

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

(Mark One)

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934.  
For the fiscal year ended March 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)

Securities registered pursuant to Section 12(b) of the Act:  
None

Securities registered pursuant to Section 12(g) of the Act:  
Common Stock, \$.0001 Par Value

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

The aggregate market value of the voting stock held by non-affiliates of the registrant, as of June 21, 2001 was approximately \$258,691,865 (based on the closing price for shares of the registrant's Common Stock as reported by the Nasdaq National Market for the last trading day prior to that date). Shares of Common Stock held by each officer, director and holder of 5% or more of the outstanding Common Stock have been excluded in that such persons may be deemed affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of shares outstanding of the registrant's Common Stock, \$.0001 par value, as of June 21, 2001 was 22,067,299.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the registrant's definitive Proxy Statement to be filed with the Securities and Exchange Commission pursuant to Regulation 14A in connection with its 2001 Annual Meeting of Stockholders are incorporated by reference into Part III of this Report. Such Proxy Statement will be filed with the Securities and Exchange Commission not later than 120 days after the registrant's fiscal year ended March 31, 2001.

Certain exhibits filed with the registrant's Registration Statement on Form S-3 (File No. 333-31758), as amended, Registration Statement on Form S-1 (File No. 333-13183), as amended, Annual Report on Form 10-K for the fiscal years ended March 31, 1997, 1998, 1999 and 2000, and Proxy Statement relating to its 1999 Annual Meeting of Stockholders, are incorporated by reference into Part IV of this Report.

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**FORM 10-K**  
**For the fiscal year ended MARCH 31, 2001**

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**PART I**

**Item 1. Business**

All references in this annual report to our fiscal year refer to the fiscal year ending on March 31, 2001.

**Introduction**

We are a leading provider of advanced broadband digital satellite communications and other wireless networking and signal processing equipment and services. Based on our extensive experience in complex defense communications systems, we have developed the capability to design and implement innovative

communications solutions which enhance bandwidth utilization by applying our sophisticated networking and digital signal processing techniques. On April 25, 2000, we completed the acquisition of the satellite networks business (the "Satellite Networks Business") of Scientific-Atlanta, Inc., which allowed us to accelerate the development of our growing commercial business. For a more detailed discussion of the acquisition, see "—Acquisition of the Satellite Networks Business" below. To date, we have achieved 15 consecutive years of revenue growth and 14 consecutive years of profitability. Our goal is to leverage our advanced technology and capabilities to capture a significant share of the global satellite communications services and equipment segment of the high-growth broadband communications market.

Our internal growth to date has historically been driven largely by our success in meeting the need for advanced communications products for the U.S. military. By developing cost-effective communications products incorporating our advanced technologies we have continued to grow the markets for our defense products and services in an environment of shrinking defense budgets. Our current defense products include our advanced multifunction information distribution system, or MIDS, product line, our simulation and test equipment which allows the testing of sophisticated airborne radio equipment without expensive flight exercises, and our UHF DAMA satellite communications products consisting of modems, terminals and network control systems. The MIDS terminal operates as part of the Link-16 line-of-sight tactical radio system that enables real time data networking among ground and airborne military users providing an electronic overview of the battlefield. We were recently selected by the U.S. government as a new Link-16 terminal contractor and one of only three current U.S. government certified manufacturers of Link-16 MIDS terminals.

We have been increasing our focus in recent years on offering satellite based communications products to address commercial market needs. Our commercial business has grown from approximately 24% of our revenues in fiscal year 2000 to approximately 62% of our revenues in fiscal year 2001. Based on our advanced satellite technology and systems integration experience, we have recently won several important projects in the three key broadband markets: enterprise, consumer and in-flight mobile applications. These projects are comprised of a recent contract award from ASTROLINK to provide two-way Ka-band terminals and gateways for broadband service to enterprise customers, a contract with WildBlue Communications to supply satellite modems and satellite modem termination systems for broadband service to residential and small businesses customers, and selection by Connexion by Boeing<sup>SM</sup> to provide receiver/transmitter subsystems for broadband access for air travelers.

### **Acquisition of the Satellite Networks Business**

On April 25, 2000, we completed the acquisition of the Satellite Networks Business from Scientific-Atlanta. The aggregate purchase price (including post-closing adjustments) for the Satellite Networks Business was approximately \$58 million in cash plus warrants to purchase 100,000 shares of our common stock. We believe our acquisition of the Satellite Networks Business will give us the scale and scope to become a larger player in the market for broadband commercial satellite communications and services. The acquisition of the Satellite Networks Business, which is also a significant DAMA-based VSAT vendor, will further strengthen our position in the DAMA marketplace. The Satellite Networks Business provides additional product lines addressing the non-DAMA VSAT market, the gateway market, the asset tracking and meter reading market, and the telemetry and antenna systems market. In addition, the Satellite Networks Business has brought us a larger and more experienced commercial sales force, a significant customer base, additional research and development and engineering capabilities.

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### **The ViaSat Advantage**

*Leading Industry Position.* We have a leading position in certain segments of the advanced communications network industry, including our leadership in DAMA and Link-16 MIDS businesses. More recently, some of our largest contracts have related to the provision of broadband equipment and services to commercial customers utilizing advanced satellites currently under development. The recent acquisition of the Satellite Networks Business will increase our presence in the satellite communications ground segment and services business. We believe that our leadership position in the development of advanced technologies and the provision of broadband equipment and services provides us with a competitive advantage in developing and enhancing our products and services to capture a significant portion of the emerging high growth broadband communications market.

*Leading Technology Innovator.* We are a leading provider of innovative and advanced communications network products and services. We have achieved this leadership through our expertise in applying emerging technologies to satellite networks as well as developing entirely new technologies. To maintain our technological edge we have over 300 engineers focusing on the research, design and development of new and enhanced communications network technologies and techniques. Because we provide our engineers with the opportunity to continually work with and develop state of the art technologies, we have been successful in hiring and retaining highly-qualified engineers.

*Experienced Management Team.* We have a strong and experienced management team, which has overseen our profitable growth for more than a decade. Prior to joining us, several members of our management team have had experience in successfully acquiring and integrating advanced technology businesses. Mark D. Dankberg, a co-founder of ViaSat and a leader in satellite systems solutions and development, has been our President, Chief Executive Officer and Chairman since our inception in 1986. Each of the other two founders of ViaSat, Mark J. Miller, Vice President and Chief Technical Officer, and Steven R. Hart, Vice President-Engineering and Chief Technical Officer, continue to serve as integral members of our management team. In addition, the remainder of our senior management team has significant long-term experience in the satellite communications industry.

*High Quality and Efficient Manufacturing Processes.* We believe that our ability to deliver high-quality, low-cost products through our manufacturing processes has been a key factor in our success in attracting and retaining customers. We utilize a range of contract manufacturers to maintain low-cost products and to support rapid increases in the volume of units. By using contract manufacturers for a large portion of our manufacturing, we are able to take advantage of the contract manufacturers' high-volume purchasing power, advanced manufacturing equipment, and highly-trained workforce. We also maintain the internal capability to conduct limited manufacturing for small volume productions, final assembly, integration and testing. As part of our manufacturing accomplishments, we have for the past four years maintained ISO 9000 certification for our product development, manufacturing and support services. As further recognition of our manufacturing success, Lockheed Martin Corporation recently honored us with a Star Supplier award for the second year in a row for continued product quality and delivery. We were one of only 18 suppliers to recently receive this award among 65,000 of Lockheed Martin's suppliers.

### **Strategy**

Our objective is to leverage our advanced technology and capabilities to capture a significant share of the global satellite services and equipment segment of the high growth broadband communications market, as well as to maintain a leadership position in developing and supplying DAMA-based products to the government market. To implement this strategy, we intend to:

*Capitalize On Our Existing Technology Leadership in New and Emerging High Growth Communications Markets.* We believe that the global satellite communications services and equipment segment of the high-growth broadband communications market presents a number of attractive opportunities to apply our advanced technologies and capabilities. We plan to develop new products and enhance existing products to capture a significant share of this anticipated growth opportunity. As part of our strategy to penetrate the broadband communications market, we intend to expand our activity as a network service provider. As a result of the recent acquisition of the Satellite Networks Business, we have significantly increased our ability to offer our customers satellite bandwidth, installation of network equipment, on-line network monitoring and network maintenance.

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*Maintain and Enhance Our Technology Leadership Position.* We are a leader in the development of advanced broadband digital satellite and other wireless technologies. We continually strive to improve our technology by meeting complex network design needs for customers and by devoting significant resources to research, design and development efforts in emerging markets. In order to enhance our technology leadership position we intend to leverage the experience of our skilled research, design and engineering team to develop new and enhanced satellite products and applications. We also intend to devote additional funds, consisting partially from the cost-savings associated with eliminating duplicative research, design and development efforts between us and the Satellite Networks Business, to further strengthen our technological expertise.

*Provide Superior Customer Value by Designing Advanced Systems and Lowering the Total Cost of Network Ownership.* We plan to continue to provide our customers superior value by offering network solutions with the lowest total cost of ownership, considering factors such as equipment purchase cost, cost of satellite bandwidth, delivery schedules and installation and maintenance costs. With the recent emergence of broadband networks where the cost of bandwidth represents a higher proportion of the overall network cost, products that are based on technologies which increase the efficient use of bandwidth, such as DAMA and PCMA, offer a means to provide additional customer value. We intend to develop new products and enhance existing products, primarily based on our DAMA technology, to offer customers a cost-effective two-way broadband solution.

*Emphasize Strategic Partnerships to Accelerate Market Penetration.* We intend to establish relationships with companies whose financial, marketing, operational or technological resources can accelerate the introduction of new technologies and the penetration of new markets. We are seeking to continue to develop strategic relationships with satellite manufacturers, satellite network equipment manufacturers, high-volume consumer product manufacturers and distributors, systems integrators and installers, ground-based network equipment manufacturers, satellite operators, and satellite network service providers through teaming arrangements, joint ventures and equity investments. Large, complex network systems typically involve partnering or teaming arrangements as a means to compete successfully for and implement complete network systems. As a leader of innovative network designs and communications solutions, we believe we are an attractive partner for other companies in the satellite communications market.

*Maintain Our Historical Emphasis On Operational Efficiency and Financial Performance.* We have maintained a strong emphasis on operational efficiency and financial performance. We believe that operational focus is essential to our continuing success in providing advanced communications network solutions. In order to continue this performance, we devote significant time and resources to key components of our business, such as our manufacturing processes, design systems, customer relationships, research and development efforts, and the expansion of our markets. We expect our strong emphasis on operational efficiency and financial performance to be a key factor in successfully integrating the Satellite Networks Business.

## **Technology**

We develop innovative technologies aimed at rapidly evolving communications markets. Our development efforts focus on enhancing existing communications technologies and developing new technologies to increase the efficiency of our communications products. We integrate advanced signal processing, networking and multiple access techniques into our networks to increase the efficiency of satellite resources and to support more users with a given amount of bandwidth.

Since no single technology is optimal for all applications, we believe it is important to maintain expertise in a broad range of communications technologies. We excel at determining and designing the optimal technologies for a specific network use and then integrating those technologies with our products. Our technology development efforts have led to the successful introduction of a number of advanced digital communications products ranging from our innovative commercial satellite networks to our military Link-16 MIDS products.

As a result of our technological expertise, we have developed numerous communications products based on DAMA technology. DAMA technology enables efficient utilization of satellite resources by allowing users to share bandwidth based on their changing needs. DAMA network subscribers only access a communications link for the duration of the transmission. The terminated communication link is then made available for use by other subscribers

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in the DAMA network. In addition, DAMA technology allows the development of networks providing unrestricted direct connectivity among users.

DAMA-based networks provide two primary communications solutions: switching services and access for network users. DAMA satellite networks essentially enable the satellite to act as a “switch in the sky.” An originator of a communication can use a DAMA-based network to be connected or switched directly to the desired destination either through a single hop to a ground-based gateway where the signal is then routed through the ground-based network or through a single hop point-to-point connection between terminals in the network. In the latter case, the signal is switched directly to the end user by the satellite through the use of an Internet Protocol router embedded in our network control products.

Mesh networks based on DAMA technology are particularly advantageous where both in-bound and out-bound, point-to-point transmission at high data rates are needed since traditional non-DAMA networks are capable of providing high data rates in only one direction. The optimal application for DAMA mesh networks are networks comprised of a large number of users communicating at high data rates with other users, such as corporate and government networks or Intranets.

We have also developed advanced satellite networks incorporating our advanced technology using “hub and spoke” architectures. These networks require all transmissions to be routed through a central ground-based hub location and are most useful for communications from remote locations to a central network location. These networks require two satellite transmissions, or hops, for communication from one remote user to another user.

We have further developed our patented PCMA technology which represents a fundamentally new technique for two-way satellite communications. PCMA technology is a key example of our advanced signal processing and multiple access techniques. PCMA technology enables two satellite terminals to use the same bandwidth at the same time, enabling satellite networks to support up to twice as many users or double the traffic on a given satellite resource. For users of the same bandwidth, the satellite communications signal represents an aggregate of the signal sent to the other user and the signal received from the other user. PCMA technology permits each user receiving the combined signal to delete the signal that the user sent, leaving only the signal intended to be received. The separation and deletion of the unwanted portion of the signals takes place on the ground by the terminal and does not interfere with the satellite transmission. We have recently developed prototypes and models for the integration and testing of the PCMA technology and are currently offering products enabled with our PCMA technology.

## **Commercial Markets**

### *Market Opportunity*

The introduction of satellite communications technology in the 1950’s represented a fundamental change in communications networks. A communications satellite, in essence, provides the ability to route a communications signal through the sky. Signals are sent from users on the ground to the satellite, which then amplifies the signal and sends it back to the end-user on the ground. Depending on the altitude of a satellite’s orbit, it can cover a geographic area, or footprint, larger than the size of a continent. The key components of a satellite communications system include:

- user terminals connecting the users to the satellite network,
- satellites which relay communications signals to and from the users, and
- gateways that control the satellite network and connect it to communications networks on the ground.

The essential advantage of satellite communications is that they allow a network provider to rapidly deploy new communications services to large numbers of people anywhere in the footprint of the satellite. Consequently, satellites can be used to deploy broadband services in developed and developing markets in a shorter period of time than building ground-based infrastructure. Moreover, in some areas satellite solutions are less expensive than terrestrial wired and wireless alternatives. As satellite communications equipment becomes less expensive and new

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capabilities emerge in satellite communications technology, we believe that the market for satellite communications offers tremendous growth opportunities.

The demand in the commercial market for communications network products has been growing in both developed and developing countries. Much of the growth in demand is due to high data rate, or broadband, Internet or Intranet access, which requires transmission speeds that are much higher than traditional voice connections. We believe there are significant opportunities to provide satellite links to fill in gaps in ground-based wired and wireless coverage. The high growth projected in the commercial satellite communications industry is expected to be driven by the following major factors: (1) rapidly growing world-wide demand for communications services in general, and broadband data networks in particular, (2) the relative cost-effectiveness of satellite communications for many uses, (3) recent technological advancements which broaden applications for and increase the capacity and efficiency of satellite based networks, and (4) global deregulation and privatization of government-owned telecommunications carriers.

We provide satellite communications network solutions for multiple segments of the commercial market.

*Data Networks.* Satellite networks are well suited for data networks which focus on (1) rapidly deploying new services across large geographic areas, (2) reaching multiple user locations separated by long distances, (3) filling in gaps or providing support for data points of congestion, or “bottlenecks,” in ground-based communications networks, and (4) providing communications capabilities in remote locations and in emerging markets where ground-based infrastructure has not yet been developed.

Corporate users are increasingly appreciating the benefits of satellite networks as they realize the advantages described above. Satellite networks are experiencing significant growth as a substitute for, or supplement to, ground-based communications services such as frame relay, digital subscriber lines, fiber optic cables, and Integrated Services Digital Networks (ISDN). We believe satellite data network products and services will continue to present us with significant growth opportunities as broadband data networks continue to expand in developed and developing markets throughout the world.

*Internet Applications.* The Internet is evolving into a global medium, allowing millions of individuals throughout the world to communicate, share information, and engage in electronic commerce. In recent years, there has been significant growth in the use of satellites for Internet traffic. This growth has been centered on connecting consumers and businesses with the Internet. Satellite capacity is being used primarily where fiber cable is prohibitively expensive or rare, such as rural areas or emerging countries.

We expect satellite communications to continue to offer a cost-effective augmentation capability for ISPs, particularly in markets where ground-based networks are unlikely to be either cost-effective or abundant. Additionally, satellite broadcast architecture provides an attractive alternative for ISPs, which are presently dealing with congestion associated with rapid and uneven Internet growth. Satellite systems can relieve congestion by providing a low-cost means of selectively distributing content to sites closer to end users.

*International and Rural Telecommunications Services.* In a large number of remote or rural areas in developed countries and throughout developing countries, voice services are limited by the lack of ground-based infrastructure. In these areas, satellite networks are able to rapidly provide high-quality communications services in a cost-effective manner. In contrast to ground-based networks, satellite networks are simple to reconfigure or expand and are generally immune to difficulties of adding additional users in geographically dispersed areas. Another primary advantage of satellite networks is that additional users can be connected to a network in a short period of time.

We believe there are growth opportunities for providing satellite communications equipment and services to communications service providers targeting rural and residential areas in developed and developing countries where it may not be cost effective or time efficient to lay the necessary ground-based infrastructure for telephone and voice services. We believe satellite based telecommunications products and services represent a growth opportunity for us.

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*Products and Services*

We offer a broad range of satellite communications and other wireless communications products and services, including:

*VSAT Network Products.* A VSAT terminal generally consists of an indoor unit and an outdoor unit. The indoor unit usually connects to a user's desktop or equipment similar to a modem and contains the circuitry needed to connect the desktop or equipment to the satellite. The outdoor unit usually includes an antenna, generally two to six feet in diameter, and electronic equipment that transmits and receives signals to and from the satellite. The network control system manages communications between the user terminals.

*StarWire.* Our StarWire VSAT products employing DAMA technology provide "mesh" broadband data, video and voice services via satellite to remote locations and areas that lack adequate ground-based communications infrastructure. Using frequency pre-correction, one of our resource management techniques, StarWire provides high levels of DAMA operating efficiency. In addition, all of our StarWire products are embedded with Internet Protocol routing and are compatible with Internet and Intranet applications. Our StarWire line currently consists of two terminal products and a network control system.

Our Calypso terminal represents a lower priced terminal with up to two DAMA channels and operating rates from 4.8 kbps to 2 Mbps. This terminal is ideal for backup and restoral of ground-based networks, file transfers, extending coverage of existing ground-based communications networks, and networks with multiple server locations such as corporate Intranets. Many features and functions of the Calypso terminal are implemented in our advanced software and are downloadable over the satellite. This flexibility makes the implementation of new enhancements and features easy, extends the life of the equipment and enables the terminal to quickly adapt to different network protocols.

In contrast, our Aurora terminal is a subscriber terminal providing up to six DAMA channels, with a standard operating rate of 2 Mbps per second. The Aurora terminal further enhances bandwidth efficiency by determining satellite and terminal transmission power prior to establishing a connection and then optimizing the terminal power based on service type, error correction requirements, antenna size, and satellite footprint. Users of the Aurora terminal can connect computers, phones, a private branch exchange (PBX), or facsimile machines directly to the terminal, or use the terminal as part of a gateway into a public-switched telephone network. The Aurora terminal also implements many of the functions in our advanced software, making it simple to download software through the satellite for on-going maintenance or adding new product enhancements.

The StarWire product line also consists of a scaleable network control system consisting of a computer workstation and network server similar to the StarWire subscriber terminals, which together essentially function as a "switchboard in the sky." This system performs real-time circuit assignment, system-wide resource management, and extensive network management. The system can assign network resources in three ways: (1) on demand, (2) by reservation one time or periodically, and (3) permanently. The network control systems are Windows NT-based, giving users a graphically rich interface to make the system easy to learn and simple to use. The configuration implements two control channels: inbound for satellite resource requests and outbound for resource assignment. The StarWire network control system is significantly less expensive than large installations required by conventional VSAT systems. The network control system works to further enhance the optimization of the network with comprehensive monitoring of peak loading, utilization percentages, blocking statistics, network-wide status, terminal configurations, and diagnostics.

*Skylinx.* Our Skylinx VSAT product, which was developed by the Satellite Networks Business, is a competitively-priced VSAT terminal based on DAMA technology. This product is designed to provide inexpensive, toll quality telephone service for voice and fax communication for small businesses and cities in areas lacking adequate telephone infrastructure. An important feature of the Skylinx terminal is the large number of telephone interfaces which it supports. The ability to interface with many different telephone protocols gives the Skylinx terminal a much larger addressable market as compared to other VSAT systems which normally only support one or two voice interfaces. These voice protocols include 2-wire E&M, 4-wire E&M, MF, DTMF, R2, China #1, SS#5, and SS#7.

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The Skylinx VSAT terminal's flexibility, in conjunction with the Skylinx network control system, allows common or custom numbering plans, downloadable channel unit circuit types, interfaces and signaling systems. This enables a network to accommodate specific customer requirements for private business telephony, public rural telephony and disaster recovery. In addition, a single Skylinx network control system can support up to 62,000 subscribers in the network. We believe the Skylinx terminals offer a cost-effective communications solution for rural telephony users who have historically been without service.

*SkyRelay.* Our SkyRelay products, which were developed by the Satellite Networks Business, are based on TDM/TDMA technology and are designed for transaction-oriented, single point to multi-point satellite networks. The feature that distinguishes a TDM/TDMA network from other satellite networks is that information for each specific site is quickly transmitted a few bits at a time instead of being all sent in one continuous transmission. The SkyRelay VSAT terminal product is designed to efficiently distribute large amounts of data through a network from a central hub location to many remote users. The SkyRelay is a high-end product supporting multiple data protocols, including X.25, SDLC/SNA, BSC 2780, 3780, BSC 3270, Async, and Internet Protocol routing. The ability to interface with many different data protocols gives SkyRelay networks a much larger addressable market as compared to other VSAT data communication systems which support fewer data protocols. Protocols may be assigned on a port by port basis on the SkyRelay terminals with different ports using different protocols. All protocol parameters are configured remotely by the network management system, then downloaded to the remote site.

Another important feature of the SkyRelay VSAT terminal is that it increases the efficiency of bandwidth utilization by automatically adjusting bandwidth resources to fit the precise nature of user traffic. As traffic switches from simple interactive transactions to complex batch transfer, each SkyRelay terminal is able to transition automatically from a straightforward contention protocol on the satellite link to an array of alternative channel access schemes. Transparent to the user, these dynamic adjustments in traffic loading minimize transmission delays. The SkyRelay network management system further increases bandwidth

efficiency by tracking bandwidth utilization, identifying traffic patterns, providing automatic trouble-tickets, and creating user profiles. Typical applications supported by SkyRelay include remote network access, email, voice communications, ATM networks, credit card and check authorizations, inventory control, and information management.

*New VSAT Network Product Development.* We continually strive to develop new commercial products and services, both from our research and development efforts as well as through leveraging our government technologies and techniques to commercial applications. For example, we intend to implement our patented PCMA technology into products in the near future. In addition, with the recent acquisition of the Satellite Networks Business, we have gained a wide range of new technologies and products. We intend to harmonize our products and technologies with the products and technologies of the Satellite Networks Business to create derivative products and technologies composed of the strengths and best features of each of our combined products and technologies.

We currently expect to launch our new ArcLight product, which both incorporates our patented PCMA technology and represents a harmonization of ViaSat's technologies with some of the advanced technologies of the Satellite Networks Business, in the latter part of 2001. ArcLight is designed to be the next generation VSAT, delivering both low-speed transactions as well as interactive broadband to service providers and enterprise users.

*Communications and Tracking Systems.* Our communications and tracking systems products, which were developed by the Satellite Networks Business, are designed for four market segments: (1) gateway infrastructure, (2) remote sensing ground stations, (3) antenna systems and (4) tracking, telemetry and command ground stations. Communications and tracking systems products consist of essentially the same three components: a large satellite antenna dish, a high-powered radio transmitter and receiver, and an ultra high speed satellite modem. The modems integrated into these systems can process data at rates of up to 150 Mbps per second, depending on the application of the satellite system. These systems support functions in the L, S, X, Ku, and Ka-band frequency spectrums.

*Gateways.* Our gateway business represents a key component of our ability to offer complete network development and integration services. The gateway products are used to connect satellites to the communications infrastructure on the ground, such as public switched telephone networks. We offer a number of different gateway products depending on the type, speed and size of the network. The gateways consist of our internally developed

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antenna and signal processing hardware and software as well as third party hardware. Although each of these components employs advanced technologies, the most complex component of a gateway is the overall system design and the software used to integrate each of the hardware components and operate the system. Gateways represent a key operating component of any satellite network since gateways are required to interface the satellite portion of the network to the terrestrial communications network.

We believe that we will derive many benefits and efficiencies from our gateway building capabilities. Since the gateway is the most complex and central component of any network, the optimization of the gateway for the specific network use is critical to optimizing the performance of the entire network. The ability to provide gateways and integrate those gateways into our innovative network solutions will provide us with an advantage over other network manufacturers and integrators, most of which purchase gateways from third parties. Our recent acquisition of the Satellite Networks Business has provided us with extensive experience in developing gateways for systems using Ka-band technologies. We believe these new technologies are the cornerstone of emerging satellite services like broadband on demand.

*Remote Sensing Ground Stations.* The Satellite Networks Business has been a leader in the satellite imaging and remote sensing ground station market for over 20 years. Remote sensing ground stations receive images of the earth transmitted from low earth orbit satellites. These images are often collected for both civilian and military purposes. Our remote sensing ground station products typically include a personal computer with software to provide satellite pre-mission planning, automated pre-pass set-up, system performance integrity analysis, signal routing assignments, and maintenance actions.

*Antenna Systems.* Our antenna products provide standard off the shelf antenna solutions for typical geostationary satellite applications. Although our antenna systems are often sold and integrated with our other satellite communication products, we also offer a wide range of antenna systems as separate units. Our antennas range from 3.6 meters to 18 meters in diameter depending on the power of the transmissions from the satellite. Customers of our antenna systems include cable TV uplink stations and cable system providers which operate head-end receive stations, VSAT hub stations, and various satellite communication system integrators that require traditional satellite communication capability.

