

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the quarterly period ended December 31, 2001.

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 February 12, 2002 was 25,892,433.

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VIASAT, INC.
CONDENSED CONSOLIDATED BALANCE SHEET

	March 31, 2001	December 31, 2001
		(Unaudited)
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 17,721,000	\$ 5,147,000
Short term investments	—	153,000
Accounts receivable	64,105,000	73,885,000
Inventory	22,916,000	29,152,000
Deferred income taxes	1,792,000	1,975,000
Other current assets	13,416,000	7,946,000
	<hr/>	<hr/>
Total current assets	119,950,000	118,258,000
Intangible assets, net	25,744,000	35,707,000
Property and equipment, net	19,888,000	30,329,000
Other assets	3,796,000	22,125,000
	<hr/>	<hr/>
Total assets	\$169,378,000	\$206,419,000
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LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 20,310,000	\$ 20,472,000
Accrued liabilities	14,970,000	16,012,000
Notes payable	—	6,500,000
Line of credit	—	10,799,000
Current portion of notes payable	336,000	—
	<hr/>	<hr/>
Total current liabilities	35,616,000	53,783,000
Other liabilities	604,000	1,745,000
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Total liabilities	36,220,000	55,528,000
	<hr/>	<hr/>
Contingencies (Note 7)		
Minority interest in consolidated subsidiary	351,000	412,000
	<hr/>	<hr/>
Stockholders' equity:		
Common stock	2,000	2,000
Paid in capital	96,154,000	107,843,000
Retained earnings	37,328,000	42,918,000
Accumulated other comprehensive loss	(677,000)	(284,000)
	<hr/>	<hr/>
Total stockholders' equity	132,807,000	150,479,000
	<hr/>	<hr/>
Total liabilities and stockholders' equity	\$169,378,000	\$206,419,000
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See accompanying notes to condensed consolidated financial statements.

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

	Three Months Ended December 31,		Nine Months Ended December 31,	
	2000	2001	2000	2001
Revenues	\$43,093,000	\$50,089,000	\$119,449,000	\$148,447,000
Cost of revenues	29,466,000	34,040,000	80,811,000	101,960,000
Gross profit	13,627,000	16,049,000	38,638,000	46,487,000
Operating expenses:				
Selling, general and administrative	7,675,000	9,272,000	20,065,000	25,637,000
Independent research and development	1,589,000	2,532,000	4,955,000	5,643,000
Acquired in-process research and development	141,000	—	2,334,000	2,500,000
Amortization of intangible assets	967,000	1,814,000	2,342,000	4,401,000
Income from operations	3,255,000	2,431,000	8,942,000	8,306,000
Other income (expense):				
Interest income	304,000	75,000	1,330,000	481,000
Interest expense	(15,000)	(101,000)	(80,000)	(198,000)
Minority interest	(46,000)	(5,000)	(44,000)	(95,000)
Equity in loss of joint venture	—	(810,000)	—	(2,250,000)
Income before income taxes	3,498,000	1,590,000	10,148,000	6,244,000
Provision (benefit) for income taxes	783,000	(849,000)	3,044,000	654,000
Net income	\$ 2,715,000	\$ 2,439,000	\$ 7,104,000	\$ 5,590,000
Basic net income per share	\$.12	\$.11	\$.34	\$.25
Diluted net income per share	\$.12	\$.10	\$.32	\$.24
Shares used in basic net income per share computation	21,836,429	22,635,141	21,187,133	22,381,145
Shares used in diluted net income per share computation	22,875,989	23,440,711	22,416,498	23,281,104

See accompanying notes to condensed consolidated financial statements.

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

	Nine Months Ended December 31,	
	2000	2001
Cash flows from operating activities:		
Net income	\$ 7,104,000	\$ 5,590,000
Adjustments to reconcile net income to net cash used in operating activities:		
Depreciation and amortization	5,723,000	9,318,000
Acquired in-process research and development	2,334,000	2,500,000
Deferred taxes	(1,795,000)	(1,055,000)
Tax benefit from exercise of stock options	478,000	—
Equity in loss of joint venture	—	2,250,000
Minority interest in consolidated subsidiary	332,000	61,000
Non-cash compensation	134,000	15,000
Increase (decrease) in cash resulting from changes in:		
Accounts receivable	(15,311,000)	(9,843,000)
Inventory	(11,199,000)	(4,301,000)
Other assets	(10,539,000)	(1,932,000)
Accounts payable	10,115,000	(56,000)
Accrued liabilities	3,956,000	(853,000)
Other liabilities	(723,000)	1,504,000
Net cash (used in) provided by operating activities	(9,391,000)	3,198,000
Cash flows from investing activities:		
Acquisition of a business	(57,114,000)	(11,424,000)
Investment in joint venture	—	(2,250,000)
Proceeds from sale of short-term investments	121,000	—
Purchases of short-term investments	—	(153,000)
Purchases of property and equipment, net	(2,973,000)	(13,996,000)
Net cash used in investing activities	(59,966,000)	(27,823,000)
Cash flows from financing activities:		
Repayment of notes payable	(739,000)	(336,000)
Proceeds from line of credit	—	10,799,000
Proceeds from issuance of common stock, net of issuance costs	75,107,000	1,674,000
Net cash provided by financing activities	74,368,000	12,137,000
Effect of exchange rate changes on cash	(27,000)	(86,000)
Net increase (decrease) in cash and cash equivalents	4,984,000	(12,574,000)
Cash and cash equivalents at beginning of period	19,520,000	17,721,000
Cash and cash equivalents at end of period	\$ 24,504,000	\$ 5,147,000

Non-cash investing and financing activities — Notes payable issued for \$6.5 million and accounts receivable credit of \$3.5 million to seller in exchange for \$10.0 million equity interest in U.S. Monolithics, LLC. See also Note 4

See accompanying notes to condensed consolidated financial statements.

VIASAT, INC.

CONDENSED CONSOLIDATED STATEMENT OF STOCKHOLDERS' EQUITY

	Common Stock		Paid in Capital	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total	Comprehensive Income (Loss)
	Number of Shares	Amount					
Balance at March 31, 2001	22,007,650	\$2,000	\$ 96,154,000	\$37,328,000	\$(677,000)	\$132,807,000	
Exercise of stock options	116,863		458,000			458,000	
Issuance of stock under Employee Stock Purchase Plan	100,227		1,216,000			1,216,000	
Purchase of Comsat Laboratories	478,217		10,000,000			10,000,000	
Non-cash compensation modification of stock options			15,000			15,000	
Net income				5,590,000		5,590,000	\$5,590,000
Foreign currency translation					393,000	393,000	393,000
Comprehensive income							\$5,983,000
Balance at December 31, 2001	22,702,957	\$2,000	\$107,843,000	\$42,918,000	\$(284,000)	\$150,479,000	

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 December 31, 2001, the condensed consolidated statements of income for the three and nine month periods ended December 31, 2000 and 2001, the condensed consolidated statement of cash flows for the nine months ended December 31, 2000 and 2001, and the condensed consolidated statement of stockholders' equity for the nine months ended December 31, 2001 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, 2001 included in our 2001 Annual Report on Form 10-K. Interim operating results are not necessarily indicative of operating results for the full year.

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

In general, the functional currency of a foreign operation is deemed to be the local country's currency. Consequently, assets and liabilities of operations outside the United States are generally translated into United States dollars, and the effects of foreign currency translation adjustments are included as a component of stockholders' equity.

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during the reporting period. Estimates have been prepared on the basis of the most current and best available information, and actual results could differ from those estimates.

NOTE 2 — Revenue Recognition

The majority of our revenues are derived from services performed under a variety of contracts including cost-plus-fixed fee, fixed-price, and time and materials type contracts. Generally, revenues are recognized as 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 Government representatives. These audits have been completed and agreed upon through fiscal year 1998. Contract revenues and accounts receivable are stated at amounts which are expected to be realized upon final settlement.

NOTE 3 — Shelf Registration Statement

In September 2001, we filed a universal shelf registration statement with the Securities and Exchange Commission for the future sale of up to \$75 million of debt securities, common stock, preferred stock, depositary shares, and warrants. The securities may be offered from time to time, separately or together, directly by us or through underwriters at amounts, prices, interest rates and other terms to be determined at the time of the offering. We currently intend to use the net proceeds from the sale of the securities under the shelf registration statement for general corporate purposes, including acquisitions, capital expenditures, working capital and the repayment or refinancing of our debt. See Note 10 — Subsequent Events

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

NOTE 4 — Acquisitions

Comsat Laboratories

On July 27, 2001, we acquired 100% of the assets of Comsat Laboratories from Comsat Corporation, a Lockheed Martin Global Telecommunications company, for an aggregate purchase price of approximately \$21.4 million (including acquisition costs and estimated post-closing adjustments). The purchase price consisted of approximately \$11.4 million in cash, plus 478,217 shares of our common stock valued at approximately \$10.0 million based on the average market price of our common stock. In addition, warrants to purchase up to 60,000 shares of our common stock may be issued as part of the purchase price contingent upon certain revenue and development award targets being achieved by Comsat Laboratories within a two-year period from the date of the acquisition. The value of the warrants will be measured once their contingency is resolved. The allocation of the purchase price is preliminary based on the completion of third-party valuations and the resolution of the contingency noted above.

Comsat Laboratories specializes in broadband satellite network terminals designed to extend the reach and functionality of networks using a variety of flexible, multi-protocol products. The terminals support high-speed voice, video, data, multimedia and Internet connections under the LINKWAY™ and LinkStar™ brand names. We expect the acquisition to augment our position in core satellite networks and communications systems business.

The following unaudited pro forma information presents a summary of consolidated results of operations for the three and nine month periods ended December 31, 2001 as if the acquisition had occurred at the beginning of fiscal year 2002, with pro forma adjustments to give effect to amortization of intangibles and certain other adjustments, together with related income tax effect. These pro forma results include \$2.5 million of in-process research and development costs that are considered nonrecurring. The assets purchased from Comsat Corporation did not comprise a division or business unit of Comsat Corporation until October 2000. Therefore, accounting records are not available to prepare pro forma consolidated results for the year ended March 31, 2001. These pro forma amounts do not purport to be indicative of the results that would have actually been obtained if the acquisition had occurred as of the beginning of the periods presented, or that may be obtained in the future.

	For the Three Months Ended December 31, 2001	For the Nine Months Ended December 31, 2001
Revenues	\$50,089,000	\$152,673,000
Net income	\$ 2,439,000	\$ 3,670,000
Earnings per share		
Basic	\$.11	\$.16
Diluted	\$.10	\$.16
Weighted average number of shares		
Basic	22,635,151	22,523,344
Diluted	23,440,711	23,486,303

U.S. Monolithics, LLC

On December 12, 2001, we acquired all outstanding preferred units of U.S. Monolithics, LLC (USM), from Wildblue Communications, Inc. pursuant to a Unit Purchase Agreement dated December 12, 2001 (the Wildblue Agreement). The preferred units comprise approximately 35% of the outstanding equity interests of USM. In addition, on December 14, 2001 we entered into another Unit Purchase Agreement to acquire all outstanding common units of USM. The aggregate purchase price for the preferred and common units of USM is approximately \$30 million. After the closing, we will become the sole equity holder of USM, which will continue its business as our wholly-owned subsidiary. See also Note 10 — Subsequent Events

VIASAT, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
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Under the terms of the Wildblue Agreement, we exchanged (a) a secured promissory note in the amount of \$6,000,000, (b) an unsecured promissory note in the amount of \$500,000 and (c) a credit of \$3,500,000 against certain payment obligations of Wildblue under a commercial agreement that we entered into with Wildblue concurrently with the signing of the Wildblue Agreement, for all of the outstanding preferred units of USM. The secured note and the unsecured note bear interest at the rate of 5% per annum, with all principal and interest due on January 31, 2002. In addition, we entered into a security agreement with Wildblue pledging a portion of the preferred units of USM to secure our payment obligations under the secured note.

The total investment as of December 31, 2001 of \$10.0 million in USM is recorded under the equity method of accounting and the investment is recorded as a portion of Other assets. A loss of \$90,000 is included as part of Equity in loss of joint venture for the three and nine months ended December 31, 2001.

NOTE 5 — Earnings Per Share

Common stock equivalents of 1,039,559 and 805,569 shares for the three months ended December 31, 2000 and 2001, respectively, and 1,229,366 and 899,959 for the nine months ended December 31, 2000 and 2001 respectively, were used to calculate diluted earnings per share. Antidilutive shares excluded from the calculation were 1,933,405 and 2,462,025 shares for the three months ended December 31, 2000 and 2001, respectively. Antidilutive shares excluded from the calculation were 864,943 and 2,157,698 shares for the nine months ended December 31, 2000 and 2001, respectively. Common stock equivalents are primarily comprised of options granted under our stock option plan.

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

NOTE 6 — Composition of Certain Balance Sheet Captions

	March 31, 2001	December 31, 2001
		(Unaudited)
Accounts receivable:		
Billed	\$45,099,000	\$41,891,000
Unbilled	19,322,000	32,228,000
Allowance for doubtful accounts	(316,000)	(234,000)
	\$64,105,000	\$73,885,000
Inventory:		
Raw materials	\$11,657,000	\$15,119,000
Work in process	7,770,000	7,271,000
Finished goods	3,489,000	6,762,000
	\$22,916,000	\$29,152,000
Intangible assets:		
Technology	\$ 9,845,000	\$13,695,000
Contracts and relationships	9,686,000	9,686,000
Acquired work force	5,477,000	5,477,000
Non-compete agreement	—	5,350,000
Other intangible assets	—	3,800,000
Goodwill	4,525,000	5,889,000
	29,533,000	43,897,000
Accumulated amortization	(3,789,000)	(8,190,000)
	\$25,744,000	\$35,707,000
Accrued liabilities:		
Current portion of warranty reserve	\$ 1,291,000	\$ 883,000
Accrued vacation	2,531,000	3,204,000
Accrued bonus	1,828,000	1,805,000
Accrued 401(k) matching contribution	1,773,000	1,888,000
Collections in excess of revenues	6,196,000	3,444,000
Other	1,351,000	4,750,000
	\$14,970,000	\$15,974,000

The intangible assets are amortized using the straight-line method over their estimated useful lives ranging from two to nine years. The technology intangible asset has several components with estimated useful lives of six to nine years, contracts and relationships intangible asset has several components with estimated useful lives of three to nine years, acquired work force has an estimated useful life of five years, the non-compete agreement has an estimated useful life of three years and other intangibles have estimated useful lives from two years to nine years.

Goodwill related to the acquisition of the satellite networks business of Scientific-Atlanta, Inc. (Satellite Networks Business) in April 2000 of approximately \$4.5 million has an estimated useful life of seven years. Goodwill acquired in conjunction with the Comsat Laboratories acquisition is not subject to amortization under SFAS 141. Goodwill of approximately \$1.4 million related to the Comsat Laboratories acquisition will not be amortized, but will be periodically tested for impairment as required by SFAS 142. See Note 9 for further discussions.

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

NOTE 7 — Contingencies

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. On April 23, 2001, International Licensees, LLC was approved by the bankruptcy court as the buyer of ORBCOMM. International Licensees is a consortium of current ORBCOMM licensees and other investors. There remain some conditions with respect to financing set in bankruptcy that the International Licensees must fulfill in the future. A failure to meet these conditions could result in the unwinding of the purchase by the International Licensees. On November 15, 2001 ORBCOMM formally rejected our contracts in bankruptcy. The following table summarizes our assets related to ORBCOMM at December 31, 2001.

Accounts receivable-billed	\$4,628,000
Accounts receivable-unbilled	136,000
	<hr/>
Total	\$4,764,000
	<hr/>

Although we are continuing to negotiate with ORBCOMM on maintaining our business relationship, we cannot make assurances that the assets listed above will be fully recovered. If we are unable to reach an agreement with ORBCOMM, our rights as an unsecured creditor will entitle us to collect only a small percentage of our assets currently at risk. Further, if ORBCOMM is unable to successfully restructure its operations, it would substantially limit our ability to recover the assets listed above and would cause ViaSat to incur substantial losses, which would harm our business; however, we have not made any adjustments to the recorded amount for the assets as it is not possible at this time to reasonably estimate or determine what loss, if any, will be incurred.

On December 5, 2001 Astrolink International LLC terminated for convenience two of our ground segment contracts. These two contracts relate to the development and production of subscriber terminals and service provider gateways for the Astrolink satellite system. This termination requires Astrolink to pay ViaSat a termination amount that is based on a predetermined formula provided by the contracts. The contractual termination amounts, to the extent collectible, exceed our assets at risk. In addition, Telespazio SpA has terminated our contract for the production of dedicated gateways for the Astrolink system.

The assets at risk to Astrolink as of December 31, 2001 are accounts receivable due from Astrolink in the amount of approximately \$6.3 million and \$2.5 million for prepaid airtime on Astrolink satellites. We expect that our assets at risk will exceed \$8.9 million, however, the additional amounts at risk are not determinable at this time. Further, we expect to incur additional costs associated with winding down the program and terminating the contracts of our subcontractors on the program.

ViaSat is continuing discussions with Astrolink and other interested parties regarding potential alternatives for the Astrolink project. We cannot, however, make assurances that the assets or the contractual termination amounts will be fully recovered. If Astrolink is unable to successfully restructure its operations, or obtain additional funding, it would substantially limit our ability to recover the assets at risk and could cause ViaSat to incur losses which could harm our business; however, we have not made any adjustments to the recorded amount 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 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 permits 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

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

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 8 — Segment Information

We are organized primarily on the basis of products with commercial and government (defense) communication applications. The following table summarizes revenues and operating profits by operating segment for the three and nine month periods ended December 31, 2000 and 2001. 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. Assets are not tracked by operating segment. Consequently, it is not practical to show assets by operating segments.

	Three months ended December 31,		Nine months ended December 31,	
	2000	2001	2000	2001
	(unaudited)		(unaudited)	
Revenues				
Commercial	\$26,114,000	\$35,734,000	\$ 71,568,000	\$103,185,000
Government	16,979,000	14,355,000	47,881,000	45,262,000
Total Revenues	43,093,000	50,089,000	119,449,000	148,447,000
Operating Profits				
Commercial	2,445,000	2,425,000	6,034,000	9,347,000
Government	2,156,000	2,117,000	8,578,000	6,441,000
Segment operating profit before corporate	4,601,000	4,542,000	14,612,000	15,788,000
Corporate	(238,000)	(297,000)	(994,000)	(581,000)
Amortization of intangibles	(967,000)	(1,814,000)	(2,342,000)	(4,401,000)
Acquired in-process research and development	(141,000)	—	(2,334,000)	(2,500,000)
Total operating profits	\$ 3,255,000	\$ 2,431,000	\$ 8,942,000	\$ 8,306,000

Revenue information by geographic area for the three and nine month periods ended December 31, 2000 and 2001 is as follows:

	Three months ended December 31,		Nine months ended December 31,	
	2000	2001	2000	2001
	(unaudited)		(unaudited)	
North America	\$34,542,000	\$32,769,000	\$ 96,065,000	\$110,376,000
Europe	3,673,000	8,983,000	10,860,000	18,575,000
Asia Pacific	4,447,000	7,915,000	10,977,000	18,066,000
Latin America	431,000	422,000	1,547,000	1,430,000
	\$43,093,000	\$50,089,000	\$119,449,000	\$148,447,000

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 \$34,000 at December 31, 2001.

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

NOTE 9 — New Accounting Pronouncements

In June 1998, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 133 — *Accounting for Derivative Instruments and Hedging Activities*, which establishes accounting and reporting standards for derivative instruments, and for hedging activities. In June 1999, the FASB issued SFAS 137 — *Accounting for Derivative Instruments and Hedging Activities-Deferral of the Effective Date of SFAS 133*, which delayed the effective date of SFAS 133 to fiscal years beginning after June 15, 2000. We were required to adopt SFAS 133 in the quarter ended June 30, 2001. SFAS 133 requires certain derivative instruments to be recorded at fair value. The adoption of SFAS 133 did not have a material effect on the consolidated financial statements.

In June 2001, the FASB issued SFAS No. 141 — *Business Combinations*. SFAS 141 addresses financial accounting and reporting for business combinations and supersedes APB Opinion No. 16 — *Business Combinations*, and FASB Statement 38 — *Accounting for Preacquisition Contingencies of Purchased Enterprises*. All business combinations in the scope of this Statement are to be accounted for using one method, the purchase method. The statement is applicable for all business combinations occurring after June 30, 2001. The adoption of SFAS 141 did not have a material effect on the consolidated financial statements. However, for the Comsat Laboratories acquisition that was completed on July 27, 2001, we applied the provisions of SFAS 141. See Note 4 for further discussion.

In June 2001, the FASB issued SFAS No. 142 — *Goodwill and Other Intangible Assets*. SFAS 142 addresses financial accounting and reporting for acquired goodwill and other intangible assets and supersedes APB Opinion No. 17 — *Intangible Assets*. It addresses how intangible assets that are acquired individually or with a group of other assets (but not those acquired in a business combination) should be accounted for in financial statements upon their acquisition. This Statement also addresses how goodwill and other intangible assets should be accounted for after they have been initially recognized in the financial statements. This accounting pronouncement will be adopted on April 1, 2002 for goodwill and intangible assets acquired prior to July 1, 2001. As the result of adopting SFAS 142 for our fiscal year ending March 31, 2003, we will no longer amortize the intangibles assets “Acquired workforce” of \$5.5 million or “Goodwill” of \$4.5 million acquired in the Satellite Networks Business acquisition. This will decrease amortization expense in that year by approximately \$1.7 million. See Note 6 for further discussion.

In October 2001, the FASB issued SFAS No. 144 — *Accounting for the Impairment or Disposal of Long-Lived Assets*, which replaces SFAS No. 121 — *Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of*. SFAS No. 144 resolves implementation issues previously experienced under SFAS No. 121 and broadens the reporting of discontinued operations. This statement becomes effective for financial statements issued for fiscal years beginning after December 15, 2001. Management is currently evaluating the effect that adoption of this standard will have on the consolidated financial statements.

In August 2001, the FASB issued SFAS No. 143 — *Accounting for Asset Retirement Obligations*. SFAS No. 143 addresses financial accounting and reporting for obligations associated with the retirement of tangible long-lived assets and the associated asset retirement costs. This statement becomes effective for financial statements issued for fiscal years beginning after June 15, 2002. Management is currently evaluating the effect that adoption of this standard will have on the consolidated financial statements.

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

NOTE 10 — Subsequent Events

On January 4, 2002 we completed the acquisition of U.S. Monolithics, LLC, an Arizona limited liability company (USM). The acquisition was completed in two steps. We completed the first step on December 12, 2001 by acquiring 100% of the preferred units of USM (representing approximately 35% of USM outstanding units) held by WildBlue Communications pursuant to a Unit purchase Agreement dated December 12, 2001. We have now completed the second step by acquiring all of the outstanding common units of USM pursuant to a Unit Purchase Agreement dated December 14, 2001. The aggregate purchase price for the preferred and common units of USM was approximately \$30 million. We issued 1,163,190 shares of common stock in acquiring the common units. See Note 4 - Acquisitions

Founded in 1998, USM is primarily focused on developing proprietary gallium arsenide (GaAs) millimeter wave Integrated Circuits (MMICs) for use in broadband communications. USM's systems background and proprietary capabilities have also enabled it to design power amplifiers, frequency block upconverters, and entire transceivers for the high frequency, broadband markets. USM also has strong capabilities with respect to high frequency packaging.

On January 8, 2002 we completed a public stock offering under our universal shelf registration statement for the sale of 2,000,000 shares of common stock for net proceeds of approximately \$27.1 million.

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, 2001, 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 December 31,		Nine Months Ended December 31,	
	2000	2001	2000	2001
Revenues	100.0%	100.0%	100.0%	100.0%
Cost of revenues	68.4	68.0	67.6	68.7
Gross profit	31.6	32.0	32.4	31.3
Operating expenses:				
Selling, general and administrative	17.8	18.5	16.8	17.3
Independent research and development	3.7	5.1	4.1	3.8
Acquired in-process research and development	.3	—	2.0	1.7
Amortization of intangible assets	2.2	3.6	2.0	3.0
Income from operations	7.6	4.8	7.5	5.5
Income before income taxes	8.1	3.2	8.5	4.2
Net income	6.3	4.9	5.9	3.8

Included in the above results are revenues related to Astrolink International LLC. On December 5, 2001 Astrolink terminated for convenience two of our ground segment contracts. These two contracts relate to the development and production of subscriber terminals and service provider gateways for the Astrolink satellite system. This termination requires Astrolink to pay ViaSat a termination amount that is based on a predetermined formula provided by the contracts. The contractual termination amounts, to the extent collectible, exceed our assets at risk. In addition, Telespazio SpA has terminated our contract for the production of dedicated gateways for the Astrolink system.

Revenues for all Astrolink related contracts were \$4.2 million (9.8% of total revenues) and \$6.7 million (13.4% of total revenues) for the three months ended December 31, 2000 and 2001, respectively and \$8.1 million (6.8% of total revenues) and \$19.1 million (12.9% of total revenues) for the nine months ended December 31, 2000 and 2001, respectively. ViaSat has redeployed key personnel to other projects and has instituted staff reductions to manage its cost structure in a manner consistent with the change in Astrolink's status.

See Note 7 to our Condensed Consolidated Financial Statements for further information regarding Astrolink.

Three Months Ended December 31, 2000 vs. Three Months Ended December 31, 2001

Revenues. Revenues increased 16.2% from \$43.1 million for the three months ended December 31, 2000 to \$50.1 million for the three months ended December 31, 2001. This increase was mainly due to higher sales of commercial terminal products and certain government products partially offset by lower sales on certain government development programs.

Gross Profit. Gross profit increased 17.8% from \$13.6 million (31.6% of revenues) for the three months ended December 31, 2000 to \$16.0 million (32.0% of revenues) for the three months ended December 31, 2001. This increase was primarily due to higher volumes related to commercial terminal products and certain government products partially offset by lower gross profit on certain development programs.

Selling, General and Administrative Expenses. Selling, general and administrative (SG&A) expenses increased 20.8% from \$7.7 million (17.8% of revenues) for the three months ended December 31, 2000 to \$9.3 million (18.5% of revenues) for the three months ended December 31, 2001. The increase was primarily due to the additional costs from the operations of Comsat Laboratories, and efforts related to pursuing both commercial and government 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 increased 59.4% from \$1.6 million (3.7% of revenues) for the three months ended December 31, 2000, to \$2.5 million (5.1% of revenues) for the three months ended December 31, 2001. This increase resulted from a higher level of effort in commercial areas.

Amortization of Intangible Assets. Amortizable intangible assets are being amortized over useful lives ranging from two to nine years. Amortization expense increased 87.6% from \$967,000 (2.2% of revenues) for the three months ended December 31, 2000, to \$1.8 million (3.6% of revenues) for the three months ended December 31, 2001. This increase resulted from the additional intangible assets acquired in the purchase of Comsat Laboratories and a completed allocation to the intangible assets as part of the purchase price of the Satellite Networks Business.

Interest Expense. Interest expense increased from \$15,000 for the three months ended December 31, 2000 to \$101,000 for the three months ended December 31, 2001. 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 \$504,000 at December 31, 2000. At December 31, 2001 there were no outstanding equipment loans, \$10.8 million in outstanding borrowings under our line of credit and \$6.5 million in notes payable to Wildblue Communications. See Note 4 to our Condensed Consolidated Financial Statements for more details on the notes payable to Wildblue.

Interest Income. Interest income decreased from \$304,000 for the three months ended December 31, 2000 to \$75,000 for the three months ended December 31, 2001. This decrease resulted from a decrease in invested balances and lower rate of earnings. Interest income relates largely to interest earned on short-term deposits of cash.

Provision for Income Taxes. Our effective income tax rate changed from a 22.4% tax provision for the three months ended December 31, 2000 to a 53.4% tax benefit for the three months December 31, 2001. The decrease results primarily from a change in estimated research and development tax credit for the current and prior year. The change in estimate was made based upon historical detailed information received from Scientific-Atlanta, Inc. for calculating base period percentages.

Nine Months Ended December 31, 2000 vs. Nine Months Ended December 31, 2001

Revenues. Revenues increased 24.3% from \$119.4 million for the nine months ended December 31, 2000 to \$148.4 million for the nine months ended December 31, 2001. This increase was primarily due to improvements in revenues generated by commercial development programs and terminal products including the acquisition of Comsat Laboratories.

Gross Profit. Gross profit increased 20.3% from \$38.6 million (32.4% of revenues) for the nine months ended December 31, 2000 to \$46.5 million (31.3% of revenues) for the nine months ended December 31, 2001. This increase was primarily due to a higher volume of commercial development and terminal product sales.

Selling, General and Administrative Expenses. SG&A expenses increased 27.8% from \$20.1 million (16.8% of revenues) for the nine months ended December 31, 2000 to \$25.6 million (17.3% of revenues) for the nine months ended December 31, 2001. The increase was primarily due to the additional costs from the operations of Comsat Laboratories, and efforts related to pursuing both commercial and government business.

Independent Research and Development. IR&D expenses increased 13.9% from \$5.0 million (4.1% of revenues) for the nine months ended December 31, 2000 to \$5.6 million (3.8% of revenues) for the nine months ended December 31, 2001.

Acquired In-Process Research and Development. Purchased in-process research and development charges result from two recently completed acquisitions. The acquisition of the Satellite Networks Business accounted for \$2.3 million (2.0% of revenues) in the nine months ended December 31, 2000 and the acquisition of Comsat Laboratories accounted for \$2.5 million (1.7% of revenues) in the nine months ended December 31, 2001.

An independent valuation was performed and used as an aid in determining the fair value of the purchased IPR&D projects. The product areas were identified in which there were research and development efforts underway where technological feasibility had not been reached.

The Satellite Networks Business is developing a next generation mobile subscriber communicator. This next generation product contains a new chipset, new connectors, added functionality, bigger programming space and a longer battery life than the legacy product and will be sold at a lower price. The estimated completion date at the time of the acquisition was November 2000. We estimated based on man hours incurred versus man hours required to complete the project that at the acquisition date the project was 77% complete and would require approximately \$500,000 to complete. Using the income approach the value calculated for the IPR&D associated with the mobile subscriber communicator was \$1.6 million. The market for this product has not materialized to the extent anticipated and as a result, the completion date has been delayed.

The Satellite Networks Business also has the SkyRelay and the SkyLynx products. The SkyRelay development of a next generation terminal included a terminal with newer interfaces, an additional IP port and consolidated functionality onto a single card. At the time of acquisition, the project completion was expected to be in June of 2001 and we estimated based on man hours incurred versus man hours required to complete the project that the project was estimated to be 15% complete and will require approximately \$6.0 million to complete. Using the income approach the value calculated for the IPR&D associated with SkyRelay was \$300,000. The production for this next generation SkyRelay product is expected to begin in fiscal 2002. The SkyLynx related IPR&D projects are the Mesh Working and 2mbps Channel Unit. Based on the same completion criteria as SkyRelay, it was estimated the SkyLynx related IPR&D was 60% complete at the date of acquisition and would require approximately \$385,000 to complete. The estimated completion date at the time of acquisition was in fiscal 2002 for both projects. Also using the income approach, the value calculated for IPR&D associated with SkyLynx was \$400,000. The IPR&D for the SkyRelay and SkyLynx products continue progress, in all material respects, consistently with our original assumptions that were provided to the independent appraiser and used to value the IPR&D.

