SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

---

# FORM 8-K

## CURRENT REPORT

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

March 19, 2003

(Date of Report)

ITRON, INC.

(Exact Name of Registrant as Specified in Charter)

| WASHINGTON | 000-22418 | 91-1011792 |
|---|---|---|
| (State or Other Jurisdiction of Incorporation) | (Commission File No.) | (IRS Employer Identification No.) |

2818 N. Sullivan Road, Spokane, WA 99216

(Address of Principal Executive Offices, including Zip Code)

(509) 924-9900

(Registrant's Telephone Number, Including Area Code)

None

(Former Name or Former Address, if Changed Since Last Report)

ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS

Pursuant to the Agreement and Plan of Merger, dated January 18, 2003 as amended on February 27, 2003 and February 28, 2003 (the "Merger Agreement"), by and among Itron, Inc. ("Itron"), Shadow Combination, Inc., a Delaware Corporation and wholly owned subsidiary of Itron ("Shadow Combination"), and Silicon Energy Corp., a Delaware Corporation ("Silicon"), the merger of Shadow Combination with and into Silicon became effective March 4, 2003 (the "Acquisition"). As a result of the Acquisition, Silicon became a wholly owned subsidiary of Itron.

In accordance with the Merger Agreement the capital stock of Shadow Combination and the capital stock of Silicon, other than dissenting shares, were cancelled and converted as follows:

(a) all issued and outstanding shares of capital stock of Shadow Combination were converted into and became one fully paid and nonassessable share of common stock, par value $.001 per share, of Silicon;

(b) all issued and outstanding shares of Silicon common stock (including Silicon Series A and Series B Preferred Stock as converted) were converted into the right to receive an amount of cash equal to approximately $1.21 per share, a portion of which will remain in escrow as discussed below;

(c) all issued and outstanding shares of Silicon Series C Preferred Stock were converted into the right to receive an amount of cash equal to approximately $2.77 per share, a portion of which will remain in escrow as discussed below; and

(d) all issued and outstanding shares of Silicon Series D Preferred Stock were converted into the right to receive an amount of cash equal to approximately $8.12 per share, a portion of which will remain in escrow as discussed below.

The consideration for the Acquisition was cash of $71,200,000, which included the repayment of approximately $4,200,000 in convertible debt of Silicon. Approximately $6,462,543 of the $71,200,000 will be held in escrow as security for indemnification obligations to Itron against certain claims during the first 24 months following the Acquisition.

The foregoing summary is qualified in its entirety by reference to the full text of the Merger Agreement attached hereto as Exhibit 2.1, which is incorporated herein by reference.

On March 4, 2003 Itron issued a press release announcing the Acquisition. The press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Silicon uses its assets (including plant, equipment or other physical property) to provide software solutions to customers including an integrated data collection, warehousing and analytic platform for the management of energy consumption information for utilities and major energy consumers. Itron intends that Silicon will continue to use assets for the same purposes following the Acquisition.

In connection with the Acquisition, on March 4, 2003 Itron entered into a Credit Agreement (the "Credit Agreement") with Wells Fargo Bank, National Association as Administrative Agent and the lenders who are, or may from time to time become a party to the Credit Agreement. The Credit Agreement consists of (i) a $55,000,000 three-year senior secured revolving credit facility and (ii) a $50,000,000 three-year senior secured term loan. The Credit Agreement is attached hereto as Exhibit 4.1 and is incorporated herein by reference.

ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS

(a) Financial statements of business acquired.

To be filed by amendment not later than 60 days from the date of this Report.

(b) Pro forma financial information

To be filed by amendment not later than 60 days from the date of this Report.

(c) Exhibits

The following exhibits are filed as part of this report:

| | |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated January 18, 2003 as amended on February 27, 2003 and February 28, 2003, by and among Itron, Inc., Shadow Combination, Inc., and Silicon Energy Corp ("Agreement and Plan of Merger"). * |
| 2.2 | Escrow Agreement dated March 4, 2003 by and among Itron, Inc., Mellon Investor Services, Inc. and JMI Equity Fund III, LP as the Stockholders' Representative (Exhibit A to Agreement and Plan of Merger). |
| 4.1 | Credit Agreement, dated March 4, 2003 by and among Itron, Inc. and Wells Fargo Bank, National Association as Administrative Agent.* |
| 99.1 | Press Release dated March 4, 2003 |

- ----------
*Certain schedules in connection with the Merger Agreement and Credit Agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. Registrant agrees to provide the Commission a copy of any such schedule upon request.

SIGNATURE

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

ITRON, INC.

Dated: March 19, 2003

By /s/ David G. Remington
---
David G. Remington
Vice President and Chief Financial Officer.

EXHIBIT INDEX

| Exhibit Number | Description |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated January 18, 2003 as amended on February 27, 2003 and February 28, 2003, by and among Itron, Inc., Shadow Combination, Inc., and Silicon Energy Corp ("Agreement and Plan of Merger"). * |
| 2.2 | Escrow Agreement dated March 4, 2003 by and among Itron, Inc., Mellon Investor Services, Inc. and JMI Equity Fund III, LP as the Stockholders' Representative (Exhibit A to Agreement and Plan of Merger). |
| 4.1 | Credit Agreement, dated March 4, 2003 by and among Itron, Inc. and Wells Fargo Bank, National Association as Administrative Agent.* |
| 99.1 | Press Release dated March 4, 2003. |

* Certain schedules in connection with the Merger Agreement and Credit Agreement have been omitted pursuant to item 601(b)(2) of Regulation S-K. Registrant agrees to provide the commission a copy of any such schedule upon request.

Exhibit 2.1

# AGREEMENT AND PLAN OF MERGER

By and Among

SILICON ENERGY CORP.,

SHADOW COMBINATION, INC.

and

ITRON, INC.

January 18, 2003

CONTENTS

SCHEDULES

# AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER, dated as of January 18, 2003 (this "Agreement"), is by and among SILICON ENERGY CORP., a Delaware corporation (the "Company"), SHADOW COMBINATION, INC., a Delaware corporation and wholly-owned subsidiary of Itron (the "Combination Company"), and ITRON, INC., a Washington corporation ("Itron").

## RECITALS

A. The parties hereto desire to consummate a merger whereby the Combination Company will be merged with and into the Company (the "Merger"), all upon the terms and subject to the conditions set forth in this Agreement and in accordance with the DGCL, whereby the Company Stockholders will receive cash in accordance with this Agreement.

B. The respective Boards of Directors of Itron, the Combination Company and the Company have reviewed and approved the terms of the Merger.

C. Concurrently with the execution of this Agreement, the stockholders listed in Schedule 1 (together, the "Majority Stockholders") will enter into support agreements (collectively, the "Support Agreements") whereby each of the Majority Stockholders will support the Merger and grant Itron a proxy for purposes of voting their respective interests in the Company at any Company Stockholders' meeting regarding the Merger.

D. The parties hereto have agreed that, as partial security for the indemnification provided hereunder by the Company Stockholders to Itron, an escrow (the "Escrow") shall be established in accordance with the terms and conditions of an Escrow Agreement substantially in the form attached hereto as Exhibit A (the "Escrow Agreement").

E. Itron, the Combination Company and the Company desire to make certain representations, warranties and agreements in connection with the Merger and also to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the premises and the representations, warranties and agreements herein contained, the parties agree as follows:

## AGREEMENT

## ARTICLE I.

## DEFINITIONS

For purposes of this Agreement, unless otherwise defined herein, capitalized terms and terms listed herein shall have the following meanings:

"AAA Rules" shall have the meaning given in Section 10.3(b)(i).

"Accounting Arbitrator" shall mean the independent accounting firm to be mutually designated by the Stockholders' Representative and Itron from time to time as necessary pursuant to Section 3.1(d)(iii).

"Accounts" shall have the meaning as given in Section 4.1(x).

"Additional Employee Payment Pool" shall have the meaning as given in Section 6.11.

"Affiliate" shall mean, with respect to any Person, (i) any Person who is a director, executive officer or the equivalent of that Person, (ii) any Person who directly or indirectly holds a ten percent (10%) or greater equity position in that Person, whether through shares, partnership interests, limited liability company interests, or otherwise, (iii) any Person in whom that Person holds, directly or indirectly, a ten percent (10%) or greater equity position, whether through shares, partnership interests, limited liability company interests, or otherwise, and (iv) any Person that controls that Person or any Person controlled by that Person, in either case directly or indirectly.

"Agreement" shall have the meaning as given in the Preamble hereto.

"Application Software" shall have the meaning as given in Section 4.1(k).

"Assets" shall mean all of the properties and assets owned, leased, or licensed by the Company, except for the Leased Premises, whether personal or mixed, tangible or intangible, wherever located.

"Bonus Pool Amount" shall have the meaning as given in Section 6.14.

"Bridge Note Amount" shall mean the aggregate principal amount of the Bridge Notes outstanding immediately prior to the Effective Time of the Merger, together with accrued and unpaid interest.

"Bridge Notes" shall mean the secured convertible promissory notes issued pursuant to the Convertible Note and Warrant Purchase Agreement, dated as of July 12, 2002, by and among the Company and the purchasers listed on Exhibit A thereto.

"business" shall mean the business of providing enterprise energy management software solutions, as conducted by the Company prior to the Closing Date.

"Business" shall mean the business of providing enterprise energy management software solutions, as conducted by the Company on the Closing Date.

"Business Condition" with respect to any entity shall mean the assets, business, financial condition or results of operations (without giving effect to the consequences of the

Merger contemplated by this Agreement) of such entity and its subsidiaries, if any, taken as a whole.

"Business Day" shall mean a day other than a Saturday, a Sunday, or a day on which banks in Spokane, Washington or Alameda, California are permitted or required by law to close.

"Cause" shall mean the occurrence of one or more of the following events: (a) willful misconduct, insubordination, or dishonesty in the performance of the Continuing Employee's duties or other knowing and material violation of the Surviving Corporation's or Itron's policies and procedures in effect from time to time which results in a Material Adverse Effect on the Surviving Corporation or Itron; (b) the continued failure of the Continuing Employee to satisfactorily perform his or her duties after receipt of written notice that specifically identifies the areas in which the Continuing Employee's performance is deficient; (c) willful actions (or intentional failures to act) in bad faith by the Continuing Employee with respect to the Surviving Corporation or Itron that materially impair the Surviving Corporation's or Itron's business, goodwill or reputation; (d) conviction of the Continuing Employee of a felony involving an act of dishonesty, moral turpitude, deceit or fraud, or the commission of acts that could reasonably be expected to result in such a conviction; (e) current use by the Continuing Employee of illegal substances; or (f) any material violation by the Continuing Employee of his or her confidentiality agreement with the Surviving Corporation or Itron.

"CCC" shall mean the California Corporations Code, as amended.

"Certificates" shall have the meaning as given in Section 3.2(c).

"Change of Control Agreement" shall mean the Change of Control Severance Agreements between the Company and certain persons as listed in the Company Disclosure Schedule.

"Claim Notice" shall mean a written notice in reasonable detail of the facts and circumstances that form the basis of an indemnification claim hereunder and setting forth the amount of Losses that an indemnified party has paid, sustained, incurred, or properly accrued, or reasonably anticipates that it will have to pay, sustain, incur, or accrue, and the sections of this Agreement upon which the claim for indemnification for such Losses is based.

"Closing" shall have the meaning as given in Section 2.2.

"Closing Date" shall have the meaning as given in Section 2.2.

"Closing Statement" shall have the meaning as given in Section 3.1(d).

"COBRA" shall mean the health care continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

"Commitment Letter" shall have the meaning as given in Section 4.2(h).

"Combination Company" shall mean Shadow Combination, Inc., a Delaware corporation.

"Common Merger Consideration" shall mean the dollar amount equal to the fraction, (a) the numerator of which is equal to the Merger Consideration less the Preferred Preference, and (b) the denominator of which is equal to the sum of (x) the aggregate number of shares of Company Common Stock issued and outstanding immediately prior to the Effective Time of the Merger (including shares of Company Common Stock issued with respect to Company Options which will become exercisable in connection with the Closing), and (y) the aggregate number of shares of Company Common Stock issuable upon exercise of the Company Warrants outstanding immediately prior to the Effective Time of the Merger.

"Company" shall mean Silicon Energy Corp., a Delaware corporation.

"Company Bonus Plan" shall have the meaning as given in Section 6.14.

"Company Common Stock" shall have the meaning as given in Section 4.1(b).

"Company Consents" shall have the meaning as given in Section 7.2(e).

"Company Disclosure Schedule" shall mean a document referring specifically to the representations and warranties in this Agreement that is delivered by the Company to Itron prior to the execution of this Agreement.

"Company Fee" shall have the meaning as given in Section 8.2(c).

"Company Intellectual Property Registrations" shall have the meaning as given in Section 4.1(k).

"Company Intellectual Property Rights" shall have the meaning as given in Section 4.1(k).

"Company's Knowledge" shall mean the actual knowledge, with an obligation to conduct a reasonable inquiry, of John Woolard, Jack Jenkins-Stark and Allan Schurr.

"Company Options" shall mean the Company common stock purchase options granted under the Company Stock Option Plan, or under any predecessor plan or arrangement under which Company Options were granted to employees, officers, directors and consultants of the Company as set forth in the Company Disclosure Schedule.

"Company-Paid Bonus Portion" shall mean that amount of cash of the Company that is to be paid as part of the Bonus Pool Amount at Closing.

"Company Payroll Agent" shall mean ADP, Inc.

"Company Permits" shall have the meaning as given in Section 4.1(j).

"Company Preferred Stock" shall have the meaning as given in Section 4.1(b).

"Company Representative" shall mean any director, officer, agent, employee, affiliate, attorney, accountant, financial advisor or other representative of the Company or its Affiliates.

"Company Stock" shall mean the Company Common Stock and the Company Preferred Stock.

"Company Stockholder Approval" shall have the meaning as given in Section 4.1(c).

"Company Stockholders" shall mean those individuals holding Company Stock immediately prior to the Effective Time of the Merger.

"Company Stockholders Meeting" shall have the meaning as given in Section 6.1(a).

"Company Stock Option Plan" shall have the meaning as given in Section 4.1(b).

"Company Warrants" shall mean the warrants of the Company exercisable for capital stock of the Company as set forth in the Company Disclosure Schedule.

"Confidentiality Agreement" shall have the meaning as given in Section 6.2.

"Consent" shall mean a consent, approval, Order, or authorization of, or registration, declaration, or filing with, or exemption by any third party, including without limitation, by any Governmental Entity.

"Constructively Terminated" shall mean any of the following events, without the consent of the Continuing Employee: (a) a demotion or other material reduction in the nature or status of the Continuing Employee's responsibilities; (b) a non-voluntary reduction in the Continuing Employee's annual base salary; or (c) a requirement that the Continuing Employee relocate his or her principal place of employment to a location that is more than 50 miles from the place of employment where the Continuing Employee was previously employed.

"Continuing Employee" shall have the meaning as given in Section 6.9(a).

"Contractual Documents" shall have the meaning as given in Section 4.1(c).

"Control" shall mean, with respect to any specified Person, the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of Voting Stock, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Counternotice" shall mean a written objection to a claim or payment setting forth the basis for disputing such claim or payment.

"Debt Financing" shall have the meaning as given in Section 4.2(h).

"Default" shall have the meaning as given in Section 4.1(c).

"DGCL" shall mean the Delaware General Corporation Law, as amended.

"Dissent Rights" shall mean the rights of Company Stockholders to dissent from the Merger as provided under the DGCL.

"DOL" shall mean the United States Department of Labor.

"Domain Names" shall have the meaning as given in Section 4.1(k).

"Effective Time of the Merger" shall have the meaning as given in Section 2.2.

"Eligible Dissenting Shares" shall have the meaning as given in Section 3.1(e).

"Employee Benefit Plan" shall mean any retirement, pension, profit sharing, deferred compensation, stock bonus, savings, bonus, incentive, cafeteria, medical, dental, vision, hospitalization, life insurance, accidental death and dismemberment, medical expense reimbursement, dependent care assistance, tuition reimbursement, disability, sick pay, holiday, vacation, severance, change of control, stock purchase, stock option, restricted stock, phantom stock, stock appreciation rights, fringe benefit or other employee benefit plan, fund, policy, program, contract, arrangement or payroll practice of any kind (including any "employee benefit plan," as defined in Section 3(3) of ERISA) or any employment, consulting or personal services contract, whether written or oral, qualified or nonqualified, funded or unfunded, or domestic or foreign, (a) sponsored, maintained or contributed to by the Company or to which the Company is a party, (b) covering or benefiting any current or former officer, employee, agent, director or independent contractor of the Company (or any dependent or beneficiary of any such individual), or (c) with respect to which the Company has (or could have) any obligation or liability.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"Escrow" shall have the meaning as given in the Recitals hereto.

"Escrow Agent" shall have the meaning as given in Section 3.1(c).

"Escrow Agreement" shall have the meaning as given in the Recitals hereto.

"Escrowed Pro Rata Basis" shall mean that each Company Stockholder's contribution to and/or deduction from the Escrow shall be proportional to the amount of Merger

Consideration that such stockholder is entitled to receive at the Effective Time of the Merger (without giving effect to the Escrow) relative to the total amount of the Merger Consideration.

"Estimated Net Working Capital Adjustment" shall have the meaning as given in Section 3.1(d).

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

"Exchange Agent" shall have the meaning as given in Section 3.2(a).

"Final Closing Balance Sheet" shall have the meaning as given in Section 3.1(d)(ii).

"Final Closing Statements" shall have the meaning as given in Section 3.1(d)(ii).

"Final NWCA Decrease" shall have the meaning as given in Section 3.1(d)(v).

"Final NWCA Determination" shall have the meaning as given in Section 3.1(d)(iii).

"Final NWCA Increase" shall have the meaning as given in Section 3.1(d)(iii).

"Final NWCA Payment" shall have the meaning as given in Section 3.1(d)(iii).

"Financial Statements" shall have the meaning as given in Section 4.1(h).

"Former Company Employees" shall mean the employees of the Company as of the Effective Time of the Merger.

"Former Employee Claims" shall mean the claims for relief by former Company employees Jay Bileti, Michael Kulisch and Lina Larieau that have been brought or may be brought against the Company, the Surviving Corporation or Itron for the Company's actions prior to the Effective Time of the Merger with respect to the employment of such former Company employees.

"GAAP" shall mean generally accepted accounting principles established by the American Institute of Certified Public Accountants.

"Governmental Entity" shall mean an administrative agency, court, or commission or other governmental authority or instrumentality, whether domestic or foreign.

"HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1997, as amended.

"HSR" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indemnified Personnel" shall have the meaning as given in Section 6.13.

"Initial Excess Decrease" shall have the meaning as given in Section 3.1(d)(i).

"Initial Excess Increase" shall have the meaning as given in Section 3.1(d)(i).

"Investment" shall have the meaning as given in Section 8.2(b).

"IRS" shall mean the United States Internal Revenue Service.

"Itron" shall mean Itron, Inc., a Washington corporation.

"Itron SEC Reports" shall have the meaning as given in Section 4.2(g).

"Itron's Knowledge" shall mean the actual knowledge, with an obligation to conduct a reasonable inquiry, of LeRoy Nosbaum, David Remington and Russ Fairbanks.

"Itron Permits" shall have the meaning as given in Section 4.2(j).

"Laws" shall mean all statutes, regulations, rules and orders of Governmental Entities, and terms and conditions of any grant of approval, permission, authority, or license of any court, Governmental Entity, statutory body or self-regulatory authority, and the term "applicable" with respect to such Laws and in the context that refers to one or more persons, means that such Laws apply to such Person or Persons or its or their business, undertaking, property or securities and have been created or otherwise provided for by a Governmental Entity having jurisdiction over the Person or Persons or its or their business, undertaking, property or securities.

"Leased Premises" shall mean all parcels of real estate subject to leases to which the Company is a party as a lessee as identified on Section 4.1(q) of the Company Disclosure Schedule.

"Losses" shall mean actual losses, damages, liabilities, claims, judgments, settlements, fines, costs, and expenses (including reasonable attorneys' fees) of any kind, minus: (i) any insurance proceeds received (less the fees and expenses incurred to obtain such proceeds) from a third party insurer (other than under insurance that is retrospectively rated or that is the economic equivalent of self-insurance); and (ii) any actual recovery from third parties (less the fees and expenses incurred to obtain such proceeds); provided, however, that "Losses" shall not include any indirect and/or consequential losses or damages of any kind incurred by Itron and/or the Surviving Corporation but shall include indirect and/or consequential losses or damages claimed by a third party.

"Majority Stockholders" shall have the meaning as given in the Recitals hereto.

"Material Adverse Effect" shall mean, with respect to any entity, a material adverse effect individually or in the aggregate on the Business Condition of such entity, other than

any change, circumstance or effect (i) relating to the United States economy or securities markets in general, (ii) relating to the industries in which the Company or Itron operate and not specifically relating to the Company or Itron, or (iii) relating to or resulting from, directly or indirectly, the execution of this Agreement, the announcement of this Agreement and the transactions contemplated hereby.

"Material Contract" shall have the meaning as given in Section 4.1(d).

"Meeting" shall mean the meeting of the Company's stockholders to consider approval of the Merger in compliance with the DGCL.

"Merger" shall have the meaning as given in the Recitals hereto.

"Merger Consideration" shall mean a cash amount equal to the result obtained by subtracting (i) the Bonus Pool Amount (less the Company-Paid Bonus Portion) and the Bridge Note Amount from (ii) Seventy-One Million, Two Hundred Thousand U.S. Dollars ($71,200,000).

"Merger Filing" shall have the meaning as given in Section 2.2.

"NASD" shall mean the National Association of Securities Dealers, Inc.

"Net Working Capital" shall have the meaning as given in Schedule 3.1(d).

"Net Working Capital Adjustment" shall mean an adjustment to Net Working Capital.

"NWCA Overpayment" shall have the meaning as given in Section 3.1(d)(iv).

"NWCA Dispute Notice" shall have the meaning as given in Section 3.1(d)(iii).

"NWCA Underpayment" shall have the meaning as given in Section 3.1(d)(vi).

"OFAC" shall have the meaning as given in Section 4.1(i).

"Operative Documents" shall have the meaning as given in Section 4.1(a).

"Order" shall mean a decree, judgment, injunction, ruling, writ or other order of a Governmental Entity having jurisdiction.

"Payment Certificate" shall mean a written claim for payment of Losses in reasonable detail and specifying the amount of such Losses.

"Person" shall mean an individual, corporation, partnership, joint venture, limited liability company, association, trust, unincorporated organization or other entity.

"Post-Closing Terminated Employee" shall have the meaning as given in Section 6.9(d).

"Preferred Preference" shall mean the sum of (a) the Series A Preference multiplied by the aggregate number of shares of Series A Preferred Stock outstanding immediately prior to the Effective Time of the Merger, (b) the Series B Preference multiplied by the aggregate number of shares of Series B Preferred Stock outstanding immediately prior to the Effective Time of the Merger, (c) the Series C Preference multiplied by the aggregate number of shares of Series C Preferred Stock outstanding immediately prior to the Effective Time of the Merger and (d) the Series D Preference multiplied by the aggregate number of shares of Series D Preferred Stock outstanding immediately prior to the Effective Time of the Merger. For purposes of this definition, it is assumed that any shares of Company Preferred Stock that are converted into shares of Company Common Stock in connection with the Closing are converted prior to calculating the Preferred Preference.

"Preliminary Closing Balance Sheet" shall have the meaning as given in Section 3.1(d)(i).

"Products" shall have the meaning as given in Section 4.1(k)(ii).

"Public Software" means any software that contains, or is derived (in whole or in part) from, any software that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including, but not limited to software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (i) STL Port 4.5.1, and (ii) SSL (Secure Socket Layer).

"SEC" shall mean the United States Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Series A Preference" means $0.55.

"Series A Preferred Stock" means the Series A Preferred Stock, $0.001 par value, of the Company.

"Series B Preference" means $0.80, plus an amount equal to all accrued but unpaid dividends on each share of Series B Preferred Stock.

"Series B Preferred Stock" means the Series B Preferred Stock, $0.001 par value, of the Company.

"Series C Preference" means $2.20, plus an amount equal to all accrued but unpaid dividends on each share of Series C Preferred Stock.

"Series C Preferred Stock" means the Series C Preferred Stock, $0.001 par value, of the Company.

"Series D Preference" means $6.75, plus an amount equal to all accrued but unpaid dividends on each share of Series D Preferred Stock.

"Series D Preferred Stock" means the Series D Preferred Stock, $0.001 par value, of the Company.

"Stock Purchase Agreement" shall have the meaning as given in Section 8.2(b).

"Stockholders' Representative" shall have the meaning as given in Section 10.7.

"Superior Proposal" shall have the meaning as given in Section 9.2.

"Surviving Corporation" shall have the meaning as given in Section 2.1.

"SVB Loan" shall mean the Company's existing credit facility (or facilities, if more than one) with Silicon Valley Bank immediately prior to the Effective Time of the Merger.

"SVB Loan Amount" shall mean all unpaid principal and interest on the SVB Loan immediately prior to the Effective Time of the Merger.

"Takeover Proposal" shall have the meaning as given in Section 9.1.

"Tax" and "Taxes" shall mean (a) domestic or foreign federal, state or local taxes, charges, fees, levies, imposts, duties and governmental fees or other like assessments or charges of any kind whatsoever (including, without limitation, any income, net income, gross income, receipts, windfall profit, severance, property, production, sales, use, business and occupation, license, excise, registration, franchise, employment, payroll, withholding, alternative or add-on minimum, intangibles, ad valorem, transfer, gains, stamp, estimated, transaction, title, capital, paid-up capital, profits, occupation, premium, value-added, recording, real property, personal property, inventory and merchandise, business privilege, federal highway use, commercial rent or environmental tax), (b) interest, penalties, fines, additions to tax or additional amounts imposed by any taxing authority in connection with (i) any item described in clause (a) or (ii) the failure to comply with any requirement imposed with respect to any Tax Return, and (c) liability in respect of any items described in clause (a) or (b) payable by reason of contract assumption, transferee liability, operation of law, Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any similar provision under law) or otherwise.

"Tax Returns" shall mean any return, report or statement required to be filed with respect to any Tax (including any attachments thereto and any amendment thereof),

including, without limitation, any information return, claim for refund, amended return or declaration of estimated Tax.

"Technical Information" shall have the meaning as given in Section 4.1(k).

"Technology" shall have the meaning as given in Section 4.1(k).

"Technology-Related Assets" shall have the meaning as given in Section 4.1(k).

"Terminated Employee" shall have the meaning as given in Section 6.9(d).

"Third Party Claim" shall have the meaning as given in Section 10.4(a).

"Third Party Licenses" shall have the meaning as given in Section 4.1(k).

"Third Party Technologies" shall have the meaning as given in Section 4.1(k).

"Voting Stock" shall mean any class or classes of capital stock pursuant to which the holders thereof have the general voting power under ordinary circumstances to elect a majority of the Board of Directors, managers or trustees of any Person (irrespective of whether or not, at the time, stock of any other class or classes shall have, or might have, voting power by reason of the happening of any contingency).

"Wells Fargo" shall have the meaning as given in Section 4.2(h).

## ARTICLE II.

## THE MERGER

### 2.1 THE MERGER

Upon the terms and subject to the conditions hereof and in accordance with the DGCL, the Combination Company shall be merged with and into the Company at the Effective Time of the Merger. Following the Merger, the separate corporate existence of the Combination Company shall cease and the Company shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights and obligations of the Combination Company in accordance with the DGCL.

### 2.2 EFFECTIVE TIME

As soon as practicable following the satisfaction or, to the extent permitted hereunder, the waiver of the conditions set forth in Article VII, and provided that this Agreement has not been terminated pursuant to Section 8.1, the parties hereto shall cause the Merger to be consummated by executing and filing a certificate of merger (substantially in the form attached hereto as Exhibit B) as required by the DGCL with respect to the Merger (the "Merger Filing") and other appropriate documents executed in accordance with the relevant provisions of the DGCL. The Merger shall become effective at such time as the Merger

Filing is duly filed with the Delaware Secretary of State, or at such later time as Itron and the Company shall agree should be specified in the Merger Filing (the time the Merger becomes effective being the "Effective Time of the Merger"). The closing of the Merger (the "Closing") shall take place at the offices of Perkins Coie LLP, 1201 Third Avenue, Suite 4800, Seattle, Washington 98101, as soon as practicable after satisfaction or waiver of the latest to occur of the conditions set forth in Article VII (but in no event later than five (5) Business Days after such satisfaction or waiver) or on such other date as agreed to by Itron and the Company (the "Closing Date").

2.3 EFFECTS OF THE MERGER

The Merger shall have the effects set forth herein and in Section 251 of the DGCL. If at any time after the Effective Time of the Merger, the Company or the Surviving Corporation shall consider or be advised that any further assignments or assurances in law or otherwise are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation, all rights, title and interests in all real estate and other property and all privileges, powers and franchises of the Company and the Combination Company, the Surviving Corporation and its proper officers and directors, in the name and on behalf of the Company and the Combination Company, shall execute and deliver all such proper deeds, assignments and assurances in law and do all things necessary and proper to vest, perfect or confirm title to such property or rights in the Surviving Corporation and otherwise to carry out the purpose of this Agreement, and the proper officers and directors of the Surviving Corporation are fully authorized in the name of the Company and the Combination Company or otherwise to take any and all such action.

2.4 CERTIFICATE OF INCORPORATION AND BYLAWS

(a) At the Effective Time of the Merger, the Certificate of Incorporation of the Company shall be amended and restated in full to read as set forth in Exhibit C attached hereto and shall be the Certificate of Incorporation of the Surviving Corporation; provided, however, at the Effective Time of the Merger, Article I thereof shall be amended to read as follows: "The name of the corporation is Silicon Energy Corp." Thereafter, the Certificate of Incorporation of the Surviving Corporation may be changed or amended as provided therein or by applicable law.

(b) At the Effective Time of the Merger, the Bylaws of the Company shall be amended and restated in full to read as set forth in Exhibit D hereto and shall be the Bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law.

2.5 DIRECTORS AND OFFICERS

The directors and officers of the Combination Company shall, from and after the Effective Time of the Merger, be the directors and officers of the Surviving Corporation and shall serve until their successors have been duly elected or appointed and qualified or until

their earlier death, resignation or removal in accordance with the Surviving Corporation's Certificate of Incorporation and Bylaws.

## ARTICLE III.

## EFFECT OF THE MERGER ON THE CAPITAL STOCK OF THE CONSTITUENT CORPORATIONS; EXCHANGE OF CERTIFICATES

### 3.1 EFFECT ON CAPITAL STOCK

As of the Effective Time of the Merger, by virtue of the Merger and without any action on the part of the Company, the Combination Company, Itron or the holders of any Company Stock or capital stock of Combination Company:

(a) CONVERSION OF COMBINATION COMPANY STOCK

All shares of stock of the Combination Company issued and outstanding immediately prior to the Effective Time of the Merger shall, in the aggregate, be converted automatically into one share of the Surviving Corporation as of the Effective Time of the Merger.

(b) CONVERSION OF COMPANY STOCK

On the terms and subject to the conditions of this Agreement, including reduction for the Escrow and Net Working Capital Adjustment pursuant to Sections 3.1(c) and 3.1(d), respectively, at the Effective Time of the Merger, by virtue of the Merger and without any action on the part of Itron, the Company or the holder of any Company Stock, the following shall occur:

(i) Conversion of Company Common Stock. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time of the Merger (other than any shares of Company Common Stock to be canceled pursuant to Section 3.1(b)(vi), and any Eligible Dissenting Shares (as provided in Section 3.1(e)) shall be automatically converted into solely the right to receive in cash the Common Merger Consideration.

(ii) Conversion of Series A Preferred Stock. Each share of Series A Preferred Stock issued and outstanding immediately prior to the Effective Time of the Merger (other than any shares of Series A Preferred Stock to be canceled pursuant to Section 3.1(b)(vi) and any Eligible Dissenting Shares (as provided in Section 3.1(e)) shall be automatically converted into solely the right to receive in cash the Series A Preference.

(iii) Conversion of Series B Preferred Stock. Each share of Series B Preferred Stock issued and outstanding immediately prior to the Effective Time of the Merger (other than any shares of Series B Preferred Stock to be canceled pursuant to Section 3.1(b)(vi) and any Eligible Dissenting Shares (as provided in Section 3.1(e)) shall be automatically converted into solely the right to receive in cash the Series B Preference.

(iv) Conversion of Series C Preferred Stock. Each share of Series C Preferred Stock issued and outstanding immediately prior to the Effective Time of the Merger (other than any shares of Series C Preferred Stock to be canceled pursuant to Section 3.1(b)(vi) and any Eligible Dissenting Shares (as provided in Section 3.1(e)) shall be automatically converted into solely the right to receive in cash the Series C Preference.

(v) Conversion of Series D Preferred Stock. Each share of Series D Preferred Stock issued and outstanding immediately prior to the Effective Time of the Merger (other than any shares of Series D Preferred Stock to be canceled pursuant to Section 3.1(b)(vi) and any Eligible Dissenting Shares (as provided in Section 3.1 (e)) shall be automatically converted into solely the right to receive in cash the Series D Preference.

(vi) Cancellation of Company-Owned Stock. Each share of Company Stock owned by the Company immediately prior to the Effective Time of the Merger shall be automatically canceled and extinguished without any exchange thereof and without any further action on the part of Itron, Combination Company or the Company.

(vii) Company Options. No Company Options shall be assumed by Itron and pursuant to the Company Stock Option Plan, immediately prior to the Effective Time of the Merger, all of the outstanding Company Options shall become fully exercisable. Pursuant to the terms of the Company Stock Option Plan, any Company Options not exercised prior to the Effective Time of the Merger will be automatically terminated.

(viii) Company Warrants. No outstanding Company Warrants shall be assumed by Itron, and the Company agrees to use commercially reasonable efforts to arrange for each of the Company Warrants to be cancelled and extinguished at, or prior to, the Effective Time of the Merger.

(ix) No Further Rights in Company Stock. At the Effective Time of the Merger, the holders of any Company Stock outstanding immediately prior to the Effective Time of the Merger shall cease to have any rights with respect to such Company Stock, except the right to receive their respective portions of the Merger Consideration and as otherwise provided herein.

(c) DEPOSIT OF ESCROWED FUNDS

Notwithstanding the foregoing and the provisions of this Article III (other than this Section 3.1(c)), and subject to the effectiveness of the Merger, ten percent (10%) of the Merger Consideration shall be deposited in the Escrow with Mellon Investor Services LLC (the "Escrow Agent"), to be held and administered in accordance with the Escrow Agreement, such Escrow to be withheld and deducted, on an Escrowed Pro Rata Basis, from the Merger Consideration otherwise issuable to the Company Stockholders at the Effective Time of the Merger.

(d) NET WORKING CAPITAL ADJUSTMENT

(i) At least two (2) Business Days prior to the estimated Effective Time of the Merger, the Company shall prepare in good faith and deliver to Itron a preliminary projected balance sheet as of the anticipated Effective Time of the Merger (the "Preliminary Closing Balance Sheet"). The Preliminary Closing Balance Sheet shall be prepared according to GAAP consistent with the Company's past practices and shall be accompanied by a projected statement of income in accordance with GAAP for the period ended at the anticipated Effective Time of the Merger (the "Closing Statement"). In addition, the Company shall provide a schedule reasonably detailing the Company's estimate as of the projected Effective Time of the Merger of the Net Working Capital Adjustment (the "Estimated Net Working Capital Adjustment") prepared in accordance with the provisions set forth on Schedule 3.1(d) comparing the Net Working Capital on the Company's Balance Sheet as of August 31, 2002 with the anticipated balance sheet at the Effective Time of the Merger based on the Preliminary Closing Balance Sheet. To the extent that the Estimated Net Working Capital Adjustment is a decrease in excess of Three Million Dollars ($3,000,000) (such excess over $3,000,000, an "Initial Excess Decrease"), Itron shall withhold from the Merger Consideration an amount of cash equal to One Hundred Percent (100%) of such Initial Excess Decrease, and Itron shall add such to the Escrow provided for in Section 3.1(c) above. To the extent that the Estimated Net Working Capital Adjustment is an increase in excess of Three Million Dollars ($3,000,000) (such excess over $3,000,000, an "Initial Excess Increase"), Itron shall contribute to the Escrow provided for in Section 3.1(c) above an amount of cash equal to such Initial Excess Increase. The Company shall consult with Itron during the preparation of the Preliminary Closing Balance Sheet, the Closing Statement and the Net Working Capital Adjustment. If the Company and Itron are unable to agree on the Estimated Net Working Capital Adjustment following such consultation, then, in addition to any other amounts to be deposited into the Escrow at Closing pursuant to this Section 3.1, Itron shall withhold from the Merger Consideration and deposit into the Escrow an amount of Merger Consideration equal to (x) the Estimated Net Working Capital Adjustment prepared by the Company (the "Company NWCA Estimate"), plus (y) one-half of the result obtained by subtracting (I) the Company NWCA Estimate from (II) the Estimated Net Working Capital Adjustment prepared by Itron. For all purposes of Sections 3.1(c) and (d) and Article X, the amounts to be withheld from or paid in addition to the Merger Consideration, and amounts otherwise deposited in or paid from the Escrow, shall be apportioned on an Escrowed Pro Rata Basis among all Company Stockholders. It is the intent of the Company and Itron to provide in so far as reasonably possible that the Final NWCA Decrease (as hereinafter defined) will not be more than the Initial NWCA Decrease (as hereinafter defined).

(ii) As promptly as practicable after the Effective Time of the Merger, but in no event more than forty-five (45) days after the Effective Time of the Merger, Itron shall prepare an unaudited balance sheet and income statement as of the Effective Time of the Merger (the "Final Closing Balance Sheet") and a schedule calculating the Net Working Capital Adjustment prepared in accordance with the provisions set forth on Schedule 3.1(d)

(together the "Final Closing Statements") and, prior to the Closing Date, may engage Deloitte & Touche, LLP or such other nationally recognized accounting firm to conduct an audit of the Final Closing Statements at Itron's sole cost. The Final Closing Statements shall be prepared according to GAAP, consistent with the Company's past practices through the Effective Time of the Merger, except for the adjustments set forth on Schedule 3.1(d), which shall be applied to calculate the final Net Working Capital Adjustment and shall be reflected in one or more footnotes and supplemental schedules to such statements. A separate schedule attached to the Final Closing Statements shall contain the calculation of the final Net Working Capital Adjustment. The Final Closing Statements shall be promptly delivered to each of the Stockholders' Representative as soon as they are available for their review and comment, and Itron and the Stockholders' Representative shall thereafter attempt to reach agreement on the Final Closing Statements. Itron and the Stockholders' Representative shall have access to the Company's and Itron's work papers used in the preparation of the Preliminary Closing Balance Sheet and Final Closing Statements.