*Tracking, Telemetry and Command Systems.* Our tracking, telemetry and command products are designed to provide a means for monitoring and controlling satellites in orbit. The telemetry subsystem in the satellite supplies measurements of various parameters to an earth station which is responsible for the satellite management. The tracking systems provide the tracking and command functions of the system. The tracking subsystem provides the facilities by which the satellite orbit can be determined. Satellites operating in low earth orbit need to have their orbit parameters determined so that their passage over the earth station can be accurately predicted. The command subsystem provides the means by which the satellite is controlled.

*Data Tracking Communicators.* Our data tracking communicators, which were developed by the Satellite Networks Business, are designed to relay information at low data rates through small satellites in low earth orbit, whereas traditional VSAT terminals relay information at higher data rates through large satellites placed far higher up in orbit. Because they do much less than traditional VSAT terminals, data tracking communicators cost only a few hundred dollars, as opposed to thousands of dollars for traditional VSAT terminals.

For fixed applications like automated meter reading and the monitoring and controlling of electric utility distribution networks, data tracking communicators can be cost effective in areas where ground-based communications may not be available or reliable. The fixed site communicator includes a single card modem board, multiple access ports, industry-standard connectors, AC power supply, and a fully integrated antenna. The entire unit is housed in a case with knockouts for power and communication lines to facilitate installation.

For mobile applications like automated vehicle location systems that track and monitor the status of remote vehicles such as trucks, trailers and railway locomotives as well as marine vessels, data tracking communicators can provide substantial savings to large fleet operators. The mobile communicator includes a single card modem board, multiple access ports, industry-standard connectors, DC battery-based power supply with charger, and an external antenna.

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The Data Tracking Communicators unit's primary customer historically has been ORBCOMM. Please see "Factors That May Affect Future Performance" for a more detailed discussion regarding the status of ORBCOMM and its relationship with ViaSat.

*Network Integration Services.* We provide a suite of network integration services. Network integration services are a primary competitive advantage we maintain in the commercial satellite communications industry. Most of the manufacturers in this industry do not perform complex and customized network integration. Instead, most manufacturers only sell hardware and software communications products. Although some companies build standardized networks limited to the applications offered by the hardware and software used in the network, we are one of the few companies that develop complex, fully-operational networks integrating thousands of advanced hardware and software communications products. With expertise in satellite network engineering, gateway construction, and remote terminal manufacturing for all types of interactive communications services, we take end-to-end responsibility for building, initially operating, and then handing over a fully-operational, customized satellite network. Often our development efforts in building these complex networks results in the development of both new and enhanced technologies that can be leveraged to generate future products and services.

Network integration services first include network design and then network implementation. Network design involves analyzing the complex configuration or technology required to operate the customer's network, designing the system, determining critical system components and parameters of the system, and developing components and specifications for the network's hardware and software. Network implementation involves network hardware and software installation as well as interfacing the network equipment with the customer's other communications equipment. Network designs and implementations are planned and managed by our in-house network design teams.

*Network Services.* Satellite network services are a natural extension of our network integration business. Many of our customers want to maintain satellite communications networks without purchasing network control systems, directly purchasing bandwidth from satellite providers, or hiring and training specialized personnel. As part of our strategy to penetrate the broadband communications market, we intend to significantly expand our activity as a network service provider.

During the last fiscal year, we formed a joint venture with Loral Skynet, Immeon Networks L.L.C., which offers metered bandwidth on demand satellite based communication services. See "—Strategic Ventures" below for a more detailed discussion on Immeon Networks. Our turnkey network services include the provision of bandwidth to our customers by procuring satellite transponder capacity, which we obtain from third parties on an as-needed basis. We provide on-site installation of our equipment sold to customers, systems integration and training of customer on-site personnel. We also provide our customers with access to our network operations centers (NOC) and to our network control systems for users of our VSAT terminal products. Although pricing terms vary, we offer flexible terms for our network services based on both a fixed recurring charge per site or variable pricing based on usage. We package satellite bandwidth together with our network operation services and the use of our network control systems to provide our customers with immediate access to a satellite network.

Many of our customers who operate their own networks require technical support. When our customers experience a problem with their network, they can contact the network operations center on a 24 hour basis, seven days a week, where one of our technicians or engineers, using our advanced monitoring and control technology, will work to resolve the problem and restore service. If service cannot be restored to satisfactory levels through our network operations center, we will dispatch one of our experienced field technicians, usually third parties trained and certified by us, to repair or replace the faulty equipment or software. Our maintenance services are supported by our internal logistics and repair organizations. The recent acquisition of the Satellite Networks Business will further strengthen our ability to provide high-quality technical support to our customers. A key component of our ability to provide end-to-end network solutions is our expertise in network support services.

Our largest network operations center is located in Norcross, Georgia, which is staffed by technicians who are trained in network fault isolation, problem resolution and customer service. We also operate a network operations center at our corporate headquarters in Carlsbad, California.

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### *Strategic Ventures*

*Immeon.* In fiscal year 2001 we entered into a joint venture with Loral Skynet, a division of Loral Space & Communications Ltd., to offer metered satellite bandwidth on demand. Immeon is a wireless, satellite-based bandwidth-on-demand network, that provides wideband IP services to its customers using StarWire VSAT terminals located anywhere in the United States. All Immeon resources within the network are controlled and monitored by ViaSat's network operations center (NOC) operated by ViaSat personnel. Immeon network access terminals are located at customers' facilities and provide the network interface between the satellite network and the enterprise LAN/WAN using industry standard IP protocol and Ethernet interfaces.

*TrellisWare Technologies.* In August 2000 we established TrellisWare Technologies Inc., a majority-owned spin-off of ViaSat. TrellisWare was formed to focus on developing products based on Per Survivor Processing (PSP®) technology, a proprietary signal processing technology that is expected to greatly improve the performance of broadband communications in challenging environments (multipath, interference and high channel dynamics). Potential applications for PSP include digital cellular/PCS, wireless LANs, Digital Subscriber Line (DSL), High Definition TV (HDTV), and high-speed fiber optics.

We expect to continue to actively seek strategic relationships and ventures with companies whose financial, marketing, operational or technological resources can accelerate the introduction of new technologies and penetration of new markets.

### *Customers*

The majority of our customers for our commercial products and services are satellite network integrators, large communications service providers and corporations requiring complex communications networks. Although in fiscal year 2000 we only had a limited number of commercial customers, the recent acquisition of the Satellite Networks Business expanded our growing commercial customer base both domestically and internationally.

Our Broadband Systems Division is currently developing and building products for three major broadband projects. We are producing the satellite control portion of the service provider gateways and two-way end-user terminals for the multi-billion dollar ASTROLINK Ka-band enterprise broadband satellite system currently under development. We are also developing and manufacturing the satellite modems and satellite modem termination systems for the WildBlue



Communications Ka-band satellite system, which is aimed at providing broadband Internet access to residences and small businesses. Further, we were recently selected by Connexion by Boeing<sup>SM</sup> to provide receiver/transmitter subsystems for broadband service for air travelers.

Significant commercial customers of our Satellite Networks Division in the last fiscal year include Gedas, Inc., Shoppers Drug Mart, Shanghai Stock Exchange, Telstra Corporation and Science Applications International Corporation (SAIC). Gedas (the IT division of Volkswagen), Shoppers Drug Mart (Canada's leading drug retailing chain) and the Shanghai Stock Exchange (China's largest equities market), all extended their contracts with us for SkyRelay data networks that perform critical application functions for their day to day business operations. Telstra, Australia's national telecommunications operator, placed significant expansion orders for Skylinx telecommunications terminals that allow them to deliver government mandated voice and data telecommunications services to the Australian outback. We continued our rollout, expansion and operation of the SAIC global broadband network for oil and gas exploration, based on the StarWire product line. In addition, we established two new Skylinx customers in Europe: KB Impuls Hellas in Greece, our service provider delivering corporate voice and data services in the Balkans and eastern Mediterranean, and Indra Espacio in Spain, a network integrator, deploying Skylinx terminals nationwide in Spain for an emergency communications network for the national Ministry of the Interior.

Significant commercial customers of our Satellite Ground Systems (SGS) Division include Telespazio, ASTROLINK, Space Imaging, Raytheon, and numerous international remote sensing customers. Telespazio is an investor in ASTROLINK and has a contract with ASTROLINK for the initial infrastructure Ka-band dedicated gateways. Our SGS unit is providing the Ka-band satellite access facility dedicated gateways to Telespazio for use

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on the ASTROLINK program. Numerous antenna systems of various sizes have been provided by our SGS unit to Space Imaging and to Raytheon for use in Space Imaging's IKONOS imaging system.

### *Sales and Marketing*

We primarily use direct sales channels to market and sell our products and services. Our marketing and sales activities are organized geographically in domestic and global markets. There is also a specialized sales force in North America specifically focused on sales for Immeon, our joint venture with Loral Skynet. In addition, the Satellite Networks Business provides us with an international salesforce and agent relationships in global and regional markets, including Europe, Asia and South America, which we are using to target foreign customers for our SkyRelay, Skylinx and StarWire commercial products. As a result of the acquisition, our sales and marketing group has grown to include approximately 20 persons, with approximately one half located outside the United States.

Our sales teams consist of regional sales directors, regional sales managers and sales engineers, who act as the primary interface to establish account relationships and determine technical requirements for the customers' networks. In addition to our sales force, we maintain a highly-trained service staff to provide technical product and service support to our customers. The sales cycle in the commercial satellite network market is lengthy and it is not unusual for a sale to take up to 18 months from the initial contact through the execution of the agreement. The sales process often includes several network design iterations, network demonstrations, and pilot networks consisting of a few sites.

In addition, we seek to develop key strategic relationships to market and sell our network products and services. We seek strategic relationships and partners based on many factors, including financial resources, technical capability, geographic location and market presence. For example, we developed strategic relationships with SeaTel Inc. and Satpool AB for the development of the Star Cruises customized broadband communications network. We worked closely with SeaTel and Satpool for the development and successful integration of the integral shipboard antennas for these networks.

We also obtain sales to new customers through referrals from existing customers, industry suppliers, and other sources such as participation in trade shows. Additionally, we direct our sales and marketing efforts to our strategic partners, primarily through our senior management relationships. In some cases a strategic ally may be the prime contractor for a system or network installation and will subcontract a portion of the project to us. In other cases, the strategic ally may recommend us as the prime contractor for the design and integration of the network.

We provide service, repair and technical support for our products and services. Through our sales teams and support services, we are constantly made aware of customers' needs and their use of products and services. Accordingly, a superior level of continuing customer service and support is integral to our objective of developing and maintaining long-term relationships with our customers. The majority of our service and support activities are provided by our field engineering team, systems engineers, and sales and administrative support personnel, both on-site at the customer's location and by telephone.

### *Competition*

The commercial communications industry is highly competitive and the level of competition is increasing. As a provider of commercial network products and designer of commercial network solutions in the United States and internationally, we compete with a number of wireless and ground-based communications service providers. Many of these competitors have significant competitive advantages, including strong customer relationships, more experience with regulatory compliance, greater financial and management resources, and control over central communications networks. To compete with these providers, we emphasize:

- the overall cost of our satellite networks, which includes both equipment and bandwidth costs, as compared to products offered by ground-based and other satellite service providers,
- the distinct advantages of satellite data networks,
- our end-to-end network implementation services, and

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- our network management services.

Our principal competitors in the supply of commercial satellite data networks are Hughes Network Systems, Gilat Satellite Networks Ltd., Motorola, Inc., EMS Technologies, Inc., Nera ASA, NEC Corporation, and STM Wireless, Inc., each of which offers a broad range of satellite communications products and services. In competing with these companies, we emphasize:

- the advanced and flexible features integrated into our products,
- our proven design solutions and network integration services for complex, customized network needs, and
- the increased bandwidth efficiency offered by our networks and products.

In addition, we compete in large part with Datron/Transco Inc. in the communications and tracking systems market.

In the future there will likely be formidable competition for high-speed broadband networking from several announced Ka-band satellite systems such as Spaceway, ASTROLINK, and Teledesic and the Ku-band Skybridge system. In many cases these systems will offer capabilities that are similar to those enabled by our VSAT networks.

## **Government Markets**

### *Market Opportunity*

Historically, the U.S. military has driven development of many new wireless technologies. This includes pioneering applications of satellite communications, digital radios, spread spectrum, and mobile wireless networks to connect widely dispersed operations. In many cases, these technologies have been transitioned to serve broader commercial markets. However, more recently, technology developed for commercial applications has been increasingly used for military markets as the military looks for more efficient ways to rapidly access the most advanced technology for warfare applications.

The break-up of the Soviet Union has caused the U.S. military to de-emphasize strategic missions and shift towards more localized tactical roles such as peacekeeping, counter-terrorism, counter-insurgency and drug enforcement. These missions create new demands for rapidly deployable, mobile connectivity. In addition, reductions in the defense budget have led to a numerically smaller, more technologically advanced military force. As a result, defense networks are increasingly built around advanced technologies and products providing high-speed transmissions of digital tactical data.

The market for defense applications of wireless technologies is growing at a higher rate than other parts of the defense market due in large measure to an increasing reliance on complex weapon and tactical data communication systems. Key reasons for this growth include:

- the need to communicate target information and the location of coalition and enemy forces to all military units in the battlefield,
- the need to maintain smaller, lighter, less expensive and better performing voice and data equipment for rapid deployment of ground troops and weapons systems to all parts of the world,
- the need to develop advanced networks capable of supporting modern military maneuvers and operations, and
- the development of new technologies that are increasing the utility of wireless communications networks by decreasing operating costs and increasing bandwidth utilization and capabilities.

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We believe that we are well positioned to take advantage of the trends in the defense industry. Our leadership in the UHF DAMA market and communications test equipment, and our recent selection as one of only three current U.S. government certified manufacturers of Link-16 MIDS terminals, provide an advantage for future United States and international procurements in these areas and a foundation from which to expand our sales opportunities. We intend to continue inserting our commercial technology and applying commercial products and standards into government applications to expand our traditional opportunities by both increasing capabilities and functionality of our government products as well as increasing the cost competitiveness of these offerings.

### *Products and Services*

We offer a broad range of products and services to the government communications market. We are a leading developer of UHF DAMA products and services for the U.S. military. In addition, we have recently developed highly sophisticated communications products for military applications such as the Link-16 MIDS terminal and our simulator and test products.

**UHF DAMA PRODUCTS.** UHF is a globally available U.S. satellite radio frequency for military communications. We have historically developed many advanced products for the U.S. military for use on the UHF frequency. Many of these products employ DAMA-based technology to efficiently manage the limited bandwidth represented by the UHF frequency. Our UHF DAMA products and services for the government market include:

**AN/PSC-5 Terminal is also known as the Spitfire.** The Spitfire is a battery-operated UHF satellite radio that Raytheon Systems Company builds for the U.S. Army. Spitfires are used to send encrypted voice, electronic mail, fax or other data via satellite. Our DAMA modem, which is a central component of the Spitfire, allows the radio operator to automatically request a portion of a satellite channel for a selected destination at the time the operator needs to send a message or transmit data. The Spitfire radio, combined with a portable satellite antenna, can be used to transmit secure voice or other data from almost anywhere in the world. We have provided over 7,000 DAMA modems to Raytheon for the Spitfire. A next-generation modem development is underway with a recent order for 5,000 modems for application in Raytheon's extended Skyfire and Shadowfire line of radios as well as other applications such as the Tomahawk missile program.

**Worldwide Network Control System** is the DAMA network management system originally developed and installed by us for the U.S. Air Force, which has recently been transitioned over to the U.S. Navy. The network consists of four sites worldwide that manage automatic DAMA access to UHF satellite channels. The network control computer developed by us automatically allocates satellite resources to subscriber terminals when a subscriber requests a voice or data

service. The network control system also keeps track of which satellite terminals are active and the capacity available for each satellite. We continue to offer technical support services to each network management site.

*MD-1324 is our stand-alone UHF DAMA modem product.* This modem can be used with many types of UHF satellite radios. The MD-1324 enables a satellite radio connected to external equipment to connect to a DAMA-based network. We have provided over 1,000 of these modems to U.S. and international forces in airborne, shipboard, and ground based applications. We also recently developed an upgrade to our MD-1324 product which adds an improved digital signal processor to enable better performance within the same package. The President of the United States and his staff rely on this upgraded modem onboard Air Force One for their UHF communications needs.

*VT-320 is our next generation UHF DAMA terminal product.* The VT-320 is a programmable, modular radio system providing flexible configuration of UHF satellite communications terminals and test equipment. Various configurations of this system utilize the same core module hardware for ship, shore, mobile, and airborne applications. This product line is intended for near-term applications throughout the U.S. services and in international military sales. The VT-320 is currently deployed in Italy and Australia and was recently chosen by the White House Communications Agency to maintain UHF communications support for the President of the United States and senior staff while on travel.

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*QDC-100 is our antenna combiner product.* Without this product, an aircraft loses communications if its single fixed antenna is pointed away from the satellite by aircraft position changes. This product is currently used on U.S. Navy P-3 Orion reconnaissance aircraft. Additional potential uses for this product include international and naval shipboard applications. Projected upgrades to our QDC-100 product are expected to provide a stand-alone satellite communications and antenna-combining solution in one piece of equipment for applications to the United States and international aircraft and surface ships which currently have multiple antennas.

*DOCCT/S is our trainer and simulator product.* By simulating signals, this product enables users to integrate and test UHF DAMA systems as well as train UHF DAMA users without actually accessing the DAMA network through the satellite. Access to this tool simplifies the user's activity by providing realistic communications experiences without the difficult and expensive process of obtaining satellite resources. An optional antenna system provides line of sight channel simulation for pre- and post-mission checkout of UHF DAMA terminals currently installed aboard a user's platform.

*LINK-16 Products.* Link-16 is a high performance broadband data link system selected by the U.S. government and international allied nations to support networked information transmission across a variety of air, sea and ground-based platforms. The Link-16 system is a wireless line-of-sight system used to communicate among ground and airborne military users without the use of a satellite. We were recently selected by the U.S. government as a new Link-16 terminal contractor, and only one of three current U.S. government qualified manufacturers of Link-16 MIDS terminals. The Link-16 market segment has significant technology and data certification barriers to entry, and the U.S. and international military portion of the Link-16 MIDS market is expected to total approximately 8,000 units and generate approximately \$2 billion in revenues for Link-16 providers over the next five to ten years. In addition, this market may experience growth from non-military applications and the development of other related Link-16 products and test equipment. Our Link-16 products include MIDS terminals, monitoring products and test products.

Multifunction Information Distribution System, or MIDS, terminals are designed to operate in a highly secure, high performance wireless networking system that allows military platforms, including fighter aircraft, ships, command and control aircraft, and ground-based units, to share critical real-time information. Platforms that employ MIDS/Link-16 within a theater of operation use it to first collect tactical information from each user's on-board sensors such as radars, early warning electronic warfare systems, and electronic identification systems and then disseminate a packaged set of information back to the other network users. By sharing this critical information, MIDS allows each user in a Link-16 network to maintain a real-time situational awareness picture of the entire battle space. Our MIDS terminals communicate in a Link-16 network using a complex, highly secure waveform. This waveform is designed to provide reliable communications to multiple users within a hostile electromagnetic environment. It employs many advanced techniques, such as direct sequence spread spectrum, frequency hopping, error detection and correction coding, and encryption, to ensure maximum robustness and jam resistance. The first U.S. platforms to receive MIDS will be the Navy F/A-18 fighter aircraft and the Air Force F-16 Fighting Falcon. Other platforms include U.S. ground-based Command and Control platforms, bomber aircraft, ships, submarines, the French Rafael fighter, the European EF-2000, Italy's AMX/Tornado fighters, and Spain's EF-18 fighters.

*Link-16 Monitoring and Test Products.* These include monitoring products such as the one we developed for Northrop Grumman's Link-16 Monitoring System which provides the capability to receive transmissions, complete with signal quality measures, for monitoring and analyzing a Link-16 wireless network. The Link-16 Simulator is another of our test products that allows the generation of low power Link-16 signals representing many different participants in the network for testing of Link-16 equipment in a dynamic, dense environment.

*Communication Navigation And Identification Environment Simulators.* These products are comprised of large systems designed to simulate realistic radio environments and are used to test how well surveillance or other radio systems work in the presence of various and changing communications signals. The simulation product generates a large number of very accurate radio frequency signals which can be radiated and received by the equipment under test or potentially directly inserted into multiple antenna ports. The U.S. military forces have found it critical to accurately and quickly transmit information during air combat situations, not only between various U.S. military component systems, but also among our allies. Historically, these systems needed to be tested while aircraft were in-flight simulated combat. ViaSat's Communications Environment Simulator (CES) allows the U.S. military and its

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allies to integrate, test, and evaluate communications systems without incurring the expense or danger of in-flight simulated combat testing. The U.S. military and major aerospace firms have awarded ViaSat more than \$60 million for the CES products and technology. For example, Lockheed Martin purchased this system to facilitate its internal system integration, testing, and weapon system support. In addition, GTE Inc. uses a product similar to CES for advanced weapon and sensor system testing and evaluation.

*Tactical Network And Security Products And Systems.* Our tactical network and security products and systems are used globally with many U.S. Department of Defense services and military forces. U.S. Special Forces rely on our products to conduct their covert operations and to communicate internally with voice and data. These products extend reliable data transfer across voice radios creating full mesh tactical Internets. We are continually improving these products to allow our customers to operate effectively over very low data rate channels.

*ViaSat Internet Protocol Crypto.* Our KIV-21 Crypto product encrypts classified information so that it can be transmitted over communications networks, ground-based or satellite. This product enables classified private networks to be set up and operated over unclassified networks such as the public Internet. KIV-21 Crypto was approved in 2000 by the National Security Agency for transmission of classified information classified up to Top Secret. Interesting applications that KIV-21 is especially suited for include coalition interoperability missions and “industrial security.” The industrial security application allows defense contractors to establish wide area secure networks between geographically separated development teams.

*INFOSEC Business.* The release of the KIV-21 has opened the door for other opportunities to provide high grade secure communications technology to the marketplace. We currently have relationships with several customers to embed high grade security into their products. This is a rapidly growing business that usually involves designing a “crypto module” to satisfy requirements specific to each customer. We have created a flexible and modular security architecture that can be adapted to diverse applications. This allows us to provide custom, cost effective solutions that ordinarily would be very expensive.

### *Customers*

The primary customers for our government products and services are the U.S. Department of Defense, international allied nations and large defense contractors. While most of our commercial customers are based in the United States, many of our large defense contractor customers have recently been leveraging our network design experience and the advanced capabilities of our products to sell communications products to international military forces. Examples of large defense contractors with which we have worked in the past include Raytheon Systems Company, Lockheed Martin Corporation, The Boeing Company, Northrop-Grumman Corporation and Marconi Communications, Elmer S.p.A.

### *Sales and Marketing*

We use both direct and indirect sales channels to sell our government products. We have approximately seven sales and marketing personnel who offer our government products and services. All of these sales personnel are located in the United States. International government sales are conducted through our U.S. sales personnel. Although many of our sales are generated from direct sales, we often sell our products directly to prime contractors responsible for developing the entire network system where our products are integrated and embedded into the system.

Our government sales teams consist of engineers, program managers, marketing managers and contract managers who work together to identify business opportunities, develop customer relationships, develop solutions for the customer’s needs, prepare proposals and negotiate a contractual arrangement. The period of time from initial contact through the point of product sale and delivery can take over three years for more complex product developments or for product developments including prototypes and demonstrations. Products already in production can usually be delivered to a customer between 90 to 180 days.

Our indirect sales are primarily generated from strategic relationships with prime contractors for large defense projects and referrals from existing large defense contractor customers.

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### *Competition*

The government communications industry is highly competitive and the level of competition is increasing. As a developer of communications products and services for the government markets in the United States and internationally, we compete with a variety of communications providers. Many of these companies have significant competitive advantages, including long standing customer relationships, more experience with meeting government standards, and greater financial and management resources. To compete effectively, we emphasize:

- our record of developing and producing products in relatively short periods of time,
- our products featuring advanced and flexible architectures,
- our proven network design solutions, and
- our competitive product and service prices.

Our principal competitors in the supply of communications products and services to the U.S. government include The Titan Corporation, Rockwell International Corporation, Raytheon Systems Company, Motorola, Inc., and BAE Systems. With respect to Link-16 products, our principal competitor is Data Link Solutions (DLS), a partnership between BAE Systems and Rockwell’s Collins division, which is also a U.S. government qualified Link-16 MIDS provider. EuroMIDS, a third provider of Link-16 MIDS products, which has been certified by the U.S. government, is a consortium among Thomson-CSF(France), MID S.p.A. (Italy), INDRA (Spain), and DaimlerChrysler AG (DASA-Germany). We compete with EuroMIDS in the international MIDS terminal market. We believe that we are competitively positioned among these companies because of our installed base of equipment, our existing contracts, our market lead time with respect to some DAMA product capabilities and our participation in both the network control and subscriber terminal markets.

### **Research and Development**

We believe that future success depends on the ability to adapt to the rapidly changing satellite communications and related signal processing and networking software environment. Therefore, the continued timely development and introduction of new products is essential in maintaining our competitive position. We develop most of our products in-house and currently have a research and development and engineering staff that includes over 385 engineers. A significant portion of our research and development efforts in the defense industry has generally been conducted in direct response to the specific requirements of a customer’s order and, accordingly, these amounts are included in the cost of sales when incurred and the related funding is included in revenues at that time. In

contrast, all of the research and development efforts of the Satellite Networks Business have been focused on the development of commercial products and services.

Our revenues for research and development funded by government and commercial customers during the fiscal year 1999 were approximately \$40.5 million, during fiscal year 2000 were approximately \$35.0 million, and during fiscal year 2001 were approximately \$79.0 million. In addition, we invested \$7.6 million, \$7.6 million and \$6.2 million in fiscal years 1999, 2000, and 2001, respectively, on independent research and development, which is not directly funded by a third party. Funded research and development contains a profit component and is therefore not directly comparable to independent research and development. As a government contractor, we also are able to recover a portion of our independent research and development expenses, consisting primarily of salaries and other personnel-related expenses, supplies and prototype materials related to research and development programs.

We have benefited from the Small Business Innovation Research program, known as SBIR, through which the government provides research and development funding for companies with fewer than 500 employees. As we have grown, our reliance on SBIR funding for research and development has significantly decreased. Upon completion of the recent acquisition of the Satellite Networks Business we became ineligible for SBIR funding due to the increased size of the combined entity. We cannot assure you that our loss of SBIR funding status will not materially harm our business. Nevertheless, we plan to build from this established technology base to further develop products for commercial applications.