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At the time of the acquisition, Comsat Laboratories was developing a satellite network terminal that expands the frequencies on which an existing terminal could operate. The date when the project was expected to reach technological feasibility at the time of the acquisition was September 2001. We estimated based on man hours incurred versus man hours required to complete the project that at the acquisition date the project was 80% complete and would require approximately \$900,000 to complete. Using the income approach the value calculated for the IPR&D associated with the satellite network terminal was \$2.5 million. The project has proceeded since the acquisition and has reached technological feasibility.

Amortization of Intangible Assets. Amortization of intangible assets increased 87.9% from \$2.3 million (2.0% of revenues) for the nine months ended December 31, 2000 to \$4.4 million (3.0% of revenues) for the nine months ended December 31, 2001. Amortizable intangible assets are being amortized over useful lives ranging from two to nine years. This increase resulted from the acquisition of Comsat Laboratories and a completed allocation of the intangible assets as part of the purchase price of the Satellite Networks Business.

Interest Expense. Interest expense increased from \$80,000 for the nine months ended December 31, 2000 to \$198,000 for the nine months ended December 31, 2001. Total outstanding equipment loans were \$504,000 at December 31, 2000. At December 31, 2001 there were no outstanding equipment loans, \$10.8 million in outstanding borrowings under our line of credit and \$6.5 million in notes payable to Wildblue Communications. See Note 4 to our Condensed Consolidated Financial Statements for more details on the notes payable to Wildblue.

Interest Income. Interest income decreased from \$1.3 million for the nine months ended December 31, 2000 to \$481,000 for the nine months ended December 31, 2001. This decrease resulted from a decrease in invested balances and lower rate of earnings.

Provision for Income Taxes. Our effective income tax rate decreased from 30.0% for the nine months ended December 31, 2000 to 10.5% for the nine months ended December 31, 2001. The decrease results primarily from a change in estimated research and development tax credit for the current and prior year. The change in estimate was made based upon historical detailed information received from Scientific-Atlanta, Inc. for calculating base period percentages.

Backlog

At December 31, 2001 we had firm backlog of \$162.5 million of which \$142.2 million was funded. The firm backlog of \$162.5 million does not include contract options of \$81.1 million. Of the \$162.5 million in firm backlog, approximately \$32.3 million is expected to be delivered in the fiscal year ending March 31, 2002, and the balance is expected to be delivered in the fiscal year ending March 31, 2003 and thereafter. At March 31, 2001 we had firm backlog of \$236.2 million, of which \$212.3 million was funded, not including options of \$55.4 million.

The backlog amounts as presented are comprised of funded and unfunded components. Funded backlog represents the sum of contract amounts for which funds have been specifically obligated by customers to contracts. Unfunded backlog represents future amounts that customers may obligate over the specified contract performance periods. Our customers allocate funds for expenditures on long-term contracts on a periodic basis. Our ability to realize revenues from contracts in backlog is dependent upon adequate funding for such contracts. Although funding of 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 nine months ended December 31, 2000 was \$9.4 million and cash provided by operating activities for the nine months ended December 31, 2001 was \$3.2 million. Increases in accounts receivable and inventories were partially offset by a decrease in other liabilities.

Cash used in investing activities for the nine months ended December 31, 2000 was \$60.0 million and cash used in investing activities for the nine months ended December 31, 2001 was \$27.8 million. During the nine months ended December 31, 2001, we acquired Comsat Laboratories for cash of approximately \$11.4 million, plus 478,217 shares of our common stock valued at approximately \$10.0 million. In addition, warrants to purchase up to 60,000 shares of our common stock may be issued as part of the purchase price contingent upon certain revenue targets being achieved by Comsat Laboratories within a two-year period from the date of the acquisition. The value of the warrants will be measured once their contingency is resolved. We also acquired \$14.0 million in equipment in the nine months ended December 31, 2001.

Cash provided by financing activities for the nine months ended December 31, 2000 was \$74.4 million and cash provided by financing activities for the nine months ended December 31, 2001 was \$12.1 million. This decrease was primarily the result of completing a public stock offering for \$73.1 million in the nine months ended December 31, 2000, partially offset by draws on our line of credit of \$10.7 and issuance of \$6.5 million in notes payable to Wildblue in the nine months ended December 31, 2001.

In December 2001 we acquired the preferred units of U.S. Monolithics, LLC for \$10.0 million, of which \$3.5 million was applied to accounts receivable owed to us by Wildblue and \$6.5 million consisted of notes payable to Wildblue with maturity dates no later than January 31, 2002.

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

At December 31, 2001, we had \$5.3 million in cash, cash equivalents and short-term investments and \$64.5 million in working capital. On June 21, 2001 we executed a one year Revolving/Term Loan Agreement of \$25.0 million from Union Bank of California, N.A. and Washington Mutual Bank, with Union Bank of California, N.A., as Administrative Agent. Under the revolving facility and the term loan facility, we have the option to borrow at the bank's prime rate or at LIBOR plus, in each case, an applicable margin based on the ratio of our total debt to EBITDA (earnings before interest and taxes and depreciation and amortization). The agreement contains financial covenants that set maximum debt to EBITDA limits, minimum quarterly EBITDA limits, minimum quick ratio limit and a minimum tangible net worth limit. We had \$10.8 million in outstanding borrowings under the revolving portion of the facility at December 31, 2001.

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. We have approximately \$4.8 million worth of receivables and other assets currently at risk with ORBCOMM. We cannot make assurances that the assets will be fully recovered. If ORBCOMM is unable to successfully restructure its operations it could cause ViaSat to incur losses up to the amount of the assets at risk; however, we have not made any adjustments to the recorded amount as it is not possible at this time to reasonably estimate or determine what loss, if any, will be incurred. See Note 7 to our Condensed Consolidated Financial Statements for further discussion related to ORBCOMM.

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On December 5, 2001 Astrolink International LLC terminated for convenience two of our ground segment contracts. These two contracts relate to the development and production of subscriber terminals and service provider gateways for the Astrolink satellite system. This termination requires Astrolink to pay ViaSat a termination amount that is based on a predetermined formula provided by the contracts. The contractual termination amounts, to the extent collectible, exceed our assets at risk. In addition, Telespazio SpA has terminated our contract for the production of dedicated gateways for the Astrolink system. At December 31, 2001 we had accounts receivable due from Astrolink in the amount of approximately \$6.3 million and \$2.5 million for prepaid airtime on Astrolink satellites. We cannot make assurances that the assets at risk will be fully recovered. If Astrolink is unable to successfully restructure its operations or obtain additional financing it would substantially limit our ability to recover the assets at risk and could cause ViaSat to incur losses which could harm our business; however we have not made any adjustments to the recorded amount as it is not possible at this time to reasonably estimate or determine what loss, if any, will be incurred. See Note 7 to our Condensed Consolidated Financial Statements for further discussion related to Astrolink.

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 and borrowings from our revolving line of credit 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

Our risks have not changed since year-end and therefore, this item is not applicable.

PART II — OTHER INFORMATION

Item 6. Exhibits and Reports on Form 8-K

- (a) Exhibit 10.1 — Gateway Terminal Development, Production and Purchase Agreement, by and between Astrolink International, LLC and ViaSat, Inc. dated December 28, 2000.(1)

Exhibit 10.2 — Agreement for Satellite Modem, Wildblue Satellite Terminal and Satellite Modem Termination System Development, Production and Purchase, by and between Wildblue Communications, Inc. and ViaSat, Inc. dated December 12, 2001.(1)

- (b) Reports on Form 8-K

A Current Report on Form 8-K was filed with the Securities and Exchange Commission on December 19, 2001 and amended on December 20, 2001, regarding our acquisition of U.S. Monolithics, LLC.

- (1) Certain portions of this exhibit have been requested to be redacted pursuant to a request for confidential treatment filed by ViaSat, Inc.

SIGNATURES

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

VIASAT, INC.

February 14, 2002

/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)

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

GATEWAY TERMINAL DEVELOPMENT, PRODUCTION AND PURCHASE AGREEMENT

BY AND BETWEEN

ASTROLINK INTERNATIONAL LLC

AND

VIASAT, INC.

This Gateway 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 utilizes ground terminals and Gateways (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 Gateway Terminal technology and desires to develop, produce and provide AIL with Service Provider Gateway 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, and manufacturing the Gateway Terminals in accordance with the terms hereof;
- (b) Bringing the Gateway Terminals, which incorporate and meet the requirements of the SOW and the Acceptance Criteria, quickly and reliably to market;
- (c) 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 Gateways;
- (d) 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;
- (e) Aligning the capabilities and performance of the Gateway Terminals with the AIL System specifications, AIL's business requirements and Contractor's (including its Subcontractors') capabilities; and
- (f) Establishing Contractor as a designer and supplier of Service Provider Gateway 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 Gateway Terminal that such Milestone or Gateway Terminal has satisfied the applicable requirements set forth in Section 6.2.
- (b) "Acceptance Criteria" means the criteria used to confirm that the Gateway Terminals, the interfaces of the Gateway Terminals with the Baseband Equipment and the Element Manager, 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 Section 6.2 and 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) "ATM Switch" means the asynchronous transfer mode switch which is supplied to Contractor by AIL as CFE for integration with the Gateway Terminal.
- (i) "Baseband Equipment" or "BBE" means that portion of a Gateway that is used to perform terrestrial interworking, switching and other terrestrial networking functions. The Baseband Equipment includes the ATM Switch.
- (j) "CFE" means that equipment, data and documentation set forth in the SOW for delivery to Contractor in accordance with the SOW schedule that AIL provides for Contractor's use hereunder, and unless otherwise agreed by the Parties, in which AIL retains ownership.
- (k) "Comparable Gateway Terminals" means any Gateway Terminals developed and/or manufactured by Contractor for use with the AIL System that are substantially similar to or a derivative of the Gateway 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 Gateways and Comparable Gateways, including the related Intellectual Property Rights.
- (o) "Contractor-Certified Installer" means a third party installer of Gateway Terminals of AIL's choice that has been trained and certified by Contractor using procedures which Contractor follows for such certifications under similar commercial conditions, in accordance with reasonable standards set forth by Contractor.
- (p) "Contractor Foreground Information" means the Confidential Information (and the Intellectual Property Rights appurtenant thereto) developed by Contractor hereunder and any Joint Confidential Information developed hereunder or acquired by Contractor after the Effective Date, which shall not include any AIL Confidential Information or any Contractor Background Information.
- (q) "Contractor Personnel" means employees of Contractor, including (i) any temporary-duty personnel and Key Contractor Personnel, and (ii) Contractor's Subcontractors performing under this Agreement.
- (r) "Control" and its derivatives means with regard to any entity (i) the legal or beneficial ownership, directly or indirectly, of fifty percent (50%) or more of the capital stock of

such entity ordinarily having voting rights or (ii) the management control over such entity.

- (s) "Dead on Arrival" means where any Gateway 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 *** period immediately following such initial installation, excluding any Gateway Terminal or component failure to the extent caused by damage during shipping or installation (if such installation is not performed by Contractor or a Contractor-Certified Installer).
- (t) "Defect" or "Defective" means any failure of a Gateway Terminal, including any components thereof, to operate in conformance with the SOW and applicable Standards.
- (u) ***
- (v) "Documentation" shall include 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 Gateway Terminal, all of the above as set forth or referenced in the SOW.
- (w) "Effective Date" means the date that this Agreement is executed by the Parties.
- (x) "Element Manager" or "EM" means that portion of a Gateway that provides consolidated control and status capabilities of the Gateway.
- (y) "Equipment" means the ground-based hardware, cabling, spare or replacement parts for Gateways and other non-Software components associated with the Gateway Terminals that may be purchased by AIL from Contractor under this Agreement.
- (z) "Firmware" means the computer programs that are stored in machine executable form within non-volatile memory and operate embedded processes within the equipment.
- (aa) "Gateway" means a major satellite earth station that operates with an AIL satellite on a designated gateway beam that is used (i) to interface the AIL network with a local terrestrial network (including a larger number of users), (ii) to provide high throughput of data, (iii) to support the management of its associated customers and (iv) to support AIL's regional network control center in the management of AIL System resources. A Gateway means *** Gateway consisting of Baseband Equipment (including the ATM Switch), an Element Manager and Gateway Terminal.
- (bb) "Gateway Support Facility" means the diagnostic and repair facility for Gateways established by Contractor pursuant to Section 14.2 for the Gateway Terminals and located at Contractor's facility (Atlanta facility for baseline pricing-other options under study).
- (cc) "Gateway Terminal" means that portion of a Gateway that translates RF (radio frequency) to and from the ATM Switch and performs the TCP PEP functions and as further defined in the SOW, that is 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, as updated, revised or improved from time-to-time and provided by Contractor to AIL or its Service Providers.

- (dd) "Initial Warranty Period" means the first to occur of (i) *** following installation of a Gateway Terminal at a Gateway site by a Contractor-certified Installer or (ii) *** from the date of delivery of a Gateway Terminal to AIL or a Service Provider.
- (ee) "Intellectual Property" means patents, copyrights, Confidential Information, Marks, know-how, trade secrets, moral rights, contract or licensing rights, confidential and proprietary information protected under contract or otherwise under law and other similar intellectual or industrial property.
- (ff) "Intellectual Property Rights" means any and all rights in and with respect to patents, copyrights, Confidential Information, rights in Marks, 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.
- (gg) "Joint Confidential Information" means (A) information that has been developed pursuant to Section 10.4(c)(iii); and (B) 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 15.3(c)(i)(3), (4) or (5) below.
- (hh) "Lien" means any lien (including subcontractor and other mechanic liens), imperfection in title, security interest, claim, charge, restriction or other encumbrance.
- (ii) ***
- (jj) ***
- (kk) "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.
- (ll) "Mark" means any trademark, service mark, trade name, domain name, logo or other indicia of source or origin of a product or service.
- (mm) "Milestone Payment" means a payment made by AIL to Contractor in accordance with Section 14.2(e) below upon Acceptance by AIL of the corresponding Milestone.
- (nn) "Milestone and Payment Schedule" has the meaning given in Section 5.4 and is attached hereto as Schedule 1.
- (oo) ***
- (pp) "Order" means a purchase order issued to Contractor for the purchase of Gateway Terminals.

- (qq) "Preproduction Gateway Terminals" means the *** Gateway Terminals delivered in accordance with the Milestone and Payment Schedule that provides a single thread RF-to-ATM and TCP PEP, as described in the SOW.
- (rr) "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.
- (ss) "Production Gateway Terminals" means a Gateway Terminal produced by Contractor following AIL's Acceptance of the Prototype Gateway Terminals and the Preproduction Gateway Terminals for use by AIL or a Service Provider with the AIL System.
- (tt) "Prototype Gateway Terminal" means a non-Redundant, ***Gateway Terminal described in the SOW delivered in accordance with the Milestone and Payment Schedule that provides a single thread RF-to-ATM.
- (uu) "Purchase Price" means the price of a Gateway Terminal to AIL and its Service Providers, FOB Contractor's designated site, as set forth in Section 13.2 for the Purchase Commitment and Schedule 2 attached hereto (as may be amended by mutual agreement of the Parties to include pricing for various Gateway options and Services) for additional Gateway Terminals Ordered hereunder.
- (vv) ***
- (ww) "Redundancy" shall have the meaning set forth in the SOW.
- (xx) "Service Provider" means entities that pursuant to written agreement with AIL own and/or operate the Gateways or Comparable Gateways with the AIL System and other related software and equipment, and that may purchase Gateway Terminals from Contractor.
- (yy) "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).
- (zz) "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 Gateway 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.
- (aaa) "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.

- (bbb) "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.
- (ccc) "Standards" shall have the meaning set forth in the SOW.
- (ddd) "Statement of Work" or "SOW" means the document attached hereto as Schedule 4, 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.
- (eee) "Subcontractor" means those contractors, consultants, suppliers and providers used by Contractor under this Agreement.
- (fff) "TCP PEP" means equipment providing the performance enhancing protocol that is used to enhance the performance of using transmission control protocol over a satellite link.
- (ggg) "Technical Materials" means the technical, engineering and design information and specifications relating to the Gateway 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 part numbers), and associated documentation, in reasonable detail sufficient to permit AIL or its designees to manufacture, support, maintain and procure Gateway Terminals as permitted hereunder.
- (hhh) "Termination Date" means the date that this Agreement is terminated by a Party in accordance herewith.
- (iii) "United States" or "U.S." means the United States of America.
- (jjj) "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).
- (kkk) "Warranty" means any of the representations, covenants and warranties set forth in this Agreement.
- (lll) "Warranty Period" means the Initial Warranty Period and all Extended Warranty Periods for any Gateway Terminals.
- (mmm) "Year 2000 Compliant" means the ability of Gateway 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 12.2
AIL-proposed Change	Section 12.2(a)
AIL Purchase Commitment	Section 8.1
Annual Forecast	Section 8.2
Confidential Information	Section 15.3(a)
Contractor Program Manager	Section 12.4(a)
Development License	Section 10.1(a)

Disabling Code	Section 18.10
Early Default	Section 5.6
Escrow Agreement	Section.10.6(a)
Escrowed Material	Section 10.6(a)
Excusable Delay	Section 20.4
Extended Warranty Period	Section 11.3(b)
Final Statement	Section 22.2(c)
Force Majeure Event	Section 20.3(a)
Gateway Terminal IP	Section 22.3(a)
Initial Payment	Section 14.1
Initial Term	Article 4
Key Contractor Personnel	Section 12.5(a)

Long Lead Kit	Section 8.3(b)
Material Subcontract	Section 12.9(b)
Material Subcontractor	Section 12.9(b)
Milestone	Section 5.4
Milestone Date	Section 5.4
Notice of Election	Section 19.4
On-Site Representative	Section 12.10
Permit	Section 5.7
Pre-prepared Site	Section 9.3(a)
Production Acceptance Test Plan	Section 6.2(b)(ii)

Purchase Commitment	Section 8.1
Quality Assurance Program	Section 6.4
Release Conditions	Section 10.6(a)
Replacement Vendor	Section 22.3
Scheduled Delivery Date	Section 8.5
Service Provider Terms	Section 8.4
Term	Article 4
Termination/Expiration Assistance	Section 22.4
Updated Forecast	Section 8.2

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 Gateway Terminals to AIL and its Service Providers, and under which AIL and

its Service Providers may purchase Gateway Terminals and Services from Contractor for use with the AIL System, including Services associated with the Warranty Period. For Services not included within the pricing hereunder and to be performed outside the U.S., Contractor shall provide Services on a country-by-country basis, as requested by AIL, at commercially reasonable rates.

3.2 UNIQUE REQUIREMENTS.

The Parties acknowledge and agree that AIL has unique requirements and Contractor has solutions regarding the Gateway 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 Gateway 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 and the support hours set forth in Section 14.2, to coordinate with other members of AIL's integrated product team to accomplish the work set forth in 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 Gateway Terminals and to provide the interfaces for each Gateway Terminal to the Element Manager and Baseband Equipment in accordance with the SOW. 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 NON-EXCLUSIVITY.

- (a) It is expressly understood and agreed that other than the purchase commitments made by AIL in Sections 8.1 and 8.2 hereunder, this Agreement does not require AIL to purchase or order any Gateway Terminals, including any components thereof, or Services from Contractor and does not grant to Contractor an exclusive privilege to sell or otherwise provide to AIL or its Service Providers any or all of the Gateway Terminals, including any components thereof or Services of the type described in this Agreement.
- (b) 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 Gateway 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 of any kind.
- (c) Notwithstanding the foregoing, during the Term, to the extent that AIL requires additional Gateway Terminals of similar functionality to those described in this Agreement (including the SOW) beyond the Purchase Commitment, and Contractor is materially performing its obligations hereunder to AIL's reasonable satisfaction (and Contractor can fulfill AIL's additional requirements for Gateway Terminals), AIL will order such additional Gateway Terminals from Contractor through the earlier to occur of the placement of orders for 24 Gateway Terminals (without cancellation of such orders), or the termination or expiration of this Agreement.

4. TERM

The term of this Agreement shall begin upon the Effective Date and shall expire December 31, 2007 (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 three (3) year renewal periods. The Initial Term, as earlier terminated or extended, shall be known as the "Term".

5. GATEWAY TERMINAL DEVELOPMENT

5.1 AIL RESPONSIBILITIES.

The Parties have agreed to the SOW, which describes the Gateway Terminals, including interface specifications for the Gateway and the AIL System. AIL shall deliver the CFE specified in the SOW in accordance with the schedule set forth therein. 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 (including such work implied therein, incidental to and reasonably required for the proper provision of such work), and shall perform such work in accordance with the SOW and this Agreement, for the design, development and production of Gateway Terminals.

5.3 USE OF PROTOTYPE GATEWAY TERMINALS.

AIL shall make the Prototype Gateway Terminal available to Contractor as CFE one (1) month following Acceptance of the Preproduction Gateway Terminal for use in Contractor's Gateway Support Facility during the Term. Upon expiration or termination of the Agreement, Contractor will make available the Prototype Gateway Terminal to AIL for AIL to pick up at Contractor's facility in its then-current configuration and condition which would include normal wear and tear, any refurbishment and use for various test functions, among other things. Ownership of the Prototype Gateway Terminal shall remain with AIL.

5.4 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, attached as Schedule 1. Contractor will satisfy the applicable Acceptance Criteria for all milestones set forth in the Milestone and Payment Schedule, including achieving the milestones (each, a "Milestone") within the corresponding dates set forth therein (each, a "Milestone Date").

5.5 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 (which schedule shall not affect *** as provided in Section 5.6 below) 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 terminate this Agreement for Cause in accordance with Section 22.1(a) hereof if the breach is not cured during the applicable period *** for such breach as provided below.

5.6 FAILURE TO MEET DEVELOPMENT MILESTONE DATES; ***.

- (a) Failure to Meet Development Milestone Dates. Contractor acknowledges that time is of the essence with respect to the Milestone Dates and timely delivery and implementation of the Gateway Terminals. If Contractor fails to meet the Milestone Date for Milestone 4 *** or Milestone 7 ***, except in the case of Excusable Delay, AIL will incur substantial damages which are and will be difficult to determine. Such failure will be considered an "Early Default". Upon such occurrence of an Early Default, AIL will be entitled to terminate this Agreement for Cause as provided in Section 22.1(a).

- (b) ***Following a fifteen (15) day grace period and subject to Excusable Delay, Contractor ***

5.7 PERMITS.

Contractor shall, at Contractor's expense, identify, procure and maintain throughout the Term all applicable federal, state, county, local and foreign licenses, approvals, inspections, permits and certificates (collectively, "Permits") necessary to perform its obligations under this Agreement, including all export and import Permits and excluding all Permits related solely to the installation of Gateway Terminals and Gateways. In the event that AIL requests Contractor to obtain any Permits on AIL's behalf, AIL shall reimburse Contractor for the fees paid by Contractor for such Permits and for any associated work performed to obtain such Permits, in accordance with the time and material rates set forth in Schedule 9. 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 and other applicable 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 Permits.

6. ACCEPTANCE AND PRODUCTION

6.1 CONTRACTOR RESPONSIBILITIES.

Contractor shall be responsible for timely 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 Gateway Terminals, including production setup, production cycle, software support, drawings and documentation, quality program (including product assurance program, parts management, materials and processes management, and test and material discrepancy reviews), logistics, training, manuals and operations support (including such work implied in the SOW, incidental thereto and reasonably required for the proper provision of such work).

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 the Prototype Gateway Terminal and Preproduction Gateway Terminal, Contractor shall provide an Acceptance Test Plan to AIL for approval prior to scheduled commencement of testing, as set forth in the SOW. 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, 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.
 - (ii) Prior to the scheduled delivery date of the Prototype Gateway Terminal as set forth in the SOW or as otherwise agreed by the Parties, AIL shall provide to Contractor, as CFE for Acceptance Testing of the Prototype Gateway Terminal and the Preproduction Gateway Terminal, a standard ATM Switch and an Element Manager as described in the SOW, for use in the Gateway Support

Facility during the Term. Using the support hours set forth in Section 14.2, Contractor shall develop an integration control document as specified in the SOW ("ICD") for the ATM Switch and Contractor shall provide to AIL at Milestone 3 (CDR) the recommended ICD for the ATM Switch and the date the ATM Switch is required to be delivered to Contractor. AIL shall arrange on-site support for Contractor at its design facility by the switch manufacturer as described in the SOW.

- (iii) 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.
- (iv) For each Acceptance test performed above, Contractor shall provide reasonable notice to AIL (as provided in the SOW) of the date of performance of each Acceptance test so that an AIL designated representative can attend and witness each Acceptance test. AIL's designated representative shall have the opportunity to attend and observe each Acceptance test, unless AIL waives such right in writing. Upon the completion of each Acceptance test, Contractor shall provide to AIL's representative written test results and, if applicable, a statement that the Gateway Terminal has passed the applicable Acceptance Tests (the "Acceptance Test Report"), which AIL's representative either shall approve by signing such report or shall disapprove by not signing such report. If AIL's representative approves and signs an Acceptance Test Report, then the Gateway Terminal so tested shall be deemed to be Accepted hereunder. If AIL's representative does not approve an Acceptance Test Report, Contractor shall remedy any deficiency in the Gateway Terminal and retest the applicable Gateway Terminal, at no charge to AIL. If Contractor disputes in good faith AIL's refusal to approve any Acceptance Test Report, the Parties shall meet to discuss the Acceptance tests and Acceptance Test Report, and the Parties shall resolve such dispute in accordance with Section 21.

(b) Acceptance of Production Gateway Terminals and Optional Priced Items.

- (i) First Article Acceptance Testing. Prior to Scheduled Delivery Date of the First Article Gateway Terminal unit (as defined in the SOW), Contractor shall provide a First Article Gateway Terminal Acceptance Test Plan to AIL for approval. Contractor shall be obligated to conduct acceptance tests which demonstrate that the First Article Gateway Terminal unit meets the SOW, 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 the First Article Gateway Terminal unit 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 Test Plans for Production Gateway Terminals after the First Article Gateway Terminal and for Optional Priced Items in Schedule 2 (the "Production Acceptance Test Plan"). Contractor shall be obligated to conduct acceptance tests that

demonstrate that each Production Gateway Terminal or Optional Priced Item meets the SOW, 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. Contractor shall demonstrate that each Gateway Terminal complies with the Acceptance Criteria in the approved Production Acceptance Test Plan and the applicable provisions of the SOW.

- (iii) Acceptance of Production Gateway Terminals. For each Acceptance test performed in accordance with the approved Production Gateway Terminal Acceptance Test Plan on subassemblies identified in such Acceptance Test Plan, Contractor shall provide reasonable notice to AIL (as provided in the SOW) of the date of performance of each such Acceptance test so that an AIL designated representative can attend and witness each such Acceptance test. AIL's designated representative shall have the opportunity to attend and observe each such Acceptance test, unless AIL waives such right in writing. Upon the completion of all Acceptance tests, Contractor shall provide to AIL test results and a certification that the Gateway Terminal has passed the applicable Acceptance Tests. The Gateway Terminal will be deemed Accepted by AIL after review of the certification and associated data which will be accomplished by AIL promptly after receipt of such certification and associated data. If after review, AIL in its reasonable discretion considers that the Acceptance Criteria have not been met, AIL will promptly notify Contractor and the Parties shall meet and confer to agree on any corrective action and re-testing required to be successfully performed in order to achieve Acceptance. Such corrective action and re-testing, if required, shall be performed by Contractor at no additional charge to AIL. If Contractor disputes in good faith AIL's refusal to grant Acceptance, the Parties shall meet to discuss the disputed Acceptance, and if unable to reach mutually satisfactory resolution, the Parties shall resolve such dispute in accordance with Section 21.

6.3 ACCEPTANCE TESTING FAILURES, CURE PERIODS AND REMEDIES.

- (a) For Development Deliverables. Problems and Acceptance test failures of development deliverables are to be resolved in accordance with the SOW.
- (b) For Production Gateway Terminals. Gateway Terminals that fail testing in accordance with the Production Acceptance Test Plan will be rejected by AIL. Contractor shall not deliver or ship such Gateway Terminals and Contractor will not be entitled to receive payment for such Gateway 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 of the Gateway Terminal (including Prototype Gateway Terminal and the Preproduction Gateway Terminal) with the AIL System 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 Gateway Terminals, the applicable provisions of the SOW or the Gateway Terminal design documentation, Contractor shall cooperate with AIL to implement, on an accelerated basis, adjustments and

modifications to the design and production of the Gateway 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 Gateway 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 Gateway Terminals, such that the Gateway 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 Gateway Terminals until Contractor meets the requirements of the Quality Assurance Program. If prior to the expiration of the Initial Warranty Period AIL reasonably believes that the quality of the Gateway Terminal has diminished or that the Gateway 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 Gateway 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 Gateway Terminals can be modified to meet the applicable Standards, in accordance with Section 12.3(b) below. If the Gateway Terminals cannot be modified to comply with the applicable Standards, or if the Parties elect not to modify the Gateway 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 Article Gateway Terminal Acceptance Test, including a written statement provided by Contractor to AIL certifying the compliance of the Gateway Terminals with the SOW, AIL shall certify Contractor as an AIL-certified supplier of Gateway Terminals. In addition, as set forth below, Contractor shall submit for AIL's approval (which shall not be unreasonably withheld or delayed) all Software, Software Updates and other Gateway Terminal upgrades and updates produced by Contractor or any Subcontractor for use in or with the Gateways or Comparable Gateways. All such Software, Software Updates and other Gateway Terminal upgrades and updates must meet the SOW without adverse effect to the Gateways or the AIL System. At least thirty (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 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 Contractor has defined test requirements, the change request will include a test report on tests which Contractor has conducted to ensure that the Gateway Terminals will interwork with the AIL System, will not harm the AIL System, and will not contain defects which adversely affect performance for AIL or Service Providers. At AIL's request, Contractor shall loan on a limited time basis to AIL such proposed software or a limited quantity of sample hardware for AIL's own use in testing. Throughout the above certification process, AIL shall perform its obligations in a reasonably timely manner, without unreasonable delay.

6.6 MANUFACTURING CAPACITY REQUIREMENTS.

Contractor will at all times during the Term (except in the case of Excusable Delay, or pursuant to Section 13.2(b), maintain the capacity and capability to manufacture and timely deliver each Gateway Terminal and related optional items ordered by AIL or Service Providers hereunder in accordance with the Annual Forecast and Updated Forecast set forth in Section 8.2 and in accordance with Section 8.3(b), up to a maximum of two (2) Gateway Terminals in any thirty (30) day period.

6.7 ***

- (a) For each Production Gateway Terminal scheduled for delivery through ***, Contractor will ***
- (b) Notwithstanding the requested hardware delivery date per Section 8.5(a) and provided that two (2) Production Gateway Terminals each having a capability equivalent to the Pre-production Gateway Terminal are provided to AIL by the requested delivery date to support Alpha testing with the satellite, the required date of delivery of each of the first two (2) Production Gateway Terminals (for this clause) is the date specified by AIL for final Acceptance of such Gateway Terminal (including the production Modem Interworking Units) which shall not be required to be earlier than ***. In the event Contractor needs to install retrofits to either of the first two production Gateway Terminals, such retrofits shall be accomplished and tested to AIL's reasonable satisfaction prior to the commencement of commercial service using such Gateway(s). In addition, for purposes of this *** clause, a delay in satellite launch will constitute a period of Excusable Delay applicable to the Production Gateway Terminals scheduled for delivery through ***, which shall not exceed the lesser of (i) the actual delay in the satellite launch date, or (ii) 60 days in the Scheduled Delivery Date. In the event of Excusable Delay, the *** provisions set forth above will apply for each day that such

Gateway Terminal is not delivered after the last day of the Excusable Delay to the date of actual delivery.