(iii) If the Stockholders' Representative and Itron are unable to agree on the Final Closing Statements, then the Stockholders' Representative shall present any objections or comments in writing to Itron no later than twenty (20) days after their receipt of the Final Closing Statements, specifying in reasonable detail any objections thereto (the "NWCA Dispute Notice"). Itron and the Stockholders' Representative shall be deemed to have agreed with all other items and amounts contained in the Final Closing Statements. If within twenty (20) Business Days after Itron's receipt of the Revenue Dispute Notice, Itron and the Stockholders' Representative are unable to resolve informally matters raised by the Revenue Dispute Notice and the Stockholders' Representative have not retracted the Revenue Dispute Notice, the parties shall submit the Revenue Dispute Notice to the Accounting Arbitrator for resolution. If the parties are unable to agree upon one Accounting Arbitrator, each shall appoint an Accounting Arbitrator and these appointees shall appoint a third Accounting Arbitrator (collectively the "Accounting Arbitrators"), in which case the resolution of the items contained in the Revenue Dispute Notice shall be made by a majority decision of the Accounting Arbitrators. The Accounting Arbitrator(s) shall be directed to make a resolution within forty-five (45) days of engagement and such resolution shall be conclusive and binding on all parties. Itron and the Stockholders' Representative shall pay the costs and expense of their own accountants and attorneys and shall bear equally the expense of the Accounting Arbitrator(s); provided, however, that if the Accounting Arbitrator(s) shall determine that the total variance of all items contained in the Revenue Dispute Notice varies by more than 15% of the amount calculated by Itron, then such fees and expenses of the Accounting Arbitrator(s) shall be paid by Itron.

(iv) To the extent that the Net Working Capital Adjustment (as finally determined in accordance with the provisions set forth above (a "Final NWCA Determination") is an increase greater than Three Million Dollars ($3,000,000) (such excess

over $3,000,000 being a "Final NWCA Increase") when compared to the August 31, 2002 Balance Sheet, then, within five (5) Business Days after such Final NWCA Determination, Itron shall deposit with the Escrow Agent an amount of cash equal to such Final Excess Increase, less any cash added to the Escrow as an Initial Excess Increase, if any, (a "Final NWCA Payment"). Within five (5) days after a Final NWCA Payment is deposited in the Escrow pursuant to this Section 3.1(d)(iii), such Final NWCA Payment, plus any Initial Excess Increase or any Initial Excess Decrease, as applicable, shall be released from the Escrow to the Stockholders' Representative, whereupon it shall be paid at and by the direction of the Stockholders' Representative to the former Company Stockholders in proportion to their receipt of the Merger Consideration in accordance with Section 3.1(b).

(v) To the extent that a Final NWCA Determination results in a Net Working Capital Adjustment that is zero or a Final NWCA Increase that is less than the amount of any Initial Excess Increase, if any (such difference, an "NWCA Overpayment"), then, within five (5) Business Days following a Final NWCA Determination, (x) an amount of cash equal to such NWCA Overpayment shall be transferred to Itron in accordance with the Escrow Agreement, and (y) the remainder of such Initial Excess Increase shall be released from the Escrow to the Stockholders' Representative, whereupon it shall be paid at and by the direction of the Stockholders' Representative to the former Company Stockholders in proportion to their receipt of the Merger Consideration in accordance with Section 3.1(b).

(vi) To the extent that a Final NWCA Determination results in a Net Working Capital Adjustment that is a decrease of more than Three Million Dollars ($3,000,000) (the amount of such decrease in excess of $3,000,000 being a "Final NWCA Decrease"), then within five (5) business days following such Final NWCA Determination, an amount of cash equal to such Final NWCA Decrease, including the entire amount of any Initial Excess Increase previously deposited into the Escrow by Itron, shall be transferred to Itron in accordance with the Escrow Agreement.

(vii) To the extent that a Final NWCA Determination results in a Net Working Capital Adjustment that is zero or a Final NWCA Decrease that is less than the amount of an Initial Excess Decrease, if any (such difference, an "NWCA Underpayment"), then, within five (5) business days following a Final NWCA Determination, such NWCA Underpayment shall be released from the Escrow to the Stockholders' Representative, whereupon it shall be paid at and by the direction of the Stockholders' Representative to the former Company Stockholders in proportion to their receipt of the Merger Consideration in accordance with in Section 3.1(b).

(viii) The adjustments pursuant to the Net Working Capital Adjustments in this Section 3.1(d) shall be treated as an increase or a decrease in the Merger Consideration.

(e) DISSENT RIGHTS

(i) Notwithstanding any other provision of this Agreement to the contrary, any Company Stock held by a holder who has not effectively withdrawn or lost such holder's appraisal or dissenter's rights under the DGCL or under Chapter 13 of the CCC, as applicable (collectively, the "Eligible Dissenting Shares"), shall not be converted into or represent a right to receive the applicable Merger Consideration for the Company Stock set forth in Section 3.1(b) hereof, but the holder thereof shall only be entitled to such rights as are provided by the DGCL and CCC, as applicable.

(ii) Notwithstanding the provisions of Section 3.1(e)(i) hereof, if any holder of Eligible Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's appraisal or dissenter's rights under the DGCL and CCC, as applicable, then, as of the later of the Effective Time of the Merger and the occurrence of such event, such holder's shares shall automatically be cancelled, extinguished and represent only the right to receive the Merger Consideration as set forth in Section 3.1(b) hereof, without interest thereon, and subject to the escrow provisions of Section 3.1(c) and the Net Working Capital Adjustment provisions of Section 3.1(d) hereof, upon surrender of the Certificate representing such shares.

(iii) The Company shall give Itron (x) prompt notice of any written demand for appraisal or exercise of dissenter's rights received by the Company pursuant to the DGCL or CCC, and (y) the opportunity to participate in all negotiations and proceedings with respect to such demands or exercise of rights. The Company shall not, except with the prior written consent of Itron, voluntarily make any payment with respect to any such demands or exercise of rights or offer to settle or settle any such demands or exercise of rights.

3.2 EXCHANGE OF CERTIFICATES

(a) EXCHANGE AGENT

Prior to the Effective Time of the Merger, Itron shall engage Mellon Investor Services LLC to act as exchange agent (the "Exchange Agent") for the issuance of the Merger Consideration upon surrender of the Certificates.

(b) PAYMENT OF MERGER CONSIDERATION

As of the Effective Time of the Merger, Itron shall have delivered to the Exchange Agent the Merger Consideration consisting of the cash to be issued and paid upon the conversion of the Company Stock pursuant to Section 3.1(b). At the Effective Time of the Merger, Itron shall cause the Exchange Agent, pursuant to irrevocable instructions delivered to the Exchange Agent prior thereto, to deliver the cash contemplated to be paid pursuant to Section 3.1(b) and, to the extent not already delivered by the Company, to deliver a form of letter of transmittal to each Company Stockholder. The Exchange Agent shall not use such funds for any purposes other than as set forth in this Section 3.2(b).

In addition, as of the Effective Time of the Merger Itron shall have wired (i) the Bonus Pool Amount to the Company Payroll Agent (less the Company-Paid Bonus Portion, which Company-Paid Bonus Portion shall be separately delivered by the Company to the Company Payroll Agent as of the Effective Time of the Merger), and (ii) the Bridge Note Amount to the Company. The Company shall inform Itron of the Company-Paid Bonus Portion and the Bridge Note Amount no later than two (2) Business Days prior to the Effective Time of the Merger.

(c) EXCHANGE PROCEDURE FOLLOWING THE EFFECTIVE TIME OF THE MERGER

As soon as practicable after the Effective Time of the Merger, the Exchange Agent shall, upon surrender to the Exchange Agent of a certificate or certificates that represented immediately prior to the Effective Time of the Merger the issued and outstanding Company Stock (the "Certificates"), together with a letter of transmittal, duly executed, deliver to the holder of such Certificate in exchange therefor the applicable amount of the Merger Consideration, pursuant to Section 3.1(b), consisting of the cash into which the Company Stock theretofore represented by such Certificate shall have been converted pursuant to Section 3.1(b), and the Certificate so surrendered shall forthwith be canceled. Until surrendered as contemplated by this Section 3.2(c), each Certificate shall be deemed at any time after the Effective Time of the Merger, to represent only the right to receive, upon surrender of such Certificate in accordance with this Section 3.2(c), the applicable amount of the Merger Consideration, pursuant to Section 3.1(b).

(d) NO FURTHER OWNERSHIP RIGHTS IN COMPANY STOCK

All cash paid as the Merger Consideration upon the surrender of Certificates in accordance with the terms of this Article III shall be deemed to have been exchanged and paid in full satisfaction of all rights pertaining to the Company Stock theretofore represented by such Certificates and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the Company Stock represented by such Certificates that were outstanding immediately prior to the Effective Time of the Merger. If, after the Effective Time of the Merger, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article III, except as otherwise provided by applicable law.

(e) LOST, STOLEN OR DESTROYED CERTIFICATES

In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit setting forth that fact by the Person claiming such loss, theft or destruction and, the granting of a reasonable indemnity against any claim that may be made against Itron or the Exchange Agent with respect to such Certificate, Itron shall cause the Exchange Agent to issue to such Person the applicable amount of the Merger Consideration with respect to such lost, stolen or destroyed Certificate to which the holder thereof may be entitled pursuant to this Article III.

3.3 STOCK TRANSFER BOOKS

At the Effective Time of the Merger, the transfer books of the Company with respect to all shares of capital stock or other securities of the Company shall be closed and no further registration of transfers of such shares of capital stock or other securities shall thereafter be made on the records of the Company.

3.4 CERTAIN ADJUSTMENTS

If between the date hereof and the Effective Time of the Merger, the outstanding shares of the Company Common Stock or Company Preferred Stock shall be changed into a different number of shares by reason of any reclassification, recapitalization, split, combination or exchange of shares, or any dividend payable in stock or other securities shall be declared thereon with a record date within such period, the Merger Consideration shall be adjusted accordingly to provide the same economic effect as contemplated by this Agreement prior to such reclassification, recapitalization, split, combination, exchange or dividend.

3.5 REQUIRED WITHHOLDING

Notwithstanding any provision to the contrary herein, each of Itron and the Company shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of Company Stock such amounts as may be required to be deducted or withheld therefrom under the Code or under any provision of state, local or foreign tax law or under any other applicable legal requirement. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid.

## ARTICLE IV.

## REPRESENTATIONS AND WARRANTIES

4.1 REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to any exceptions specified in the Company Disclosure Schedule, the Company represents and warrants to Itron and the Combination Company as herein set forth below. Such representations and warranties shall be deemed to be made as of the date hereof and as of the Closing Date (other than such representations and warranties made as of a specific date, which representations and warranties shall be deemed to be made as of such date). Disclosure of an item in response to one section of this Agreement shall constitute disclosure and response to every section of this Agreement, notwithstanding the fact that no express cross-reference is made.

(a) ORGANIZATION; STANDING AND POWER; NO SUBSIDIARIES; CHARTER DOCUMENTS

The Company is a corporation duly organized and validly existing under the laws of the State of Delaware and has the requisite corporate power and authority to own, operate and lease its properties and assets, to carry on its Business as now being conducted, and to enter into and perform its obligations under this Agreement and the other agreements and certificates that are required to be executed by the Company pursuant to this Agreement (collectively, the "Operative Documents") to which the Company is a party, and to consummate the transactions contemplated hereby and thereby. The Company is duly qualified to do business and is licensed as a foreign corporation and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification necessary, other than in such jurisdictions where the failure to be so qualified to do business or in good standing (individually, or in the aggregate) would not have a Material Adverse Effect on the Company. Except as set forth in Section 4.1(a) of the Company Disclosure Schedule, the Company does not have any subsidiaries or own of record or beneficially any capital stock of or equity interest or investment in any Person. The Company has furnished to Itron true and correct copies of (a) the Certificate of Incorporation and Bylaws of the Company, respectively, as currently in effect, including all amendments thereto, (b) the minute books of the Company, and (c) the stock records of the Company.

(b) CAPITAL STRUCTURE

As of the date hereof, the authorized capital stock of the Company consists of (a) 45,137,500 shares of common stock, $0.001 par value per share ("Company Common Stock"), and (b) 21,531,828 shares of preferred stock, $0.001 par value per share ("Company Preferred Stock"). As of the date hereof, (i) 7,872,547 shares of Company Common Stock are issued and outstanding all of which are validly issued and fully paid, nonassessable and free of preemptive rights created by statute, the Certificate of Incorporation or Bylaws of the Company, or any agreement to which the Company is a party or to which it is bound, (ii) 1,200,000 shares of Series A Preferred Stock, 4,990,625 shares of Series B Preferred Stock, 6,500,000 shares of Series C Preferred Stock and 3,703,690 shares of Series D Preferred Stock are issued and outstanding, all of which are validly issued and fully paid, nonassessable and free of preemptive rights created by statute, the Certificate of Incorporation or Bylaws of the Company, or any agreement to which the Company is a party or to which it is bound. As of the date hereof, the Company has (a) outstanding options for the purchase of an aggregate of 2,749,831 shares of Company Common Stock out of a total of 6,536,000 shares of Company Common Stock that have been reserved for issuance pursuant to the 1998 Incentive Stock Option Plan (the "Company Stock Option Plan") and (b) warrants to purchase an aggregate of 958,202 shares of Company Common Stock. True and correct copies of the stock records of the Company have been provided to Itron or its counsel.

Except as set forth above and the Series E Preferred Stock of the Company, none of which is issued and outstanding, no shares of capital stock or other equity or voting securities of the Company are reserved for issuance or outstanding. All outstanding shares of capital stock of the Company immediately prior to the Closing will be (and immediately prior to the Closing all shares issuable upon the exercise of outstanding stock options or warrants will be), duly authorized, validly issued, fully paid and nonassessable and not subject to preemptive rights created by statute, the Certificate of Incorporation or Bylaws of the Company, or any agreement to which the Company is a party or to which it is bound. All of such issued and outstanding shares of capital stock of the Company were offered and sold in compliance with all applicable state and federal securities laws, rules and regulations. Except as set forth above or in Section 4.1(b) of the Company Disclosure Schedule, there are no outstanding or authorized securities, options, warrants, calls, rights, commitments, preemptive rights, agreements, arrangements or undertakings of any kind to which the Company is a party, or by which it is bound, obligating the Company to issue, deliver or sell, or cause to be issued, delivered or sold, any shares of capital stock or other equity or voting securities of, or other ownership interests in, the Company or obligating the Company to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment, agreement, arrangement or undertaking. To the Company's Knowledge, no Person other than the Company Stockholders holds any interest in the Company Stock. Except as set forth in Section 4.1(b) of the Company Disclosure Schedule, there are not as of the date hereof and there will not be at the Effective Time of the Merger any registration rights agreements, stockholder agreements, rights of first refusal, co-sale agreements, voting trusts or other agreements or understandings to which the Company is a party or by which it is bound relating to the voting of any shares of the Company Stock.

(c) AUTHORITY; NON-CONTRAVENTION

(i) The Board of Directors of the Company has approved the Operative Documents and determined the Operative Documents to be in the best interests of the Company Stockholders pursuant to the terms hereof and thereof. The Company has the requisite corporate power and authority to enter into the Operative Documents and, subject to obtaining the requisite approval of the Merger and the Operative Documents by the Company Stockholders as required by the DGCL (the "Company Stockholder Approval"), to consummate the transactions contemplated hereby and thereby. The execution and delivery of the Operative Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company subject to the Company Stockholder Approval. The Operative Documents have been duly and validly executed and delivered by the Company and, assuming due authorization and delivery by Itron and the Combination Company, constitute the valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except that (A) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions now or hereafter in effect relating to creditors' rights generally and the application of general principles of equity, (B) the remedy of specific performance and

injunctive relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought, and (C) the enforceability of any indemnification provision contained herein may be limited by applicable federal or state securities laws.

(ii) Except as set forth on Section 4.1(c) of the Company Disclosure Schedule, the execution, delivery and performance of the Operative Documents by the Company do not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not, conflict with or result in a default (a "Default") (with or without the giving of notice or lapse of time, or both) under, or acceleration or termination of, or the creation in any party of the right to accelerate, terminate, modify, invalidate, adversely affect or cancel any provision of (a) any loan or credit agreement, note, bond, mortgage, indenture, lease, or other agreement, instrument, permit, authorization, concession, franchise or license to which the Company is a party or by which it or any of its properties or assets is bound (individually, a "Contractual Document" and collectively, the "Contractual Documents"), (b) the Certificate of Incorporation or Bylaws of the Company, (c) subject to the governmental filings and other matters referred to in the following sentence, any Order, statute, law, ordinance, rule or regulation or arbitration award applicable to the Company or its properties or assets, except any such conflict, Default or termination that would not have a Material Adverse Effect on the Company. No Consent of any Governmental Entity or other Person is required by or with respect to the Company in connection with the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby, except where lack of such Consents would not have a Material Adverse Effect, and except for (A) the Company Stockholder Approval, (B) the filing of the Merger Filing with and approval by the Delaware Secretary of State with respect to the Merger as provided in the DGCL and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, if any, and (C) applicable requirements, if any, of the consents, approvals, authorizations or permits described in Section 4.1(c) of the Company Disclosure Schedule.

(d) MATERIAL CONTRACTS

Section 4.1(d) of the Company Disclosure Schedule sets forth a complete and accurate list of all currently effective written or oral contracts, agreements, leases, instruments or legally binding contractual commitments to which the Company is a party that meet any of the following criteria (each, a "Material Contract"):

(i) any contract with a customer of the Company or with any entity that purchases goods or services from the Company for consideration paid to the Company of $100,000 or more in any fiscal year of the Company;

(ii) any contract for capital expenditures or the acquisition or construction of fixed assets in excess of $50,000 in any fiscal year of the Company;

(iii) any contract for the purchase or lease of goods or services (including without limitation, equipment, materials, software, hardware, supplies, merchandise, parts or other property, assets or services), requiring aggregate future payments by the Company in excess of $50,000 in any fiscal year of the Company;

(iv) any contract relating to the borrowing of money or guaranty of indebtedness in excess of $50,000 in any fiscal year of the Company;

(v) any collective bargaining agreement or other agreement with any labor union;

(vi) any contract granting a first refusal, first offer or similar preferential right to purchase or acquire any of the Company's capital stock or assets;

(vii) any contract limiting, restricting or prohibiting the Company from conducting business anywhere in the United States or elsewhere in the world or any contract limiting the freedom of the Company to engage in any line of business or to compete in any respects with any other Person;

(viii) any joint venture or partnership agreement;

(ix) contracts requiring future payments of $50,000 or more in any fiscal year of the Company;

(x) any employment contract, severance agreement or other similar binding agreement or policy with any officer or director of the Company;

(xi) any contract (other than "shrink-wrap," "click wrap" or similar contracts for widely distributed commercially available software) for or with exclusive arrangements for product distribution, development, marketing, branding or services, or software licenses; and

(xii) any contract the breach of which by the Company could reasonably be expected to result in damages in excess of $50,000 payable by the Company.

The Company has made available to Itron a true and complete copy of each Material Contract (and a written description of each oral Material Contract is included in Section 4.1(d) of the Company Disclosure Schedule), including all amendments or other modifications thereto. Except as set forth on Section 4.1(d) of the Company Disclosure Schedule, to the Company's Knowledge, each Material Contract is a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, subject only to bankruptcy, reorganization, receivership or other laws affecting creditors' rights generally and general principles of equity (whether applied in an action at law or in equity). Except as set forth on Section 4.1(d) of the Company Disclosure Schedule, the Company has performed, or will perform when due, all obligations required to be performed by it under the Material Contracts and the Company is not in breach or default thereunder, except for breaches of and defaults under the Material Contracts that would not have a Material Adverse Effect on the Company. To the Company's Knowledge, no party to a Material Contract is in default thereunder, nor, to the Company's Knowledge, is there any event that with notice or lapse of time, or both, would constitute a default by the Company or, to the Company's Knowledge, any other party thereunder, except for such default under the Material Contracts that would not have a Material Adverse Effect on the Company.

In addition, except as set forth on Section 4.1(d) of the Company Disclosure Schedule or as would otherwise not have a Material Adverse Effect on the Company, the Company has:

(xiii) no contracts with directors, officers, stockholders, employees, agents, consultants, advisors, salespeople, sales representatives, distributors or dealers that cannot be canceled by the Company within 30 days' notice without liability, penalty or premium

(xiv) no agreement or arrangement providing for the payment of any bonus or commission based on sales or earnings, or any compensation agreement or arrangement affecting or relating to former employees of the Company;

(xv) not received any notice that any party to a contract listed in Section 4.1(d) of the Company Disclosure Schedule intends to cancel, terminate or refuse to renew such contract (if such contract is renewable);

(xvi) no material dispute with any of its suppliers, customers, distributors, OEM resellers, licensors or licensees; or

(xvii) except for existing agreements with officers and directors of the Company disclosed in Section 4.1(d) of the Company Disclosure Schedule, no agreements or commitments to provide indemnification.

(e) ABSENCE OF CERTAIN CHANGES OR EVENTS

Except as disclosed in Section 4.1(e) of the Company Disclosure Schedule, since August 31, 2002, the only business that the Company has conducted has been the Business,

the Company has conducted such Business in the ordinary course consistent with past practice, and there has not been:

(i) any change, event or condition with respect to the Company that has had a Material Adverse Effect on the Company;

(ii) any issuance of any capital stock or other securities or options or other rights to acquire capital stock or other securities, or any declaration, setting aside or payment of any dividend (whether in cash, stock or property) with respect to any of the Company's capital stock, other than (A) the issuance, delivery and/or sale of shares of Company Common Stock pursuant to the exercise of stock options therefor outstanding as of August 31, 2002, (B) the granting of options to purchase Company Common Stock in the ordinary course of business, consistent with past practice and in accordance with the existing Company Stock Option Plan, and the issuance of Company Common Stock upon the exercise of such options, (C) issuances, reservations and commitments disclosed in or pursuant to Section 4.1(b), and (D) issuances upon exercise of options, warrants or rights disclosed pursuant to Section 4.1(b);

(iii) (A) any granting by the Company of any increases in compensation to the executive officers of the Company in excess of four percent (4%) in the aggregate for all such officers, (B) any granting by the Company to any such executive officer of any increase in severance or termination pay, or (C) any entry by the Company into any employment, severance or termination agreement with any such executive officer, except, in each case in this subsection (iii), such grants or entries that would not have a Material Adverse Effect on the Company;

(iv) any amendment, waiver or forgiveness of any material term of any outstanding equity or debt security of the Company;

(v) any repurchase, redemption or other acquisition by the Company of any outstanding shares of capital stock or other equity securities of, or other ownership interests in, the Company, except as contemplated by any employee benefit plans of the Company;

(vi) any material damage, destruction or other property loss, whether or not covered by insurance; or

(vii) any change in accounting methods, principles or practices by the Company, except insofar as may have been required by a change in GAAP.

Furthermore, except as disclosed in Section 4.1(e) of the Company Disclosure Schedule, since August 31, 2002, neither the Company nor any of its officers, directors or agents in their representative capacities on behalf of the Company have:

(viii) taken any action or entered into or agreed to enter into any transaction, agreement or commitment other than in the ordinary course of business that would have a Material Adverse Effect on the Company;

(ix) paid, discharged or satisfied any material claims, liabilities or obligations (absolute, accrued or contingent) other than the payment, discharge or satisfaction in the ordinary course of business and consistent with past practice of claims, liabilities and obligations reflected or reserved against in the Financial Statements or incurred in the ordinary course of business and consistent with past practice since August 31, 2002, or prepaid any material obligation having a fixed maturity of more than ninety (90) days from the date such obligation was issued or incurred;

(x) permitted or allowed any of its material property or assets (real, personal or mixed, tangible or intangible) to be subjected to any mortgage, pledge, lien, security interest, encumbrance, restriction or charge, except (A) conditional sales or similar security interests granted in connection with the purchase of equipment or supplies in the ordinary course of business, (B) assessments for current taxes not yet due and payable, (C) landlord's liens for rental payments not yet due and payable, and (D) mechanics', materialmen's, carriers' and other similar statutory liens securing indebtedness that is in the aggregate less than $50,000, was incurred in the ordinary course of business or is not yet due and payable;

(xi) written down the value of any inventory or written off as uncollectible any notes or accounts receivable, except for write-downs and write-offs that are in the aggregate less than $50,000, incurred in the ordinary course of business or consistent with past practice;

(xii) sold, transferred or otherwise disposed of any of its material properties or assets (real, personal or mixed, tangible or intangible) with an aggregate net book value in excess of $50,000, except the sale of inventory in the ordinary course of business or consistent with past practice;

(xiii) disposed of or permitted to lapse any rights to the use of any trademark, trade name, patent or copyright currently used to conduct the Business, or disposed of or disclosed to any Person other than representatives of Itron any trade secret, formula, process or know-how not theretofore a matter of public knowledge;

(xiv) made any single capital expenditure or commitment in excess of $50,000 for additions to property, plant, equipment or intangible capital assets or made aggregate capital expenditures in excess of $100,000 for additions to property, plant, equipment or intangible capital assets;

(xv) received oral or written notice that there has been, will be or may be a loss of, or contract cancellation by, one or more current customers, suppliers or licensors of the Company, which loss or cancellation would result in lost annual revenues to the Company

of more than $50,000 in the aggregate, or formed the basis for any belief that there may be such a loss or cancellation;

(xvi) received written notice of any other event or facts that could reasonably be expected to result in a Material Adverse Effect on the Company; or

(xvii) agreed, whether in writing or otherwise, to take any action described in this Section 4.1(e).

(f) BROKERS

Except as set forth in Section 4.1(f) on the Company Disclosure Schedule, no broker, investment banker or other Person, is entitled to receive from the Company, or any party other than Itron, any investment banking, broker's, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby, including any fee for any opinion rendered by any investment banker based upon arrangements made by or on behalf of the Company or the Company Stockholders.

(g) LITIGATION

Except as disclosed in Section 4.1(g) of the Company Disclosure Schedule, (x) there is no claim, suit, action, proceeding or investigation pending or, to the Company's Knowledge, threatened against or which could reasonably be expected to have an Material Adverse Effect on the Company before or by any Governmental Entity or any other Person, and (y) there is no claim, suit, action, proceeding or investigation pending, or to the Company's Knowledge, threatened against the Company that could reasonably be expected to prevent or materially delay the ability of the Company to consummate the transactions contemplated by the Operative Documents, nor is there any Order of any Governmental Entity or arbitrator outstanding against the Company having any such effect. Except as disclosed in Section 4.1(g) of the Company Disclosure Schedule, there is no outstanding or unsatisfied Order to which the Company is a party, which could reasonably be expected to have a Material Adverse Effect on the Company.

(h) FINANCIAL STATEMENTS

Set forth in Section 4.1(h) of the Company Disclosure Schedule are the following financial statements: (i) audited statements of income, cash flow, and changes in stockholders' equity of the Company for the calendar years ended December 31, 2000 and December 31, 2001, and accompanying notes; (ii) audited balance sheet of the Company as of December 31, 2001, and accompanying notes; (iii) unaudited balance sheet of the Company as of August 31, 2002; and (iv) an unaudited statement of income of the Company for the period from January 1, 2002 to August 31, 2002. The financial statements in (i) through (iv) in the preceding sentence are collectively referred to herein as the "Financial Statements". The Financial Statements described in clauses (i) and (ii) of the foregoing sentence: (A) are in accordance with the books and records of the Company; (B) present

fairly, in all material respects, the financial condition, cash flows and results of operations for the Company as of the date and for the periods covered; and (C) have been prepared in accordance with GAAP consistently applied. The Financial Statements described in clauses (iii) and (iv) of the foregoing sentence: (A) are in accordance with the books and records of the Company; (B) present fairly, in all material respects, the financial position of the Company as of the date indicated and the results of operations for the period covered thereby; and (C) have been prepared in accordance with GAAP consistently applied, subject to normal year-end adjustments which are not expected to be material in amount and the absence of certain footnote disclosure. The Company maintains and will continue to maintain standard systems of accounting established and administered in accordance with GAAP.

(i) TAXES

Except as set forth in Section 4.1(i) of the Company Disclosure Schedule:

(i) the Company has timely filed with the appropriate Governmental Entities all Tax Returns required to be filed by or with respect to it (taking into account validly obtained extensions of time to file such Tax Returns) and has timely paid or deposited all Taxes which are required to be paid or deposited, and no other Taxes are due and payable by the Company with respect to items or periods covered by such Tax Returns (whether or not shown on or reportable on such Tax Returns) or with respect to any period prior to the date of this Agreement;

(ii) each of the Tax Returns filed by the Company is accurate, correct and complete in all material respects;

(iii) the audited Financial Statements of the Company and, the unaudited Financial Statements, reflect an adequate reserve for all Taxes payable by the Company for all taxable periods and portions thereof through the date of such Financial Statements whether or not shown as being due on any Tax Returns;

(iv) there are no actions, suits, investigations, audits or claims by any Governmental Entity in progress relating to the Company, nor has the Company received any notice from any Governmental Entity that it intends to conduct such an audit or investigation;

(v) the Company is not subject to any private letter ruling of the IRS or comparable ruling of any other Governmental Entity with respect to Taxes;

(vi) there are no tax liens upon any assets of the Company, except liens arising as a matter of law relating to current Taxes not yet due;

(vii) Except as set forth in Section 4.1(i) of the Company Disclosure Schedule, no audit report has been issued prior to the date of this Agreement (or otherwise

with respect to any audit or investigation in progress) relating to Taxes due from or otherwise with respect to the Company;

(viii) the Company has delivered or made available to Itron true and complete copies of (A) any audit reports issued prior to the date of this Agreement relating to Taxes due from or with respect to the Company, and (B) and all Tax Returns for all taxable periods with respect to the Company since inception;

(ix) all Taxes that the Company has been or is required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid over to the appropriate Governmental Entities;

(x) the Company has not extended the time (A) within which to file any Tax Return, which Tax Return has not since been filed, or (B) for the assessment or collection of Taxes, which Taxes have not since been paid;

(xi) the Company has not granted to any Person any power of attorney with respect to any Tax matter;

(xii) the Company (A) is not nor has it been a member of any "affiliated group" within the meaning of Section 1504 of the Code or any similar group defined under a similar provision of law that filed or was required to file a consolidated, combined or unitary Tax Return, or (B) does not have any liability for the Taxes of any Person (other than the Company) under Treasury Regulations Section 1.1502-6 (or any similar provision of law);

(xiii) Except as set forth in Section 4.1(i) of the Company Disclosure Schedule, the Company has not: (A) agreed or requested permission to, nor is it required to, make any adjustments pursuant to Section 481(a) of the Code (or any predecessor provision thereof or similar provision of Law), nor has the IRS or any other Governmental Entity proposed any such adjustment; (B) filed a consent pursuant to Section 341(f) of the Code or agreed to have Section 341(f)(2) of the Code apply to any disposition of a "subsection (f) asset" (as such term is defined in Section 341(f)(4) of the Code); (C) made any payment or payments, is not obligated to make any payment or payments, nor is a party to (or participating employer in) any agreement or Employee Benefit Plan that could obligate it or Itron to make any payment or payments that would constitute an "excess parachute payment," as defined in Section 280G of the Code (or any comparable provision of foreign, state or local law); or that would otherwise not be deductible under Section 162 or 404 of the Code; (D) been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code; (E) executed, become subject to, or entered into any closing agreement pursuant to Section 7121 of the Code or any similar or predecessor provision thereof under the Code or other Tax law; (F) incurred or assumed any liability for the Taxes of any person; (G) been either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) with respect to a

distribution of stock intended to qualify for gain or income non-recognition under Section 355 of the Code;

(xiv) the Company has never had a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country;

(xv) the Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code;

(xvi) no claim has been made by a Governmental Entity in a jurisdiction where the Company does not file a Tax Return to the effect that the Company is or may be subject to taxation by that jurisdiction; and

(xvii) the Company is not a party to, bound by or obligated under any allocation, indemnity, sharing or similar contract or arrangement (whether or not written) with respect to Taxes.

(j) COMPLIANCE WITH LAWS

Except as set forth on Section 4.1(j) of the Company Disclosure Schedule, the Company holds all permits, licenses, variances, exemptions, Orders, franchises and approvals of all Governmental Entities that are required for the operation of the business of the Company as presently conducted and the ownership, operation, lease and holding by the Company of its respective properties and Assets (the "Company Permits"), except where the failure to hold such Company Permits would not have a Material Adverse Effect on the Company. To the Company's Knowledge, the Company is in material compliance with the terms of the Company Permits and has not violated, failed to comply with, or received any written notice of any alleged violation of or failure to comply with, any statute, law, ordinance, regulation, rule, permit or Order of any Governmental Entity, any arbitration award or any judgment, decree or Order of any court or other Governmental Entity, applicable to the Company or its business, assets or operations.

(k) INTELLECTUAL PROPERTY

Except as set forth on Section 4.1(k) of the Company Disclosure Schedule:

(i) "Technical Information" means all tangible embodiments of technology, including computer programs, specifications, source code, object code, graphics, devices, techniques, algorithms, methods, processes, procedures, packaging, trade dress, formulae, drawings, designs, improvements, discoveries, concepts, user interfaces, software, "look and feel," development and other tools, content, inventions (whether or not patentable or copyrightable and whether or not reduced to practice), designs, logos, themes, know-how and concepts. The Company is in possession of all Technical Information necessary to

conduct the Business (collectively, the "Technology-Related Assets"). The intellectual property rights owned by the Company in Technology-Related Assets (the "Company Intellectual Property Rights"), together with the intellectual property rights granted to the Company in the Technology-Related Assets under third party licenses, constitute all intellectual property rights necessary to operate the Business as now conducted. Set forth on Section 4.1(k)(i) of the Company Disclosure Schedule is a true and complete list of all Company Intellectual Property Rights that are the subject of a registration filed with or recorded by any Governmental Entity (the "Company Intellectual Property Registrations").

(ii) Section 4.1(k)(ii) of the Company Disclosure Schedule sets forth a list of all products marketed or distributed by the Company during the two years prior to the date of this Agreement (collectively, the "Products"). Solely to the extent that the following are the subject of proprietary rights protection pursuant to applicable law the Company owns all right, title and interest in and to the Technology-Related Assets and the following (except for any Third Party Technologies (as defined in Section 4.1(k)(iii)), free and clear of all encumbrances: (A) the Products, together with any and all codes, techniques, software tools, formats, designs, user interfaces, content and "look and feel" related thereto; (B) any and all updates, enhancements, corrections, modifications, improvements and new releases related to the items set forth in clause (A) above; (C) any and all technology and work in progress related to the items set forth in clauses (A) and (B) above; and (D) all inventions, discoveries, processes, designs, trade secrets, know-how and other confidential or proprietary information of the Company related to the items set forth in clauses (A), (B), and (C) above (collectively, the "Technology"). The Technology, excluding the Third Party Technologies (as defined below), is sometimes referred to herein as the "Company Technology."

(iii) Section 4.1(k)(iii) of the Company Disclosure Schedule sets forth a list of all Technology included in or distributed with the Company's Products for which the Company does not own all right, title and interest (collectively, the "Third Party Technologies"), and all license agreements and other contracts pursuant to which the Company has the right to use Third Party Technologies, other than commercially available third-party Application Software (as defined below), used by the Company, or intended or necessary for use by the Company, with the Company Technology (such license agreements and other contracts, the "Third Party Licenses"), indicating, with respect to each of the Third Party Technologies listed therein, the owner thereof and the Third Party License applicable thereto. The Company has the lawful right to use, (subject to all restrictions expressly set forth in the Third Party Licenses) (A) all Third Party Technology that is incorporated in or used in the development or production of the Company Technology and (B) all other Third Party Technology necessary for the conduct of the Business. Neither the Company nor, to the Company's Knowledge, any other party thereto is in default under any such Third Party License, nor to the Company's Knowledge has there occurred any event or circumstance that with notice or the passage of time or both would constitute a default or event of default on the part of the Company or, to the Company's Knowledge, any other party thereto or give to any other party thereto the right to terminate or modify any Third Party License. The Company has not received notice that any party to any Third Party License intends to cancel, terminate,

suspend or refuse to renew (if renewable) such Third Party License or to exercise or decline to exercise any option or right thereunder. As used herein, "Application Software" shall mean third-party software applications designed for use by end users and not included in or distributed with the Products; including, without limitation, end-user applications such as word processing and spreadsheet software, as well as operating system software for workstations and networks.

(iv) To the Company's Knowledge, the Company has not conducted its Business, and has not used or enforced or failed to use or enforce the Company Intellectual Property Registrations, in a manner that would result in the abandonment, cancellation or unenforceability of any item of the Company Intellectual Property Registrations the Company has not taken or failed to take any action that would result in the forfeiture or relinquishment of any Company Intellectual Property Rights or Company Intellectual Property Registrations, in each case where such abandonment, cancellation, unenforceability, forfeiture or relinquishment would have a Material Adverse Effect on the Company. Except as set forth in Section 4.1(k)(iv) of the Company Disclosure Schedule or pursuant to non-exclusive licenses granted in the ordinary course of business (the forms of which have been provided to Itron), the Company has not granted to any third party any rights or permissions to use any of the Technology or the Company Intellectual Property Rights. Except pursuant to a written nondisclosure agreement set forth in Section 4.1(k)(ix) of the Company Disclosure Schedule, (A) no third party has received any confidential information relating to the Technology or the Company Intellectual Property Rights and (B) the Company is not under any contractual or other obligation to disclose to any third party any Company Technology.

(v) (A) The Company has not received any notice or claim (whether written, oral or otherwise) challenging the Company's ownership or rights in the Company Technology or the Company Intellectual Property Rights or claiming that any other Person has any legal or beneficial ownership with respect thereto; (B) all the Company Intellectual Property Rights are legally valid and enforceable without any material qualification, limitation or restriction on their use, and the Company has not received any notice or claim (whether written, oral or otherwise) challenging the validity or enforceability of any of the Company Intellectual Property Rights; and (C) to the Company's Knowledge, no other Person is infringing or misappropriating any part of the Company Intellectual Property Rights or otherwise making any unauthorized use of the Company Technology.

(vi) Except as set forth in Section 4.1(k)(vi) of the Company Disclosure Schedule, (A) to the Company's Knowledge, the conduct of the Business does not infringe, violate or interfere with or constitute an appropriation of any copyright, trade secret, trademark or U.S. Patent of any Person, and there have been no claims made with respect thereto; and (B) the use of any of the Company Intellectual Property Rights in the Company's business does not infringe, violate or interfere with or constitute an appropriation of any copyright, trademark, trade secret or U.S. Patent of any other person or entity, and there have been no claims made with respect thereto. Except as set forth in Section 4.1(k)(iii) of the

Company Disclosure Schedule, the consummation of the transactions contemplated hereby will not result in the loss or impairment of any Company Intellectual Property Rights.

(vii) (A) Except as set forth on Section 4.1(k) of the Company Disclosure Schedule, the Company has not disclosed any source code regarding the Technology to any Person other than an employee or a consultant of the Company except pursuant to a written nondisclosure agreement as set forth in Section 4.1(k)(ix) of the Company Disclosure Schedule or an independent contractor subject to a written nondisclosure agreement; (B) the Company has at all times maintained and diligently enforced commercially reasonable procedures to protect all confidential information relating to the Technology; (C) neither the Company nor, to the Company's Knowledge with respect to Third Party Technologies, any escrow agent is under any contractual or other obligation to disclose the source code or any other proprietary information included in or relating to the Technology; and (D) the Company has not deposited any source code relating to the Technology into any source code escrows or similar arrangements. If, as disclosed on Section 4.1(k)(viii) of the Company Disclosure Schedule, the Company has deposited any source code to the Technology into source code escrows or similar arrangements, no event has occurred that has or could reasonably form the basis for a release of such source code from such escrows or arrangements.

(viii) Section 4.1(k)(viii) of the Company Disclosure Schedule sets forth a list of all Internet domain names used in the Business (collectively, the "Domain Names"). The Company has, and immediately after the Effective Time of the Merger the Combination Company will have, a valid registration and all material rights (free of any material restriction) in and to the Domain Names, including, without limitation, all rights necessary to continue to conduct the Business.