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### **Manufacturing**

Our manufacturing objective is to produce high-quality products that conform to their specifications at the lowest possible manufacturing cost. We primarily utilize a range of contract manufacturers, based on the volume of the production, to reduce the costs of products and to support rapid increases in delivery rates when needed. As part of our manufacturing process, we conduct extensive testing and quality control procedures for all products before they are delivered to customers.

Contract manufacturers produce products for many different customers and are able to pass on the benefits of large scale manufacturing to their customers. These manufacturers are able to achieve high quality products with lower levels of costs by (1) exercising their high-volume purchasing power, (2) employing advanced and efficient production equipment and systems on a full-time basis, and (3) using a highly skilled workforce. Our primary contract manufacturers include Flextronics, Inc., SMS Technologies, Inc., SMTEK International and Spectral Response, Inc.

Our experienced management team facilitates the efficient contract manufacturing process through the development of strong relationships with a number of different contract manufacturers. By negotiating beneficial contract provisions and purchasing some of the equipment needed to manufacture our products, we retain the ability to move the production of our products from one contract manufacturing source to another if required. Our operations management has experience in the successful transition from in-house production to contract manufacturing. The degree to which we employ contract manufacturing depends on the maturity of the product. We intend to limit our internal manufacturing capacity to new product development support and customized products which need to be manufactured in strict accordance with a customer's specifications and delivery schedule. Therefore, our internal manufacturing capability for standard products has been, and is expected to continue to be, very limited, and we intend to rely on contract manufacturers for large scale manufacturing.

We also rely on outside vendors to manufacture specific components and subassemblies used in the production of our products. Some components, subassemblies and services necessary for the manufacture of our products are obtained from a sole supplier or a limited group of suppliers. In particular, Texas Instruments is a sole source supplier of digital signal processing chips, which are critical components used by us in substantially all of our products.

### **Backlog**

As of March 31, 2001, we had firm backlog of \$236.2 million, of which \$212.3 million was funded, compared to firm backlog of \$88.2 million at March 31, 2000, of which \$58.6 million was funded, not including options of \$53.3 million. Of the \$236.2 million in firm backlog at March 31, 2001, approximately \$93.2 million is expected to be delivered in fiscal year 2002, approximately \$46.9 million is expected to be delivered in fiscal year 2003 and the balance is expected to be delivered in fiscal year 2004 and thereafter. The increase in backlog results from growth in total awards for both commercial and defense products from \$119.3 million for fiscal year 2000 to \$238.8 million for fiscal year 2001. We include in our backlog only those orders for which we have accepted purchase orders. Our firm backlog as of March 31, 2001 does not include contract options of \$55.4 million. These options include \$43.8 million of Indefinite Delivery/Indefinite Quantity (IDIQ) contracts for our UHF DAMA satellite communications products and \$11.6 million of IDIQ contracts for our other products.

Backlog is not necessarily indicative of future sales. A majority of our contracts can be terminated at the convenience of the customer since orders are often made substantially in advance of delivery, and our contracts typically provide that orders may be terminated with limited or no penalties. In addition, purchase orders may present product specifications that would require us to complete additional product development. A failure to develop products meeting such specifications could lead to a termination of the related purchase order.

The backlog amounts as presented are comprised of funded and unfunded components. Funded backlog represents the sum of contract amounts for which funds have been specifically obligated by customers to contracts. Unfunded backlog represents future amounts that customers may obligate over the specified contract performance periods. Our customers allocate funds for expenditures on long-term contracts on a periodic basis. Our ability to

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realize revenues from contracts in backlog is dependent upon adequate funding for such contracts. Although funding of our contracts is not within our control, our experience indicates that actual contract fundings have ultimately been approximately equal to the aggregate amounts of the contracts.

### **Government Contracts**

A substantial portion of our revenues are generated from contracts and subcontracts with the U.S. Department of Defense and other federal government agencies. Many of our contracts are competitively bid and awarded on the basis of technical merit, personnel qualifications, experience and price. We also receive some contract awards involving special technical capabilities on a negotiated, noncompetitive basis due to our unique technical capabilities in special areas. Recently the Federal Acquisition Streamlining Act of 1994 has encouraged the use of commercial type pricing on dual use products. Our future revenues and income could be materially affected by changes in procurement policies, a reduction in expenditures for the products and services provided by us, and other risks generally associated with federal government contracts.

We provide products under federal government contracts that usually require performance over a period of several months to five years. Long-term contracts may be conditioned upon continued availability of congressional appropriations. Variances between anticipated budget and congressional appropriations may result in a delay, reduction or termination of these contracts. Contractors often experience revenue uncertainties with respect to available contract funding during the first quarter of the government's fiscal year beginning October 1, until differences between budget requests and appropriations are resolved.

Our federal government contracts are performed under cost-reimbursement contracts, time-and-materials contracts and fixed-price contracts. Cost-reimbursement contracts provide for reimbursement of costs and for payment of a fee. The fee may be either fixed by the contract or variable, based upon cost control, quality, delivery and the customer's subjective evaluation of the work. Under time-and-materials contracts, we receive a fixed amount by labor category for services performed and are reimbursed for the cost of materials purchased to perform the contract. Under a fixed-price contract, we agree to perform specific work for a fixed price and, accordingly, realize the benefit or detriment to the extent that the actual cost of performing the work differs from the contract price. Revenues generated from contracts with the federal government or our prime contractors for fiscal year 2001 were approximately 15% from cost-reimbursement contracts, approximately 1% from time-and-materials contracts and approximately 84% from fixed-price contracts of total revenues.

Our allowable federal government contract costs and fees are subject to audit by the Defense Contract Audit Agency. Audits may result in non-reimbursement of some contract costs and fees. While the government reserves the right to conduct further audits, audits conducted for periods through fiscal year 1997 have resulted in no material cost recovery disallowances for us.

Our federal government contracts may be terminated, in whole or in part, at the convenience of the government. If a termination for convenience occurs, the government generally is obligated to pay the cost incurred by us under the contract plus a pro rata fee based upon the work completed. When we participate as a subcontractor, we are at risk if the prime contractor does not perform its contract. Similarly, when we act as a prime contractor employing subcontractors, we are at risk if a subcontractor does not perform its subcontract.

Some of our federal government contracts contain options that are exercisable at the discretion of the customer. An option may extend the period of performance for one or more years for additional consideration on terms and conditions similar to those contained in the original contract. An option may also increase the level of effort and assign new tasks to us. In our experience, options are exercised more often than not.

Our eligibility to perform under our federal government contracts requires us to maintain adequate security measures. We have implemented security procedures that we believe are adequate to satisfy the requirements of our federal government contracts.

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### **Regulatory Environment**

Some of our products are incorporated into wireless communications systems that are subject to regulation domestically by the Federal Communications Commission and internationally by other government agencies. Although the equipment operators and not us are responsible for compliance with these regulations, regulatory changes, including changes in the allocation of available frequency spectrum and in the military standards which define the current networking environment, could materially adversely affect our operations by restricting development efforts by our customers, making current products obsolete or increasing the opportunity for additional competition. Changes in, or our failure to manufacture products in compliance with, applicable regulations could materially harm our business. In addition, the increasing demand for wireless communications has exerted pressure on regulatory bodies world wide to adopt new standards for these products, generally following extensive investigation and deliberation over competing technologies. The delays inherent in this government approval process have in the past caused and may in the future cause the cancellation, postponement or rescheduling of the installation of communication systems by our customers, which in turn may have a material adverse effect on the sale of our products to the customers.

We are also subject to a variety of local, state and federal government regulations relating to the storage, discharge, handling, emission, generation, manufacture and disposal of toxic or other hazardous substances used to manufacture our products. The failure to comply with current or future regulations could result in the imposition of substantial fines on us, suspension of production, alteration of our manufacturing processes or cessation of operations. To date, these regulations have not had a material effect on our business, as we have neither incurred significant costs to maintain compliance nor to remedy past noncompliance.

We believe that we operate our business in material compliance with applicable government regulations. We are not aware of any pending legislation that if enacted could materially harm our business.

In addition to the local, state and federal government regulations, we must comply with applicable laws and obtain the approval of the regulatory authorities of each foreign country in which it operates. The laws and regulatory requirements relating to satellite communications and other wireless communications systems vary from country to country. Some countries have substantially deregulated satellite communications and other wireless communications, while other countries maintain strict and often burdensome regulations. The procedure to obtain these regulatory approvals can be time-consuming and costly, and the terms of the approvals vary for different countries. In addition, in some countries there may be restrictions on the ability to interconnect satellite communications with ground-based communications systems.

### **Intellectual Property**

We rely on a combination of patents, trade secrets, copyrights, trademarks, service marks and contractual rights to protect our intellectual property. We attempt to protect our trade secrets and other proprietary information through agreements with our customers, suppliers, employees and consultants, and through other security measures. Although we intend to protect our rights vigorously, we cannot assure you that these measures will be successful. In addition, the laws of some

countries in which our products are or may be developed, manufactured or sold may not protect our products and intellectual property rights to the same extent as the laws of the United States.

While our ability to compete may be affected by our ability to protect our intellectual property, we believe that, because of the rapid pace of technological change in the satellite and other wireless communications industry, our technical expertise and ability to introduce new products on a timely basis will be more important in maintaining our competitive position than protection of our intellectual property and that patent, trade secret and copyright protections are important but must be supported by other factors such as the expanding knowledge, ability and experience of our personnel, new product introductions and frequent product enhancements. Although we continue to implement protective measures and intend to defend vigorously our intellectual property rights, we cannot assure you that these measures will be successful.

In the event of litigation to determine the validity of any third party's claims, the litigation could result in significant expense to us and divert the efforts of our technical and management personnel, whether or not the

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litigation is determined in our favor. The wireless communications industry has been subject to frequent litigation regarding patent and other intellectual property rights. Leading companies and organizations in the industry have numerous patents that protect their intellectual property rights in these areas. In the event of an adverse result of any litigation, we could be required to expend significant resources to develop non-infringing technology or to obtain licenses to the technology that is the subject of the litigation.

### **Employees**

As of March 31, 2001, we had 796 employees (of which 47 were temporary employees), including over 385 in research and development, 30 in sales and marketing, 243 in production, and 138 in corporate, administration and production coordination. None of our employees are covered by a collective bargaining agreement and we have never experienced any strike or work stoppage. We believe that our relations with our employees are good.

### **Factors That May Affect Future Performance**

#### *Our Success Depends On Our Ability to Grow Our Commercial Business*

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

#### *Our Reliance On U.S. Government Contracts Could Harm Our Business*

Approximately 76% of our revenues for fiscal year 2000 and approximately 38% of our revenues for fiscal year 2001 were derived from U.S. government applications. While the acquisition of the Satellite Networks Business has substantially reduced our dependence on U.S. government business, such business will continue to represent a significant portion of our revenues for the foreseeable future. U.S. government business exposes us to various risks, including:

- unpredictable contract or project terminations,
- reductions in government funds available for our projects due to government policy changes, budget cuts and contract adjustments,
- penalties arising from post-award contract audits,
- cost audits in which the value of our contracts may be reduced,
- higher-than-expected final costs, particularly relating to software and hardware development, for work performed under contracts where we commit to specified deliveries for a fixed price,
- limited profitability from cost-reimbursement contracts under which the amount of profit is limited to a specified amount, and
- unpredictable cash collections of unbilled receivables that may be subject to acceptance of contract deliverables by the customer and contract close-out procedures, including government approval of final indirect rates.

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

#### *A Significant Portion of Our Revenue is Derived From a Few of Our Contracts*

A small number of our contracts account for a significant percentage of our revenues. Historically, our largest revenue producing contracts have been U.S. government contracts related to our UHF DAMA technology, which generated approximately 33% of our revenues for our fiscal year 2000 and 9% of our revenues for fiscal year 2001. Our five largest contracts generated approximately 35% of our revenues for fiscal year 2000 and 37% of our revenues for fiscal year 2001. In the next few years, we expect to generate a significant portion of our revenues from broadband commercial projects, including ASTROLINK, WildBlue and Connexion by Boeing<sup>SM</sup>. Termination or disruption of these contracts, delays in the launch of their systems, or our inability to renew or replace these contracts when they expire, could materially harm our business and impair the value of our common stock.

In addition, one of our customers, ORBCOMM, was recently purchased in bankruptcy. We have approximately \$5.0 million worth of receivables and other assets currently at risk with ORBCOMM. We cannot make assurances that any portion of these assets will be recovered. If ORBCOMM does not assume our assets in bankruptcy or if ORBCOMM is unable to successfully restructure its operations, it would substantially limit our ability to recover these assets. If we are unable to recover these assets it will cause ViaSat to incur substantial losses, which would harm our business and impair the value of our common stock.

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

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

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

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

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### *Our Success Depends Upon the Growth of Commercial Wireless Communications Markets*

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

### *We Depend Heavily On the VSAT Market*

We derived approximately 24% of our product revenues for fiscal year 2000 and approximately 14% of our product revenues for fiscal year 2001 from sales of VSAT communications networks. While the market for VSAT communications networks and services has grown steadily since its inception in the mid-1980's, this market may not continue to grow or VSAT technology may be replaced by an alternative technology. A significant decline in this market or the replacement of VSAT technology by an alternative technology could materially harm our business and impair the value of our common stock.

### *Any Failure by Us to Efficiently and Effectively Manage Our Growth Could Adversely Affect Our Business*

Future expansion of our business may place strains on our personnel, financial and other resources. In order to successfully manage our growth we must identify, attract, motivate, train and retain highly skilled managerial, financial, engineering, business development, sales and marketing and other personnel. Competition for these types of personnel is intense. If we fail to efficiently manage our growth and compete for these types of personnel, it could adversely affect the quality of our services and, in turn, materially harm our business and impair the value of our common stock.

### *If the Selling Prices of Our Products Decrease, It Could Materially Harm Our Business*

The average selling prices of wireless communications products historically decline over product life cycles. In particular, we expect the average selling prices of our products to decline as a result of competitive pricing pressures and customers who negotiate discounts based on large unit volumes. We also expect that competition in this industry will continue to increase. To offset these price decreases, we intend to rely primarily on obtaining yield improvements and



corresponding cost reductions in the manufacturing process of existing products and on the introduction of new products with advanced features that can be sold at higher prices. However, we cannot assure you that we will be able to obtain any yield improvements or cost reductions or introduce any new products in the future. To the extent that we do not reduce costs or introduce new products in a timely manner, or our customers' products do not achieve market acceptance, it could materially harm our business and impair the value of our common stock.

#### *Our Development Contracts May be Difficult for Us to Comply With and May Expose Us to Damages*

The wireless communications industry is characterized by rapid technological change. We are often party to government and commercial contracts that involve the development of new products. We derived 46% of our revenues for fiscal year 2000 and 48% of our revenues for fiscal year 2001 from these development contracts. These contracts typically contain strict performance obligations and project milestones. We cannot assure you that we will comply with these performance obligations or meet these project milestones. If we are unable to comply with these performance obligations or meet these milestones, our customers may terminate these contracts and, under some circumstances, recover damages or other penalties from us. We are not currently, nor have we always been, in compliance with all outstanding performance obligations and project milestones. In the past, when we have not complied with the performance obligations or project milestones in a contract, generally, the other party has not elected to terminate the contract or seek damages from us. However, we cannot assure you that in the future other parties will not terminate their contracts or seek damages from us. If other parties elect to terminate their contracts or seek damages from us, it could materially harm our business and impair the value of our common stock.

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#### *We May Experience Losses From Our Fixed-price Contracts*

Approximately 79% of our revenues for fiscal year 2000 and 94% of our revenues for fiscal year 2001 were derived from contracts with fixed prices. We assume greater financial risk on fixed-price contracts than on other types of contracts since if we do not anticipate technical problems, estimate costs accurately or control costs during performance of a fixed-price contract, it may significantly reduce our net profit or cause a loss on the contract. We believe that a high percentage of our contracts will be at fixed prices in the future. Although we believe that we adequately estimate costs for fixed-price contracts, we cannot assure you that our estimates will be adequate or that substantial losses on fixed-price contracts will not occur in the future. If we are unable to address any of the risks described above, it could materially harm our business and impair the value of our common stock.

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

Our future growth depends on penetrating new markets, adapting existing satellite communications products to new applications, and introducing new communications products that achieve market acceptance. Accordingly, we are actively applying our communications expertise to design and develop new hardware and software products and enhance existing products. We expended \$7.6 million in fiscal year 2000 and \$6.2 million in fiscal year 2001 on research and development activities. Since we account for research and development as an operating expense, these expenditures will adversely affect our earnings in the near future. Additionally, even if adequately funded, our research and development program may not produce successful results, which could materially harm our business and impair the value of our common stock.

#### *Our Reliance On a Limited Number of Third Parties to Manufacture Our Products Exposes Us to Various Risks*

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

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

#### *The Markets We Serve are Highly Competitive and Our Competitors May Have Greater Resources Than Us*

The wireless communications industry generally is highly competitive and competition is increasing. In addition, because our industry is evolving and characterized by rapid technological change, it is difficult for us to predict whether, when and by whom new competing technologies, products or services may be introduced into our markets. Currently, we face substantial competition from domestic and international wireless and ground-based communications service providers in the commercial and government industries. In the commercial industry, our major competitors include Hughes Network Systems and Gilat Satellite Networks Ltd., which have captured a substantial portion of the overall VSAT market over the past several years. Motorola, Inc. is a competitor of ours in the commercial broadband market. In the government industry, our major competitors include Datalink Solutions (a joint venture of BAE Systems and Rockwell Collins), EuroMIDS, The Titan Corporation and Rockwell International Corporation. Many of our competitors and potential competitors have significant competitive

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advantages, including strong customer relationships, more experience with regulatory compliance, greater financial and management resources, and control over central communications networks. In addition, some of our customers continuously evaluate whether to develop and manufacture their own products and could

elect to compete with us at any time. Increased competition from any of these or other entities could materially harm our business and impair the value of our common stock.

#### *We Depend On a Limited Number of Key Employees Who Would be Difficult to Replace*

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

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

In order to position ourselves to take advantage of growth opportunities, we have made, and may continue to make, strategic acquisitions that involve significant risks and uncertainties such as our recent acquisition of the Satellite Networks Business. These risks and uncertainties include: (1) the difficulty in integrating newly-acquired businesses and operations in an efficient and effective manner, (2) the challenges in achieving strategic objectives, cost savings and other benefits expected from acquisitions, (3) the risk that our markets do not evolve as anticipated and that the technologies acquired do not prove to be those needed to be successful in those markets, (4) the potential loss of key employees of the acquired businesses, (5) the risk of diverting the attention of senior management from the operations of our business, and (6) the risks of entering markets in which we have less experience. Any failure to successfully integrate strategic acquisitions could harm our business and impair the value of our common stock.

#### *We Face Risks Associated With Our Acquisition Agreement With Scientific-Atlanta*

In connection with the recent acquisition of the Satellite Networks Business, we entered into an asset purchase agreement and other related agreements with Scientific-Atlanta. The acquisition agreement contemplates post-closing adjustments to the purchase price which may require us to pay additional amounts to Scientific-Atlanta after the closing or may require Scientific-Atlanta to pay additional amounts to us. Our financial results for the fiscal year 2001 stated in this annual report reflect our expected resolution with Scientific-Atlanta on post-closing purchase price adjustments. However, we cannot assure you that the final resolution with Scientific-Atlanta on purchase price adjustments will not deviate from the amounts reflected in this annual report. In addition, Scientific-Atlanta and us will have additional payment obligations, including indemnification obligations, under both the acquisition agreement and the related agreements. If our payment obligations significantly increase, or if Scientific-Atlanta fails or delays in making its required payments, it could materially harm our business and impair the value of our common stock.

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

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

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

#### *We Face Risks Associated with the California Energy Crisis.*

California is in the midst of an energy crisis that could disrupt our operations and increase our expenses. In the event of an acute power shortage, when power reserves for California fall below 1.5%, electricity providers have on some occasions implemented, and may in the future implement, rolling blackouts. If blackouts interrupt the power supply to any of our facilities, these facilities would temporarily be unable to continue operations. Any such interruption in our ability to continue operations would result in lost revenue. In addition, as a result of the energy crisis many of the electricity suppliers have raised their rates substantially. Although we recently contracted with a large third party provider of electricity for all of our electricity needs for our California facility at fixed rates for the next six years, we cannot assure you that this contract will not be revoked or held invalid by the State of California under future energy regulations. If this contract is revoked or held invalid by the State of California, our rates for electricity could rise significantly. As a result, the California energy crisis could materially harm our business and impair the value of our common stock.

#### *Adverse Regulatory Changes Could Impair Our Ability to Sell Products*

Our products are incorporated into wireless communications systems that must comply with various government regulations. Regulatory changes, including changes in the allocation of available frequency spectrum and in the military standards and specifications which define the current satellite networking environment, could materially harm our business by (1) restricting development efforts by us and our customers, (2) making our current products less attractive or obsolete, or (3) increasing the opportunity for additional competition. Changes in, or our failure to comply with, applicable regulations could materially harm our business and impair the value of our common stock. In addition, the increasing demand for wireless communications has exerted pressure on regulatory bodies world wide to adopt new standards for these products and services, generally following extensive investigation of and deliberation over competing technologies.

The delays inherent in this government approval process have caused and may continue to cause our customers to cancel, postpone or reschedule their installation of communications systems. This, in turn, may have a material adverse effect on our sales of products to our customers.

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

We anticipate that international sales will account for an increasing percentage of our revenues over the next several years. In addition, international sales represent a significant portion of the Satellite Networks Business' revenues. Many of these international sales may be denominated in foreign currencies. Since we do not currently engage in nor do we currently anticipate engaging in foreign currency hedging transactions, a decrease in the value of foreign currencies relative to the U.S. dollar could result in losses from transactions denominated in foreign currencies. This decrease in value could make our products less price-competitive.

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There are additional risks in conducting business internationally, including:

- unexpected changes in regulatory requirements,
- increased cost of localizing systems in foreign countries,
- increased sales and marketing and research and development expenses,
- availability of suitable export financing,
- timing and availability of export licenses,
- tariffs and other trade barriers,
- political and economic instability,
- challenges in staffing and managing foreign operations,
- difficulties in managing distributors,
- potentially adverse tax consequences, and
- potential difficulty in collecting accounts receivable.

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

*Our Operating Results Have Varied Significantly From Quarter to Quarter in the Past And, If They Continue to Do So, the Market Price of Our Common Stock Could be Impaired*

Our operating results have varied significantly from quarter to quarter in the past and may continue to do so in the future. As a result, we believe that period-to-period comparisons of our revenues are not necessarily meaningful and you should not rely upon them as indicators of future performance. It is likely that in one or more future quarters our results may fall below the expectations of analysts and investors. In this event, the trading price of our common stock would likely decrease. The factors that cause our quarter-to-quarter operating results to be unpredictable include:

- a complex and lengthy procurement process for most of our customers or potential customers,
- the difficulty in estimating costs over the life of a contract, which may require adjustment in future periods,
- the timing, quantity and mix of products and services sold,
- price discounts given to some customers,
- market acceptance and the timing of availability of our new products,
- the timing of customer payments for significant contracts,
- the failure to receive an expected order or a deferral of an order to a later period, and
- general economic and political conditions.

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If we are unable to address any of the risks described above, it could materially harm our business and impair the value of our common stock.

### *We Face Potential Product Liability Claims*

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

### *We Face Risks from the Uncertainty of Prevailing Economic Conditions.*

Current domestic and global economic conditions and economies are extremely uncertain. As a result, it is difficult to estimate the level of expansion for the economy. Even more difficult is estimating the growth in various parts of the economy, including the markets in which we participate. Since parts of our budgeting and forecasting are reliant on estimates of growth in the markets we serve, the current economic uncertainty renders estimates of future income and expenditures even more difficult than usual to formulate. The future direction of the overall domestic and global economies may have a significant impact on our overall financial performance and impair the value of our common stock.

### *The Loss of Small Business Innovation Research Funding Status Could Harm Our Business*

We have benefited from the Small Business Innovation Research program, known as SBIR, through which the government provides research and development funding for companies with fewer than 500 employees. As we have grown, our reliance on SBIR funding for research and development has significantly decreased. Upon completion of the acquisition of the Satellite Networks Business we became ineligible for SBIR funding due to the increased size of the combined entity. We cannot assure you that our loss of SBIR funding status will not materially harm our business.

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

As of March 31, 2001 our executive officers and directors and their affiliates beneficially owned an aggregate of approximately 23.3% of our common stock. Accordingly, these stockholders may be able to significantly influence the board of directors and the outcome of corporate actions requiring stockholder approval, such as mergers and acquisitions. These stockholders may exercise this ability in a manner that advances their best interests and not necessarily those of other stockholders. This ownership interest could also have the effect of delaying or preventing a change in control.

### *We Have Implemented Anti-takeover Provisions That Could Prevent an Acquisition of Our Business At a Premium Price*

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

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

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

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

Some of the information under “Item 1. Business,” “Item 7. Management’s Discussion and Analysis of Financial Condition and Results of Operations,” and elsewhere in this annual report are forward-looking statements. These forward-looking statements include, but are not limited to, statements about our plans, objectives, expectations and intentions and other statements contained in this annual report that are not historical facts. When used in this annual report, the words “expects,” “anticipates,” “intends,” “plans,” “believes,” “seeks,” “estimates” and similar expressions are generally intended to identify forward-looking statements. Because these forward-looking statements involve risks and uncertainties, there are important factors, including the factors discussed in this “Factors that May Affect Future Performance” section of the annual report, that could cause actual results to differ materially from those expressed or implied by these forward-looking statements.

### **Item 2. Facilities**

We are headquartered in facilities consisting of approximately 180,000 square feet in Carlsbad, California, under a lease expiring in 2009. We also operate in three facilities consisting of an aggregate of approximately 234,000 square feet located in Norcross, Georgia. These facilities are subject to leases expiring in 2003, with options to extend the terms through 2005. Additionally, we maintain offices or a sales presence in Arlington (VA), Auburn Hills (MI), Boston (MA), Melbourne (FL), United Kingdom, Australia, China, Chile, Canada and India. We anticipate operating additional regional sales offices in fiscal year 2002 and beyond.

### **Item 3. Legal Proceedings**

From time to time, we may be involved in litigation arising in the ordinary course of our business. We are not presently a party to any material legal proceedings.

**Item 4. Submission of Matters to a Vote of Security Holders**

No matters were submitted to a vote of security holders during the quarter ended March 31, 2001.