- (c) For each Production Gateway Terminal scheduled for delivery on or after ***, Contractor will ***
- (d) For Gateway Terminals ordered pursuant to Section 8.3(b), ***
- (e) Notwithstanding (a), (b) and (c) above, if AIL requests that a Gateway Terminal be delivered in less than *** after receipt of the applicable Order by Contractor and Contractor accepts such order or proposes an alternate delivery date sooner than *** after Contractor's receipt of the Order that is acceptable to AIL*** shall apply to such Gateway Terminal until the day following *** after receipt of the applicable Order, except for Orders placed in accordance with Section 8.3(b).
- (f) ***
- (g) Notwithstanding the ***hereunder, if Contractor commits a material breach of Section 8.5, AIL may terminate this Agreement in accordance with Section 22.1(a) and cancel its outstanding Orders in accordance with Section 8.6 (without incurring cancellation payment liability). If AIL so terminates this Agreement for Contractor's material breach of Section 8.5, AIL shall be entitled to have the work completed by another party or parties.

6.8 SPARE PARTS.

Contractor shall use reasonable commercial efforts to ensure that spare parts can be procured for the Gateway Terminals for the life of the AIL System or the Term, whichever is sooner. At Milestone 3 ***Contractor will provide a list of recommended spares with then-current pricing and delivery, reasonably adequate to maintain all Gateway Terminals, including depot-level support of on-site spares by AIL or Service Providers. Such recommended spares shall take into account delivery times for limited source and long-lead items. Provided AIL and Contractor enter into a separate Maintenance Contract, Contractor shall inventory various spare parts recommended by Contractor and procured from Contractor by AIL at mutually agreed upon prices for the spare parts and the storage costs. Periodically, the Parties will meet to review Contractor's spare parts inventory levels. Contractor will sell spare parts to AIL and/or its Service Providers on commercially reasonable terms and prices. Spare parts that are in-stock at the Contractor's storage facility shall be delivered by Contractor for shipment to the location designated by AIL or a Service Provider within forty-eight (48) hours from the time Contractor is notified in writing of the need for the spare part. Except as provided in Section 11.3(a), AIL or a Service Provider shall pay for the spare part and shipment, customs, duties and taxes of spare parts to AIL or such Service Provider.

7. BRANDING

7.1 GATEWAY TERMINAL MARKINGS.

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 Gateway Terminal the AIL Mark, in a form and location as designated by AIL. The Parties agree to enter into appropriate royalty-free, Mark licensing agreements in furtherance of the foregoing. Unless otherwise mutually agreed, the Gateway

Terminals shall be "co-branded" with the respective Marks of AIL and Contractor, subject to reasonable written approval of each Party as to how its brand is used. "Co-branding" means the Gateway Terminals will be marketed, promoted, advertised and sold with such Marks in ways that maintain the identity of the Marks of AIL and Contractor, respectively. The Marks of either Party may be used by the other Party 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 Gateways.

8. FORECASTS AND ORDERING

8.1 AIL PURCHASE COMMITMENT.

AIL hereby commits to Contractor that, pursuant to a delivery schedule mutually agreed upon by the Parties, that AIL and Service Providers shall purchase and Contractor shall deliver a number of Gateway Terminals equal to the Purchase Commitment for delivery between ***and ***. The "Purchase Commitment" means any of the following combinations of ***:

- (a) ***Gateway Terminals, or
- (b) ***Gateway Terminals, or
- (c) ***Gateway Terminals, or
- (d) ***Gateway Terminals.

By no later than ***, AIL shall provide Contractor in writing with its choice of the configuration of the Purchase Commitment from one of the options set forth above.

8.2 INITIAL, ANNUAL AND UPDATED FORECASTS.

By ***, AIL will provide its initial forecast for Gateway Terminals to be delivered ***, including the number of Gateway Terminals forecasted to be purchased in each calendar quarter and the requested delivery dates therefor (the "Initial Forecast"). The Initial Forecast shall include no more than (a) *** Gateway Terminals for scheduled delivery ***, and ***Gateway Terminals for scheduled delivery ***At least ***Gateway Terminals or, where the Purchase Commitment contains ***Terminals, ***shall be scheduled for delivery prior to ***thereafter ***, AIL will provide an annual forecast to Contractor for the number of Gateway Terminals to be delivered in the ***following Contract ***and the requested delivery dates (the "Annual Forecast"). ***AIL will provide to Contractor an update of its Annual Forecast to cover the four (4) calendar quarters following the date of such updated forecast (the "Updated Forecast"). Beginning with the Gateway Terminal deliveries scheduled for the ***, AIL will have the option to increase in an Order the quantity of Gateway Terminals to be delivered in each calendar quarter by ***as long as an Updated Forecast for such increase is provided to Contractor at least ***the first requested delivery date for such increased quantity, except as expressly limited in this Section 8.2 and except as provided in Sections 8.3(b) and 6.6.

8.3 ORDERS GENERALLY.

- (a) During the Term of this Agreement, purchases of Gateway Terminals by AIL shall be made by means of by an Order in the English language issued to Contractor as provided in this Agreement. Service Providers shall place Orders pursuant to separate agreement

with Contractor as described in Section 8.4. 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. 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 Gateway 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 other purchasing party of its objection to any Order within five (5) business days of Contractor's receipt of such Order by Contractor. Subject to subsection 8.3(b) below, AIL will issue Orders for Gateway Terminals under this Agreement at least *** prior to the requested delivery date. Notwithstanding the foregoing, AIL may request a delivery date ***from receipt of Order by Contractor, and Contractor shall use commercially reasonable efforts to deliver such Gateway within the *** leadtime; subject to Section 6.6 and Section 6.7(e).

- (b) AIL may Order from Contractor kits of Gateway Terminal components that typically are long leadtime items (the "Long Lead Kits"). Delivery dates for Long Lead Kits ordered hereunder shall be ***after receipt of the Long Lead Kit Order by Contractor, with a maximum delivery rate of ***. AIL may increase the quantity of Gateway Terminals to be delivered in any month (subject to the capacity limitation set forth in Section 6.6) by up to the amount of the Long Lead Kits scheduled to be delivered to Contractor ***prior to the requested delivery date for such Order and/or on hand at Contractor's facilities, as long as the increased order is placed at least ***prior to the requested delivery date for such Gateway Terminals and the maximum number of Gateway Terminals to be delivered is not more than ***per month. The Scheduled Delivery Date for each such Order shall be ***following receipt of such an Order by Contractor. All Long Lead Kits, upon Acceptance, shall become the property of AIL, and AIL shall direct the disposition of any Long Lead Kits that are not used for Orders hereunder. For the purpose of this Section 8.3(b), "Acceptance" shall occur upon satisfactory completion of Production Acceptance Tests as per Sections 6.2(b)(ii) and 6.2(b)(iii).
- (c) 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 ***of acceptance and acknowledgement by Contractor 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 Section 8.5 and approval of credit.

8.4 ORDERS FROM SERVICE PROVIDERS.

Within ninety (90) days from the Effective Date, the Parties will negotiate and agree to a form of contract that Contractor will offer to Service Providers ordering Gateway Terminals. Such form of contract will include certain agreements reached by the Parties herein, such as pricing, taxes, passage of title and risk of loss, warranties, 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 Gateway Terminals upon terms that differ from the Service Provider Terms. Acceptance by Contractor of any Service Provider Order shall depend on the Service Provider (a) ordering the

Gateway Terminals a pre-agreed number of days in advance; and (b) meeting pre-agreed financial requirements (such as satisfactory assurance of payment or adequate vendor financing, or a combination of the foregoing or otherwise).

8.5 DELIVERY DATES.

- (a) Unless otherwise agreed by Contractor and either AIL or a Service Provider as set forth in an Order or other writing, Contractor shall deliver Gateway Terminals to AIL and Service Providers by the Scheduled Delivery Date, within a permissible delivery window of ***the Scheduled Delivery Date, unless otherwise agreed by the contracting parties. The "Scheduled Delivery Date" means the requested date of delivery of a Gateway Terminal as set forth in an Order; provided however that (i) the Scheduled Delivery Dates for the Gateway Terminals to be delivered to AIL ***shall be the delivery dates set forth in the Initial Forecast and (ii) the Scheduled Delivery Dates for the Gateway Terminals to be delivered to AIL ***shall be the requested delivery date as set forth in an Order. Notwithstanding the foregoing, if the requested delivery date set forth in an Order is less than *** from the date of receipt thereof by Contractor, the Scheduled Delivery Date shall be no less than *** from such date of receipt, except for Orders pursuant to Section 8.3(b), or unless otherwise agreed by Contractor and AIL or the Service Provider in writing, as applicable. Scheduled Delivery Dates shall be firm and time is of the essence for Scheduled Delivery Dates. Early deliveries (except as provided above or authorized in writing by the purchasing party (AIL or Service Provider)) may be refused due to space or security considerations and returned or stored at Contractor's expense and risk of loss.
- (b) Delivery shall occur upon delivery to the carrier at Contractor's shipping point. Delivery schedule changes must be mutually agreed to in writing.
- (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.

8.6 ORDER CHANGES; CANCELLATION AND RESCHEDULING OF AIL ORDERS.

- (a) Following the delivery of the Purchase Commitment and payment therefor, AIL may cancel a Gateway Terminal or a *** as provided in this Section 8.6. If AIL desires to cancel any Gateway Terminal or ***, it shall so notify Contractor of the expected date of cancellation (the "Cancellation Date") and the number of Gateway Terminals and/or *** to be cancelled (the "Cancellation Notice"). The Cancellation Date shall not be less than thirty (30) days from the date of receipt by Contractor of the Cancellation Notice. By no later than the Cancellation Date, Contractor shall provide AIL with a price for cancellation. Such price shall provide for AIL to pay Contractor for Contractor's actual costs incurred up to and including the date of termination or arising from such termination, which shall take into account, among other things, Contractor's actual termination liability to its vendors and incurred costs for bulk orders of components already placed and for component price increases by vendors for lesser total component quantities ordered by Contractor, plus a reasonable profit on such costs. The costs and profit paid to Contractor under this Section shall not exceed the Purchase Price of any Gateway Terminal or *** so cancelled.

- (b) AIL may change the "ship to" destination of any Order by submitting notice to Contractor in writing at least fifteen (15) business days prior to shipment. If such change is requested by AIL with less than fifteen (15) 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 prior Scheduled Delivery Date by up to fifteen (15) days in the event AIL changes the "ship to" destination within the fifteen (15) 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 8.5, AIL may reschedule any Scheduled Delivery Date contained in Purchase Commitment at no cost, expense or liability at least ten (10) business days prior to such Scheduled Delivery Date, up to two (2) times per Gateway Terminals; provided, however that the updated Scheduled Delivery Date may not be more than ninety (90) days following the original Scheduled Delivery Date. If the new Scheduled Delivery Date is within thirty (30) days of the prior Scheduled Delivery Date, then Contractor shall arrange and pay for all additional storage costs and expenses for the Order. If the new Scheduled Delivery Date is more than thirty (30) days after the prior Scheduled Delivery Date, then such reasonable additional transportation and storage costs and expenses incurred by Contractor shall be payable by AIL. Payment for Gateway Terminals delivered pursuant to a new Scheduled Delivery Date shall be paid in accordance with Article 15 as of the new Scheduled Delivery Date; provided, however that payment for Gateway Terminals shall be due no later than ninety (90) days following the original Scheduled Delivery Date (provided that the Gateway Terminal has delivered to AIL in accordance with Section 6.3(b)).

8.7 GATEWAY TERMINAL FINANCING PROGRAM.

Contractor agrees to provide, or assist in arranging financing for AIL and its Service Providers 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 or its Service Providers are located, as such terms may evolve during the term of the Agreement based upon specific credit worthiness of AIL or such Service Provider and appropriate security provisions. Indicative terms for such financing program are as follows:

- ***financing term
- Amounts of up to ***per Gateway Terminal
- Interest rate ***based on credit review of the purchaser (AIL or the applicable Service Provider)
- Monthly payments
- Facility to be secured by equipment, and credit rating of Service Provider on limited or non-recourse basis to AIL for Service Provider financing
- Extension of credit subject to standard credit and financial review of AIL or Service Provider, as applicable.

9. SHIPPING, INSTALLATION AND INTEGRATION

9.1 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 Gateway packages shipped to AIL

and Service Providers shall contain the items required in Section 1.7 of the SOW, plus any optional items if ordered.

9.2 SHIPPING.

Unless otherwise specified in an Order accepted by Contractor, all shipments hereunder shall be delivered to the loading dock FOB Contractor's designated site in North America.

9.3 INSTALLATION.

(a) The price of installation, excluding the cost of site preparation, travel and options, of the Gateway Terminals at each Pre-prepared Site is ***for a ***Gateway Terminal and ***for a ***Gateway Terminal with redundancy at the ***. For purposes of this Section, a "Pre-prepared Site" is a site where Gateway Terminal installation is to occur and which meets the following criteria:

- (i) the site is prepared in accordance with the Facility Requirements Document contained in the SOW;
- (ii) all Gateway Terminal equipment is on site and undamaged prior to the arrival of the installation team;
- (iii) the site can be accessed by the heavy equipment (e.g. crane) needed to assemble the Gateway and readily available; utilities (including power and telephone) are available on-site;
- (iv) sanitary facilities are available on-site; room and board is available within 30 minutes of the site;
- (v) Contractor personnel and Subcontractors have access to the site and are permitted to work on-site at least 6 days a week, 12 hours a day, if reasonable for conditions at such site;
- (vi) an AIL representative is on-site as a liaison between Contractor and local authorities;
- (vii) the weather does not limit the time that installation work can be performed by more than 10%; and
- (viii) there are no hostilities in the region which would reasonably be considered to place safety or health of Contractor personnel in jeopardy.

(b) The scope of installation effort is through the checkout of the Gateway Terminals in accordance with the on-site acceptance test plan that will be mutually agreed to by AIL and Contractor;

- (i) The site is ground based, i.e. it is not on a tower or a building.
- (ii) The site can be reached from the United States within 24 hours total elapsed travel time.

- (iii) Support of other efforts, such as the integration of other equipment with the Gateway Terminal, testing for local/national/regional regulatory requirements, and system level testing, will be performed on a T&M basis.
- (c) AIL shall be responsible for site availability for Gateways to be installed by Contractor and will advise Contractor within a reasonable time if there is going to be a delay involving site availability that would impact Contractor's installation. 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 the installation services, in accordance with the provisions set forth in this Section 9.3.
- (d) Contractor shall bill to AIL all travel, living costs, material and other costs at Contractor's actual, unburdened cost, with detailed supporting documentation and receipts therefor.
- (e) For any installation not meeting the above criteria, the Parties will work together to negotiate a mutually agreeable installation solution by separate agreement.
- (f) Contractor agrees to certify qualified Installers of AIL's choice as described in Schedule 12.

9.4 INTEGRATION,

Contractor shall support AIL with the integration of the ATM Switch and the Element Manager with the Gateway Terminals, testing for local/national/regional regulatory requirements, and other system level testing. For the Prototype Gateway, Preproduction Gateway and First Article Production Gateway, Contractor will perform this effort at the rates set forth in Schedule 9. For the Production Gateway Terminals, Contractor, upon AIL's request, will submit a fixed price offer (plus actual travel and living costs consistent with Schedule 9) to perform the integration for a particular site.

9.5 RISK OF LOSS.

Risk of loss to any Gateway Terminals, Equipment or Software shipped to AIL or its Service Provider shall vest in AIL, or such Service Provider, as the case may be, upon acceptance of delivery of such items by the authorized agent or carrier of AIL or Service Provider, as applicable, 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.

9.6 TITLE.

Title, free and clear of all Liens, to any Gateway Terminal (exclusive of Software) or Equipment shipped to AIL or its Service Providers shall vest in such recipient upon acceptance of delivery of such items by the authorized agent or carrier of AIL or Service Provider, as appropriate, as designated by such party in the corresponding Order, and if not so designated, upon delivery of the carrier at 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 23.18 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 23.1 hereof) development license to use and reproduce the AIL Background Information and AIL Foreground Information (including AIL's System and Gateway Terminals background Intellectual Property related thereto) provided by AIL and required by Contractor or its Subcontractors for the sole purpose of designing and developing the Gateway 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 23.1 hereof) production license to use the AIL Background Information and AIL Foreground Information to manufacture and support the Gateway 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 Gateway Terminals and Comparable Gateway 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 and its Service Providers a worldwide, perpetual, fully-paid-up, royalty-free, limited, non-exclusive, non-transferable (subject to Section 23.1 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, the Developed IP and Contractor Foreground Information as incorporated with and into the Gateway Terminals.

10.3 SOFTWARE LICENSES AND RIGHTS.

Commencing upon delivery of Software, Contractor grants to AIL and its Service Providers 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 or Service Providers intended use of the Gateway Terminals.

- (a) Back-up Copies. AIL and each Service Provider that purchases a Gateway Terminal may make a reasonable number of copies per Gateway Terminals (or as otherwise

required by applicable law) of the Software for back-up purposes and for operation of the Gateways. Any such reproduction shall include any copyright or similar proprietary notices contained in the Software being reproduced.

- (b) No Reverse Engineering. Neither AIL nor any Service Provider to which AIL supplies Gateways 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) No Derivative Works. Neither AIL nor any Service Provider to which AIL supplies Gateways 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 and its Service Providers 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) Compliance by Service Providers. AIL shall require by written agreement with the Service Providers to which AIL supplies Gateways that such Service Providers agree to comply with the provisions of Subsections (a) through (c) above, subject to the requirements of applicable law.
- (e) Modification of Escrowed Materials. 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) Third Party Use. AIL shall have the right to permit its officers, employees, agents, advisors, third party consultants, and Service Providers to use the Software on behalf of AIL or its Service Providers, as the case may be, to the same extent AIL is permitted hereunder, subject to the restrictions hereof.
- (g) Transfer of Rights. AIL shall have the right to transfer any of the licenses granted to AIL herein in the event AIL sells a Gateway Terminal or in the event of an assignment or change in Control in accordance with Section 23.1.
- (h) Software Corrections and Updates. During the Warranty Period, AIL and its Service Providers 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, Contractor agrees to provide Software Corrections to AIL and its Service Providers for commercially reasonable fees. In addition, Contractor may make available to AIL and Service Providers from time to time during the Warranty Period 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) Contractor Foreground Information. Subject to Subsections (a) and (c) of this Section 10.4, 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) contained therein, shall be the sole property of Contractor, the appropriate 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.
- (c) 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 the 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.

- (d) Other Proprietary Information. Each Party shall own its respective Intellectual Property that each Party furnishes with respect to the performance of its obligations under this Agreement. Except as provided in subsection (c) above, all Contractor Foreground Information shall be the property of Contractor, exclusive of any Joint Confidential Information (and the Intellectual Property appurtenant thereto, which shall be owned jointly by the Parties) and any underlying background Intellectual Property furnished by either Party. In addition, Contractor shall escrow the Contractor Foreground Information as Escrowed Materials pursuant to Section 10.6 below and AIL may use such Escrowed Materials as provided therein.
- (e) ***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, at no additional charge, such Documentation in the English language covering the Gateway Terminals delivered under this Agreement. Contractor shall develop, publish and provide to AIL and its Service Providers as appropriate, accurate and complete Documentation, written in a manner reasonably understood by AIL and its Service Providers, for each such Gateway 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. In addition, Contractor shall provide copies of all Documentation to AIL in electronic form.
- (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 ninety (90) 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 5 (the "Escrow Agreement") pursuant to which Contractor will deposit with the escrow agent applicable Technical Materials available at that time related to such Gateway Terminals (the "Escrowed Materials"). Contractor shall update the Escrowed Materials upon delivery of each of the Prototype Gateway Terminals and the Preproduction Gateway Terminals and following the conclusion of Alpha and Beta testing, 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 Gateway Terminals as contemplated herein. During the Term, Contractor will maintain such Escrow Materials current with respect to the Gateway 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 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 Gateway Terminals;
- (vi) Contractor's failure to reasonably correct or cure any material Defects in the Gateway Terminals in accordance with this Agreement following Contractor's receipt of a written notice thereof from AIL;
- (vii) AIL's termination of this Agreement for Cause in accordance with Section 22.1; or
- (viii) AIL's termination of this Agreement in accordance with Section 13.1

(items (i) through (viii) 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 Gateway Terminals as well as to manufacture, or have manufactured, Gateway 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; WARRANTY SERVICES

11.1 TRAINING.

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

- (a) Contractor will provide, at its designated facility, one (1) five (5) day training class for each Gateway Terminal purchased, in accordance with SOW ***. These courses will be available at Contractor-designated facilities or at AIL-designated facilities as mutually agreed and priced. Training, which will be scheduled at least ninety (90) days in advance and will be conducted within forty-five (45) days of delivery of a Gateway Terminal, will consist of formal and informal classroom instruction and actual hands-on training in laboratory environments. Contractor reserves the right to subcontract the training to a designated third party vendor; provided that such vendor is trained and qualified by Contractor and that Contractor shall perform the training at no charge to AIL or a Service Provider if the third party vendor's training services are inadequate, in AIL's reasonable determination. 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. Additional training desired by AIL or its Service Providers will be mutually agreed upon. Contractor shall develop and furnish all training materials in accordance with the SOW.
- (b) Upon receipt of purchase order, Contractor shall, at commercially reasonable prices and terms, provide remedial training and training on any changes, updates and enhancements to the Gateway 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 Gateways.

11.2 MAINTENANCE AND SUPPORT.

During the Term and at prices to be mutually agreed upon, Contractor will have the ability to service or will have an agreement with others to have the ability to maintain and service Gateways in each country where Gateways are installed. Gateway Terminal repairs are to be effected by Contractor's help desk services, in accordance with this Agreement. Contractor shall create service manuals and maintenance documents, in the English language, for all versions and generations of the Gateway Terminals, which shall be provided with each delivered Gateway Terminal to AIL and Service

Providers, as applicable, for use by them and their designated third party maintenance providers. 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.

11.3 PRODUCTION WARRANTY AND POST-WARRANTY SERVICES.

- (a) Initial Warranty Period. During the Initial Warranty Period, Contractor shall provide the following warranty services to AIL and its Service Providers at no additional charge:
- (i) telephone and email customer support to the help desk of designated maintenance providers of AIL or its Service Providers on a 24 x 7 x 365 basis for trouble logging and for basic fault isolation assistance as provided for in Section 17.3(c)(vi) to answer such maintenance providers' maintenance-related questions with respect to the Gateway Terminals;
 - (ii) repair or replace, at Contractor's option, the failed Gateway Terminal upon receipt of the Defective equipment and return such upon its repair or replacement. AIL or its Service Provider is responsible for all handling, shipping, duties, taxes and insurance associated with transporting the failed unit to Contractor. Contractor is responsible for costs of shipping, handling and insurance associated with transporting the repaired/replaced unit back to the Gateway site;
 - (iii) inspection, diagnosis and repair or replacement of failed equipment at the Gateway Support Facility for field-replaceable units; and
 - (iv) inspection, diagnosis and repair or replacement of failed equipment at the Gateway site for components that are not field-replaceable units. Contractor shall bear the travel and labor costs associated with such Warranty inspection, diagnosis, and repair or replacement of failed equipment at the Gateway site for the first four (4) of such Warranty services provided during the Term. Thereafter, AIL shall pay the travel and labor costs associated with such Warranty services at Gateway sites at the rates provided in Schedule 9.
- (b) Extended Warranty Period. AIL or its Service Providers may extend the Initial 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 6 (the aggregate of such extensions the "Extended Warranty Period"). Contractor's procedures for obtaining Warranty services are set forth in Schedule 7 attached hereto. During the Extended Warranty Period, Contractor shall provide the extended warranty services, including the services described in Subsection 11.3(a) above and any other services as the Parties may mutually agree to AIL and its Service Providers at the Extended Warranty price.
- (c) Post-warranty Maintenance and Support. Following the applicable Warranty Period and for the Term, Contractor will provide, in accordance with mutually agreed upon schedule and prices, depot level maintenance, telephone support, sustaining engineering support, sustaining training, sparing, field engineering and field services (including on-site repair and support services).

11.4 CONTRACTOR ACCESS TO GATEWAY FACILITIES.

Contractor shall coordinate with AIL to obtain approval for any required access to Gateway facilities in accordance with mutually agreed upon procedures to be developed at least six (6) months prior to commencement of AIL commercial Gateway operations.

11.5 GATEWAY SUPPORT FACILITY.

Contractor shall establish, maintain and use a Gateway Support Facility for the period from the delivery by AIL to Contractor of the Prototype Gateway Terminal through the end of the Term. Contractor shall use the Gateway Support Facility for Gateway Terminals (and component) testing, diagnostic, support, repair and other services, as set forth in Section 3.4.7 of the SOW.

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, Purchase Price or delivery schedule, as applicable. Price adjustments related to Development Phase changes shall account only for the net cost impact incurred by Contractor as a result of the change plus a reasonable profit thereon ***. 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 Gateway Terminals when first deployed.

12.2 PRODUCTION PHASE CHANGE PROCEDURES.

- (a) Contractor shall also develop and provide for sale to AIL Gateway Terminals 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 Gateway 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.
 - (ii) Within thirty (30) days of receipt in writing 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 Gateway 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 Gateway Terminals 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 Gateway Terminals, 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 and without charge to AIL, to make changes that do not affect a Gateway 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 Gateway Terminals and the AIL System of such change. AIL may decline to change the SOW, or AIL may implement such change.
- (b) If either Party becomes aware of an inconsistency between the Specifications and the Standards, or if changes to any Standard from time to time after the Effective Date require material changes to be made to the Gateway Terminals (or any configuration of Gateway Terminal being shipped to a particular country) that would result in a material impact on either the applicable Purchase Prices, non-recurring costs and expenses or delivery schedule of such Gateway Terminals, the Parties agree to negotiate in good faith and to reasonably adjust Contractor's applicable Purchase Price, non-recurring payments and delivery schedules to accommodate such Standards change. Each Party will promptly advise the other Party at such time as it becomes aware of any inconsistency between the Specifications and the Standards or of any such changes or proposed changes to any Standard.
- (c) Changes required by the obsolescence of components of the Gateway Terminals shall be made by Contractor at Contractor's sole expense through December 31, 2005, at which time AIL shall be responsible for the reasonable costs incurred by Contractor in making such changes. Contractor agrees to use commercially reasonable efforts to avoid the need for such changes, including without limitation, providing AIL the opportunity to procure last-time buys and identifying sources of alternative components.

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 Program Manager" or the "AIL Program Manager", as the case may be). Each Program 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) 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 Gateway Terminals and Services provided hereunder;
 - (iii) the state of affairs regarding any aspect of the Gateway Terminals;
 - (iv) all pertinent limitations and problems with the Gateway Terminals; and
 - (v) its known limitations of its work on the Gateway

Terminals.

12.5 CONTRACTOR PERSONNEL.

- (a) "Key Contractor Personnel" shall be the Contractor and Subcontractor personnel filling the positions identified in Schedule 8 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 8, 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 8. 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 Gateway 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, Gateway 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 Gateway 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 Gateway Terminals, Equipment or Software purchased by AIL or its Service Providers hereunder, except for purchase money security interests as described in Section 23.18 below. Except as required by Section 3.3, 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) 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) 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 Material 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 Gateway 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.

- (c) To the extent commercially reasonable, Contractor shall include in each contract with a Subcontractor the right to assign such contract to AIL if AIL terminates this Agreement for breach pursuant to Section 22.1(a) below.

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 Gateway Terminals;

- (c) right to attend regularly scheduled meetings, reviews and tests; and

- (d) electronic access to Gateway Terminals-related documents submitted to AIL and a right to copy same.

13. GATEWAY PRICES.

13.1 GENERAL.

Contractor agrees to offer Gateway Terminals for sale to AIL's Service Providers at the prices per Gateway Terminals no greater than those Purchase Prices offered to AIL hereunder. Accordingly, AIL and its Service Providers may purchase Gateway Terminals, Equipment, Services and Documentation at the Purchase Prices set forth herein. The Purchase Price of each Gateway Terminal shall include such Gateway Terminals and the items set forth in Section 1.7 of the SOW. Purchase Prices are FOB Contractor's designated site. Purchase Prices do not include

the costs to AIL of delivery (including freight, insurance, taxes, duties, warehousing, etc.), travel and other expenses related to System Engineering Support Services, Permits and licenses for import, installation or operation of the Gateways, service and maintenance other than service and maintenance provided for in this Agreement and Gateway Terminals Installation and Integration (as described in Sections 9.3 and 9.4), which AIL shall pay for in accordance with the prices set forth in this Agreement. If Contractor materially fails, after the applicable cure period, to offer the Gateway Terminals for sale at prices no greater than the Purchase Prices specified herein (unless otherwise mutually agreed by Contractor and AIL or a Service Provider, as the case may be), Contractor agrees to pay AIL or the applicable Service Provider a payment equal to *** of the difference between the actual Gateway Terminals price charged and the applicable Purchase Price for such Gateway Terminal(s) or, AIL, in lieu of such payment, shall be entitled to terminate this Agreement. If AIL so terminates this Agreement for Contractor's uncured material breach of this Section, AIL shall be entitled to have Contractor's obligations hereunder completed by another party or parties, and Contractor reasonably shall fulfill its obligations under Section 22.3(a). The foregoing remedies shall be AIL's sole remedies for breach of this Section.

13.2 DETERMINATION OF PURCHASE PRICES.

- (a) ***Gateways. For the Purchase Commitment, AIL or its Service Providers shall pay a firm fixed Purchase Price of ***for each ***Gateway Terminal and ***delivered by Contractor and Accepted hereunder. Pricing for other Gateway Terminal Orders shall be in accordance with the price table set forth in Schedule 2. Notwithstanding the foregoing, if AIL and/or its Service Providers order additional Gateway Terminals (up to an aggregate of ***; with ***Gateway Terminal) on or prior to ***, the Purchase Price for such additional Gateway Terminals shall be calculated based on the aggregate quantity of the Purchase Commitment and the additional Gateway Terminals using the price table contained in Schedule 2. In the foregoing case, the first *** Gateway Terminals of the total number scheduled for delivery shall be considered the Purchase Commitment.
- (b) Pricing Terms. All pricing set forth in Schedule 2 is in Year 2000 Dollars and such pricing shall be adjusted in accordance with Schedule 2. If neither AIL nor its Service Providers schedule any Gateway Terminals orders for delivery and take delivery for a continuous eighteen month period, the Parties agree to revise Schedule 2 based on the economic impact of restarting Contractor's production line for Gateway Terminals. If the Parties fail to reach mutual agreement on a revised Schedule 2, a revised Schedule 2 shall be established pursuant to Article 21.

13.3 MOST FAVORED CUSTOMER.

- (a) Most Favored Customer. If Contractor provides Gateway Terminals or Comparable Gateway Terminals to a Service Provider of AIL or to a Competitor of AIL and the prices charged to such Competitor for such Gateway 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 Competitor became effective. Upon each anniversary of the Effective Date during the Term, 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 (i) the above certification is not so provided by Contractor or (ii) AIL has reason to believe that information provided by Contractor is inaccurate.

- (b) Pricing Cooperation. Both Parties shall cooperate to assure that the price AIL charges for its services and the price Contractor charges for its Gateway Terminals are competitive in each country in which such services and Gateway Terminals are offered for sale by AIL and Contractor, respectively

13.4 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 Gateways 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 Gateway Terminals 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.

14. AIL PAYMENTS TO CONTRACTOR AND INVOICING

14.1 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 a Milestone Payment (for Milestone No. 1) as described in Section 14.2(c) below.