(ix) None of the Company's officers, employees, consultants, distributors, agents, representatives or advisors has entered into any agreement relating to the Business regarding know-how, trade secrets, assignment of rights in inventions, or prohibition or restriction of competition or solicitation of customers, or any other similar restrictive agreement or covenant, whether written or oral, with any Person other than the Company.

(x) Except as set forth in Section 4.1(k)(x) of the Company Disclosure Schedule, no Public Software forms part of the Technology or was or is used in connection with the development of any Technology, incorporated in whole or in part, or has been distributed, in whole or in part, in conjunction with any Technology.

(xi) Except as set forth in Section 4.1(k)(xi) of the Company Disclosure Schedule, no Public Software forming part of the Technology is software that requires as a condition of use, modification and/or distribution of such software that other software distributed with such software: (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; or (iii) be redistributable at no charge.

(l) NO DEFAULT

The Company is not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of: (i) its Certificate of Incorporation or Bylaws; (ii) any Material Contract or Contractual Document, except any such defaults or violations that would not have a Material Adverse Effect on the Company; or (iii) any Order, statute, rule or regulation applicable to the Company, except any such defaults or violations that would not have a Material Adverse Effect on the Company. Section 4.1(l) of the Company's Disclosure Schedule sets forth, to the Company's Knowledge, all such defaults and violations as described in subsections (i), (ii), and (iii) set forth above.

(m) TRANSACTIONS WITH AFFILIATES

Except as set forth in Section 4.1(m) of the Company Disclosure Schedule, since August 31, 2002, the Company has not purchased, leased or otherwise acquired any material property or assets or obtained any material services from, or sold, leased or otherwise disposed of any material property or assets or provided any material services to (except with respect to remuneration for services rendered as a director, officer or employee of the Company in the ordinary course), (i) any employee of the Company, (ii) any Company Stockholder, (iii) any Person, firm or corporation that directly or indirectly controls, is controlled by or is under common control with or by the Company or any officer, director or employee of the Company, or (iv) any member of the immediate family of any of the foregoing Persons.

(n) EMPLOYEE BENEFIT MATTERS

(i) Employee Benefit Plan Listing. Section 4.1(n) of the Company Disclosure Schedule contains a complete and accurate list of all Employee Benefit Plans. Except as set forth in Section 4.1(n) of the Company Disclosure Schedule, the Company does not have any agreement, arrangement, commitment or obligation, whether formal or informal, whether written or unwritten and whether legally binding or not, to create, enter into or contribute to any additional Employee Benefit Plan, or to modify or amend any existing Employee Benefit Plan, except to the extent such modification or amendment is required to be made in order to comply with applicable laws or to retain the tax-qualified or tax-favored status of an Employee Benefit Plan that intends to have such status. There has been no amendment, interpretation or other announcement (written or oral) by the Company or any other Person relating to, or change in participation or coverage under, any Employee Benefit Plan that, either alone or together with other such items or events, could materially increase the expense of maintaining such Employee Benefit Plan (or the Employee Benefit Plans taken as a whole) above the level of expense incurred with respect thereto for the most recent fiscal year included in the Financial Statements. The terms of each Employee Benefit Plan permit the Company to amend or terminate such Employee Benefit Plan at any time and for any reason without material liability or expense.

(ii) Documents Provided. The Company has delivered to Itron true, correct and complete copies (or, in the case of unwritten Employee Benefit Plans, descriptions) of all Employee Benefit Plans (and all amendments thereto), along with, to the extent applicable to the particular Employee Benefit Plan, copies of the following: (A) the last three annual reports (Form 5500 series) filed with respect to such Employee Benefit Plan; (B) all summary plan descriptions, summaries of material modifications and all employee manuals or communications filed or distributed with respect to such Employee Benefit Plan during the last three years; (C) all contracts and agreements currently in effect (and any amendments thereto) relating to such Employee Benefit Plan, including, without limitation, trust agreements, investment management agreements, annuity contracts, insurance contracts, bonds, indemnification agreements and service provider agreements; (D) the most recent determination letter issued by the IRS with respect to such Employee Benefit Plan; (E) all written communications relating to the amendment, creation or termination of such Employee Benefit Plan, or an increase or decrease in benefits, acceleration of payments or vesting or other events that could result in a material liability to the Company since the date of the most recently completed and filed annual report; (F) all correspondence that has been exchanged within the last three years with any governmental entity or agency relating to such Employee Benefit Plan; (G) samples of all administrative forms currently in use, including, without limitation, all COBRA and HIPAA forms and notices; and (H) all coverage, nondiscrimination, top heavy and Code Section 415 tests performed with respect to such Employee Benefit Plan for the last three years.

(iii) Compliance. With respect to each Employee Benefit Plan: (A) such Employee Benefit Plan is, and at all times since inception has been, maintained, administered, operated and funded in all material respects in compliance with its terms and all applicable requirements of all applicable Laws, including, without limitation, ERISA, COBRA, HIPAA and the Code; (B) the Company (and each of its employees, officers and directors) and, to the Company's Knowledge, all other Persons (including, without limitation, all fiduciaries) have, at all times and in all material respects, properly performed all of their duties and obligations (whether arising by operation of law or by contract) under or with respect to such Employee Benefit Plan, including, without limitation, all reporting, disclosure and notification obligations; (C) neither the Company (nor any of its employees, officers or directors) nor, to the Company's Knowledge, any other fiduciary of such Employee Benefit Plan has engaged in any transaction or acted or failed to act in a manner that violates the fiduciary requirements of ERISA or any other applicable Law; (D) no transaction or event has occurred or, to the Company's Knowledge, is either threatened or about to occur (including any of the transactions contemplated in or by this Agreement) that constitutes or could constitute a prohibited transaction under Section 406 or 407 of ERISA or under Section 4975 of the Code for which an exemption is not available; and (E) the Company has not incurred and there currently exists no condition or set of circumstances in connection with which the Company, the Combination Company, the Surviving Corporation or Itron could incur, directly or indirectly, any material liability or expense (except for routine contributions and benefit payments) under ERISA, the Code or any other applicable Law or pursuant to any indemnification or similar agreement, with respect to such Employee Benefit Plan.

(iv) Qualification. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code is, and at all times since inception has been, so qualified and its related trust is, and at all times since inception has been, exempt from taxation under Section 501(a) of the Code. Each such Employee Benefit Plan either (A) is the subject of an unrevoked favorable determination or opinion letter from the IRS with respect to such Employee Benefit Plan's qualified status under the Code, as amended by the Tax Reform Act of 1986 and all subsequent legislation, or (B) has remaining a period of time under the Code or applicable Treasury regulations or IRS pronouncements in which to apply to the IRS for such a letter and to make any amendments necessary to obtain such a letter from the IRS. Nothing has occurred or is reasonably expected by the Company to occur that could adversely affect the qualification or exemption of any such Employee Benefit Plan or its related trust. No such Employee Benefit Plan is a "top-heavy plan," as defined in Section 416 of the Code.

(v) Contributions, Premiums and Other Payments. All contributions, premiums and other payments due or required to be paid to (or with respect to) each Employee Benefit Plan have been timely paid, or, if not yet due, have been accrued as a liability on the Financial Statements. All income taxes and wage taxes that are required by law to be withheld from benefits derived under the Employee Benefit Plans have been properly withheld and remitted to the proper depository.

(vi) Related Employers. The Company is not, and has never been, a member of (A) a controlled group of corporations, within the meaning of Section 414(b) of the Code, (B) a group of trades or businesses under common control, within the meaning of Section 414(c) of the Code, (C) an affiliated service group, within the meaning of Section 414(m) of the Code, or (D) any other group of Persons treated as a single employer under Section 414(o) of the Code.

(vii) Multiemployer, Defined Benefit and Money Purchase Pension Plans and Multiple Employer Welfare Arrangements. The Company does not sponsor, maintain or contribute to, and has never sponsored, maintained or contributed to (or been obligated to sponsor, maintain or contribute to), (A) a multiemployer plan as defined in Section 3(37) or Section 4001(a)(3) of ERISA or 414(f) of the Code, (B) a multiple employer plan within the meaning of Section 4063 or 4064 of ERISA or Section 413(c) of the Code, (C) an employee benefit plan, fund, program, contract or arrangement that is subject to Section 412 of the Code, Section 302 of ERISA or Title IV of ERISA, (D) a multiple employer welfare arrangement as defined in Section 3(40) of ERISA or (E) a voluntary employees' beneficiary association within the meaning of Section 501(c)(9) of the Code.

(viii) Post-Employment Benefits. Neither the Company nor any Employee Benefit Plan provides or has any obligation to provide (or contribute toward the cost of) post-employment or post-termination benefits of any kind, including, without limitation, death and medical benefits, with respect to any current or former officer, employee, agent, director or independent contractor of the Company, other than (A) continuation coverage mandated by Sections 601 through 608 of ERISA and Section 4980B(f) of the Code, (B) retirement benefits under any Employee Benefit Plan that is qualified under Section 401(a) of the Code, and (C) deferred compensation that is accrued as a current liability on the Financial Statements.

(ix) Suits, Claims and Investigations. There are no actions, suits or claims (other than routine claims for benefits) pending or, to the Company's Knowledge, threatened with respect to (or against the assets of) any Employee Benefit Plan, nor, to the Company's Knowledge, is there a basis for any such action, suit or claim. No Employee Benefit Plan is currently under investigation, audit or review by the IRS, the DOL or any other Governmental Entity, and, to the Company's Knowledge, no such action has been threatened or proposed by the IRS, the DOL or any other Governmental Entity.

(o) EMPLOYMENT MATTERS

Except as disclosed in Section 4.1(o) of the Company Disclosure Schedule:

(i) the Company is not engaged in any unfair labor practice and has no material liability for any arrears of wages or Taxes or penalties for failure to comply with any such provisions of law;

(ii) there is no labor strike, dispute, slowdown or stoppage pending or, to the Company's Knowledge, threatened against or affecting the Company, and the Company has not experienced any work stoppage or other labor difficulty since its incorporation;

(iii) to the Company's Knowledge, no organizational efforts are presently being made or threatened by or on behalf of any labor union with respect to employees of the Company;

(iv) no employee (or Person performing similar functions) of the Company is in violation of any nondisclosure agreement or any employment agreement, noncompetition agreement, patent disclosure agreement, invention assignment agreement, proprietary information agreement or other contract or agreement relating to the relationship of such employee with the Company or any other party;

(v) all employees of the Company are employed on an "at will" basis, and, to the Company's Knowledge, are eligible to work and are lawfully employed in the United States; and

(vi) the Company has complied with all provisions of law relating to employment and employment practices, terms and conditions of employment, wages and hours.

(p) ENVIRONMENTAL MATTERS

The Company is not in violation of, and has not violated, in connection with the ownership, use, maintenance or operation of the Company's property (real or personal) or the conduct of its business or Business, any applicable foreign, national, provincial and local statutes, laws, regulations, rules, ordinances, licenses, permits, judgments or orders of any governmental entity relating to environmental matters. The Business and operations of the Company are being conducted in compliance in all material respects with all limitations, restrictions, standards and requirements established under all environmental laws, and no facts or circumstances exist that impose, or, to the Company's Knowledge, with the passage of time, notice, cessation of operations or otherwise will impose, on the Company an obligation under environmental laws to conduct any removal, remediation or similar response action, at present or in the future.

(q) TITLE TO AND CONDITION OF PROPERTIES

The Company has title to all of the Assets, free and clear of any material liens or restrictions that would preclude their current use, except: (i) liens of current taxes and assessments not yet delinquent; (ii) liens imposed by law and incurred in the ordinary course of business for obligations not yet due to materialmen, warehousemen and the like; and (iii) matters disclosed in Section 4.1(q) of the Company's Disclosure Schedule. The Company does not own any real property and has a valid leasehold interest in its Leased Premises. Section 4.1(q) of the Company Disclosure Schedule sets forth all leases pursuant to which facilities are leased, occupied or used by the Company (as lessee). The Company has complied in all material respects with the terms of all leases for the Leased Premises, and all such leases are in full force and effect. The Company's offices, facilities and other structures and the Company's personal property are adequate for the conduct of the Business and, to the Company's Knowledge, there are no applicable adverse zoning, building or land use codes or rules, ordinances, regulations or other restrictions relating to zoning or land use that currently or may prospectively prevent, or cause the imposition of material fines or penalties as the result of, the use of all or any portion of the real property for the conduct of the business as presently conducted. The Company has received all necessary approvals with regard to occupancy of the real property. The Company has delivered to Itron true and complete copies of all leases, subleases, rental agreements, contracts for sale, tenancies or licenses relating to the real property and personal property.

(r) UNDISCLOSED LIABILITIES

Except as (i) disclosed in Section 4.1(r) of the Company Disclosure Schedule, (ii) directly incurred in connection with the execution of this Agreement, or (iii) permitted to be incurred pursuant to Section 6.3 (each of which exceptions under (ii) and (iii) of this

Section 4.1(r) is reflected or properly reserved against in the Financial Statements), as of August 31, 2002, the Company had not, and since such date the Company has not, incurred (except in the ordinary course of business) any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), required by GAAP to be set forth on a financial statement or in the notes thereto or which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect on the Company.

(s) INSURANCE

Section 4.1(s) of the Company Disclosure Schedule accurately lists in reasonable detail all material insurance policies maintained by the Company. The Company maintains commercially reasonable levels of (a) insurance on its property (including Leased Premises) that insures against loss or damage by fire or other casualty and (b) insurance against liabilities, claims and risks of a nature and in such amounts as are normal and customary in the Company's industry for companies of similar size and financial condition. All insurance policies of the Company are in full force and effect, all premiums with respect thereto covering all periods up to and including the date this Agreement have been paid, and no notice of cancellation or termination has been received with respect to any such policy or binder. Such policies or binders are sufficient for compliance with all requirements of law currently applicable to the Company and of all agreements to which the Company is a party, will remain in full force and effect through the respective expiration dates of such policies or binders without the payment of additional premiums and will not in any way be affected by, or terminate or lapse by reason of, the transactions contemplated by this Agreement. The Company has not been refused any insurance with respect to its assets or operations, nor has its coverage been limited, by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance.

(t) ABSENCE OF QUESTIONABLE PAYMENTS

Neither the Company nor, to the Company's Knowledge, any director, officer, agent or employee has used any Company funds for improper or unlawful contributions, payments, gifts or entertainment, or made any improper or unlawful expenditures relating to political activity to domestic or foreign government officials or others. Neither the Company nor, to the Company's Knowledge, any current director, officer, agent or employee has accepted or received any improper or unlawful contributions, payments, gifts or expenditures. The Company has at all times complied, and is in compliance, in all material respects with the Foreign Corrupt Practices Act and all foreign laws and regulations relating to prevention of corrupt practices and similar matters. The Company has not received any notice that any transaction was improper or unlawful within the meaning of this Section 4.1(t).

(u) BANK ACCOUNTS

Section 4.1(u) of the Company Disclosure Schedule sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains safe deposit boxes or accounts of any nature and

the names of all Persons authorized to draw thereon, make withdrawals therefrom or have access thereto.

(v) GOVERNMENT CONTRACTS

The Company has never been, nor as a result of the consummation of the transactions contemplated by this Agreement will it be, suspended or debarred from bidding on contracts or subcontracts for any agency of the United States government or any foreign government, nor to the Company's Knowledge has such suspension or debarment been threatened or action for suspension or debarment been commenced.

(w) ORDERS; COMMITMENTS; WARRANTIES AND RETURNS

Section 4.1(w) of the Company Disclosure Schedule contains a reasonable estimate as of August 31, 2002 of the Company's total backlog (including all accepted and unfulfilled service contracts) and the aggregate of all outstanding purchase orders issued by the Company (which aggregates include all material contracts or commitments for the purchase by the Company of materials or other supplies). All such sale and purchase commitments were made in the ordinary course of business. Section 4.1(w) of the Company Disclosure Schedule sets forth the warranties of the Company currently made with respect to its Business, products and services, and current policies with respect to returns of products in the course of the Company's conduct of the Business. Except as set forth on Section 4.1(w) of the Company Disclosure Schedule , the Company has not made any express warranties in connection with the sale of its products and services. Claims against the Company for warranty costs (individually or in the aggregate) with respect to products and services during each of the last three fiscal years did not exceed $50,000 and there are no outstanding or, to the Company's Knowledge, threatened claims for any such warranty costs that would exceed $20,000 (individually or in the aggregate). As used above, the term "warranty costs" shall mean costs and expenses associated with correcting, returning or replacing defective or allegedly defective products or services, whether such costs and expenses arise out of claims sounding in warranty, contract, tort or otherwise.

(x) ACCOUNTS RECEIVABLE

All accounts receivable of the Company reflected in the Final Closing Balance Sheet ("Accounts") will represent amounts due for services performed or sales actually made in the ordinary course of business and properly reflect the amounts due. The bad debt reserves and allowances reflected in the Preliminary Closing Balance Sheet will be adequate and calculated consistent with past practices. All Accounts existing and remaining unpaid at the time of Closing will be fully collectible by Itron, net of the bad debt reserves on the Preliminary Closing Balance Sheet.

4.2 REPRESENTATIONS AND WARRANTIES OF ITRON AND THE COMBINATION COMPANY

Itron and the Combination Company each represents and warrants to, and agrees with, the Company as herein set forth below. Such representations and warranties shall be deemed to be made as of the date hereof and as of the Closing Date. Disclosure of an item in response to one section of this Agreement shall constitute disclosure and response to every section of this Agreement, notwithstanding the fact that no express cross-reference is made.

(a) ORGANIZATION; STANDING AND POWER

Itron and the Combination Company are each respectively corporations duly organized and validly existing under the laws of the State of Washington and the State of Delaware. Each of Itron and the Combination Company has the requisite corporate power and authority to enter into and perform its obligations under the Operative Documents to which Itron or the Combination Company is a party, and to consummate the transactions contemplated hereby and thereby. The Combination Company was formed solely for the purpose of engaging in the transactions contemplated by this Agreement. As of the date of this Agreement, except for obligations or liabilities incurred in connection with the transactions contemplated hereby, the Combination Company has no material assets or liabilities of any type.

(b) COMBINATION COMPANY CAPITAL STRUCTURE

The authorized capital stock of the Combination Company consists of One Thousand (1,000) shares of common stock, $.001 par value, and no shares of preferred stock. As of the date of this Agreement, One Thousand (1,000) shares of the Combination Company's common stock are issued and outstanding in the name of Itron, and no other shares of capital stock of the Combination Company are issued and outstanding. All outstanding shares of capital stock of the Combination Company are validly issued, fully paid and nonassessable and not subject to preemptive or other similar rights.

(c) AUTHORITY; NON-CONTRAVENTION

(i) The Board of Directors of Itron and the Combination Company, respectively, have approved the Merger and the Operative Documents and determined the Merger and the Operative Documents to be in the best interests of Itron and the Combination Company and their respective stockholders. Itron and Combination Company, respectively, have the requisite corporate power and authority to enter into the Operative Documents and to consummate the transactions contemplated hereby. The execution and delivery of the Operative Documents by Itron and the Combination Company and the consummation by Itron and Combination Company of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Itron and Combination Company, respectively. The Operative Documents have been duly and validly executed and delivered by Itron and the Combination Company and constitute valid and binding obligations of Itron and the Combination Company, respectively, enforceable against Itron

and the Combination Company in accordance with their terms, except that (x) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws or judicial decisions now or hereafter in effect relating to creditors' rights generally and the application of general principles of equity, (y) the remedy of specific performance and injunctive relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought, and (z) the enforceability of any identification provision contained herein may be limited by applicable federal or state securities laws.

(ii) The execution, delivery and performance of the Operative Documents by Itron do not, and the consummation of the transactions contemplated hereby and thereby and compliance with the provisions hereof will not, conflict with, or result in or constitute a violation of or any default (with or without the giving of notice or lapse of time, or both) under, or acceleration or termination of, or the creation in any party of the right to accelerate, terminate or cancel or give rise to a right of termination, cancellation or acceleration with respect to (x) the Articles or Certificate of Incorporation or the Bylaws of Itron or the Combination Company or any provision of the comparable organizational documents of any of their respective subsidiaries, (y) any loan or credit agreement, note, bond, mortgage, indenture, lease, or other agreement, instrument, permit, concession, franchise or license to which Itron is a party or by which it or any of its properties or assets is bound, except any such violation or default that, individually or in the aggregate, would not have a Material Adverse Effect on Itron, or (z) subject to the governmental filings and other matters referred to in the following sentence, any judgment, order, decree, statute, law, ordinance, rule or regulation or arbitration award applicable to Itron or any of its subsidiaries or their respective properties or assets, other than, in the case of clause (y), for any immaterial defaults, conflicts or violations. No consent, approval, Order or authorization of, or registration, declaration or filing with, any Governmental Entity or other Person is required by or with respect to Itron or any of its subsidiaries in connection with the execution and delivery of this Agreement by Itron or the consummation by Itron of the transactions contemplated hereby, except for (A) the filing with the SEC of such reports under Section 13(a) of the Exchange Act as may be required in connection with this Agreement and the transactions contemplated hereby, (B) the filing of the Merger Filing with and approval by the Delaware Secretary of State with respect to the Merger as provided in the DGCL, (C) the filing of HSR notification materials with and approval by the Federal Trade Commission or Department of Justice, as applicable, with respect to the Merger, (D) appropriate documents with the relevant authorities of other states in which Itron and the Combination Company are qualified to do business and such other consents, approvals, Orders, authorizations, registrations, declarations and filings as may be required under the "takeover" or "blue sky" laws of various states, (E) and such other consents, approvals, Orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made would not have a Material Adverse Effect on Itron and its subsidiaries, taken as a whole, and (F) any filings required by Nasdaq or the NASD. No vote of the shareholders of Itron is necessary or required to approve or consummate any of the transactions contemplated hereby. The affirmative vote of Itron, as the sole stockholder of

Combination Company, is the only vote of the holders of any class or series of capital stock of the Combination Company necessary to approve the transaction contemplated hereby.

(iii) The Board of Directors of Itron has approved the Investment and has determined the Investment to be in the best interests of Itron and its stockholders. Itron has the requisite power and authority to enter into the Stock Purchase Agreement and consummate the transactions contemplated thereby. The execution, delivery and performance of the Stock Purchase Agreement by Itron will not, and the consummation of the transactions contemplated thereby and compliance with the provisions thereof will not, conflict with, or result in or constitute a violation or any default (with or without the giving of notice or lapse of time, or both) under, or acceleration or termination of, or the creation in any party of the right to accelerate with respect to (x) the Articles or Certificate of Incorporation or the Bylaws of Itron or any comparable organizational documents of any of its subsidiaries, (y) any loan or credit agreement, note, bond, mortgage, indenture, lease, or other agreement, instrument, permit, concession , franchise or license to which Itron is a party or by which it or any of its properties or assets is bound or (z) any judgment, order, decree, statute, law, ordinance, rule or regulation or arbitration award applicable to Itron or any of its subsidiaries or their respective properties or assets.

(d) BROKERS

Other than Wachovia Corporate Services, Inc., Itron has not employed any broker, investment banker or other Person entitled to receive any investment banking, broker's, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby, including any fee for any opinion rendered by any investment banker.

(e) NO IMPLIED WARRANTIES

Itron makes the specific representations and warranties contained in this Agreement; there are no implied representations or warranties. This Agreement and the Exhibits and Schedules hereto, taken as a whole, do not include any untrue statement of a material fact or omit to state a material fact necessary to make the statements herein as to Itron not misleading.

(f) LITIGATION

There is no claim, suit, action, proceeding or investigation pending or, to Itron's Knowledge, threatened against or affecting Itron or any of its subsidiaries that could have a Material Adverse Effect on Itron and its subsidiaries, and there is no claim, suit, action, proceeding or investigation pending, or to Itron's Knowledge, threatened against Itron or the Combination Company that could prevent or materially delay the ability of Itron or the Combination Company to consummate the transactions contemplated by the Operative Documents, nor is there any judgment, decree, injunction, rule or Order of any Governmental Entity or arbitrator outstanding against Itron or the Combination Company having any such effect.

(g) SEC REPORTS

Itron has filed with the SEC all required forms, reports, registration statements and documents required to be filed by it with the SEC (collectively, all such forms, reports, registration statements, and documents filed after October 1, 2002 are referred to herein as "Itron SEC Reports"), all of which complied as to form when filed in all material respects with the applicable provisions of the Securities Act and the Exchange Act, as the case may be. Accurate and complete copies of Itron SEC Reports have been made available to the Company. As of their respective dates, Itron SEC Reports (including documents incorporated by reference therein and all exhibits and schedules thereto) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(h) FINANCING

Itron has entered into a commitment letter , dated as of January 18, 2003 (the "Commitment Letter"), with Wells Fargo Bank, National Association ("Wells Fargo") wherein Wells Fargo commits to provide One Hundred percent (100%) of certain loans in an aggregate amount of up to One Hundred and Five Million Dollars ($105,000,000) of which Fifty Million Dollars ($50,000,000) will be made available in connection with the transactions contemplated by this Agreement (together with the other credit accommodations under the credit agreement, the "Debt Financing"). A true and complete copy of the Commitment Letter has been delivered to Shadow. The Debt Financing together with Itron's existing financial resources are sufficient to enable Itron to perform its obligations under this Agreement.

(i) U.S. TREASURY DEPARTMENT REPRESENTATION

Itron and Combination Company acknowledge that U.S. federal regulations and executive orders administered by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") prohibit, among other things, the engaging in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals. Itron and Combination Company represent and warrant as follows: (i) all evidence of identity provided herein is genuine and all related information furnished is accurate; (ii) the funds tendered for the purchase of the securities hereunder are not directly or indirectly derived from activities that may contravene federal, state, or international laws and regulations, including anti-money laundering laws; (iii) neither Itron, Combination Company nor any person controlling, controlled by, or under common control with, Itron, Combination Company or any person having a beneficial interest in Itron or Combination Company or providing financing to Itron or Combination Company to consummate the transaction contemplated by this Agreement, or for whom Itron or Combination Company is acting as agent or nominee in connection with the transaction contemplated by this Agreement, is (A) a country, territory, person, or entity named on an OFAC list, or (B) a person or entity that

resides or has a place of business in a country or territory named on such lists or which is designated as a non-cooperative jurisdiction by the Financial Action Task Force on Money Laundering; and (iv) neither Itron nor Combination Company is a senior foreign political figure, or an immediate family member or close associate of a senior foreign political figure within the meaning of the USA Patriot Act of 2001.

(j) COMPLIANCE WITH LAWS

Itron holds all permits, licenses, variances, exemptions, Orders, franchises and approvals of all Governmental Entities that are required for the operation of the business of Itron as presently conducted and the ownership, operation, lease and holding by Itron of its respective properties and Assets (the "Itron Permits"), except where the failure to hold such Itron Permits would not have a Material Adverse Effect on Itron. To Itron's Knowledge, Itron is in material compliance with the terms of the Itron Permits and has not violated, failed to comply with, or received any written notice of any alleged violation of or failure to comply with, any statute, law, ordinance, regulation, rule, permit or Order of any Governmental Entity, any arbitration award or any judgment, decree or Order of any court or other Governmental Entity, applicable to the Itron or its business, assets or operations.

## ARTICLE V.
## COVENANTS OF THE COMPANY

During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing Date, the Company agrees (except as expressly contemplated by this Agreement or with Itron's prior written consent (with e-mail consent deemed sufficient for such purposes), which will not be unreasonably withheld or delayed) that:

5.1 CONDUCT OF BUSINESS

The Company shall carry on its business in the usual and ordinary course in substantially the same manner as heretofore conducted (unless doing so would cause harm to the Company or any of its personnel) and, to the extent consistent with such business, use commercially reasonable efforts consistent with past practice and policies to preserve intact its present business organization, keep available the services of its present officers, consultants, and employees, and preserve its relationships with customers, suppliers, distributors and others having business dealings with it. The Company shall not:

(a) grant any severance or termination pay to any officer, director or any employee of the Company without consulting with Itron on the identity and number of Shadow employees that will be terminated, as well as the amount of severance to be paid, the result of such consultation being agreed to by Itron (which agreement shall not be unreasonably withheld);

(b) commence a lawsuit other than (i) for the routine collection of bills, (ii) in such cases where the Company in good faith determines that failure to commence suit would result in a material impairment of the Company's business, or (iii) for a breach of this Agreement;

(c) enter into any agreement, contract, or commitment that extends for a period of greater than one (1) year beyond the date of this Agreement or that obligates the Company to pay aggregate gross amounts in excess of $50,000, except for (i) purchases in the ordinary course of business, (ii) draw-downs from the Company's existing revolving credit facility with Silicon Valley Bank, (iii) draw-downs under the Bridge Notes, or (iv) agreements, contracts, or commitments between the Company and its existing or new customers;

(d) except in the ordinary course of business consistent with past practice, enter into one or more agreements, contracts, or commitments with customers, that extend for a period of greater than one (1) year beyond the date of this Agreement or that may produce for the Company proceeds to the Company in amounts in excess of $100,000;

(e) fail, except for adequate replacement policies, to maintain in full force and effect each insurance policy listed on Section 4.1(s) of the Company's Disclosure Schedule; or

(f) make any capital expenditures in excess of $50,000;

provided, however, that the foregoing items (a) through (f) shall not prevent the Company from performing the following in connection with or in anticipation of the Closing: (i) paying off the Bridge Note Amount, (ii) delivering the Company-Paid Bonus Portion to the Company Payroll Agent and (iii) paying off the SVB Loan Amount and terminating the SVB Loan.

5.2 DIVIDENDS; CHANGES IN CAPITAL STOCK

The Company shall not: (i) declare or pay any dividends on or make any other distributions in respect to any of its capital stock; or (ii) split, combine, or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of, or in substitution of shares of its capital stock.

5.3 ISSUANCE OF SECURITIES

The Company shall not issue, deliver, or sell, or authorize, propose, or agree or commit to the issuance, delivery, or sale of any shares of its capital stock of any class, any securities convertible into its capital stock or, any options, warrants, calls, conversion rights, commitments, agreements, contracts, understandings, restrictions, arrangements or rights of any character obligating it to issue any such shares, or other convertible securities; provided, however, nothing herein shall prevent the Company from (a) issuing Company Stock on the valid conversion of the Bridge Notes or exercise of any existing option or warrant to purchase

shares of Company Common Stock, or (b) granting options to purchase Company Shares in the ordinary course of business.

5.4 GOVERNING DOCUMENTS

Except as may be necessary to consummate the Merger, the Company shall not amend its Certificate of Incorporation or Bylaws.

5.5 NO ACQUISITIONS

The Company shall not acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association, or other business organization or division thereof.

5.6 NO DISPOSITIONS

The Company shall not sell, lease, license, transfer, mortgage, encumber, or otherwise dispose of any of its assets or cancel, release, or assign any indebtedness or claim, except in the ordinary course of business or in amounts that are not material to the Business Condition of the Company.

5.7 INDEBTEDNESS

The Company shall not incur any indebtedness for borrowed money by way of direct loan, sale of debt securities, purchase money obligation, conditional sale, guarantee, or otherwise, except in the ordinary course of business or in amounts that are not material to the Business Condition of the Company; provided, however, that nothing in this Section 5.7 shall be interpreted to prohibit borrowing by the Company pursuant to its existing lines of credit or the Bridge Notes.

5.8 CLAIMS

The Company shall not settle any proceeding, except in the ordinary course of business or in amounts that are not material, individually or in the aggregate, to the Business Condition of the Company.

5.9 OTHER ACTIONS

The Company shall not take any action that would cause or constitute a material breach of any of the representations and warranties set forth in Section 4 or that would cause any of such representations and warranties to be inaccurate in any material respect.

## ARTICLE VI.
## ADDITIONAL AGREEMENTS

### 6.1 STOCKHOLDER APPROVAL

(a) The Company shall, subject to Section 6.1(b), as soon as practicable following the execution and delivery of this Agreement, convene and hold a meeting of the Company Stockholders for the purpose of approving the Merger, this Agreement and the transactions contemplated hereby (and any other proper purpose as may be set out in the notice for such meeting) (the "Company Stockholders Meeting").

(b) The Company shall keep Itron and its counsel apprised of the status of matters relating to the Company Stockholders Meeting and will promptly furnish copies to Itron and its counsel of any documents to be sent to the Company Stockholders. The Company will comply with all applicable provisions of the DGCL and CCC with respect to dissenters' and appraisal rights.

(c) The Company will cause its transfer agent to make stock transfer records relating to the Company available to the extent reasonably necessary to effectuate the intent of this Agreement.

### 6.2 ACCESS TO INFORMATION; CONFIDENTIALITY

(a) Upon reasonable notice, the Company shall afford to the officers, employees, accountants, counsel and other representatives of Itron, reasonable access during normal business hours during the period from the date hereof to the Effective Time of the Merger, to all of its properties, books, contracts, commitments and records. During such period the Company shall furnish promptly to Itron all other information concerning the Company and its Business, properties and personnel as Itron may reasonably request; provided, however, that notwithstanding the foregoing provisions of this Section 6.2 or any other provision of this Agreement, the Company shall not be required to provide to Itron any information that is subject to a confidentiality agreement and that relates primarily to a party other than the Company. Itron agrees that it will not, and it will cause its respective representatives not to, use any information obtained pursuant to this Section 6.2 for any purpose unrelated to the consummation of the transactions contemplated by this Agreement. That certain letter agreement, dated as of March 28, 2002 by and between the Company and Itron (the "Confidentiality Agreement"), shall apply with respect to information furnished by the Company and its respective representatives thereunder or hereunder and any other activities contemplated thereby. The parties agree that this Agreement and the transactions contemplated hereby shall not constitute a violation of the Confidentiality Agreement and that the provisions hereof shall supersede all provisions of the Confidentiality Agreement in the event of a conflict.

(b) Neither the Company nor Itron shall issue any statement or communication to the public or press regarding this Agreement or the proposed Merger without the prior written

consent and approval of the other party, except as otherwise provided in Section 6.5. If this Agreement is terminated pursuant to Article VIII by either the Company or Itron, the proposed terms of the Merger and all Merger related discussions shall remain confidential and shall not be disclosed to any Person without the consent of the other party except as may be required by law or regulatory authorities.

6.3 COMMERCIALLY REASONABLE EFFORTS; NOTIFICATION

(a) Upon the terms and subject to the conditions set forth in this Agreement and otherwise provided in this Section 6.3, each of the parties agrees to use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement, including (i) the obtaining of all necessary actions or nonactions, waivers, consents and approvals from Governmental Entities and the making of all necessary registrations and filings (including filings with Governmental Entities) and the taking of all reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Entity, (ii) the obtaining of all necessary consents, approvals or waivers from third parties, (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby and (iv) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by this Agreement. In connection with and without limiting the foregoing, each of the Company and Itron and its respective Board of Directors shall (i) take all action reasonably necessary to ensure that no state takeover statute or similar statute or regulation is or becomes applicable to the Merger and (ii) if any state takeover statute or similar statute or regulation becomes applicable to the Merger, take all action reasonably necessary to ensure that the Merger may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to minimize the effect of such statute or regulation on the Merger.

(b) The Company shall give prompt notice to Itron, and Itron shall give prompt notice to the Company, of (i) any representation or warranty made by it contained in this Agreement becoming untrue or inaccurate in any material respect or (ii) the failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; provided, however, that no such notification shall affect the representations or warranties or covenants or agreements of the parties or the conditions to the obligations of the parties hereunder.

6.4 FEES AND EXPENSES

Except as provided in Article VIII, all fees and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees or expenses, whether or not the Merger is consummated.

6.5 PUBLIC ANNOUNCEMENTS

Itron and the Company will consult with each other before issuing any press release or otherwise making any public statements with respect to the transactions contemplated by this Agreement and shall not issue any such press release or make any such public statement prior to such consultation, except that each party may respond to questions from stockholders and may respond to inquiries from financial analysts and media representatives in a manner consistent with its past practice and each party may make such disclosure as may be required by applicable law or by obligations pursuant to any listing agreement with any national securities exchange without prior consultation to the extent such consultation is not reasonably practicable. Except to the extent deemed necessary by Itron to comply with SEC or Nasdaq disclosure requirements, the parties agree that the initial press release or releases to be issued in connection with the execution of this Agreement shall be mutually agreed in writing upon prior to the issuance thereof.

6.6 AGREEMENT TO DEFEND

In the event any claim, action, suit, investigation or other proceeding by any Governmental Entity or other Person or other legal or administrative proceeding is commenced that questions the validity or legality of the transactions contemplated hereby or seeks damages in connection therewith, the parties hereto agree to cooperate and use their commercially reasonable efforts to defend against and respond thereto.

6.7 OTHER ACTIONS

Except as contemplated or otherwise permitted by this Agreement, neither Itron nor the Company shall, nor shall Itron permit any of its subsidiaries to, take or agree or commit to take any action that is reasonably likely to result in any of its respective representations or warranties hereunder being untrue in any material respect or in any of the conditions to the Merger set forth in Article VII not being satisfied.

6.8 THE COMBINATION COMPANY

Itron shall cause the Combination Company to approve and adopt, and to perform its obligations in accordance with, this Agreement and shall take any and all steps reasonably necessary to cause the Combination Company to effect the transactions contemplated hereby.

6.9 EMPLOYEE MATTERS AND PAYMENTS

(a) Each of the Employee Benefit Plans of the Company shall be terminated prior to or concurrent with the Effective Time of the Merger, including without limitation, the Company Stock Option Plan, provided, however, that (i) the Company's 401(k) plan shall be terminated prior to the Closing Date pursuant to resolutions of the Company's Board of Directors (the form and substance of such resolutions shall be subject to advance review and approval by Itron), and (ii) the Company's plans that are listed on Section 4.1(n) of the

Company Disclosure Schedule as "Surviving Plans" shall survive the Effective Time of the Merger and terminate upon the date stated in such plans. The Surviving Corporation or Itron shall pay the employer's portion of the costs of the Surviving Plans for all periods after the Effective Time of the Merger in accordance with the Company's ordinary course of business. Itron shall take commercially reasonable efforts to ensure that all Company employees that either remain with the Surviving Corporation or join Itron immediately after the Merger ("Continuing Employees") will be eligible to participate no later than 90 days after the Effective Time of the Merger in all of Itron's employee benefit plans that are available to Itron employees generally and on terms no less favorable than provided to similarly situated Itron employees, provided however that (A) Itron shall also take commercially reasonable efforts to ensure both that (I) Continuing Employees will continue to be covered by the Company's medical plans until the termination date of such plans, and (II) Continuing Employees will become eligible to participate in Itron's 401(k) plan within 30 days after the Effective Time of the Merger, and (B) no Continuing Employee will be allowed to participate in both a Company benefit plan and a similar benefit plan of the Surviving Corporation or Itron at the same time (e.g., the Company's medical plans and Itron's medical plans). Continuing Employees shall be credited for prior service with the Company for purposes of (i) participation and vesting in Itron's 401(k) plan and (ii) participation in Itron's dental plan and coverage levels for preventive and basic dental care and (iii) calculation of vacation and sick leave amounts. In addition, Continuing Employees may carry over up to 240 hours of their accrued but unused paid time off as vacation. Itron shall use commercially reasonable efforts to cause its medical, dental, life, and disability plan providers to allow waiver of pre-existing conditions with respect to a Continuing Employee and his or her eligible dependents to the extent that the Continuing Employee and his or her eligible dependents are covered under a similar medical, dental, life or disability plan, as applicable, of the Company.

(b) Notwithstanding anything in Article V or Article VI to the contrary, Itron will make closing bonus and retention payments to the Company's existing employees as set forth in Section 6.11.