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**PART II**

**Item 5. Market for Registrant's Common Stock and Related Stockholder Matters**

Our common stock is traded on the Nasdaq National Market under the symbol "VSAT." The following table sets forth the range of high and low sales prices on the Nasdaq National Market of our common stock for the periods indicated, as reported by Nasdaq. Such quotations represent inter-dealer prices without retail markup, markdown or commission and may not necessarily represent actual transactions.

	<u>High</u>	<u>Low</u>
<b>Fiscal 2000</b>		
First Quarter	\$ 7.88	\$ 3.91
Second Quarter	11.13	6.66
Third Quarter	27.75	9.03
Fourth Quarter	52.50	21.50
<b>Fiscal 2001</b>		
First Quarter	\$35.50	\$15.00
Second Quarter	34.00	18.56
Third Quarter	23.44	12.00
Fourth Quarter	19.44	9.38

To date, we have neither declared nor paid any dividends on our common stock. We currently intend to retain all future earnings, if any, for use in the operation and development of our business and, therefore, do not expect to declare or pay any cash dividends on our common stock in the foreseeable future. As of June 21, 2001 there were 421 holders of record of our common stock.

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**Item 6. Selected Financial Data**

The following table provides selected financial information for us for each of the fiscal years in the five-year period ended March 31, 2001. The data as of and for each of the fiscal years in the five-year period ended March 31, 2001 have been derived from our audited financial statements and include, in the opinion of our management, all adjustments necessary to present fairly the data or those periods. You should consider the financial statement data provided below in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and notes which are included elsewhere in this annual report. All amounts shown are in thousands, except per share data.

	<b>Years Ended March 31,</b>				
	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>
<b>Statement of Income Data:</b>					
Revenues	\$47,715	\$64,197	\$71,509	\$75,880	\$164,352
Cost of revenues	33,102	40,899	44,182	45,557	112,900
Gross profit	14,613	23,298	27,327	30,323	51,452
Operating expenses:					
Selling, general and administrative	4,752	7,862	10,093	11,269	26,482
Independent research and development	5,087	7,631	7,639	7,590	6,173
Acquired in-process research and development	—	—	—	—	2,334
Amortization of intangible assets	—	—	—	—	3,789
Income from operations	4,774	7,805	9,595	11,464	12,674
Interest income (expense)	100	586	584	913	1,647
Other	—	—	—	—	(634)
Income before income taxes	4,874	8,391	10,179	12,377	13,687
Provision (benefit) for income taxes	1,702	3,104	3,883	4,471	3,422

Net income	\$ 3,172	\$ 5,287	\$ 6,296	\$ 7,906	\$ 10,265
Basic net income per share	\$ 0.33	\$ 0.34	\$ 0.39	\$ 0.49	\$ 0.48
Diluted net income per share	\$ 0.24	\$ 0.32	\$ 0.39	\$ 0.45	\$ 0.46
Shares used in computing basic net income per share	9,620	15,602	15,954	16,193	21,379
Shares used in computing diluted net income per share	13,284	16,350	16,345	17,422	22,537
<b>Balance Sheet Data:</b>					
Cash, cash equivalents and short-term investments	\$12,673	\$ 9,208	\$20,793	\$19,641	\$ 17,721
Working capital	20,406	24,276	31,298	38,169	84,334
Total assets	35,674	42,793	50,016	61,930	169,378
Notes payable, less current portion	1,428	1,544	1,243	336	—
Total stockholders' equity	23,619	29,610	36,847	45,997	132,807

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

### General

ViaSat was incorporated in 1986 and completed its initial public offering in 1996. We have achieved 15 consecutive years of revenue growth and 14 consecutive years of profitability. Historically, our revenues have been primarily generated from contracts with the U.S. Department of Defense. However, on April 25, 2000 we acquired the Satellite Networks Business which has substantially increased our revenue and helped accelerate the development of our commercial business. Our commercial business accounted for approximately 62% of revenues in fiscal year 2001 compared to 24% of revenues in fiscal year 2000.

To date, our ability to grow and maintain our revenues has depended on obtaining additional sizable contract awards. It is difficult to predict the probability and timing of obtaining these awards. Generally, revenues are recognized as services are performed using the percentage of completion method, measured primarily by costs incurred to date compared with total estimated costs at completion or based on the number of units delivered. We provide for anticipated losses on contracts by charges to income during the period in which they are first identified.

Our products and services are provided primarily through three types of contracts: fixed-price, time-and-materials and cost-reimbursement contracts. Historically, approximately 80.3% for fiscal year 1999, 79.1% for fiscal year 2000, and 94.0% for fiscal year 2001, of our revenues were derived from fixed-price contracts which require us to provide products and services under a contract at a stipulated price. Our proportion of fixed-price contracts has

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continued to increase as our commercial business has grown and as government customers are increasingly relying on fixed-price awards. The remainder of our annual revenue was derived from cost-reimbursement contracts, under which we are reimbursed for all actual costs incurred in performing the contract to the extent that such costs are within the contract ceiling and allowable under the terms of the contract, plus a fee or profit, and from time-and-materials contracts which reimburse us for the number of labor hours expended at an established hourly rate negotiated in the contract, plus the cost of materials utilized in providing such products or services.

Historically, a significant portion of our revenues has been generated from funded research and development contracts. The research and development efforts are conducted in direct response to the specific requirements of a customer's order and, accordingly, expenditures related to such efforts are included in cost of sales when incurred and the related funding (which includes a profit component) is included in revenues. Revenues for our funded research and development were approximately \$40.5 million or 56.6% of our total revenues during fiscal year 1999, \$35.0 million or 46.2% of our total revenues during fiscal year 2000 and \$79.0 million or 48.1% of our total revenues during fiscal year 2001.

We invest in independent research and development, which is not directly funded by a third party. We expense independent research and development costs as they are incurred. Independent research and development expenses consist primarily of salaries and other personnel-related expenses, supplies and prototype materials related to research and development programs. Independent research and development expenses were approximately 10.7% of revenues during fiscal year 1999, 10.0% of revenues during fiscal year 2000, and 3.8% of revenues during fiscal year 2001. As a government contractor, we are able to recover a portion of our independent research and development expenses pursuant to our government contracts.

### Results of Operations

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

	Years Ended March 31,		
	1999	2000	2001
Revenues	100.0%	100.0%	100.0%
Cost of revenues	61.8	60.0	68.7
Gross profit	38.2	40.0	31.3
Operating expenses:			
Selling, general and administrative	14.1	14.9	16.1

Independent research and development	10.7	10.0	3.8
Acquired in-process research and development	—	—	1.4
Amortization of intangible assets	—	—	2.3
	<hr/>	<hr/>	<hr/>
Income from operations	13.4	15.1	7.7
Income before income taxes	14.2	16.3	8.3
Provision for income taxes	5.4	5.9	2.1
Net income	8.8	10.4	6.2

### Fiscal Year 2001 Compared to Fiscal Year 2000

**Revenues.** Revenues increased 116.6% from \$75.9 million for fiscal year 2000 to \$164.4 million for fiscal year 2001. This increase was primarily due to the acquisition of the Satellite Networks Business as well as improvements in revenues generated by commercial broadband and other development programs including the multifunction information distribution system (MIDS). These increases were partially offset by a decrease in revenues resulting from completion of various production contracts.

**Gross Profit.** Gross profit increased 69.7% from \$30.3 million (40.0% of revenues) for fiscal year 2000 to \$51.5 million (31.3% of revenues) for fiscal year 2001. The increase in gross profit was primarily due to higher volumes related to the acquisition of the Satellite Networks Business and broadband development programs. The decrease as a percentage of revenues resulted from lower volumes of various high margin products and increased volumes of lower margin development projects.

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**Selling, General and Administrative Expenses.** Selling, general and administrative (SG&A) expenses increased 135.0% from \$11.3 million (14.9% of revenues) for fiscal year 2000 to \$26.5 million (16.1% of revenues) for fiscal year 2001. The increase in SG&A expenses was primarily due to the additional costs from the Satellite Networks Business, transition costs related to the acquisition, marketing of commercial products, increased business development, and additional administrative staffing to support our growth. SG&A expenses consist primarily of personnel costs and expenses for business development, marketing and sales, bid and proposal, finance, contract administration and general management. Some SG&A expenses are difficult to predict and vary based on specific government and commercial sales opportunities.

**Independent Research and Development.** Independent research and development (IR&D) expenses decreased 18.7% from \$7.6 million (10.0% of revenues) for fiscal year 2000 to \$6.2 million (3.8% of revenues) for fiscal year 2001. This decrease resulted from the increased awards of funded development contracts related to both our defense and commercial products.

**Acquired In-Process Research and Development.** The acquisition of the Satellite Networks Business was accounted for by the purchase method of accounting. In connection with this acquisition, a charge of \$2.3 million for purchased in-process research and development is included in our results. This charge represented the fair value of certain acquired research and development projects that were determined to have not reached technological feasibility as of the date of acquisition. The valuation of the in-process research and development related to specific products in the products areas of SkyRelay, SkyLynx and Mobile Asset Tracking. The level of completion was measured using the percentage of completion method. The total man months incurred on the project at the date of value was compared to the total man months expected for the entire project to derive the percent complete. The income approach was then applied to value the amount of in-process research and development.

**Amortization of Intangible Assets.** The acquisition of the Satellite Networks Business was accounted for by the purchase method of accounting. Intangible assets of \$25.0 million and goodwill of \$4.5 million are being amortized in connection with this acquisition. The intangible assets are being amortized over useful lives ranging from three to nine years. For the fiscal year ended March 31, 2001 amortization expense was \$3.8 million for the period from April 25, 2000 to March 31, 2000.

**Interest Expense.** Interest expense decreased from \$157,000 for fiscal year 2000 to \$78,000 for fiscal year 2001. Interest expense relates to loans for the purchase of capital equipment, which are generally three year variable-rate term loans. Total outstanding equipment loans were \$1.2 million at March 31, 2000 and \$336,000 at March 31, 2001.

**Interest Income.** Interest income increased from \$1.1 million for fiscal year 2000 to \$1.7 million for fiscal year 2001. This increase resulted from higher average invested cash balances and higher yields.

**Provision for Income Taxes.** Our effective income tax rate decreased from 36% for fiscal year 2000 to 25% for fiscal year 2001. The decrease relates primarily to increases in estimates of prior period research and development tax credits.

### Fiscal Year 2000 Compared to Fiscal Year 1999

**Revenues.** Revenues increased 6.1% from \$71.5 million for fiscal year 1999 to \$75.9 million for fiscal year 2000. This was primarily due to an increase in our commercial revenues as a result of our Science Applications International Corporation (SAIC) and Star Cruises Management Ltd. commercial broadband contracts, offset in part by lower revenues from volumes of selected UHF defense products.

**Gross Profit.** Gross profit increased 11.0% from \$27.3 million (38.2% of revenues) for fiscal year 1999 to \$30.3 million (40.0% of revenues) for fiscal year 2000. The increase in gross profit was primarily due to an improvement in our commercial margins as a result of greater commercial volumes and increased operating efficiencies in the commercial business.

**Selling, General and Administrative Expenses.** SG&A expenses increased 11.7% from \$10.1 million (14.1% of revenues) for fiscal year 1999 to \$11.3 million (14.9% of revenues) for fiscal year 2000. The increase in SG&A expenses reflects increased expenditures relating to the marketing of commercial products, increased business development and bid and proposal expenses for defense programs, and additional administrative staffing.

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*Independent Research and Development.* IR&D expenses remained at \$7.6 million for both fiscal years but decreased as a percentage of revenues (10.7% of revenues for fiscal 1999 and 10.0% for fiscal 2000.) The decrease as a percentage of revenues resulted in part from the award of funded development contracts related to our commercial products, and from the overall increase in sales.

*Interest Expense.* Interest expense decreased from \$250,000 for fiscal year 1999 to \$157,000 for fiscal year 2000. Interest expense relates to loans for the purchase of capital equipment, which are generally three year variable-rate term loans. Total outstanding equipment loans were \$2.5 million at March 31, 1999 and \$1.2 million at March 31, 2000.

*Interest Income.* Interest income increased from \$834,000 for fiscal year 1999 to \$1.1 million for fiscal year 2000. This increase resulted from higher average invested cash balances and higher yields, offset in part by a decrease in interest income from overdue government receivables from \$102,000 for fiscal year 1999 to \$45,000 for fiscal year 2000.

*Provision for Income Taxes.* Our effective income tax rate decreased from 38% for fiscal year 1999 to 36% for fiscal year 2000. The decrease relates primarily to greater than anticipated research and development tax credits in prior years.

## **Backlog**

As of March 31, 2001, we had firm backlog of \$236.2 million, of which \$212.3 million was funded. This compares to firm backlog of \$88.2 million at March 31, 2000, of which \$58.6 million was funded, not including options of \$53.3 million. Of the \$236.2 million in firm backlog at March 31, 2001, approximately \$93.2 million is expected to be delivered in fiscal year 2002, approximately \$46.9 million is expected to be delivered in fiscal year 2003 and the balance is expected to be delivered in fiscal year 2004 and thereafter. The increase in backlog results from growth in total awards for both commercial and defense products from \$119.3 million for fiscal year 2000 to \$238.8 million for fiscal year 2001. We include in our backlog only those orders for which we have accepted purchase orders. Our firm backlog does not include contract options of \$55.4 million. These options include \$43.8 million of Indefinite Delivery/Indefinite Quantity (IDIQ) contracts for our UHF DAMA satellite communications products and \$11.6 million of IDIQ contracts for our other products.

Backlog is not necessarily indicative of future sales. A majority of our contracts can be terminated at the convenience of the customer since orders are often made substantially in advance of delivery, and our contracts typically provide that orders may be terminated with limited or no penalties. In addition, purchase orders may present product specifications that would require us to complete additional product development. A failure to develop products meeting such specifications could lead to a termination of the related purchase order.

The backlog amounts as presented are comprised of funded and unfunded components. Funded backlog represents the sum of contract amounts for which funds have been specifically obligated by customers to contracts. Unfunded backlog represents future amounts that customers may obligate over the specified contract performance periods. Our 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 our contracts is not within our control, our experience indicates that actual contract fundings have ultimately been approximately equal to the aggregate amounts of the contracts.

## **Recent Accounting Pronouncement**

In June 1998, the Financial Accounting Standards Board issued 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 Financial Accounting Standards Board issued SFAS No. 137 "Accounting for Derivative Instruments and Hedging Activities-Deferral of the Effective Date of FASB Statement No.133," which delayed the effective date of SFAS No. 133 to fiscal years beginning after June 15, 2000. The Company is required to and will adopt SFAS No. 133 in the first quarter of fiscal 2002. The Company is still

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evaluating the impact of SFAS No. 133 and therefore cannot estimate the impact on its consolidated results of operations or financial position.

## **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 in fiscal year 2001 was \$9.9 million as compared to cash provided by operating activities in fiscal year 2000 of \$3.7 million. The increase in cash used in operating activities for fiscal year 2001 compared to the prior year was primarily due to an increase in accounts receivable and inventory due to the new business, partially offset by an increase in accounts payable.

Cash used in investing activities in fiscal year 2001 was \$65.3 million as compared to cash provided by investing activities in 2000 of \$11.0 million. During fiscal year 2001, we acquired the Satellite Networks Business for cash of \$57.9 million. In addition, we acquired \$7.5 million in equipment in fiscal 2001 compared to \$4.8 million of equipment in fiscal 2000, excluding the acquisition of the Satellite Networks Business.

Cash provided by financing activities in fiscal year 2001 was \$74.4 million as compared to cash used in financing activities in 2000 of \$25,000. This increase was primarily the result of completing a secondary public stock offering for \$73.2 million.

At March 31, 2000 we had \$19.6 million in cash and cash equivalents and short-term investments, \$38.2 million in working capital and \$1.2 million in long-term debt which consisted of equipment financing. At March 31, 2001, we had \$17.7 million in cash, cash equivalents and short-term investments, \$84.3 million in working capital and \$336,000 in equipment financing. We had no outstanding borrowings under our line of credit at March 31, 2001.

On June 21, 2001 we executed a one year Revolving/Term Loan Agreement of \$25 million from Union Bank of California, N.A. and Washington Mutual Bank, with Union Bank of California, N.A., as Administrative Agent.



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

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**Summarized Quarterly Data (Unaudited)**

The following financial information reflects all normal recurring adjustments which are, in the opinion of management, necessary for the fair statement of the results for the interim periods. Summarized quarterly data for fiscal years 2000 and 2001 are as follows (in thousands, except per share data):

	<u>1st Quarter</u>	<u>2nd Quarter</u>	<u>3rd Quarter</u>	<u>4th Quarter</u>
<b>2000</b>				
Revenues	\$17,035	\$17,017	\$18,041	\$23,787
Gross profit	7,326	7,459	7,548	7,990
Income from operations	2,788	2,736	2,616	3,324
Net income	1,805	1,804	2,007	2,290
Basic net income per share	0.11	0.11	0.12	0.14
Diluted net income per share	0.11	0.11	0.12	0.13
<b>2001</b>				
Revenues	\$36,626	\$39,730	\$43,093	\$44,903
Gross profit	12,647	12,364	13,627	12,814
Income from operations	2,486	3,201	3,255	3,732
Net income	1,955	2,434	2,715	3,161
Basic net income per share	0.10	0.11	0.12	0.14
Diluted net income per share	0.09	0.11	0.12	0.14

**Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

Our market risks at March 31, 2001, pursuant to Item 7A are minimal and therefore are not separately disclosed.

**Item 8. Financial Statements**

Our financial statements at March 31, 2001 and 2000, and for each of the three years in the period ended March 31, 2001, and the Report of PricewaterhouseCoopers LLP, Independent Accountants, are included in this annual report on pages F-1 through F-18.

**Item 9. Changes in and Disagreements With Accountants On Accounting and Financial Disclosure**

None.

**PART III**

**Item 10. Directors and Executive Officers of the Registrant**

The information required by this item will be set forth under the captions "Election of Directors" and "Executive Officers" in our definitive Proxy Statement to be filed with the Securities and Exchange Commission in connection with our 2001 Annual Meeting of Stockholders (the "Proxy Statement"), which is incorporated by reference herein.

**Item 11. Executive Compensation**

The information required by this item is incorporated by reference to the Proxy Statement under the heading "Executive Compensation."

**Item 12. Security Ownership of Certain Beneficial Owners and Management**

The information required by this item is incorporated by reference to the Proxy Statement under the heading "Security Ownership of Certain Beneficial Owners and Management."

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**Item 13. Certain Relationships and Related Transactions**

The information required by this item is incorporated by reference to the Proxy Statement under the heading "Certain Transactions."

## Item 14. Exhibits, Financial Statements, Schedules, and Reports On Form 8-K

	<b>Page Number</b>
(a) Documents filed as part of the report:	
(1) Report of Independent Accountants	F-1
Consolidated Balance Sheet as of March 31, 2000 and 2001	F-2
Consolidated Statement of Income for the years ended March 31, 1999, 2000 and 2001	F-3
Consolidated Statement of Cash Flows for the years ended March 31, 1999, 2000 and 2001	F-4
Consolidated Statement of Stockholders' Equity for the years ended March 31, 1999, 2000 and 2001	F-5
Notes to the Consolidated Financial Statements	F-6
(2) Schedule II — Valuation and Qualifying Accounts	

All other schedules are omitted because they are not applicable or the required information is shown in the financial statements or notes thereto.

(3) Exhibits

<b>Exhibit Numbers</b>	<b>Description of Exhibit</b>
2.1	Asset Purchase Agreement, dated January 18, 2000, by and between ViaSat, Inc. and Scientific-Atlanta, Inc.(1)
3.1	Bylaws.(2)
3.2	Second Amended and Restated Certificate of Incorporation of ViaSat, Inc.(12)
4.1	Form of Common Stock Certificate.(2)
10.1	Warrants to purchase shares of common stock of ViaSat, Inc. issued to Scientific-Atlanta, Inc.(3)
10.2	Form of Invention and Confidential Disclosure Agreement by and between ViaSat, Inc. and each employee of ViaSat, Inc. (2)
10.3	ViaSat, Inc. 1993 Stock Option Plan (the "1993 Stock Option Plan").(2)
10.4	First Amendment to the 1993 Stock Option Plan.(4)
10.5	Form of Incentive Stock Option Agreement under the 1993 Stock Option Plan.(2)
10.6	Form of Nonqualified Stock Option Agreement under the 1993 Stock Option Plan.(2)
10.7	Form of Incentive Stock Option Agreement under the 1996 Equity Participation Plan.(2)
10.8	Form of Nonqualified Stock Option Agreement under the 1996 Equity Participation Plan.(2)
10.9	The Amended and Restated 1996 Equity Participation Plan of ViaSat, Inc.(12)
10.10	The ViaSat, Inc. Employee Stock Purchase Plan, as amended.(9)
10.11	ViaSat, Inc. 401(k) Profit Sharing Plan.(2)
10.12	Loan Agreement, dated as of September 15, 1995, by and between ViaSat, Inc. and Union Bank.(2)
10.13	Waiver and First Amendment to Loan Agreement, dated as of March 31, 1997, by and between ViaSat, Inc. and Union Bank.(2)

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<b>Exhibit Numbers</b>	<b>Description of Exhibit</b>
10.14	Lease, dated March 24, 1998, by and between W9/LNP Real Estate Limited Partnership and ViaSat, Inc. (6155 El Camino Real, Carlsbad, California).(6)
10.15	Supply & Services Contract, dated June 2, 1996, by and between HCL Comnet Systems and Services Limited and ViaSat, Inc.(2)
10.16	Award/Contract, effective March 29, 1996, as amended, issued by Electronic Systems Center/MCK Air Force Materiel Command, USAF to ViaSat, Inc.(2)
10.17	Amendment of Award/Contract, effective February 24, 1997, issued by Electronic Systems Center/MCK Air Force Materiel Command, USAF to ViaSat, Inc.(4)
10.18	Award/Contract, effective October 2, 1995, issued by Electronic Systems Center/MCK Air Force Materiel Command, USAF to ViaSat, Inc.(2)
10.19	Award/Contract, effective September 29, 1993, as amended, issued by Information Technology Acquisition Center to ViaSat, Inc.(2)
10.20	Award Contract, effective September 21, 1994, as amended, issued by Technical Contract Management Office to ViaSat, Inc.(2)
10.21	Satellite Network and Ordering Agreement by and between ViaSat, Inc. and Science Applications International Corporation, dated October 12, 1999.(8)
10.22	Award/Contract, effective January 20, 2000, issued by Space and Naval Warfare Systems to ViaSat, Inc.(9)
10.23	Terminal Development, Production and Purchase Agreement by and between ASTROLINK International LLC and ViaSat, Inc., dated October 20, 2000.(12)(15)
10.24	Memorandum of Agreement between ASTROLINK International LLC and ViaSat, Inc., dated October 20, 2000.(12)(15)
10.25	Gateway Terminal Development, Production and Purchase Agreement by and between ASTROLINK International LLC



<u>/s/ MARK D. DANKBERG</u>	Chairman of the Board, President and Chief Executive Officer (Principal Executive Officer)	June 28, 2001
Mark D. Dankberg		
<u>/s/ RICHARD BALDRIDGE</u>	Executive Vice President, Chief Financial Officer and Chief Operating Officer (Principal Financial and Accounting Officer)	June 28, 2001
Richard Baldrige		
<u>/s/ ROBERT W. JOHNSON</u>	Director	June 28, 2001
Robert W. Johnson		
<u>/s/ JEFFREY M. NASH</u>	Director	June 28, 2001
Jeffrey M. Nash		
<u>/s/ B. ALLEN LAY</u>	Director	June 28, 2001
B. Allen Lay		
<u>/s/ JAMES F. BUNKER</u>	Director	June 28, 2001
James F. Bunker		
<u>/s/ WILLIAM A. OWENS</u>	Director	June 28, 2001
William A. Owens		

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**REPORT OF INDEPENDENT ACCOUNTANTS**

To the Board of Directors and Stockholders of ViaSat, Inc.:

In our opinion, the consolidated financial statements listed in the index appearing under Item 14(a)(1) appearing on page 36 present fairly, in all material respects, the financial position of ViaSat, Inc. and its subsidiaries at March 31, 2000 and 2001, and the results of their operations and their cash flows for each of the three years in the period ended March 31, 2001 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 14(a)(2) appearing on page 36 presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PRICEWATERHOUSECOOPERS LLP

San Diego, California

June 15, 2001, except for Note 14 for which the date is June 21, 2001

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**VIASAT, INC.**

**CONSOLIDATED BALANCE SHEETS**

	<b>As of March 31, 2000</b>	<b>As of March 31, 2001</b>
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$19,520,000	\$ 17,721,000
Short-term investments	121,000	—
Accounts receivable, net	26,268,000	64,105,000
Inventory	3,122,000	22,916,000

Deferred income taxes	1,813,000	1,792,000
Other current assets	2,167,000	13,416,000
Total current assets	53,011,000	119,950,000
Intangible assets, net	—	25,744,000
Property and equipment, net	8,164,000	19,888,000
Other assets	755,000	3,796,000
Total assets	\$61,930,000	\$169,378,000
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 8,934,000	\$ 20,310,000
Accrued liabilities	5,001,000	14,970,000
Current portion of notes payable	907,000	336,000
Total current liabilities	14,842,000	35,616,000
Notes payable	336,000	—
Other liabilities	755,000	604,000
Total long-term liabilities	1,091,000	604,000
Commitments and contingencies (Notes 10 & 11)		
Minority interest in consolidated subsidiary	—	351,000
Stockholders' equity:		
Series A, convertible preferred stock, \$.0001 par value; 5,000,000 shares authorized; no shares issued and outstanding at March 31, 2000 and 2001, respectively		
Common stock, \$.0001 par value, 100,000,000 shares authorized; 16,393,208 and 22,007,650 shares issued and outstanding at March 31, 2000 and 2001, respectively	2,000	2,000
Paid in capital	18,932,000	96,154,000
Retained earnings	27,063,000	37,328,000
Accumulated other comprehensive income (loss)	—	(677,000)
Total stockholders' equity	45,997,000	132,807,000
Total liabilities and stockholders' equity	\$61,930,000	\$169,378,000

See accompanying notes to the consolidated financial statements.

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VIASAT, INC.