14.2 PAYMENTS.

(a) Payment Schedule for Purchase Commitment. Payments for Production Gateways that compose the Purchase Commitment are to be made as follows:

- (i) *** of the Purchase Price for all Gateway Terminals in the Purchase Commitment is due ***;
- (ii) *** of the Purchase Price for all Gateway Terminals in the Purchase Commitment is due three (3) months prior to the original Scheduled Delivery Date of the first Gateway Terminal to be delivered under the Purchase Commitment; and
- (iii) *** of the Purchase Price for each Gateway Terminal is due upon Acceptance and delivery of the Gateway Terminal (FOB Contractor's designated site).

(b) Payment Schedule for other Gateway Terminals. Payments for Production Gateways, other than the Purchase Commitment, and optional priced items (other than Long Lead Kits and shelters) are to be made as follows:

- (i) *** of the Purchase Price is due upon placement of an Order;
- (ii) *** of the Purchase Price is due three (3) months prior to the Scheduled Delivery Date; and
- (iii) *** of the Purchase Price is due upon Acceptance and delivery (FOB Contractor's designated site).

(c) Payment Schedule for Long Lead Kits. Payments for Long Lead Kits are to be made as follows:

- (i) *** of the purchase price of each Long Lead Kit, as set forth in Schedule 2, is due upon placement of the Long Lead Kit Order;
- (ii) *** of such purchase price of each Long Lead Kit is due three (3) months prior to the scheduled receipt of the Long Lead Kit at the Contractor's facility; and

- (iii) ***of such purchase price of each Long Lead Kit is due upon receipt of the Long Lead Kit by Contractor at Contractor's facility.
- (d) Payment Schedule for Optional Shelters. Payments for optional shelters are to be made as follows:
 - (i) ***for the purchase price for optional shelters, as set forth in Schedule 2, is due upon placement of the optional shelters Order; and
 - (ii) ***for such purchase price for optional shelters is due upon Acceptance of the optional shelters;
- (e) Milestone Payments. In accordance with the mutually agreed upon Milestone and Payment Schedule and subject to Contractor's timely compliance with the terms hereof, AIL will pay Contractor Milestone Payments for nonrecurring engineering payments in the aggregate of *** for the work described herein (including the SOW). Milestone Payments shall not include installation charges, shipping charges, taxes, duties and insurance. All Milestone Payments made by AIL to Contractor are subject to satisfaction of mutually agreed upon Milestone Events as set forth in Schedule 1. All Milestone Payments shall be paid in accordance with Section 14.3 and 14.4 below.
- (f) Support Services. The Milestone Payments shall also cover 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 9. None of the Support Service hours provided hereunder shall have been deemed to be performed prior to the Effective Date.

14.3 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 (ii) 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) In accordance with the payment schedule set forth in Section 14.2(a), Contractor will invoice AIL or the applicable Service Provider for amounts due pursuant to this Agreement for such Gateways. Such invoice shall include invoice date, Order number, Gateway Terminals part numbers and descriptions, quantities, unit prices and total amount due.
- (c) For deliverables 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 Contractor's fees and expenses to be reimbursed by AIL hereunder, such as travel and per diem expenses, 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 13.4(c) that Contractor is collecting from AIL.

14.4 PAYMENT DUE.

- (a) Subject to Section 20.3, and the other provisions of this Article 14, invoices provided for under Section 14.3 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 Accepted by AIL as evidenced in a written notification from AIL to Contractor, which notification shall be issued promptly following AIL's Acceptance of the applicable Milestone.
- (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 ***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.
- (e) All disputed payments required to be made by AIL (as determined after resolution of such dispute) shall be made within thirty (30) days after the dispute is resolved in accordance with Section 14.8.

14.5 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.

14.6 PRORATION.

Except as expressly provided herein, periodic charges under this Agreement are to be computed on a calendar month basis, and shall be prorated for any partial month.

14.7 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.

14.8 DISPUTED CHARGES.

Subject to Section 14.7, AIL shall pay undisputed charges when such payments are due under this Article 14. 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 14.4(d).

14.9 ENCUMBRANCES.

Contractor shall not perfect any Lien upon any Gateway Terminals, Equipment or Software provided pursuant to this Agreement except as otherwise expressly permitted by this Agreement. All Gateway Terminals provided to AIL and its Service Providers shall be free and clear of all Liens in accordance with Section 9.6, subject to Section 23.18.

15. INFORMATION; CONFIDENTIALITY

15.1 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 15.3(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.

15.2 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 15.3(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. No 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 as provided in Section 22.1) 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.

15.3 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 Gateway 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 15.3.

- (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 15.3.
- (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.

16. EXAMINATION AND AUDIT OF INFORMATION; RECORDKEEPING

16.1 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 travel and related living 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 those travel and related 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.

16.2 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 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 Gateway 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 such costs or expenses were incurred and paid for. 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.

17. REPRESENTATIONS AND WARRANTIES

17.1 PASS-THROUGH WARRANTIES.

Contractor will from time to time provide certain Gateway Terminals, Equipment and Software for which Contractor is entitled to warranties from the manufacturers, lessors or licensors of such items. Contractor shall pass through to AIL and its Service Providers that purchase Gateway 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.

17.2 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.

17.3 GATEWAY TERMINAL AND SERVICES WARRANTIES.

Contractor warrants to AIL as follows and AIL may incorporate such warranties into its agreements with Service Providers to which AIL supplies Gateway Terminals, with AIL as the warranting Party. Contractor will include with each Gateway Terminal shipped to AIL appropriate documentation that sets forth Contractor's warranty policy to Service Providers.

- (a) Contractor warrants that Gateway 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 (all in effect at the time of delivery) upon delivery and during the Warranty Period. Contractor further warrants that Gateway Terminals provided hereunder shall be free of any defect in design, during the Warranty Period, that results in non-conformance of a Gateway Terminal to the SOW and applicable Standards in effect at the time of delivery. Contractor further warrants that the Gateway Terminals are built in accordance with the applicable requirements set forth in the SOW.
- (b) Contractor represents, warrants and covenants that all Gateway Terminals 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 Gateway Terminals such that the Gateway Terminals conform to the SOW (in effect at the time of delivery) during the Warranty Period. Such maintenance shall include:
 - (i) in accordance with the procedures set forth in Schedule 7, perform repairs on Gateway 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 Gateway Terminals;

- (ii) providing any release, update, alteration, modification, enhancement or improvement that is generally available to Contractor's other customers under warranty or extended warranty for the same Gateway Terminal;
 - (iii) 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' improper use (which shall not be improper use if used in accordance with the documentation or as instructed by Contractor's) or through no fault of Contractor and as a result such Software are unusable or fail to operate in accordance with the SOW;
 - (iv) providing telephone and email support and basic fault isolation assistance to AIL and its Service Providers, at no charge during the Warranty Period, in order to document such parties' functional or operational problems with the Gateway Terminals and to assist Gateway Terminal maintenance personnel in isolating faults. Such telephone logging and email support and basic fault isolation assistance shall be provided on a 24 hour, 7 days per week, 365 days per year basis via Contractor's help desk. To the extent required and requested by AIL for assistance beyond basic fault isolation, 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 9. In addition, Contractor's after-hours 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 9. Contractor shall provide a single contact number for AIL and its Service Providers to use the telephone and email support and mutually agreed upon procedures shall be utilized for AIL to request technical assistance which will result in charges to AIL;
 - (v) in the event AIL requests technical assistance be provided on-site at a Gateway location, Contractor shall provide such assistance at the rates set forth in Schedule 9, subject to the provisions of Section 11.3(a)(iv);
 - (vi) inspection, diagnosis and repair or replacement of failed equipment at the Gateway site for components that are not field-replaceable units. Contractor shall bear the travel and labor costs associated with such Warranty inspection, diagnosis, and repair or replacement of failed equipment at the Gateway site for the *** of such Warranty services provided during the Term. Thereafter, AIL shall pay the travel and labor costs associated with such Warranty services at Gateway sites at the rates provided in Schedule 9; and
 - (vii) during the Initial Warranty Period, if Contractor is required under the Agreement to repair a particular component or subassembly of the Gateway Terminals more than ***times in any rolling ***period, Contractor shall replace such component or subassembly, as the case may be, in its entirety at no charge.
- (d) Contractor represents and warrants that it shall offer to AIL and its Service Providers the post-warranty support and repair services described in Section 11.3(c) and as set forth in Schedule 10 attached hereto and maintain the availability of Gateway Terminals parts

and sub-parts, consistent with the Gateway Terminals redundancy design, for a period of the later of (i) expiration of all applicable Extended Warranty Periods ***Gateway 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 Gateway Terminals components associated with this Agreement to permit AIL a last time purchase opportunity. Contractor acknowledges and agrees that it shall not utilize this "discontinuation" provision as a means to cease supplying Gateway Terminals during the Term.

- (e) Contractor warrants that all Gateway Terminals, including all updates, upgrades and revisions to Gateway Terminals and/or Software, shall be backward compatible to existing Production Gateway Terminals or prior releases so that all applications and other items that can be used in connection with the Gateway Terminals at any time can be used in connection with future Gateway Terminals in materially the same manner and with materially equivalent performance. In addition, all updates, upgrades and revisions to Gateway 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. Gateway Terminals upgrades to implement Software enhancements or improvements that AIL desires to implement shall be provided to AIL at mutually agreed upon prices, schedules and rates.
- (f) Contractor warrants, to its actual knowledge, that the Gateway 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.
- (g) Contractor shall provide appropriate technical resources to AIL's or its Service Providers' appropriate personnel in order to resolve any problem that AIL or a Service Provider cannot resolve through help desk support, including engineering support, field engineering, remote on-site repair, - training and field service support for errors or problems that cannot be remotely diagnosed and cured in accordance with Section 17.3(c). Such technical resources shall be provided at Contractor's then-current time and materials rates, except as provided in Schedule 9.
- (h) In the event of a breach of the foregoing representations, warranties and covenants during the Warranty Period and upon written notice from AIL describing the breach, Contractor shall at no charge to AIL: (i) in the case of Gateway Terminals, repair or replace, at Contractor's discretion, such Gateway Terminals so that they are compliant with the warranty as set forth in Section 17.3(a), and (ii) in the case of Services, immediately re-perform the Services. In the event Contractor fails to repair or replace such Gateway Terminals or to perform such Services, AIL reasonably may do so at Contractor's expense.
- (i) 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 Gateway Terminals delivered hereunder or infringement of any third party Intellectual Property Rights 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 Rights is caused by the combination of a Gateway 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 Gateway Terminals with 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.

17.4 REVIEWS.

- (a) Periodic Reviews. Upon six (6) months after the date of Acceptance of the First Article Gateway Terminal, and at least annually thereafter, AIL and Contractor shall review Contractor's performance of its warranty obligations hereunder and shall make adjustments to its performance as may be mutually agreed by the Parties.
- (b) Special Reviews. If AIL determines that there is a recurring Defect in Gateway Terminals, AIL will notify Contractor of such Defect and Contractor, along with Subcontractor, if applicable, shall promptly meet with AIL and propose a mutually acceptable corrective action plan to correct the Defect at Contractor's expense.

17.5 MEASUREMENT AND MONITORING TOOLS.

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

17.6 DOCUMENTATION.

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

17.7 EFFICIENCY AND COST EFFECTIVENESS.

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

17.8 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.

17.9 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 Gateway 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.

17.10 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) it is not subject to any contractual or other obligation that would prevent it from entering into this Agreement.

17.11 VIRUSES.

Contractor warrants that no Viruses are coded or introduced into any Software or Gateway Terminals at time of delivery. If a Virus is found in any Software or a Gateway Terminal, which was present at the time of delivery, Contractor, at no additional charge to AIL or any Service Provider, 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.

17.12 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 any Software or Gateway Terminals are coded or introduced into any Software or Gateway Terminals at the time the Software or Gateway Terminals is delivered by Contractor ("Disabling Code"), unless AIL authorizes Contractor to include any such code. If any such unauthorized Disabling Code is found in any Software or Gateway Terminals, Contractor, at no additional charge to AIL or any Service Provider, 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.

17.13 YEAR 2000.

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

17.14 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.

18. 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 ***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 18(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.

19. INDEMNITIES

19.1 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 Gateway 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.

19.2 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 Gateways or Gateway Terminals.

19.3 INFRINGEMENT.

If any item used by Contractor to provide the Gateways or Services, or contained in any Gateway Terminals, 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 Gateways 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 Gateway Terminals or Services and (B) the total amounts paid hereunder for the affected Services and Gateway Terminals, less reasonable depreciation. With respect to Gateway Terminals, such payment shall be made contemporaneously with AIL's removal of such Gateway Terminals from AIL's network.

19.4 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 19.1 through 19.3 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.

19.5 SUBROGATION.

In the event that an indemnitor shall be obligated to indemnify an indemnitee pursuant to Sections 19.1 through 19.3, 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.

20. LIABILITY

20.1 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.

20.2 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.

20.3 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 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 20.3, 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.

20.4 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 20.3 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 proposal back-up price data to support its claim for such adjustment.

20.5 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.

20.6 AIL'S SUSPENSION OF WORK.

Notwithstanding the foregoing Section 20.5, AIL, by written notice, may at any time suspend work (including suspension of production work, delivery of Gateway Terminals and payment therefor, excluding suspensions due to catastrophic failures of satellites) for a period not to exceed one hundred

eighty (180) days, and for further periods agreed to by the Parties. The Parties will agree to appropriate adjustments to the Purchase 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 three (3) times during any five (5) consecutive year 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 22.2. 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.

21. 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 21. Notwithstanding any other provision of this Agreement, Contractor shall***, Contractor, at its election, shall be entitled 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 damages and remedies available to Contractor at law, equity or otherwise, ***

21.1 INFORMAL DISPUTE RESOLUTION.

Subject to Subsection 21.3, prior to the initiation of formal dispute resolution procedures, the Parties shall first attempt to resolve their dispute informally pursuant to this Section 21.1. 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.

21.2 ARBITRATION.

Subject to Subsection 21.3, if the Parties fail to resolve a dispute pursuant to Section 21.1 above, the Parties agree to pursue binding arbitration as the sole remedy of any dispute hereunder. Each Party shall designate one (1) arbitrator, provided that the arbitrator(s) selected shall be knowledgeable in the telecommunications field. The two (2) designated arbitrators shall then choose a third arbitrator, who shall be the head of the panel of arbitrators, and the panel of three (3) 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 Gateway 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.

21.3 INJUNCTIVE RELIEF.

Notwithstanding Subsections 21.1 or 21.2, 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 21.2.

21.4 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 22.1(b) shall permit discontinuance of Contractor's performance obligations solely with respect to the payment failure).

21.5 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.

22. TERMINATION

22.1 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 in accordance with Section 5.4;
- (3) failure to complete a Milestone or other agreed-upon material task within the corresponding Milestone Date or agreed-upon timeframe in accordance with Section 5.5; 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 a different cure period is expressly provided herein for such breach or 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 (3) 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. Contractor shall pay *** as provided in Section 5.6 and Section 6.7, if applicable; shall refund to AIL all or a portion of the Milestone Payments (for services and work that have not been performed by the Termination Date or for services or work that AIL has not Accepted by the Termination Date or for which AIL elects to revoke its Acceptance due to Contractor's uncured material breach hereof), if it defaults during the development phase; shall assign its subcontracts to AIL (to the extent assignable); shall provide termination assistance to AIL as provided in Section 22.4 below; and shall fulfill any other applicable terms as set forth in the Agreement. In addition, following the Termination Date, Contractor agrees to license its Gateway Terminal IP (including the Contractor Background Information and the Gateway Terminal IP for the modem ***) to AIL or its Replacement Vendor as defined in and in accordance with Section 22.3(a) or, at AIL's election, manufacture and/or sell the modem and ***to AIL and its authorized purchasers at commercially reasonable prices.

(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". Contractor will also be eligible to receive payment for work performed and reasonable wind-down expenses, as its sole remedy under this Section 22.1(b), not to exceed ***, less amounts already paid.

22.2 TERMINATION FOR CONVENIENCE.

- (a) Termination Date. 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 Termination Date.
- (b) Termination Liability for AIL Purchase Commitment. If AIL elects to terminate this Agreement for convenience in accordance with this Section 22.2 prior to the delivery and payment of the Purchase Commitment, AIL agrees to pay Contractor a termination liability payment in accordance with Schedule 11 less all amounts paid by AIL to Contractor hereunder to up and including the Date of Termination. This Subsection (b) shall be of no further effect after AIL completes the AIL Purchase Commitment. Notwithstanding anything herein to the contrary, AIL's maximum liability and Contractor's sole remedy for termination for convenience under this Section 22.2(b) shall be no greater than ***, less prior payments made by AIL.
- (c) Termination Liability following AIL Purchase Commitment. If AIL elects to terminate this Agreement for convenience in accordance with this Section 22.2 following the completion of the AIL Purchase Commitment, AIL shall be liable to Contractor for all unpaid amounts due and owing for work performed and Contractor's expenses for any outstanding Orders cancelled as a result of termination (determined in accordance with Section 8.6 above). 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 termination liability payment set forth 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 22.1 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 22.2. For purposes of calculating termination costs relating to outstanding Orders cancelled as a result of termination, the provisions of Section 8.6 apply.

22.3 EFFECT OF TERMINATION FOR CAUSE.

- (a) If AIL terminates this Agreement pursuant to Sections 5.4, 5.5, 6.7, 13.1 or 22.1 hereof, Contractor agrees to license to AIL or, at AIL's election, AIL's designated replacement vendor for Contractor (the "Replacement Vendor") Contractor's Confidential Information, Contractor Background Information, Contractor Foreground Information and the Intellectual Property Rights appurtenant thereto required to develop, produce, modify, operate, market, demonstrate, distribute, sell, operate and maintain the Gateway Terminals (collectively, the "Gateway Terminal IP") and to authorize others to do any of

the foregoing. Contractor shall provide such Gateway Terminal IP to AIL or the Replacement Vendor (at AIL's election) and shall license to AIL or the Replacement Vendor the Gateway Terminal IP on a non-exclusive, worldwide, royalty-free and irrevocable basis (as to the Replacement Vendor only, until the Replacement Vendor ceases to produce Gateway Terminals), for use only in the development, production, marketing and sales of Gateway 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 Gateway Terminal IP to develop, modify, manufacture, produce, distribute, sell, operate and maintain the Gateway 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.

- (b) If AIL terminates this Agreement under Section 22.1(a) above, AIL shall be entitled to have the work completed by another party or parties, and Contractor shall be liable to AIL for ***

22.4 TERMINATION/EXPIRATION ASSISTANCE.

- (a) Upon termination of this Agreement pursuant to Section 22.1(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 22.3(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 Gateway 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 acceptable to AIL;
 - (ii) Contractor shall (to the extent authorized) sublicense to AIL all third party products utilized with the Gateway 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 Gateway 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 Gateway Terminals.

- (c) This Section 22.4 shall survive termination or 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 22.4, 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 22.1(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.

22.5 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 22.4, 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).

23. GENERAL

23.1 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.

23.2 CONDITIONAL ASSIGNMENT OF SUBCONTRACTS.

Notwithstanding the terms of Section 23.1 above and subject to the condition contained in this Section 23.2, Contractor hereby assigns to AIL its rights and obligations under Contractor's subcontracts with the Material Subcontractors. Such assignment shall become effective, if at all, if this Agreement is terminated in accordance with the terms hereof.

23.3 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.

23.4 ALIGNMENT OF INTERESTS.

Contractor agrees that it will in no way take a position adverse to AIL, including with respect to the spectrum assigned and designated for use by AIL, in trade associations, regulatory bodies, the press or otherwise, unless mutually agreed upon by the Parties in advance.

23.5 COMPLIANCE WITH LAWS AND REGULATIONS.

- (a) Each Party shall perform its obligations in a manner that complies with all applicable U.S. federal, state and local laws, regulations, ordinances and codes, including export and foreign controls, the Foreign Corrupt Practices Act, the U.S. Export Administration Act, EPA, OSHA, and foreign import and export laws and regulations, as well as any applicable requirements of the FCC. If either Party is charged with a failure to comply with any of such laws or regulations, 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.

23.6 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.

23.7 COUNTERPARTS.

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

23.8 RELATIONSHIP OF PARTIES.

Contractor, in furnishing Gateway 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.

23.9 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.

23.10 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.

23.11 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.

23.12 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.

23.13 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.

23.14 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.

23.15 AMENDMENT.

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

23.16 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 23.15, 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) Pricing Schedules;
- (iv) SOW;
- (v) The Attachments to the Schedules; and
- (vi) Orders.

23.17 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 23.1.

23.18 SECURITY INTEREST.

Contractor reserves a purchase money security interest in each Gateway 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.

23.19 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.

23.20 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.

23.21 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: _____
Printed: _____
Title: _____
Date: December 28, 2000

By: _____
Printed: _____
Title: _____
Date: December 28, 2000

SCHEDULE 1

MILESTONE AND PAYMENT SCHEDULE

In accordance with Section 5.4, Contractor shall be paid in accordance with the below Milestone and Payment Schedule following Acceptance.

1-1

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 2

PURCHASE PRICES FOR GATEWAY TERMINALS

[4 pages omitted]

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 3
COUNTRY SCHEDULE

* * *

[2 pages omitted]

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 4

STATEMENT OF WORK

[61 pages omitted]

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 5

ESCROW AGREEMENT

[TO BE COMPLETED WITHIN NINETY (90) DAYS AFTER THE EFFECTIVE DATE
AND ATTACHED IN ACCORDANCE WITH SECTION 10.6]

5-1

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 6

EXTENDED WARRANTY OPTION

Extended Warranty shall be provided in accordance with the Section 11.3(b) of the Agreement. Pricing for this Extended Warranty shall be proposed by Contractor at the CDR.

6-1

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 7

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.

7-2

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 8

KEY CONTRACTOR PERSONNEL

[CONTRACTOR TO DESIGNATE INDIVIDUALS FOR POSITIONS BELOW WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF CONTRACT]

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

POSITION	NAME
PROGRAM MANAGER	
SATELLITE ACCESS EQUIPMENT LEAD ENGINEER	
MODEM INTERWORKING UNIT LEAD ENGINEER	

SCHEDULE 9

CONTRACTOR RATES

The rates and guidelines for expenses and travel set forth on this Schedule 9 apply only to those Services identified in the Agreement that refer to Schedule 9.

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, without any administrative fee.
- 4) No more than eight (8) hours per day may be charged during travel.

9-1

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 10

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 Gateway Terminals field-replaceable units ("FRUs") 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 Gateway Terminal component 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.

10-1

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 11

TERMINATION LIABILITY PAYMENTS

If AIL elects to terminate for its convenience pursuant to Section 22.2 of the Agreement prior to or upon the delivery and payment of the 9 Gateway Terminals in the AIL Purchase Commitment, AIL's termination liability shall be determined in accordance with the table set forth below, less the aggregate amounts paid by AIL hereunder. The following Table sets forth termination points by quarter for each Contract Year. The actual termination liability payment will be the amount shown in the table minus all payments received from AIL.

11-1

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

SCHEDULE 12

CERTIFICATION OF THIRD PARTY INSTALLERS

If requested by AIL, Contractor will perform this certification on a time and materials cost basis using the rates set forth in Schedule 9. The process for certification is as follows:

- An established ground system integration company which is in the business of performing satellite ground system installations is selected by AIL.
- Contractor will develop detailed installation and on-site acceptance testing (OSAT) procedures that are suitable for use by third parties.
- The installer sends all personnel who would be involved in the installation to Contractor's facility to attend a one (1) week training class on the Gateway Terminals. This course will be designed to enable the installer to understand the overall function of the Gateway Terminal and how it interacts with other elements of the Gateway.
- Contractor will also provide classroom training on the installation and OSAT.
- The team, under the supervision of Contractor personnel, would install one of the deliverable ***Gateway Terminals at a site to be designated by AIL.
- If installers pass the written tests associated with the training and successfully install the Gateway Terminal, they will be certified by Contractor.
- If the installers do not meet the required standards, the Parties will meet and confer to determine a mutually acceptable plan of action to achieve certifications.

12-1

ASTROLINK AND VIASAT
CONFIDENTIAL AND PROPRIETARY INFORMATION

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

AGREEMENT

FOR

SATELLITE MODEM, WILDBLUE SATELLITE TERMINAL AND SATELLITE MODEM
TERMINATION SYSTEM

DEVELOPMENT, PRODUCTION AND PURCHASE

BY AND BETWEEN

WILDBLUE COMMUNICATIONS, INC.

AND

VIASAT, INC.

EFFECTIVE AS OF DECEMBER 12, 2001.

ViaSat and WildBlue Confidential Information

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LIST OF SCHEDULES.

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2. WildBlue Radio Frequency Interface Specification
3. WildBlue Product Phasing Document, version 1, July 20, 2001
4. IDU/ODU Interface Specification
5. WildBlue Responsibilities
6. Reserved
7. Reserved
8. Minimum Order Commitment and Maximum Capacity Commitment
9. WBST/WBSM Order and Delivery Forecast
10. Labor Rates
11. WildBlue Satellite Terminal Pricing Schedule
12. Contractor's Marks
13. Technical Support, Warranty Support and Maintenance
14. Post Warranty Support and Maintenance
15. Documentation Reproduction Guidelines
16. Warranty Related Fee Schedule
17. Reserved
18. Reserved
19. SMTS Production Price Schedule
20. SMTS Initial Production Order Delivery Schedule and Forecast
21. Product Description of the SMTS
22. SMTS Technical Support, Warranty Support and Maintenance
23. SMTS Post Warranty Support and Maintenance

AGREEMENT FOR
SATELLITE MODEM, WILDBLUE SATELLITE TERMINAL AND SATELLITE MODEM
TERMINATION SYSTEM DEVELOPMENT, PRODUCTION AND PURCHASE AGREEMENT

BY AND BETWEEN

WILDBLUE COMMUNICATIONS, INC.

AND

VIASAT, INC.

This Agreement for the Satellite Modem, WildBlue Satellite Terminal and Satellite Modem Termination System 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 WildBlue Communications, Inc., a Delaware corporation with offices located at 4600 South Syracuse, Suite 500, Denver, CO 80237 ("WILDBLUE"), 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 WildBlue or Contractor, as appropriate, and "PARTIES" means WildBlue and Contractor.

WHEREAS, the Parties entered into a Satellite Modem ("SM") Development, Production and Purchase Agreement with an Effective Date of March 5, 2001 (the "SM AGREEMENT");

WHEREAS, the Parties entered into a Satellite Modem Transmission System ("SMTS") Development, Production and Purchase Agreement with an Effective Date of June 22, 2001 (the "SMTS AGREEMENT");

WHEREAS, the Parties desire to terminate the SM Agreement and SMTS Agreement ("PRIOR AGREEMENTS") concurrently with entering into this Agreement, which shall supersede the Prior Agreements;

WHEREAS, WildBlue desires to procure WildBlue Satellite Terminals ("WBST"), SMs and SMTS and Contractor desires to sell such pursuant to the terms and conditions of this Agreement;

WHEREAS, WildBlue has requirements to support *** (defined below) and WildBlue requires that Contractor support the WildBlue's requirements to; *** and,

WHEREAS, WildBlue has entered into an agreement with Telesat Canada to license all of the U.S. capacity on Anik F2, and the Parties desire to enter into a Service Agreement, wherein, Contractor is to be provided a portion of the satellite capacity licensed to WildBlue, if any, on Anik F2, if and when such satellite is launched.

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

ViaSat and WildBlue Confidential

1. CONSTRUCTION AND INTERPRETATION

- 1.1. 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.
- 1.2. Unless the context otherwise requires, words importing the singular include the plural and vice-versa.
- 1.3. References to an "Article," "Section" and "Subsection" shall be references to an article, section, or subsection of this Agreement, unless otherwise specifically stated.
- 1.4. 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.
- 1.5. 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.
- 1.6. The word "including" and words of similar import (such as "include" and "includes") mean "including, but not limited to."
- 1.7. A reference to "days" means calendar days, unless otherwise specifically stated in a reference. A reference to a monthly "date" is the last day of the month unless another day is specified.

2. 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.

- 2.1. "AFFILIATE" means, with respect to a Party, any person or entity Controlling, Controlled by or under common Control with such entity (but only as long as such person or entity meets these requirements).
- 2.2. "ANIK F2" means the Anik F2 satellite to be owned and operated by Telesat Canada.
- 2.3. "AUTHORIZED RESELLER" means a person or entity that is authorized by WildBlue to buy SMS from Contractor for use with the WildBlue System.
- 2.4. "CHASSIS" means one rack mountable enclosure with a minimum of a functioning and deployable single Downstream and eight Upstreams.
- 2.5. "CONTRACTOR BACKGROUND INFORMATION" means all information and technology, and all Intellectual Property Rights therein, developed by or for Contractor prior to the Effective Date or developed by or for Contractor at any time independent of this Agreement, exclusive of Contractor Foreground Information developed under the Prior Agreements. Contractor Background Information expressly excludes all Third Party Information.

- 2.6. "CONTRACTOR FOREGROUND INFORMATION" means all information and technology, and all Intellectual Property Rights therein, developed by or for Contractor in connection with the development of WBSTs, SMs or SMTSS under this Agreement or Prior Agreements, excluding Joint Foreground Information.
- 2.7. "CONTROL" and its derivatives mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting stock, by contract or otherwise.
- 2.8. "DEFECT" means any failure of an WBST, SM, or SMTS including any components thereof (but excluding failures of any third party components provided by WildBlue), to operate in conformance with the applicable Specification.
- 2.9. "DELIVERABLES" means the WBST, SM or SMTS ("Products") and services set forth in this Agreement, including, without limitation, all incidental related products and services, provided by Contractor under this Agreement.
- 2.10. "DOCUMENTATION" means documentation required to be prepared and delivered by Contractor under this Agreement.
- 2.11. "DOWNSTREAM" means the hardware element within an SMTS that enables a communication channel to send data from a SMTS to the satellite modem.
- 2.12. "DPM" means that version of the DOCSIS Processor Module as described in the SMTS Product Description (Schedule 21).
- 2.13. "DYNAMIC PHYSICAL LAYER DOWNSTREAM" means a Downstream supporting dynamic selection of modulation and coding parameters on a frame by frame basis.
- 2.14. "EFFECTIVE DATE" means December 12, 2001.
- 2.15. "END USER" means a person or entity (other than WildBlue, Authorized Resellers or Service Providers) that purchases (other than for resale or distribution) an SM or SMTS for use outside the WildBlue System.
- 2.16. "ESCROW AGREEMENT" means the Escrow Agreement in the form and on the terms set forth and established between the Parties pursuant to the purchase of certain goods from WildBlue.
- 2.17. "FEATURE" means a function, innovation or performance improvement to the SMs that is made generally available to any User. New Features may be offered by Contractor to WildBlue separately or bundled. The term "Feature" does not include Point Releases or Software Patches, or hardware or software changes which correct and/or fix Defects in such current release.
- 2.18. "HARDWARE" means the hardware components of WBSTs, SMs or SMTSS, excluding any Software.
- 2.19. "INITIAL WILDBLUE SATELLITE TERMINAL ORDER" is defined in Section 8.3 below.