(c) On the first Business Day after the Effective Time of the Merger, Itron shall offer Continuing Employees options to acquire common stock of Itron on substantially the same basis as granted to Itron's current employees, provided, however, that the aggregate amount of such options granted to Continuing Employees shall not exceed the right to acquire 260,000 shares of Itron common stock. The number of options to be granted to each Continuing Employee shall not be based upon a formula, but shall be determined in consultation with the Company's management. The terms of such options shall provide, among other things, for a three-year vesting period and full vesting and exercisability of the options if the Continuing Employee is terminated without cause or constructively terminated without cause (as such terms are defined in the option documents) within one year of the Closing. Itron has on file an effective Registration Statement on Form S-8 with respect to the granting of such options as is provided for in this Section 6.9(c), and Itron has reserved for issuance a sufficient number of shares to cover any options granted pursuant to this Section 6.9(c).

(d) As soon as practicable following the execution of this Agreement and prior to the Closing, the parties agree to evaluate the expected need for employees of the Company and its successor as a result of the consummation of the Merger. Itron and the Company agree to consult on the number and identity of Company employees to be terminated at anytime during the period from the date hereof up to and including the Effective Time of the Merger (each a "Terminated Employee") and the amounts of severance to be paid to such employees. The parties agree that the Company shall make severance payments to the Terminated Employees, and such severance payments shall be excluded from the calculation of Net Working Capital as set forth on Schedule 3.1(d). The parties agree that Itron shall make severance payments to those Continuing Employees who are terminated without cause within twelve (12) months after the Effective Time of the Merger, and such severance payments shall be comparable to those currently provided to Itron employees, with credit given for the respective Continuing Employee's length of employment and position with the Company (each a "Post-Closing Terminated Employee"). Terminated Employees and Post-Closing Terminated Employees shall remain eligible for payments from both the Company Bonus Plan and the Itron Bonus Plan (as applicable and subject to the terms of such plan).

6.10 TAX MATTERS

(a) The Company shall prepare or cause to be prepared and file or cause to be filed all Tax Returns that are required to be filed by or with respect to the Company prior to the Closing Date and shall pay any Taxes due with respect to such Tax Returns.

(b) Itron shall prepare or cause to be prepared and file or cause to be filed all Tax Returns of the Company for all taxable periods that begin before the Closing Date but end on or after the Closing Date and for all taxable periods that end on or before the Closing Date for which Tax Returns are not required to be filed prior to the Closing Date. The Stockholders' Representative shall remit (or cause to be remitted) from the escrow provided in Section 3.1(c) any Taxes due with respect to such Tax Returns, which are properly allocated a taxable period (or portion thereof) ending on or prior to the Closing Date to the extent such Taxes are not reserved for on the Final Closing Balance Sheet. Itron shall permit the Stockholders' Representative to review and comment on each such Tax Return no later than thirty (30) days prior to the filing date of such Tax Return and shall make such revisions to such Tax Returns as are reasonably requested by the Stockholders' Representative.

(c) The Stockholders' Representative shall cooperate fully, as and to the extent reasonably requested by Itron, in connection with the filing of Tax Returns pursuant to this Section 6.10 and any audit, litigation or other proceeding with respect to Taxes of the Company, and shall make available to Itron and to any Governmental Entity, as reasonably requested in connection with any Tax Return described in Section 6.10, all information relating to any Taxes or Tax Returns of the Company. Such cooperation shall also include, without limitation, the retention and (upon

the other party's reasonable request) the provision of records and information that are reasonably relevant to any such Tax Return, audit, litigation or other proceeding.

(d) For purposes of this Agreement, Taxes shall be computed based on the closing of the books method as of the end of the Closing Date; provided, however, that exemptions, allowances and deductions (such as depreciation deductions) calculated on an annual basis shall be prorated on a per diem basis, and provided further, in the case of any Tax imposed upon the ownership or holding of real or personal property, such Taxes shall be prorated based on the percentage of the actual period to which such Taxes relate that precedes the Closing Date.

6.11 ADDITIONAL EMPLOYEE PAYMENT POOL

Itron shall provide for payments in an aggregate amount of up to $3,499,847 (the "Additional Employee Payment Pool") to Former Company Employees, Continuing Employees and designated consultants. The amount and terms of the payment or payments to be allocated to each Former Company Employee, Continuing Employee and designated consultants shall be as set forth in Schedule 6.11. The Company and Itron anticipate that of the Additional Employee Payment Pool, (i) up to a total of $1,976,316 will be distributed to Former Company Employees and designated consultants within ten (10) Business Days after the Closing in payment for services performed prior to the Effective Time of the Merger, (ii) up to a total of $781,950 will be distributed to Continuing Employees who remain employed by the Surviving Corporation or Itron 12 months after the Closing (such 12-month period after Closing, "Year One"), and (iii) up to a total of $741,581 will be distributed to Continuing Employees who remain employed by the Surviving Corporation or Itron from the end of Year One to the date 24 months after the Closing (such 12-month period after Year One, "Year Two"). To the extent that any Continuing Employee is terminated without Cause or is Constructively Terminated in Year One or Year Two, such Continuing Employee shall receive, in addition to any severance otherwise provided for by Itron, the amount of payment from the Additional Employee Payment Pool that he or she would have received had he or she remained employed until the end of the relevant 12-month period in which he or she is terminated.

6.12 PARACHUTE PAYMENTS

The Company and Itron will use their best efforts to ensure that no payment in connection with the employment arrangements contemplated in Sections 6.9 and 6.11 constitutes an "excess parachute payment" as defined in Section 280G of the Code (or any comparable provision of foreign, state or local laws).

6.13 INDEMNIFICATION

(a) From and after the Effective Time of the Merger, the Surviving Corporation and Itron and any of their respective successors or assigns will fulfill and honor in all respects the obligations of the Company (to the extent that the Company would have such obligations

if the Merger had not occurred) to indemnify and hold harmless the Company's and its subsidiaries' present and former directors, officers, employees, and agents and their heirs, executors and assigns (collectively, the "Indemnified Personnel") against all claims, losses, liabilities, damages, judgments, fines and fees, costs and expenses, including attorneys' fees and disbursements and amounts paid in settlement, incurred in connection with any threatened or pending claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative, arising out of or pertaining to (i) the fact that the Indemnified Personnel is or was an officer, director, employee or agent of the Company or any of its subsidiaries or (ii) matters existing or occurring at or prior to the Effective Time (including this Agreement and the transactions and actions contemplated hereby), whether asserted or claimed prior to, at or after the Effective Time of the Merger, to the fullest extent permitted under applicable law.

(b) In the event that Itron or the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers all or substantially all of its properties and assets to any person in a single transaction or a series of transactions, then, and in each such case, Itron or the Surviving Corporation, as applicable, shall make or cause to be made proper provision so that the successors and assigns of Itron or the Surviving Corporation, as applicable, assume the indemnification obligations of Itron or the Surviving Corporation, as applicable, under this Section 6.13 for the benefit of the Indemnified Personnel.

6.14 COMPANY BONUS PLAN

The Company may, prior to the Effective Time of the Merger, create a bonus plan for its employees (the "Company Bonus Plan") to provide cash bonus payments to employees for services previously rendered to the Company and rendered in connection with the Merger (the aggregate of such bonus payments constituting the "Bonus Pool Amount"). Such bonus payments will be made, and the Company Bonus Plan will terminate, upon the Effective Time of the Merger, and no additional bonus payments will be made thereafter. The Bonus Pool Amount shall not exceed $2,000,000.

6.15 COOPERATION IN CONNECTION WITH COMPANY LEASES

In connection with the Company's planned termination of the SVB Loan immediately prior to the Effective Time of the Merger, the Company and Itron shall cooperate to obtain replacement letters of credit from Itron's lender to satisfy the conditions of the Company's leases listed in Section 4.1(q) of the Company Disclosure Schedule.

6.16 FINANCING ARRANGEMENTS

Itron will use its best efforts to satisfy the conditions precedent to borrowing under the credit agreement entered into in connection with the Commitment Letter and to obtain the Debt Financing on the terms set forth in such credit agreement . Itron's chief financial officer

shall keep Shadow's chief financial officer informed as to the status of the Debt Financing through status reports, which may be delivered orally or in writing and which shall be provided at least every five (5) Business Days, with the first status report to be provided not later than the fifth Business Day following the date hereof. Itron shall provide to the Company a true and complete copy of the credit agreement at the time that Itron enters into such credit agreement.

6.17 COMPANY COMPLIANCE FILING

Prior to the Closing Date, the Company shall use commercially reasonable efforts to file with the IRS a request for a compliance statement(s) under the IRS's Employee Plan Compliance Resolution System, described in Revenue Procedure 2002-47, addressing applicable compliance failures with respect to the Company's, SRC Systems, Inc. 's and EPS Solutions, Inc.'s defined contribution plans.

## ARTICLE VII.
## CONDITIONS PRECEDENT

7.1 CONDITIONS TO EACH PARTY'S OBLIGATION TO EFFECT THE MERGER

The respective obligation of each party to effect the Merger is subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) GOVERNMENTAL ENTITY APPROVALS

All filings required to be made prior to the Effective Time of the Merger with, and all consents, approvals, permits and authorizations required to be obtained prior to the Effective Time of the Merger from, any Governmental Entity in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby shall have been made or obtained (as the case may be), except where the failure to obtain such consents, approvals, permits and authorizations could not reasonably be expected to have a Material Adverse Effect on the Company or Itron (assuming the Merger has taken place) or to materially adversely affect the consummation of the Merger.

(b) NO INJUNCTIONS OR RESTRAINTS

No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Merger shall be in effect.

(c) HART SCOTT RODINO ACT

The applicable waiting period, together with any extensions thereof, under the Hart Scott Rodino Act shall have expired or been terminated

7.2 CONDITIONS TO ITRON OBLIGATIONS

The obligation of Itron to consummate the Merger is further subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) STOCKHOLDER APPROVAL

The Company shall have delivered evidence of the Company Stockholder Approval in form satisfactory to Itron.

(b) COMPLIANCE

The agreements and covenants of the Company to be complied with or performed on or before the Closing Date pursuant to the terms hereof shall have been duly complied with or performed in all material respects and Itron shall have received a certificate dated the Closing Date and executed on behalf of the Company by the chief executive officer and the chief financial officer of the Company to such effect.

(c) CERTIFICATIONS

The Company shall have furnished Itron with a certified copy of a resolution or resolutions duly adopted by the Board of Directors of the Company as of the execution of this Agreement approving this Agreement and the consummation of the Merger and the transactions contemplated hereby. Copies of the Company's Certificate of Incorporation, certified by the Delaware Secretary of State, and Bylaws, certified by the Secretary of the Company, shall be attached to such certificate.

(d) REPRESENTATIONS AND WARRANTIES TRUE

The representations and warranties of the Company contained in this Agreement (other than any representations and warranties made as of a specific date, which representations and warranties shall be true and correct in all material respects as of such date) shall be true and correct in all material respects (except to the extent the representation or warranty is already qualified by materiality and/or the phrase "Material Adverse Effect," in which case it shall be true and correct in all respects) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, except where the failure of such representation or warranty to be true and correct would not, individually or on an aggregate basis, have a Material Adverse Effect on the Company, and Itron shall have received a certificate to that effect dated the Closing Date and executed on behalf of the Company by the chief executive officer or the chief financial officer of the Company.

(e) CONSENTS; RELATED MATTERS

Itron shall have received evidence, in form and substance reasonably satisfactory to it, that the parties hereto have obtained such licenses, permits, consents (including those consents and prior written approvals for the assignment of each of the Material Contracts), approvals, authorizations, qualifications and Orders as set forth on Schedule 7.2(e) (collectively, the "Company Consents"), and the Company and Itron have mutually determined that such Company Consents shall include all such licenses, permits, consents, approvals, authorizations, qualifications and Orders as are reasonably necessary in connection with the transactions contemplated hereby, including the ultimate merger, if any, of the Surviving Corporation with and into Itron, except such Company Consents which are not, individually or in the aggregate, material to the Surviving Corporation, or the failure of which to have received would not (as compared to the situation in which such Company Consent had been obtained) have a Material Adverse Effect on the Surviving Corporation, or Itron, or both after giving effect to the Merger and the ultimate merger, if any, of the Surviving Corporation with and into Itron.

(f) COMPANY COUNSEL OPINION

Itron shall have received an opinion dated the Closing Date of Wilson, Sonsini, Goodrich & Rosati, counsel to the Company, in the form of Exhibit E attached hereto.

(g) NO LITIGATION

There shall not be pending or threatened any suit, action or proceeding (i) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement or seeking to obtain from Itron or any of its subsidiaries any damages that are material in relation to Itron and its subsidiaries, taken as a whole, (ii) seeking to prohibit or limit the ownership or operation by the Surviving Corporation of any material portion of the business or assets of the Company, or any of the other transactions contemplated by this Agreement or (iii) seeking to prohibit the Surviving Corporation from effectively controlling in any material respect the business or operations of the Company.

(h) ESCROW AGREEMENT

The Stockholders' Representative, on behalf of the Company Stockholders, and the Escrow Agent shall have executed and delivered the Escrow Agreement in substantially the form attached hereto as Exhibit A.

(i) TERMINATION OF CERTAIN AGREEMENTS

Any and all stockholder agreements, rights of refusal, co-sale rights, registration rights or voting trusts or other voting agreements (other than pursuant hereto) for the benefit of the holders of Company Stock, or stock purchase rights relating to securities of the

Company, all as set forth in the Company Disclosure Schedule, shall have been terminated without cost to the Company, the Surviving Corporation or Itron.

(j) EXERCISE OR TERMINATION OF WARRANTS AND STOCK PURCHASE RIGHTS; CONVERSION OF CONVERTIBLE SECURITIES

Any and all Company Warrants, Company Options and rights to purchase securities of the Company, and any and all securities and notes convertible at any time into Company Stock, vested and unvested, and regardless of restrictions on exercise or conversion, for Company Stock shall have been exercised, converted, repurchased, terminated or paid, as the case may be, immediately prior to the Effective Time of the Merger.

(k) DISSENT RIGHTS

The holders of not more than five percent (5%) of all Company Stock shall have exercised Dissent Rights.

(l) CONSENTS TO JURISDICTION

By executing a Support Agreement or a form of consent reasonably acceptable to Itron, the holders of at least sixty percent (60%) of all shares of Company Stock outstanding immediately prior to the Effective Time of the Merger shall have consented to personal jurisdiction in Alameda County, California, in connection with any action that may be brought by Itron or the Surviving Corporation for purposes of determining any right of Itron or the Surviving Corporation to indemnification for any breach or claim of breach of the representations and warranties contained Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i).

(m) FINANCING

Itron shall have funds available under the credit facility or facilities as such credit facility or facilities are described in Section 4.2(h) herein and shall have the necessary authorization to draw down funds from such credit facility or facilities.

(n) TERMINATION OF CHANGE OF CONTROL AGREEMENTS

Any and all Change of Control Agreements, all as set forth in the Company Disclosure Schedule, shall have been terminated prior to the Effective Time of the Merger.

7.3 CONDITIONS TO COMPANY OBLIGATIONS

The obligation of the Company to consummate the Merger is further subject to the satisfaction or waiver on or prior to the Closing Date of the following conditions:

(a) COMPLIANCE

The agreements and covenants of Itron and the Combination Company to be complied with or performed on or before the Closing Date pursuant to the terms hereof shall have been duly complied with or performed in all material respects and the Company shall have received a certificate dated the Closing Date on behalf of Itron and the Combination Company by the chief executive officer and the chief financial officer of Itron and the Combination Company to such effect.

(b) CERTIFICATIONS

Itron shall have furnished the Company with a certified copy of a resolution or resolutions duly adopted by the Board of Directors or a duly authorized committee thereof of Itron and the Combination Company approving this Agreement and consummation of the Merger and the transactions contemplated hereby.

(c) REPRESENTATIONS AND WARRANTIES TRUE

The representations and warranties of Itron and the Combination Company contained in this Agreement (other than any representations and warranties made as of a specific date, which representations and warranties shall be true and correct in all material respects as of such date) shall be true and correct in all material respects (except to the extent the representation or warranty is already qualified by materiality or the phrase "Material Adverse Effect," in which case it shall be true and correct in all respects) on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of such date, except where the failure of such representation or warranty to be true and correct would not, individually or on an aggregate basis, have a Material Adverse Effect on Itron and its subsidiaries, taken as a whole, and the Company shall have received a certificate to that effect dated the Closing Date and executed on behalf of Itron and the Combination Company by the chief executive officer or the chief financial officer of Itron.

(d) ITRON COUNSEL OPINION

The Stockholders' Representative shall have received an opinion dated the Closing Date of Perkins Coie LLP, counsel to Itron and the Combination Company, in the form of Exhibit F attached hereto.

(e) NO LITIGATION

There shall not be pending or threatened any suit, action or proceeding (i) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement or seeking to obtain from the Company, the Surviving Corporation or any of their respective subsidiaries any damages that are material in relation to the Company, (ii) seeking to prohibit or limit the ownership or operation by the Surviving Corporation or any of its subsidiaries of any material portion of the business or assets of the Company, or any of the other transactions contemplated by this Agreement or (iii) seeking to prohibit the Surviving Corporation or any of its subsidiaries from effectively controlling in any material respect the business or operations of the Company.

(f) SUFFICIENT FUNDS

Itron shall have funds sufficient to enable it to perform its obligations under this Agreement.

## ARTICLE VIII.
## TERMINATION, AMENDMENT AND WAIVER

8.1 TERMINATION

This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time of the Merger pursuant to the following.

(a) By mutual written consent of Itron and the Company.

(b) By either Itron or the Company:

(i) if the Company Stockholders fail to give any required approval of the Merger and the transactions contemplated hereby at the Company Stockholder Meeting or other duly held meetings of the Company Stockholders;

(ii) if any court of competent jurisdiction or any governmental, administrative or regulatory authority, agency or body shall have issued an Order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the Merger; or

(iii) if the Merger shall not have been consummated on or before February 28, 2003; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(iii) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time of the Merger to occur on or before such date.

(c) by Itron

(i) if the Company (x) breaches in any material respect any of its representations or warranties herein such that the condition set forth in Section 7.2(d) cannot be satisfied within twenty (20) calendar days following receipt by the Company of notice of breach, or (y) fails to perform in any material respect any of its covenants, agreements or obligations under this Agreement within twenty (20) calendar days following receipt by the Company of notice of breach, if such failures result in or would reasonably be expected to result in a Material Adverse Effect on the Company;

(ii) if, in response to the public announcement or disclosure of any Takeover Proposal, the Company fails to hold within thirty (30) calendar days the Company Stockholders Meeting or other duly called meeting of the Company Stockholders to approve the Merger; or

(iii) if, (x) the Board of Directors of the Company or any committee thereof shall have recommended to the Company's stockholders a Superior Proposal, (y) the Board of Directors of the Company or any committee thereof shall have resolved to do the foregoing, or (z) a Superior Proposal is consummated or an agreement with respect to a Superior Proposal is executed.

(d) by the Company

(i) if Itron (x) breaches in any material respect any of its representations or warranties herein such that the condition set forth in Section 7.3(c) cannot be satisfied within twenty (20) calendar days following receipt by Itron of notice of breach, or (y) fails to perform in any material respect any of its covenants, agreements or obligations under this Agreement within twenty (20) calendar days following receipt by Itron of notice of breach, if such failures result in or would reasonably be expected to result in a Material Adverse Effect on Itron; or

(ii) for purpose of accepting a Superior Proposal; provided, that such termination under this Section 8.1(d) shall not be effective unless the Company provides Itron with at least two (2) Business Days prior written notice before terminating this Agreement, which notice shall be accompanied by a copy of the proposed acquisition agreement with respect to the Superior Proposal that the Company proposes to accept.

8.2 EFFECT OF TERMINATION; FEES AND INVESTMENTS

(a) In the event of termination of this Agreement by either the Company or Itron as provided in Section 8.1, this Agreement shall forthwith become void and have no effect, without any current or future liability or obligation on the part of Itron or the Company, other than the confidentiality provisions of Sections 6.2, 6.4, 6.5, the investment and fee provisions of this Section 8.2 and the provisions of Article IX. Except as provided in Section 8.2(e), any termination of this Agreement pursuant to Section 8.1 shall not relieve any party hereto for liabilities related to any breach of any of its representations, warranties, covenants or agreements in this Agreement, which right to recover damages shall be in addition to (and not

exclusive of) any other remedy at law or in equity available to any party. Notwithstanding and in addition to the foregoing, if Itron or the Company terminates this Agreement following a breach hereof by the other party, in accordance with Sections 8.1(c)(i) or 8.1(c)(ii) or Section 8.1(d)(i), respectively, such breaching party shall reimburse the non-breaching party for all of its reasonable out-of-pocket expenditures incurred in connection with this Agreement.

(b) Itron shall make an investment in the Company (the "Investment") on the terms set forth in the Common Stock Purchase Agreement attached hereto as Exhibit G (the "Stock Purchase Agreement") within ten (10) Business Days after written demand by the Company if this Agreement is terminated by Itron or the Company pursuant to Section 8.1(b)(iii) above, and, at the time of such termination, all conditions in Sections 7.1 and 7.2 have been satisfied other than Itron having the Debt Financing to enable it to perform its obligations under this Agreement; provided, however, the requirement that the Company Consents be obtained for the ultimate merger of the Surviving Corporation into Itron shall be disregarded for purposes of determining whether all conditions have been satisfied.

(c) The Company shall pay Itron the sum of One Million Dollars ($1,000,000) (the "Company Fee") within ten (10) Business Days after written demand by Itron if the Agreement is terminated by Itron or the Company pursuant to Sections 8.1(c)(iii) or 8.1(d)(ii) above, and, at the time of such termination, all conditions in Sections 7.1 and 7.3 have been satisfied.

(d) The parties hereto acknowledge that the agreements contained in this Section 8.2 are an integral part of the transactions contemplated by this Agreement, and that without these agreements, the parties would not enter into this Agreement. Accordingly, if either Itron or the Company fails promptly to satisfy its obligations under to Sections 8.2(a), 8.2(b) or 8.2(c), respectively, and the other party commences an action in order to obtain performance of such obligations, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and litigation expenses to be paid by the non-prevailing party, subject in each case to a determination by the judge, arbitrator or other decisionmaker as to which party is the prevailing party.

(e) If this Agreement is terminated under circumstances in which the Company is entitled to the Investment or Itron is entitled to the Company Fee, (i) the obligation of Itron to make the Investment or the Company to pay the Company Fee, as applicable, shall survive the termination of this Agreement and (ii) the Investment or the Company Fee, as applicable, shall be the sole and exclusive remedy available to the Company or Itron.

8.3 AMENDMENT

This Agreement may be amended as provided in this Section 8.3 by the parties at any time before or after any required approval of matters presented in connection with the Merger by the Company Stockholders; provided, however, that after any such approval, there shall be made no amendment that by law requires further approval by such stockholders without the

further approval of such stockholders. Prior to the Effective Time of the Merger, this Agreement may not be amended except by an instrument in writing signed on behalf of each of Itron, Combination Company and the Company. On or after the Effective Time of the Merger, this Agreement may not be amended except by an instrument in writing signed on behalf of each of Itron, Combination Company and the Stockholders' Representative.

8.4 EXTENSION; WAIVER

At any time prior to the Effective Time of the Merger, the parties may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or the other acts of the other parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto or (c) subject to the proviso of Section 8.3, waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights. If, prior to the Closing Date, either party to this Agreement acquires actual knowledge of any specific information inconsistent with the representations and warranties of the other party to this Agreement, such party shall provide such information to the other party; and, if such party nevertheless elects not to terminate this Agreement, then such party shall not be entitled to rely on any representations or warranties which are inconsistent with such information.

8.5 PROCEDURE FOR TERMINATION, AMENDMENT, EXTENSION OR WAIVER

A termination of this Agreement pursuant to Section 8.1, an amendment of this Agreement pursuant to Section 8.3 or an extension or waiver pursuant to Section 8.4 shall, in order to be effective, require in the case of Itron or the Company, action by its respective Board of Directors or the duly authorized designee of such Board of Directors.

## ARTICLE IX.
## NO SOLICITATION

9.1 NO SOLICITATION

Prior to the Effective Time of the Merger, the Company agrees that neither it, nor any of its officers or directors will, and it will direct Company Representatives other than its officers and directors not to: (i) solicit or initiate any inquiries or the making of any proposal with respect to any merger, consolidation or other business combination involving the Company or the acquisition of any of the assets or capital stock of the Company (a "Takeover Proposal") or (ii) negotiate, explore or otherwise engage in discussion with any Person (other than Itron and its representatives) with respect to any Takeover Proposal, or which may reasonably be expected to lead to a Takeover Proposal, or (iii) enter into any agreement, arrangement or understanding with respect to any such Takeover Proposal or which would

require it to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement; provided, however, that the Company may, in response to an unsolicited written proposal from a third party regarding a Superior Proposal (as hereinafter defined), furnish information to, negotiate or otherwise engage in discussions with such third party, if the Board of Directors of the Company determines in good faith, after consultation with its financial advisors and outside legal counsel, that failure to do so would be inconsistent with the fiduciary duties of the Board of Directors of the Company under applicable law.

9.2 TERMINATION OF CURRENT DISCUSSIONS

Except as may be required pursuant to the fiduciary duties of the Company's Board of Directors under applicable law, the Company agrees that, as of the date hereof, it and its officers and directors will, and it will direct Company Representatives other than officers and directors to, immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person (other than Itron and its representatives) conducted heretofore with respect to any Takeover Proposal. The Company agrees to promptly advise Itron of any inquiries or proposals received by, any such information requested from, or any negotiations or discussions sought to be initiated or continued with, the Company, or any of its directors, officers, employees, agents or representatives, in each case from a Person (other than Itron and its representatives) with respect to a Takeover Proposal, and the terms thereof, including, if not prohibited by any confidentiality agreement in effect, the identity of such third party and the general terms of any financing arrangement or commitment in connection with such Takeover Proposal, and, to update on an ongoing basis or upon Itron's reasonable request, the status thereof, as well as any actions taken or other developments pursuant to this Article IX. As used herein, a "Superior Proposal" means a bona fide, written and unsolicited proposal or offer made by any Person (or group) (other than Itron or any of its subsidiaries) with respect to a Takeover Proposal on terms which the Board of Directors of the Company determines in good faith, and in the exercise of reasonable judgment, to (i) be more favorable to the Company and its stockholders than the transactions contemplated hereby, and (ii) is likely, in the reasonable good faith judgement of the Board of Directors of the Company, of being financed by the Person making such Superior Proposal.

9.3 FIDUCIARY DUTY; RECOMMENDATION OF MERGER

The Company's Board of Directors shall use its reasonable best efforts to obtain from the Company Stockholders the vote required by the DGCL and CCC in favor of the adoption of the Merger and this Agreement, including the transactions contemplated hereby, and shall recommend to the Company Stockholders that they so vote; provided, that the Company's Board of Directors shall not be required to use such reasonable best efforts to obtain the vote in favor of the adoption of the Merger and this Agreement or to make or continue to make such recommendation if such Board of Directors, after having consulted with outside counsel, has determined that the making of such reasonable best efforts to obtain the vote in favor of the adoption of this Agreement or making or continuing to make such

recommendation would be inconsistent with the fiduciary duties of the Board of Directors of the Company under applicable law.

Notwithstanding any provision to the contrary herein, (i) the Company shall be required to submit the Merger proposal for approval by the Company Stockholders at the Company Stockholders Meeting or other duly held meeting of the Company Stockholders, whether with or without the recommendation of the Company's Board of Directors, and (ii) recognizing that special circumstances, as provided in Section 251 of the DGCL, may exist, the Company shall not alter its actions in a manner that would prevent the Company from complying with its agreement to hold a meeting of the Company Stockholders to act on the Merger and this Agreement as described in the preceding clause (i) of this sentence.

## ARTICLE X.
## INDEMNIFICATION

### 10.1 INDEMNIFICATION BY COMPANY STOCKHOLDERS

(a) Subject to Sections 10.5 and 10.6, each of the Company Stockholders shall, on a several, proportionate basis as specified below in Section 10.6(a), defend, indemnify, and hold Itron and the Surviving Corporation and their respective directors, officers and other Affiliates harmless from and against, and reimburse Itron and the Surviving Corporation and their respective directors, officers and other Affiliates with respect to, any and all Losses incurred by them by reason of or arising out of or in connection with: (i) any breach, or any claim (including claims by parties other than Itron) that if true, would constitute a breach of any representation or warranty of the Company contained in this Agreement, and (ii) the failure, partial or total, of the Company to perform any agreement or covenant required by this Agreement to be performed by it.

(b) The indemnification obligations of the Company Stockholders pursuant to clauses (i) and (ii) of Section 10.1(a) shall apply only to the extent that the aggregate Losses incurred in connection therewith exceed Two Hundred Fifty Thousand Dollars ($250,000); provided, however that this limitation shall not apply to indemnification obligations of the Company Stockholders pursuant to clauses (i) and (ii) of Section 10.1(a) with respect to (x) Taxes, (y) Employee Benefit Plans and related matters under Section 4.1(n), and (z) Losses incurred by the Surviving Corporation or Itron in connection with any settlement by or judgment against the Surviving Corporation or Itron in connection with the Former Employee Claims and provided further that, for purposes of determining under Section 10.1(a)(i) whether a breach or claim has occurred that would entitle Itron to indemnification or other relief specified under Section 10.1(a)(i), the disclosures by the Company in Sections 4.1(j) and 4.1(n) of the Company Disclosure Schedule shall be treated as not disclosed, ignored and of no effect.

(c) Notwithstanding anything to the contrary herein, before making any claim for indemnification under Section 10.1(a) for sales and use Taxes, Itron shall take the following

steps using appropriate tax professionals to reduce, mitigate, eliminate, and or collect the outstanding state sales tax liability of the Company:

(i) Determine the applicability of sales and use taxes to the Company's products and services in each of the state and local jurisdiction(s) in which the Company had a filing requirement. The sales tax determinations will include and differentiate among the Company's products and services.

(ii) Utilize where applicable, statutory exemptions, reduced rates, estimates or pro-rations of the individual value of each service (e.g., taxable and non-taxable) and other factors that could affect the Company' sales tax liability.

(iii) Issue confirmation letters to customers in, at least, but not limited to, all instances wherein there were sales of taxable products or services of $100,000 or greater by the Company into a state with a sales tax filing requirement to determine whether any taxes due were accrued and remitted directly to the state and local jurisdictions by customers.

(iv) Mitigate penalties and interest due through negotiated voluntary disclosure agreements or participation in state amnesty programs or other abatement efforts.

(v) Make two (2) written requests for payment no less than thirty (30) days apart to those customers for whom the sales tax liability could not be mitigated or eliminated through the steps identified above. To the extent the request remains unpaid 90 days after the second request, it shall be deemed not collectible.

(vi) Nothing in this Agreement shall preclude the Company from taking steps to identify, mitigate, or eliminate the outstanding sales tax liability prior to the Closing Date up to and including retaining appropriate external tax professionals. Costs for engaging external tax professionals paid by Itron following the Closing Date to perform the steps specified above and that have not already been undertaken by the Company shall be a valid indemnification claim under Section 10.1(a) and shall not be subject to the $250,000 deductible under Section 10.1(b) but such costs shall not exceed $175,000. Further, the costs of the time spent by internal Itron tax professionals in working on the above steps and coordinating work with external tax professionals shall be a valid indemnification claim at the rate of $67.00 per hour. Such internal costs shall not exceed $75,000.

(d) In addition to the requirements of Section 10.1(c) above, (i) Itron and the Surviving Corporation shall use commercially reasonable efforts to access any applicable insurance of the Company in existence at the Effective Time of the Merger in connection with any claim seeking indemnification from the Company Stockholders pursuant to this Section 10.1, (ii) Itron shall make two (2) written requests for payment at least one (1) month apart in an attempt to collect all Accounts, net of the bad debt reserves on the Preliminary Closing Balance Sheet and wait ninety (90) days from such second request, prior to seeking indemnification from the Company Stockholders pursuant to this Section 10.1, (iii) within six months following the Effective Time, Itron shall take commercially reasonable efforts to

initiate and resolve any issues regarding the Employee Benefit Plans, and, for any such reporting obligations issues with respect to which action has not been initiated within six months following the Effective Time of the Merger, the $250,000 deductible provided for in Section 10.1(b) above with respect to indemnification under this Section 10.1 shall apply and (iv) the amount of any Losses for which indemnification is provided to Itron under this Article X for sales and use Taxes and Former Employee Claims shall be net of any amounts actually recovered by Itron and the Surviving Corporation from third parties (including amounts actually recovered under insurance policies) with respect to such Losses. Any Losses for which indemnification is provided to Itron under this Article X shall be net of any amounts actually recovered by Itron and the Surviving Corporation from third parties (including amounts actually recovered under insurance policies) with respect to such Losses. Any netting of insurance proceeds payable in connection with any such Losses may be satisfied by Itron assigning any potential insurance claims to the Company Stockholders, and in any event, the potential availability of insurance proceeds shall not permit delay in the performance of the indemnification obligations under this Article X.

(e) If Itron or the Surviving Corporation recovers an amount from a third party in respect of a Loss after the full amount of such loss has been paid or after a partial payment and the amount received from the third party exceeds the remaining unpaid balance of such loss, then Itron shall promptly remit to the Company Stockholders the excess of (i) the sum of the amount theretofore paid in respect of such loss plus the amount received from the third party in respect thereof, less (ii) the full amount of such Loss.

10.2 INDEMNIFICATION BY ITRON

Subject to Section 10.5, Itron agrees to defend, indemnify, and hold harmless the Company Stockholders from and against, and to reimburse the Company Stockholders with respect to, any and all Losses incurred by the Company Stockholders by reason of or arising out of or in connection with: (a) any breach, or any claim (including claims by parties other than the Company or the Company Stockholders) that if true, would constitute a breach of any representation or warranty of Itron contained in this Agreement, and (b) the failure, partial or total, of Itron to perform any agreement or covenant required by this Agreement to be performed by it, but the indemnification obligations pursuant to the foregoing clauses (a) and (b) shall apply only to the extent that the aggregate Losses incurred in connection therewith exceed Two Hundred Fifty Thousand Dollars ($250,000).

10.3 CLAIMS BETWEEN THE PARTIES

All claims for indemnification under this Agreement, other than Third Party Claims as described in Section 10.4, shall be resolved in accordance with the following procedures:

(a) NOTICE OF CLAIMS

(i) If an indemnified party has incurred or reasonably believes that it may incur Losses, it shall deliver a Claim Notice to the indemnifying party with respect to such

Losses. The failure to give such notice shall not affect the rights of the indemnified party or parties except to the extent that (A) the indemnifying party is materially prejudiced by such failure, or (B) the indemnified party does not deliver the Claim Notice within the relevant time period provided for in Section 10.5.

(ii) When Losses are actually incurred or paid by an indemnified party or on an indemnified party's behalf or otherwise fixed or determined, the indemnified party shall deliver a Payment Certificate to the indemnifying party for such Losses.

(iii) If, after receiving a Payment Certificate, the indemnifying party desires to dispute such claim or the amount claimed in the Payment Certificate, it shall deliver to the indemnified party within thirty (30) days a Counternotice as to such claim or amount. If no such Counternotice is received within the aforementioned thirty (30) day period, the indemnifying party shall be deemed to have accepted liability in respect of the Payment Certificate.

(iv) The parties will use good faith efforts for a thirty (30) day period in an effort to resolve the issue. If, however, within thirty (30) days after receipt or deemed receipt by the indemnified party of the Counternotice to a Payment Certificate, the parties have not reached agreement as to the claim or amount in question, the claim for indemnification shall be decided in accordance with the provisions of Section 10.3(b), unless otherwise specified in this Agreement.

(v) With respect to any Losses for which indemnification is being claimed based upon an asserted liability or obligation to a Person or entity not a party to this Agreement, the obligations of the indemnifying party hereunder shall not be reduced as a result of any action by the indemnified party in responding to such claim if such action is reasonably required to minimize damages, avoid a forfeiture or penalty, or comply with a legal requirement.

(vi) For purposes of this Section 10.3, a Company Stockholder who is an indemnifying party hereunder shall be deemed to have received notice for purposes of this Article X, once the Stockholders' Representative has received a Claim Notice or Payment Certificate, as applicable.

(b) RESOLUTION OF DISPUTED CLAIMS

(i) All disputed claims for indemnification under this Agreement, other than Third Party Claims as described in Section 10.4, shall be submitted for final and binding arbitration in Santa Clara County, California, which arbitration shall, except as specifically stated herein, be conducted in accordance with the AAA Commercial Arbitration Rules (the "AAA Rules") then in effect; provided, however, that the parties agree first to try in good faith to resolve any claim for indemnification that does not exceed Two Hundred Fifty Thousand Dollars ($250,000) by mediation under the AAA Commercial Mediation Rules, before resorting to arbitration; provided, further, that, in the event of an arbitration, the

arbitration provisions of this Agreement shall govern over any conflicting rules which may now or hereafter be contained in the AAA Rules.

(ii) The final decision of the arbitrator(s) shall be a reasoned opinion based on applicable law and furnished in writing to the parties and will constitute a conclusive determination of the issue in question, binding upon the parties. The arbitrator(s) shall have the authority to grant any equitable and legal remedies that would be available in any judicial proceeding instituted to resolve a claim for indemnification. Any judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction over the subject matter thereof.

(iii) The parties shall select the arbitrator by mutual agreement promptly following initiation of arbitration in accordance with the AAA Rules; provided, however, that in the event the parties are unable to reach such agreement within twenty (20) days of initiation, the AAA shall have the authority to select an arbitrator from a list of arbitrators who are partners in a nationally recognized firm of independent certified public accountants from the management advisory services department (or comparable department or group) of such firm or who are partners in a major law firm and who have significant experience in acquisition transactions similar to the transactions contemplated by this Agreement; provided, however, that such accounting firm or law firm cannot be a firm that has within the last three (3) years rendered, or is then rendering, services to any party hereto or, in the case of a law firm, appeared, or is then appearing, as counsel of record in opposition to any party hereto. Any arbitrator selected to serve shall be qualified by training and experience for the matters for which such arbitrator is designated to serve. If the parties are unable to agree upon one arbitrator, each shall appoint an arbitrator and these appointees shall appoint a third arbitrator, in which case the arbitration determination shall be made by a majority decision of the three selected arbitrators.

(iv) The prevailing party in any arbitration shall be entitled to an award of reasonable attorneys' fees and costs, and all costs of arbitration, including those provided for above, will be paid by the losing party, subject in each case to a determination by the arbitrator as to which party is the prevailing party and the amount of such fees and costs to be allocated to such party. Any amounts payable under this subsection will be reimbursed as if the amount of such awarded fees and costs were not contested, and the parties will have no further liability for any amounts payable under this Section 10.3(b) for such fees and costs.

(v) The arbitrator(s) chosen in accordance with these provisions shall not have the power to alter, amend or otherwise affect the terms of these arbitration provisions or the provisions of this Agreement or any other documents that are executed in connection therewith.