CONSOLIDATED STATEMENTS OF INCOME

	Years Ended March 31,		
	1999	2000	2001
Revenues	\$71,509,000	\$75,880,000	\$164,352,000
Cost of revenues	44,182,000	45,557,000	112,900,000
Gross profit	27,327,000	30,323,000	51,452,000
<b>Operating expenses:</b>			
Selling, general and administrative	10,093,000	11,269,000	26,482,000
Independent research and development	7,639,000	7,590,000	6,173,000
Acquired in-process research and development	—	—	2,334,000
Amortization of intangible assets	—	—	3,789,000
Income from operations	9,595,000	11,464,000	12,674,000
<b>Other income (expense):</b>			
Interest income	834,000	1,070,000	1,725,000
Interest expense	(250,000)	(157,000)	(78,000)
Minority interest	—	—	(76,000)
Equity in loss of joint venture	—	—	(558,000)

Income before income taxes	10,179,000	12,377,000	13,687,000
Provision for income taxes	3,883,000	4,471,000	3,422,000
Net income	\$ 6,296,000	\$ 7,906,000	\$ 10,265,000
Basic net income per share	\$ 0.39	\$ 0.49	\$ 0.48
Diluted net income per share	\$ 0.39	\$ 0.45	\$ 0.46
Shares used in computing basic net income per share	15,953,696	16,193,000	21,379,015
Shares used in computing diluted net income per share	16,345,320	17,422,444	22,536,982

See accompanying notes to the consolidated financial statements.

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VIASAT, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

Years Ended March 31,

	1999	2000	2001
<b>Cash flows from operating activities:</b>			
Net income	\$ 6,296,000	\$ 7,906,000	\$ 10,265,000
<b>Adjustments to reconcile net income to net cash provided by (used in) operating activities:</b>			
Depreciation and amortization	2,853,000	3,292,000	9,065,000
Acquired in-process research and development	—	—	2,334,000
Deferred income taxes	(1,082,000)	843,000	(270,000)
Minority interest in consolidated subsidiary	—	—	351,000
Non-cash compensation	—	—	134,000
Tax benefit from exercise of stock options	82,000	68,000	521,000
<b>Increase (decrease) in cash resulting from changes in:</b>			
Accounts receivable	2,880,000	(10,092,000)	(21,018,000)
Inventory	2,162,000	(597,000)	(15,593,000)
Other assets	46,000	(1,686,000)	(13,447,000)
Accounts payable	(801,000)	5,180,000	10,246,000
Accrued liabilities	940,000	(1,026,000)	6,786,000
Other liabilities	(11,000)	(171,000)	(347,000)
Net cash provided by (used in) operating activities	13,365,000	3,717,000	(10,973,000)
<b>Cash flows from investing activities:</b>			
Acquisition of a business	—	—	(57,904,000)
Purchases of short-term investments, net	(8,870,000)	14,667,000	121,000
Purchases of property and equipment	(2,497,000)	(4,826,000)	(7,468,000)
Net cash (used in) provided by investing activities	(11,367,000)	9,841,000	(65,251,000)
<b>Cash flows from financing activities:</b>			
Proceeds from issuance of notes payable	1,092,000	—	—
Repayment of notes payable	(1,234,000)	(1,219,000)	(907,000)
Proceeds from issuance of common stock, net of issuance costs	859,000	1,176,000	75,351,000
Net cash provided by financing activities	717,000	(43,000)	74,444,000
Effect of exchange rate changes on cash	—	—	(19,000)
Net increase (decrease) in cash and cash equivalents	2,715,000	13,515,000	(1,799,000)
Cash and cash equivalents at beginning of year	3,290,000	6,005,000	19,520,000
Cash and cash equivalents at end of year	\$ 6,005,000	\$ 19,520,000	\$ 17,721,000
<b>Supplemental information:</b>			

Cash paid for interest	\$ 250,000	\$ 157,000	\$ 82,000
Cash paid for income taxes	\$ 4,263,000	\$ 4,349,000	\$ 5,491,000
<b>Supplemental noncash financing activity:</b>			
Issuance of warrants for acquisition of business	\$ —	\$ —	\$ 1,215,000

See accompanying notes to the consolidated financial statements.

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**VIASAT, INC.**

**CONSOLIDATED STATEMENTS 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, 1998	15,841,276	\$ 2,000	\$ 16,747,000	\$12,861,000		\$ 29,610,000	
Tax benefit from exercise of stock options			82,000			82,000	
Exercise of stock options	120,962		334,000			334,000	
Issuance of stock under Employee Stock Purchase Plan	106,168		525,000			525,000	
Net income				6,296,000		6,296,000	
Balance at March 31, 1999	16,068,406	\$2,000	17,688,000	19,157,000	—	36,847,000	
Tax benefit from exercise of stock options			68,000			68,000	
Exercise of stock options	228,448		681,000			681,000	
Issuance of stock under Employee Stock Purchase Plan	96,354		495,000			495,000	
Net income				7,906,000		7,906,000	
Balance at March 31, 2000	16,393,208	\$2,000	\$18,932,000	27,063,000	—	45,997,000	
Exercise of stock options	324,076		1,253,000			1,253,000	
Tax benefit from exercise of stock options			521,000			521,000	
Issuance of stock under Employee Stock Purchase Plan	66,216		911,000			911,000	
Issuance for stock for secondary public offering, net of issuance costs of \$864,000	5,224,150		73,188,000			73,188,000	
Issuance of warrants			1,215,000			1,215,000	
Non-cash compensation modification of stock options			134,000			134,000	
Net income				10,265,000		10,265,000	\$10,265,000
Foreign currency translation					\$(677,000)	(677,000)	(677,000)
Comprehensive income							\$ 9,588,000
Balance at March 31, 2001	22,007,650	\$ 2,000	\$ 96,154,000	\$37,328,000	\$(677,000)	\$132,807,000	

See accompanying notes to the consolidated financial statements.

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**Note 1 — The Company and a Summary of Its Significant Accounting Policies**

*The Company*

ViaSat, Inc. (the “Company”) designs, produces and markets advanced broadband digital satellite communications and other wireless networking and signal processing equipment.

*Principles of Consolidation*

The Company’s 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.

*Management Estimates and Assumptions*

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

and best available information and actual results could differ from those estimates. Significant estimates made by management include estimates of our warranty obligations.

#### *Cash Equivalents*

Cash equivalents consist of highly liquid investments with original maturities of 90 days or less.

#### *Short-term Investments*

At March 31, 2000 and 2001, the Company held investments in investment grade debt securities with various maturities. Management determines the appropriate classification of its investments in debt securities at the time of purchase and has designated all of its investments as held to maturity. The Company's investments in these securities as of March 31, 2000 and 2001 totaled \$16,769,000 and \$11,964,000, respectively. The Company has included \$16,648,000 and \$11,964,000 of these securities in cash and cash equivalents as of March 31, 2000 and 2001, respectively, as they have original maturities of less than 90 days. The remaining \$121,000 as of March 31, 2000 has been classified as short-term investments.

#### *Revenue Recognition*

The majority of the Company's revenues are derived from services performed under a variety of contracts including cost-plus-fixed fee, fixed-price, and time and materials contracts. Revenues from the United States Department of Defense and its prime contractors amounted to \$65,478,000, \$53,859,000 and \$62,410,000 for the years ended March 31, 1999, 2000 and 2001, respectively. Revenues from commercial customers amounted to \$3,836,000, \$18,409,000 and \$101,942,364 for the years ended March 31, 1999, 2000 and 2001 respectively. The Company's five largest contracts (by revenues) generated approximately 61%, 35% and 36% of the Company's total revenues for the fiscal year ended March 31, 1999, 2000 and 2001, respectively.

Generally, revenues are recognized as services are performed using the percentage of completion method, measured primarily by costs incurred to date compared with total estimated costs at completion or based on the number of units delivered. The Company provides for anticipated losses on contracts by a charge to income during the period in which they are first identified.

Contract costs on Government contracts, including indirect costs, are subject to audit and negotiations with Government representatives. These audits have been completed and agreed upon through fiscal year 1997. Contract revenues and accounts receivable are stated at amounts which are expected to be realized upon final settlement.

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#### *Unbilled Accounts Receivable*

Unbilled receivables consist of costs and fees earned and billable on contract completion or other specified events. The majority of unbilled receivables is expected to be collected within one year.

#### *Concentration of Risk*

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash equivalents, short-term investments, and trade accounts receivable which are generally not collateralized. The Company limits its exposure to credit loss by placing its cash equivalents and short-term investments with high credit quality financial institutions and investing in high quality short-term debt instruments. Concentrations of credit risk with respect to receivables are generally limited because the Company performs ongoing credit evaluations. The Company also maintains reserves for potential credit losses, which it considers adequate to cover such losses. See Note 11 related to ORBCOMM.

The Company relies on a limited number of contract manufacturers to produce its products.

#### *Inventory*

Inventory is valued at the lower of cost or market, cost being determined by the first-in, first-out method.

#### *Independent research and development*

Independent research and development, which is not directly funded by a third party, is expensed as incurred. Independent research and development expenses consist primarily of salaries and other personnel-related expenses, supplies and prototype materials related to research and development programs.

#### *Software development*

Software development costs incurred from the time technological feasibility is reached until the product is available for general release to customers are capitalized and reported at the lower of cost or net realizable value. Through March 31, 2001, \$3.2 million has been incurred and no amounts have been amortized to date, on software development products subsequent to reaching technological feasibility. Once the product is available for general release, the software development costs will be amortized on a straight line basis over their estimated useful lives.

#### *Property and Equipment*

Equipment, computers, and furniture and fixtures are recorded at cost, and depreciated over estimated useful lives of three to seven years using the straight-line method. Additions to property and equipment together with major renewals and betterments are capitalized. Maintenance, repairs and minor renewals and betterments are charged to expense. When assets are sold or otherwise disposed of, the cost and related accumulated depreciation or amortization are removed from the accounts and any resulting gain or loss is recognized.

#### *Intangible Assets and Goodwill*



Intangible assets and goodwill are recorded at cost and amortized using the straight-line method over their estimated useful lives, which currently range from three to nine years.

#### *Long-lived Assets*

The Company assesses potential impairments to its long-lived assets and certain identifiable intangibles when there is evidence that events or changes in circumstances have made recovery of the asset's carrying value unlikely. An impairment loss would be recognized when the sum of the expected future undiscounted net cash flows is less than the carrying amount of the asset and would be recorded as a reduction in the carrying value of the related asset and a charge to results of operations. No such impairment losses have been identified by the Company.

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#### *Warranty Reserves*

The Company provides limited warranties on certain of its products for periods of up to three years. The Company records warranty reserves when products are shipped based upon an estimate of total warranty costs, with amounts expected to be incurred within twelve months classified as a current liability.

#### *Income Taxes*

Current income tax expense is the amount of income taxes expected to be payable for the current year. A deferred income tax asset or liability is established for the expected future tax consequences resulting from differences in the financial reporting and tax bases of assets and liabilities and for the expected future tax benefit to be derived from tax credit and loss carryforwards. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more likely than not that some portion or all of the deferred tax assets will not be realized. Deferred income tax expense (benefit) is the net change during the year in the deferred income tax asset or liability.

#### *Stock Split*

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

#### *Stock Based Compensation*

The Company measures compensation expense for its stock-based employee compensation plans using the intrinsic value method and provides pro forma disclosures of net income and earnings per share as if the fair value method had been applied in measuring compensation expense.

#### *Earnings Per Share*

Basic earnings per share is computed based upon the weighted average number of common shares outstanding during the period. Diluted earnings per share is based upon the weighted average number of common shares outstanding and dilutive common stock equivalents during the period. Common stock equivalents include options granted under the Company's stock option plans and warrants which are included in the earnings per share calculations using the treasury stock method and common shares expected to be issued under the Company's employee stock purchase plan.

#### *Foreign Currency*

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 accumulated other comprehensive income in the consolidated statements stockholders' equity.

#### *Fair Value of Financial Instruments*

At March 31, 2001, the carrying amounts of the Company's financial instruments, including cash equivalents, short-term investments, trade receivables, accounts payable and notes payable, approximated their fair values due to their short-term maturities.

#### *Segment Reporting*

Operating segments are determined consistent with the way that management organizes and evaluates financial information internally for making operating decisions and assessing performance. The Company is organized

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primarily on the basis of products with commercial and defense communication applications, represented by ViaSat Satellite Networks which operates primarily in the commercial market and Communication Systems Group which operates primarily in the defense market. As new areas of our business grow, such as broadband systems, additional operating segments may be reported in the future.

#### *Recent Accounting Pronouncements*

In June 1998, the Financial Accounting Standards Board issued 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 Financial Accounting Standards Board issued SFAS No. 137 "Accounting for Derivative Instruments and Hedging Activities-Deferral of the Effective Date of FASB Statement No. 133," which delayed the effective date of SFAS No. 133 to fiscal years beginning after June 15, 2000. The Company is required to and will adopt SFAS No. 133 in the first quarter of fiscal 2002. The Company is still evaluating the impact of SFAS No. 133 and therefore cannot estimate the impact on its consolidated results of operations or financial position.

## Note 2 — Secondary Public Stock Offering and Acquisition of Satellite Networks Business

On April 24, 2000, we completed a secondary public stock offering for the sale of 5,224,150 shares of common stock for net proceeds of approximately \$73.2 million.

On April, 25, 2000, we completed the acquisition of the satellite networks business (the "Satellite Networks Business") of Scientific-Atlanta, Inc. for an aggregate purchase price of approximately \$57.9 million in cash (which reflects post-closing adjustments to the purchase price in accordance with the asset purchase agreement), plus warrants to purchase 100,000 shares of common stock valued at \$1.2 million. The warrants are currently vested and will expire April 25, 2002. The warrants are exercisable in increments of 25,000 shares at prices of \$26.25, \$31.25, \$36.25 and \$41.25 per share.

The Satellite Networks Business is a DAMA-based VSAT supplier with additional product lines addressing the non-DAMA VSAT market, the gateway market and the telemetry and antenna systems market.

The acquisition has been accounted for by the purchase method of accounting as defined in Accounting Principles Board Opinion No. 16, and accordingly, the operating results of the Satellite Networks Business have been included in the Company's financial statements from the date of acquisition. The purchase price of the acquisition has been allocated to the fair value of the tangible and intangible assets acquired and liabilities assumed of the Satellite Networks Business. The purchase price allocation for certain assets is preliminary and further refinements are likely to be made on the completion of final valuation studies. In connection with this acquisition, a charge of \$2.3 million for acquired in process research and development is included in our results, which represents the fair value of certain acquired research and development projects that were determined to have not reached technological feasibility and have no alternative future use. The estimated fair value of assets acquired and liabilities assumed, which is subject to further refinement, is as follows:

Accounts receivable	\$17,152,000
Inventory	4,353,000
Property, plant and equipment	9,540,000
Intangible assets including goodwill	29,533,000
Acquired in-process research and development	2,334,000
Other assets	556,000
Liabilities	(4,349,000)
	<hr/>
Total	\$59,119,000
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The following unaudited pro forma condensed combined financial information gives effect to the acquisition as though it had occurred on April 1, 1999. Because the Satellite Networks Business had been operated as a division of Scientific-Atlanta, its results as incorporate into the pro forma financial information may not reflect those that would have resulted had it operated as an independent entity or as a part of ViaSat.

The pro forma condensed combined financial information combines information from ViaSat's income statement for the fiscal years ended March 31, 2000 and 2001 with the Satellite Networks Business' income statement for the twelve month periods ended March 31, 2000 and 2001.

	Years Ended March 31,	
	2000	2001
	(unaudited)	(unaudited)
Revenues	\$162,280,000	\$171,735,000
Net income	107,000	12,471,000
Earnings per share		
Basic	.01	.57
Diluted	.00	.54
Weighted average number of shares*		
Basic	21,417,150	21,736,833
Diluted	22,646,594	22,894,800

\* The weighted average number of shares includes 5,224,150 shares issued in connection with the secondary public offering.

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

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**Note 3 — Composition of Certain Balance Sheet Captions**

	<b>As of March 31,</b>	
	<b>2000</b>	<b>2001</b>
Cash and cash equivalents:		
Investments in debt securities	\$16,648,000	\$ 11,964,000
Cash	2,872,000	5,757,000
	<u>\$19,520,000</u>	<u>\$ 17,721,000</u>
Accounts receivable, net:		
Billed	\$13,031,000	\$ 45,099,000
Unbilled	13,237,000	19,322,000
Allowance for doubtful accounts	—	(316,000)
	<u>\$26,268,000</u>	<u>\$ 64,105,000</u>
Inventory:		
Raw materials	\$ 2,263,000	\$ 11,657,000
Work in process	484,000	7,770,000
Finished goods	375,000	3,489,000
	<u>\$ 3,122,000</u>	<u>\$ 22,916,000</u>
Intangible assets:		
Technology	—	\$ 9,845,000
Contracts and relationships	—	9,686,000
Acquired work force	—	5,477,000
Goodwill	—	4,525,000
	<u>—</u>	<u>29,533,000</u>
Less accumulated amortization	—	(3,789,000)
	<u>—</u>	<u>\$ 25,744,000</u>
Property and equipment:		
Machinery and equipment	\$11,602,000	\$ 24,884,000
Computer equipment	5,642,000	8,585,000
Furniture and fixtures	877,000	1,651,000
	<u>18,121,000</u>	<u>35,120,000</u>
Less accumulated depreciation	(9,957,000)	(15,232,000)
	<u>\$ 8,164,000</u>	<u>\$ 19,888,000</u>
Accrued liabilities:		
Current portion of warranty reserve	\$ 799,000	\$ 1,291,000
Accrued vacation	1,188,000	2,531,000
Accrued bonus	1,004,000	1,828,000
Accrued 401(k) matching contribution	917,000	1,773,000
Collections in excess of revenues	694,000	6,196,000
Other	399,000	1,351,000
	<u>\$ 5,001,000</u>	<u>\$ 14,970,000</u>

**Note 4 — Notes Payable**

	<b>As of March 31,</b>	
	<b>2000</b>	<b>2001</b>
Bank installment loan, with a maturity date of September 2001, total monthly payment of \$56,000 with interest rates ranging between 8.75% and 9.85%, collateralized by equipment	<u>\$1,243,000</u>	<u>\$ 336,000</u>

Less current portion

(907,000)	(336,000)
<u>\$ 336,000</u>	<u>\$ 0</u>

**Note 5 — Common Stock and Options**

In July 1993, the Company adopted the 1993 Stock Option Plan (the “Plan”) which authorizes 1,467,000 shares to be granted no later than July 2003. In November 1996, the Plan was terminated and replaced by the ViaSat, Inc. 1996 Equity Participation Plan (the “1996 Equity Participation Plan”). No options have been issued under the Plan since July 1996.

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In November 1996, the Company adopted the 1996 Equity Participation Plan. The 1996 Equity Participation Plan provides for the grant to executive officers, other key employees, consultants and non-employee directors of the Company a broad variety of stock-based compensation alternatives such as nonqualified stock options, incentive stock options, restricted stock and performance awards. In September 2000, the Company amended the 1996 Equity Participation Plan to increase the maximum number of shares reserved for issuance under this plan from 2,500,000 shares to 6,100,000 shares. As of March 31, 2001, the Company had granted options to purchase 4,525,466 shares of common stock under this plan with vesting terms of three to five years and are exercisable for up to ten years from the grant date or up to five years from the date of grant for a ten percent owner.

In November 1996, the Company adopted the ViaSat, Inc. Employee Stock Purchase Plan (the “Employee Stock Purchase Plan”) to assist employees in acquiring a stock ownership interest in the Company and to encourage them to remain in the employment of the Company. The Employee Stock Purchase Plan is intended to qualify under Section 423 of the Internal Revenue Code. A maximum of 1,000,000 shares of common stock are reserved for issuance under the Employee Stock Purchase Plan. The Employee Stock Purchase Plan permits eligible employees to purchase common stock at a discount through payroll deductions during specified six-month offering periods. No employee may purchase more than \$25,000 worth of stock in any calendar year. The price of shares purchased under the Employee Stock Purchase Plan is equal to 85% of the fair market value of the common stock on the first or last day of the offering period, whichever is lower. As of March 31, 2001, the Company has issued 372,942 shares of common stock under this plan.

Transactions under the Company’s stock option plans are summarized as follows:

	Number of Shares	Exercise Price Per Share	Weighted Average Exercise Price Per Share
Outstanding at March 31, 1998	1,313,368	\$ .17 – 9.91	\$ 4.47
Options granted	648,000	3.69 – 8.54	6.55
Options canceled	(219,816)	.68 – 7.77	5.41
Options exercised	(120,960)	.17 – 7.07	2.78
Outstanding at March 31, 1999	1,620,592	.24 – 9.91	5.30
Options granted	851,600	4.25 – 43.82	12.98
Options canceled	(64,942)	2.05 – 7.77	6.67
Options exercised	(228,448)	.24 – 9.91	3.06
Outstanding at March 31, 2000	2,178,802	.68 – 43.82	8.50
Options granted	2,136,800	9.95 – 27.94	20.42
Options canceled	(165,383)	3.69 – 26.16	14.00
Options exercised	(324,075)	.68 – 8.33	3.82
Outstanding at March 31, 2001	3,826,144	2.05 – 43.82	15.31

The following table summarizes all options outstanding and exercisable by price range as of March 31, 2001:

Range of Exercise Prices	Number Outstanding	Weighted Average Remaining Contractual Life—years	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price
\$ 2.05 – 5.38	496,980	6.26	\$ 4.46	294,650	\$ 4.39
5.78 – 6.38	441,176	7.24	6.10	253,175	6.23
7.02 – 7.77	419,138	7.33	7.65	216,703	7.65
8.07 – 14.97	386,700	8.97	12.23	61,135	8.61
15.09 – 21.83	293,100	9.19	17.33	0	0.00
22.03 – 22.03	1,497,350	9.49	22.03	0	0.00
22.10 – 35.63	277,700	8.75	25.66	68,622	25.84
36.35 – 36.35	2,000	8.88	36.35	667	36.35
36.56 – 36.56	6,000	8.91	36.56	2,000	36.56

43.82 – 43.82	6,000	3.93	43.82	2,100	43.82
2.05 – 43.82	3,826,144	8.43	15.31	899,052	7.81

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On September 1, 2000 the Company accelerated the vesting of 7,667 outstanding options granted under the 1996 Equity Participation Plan to one individual. Non-cash compensation of \$134,000 related to this modification of vesting was recorded in the fiscal year ended March 31, 2001.

**Note 6 — Shares Used in Earnings Per Share Calculations**

	Years Ended March 31,		
	1999	2000	2001
Weighted average common shares outstanding used in calculating basic net income per share	15,953,696	16,193,000	21,379,015
Weighted average options to purchase common stock as determined by application of the treasury stock method	370,904	1,223,170	1,148,430
Employee Stock Purchase Plan equivalents	20,720	6,274	9,537
Shares used in computing diluted net income per share	16,345,320	17,422,444	22,536,982

Antidilutive shares and warrants excluded from the calculation were 420,735, 30,420, and 1,262,564 shares for the fiscal years ended March 31, 1999, 2000, and 2001 respectively.

**Note 7 — Pro Forma Earnings Per Share**

The fair values of options granted during the years ended as reported below were estimated at the date of grant using a Black-Scholes option pricing model with the following weighted average assumptions:

	Employee Stock Options			Employee Stock Purchase Plan		
	1999	2000	2001	1999	2000	2001
Expected life (in years)	3.50-5.00	4.99-5.00	4.86	0.50	0.50	0.50
Risk-free interest rate	4.46-5.42%	5.69%	5.42%	5.66-6.22%	5.55%	5.70-6.24%
Expected volatility	50.00%	71.00%	125.00%	50.00%	71.00%	125.00%
Expected dividend yield	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

The weighted average estimated fair value of employee stock options granted during 1999, 2000, and 2001 was \$6.27, \$16.61, and \$18.69 per share, respectively. The weighted average estimated fair value of shares granted under the Employee Stock Purchase Plan during 1999, 2000 and 2001 was \$4.00, \$5.43 and \$9.23 per share, respectively.

For purposes of pro forma disclosures, the estimated fair value of options is amortized to expense over the vesting period. The Company's pro forma information for the years ended March 31, 1999, 2000 and 2001 are as follows:

	Year Ended March 31,		
	1999	2000	2001
Net income as reported	\$6,296,000	\$7,906,000	\$10,265,000
Pro forma net income	5,157,000	5,974,000	952,000
Pro forma basic earnings per share	0.65	0.74	0.04
Pro forma diluted earnings per share	0.65	0.70	0.04

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**Note 8 — Income Taxes**

The provision for income taxes includes the following:

	Years Ended March 31,		
	1999	2000	2001
Current tax provision			
Federal	\$ 3,977,000	\$2,947,000	\$2,629,000
State	988,000	681,000	—
Foreign	—	—	1,063,000
	<u>4,965,000</u>	<u>3,628,000</u>	<u>3,692,000</u>
Deferred tax (benefit) provision			
Federal	(863,000)	680,000	(137,000)
State	(219,000)	163,000	(80,000)
Foreign	—	—	(53,000)
	<u>(1,082,000)</u>	<u>843,000</u>	<u>(270,000)</u>
Total provision for income taxes	<u>\$ 3,883,000</u>	<u>\$4,471,000</u>	<u>\$3,422,000</u>

Significant components of the Company's deferred tax assets and liabilities are as follows:

	As of March 31,	
	2000	2001
Deferred tax assets:		
Warranty reserve	\$ 418,000	\$ 347,000
Inventory	820,000	744,000
Accrued vacation	374,000	559,000
State income taxes	231,000	21,000
Depreciable, amortizable and other property	307,000	766,000
Other	158,000	141,000
Total deferred tax assets	<u>\$2,308,000</u>	<u>\$2,578,000</u>

A reconciliation of the provision for income taxes to the amount computed by applying the statutory federal income tax rate to income before income taxes is as follows:

	Years Ended March 31,		
	1999	2000	2001
Tax expense at statutory rate	\$3,461,000	\$4,208,000	\$4,690,000
State tax provision, net of federal benefit	507,000	558,000	(223,000)
Research tax credit	(67,000)	(240,000)	(928,000)
Other	(18,000)	(55,000)	(117,000)
	<u>\$3,883,000</u>	<u>\$4,471,000</u>	<u>\$3,422,000</u>

#### Note 9 — Employee Benefits

The Company has a voluntary deferred compensation plan under Section 401(k) of the Internal Revenue Code. The Company may make discretionary contributions to the plan which vest equally over six years. Employees who have completed 90 days of service and are at least 21 years of age are eligible to participate in the plan. Participants are entitled, upon termination or retirement, to their vested portion of the plan assets which are held by an independent trustee. Discretionary contributions accrued by the Company during fiscal years 1999, 2000 and 2001 amounted to \$791,000, \$917,000 and \$1,772,000, respectively. The increase in the contributed amount is primarily due to the acquisition of the Satellite Networks Business. The cost of administering the plan is not significant.