- 2.20. "INITIAL SMTS ORDER" means those SMTS units and components set forth in Schedule 19, SMTS Initial Order Delivery Schedule.
- 2.21. "INITIAL SMTS DELIVERY" is defined in Schedule 19.
- 2.22. "INTELLECTUAL PROPERTY RIGHTS" means any and all rights in the following:
- (a) patents whether registered or unregistered;
 - (b) inventions whether or not capable of protection by patent or registration;
 - (c) rights in commercial information and technical information, including know-how, research and development data, manufacturing methods and data, specifications and drawings, formulas, trade secrets, algorithms, prototypes and research materials;
 - (d) copyrights (including without limitation any application, registration or renewal related thereto), registered designs or design rights (whether or not capable of protection by registration), trademarks (whether registered or unregistered, including without limitation service marks, logos, sound logos, certification marks, and trade names, together with any applications, registrations and renewals for any of the foregoing and the goodwill associated with each), domain names, mask work rights, database rights, and moral rights;
 - (e) applications for the grant of rights of the foregoing descriptions;
 - (f) rights of a similar or analogous nature to any of the foregoing whether in existence now or in the future and wherever located in the world.
- 2.23. "INTERFACE SPECIFICATION" means the written specifications defined in Schedules 2 and 4 in effect as of the Effective Date, excluding Specification Embodiment and IS Background Information.
- 2.24. "IS BACKGROUND INFORMATION" means that Contractor Background Information developed by Contractor prior to the Effective Date or developed by or for Contractor at any time independent of this Agreement, exclusive of IS Foreground Information developed under the Prior Agreements that is incorporated into or essential to the application of the Interface Specification, and all Intellectual Property Rights therein, but shall not include Specification Embodiment.
- 2.25. "IS FOREGROUND INFORMATION" means that Contractor Foreground Information developed by Contractor prior to the delivery of the March 15, 2002 Deliverable specified in Section 5.4(a), *** in the course of performance of this Agreement or the Prior Agreements that relates to the Interface Specification, and all Intellectual Property Rights therein, but shall not include Specification Embodiment.
- 2.26. "JOINT FOREGROUND INFORMATION" means all information and technology, and all Intellectual Property Rights therein, jointly developed by Contractor and WildBlue in connection with the development of SMS and SMTSs under this Agreement or the Prior

Agreements. The determination of whether Contractor and WildBlue are joint authors for copyrightable foreground information or joint inventors for patentable foreground information shall be based on federal copyright and federal patent law respectively.

- 2.27. "LEGAL REQUIREMENTS" means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, directions and requirements of all governmental agencies applicable to or required in connection with the SMS, WBST or SMTSS.
- 2.28. "LIEN" means any lien (including subcontractor and other mechanic liens), imperfection in title, security interest, claim, charge, restriction or other encumbrance.
- 2.29. "LOSSES" means all losses, costs, expenses, liabilities and damages reasonably incurred resulting from or relating to under any settlement, litigation or final judgment, and all related reasonable costs and expenses, including reasonable legal fees, fines, interest and penalties.
- 2.30. "MAJOR COMPONENT" is defined in Section 14.
- 2.31. "MAJOR COMPONENT VENDOR" is defined in Section 14.
- 2.32. "MAJOR RELEASE" means the issue of Software and any superseding issue thereof which adds new Features or functionality to, or substantially enhances, the existing Software. A Major Release may also correct defects in earlier releases.
- 2.33. "MARK" means any trademark, service mark, trade name, domain name, logo or other indicia of source or origin of a product or service.
- 2.34. "MILESTONE PAYMENT" means an NRE Payment (as defined in Section 17.1) made by WildBlue to Contractor in accordance with Section 17.2 below upon the achievement by Contractor of certain Milestones and Acceptance by WildBlue of the corresponding Milestone.
- 2.35. "MILESTONES" is defined in Section 5.4.
- 2.36. "NRE PAYMENT" is defined in Section 17.1.
- 2.37. "ORDER" means a purchase order issued by WildBlue to Contractor confirming the purchase of WBSTs, SMS or SMTSS and providing carrier, shipping destination and other similar information.
- 2.38. "OUT-OF-BOX FAILURE" means the inoperability of any SM or WBST or failure of any SM or WBST to operate in accordance with the applicable Specification either (a) if initially tested after delivery to WildBlue but before initial installation, or (b) failure to so operate during the two (2) day period immediately following such initial installation. Out-of-Box failure does not include failure of any third party components provided by WildBlue.

- 2.39. "POINT RELEASE" means a reissue of the existing Software which revises or improves the Software with which it is associated; a Point Release may also correct and/or fix defects in the current release of Software.
- 2.40. "PRICE" means the price of an SM, WBST or SMTS to WildBlue as set forth on Schedule 11 and Schedule 19 respectively, FOB those Contractor's designated sites in the contiguous United States.
- 2.41. "SATELLITE TERMINAL" means a version of satellite terminal other than a WBST, generally based upon customer premise equipment that consists of a satellite modem, outdoor antenna, Ka-band transceiver, standard alignment/mounting/grounding hardware, cable from modem to dish, and power supply(s).
- 2.42. "SERVICE PROVIDER" means persons or entities other than WildBlue, Authorized Resellers, or End Users that acquire SMS from Contractor and resell or distribute such SMS.
- 2.43. "SM" means the satellite modem, designed, developed and manufactured by Contractor substantially in accordance with the applicable Specification and as authorized under the terms and conditions of this Agreement, and any other substantially similar satellite modem in design and function manufactured by or for Contractor.
- 2.44. "SM-A" means that version of the SM whose functions are described in the SM Product Description (Schedule 1), and Schedule 11, the WildBlue Satellite Terminal Pricing Schedule with the exception of support for dynamic multi-rate downstream PHY operation.
- 2.45. "SM-B" means that version of the SM Satellite Modem whose functions are described in the SM Product Description (Schedule 1).
- 2.46. "SMP" means that version of the Satellite MAC/PHY daughtercard as described in the SMTS Product Description (Schedule 21).
- 2.47. "SMTS" means the satellite modem termination system, designed, developed and manufactured by or for Contractor substantially in accordance with the applicable Specification for use in the WildBlue System and as authorized under the terms and conditions of this Agreement, and any other satellite modem termination system substantially compliant with the WildBlue RFI (as defined in Schedule 2) in design and function manufactured by or for Contractor. Unless otherwise expressly stated herein, the obligations of Contractor under this Agreement apply only to SMTS(s) which are provided to WildBlue by Contractor hereunder.
- 2.48. "SMTS-A" means that version of the SMTS whose functions are described in the SMTS Product Description (Schedule 21), with the exception of support for dynamic multi-rate downstream PHY operation.
- 2.49. "SMTS-B" means that version of the SMTS whose functions are described in the SMTS Product Description (Schedule 21).

- 2.50. "SOFTWARE" means the machine readable computer programs (including firmware, files, databases, interfaces, documentation and other materials related thereto, any third party Software sublicensed by Contractor hereunder), as such Software is revised, upgraded, updated, corrected, modified, and enhanced from time-to-time and provided to WildBlue pursuant to this Agreement.
- 2.51. "SOFTWARE PATCHES" means Software that corrects or removes a reproducible anomaly or "bug," whether or not such anomaly applies to software furnished to WildBlue under this Agreement. Software Patches do not include Point Releases or Major Releases, and do not represent an upgrade to or enhancement of existing Software specifications.
- 2.52. "SPECIFICATION" means, with respect to each Product, those functional, performance and other requirements specified for such Product. For the Products, the Specification includes the following documents as may be amended from time to time in accordance with the terms of this Agreement:
- (a) Satellite Modem Product Description (set forth in Schedule 1)
 - (b) WildBlue Radio Frequency Interface Specification (set forth in Schedule 2)
 - (c) SM/SMTS Functional Specification (set forth in Schedule 3)
 - (d) IDU/ODU Interface Specification (set forth in Schedule 4)
 - (e) Product Description SMTS(set forth in Schedule 21)
- 2.53. "SPECIFICATION EMBODIMENT" means all Intellectual Property Rights throughout the world now or hereafter owned by a Party hereof contained in any embodiment of the SMs, SMTS, and WBST apart from the Interface Specification.
- 2.54. "THIRD PARTY INFORMATION" means information and technology, and all Intellectual Property Rights therein, owned by a third party.
- 2.55. "UNITED STATES" or "U.S." means the United States of America.
- 2.56. "UPSTREAM" means the hardware element with an SMTS that enables a set of communication channels for receiving data at the SMTS. Upstream channels are used by satellite modems to send TDMA bursts of data to the SMTS. A number of upstream channels are associated with a given downstream channel in order to form a full-duplex link between the SMTS and a set of satellite modems.
- 2.57. "USER" means a person or entity (other than WildBlue, any Authorized Reseller, or a Service Provider) that purchases other than for resale or distribution a SM, WBST or SMTS for use in the WildBlue System.
- 2.58. "USER DOCUMENTATION" means the user documentation furnished to WildBlue by Contractor for distribution along with the SMs and WBST.
- 2.59. "WBSM" means the SM-A or SM-B or other production versions of the SM produced for WildBlue under this Agreement after Acceptance for production by WildBlue in accordance with Section 6.2.
- 2.60. "WBST" means the WildBlue Satellite Terminal as defined in Section 2.66.

- 2.61. "WBST-A" means the WBST incorporating an SM-A.
- 2.62. "WBST-B" means the WBST incorporating an SM-B.
- 2.63. "WILDBLUE BACKGROUND INFORMATION" means all information and technology, and all Intellectual Property Rights therein, developed by or for WildBlue prior to the Effective Date or developed by or for WildBlue at any time independent of this Agreement, exclusive of WildBlue Foreground Information developed under the Prior Agreements.
- 2.64. "WILDBLUE FOREGROUND INFORMATION" means all information and technology, and all Intellectual Property Rights therein, developed by or for WildBlue in connection with the development of SMS, WBSTs, SMTSS under this Agreement or Prior Agreements, but excluding all Joint Foreground Information.
- 2.65. "WILDBLUE SYSTEM" means the broadband internet access system operated by WildBlue, as further described in the Specification.
- 2.66. "WILDBLUE SATELLITE TERMINAL" means that version of the Customer Premise Equipment that consists of a WBSM, outdoor antenna, 4 watt Ka-band transceiver, standard alignment/mounting/grounding hardware, cable from modem to dish, and power supply that supports both the indoor and outdoor equipment produced for WildBlue under this Agreement. The Specification substantially describes the performance and capabilities of the WildBlue Satellite Terminals.

3. CONTRACT DOCUMENTS; POST EXECUTION MATTERS

The contract documents consist of this Agreement and each of the Schedules, each as may be amended from time to time in accordance with the terms of this Agreement, which are attached hereto and incorporated into this Agreement by this reference.

4. TERM AND EXCLUSIVITY

- 4.1 TERM. The term of this Agreement shall begin upon the Effective Date and shall expire the earlier of five (5) years thereafter (the "INITIAL TERM") or the termination of this Agreement in whole in accordance with Section 23. Prior to the expiration of the Initial Term or the first two Extended Terms (as defined below), WildBlue may, at its option, extend the term of this Agreement for additional one (1) year terms (for a maximum Term of eight years), by providing at least sixty (60) days written notification to Contractor of such extension prior to the end of the then current term (each such extension is referred to as an "EXTENDED TERM"); provided that the then current WBST/WBSM Order and Delivery Forecast is at least five thousand (5,000) SMS and/or WBSTs per month. WildBlue may also extend the Term for ordering SMTSS units, provided that WildBlue (i) agrees to purchase at least 50 Downstreams during each such one-year period. The Initial Term and all of Extended Terms (as they may be earlier terminated), are collectively referred to as the "TERM."
- 4.2 EXCLUSIVITY. If WildBlue purchases or intends to purchase devices performing functions substantially similar to WBSTs, SMTSS and/or SMS during the five year period commencing on the Effective Date, WildBlue will first negotiate with the Contractor to

provide a significant quantity of the required devices. If, after good faith negotiations, the Parties are unable to reach agreement on price, schedule, warranty, specification/functionality or any other material term with respect to the purchase of such device, WildBlue may then solicit offers and purchase any or all such devices from other suppliers and, in such event, WildBlue shall immediately pay to Contractor any payments which may be due pursuant to Section 23.2. This requirement remains in effect until WildBlue has purchased a cumulative 100,000 devices from any party(ies). Subject to the last clause of the immediately preceding sentence, this Section 4.2 shall survive any termination of this Agreement by WildBlue pursuant to Section 23.2 for a period of five years after the Effective Date, but shall be of no further effect after the fifth anniversary of the Effective Date.

5. RESPONSIBILITIES

- 5.1. STATEMENT OF WORK. The Parties each agree to perform their respective obligations set forth in this Agreement. In accordance with the terms of this Agreement, Contractor shall develop and provide WildBlue with the Deliverables. In accordance with Section 14.4, Contractor shall use commercially reasonable efforts to assume WildBlue's agreement with Broadcom Corporation.
- 5.2. WILDBLUE RESPONSIBILITIES. WildBlue shall deliver to Contractor those documents and items set forth on and in accordance with Schedule 5. WildBlue agrees to provide such other WildBlue Background Information and WildBlue Foreground Information to Contractor as required by Section 10.1. WildBlue shall use commercially reasonable efforts to obtain any government approvals or certifications applicable to the WildBlue System, apart from approvals or certifications applicable to SMs or SMTs, that are reasonably necessary for Contractor to fulfill its obligations set forth in Section 5.3(b) below. In accordance with Section 14.4, WildBlue shall use commercially reasonable efforts to renegotiate and/or assign its agreement with Broadcom Corporation to Contractor. In accordance with Section 14.5, WildBlue shall support Contractor in exploring the assignment of the Mentat contract to Contractor.

WildBlue has licensed all of the ***. *** has retained all of the ***. WildBlue requires that Contractor support *** consistent with WildBlue's requirements in the U.S., subject to *** and Contractor agreeing to provide such support and/or equipment. WildBlue intends to assist and support Contractor in its efforts to contract with *** for the ***.

The Parties further agree as follows: (i) WildBlue shall provide, at no additional cost to Contractor, *** Gbytes of capacity that WildBlue has the right to use, if any (but in no event more than ***% of the Ka-band capacity on Anik F-2 over the U.S.) usable during the 24 month period immediately following the start of WildBlue providing commercial service ("COMMERCIAL ACCEPTANCE") using Anik F2; and (ii) WildBlue grants to Contractor an option, exercisable up to 12 months after Commercial Acceptance, to purchase (upon mutually agreeable terms) up to a total of ***% of the Ka-band capacity on Anik F2 over the U.S. that WildBlue has the right to use, usable during the 24 month period immediately following exercise of the option. Capacity will be based on actual packets sent over the satellite. Notwithstanding the foregoing, Contractor shall pay a reasonable premium if the peak usage by Contractor exceeds a to be determined

threshold and a mutually agreeable limit on geographic concentration of traffic. WildBlue further agrees to promptly enter into a mutually acceptable amendment hereto or a separate agreement, as Contractor may reasonably request, if Contractor desires to further definitize this obligation of WildBlue.

5.3. CONTRACTOR RESPONSIBILITIES.

- (a) Contractor shall design, construct and deliver the Deliverables set forth in Section 5.4 or the Products ordered that meet the requirements of the Specification in all material respects in accordance with this Agreement. Further, promptly upon the completion of each development phase, and no later than the relevant Milestone date, Contractor will deliver to WildBlue the portion of the Deliverables and any other materials required to be provided by Contractor under such phase as described in this Agreement (such other materials being included in the definition of the term "DELIVERABLES").
- (b) Prior to the delivery of the first 2,000 production WBSMs and/or WBSMs, Contractor shall obtain the appropriate and necessary government approvals and certifications applicable to the WBSM which allow the WBSM to be sold in the United States and Canada. Further, for all other countries in North and South America, provided that WildBlue has obtained the necessary and applicable government approvals for landing rights, Contractor shall at commercially reasonable rates (including reimbursement for reasonable travel, legal, and other related expenses) and, upon a written request from WildBlue, use commercially reasonable efforts to obtain the appropriate and necessary government approvals and certifications applicable to the WBSM and to make any necessary modifications to the WBSM as soon as reasonably practicable after the WildBlue request that allow the WBSM to be sold in such other countries. To the extent practicable, Contractor shall upon request provide WildBlue a non-binding estimate of the costs associated with obtaining such approvals or consents within such countries. Subject to WildBlue's obligations set forth in this Section 5.3(b), Contractor warrants that WBSMs will comply fully with the applicable Legal Requirements in the country for which the WBSMs have been approved as of the date of delivery of such WBSMs.
- (c) Given a firm production delivery date and prior to the delivery of the first production SMTS, Contractor shall obtain all appropriate and necessary government approvals and certifications applicable to the SMTS to allow the SMTS to be used in the United States and Canada. Further, for all other countries in North and South America in which WildBlue has obtained the necessary and applicable government approvals for landing rights ("LANDING RIGHTS COUNTRIES"), Contractor shall at commercially reasonable rates (including reimbursement for reasonable travel, legal, and other related expenses) and, upon a written request from WildBlue, use commercially reasonable efforts (i) to obtain all appropriate and necessary government approvals and certifications applicable to the SMTS, and (ii) to make any necessary modifications to the SMTS as soon as reasonably practicable after the WildBlue request to allow SMTSs to be delivered to such other countries. To the extent practicable, Contractor shall upon request provide WildBlue a non-

binding estimate of the costs associated with obtaining such approvals or consents within such countries. Contractor warrants that the SMTSS will comply fully with the applicable Legal Requirements in the United States and Canada as of the date of delivery of the SMTSS. For Landing Rights Countries for which WildBlue has requested and paid Contractor to undertake the activities under subsections (i) and (ii), Contractor warrants that SMTSS will comply fully with the applicable Legal Requirements in each such country for which the SMTSS have been approved as of the date of delivery of such SMTSS.

- (d) At its option, WildBlue may purchase from Contractor, upon commercially reasonable terms, support services for a third party satellite modem vendor in connection with its development of satellite modems prior to delivery to WildBlue of the first production SMTS. Such support shall include reasonable technical support by Contractor and reasonable access to the specifications related to the interfaces of the WildBlue satellite modem. Contractor also agrees to provide, at the same unit prices and terms made available to WildBlue under this Agreement, the SMTS Hardware and Software set forth in Schedule 19 to the third party satellite modem vendor for the sole purpose of that party testing and verifying modem functionality. All access and support provided by Contractor pursuant to this paragraph shall be subject to such third party first executing a confidentiality and royalty-free licensing agreement with Contractor to among other things, treat such Hardware and Software as confidential information, not reverse engineer any portion of the SMTS Hardware or SMTS Software or attempt to decode any functionality contained within the SMTS.

5.4. MILESTONE SCHEDULE AND DELIVERABLE.

- (a) MILESTONES. Critical milestones in the development and manufacture of the SM or SMTS (each a "MILESTONE"), the deadline for achievement for each Milestone (each a "MILESTONE DATE") are as follows (the "MILESTONE SCHEDULE"):

Milestone Date	Deliverable
December 30, 2001	***
Jan. 31, 2002	***
Jan. 31, 2002	***
March 15, 2002	***

Contractor will complete each Milestone on or before the corresponding Milestone Date. Early deliveries are acceptable. Further, if Beta or production software for the SMTS becomes available at any time prior to March 15, 2003, this software will be provided to WildBlue, at no charge "AS IS" without warranty or support requirements, solely for WildBlue's demonstration purpose.

- (b) FAILURE TO MEET MILESTONES. If Contractor fails to complete each Milestone on or before the corresponding Milestone Date, (1) Contractor will develop a

correction plan demonstrating that Contractor can recover from Contractor's failure to achieve such Milestone and present such a correction plan to WildBlue within fourteen (14) days after WildBlue's request for such correction plan; and (2) the Parties will work in good faith to devise a plan of action to achieve the next Milestone by the specified Milestone Date or arrive at a mutually acceptable revised schedule within five (5) business days after WildBlue's receipt of Contractor's plan; and (3) Contractor's performance will be measured against the revised schedule (in no event to exceed ninety (90) days after the original Milestone Date) in such plan of action; provided that Contractor shall not be in breach of this Agreement until the later of five (5) weeks after the Original Milestone Date or the date for performance set forth in the revised schedule.

- (c) WILDBLUE OPTION. WildBlue may, at its option, order any or all of the following optional items by providing written notification to Contractor on or before January 5, 2002:

Optional Item	Quantity	Unit Price	Extended Price
***	***	***	***

Delivery will be within ninety (90) days from Contractor's receipt of WildBlue's written election to exercise its option.

- 5.5. FAILURE TO ACHIEVE MILESTONES. Without prejudice to any remedies WildBlue may have available pursuant to Section 5.4, if Contractor fails to achieve an original Milestone or a revised Milestone by the corresponding Milestone Date, Contractor shall use its reasonable best efforts to complete the Milestone as quickly as possible thereafter.

6. TESTING AND QUALITY ASSURANCE.

- 6.1. ACCEPTANCE TESTING. The following shall apply only to first article testing on any product development the Parties may agree to after the Effective Date hereof:

- (a) ACCEPTANCE CRITERIA. A mutually acceptable Acceptance Test Plan will be created by the Parties and used to verify that each Deliverable subject to Acceptance Testing in accordance with the Statement of Work meets the Acceptance Criteria defined in the SOW for such Deliverable. Each such Acceptance Test Plan shall include the scope, Acceptance Criteria, parameters to be tested, and an objective measurement for passing or failing, as well as other mutually agreed-upon parameters. If the Parties agree to conduct future Acceptance Testing in relation to new versions of SMs (including new versions of SM Hardware and SM Software), the Acceptance Test Plan, Approval and Acceptance process will follow the process described in this Agreement. For

Deliverables in the Milestone Payment Schedule which do not require testing, Acceptance will occur upon satisfying the Acceptance Criteria defined in the SOW for that Milestone.

- (b) ACCEPTANCE TEST PLAN APPROVAL. Contractor shall submit an Acceptance Test Plan to WildBlue for each Deliverable that is subject to Acceptance Testing no later than sixty (60) days before the relevant Milestone subject to Acceptance Testing. WildBlue will have two (2) weeks to provide a written response to Contractor with respect to the proposed Acceptance Test Plan and have the right to make reasonable modifications to such draft to make it conform to the Specifications and the requirements of this Agreement. Each final Acceptance Test Plan must be approved by both Parties within two (2) weeks after WildBlue's written response to Contractor. If the Parties cannot reach agreement regarding an applicable Acceptance Test Plan in accordance with the two (2) week time frame set forth above, the expedited dispute resolution process of Section 22.2(b) will be applied.
- (c) ACCEPTANCE TESTING. For each Deliverable that is subject to Acceptance Testing, Contractor shall perform formal testing on first article production units in accordance with the approved Acceptance Test Plan on or prior to the date specified for initial delivery of such Deliverable. WildBlue representatives shall be invited to review the test configuration and witness the formal testing. Upon successful completion of testing, Contractor will deliver to WildBlue a certification that the applicable Deliverable has met the applicable Acceptance Criteria, a copy of the Acceptance Test results and any request for waivers or deviations. Upon delivery of these items WildBlue shall have five (5) days to notify Contractor in writing confirming that Acceptance Testing has been satisfactorily completed or indicating that the Deliverable has failed to pass the Acceptance Testing. Any determination of failure shall be based solely on nonconformity with the Acceptance Test Plan and shall be accompanied by a notice containing reasonably detailed information regarding the reasons for the failure and copies of applicable test documents. Any Deliverable that meets the applicable Acceptance Criteria or that is not rejected or provisionally accepted within such five (5) day period shall be deemed to have been "Accepted." In the event Contractor receives notification that a Deliverable has failed the relevant Acceptance Test Plan, Contractor agrees to use its commercially reasonable best efforts to correct the defects identified in the notice and upon completion of acceptance testing resubmit the items listed above to WildBlue. Contractor will not be authorized to deliver or invoice WildBlue for SM units of a given version until that version has been "Accepted." The failure of an SM version to satisfy the applicable Acceptance Test Plan shall be subject to the cure period and procedures set forth in Section 5.4 above. In the event that Contractor is unable to deliver an SM that satisfies the applicable Acceptance Test Plan within the cure period, WildBlue shall have the remedies set forth in Section 5.4.
- (d) INDEPENDENT TESTING. WildBlue may perform additional testing on Deliverables. If Acceptance testing, performed by WildBlue after the Deliverable has been Accepted identifies a Defect in that Deliverable, WildBlue shall inform Contractor in writing and describe the alleged Defect and the test

conditions under which the Defect was identified. Contractor will have fourteen (14) days to provide a response either disputing the allegation of failure, requesting a Waiver or concurring with the alleged Defect. If Contractor concurs with WildBlue's finding, Contractor will submit a corrective action plan covering SMS of the affected version which are under Warranty or Extended Warranty coverage and Contractor will suspend future deliveries of that version until successful demonstration of the fixes called out in the corrective action plan. A request for a Waiver will be handled in accordance with the provisions of this Agreement. If Contractor disputes WildBlue's allegation of failure, Contractor will provide WildBlue with a written response describing the reasons why the WildBlue test results do not indicate a Defect along with any supporting test data.

- 6.2. QUALITY ASSURANCE. Contractor shall maintain compliance with its ISO 9001 series approach to quality in the performance of its obligations under this Agreement. As part of its quality assurance obligations, Contractor shall conduct testing of production, SMS WBSTs, SMTSS after Acceptance (or provisional acceptance) of such SM, WBST or SMTSS version in accordance with reasonable industry practices. If testing of WBSTs, SMS or SMTSS indicates a problem with the quality of the WBSTs, SMS or SMTSS generally based on evidence of failure of the SMS, WBSTs, SMTSS, then Contractor will provide an plan to correct the problem within two (2) weeks after notice of such problems by WildBlue.

7. PHYSICAL APPEARANCE AND BRANDING

- 7.1. PHYSICAL APPEARANCE. Contractor has submitted a physical design to WildBlue for review and approval. Contractor shall incorporate all reasonable suggestions made by WildBlue regarding physical design and appearance of the WBSMs. If incorporating WildBlue's suggestions regarding physical design and appearance (including SM Marks) materially impacts Contractor's cost or schedule, Contractor shall be entitled to receive an equitable adjustment in Price and/or schedule in a manner consistent with Section 12.1 below.
- 7.2. SM MARKS. Branding of WBSMs shall be determined solely by WildBlue. WildBlue has the right (but not the obligation) to put a Contractor logo (provided by Contractor, which may be a name other than "ViaSat"), another logo (excluding that of a competing manufacturer of satellite terminals) and/or a WildBlue logo on the WBSM at a location and size of WildBlue's choosing. If WildBlue opts not to include a Contractor logo, WildBlue will include a unique brand name which distinguishes Contractor's WBSMs from other manufacturer's WBSMs and will not use such brand name on WBSMs from any other manufacturer. WildBlue agrees that it will treat Contractor no less favorably regarding the placement of brand name and logos on the WBSMs than other manufacturers of WBSMs for WildBlue. Contractor shall affix to each production WBSM, the Marks selected by WildBlue for inclusion on WBSMs, in the form and location determined by WildBlue.
- 7.3. USE OF CONTRACTOR MARKS. Contractor grants WildBlue a non-exclusive, non-transferable (except as permitted under Section 25.1 (Assignment)), royalty-free license

(without the right to grant sublicenses) to use and reproduce the Contractor Marks set forth on Schedule 12, as may be amended upon mutual agreement of the Parties from time to time, in accordance with Contractor's reasonable guidelines solely for use on WBSMs, or for advertising, promotional or other purposes having to do with the WildBlue business. WildBlue agrees to state in appropriate places on all materials using Contractor Marks that the Contractor Marks are trademarks of Contractor and to include the symbol (TM) or (R) as appropriate. Contractor agrees that WildBlue may utilize Contractor Marks to advertise Contractor's participation as a SM vendor. Contractor must obtain permission in writing from WildBlue to use the WildBlue logo or the WildBlue trade name. Subject to Section 25.11, Contractor may use the WildBlue logo or WildBlue trade name in connection with listing and describing WildBlue as a customer of Contractor in its advertising, promotion, marketing and sales materials. Notwithstanding the foregoing, neither Party shall make any statement that acts as an implied or direct endorsement of any product (except for the WBSM) or service of the referencing Party by the other Party without such other Party's prior written consent.

- 7.4. DISPUTE RESOLUTION. If the Parties cannot reach agreement regarding matters arising under Section 7.1, the Parties will engage in the Dispute Resolution procedure set forth in Section 22.

8. ORDERING

- 8.1. ORDERS GENERALLY. During the Term, WildBlue may issue Orders for WildBlue Satellite Terminals, WBSMs and SMTSs beyond those set forth in the Initial WildBlue Satellite Terminals Order and Initial SMTS Order ("ADDITIONAL ORDERS"). Orders and Additional Orders shall be issued in accordance with this Section 8.1 and Section 8.2. 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. Subject to the terms of this Agreement, Contractor shall accept all Orders issued by WildBlue in accordance with the terms of this Agreement and deliver such Orders in accordance with the terms of the Order and the terms and conditions of this Agreement. Title and risk of loss or damage shall transfer, upon Contractor's delivery to the carrier of WildBlue's choice at Contractor's designated shipping point within the contiguous U.S. Except as expressly set forth herein, delivery schedule changes must be mutually agreed to in writing. If Contractor obtains shipping insurance on behalf of or for the benefit of WildBlue, WildBlue shall be responsible for filing, processing and pursuing all claims under such insurance policy. Subject to the terms hereof, each Order shall include delivery instructions, packaging type, purchase order number, quantity, applicable Price (set forth in Schedules 11 and 19) and statement that the Order is being placed under this Agreement. For all SMTS Orders (including those set forth in the Production Schedule), WildBlue shall deliver to Contractor the delivery instructions, including location, for the SMTS Chassis and any associated components at least 90 days prior to the scheduled delivery date.
- 8.2. ORDER AND DELIVERY FORECAST. WildBlue shall provide Contractor with a delivery forecast and order commitment for the WildBlue Satellite Terminals and/or SMs as required by Schedule 9 (the "SM/WBST ORDER AND DELIVERY FORECAST"). A monthly

delivery forecast becomes an Order through the process defined in Schedule 9. Contractor acknowledges that the WildBlue Order Forecast will be binding only as set forth in Schedule 9. WildBlue may vary the forecast as provided in Schedule 9. WildBlue shall also provide Contractor with a delivery forecast and order commitment as required by Schedule 20 (the "SMTS ORDER AND DELIVERY FORECAST"). A monthly delivery forecast becomes an Order through the process defined in Schedule 20.