10.4 THIRD PARTY CLAIMS

(a) If an indemnified party receives notice of a demand for arbitration, summons or other notice of the commencement of a proceeding, audit, investigation, review, suit or

other action by a third party (any such action a "Third Party Claim") for which it intends to seek indemnification hereunder, it shall give the indemnifying party prompt written notice of such claim (together with all copies of the claim, any process served, and all filings with respect thereto), so that the indemnifying party's defense of such claim under this Section 10.4 may be timely instituted. The indemnifying party under this Article X shall have the right to conduct and control, through counsel (reasonably acceptable to the indemnified party) of its own choosing and at its own cost, any Third Party Claim, compromise, or settlement thereof. Assumption by an indemnifying party of control of any such defense, compromise, or settlement shall not be a waiver by it of its right to challenge its obligation to indemnify the indemnified party. The indemnified party may, at its election, participate in the defense of any such claim, action, or suit through counsel of its choosing, but the fees and expenses of such counsel shall be at the expense of the indemnified party, unless the indemnified party shall have been advised by such counsel that there may be one or more legal defenses available to it that are different from or in addition to those available to the indemnifying party (in which case, if the indemnified party notifies the indemnifying party in writing that it elects separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such action on behalf of the indemnified party with respect to such defenses).

(b) If the indemnifying party fails to defend diligently any Third Party Claim, then the indemnified party may defend, with counsel of its own choosing, and (i) settle such Third Party Claim and then recover from the indemnifying party the amount of such settlement or of any judgment and the reasonable costs and expenses of such defense, or (ii) litigate the Third Party Claim to the completion of trial or arbitration and then promptly recover from the indemnifying party the reasonable costs and expense of such defense and the amount of the judgment, verdict or award, if any, against the indemnified party.

(c) Notwithstanding Section 10.4(b)(i), the indemnifying party shall not be liable to pay or otherwise satisfy any settlement of a Third Party Claim unless the indemnified party shall have given the indemnifying party written notice of the terms of the proposed settlement at least twenty (20) days prior to entering into such settlement.

(d) Without the consent of the indemnified party, the indemnifying party shall not compromise or settle any Third Party Claim if such settlement involves an admission of liability or wrongdoing on the party of the indemnified party, or a restriction on the operation of the indemnified party's business in the future or would adversely affect the business reputation or Tax liability of the indemnified party. No Third Party Claim may be settled by an indemnifying party without the written consent of the indemnified party, which consent shall not be unreasonably withheld or delayed. No settlement of a Third Party Claim that involves the payment of money only shall be made by any indemnifying party unless the indemnifying party has and reserves a sufficient amount of immediately available funds to provide for such settlement.

(e) Itron, the Stockholders' Representative, and the Surviving Corporation shall cooperate in all reasonable respects with each other in connection with the defense, negotiation, or settlement of any legal proceeding, claim, or demand referred to in this Section 10.4.

10.5 TIME LIMIT

The provisions of this Article X (other than the last sentence of Section 10.6(a)) shall apply only to Losses for which a Claim Notice is delivered before the later of (a) 12 months from the Closing Date and (b) the filing of Itron's annual report on Form 10-K for the year ended December 31, 2003; provided, however, that: (i) the obligation of either party to indemnify the other and its directors and officers for such claims for which a Claim Notice is given within the time period set forth above shall continue until the final resolution of each such claim; (ii) the limitation set forth in this Section 10.5 shall not apply to any right to indemnification for a failure to perform any agreement or covenant set forth in this Agreement or for any of the representations set forth in Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b) 4.1(c)(i), 4.2(a), 4.2(b) and 4.2(c)(i), which shall survive the Effective Time of the Merger indefinitely; and (iii) the representations set forth in Section 4.1(i) and 4.1(n) shall survive until the expiration of the applicable statute of limitations.

10.6 LIMITATIONS

(a) (i) The aggregate amount for which the Company Stockholders shall be liable pursuant to this Article X shall not exceed ten percent (10%) of the Merger Consideration; provided, however, that the limitation set forth in this Section 10.6 shall not apply to any right to indemnification for any breach or claim of breach of the representations and warranties contained in Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i).

(ii) The liability of each Company Stockholder under this Article X shall be determined on an Escrowed Pro Rata Basis and, except as provided in Sections 10.6(a)(i) and 10.6(a)(iii), shall not exceed such Company Stockholder's respective share of the Escrow.

(iii) Notwithstanding any provisions of Sections 10.6(a)(i) and 10.6(a)(ii), and except as provided in 10.6(a)(iv), the aggregate liability of each Company Stockholder for claims of breach of the representations and warranties contained in Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i) shall be limited to the aggregate Merger Consideration received by such Company Stockholder.

(iv) Except for Losses based upon fraud , the sole remedy of Itron, the Surviving Corporation, or their respective directors, officers and other Affiliates for breaches of this Agreement shall be claims made in accordance with and subject to the limitations in this Article X.

(b) Except for claims for any breach or claim of breach of the representations and warranties contained in Section 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i), the indemnification obligations of the Company Stockholders under this Article X shall be satisfied by payment to Itron of the obligations by all Company Stockholders from the Escrow on an Escrowed Pro Rata Basis. The aggregate value of claims paid by means of the payments to Itron pursuant to this Article X shall be deemed to reduce the total Merger Consideration otherwise payable to the Company Stockholders pursuant to Section 3.1.

10.7 STOCKHOLDERS' REPRESENTATIVE

(a) By virtue of the approval of the Merger and this Agreement by the requisite vote of the Company Stockholders, each of the Company Stockholders shall be deemed to have agreed to appoint JMI Equity Fund, L.P. as agent (the "Stockholders' Representative") for and on behalf of the Company Stockholders, their respective Affiliates and their respective representatives to give and receive notices and communications, to organize or assume the defense of third-party claims, to assign claims to individual Company Stockholders, to agree to, negotiate or enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to third-party claims, and to take all actions necessary or appropriate in the judgment of the Stockholders' Representative for the accomplishment of the foregoing. Such agency may be changed by the holders of rights to receive at least sixty percent (60%) of the Merger Consideration upon not less than ten (10) days' prior written notice to Itron. No bond shall be required of the Stockholders' Representative, and the Stockholders' Representative shall receive no compensation for services rendered; provided, however, that they shall be entitled to reimbursement of their expenses in serving as Stockholders' Representative, which amounts shall be deducted from the Escrow. Notices or communications to or from the Stockholders' Representative shall constitute notice to or from the Company Stockholders.

(b) The Stockholders' Representative shall not be liable to any of the Company Stockholders for any act done or omitted hereunder as Stockholders' Representative except to the extent they individually or collectively acted with gross negligence or willful misconduct, and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence that the Stockholders' Representative did not act with gross negligence or willful misconduct. The Company Stockholders shall severally and proportionately indemnify the Stockholders' Representative and hold them harmless against any loss, liability or expense incurred without gross negligence or willful misconduct on the part of the Stockholders' Representative and arising out of or in connection with the acceptance or administration of the duties hereunder.

(c) The Stockholders' Representative shall have reasonable access to information about the former Company Business and operations and the reasonable assistance of Itron's officers and employees for purposes of performing the duties and exercising the rights hereunder; provided, that the Stockholders' Representative shall treat confidentially and not disclose any nonpublic information from or about Itron to anyone (except on a need to know basis to individuals who agree to treat such information confidentially). The Stockholders' Representative shall be a third party beneficiary of the terms of this Section 10.7(c).

10.8 ACTIONS OF THE STOCKHOLDERS' REPRESENTATIVE

A unanimous decision, act, consent or instruction of the Stockholders' Representative shall constitute a decision of all Company Stockholders and shall be final, binding and conclusive upon each such Company Stockholder and Itron may rely upon any written decision, act, consent or instruction of the Stockholders' Representative as being the decision, act, consent or instruction of the Company Stockholders. Itron is hereby relieved from any liability to any Person for any acts done by them in accordance with such written decision, act, consent or instruction of the Stockholders' Representative.

## ARTICLE XI.
## GENERAL PROVISIONS

11.1 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations and warranties made by the parties to this Agreement and contained herein or in any instrument delivered by the Company or Itron pursuant to this Agreement shall survive until the later of (a) 12 months from the Closing Date and (b) the date of the filing of Itron's annual report on Form 10-K for the year ended December 31, 2003; provided that the warranties contained in Section 4.1(i) and 4.1(n) shall survive until the expiration of the applicable statute of limitations and Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), 4.1(c)(i), 4.2(a), 4.2(b) and 4.2(c)(i) shall survive indefinitely.

11.2 NOTICES

All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by facsimile or sent by overnight courier to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to the Company, to:

Silicon Energy Corp.
1010 Atlantic Avenue
Alameda, CA 94591
Attention: John Woolard
Telephone: 510-263-2600
Facsimile: 510-749-6823

with a copy to:

Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304-1050
Attention: Issac Vaughn
Telephone: 650-320-4653
Facsimile: 650-493-6811

(b) if to Itron, to:

Itron, Inc.
2818 N. Sullivan Road
Spokane, WA 99216
Attention: CFO
Telephone: 509-924-9900
Facsimile: 509-891-3334

with a copy to:

Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101-3099
Attention: Andrew Bor
Telephone: (206) 583-8888
Facsimile: (206) 583-8500

| | | |
|---|---|---|
| (c) | if to the Stockholders' Representative, to: | JMI Equity Fund, L.P.<br>12680 High Bluff Drive<br>Suite 200<br>San Diego, CA 92130<br>Telephone: 858-350-1875<br>Facsimile: 858-350-1870 |
| | with a copy to: | Wilson, Sonsini, Goodrich & Rosati<br>650 Page Mill Road<br>Palo Alto, CA 94304-1050<br>Attention: Issac Vaughn<br>Telephone: 650-320-4653<br>Facsimile: 650-493-6811 |

11.3 INTERPRETATION

When a reference is made in this Agreement to a Section, Exhibit or Schedule, such reference shall be to a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the word "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

11.4 COUNTERPARTS; FACSIMILE EXECUTION

This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid and binding obligation of the executing party with the same force and effect as if such facsimile signature page were an original thereof.

11.5 ENTIRE AGREEMENT; NO THIRD-PARTY BENEFICIARIES EXCEPT THE COMPANY STOCKHOLDERS AND THE STOCKHOLDERS' REPRESENTATIVE

This Agreement (including the documents and instruments referred to herein) and the Confidentiality Agreement (a) constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and (b) are not intended to confer upon any Person other than the parties, the Company Stockholders and the Stockholders' Representative any rights or remedies hereunder, except as otherwise specified herein. This Agreement may not be amended except by a writing signed by all parties consistent with the requirements of Section 8.3.

11.6 GOVERNING LAW; VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof, and venue for any action taken in connection herewith or related hereto shall exclusively reside in the courts of Spokane County, Washington.

11.7 ASSIGNMENT

Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties without the prior written consent of the other parties. This Agreement will be binding upon, inure to the benefit of, and be enforceable by, the parties and their respective successors and assigns.

11.8 ENFORCEMENT OF THIS AGREEMENT

The parties agree that irreparable damage would occur in the event that any material provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that any party shall be entitled to an injunction or injunctions to prevent a breach of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States, this being in addition to any other remedy to which such party is entitled at law or in equity.

11.9 SEVERABILITY

In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

IN WITNESS WHEREOF, Itron, the Combination Company and the Company have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

ITRON, INC.

By: /s/ David G. Remington
---
Name: David G. Remington
---
Title: Vice President and CFO
---

SHADOW COMBINATION, INC.

By: /s/ David G. Remington
---
Name: David G. Remington
---
Title: President
---

SILICON ENERGY CORP.

By: /s/ John Woolard
---
Name: John Woolard
---
Title: President and CEO
---

# FIRST AMENDMENT OF AGREEMENT AND PLAN OF MERGER

This First Amendment of Agreement and Plan of Merger ("First Amendment") is made and entered into as of February 27, 2003, by and between Silicon Energy Corp., a Delaware corporation (the "Company"), Shadow Combination, Inc., a Delaware corporation and wholly owned subsidiary of Itron (the "Combination Company"), and Itron, Inc., a Washington corporation ("Itron").

## RECITALS

A. On January 18, 2003, the Company, Combination Company and Itron entered into the Agreement and Plan of Merger (the "Merger Agreement").

B. The purpose of this First Amendment is to set forth the terms and conditions upon which the Company, Combination Company and Itron will modify the terms of the Merger Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

## 1. AMENDMENT; DEFINITIONS

### 1.1 AMENDMENT

The Merger Agreement is amended as set forth herein. Except as specifically provided for in this First Amendment, all of the terms and conditions of the Merger Agreement and each of the other documents related to the Merger Agreement shall remain in full force and effect.

### 1.2 DEFINITIONS

Capitalized terms shall have the meanings given to them in the Merger Agreement, except as otherwise defined in this First Amendment.

## 2. AMENDMENT TO EXHIBIT A, SECTION 2.1(i) (ESCROW AGREEMENT)

Section 2.1(i) of Exhibit A to the Merger Agreement is hereby deleted in its entirety and replaced with the following:

If from time to time on or before March 4, 2005 (the "Escrow Termination Date"), the Escrow Agent receives joint written instructions from

an Appropriate Officer of Itron and the Stockholders' Representatives instructing the Escrow Agent to distribute the Escrowed Property or any part thereof (including, without limitation, income or earnings thereon), and specifically setting forth the exact amount of Escrowed Property to be distributed, the identity of the person or entity to which a distribution is to be made, and the manner for which the distribution is to be made, then the Escrow Agent shall forthwith transfer from the Escrow Account and distributed the Escrowed Property or such part thereof in accordance with such joint written instructions, to the extent such Escrowed Property is available in the Escrow Account. For purposes of this Escrow Agreement an "Appropriate Officer" of Itron shall include LeRoy Nosbaum, Chief Executive Officer, David Remington, Vice President and Chief Financial Officer, and Russell Fairbanks, Vice President and General Counsel, or any such other officers as may be appointed by the Itron Board of Directors, written notice of which shall be promptly provided by Itron to the Escrow Agent and the Stockholders' Representatives.

3. AMENDMENT TO ARTICLE I

Article I of the Merger Agreement is hereby amended by adding the following as defined terms and attaching Schedule 1.1 to the Merger Agreement in the form attached to this First Amendment:

"Action" shall mean that (a) a lawsuit shall have been filed by a party other than Itron, Surviving Corporation or any affiliate thereof with respect to a Covered Claim, or (b) following the receipt of the written consent of the Stockholders' Representative, which consent shall not be unreasonably withheld, Itron, Surviving Corporation or any affiliate thereof shall have either filed a lawsuit related to one or more of the Asserted Patents or commenced settlement negotiations relating to one or more of the Asserted Patents.

"Aggregate Liability Limit" shall have the meaning as given in Section 10.6(a)(i).

"Asserted Patents" shall mean those patents specifically identified in attached Schedule 1.1.

"Covered Claim" shall mean any claim described in attached Schedule 1.1.

"Covered Claim Representations" shall have the meaning as given in Section 10.6(a)(i).

"First Year Claim Period" shall have the meaning as given in Section 10.6(a)(i).

"Threshold Amount" shall have the meaning as given in Section 10.6(a)(i).

"Unauthorized Action" shall mean an action by Itron, Surviving Corporation or any affiliate thereof with respect to a category of Asserted Patents whereby such Person has, prior to the occurrence of any Action with respect to such category of Asserted Patents and without the consent of the Stockholders' Representative, which consent shall not be unreasonably

withheld, either (a) filed a lawsuit relating to such category of Asserted Patents, (b) delivered a letter, the subject matter of which is such category of Asserted Patents, or (c) commenced settlement negotiations relating to, or obtained a settlement with respect to, such category of Asserted Patents; provided, however, that the delivery of a letter, the form of which has been approved by Itron and the Company, to a claimant or its agent by Itron, the Surviving Corporation or any affiliate thereof in response to a Covered Claim regarding such category of Asserted Patents, shall not require the consent of the Stockholders' Representative and shall not be deemed an Unauthorized Action hereunder with respect to such category of Asserted Patents.

3A. AMENDMENT TO SECTION 8.1

Section 8.1(b)(iii) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

(iii) if the Merger shall not have been consummated on or before March 5, 2003; provided, however, that the right to terminate this Agreement under this Section 8.1(b)(iii) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time of the Merger to occur on or before such date.

4. AMENDMENT TO SECTION 10.1(b)

Section 10.1(b) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

(b) The indemnification obligations of the Company Stockholders pursuant to clauses (i) and (ii) of Section 10.1(a) shall apply only to the extent that the aggregate Losses incurred in connection therewith exceed Two Hundred Fifty Thousand Dollars ($250,000); provided, however that this limitation shall not apply to indemnification obligations of the Company Stockholders pursuant to clauses (i) and (ii) of Section 10.1(a) with respect to (x) Taxes, (y) Employee Benefit Plans and related matters under Section 4.1(n), and (z) Losses incurred by the Surviving Corporation or Itron in connection with any settlement by or judgment against the Surviving Corporation or Itron in connection with the Former Employee Claims and, provided further that, for purposes of determining under Section 10.1(a)(i) whether a breach or claim of breach has occurred that would entitle Itron to indemnification or other relief specified under Section 10.1(a)(i), the disclosures by the Company in Sections 4.1(j) and 4.1(n) of the Company Disclosure Schedule, and the disclosures by the Company with respect to any Covered Claim in [Sections 4.1(e)(i), 4.1(g) and 4.1(k)] of the Company Disclosure Schedule, shall be treated as not disclosed, ignored and of no effect.

5. AMENDMENT TO SECTION 10.4(a)

Section 10.4(a) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

(a) If an indemnified party receives notice of a demand for arbitration, summons or other notice of the commencement of a proceeding, audit, investigation, review, suit or other action by a third party (any such action a "Third Party Claim") for which it intends to seek indemnification hereunder, it shall give the indemnifying party prompt written notice of such claim (together with all copies of the claim, any process served, and all filings with respect thereto), so that the indemnifying party's defense of such claim under this Section 10.4 may be timely instituted. TExcept with respect to Covered Claims, which claims shall be conducted and controlled by Itron and/or the Surviving Corporation, the indemnifying party under this Article X (or Itron and/or the Surviving Corporation in the case of a Covered Claim) shall have the right to conduct and control, through counsel (reasonably acceptable to the indemnified party or, in the case of a Covered Claim, the Stockholders' Representative) of its own choosing and at its own cost, any Third Party Claim, compromise, or settlement thereof (such party conducting and controlling the Third Party Claim proceeding, the "Controlling Party," and all other parties not conducting and controlling such proceeding, the "Non-Controlling Parties"). Assumption by an indemnifying party of control of any such defense, compromise, or settlement shall not be a waiver by it of its right to challenge its obligation to indemnify the indemnified party. The indemnified party may, at its election, participate in the defense of any such claim, action, or suit through counsel of its choosing, but the fees and expenses of such counsel shall be at the expense of the indemnified party, unless the indemnified party shall have been advised by such counsel that there may be one or more legal defenses available to it that are different from or in addition to those available to the indemnifying party (in which case, if the indemnified party notifies the indemnifying party in writing that it elects separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such action on behalf of the indemnified party with respect to such defenses).

6. AMENDMENT TO SECTION 10.4(d)

Section 10.4(d) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

Without the consent of the Non-Controlling Party, the Controlling Party shall not compromise or settle any Third Party Claim if such settlement involves an admission of liability or wrongdoing on the party of the Non-Controlling Party, or a restriction on the operation of the Non-Controlling Party's business in the future or would adversely affect the business reputation or Tax liability of the Non-Controlling Party. No Third Party Claim, including a Covered Claim, may be settled by an Controlling

Party without the written consent of the Non-Controlling Party, which consent shall not be unreasonably withheld or delayed. No settlement of a Third Party Claim that involves the payment of money only shall be made by any Controlling Party unless the Non-Controlling Party has and reserves a sufficient amount of immediately available funds to provide for such settlement.

7. AMENDMENT TO SECTION 10.4(e)

Section 10.4(e) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

(e) Itron, the Stockholders' Representative, and the Surviving Corporation shall cooperate in all reasonable respects with each other in connection with the defense, negotiation, or settlement of any legal proceeding, claim, or demand referred to in this Section 10.4. Such cooperation shall include, but is not limited to, (i) allocating defense costs between the parties for any Third Party Claim in relative proportion to the parties' good faith estimates of the indemnification obligations under this Article X and paying such costs as incurred, and (ii) providing periodic updates on the status of such legal proceedings, provided, however, that to the extent that material nonpublic information may be included in such updates, the recipient of such information shall first enter into a nondisclosure agreement with the disclosing party. For purposes of the allocation and payment of defense costs under this Section 10.4(e), Itron, the Surviving Corporation and the Stockholders' Representative shall have access, consistent with the maintenance of the attorney-client privilege, to such billing records, statements and other documents as are reasonably necessary to permit such allocation and payment.

8. AMENDMENT TO SECTION 10.6

Section 10.6 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

(a) (i) The aggregate amount for which the Company Stockholders shall be liable pursuant to this Article X shall not exceed ten percent (10%) of the Merger Consideration (the "Aggregate Liability Limit"); provided, however, that the Aggregate Liability Limit shall not apply to any right to indemnification for any breach or claim of breach of the representations and warranties contained in (A) Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i), or (B) [Sections 4.1(e)(i), 4.1(g) or 4.1(k)] with respect to Covered Claims (the "Covered Claim Representations"). Notwithstanding the foregoing, the Aggregate Liability Limit shall apply to any indemnification obligation of the Company Stockholders for any breach or claim of breach of the Covered Claim Representations with respect to a category of Asserted Patents if no Action has occurred or an Unauthorized Action occurs with respect to such category of Asserted Patents on or

before the later of (1) 12 months from the Closing Date and (2) the filing of Itron's annual report on Form 10-K for the year ended December 31, 2003 but in no event later than April 1, 2004 (the "First Year Claim Period"). In addition, to the extent that an Unauthorized Action with respect to a category of Asserted Patents occurs after the First Year Claim Period, the Company Stockholders shall have no indemnification obligations for any breach or claim of breach of the Covered Claim Representations with respect to such category of Asserted Patents. The parties further agree that in connection with any breach or claim of breach of the Covered Claim Representations, (a) if an Action or Unauthorized Action occurs during the First Year Claim Period, then the Company Stockholders shall only be liable for 50 percent of the amount of any Losses over and above Three Million Dollars ($3,000,000) (the "Threshold Amount"), and (b) if no Action or Unauthorized Action occurs during the First Year Claim Period and an Action occurs after the First Year Claim Period, then the Company Stockholders shall only be liable for 75 percent of the amount of any Losses over and above the Threshold Amount.

(ii) The liability of each Company Stockholder under this Article X shall be determined on an Escrowed Pro Rata Basis and, except as provided in Sections 10.6(a)(i) and 10.6(a)(iii), shall not exceed such Company Stockholder's respective share of the Escrow and shall in no event exceed the Merger Consideration received by such Company Stockholder.

(iii) Notwithstanding any provisions of Sections 10.6(a)(i) and 10.6(a)(ii), and except as provided in 10.6(a)(iv), the aggregate liability of each Company Stockholder for claims of breach of the representations and warranties contained in Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i) shall be limited to the aggregate Merger Consideration received by such Company Stockholder.

(iv) Except for Losses based upon fraud, the sole remedy of Itron, the Surviving Corporation, or their respective directors, officers and other Affiliates for breaches of this Agreement shall be claims made in accordance with and subject to the limitations in this Article X.

(b) Except to the extent that claims for any breach or claim of breach of (i) the representations and warranties contained in Section 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i), or (ii) the Covered Claim Representations where an Action has occurred on or before the First Year Claim Period exceed the amount remaining in escrow, the indemnification obligations of the Company Stockholders under this Article X shall be satisfied solely by payment to Itron of the obligations by all Company Stockholders from the Escrow on an Escrowed Pro Rata Basis. The aggregate value of claims paid by means of the payments to Itron pursuant to this Article X shall be deemed to reduce the total Merger Consideration otherwise payable to the Company Stockholders pursuant to Section 3.1.

9. AMENDMENT TO SECTION 11.1

Section 11.1 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

The representations and warranties made by the parties to this Agreement and contained herein or in any instrument delivered by the Company or Itron pursuant to this Agreement shall survive until the later of (a) 12 months from the Closing Date and (b) the date of the filing of Itron's annual report on Form 10-K for the year ended December 31, 2003 but in no event later than April 1, 2004; provided that (1) the warranties contained in Sections 4.1(i) and 4.1(n) shall survive until the expiration of the applicable statute of limitations, (2) the Covered Claims Representations shall survive until the date that is 24 months from the Closing Date and (3) the warranties in Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), 4.1(c)(i), 4.2(a), 4.2(b) and 4.2(c)(i) shall survive indefinitely.

10. COUNTERPARTS

This First Amendment may be executed in one or more counterparts, each of which shall constitute an original agreement, but all of which together shall constitute one and the same agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company, Combination Company and Itron have caused this First Amendment to be duly executed as of the date first written above.

SILICON ENERGY CORP.

By /s/ John Woolard

Its President and CEO

SHADOW COMBINATION, INC.

By /s/ David G. Remington

Its President

ITRON, INC.

By /s/ David G. Remington

Its Vice President and CFO

SCHEDULE 1.1

The Asserted Patents are comprised of the following two categories of patents (A) United States Patents 5,572,438, 5,684,710, 5,696,695, 5,924,486, 6,216,956 and any foreign counterparts, and (B) United States Patents 6,169,179 and 5,758,331 and any foreign counterparts.

A Covered Claim is a claim alleging that (A) any Company Technology, Company Intellectual Property Rights, or product or service of the Company in each case as such existed prior to the Effective Time of the Merger, or the use thereof, infringed one or more of the Asserted Patents, or (B) any product, service, or intellectual property of the Surviving Corporation or Itron after the Effective Time of the Merger (a "Post-Merger Product or Service") or the use thereof infringes one or more of the Asserted Patents, where such Post-Merger Product or Service (1) was Company Technology, a Company Intellectual Property Right, or product or service of the Company prior to the Effective Time of the Merger and (2) has not been materially modified so as to infringe one or more of the Asserted Patents.

SECOND AMENDMENT OF
AGREEMENT AND PLAN OF MERGER

This Second Amendment of Agreement and Plan of Merger ("Second Amendment") is made and entered into as of February 28, 2003, by and between Silicon Energy Corp., a Delaware corporation (the "Company"), Shadow Combination, Inc., a Delaware corporation and wholly owned subsidiary of Itron (the "Combination Company"), and Itron, Inc., a Washington corporation ("Itron").

RECITALS

A. On January 18, 2003, the Company, Combination Company and Itron entered into the Agreement and Plan of Merger, and on February 27, 2003 amended such Agreement and Plan of Merger through the First Amendment to Agreement and Plan of Merger (such agreement, as amended, the "Merger Agreement").

B. The purpose of this Second Amendment is to set forth the terms and conditions upon which the Company, Combination Company and Itron will further modify the terms of the Merger Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. AMENDMENT; DEFINITIONS

1.1 AMENDMENT

The Merger Agreement is amended as set forth herein. Except as specifically provided for in this Second Amendment, all of the terms and conditions of the Merger Agreement and each of the other documents related to the Merger Agreement shall remain in full force and effect.

1.2 DEFINITIONS

Capitalized terms shall have the meanings given to them in the Merger Agreement, except as otherwise defined in this Second Amendment.

2. AMENDMENT TO ARTICLE I

Article I of the Merger Agreement is hereby amended by deleting the definition of "Unauthorized Action" in its entirety and replacing it with the following:

"Unauthorized Action" shall mean an action by Itron, Surviving Corporation or any affiliate thereof with respect to a category of Asserted Patents whereby such Person has, prior to the occurrence of any Action with respect to such category of Asserted Patents and without

the prior written consent of the Stockholders' Representative, which consent shall not be unreasonably withheld, either (a) filed a lawsuit relating to such category of Asserted Patents, (b) delivered a letter, the subject matter of which is such category of Asserted Patents, or (c) commenced settlement negotiations relating to, or obtained a settlement with respect to, such category of Asserted Patents; provided, however, that the delivery of one letter responding to each of the letters that the Company has received prior to the date hereof, the forms of which have been approved by Itron and the Company prior to the Closing, to a claimant or its agent by Itron, the Surviving Corporation or any affiliate thereof in response to a Covered Claim regarding such category of Asserted Patents, shall not require the consent of the Stockholders' Representative and shall not be deemed an Unauthorized Action hereunder with respect to such category of Asserted Patents.

3. AMENDMENT TO SECTION 10.4(d)

Section 10.4(d) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

Without the consent of the Non-Controlling Party, the Controlling Party shall not compromise or settle any Third Party Claim if such settlement involves an admission of liability or wrongdoing on the part of the Non-Controlling Party, or a restriction on the operation of the Non-Controlling Party's business in the future or would adversely affect the business reputation or Tax liability of the Non-Controlling Party. No Third Party Claim, including a Covered Claim, may be settled by Controlling Party without the prior written consent of the Non-Controlling Party, which consent shall not be unreasonably withheld or delayed. No settlement of a Third Party Claim that involves the payment of money only shall be made by any indemnifying party unless the indemnifying party has and reserves a sufficient amount of immediately available funds to provide for such settlement.

4. AMENDMENT TO SECTION 10.4(e)

Section 10.4(e) of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

(e) Itron, the Stockholders' Representative, and the Surviving Corporation shall cooperate in all reasonable respects with each other in connection with the defense, negotiation, or settlement of any legal proceeding, claim, or demand referred to in this Section 10.4. Such cooperation shall include, but is not limited to, (i) allocating defense costs between the parties for any Third Party Claim in relative proportion to the parties' good faith estimates of the indemnification obligations under this Article X and paying such costs as incurred, and (ii) providing periodic updates on the status of such legal proceedings, provided, however, that to the extent that material nonpublic information may be included in such updates, the recipient of such information shall first enter into a nondisclosure agreement with the disclosing party which nondisclosure agreement shall be reasonable

and shall be designed only to preserve the confidentiality of, and prohibit the inappropriate use of, such material nonpublic information. For purposes of the allocation and payment of defense costs under this Section 10.4(e), Itron, the Surviving Corporation and the Stockholders' Representative shall have access, consistent with the maintenance of the attorney-client privilege, to such billing records, statements and other documents as are reasonably necessary to permit such allocation and payment.

5. AMENDMENT TO SECTION 10.6

Section 10.6 of the Merger Agreement is hereby deleted in its entirety and replaced with the following:

(a) (i) The aggregate amount for which the Company Stockholders shall be liable pursuant to this Article X shall not exceed ten percent (10%) of the Merger Consideration (the "Aggregate Liability Limit"); provided, however, that the Aggregate Liability Limit shall not apply to any right to indemnification for any breach or claim of breach of the representations and warranties contained in (A) Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i), or (B) [Sections 4.1(e)(i), 4.1(g) or 4.1(k)] with respect to Covered Claims (the "Covered Claim Representations"). Notwithstanding the foregoing, the Aggregate Liability Limit shall apply to any indemnification obligation of the Company Stockholders for any breach or claim of breach of the Covered Claim Representations with respect to a category of Asserted Patents if no Action has occurred or an Unauthorized Action occurs with respect to such category of Asserted Patents on or before the later of (1) 12 months from the Closing Date and (2) the filing of Itron's annual report on Form 10-K for the year ended December 31, 2003 but in no event later than April 1, 2004 (the "First Year Claim Period"). In addition, to the extent that an Unauthorized Action with respect to a category of Asserted Patents occurs after the First Year Claim Period, the Company Stockholders shall have no indemnification obligations for any breach or claim of breach of the Covered Claim Representations with respect to such category of Asserted Patents. The parties further agree that in connection with any breach or claim of breach of the Covered Claim Representations, (a) if an Action or Unauthorized Action occurs during the First Year Claim Period, then the Company Stockholders shall only be liable for 50 percent of the amount of any Losses over and above Three Million Dollars ($3,000,000) (the "Threshold Amount"), and (b) if no Action or Unauthorized Action occurs during the First Year Claim Period and an Action occurs after the First Year Claim Period but on or before the Escrow Termination Date, then the Company Stockholders shall only be liable for 75 percent of the amount of any Losses over and above the Threshold Amount.

(ii) The liability of each Company Stockholder under this Article X shall be determined on an Escrowed Pro Rata Basis and, except as provided in Sections 10.6(a)(i) and 10.6(a)(iii), shall not exceed such Company Stockholder's respective share of the Escrow. Notwithstanding anything to the contrary in the Agreement, except as provided in Section 10.6(a)(iv), the liability of each Company Stockholder under this Article X shall in no event exceed the Merger Consideration received by such Company Stockholder.

(iii) Notwithstanding any provisions of Sections 10.6(a)(i) and 10.6(a)(ii), and except as provided in 10.6(a)(iv), the aggregate liability of each Company Stockholder for any breach or claims of breach of the representations and warranties contained in Sections 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i) shall be limited to the aggregate Merger Consideration received by such Company Stockholder.

(iv) Except for Losses based upon fraud, the sole remedy of Itron, the Surviving Corporation, or their respective directors, officers and other Affiliates for breaches of this Agreement shall be claims made in accordance with and subject to the limitations in this Article X.

(b) Except to the extent that claims for any breach or claim of breach of (i) the representations and warranties contained in Section 4.1(a) (other than the second and last sentences thereof), 4.1(b), or 4.1(c)(i), or (ii) the Covered Claim Representations with respect to a category of Asserted Patents where an Action with respect to such category of Asserted Patents has occurred on or before the First Year Claim Period and such claim with respect to such category of Asserted Patents, together with all other claims and Covered Claims under this Agreement, exceeds the amount remaining in escrow, the indemnification obligations of the Company Stockholders under this Article X shall be satisfied solely by payment to Itron of the obligations by all Company Stockholders from the Escrow on an Escrowed Pro Rata Basis. The aggregate value of claims paid by means of the payments to Itron pursuant to this Article X shall be deemed to reduce the total Merger Consideration otherwise payable to the Company Stockholders pursuant to Section 3.1.

6. COUNTERPARTS

This First Amendment may be executed in one or more counterparts, each of which shall constitute an original agreement, but all of which together shall constitute one and the same agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company, Combination Company and Itron have caused this First Amendment to be duly executed as of the date first written above.

SILICON ENERGY CORP.

By /s/ John Woolard

Its President and CEO

SHADOW COMBINATION, INC.

By /s/ David G. Remington

Its President

ITRON, INC.

By /s/ David G. Remington

Its Vice President and CFO

Exhibit 2.2

# ESCROW AGREEMENT

This Escrow Agreement (this "Escrow Agreement") is made and entered into as of March 4, 2003, by and among (i) Itron, Inc., a Washington corporation ("Itron"); (ii) JMI Equity Fund III, L.P. as the Stockholders' Representative (the "Stockholders' Representative"); (iii) the stockholders of Silicon Energy Corp., a Delaware company (the "Company"), listed on Schedule A hereto, as such Schedule A shall be updated as of the Closing Date, as that term is defined below (such stockholders collectively, the "Company Stockholders") by and through the Stockholders' Representative and (iv) Mellon Investor Services LLC, a New Jersey limited liability company, as escrow agent of the Escrowed Property (as defined below) (the "Escrow Agent").

## RECITALS

A. The Company, Shadow Combination, Inc., a Delaware Corporation, (the "Combination Company") and Itron have entered into an Agreement and Plan of Merger, dated as of January 18, 2003 (the "Merger Agreement") setting forth certain terms and conditions pursuant to which the Combination Company is being merged with and into the Company (the "Merger").

B. Pursuant to Section 3.1(b) of the Merger Agreement, shares of Company capital stock will be converted into cash at the Effective Time of the Merger (as such term is defined in the Merger Agreement).

C. The parties to the Merger Agreement have agreed to establish an escrow account (the "Escrow Account") and to authorize Itron to deliver to the Escrow Agent for deposit into the Escrow Account the aggregate amount of up to Seven Million One Hundred Twenty Thousand Dollars ($7,120,000.00) (the "Escrowed Cash").

D. Itron, the Stockholders' Representative and the Company Stockholders desire to appoint Mellon Investor Services LLC to act as Escrow Agent for the Escrowed Cash and any other funds or cash deposited or held in the Escrow Account from time to time in accordance with this Escrow Agreement, including without limitation any interest, income or earnings thereon (collectively the "Escrowed Property").

NOW THEREFORE, for and in consideration of the premises and mutual covenants and agreements contained in this Escrow Agreement, the parties agree as follows:

AGREEMENT

1. ESTABLISHMENT OF ESCROW.

1.1 Deposits of Cash on Behalf of the Company Stockholders

On the date hereof, Itron hereby agrees to deliver the Escrowed Cash to the Escrow Agent for deposit in the Escrow Account.

1.2 Treatment of Escrowed Cash and other Escrowed Property

1.2.1 Upon receipt of the Escrowed Cash, the Escrow Agent shall promptly deposit the Escrowed Cash into the Escrow Account.

1.2.2 So long as the Escrow Agent is holding the Escrowed Cash or any other Escrowed Property in the Escrow Account in accordance with this Escrow Agreement, the Escrow Agent is hereby instructed to invest such Escrowed Cash and any other Escrowed Property in Class B Shares of the Dreyfus General Money Market Fund. All income and earnings from the investment of the Escrowed Property shall be credited to, and become a part of, the Escrow Account and/or the Escrowed Property, and any losses on any such investments shall be debited to the Escrow Account and/or the Escrowed Property. The Escrow Agent shall have no duty, responsibility or obligation to invest any part of the Escrow Account and/or the Escrowed Property held in the Escrow Account other than in accordance with this Section 1.2.2. The Escrow Agent shall have no liability or responsibility for any investment losses, including without limitation any market loss on any investment liquidated (whether at or prior to maturity) in order to make a distribution or other payment required under this Escrow Agreement. The Escrow Agent may, in making or disposing of any investment permitted by this Escrow Agreement, deal with itself, in its individual capacity, or any of its affiliates, whether or not it or such affiliate is acting as a subagent of the Escrow Agent or for any third person or dealing as principal for its own account.

1.3 Delivery to the Escrow Agent; Release by the Escrow Agent

The Escrow Agent is hereby appointed, and hereby agrees, to act as the Escrow Agent hereunder upon the express terms and conditions set forth herein, and to accept the Escrowed Cash and any other Escrowed Property, deposit the Escrowed Cash and any other Escrowed Property in the Escrow Account, release the Escrowed Cash and any other Escrowed Property from the Escrow Account pursuant to the express terms and conditions of this Escrow Agreement and otherwise perform the duties of the Escrow Agent expressly set

forth in this Escrow Agreement. The Escrow Agent shall hold and safeguard the Escrowed Cash and any other Escrowed Property deposited or held from time to time in the Escrow Account during the term of this Escrow Agreement.

1.4 Power to Transfer Escrowed Property

The Escrow Agent is hereby granted the power to effect any transfer of the Escrowed Cash and any other Escrowed Property from the Escrow Account as provided in this Escrow Agreement.

2. DISBURSEMENT FROM ESCROW ACCOUNT

2.1 The Escrow Agent shall make disbursements from the Escrow Account as follows:

(i) If from time to time on or before March 4, 2005 (the "Escrow Termination Date"), the Escrow Agent receives joint written instructions from an Appropriate Officer of Itron and the Stockholders' Representative instructing the Escrow Agent to distribute the Escrowed Property or any part thereof (including, without limitation, income or earnings thereon), and specifically setting forth the exact amount of Escrowed Property to be distributed, the identity of the person or entity to which a distribution is to be made, and the manner for which the distribution is to be made, then the Escrow Agent shall forthwith transfer from the Escrow Account and distribute the Escrowed Property or such part thereof in accordance with such joint written instructions, to the extent such Escrowed Property is available in the Escrow Account. For purposes of this Escrow Agreement an "Appropriate Officer" of Itron shall include LeRoy Nosbaum, Chief Executive Officer, David Remington, Vice President and Chief Financial Officer, and Russell Fairbanks, Vice President and General Counsel, or any such other officers as may be appointed by the Itron Board of Directors, written notice of which shall be promptly provided by Itron to the Escrow Agent and the Stockholders' Representative.