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#### Note 10 — Commitments

The Company leases office facilities under noncancelable operating leases with initial terms ranging from one to ten years which expire between June 2002 and December 2009. Certain of the Company's facilities leases contain option provisions which allow for extension of the lease terms. Rent expense, which is

recognized on a straight-line basis, was \$1,312,000, \$1,939,000 and \$4,194,000 in fiscal years 1999, 2000 and 2001, respectively.

Future minimum lease payments are as follows:

<b>Year Ending March 31,</b>	
2002	\$ 4,317,000
2003	4,157,000
2004	2,523,000
2005	2,408,000
2006	2,382,000
Thereafter	8,726,000
	<hr/>
	\$24,513,000

#### **Note 11 — 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. We are currently in negotiations with International Licensees relating to our relationship with ORBCOMM in the future, including the potential assumption of all or part of our receivables and contracts in bankruptcy. The following table summarizes our assets related to ORBCOMM at March 31, 2001.

Accounts receivable-billed	\$4,611,000
Accounts receivable-unbilled	359,000
Inventory	123,000
	<hr/>
Total	\$5,093,000

We cannot make assurances that the assets listed above will be fully recovered. If we are unable to successfully complete our negotiations with ORBCOMM regarding the assumption of our receivables and contracts in bankruptcy, or if ORBCOMM is unable to successfully restructure its operations, it would substantially limit our ability to recover the assets listed above and could cause ViaSat to incur losses which could 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.

The Company is currently a party to various government and commercial contracts which require the Company to meet performance covenants and project milestones. Under the terms of these contracts, failure by the Company to meet such performance covenants and milestones permit the other party to terminate the contract and, under certain circumstances, recover liquidated damages or other penalties. The Company is currently not in compliance (or in the past was not in compliance) with the performance or milestone requirements of certain of these contracts. Historically, the Company's customers have not elected to terminate such contracts or seek liquidated damages from the Company and management does not believe that its existing customers will do so; therefore, the Company has not accrued for any potential liquidated damages or penalties.

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#### **Note 12 — Immeon Networks, L.L.C.**

In January 2001 the Company and Loral Skynet formed a joint venture named Immeon Networks, L.L.C., (Immeon). The Company and Loral Skynet are each entitled to 50% of the net profits of Immeon, subject to certain adjustments. The Company accounts for its investment under the equity method because the Company has significant influence, but not control, of the operations of Immeon. The Company's share of net losses of Immeon is limited to the extent of the Company's investment in, advances to and financial guarantees that create additional basis in the Immeon. The Company's share of losses and advances to Immeon have reduced our investment to zero at March 31, 2001. The Company's share of the operating loss of Immeon for fiscal year 2001 is \$558,000.

#### **Note 13 — Segment Information**

We are organized primarily on the basis of products with commercial and defense communication applications, represented by ViaSat Satellite Networks which operates primarily in the commercial market and Communication Systems Group which operates primarily in the defense market. As new areas of our business grow, such as broadband systems, additional operating segments may be reported in the future.

The following table summarizes revenues and operating profits by operating segment for the fiscal year ended March 31, 2001. The acquisition of the Satellite Networks Business resulted in a second operating segment. Certain corporate general and administrative costs, amortization of intangible assets and the charge of acquired in-process research and development are not allocated to either segment and accordingly, are shown as reconciling items from segment operating profit and consolidated operating profit. Assets are not tracked by operating segment. Consequently, it is not practical to show assets by operating segments.

**Year Ended**

	<b>March 31, 2001</b>
Revenues ViaSat Satellite Networks	\$101,942,000
Communication Systems Group	62,410,000
Total revenues	164,352,000
Operating profits	
ViaSat Satellite Networks	8,968,000
Communication Systems Group	9,278,000
Segment operating profit before corporate and other	18,246,000
Corporate	551,000
Amortization of intangibles	(3,789,000)
Acquired in-process research and development	(2,334,000)
Total operating profits	<u>\$ 12,674,000</u>

Revenue information by geographic area for the fiscal year ended March 31, 2001 is as follows:

	<b>Year Ended March 31, 2001</b>
North America	\$130,011,000
Europe	15,375,000
Asia Pacific	17,198,000
Latin America	1,768,000
	<u>\$164,352,000</u>

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

The net book value of long-lived assets located outside North America was \$37,000 at March 31, 2001.

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### Note 14 — Subsequent Events

June 21, 2001 the Company executed a one year Revolving/Term Loan Agreement of \$25 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, the Company has 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.

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## SCHEDULE II

### VALUATION AND QUALIFYING ACCOUNTS FOR THE THREE YEARS ENDED MARCH 31, 2001

<b>Date</b>	<b>Allowance for Doubtful Accounts</b>	<b>Allowance For Warranty Costs</b>	<b>Total</b>
Balance, March 31, 1998	0	\$ 1,854,000	\$ 1,854,000
Provision	0	964,000	964,000
Write-off	0	(1,047,000)	(1,047,000)
Balance, March 31, 1999	0	1,771,000	1,771,000
Provision	0	66,000	66,000
Write-off	0	(788,000)	(788,000)
Balance, March 31, 2000	0	1,049,000	1,049,000



Satellite Networks acquisition	\$ 439,000	1,015,000	1,454,000
Provision	316,000	809,000	1,125,000
Write-off	(439,000)	(1,541,000)	(1,980,000)
	<u>          </u>	<u>          </u>	<u>          </u>
Balance, March 31, 2001	\$ 316,000	\$ 1,332,000	\$ 1,648,000
	<u>          </u>	<u>          </u>	<u>          </u>

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

SATELLITE MODEM DEVELOPMENT, PRODUCTION AND PURCHASE AGREEMENT

BY AND BETWEEN

WILDBLUE COMMUNICATIONS, INC.

AND

VIASAT, INC.

EFFECTIVE AS OF MARCH 5, 2001.

ViaSat and WildBlue Confidential

March 5, 2001

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3. SM/SMTS Functional Specification
4. IDU/ODU Interface Specification
5. WildBlue Responsibilities
6. Statement of Work
7. Milestone and Payment Schedule
8. Minimum Order Commitment and Maximum Capacity Commitment
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15. Documentation Reproduction Guidelines
16. Warranty Related Fee Schedule
17. Satellite Physical Layer MIB Objects
18. Master Preferred Escrow Agreement.

SATELLITE MODEM DEVELOPMENT, PRODUCTION AND PURCHASE AGREEMENT

BY AND BETWEEN

WILDBLUE COMMUNICATIONS, INC.

AND

VIASAT, INC.

This Satellite Modem 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.

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

v

ViaSat and WildBlue Confidential

March 5, 2001

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. "ACCEPTANCE" or "ACCEPTED" means written notification of acceptance from the WildBlue Program Manager to the Contractor Program Manager (or lapse of the required time for notice of rejection set forth in the Acceptance Test Plan or herein as applicable) in accordance with the Acceptance Test Plan that a Deliverable meets the applicable Acceptance Criteria.
- 2.2. "ACCEPTANCE CRITERIA" means the criteria used to confirm that Deliverables meet the requirements of the Acceptance Test Plan and/or the Statement of Work.
- 2.3. "ACCEPTANCE TEST PLAN" means the defined criteria, processes, and time frame to be mutually agreed upon by the Parties in accordance with Section 6.2 below, which are necessary to evaluate and demonstrate that Deliverables subject to Acceptance Testing in accordance with the Statement of Work satisfy the applicable requirements for the relevant Milestone or that the Deliverables provide the applicable Features and conform to the applicable Specification in all material respects as set forth in the Statement of Work.

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- 2.4. "ACCEPTANCE TESTING" means the acceptance tests to be conducted in accordance with the procedures and timeframes set forth in the Acceptance Test Plan.
- 2.5. "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).
- 2.6. "AUTHORIZED RESELLER" means a person or entity that is authorized by WildBlue to buy SMS from Contractor for use with the WildBlue System.
- 2.7. "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. Contractor Background Information expressly excludes all Third Party Information.
- 2.8. "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 SMS under this Agreement, excluding Joint Foreground Information.
- 2.9. "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.
- 2.10. "DEFECT" means any failure of an SM, including any components thereof (but excluding failures of any third party components provided by WildBlue), to operate in conformance with the applicable Specification.
- 2.11. "DELIVERABLES" means the products and services set forth in Schedule 6 (Statement of Work), including, without limitation, all incidental related products and services, provided by Contractor under this Agreement.
- 2.12. \*\*\*
- 2.13. "DOCUMENTATION" means documentation required to be prepared and delivered by Contractor under this Agreement in accordance with Schedule 6.
- 2.14. "EFFECTIVE DATE" means March 5, 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 for use outside the WildBlue System.
- 2.16. "ESCROW AGREEMENT" means the Escrow Agreement for Source Materials to be agreed to by the parties and attached to this Agreement as Schedule 18.
- 2.17. "EXECUTABLE CODE" means the fully compiled version of a software program that can be executed by a computer and used by an end user without further compilation.

2.18. "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

March 5, 2001

Software Patches, or hardware or software changes which correct and/or fix Defects in such current release.

- 2.19. "HARDWARE" means the hardware components of SMS, excluding any Software.
- 2.20. "INITIAL ORDER" is defined in Section 8.3 below.
- 2.21. "INITIAL SM DELIVERY" is defined in Section 5.4(d).
- 2.22. "INSOLVENCY EVENT" is defined in the Escrow Agreement.
- 2.23. "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.
- 2.24. "INTERFACE SPECIFICATION" means the written specifications defined in Schedules 2 and 4 and each subsequent revision of such documents (including any modifications and derivative works thereof), but shall not include Specification Embodiment and IS Background Information.
- 2.25. "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 that incorporated into or essential to the application of the Interface Specification, and all Intellectual Property Rights therein, but shall not include Specification Embodiment.
- 2.26. "IS FOREGROUND INFORMATION" means that Contractor Foreground Information developed by Contractor in the course of performance of this Agreement that relates to the Interface Specification, and all Intellectual Property Rights therein, but shall not include Specification Embodiment.



March 5, 2001

- 2.27. "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 under this Agreement. 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.
- 2.28. "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.
- 2.29. "LIEN" means any lien (including subcontractor and other mechanic liens), imperfection in title, security interest, claim, charge, restriction or other encumbrance.
- 2.30. \*\*\*
- 2.31. "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.
- 2.32. "MAJOR COMPONENT" is defined in Section 14.
- 2.33. "MAJOR COMPONENT VENDOR" is defined in Section 14.
- 2.34. "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.
- 2.35. "MARK" means any trademark, service mark, trade name, domain name, logo or other indicia of source or origin of a product or service.
- 2.36. "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.
- 2.37. "MILESTONES" is defined in Section 5.4.
- 2.38. "NRE PAYMENT" is defined in Section 17.1.
- 2.39. "ORDER" means a purchase order issued by WildBlue to Contractor confirming the purchase of SMS and providing carrier, shipping destination and other similar information.
- 2.40. "OUT-OF-BOX FAILURE" means the inoperability of any SM or failure of any SM 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.





March 5, 2001

- 2.41. "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.
- 2.42. "PRICE" means the price of an SM to WildBlue as set forth on Schedule 11, FOB those Contractor's designated sites in the contiguous United States.
- 2.43. "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.
- 2.44. "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.
- 2.45. "SM-A" and "SM-B" mean those versions of the SM with the applicable requirements and Specifications set forth in the Statement of Work.
- 2.46. "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.
- 2.47. "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.
- 2.48. "SOURCE MATERIALS" means the human readable version of the Software 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 that enable the software program to be compiled into Executable Code, all of which, where applicable, shall be on media that allows the program to be read and processed. Source Code includes all documentation and know-how reasonably necessary to allow a person reasonably skilled in computer programming to understand and utilize such programs.
- 2.49. "SPECIFICATION" means, with respect to each Deliverable, those functional, performance and other requirements specified in the Statement of Work for such Deliverable. For SMs, 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) Satellite Physical Layer MIB Objects (set forth in Schedule 17).

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- 2.50. "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 apart from the Interface Specification.
- 2.51. "STATEMENT OF WORK" or "SOW" means the description of the work to be performed by Contractor under this Agreement as set forth in Schedule 6.
- 2.52. "THIRD PARTY INFORMATION" means information and technology, and all Intellectual Property Rights therein, owned by a third party.
- 2.53. "UNITED STATES" or "U.S." means the United States of America.
- 2.54. "USER" means a person or entity (other than WildBlue, any Authorized Reseller, or a Service Provider) that purchases other than for resale or distribution an SM for use in the WildBlue System.
- 2.55. "USER DOCUMENTATION" means the user documentation furnished to WildBlue by Contractor for distribution along with the SMS.
- 2.56. "WAIVER" means a written authorization to accept an item of equipment or software after manufacture which is found to depart from specified requirements but is nevertheless considered suitable for use, "as is," or after rework by an appropriate method.
- 2.57. "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.
- 2.58. "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.
- 2.59. "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 under this Agreement, but excluding all Joint Foreground Information.
- 2.60. "WILDBLUE SYSTEM" means the broadband internet access system operated by WildBlue, as further described in the Specification.

### 3. CONTRACT DOCUMENTS; POST EXECUTION MATTERS

- 3.1. 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.
- 3.2. The Parties acknowledge that as of the Effective Date, following Schedules are incomplete: 16 and 17 . Within sixty (60) days after the Effective Date, or such later time as the Parties may mutually agree, the Parties will agree on and deliver a final version of such Schedules.

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4. TERM

The term of this Agreement shall begin upon the Effective Date and shall expire five (5) years thereafter (the "INITIAL TERM"). 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 SM Order and Delivery Forecast is at least five thousand (5,000) SMs per month. The Initial Term and all of Extended Terms (as they may be earlier terminated), are collectively referred to as the "TERM."

5. SATELLITE MODEM DEVELOPMENT

5.1. STATEMENT OF WORK. The Parties each agree to perform their respective obligations set forth in the Statement of Work, setting forth the development schedule, Milestones, Deliverables, Acceptance Criteria and other criteria relating to the Deliverables to be provided by Contractor under this Agreement. In accordance with the terms of this Agreement and the Statement of Work, Contractor shall develop and provide WildBlue with the Deliverables.

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, that are reasonably necessary for Contractor to fulfill its obligations set forth in Section 5.3(b) below.

5.3. CONTRACTOR RESPONSIBILITIES.

(a) Contractor shall design, construct and deliver the Deliverables that meet the requirements of the Specification in accordance with the Statement of Work. 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 development phase as described in the Statement of Work (such other materials being included in the definition of the term "Deliverables"). The Deliverables subject to Acceptance Testing in accordance with Schedule 7 that are produced by Contractor hereunder shall be tested by Contractor and delivered to WildBlue for Acceptance, as more fully described in Section 6 below.

(b) 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



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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.

5.4. MILESTONE AND PAYMENT SCHEDULE.

- (a) MILESTONES. Critical milestones in the development and manufacture of the SM (each a "MILESTONE"), the deadline for achievement for each Milestone (each a "MILESTONE DATE") and the payments required upon the completion of each Milestone, are set forth on Schedule 7 hereto (the "MILESTONE AND PAYMENT SCHEDULE"). Contractor acknowledges and agrees that time is of the essence in the performance of its obligations hereunder and that Contractor's failure to complete its development or manufacturing obligations in a timely fashion will cause serious damage to WildBlue, the amount of which will be difficult to ascertain. Accordingly, Contractor will complete each Milestone on or before the corresponding Milestone Date.
- (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) \*\*\*If Contractor fails to meet Milestones as set forth in Section 5.4(a), WildBlue will \*\*\*.
- (d) \*\*\*Notwithstanding anything to the contrary herein, if Contractor delivers at least \*\*\* production SMs which conform to the Specification and satisfactorily pass all Acceptance Testing (the "INITIAL SM Delivery") by the delivery date for Milestone 11 of Schedule 7, WildBlue shall \*\*\*.

5.5. FAILURE TO ACHIEVE MILESTONES. Subject to the Statement of Work, but 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. ACCEPTANCE AND PRODUCTION



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- 6.1. CONTRACTOR RESPONSIBILITIES. Contractor shall perform all work necessary for the manufacturing and delivery of SMS, in accordance with the Specification and the Statement of Work.
- 6.2. ACCEPTANCE TESTING.
- (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



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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 in accordance with 6.2(c) 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.
  
- (e) PROVISIONAL ACCEPTANCE.
  - (i) Without waiving any of its rights under this Section 6.2, WildBlue may, prior to Acceptance, provisionally accept the initial \*\*\* SMs described in Schedule 8 that have not satisfied the Acceptance Test Criteria by notifying Contractor in writing of WildBlue's "provisional acceptance." Such provisional acceptance shall be accompanied by a notice indicating the Defects identified in such SMs (including copies of the applicable test documents, if any) and requiring Contractor to correct such Defects within the Make-Good Period defined below.
  
  - (ii) SMs provisionally accepted under paragraph (i) above are counted as full deliveries for purpose of the WildBlue's obligation to make payment (including the associated NRE Payment) and for \*\*\*. If (1) the provisionally accepted SMs have Hardware related Defects and SMs with Hardware that meets the Specifications in all respects are not available for delivery forty-five (45) days from the Initial SM Delivery date (Milestone 12 of Schedule 7) or (2) the provisionally accepted SMs have a Software Defect and Contractor has not corrected the Software Defect through a Major Release, Point Release or Software Patch, within two and one half (2.5) months after the Initial SM Delivery Date (each a "Make Good Period"), Contractor shall refund such NRE Payment associated with delivery of those provisionally accepted SMs within thirty (30) days after the end of the Make Good Period. Notwithstanding the foregoing, if the



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satellite delivery to WildBlue occurs prior to \*\*\*, thirty (30) days will be added to the each of the Make Good Periods.

- (iii) WildBlue has the right to return to Contractor SMS provisionally accepted pursuant to paragraph (i) above that contain Hardware Defects, at any time within twelve (12) months of the SMS having been delivered to WildBlue. Contractor shall provide to WildBlue a credit of fifty percent (50%) of the original unit purchase Price of any such returned SMS and permit WildBlue to apply such credit towards the purchase Price for SMS that meet the requirements of the Acceptance Test Plan in all respects.

6.3. 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 SMS after Acceptance (or provisional acceptance) of such SM version in accordance with reasonable industry practices. If testing of SMS indicates a problem with the quality of the SMS generally based on evidence of failure of the SMS, then Contractor will provide an plan to correct problem within two (2) weeks after notice of such problems by WildBlue.

## 7. PHYSICAL APPEARANCE AND BRANDING

7.1. PHYSICAL APPEARANCE. Contractor shall submit 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



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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 of this Agreement, Orders for SMS shall be issued in accordance with 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.

8.2. ORDER AND DELIVERY FORECAST. WildBlue shall provide Contractor with a delivery forecast and order commitment as required by Schedule 9 (the "SM ORDER AND DELIVERY FORECAST"). A monthly delivery forecast becomes an Order through the process defined in Schedule 9. Subject to the terms hereof, each Order shall include delivery instructions, packaging type, purchase order number, quantity, applicable Price (set forth in Schedule 11) and statement that the Order is being placed under this Agreement. 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.

8.3. INITIAL ORDER. Subject to Contractor delivering the SM-Bs by \*\*\*, WildBlue agrees to purchase from Contractor \*\*\* thousand WBSMs (the "INITIAL ORDER"), which includes the Initial SM Delivery. The delivery schedule for the Initial Order shall be established with the first WBSM Order and Delivery Forecast provided by WildBlue in accordance with Schedule 9. The delivery schedule and quantities for the Initial 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. The time period during which WildBlue must complete purchase of the Initial Order is a function of the actual date for the completion of First Article Testing for the SM-B version as defined in Schedule 8.

8.4. 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



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satisfaction of all minimum purchase commitments of WildBlue hereunder, including the Initial Order; provided that \*\*\* shall not be required in such Authorized Reseller agreements. Contractor and WildBlue shall use commercially reasonable efforts to mutually agree on a form of purchase agreement within ninety (90) days after the Effective Date, 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.

#### 8.5. SHORTFALLS AND CANCELLATION OF WILDBLUE 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 SMS 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) For the Initial Order, if WildBlue elects to take delivery of an Unexcused Shortfall, Contractor shall \*\*\*. For purposes of determining when Contractor has delivered an SM for which Contractor is required to \*\*\* to WildBlue \*\*\* under this Section 8.5(b), units of SMS delivered after the Unexcused Shortfall shall be applied first to make up the Unexcused Shortfall. If the delay in making up an Unexcused Shortfall exceeds four (4) weeks, the minimum commitment agreed to by WildBlue for the applicable monthly period and for the Initial Order shall be reduced by the amount of the entire Order to which the Unexcused Shortfall relates.
- (c) After the completion of the Initial Order, if WildBlue elects to take delivery of an Unexcused Shortfall, Contractor shall \*\*\* WildBlue \*\*\* subject to the Unexcused Shortfall.
- (d) 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,





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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.

8.6. MINIMUM ORDER QUANTITY. After completion of the Initial Order, if WildBlue places an Order for fewer than five thousand (5,000) SMS 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 SMS, Contractor shall deliver such SMS in accordance with the terms of this Agreement. If WildBlue fails to order 5,000 SMS 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 SMS, Contractor will be entitled to a one time payment to cover reasonable costs associated with reinitiating volume production of SMS to enable Contractor to fulfill the Order.

## 9. SHIPPING AND RELATED MATTERS

9.1. SERIAL NUMBERS. Contractor shall mark each WBSM produced with a unique serial number. Contractor shall keep accurate records as to the WBSMs, 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, orders will be packaged in blocks of twenty-four (24) individual WBSMs or multiples thereof. All deliveries to WildBlue pursuant to this Agreement shall be packaged in a manner consistent with industry standards for cable modems and packed for safe delivery to their destinations without damage. Wholesale, single color packaging is included in the purchase price. 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 on or before \*\*\*. The price for the Retail Package will be negotiated between the two 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 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 unit per month for such continued storage. Such election to store SMS does not relieve WildBlue of the requirement to pay the purchase Price for such SM units, which may be invoiced on the originally scheduled delivery date.

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10. LICENSES, PROPRIETARY RIGHTS AND ESCROW

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



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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 (except as set forth in Section 16.3(b)), 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(the "DEVELOPMENT LICENSE").
- (b) WILDBLUE SM PRODUCTION AND DISTRIBUTION LICENSE FOR WBSMS. 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, distribute and support WBSMS on behalf of WildBlue (the "WBSM PRODUCTION LICENSE").
- (c) WILDBLUE SM PRODUCTION AND DISTRIBUTION LICENSE FOR OTHER SMS. 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 produce, manufacture, distribute and support SMS on behalf of third parties (the "SM 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 manufacturers, to:
  - (i) make, have made, use, reproduce, market, distribute, offer to sell and sell, and import WBSMs; and

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- (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 WBSMs or products related thereto.

10.4. SOFTWARE LICENSES AND RIGHTS. Commencing upon delivery of the WBSMs 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 Documentation in accordance with Schedule 6. 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. INTELLECTUAL PROPERTY POOL. WildBlue intends to create an intellectual property pool similar to that created by CableLabs for the DOCSIS standard. Contractor will negotiate in good faith with WildBlue to enter into the agreement for such intellectual property pool.



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10.7. SOURCE MATERIALS LICENSE. Subject to the terms and conditions of this Agreement, the Escrow Agreement and any restrictions set forth in third party license agreements (including Major Component Vendors), Contractor hereby grants to WildBlue a current non-exclusive, perpetual, royalty free, worldwide, non-transferable (except as provided in the Assignment provision) license to access, utilize, modify and adapt Source Materials, make, have made, use, have used, sell, lease or otherwise transfer WBSMs and to provide or have a third party provide support and maintenance or Feature Work (as defined below) for WBSMs in accordance with Section 12.2(a)(iii). WildBlue hereby covenants not to exercise the rights granted to it in this clause 10.7 except upon the valid release of the Source Materials pursuant to a release event ("RELEASE EVENT") as provided in this Agreement and the Escrow Agreement. WildBlue shall be obligated to maintain the confidentiality of the released Source Materials as Confidential Information hereunder. Release Events shall include the following events: (a) ViaSat is unable or unwilling, after fourteen (14) days notice from WildBlue, to provide support and maintenance for WBSMs in accordance with this Agreement; (b) ViaSat is subject to an Insolvency Event; (c) WildBlue requires Feature Work to be performed on WBSMs and ViaSat is unwilling to perform the Feature Work or the parties are unable to agree on the terms under which ViaSat would perform such Feature Work in accordance with Section 12.2(a)(iii); (d) termination due to breach of a material term of the Agreement by ViaSat; or (e) at the end of the Term, ViaSat will not extend the Agreement on commercially reasonable terms. While WildBlue is in material breach of the Agreement, such Source Materials shall not be released to WildBlue. The Parties shall execute the Escrow Agreement in the form attached hereto as Schedule 18, subject to modifications reasonably requested by the escrow agent thereunder and mutually agreed to by the Parties, upon the earlier of (1) execution of an agreement between the Parties relating to the production of SMTS and (2) sixty (60) days from the date hereof.

10.8. CONTRACTOR'S RIGHTS OF SALE TO OTHER SERVICE PROVIDERS AND END USERS. Subject to Contractor's compliance with the terms and conditions of this Agreement, Contractor is entitled to and authorized to sell SMs to Service Providers and End Users consistent with the terms and conditions of this Agreement.

## 11. TRAINING

11.1. TRAINING. Contractor will provide WildBlue training in accordance with the following:

- (a) Within thirty (30) days after the delivery of the first production WBSMs, 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 course (with content sufficient to train employees in the use and installation of the WBSM) for attendance by up to twenty-five (25) WildBlue designated individuals. Such training course 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.
- (c) Contractor shall provide up to twice a year remedial training and training on any changes, updates and enhancements to the WBSMs, or training otherwise





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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 were made due to a Defect in the WBSMs. 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.

- (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. CHANGE PROCEDURES

12.1. DEVELOPMENT PHASE CHANGE PROCEDURES. During the Term, WildBlue may require changes to the Specification. Within thirty (30) days of WildBlue's written requested change, Contractor shall provide WildBlue with a summary of the effect of such changes on the Price (recurring and non-recurring) and time required for performance, and WildBlue 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, Price, development schedule or delivery schedule, as applicable. Price adjustments shall account only for the net cost impact incurred by Contractor as a result of the change plus a reasonable profit thereon. Contractor will provide reasonably detailed back-up cost data to support its claim for adjustment.