- 8.3. INITIAL WILDBLUE SATELLITE TERMINALS ORDER. WildBlue hereby purchases from Contractor fifty-eight thousand WBSTs as some combination of WBST-A and WBST-B (the "INITIAL WBST ORDER"). The delivery schedule for the Initial WBST Order shall be established with the first WBST/WBSM Order and Delivery Forecast provided by WildBlue in accordance with Schedule 9. The delivery schedule and quantities for the Initial WBST Order shall be consistent with Schedule 8 (Minimum Order Commitment and Maximum Capacity Commitment). The delivery schedule may be modified in subsequent months consistent with Schedule 8 and Schedule 9.
- 8.4. INITIAL SMTS ORDER. WildBlue hereby purchases from Contractor the SMTSs and SMTS components set forth in the Initial SMTS Order Delivery Schedule, Schedule 20, (the "INITIAL SMTS ORDER"). The delivery of the Initial SMTS Order shall be in accordance with Schedule 20. WildBlue shall pay one-third of the purchase price of the Deliverables 120 days prior to the scheduled delivery date (as may be revised by the Parties) and Contractor may invoice WildBlue for the remaining two-thirds of the purchase price in accordance with Section 17.3. Notwithstanding any provision to the contrary, WildBlue may cancel the Initial Order by exercising its rights under Section 23.2(b) or Section 23.2(c) hereof.
- 8.5. ORDERS FROM AFFILIATES AND AUTHORIZED RESELLERS. Affiliates and Authorized Resellers shall be entitled to purchase WBSMs from Contractor under Price, Order, Delivery and Warranty terms consistent with this Agreement and such orders shall count toward satisfaction of all minimum purchase commitments of WildBlue hereunder, including the Initial Order. One Hundred Twenty (120) days prior to the first firmed scheduled delivery of a WBST under its Initial Order, Contractor and WildBlue shall use commercially reasonable efforts to mutually agree on a form of purchase agreement, under which Authorized Resellers may order and purchase WBSMs. Such purchase agreement will include a license of Contractor Marks to Authorized Resellers consistent with the terms of this Agreement. Contractor shall notify WildBlue of orders for WBSMs placed by Affiliates and Authorized Resellers on a quarterly basis. Contractor agrees that, without the prior written consent of WildBlue, no Order by an Affiliate or Authorized Reseller shall be delivered unless and until all Orders for the relevant time period by WildBlue have been delivered.
- 8.6. SHORTFALLS AND CANCELLATION OF WILDBLUE SM ORDERS.
- (a) Without WildBlue's prior written approval, Contractor shall not deliver incomplete Orders. WildBlue may refuse to accept a partial delivery or an overage. If Contractor fails to deliver all of the WBSTs, SMs or SMTSs in a WildBlue Order as required by the Order (a "SHORTFALL"), and the delivery delay is not requested by WildBlue or excused under Section 15 (an "UNEXCUSED SHORTFALL"), then on the date the Order was due Contractor shall give WildBlue a

written schedule setting forth the schedule on which Contractor will deliver the shortfall (the "MAKE-UP ORDER"). Within five (5) days after WildBlue receives such schedule from Contractor, WildBlue may elect, by giving written notice to Contractor, to delay delivery of all or any portion of the Unexcused Shortfall beyond the dates in Contractor's schedule (for a period not to exceed 120 days), or delete all or any portion of the Unexcused Shortfall from the Order commitment. If WildBlue accepts a partial delivery, WildBlue will have no obligation to pay for any portion of the delivery until the earlier of (i) delivery of the Shortfall by Contractor, and (ii) notice from WildBlue that it has elected to delay (for a period not to exceed 120 days) or delete all or any undelivered portion of the affected Order (in which case WildBlue shall be required to pay for only that portion of the Order actually received). Notwithstanding any of the foregoing, WildBlue's acceptance of partial deliveries will not constitute a waiver of WildBlue's rights or a release of Contractor's obligations under this Agreement.

- (b) If Contractor becomes aware of any circumstance involving Contractor or a sub-contractor of Contractor that would threaten the timely or full delivery of an Order, Contractor shall immediately notify WildBlue of such delay and the cause of such delay. If requested by WildBlue, Contractor shall promptly provide a written plan for correction of such delay.

8.7. SM OR WILDBLUE SATELLITE TERMINALS MINIMUM ORDER QUANTITY. After completion of the Initial WBST Order and Initial SMTS Order, if WildBlue places an Order for fewer than five thousand (5,000) total units consisting of either SM-B and/or WildBlue Satellite Terminals during any month, Contractor shall have the right to refuse to accept such Order. If Contractor elects to accept an Order for fewer than 5,000 SM-Bs or WildBlue Satellite Terminals, Contractor shall deliver such SM-Bs or WildBlue Satellite Terminals in accordance with the terms of this Agreement. If WildBlue fails to order 5,000 SM-B or WildBlue Satellite Terminals for two (2) consecutive months or three (3) out of any period of six (6) consecutive months and thereafter places an Order of greater than 5,000 SM-B or WildBlue Satellite Terminals, Contractor, if it accepts such Order, will be entitled to a one time payment to cover reasonable costs associated with reinitiating volume production of SM-B or WildBlue Satellite Terminals to enable Contractor to fulfill the Order.

9. SHIPPING AND RELATED MATTERS

- 9.1. SERIAL NUMBERS. Contractor shall mark each WBSM, WBST and WildBlue SMTS produced or delivered to WildBlue hereunder with a unique serial number. Contractor shall keep accurate records as to the WBSMs, WBSTs or WildBlue SMTSs, by serial number, that were delivered to WildBlue and Authorized Resellers. Upon WildBlue's request, Contractor shall provide a report in electronic format which identifies the serial numbers received by any purchaser.
- 9.2. PACKING AND PACKAGING. To the extent possible, WBSM-B orders will be packaged in blocks of twenty-four (24) individual WBSMs or multiples thereof. All other deliveries to WildBlue pursuant to this Agreement shall be packaged in a manner consistent with

industry standards and packed for safe delivery to their destinations without damage. Wholesale, single color packaging is included in the purchase price. Subject to Contractor having a firm WBSM delivery schedule, Contractor shall submit a retail outside packaging design and cable options package (to include Ethernet and USB cables) ("RETAIL PACKAGE") to WildBlue for WildBlue's approval not more than 30 days after WildBlue's written request in conjunction with a firm delivery schedule for the Initial WBST Order. The obligation to submit a Retail Package is a one-time event. The price for the Retail Package will be negotiated between the Parties. The Retail Package shall be an option for WildBlue. If the Retail Package option is requested WildBlue may purchase WBSMs with both the standard packaging and Retail Packaging. Packaging type will be specified on Orders.

- 9.3. DELIVERY AND STORAGE. Unless otherwise specified in an Order accepted by Contractor, all shipments hereunder shall be FOB Contractor's designated site within the contiguous U.S. WildBlue may upon five (5) days prior written notice elect to defer a scheduled shipment for up to ninety (90) days and Contractor will store SMS, SMTs and/or WBSTs in its designated warehouses for up to ninety (90) days at no cost to WildBlue and Contractor shall retain title and risk of loss during storage. Thereafter, Contractor shall continue storage and WildBlue shall pay Contractor *** per SM unit per month or *** per WBST per month for such continued storage. For the SMTs, WildBlue shall pay Contractor *** per Chassis per month for such continued storage. Such election to store units does not relieve WildBlue of the requirement to pay the purchase Price for such units, which may be invoiced on the originally scheduled delivery date.

10. LICENSES, PROPRIETARY RIGHTS

10.1. OWNERSHIP.

- (a) BACKGROUND INFORMATION. As between the Parties, each Party hereto shall have and retain exclusive ownership of its Background Information, subject to the rights granted to the other Party under this Section 10.
- (b) FOREGROUND INFORMATION.
- (i) As between the Parties, and except as provided in Section 10.1(b)(iv), Contractor shall have and retain exclusive ownership of Contractor Foreground Information, subject to the rights granted to WildBlue under this Section 10.
- (ii) As between the Parties, WildBlue shall have and retain exclusive ownership of WildBlue Foreground Information, subject to the rights granted to Contractor under this Section 10.
- (iii) JOINT FOREGROUND INFORMATION. Contractor and WildBlue shall have and retain joint ownership of all Joint Foreground Information without any appropriate right or obligation of accounting to the other Party for profits from exploitation of the rights. 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 such patents. The Parties will divide any costs and expenses incurred by the Parties preparing, filing, and prosecuting a particular patent application or patent. If a Party does not wish to pay the costs and expenses associated with preparing or filing 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 have any ownership of any resulting patent.

(iv) **INTERFACE SPECIFICATION IS FOREGROUND INFORMATION.** As between the Parties, WildBlue shall have and retain exclusive ownership of all IS Foreground Information. Except for Contractor's rights in the Contractor Background Information, Contractor hereby irrevocably assigns to WildBlue all right, title and interest worldwide in and to the IS Foreground Information and all applicable Intellectual Property Rights related to the IS Foreground Information that Contractor has or may acquire. Contractor will execute, verify and deliver such documents and perform such other acts (including appearances as a witness) as WildBlue may reasonably request for use in applying for, obtaining, perfecting, evidencing, sustaining and enforcing such its rights in the IS Foreground Information and the assignment thereof. Contractor hereby irrevocably designates and appoints WildBlue and its duly authorized officers and agents as its agent and attorney in fact, which appointment is coupled with an interest, to act for and in its behalf to execute, verify and file any such documents and to do all other lawfully permitted acts to further the purposes of this paragraph with the same legal force and effect as if executed by Contractor.

(c) **RESERVATION OF RIGHTS.** There are no implied licenses under this Agreement, and any rights not expressly granted by a Party to the other Party hereunder shall be reserved by such Party.

10.2. GRANTS OF LICENSES TO CONTRACTOR.

(a) **DEVELOPMENT LICENSE TO USE WILDBLUE INFORMATION.** WildBlue hereby grants Contractor a perpetual, worldwide, royalty-free, non-exclusive, non-transferable (except in accordance with Section 25.1 hereof) license to use, reproduce, modify, and create derivative works of WildBlue Background Information, WildBlue Foreground Information, IS Foreground Information and Third Party Information provided by WildBlue and required by Contractor for the sole purpose of designing and developing SMS, WBSMs, SMTs, WildBlue Satellite Terminals, other satellite modems, other satellite modem termination systems or other Satellite Terminals, and components thereof, including the right to sublicense to its subcontractors and/or suppliers (the "DEVELOPMENT LICENSE").

(b) **WILDBLUE PRODUCTION AND DISTRIBUTION LICENSE FOR WILDBLUE.** WildBlue hereby grants to Contractor a worldwide, royalty-free, non-exclusive, non-transferable (except in accordance with Section 25.1 hereof) license to (1) use WildBlue Background Information, WildBlue Foreground Information, IS

Foreground Information and Third Party Information provided to Contractor by WildBlue (collectively, "WB IP"), solely to produce, manufacture, have manufactured, sell, distribute and support SMS, SMTSS WBSMS, other satellite modems, other satellite modem termination systems, other Satellite Terminals, and/or WildBlue Satellite Terminals, including components thereof, including the right to sublicense to its subcontractors and/or suppliers, on behalf of WildBlue (the "WILDBLUE PRODUCTION LICENSE").

- (c) WILDBLUE PRODUCTION AND DISTRIBUTION LICENSE FOR THIRD PARTIES. WildBlue hereby grants to Contractor a worldwide, royalty-free, perpetual, non-exclusive, non-transferable (except in accordance with Section 25.1 hereof) license to use the WB IP, apart from the performance enhancing proxy ("PEP"), solely to develop, produce, manufacture, have manufactured, sell, distribute and support SMS, SMTSS, other satellite modems, other satellite modem termination systems, other Satellite Terminals, and/or WildBlue Satellite Terminals, including components thereof, including the right to sublicense to its subcontractors and/or suppliers on behalf of third parties (the "PRODUCTION LICENSE").

10.3. GRANT OF LICENSES TO WILDBLUE.

- (a) DISTRIBUTION LICENSE. Subject to Sections 10.4 and 10.7, Contractor hereby grants to WildBlue a worldwide, perpetual, royalty-free, non-exclusive, right and license (with the right to sublicense) to use, have used, operate, display, demonstrate, market, distribute, lease and/or sell, without out rights to manufacture or have made, and authorize others to perform the foregoing, the Contractor Background Information and Contractor Foreground Information as incorporated with and into SMS.
- (b) IS BACKGROUND INFORMATION LICENSE. Contractor grants to WildBlue a worldwide, nonexclusive, royalty-free, perpetual and irrevocable right and license to the IS Background Information, with a right to sublicense to other WBSM and SMTS manufacturers, to:
- (i) make, have made, use, reproduce, market, distribute, offer to sell and sell, and import WBSMs; and
 - (ii) copy, reproduce, publish, display (publicly or otherwise), and make derivative works of the IS Background Information.

Contractor acknowledges that the IS Background Information will be publicly disseminated and Contractor waives any right of trade secret in and to the IS Background Information. Contractor further acknowledges that, in the event the license granted in this Section 10.3(b) is terminated, User licenses in effect at the time of such termination shall be unaffected by the termination and shall remain in full force.

- (c) DEVELOPMENT SOURCE CODE LICENSE. Contractor hereby grants to WildBlue a non-exclusive, royalty free, worldwide, non-transferable (except as provided in the Assignment provision) license to access, utilize, modify and adapt (without

the right to distribute) source code versions of Contractor Background Information and the Contractor Foreground Information solely for internal evaluation, development and testing purposes in connection with SM-As and SMTS-As for the longer of three years from the Effective Date or two years after the delivery of the Initial Order.

10.4. SOFTWARE LICENSES AND RIGHTS. Commencing upon delivery of the WBSMs or WBSTs to Users, Contractor shall grant to Users a perpetual, nontransferable, 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 the intended use of the WBSMs. Such User license shall contain, at Contractor's option, the following terms:

- (a) Users shall agree not 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.
- (b) Users will not create derivative works of the Software or modify the code to the Software, nor shall it authorize others to do so; provided, however, the foregoing shall not in any manner whatsoever limit WildBlue's, its Authorized Resellers and User's rights to use the Software in accordance with Contractor's instructions or otherwise limit WildBlue's rights to use any tools provided with the Software.

WildBlue hereby agrees to use the Software in conformance with the requirements set forth in paragraphs (a) and (b) above.

10.5. DOCUMENTATION. Contractor shall deliver to WildBlue at no additional charge, the following Documentation in support of production deliveries:

a. WILDBLUE SATELLITE TERMINAL INSTRUCTION MANUALS

One user instruction manual printed in both English and Spanish shall be included with each WildBlue Satellite Terminal (WBST). These User instruction manuals will detail the operation of the WBST as follows: preliminary manuals to be provided with all non-production units (English only), final manual to be delivered ninety (90) days prior to delivery of Month 1 Initial Order for review and approval by WildBlue, which shall not be unreasonably withheld.

b. SMTS INSTRUCTION MANUALS

One user instruction manual printed in English shall be included with each SMTS. These User instruction manuals will detail the operation of the SMTS as follows: preliminary manuals to be provided with all non-production units, final manual to be delivered ninety (90) days prior to delivery of Month 1 Initial Order for review and approval by WildBlue, which shall not be unreasonably withheld.

c. TRAINING MATERIALS

ViaSat and WildBlue Confidential

The Contractor shall provide the training materials set forth in Section 11.

Subject to Contractor's copyrights and the restrictions set forth in Schedule 15, Contractor hereby grants WildBlue a perpetual, world wide, non-exclusive, sublicensable (to Authorized Resellers) license to use, reproduce, publish, modify, and create derivative works of Documentation. WildBlue may elect upon one hundred eighty (180) days prior written notice to not include Contractor's manual within the WBSM and have the unit Price reduced by ten cents (\$0.10).

- 10.6. OPEN STANDARD. Either Party may elect to publish the WildBlue Radio Frequency Interface Specification, with updates, derivatives and/or modifications, as an open standard ("Open Standard") and to promote it as a DOCSIS-based open satellite terminal standard. Neither Party shall be entitled to any royalties in connection with the WildBlue Radio Frequency Interface Specification (Schedule 2).
- 10.7. CONTRACTOR'S RIGHTS OF SALE TO OTHER THIRD PARTIES. Subject to Contractor's compliance with the terms and conditions of this Agreement, Contractor is entitled to and authorized, without restriction, to sell SMS, SMTSS, other satellite modems, other satellite modem termination systems, WildBlue Satellite Terminals or other Satellite Terminals and components thereof, to other parties.

11. TRAINING

- 11.1. TRAINING. During the Term, Contractor will provide WildBlue training in accordance with the following:
- (a) Within thirty (30) days after the delivery of the first production WBSMs or first production SMTSS, Contractor shall provide WildBlue employees (or their designees), at no additional cost or expense (other than attendees own travel and related expenses to Contractor's training facility, which shall be paid for by WildBlue), one comprehensive training courses (with content sufficient to train employees in the use and installation of the WBSM and the SMTS) for attendance by up to twenty-five (25) WildBlue designated individuals. Such training courses shall include written course materials for each attendee.
 - (b) Contractor shall develop and furnish all training materials for the initial training referred to in paragraph (a) in a form that is sufficient to enable WildBlue's designated representatives to provide Tier 1 support for WBSMs and SMTSS.
 - (c) Contractor shall provide up to twice a year remedial training and training on any changes, updates and enhancements to the WBSMs and SMTSS, or training otherwise requested by WildBlue to enable WildBlue and its Authorized Resellers to be capable of performing all necessary services, including installation, operation, maintenance, provisioning, monitoring and control of the WBSMs. Such additional training shall be at Contractor's expense if changes to the WBSMs or SMTSS were made due to a Defect in the WBSMs or SMTSS. Other training will be provided at the rates set forth in Schedule 10. Contractor will provide WildBlue with all updates, if appropriate, to the training materials

provided in order to enable WildBlue to maintain the skill level of its personnel in light of Contractor's changes to the WBSM and SMTS.

- (d) Subject to Schedule 15, Contractor grants to WildBlue license to use, modify and distribute all training materials provided by Contractor to WildBlue under this Section 11.

12. RESERVED.

13. PROGRAM MANAGEMENT

Each Party shall designate one employee with decision-making authority to serve as the principal technical contact for such Party during the Term (each a "PROJECT MANAGER"). The Project Managers shall work together to ensure that the development and manufacturing efforts hereunder proceed in a timely manner. Either Party may change its Project Manager at any time and from time to time by giving the other Party written notice. Each Party shall bear its own costs and expenses incurred in connection with participation in such meetings.

14. CONTRACTOR'S USE OF SUBCONTRACTORS AND MANUFACTURING FACILITY

- 14.1. Excluding components provided by WildBlue or its suppliers, Contractor shall be solely responsible in all respects for obtaining the components necessary to manufacture the WBSMs and SMTSs, including without limitation, managing relationships with component vendors and sub-contractors and maintaining adequate controls on component quality and supply. Contractor will not enter into exclusive arrangements with component vendors that would preclude the manufacture of WBSMs by other SM manufacturers.
- 14.2. In the event that Contractor becomes aware of circumstances suggesting that a component vendor or sub-contractor is likely to breach its obligations to provide components and/or services to Contractor for any reason and if such breach will materially impact Contractor's ability to meet its obligations hereunder, Contractor shall so notify WildBlue. Upon such breach Contractor will develop an action plan to recover from such breach and promptly present said plan to WildBlue for recommended changes, if any, to such plan.
- 14.3. Contractor shall notify WildBlue in writing of all Major Component Vendors that Contractor selects to assist Contractor with the development, modification and supply of WBSMs hereunder. "MAJOR COMPONENT VENDOR" means a vendor, supplier or subcontractor selected by Contractor to develop, modify or supply existing application specific integrated circuits for MAC processing, downstream demodulation and decoding and upstream modulation and coding required to meet the Specification (such components referred to as "MAJOR COMPONENTS"). If Contractor selects a Major Component Vendor pursuant to section 14.3, Contractor shall use commercially reasonable efforts to negotiate terms and conditions that are consistent with the following provisions:

- (a) Contractor will ensure that Major Components Vendors will agree to sell and/or license to other WBSM manufacturers on fair and reasonable terms no less favorable than terms Contractor receives.
- (b) WildBlue may purchase Major Components under substantially the same terms, cost and timeframe as Contractor.
- (c) To the extent required to develop the SMS, any cable modem and SM reference designs, evaluation boards, software releases and MAC source code releases shall be made available to WildBlue, at the same time, and on the same terms and conditions (including, without limitation, cost) as such materials are made available to Contractor.

14.4. The Parties acknowledge and agree that WildBlue has entered into a development agreement (the "BROADCOM CONTRACT") with Broadcom Corporation ("BROADCOM") the terms of which are sufficient to satisfy the terms of this section. WildBlue and Contractor will negotiate (between themselves and with Broadcom) in good faith to amend or terminate the Broadcom Contract by January 31, 2002 (the "BROADCOM NEGOTIATION PERIOD"). The goal of this effort is the assignment of the Broadcom Contract to Contractor with mutually acceptable changes in scope and termination liability. However, this also could result in sharing of the costs between Contractor and WildBlue or termination of the Broadcom Contract. Upon any assignment that allows for such rights, WildBlue will have the right to receive and transfer to others all DOCSIS SM and SMTS related information provided to Contractor from Broadcom (including SM and SMTS reference designs) and access to the chips and chipsets on the same price and terms offered to Contractor under the Broadcom Contract or any successor agreement thereto between Contractor and Broadcom for the same or substantially similar chips and chipsets.

If the Broadcom Contract is not assigned to Contractor during the Broadcom Negotiation Period, prior to terminating or modifying the Broadcom Contract, WildBlue shall provide reasonable prior written notice to Contractor of its intention to do so. If, prior to such termination or modification the Contractor agrees in writing to pay all amounts when due under the Broadcom Contract (and in fact timely makes all such payments), (i) WildBlue shall not terminate or modify the Broadcom Contract without the prior written approval of the Contractor, (ii) WildBlue will operate in good faith to represent Contractor's interests in managing the Broadcom Contract, and (iii) Contractor may, by providing 30 days prior written notice to WildBlue, take the lead in the technical management of the Broadcom Contract, subject to the terms of such contract.

14.5. WildBlue shall support Contractor in exploring the assignment of the Mentat contract to Contractor.

15. FORCE MAJEURE AND DELAYS

15.1. FORCE MAJEURE.

- (a) Except for payment obligations hereunder, 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, Governmental acts (including government approvals of the SM, WBST or SMTS and import/export issues provided that Contractor has complied with its obligations to obtain such approvals or import/export clearances), riots, civil disorders, rebellions or revolutions in any country, or any other cause beyond the reasonable control of such Party; 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 the event of a Force Majeure 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 five (5) 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 one hundred twenty (120) consecutive days, then at WildBlue's option, WildBlue may terminate or modify any affected portion of any Order, or terminate this Agreement in whole or in part, and the charges payable hereunder to the date of termination shall be appropriately adjusted to reflect such termination.
- (d) Notwithstanding the foregoing provisions of this Section 15.1, if the U.S. Federal Communications Commission or other U.S. or foreign regulatory or governing body rescinds or otherwise invalidates WildBlue's communications license or fails to issue such license in due course, which substantially impairs the economic viability of WildBlue (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 WildBlue.

15.2. EXCUSABLE DELAY. "EXCUSABLE DELAY" shall mean (i) a Force Majeure Event that prevents Contractor from timely performing its obligations hereunder, (ii) WildBlue's failure to timely meet its material obligations hereunder (following the applicable cure period, if any, and provided that WildBlue receives written notice describing in reasonable detail its failure within fifteen (15) days after the applicable due date, or in the case of WildBlue Major Component Vendor deliverables as set forth in Schedule 5, 30 days after the applicable due date) which adversely affects Contractor's ability to timely perform its obligations hereunder (but only to the extent of such adverse effect). In the event of an Excusable Delay, Contractor may stop work until Contractor can

resume performance following cessation of the Force Majeure Event in accordance with Section 15.1 hereof or WildBlue resumes or cures performance, as the case may be. In addition, Contractor shall be entitled to an appropriate adjustment in the Milestone Dates, or other applicable production schedule obligations hereunder for any Excusable Delay (only to the extent not already covered pursuant to Section 15.3) and, in the event of an Excusable Delay caused by WildBlue's failure to perform its obligations hereunder, an appropriate payment adjustment as mutually agreed by the Parties. Payment 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. Contractor will provide reasonably detailed back-up data to support its claim for such adjustment.

- 15.3. DELAY DUE TO LAUNCH OR SATELLITE FAILURE. For Orders in place at the time of a launch failure or satellite failure, WildBlue shall pay, pursuant to the normal invoice schedule. If directed by WildBlue in writing, Contractor shall store such units for up to eighteen (18) months at the rates established in Section 9.3. If, at WildBlue's option, WildBlue suspends the Order process set forth in Section 8.2 because of launch failure or satellite failure, WildBlue shall pay reasonable and mutually agreed upon expenses associated with Contractor's wind down and restart of the production program.

16. PRICES

- 16.1. GENERAL. Contractor shall offer WBSM-B,, WildBlue Satellite Terminals and SMTSs for sale to WildBlue, Affiliates, and Authorized Resellers at the unit Prices set forth in this Agreement. Provided that the monthly delivery order requirements are consistent with Schedule 8 and subject to the provisions of Section 8.6, the WildBlue Satellite Terminal unit Prices will not exceed the volume prices defined in Schedule 11 (WildBlue Satellite Terminal Pricing Schedule), subject to equitable increase for changes to the requirements.
- 16.2. WILDBLUE SATELLITE TERMINAL PRICES BY CONFIGURATION. The Price of each WBSM-B, WBST-A and WBST-B delivered hereunder shall be as set forth in Schedule 11 and Section 16.4. WildBlue may, elect to change the configuration by adding Features or removing Features in accordance with the terms of this Agreement.
- 16.3. SMTS PRICING. The pricing for each SMTS shall be as set forth in Schedule 19.
- 16.4. MOST FAVORED CUSTOMER.
- MOST FAVORED CUSTOMER. If during the Term, Contractor sells ***. Assuming substantially similar specifications, terms and conditions, in no event will the WBST-B or SMTS-B pricing be greater than the WBST-A or SMTS-A pricing. If WildBlue is entitled to a price revision, such adjustment shall be retroactive to the first date on which the lower charges were first provided to ***. The purchase price to a *** shall be calculated to be net of any volume discounts, rebates and other similar adjustments.
- 16.5. 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 designing, manufacturing, and providing the SMs 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) WildBlue shall be responsible for any sales, use, excise, value-added, services, consumption, or other tax, customs and duties assessed on any particular SM or SMTS or Service purchased by WildBlue and delivered by Contractor to WildBlue or designee hereunder. Such taxes are in addition to the prices set forth herein and shall be identified separately on invoices.
- (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 WildBlue. 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 WildBlue of, and coordinate with WildBlue the response to and settlement of, any claim for taxes asserted by applicable taxing authorities for which WildBlue 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 WildBlue requests Contractor to challenge the imposition of any tax, Contractor agrees to do so and WildBlue shall reimburse Contractor for all reasonable legal fees and expenses it incurs. WildBlue shall be entitled to any tax refunds or rebates granted to the extent such refunds or rebates are for taxes that were paid by WildBlue.

17. WILDBLUE PAYMENTS TO CONTRACTOR AND INVOICING

17.1. PAYMENTS TO CONTRACTOR. WildBlue shall pay Contractor nonrecurring engineering payments in the aggregate of Four Million Dollars for non-recurring development (the "NRE PAYMENTS") as follows:

----- NRE PAYMENT EVENT -----	NRE PAYMENT AMOUNT -----
***	***

- 17.2 WildBlue shall wire transfer to Contractor within three business days fifty percent (50%) of the amount due upon exercising its option under Section 5.4(c) ("INITIAL OPTION PAYMENT"). The balance of the amount owed by WildBlue shall be wire transferred to Contractor within ten (10) days from delivery.
- 17.3 PAYMENTS TO WILDBLUE. Not more than ten calendar days after the Effective Date, WildBlue shall provide Contractor an estimated payment schedule for amounts due to Broadcom under the Broadcom Contract. Contractor shall pay to WildBlue an amount equal to 50% of such required payment made by WildBlue to Broadcom under the Broadcom contract; provided however, that the aggregate amount of such required payments by Contractor shall not exceed \$500,000. If Contractor assumes the Broadcom Contract, Contractor shall reimburse WildBlue for all required payments made by WildBlue to Broadcom after the date hereof through the date of assignment. At least ten (10) calendar days prior to making a required payment, WildBlue shall provide Contractor with written notification advising Contractor of the date such payment will be made, the amount of the payment and a certification that immediately upon receipt of funds from Contractor, WildBlue will pay Broadcom all amounts then due. In the alternative, Contractor may pay its portion of any payment due under the Broadcom Contract directly to Broadcom and provide WildBlue reasonable evidence of such payment. All payments required by this Section 17.3 to WildBlue shall be made by Contractor by wire transfer of immediately available funds to WildBlue before WildBlue's payment is due to Broadcom.
- 17.4 INVOICING.
- (a) No invoice shall be required with respect to the *** payment due upon execution and delivery of this Agreement.
 - (b) Upon execution and delivery of this Agreement by the Parties, Contractor shall deposit *** into escrow pursuant to the Escrow Agreement on behalf of WildBlue.
 - (c) For the optional items, no invoice for the Initial Option Payment is required. For the balance of the option payment, Contractor shall invoice WildBlue upon delivery and this amount is due and payable in accordance with Section 17.1.
 - (d) 120 days prior to the scheduled commencement of delivery of SMTS's from the Initial Order, Contractor may invoice WildBlue for one-third of the purchase price.
 - (e) Upon shipment of SMS, WBSTs or SMTSs pursuant to an Order (including the Initial Order), Contractor will invoice WildBlue for amounts due pursuant to this Agreement for such SMS, WBSTs or SMTSs. Such invoice shall include invoice date, Order number, SM, WBSTs or SMTS part numbers and descriptions, quantities, unit Prices and total amount due.

- (f) For deliverables or services provided by Contractor, Contractor will invoice WildBlue upon delivery or at such time as otherwise mutually agreed. For Services, Contractor will invoice WildBlue upon reasonably satisfactory completion of the performance of such Services or at such times as mutually agreed at the hourly rates set forth in Schedule 10. All such invoices shall include invoice date, Order number, description, quantities, unit Prices and total amount due.

17.5 PAYMENT DUE.

- (a) Invoices submitted to WildBlue in accordance with this Section 17 shall be due and payable by WildBlue within thirty (30) days of the date of such invoice, unless earlier payment is provided for.
- (b) Subject to Sections 8.4 and 17.3, WildBlue shall pay one-third of the purchase price of the units from the Initial SMTS Order 120 days prior to the scheduled commencement of delivery with the balance due and owed upon delivery.
- (c) Subject to the provisions of Section 17.2, invoices for any undisputed amounts owed by Contractor to WildBlue shall be due and payable by Contractor within thirty (30) days of the date of such invoice.
- (d) Any undisputed payment that is not made after the due date hereunder will be subject to an interest charge at the lesser of (i) one percent (1%) per month, or (ii) the highest rate permitted by applicable law, plus reasonable attorneys' fees and other reasonable collection expense.
- (e) Payments to Contractor shall be made in U.S. Dollars via check or wire transfer to the following Contractor account:

Union Bank of California
530 B Street
San Diego, California 92101-4407 USA
9 digit Routing Transit Number: ***
Depositor Account Title: ViaSat General Account
Depositor Account Number: ***
- (f) Either Party may set-off against amounts owed to the Other Party hereunder any amounts owed that are not disputed in good faith.

17.6 RIGHT TO CHANGE PAYMENT ARRANGEMENT.

Should WildBlue twice shall fail to make any payment properly invoiced within 30 days of its due date (taking into account WildBlue's right to dispute invoices in accordance with Section 17.6), all future payments for WildBlue Satellite Terminals, SMS, or SMTSs and components thereof ("PRODUCTS") shall be made in accordance with this Section. WildBlue shall pay fifty percent (50%) of the purchase price of any Order upon placing the Order, and Contractor shall invoice WildBlue for the remaining fifty percent (50%) of the purchase price in accordance with this Section. Contractor may, at any time, decline to deliver if WildBlue is in a delinquent

payment status. WildBlue hereby grants to Contractor and Contractor retains a security interest in each Product and other Deliverable shipped and the proceeds therefrom (including accounts receivable) and the right of possession to the Products and other Deliverables shall remain with Contractor, until payment in full is made (provided that title and ownership to any software Products shall in any event and at all times be retained by Contractor since Software Products are provided under license only). WildBlue agrees to execute all financing statements or other statements or other documents and to do all other acts which Contractor may reasonably deem necessary to perfect and maintain such security interest, title and right in Contractor, and hereby authorizes Contractor to file this Agreement with appropriate authorities in order to protect Contractor's interests herein.