(ii) Any dispute between Itron and the Stockholders' Representative under this Escrow Agreement shall be submitted to final and binding arbitration. Arbitration or mediation shall be the sole and exclusive remedy of Itron and the Stockholders' Representative for any dispute between Itron and the Stockholders' Representative arising out of this Escrow Agreement and the Escrow Agent is hereby authorized and instructed to comply with any written judgment, order, ruling or decision of such arbitration (including, but not limited to, distributing the Escrowed Property in accordance therewith). Unless otherwise agreed to in writing by an Appropriate Officer of Itron and the Stockholders' Representative, such arbitration shall be conducted under the same procedures specified in Section 10.3(b) of the Merger

Agreement, provided, however, that the Escrow Agent shall have no duty or obligation to inquire or investigate whether such arbitration was conducted under the procedures specified in the Merger Agreement.

(iii) Promptly after the Escrow Termination Date and receipt by the Escrow Agent of written instructions from the Stockholders' Representative; (which instructions shall set forth the amounts and identity of the persons or entities to which a distribution is to be made and the manner for which such distribution is to be made), the Escrow Agent shall distribute any and all of the Escrowed Cash and other Escrowed Property which remains in the Escrow Account and which had not previously been disbursed pursuant to Section 2.1(i) or 2.1(ii), pursuant to the written instruction of the Stockholders' Representative; provided, however, that if either an Appropriate Officer of Itron or the Stockholders' Representative provide the Escrow Agent with written notice of a dispute between Itron and the Stockholders' Representative under this Escrow Agreement, and the Escrow Agent receives such notice prior to the Escrow Termination Date, the Escrow Agent is hereby instructed to continue to hold the Escrowed Cash and other Escrowed Property in the Escrow Account under this Escrow Agreement until the Escrow Agent receives written instructions or a written judgment, order, ruling or decision of an arbitrator to disburse such Escrowed Cash and other Escrowed Property as contemplated by Section 2.1(i) or 2.1(ii) hereof.

2.2 The Escrow Agent shall disburse the Escrowed Property only in accordance with this Section 2.

2.3 The transfer of any of the Escrowed Cash and other Escrowed Property by the Escrow Agent from the Escrow Account to any party pursuant to this Section 2 shall be made by such means as shall be set forth in the written instructions or judgment, order, ruling or decision, as the case may be, and which are satisfactory to the Escrow Agent.

3. ESCROW AGENT

3.1 Duties

The duties of the Escrow Agent hereunder shall be entirely administrative and not discretionary. The Escrow Agent shall have no duties, responsibilities or obligations as the Escrow Agent except those which are expressly set forth herein, and in any modification or amendment hereof to which the Escrow Agent has consented in writing, and no duties, responsibilities or obligations shall be implied or inferred. The Escrow Agent shall not have any responsibility as to the accuracy of, and shall incur no liability with respect to, any statement, representation, warranty, agreement, or

covenant made by any party hereto. Without limiting the foregoing, the Escrow Agent shall not be subject to, nor be required to comply with, or determine if any person or entity has complied with, the Merger Agreement or any other agreement between or among the parties hereto, even though reference thereto may be made in this Escrow Agreement, or to comply with any notice, instruction, direction, request or other communication, paper or document other than as expressly set forth in this Escrow Agreement. With respect to the Escrowed Property and the Escrow Agent's duties and obligations hereunder, the Escrow Agent is hereby authorized and instructed to comply with any written orders, judgments, or decrees of any court or arbitrator, with or without jurisdiction, and shall not be liable as a result of its compliance with the same.

3.2 Advice; Instructions

The Escrow Agent may consult with and obtain advice from counsel (who may be counsel to a party hereto or an employee of the Escrow Agent) and shall be fully protected in taking, suffering or omitting to take any action in reliance on said advice; the Escrow Agent may rely absolutely upon the joint instruction of Itron and the Stockholders' Representative and shall be fully protected in taking, suffering or omitting to take any action in reliance on such joint instruction; the Escrow Agent shall be fully protected in acting upon any written notice, instruction, direction, request or other communication, paper or document which the Escrow Agent believes to be genuine, and shall have no duty to inquire into or investigate the validity, accuracy or content thereof.

3.3 Signatures

The Escrow Agent may rely absolutely upon the genuineness and authorization of the signature and purported signature of any party (including arbitrator(s) hereunder) upon any instruction, notice, release, receipt, or other document delivered to it pursuant to this Escrow Agreement and shall incur no liability acting in reliance thereon.

3.4 Receipts

The Escrow Agent may, as a condition to the disposition of the Escrowed Property as provided herein, require from the recipient a receipt therefor.

3.5 Refrain from Action

The Escrow Agent may (but shall not be obligated to) refrain from taking any action contemplated by this Escrow Agreement in the event it becomes aware of any

dispute between any of the Company, the Company Stockholders, the Stockholders' Representative or Itron as to any material facts or as to the happening of any event precedent to such action.

3.6 Interpleader

If any dispute or controversy arises between Itron and the Stockholders' Representative or with any third person, the Escrow Agent shall not be required to determine the same or to take any action until such dispute or controversy is resolved pursuant to this Escrow Agreement, but the Escrow Agent in its sole discretion may (but shall not be obligated to) institute an interpleader or other proceedings in connection therewith as the Escrow Agent may deem proper, and in following either course, the Escrow Agent shall not be liable to any person or entity.

3.7 Tax Issues

The parties acknowledge that the Escrow Agent does not have any interest in the Escrowed Cash, the Escrowed Property or the Escrow Account, but is serving only as escrow holder hereunder. Without limiting the foregoing, Itron, each of the Stockholders' Representative, the Company and each of the Company Stockholders shall be responsible for any respective taxes relating to the Escrowed Cash, the Escrowed Property, the Escrow Account and funds on deposit therein and the income and earnings thereon as provided herein. Any disbursements of the Escrowed Cash, the Escrowed Property or payments from the Escrow Account shall be subject to applicable information reporting and withholding taxes under the United States Federal Income Tax Code and applicable provisions of state, local, or foreign tax laws, and Itron shall provide written instructions, executed by an Appropriate Officer of Itron to the Escrow Agent regarding the deduction and withholding of applicable federal, state and local taxes from any payments from the Escrow Account and the reporting thereof. For the period prior to the Escrow Agent's delivery of all of the Escrowed Property pursuant to Section 2, the Escrow Agent shall report all income and earnings from the investment of the Escrowed Cash, and the other Escrowed Property held by the Escrow Agent in the Escrow Account, as income of Itron for income tax purposes. Notwithstanding anything to the contrary contained herein, each person or entity entitled to receive a disbursement from the Escrow Account hereunder shall provide the Escrow Agent with a properly completed W-9 IRS tax form (or such other forms for tax certifications, as requested by the Escrow Agent or its agents) prior to the Escrow Agent making any such disbursement. This Section shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

3.8 Miscellaneous

The Escrow Agent:

(i) shall act hereunder as an escrow agent only and shall not be responsible or liable in any matter whatever for the sufficiency, collection, correctness, genuineness or validity of any revenues, cash, payments, securities, property, funds, investments, income, earnings or other amounts deposited with or held by it or for the identity, authority or rights of any person or entity executing and delivering or purporting to execute or deliver any thereof to the Escrow Agent;

(ii) shall not be liable for any error of judgment or for any action taken, suffered or omitted to be taken except in the case of its own gross negligence or bad faith, as such gross negligence or bad faith is determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction. Notwithstanding anything to the contrary contained herein, in no event shall the Escrow Agent be (A) liable for acting in accordance with a notice, instruction, direction, request or other communication, paper or document from Itron or the Stockholders' Representative or (B) liable or responsible for special, punitive, indirect, consequential or incidental loss or damages of any kind whatsoever to any person or entity (including without limitation lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage. Any liability of the Escrow Agent under this Escrow Agreement will be limited to the amount of fees paid to the Escrow Agent, provided, however, that if it is determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction that the Escrow Agent acted with bad faith or willful misconduct, any liability of the Escrow Agent resulting therefrom shall be limited to the amount of the Escrowed Property;

(iii) may execute or perform any duty, responsibility or obligation hereunder either directly or through agents, attorneys, accountants or other experts, and the Escrow Agent shall not be answerable or accountable for any act, default, neglect or misconduct of any such agent, attorneys, accountants or other experts of for any loss to any of the Company, Combination Company, Company Stockholders, the Stockholders' Representative or any other person or entity, or any other party hereto or affiliate thereof resulting from any such act, default, neglect or misconduct;

(iv) may engage or be interested in any financial or other transaction with the Company, Combination Company, Company Stockholders, the Stockholders' Representative or any other person or entity or any other party hereto or affiliate thereof, and may act on, or as depositary, trustee or agent for, any committee or body

of holders of obligations of such party or affiliate, as freely as if it were not the Escrow Agent hereunder;

(v) shall not be obligated to expend or risk its own funds or to take any action which it believes would expose it to expense or liability or to a risk of incurring expense or liability, unless it has been furnished with assurances of repayment or indemnity satisfactory to it;

(vi) shall not take instructions or directions except those given in accordance with this Escrow Agreement;

(vii) shall not incur any liability for not performing any act, duty, obligation or responsibility by reason of any occurrence beyond the control of the Escrow Agent (including without limitation any act or provision of any present or future law or regulation or governmental authority, any act of God, war, civil disorder or failure of any means of communication); and

(viii) shall not be called upon to advise any person or entity as to any investments with respect to any security, property or funds held in escrow hereunder or the dividends, distributions, income, interest or earnings thereon.

3.9 Ambiguity or Uncertainty

In the event the Escrow Agent reasonably believes any ambiguity or uncertainty exists hereunder or in any notice, instruction, direction, request or other communication, paper or document received by the Escrow Agent hereunder, the Escrow Agent shall promptly provide written notice of such ambiguity or uncertainty to the parties hereto and the Escrow Agent may, in its sole discretion, refrain from taking any action, and shall be fully protected and shall not be liable in any way to Itron, the Stockholders' Representative, the Company, the Company Stockholders or any other person or entity for refraining from taking such action, unless the Escrow Agent receives written instructions signed by an Appropriate Officer of Itron and the Stockholders' Representative which eliminates such ambiguity or uncertainty to the satisfaction of the Escrow Agent.

4. WAIVER AND INDEMNIFICATION

Itron, the Stockholders' Representative, and the Company Stockholders agree to and hereby do waive any suit, claim, demand, or cause of action of any kind which they may have or may assert against the Escrow Agent arising out of or relating to the execution or performance by the Escrow Agent of this Escrow Agreement, unless such suit, claim, demand, or cause of action is based upon the gross negligence or bad faith

of the Escrow Agent, as such gross negligence or bad faith is determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction. Itron and the Company Stockholders further agree to jointly and severally, indemnify, defend, protect, save and keep harmless the Escrow Agent and its affiliates and their respective successors, assigns, directors, officers, managers, employees, agents, attorneys, accountants and experts (collectively the "Indemnitees"), from and against any and all losses, damages, claims, liabilities, penalties, judgments, settlements, actions, suits, proceedings, litigation, investigations, costs or expenses, including, without limitation, reasonable fees and disbursements of counsel (collectively "Losses"), that may be imposed on, incurred by, or asserted against any Indemnitee, at any time, and in any way relating to or arising out of the execution, delivery or performance of this Escrow Agreement, the enforcement of any rights or remedies under or in connection with this Escrow Agreement, the establishment of the Escrow Account, the acceptance or administration of the Escrowed Cash and any other Escrowed Property and any payment, transfer or other application of the Escrowed Cash, any other Escrowed Property or other funds pursuant to this Escrow Agreement, or as may arise by reason of any act, omission or error of the Indemnitee; provided, however, that no Indemnitee shall be entitled to be so indemnified, defended, protected, saved and kept harmless to the extent such Loss was proximately caused by its own gross negligence or bad faith, as such gross negligence or bad faith is determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction. Notwithstanding the foregoing, the obligation of GE Capital Equity Investments, Inc. to indemnify any Indemnities pursuant to this Section 4 shall not in any case exceed, in the aggregate, an amount equal to twice GE Capital Equity Investments, Inc.'s pro rata share of the Escrowed Cash. The Escrow Agent agrees to give prompt notice to the parties hereto of any filed claim that could give rise to an obligation to indemnify the Escrow Agent or any Indemnitee hereunder upon the Escrow Agent's actual knowledge thereof, provided, however, that the failure to give such notice shall in no way limit the indemnification of Escrow Agent or any Indemnitee hereunder. The obligations contained in this Section 4 shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent. Notwithstanding the foregoing, as between Itron and the Company Stockholders, the liability of each Company Stockholder pursuant to this Section shall be limited to the interest of such Company Stockholder in any remaining Escrowed Property.

5. RESIGNATION OR REMOVAL OF THE ESCROW AGENT; SUCCESSOR

5.1 Resignation and Removal.

5.1.1 Notice

(a) The Escrow Agent or any successor Escrow Agent may resign and be discharged from its duties under this Escrow Agreement upon thirty (30) days' prior written notice to the other parties hereto. Similarly, the Escrow Agent or any successor Escrow Agent may be discharged and removed from its duties under this Escrow Agreement following thirty (30) days' prior written notice to the Escrow Agent from the Stockholders' Representative and an Appropriate Officer of Itron. In either event, the duties of the Escrow Agent shall terminate thirty (30) days after the date of such notice (or as of such earlier date as may be mutually agreeable), and the Escrow Agent shall then deliver the balance of the Escrowed Cash and other Escrowed Property then in the Escrow Account to a successor Escrow Agent or any other person or entity pursuant to joint written instructions from the Stockholders' Representative and an Appropriate Officer of Itron or pursuant to a court of competent jurisdiction as set forth in Section 5.1.2.

(b) Any person or entity into which the Escrow Agent may be merged or converted or with which the Escrow Agent may be consolidated, or any person or entity resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any person or entity to which substantially all the stock transfer or shareholder services business of the Escrow Agent may be transferred, shall automatically be the Escrow Agent under this Escrow Agreement without any further act.

5.1.2 Court Appointment

If the parties hereto are unable to agree upon a successor Escrow Agent or shall have failed to appoint a successor Escrow Agent prior to the expiration of thirty (30) days following the date of the notice of resignation or removal, then the acting Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent or other appropriate relief, and any such resulting appointment or determination of other appropriate relief shall be binding upon all of the parties hereto.

5.2 Successors

Except as provided in Section 5.1.1(b) or for successor Escrow Agents or other appropriate relief appointed and/or determined pursuant to Section 5.1.2, as the case may be, every successor Escrow Agent appointed hereunder shall execute, acknowledge, and deliver to its predecessor Escrow Agent, and also to the Stockholders' Representative and Itron, an instrument in writing accepting such appointment hereunder, and thereupon such successor Escrow Agent, without any

further act, shall become fully vested with all the rights, duties, responsibilities, and obligations of its predecessor Escrow Agent; but such predecessor Escrow Agent shall, nevertheless, on the written request of its successor Escrow Agent or any of the parties hereto, deliver all property, securities, and monies held by it pursuant to this Escrow Agreement to its successor Escrow Agent. Should any instrument be required by any successor Escrow Agent for more fully vesting in such successor Escrow Agent the rights, duties, responsibilities, and obligations hereby vested or intended to be vested in the predecessor Escrow Agent, any and all such reasonable instruments in writing shall, on the request of any of the other parties hereto, be executed, acknowledged, and delivered by the predecessor Escrow Agent at the expense of Itron.

6. FEE

(a) Itron hereby agrees to pay the Escrow Agent as billed for services hereunder in accordance with the fee schedule attached hereto as Schedule B (the "Fee Schedule") and for all its reasonable out-of-pocket costs and expenses (including without limitation reasonable fees and disbursements of counsel) in connection with the preparation, negotiation, amendment, modification, waiver, execution, delivery, performance or enforcement of this Escrow Agreement. The obligations contained in this Section shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

(b) In the event that the Escrow Agent is made a party to litigation with respect to the Escrowed Cash or any other Escrowed Property, or the Escrow Agent brings an action in interpleader, or in the event that the conditions to this Escrow Agreement are not promptly fulfilled, or the Escrow Agent is required to render any service not provided for in the Fee Schedule, or there is any assignment of the interests of this Escrow Agreement or any modification hereof, the Escrow Agent shall be entitled to reasonable compensation for such services and reimbursement for all fees, costs, liability, and expenses, including reasonable attorneys' fees in addition to that which is scheduled on the Fee Schedule. Notwithstanding the foregoing, the Escrow Agent shall not be entitled to attorneys' fees in litigation between the parties under this Escrow Agreement if it is determined by a final non-appealable order, judgment, decree or ruling of a court of competent jurisdiction that the Escrow Agent acted with bad faith or gross negligence and therefore either (i) is not entitled to indemnification under this Escrow Agreement, or (ii) is liable for damages under this Escrow Agreement.

7. STOCKHOLDERS' REPRESENTATIVE

To the extent that the Stockholders' Representative is replaced, an Appropriate Officer of Itron and the Stockholders' Representative shall promptly provide written notice to the Escrow Agent of the successor Stockholders' Representative(s). Each successor Stockholders' Representative shall execute, acknowledge, and deliver to the parties hereto an instrument in writing accepting the responsibilities of a Stockholders' Representative hereunder, and thereupon such successor Stockholders' Representative, without any further act, shall become fully vested with all the duties, responsibilities, and obligations of his or her predecessor Stockholders' Representative. Itron and the Stockholders' Representative agree that, as between such parties, a Stockholders' Representative shall only be replaced in accordance with the provisions of Section 10.7 of the Merger Agreement, provided, however, that the Escrow Agent shall have no duty or obligation to inquire or investigate as to whether such replacement was effected under the procedures specified under Section 10.7 of the Merger Agreement and the Escrow Agent will not be deemed to have knowledge of such replacement unless and until it shall have received actual written notice thereof from an Appropriate Officer of Itron and the Stockholders' Representative.

8. REPRESENTATIONS

Itron represents and warrants that it is a corporation duly organized, validly existing in good standing under its respective jurisdiction of organization. Itron and the Stockholders' Representative each represents and warrants, as to itself, that (i) it has all requisite power and authority to execute, deliver and perform its obligations under the Merger Agreement (in the case of Itron) and this Escrow Agreement, (ii) each of the Merger Agreement (in the case of Itron) and this Escrow Agreement has been duly authorized, executed and delivered by it and constitutes its legal, valid, binding and enforceable obligation and (iii) the execution, delivery and performance by it of the Merger Agreement (in the case of Itron) and this Escrow Agreement do not and will not violate or require consent under any of its organizational documents, any law, statute, rule, regulation or ordinance or contract, agreement, instrument, indenture or other undertaking to which it is a party or by which it or its property may be bound. The Stockholders' Representative further represents and warrants that it has the irrevocable right, power and authority to act on behalf of and bind all of the Company Stockholders, to give and receive notices, instructions, directions, requests or other communications hereunder and to make determinations that may be necessary or appropriate under this Escrow Agreement.

9. TERMINATION

Except as provided in Sections 3.7, 4 and 6, this Escrow Agreement shall terminate following Escrow Agent's delivery of all of the Escrowed Property pursuant to Section 2.

10. MISCELLANEOUS PROVISIONS

10.1 Parties in Interest

Except as expressly provided in Section 4, this Escrow Agreement is not intended, nor shall it be construed, to confer any enforceable rights, remedies, interests or claims on any person or entity not a party hereto. This Escrow Agreement and all rights and obligations hereunder in and to the Escrowed Cash and the other Escrowed Property and the Escrow Account and any and all written instruments evidencing investments made from the funds held in the Escrow Account shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

10.2 Entire Escrow Agreement

This Escrow Agreement, including the schedules delivered pursuant to this Escrow Agreement, constitutes the final and entire agreement among the parties with respect to the subject matter hereof and supersedes all prior arrangements or understandings.

10.3 Notices

All notices, requests, instructions, demands, or other communications which are required or may be given pursuant to the terms of this Escrow Agreement will be in writing and will be deemed to have been duly given: (i) on the date of delivery, if personally delivered by hand; (ii) upon the third day after such notice is deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, (iii) upon the first day after such notice is sent by a nationally recognized overnight express courier for next-day delivery; or (iv) if by facsimile, upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice:

If to the Stockholders' Representative: JMI Equity Fund III, L.P.
12680 High Bluff Drive
Suite 200
San Diego, CA 92130

| | |
|---|---|
| | Attn: Peter Arrowsmith<br>Telephone: 858-259-2500<br>Facsimile: 858-259-4843 |
| If to Itron: | Itron, Inc.<br>2818 N. Sullivan Road<br>Spokane, WA 99216<br>Attn: CFO<br>Telephone: (509) 891-3488<br>Facsimile: (509) 891-3334 |
| With a copy to: | Perkins Coie LLP<br>1201 Third Avenue, Suite 4800<br>Seattle, WA 98101-3099<br>Attention: Andrew Bor<br>Telephone: (206) 583-8888<br>Facsimile: (206) 583-8500 |
| If to The Escrow Agent: | Mellon Investor Services LLC<br>85 Challenger Road<br>Ridgefield Park, NJ 07660<br>Attention: Joe Carraturo<br>Telephone: (201) 296-4971<br>Facsimile: (201) 296-4774 |

10.4 Amendments, Modifications, Waivers

No amendment, modification or waiver of any provision of this Escrow Agreement, nor any consent to any departure therefrom, by any party hereto shall be valid or effective for any purpose unless the same shall be in writing and signed by each of the parties hereto, and then such amendment, modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to, or demand on, any party for any purpose not specifically required of another hereunder shall not entitle the first party to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

10.5 Conflicts and Severability

With respect to the rights, duties and obligations of the Escrow Agent hereunder, in the event of any conflict between the terms and provisions of this Escrow Agreement and those of the Merger Agreement, the terms and conditions of this Escrow Agreement shall control. If any provision of this Escrow Agreement is

determined to be prohibited or unenforceable by reason of any applicable law of a jurisdiction, then such provision shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions thereof, and any such prohibition or unenforceability in such jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby irrevocably waived by the parties hereto to the fullest extent permitted by law, to the end that this Escrow Agreement shall be enforced as written.

10.6 Counterparts

This Escrow Agreement may be executed by facsimile or in two or more partially or fully executed counterparts each of which shall be deemed an original and shall bind the signatory, but all of which together shall constitute but one and the same instrument. The execution and delivery of an Escrow Agreement - Signature Page in the form annexed to this Escrow Agreement by any party hereto who has been furnished the final form of this Escrow Agreement shall constitute the execution and delivery of this Escrow Agreement by such party.

10.7 Headings

The headings of the various sections of this Escrow Agreement have been inserted for convenience of reference only and shall not be deemed to be a part of this Escrow Agreement.

10.8 Governing Law

This Escrow Agreement and all amendments, modifications and waivers thereof shall, in all respects, be governed by and construed and enforced in accordance with the internal laws (without regard to principles of conflicts of law) of the State of New York. Each party hereto irrevocably waives the right to trial by jury in any action, suit or proceeding relating to or arising under this Escrow Agreement.

10.9 Cumulative Remedies

The rights and remedies of the Escrow Agent set forth in this Escrow Agreement shall be cumulative, and not exclusive, of any rights and remedies available to it at law or equity or otherwise.

[remainder of page intentionally blank]

ESCROW AGREEMENT - SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have duly executed this Escrow Agreement as of the day and year first above written.

Itron, Inc.

By: /s/ David Remington
---
Name: David Remington
Title: CFO

JMI Equity Fund III, L.P.

By: /s/ Peter C. Arrowsmith
---
Name: Peter C. Arrowsmith
Title: Partner

Mellon Investor Services LLC,
as Escrow Agent

By: /s/ Lisa Scolaro
---
Name: Lisa Scolaro
Title: Event Manager

Stockholders of Silicon Energy Corp., listed on Schedule A

By: /s/ Peter C. Arrowsmith
---
Title: Stockholder Representative

SCHEDULE A
COMPANY STOCKHOLDERS

SCHEDULE B
ESCROW AGENT'S FEES

Exhibit 4.1

# CREDIT AGREEMENT

DATED AS OF March 4, 2003

AMONG

ITRON, INC,
as Borrower,

THE LENDERS LISTED HEREIN,
as Lenders,

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Arranger and Administrative Agent

TABLE OF CONTENTS

EXHIBITS

| | |
|---|---|
| I | FORM OF NOTICE OF BORROWING |
| II | FORM OF NOTICE OF CONVERSION/CONTINUATION |
| III | FORM OF REQUEST FOR ISSUANCE |
| IV | FORM OF TERM NOTE |
| V | FORM OF REVOLVING NOTE |
| VI | FORM OF SWING LINE NOTE |
| VII | FORM OF COMPLIANCE CERTIFICATE |
| VIII | FORM OF OPINION OF COMPANY COUNSEL |
| IX | FORM OF ASSIGNMENT AGREEMENT |
| X | FORM OF OPINION OF O'MELVENY & MYERS LLP |
| XI | FORM OF FINANCIAL CONDITION CERTIFICATE |
| XII | FORM OF SECURITY AGREEMENT |
| XIII | FORM OF SUBSIDIARY GUARANTY |
| XIV | FORM OF COLLATERAL ACCESS AGREEMENT |
| XV | FORM OF MORTGAGE |

SCHEDULES

EXECUTION VERSION

ITRON, INC.

CREDIT AGREEMENT

This CREDIT AGREEMENT is dated as of March 4, 2003 and entered into by and among ITRON, INC., a Washington corporation ("Company"), THE FINANCIAL INSTITUTIONS LISTED ON THE SIGNATURE PAGES HEREOF (each individually referred to herein as a "Lender" and collectively as "Lenders"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Wells Fargo"), as arranger and administrative agent for Lenders (in such capacity, "Administrative Agent").

R E C I T A L S

WHEREAS, Company's direct wholly owned Subsidiary, Shadow Combination, Inc. (these and other capitalized terms used in these recitals without definition being used as defined in subsection 1.1), plans to acquire all of the outstanding Capital Stock of Silicon Energy Corp. for Cash in an amount equal to the Merger Consideration (as defined in the Merger Agreement);

WHEREAS, on the Closing Date, Shadow Combination, Inc. will be merged with and into Silicon Energy Corp. pursuant to the Merger Agreement, with Silicon Energy Corp. being the surviving corporation in the Merger;

WHEREAS, Lenders, at the request of Company, have agreed to extend certain credit facilities to Company, the proceeds of which will be used (i) to fund the Acquisition Financing Requirements and (ii) to provide financing for working capital and other general corporate purposes of Company and its Subsidiaries;

WHEREAS, Company desires to secure all of the Obligations hereunder and under the other Loan Documents by granting to Administrative Agent, on behalf of Lenders, a First Priority Lien on substantially all of its real, personal and mixed property, including a pledge of all of the capital stock of its Domestic Subsidiaries and 66% of the capital stock of its Significant Foreign Subsidiaries; and

WHEREAS, all of the Domestic Subsidiaries of Company have agreed to guarantee the Obligations hereunder and under the other Loan Documents and to secure their guaranties by granting to Administrative Agent, on behalf of Lenders, a First Priority Lien on substantially all of their real, personal and mixed property, including a pledge of all of the capital stock of their Domestic Subsidiaries and 66% of the capital stock of their Significant Foreign Subsidiaries:

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Company, Lenders and Administrative Agent agree as follows:

Section 1. DEFINITIONS

1.1 CERTAIN DEFINED TERMS.

The following terms used in this Agreement shall have the following meanings:

"Acquisition Financing Requirements" means the aggregate of all amounts necessary (i) to finance a portion of the purchase price payable in connection with the Merger, (ii) to refinance certain Indebtedness outstanding under the Existing Company Credit Agreement and the Existing Silicon Energy Corp. Credit Agreements, and (iii) to pay Transaction Costs.

"Additional Mortgaged Property" has the meaning set forth in subsection 6.9.

"Additional Mortgages" has the meaning set forth in subsection 6.9.

"Administrative Agent" has the meaning assigned to that term in the introduction to this Agreement and also means and includes any successor Administrative Agent appointed pursuant to subsection 9.5A.

"Affected Lender" has the meaning assigned to that term in subsection 2.6C.

"Affected Loans" has the meaning assigned to that term in subsection 2.6C.

"Affiliate", as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlling", "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise.

"Agents" means Administrative Agent and other agents.

"Agreement" means this Credit Agreement dated as of March 4, 2003, as it may be amended, supplemented or otherwise modified from time to time.

"Approved Fund" means a Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender, or (iii) an entity or an Affiliate of an entity that administers or manages a Lender.

"Asset Sale" means the sale by Company or any of its Subsidiaries to any Person other than Company or any of its wholly-owned Subsidiaries of (i) any of the stock of any of Company's Subsidiaries, (ii) substantially all of the assets of any division or line of business of Company or any of its Subsidiaries, or (iii) any other assets (whether tangible or intangible) of Company or any of its Subsidiaries (other than (a) inventory sold in the ordinary course of business, (b) sales, assignments, transfers or dispositions of accounts in the ordinary course of business for purposes of collection, (c) sales of Cash Equivalents, provided that the proceeds of

such sales are used to purchase Cash Equivalents, and (d) any such other assets to the extent that the aggregate value of such assets sold in any single transaction or related series of transactions is equal to $1,000,000 or less).

"Assignment Agreement" means an Assignment Agreement in substantially the form of Exhibit IX annexed hereto.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy", as now and hereafter in effect, or any successor statute.

"Base Rate" means, at any time, the higher of (i) the Prime Rate or (ii) the rate which is 1/2 of 1% in excess of the Federal Funds Effective Rate. Any change in the Base Rate due to a change in the Prime Rate or the Federal Funds Effective Rate shall be effective on the effective date of such change.

"Base Rate Loans" means Loans bearing interest at rates determined by reference to the Base Rate as provided in subsection 2.2A.

"Base Rate Margin" means the margin over the Base Rate used in determining the rate of interest of Base Rate Loans pursuant to subsection 2.2A.

"Benghiat Appeal Bond" means one or more surety bonds posted by Company to stay enforcement pending appeal of any judgment entered against it in the Benghiat Litigation.

"Benghiat Appeal Bond Amount" means the amount of any Standby Letter of Credit required by the bonding company in order to post the Benghiat Appeal Bond.

"Benghiat Letter of Credit" means a Standby Letter of Credit in a face amount not to exceed the lesser of $20,000,000 and the Benghiat Appeal Bond Amount.

"Benghiat Litigation" means that certain litigation to which Company is a party known as Itron, Inc. v. Ralph Benghiat, being Civil Case No. 99-CV-501 presently pending in the United States District Court for the District of Minnesota.

"Business Day" means (i) for all purposes other than as covered by clause (ii) below, any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of California or the State of Washington or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close, and (ii) with respect to all notices, determinations, fundings and payments in connection with the Eurodollar Rate or any Eurodollar Rate Loans, any day that is a Business Day described in clause (i) above and that is also a day for trading by and between banks in Dollar deposits in the London interbank market.

"Capital Lease", as applied to any Person, means any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is accounted for as a capital lease on the balance sheet of that Person.

"Capital Stock" means the capital stock or other equity interests of a Person.

"Cash" means money, currency or a credit balance in a Deposit Account.

"Cash Equivalents" means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the United States Government or (b) issued by any agency of the United States the obligations of which are backed by the full faith and credit of the United States, in each case maturing within 15 months after such date; (ii) marketable direct obligations issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof, in each case maturing within 15 months after such date and having, at the time of the acquisition thereof, the highest rating obtainable from either Standard & Poor's ("S&P") or Moody's Investors Service, Inc. ("Moody's"); (iii) commercial paper maturing no more than 15 months from the date of creation thereof and having, at the time of the acquisition thereof, a rating of at least A-1 from S&P or at least P-1 from Moody's; (iv) certificates of deposit or bankers' acceptances maturing within 15 months after such date and issued or accepted by any Lender or by any commercial bank organized under the laws of the United States or any state thereof or the District of Columbia that (a) is at least "adequately capitalized" (as defined in the regulations of its primary Federal banking regulator) and (b) has Tier 1 capital (as defined in such regulations) of not less than $100,000,000; and (v) shares of any money market mutual fund that (a) has at least 95% of its assets invested continuously in the types of investments referred to in clauses (i) and (ii) above, (b) has net assets of not less than $500,000,000, and (c) has the highest rating obtainable from either S&P or Moody's.

"Change in Control" means any of the following: (i) any Person, either individually or acting in concert with one or more other Persons, shall have acquired beneficial ownership, directly or indirectly, of Securities of Company (or other Securities convertible into such Securities) representing 30% or more of the combined voting power of all Securities of Company entitled to vote in the election of members of the Governing Body of Company, other than Securities having such power only by reason of the happening of a contingency, or (ii) the occurrence of a change in the composition of the Governing Body of Company such that a majority of the members of any such Governing Body are not Continuing Members. As used herein, the term "beneficially own" or "beneficial ownership" shall have the meaning set forth in the Exchange Act and the rules and regulations promulgated thereunder.

"Closing Date" means the date on which the initial Loans are made.

"Closing Date Mortgaged Property" has the meaning set forth in subsection 4.1Q.

"Closing Date Mortgage" has the meaning set forth in subsection 4.1Q.

"Closing Date Mortgage Policy" has the meaning set forth in subsection 4.1Q.

"Collateral" means, collectively, all of the real, personal and mixed property (including Capital Stock ) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

"Collateral Access Agreement" means any landlord waiver, mortgagee waiver, bailee letter or any similar acknowledgement or agreement of any landlord or mortgagee in respect of any Real Property Asset where any Collateral is located or any warehouseman or processor in possession of any inventory of any Loan Party, substantially in the form of Exhibit XIV annexed hereto with such changes thereto as may be agreed to by Administrative Agent in the reasonable exercise of its discretion.

"Collateral Account" has the meaning assigned to that term in the Security Agreement.

"Collateral Documents" means, the Security Agreement, the Foreign Pledge Agreements, the Mortgages, the Control Agreements and all other instruments or documents delivered by any Loan Party pursuant to this Agreement or any of the other Loan Documents in order to grant to Administrative Agent, on behalf of Lenders, a Lien on any real, personal or mixed property (including Capital Stock) of that Loan Party as security for the Obligations.

"Commercial Letter of Credit" means any letter of credit or similar instrument issued for the purpose of providing the primary payment mechanism in connection with the purchase of any materials, goods or services by Company or any of its Subsidiaries in the ordinary course of business of Company or such Subsidiary.

"Commitments" means the commitments of Lenders to make Loans as set forth in subsection 2.1A and subsection 3.3.

"Company" has the meaning assigned to that term in the introduction to this Agreement.

"Compliance Certificate" means a certificate substantially in the form of Exhibit VII annexed hereto.

"Confidential Information Memorandum" means the Confidential Information Memorandum dated February, 2003 and any supplement thereto prepared by Wells Fargo relating to the credit facilities evidenced by this Agreement.

"Consolidated Capital Expenditures" means, for any period, the sum of the (i) aggregate of all expenditures (whether paid in cash or other consideration or accrued as a liability and including that portion of Capital Leases which is capitalized on the consolidated balance sheet of Company and its Subsidiaries) by Company and its Subsidiaries during that period that, in conformity with GAAP, are included in "additions to property, plant or equipment" or comparable items reflected in the consolidated statement of cash flows of Company and its Subsidiaries (net of any proceeds of any related financing with respect to such expenditures) minus (ii) to the extent included in clause (i) of this definition, (a) the total cash

consideration expended by Company and its Subsidiaries during such period to acquire (by purchase or otherwise) the business, property or fixed assets of any Person, or the Capital Stock of any Person that, as a result of the Merger or a Permitted Acquisition, becomes a Subsidiary of Company and (b) all expenditures to purchase Outsourcing Project Assets. For purposes of this definition, the purchase price of equipment that is purchased simultaneously with the trade-in of existing equipment or with insurance proceeds shall be included in Consolidated Capital Expenditures only to the extent of the gross amount of such purchase price less the credit granted by the seller of such equipment for the equipment being traded in at such time or the amount of such proceeds, as the case may be.

"Consolidated EBITDA" means, for any period, the sum of the amounts for such period of (i) Consolidated Net Income, (ii) Consolidated Interest Expense, (iii) provisions for taxes based on income, (iv) total depreciation expense, (v) total amortization expense, and (vi) any reserve created in respect of the Benghiat Litigation, less any payment of any judicially determined amount owed pursuant to the Benghiat Litigation, all of the foregoing as determined on a consolidated basis for Company and its Subsidiaries in conformity with GAAP.

"Consolidated Fixed Charges" means, for any period, the sum (without duplication) of the amounts for such period of (i) Consolidated Interest Expense, (ii) scheduled principal payments in respect of Consolidated Total Funded Debt, and (iii) Consolidated Operating Lease Payments, all of the foregoing as determined on a consolidated basis for Company and its Subsidiaries in conformity with GAAP.

"Consolidated Interest Expense" means, for any period, total interest expense (including that portion attributable to Capital Leases in accordance with GAAP and capitalized interest) of Company and its Subsidiaries on a consolidated basis with respect to all outstanding Indebtedness of Company and its Subsidiaries, including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, net costs under Interest Rate Agreements and amounts referred to in subsection 2.3 payable to Administrative Agent and Lenders that are considered interest expense in accordance with GAAP, but excluding, however, any such amounts referred to in subsection 2.3 payable on or before the Closing Date.

"Consolidated Leverage Ratio" means, as of the last day of any Fiscal Quarter, the ratio of (i) Consolidated Total Funded Debt as at such day to (ii) Consolidated EBITDA for the consecutive four Fiscal Quarters ending on such day.

"Consolidated Net Income" means, for any period, the net income (or loss) of Company and its Subsidiaries on a consolidated basis for such period taken as a single accounting period determined in conformity with GAAP; provided that there shall be excluded (i) the income (or loss) of any Person (other than a Subsidiary of Company) in which any other Person (other than Company or any of its Subsidiaries) has a joint interest, except to the extent of the amount of dividends or other distributions actually paid to Company or any of its Subsidiaries by such Person during such period, (ii) the income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of Company or is merged into or consolidated with Company or any of its Subsidiaries or that Person's assets are acquired by Company or any of its

Subsidiaries, (iii) the income of any Subsidiary of Company to the extent that the declaration or payment of dividends or similar distributions by that Subsidiary of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to that Subsidiary, (iv) any after-tax gains or losses attributable to asset sales or returned surplus assets of any Pension Plan, and (v) (to the extent not included in clauses (i) through (iv) above) any net extraordinary gains or net non-cash extraordinary losses.

"Consolidated Operating Lease Payments" means, for any period, the aggregate amount of all rents paid under all Operating Leases of Company and its Subsidiaries as lessee (net of sublease income), all as determined on a consolidated basis for Company and its Subsidiaries in conformity with GAAP.

"Consolidated Tangible Net Worth" means, as at any date of determination, the sum of the Capital Stock and additional paid-in capital plus retained earnings (or minus accumulated deficits) of Company and its Subsidiaries on a consolidated basis determined in conformity with GAAP minus the sum of (i) goodwill, Intellectual Property and other intangible assets, (ii) treasury stock, and (iii) obligations due to Company or any of its Subsidiaries from any stockholder, employee or Affiliate of Company or any of its Subsidiaries.

"Consolidated Total Funded Debt" means, as at any date of determination, the sum of (i) the aggregate stated balance sheet amount of all Indebtedness for borrowed money of Company and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, including, without limitation, the aggregate principal amount of all outstanding Loans and the aggregate principal amount of all outstanding Indebtedness incurred in connection with an Outsourcing Project, (ii) the aggregate amount of that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP, (iii) the Letter of Credit Usage, and (iv) the aggregate amount of all Contingent Obligations.