### 12.2. POST-DEVELOPMENT PHASE CHANGE PROCEDURES.

- (a) If WildBlue desires to add or remove WBSM Features or functions, WildBlue shall make available to Contractor a right of first offer to perform such Feature/function work ("FEATURE WORK"):
- (i) WildBlue shall provide to Contractor in writing details relating to the proposed Feature Work ("WILDBLUE PROPOSED CHANGE");
  - (ii) Not more than thirty (30) days after receipt of a WildBlue-proposed Change, Contractor shall propose a Price and a development, acceptance and delivery schedule for the WildBlue Proposed Change;
  - (iii) During the thirty (30) days after WildBlue's receipt of Contractor's proposal, the Parties shall negotiate in good faith regarding the terms and conditions (including price and schedule) for the incorporation of the WildBlue Proposed Change into the WBSM. If Contractor and WildBlue reach agreement on such terms and conditions, Contractor shall design, develop and/or manufacture or have manufactured such WildBlue Proposed Change in accordance with the negotiated terms. Should the Parties not agree upon terms within this thirty (30) day period, WildBlue will have the right to engage a third party to design, develop and manufacture WBSMs incorporating the WildBlue Proposed Change (the



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"REVISED SM"). If WildBlue engages a third party to develop the new Features or functions of the Revised SM, Contractor will, subject to any restrictions set forth in third party license agreements (including Major Component Vendors), provide WildBlue (and/or its third party designee) (1) a worldwide, non-exclusive, non-transferable, perpetual, royalty free license to access, utilize copy, modify and adapt Contractor Source Materials solely for the development, distribution and support of the new Features and functions, and (2) such other resources at fair market rates as are necessary to enable the third party to develop the new Features and functions. To the extent that any such new Features or functions incorporate or are based on the Contractor Background Information or Contractor Foreground Information, the use of such Intellectual Property is limited to the licenses granted under Section 10.

- (b) Contractor shall not make changes to the WBSMs to be distributed hereunder unless approved in writing by the WildBlue Program Manager; provided however, that Contractor is authorized, without WildBlue's prior approval, to make changes that do not affect an SM's compliance with the Specifications.

12.3. CONTRACTOR-PROPOSED CHANGES. All Contractor-proposed changes to the Specification shall be submitted to WildBlue in a written proposal that describes in reasonable detail the proposed change and the technical, performance and economic (including unit price, non-recurring costs and delivery) effects on the SMs and the WildBlue System. The Parties shall negotiate in good faith and, if agreement is reached, Contractor's Price, non-recurring payments and delivery schedules shall be adjusted as applicable; provided, however, in no event shall WildBlue be required to accept a Contractor proposed change.

12.4. CHANGE ORDERS. All changes agreed to by the Parties pursuant to this Section 12 shall be in writing signed by both Parties ("CHANGE ORDERS").

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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, 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"). The selection of Major Component Vendors is subject to WildBlue's prior written approval, which consent shall not be unreasonably withheld, conditioned or delayed. Contractor shall make no change in a Major Component Vendor without the prior written consent of WildBlue, which consent shall not be unreasonably withheld, conditioned or delayed. Contractor shall ensure that its contract with Major Component Vendors shall be on a non-exclusive basis such that the Major Component Vendor can provide components to other manufacturers of WBSMs. In the event that Contractor becomes aware of circumstances suggesting that a Major Component Vendor is likely to breach its obligations to provide components and/or services to Contractor for any reason, Contractor shall so notify WildBlue, and shall use commercially reasonable best efforts to enforce its contractual rights against such vendor or sub-contractor to minimize the adverse impact to the WildBlue program and schedule. WildBlue may reasonably reject or request replacement of any Major Component Vendor by specifying the reasons therefor. WildBlue can require the assignment of contracts for Major Components if Contractor is in breach of those contracts. Contractor will ensure that WildBlue will be named a third party beneficiary in any contracts with Major Component Vendors.

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- 14.4. Contractor shall use a facility (including a third party facility) for the manufacture of WBSMs approved by WildBlue, such approval not to be unreasonably withheld.
- 14.5. 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. Any difference in material terms between other WBSM manufacturers and Contractor must be approved in writing by WildBlue. Contractor will ensure that Major Component Vendors are required to notify WildBlue if Contractor is in breach of the agreement with such Major Component Vendor.
  - (b) WildBlue may purchase Major Components under substantially the same terms, cost and timeframe as Contractor.
  - (c) The interfaces to the downstream physical layer and upstream physical layer components shall be well documented and such documents must be made available to WildBlue for distribution to competing vendors of such components at no cost. Such documentation must be thorough enough so that other components built in compliance with such documentation will interoperate within the WildBlue system.
  - (d) 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, and other manufacturers identified by WildBlue, at the same time, and on the same terms and conditions (including, without limitation, cost) as such materials are made available to Contractor.
  - (e) Cable modem and SM reference designs, evaluation boards and source code releases must include the same features and capabilities for all WBSM manufacturers.
  - (f) If a Major Vendor fails to deliver in a timely fashion so as to materially breach their subcontract, remedies available to the Contractor shall include reasonable license rights and technical support to allow Contractor to minimize the impact on the SM delivery schedule.
- 14.6. Within 30 days of Effective Date, WildBlue may chose to contract directly with a Major Component Vendor to provide a selected Major Component to Contractor and any other SM supplier and may direct the Contractor to utilize the selected Major Component in their WBSM. In that event, the following terms and conditions will be included in the contract between WildBlue and the Major Component Vendor:
- (a) Major Components Vendors will agree to sell and/or license to Contractor the components or other deliverables on fair and reasonable terms no less favorable than terms WildBlue receives;

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- (b) Contractor may purchase Major Components under substantially the same terms, cost and timeframe as WildBlue; and
- (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 Contractor at the same time as such materials are made available to WildBlue and at no additional cost.

The Parties acknowledge and agree that WildBlue has entered into a development agreement \*\*\*, the terms of which are sufficient to satisfy the terms of this section. WildBlue shall designate the Contractor as a WildBlue SM Manufacturing Partner (as defined in such development agreement).

## 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 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

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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, Statement of Work or other applicable production schedule obligations hereunder for any Excusable Delay (only to the extent not already covered pursuant to Section 15.3 except that the incentive payment dates in Schedule 11 shall be adjusted by the delay in the applicable delivery) 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 SATELLITE CONSTRUCTION. If WildBlue reasonably believes that shipment of the first WildBlue Satellite will be after \*\*\* ("SATELLITE Delay"), WildBlue, will provide written notice to Contractor. If, at WildBlue's option, WildBlue requests that Contractor wind down and restart the development program because of Satellite Delay, WildBlue shall pay reasonable and mutually agreed upon expenses associated with Contractor's wind down and restart of the development program. If WildBlue provides Contractor with written notice of a Satellite Delay, Milestone Dates, Statement of Work schedules, manufactured SM commitments (excluding the incentive payment dates in Schedule 11) will be extended in proportion to the delay relative to Milestone 11 (Initial SM Delivery) (only to the extent not already extended pursuant to section 15.2). For example, if one quarter (¼) of the way through the development program the satellite ship date is delayed by 8 weeks, then the Milestone(s) one quarter (¼) of the way between Effective Date and the Initial SM Delivery will be postponed by 2 weeks, the Milestone(s) half way between Effective Date and the Initial SM Delivery will be postponed by 4 weeks, the Milestone 11 and subsequent Milestones by 8 weeks.
- 15.4. DELAY DUE TO LAUNCH OR SATELLITE FAILURE. In the event of a launch or satellite failure with respect to a WildBlue satellite, Contractor shall be entitled to complete its development effort and receive payment for such effort in accordance with Schedule 7. For Orders in place at the time of such launch failure or satellite failure, WildBlue shall pay, pursuant to the normal invoice schedule. If directed by WildBlue in writing, Contractor shall store such SMs for up to eighteen (18) months at an additional price of Two Dollars (\$2) per unit per month. 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 WBSMs for sale to WildBlue, Affiliates, and Authorized Resellers at the unit Prices set forth in Section 16.2. Provided that the monthly delivery order requirements are consistent with Schedule 8 and subject to the provisions of Section 8.6, the WBSM unit Prices will not exceed the volume prices defined in Schedule 11 (SM Pricing Schedule), subject to equitable increase for changes to the WBSM requirements.
- 16.2. SM PRICES BY CONFIGURATION. The Price per unit for the SM described in the "iSKY Satellite Modem Development Partner & Manufacturer Request for Proposal" dated July 7, 2000 is \*\*\*. It is WildBlue's intention to purchase SM-A's and SM-B's. The Price of each WBSM delivered hereunder shall be as set forth in Schedule 11. WildBlue may, elect to change the configuration by adding Features or removing Features in accordance with the terms of this Agreement.
- 16.3. \*\*\* CUSTOMER AND \*\*\*.
- (a) \*\*\* CUSTOMER. If during the Term, Contractor sells SMs to a Service Provider or End User ,\*\*\*. The purchase price to a Service Provider or End User shall be calculated to be net of any volume discounts, rebates and other similar adjustments.
- (b) \*\*\*. For a period of \*\*\* years after the Effective Date, Contractor shall \*\*\* to WildBlue \*\*\* for each SM purchased by any Service Provider; provided, however, that \*\*\* received and retained by Contractor hereunder (exclusive of any NRE Payments made to a Major Component Vendor pursuant to Schedule 7). This paragraph will survive termination of this Agreement
- 16.4. 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 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 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.



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- (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. Provided that Contractor has completed the Milestones set forth on Schedule 7 in accordance with the terms and conditions of this Agreement, WildBlue shall pay Contractor nonrecurring engineering payments in the aggregate of \*\*\* plus any amount paid by Contractor to a Major Component Vendor for non-recurring development (the "NRE PAYMENTS") in accordance with the Schedule 7 and this Section 17.

#### 17.2. INVOICING.

- (a) Following Contractor's successful completion of each Milestone in accordance with the terms hereof, Contractor may invoice WildBlue 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.
- (b) Upon successful completion of a payment Milestone earlier than the required date specified in Schedule 7, Contractor may invoice immediately provided that Contractor has provided WildBlue at least sixty (60) days notice of the intent to deliver early.
- (c) Upon shipment of SMS pursuant to an Order (including the Initial Order), Contractor will invoice WildBlue for amounts due pursuant to this Agreement for such SMS. Such invoice shall include invoice date, Order number, SM part numbers and descriptions, quantities, unit Prices and total amount due.
- (d) 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



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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.

17.3. 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.
- (b) Invoices for payment of \*\*\* hereunder and 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.
- (c) 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 expenses.
- (d) 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: \*\*\*
- (e) WildBlue may set-off against amounts owed to Contractor hereunder any amounts owed by Contractor to WildBlue that are not disputed in good faith.

17.4. 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.

17.5. ENCUMBRANCES. Contractor shall not perfect any Lien upon any SM or Software provided pursuant to this Agreement except as otherwise expressly permitted by this Agreement.

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.



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- (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





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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

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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 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.



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19.2. SM WARRANTY.

- (a) SM PERFORMANCE WARRANTIES. All WBSMs (including WBSM Software) are hereby warranted by Contractor in accordance with Schedule 13.
- (b) NONCONFORMING SM. Contractor's obligations and WildBlue's remedies for WBSMs which fail to meet the warranties set forth in the preceding paragraph are as set out in Schedule 13.
- (c) WARRANTY NOT APPLICABLE. This warranty shall not apply to any WBSM 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 that have been provided by WildBlue or WildBlue supplier.
- (d) COMPONENTS. Contractor represents, warrants and covenants that all SM 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) SM SOFTWARE. During the Warranty Period (as defined in Schedule 13), or any Extended Warranty Period (as defined in Schedule 14) purchased by WildBlue, for each SM 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. After the Warranty Period, Contractor shall provide Software Corrections and Major Releases in accordance with Schedule 14 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 that Contractor makes available to other SM customers, for prices that are no less favorable than the prices under which the Software Updates are made available to such other SM customers. Software Corrections and Software Updates shall be considered to form part of the SM Software for purposes of this Agreement. Software Corrections and Software Updates shall be tested prior to release.
- (f) POST-WARRANTY SM SUPPORT. Contractor shall offer to WildBlue and its Authorized Resellers, Affiliates and Users post-warranty SM 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

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(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 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 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 SMS FOUND TO BE DEFECTIVE AFTER ACCEPTANCE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE USE OF THE SMS. EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 19 AND SCHEDULE 13 AND 14, THE SMS 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 SMS, 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;



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- (e) claims for damage to real or tangible property caused by the SMS 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 SMS 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 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 SMS, 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





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efforts, (c) refund to WildBlue any payments made by WildBlue to Contractor (to the extent that such payments have not been recouped through credits against accrued royalties), 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 SMS 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 SMS; (b) any use of any SM in combination with other hardware or software products or in any manner for which the SMS 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 SM 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

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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.

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- (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.



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- (b) ACCEPTANCE TEST PLAN ARBITRATION.
- (i) Any dispute, claim or controversy between the Parties arising out of or relating to the creation of Acceptance Test Plans in accordance with Section 6.2 ("ATP DISPUTE"), upon written request by a Party, will be resolved under this Section 22.2(b) and subject to final, binding arbitration in accordance with this Section 22.2(b). ATP Disputes do not include any dispute, claim or controversy between the parties regarding whether or not a Deliverable actually meets the Acceptance Criteria. The ATP Dispute shall be submitted before CPR within five (5) days after the requesting notice in accordance with the then-existing CPR arbitration rules as modified by this Section.
- (ii) The arbitrator under this Section 22.2(b) shall not limit, expand or modify the terms of this Agreement nor award damages in excess of damage limitations contained in this Agreement, and each party waives any claim to such excess damages.
- (iii) Within ten (10) days after the fact-find hearing held in accordance with said CPR arbitration rules, each Party to the ATP Dispute shall submit to each other and the arbitrator its respective proposal for resolution of the ATP Dispute, and the arbitration shall be limited to the sole question of determining which of the two written proposals is to be accepted. The arbitrator shall have no authority to compromise between the proposals, provided however that prior to issuing a decision the arbitrator will attempt to negotiate a resolution and may suggest one or more compromise resolutions. Such negotiation process shall commence within ten (10) days of submission of the proposed resolutions by the parties. If resolution of the ATP Dispute is not reached pursuant to such negotiations within ten (10) days of commencement thereof, the arbitrator shall, within five (5) business days, select to be the single binding decision, one of the two submitted proposals, excising from such proposal any term that limits, expands or modifies the terms of this Agreement or awards damages in excess of damage limitations contained in this Agreement. 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.
- (iv) If the parties disagree on the choice for an arbitrator, the parties shall jointly request CPR to furnish a list of five available arbitrators. After receipt of such list and an opportunity to consider the names, each party may designate in writing to CPR not more than two names to be eliminated from the selection process. If more than one name remains after such eliminations are made, the selection of the arbitrator shall be made by lot from the remaining names. The arbitration proceeding shall be conducted in as expedited a manner as is then permitted by the CPR commercial arbitration rules (formal or informal).
- (c) COSTS AND EXPENSES. The arbitrators may award to the prevailing Party all reasonable fees, costs and expenses of the arbitration, including, without limitation, such reasonable fees and expenses of attorneys and experts.



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- (d) CONSOLIDATION AND JOINDER. Any arbitration arising out of or relating to this Agreement or breach thereof may include by consolidation, joinder or other manner any other person or persons which or whom a Party to the arbitration reasonably believes to be substantially involved in a common question of fact or law.
- (e) ENFORCEMENT. The agreement to arbitrate shall be specifically enforceable under prevailing arbitration law. Any award rendered by the arbitrators shall be final, binding and enforceable by any Party to the arbitration, and judgment may be rendered upon it in accordance with applicable law in a court of competent jurisdiction.
- (f) UNITED STATES ARBITRATION ACT. The Parties acknowledge that this Agreement evidences a transaction involving interstate commerce. The United States Arbitration Act shall govern the enforcement of any arbitration awards entered pursuant to this Section 22.2.

22.3. INDEPENDENT EXPERT DISPUTE RESOLUTION. Any dispute, claim or controversy between the Parties arising out of or relating to whether a Deliverable that is subject to Acceptance Testing, has met the applicable Acceptance Criteria in accordance with Section 6.2(c), will be resolved under this Section 22.3. Upon the written request of a Party, the Parties shall appoint an expert to resolve such disputes. If the Parties disagree on the choice for an expert, the Parties shall jointly request CPR to furnish a list of five available experts. After receipt of such list and an opportunity to consider the names, each party may designate in writing not more than two names to be eliminated from the selection process. If more than one name remains after such eliminations are made, the selection of the arbitrator shall be made by lot from the remaining names. The role of the expert shall be limited to the sole question of whether the applicable Deliverable has met the agreed upon Acceptance Test Plan. 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. The expert under this Section 22.3 shall not limit, expand or modify the terms of this Agreement or any ATP. The decision made by the expert shall be final, binding and enforceable by a Party.

22.4. INJUNCTIVE RELIEF. Notwithstanding Subsections 22.1, 22.2 or 22.3, 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).

22.5. 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.





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(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.



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## 23.2. TERMINATION \*\*\*.

- (a) WildBlue may terminate this Agreement, in whole or in part, for \*\*\* by giving Contractor written notice of termination; provided such notice of termination is sent to Contractor on or before \*\*\*. Such notice shall designate a Termination Date, which date shall be not less than sixty (60) days after the date of such notice (but not later than \*\*\*).
- (b) If WildBlue elects to terminate this Agreement for \*\*\* in accordance with this Section 23.2, as soon as practicable following the Termination Date, Contractor shall provide WildBlue with a complete statement of all of its costs incurred, unpaid amounts due and owing for work performed hereunder and other amounts that are due to Contractor hereunder as of the Termination Date and a reasonable profit to be specified by Contractor and agreed to by WildBlue thereon (the "FINAL STATEMENT"). The Final Statement and all previous milestone payments will not exceed (i) \$\*\*\* for termination within thirty (30) days of the Effective Date, (ii) \$\*\*\* for termination within sixty (60) days of the Effective Date, (iii) \$\*\*\* for termination within ninety (90) days of the Effective Date, or (iv) the total NRE Payment amount. WildBlue shall review the Final Statement within thirty (30) days of receipt thereof and, if reasonably satisfactory to WildBlue, shall pay Contractor within thirty (30) days of approval all or part of the Final Statement, all undisputed amounts due thereunder. If WildBlue disputes any amounts set forth in the Final Statement, the Parties shall resolve such disputes as provided herein, and following resolution of such disputes, WildBlue shall pay Contractor all remaining undisputed amounts, if any, within thirty (30) days after resolution of such disputes. If a purported termination for Cause by WildBlue under Section 23.1 is determined by a competent authority not to be properly a termination for cause, then such termination shall be deemed to be a termination for \*\*\* by WildBlue under this Section 23.2.

## 23.3. EFFECT OF TERMINATION OR EXPIRATION; WIND DOWN.

After expiration or termination of the Agreement, Contractor agrees to provide Post Warranty Support and Maintenance (in accordance with Schedule 14) for \*\*\* after the date of the last WBSM delivery and technical support services as identified in Schedule 14 Section 1, for \*\*\* 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 \*\*\*, (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; (II) THE USE OF AN SM; (III) THE RESULTS OF ANY USE



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OF AN SM; (IV) THE INTEGRATION OF SMS WITH EQUIPMENT NOT PROVIDED BY CONTRACTOR; (V) OTHERWISE RELATING TO THE FUNCTIONING OF AN SM; 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, (B) CONTRACTOR'S OBLIGATIONS WITH RESPECT TO THE PAYMENT OF \*\*\*, AND (C) 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) \$3.0 MILLION, 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

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 the letter agreement between the Parties dated October 11, 2000, as amended ("LETTER AGREEMENT"), and all works of authorship, Intellectual Property and other deliverables provided by either Party to the other thereunder or developed by either Party thereunder shall be treated in accordance with the terms of this Agreement, notwithstanding any conflicting term or condition contained in the Letter Agreement and the Letter Agreement shall be null and void and of no further force or effect.

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

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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 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:

David Bukovinsky, Vice President  
 Program Management  
 (dbukovinsky@WildBlue.com)

David M. Brown, Vice President &  
 General Counsel  
 (dbrown@WildBlue.com)

Contact Persons:

Stephen W. Cable, Vice President  
 Broadband Systems (scable@viasat.com)

Gregory D. Monahan, Vice President  
 Administration & General Counsel  
 (gmonahan@viasat.com)

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.

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- 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 and THE following provisions of this Agreement 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: SECTIONS 10, 12.2(a)(iii), 16.3(b), 16.4, 17, 18, 19, 20, 22, 24 AND 25.
- 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.



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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 6 (Statement of Work), Schedule 3 (SM/SMTS Functional Specification), Schedule 4 (IDU/ODU Interface Specification), Schedule 2 (WildBlue Radio Frequency Interface Specification), Schedule 17 (Satellite Physical Layer MIB Objects)); 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.



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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: \_\_\_\_\_  
Stephen W. Cable  
Vice President, Broadband Systems.

Date: March 5, 2001

Date: March 5, 2001.

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SCHEDULE 1

SATELLITE MODEM PRODUCT DESCRIPTION

VERSION 9, DATED 2/23/2001

\*\*\*

SCHEDULE 2

WILDBLUE RADIO FREQUENCY INTERFACE SPECIFICATION

DATED JANUARY 24, 2001

\* \* \*

SCHEDULE 3

SM/SMTS FUNCTIONAL SPECIFICATION

REVISION W06 DATED JANUARY 23, 2001

\* \* \*

SCHEDULE 4

IDU/ODU INTERFACE SPECIFICATION.

DRAFT 1, FEBRUARY 22, 2001

\* \* \*

SCHEDULE 5

WILDBLUE RESPONSIBILITIES

\* \* \*



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SCHEDULE 6

STATEMENT OF WORK

REVISION 7 DATED 2/22/2001

\*\*\*

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SCHEDULE 7

MILESTONE AND PAYMENT SCHEDULE

\*\*\*

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SCHEDULE 8

MINIMUM ORDER COMMITMENT AND MAXIMUM CAPACITY COMMITMENT

\*\*\*

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## SCHEDULE 9

## ORDER AND DELIVERY FORECAST

The Initial SM Delivery is identified as a milestone in Schedule 7 and becomes a firm Order upon the effective date of this contract.

Within a 5 day window of the first of each month, beginning \*\*\* and continuing through the Term, WildBlue will provide an Order and Delivery Forecast to the Contractor. 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. For the purposes of Section 8.5, Contractor may fulfill its commitment by delivering the ordered quantity of either version by the required delivery date.

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.

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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.)
*** (Firm Order)	***	***	*** (Forecast only)	*** (Forecast only)	*** (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)
***	***	***	***	***	***
(within +/- 15% of previous forecast for Nov.)	(within +/- 25% of previous forecast for Dec.)	(within +/- 50% of previous forecast for Jan. but cannot exceed *** per Schedule 8)	(Forecast Only)	(Forecast Only)	(Forecast Only)
(now Firm)					

-----

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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

\*\*\*

- 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 ten percent (10%) 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.

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SCHEDULE 11

SM PRICING SCHEDULE

Note: The ODU power supply is not priced. WildBlue reserves the right to remove the SM power supply from the SMS and contract for it separately from Contractor or a third party vendor.

\*\*\*

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SCHEDULE 12  
CONTRACTOR MARKS

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

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### SCHEDULE 13

#### TECHNICAL SUPPORT, WARRANTY SUPPORT AND MAINTENANCE

##### 1. TECHNICAL SUPPORT FOR SM

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:

1.1 At no additional charge, telephone support to the WildBlue technical team, 24 hours per day, seven days per week for SM related problems during development, testing, and the first six months of SMs operating in the field and communicating through a WildBlue satellite.

1.2 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.

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

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

1.5 Assistance in the support of the initial implementation of SMs and during installation of significant SM updates and/or changes.

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

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

##### 2. WARRANTY

2.1 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 \*\*\* 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.

2.2 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 \*\*\* 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

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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 \*\*\* 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 \*\*\* 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.

2.3 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.

2.4 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:

2.4.1 "Epidemic Failure" means within any consecutive \*\*\* period a failure of \*\*\* or more of the total number of SMs delivered to WildBlue in \*\*\* during the Warranty Period or Extended Warranty Period, as applicable, to conform to the Specifications. In the event of an Epidemic Failure, the Contractor shall do as follows:

(i) 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;

(ii) 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

(iii) 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.

2.4.2 In the event of an Out-of-Box Failure (as defined in the Agreement) affecting \*\*\* or more of any shipping lot of WBSMs equal to or greater than \*\*\* units, Contractor shall do as follows:

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(i) 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;

(ii) 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.

2.5 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.

2.6 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.

### 3. SM REPAIR RETURN

3.1 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.

3.2 The following information shall be furnished with SMS returned to Contractor for repairs:

3.2.1 Name of User, complete address and phone number;

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

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

3.2.4 SM warranty status via receipt, or RSA.

3.2.5 RSA number; and

3.2.6 SM Serial Number.

3.3 All SMS shipped to Contractor for repair shall have repair tags attached by Contractor which shall contain the above stated information.

3.4 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

POST WARRANTY SUPPORT AND MAINTENANCE

1. TECHNICAL SUPPORT FOR SM

The terms for post-warranty technical support are identical to those outlined in Schedule 13 under the section "Technical Support for SM."

2. POST-WARRANTY

2.1 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.

2.2 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.

2.3 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.

2.4 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.

2.5 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.

3. SM REPAIR RETURN

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

4. EMERGENCY REPLACEMENT SERVICE

4.1 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

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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:

4.1.1 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.

4.1.2 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.

4.1.3 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



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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.



March 5, 2001

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.

March 5, 2001

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 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

SATELLITE PHYSICAL LAYER MIB OBJECTS.

\* \* \*

ViaSat and WildBlue Confidential

## SCHEDULE 18

## MASTER PREFERRED ESCROW AGREEMENT.

Master Number \_\_\_\_\_.

THIS MASTER PREFERRED ESCROW AGREEMENT (the "Agreement") is entered into and effective as of February \_\_, 2001 ("Effective Date") by and among DSI TECHNOLOGY ESCROW SERVICES, INC. ("DSI"), VIASAT, INC., a Delaware corporation with its principal place of business at 6155 El Camino Real, Carlsbad, California 92009 ("ViaSat") and WILDBLUE COMMUNICATIONS, INC., a Delaware corporation with its principal place of business at 4600 South Syracuse, Suite 500, Denver, Colorado 80237 ("WildBlue"), who may be referred to in this Agreement individually as a "Party" or collectively as the "Parties." WildBlue may sometimes be referred to as "Preferred Beneficiary."