17.7 DISPUTED CHARGES.

Either Party may withhold payment of particular charges that such Party disputes in good faith. Each Party shall notify the other Party if it disputes any charges hereunder within ten (10) days after receipt of the invoice for such disputed charges, and will set forth its reasons for such dispute in reasonable detail. All disputes under this Section shall be resolved in accordance with Section 22 below.

18. INFORMATION; CONFIDENTIALITY

18.1. CONTRACTOR INFORMATION.

- (a) Contractor Background Information and Contractor Foreground Information shall constitute Confidential Information of Contractor. WildBlue 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, shall be sold, assigned, leased, or otherwise disposed of to third parties by WildBlue or commercially exploited by or on behalf of WildBlue, its employees, vendors, contractors or agents, except as expressly provided herein.
- (b) Except as expressly provided herein, Contractor Confidential Information shall not be disclosed to any party without the prior written consent of Contractor, nor utilized by WildBlue for any purpose other than that of performing its obligations or exercising its rights hereunder.

18.2. WILDBLUE INFORMATION.

- (a) WildBlue Background Information and WildBlue Foreground Information shall constitute Confidential Information of WildBlue. Contractor shall not possess or assert any Lien against or to any WildBlue Background Information or WildBlue Foreground Information. No WildBlue Background Information or WildBlue Foreground Information, or any part thereof, 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 WildBlue'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 WildBlue Confidential Information (including copies thereof) shall be promptly returned to WildBlue by Contractor in a form reasonably requested by WildBlue or, if WildBlue so elects, shall be destroyed. Contractor shall certify to WildBlue in writing that Contractor has fully complied with the letter and the spirit of this Subsection.
- (c) Except as expressly provided herein, WildBlue Confidential Information shall not be disclosed to any party without the prior written consent of WildBlue, nor utilized by Contractor for any purpose other than that of performing its obligations or exercising its rights hereunder.

18.3. CONFIDENTIALITY.

- (a) CONFIDENTIAL INFORMATION. Contractor and WildBlue 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 SMS, which is marked confidential, restricted, proprietary, or with a similar designation, including all WildBlue Background Information, WildBlue 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, 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 Authorized Resellers (including customer lists, customer information, account information and consumer markets); (iii) software provided to a Party by or through the other Party; (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; and (v) WildBlue equipment forecasts and orders.
- (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. WildBlue 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 18.3.

- (ii) As requested by a Party during the Term and upon expiration or any termination of this Agreement (in whole or in part) and completion of the other Party's obligations under this Agreement subject to any continuing need to fulfill its obligations hereunder, the requested Party shall return or destroy, as the requesting Party may direct in writing, all material in any medium that contains, refers to, or relates to the requesting Party's Confidential Information, and retain no copies. The requesting Party shall certify to the other Party 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 18.3.

(c) EXCLUSIONS.

- (i) "Confidential Information" shall exclude any particular information which Contractor or WildBlue 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, whether express or implied, any rights or license to the Confidential Information of the other Party.

19. WARRANTIES AND TECHNICAL SUPPORT

19.1. PASS THROUGH WARRANTIES.

- (a) Contractor will from time to time provide certain SM, WBST and/or SMTS components, 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 WildBlue the benefits of such warranties to the extent that Contractor is able to do so pursuant to any agreements between Contractor and such manufacturers, lessors or licensors. Contractor will use commercially reasonable best efforts to obtain warranties from such manufacturers, lessors and/or licensors to provide to WildBlue hereunder.
- (b) WildBlue shall make no promises or representations to its customers on the behalf of Contractor and its employees and suppliers.

19.2. WARRANTY.

- (a) PERFORMANCE WARRANTIES. All WBSMs and WBST (including WBSM and WBST Software) are hereby warranted by Contractor in accordance with Schedule 13. SMTSs are hereby warranted by Contractor in accordance with Schedule 22.

- (b) NONCONFORMING WBSM, WBST AND SMTS. Contractor's obligations and WildBlue's remedies for WBSMs and SMTS which fail to meet the warranties set forth in the preceding paragraph are as set out in Schedule 13 and Schedule 22.
- (c) WARRANTY NOT APPLICABLE. This warranty shall not apply to any WBSM, WBST or SMTS or parts thereof, that (a) has had the Serial Number, Model Number, or other identification markings altered, removed or rendered illegible, (b) has been damaged by or subject to improper installation or operation, misuse, neglect or use with improper equipment; or (c) has been repaired or altered by other than Contractor personnel or has been subject to the opening of any sealed cabinet boxes without Contractor's prior written consent. Additionally, this warranty shall not apply to any parts of the WBSM, WBST or SMTS that have been provided by WildBlue or WildBlue supplier.
- (d) COMPONENTS. Contractor represents, warrants and covenants that all SM, WBST and SMTS components (excluding components provided by WildBlue or its suppliers) provided under this Agreement shall be new, not refurbished, reconditioned or re-manufactured. Notwithstanding the foregoing, Contractor may use refurbished, reconditioned or re-manufactured parts for warranty repair or replacement actions.
- (e) SOFTWARE. During the Warranty Period (as defined in Schedule 13 and Schedule 22), or any Extended Warranty Period (as defined in Schedule 14 and Schedule 23) purchased by WildBlue, for each SM, WBST and SMTS under warranty Contractor shall provide to WildBlue, at no cost, all Software Patches, Point Releases, Major Releases and other Software error corrections, bug fixes, patches and mandatory updates (collectively, "SOFTWARE CORRECTIONS") for distribution to WildBlue, Authorized Resellers and Users in accordance with Schedule 13 and Schedule 22. After the Warranty Period, Contractor shall provide Software Corrections and Major Releases in accordance with Schedule 14 and Schedule 23 at the prices determined by Contractor from time to time. In addition, Contractor shall make available to WildBlue during the Term of this Agreement all updates, upgrades, enhancements and releases (collectively, "SOFTWARE UPDATES") related to SMS, WBSTs and/or SMTSs that Contractor makes available to other SM, WBSTs or SMTS customers, for prices that are no less favorable than the prices under which the Software Updates are made available to such other SM, WBST or SMTS customers. Software Corrections and Software Updates shall be considered to form part of the Software for purposes of this Agreement. Software Corrections and Software Updates shall be tested prior to release.
- (f) POST-WARRANTY SUPPORT. Contractor shall offer to WildBlue and its Authorized Resellers, Affiliates and Users post-warranty maintenance and support in accordance with the terms of Schedule 14 and Schedule 16.

19.3. MONTHLY REPORTS. Contractor shall submit to WildBlue monthly reports, which summarize the number and types of problem and reasons for return (if known) warranty returns or WBSM field failures. These monthly reports shall be submitted within thirty

(30) business days of the end of each month commencing after the Month 1 Production shipment.

19.4. EPIDEMIC FAILURES. If Epidemic Failures (as defined in Schedule 13) occur the Parties shall have the rights and obligations set forth in Schedule 13.

19.5. OWNERSHIP OR USE.

(a) Contractor represents, warrants and covenants that, upon delivery to WildBlue, all right, title and interest in SM, WBST and SMTS Hardware will pass to WildBlue free of all Liens, imperfections in title, claims, charges, restrictions, or other encumbrances.

(b) Contractor represents and warrants that it has the right to license to WildBlue the SM, WBST and SMTS Software, the Contractor Background Information and Contractor Foreground Information as provided in this Agreement (collectively, "CONTRACTOR IP").

19.6. DISCLAIMER. THE EXPRESS WARRANTIES IN THIS SECTION 19 AND SCHEDULE 13 AND 14 ARE WILDBLUE'S SOLE REMEDY FOR WildBlue Satellite Terminals, SMS AND SMTSs FOUND TO BE DEFECTIVE AFTER ACCEPTANCE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE USE OF THE WildBlue Satellite Terminals, SMS AND SMTSs. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 19 AND SCHEDULE 13 AND 14, THE WildBlue Satellite Terminals, SMS AND SMTSs ARE PROVIDED "AS IS" AND CONTRACTOR MAKES NO OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED OF ANY KIND WITH RESPECT TO THE SMS, WHETHER WRITTEN OR ORAL, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR BASED ON ANY SAMPLE OR MODEL.

19.7. TECHNICAL SUPPORT. Contractor shall provide technical support to WildBlue to the extent set forth in Schedule 13 and this Agreement.

20. INDEMNITIES

20.1. INDEMNITY BY CONTRACTOR. Contractor shall indemnify, defend and hold harmless WildBlue 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 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 WildBlue Satellite Terminals, SMS or SMTSS, 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 SMS or the tortious conduct of Contractor or its Affiliates;
- (e) claims for damage to real or tangible property caused by the WildBlue Satellite Terminals, SMS or SMTSS or the tortious conduct of Contractor or its Affiliates;
- (f) Contractor's breach of its obligations with respect to WildBlue Confidential Information;
- (g) governmental claims arising out of Contractor's failure to comply with applicable law that it is required to comply with under this Agreement or to obtain those permits it is required to obtain under the Contract;
- (h) any third party claim, demand, charge, action, cause of action, or other proceeding asserted against WildBlue but resulting from an act or omission of Contractor in its capacity as an employer of a person.

20.2. INDEMNITY BY WILDBLUE. WildBlue shall 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 WildBlue's failure to observe or perform any duties or obligations to third parties;
- (b) third party claims arising out of WildBlue's breach of its obligations with respect to Contractor Confidential Information;
- (c) 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 WildBlue or its Affiliates;
- (d) governmental claims arising out of WildBlue's failure to comply with applicable law that it is required to comply with under this Agreement or to obtain those government approvals it is required to obtain under this Agreement;
- (e) claims for damage, loss or destruction of any real or tangible personal property caused by tortious conduct of WildBlue or its Affiliates;
- (f) any third party claim, demand, charge, action, cause of action, or other proceeding asserted against Contractor but resulting from an act or omission of the WildBlue in its capacity as an employer of a person; and

20.3. INTELLECTUAL PROPERTY INFRINGEMENT. Contractor shall indemnify, defend and hold harmless WildBlue from and against any claim, suit or proceeding ("SUIT") brought against WildBlue based on a claim that the WildBlue Satellite Terminals, SMS or SMTSS furnished hereunder when used in accordance with Contractor specifications infringes any Intellectual Property Right (including misappropriation of trade secrets) of any third party. If the use or distribution of an SM or SMTS is in such suit held to constitute infringement and the use thereof is enjoined or in the event of institution of a Suit or notification of the reasonable possibility thereof, Contractor shall at its own expense, at its option, either (a) procure for WildBlue the right to continue exercising the rights of WildBlue under this Agreement, (b) replace or modify the WildBlue Satellite Terminals, SMS, or SMTSS, or such Mark, so that it becomes non-infringing and remains functionally equivalent, or, in the event that neither (a) nor (b) can be achieved, using reasonable commercial best efforts, (c) refund to WildBlue any payments made by WildBlue to Contractor and terminate this Agreement by written notice to WildBlue, subject to Article 23 (Termination). The foregoing states the entire liability of Contractor and the exclusive remedy of WildBlue with respect to any alleged patent, copyright or other infringement by WildBlue Satellite Terminals, SMS or SMTSS provided hereunder.

The foregoing shall not apply and Contractor shall have no liability for infringement based on: (a) any change or modification made by WildBlue or others without Contractor's consent after delivery of the WildBlue Satellite Terminals, SMS or SMTSS; (b) any use of any WildBlue Satellite Terminals, SM or SMTS in combination with other hardware or software products or in any manner for which the WildBlue Satellite Terminals, SMS or SMTSS were not designed, to the extent such infringement was based on such use; (c) compliance by Contractor with WildBlue's designs, specifications or instructions; (d) use of any release or version of any WildBlue Satellite Terminals, SM or SMTS Software other than the most current release made available by Contractor, if infringement could have been avoided by use of such release, (e) any use of WildBlue Background Information, WildBlue Foreground Information or Third Party Information provided by WildBlue hereunder, or (f) use of WildBlue's trademarks or third party trademarks designated by WildBlue under the terms hereof. WildBlue shall indemnify Contractor for any Suit brought against Contractor to the extent attributable to infringement or misappropriation excluded from Contractor's indemnity obligations under the foregoing clauses (a)-(f).

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 actual 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. If 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

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

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 WildBlue, shall be resolved as provided in this Article 22. Each Party agrees that during any dispute resolution process or procedure it will use reasonable commercial efforts to continue to perform under the agreement until such dispute is resolved in accordance with this Article 22.

22.1. INFORMAL DISPUTE RESOLUTION. Subject to Section 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 non-privileged 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.

- (a) Subject to Subsection 22.2(b), and 22.4, if the Parties fail to resolve a dispute pursuant to Section 22.1 above, either Party may then refer such dispute to be settled by submission to the CPR Institute for Dispute Resolution ("CPR") for binding arbitration in Denver, Colorado if Contractor is demanding such arbitration and San Diego, California if WildBlue is demanding such arbitration under the then current CPR "Non-Administered Arbitration Rules" or any successor CPR rules, and the procedures specified under this Section 22.2. Each Party consents to the enforcement of any such arbitration award or judgement in its home jurisdiction. Any arbitration shall be conducted and enforced in accordance with the following principles:
 - (i) STANDARD ARBITRATION. Selection of Arbitrators. Arbitration shall be conducted by three (3) arbitrators with each Party to this Agreement selecting one arbitrator each and the two selected arbitrators then selecting the third arbitrator. Each arbitrator shall be independent of the Parties and shall have at least ten (10) years of experience in commercial transactions, including transactions involving communications technology companies.
 - (ii) LIMITED DISCOVERY. Prior to the commencement of the arbitration, each Party shall be entitled to take limited discovery, including the rights to request a reasonable number of documents, to serve no more than twenty (20) interrogatories and to take no more than three (3) depositions. Each

Party may seek the right to serve additional interrogatories and to take additional depositions upon a showing of good faith to the arbitrators, who can grant or deny any such request, in whole or part, in their sole discretion. This limited discovery shall be conducted in accordance with the Federal Rules of Civil Procedure, which shall be interpreted and enforced by the arbitrators. Any disputes regarding whether a Party has requested a "reasonable" number of documents shall be determined by the arbitrators in their sole discretion.

(iii) HEARING AND DECISION. The arbitrators shall, as soon as practicable and upon fifteen (15) days written notice to each Party, conduct an arbitration hearing and proceeding on the merits of the dispute giving effect to this Agreement as interpreted under New York law and thereafter shall issue a preliminary written decision citing the basis for the decision, including findings of fact and conclusions of law. The Parties shall have two (2) business days to file a written response to such preliminary decision, and thereafter the arbitrators shall as soon as practicable issue a final and binding decision. The decision of the arbitrators shall be based on a majority vote. As part of such decision, the arbitrators shall also be required to determine if any equitable adjustment to the applicable schedules for performance herein is appropriate and the extent of such adjustment.

22.3. INJUNCTIVE RELIEF. Notwithstanding Subsections 22.1 or 22.2, either Party 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 that Party is threatened by the other Party's acts or omissions; provided, however, that requests for permanent injunctive relief shall be arbitrated pursuant to Section 22.2(a).

22.4. VENUE AND JURISDICTION. Each Party consents to the exclusive jurisdiction and venue in a competent court in the County of Denver, State of Colorado and the County of San Diego, State of California, 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) If Contractor:

(i) commits a material breach of this Agreement and, in the case of a breach capable of being cured, fails to cure such breach within thirty (30) days (except as expressly set forth herein) after written notice from WildBlue to Contractor detailing the particulars of such breach and requiring that it be remedied; or

- (ii) ceases to carry on its business; a receiver or similar officer is appointed for Contractor and is not discharged within sixty (60) 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 ninety (90) days;

then WildBlue 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 ("TERMINATION DATE"). If WildBlue 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 WildBlue may terminate this Agreement shall be referred to as "CAUSE." Except as expressly limited by this Agreement, if WildBlue terminates this Agreement for Cause, WildBlue shall have all remedies available to it in law and at equity.

(b) If WildBlue:

- (i) commits a material breach of this Agreement and, in the case of a breach capable of being cured, fails to cure such breach within thirty (30) days (except as expressly set forth herein) after written notice from Contractor to WildBlue detailing the particulars of such breach and requiring that it be remedied; or
- (ii) fails to pay Contractor undisputed charges when due under the Agreement and fails to cure such breach within thirty (30) days of written notice from Contractor of such breach; or
- (iii) ceases to carry on its business; a receiver or similar officer is appointed for WildBlue 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 WildBlue and are not dismissed within sixty (60) days;

Contractor may, by giving written notice to WildBlue, terminate this Agreement as of a Termination Date and any such reason for termination shall be referred to as "Cause". Except as expressly limited by this Agreement, if Contractor terminates this Agreement for Cause, Contractor shall have all remedies available to it in law and at equity.

23.2. TERMINATION FOR CONVENIENCE.

- (a) After acceptance and payment for all the Milestones listed in Section 5.4, WildBlue may terminate this Agreement, in whole or in part, for convenience by giving Contractor written notice of termination or by failing to provide written confirmation as set forth in Section 23.2(b). Such notice shall designate a

Termination Date, which date shall be not less than sixty (60) days after the date of such notice and the amounts set forth in Sections 23.2(b), 23.2(c) and 23.2(d), if any, shall be immediately due and paid.

- (b) Article 8 sets forth the Initial WildBlue Satellite Terminal Order and Initial SMTS Order. If WildBlue terminates these Initial Orders pursuant to Section 23.2(a) or fails to confirm any part of these Initial Orders in writing, by May 1, 2003, WildBlue shall pay Contractor ***. If both of the Initial Orders were either terminated pursuant to Section 23.2(a) or by failing to confirm both Initial Orders, this Agreement shall be terminated. Except as set forth in Section 23.2(c) and Section 23.2(d), payment of this amount shall be the sole liability of WildBlue for payment of said terminated Order in connection with a termination pursuant to this Section 23.2.

- (c) In addition to the payment in 23.2(b) above, if WildBlue elects to terminate, in whole or part, this Agreement or any Order(s) for WBSMs or WBSTs for convenience less than 180 days prior to the firm delivery date for those Orders (as established by Schedule 9 and Schedule 20) , WildBlue shall pay Contractor an amount calculated in accordance with the following schedule:
 - (i) 150-180 days from the Delivery Date: ***of price of terminated units scheduled for delivery during this period;
 - (ii) 120-150 days from the Delivery Date: *** of price of terminated units scheduled for delivery during this period;
 - (iii) 90-120 days from the Delivery Date: *** of price of terminated units scheduled for delivery during this period; and
 - (iv) less than 90 days from the Delivery Date: *** of price of terminated units scheduled for delivery during this period.

- (d) In addition to the payment in 23.2(b) above, if WildBlue elects to terminate, in whole or part, this Agreement or any Order for SMTSs for convenience less than 180 days prior to the first scheduled production delivery, WildBlue shall pay Contractor according to the following schedule:
 - (i) 120-180 days from the Delivery Date: *** of price of terminated units scheduled for delivery during this period;
 - (ii) 90-120 days from the Delivery Date: *** of price of terminated units scheduled for delivery during this period;
 - (iii) 60-90 days from the Delivery Date: *** of price of terminated units scheduled for delivery during this period; and
 - (iv) less than 60 days from the Delivery Date: *** of price of terminated units scheduled for delivery during this period.

23.3. EFFECT OF TERMINATION OR EXPIRATION; WIND DOWN.

After expiration or termination of the Agreement and, if Contractor has delivered and received payment for at least 50,000 WBSTs or SMS, Contractor agrees to provide Post Warranty Support and Maintenance (in accordance with Schedule 14) for four (4) years after the date of the delivery and full payment of 50,000 WildBlue Satellite Terminals or SMS and technical support services as identified in Schedule 14 Section 1, for twelve (12) months after the effective date of expiration or termination of the Agreement. WildBlue will pay Contractor for Post Warranty Support and Maintenance and technical support services in accordance with the applicable Schedules; provided that if the Agreement is terminated by WildBlue for cause, then Contractor will provide such technical support as reasonably requested to support WildBlue's transition to another supplier at no cost for up to four (4) months after the effective date of termination.

24. LIMITATION OF LIABILITY.

EXCEPT FOR (A) CONTRACTOR'S POTENTIAL LIABILITY FOR LIQUIDATED DAMAGES, (B) DAMAGES RESULTING FROM EITHER PARTY'S BREACH OF SECTION 18 (CONFIDENTIALITY), AND (C) A PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS, REVENUE, GOOD WILL OR LOSS OF USE OR DATA) ARISING OUT OF OR RELATED TO: (I) THE SMS, WILDBLUE SATELLITE TERMINAL AND SMTS; (II) THE USE OF AN SM, WILDBLUE SATELLITE TERMINAL OR SMTS; (III) THE RESULTS OF ANY USE OF AN SM, WILDBLUE SATELLITE TERMINAL OR SMTS; (IV) THE INTEGRATION OF SMS WITH EQUIPMENT NOT PROVIDED BY CONTRACTOR; (V) OTHERWISE RELATING TO THE FUNCTIONING OF AN SM, WILDBLUE SATELLITE TERMINAL OR SMTS; OR (VI) A PARTY'S PERFORMANCE (OR FAILURE TO PERFORM) ITS OBLIGATIONS UNDER THIS AGREEMENT, EVEN IF SUCH PARTY HAD BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS.

EXCEPT WITH RESPECT TO (A) WILDBLUE'S PAYMENT OBLIGATIONS PURSUANT TO SECTION 17.1 AND SECTION 23.2, AND (B) FOR BREACHES OF SECTION 18, THE MAXIMUM AGGREGATE LIABILITY OF CONTRACTOR OR WILDBLUE, THEIR RESPECTIVE OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, SUBCONTRACTORS AND AGENTS, UNDER THIS AGREEMENT FOR ALL LOSSES, DAMAGES, EXPENSES OR INJURIES, WHETHER UNDER CONTRACT, TORT (INCLUDING WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY), BY STATUTE, OTHER LEGAL THEORY OR OTHERWISE, ARISING OUT OF THE PERFORMANCE, NON-PERFORMANCE OR IMPROPER PERFORMANCE BY CONTRACTOR OR WILDBLUE, AS THE CASE MAY BE, OF ITS OBLIGATIONS HEREUNDER, SHALL BE LIMITED TO, IN ANY AND ALL EVENTS, THE GREATER OF (X) ***, AND (Y) THE AGGREGATE AMOUNT PAID BY WILDBLUE TO CONTRACTOR HEREUNDER IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

25. GENERAL

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- 25.1. **BINDING NATURE AND ASSIGNMENT.** This Agreement shall be binding on the Parties hereto and their respective successors and permitted 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, except no consent shall be required in connection with the merger, consolidation, sale, or other transfer of all or substantially all the business and/or assets of such Party.
- 25.2. **ENTIRE AGREEMENT.** This Agreement, including any Schedules 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 both the Prior Agreements, which Prior Agreements are terminated and are of no further force or effect as to events occurring after the termination of said Prior Agreements. Each Party acknowledges that, as of the Effective Date, Contractor has fully performed its development, document and delivery obligations under the Prior Agreements, and WildBlue has fully performed its payment obligations therefor, and each Party covenants not to assert any claim that the other Party breached any said obligation under a Prior Agreement.
- 25.3. **COMPLIANCE WITH LAWS AND STANDARDS.**
- (a) 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).
- (b) Subject to Contractor's obligations under Sections 5.3(b) hereof, 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 SM and SMTS 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.
- 25.4. **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 received if 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 WildBlue:
WildBlue Communications, Inc.
4600 South Syracuse St., Suite 500
Denver, CO 80237
Phone: 720-554-7400
Fax: 720-554-7500

If to Contractor:
ViaSat, Inc.
6155 El Camino Real
Carlsbad, CA 92009
Phone: 760-476-2200
Fax: 760-929-3926

Contact Persons:

Contact Persons:

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.

- 25.5. COUNTERPARTS. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.
- 25.6. RELATIONSHIP OF PARTIES. Contractor, in furnishing SMS 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. Neither Party is an agent of the other Party nor has a Party any authority to represent the other Party as to any matters, except as expressly authorized in this Agreement.
- 25.7. SEVERABILITY. If 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.
- 25.8. 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.
- 25.9. 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 Section 19.2 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.
- 25.10. SURVIVAL. All provisions with respect to payment obligations hereunder, Sections 1, 2, 3, 4.2, 10, 17, 18, 9, 20, 21, 22, 23 and 24, and any other 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.
- 25.11. 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) as soon as practicable but in not event later than five (5) days after the request of the other Party. Except as authorized by Sections 7.3 or 18, 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.
- 25.12. THIRD PARTY BENEFICIARIES. Except as specifically provided in this Agreement, this Agreement is entered into solely between, and may be enforced only by, WildBlue 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.
- 25.13. AMENDMENT. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both Parties.
- 25.14. INCORPORATION BY REFERENCE AND ORDER OF PRECEDENCE.
- (a) The Schedules and Attachments attached hereto are hereby incorporated by reference into this Agreement. Any amendments to Schedules and Attachments, and any other Schedules and Attachments that are agreed upon in writing 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 (Any conflict among or between the following Schedules will be resolved in accordance with the following order of precedence (in descending order of precedence): Schedule 1 (Satellite Modem Product Description), Schedule 3 (SM/SMTS Functional Specification), Schedule 4 (IDU/ODU Interface Specification), Schedule 2 (WildBlue Radio Frequency Interface Specification),); and
- (iv) Orders.

25.15. 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 International Sale of Goods Convention shall not apply to this Agreement.

25.16. 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.

25.17. 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 or performing this Agreement.

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

WILDBLUE COMMUNICATIONS, INC.

VIASAT, INC.

By: _____

By: _____

David M. Brown

Stephen W. Cable

Vice President and General Counsel

Vice President, Broadband Systems.

Date: December 12, 2001

Date: December 12, 2001.

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SCHEDULE 1

SATELLITE MODEM PRODUCT DESCRIPTION

VERSION 9, DATED 2/23/2001

[19 pages omitted]

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SCHEDULE 2

WILDBLUE RADIO FREQUENCY INTERFACE SPECIFICATION

DATED JANUARY 24, 2001

[82 pages omitted]

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SCHEDULE 3

WILDBLUE PRODUCT PHASING DOCUMENT

VERSION 1, JULY 20, 2001.

[13 pages omitted]

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SCHEDULE 4

IDU/ODU INTERFACE SPECIFICATION.

DRAFT 1, FEBRUARY 22, 2001

[10 pages omitted]

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SCHEDULE 5

WILDBLUE RESPONSIBILITIES

DELIVERIES FROM MAJOR COMPONENT VENDOR (MCV)	Each deliverable meeting the requirements set forth in the applicable agreement (including statement of work and technical attachments) between Major Component Vendor and WildBlue.
***	***
PEP INTERFACE	
***	***
EQUIPMENT & SERVICES ACCOUNT	DELIVERY DATE
***	***

SCHEDULE 6

RESERVED

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SCHEDULE 7

RESERVED

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SCHEDULE 8

MINIMUM ORDER COMMITMENT AND MAXIMUM CAPACITY COMMITMENT

SCHEDULED MONTH FOR DELIVERY	MINIMUM NUMBER OF UNITS(1)		MAXIMUM NUMBER OF UNITS(2)
	WBST-A	WBST-B or SM-B Version	(WBST-A/WBST-B)
Production Month 1	***	***	***
Production Month 2	***	***	***
Production Month 3	***	***	***
Production Month 4	***	***	***
Production Month 5	***	***	***
Production Month 6	***	***	***
Production Month 7	***	***	***
Production Month 8	***	***	***
Production Month 9	***	***	***
Production Month 10 and on	In accordance with SM Order and Delivery Forecast (Schedule 9)	In accordance with SM Order and Delivery Forecast (Schedule 9)	***

After the SM-B version has gone through Acceptance Testing, the SM-A column will no longer be applicable

For the purposes of this Agreement, Production Month 1 is defined to be the month selected for delivery within the time period set forth in Schedule 9. ***.

(1) After the SM-B version has gone through Acceptance Testing, the SM-A column will no longer be applicable (1)

SCHEDULE 9

WBST/WBSM ORDER AND DELIVERY FORECAST

Beginning 9 months prior to the first scheduled WBST and/or WBSM delivery and continuing through the Term, WildBlue will provide an Order and Delivery Forecast to the Contractor. For the Initial WBST Order of Section 8.3 of this Agreement, the first delivery date shall be no earlier than *** and no later than ***. The Order and Delivery Forecast will include a firm commitment for the amount of the SMS required for delivery with specified configuration for the one month period commencing on the first day of the third month following the date of the Order and Delivery Forecast and a forecast for the subsequent five months. Coincident with providing the Order and Delivery Forecast, WildBlue will issue an Order for the units identified as the firm commitment.

For example, an Order Delivery Forecast on January 1st will include a firm commitment and an accompanying Order for deliveries commencing on April 1st, with April deliveries required to be delivered prior to the month end. A month as set forth herein is a calendar month. After the initial Order and Delivery Forecast, subsequent submittals shall be consistent with Schedule 8 and the constraints on month to month forecast changes set forth below for a forecast submitted 3 months prior to the first day of month 1.

Month -----	Specified Qty -----	Requirement(1) -----
1	A	+/- 15% of Previous Month 2
2	B	+/- 25% of Previous Month 3
3	C	+/- 50% of Previous Month 4
4	D	Consistent with Schedule 8
5	E	Consistent with Schedule 8
6	F	Consistent with Schedule 8

If at the time of an Order and Delivery Forecast, the SM-B version has not gone through Acceptance Testing and been Accepted, WildBlue shall provide a forecast for both SM-A and SM-B versions. Upon receipt of the Order and Delivery Forecast, Contractor shall accept Month 1 as a firm Order subject to the terms and conditions of the Agreement. If Contractor has information that parts shortages, supplier quality issues or other factors would preclude Contractor's ability to meet the forecast deliveries in any or all of months 2 through 6, Contractor has 12 days to submit a revised forecast proposal to WildBlue. The revised forecast proposal shall include Contractor's plan of action to minimize the impact on the forecast and Contractor's proposed revision. Upon WildBlue's approval of the plan, which shall not be unreasonably withheld, the revised forecast becomes the formal Order and Delivery Forecast for that period.

 (11) WildBlue may request a delayed delivery schedule subject to the terms agreed to in this Agreement. If WildBlue desires to purchase a greater number during any month than is permitted in the forecast schedule, Contractor will provide WildBlue with a written response indicating the additional units above the previous forecast which can be committed to in the forecast.

If WildBlue fails to deliver any forecast as required in this Agreement, Contractor shall be entitled to proceed based on the last previous forecast delivered.

FOR CLARIFICATION ONLY OF THE FORECAST PROCESS, THE FOLLOWING EXAMPLE IS PROVIDED:

Previous Forecast -- each month, non-cumulative

Order and Delivery Forecast Provided July 1st

Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
(Oct.)	(Nov.)	(Dec.)	(Jan.)	(Feb.)	(Mar.)
10,000 (Firm Order)	11,000	12,000	40,000 (Forecast only)	17,000 (Forecast only)	18,000 (Forecast only)

Updated Forecast

Order and Delivery Forecast Provided August 1

Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
(Nov.)	(Dec.)	(Jan.)	(Feb.)	(Mar.)	(April)
12,650	15,000	50,000	48,000	20,000	20,000
(within +/- 15% of previous forecast for Nov.) (now Firm)	(within +/- 25% of previous forecast for Dec.)	(within +/- 50% of previous forecast for Jan. but cannot exceed 50,000 per Schedule 8)	(Forecast Only)	(Forecast Only)	(Forecast Only)

SCHEDULE 10

LABOR RATES

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

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	***

- 1) The rates set forth above are in effect through the Calendar Year 2001. Thereafter, Contractor will increase the labor rates at the end of each Calendar Year, beginning 12/31/01 to reflect Contractor's then current rates; provided that Contractor shall ensure that the rates charged to WildBlue are no less favorable than the rates charged for similar services and terms to any other customer or affiliated party of Contractor and that such rates shall not increase by more than *** percent (***) at the end of a calendar year.
- 2) Contractor shall also be reimbursed for its reasonable, documented expenses related to travel, per diem and other related expenses. Such reimbursement shall be at Contractor's cost in accordance with its accounting system plus an administrative fee of ten percent (10%). WildBlue will not be obligated to reimburse Contractor for any expenses related to travel, per diem and other related expenses in excess of two thousand dollars (\$2,000), unless WildBlue has provided its written consent, which consent shall not be unreasonably withheld, conditioned or delayed, prior to such expenses being incurred.