"Contingent Obligation", as applied to any Person, means any direct or indirect liability, contingent or otherwise, of that Person (i) with respect to any Indebtedness, lease, dividend or other obligation of another if the primary purpose or intent thereof by the Person incurring the Contingent Obligation is to provide assurance to the obligee of such obligation of another that such obligation of another will be paid or discharged, or that any agreements relating thereto will be complied with, or that the holders of such obligation will be protected (in whole or in part) against loss in respect thereof, (ii) with respect to any letter of credit issued for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings, or (iii) under Hedge Agreements. Contingent Obligations shall include (a) the direct or indirect guaranty, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another, (b) the obligation to make take-or-pay or similar payments if required regardless of non-performance by any other party or parties to an agreement, and (c) any liability of such Person for the obligation of another through any agreement (contingent or otherwise) (1) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans,

advances, stock purchases, capital contributions or otherwise), or (2) to maintain the solvency or any balance sheet item, level of income or financial condition of another if, in the case of any agreement described under subclause (1) or (2) of this sentence, the primary purpose or intent thereof is as described in the preceding sentence. The amount of any Contingent Obligation shall be equal to the amount of the obligation so guaranteed or otherwise supported, or, if less, the amount to which such Contingent Obligation is specifically limited.

"Continuing Member" means, during any period of twelve consecutive months after the Closing Date, any member of the Governing Body of Company who (i) was a member of such Governing Body at the beginning of such twelve-month period or (ii) was nominated for election or elected to such Governing Body with the affirmative vote of a majority of the members who were either members of such Governing Body at the beginning of such twelve-month period or whose nomination or election was previously so approved.

"Contractual Obligation", as applied to any Person, means any provision of any Security issued by that Person or of any material indenture, mortgage, deed of trust, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

"Control Agreement" means an agreement, satisfactory in form and substance to Administrative Agent and executed by the financial institution at which a Deposit Account or an account in which Investment Property is maintained, pursuant to which such financial institution confirms and acknowledges Administrative Agent's security interest in such Deposit Account, and agrees that the financial institution will comply with instructions originated by Administrative Agent as to disposition of funds in the Deposit Account, without further consent by Company or any Subsidiary and waives its right to set off with respect to amounts in the Deposit Account.

"Currency Agreement" means any foreign exchange contract, currency swap agreement, futures contract, option contract, synthetic cap or other similar agreement or arrangement to which Company or any of its Subsidiaries is a party.

"Deposit Account" means a demand, time, savings, passbook or similar account maintained with a Person engaged in the business of banking, including a savings bank, savings and loan association, credit union or trust company.

"Dollars" and the sign "$" mean the lawful money of the United States of America.

"Domestic Subsidiary" means any Subsidiary of Company that is incorporated or organized under the laws of the United States, any state thereof or in the District of Columbia.

"Eligible Assignee" means (i) any Lender, any Affiliate of any Lender and any Approved Fund of any Lender; and (ii) (a) a commercial bank organized under the laws of the United States or any state thereof; (b) a savings and loan association or savings bank organized under the laws of the United States or any state thereof; (c) a commercial bank organized under

the laws of any other country or a political subdivision thereof; provided that (1) such bank is acting through a branch or agency located in the United States or (2) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country; and (d) any other entity that is an "accredited investor" (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, mutual funds and lease financing companies; provided that neither Company nor any Affiliate of Company shall be an Eligible Assignee.

"Employee Benefit Plan" means any "employee benefit plan" as defined in Section 3(3) of ERISA which is or was maintained or contributed to by Company, any of its Subsidiaries or any of their respective ERISA Affiliates.

"Environmental Claim" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Government Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law, (ii) in connection with any Hazardous Materials or any actual or alleged Hazardous Materials Activity, or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"Environmental Laws" means any and all current or future statutes, ordinances, orders, rules, regulations, guidance documents, judgments, Governmental Authorizations, or any other requirements of any Government Authority relating to (i) environmental matters, including those relating to any Hazardous Materials Activity, (ii) the generation, use, storage, transportation or disposal of Hazardous Materials, or (iii) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in any manner applicable to Company or any of its Subsidiaries or any Facility.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

"ERISA Affiliate", as applied to any Person, means (i) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that Person is a member; (ii) any trade or business (whether or not incorporated) that is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Internal Revenue Code of which that Person is a member; and (iii) any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Internal Revenue Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member. Any former ERISA Affiliate of a Person or any of its Subsidiaries shall continue to be considered an ERISA Affiliate of such Person or such Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of such Person or such Subsidiary and with respect to liabilities arising after such period for which such Person or such Subsidiary could be liable under the Internal Revenue Code or ERISA.

"ERISA Event" means (i) a "reportable event" within the meaning of Section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for 30-day notice to the PBGC has been waived by regulation); (ii) the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(d) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 412(m) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to Section 4041(a)(2) of ERISA of a notice of intent to terminate such plan in a distress termination described in Section 4041(c) of ERISA; (iv) the withdrawal by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability pursuant to Section 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate any Pension Plan, or the occurrence of any event or condition which might constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on Company, any of its Subsidiaries or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (vii) the withdrawal of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by Company, any of its Subsidiaries or any of their respective ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (viii) the assertion of a material claim (other than routine claims for benefits) against any Employee Benefit Plan other than a Multiemployer Plan or the assets thereof, or against Company, any of its Subsidiaries or any of their respective ERISA Affiliates in connection with any Employee Benefit Plan; (ix) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under Section 401(a) of the Internal Revenue Code) to qualify under Section 401(a) of the Internal Revenue Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under Section 501(a) of the Internal Revenue Code; or (x) the imposition of a Lien pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or pursuant to ERISA with respect to any Pension Plan.

"Eurodollar Rate" means, for any Interest Rate Determination Date with respect to an Interest Period for a Eurodollar Rate Loan, the rate per annum obtained by dividing (i) (A) the rate per annum (rounded upward to the nearest 1/16 of one percent) that appears on the Moneyline Telerate page 3750 (or such other comparable page as may, in the opinion of Administrative Agent, replace such page for the purpose of displaying such rate) as the interbank offered rate for Dollar deposits with maturities comparable to such Interest Period as of approximately 11:00 a.m. (London time) on such Interest Rate Determination Date, or (B) if such rate is not available at such time for any reason, the arithmetic average (rounded upward to the nearest 1/16 of one percent) of the offered quotations, if any, to first class banks in the London interbank market by Wells Fargo for Dollar deposits of amounts in same day funds

comparable to the principal amount of the Eurodollar Rate Loan of Wells Fargo for which the Eurodollar Rate is then being determined with maturities comparable to such Interest Period as of approximately 11:00 A.M. (New York time) on such Interest Rate Determination Date by (ii) a percentage equal to 100% minus the stated maximum rate of all reserve requirements (including any marginal, emergency, supplemental, special or other reserves) applicable on such Interest Rate Determination Date to any member bank of the Federal Reserve System in respect of "Eurocurrency liabilities" as defined in Regulation D (or any successor category of liabilities under Regulation D).

"Eurodollar Rate Loans" means Loans bearing interest at rates determined by reference to the Eurodollar Rate as provided in subsection 2.2A.

"Eurodollar Rate Margin" means the margin over the Eurodollar Rate used in determining the rate of interest of Eurodollar Rate Loans pursuant to subsection 2.2A.

"Event of Default" means each of the events set forth in Section 8.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and any successor statute.

"Exchange Rate" means, on any date when an amount expressed in a currency other than Dollars is to be determined with respect to any Letter of Credit, the nominal rate of exchange of Administrative Agent in the New York foreign exchange market for the sale of such currency in exchange for Dollars at 12:00 noon (New York time) one Business Day prior to such date, expressed as a number of units of such currency per one Dollar.

"Existing Company Credit Agreement" means that certain Credit Agreement dated as of February 15, 2002 between Company and Wells Fargo, as amended prior to the Closing Date.

"Existing Silicon Energy Corp. Credit Agreements" means (i) that certain Loan and Security Agreement dated as of May 29, 2002 between Silicon Energy Corp. and Silicon Valley Bank and (ii) that certain Security Agreement dated as of July 12, 2002 between Silicon Energy Corp. and certain purchasers identified therein, in each case as amended prior to the Closing Date.

"Existing Silicon Energy Corp. Letters of Credit" means those letters of credit issued for the account of Silicon Energy Corp. identified on Schedule 1.1B annexed hereto.

"Existing Wells Fargo Letters of Credit" means those letters of credit issued for the account of Company identified on Schedule 1.1A annexed hereto.

"Facilities" means any and all real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by Company or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"Federal Funds Effective Rate" means, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Administrative Agent from three Federal funds brokers of recognized standing selected by Administrative Agent.

"Financial Plan" has the meaning assigned to that term in subsection 6.1(xi).

"First Priority" means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that (i) such Lien is perfected and has priority over any other Lien on such Collateral (other than Permitted Encumbrances) and (ii) such Lien is the only Lien (other than Permitted Encumbrances and Liens permitted pursuant to subsection 7.2) to which such Collateral is subject.

"Fiscal Quarter" means a fiscal quarter of any Fiscal Year.

"Fiscal Year" means the fiscal year of Company and its Subsidiaries ending on December 31 of each calendar year. For purposes of this Agreement, any particular Fiscal Year shall be designated by reference to the calendar year in which such Fiscal Year ends.

"Flood Hazard Property" means the Closing Date Mortgaged Property or an Additional Mortgaged Property located in an area designated by the Federal Emergency Management Agency as having special flood or mud slide hazards.

"Foreign Plan" means any employee benefit plan maintained by Company or any of its Subsidiaries that is mandated or governed by any law, rule or regulation of any Government Authority other than the United States, any state thereof or any other political subdivision thereof.

"Foreign Pledge Agreement" means each pledge agreement or similar instrument governed by the laws of a country other than the United States, executed on the Closing Date or from time to time thereafter in accordance with subsection 6.8 by Company or any Domestic Subsidiary that owns Capital Stock of one or more Significant Foreign Subsidiaries organized in such country, in form and substance satisfactory to Administrative Agent, as such Foreign Pledge Agreement may be amended, supplemented or otherwise modified from time to time.

"Foreign Subsidiary" means any Subsidiary of Company that is not a Domestic Subsidiary.

"Fund" means any Person (other than a natural Person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"Funding and Payment Office" means (i) the office of Administrative Agent and Swing Line Lender located at 201 Third Street, 8th Floor, San Francisco, California 94103, or (ii) such other office of Administrative Agent and Swing Line Lender as may from time to time hereafter be designated as such in a written notice delivered by Administrative Agent and Swing Line Lender to Company and each Lender.

"Funding Date" means the date of the funding of a Loan.

"GAAP" means, subject to the limitations on the application thereof set forth in subsection 1.2, generally accepted accounting principles set forth in opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession, in each case as the same are applicable to the circumstances as of the date of determination.

"Governing Body" means the board of directors or other body having the power to direct or cause the direction of the management and policies of a Person that is a corporation, partnership, trust or limited liability company.

"Government Authority" means any political subdivision or department thereof, any other governmental or regulatory body, commission, central bank, board, bureau, organ or instrumentality or any court, in each case whether federal, state, local or foreign.

"Governmental Authorization" means any permit, license, registration, authorization, plan, directive, consent, order or consent decree of or from, or notice to, any Government Authority.

"Hazardous Materials" means (i) any chemical, material or substance at any time defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "acutely hazardous waste", "radioactive waste", "biohazardous waste", "pollutant", "toxic pollutant", "contaminant", "restricted hazardous waste", "infectious waste", "toxic substances", or any other term or expression intended to define, list or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment (including harmful properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, "TCLP toxicity" or "EP toxicity" or words of similar import under any applicable Environmental Laws); (ii) any oil, petroleum, petroleum fraction or petroleum derived substance; (iii) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources; (iv) any flammable substances or explosives; (v) any radioactive materials; (vi) any asbestos-containing materials; (vii) urea formaldehyde foam insulation; (viii) electrical equipment which contains any oil or dielectric fluid containing polychlorinated biphenyls; (ix) pesticides; and (x) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any Government Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"Hazardous Materials Activity" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"Hedge Agreement" means an Interest Rate Agreement or a Currency Agreement designed to hedge against fluctuations in interest rates or currency values, respectively.

"Indebtedness", as applied to any Person, means (i) all indebtedness for borrowed money, (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP, (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money, (iv) any obligation owed for all or any part of the deferred purchase price of property or services (excluding any such obligations incurred under ERISA), which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument, and (v) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person. Obligations under Interest Rate Agreements and Currency Agreements constitute (1) in the case of Hedge Agreements, Contingent Obligations, and (2) in all other cases, Investments, and in neither case constitute Indebtedness.

"Indemnified Liabilities" has the meaning assigned to that term in subsection 10.3.

"Indemnitee" has the meaning assigned to that term in subsection 10.3.

"Intellectual Property" means all patents, trademarks, trade names, copyrights, technology, software, know-how and processes used in or necessary for the conduct of the business of Company and its Subsidiaries as currently conducted that are material to the condition (financial or otherwise), business or operations of Company and its Subsidiaries, taken as a whole.

"Interest Payment Date" means (i) with respect to any Base Rate Loan, each March 31, June 30, September 30 and December 31 of each year, commencing on the first such date to occur after the Closing Date, and (ii) with respect to any Eurodollar Rate Loan, the last day of each Interest Period applicable to such Loan; provided that in the case of each Interest Period of six months, "Interest Payment Date" shall also include the date that is three months after the commencement of such Interest Period.

"Interest Period" has the meaning assigned to that term in subsection 2.2B.

"Interest Rate Agreement" means any interest rate swap agreement, interest rate cap agreement, interest rate collar agreement or other similar agreement or arrangement to which Company or any of its Subsidiaries is a party.

"Interest Rate Determination Date", with respect to any Interest Period, means the second Business Day prior to the first day of such Interest Period.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended to the date hereof and from time to time hereafter, and any successor statute.

"Investment" means (i) any direct or indirect purchase or other acquisition by Company or any of its Subsidiaries of, or of a beneficial interest in, any Securities of any other Person (including any Subsidiary of Company), (ii) any direct or indirect redemption, retirement, purchase or other acquisition for value, by any Subsidiary of Company from any Person other than Company or any of its Subsidiaries, of any equity Securities of such Subsidiary, (iii) any direct or indirect loan, advance (other than advances to employees for moving, entertainment and travel expenses, drawing accounts and similar expenditures in the ordinary course of business) or capital contribution by Company or any of its Subsidiaries to any other Person, including all indebtedness and accounts receivable from that other Person that are not current assets or did not arise from sales to that other Person in the ordinary course of business, or (iv) Interest Rate Agreements or Currency Agreements not constituting Hedge Agreements. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment (other than adjustments for the repayment of, or the refund of capital with respect to, the original principal amount of any such Investment).

"Investment Property" has the meaning set forth in the UCC.

"IP Collateral" means, collectively, the Intellectual Property that constitutes Collateral under the Security Agreement.

"Issuing Lender", with respect to any Letter of Credit, means the Revolving Lender that agrees or is otherwise obligated to issue such Letter of Credit, determined as provided in subsection 3.1B(ii).

"Joint Venture" means a joint venture, partnership or other similar arrangement, whether in corporate, partnership or other legal form; provided however, that in no event shall any Subsidiary of any Person be considered to be a Joint Venture to which such Person is a party.

"Lender" and "Lenders" means the Persons identified as "Lenders" and listed on the signature pages of this Agreement, together with their successors and permitted assigns pursuant to subsection 10.1, and the term "Lenders" shall include Swing Line Lender unless the context otherwise requires.

"Letter of Credit" or "Letters of Credit" means Commercial Letters of Credit and Standby Letters of Credit issued or to be issued by the Issuing Lender for the account of Company pursuant to subsection 3.1.

"Letter of Credit Usage" means, as at any date of determination, the sum of (i) the maximum aggregate amount which is or at any time thereafter may become available for drawing under all Letters of Credit then outstanding plus (ii) the aggregate amount of all drawings under Letters of Credit honored by the Issuing Lender and not theretofore reimbursed out of the proceeds of Revolving Loans pursuant to subsection 3.3B or otherwise reimbursed by Company. For purposes of this definition, any amount described in clause (i) or (ii) of the preceding sentence which is denominated in a currency other than Dollars shall be valued based on the applicable Exchange Rate for such currency as of the applicable date of determination.

"Lien" means any lien, mortgage, pledge, assignment, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, and any agreement to give any security interest) and any option, trust or other preferential arrangement having the practical effect of any of the foregoing.

"Loan" or "Loans" means one or more of the Term Loans, Revolving Loans or Swing Line Loans or any combination thereof.

"Loan Documents" means this Agreement, the Notes, the Letters of Credit (and any applications for, or reimbursement agreements or other documents or certificates executed by Company in favor of the Issuing Lender relating to, the Letters of Credit), the Subsidiary Guaranty and the Collateral Documents.

"Loan Party" means each of Company and any of Company's Subsidiaries from time to time executing a Loan Document, and "Loan Parties" means all such Persons, collectively.

"Margin Stock" has the meaning assigned to that term in Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

"Material Adverse Effect" means (i) a material adverse effect upon the business, operations, properties, assets, condition (financial or otherwise), or prospects of Company and its Subsidiaries taken as a whole, or (ii) the impairment of the ability of any Loan Party to perform, or of Administrative Agent or Lenders to enforce, the Obligations.

"Material Contract" means any contract or other arrangement to which Company or any of its Subsidiaries is a party (other than the Loan Documents) for which breach, nonperformance, cancellation or failure to renew could have a Material Adverse Effect.

"Merger" means the acquisition of Silicon Energy Corp. in accordance with the terms of the Merger Agreement.

"Merger Agreement" means that certain Agreement and Plan of Merger by and among Silicon Energy Corp., Company and Shadow Combination, Inc. dated as of January 18, 2003 in the form delivered to Administrative Agent and Lenders prior to their execution of this Agreement and as such agreement may be amended from time to time thereafter to the extent permitted under subsection 7.12.

"Merger Date" means the date that the Merger becomes effective in accordance with the terms of the Merger Agreement.

"Mortgage" means (i) a security instrument (whether designated as a deed of trust or a mortgage or by any similar title) executed and delivered by any Loan Party, substantially in the form of Exhibit XV annexed hereto or in such other form as may be approved by Administrative Agent in its sole discretion, in each case with such changes thereto as may be recommended by Administrative Agent's local counsel based on local laws or customary local mortgage or deed of trust practices, or (ii) at Administrative Agent's option, in the case of an Additional Mortgaged Property, an amendment to an existing Mortgage, in form satisfactory to Administrative Agent, adding such Additional Mortgaged Property to the Real Property Assets encumbered by such existing Mortgage, in either case as such security instrument or amendment may be amended, supplemented or otherwise modified from time to time. "Mortgages" means all such instruments, including the Closing Date Mortgage and any Additional Mortgages, collectively.

"Multiemployer Plan" means any Employee Benefit Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA.

"Net Asset Sale Proceeds", means with respect to any Asset Sale, Cash payments (including any Cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) received from such Asset Sale, net of any bona fide direct costs incurred in connection with such Asset Sale, including (i) income taxes reasonably estimated to be actually payable within two years of the date of such Asset Sale as a result of any gain recognized in connection with such Asset Sale, and (ii) payment of the outstanding principal amount of, premium or penalty, if any, and interest on any Indebtedness (other than the Loans) that is secured by a Lien on the stock or assets in question and that is required to be repaid under the terms thereof as a result of such Asset Sale (including Indebtedness used to obtain financing for Outsourcing Project Assets).

"Net Insurance/Condemnation Proceeds" means any Cash payments or proceeds received by Company or any of its Subsidiaries (i) under any business interruption or casualty insurance policy in respect of a covered loss thereunder, or (ii) as a result of the taking of any assets of Company or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, in each case net of any actual and reasonable documented costs incurred by Company or any of its Subsidiaries in connection with the adjustment or settlement of any claims of Company or such Subsidiary in respect thereof.

"Net Securities Proceeds" means the cash proceeds (net of underwriting discounts and commissions and other reasonable costs and expenses associated therewith, including reasonable legal fees and expenses) from the (i) issuance of Capital Stock of or incurrence of Indebtedness by Company or any of its Subsidiaries, and (ii) capital contributions made by a holder of Capital Stock of Company.

"Non-US Lender" means a Lender that is organized under the laws of any jurisdiction other than the United States or any state or other political subdivision thereof.

"Notes" means one or more of the Term Notes, Revolving Notes or Swing Line Note or any combination thereof.

"Notice of Borrowing" means a notice substantially in the form of Exhibit I annexed hereto.

"Notice of Conversion/Continuation" means a notice substantially in the form of Exhibit II annexed hereto.

"Obligations" means all obligations of every nature of each Loan Party from time to time owed to Administrative Agent, Lenders or any of them under the Loan Documents, whether for principal, interest, reimbursement of amounts drawn under Letters of Credit, fees, expenses, indemnification or otherwise.

"Officer" means the president, chief executive officer, a vice president, chief financial officer, treasurer, general partner (if an individual), managing member (if an individual) or other individual appointed by the Governing Body or the Organizational Documents of a corporation, partnership, trust or limited liability company to serve in a similar capacity as the foregoing.

"Officer's Certificate", as applied to any Person that is a corporation, partnership, trust or limited liability company, means a certificate executed on behalf of such Person by one or more Officers of such Person or one or more Officers of a general partner or a managing member if such general partner or managing member is a corporation, partnership, trust or limited liability company.

"Operating Lease", as applied to any Person, means any lease (including leases that may be terminated by the lessee at any time) of any property (whether real, personal or mixed) that is not a Capital Lease other than any such lease under which that Person is the lessor.

"Organizational Documents" means the documents (including Bylaws, if applicable) pursuant to which a Person that is a corporation, partnership, trust or limited liability company is organized.

"Outsourcing Project" means a project under which Company constructs a meter reading system consisting of hardware and software within the service territory of a utility or the equivalent and enters into a contract with such Person for the construction of the meter

reading system and long-term operations and maintenance thereof for a price to be paid as the output is delivered.

"Outsourcing Project Assets" means the hardware and software components of the meter reading system that comprises an Outsourcing Project together with the rights to Intellectual Property and licenses necessary to operate and maintain the meter reading system, the trade and contract receivables arising from Company's performance under the contracts relating to the Outsourcing Project and the Capital Stock of the related Outsourcing Project Subsidiary, if any.

"Outsourcing Project Subsidiary" means a wholly-owned special purpose Subsidiary of Company formed for the purpose of obtaining financing for an Outsourcing Project.

"Participant" means a purchaser of a participation in the rights and obligations under this Agreement pursuant to subsection 10.1C.

"PBGC" means the Pension Benefit Guaranty Corporation or any successor thereto.

"Pension Plan" means any Employee Benefit Plan, other than a Multiemployer Plan, that is subject to Section 412 of the Internal Revenue Code or Section 302 of ERISA, and, for purposes of subsection 8.10, any Foreign Plan.

"Permitted Acquisition" has the meaning assigned to that term in subsection 7.3(vi).

"Permitted Encumbrances" means the following types of Liens (excluding any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA, any such Lien imposed by a Government Authority in connection with any Foreign Plan, any such Lien relating to or imposed in connection with any Environmental Claim, and any such Lien expressly prohibited by any applicable terms of any of the Collateral Documents):

(i) Liens for taxes, assessments or governmental charges or claims the payment of which is not, at the time, required by subsection 6.3;

(ii) statutory Liens of landlords, statutory Liens of carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business (a) for amounts not yet overdue or (b) for amounts that are overdue and that (in the case of any such amounts overdue for a period in excess of five days) are being contested in good faith by appropriate proceedings, so long as (1) such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts, and (2) in the case of a Lien with respect to any portion of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral on account of such Lien;

(iii) Liens arising solely by virtue of any statutory or common law provision relating to banker's Liens, rights of set-off or similar rights and remedies as to deposit accounts or other funds maintained with a creditor depository institution; provided that (a) such deposit account is not a dedicated cash collateral account and is not subject to restrictions against access by Company or any of its Subsidiaries owning the affected deposit account or other funds maintained with a creditor depository institution in excess of those set forth by regulations promulgated by the Federal Reserve Board or any foreign regulatory agency performing an equivalent function, and (b) such deposit account is not intended by Company or any of its Subsidiaries to provide collateral to the depository institution;

(iv) deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of statutory obligations, bids, leases, government contracts, trade contracts, and other similar obligations (exclusive of obligations for the payment of borrowed money), so long as no foreclosure, sale or similar proceedings have been commenced with respect to any portion of the Collateral on account thereof;

(v) any attachment or judgment Lien not constituting an Event of Default under subsection 8.8;

(vi) licenses (with respect to Intellectual Property and other property), leases or subleases granted to third parties in accordance with any applicable terms of the Collateral Documents and not interfering in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries or resulting in a material diminution in the value of any Collateral as security for the Obligations;

(vii) easements, rights-of-way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of Company or any of its Subsidiaries or result in a material diminution in the value of any Collateral as security for the Obligations;

(viii) any (a) interest or title of a lessor or sublessor under any lease not prohibited by this Agreement, (b) Lien or restriction that the interest or title of such lessor or sublessor may be subject to, or (c) subordination of the interest of the lessee or sublessee under such lease to any Lien or restriction referred to in the preceding clause (b), so long as the holder of such Lien or restriction agrees to recognize the rights of such lessee or sublessee under such lease;

(ix) Liens arising from filing UCC financing statements relating solely to leases not prohibited by this Agreement;

(x) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(xi) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;

(xii) Liens granted pursuant to the Collateral Documents; and

(xiii) Liens securing obligations (other than obligations representing Indebtedness for borrowed money) under operating, reciprocal easement or similar agreements entered into in the ordinary course of business of Company and its Subsidiaries.

"Person" means and includes natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, Joint Ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and governments (whether federal, state or local, domestic or foreign, and including political subdivisions thereof) and agencies or other administrative or regulatory bodies thereof.

"Pledged Collateral" means, collectively, the "Pledged Collateral" as defined in the Security Agreement and any Foreign Pledge Agreement.

"Potential Event of Default" means a condition or event that, after notice or lapse of time or both, would constitute an Event of Default.

"Pricing Certificate" means an Officer's Certificate of Company certifying the Consolidated Leverage Ratio as at the last day of any Fiscal Quarter and setting forth the calculation of such Consolidated Leverage Ratio in reasonable detail, which Officer's Certificate may be delivered to Administrative Agent at any time on or after the date of delivery by Company of the Compliance Certificate with respect to the period ending on the last day of such Fiscal Quarter.

"Prime Rate" means the rate that Wells Fargo announces at its principal office in San Francisco, California from time to time as its prime lending rate, as in effect from time to time. The Prime Rate is a reference rate and does not necessarily represent the lowest or best rate actually charged to any customer. Wells Fargo or any other Lender may make commercial loans or other loans at rates of interest at, above or below the Prime Rate.

"Proceedings" means any action, suit, proceeding (whether administrative, judicial or otherwise), governmental investigation or arbitration.

"Pro Rata Share" means (i) with respect to all payments, computations and other matters relating to the Term Loan Commitment or the Term Loan of any Lender, the percentage obtained by dividing (x) the Term Loan Exposure of that Lender by (y) the aggregate Term Loan

Exposure of all Lenders,(ii) with respect to all payments, computations and other matters relating to the Revolving Loan Commitment or the Revolving Loans of any Lender or any Letters of Credit issued or participations therein deemed purchased by any Lender or any assignments of any Swing Line Loans deemed purchased by any Lender, the percentage obtained by dividing (x) the Revolving Loan Exposure of that Lender by (y) the aggregate Revolving Loan Exposure of all Lenders, and (iii) for all other purposes with respect to each Lender, the percentage obtained by dividing (x) the sum of the Term Loan Exposure of that Lender plus the Revolving Loan Exposure of that Lender by (y) the sum of the aggregate Term Loan Exposure of all Lenders plus the aggregate Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to subsection 10.1. The initial Pro Rata Share of each Lender for purposes of each of clauses (i), (ii), and (iii) of the preceding sentence is set forth opposite the name of that Lender in Schedule 2.1 annexed hereto.

"PTO" means the United States Patent and Trademark Office or any successor or substitute office in which filings are necessary or, in the opinion of Administrative Agent, desirable in order to create or perfect Liens on any IP Collateral.

"Real Property Asset" means, at any time of determination, any interest then owned by any Loan Party in any real property.

"Refunded Swing Line Loans" has the meaning assigned to that term in subsection 2.1A(iii).

"Register" has the meaning assigned to that term in subsection 2.1D.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"Reimbursement Date" has the meaning assigned to that term in subsection 3.3B.

"Related Agreements" means, collectively, (i) the Merger Agreement, (ii) that certain escrow agreement attached as Exhibit A to the Merger Agreement, (iii) that certain common stock purchase agreement attached as Exhibit G to the Merger Agreement, and (iv) certain shareholder support agreements dated on or about January 18, 2003 by and between Company and certain shareholders of Company and as such agreements may be amended from time to time thereafter to the extent permitted under subsection 7.12.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including, without limitation, the movement of any Hazardous Materials through the air, soil, surface water or groundwater.

"Request for Issuance" means a request substantially in the form of Exhibit III annexed hereto.

"Requisite Lenders" means Lenders having or holding at least 66 2/3% of the sum of the aggregate Term Loan Exposure of all Lenders plus the aggregate Revolving Loan Exposure of all Lenders.

"Restricted Junior Payment" means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of stock of Company or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in shares of that class of stock to the holders of that class, (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of stock of Company or any of its Subsidiaries now or hereafter outstanding, (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of stock of Company or any of its Subsidiaries now or hereafter outstanding, and (iv) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness.

"Revolving Lender" means a Lender that has a Revolving Loan Commitment and/or that has an outstanding Revolving Loan.

"Revolving Loan Commitment" means the commitment of a Revolving Lender to make Revolving Loans to Company pursuant to subsection 2.1A(ii), and "Revolving Loan Commitments" means such commitments of all Revolving Lenders in the aggregate.

"Revolving Loan Commitment Termination Date" means March 4, 2006.

"Revolving Loan Exposure" means, with respect to any Revolving Lender, as of any date of determination (i) prior to the termination of the Revolving Loan Commitments, that Lender's Revolving Loan Commitment, and (ii) after the termination of the Revolving Loan Commitments, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender plus (b) in the event that Lender is the Issuing Lender, the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by the Issuing Lender (in each case net of any participations purchased by other Revolving Lenders in such Letters of Credit or in any unreimbursed drawings thereunder) plus (c) the aggregate amount of all participations purchased by that Lender in any outstanding Letters of Credit or any unreimbursed drawings under any Letters of Credit plus (d) in the case of Swing Line Lender, the aggregate outstanding principal amount of all Swing Line Loans (net of any assignments thereof purchased by other Revolving Lenders) plus (e) the aggregate amount of all assignments purchased by that Lender in any outstanding Swing Line Loans.

"Revolving Loans" means the Loans made by Revolving Lenders to Company pursuant to subsection 2.1A(ii).

"Revolving Notes" means any promissory notes of Company issued pursuant to subsection 2.1E to evidence the Revolving Loans of any Revolving Lenders, substantially in the form of Exhibit V annexed hereto, as they may be amended, supplemented or otherwise modified from time to time.

"Securities" means any stock, shares, partnership interests, voting trust certificates, certificates of interest or participation in any profit-sharing agreement or arrangement, options, warrants, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated, certificated or uncertificated, or otherwise, or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and any successor statute.

"Security Agreement" means the Security Agreement executed and delivered on the Closing Date by Company and its Subsidiaries (other than Outsourcing Project Subsidiaries) and by Silicon Energy Corp. and its Subsidiaries, substantially in the form of Exhibit XII annexed hereto, as such Security Agreement may thereafter be amended, supplemented or otherwise modified from time to time.

"Shadow Combination, Inc." means Shadow Combination, Inc., a Delaware corporation.

"Significant Foreign Subsidiary" means as of any date of determination, each Foreign Subsidiary of Company that had on the last day of the Fiscal Quarter then most recently ended either (i) total assets (excluding intercompany Indebtedness owing from Company or any of its Subsidiaries) with a book value equal to 5% or greater of the total assets (excluding intercompany Indebtedness) of Company and its Subsidiaries, on a consolidated basis, or (ii) total revenue (excluding intercompany revenue) equal to 10% or greater of the total revenue (excluding intercompany revenue) of Company and its Subsidiaries, on a consolidated basis, in each case as determined in accordance with GAAP.

"Silicon Energy Corp." means Silicon Energy Corp., a Delaware corporation.

"Silicon Energy Corp. Fiscal Year" means, prior to consummation of the Merger, the fiscal year of Silicon Energy Corp. and its Subsidiaries ending on December 31 of each calendar year. For purposes of this Agreement, any particular Silicon Energy Corp. Fiscal Year shall be designated by reference to the calendar year in which the Silicon Energy Corp. Fiscal Year ends.

"Solvent", with respect to any Person, means that as of the date of determination both (i)(a) the then fair saleable value of the property of such Person is (1) greater than the total amount of liabilities (including contingent liabilities) of such Person and (2) not less than the amount that will be required to pay the probable liabilities on such Person's then existing debts

as they become absolute and due considering all financing alternatives and potential asset sales reasonably available to such Person; (b) such Person's capital is not unreasonably small in relation to its business or any contemplated or undertaken transaction; and (c) such Person does not intend to incur, or believe (nor should it reasonably believe) that it will incur, debts beyond its ability to pay such debts as they become due; and (ii) such Person is "solvent" within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"Standby Letter of Credit" means any standby letter of credit or similar instrument issued for the purpose of supporting (i) Indebtedness of Company or any of its Subsidiaries in respect of industrial revenue or development bonds or financings, (ii) workers' compensation liabilities of Company or any of its Subsidiaries, (iii) the obligations of third party insurers of Company or any of its Subsidiaries arising by virtue of the laws of any jurisdiction requiring third party insurers, (iv) obligations with respect to Capital Leases or Operating Leases of Company or any of its Subsidiaries, and (v) performance, payment, deposit or surety obligations of Company or any of its Subsidiaries, in any case if required by law or governmental rule or regulation or in accordance with custom and practice in the industry.

"Subordinated Indebtedness" means any Indebtedness of Company incurred from time to time and subordinated in right of payment to the Obligations.

"Subsidiary" means, with respect to any Person, any corporation, partnership, trust, limited liability company, association, or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the members of the Governing Body is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided that in no event shall any Joint Venture be considered to be a Subsidiary of any Person.

"Subsidiary Guarantor" means any Subsidiary of Company that executes and delivers a counterpart of the Subsidiary Guaranty on the Closing Date or from time to time thereafter pursuant to subsection 6.8.

"Subsidiary Guaranty" means the Subsidiary Guaranty executed and delivered by Subsidiaries of Company (other than Outsourcing Project Subsidiaries) and by Silicon Energy Corp. and its Subsidiaries on the Closing Date and to be executed and delivered by additional Subsidiaries of Company from time to time thereafter in accordance with subsection 6.8, substantially in the form of Exhibit XIII annexed hereto, as such Subsidiary Guaranty may hereafter be amended, supplemented or otherwise modified from time to time.

"Supplemental Collateral Agent" has the meaning assigned to that term in subsection 9.1B.

"Swing Line Lender" means Wells Fargo, or any Person serving as a successor Administrative Agent hereunder, in its capacity as Swing Line Lender hereunder.

"Swing Line Loan Commitment" means the commitment of Swing Line Lender to make Swing Line Loans to Company pursuant to subsection 2.1A(iii).

"Swing Line Loans" means the Loans made by Swing Line Lender to Company pursuant to subsection 2.1A(iii).

"Swing Line Note" means any promissory note of Company issued pursuant to subsection 2.1E to evidence the Swing Line Loans of Swing Line Lender, substantially in the form of Exhibit VI annexed hereto, as it may be amended, supplemented or otherwise modified from time to time.

"Tax" or "Taxes" means any present or future tax, levy, impost, duty, charge, fee, deduction or withholding of any nature and whatever called, by whomsoever, on whomsoever and wherever imposed, levied, collected, withheld or assessed, including interest, penalties, additions to tax and any similar liabilities with respect thereto; except that, in the case of a Lender, there shall be excluded (i) taxes that are imposed on the overall net income or net profits (including franchise taxes imposed in lieu thereof) (a) by the United States, (b) by any other Government Authority under the laws of which such Lender is organized or has its principal office or maintains its applicable lending office, or (c) by any jurisdiction solely as a result of a present or former connection between such Lender and such jurisdiction (other than any such connection arising solely from such Lender having executed, delivered or performed its obligations or received a payment under, or enforced, any of the Loan Documents), and (ii) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which such Lender is located.

"Term Loan Commitment" means the commitment of a Lender to make a Term Loan to Company pursuant to subsection 2.1A(i), and "Term Loan Commitments" means such commitments of all Lenders in the aggregate.

"Term Loan Exposure", with respect to any Lender, means, as of any date of determination (i) prior to the funding of the Term Loans, that Lender's Term Loan Commitment, and (ii) after the funding of the Term Loans, the outstanding principal amount of the Term Loan of that Lender.

"Term Loan Maturity Date" means March 4, 2006.

"Term Loans" means the Loans made by Lenders to Company pursuant to subsection 2.1A(i).

"Term Notes" means any promissory notes of Company issued pursuant to subsection 2.1E to evidence the Term Loans of any Lender, substantially in the form of Exhibit IV annexed hereto, as they may be amended, supplemented or otherwise modified from time to time.

"Title Company" means one or more title insurance companies reasonably satisfactory to Administrative Agent.

"Total Utilization of Revolving Loan Commitments" means, as at any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans plus (ii) the aggregate principal amount of all outstanding Swing Line Loans plus (iii) the Letter of Credit Usage.

"Transaction Costs" means the fees, costs and expenses payable by Company on or before the Closing Date in connection with the transactions contemplated by the Loan Documents and the Related Agreements.

"UCC" means the Uniform Commercial Code as in effect in any applicable jurisdiction.

"Wells Fargo" has the meaning assigned to that term in the introduction to this Agreement.

1.2 ACCOUNTING TERMS; UTILIZATION OF GAAP FOR PURPOSES OF CALCULATIONS UNDER AGREEMENT.

Except as otherwise expressly provided in this Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered by Company to Lenders pursuant to clauses (ii), (iii), and (xi) of subsection 6.1 shall be prepared in accordance with GAAP as in effect at the time of such preparation (and delivered together with the reconciliation statements provided for in subsection 6.1(v)). Calculations in connection with the definitions, covenants and other provisions of this Agreement shall utilize GAAP as in effect on the date of determination, applied in a manner consistent with that used in preparing the financial statements referred to in subsection 5.3. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and Company, Administrative Agent or Requisite Lenders shall so request, Administrative Agent, Lenders and Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of Requisite Lenders), provided that, until so amended, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and Company shall provide to Administrative Agent and Lenders reconciliation statements provided for in subsection 6.1(v).

1.3 OTHER DEFINITIONAL PROVISIONS AND RULES OF CONSTRUCTION.

A. Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

B. References to "Sections" and "subsections" shall be to Sections and subsections, respectively, of this Agreement unless otherwise specifically provided. Section and subsection headings in this Agreement are included herein for convenience of reference only and

shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

C. The use in any of the Loan Documents of the word "include" or "including", when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not nonlimiting language (such as "without limitation" or "but not limited to" or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter.