A. ViaSat and WildBlue have entered or will enter into an agreement regarding certain proprietary technology developed by ViaSat.

B. ViaSat desires to avoid disclosure of its proprietary technology except under certain limited circumstances.

C. The availability of the proprietary technology of ViaSat is critical to WildBlue in the conduct of its business and, therefore, WildBlue need access to the proprietary technology under certain limited circumstances.

D. ViaSat and WildBlue desire to establish an escrow with DSI to provide for the retention, administration and controlled access of certain proprietary technology materials of ViaSat.

E. The Parties desire this Agreement to be supplementary to the Relevant Agreements pursuant to 11 United States Bankruptcy Code, Section 365(n).

## ARTICLE 1 -- DEPOSITS.

1.1 Obligation to Make Deposit. Within ninety (90) days after the signing of Satellite Modem Development, Production and Purchase Agreement between WildBlue and ViaSat, dated March 5, 2001, and the Satellite Modem Termination System Development, Production and Purchase Agreement between WildBlue and ViaSat, dated \_\_\_\_\_, 2001 (collectively referred to herein as the "Relevant Agreements"), ViaSat shall begin to deliver to DSI the proprietary technology and other materials ("Source Materials") as required by the Relevant Agreements to be deposited and identified on Exhibit A. Exhibit A is to be prepared and, once the Parties have agreed, signed by ViaSat and WildBlue. DSI shall have no obligation with respect to the preparation, signing or delivery of Exhibit A.

Master Preferred Escrow Agreement

1.2 Identification of Tangible Media. Prior to the delivery of the Source Materials to DSI, ViaSat shall conspicuously label for identification each document, magnetic tape, disk, or other tangible media upon which the Source Materials are written or stored. Additionally, ViaSat shall complete Exhibit B to this Agreement by listing each such tangible media by the item label description, the type of media, the quantity and whether such Source Materials relate to the WBSM or SMTS. The Exhibit B shall be signed by ViaSat and delivered to DSI with the Source Materials. Unless and until ViaSat makes the initial deposit with DSI, DSI shall have no obligation with respect to this Agreement, except the obligation to notify the Parties regarding the status of the deposit account as required in Section 2.2 below.

1.3 Deposit Inspection. When DSI receives the Source Materials and the Exhibit B, DSI will conduct a deposit inspection by visually matching the labeling of the tangible media containing the Source Materials to the item descriptions and quantity listed on the Exhibit B. In addition to the deposit inspection, WildBlue may elect to cause a verification of the Source Materials in accordance with Section 1.6 below.

1.4 Acceptance of Deposit. At completion of the deposit inspection, if DSI determines that the labeling of the tangible media matches the item descriptions and quantity on Exhibit B, DSI will date and sign the Exhibit B and mail a copy thereof to ViaSat and WildBlue. If DSI determines that the labeling does not match the item descriptions or quantity on Exhibit B, DSI will (a) note the discrepancies in writing on Exhibit B; (b) date and sign Exhibit B with the exceptions noted; and (c) mail a copy of Exhibit B to ViaSat and WildBlue. DSI's acceptance of the deposit occurs upon the signing of Exhibit B by DSI. Delivery of the signed Exhibit B to WildBlue is WildBlue's notice that the Source Materials have been received and accepted by DSI.

1.5 ViaSat's Representations. ViaSat represents as follows:.

- a. ViaSat lawfully possesses all of the Source Materials deposited with DSI;.
- b. With respect to all of the Source Materials, ViaSat has the right and authority to grant to DSI and WildBlue the rights as provided in this Agreement;.
- c. The Source Materials are not subject to any lien or other encumbrance;.
- d. The Source Materials consist of the proprietary technology and other materials identified in the Relevant Agreements and Exhibit A; and.
- e. The Source Materials are readable and useable in their current form or, if any portion of the Source Materials are encrypted, the decryption tools and decryption keys have also been deposited.

1.6 Verification. A verification determines, in different levels of detail, the accuracy, completeness, sufficiency and quality of the Source Materials. .

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a. DSI shall perform a Level 1 verification of the Source Materials upon the initial deposit and for each update. A Level 1 verification is defined as follows: DSI will cause a technically qualified DSI employee to evaluate the Source Materials in order to identify (a) the hardware and software configurations reasonably necessary to maintain the Source Materials; (b) the hardware and software configurations reasonably necessary to compile the Source Materials; and (c) the compilation instructions. DSI will then prepare and deliver to ViaSat and WildBlue a report describing the information so identified. It shall be the responsibility of ViaSat, and not DSI, to ensure that the Source Materials contain the information so identified in DSI's report, as well as any other information that may be required in the Relevant Agreements and Exhibit A.

b. WildBlue shall have the right to cause a verification of any Source Materials, at WildBlue's expense. WildBlue shall notify ViaSat and DSI of WildBlue's request for verification. ViaSat shall have the right to be present at the verification. If a verification is elected after the Source Materials have been delivered to DSI, then only DSI, or at DSI's election an independent person or company selected and supervised by DSI who has executed a confidentiality agreement consistent with this Agreement to protect the confidentiality of the Source Materials, may perform the verification.

#### 1.7 Deposit Updates.

a. Generally. Unless otherwise provided by the Relevant Agreements, ViaSat shall update the Source Materials within sixty (60) days after ViaSat reaches a Milestone as defined the Relevant Agreements or each release of a Major Release, Point Release, new version of the product which is subject to the Relevant Agreements. Such updates will be added to the existing deposit. All deposit updates shall be listed on a new Exhibit B and the new Exhibit B shall be signed by ViaSat. Each Exhibit B will be held and maintained separately within the escrow account. An independent record will be created which will document the activity for each Exhibit B. The processing of all deposit updates shall be in accordance with Sections 1.2 through 1.6 above. All references in this Agreement to the Source Materials shall include the initial Source Materials and any updates. .

b. Depositrack Service. DSI shall notify ViaSat in writing quarterly of ViaSat's obligation to make updated deposits. Within sixty (60) days of receipt of such notice, ViaSat shall certify in writing to DSI that (a) it has made the updated deposits as required in the immediately preceding paragraph; or (b) there has not been a release of a new version of the product since the last deposit. Within seven (7) days after such sixty (60) day period, DSI shall notify WildBlue that DSI has received (a) an updated deposit from ViaSat; (b) a statement from ViaSat advising there has not been a release of a new version of the product since the last deposit; or (c) no response from ViaSat. Unlimited deposit updates and two (2) storage units are included in the fees for this Agreement.

1.8 Removal of Source Materials. The Source Materials may be removed and/or exchanged only on written instructions signed by ViaSat and WildBlue, or as otherwise provided in this Agreement.

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## ARTICLE 2 -- CONFIDENTIALITY AND RECORD KEEPING.

2.1 Confidentiality. DSI shall maintain the Source Materials in a secure, environmentally safe, locked facility which is accessible only to authorized representatives of DSI. DSI shall have the obligation to reasonably protect the confidentiality of the Source Materials. Except as provided in this Agreement, DSI shall not disclose, transfer, make available, or use the Source Materials. DSI shall not disclose the content of this Agreement to any third party. If DSI receives a subpoena or other order of a court or other judicial tribunal pertaining to the disclosure or release of the Source Materials, DSI will immediately notify the Parties to this Agreement unless prohibited by law. It shall be the responsibility of ViaSat and/or WildBlue to challenge any such order; provided, however, that DSI does not waive its rights to present its position with respect to any such order. DSI will not be required to disobey any court or other judicial tribunal order. (See Section 7.5 below for notices of requested orders.).

2.2 Status Reports. DSI will issue to ViaSat and WildBlue a report profiling the account history at least semi-annually including details of any deposit updates made by ViaSat in accordance with Section 1.7. DSI may provide copies of the account history pertaining to this Agreement upon the request of a Party to this Agreement.

2.3 Audit Rights. During the term of this Agreement, ViaSat and WildBlue shall each have the right to inspect the written records of DSI pertaining to this Agreement. Any inspection shall be held during normal business hours and following reasonable prior notice.

## ARTICLE 3 -- GRANT OF RIGHTS TO DSI.

3.1 Title to Media. ViaSat hereby transfers to DSI the title to the media upon which the proprietary technology and materials are written or stored. However, this transfer does not include the ownership of the proprietary technology and materials contained on the media such as any copyright, trade secret, patent or other intellectual property rights.

3.2 Right to Make Copies. DSI shall have the right to make copies of the Source Materials as reasonably necessary to perform its obligations under this Agreement. DSI shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on the Source Materials onto any copies made by DSI. With all Source Materials submitted to DSI, ViaSat shall provide any and all instructions as may be necessary to duplicate the Source Materials including but not limited to the hardware and/or software needed.

3.3 Right to Transfer Upon Release. ViaSat hereby grants to DSI the right to transfer Source Materials to WildBlue upon any release of the Source Materials for use by WildBlue in accordance with Section 4.5. Except upon such a release or as otherwise provided in this Agreement, DSI shall not transfer the Source Materials.

## ARTICLE 4 -- RELEASE OF DEPOSIT.

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4.1 Release Conditions. As used in this Agreement, "ViaSat" shall include all of ViaSat's subsidiaries and "Release Conditions" shall mean the existence of any one or more of the following circumstances:

a. ViaSat is unable or unwilling, after fourteen (14) days written notice from WildBlue, to provide support and maintenance for SMS or SMTSS, as applicable, in accordance with the Relevant Agreements;

b. ViaSat is subject to an Insolvency Event as follows:

- (i) ViaSat makes an assignment for the benefit of creditors or is generally unable to pay its debts as such debts become due for sixty (60) days; or
- (ii) any decree or order for relief in respect of ViaSat is entered, under any bankruptcy, reorganization, insolvency, dissolution, or liquidation or similar law, whether now or hereafter in effect (herein called the "Bankruptcy Law") of any relevant jurisdiction; or
- (iii) ViaSat petitions or applies to any tribunal for, or consents to the appointment of, or taking possession by, a trustee, receiver, custodian, or liquidator, of any substantial part of the assets of ViaSat, or commences a voluntary case under the Bankruptcy Law of the United States or any proceedings relating to ViaSat under the Bankruptcy Law of any other jurisdiction, that is not stayed or dismissed within sixty (60) days; or
- (iv) any such petition or application is filed, or any such proceedings are commenced, against ViaSat by a third party that are not stayed or dismissed within sixty (60) days and ViaSat, by any act, indicates its approval thereof, consent thereto or acquiescence to such petition, application or proceedings; or.

c. WildBlue requires Feature Work (as defined in the Relevant Agreements) to be performed on SMS or SMTSS, as applicable, and ViaSat is unwilling to perform the Feature Work or the Parties are unable to agree on the terms under which ViaSat would perform such feature work in accordance with the applicable Relevant Agreement; .

d. termination due to breach of a material term of a Relevant Agreement by ViaSat; or .

e. at the end of the Term, ViaSat will not extend the Relevant Agreement on commercially reasonable terms. .

4.2 Filing for Release. If WildBlue believes in good faith that a Release Condition has occurred, WildBlue may provide to DSI written notice of the occurrence of the Release Condition and a request for the release of the Source Materials for the WBSM or SMTS, as applicable; provided, that in the case of a Release Condition event described in Section 4.1(c) above, WildBlue shall only be entitled to request release of those materials

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described in paragraph 1 of the definition of Source Materials set forth on Exhibit A hereto. WildBlue shall only be entitled to request a release of both WBSM and SMTS Source Materials if a Release Condition exists under both Relevant Agreements. Upon receipt of such notice, DSI shall provide a copy of the notice to ViaSat by commercial overnight mail. .

4.3 Contrary Instructions. From the date ViaSat receives a request for release of the all or part of the Source Materials, ViaSat shall have fourteen (14) calendar days to deliver to DSI Contrary Instructions. "Contrary Instructions" shall mean the written representation by ViaSat that a Release Condition has not occurred or has been cured or that the list of Source Materials requested by WildBlue is beyond the scope of Source Materials permitted to be released under this Agreement or the Relevant Agreement(s). Upon receipt of Contrary Instructions, DSI shall send a copy to WildBlue by commercial express mail. Additionally, DSI shall notify both ViaSat and WildBlue that there is a dispute to be resolved pursuant to the Dispute Resolution section of this Agreement (Section 7.3). Subject to Section 5.2, DSI will continue to store the Source Materials without release pending (a) joint instructions from ViaSat and WildBlue; (b) resolution pursuant to the Dispute Resolution provisions; or (c) order of a court.

4.4 Release of Deposit. If DSI does not receive Contrary Instructions from ViaSat, DSI is authorized to release the requested Source Materials (the "Released Source Materials") to WildBlue. However, DSI is entitled to receive any fees due DSI before making the release. Any copying expense in excess of \$300 will be chargeable to WildBlue. Upon any such release, the escrow arrangement will be suspended as it relates to ViaSat and WildBlue involved in the release.

#### 4.5 Right to Use Following Release.

Subject to the terms and conditions of this Agreement and the Relevant Agreements, ViaSat hereby grants to WildBlue a current non-exclusive, perpetual, royalty free, worldwide, non-transferable (except as provided in the Assignment provision) license to access, utilize modify and adapt the Released Source Materials, make, have made, use, have used, sell, lease or otherwise transfer SMs and SMTs (as defined in the Relevant Agreements), as applicable, and to provide or have a third party provide support and maintenance or Feature Work (as defined below) for SMs and SMTs, as applicable, in accordance with the terms of the applicable Relevant Agreement; provided, that in the case of a Release Condition event described in Section 4.1(c) above, such license shall be limited to a world-wide, non-exclusive, non-transferable, perpetual, royalty free license to access, utilize, modify and adapt the Released Source Materials solely for the development, distribution and support of the new Features and functions . WildBlue hereby covenants not to exercise the rights granted to it in this clause 4.5 except upon the valid release of the Released Source Materials pursuant to a Release Event as provided in this Agreement and the Relevant Agreements. WildBlue shall be obligated to maintain the confidentiality of the Released Source Materials and treat such Released Source Materials as "Confidential Information" in accordance with the terms of the applicable Relevant Agreement. .

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## ARTICLE 5 -- TERM AND TERMINATION.

5.1 Term of Agreement. The initial term of this Agreement is for a period of one year. Thereafter, this Agreement shall automatically renew from year-to-year unless (a) ViaSat and WildBlue jointly instruct DSI in writing that the Agreement is terminated; or (b) the Agreement is terminated by DSI for nonpayment in accordance with Section 5.2. If the Acceptance Form has been signed at a date later than this Agreement, the initial term of the Acceptance Form will be for one year with subsequent terms to be adjusted to match the anniversary date of this Agreement. If the Source Materials are subject to another escrow agreement with DSI, DSI reserves the right, after the initial one year term, to adjust the anniversary date of this Agreement to match the then prevailing anniversary date of such other escrow arrangements.

5.2 Termination for Nonpayment. In the event of the nonpayment of fees owed to DSI, DSI shall provide written notice of delinquency to the Parties to this Agreement affected by such delinquency. Each Party shall have the right to make the payment to DSI to cure the default. If the past due payment is not received in full by DSI within one month of the date of such notice, then at any time thereafter DSI shall have the right to terminate this Agreement to the extent it relates to the delinquent Party by sending written notice of termination to such affected Parties. DSI shall have no obligation to take any action under this Agreement so long as any payment due to DSI remains unpaid.

5.3 Disposition of Source Materials Upon Termination. Upon termination of this Agreement, DSI shall destroy, return, or otherwise deliver the Source Materials in accordance with instructions. If there are no instructions, DSI may, at its sole discretion, destroy the Source Materials or return them to ViaSat. DSI shall have no obligation to return or destroy the Source Materials if the Source Materials are subject to another escrow agreement with DSI.

5.4 Survival of Terms Following Termination. Upon termination of this Agreement, the following provisions of this Agreement shall survive:.

- a. ViaSat's Representations (Section 1.5) if a release of the Source Materials has occurred prior to the termination;.
- b. The obligations of confidentiality with respect to the Source Materials;.
- c. The rights granted in the sections entitled Right to Transfer Upon Release (Section 3.3) and Right to Use Following Release (Section 4.5), if a release of the Source Materials has occurred prior to termination;.
- d. The obligation to pay DSI any fees and expenses due;.
- e. The provisions of Article 7; and.
- f. Any provisions in this Agreement which specifically state they survive the termination or expiration of this Agreement.

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## ARTICLE 6 -- DSI'S FEES.

6.1 Fee Schedule. DSI is entitled to be paid its standard fees and expenses applicable to the services provided. Unless otherwise stated in this Agreement or agreed in a writing signed by DSI, WildBlue will pay DSI's fees. DSI shall notify the Party responsible for payment of DSI's fees at least sixty (60) days prior to any increase in fees. For any service not listed on DSI's standard fee schedule, DSI will provide a quote prior to rendering the service, if requested.

6.2 Payment Terms. DSI shall not be required to perform any service unless the payment for such service and any outstanding balances owed to DSI are paid in full. Fees are due upon receipt of a signed contract or receipt of the Source Materials whichever is earliest. If invoiced fees are not paid, DSI may terminate this Agreement in accordance with Section 5.2. Late fees on past due amounts shall accrue interest at the rate of one and one-half percent per month (18% per annum) from the date of the invoice.

## ARTICLE 7 -- LIABILITY AND DISPUTES.

7.1 Right to Rely on Instructions. DSI may act in reliance upon any instruction, instrument, or signature reasonably believed by DSI to be genuine. DSI may assume that any employee of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. DSI shall not be required to inquire into the truth or evaluate the merit of any statement or representation contained in any notice or document. DSI shall not be responsible for failure to act as a result of causes beyond the reasonable control of DSI.

7.2 Indemnification. ViaSat and WildBlue each agree to indemnify, defend and hold harmless DSI from any and all claims, actions, damages, arbitration fees and expenses, costs, attorney's fees and other liabilities ("Liabilities") incurred by DSI relating in any way to this escrow arrangement unless such Liabilities were caused solely by the negligence or willful misconduct of DSI.

7.3 Dispute Resolution. Unless otherwise agreed by ViaSat or WildBlue, any dispute relating to or arising from this Agreement shall be initiated and maintained in a court of competent jurisdiction in Denver, Colorado, USA or San Diego, California, USA.

7.4 Controlling Law. This Agreement is to be governed and construed in accordance with the laws of the State of New York, United States of America, without regard to its conflict of law provisions.

7.5 Notice of Requested Order. If any Party intends to obtain an order from the arbitrator or any court of competent jurisdiction which may direct DSI to take, or refrain from taking any action, that Party shall:

- a. Give DSI at least two business days' prior notice of the hearing;.

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- b. Include in any such order that, as a precondition to DSI's obligation, DSI be paid in full for any past due fees and be paid for the reasonable value of the services to be rendered pursuant to such order; and.
- c. Ensure that DSI not be required to deliver the original (as opposed to a copy) of the Source Materials if DSI may need to retain the original in its possession to fulfill any of its other escrow duties.

ARTICLE 8 -- GENERAL PROVISIONS.

8.1 Entire Agreement. This Agreement, which includes the Acceptance Form and the Exhibits described herein, and the Relevant Agreements embodies the entire understanding among all of the Parties with respect to its subject matter and supercedes all previous communications, representations or understandings, either oral or written. DSI is not a party to the Relevant Agreements between ViaSat and WildBlue and has no knowledge of any of the terms or provisions of any such Relevant Agreements. DSI's only obligations to ViaSat or WildBlue are as set forth in this Agreement. No amendment or modification of this Agreement shall be valid or binding unless signed by all the Parties hereto, except that Exhibit A need not be signed by DSI, Exhibit B need not be signed by WildBlue, Exhibit C need not be signed, and the Acceptance Form need only be signed by the Parties identified therein.

8.2 Notices. All notices, invoices, payments, deposits and other documents and communications shall be given to the Parties at the addresses specified in the attached Exhibit C and Acceptance Form. It shall be the responsibility of the Parties to notify each other as provided in this Section in the event of a change of address or facsimile number. The Parties shall have the right to rely on the last known address or facsimile number of the other Parties. Unless otherwise provided in this Agreement, all notices must be in writing and all notices, documents and communications may be delivered by a reputable courier service, by electronic facsimile (followed by a copy by mail), or by certified or registered mail, (postage prepaid and return receipt requested). Notices sent by overnight courier shall be deemed received the day after the notice was sent.

8.3 Severability. In the event any provision of this Agreement is found to be invalid, voidable or unenforceable, the Parties agree that unless it materially affects the entire intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall affect neither the validity of this Agreement nor the remaining provisions herein, and the provision in question shall be deemed to be replaced with a valid and enforceable provision most closely reflecting the intent and purpose of the original provision.

8.4 Successors. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. However, DSI shall have no obligation in performing this Agreement to recognize any successor or assign of ViaSat or WildBlue unless DSI receives clear, authoritative and conclusive written evidence of the change of Parties.

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8.5 Regulations. ViaSat and WildBlue are responsible for and warrant compliance with all applicable laws, rules and regulations, including but not limited to customs laws, import, export, and re-export laws and government regulations of any country from or to which the Source Materials may be delivered in accordance with the provisions of this Agreement.

VIASAT, INC.

DSI TECHNOLOGY ESCROW SERVICES, INC.

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_.

WILDBLUE COMMUNICATIONS, INC.

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

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

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

Date: \_\_\_\_\_

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PREFERRED BENEFICIARY ACCEPTANCE FORM.

Account Number \_\_\_\_\_.

ViaSat, WildBlue and DSI Technology Escrow Services, Inc. ("DSI"), hereby acknowledge that WildBlue Communications, Inc. is WildBlue referred to in the Master Preferred Escrow Agreement ("Agreement") effective January \_\_, 2001 with DSI as the escrow agent and ViaSat as the depositor of the Source Materials. WildBlue hereby agrees to be bound by all provisions of such Agreement.

Notices and communications to and invoices for WildBlue should be addressed to:.

WildBlue Communications, Inc.  
4600 South Syracuse Street, #500  
Denver, CO 80237  
Attention: Michelle Kuska  
With a copy to David M. Brown

Notices and communications to ViaSat should be addressed to:

ViaSat, Inc.  
6155 El Camino Real  
Carlsbad, CA 92008  
Attention: Tom Eidenshink.

VIASAT, INC.

DSI TECHNOLOGY ESCROW SERVICES, INC.

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_.

WILDBLUE COMMUNICATIONS, INC.

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

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

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

Date: \_\_\_\_\_

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EXHIBIT A.

MATERIALS TO BE DEPOSITED.

Account Number \_\_\_\_\_.

ViaSat represents to WildBlue that Source Materials delivered to DSI shall consist of the following:

SOURCE MATERIALS means:

1. the human readable version of the Software 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 that enable the software program to be compiled into Executable Code, all of which, where applicable, shall be on media that allows the program to be read and processed. Source Code includes all documentation and know-how reasonably necessary to allow a person reasonably skilled in computer programming to understand and utilize such programs; and
2. notebooks, technical data, know-how, designs and other information with respect to the design, development and production of the SMS and SMTs, as applicable, sufficient to enable WildBlue to access, utilize, modify and adapt the Source Materials, make, have made, use, have used, sell, lease or otherwise transfer SMS and SMTs and to provide or have a third party provide support and maintenance or Feature Work for the SMS and SMTs. .

VIASAT, INC.

WILDBLUE COMMUNICATIONS, INC.

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

EXHIBIT B.

DESCRIPTION OF SOURCE MATERIALS.

Depositor Company Name: ViaSat Networks Inc.

Account Number: \_\_\_\_\_.

Product Name: \_\_\_\_\_ Version: \_\_\_\_\_

(Product Name will appear as the Exhibit B Name on Account History report).

SM/SMTS RELATIONSHIP.

\_\_\_\_\_ SM \_\_\_\_\_ SMTS.

DEPOSIT MATERIAL DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item.
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\_\_\_\_\_ Disk 3.5" or \_\_\_\_\_

\_\_\_\_\_ DAT tape \_\_\_\_\_mm

\_\_\_\_\_ CD-ROM

\_\_\_\_\_ Data cartridge tape \_\_\_\_\_

\_\_\_\_\_ TK 70 or \_\_\_\_\_ tape

\_\_\_\_\_ Magnetic tape \_\_\_\_\_

\_\_\_\_\_ Documentation

\_\_\_\_\_ Other \_\_\_\_\_.

PRODUCT DESCRIPTION:

Environment: \_\_\_\_\_

DEPOSIT MATERIAL INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name \_\_\_\_\_ Version: \_\_\_\_\_

Master Preferred Escrow Agreement



Hardware required: \_\_\_\_\_

Software required: \_\_\_\_\_

Other required information: \_\_\_\_\_

I certify for ViaSat that the above described Source Materials have been transmitted to DSI:.

Signature: \_\_\_\_\_

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

Date: \_\_\_\_\_

DSI has inspected and accepted the above materials (any exceptions are noted above):.

Signature: \_\_\_\_\_

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

Date Accepted: \_\_\_\_\_

Exhibit B#: \_\_\_\_\_

Send materials to: DSI, 9265 Sky Park Ct., Suite 202, San Diego, CA 92123 (858) 499-1600.

Master Preferred Escrow Agreement

EXHIBIT C.

DESIGNATED CONTACT.

Account Number: \_\_\_\_\_.

Notices and communications should be addressed to

Invoices should be addressed to:

For ViaSat Networks:

For WildBlue Communications Company:

Requests to change the designated contact should be given in writing by the designated contact or an authorized employee.

Contracts, Source Materials and notices to DSI should be addressed:

Invoice inquiries and fee remittances addressed to:.

DSI  
Contract Administration  
Suite 202  
9265 Sky Park Court  
San Diego, CA 92123  
Tel: (858)499-1600  
Fax: (858)694-1919

DSI  
Accounts Receivable  
P.O. Box 45156  
San Francisco, CA 94145-0156  
Tel: (858) 499-1636  
Fax: (858) 499-1637.

Date: \_\_\_\_\_

## CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-21113, 333-68757 and 333-40396) of ViaSat, Inc. of our report dated June 15, 2001, except as to Note 14 -- Subsequent Event which is as of June 21, 2001, relating to the financial statements and financial statement schedule which appear in this Form 10-K.

PricewaterhouseCoopers LLP

San Diego, California  
June 28, 2001