SCHEDULE 11

WILDBLUE SATELLITE TERMINAL PRICING SCHEDULE

SCHEDULED DELIVERY DATE IN 2002	UNIT PRICE		
	WBST-A(1)	SM-B	WBST-B
August through Term	\$***	TBD IAW Section 16.4	TBD IAW Section 16.4

Plus reasonable start up costs, including costs for any requested functionality that is not available in the existing product. WildBlue and Contractor will negotiate in good faith to establish appropriate ramp up times and start up costs for production of these units.

- o The WBST-A price is based upon the design Contractor presented at CDR with the following additional requirements:
.....

- o WildBlue highly encourages the following features, but they are not requirements:

The above price commitment is predicated on the availability of ***.

(1) WBST-A pricing is for a minimum order of *** units

SCHEDULE 12

CONTRACTOR MARKS

1. ViaSat(R)
2. ViaSat Satellite Networks(TM) (Not for use on SM).

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SCHEDULE 13

WBSM/WBST TECHNICAL SUPPORT, WARRANTY SUPPORT AND MAINTENANCE

TECHNICAL SUPPORT FOR WBSMs AND WBSTs

For the purposes of this schedule, references to SMS apply equally to WBSMs and WBSTs. During the Term, Contractor will make available to WildBlue at Contractors then current commercial rates (except as noted below) technical support and services, which shall include, but not be limited to, the provision of the following services:

1. Beginning with the delivery and payment of the first *** production SMS, at no additional charge, telephone support to the WildBlue technical team, 24 hours per day, seven days per week for production SM related problems during system integration testing, and the first six months of SMS operating in the field and communicating through a WildBlue satellite.
2. Contractor must provide at no additional charge, via a web-based application, a list of the number of times WildBlue's personnel contacted Contractor's technical support, with the date and time of contact, the problem, and disposition of the call. Such application must be updated such that status of the call must be provided via the web within 24 hours. As the problem is solved/escalated status must be provided on the web based application within a reasonable period of time.
3. Assistance in the diagnosis and resolution of hardware and software problems.
4. Assistance in expediting priority replacement parts or systems required on an emergency basis.
5. Assistance in the support of the initial implementation of SMS and during installation of significant SM updates and/or changes.
6. Support in the preparation and analysis of failure and discrepancy reports, as required.
7. Cooperation in providing reasonable guidelines and documentation to ensure the necessary tracking and resolution of engineering, installation and service complaints.

WARRANTY

1. Contractor warrants to WildBlue that upon delivery of the SM to WildBlue all right, title and interest in SM Hardware will pass to WildBlue free of all liens, imperfections in title, claims, charges, restrictions, or other encumbrances. Contractor warrants to WildBlue that the SM Hardware (except for operating systems SM Software furnished) shall be new, free from defects in material and workmanship, and that the SM Hardware and SM Software shall perform in material conformance with the Specifications, for a period of one (1) year from installation date but in no event more than 30 months from delivery. (the "WARRANTY PERIOD"). All warranties shall survive inspection, acceptance and payment. WildBlue shall reasonably cooperate with Contractor in implementing the most cost efficient, cost effective warranty procedures.

2. During the Warranty Period, SMS that are subject to Defects shall be returned to Contractor for repair or replacement at no charge or cost to WildBlue, Authorized Reseller or User. Unless otherwise agreed by Contractor and WildBlue, for SMS that are returned to Contractor for repair, Contractor shall, at its option and cost, either complete repairs and return the repaired SM, or ship replacement SM, within ten (10) days of receipt of defective SM at Contractor's designated repair location. All SMS returned for warranty repair hereunder shall be returned in accordance with certain standard procedures, to be mutually agreed upon by the parties, which may be amended from time to time. Alternatively, the option of having a replacement SM shipped to either WildBlue, an Authorized Reseller or a User within two (2) business days of receipt by Contractor of the returned SM for a *** processing fee payable by the sending Party shall be provided. The sending Party shall bear the risk of loss or damage of a returned SM while such is in WildBlue's, Authorized Resellers' or Users' custody until such SM is delivered to Contractor's designated repair facility. The sending party shall bear the cost of transportation charges for shipment to Contractor (FOB destination; freight prepaid) of SMS under warranty to be repaired or replaced. For return shipments from Contractor to WildBlue, Authorized Reseller or User, Contractor shall bear the risk of loss or damage during transit and shall prepay and bear the cost of transportation charges for shipment of SM that has been repaired or replaced. If, during any one (1) year period, more than *** percent (***) of the SM's returned solely by WildBlue to Contractor for repair or replacement under this warranty are diagnosed as not defective by Contractor, WildBlue will pay for processing of Post Warranty Repair charges in accordance with Schedule 16.
3. For units under warranty, Contractor will make available to the WildBlue technical team, telephone helpdesk support from 8 am to 8 p.m. (EST), at no additional charge, with a maximum one hour telephone response time. Callers to the helpdesk must have an option to leave a message if the call is not answered within two (2) minutes. If engineering technical support is needed beyond the basic helpdesk services, Contractor will make such support available within 24 hours at the rates defined in Schedule 10.
4. In addition to the standard warranty provisions stated herein, instances of Epidemic Failure and Out of Box Failure shall be governed by the following provisions:
5. "Epidemic Failure" means within any consecutive twelve (12) month period a failure of *** percent (***) or more of the total number of SMS delivered to WildBlue in any three (3) month period during the Warranty Period or Extended Warranty Period, as applicable, to conform to the Specifications. In the event of an Epidemic Failure involving a twelve month period during which at least 10,000 WBSMs and/or WBSTs were delivered, the Contractor shall do as follows:
6. Within ten (10) business days after receiving a written notification of an Epidemic Failure by WildBlue, Contractor shall initiate implementation of an action plan, in a form reasonably satisfactory to WildBlue, to mitigate the future impact of the cause of this high failure rate on the WildBlue service;
7. As required by the action plan, Contractor may undertake to repair or replace affected WBSMs. In that case, Contractor shall bear the cost of repair or replacement of the WBSMs which includes the shipping, transportation and other costs of gathering and redistributing

the affected WBSMs in the manner defined by the action plan. Contractor's liability for costs of shipping, transportation and other costs of gathering such WBSMs for repair or replacement shall be limited to actual costs; and

8. Contractor shall take all commercially reasonable efforts to ensure that all WBSMs shipped after the repair or replacement of the defective WBSMs are free of similar faults.
9. In the event of an Out-of-Box Failure (as defined in the Agreement) affecting *** percent (***) or more of any shipping lot of WBSMs equal to or greater than *** units, Contractor shall do as follows:
10. Contractor shall send replacement SM(s) to WildBlue (FOB destination; prepaid) in the number identified by WildBlue within three days of receiving shipment of the SMs from WildBlue (which shall be sent to Contractor FOB destination; collect) subject to such Out-of-Box Failure;
11. Contractor shall also bear all costs of any repair or replacement of Out-of-Box Failure SM(s) including shipment, transportation and other costs of gathering and redistributing the affected SMs.
12. Any replacement, repair, modification, installation or other service performed by Contractor shall be warranted, commencing with the date upon which repaired SM is returned to the sending party, for the remainder of the unexpired period of the warranty or ninety (90) days, whichever is greater.
13. The warranties stated above do not extend to SM or SM Software that has been subjected to misuse, neglect or abuse not caused by Contractor or been used in violation of approved written instructions furnished by Contractor with the SM, if such action is the cause of the damage or malfunction, nor do they apply to cosmetic problems or defects resulting from normal wear and tear in ordinary use and which do not affect product performance or use.

SM REPAIR RETURN

1. Contractor will provide electronically to WildBlue a list of (or mechanism for generating) Return Service Authorization (RSA) numbers to be used for returned merchandise through a mutually agreed upon interface.
2. The following information shall be furnished with SMs returned to Contractor for repairs:
3. Name of User, complete address and phone number;
4. "Ship to" address for return of repaired SM, if different from (1);
5. A reasonable description of the nature of the defect or failure, if known;
6. SM warranty status via receipt, or RSA.
7. RSA number; and

8. SM Serial Number.
9. All SMS shipped to Contractor for repair shall have repair tags attached by Contractor which shall contain the above stated information.
10. SMS repaired by Contractor shall have the repair completion date stenciled or otherwise identified in a permanent manner in a readily visible location on SM and the repaired SM shall be returned with a tag or other documentation describing the repairs that have been made. If Contractor maintains statistical records for repaired SM, the information shall be made available to WildBlue upon reasonable request.

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SCHEDULE 14

WBSM/WBST POST WARRANTY SUPPORT AND MAINTENANCE

1. TECHNICAL SUPPORT FOR SM

For the purposes of this schedule, references to SMS apply equally to WBSMs and WBSTs. The terms for post-warranty technical support are identical to those outlined in Schedule 13 under the section "Technical Support for WBSMs and WBSTs".

POST-WARRANTY

1. Repair charges for SM Hardware out of warranty shall be as specified in Schedule 16 and shall not be changed by Contractor without written notice to WildBlue thirty (30) days in advance of such change. WildBlue shall be responsible for payment of all charges for out of warranty repair, SM replacement and return shipment hereunder.
2. Defective WBSM Hardware out of warranty may be returned to Contractor for repair or replacement. Contractor shall complete repairs and ship repaired SM Hardware or replacement SM within twenty (20) days of receipt of defective SM Hardware at Contractor's designated repair location.
3. Sending Party shall bear the risk of loss or damage of SM being shipped to Contractor for post-warranty servicing and shall prepay and bear the cost of transportation charges for shipment to Contractor of SM to be repaired or replaced. Return shipments shall be sent FOB origin; freight prepaid and charged.

If Contractor determines that a returned SM is not subject to Defects, Contractor shall return SM to the location designated by WildBlue in its "as received" condition and WildBlue will be charged a fee as outlined in Schedule 16. Determination of fee payment is the same as defined in Schedule 13, Section 2.2. If Contractor determines that a returned SM is irreparable, Contractor shall promptly notify WildBlue.

4. SM Software maintenance which includes the download of Point Releases and Software Patch releases will be made available electronically to WildBlue. Under this agreement Contractor will provide Wild Blue with one copy of software that contains Point Releases and Software Patch releases. WildBlue is responsible for distribution to its end users.
5. Any replacement, repair, modification, installation or other service performed by Contractor shall be warranted, commencing with the date upon which repaired SM is delivered to WildBlue, for a period of ninety (90) days.

SM REPAIR RETURN

1. The terms for product repair return are identical to those outlined in Schedule 10 under the section "SM Repair Return."

EMERGENCY REPLACEMENT SERVICE

1. WildBlue has the option to request expedited service for repair and replacement. Charges for this emergency service are shown in Schedule 16. In addition to the ability to expedite individual units, Contractor may sign a maintenance agreement that covers all SMS shipped to Contractor according to the terms of the agreement. If WildBlue has paid all applicable fees, or if WildBlue elects to expedite a specific repair case and agrees to pay the fees listed in Schedule 16, then:
2. Contractor agrees to ship replacement SM or SM Software by the most expedient means available, within forty-eight (48) hours after receipt of the defective unit at Contractor authorized repair facility.
3. Contractor shall return such repaired unit to WildBlue or its designated location after repair (FOB origin; freight collect) and charge WildBlue the Out of Warranty fees listed in Schedule 16.
4. If the defective SM or SM Software is not returned to Contractor within fifteen (15) days from the date of shipment of the new replacement SM or SM Software, Contractor may invoice WildBlue for such new replacement SM or SM Software at Contractor's then current list price, less WildBlue's applicable discount.

In order to schedule shipment of replacement SM, WildBlue may telephone Contractor during normal working hours. Fees for such emergency service are outlined in Schedule 16.

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SCHEDULE 15

Document Reproduction License and Guidelines

1. APPLICABILITY AND DEFINITIONS

This license applies to any documentation or written materials that are prepared by Contractor and delivered to WildBlue under the terms of the Agreement (collectively, "DOCUMENTS").

"ATP DOCUMENTS" means Documents required to be prepared by Contractor and delivered to WildBlue in connection with the Acceptance Testing conducted by Contractor under the Agreement.

"ESCROW DOCUMENTS" means all Documents delivered to the escrow agent under the Escrow Agreement.

A "MODIFIED VERSION" of the document means any work containing the document or a portion of it, either copied verbatim, or with modifications and/or translated into another language.

A "SOFT" copy of the document means a machine-readable copy, represented in a format whose specification is available to the general public, whose contents can be viewed and edited directly and straightforwardly with generic text editors or (for images composed of pixels) generic paint programs or (for drawings) some widely available drawing editor, and that is suitable for input to text formatters or for automatic translation to a variety of formats suitable for input to text formatters. A copy made in an otherwise Soft copy format that has been designed to thwart or discourage subsequent modification by readers or is in paper form is not Soft. A copy that is not "Soft" is called "HARD".

"TRAINING DOCUMENTS" means all training Documents delivered to WildBlue in accordance with Section 11 of the Agreement.

"TECHNICAL DOCUMENTS" means all technical Documents, excluding Escrow Documents, User Documents, and Training Documents, that are delivered to WildBlue by Contractor under the terms of the Agreement."

"USER DOCUMENTS" means all SM user instruction manuals and other user information necessary for the operation and use of the SM delivered to WildBlue by Contractor under the terms of the Agreement.

2. COPYING

ATP DOCUMENTS. WildBlue may copy and distribute the ATP Documents in Hard copy format, in connection with its analysis of the SM test results, provided that this License, the copyright notices, and the license notice saying this License applies to the Technical Documents are reproduced in all copies. Distribution of ATP Documents to third parties shall be limited to those parties assisting WildBlue in conducting acceptance testing or analysis thereof and provided that such third parties assume the obligations described in Section 18.3 of the Agreement.

ESCROW DOCUMENTS. WildBlue may copy and distribute the Escrow Documents in Soft or Hard format, in accordance with Section 10.7 of the Agreement, provided that this License, the copyright notices, and the license notice saying this License applies to the Escrow Documents are reproduced in all copies.

Distribution of Escrow Documents shall be limited to entities performing services related to the Escrow Documents, 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 Section 18.3 of the Agreement.

USER DOCUMENTS. WildBlue may copy and distribute the User Documents in connection with the sales, service or marketing of SMS, provided that this License, the copyright notices, and a license notice saying this License applies to the User Documents are reproduced in all copies. User Documents that are meant to be distributed along with SMS may be included in the packaging and shipment of such product (one copy only). One copy may also be included in a "read me" or "help file" or other similar digital form; provided that such items include Contractor's copyright notice and a link to Contractor's web site. Distribution of User Documents to third parties shall only be distributed in Hard copy format and shall be limited to users of the SM and all other third parties that WildBlue deems to reasonably require use of User Documents in that entity's scope of responsibility and provided that such third parties assume the obligations described in Section 18.3 of the Agreement.

TRAINING DOCUMENTS. WildBlue may copy and distribute the Training Documents in Soft or Hard format, in connection with service and operation of the SMS in the WildBlue satellite system, provided that this License, the copyright notices, and the license notice saying this License applies to the Training Documents are reproduced in all copies. Distribution of Training Documents to third parties shall be limited to those parties WildBlue reasonably requires use of Training Documents in that parties scope of responsibility and provided that such third parties assume the obligations described in Section 18.3 of the Agreement.

TECHNICAL DOCUMENTS. WildBlue may copy and distribute the Technical Documents in Soft or Hard format, in connection with its service and operation of the WildBlue satellite system, provided that this License, the copyright notices, and the license notice saying this License applies to the Technical Documents are reproduced in all copies. Distribution of Technical Documents shall be limited to entities performing services related to the Technical Documents, 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 Section 18.3 of the Agreement.

Notwithstanding the foregoing, WildBlue shall not transfer (nor permit any third party to transfer) any Documents (except Escrow Documents permitted in accordance with Section 10.7 of the Agreement and this Schedule) to other satellite modem manufacturers. All Documents transferred to third parties that requires a confidentiality agreement hereunder shall include a third party right of enforcement term for Contractor.

3. MODIFICATIONS

WildBlue may copy and distribute a Modified Version of the Escrow Documents, User Documents, Technical Documents and the Training Documents under the conditions of Section 2 above. In addition, WildBlue must do these things in the Modified Version:

1. List on the title page or first page, Contractor as original author, and, at WildBlue's option, one or more persons or entities responsible for authorship of the modifications in the Modified Version

2. Preserve all the copyright notices of the Documents.
3. Include restrictions on use and distribution consistent with this License.
4. Do not retitle the Documents.
5. Provide one copy of all Modified Versions to Contractor.

4. COMBINING DOCUMENTS

WildBlue may extract a portion of a Document, and distribute it individually under this License, provided WildBlue follow this License in all other respects regarding verbatim copying of that document.

5. TRANSLATION

Translation is considered a type of Modification, so WildBlue may distribute translations of the Documents under the terms of Section 3. WildBlue may include a translation of this License provided that WildBlue also include the original English version of this License. In case of a disagreement between the translation and the original English version of this License, the original English version will prevail.

6. GENERAL RESTRICTIONS.

Notwithstanding anything to the contrary herein, no Document prepared by Contractor and delivered to WildBlue (except Escrow Documents properly released to WildBlue under the Agreement) shall be distributed to other satellite terminal manufacturers.

Nothing herein shall in any way restrict WildBlue's use, distribution, reproduction or modification of the Interface Specifications.

SCHEDULE 16

WARRANTY FEE SCHEDULE

WildBlue may purchase Extended Warranty coverage for SMs purchased under this Agreement at the time the Order is placed or at any time during the original Warranty Period. The Extended Warranty coverage will include the standard warranty services defined in Schedule 13, Section 2 (excluding Section 2.3). The prices for Extended Warranty for SM-A and SM-B versions are listed in the table below.

TABLE 1 EXTENDED WARRANTY PRICING

	1 year beyond basic warranty	2 years beyond basic warranty	3 years beyond basic warranty
SM-A or SM-B	***	***	***

The period of the Extended Warranty listed in Table 1 is defined to cover the period from the expiration of the original warranty defined in Schedule 13 through the number of additional years identified in the table.

A pricing schedule for post warranty repair services and extended warranty for WBSTs will be added to this schedule prior to the delivery of the first production terminals. This pricing schedule will be no less favorable than that offered by Contractors to other customers for similar services and terms

SCHEDULE 17

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SCHEDULE 18

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SCHEDULE 19

SMTS PRODUCTION PRICE SCHEDULE

Unless explicitly noted elsewhere in this Agreement, initial equipment orders and all subsequent orders of SMTS systems and components shall adhere to the pricing contained within this Schedule.

Part Identifier	Item Description	Price
***	***	***

Notes:

1. All prices assume that the *** do not exceed \$*** and that the *** do not exceed \$***.
2. Prices also assume that the cost to ViaSat of the essential *** do not exceed \$***.
3. If components supplied or specified by *** exceed these prices then ***. The price increase will incorporate the ***.
4. When the Dynamic Physical Layer SMTS-BU versions are available, the prices for the SMTS-BUS and SDBs will be the same as listed above subject to notes 1. through 3. above.
5. The SMST price is based upon the design Contractor presented at CDR. Accordingly, the SMTS unit will be substantially compliant with the Specification, but may vary in some performance requirements, which do not materially impact the functionality of the SMTS.
6. WildBlue and Contractor will negotiate in good faith to establish appropriate ramp up times and start up costs for production of these units. The start up costs may include effort to complete the functionality.

SCHEDULE 20

SMTS INITIAL PRODUCTION ORDER DELIVERY SCHEDULE

The equipment comprising the SMTS Initial Production Order is listed in the table below along with a nominal delivery schedule. WildBlue will provide Contractor a firm schedule for the Initial Production Order no later than 180 days prior to the first production SMTS delivery. WildBlue reserves the right to delay the scheduled Month for Delivery if notice is given to ViaSat prior to 120 days before the order is due to be delivered. Notwithstanding the right to modify the scheduled Month for Delivery, # of chassis and spares, initial deliveries shall begin no earlier than *** and all deliveries for this Initial Order providing a minimum capability of Downstreams will be completed prior to ***.

FIRM INITIAL PRODUCTION ORDER AND NOMINAL DELIVERY SCHEDULE

SCHEDULED MONTH FOR DELIVERY	PART IDENTIFIER	QUANTITY
---	---	---
***	***	***
---	---	---

No later than 90 days prior to the first production SMTS delivery, WildBlue will provide the first rolling forecast covering deliveries for the period from 120 days to at least 180 days from the forecast date. The deliveries listed for 120 days will constitute firm orders.

Firm orders will have a delivery FOB ViaSat's designated facility no earlier than four (4) months from the date of order. For example, an Order placed in February shall have a required delivery date to WildBlue no sooner than June. Each such order shall constitute a minimum commitment upon WildBlue when the order is placed.

SCHEDULE 21- PRODUCT DESCRIPTION OF THE SMTS

[24 pages omitted]

SCHEDULE 22

SMTS TECHNICAL SUPPORT, WARRANTY SUPPORT AND MAINTENANCE

1. TECHNICAL SUPPORT FOR SMTS

During the Term, ViaSat will make available to WildBlue at ViaSat's then current commercial rates (except as noted below) technical support and services which are then generally available, which shall include, but not be limited to, the provision of the following services:

1.1 At no additional charge after delivery of the first production SMTS, telephone support to the WildBlue technical team and access to ViaSat System Engineering, Integration and Test personnel, 24 hours per day, seven days per week for production SMTS related problems during system integration testing prior to fielding, and onsite field support as needed for SMTS related problems that cause a service outage or material degradation of functionality. This on site support shall be for the first 4 months of field deployment with the first satellite. On-site field support will consist of technical personnel arriving on site at either WildBlue's lab or a designated gateway location within North America within 24 hours notice from WildBlue subject to airline schedules and availability. WildBlue will reimburse ViaSat for reasonable and documented travel and per diem expenses.

1.2 A minimum of 2 days of onsite support during the installation and configuration of the first SMTS unit in each gateway location which will be reimbursed by WildBlue at rates established in Schedule 10. This support may be canceled upon written notification from WildBlue no later than 4 weeks prior to the scheduled installation at a gateway site.

1.3 ViaSat must provide at no additional charge, via a web-based application, a list of the number of times WildBlue's personnel contacted ViaSat's technical support, with the date and time of contact, the problem, and disposition of the call. Such application must be updated such that status of the call must be provided via the web within 24 hours. As the problem is solved/escalated status must be provided on the web based application within a reasonable period of time, but in no event later than 24 hours.

1.4 Assistance in the diagnosis and resolution of hardware and software problems.

1.5 Assistance in expediting priority replacement parts or systems required on an emergency basis.

1.6 Assistance in the support of the initial implementation of SMTSs and during installation of significant SMTS updates and/or changes.

1.7 Support in the preparation and analysis of failure and discrepancy reports, as required.

1.8 Cooperation in providing reasonable guidelines and documentation to ensure the necessary tracking and resolution of engineering, installation and service complaints.

2. WARRANTY

2.1 ViaSat warrants to WildBlue that upon delivery of the SMTS to WildBlue all right, title and interest in SMTS Hardware will pass to WildBlue free of all liens, imperfections in title, claims, charges, restrictions, or other encumbrances. ViaSat warrants to WildBlue that the SMTS Hardware shall be new, free from defects in material and workmanship, and that the SMTS Hardware and SMTS Software shall perform in material conformance with the Specifications, for a period of one (1) year from installation date (the "WARRANTY PERIOD") but in no event more than *** months from delivery. All warranties shall survive inspection, acceptance and payment. WildBlue shall reasonably cooperate with ViaSat in implementing the most cost efficient, cost effective warranty procedures.

2.2 During the Warranty Period, SMTSs that are subject to Defects shall be examined onsite by ViaSat at WildBlue's request, and when possible repairs may be effected onsite without the removal of the unit in accordance with commercial rates. When this is not feasible, defective components of the SMTS shall be returned to ViaSat for repair or replacement at no charge or cost to WildBlue. Unless otherwise agreed by ViaSat and WildBlue, for SMTSs and components that are returned to ViaSat for repair, ViaSat shall, at its option and cost, either complete repairs and return the repaired SMTS or component, or ship replacement SMTS components, within 10 days of receipt of defective SMTS components at ViaSat's designated repair location. All SMTS components returned for warranty repair hereunder shall be returned in accordance with certain standard procedures, to be mutually agreed upon by the Parties, which may be amended from time to time. The sending Party shall bear the risk of loss or damage of a returned SMTS component until such SMTS component is delivered to ViaSat's designated repair facility. The sending party shall bear the cost of transportation charges for shipment to ViaSat (FOB ViaSat's designated facility; freight prepaid) of SMTS components under warranty to be repaired or replaced. For return shipments from ViaSat to WildBlue, ViaSat shall bear the risk of loss or damage during transit and shall prepay and bear the cost of transportation charges for shipment of SMTS components that have been repaired or replaced. If the SMTS components returned by WildBlue to ViaSat for repair or replacement under this warranty are diagnosed as not defective by ViaSat, WildBlue will pay for processing of Post Warranty Repair charges in accordance with Schedule 13.

2.3 For SMTSs under warranty, ViaSat will make available to the WildBlue technical team, telephone and/or pager support 24 hours a day, 7 days a week (EST), in accordance with annual prices set forth in Schedule 15, with a maximum 30 minute response time. WildBlue, as appropriate, will designate no more than 5 representatives authorized to utilize this technical support.

2.4 Any replacement, repair, modification, installation or other service performed by ViaSat shall be warranted, commencing with the date upon which repaired SMTS components are returned to the sending party, for the remainder of the unexpired period of the warranty or ninety (90) days, whichever is greater.

2.5 The warranties stated above do not extend to SMTS Hardware or SMTS Software that has been subjected to misuse, neglect or abuse not caused by ViaSat or been used in violation of approved written instructions furnished by ViaSat with the SMTS, if such action is the cause of the damage or malfunction, nor do they apply to cosmetic problems or defects resulting from normal wear and tear in ordinary use and which do not affect product performance or use. This warranty shall not apply to any SMTS or parts thereof, that has been repaired or altered by other than ViaSat personnel (unless repaired or altered under the strict guidance or supervision of ViaSat personnel or its designee or in accordance with Tier 1 maintenance procedures defined in the SMTS training material) or has been subject to the opening of any sealed cabinet boxes without ViaSat's prior written consent. Additionally, this warranty shall not apply to any parts of the SMTS or software modifications that have not been provided by ViaSat.

3. SMTS REPAIR RETURN

3.1 ViaSat will provide electronically to WildBlue, and its designated sub-contractors as appropriate, a list of (or mechanism for generating) Return Service Authorization (RSA) numbers to be used for returned merchandise through a mutually agreed upon interface.

3.2 The following information shall be furnished with SMTSs returned to ViaSat for repairs:

3.2.1 "Ship to" address for return of repaired SMTS, if different from (1);

3.2.2 A reasonable description of the nature of the defect or failure, if known;

3.2.3 SMTS warranty status via receipt, or RSA.

3.2.4 RSA number; and

3.2.5 SMTS Serial Number.

3.3 All SMTS components shipped to ViaSat for repair shall have repair tags attached by ViaSat which shall contain the above stated information.

3.4 SMTS components repaired by ViaSat shall have the repair completion date stenciled or otherwise identified in a permanent manner in a readily visible location on SMTS and the repaired SMTS component shall be returned with a tag or other documentation describing the repairs that have been made. If ViaSat maintains statistical records for repaired SMTS components, the information shall be made available to WildBlue upon reasonable request.

SCHEDULE 23

SMTS POST-WARRANTY SUPPORT AND MAINTENANCE

2. TECHNICAL SUPPORT FOR SMTS

The terms for post-warranty technical support are identical to those outlined in Schedule 12 under the section "Technical Support for SMTS."

4. POST-WARRANTY

4.1 Repair charges for SMTS Hardware out of warranty shall be as specified in Schedule 16 and shall not be changed by ViaSat without written notice to WildBlue thirty (30) days in advance of such change. WildBlue shall be responsible for payment of all charges for out of warranty repair, SMTS replacement and return shipment hereunder.

4.2 Defective SMTS Hardware out of warranty may be returned to ViaSat for repair or replacement. ViaSat shall complete repairs and ship repaired SMTS Hardware or replacement SMTS within 10 days of receipt of defective SMTS Hardware at ViaSat's designated repair location.

4.3 Sending Party shall bear the risk of loss or damage of SMTS components being shipped to ViaSat for post-warranty servicing and shall prepay and bear the cost of transportation charges for shipment to ViaSat of SMTS components to be repaired or replaced. Return shipments shall be sent FOB origin; freight prepaid and charged.

If ViaSat determines that a returned SMTS component is not subject to Defects, ViaSat shall return SMTS component to the location designated by WildBlue in its "as received" condition and WildBlue will be charged a fee as outlined in Schedule 15. If ViaSat determines that a returned SMTS component is irreparable, ViaSat shall promptly notify WildBlue.

4.4 SMTS Software maintenance, which includes the download of Point Releases and Software Patch releases, will be made available electronically to the WildBlue. Under this agreement ViaSat will provide WildBlue with one copy of software that contains Point Releases and Software Patch releases. WildBlue is responsible for distribution and installation to each SMTS.

4.5 Any replacement, repair, modification, installation or other service performed by ViaSat shall be warranted, commencing with the date upon which repaired SMTS component is delivered to WildBlue, for a period of ninety (90) days.

5. SMTS REPAIR RETURN

The terms for product repair return are identical to those outlined in Schedule 12 under the section "SMTS Repair Return."

6. EMERGENCY REPLACEMENT SERVICE

6.1 WildBlue has the option to request expedited service for repair and replacement. Charges for this emergency service are shown in Schedule 16. In addition to the ability to expedite individual units, ViaSat may sign a maintenance agreement that covers all SMTSs shipped to ViaSat according to the terms of the agreement. If WildBlue has paid all applicable fees, or if WildBlue elects to expedite a specific repair case and agrees to pay the fees listed in Schedule 15, then:

6.1.1 ViaSat agrees to ship replacement SMTS or SMTS Software by the most expedient means available, within 12 hours after receipt of notification of the defective unit from ViaSat authorized repair facility.

6.1.2 ViaSat shall return such repaired unit to WildBlue or its designated location after repair (FOB ViaSat's designated contiguous U.S. facility; freight collect) and charge WildBlue the Out of Warranty fees listed in Schedule 15.

6.1.3 If the defective SMTS or SMTS Software is not returned to ViaSat within fifteen (15) days from the date of shipment of the new replacement SMTS or SMTS Software, ViaSat may invoice WildBlue for such new replacement SMTS or SMTS Software at ViaSat's then current list price, less WildBlue's applicable discount.

In order to schedule shipment of replacement SMTS, WildBlue may telephone ViaSat during normal working hours, or page a designated ViaSat representative during non-working hours. Fees for such emergency service are outlined in Schedule 15.