Section 2. AMOUNTS AND TERMS OF COMMITMENTS AND LOANS

2.1 COMMITMENTS; MAKING OF LOANS; THE REGISTER; OPTIONAL NOTES.

A. Commitments. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Company herein set forth, each Lender hereby severally agrees to make the Loans as described in subsections 2.1A(i) and, 2.1A(ii) and Swing Line Lender hereby agrees to make the Swing Line Loans as described in subsection 2.1A(iii).

(i) Term Loans. Each Lender that has a Term Loan Commitment severally agrees to lend to Company on the Closing Date an amount not exceeding its Pro Rata Share of the aggregate amount of the Term Loan Commitments to be used for the purposes identified in subsection 2.5A. The amount of each Lender's Term Loan Commitment is set forth opposite its name on Schedule 2.1 annexed hereto and the aggregate amount of the Term Loan Commitments is $50,000,000; provided that the Term Loan Commitments of Lenders shall be adjusted to give effect to any assignments of the Term Loan Commitments pursuant to subsection 10.1B. Company may make only one borrowing under the Term Loan Commitments. Amounts borrowed under this subsection 2.1A(i) and subsequently repaid or prepaid may not be reborrowed.

(ii) Revolving Loans. Each Revolving Lender severally agrees, subject to the limitations set forth below with respect to the maximum amount of Revolving Loans permitted to be outstanding from time to time, to lend to Company from time to time during the period from the Closing Date to but excluding the Revolving Loan Commitment Termination Date an aggregate amount not exceeding its Pro Rata Share of the aggregate amount of the Revolving Loan Commitments to be used for the purposes identified in subsection 2.5B. The original amount of each Revolving Lender's Revolving Loan Commitment is set forth opposite its name on Schedule 2.1 annexed hereto and the aggregate original amount of the Revolving Loan Commitments is $55,000,000; provided that the Revolving Loan Commitments of Revolving Lenders shall be adjusted to give effect to any assignments of the Revolving Loan Commitments pursuant to subsection 10.1B and shall be reduced from time to time by the amount of any reductions thereto made pursuant to subsection 2.4. Each Revolving Lender's Revolving Loan Commitment shall expire on the Revolving Loan Commitment

Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Loan Commitments shall be paid in full no later than that date. Amounts borrowed under this subsection 2.1A(ii) may be repaid and reborrowed to but excluding the Revolving Loan Commitment Termination Date.

Anything contained in this Agreement to the contrary notwithstanding, the Revolving Loans and the Revolving Loan Commitments shall be subject to the following limitations: (a) in no event shall the Total Utilization of Revolving Loan Commitments at any time exceed the Revolving Loan Commitments then in effect and (b) in no event shall the Revolving Loan Commitments exceed $35,000,000 prior to issuance of the Benghiat Letter of Credit.

(iii) Swing Line Loans.

(a) General Provisions. Swing Line Lender hereby agrees, subject to the limitations set forth below with respect to the maximum amount of Swing Line Loans permitted to be outstanding from time to time, to make a portion of the Revolving Loan Commitments available to Company from time to time during the period from the Closing Date to but excluding the Revolving Loan Commitment Termination Date by making Swing Line Loans to Company in an aggregate amount not exceeding the amount of the Swing Line Loan Commitment to be used for the purposes identified in subsection 2.5B, notwithstanding the fact that such Swing Line Loans, when aggregated with Swing Line Lender's outstanding Revolving Loans and Swing Line Lender's Pro Rata Share of the Letter of Credit Usage then in effect, may exceed Swing Line Lender's Revolving Loan Commitment. The original amount of the Swing Line Loan Commitment is $5,000,000; provided that any reduction of the Revolving Loan Commitments made pursuant to subsection 2.4 that reduces the aggregate Revolving Loan Commitments to an amount less than the then current amount of the Swing Line Loan Commitment shall result in an automatic corresponding reduction of the Swing Line Loan Commitment to the amount of the Revolving Loan Commitments, as so reduced, without any further action on the part of Company, Administrative Agent or Swing Line Lender. The Swing Line Loan Commitment shall expire on the Revolving Loan Commitment Termination Date and all Swing Line Loans and all other amounts owed hereunder with respect to the Swing Line Loans shall be paid in full no later than that date. Amounts borrowed under this subsection 2.1A(iii) may be repaid and reborrowed to but excluding the Revolving Loan Commitment Termination Date.

Anything contained in this Agreement to the contrary notwithstanding, the Swing Line Loans and the Swing Line Loan Commitment shall be subject to the limitation that in no event shall the Total Utilization of Revolving Loan Commitments at any time exceed the Revolving Loan Commitments then in effect.

(b) Swing Line Loan Prepayment with Proceeds of Revolving Loans. With respect to any Swing Line Loans that have not been voluntarily prepaid by Company pursuant to subsection 2.4B(i), Swing Line Lender may, at any time in its sole and absolute discretion and shall, on or prior to the tenth Business Day after the date any Swing Line Loan is made, deliver to Administrative Agent (with a copy to Company), no later than 10:00 A.M. (California time) on the first Business Day in advance of the proposed Funding Date, a notice (which shall be deemed to be a Notice of Borrowing given by Company) requesting Revolving Lenders to make Revolving Loans that are Base Rate Loans on such Funding Date in an amount equal to the amount of such Swing Line Loans (the "Refunded Swing Line Loans") outstanding on the date such notice is given. Company hereby authorizes the giving of any such notice and the making of any such Revolving Loans. Anything contained in this Agreement to the contrary notwithstanding, (1) the proceeds of such Revolving Loans made by Revolving Lenders other than Swing Line Lender shall be immediately delivered by Administrative Agent to Swing Line Lender (and not to Company) and applied to repay a corresponding portion of the Refunded Swing Line Loans and (2) on the day such Revolving Loans are made, Swing Line Lender's Pro Rata Share of the Refunded Swing Line Loans shall be deemed to be paid with the proceeds of a Revolving Loan made by Swing Line Lender, and such portion of the Swing Line Loans deemed to be so paid shall no longer be outstanding as Swing Line Loans and shall no longer be due under the Swing Line Note, if any, of Swing Line Lender but shall instead constitute part of Swing Line Lender's outstanding Revolving Loans and shall be due under the Revolving Note, if any, of Swing Line Lender. Company hereby authorizes Administrative Agent and Swing Line Lender to charge Company's accounts with Administrative Agent and Swing Line Lender (up to the amount available in each such account) in order to immediately pay Swing Line Lender the amount of the Refunded Swing Line Loans to the extent the proceeds of such Revolving Loans made by Revolving Lenders, including the Revolving Loan deemed to be made by Swing Line Lender, are not sufficient to repay in full the Refunded Swing Line Loans. If any portion of any such amount paid (or deemed to be paid) to Swing Line Lender should be recovered by or on behalf of Company from Swing Line Lender in any bankruptcy proceeding, in any assignment for the benefit of creditors or otherwise, the loss of the amount so recovered shall be ratably shared among all Lenders in the manner contemplated by subsection 10.5.

(c) Swing Line Loan Assignments. If for any reason (1) Revolving Loans are not made upon the request of Swing Line Lender as provided in the immediately preceding paragraph in an amount sufficient to repay any amounts owed to Swing Line Lender in respect of any outstanding Swing Line Loans, or (2) the Revolving Loan Commitments are terminated at a time when any Swing Line Loans are outstanding, each Revolving Lender shall be deemed to, and hereby agrees to, have purchased an assignment of such outstanding Swing Line Loans in an amount equal to its Pro Rata Share (calculated, in the case of the

foregoing clause (2), immediately prior to such termination of the Revolving Loan Commitments) of the unpaid amount of such Swing Line Loans together with accrued interest thereon. Upon one Business Day's notice from Swing Line Lender, each Revolving Lender shall deliver to Swing Line Lender an amount equal to its respective assignment in same day funds at the Funding and Payment Office. In order to further evidence such assignment (and without prejudice to the effectiveness of the assignment provisions set forth above), each Revolving Lender agrees to enter into an Assignment Agreement at the request of Swing Line Lender in form and substance reasonably satisfactory to Swing Line Lender. In the event any Revolving Lender fails to make available to Swing Line Lender the amount of such Revolving Lender's assignment as provided in this paragraph, Swing Line Lender shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the rate customarily used by Swing Line Lender for the correction of errors among banks for three Business Days and thereafter at the Base Rate. In the event Swing Line Lender receives a payment of any amount in which other Revolving Lenders have purchased assignments as provided in this paragraph, Swing Line Lender shall promptly distribute to each such other Revolving Lender its Pro Rata Share of such payment.

(d) Revolving Lenders' Obligations. Anything contained herein to the contrary notwithstanding, each Revolving Lender's obligation to make Revolving Loans for the purpose of repaying any Refunded Swing Line Loans pursuant to subsection 2.1A(iii)(b) and each Revolving Lender's obligation to purchase an assignment of any unpaid Swing Line Loans pursuant to the immediately preceding paragraph shall be absolute and unconditional and shall not be affected by any circumstance, including (1) any set-off, counterclaim, recoupment, defense or other right which such Revolving Lender may have against Swing Line Lender, Company or any other Person for any reason whatsoever; (2) the occurrence or continuation of an Event of Default or a Potential Event of Default; (3) the occurrence of any Material Adverse Effect; (4) any breach of this Agreement or any other Loan Document by any party thereto; or (5) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing; provided that such obligations of each Revolving Lender are subject to the condition that (x) Swing Line Lender believed in good faith that all conditions under Section 4 to the making of the applicable Refunded Swing Line Loans or other unpaid Swing Line Loans, as the case may be, were satisfied at the time such Refunded Swing Line Loans or unpaid Swing Line Loans were made, or (y) the satisfaction of any such condition not satisfied had been waived in accordance with subsection 10.6 prior to or at the time such Refunded Swing Line Loans or other unpaid Swing Line Loans were made.

B. Borrowing Mechanics. Term Loans or Revolving Loans made on any Funding Date (other than Revolving Loans made pursuant to a request by Swing Line Lender pursuant to subsection 2.1A(iii) or Revolving Loans made pursuant to subsection 3.3B) shall be

in an aggregate minimum amount of $500,000 and multiples of $100,000 in excess of that amount; provided that Term Loans or Revolving Loans made on any Funding Date as Eurodollar Rate Loans with a particular Interest Period shall be in an aggregate minimum amount of $1,000,000 and multiples of $100,000 in excess of that amount. Swing Line Loans made on any Funding Date shall be in an aggregate minimum amount of $500,000 and multiples of $100,000 in excess of that amount. Whenever Company desires that Lenders make Term Loans or Revolving Loans it shall deliver to Administrative Agent a duly executed Notice of Borrowing no later than 10:00 A.M. (California time) at least three Business Days in advance of the proposed Funding Date (in the case of a Eurodollar Rate Loan) or at least one Business Day in advance of the proposed Funding Date (in the case of a Base Rate Loan). Whenever Company desires that Swing Line Lender make a Swing Line Loan, it shall deliver to Administrative Agent a duly executed Notice of Borrowing no later than 12:00 Noon (California time) on the proposed Funding Date. Term Loans and Revolving Loans may be continued as or converted into Base Rate Loans and Eurodollar Rate Loans in the manner provided in subsection 2.2D. In lieu of delivering a Notice of Borrowing, Company may give Administrative Agent telephonic notice by the required time of any proposed borrowing under this subsection 2.1B; provided that such notice shall be promptly confirmed in writing by delivery of a duly executed Notice of Borrowing to Administrative Agent on or before the applicable Funding Date.

Neither Administrative Agent nor any Lender shall incur any liability to Company in acting upon any telephonic notice referred to above that Administrative Agent believes in good faith to have been given by an Officer or other person authorized to borrow on behalf of Company or for otherwise acting in good faith under this subsection 2.1B or under subsection 2.2D, and upon funding of Loans by Lenders, and upon conversion or continuation of the applicable basis for determining the interest rate with respect to any Loans pursuant to subsection 2.2D, in each case in accordance with this Agreement, pursuant to any such telephonic notice Company shall have effected Loans or a conversion or continuation, as the case may be, hereunder.

Company shall notify Administrative Agent prior to the funding of any Loans in the event that any of the matters to which Company is required to certify in the applicable Notice of Borrowing is no longer true and correct as of the applicable Funding Date, and the acceptance by Company of the proceeds of any Loans shall constitute a re-certification by Company, as of the applicable Funding Date, as to the matters to which Company is required to certify in the applicable Notice of Borrowing.

Except as otherwise provided in subsections 2.6B, 2.6C and 2.6G, a Notice of Borrowing for, or a Notice of Conversion/Continuation for conversion to, or continuation of, a Eurodollar Rate Loan (or telephonic notice in lieu thereof) shall be irrevocable on and after the related Interest Rate Determination Date, and Company shall be bound to make a borrowing or to effect a conversion or continuation in accordance therewith.

Notwithstanding the foregoing provisions of this subsection 2.1B, no Eurodollar Rate Loans may be made and no Base Rate Loan may be converted into a Eurodollar Rate Loan until the earlier of the sixtieth day after the Closing Date and the date specified by

Administrative Agent to Company on which the primary syndication of the Loans has been completed.

C. Disbursement of Funds. All Term Loans and Revolving Loans shall be made by Lenders simultaneously and proportionately to their respective Pro Rata Shares, it being understood that neither Administrative Agent nor any Lender shall be responsible for any default by any other Lender in that other Lender's obligation to make a Loan requested hereunder nor shall the Commitment of any Lender to make the particular type of Loan requested be increased or decreased as a result of a default by any other Lender in that other Lender's obligation to make a Loan requested hereunder. Promptly after receipt by Administrative Agent of a Notice of Borrowing pursuant to subsection 2.1B (or telephonic notice in lieu thereof), Administrative Agent shall notify each Lender for that type of Loan or Swing Line Lender, as the case may be, of the proposed borrowing. Each such Lender shall make the amount of its Loan available to Administrative Agent not later than 12:00 Noon (California time) on the applicable Funding Date, and Swing Line Lender shall make the amount of its Swing Line Loan available to Administrative Agent not later than 2:00 P.M. (California time) on the applicable Funding Date, in each case in same day funds in Dollars, at the Funding and Payment Office. Except as provided in subsection 2.1A(iii) or subsection 3.3B with respect to Revolving Loans used to repay Refunded Swing Line Loans or to reimburse the Issuing Lender for the amount of a drawing under a Letter of Credit issued by it, upon satisfaction or waiver of the conditions precedent specified in subsections 4.1 (in the case of Loans made on the Closing Date) and 4.2 (in the case of all Loans), Administrative Agent shall make the proceeds of such Loans available to Company on the applicable Funding Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Loans received by Administrative Agent from Lenders to be credited to the account of Company at the Funding and Payment Office.

Unless Administrative Agent shall have been notified by any Lender prior to a Funding Date for any Loans that such Lender does not intend to make available to Administrative Agent the amount of such Lender's Loan requested on such Funding Date, Administrative Agent may assume that such Lender has made such amount available to Administrative Agent on such Funding Date and Administrative Agent may, in its sole discretion, but shall not be obligated to, make available to Company a corresponding amount on such Funding Date. If such corresponding amount is not in fact made available to Administrative Agent by such Lender, Administrative Agent shall be entitled to recover such corresponding amount on demand from such Lender together with interest thereon, for each day from such Funding Date until the date such amount is paid to Administrative Agent, at the customary rate set by Administrative Agent for the correction of errors among banks for three Business Days and thereafter at the Base Rate. If such Lender does not pay such corresponding amount forthwith upon Administrative Agent's demand therefor, Administrative Agent shall promptly notify Company and Company shall immediately pay such corresponding amount to Administrative Agent together with interest thereon, for each day from such Funding Date until the date such amount is paid to Administrative Agent, at the rate payable under this Agreement for Base Rate Loans. Nothing in this subsection 2.1C shall be deemed to relieve any Lender from its obligation to fulfill its Commitments hereunder or to prejudice any rights that Company may have against any Lender as a result of any default by such Lender hereunder.

D. The Register. Administrative Agent, acting for these purposes solely as an agent of Company (it being acknowledged that Administrative Agent, in such capacity, and its officers, directors, employees, agent and affiliates shall constitute Indemnitees under subsection 10.3), shall maintain (and make available for inspection by Company upon reasonable prior notice at reasonable times) at its address referred to in subsection 10.8 a register for the recordation of, and shall record, the names and addresses of Lenders and the Term Loan Commitment, Revolving Loan Commitment, Swing Line Loan Commitment, Term Loan, Revolving Loans and Swing Line Loans of each Lender from time to time (the "Register"). Company and Administrative Agent shall deem and treat the Persons listed as Lenders in the Register as the holders and owners of the corresponding Commitments and Loans listed therein for all purposes hereof; all amounts owed with respect to any Commitment or Loan shall be owed to the Lender listed in the Register as the owner thereof; and any request, authority or consent of any Person who, at the time of making such request or giving such authority or consent, is listed in the Register as a Lender shall be conclusive and binding on any subsequent holder, assignee or transferee of the corresponding Commitments or Loans. Each Lender shall record on its internal records the amount of its Loans and Commitments and each payment in respect hereof, and any such recordation shall be conclusive and binding on Company, absent manifest error, subject to the entries in the Register, which shall, absent manifest error, govern in the event of any inconsistency with any Lender's records. Failure to make any recordation in the Register or in any Lender's records, or any error in such recordation, shall not affect any Loans or Commitments or any Obligations in respect of any Loans.

E. Optional Notes. If so requested by any Lender by written notice to Company (with a copy to Administrative Agent) at least two Business Days prior to the Closing Date or at any time thereafter, Company shall execute and deliver to such Lender (and/or, if applicable and if so specified in such notice, to any Person who is an assignee of such Lender pursuant to subsection 10.1) on the Closing Date (or, if such notice is delivered after the Closing Date, promptly after Company's receipt of such notice) a promissory note or promissory notes to evidence such Lender's Term Loan, Revolving Loans or Swing Line Loans, substantially in the form of Exhibit IV, Exhibit V or Exhibit VI annexed hereto, respectively, with appropriate insertions.

2.2 INTEREST ON THE LOANS.

A. Rate of Interest. Subject to the provisions of subsections 2.6 and 2.7, each Term Loan and each Revolving Loan shall bear interest on the unpaid principal amount thereof from the date made through maturity (whether by acceleration or otherwise) at a rate determined by reference to the Base Rate or the Eurodollar Rate. Subject to the provisions of subsection 2.7, each Swing Line Loan shall bear interest on the unpaid principal amount thereof from the date made through maturity (whether by acceleration or otherwise) at a rate determined by reference to the Base Rate. The applicable basis for determining the rate of interest with respect to any Term Loan or any Revolving Loan shall be selected by Company initially at the time a Notice of Borrowing is given with respect to such Loan pursuant to subsection 2.1B (subject to the last sentence of subsection 2.1B), and the basis for determining the interest rate with respect to any Term Loan or any Revolving Loan may be changed from time to time pursuant to subsection 2.2D (subject to the last sentence of subsection 2.1B). If on any day a

Term Loan or Revolving Loan is outstanding with respect to which notice has not been delivered to Administrative Agent in accordance with the terms of this Agreement specifying the applicable basis for determining the rate of interest, then for that day that Loan shall bear interest determined by reference to the Base Rate.

(i) Subject to the provisions of subsections 2.2E, 2.2G and 2.7, the Term Loans and the Revolving Loans shall bear interest through maturity as follows:

(a) if a Base Rate Loan, then at the sum of the Base Rate plus the Base Rate Margin set forth in the table below opposite the Consolidated Leverage Ratio for the four Fiscal Quarter period for which the applicable Pricing Certificate has been delivered pursuant to subsection 6.1(iv); or

(b) if a Eurodollar Rate Loan, then at the sum of the Eurodollar Rate plus the Eurodollar Rate Margin set forth in the table below opposite the Consolidated Leverage Ratio for the four Fiscal Quarter period for which the applicable Pricing Certificate has been delivered pursuant to subsection 6.1(iv):

| | Consolidated Leverage Ratio | Eurodollar Rate Margin | Base Rate Margin |
|---|---|---|---|
| Greater than Or equal to | 2:00:1.00 | 2.75% | 1.50% |
| Greater than or equal to but less than | 1.75:1.00 2.00:1.00 | 2.50% | 1.25% |
| Greater than or equal to but less than | 1.50:1.00 1.75:1.00 | 2.25% | 1.00% |
| Less than | 1.50:1.00 | 2.00% | 0.75% |

provided that, until the delivery of the Pricing Certificate for the Fiscal Quarter ending June 30, 2003, the applicable margin for Term Loans and Revolving Loans that are Eurodollar Rate Loans shall be 2.50% per annum and for Term Loans and Revolving Loans that are Base Rate Loans shall be 1.25% per annum.

(ii) Upon delivery of the Pricing Certificate by Company to Administrative Agent pursuant to subsection 6.1(iv), the Base Rate Margin and the Eurodollar Rate Margin shall automatically be adjusted in accordance with such Pricing Certificate, such adjustment to become effective on the next succeeding Business Day following the receipt by Administrative Agent of such Pricing Certificate (subject to the provisions of

the foregoing clauses (i) and (ii)); provided that, if at any time a Pricing Certificate is not delivered at the time required pursuant to subsection 6.1(iv), from the time such Pricing Certificate was required to be delivered until delivery of such Pricing Certificate, the applicable margins shall be the maximum percentage amount for the relevant Loan set forth above.

(iii) Subject to the provisions of subsections 2.2E, 2.2G and 2.7, the Swing Line Loans shall bear interest through maturity at the sum of the Base Rate plus the applicable Base Rate Margin for Revolving Loans minus a rate equal to the commitment fee percentage then in effect as determined pursuant to subsection 2.3A.

B. Interest Periods. In connection with each Eurodollar Rate Loan, Company may, pursuant to the applicable Notice of Borrowing or Notice of Conversion/Continuation, as the case may be, select an interest period (each an "Interest Period") to be applicable to such Loan, which Interest Period shall be, at Company's option, either a one, two, three or six month period; provided that:

(i) the initial Interest Period for any Eurodollar Rate Loan shall commence on the Funding Date in respect of such Loan, in the case of a Loan initially made as a Eurodollar Rate Loan, or on the date specified in the applicable Notice of Conversion/Continuation, in the case of a Loan converted to a Eurodollar Rate Loan;

(ii) in the case of immediately successive Interest Periods applicable to a Eurodollar Rate Loan continued as such pursuant to a Notice of Conversion/Continuation, each successive Interest Period shall commence on the day on which the next preceding Interest Period expires;

(iii) if an Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that, if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the next preceding Business Day;

(iv) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (v) of this subsection 2.2B, end on the last Business Day of a calendar month;

(v) no Interest Period with respect to any portion of the Term Loans shall extend beyond the Term Loan Maturity Date, and no Interest Period with respect to any portion of the Revolving Loans shall extend beyond the Revolving Loan Commitment Termination Date;

(vi) no Interest Period with respect to any type of Term Loans shall extend beyond a date on which Company is required to make a scheduled payment of principal of such type of Term Loans unless the sum of (a) the aggregate principal amount of such

type of Term Loans that are Base Rate Loans plus (b) the aggregate principal amount of such type of Term Loans that are Eurodollar Rate Loans with Interest Periods expiring on or before such date equals or exceeds the principal amount required to be paid on such type of Term Loans on such date;

(vii) there shall be no more than five Interest Periods outstanding at any time; and

(viii) in the event Company fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Notice of Borrowing or Notice of Conversion/Continuation, Company shall be deemed to have selected an Interest Period of one month.

C. Interest Payments. Subject to the provisions of subsection 2.2E, interest on each Loan shall be payable in arrears on and to each Interest Payment Date applicable to that Loan, upon any prepayment of that Loan (to the extent accrued on the amount being prepaid) and at maturity (including final maturity); provided that in the event any Swing Line Loans or any Revolving Loans that are Base Rate Loans are prepaid pursuant to subsection 2.4B(i), interest accrued on such Loans through the date of such prepayment shall be payable on the next succeeding Interest Payment Date applicable to Base Rate Loans (or, if earlier, at final maturity).

D. Conversion or Continuation. Subject to the provisions of subsection 2.6, Company shall have the option (i) to convert at any time all or any part of its outstanding Term Loans or Revolving Loans equal to $1,000,000 and multiples of $100,000 in excess of that amount from Loans bearing interest at a rate determined by reference to one basis to Loans bearing interest at a rate determined by reference to an alternative basis, or (ii) upon the expiration of any Interest Period applicable to a Eurodollar Rate Loan, to continue all or any portion of such Loan equal to $1,000,000 and multiples of $100,000 in excess of that amount as a Eurodollar Rate Loan; provided, however, that a Eurodollar Rate Loan may only be converted into a Base Rate Loan on the expiration date of an Interest Period applicable thereto.

Company shall deliver a duly executed Notice of Conversion/Continuation to Administrative Agent no later than 10:00 A.M. (California time) at least one Business Day in advance of the proposed conversion date (in the case of a conversion to a Base Rate Loan) and at least three Business Days in advance of the proposed conversion/continuation date (in the case of a conversion to, or a continuation of, a Eurodollar Rate Loan). In lieu of delivering a Notice of Conversion/Continuation, Company may give Administrative Agent telephonic notice by the required time of any proposed conversion/continuation under this subsection 2.2D; provided that such notice shall be promptly confirmed in writing by delivery of a duly executed Notice of Conversion/Continuation to Administrative Agent on or before the proposed conversion/continuation date. Upon receipt of written or telephonic notice of any proposed conversion/continuation under this subsection 2.2D, Administrative Agent shall promptly transmit such notice by telefacsimile or telephone to each Lender of the Loan subject to the Notice of Conversion/Continuation.

E. Default Rate. Upon the occurrence and during the continuation of any Event of Default, the outstanding principal amount of all Loans and, to the extent permitted by

applicable law, any interest payments thereon not paid when due and any fees and other amounts then due and payable hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under the Bankruptcy Code or other applicable bankruptcy laws) payable upon demand at a rate that is 2% per annum in excess of the interest rate otherwise payable under this Agreement with respect to the applicable Loans (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for Base Rate Loans); provided that, in the case of Eurodollar Rate Loans, upon the expiration of the Interest Period in effect at the time any such increase in interest rate is effective such Eurodollar Rate Loans shall thereupon become Base Rate Loans and shall thereafter bear interest payable upon demand at a rate which is 2% per annum in excess of the interest rate otherwise payable under this Agreement for Base Rate Loans. Payment or acceptance of the increased rates of interest provided for in this subsection 2.2E is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Administrative Agent or any Lender.

F. Computation of Interest. Interest on the Loans shall be computed on the basis of a 360-day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Loan, the date of the making of such Loan or the first day of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted from a Eurodollar Rate Loan, the date of conversion of such Eurodollar Rate Loan to such Base Rate Loan, as the case may be, shall be included, and the date of payment of such Loan or the expiration date of an Interest Period applicable to such Loan or, with respect to a Base Rate Loan being converted to a Eurodollar Rate Loan, the date of conversion of such Base Rate Loan to such Eurodollar Rate Loan, as the case may be, shall be excluded; provided that if a Loan is repaid on the same day on which it is made, one day's interest shall be paid on that Loan.

G. Maximum Rate. Notwithstanding the foregoing provisions of this subsection 2.2, in no event shall the rate of interest payable by Company with respect to any Loan exceed the maximum rate of interest permitted to be charged under applicable law.

2.3 FEES.

A. Commitment Fees. Company agrees to pay to Administrative Agent, for distribution to each Revolving Lender in proportion to that Lender's Pro Rata Share, commitment fees for the period from and including the Closing Date to and excluding the Revolving Loan Commitment Termination Date equal to the average of the daily excess of the Revolving Loan Commitments over the sum of (i) the aggregate principal amount of outstanding Revolving Loans (but not any outstanding Swing Line Loans) plus (ii) the Letter of Credit Usage multiplied by a rate per annum equal to the percentage set forth in the table below opposite the Consolidated Leverage Ratio for the four Fiscal Quarter period for which the applicable Pricing Certificate has been delivered pursuant to subsection 6.1(iv):

| Consolidated Leverage Ratio | | Commitment Fee Percentage |
|---|---|---|
| Greater than or equal to | 2.00:1.00 | 0.500% |
| Greater than or equal to but less than | 1.75:1.00<br>2.00:1.00 | 0.375% |
| Greater than or equal to but less than | 1.50:1.00<br>1.75:1.00 | 0.375% |
| Less than | 1.50:1.00 | 0.250% |

such commitment fees to be calculated on the basis of a 360-day year and the actual number of days elapsed and to be payable quarterly in arrears on March 31, June 30, September 30 and December 31 of each year, commencing on the first such date to occur after the Closing Date, and on the Revolving Loan Commitment Termination Date; provided that until the delivery of the Pricing Certificate for the Fiscal Quarter ending June 30, 2003, the applicable commitment fee percentage shall be 0.375% per annum. Upon delivery of the Pricing Certificate by Company to Administrative Agent pursuant to subsection 6.1(iv), the applicable commitment fee percentage shall automatically be adjusted in accordance with such Pricing Certificate, such adjustment to become effective on the next succeeding Business Day following the receipt by Administrative Agent of such Pricing Certificate; provided that, if at any time a Pricing Certificate is not delivered at the time required pursuant to subsection 6.1(iv), from the time such Pricing Certificate was required to be delivered until delivery of such Pricing Certificate, the applicable commitment fee percentage shall be the maximum percentage amount set forth above.

B. Other Fees. Company agrees to pay to Administrative Agent such fees in the amounts and at the times separately agreed upon between Company and Administrative Agent.

2.4 REPAYMENTS, PREPAYMENTS AND REDUCTIONS IN REVOLVING LOAN COMMITMENTS; GENERAL PROVISIONS REGARDING PAYMENTS; APPLICATION OF PROCEEDS OF COLLATERAL AND PAYMENTS UNDER SUBSIDIARY GUARANTY.

A. Scheduled Payments of Term Loans. Company shall make principal payments on the Term Loans in quarterly installments on the dates and in the amounts set forth below:

| Date | Scheduled Repayment |
|---|---|
| June 30, 2003 | $ 4,166,666.66 |
| September 30, 2003 | $ 4,166,666.66 |
| December 31, 2003 | $ 4,166,666.66 |
| March 31, 2004 | $ 4,166,666.66 |
| June 30, 2004 | $ 4,166,666.66 |
| September 30, 2004 | $ 4,166,666.66 |
| December 31, 2004 | $ 4,166,666.66 |
| March 31, 2005 | $ 4,166,666.66 |
| June 30, 2005 | $ 4,166,666.66 |
| September 30, 2005 | $ 4,166,666.66 |
| December 31, 2005 | $ 4,166,666.66 |
| March 4, 2006 | $4,166,666.74 |

; provided that the scheduled installments of principal of the Term Loans set forth above shall be reduced in connection with any voluntary or mandatory prepayments of the Term Loans in accordance with subsection 2.4B(iv); and provided further, that the Term Loans and all other amounts owed hereunder with respect to the Term Loans shall be paid in full no later than the Term Loan Maturity Date, and the final installment payable by Company in respect of the Term Loans on such date shall be in an amount, if such amount is different from that specified above, sufficient to repay all amounts owing by Company under this Agreement with respect to the Term Loans.

B. Prepayments and Unscheduled Reductions in Revolving Loan Commitments.

(i) Voluntary Prepayments. Company may, upon written or telephonic notice to Administrative Agent on or prior to 12:00 Noon (California time) on the date of prepayment, which notice, if telephonic, shall be promptly confirmed in writing, at any time and from time to time without premium or penalty prepay any Swing Line Loan on any Business Day in whole or in part in an aggregate minimum amount of $500,000 and multiples of $100,000 in excess of that amount. Company may, upon not less than one Business Day's prior written or telephonic notice, in the case of Base Rate Loans, and

three Business Days' prior written or telephonic notice, in the case of Eurodollar Rate Loans, in each case given to Administrative Agent by 12:00 Noon (California time) on the date required and, if given by telephone, promptly confirmed in writing to Administrative Agent (which original written or telephonic notice Administrative Agent will promptly transmit by telefacsimile or telephone to each Lender for the Loans to be prepaid), at any time and from time to time without premium or penalty, except as set forth in subsection 2.7A, prepay any Term Loans or Revolving Loans on any Business Day in whole or in part in an aggregate minimum amount of $1,000,000 and multiples of $100,000 in excess of that amount. Notice of prepayment having been given as aforesaid, the principal amount of the Loans specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in subsection 2.4B(iv).

(ii) Voluntary Reductions of Revolving Loan Commitments. Company may, upon not less than three Business Days' prior written or telephonic notice confirmed in writing to Administrative Agent (which original written or telephonic notice Administrative Agent will promptly transmit by telefacsimile or telephone to each Revolving Lender), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Loan Commitments in an amount up to the amount by which the Revolving Loan Commitments exceed the Total Utilization of Revolving Loan Commitments at the time of such proposed termination or reduction; provided that any such partial reduction of the Revolving Loan Commitments shall be in an aggregate minimum amount of $5,000,000 and multiples of $1,000,000 in excess of that amount. Company's notice to Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and such termination or reduction of the Revolving Loan Commitments shall be effective on the date specified in Company's notice and shall reduce the Revolving Loan Commitment of each Revolving Lender proportionately to its Pro Rata Share. Any such voluntary reduction of the Revolving Loan Commitments shall be applied as specified in subsection 2.4B(iv).

(iii) Mandatory Prepayments. The Loans shall be prepaid in the amounts and under the circumstances set forth below, all such prepayments and/or reductions to be applied as set forth below or as more specifically provided in subsection 2.4B(iv):

(a) Prepayments and Reductions From Net Asset Sale Proceeds. No later than the date of receipt by Company or any of its Subsidiaries of any Net Asset Sale Proceeds in respect of any Asset Sale, Company shall prepay the Term Loans in an aggregate amount equal to such Net Asset Sale Proceeds. Nothing contained herein shall be construed to permit any sale of assets prohibited by subsection 7.7.

(b) Prepayments and Reductions from Net Insurance/Condemnation Proceeds. No later than the first Business Day following the date of receipt by Administrative Agent or by Company or any of its Subsidiaries of any Net Insurance/Condemnation Proceeds that are required to be applied to prepay the

Term Loans pursuant to the provisions of subsection 6.4C, Company shall prepay the Term Loans in an aggregate amount equal to such Net Insurance/Condemnation Proceeds.

(c) Prepayments and Reductions Due to Issuance of Equity Securities. On the date of receipt of the Net Securities Proceeds from the issuance of any Capital Stock of Company or of any Subsidiary of Company or from any capital contribution to Company by any holder of Capital Stock thereof after the Closing Date, Company shall prepay the Term Loans in an aggregate amount equal to 75% of such Net Securities Proceeds.

(d) Prepayments and Reductions Due to Issuance of Indebtedness. On the date of receipt of the Net Securities Proceeds from the issuance of any Indebtedness of Company or any of its Subsidiaries (other than an Outsourcing Project Subsidiary) after the Term Loan Closing Date, other than Indebtedness permitted pursuant to subsection 7.1, Company shall prepay the Term Loans in an aggregate amount equal to such Net Securities Proceeds.

(e) Calculations of Net Proceeds Amounts; Additional Prepayments and Reductions Based on Subsequent Calculations. Concurrently with any prepayment of the Term Loans pursuant to subsections 2.4B(iii)(a)-(d), Company shall deliver to Administrative Agent an Officer's Certificate demonstrating the calculation of the amount of the applicable Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds or Net Securities Proceeds, as the case may be, that gave rise to such prepayment and/or reduction. In the event that Company shall subsequently determine that the actual amount was greater than the amount set forth in such Officer's Certificate, Company shall promptly make an additional prepayment of the Term Loans in an amount equal to the amount of such excess, and Company shall concurrently therewith deliver to Administrative Agent an Officer's Certificate demonstrating the derivation of the additional amount resulting in such excess.

(f) Prepayments Due to Reductions or Restrictions of Revolving Loan Commitments. Company shall from time to time prepay first the Swing Line Loans and second the Revolving Loans to the extent necessary so that the Total Utilization of Revolving Loan Commitments shall not at any time exceed the Revolving Loan Commitments then in effect.

(iv) Application of Prepayments.

(a) Application of Voluntary Prepayments by Type of Loans and Order of Maturity. Any voluntary prepayments pursuant to subsection 2.4B(i) shall be applied as specified by Company in the applicable notice of prepayment; provided that in the event Company fails to specify the Loans to which any such prepayment shall be applied, such prepayment shall be applied first, to repay outstanding Swing Line Loans to the full extent thereof, second, to repay

outstanding Revolving Loans to the full extent thereof, and third, to repay outstanding Term Loans to the full extent thereof. Any voluntary prepayments of the Term Loans pursuant to subsection 2.4B(i) shall be applied to reduce the scheduled installments of principal of the Term Loans set forth in subsection 2.4A(i) in inverse chronological order.

(b) Application of Mandatory Prepayments by Type of Loans. Except as provided in subsection 2.4D, any amount required to be applied as a mandatory prepayment of the Loans pursuant to subsections 2.4B(iii)(a)-(d) shall be applied first, to prepay the Term Loans to the full extent thereof, second, to the extent of any remaining portion of such amount, to prepay the Swing Line Loans to the full extent thereof, and third, to the extent of any remaining portion of such amount, to prepay the Revolving Loans to the full extent thereof.

(c) Application of Mandatory Prepayments of Term Loans to the Scheduled Installments of Principal Thereof. Any mandatory prepayments of the Term Loans pursuant to subsection 2.4B(iii), shall be applied to reduce the scheduled installments of principal of the Term Loans set forth in subsection 2.4A(i), in inverse chronological order.

(d) Application of Prepayments to Base Rate Loans and Eurodollar Rate Loans. Considering Term Loans and Revolving Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner that minimizes the amount of any payments required to be made by Company pursuant to subsection 2.6D.

(v) Mandatory Reduction of Revolving Loan Commitment. Upon issuance of the Benghiat Letter of Credit, the Revolving Loan Commitments shall be reduced to an amount equal to $35,000,000 plus the face amount of the Benghiat Letter of Credit.

C. GENERAL PROVISIONS REGARDING PAYMENTS.

(i) Manner and Time of Payment. All payments by Company of principal, interest, fees and other Obligations shall be made in Dollars in same day funds, without defense, setoff or counterclaim, free of any restriction or condition, and delivered to Administrative Agent not later than 12:00 Noon (California time) on the date due at the Funding and Payment Office for the account of Lenders; funds received by Administrative Agent after that time on such due date shall be deemed to have been paid by Company on the next succeeding Business Day.

(ii) Application of Payments to Principal and Interest. Except as provided in subsection 2.2C, all payments in respect of the principal amount of any Loan shall include payment of accrued interest on the principal amount being repaid or prepaid, and all such payments (and, in any event, any payments in respect of any Loan on a date

when interest is due and payable with respect to such Loan) shall be applied to the payment of interest before application to principal.

(iii) Apportionment of Payments. Aggregate principal and interest payments in respect of Term Loans and Revolving Loans shall be apportioned among all outstanding Loans to which such payments relate, in each case proportionately to Lenders' respective Pro Rata Shares. Administrative Agent shall promptly distribute to each Lender, at its primary address set forth below its name on the appropriate signature page hereof or at such other address as such Lender may request, its Pro Rata Share of all such payments received by Administrative Agent and the commitment fees of such Lender, if any, when received by Administrative Agent pursuant to subsection 2.3. Notwithstanding the foregoing provisions of this subsection 2.4C(iii), if, pursuant to the provisions of subsection 2.6C, any Notice of Conversion/Continuation is withdrawn as to any Affected Lender or if any Affected Lender makes Base Rate Loans in lieu of its Pro Rata Share of any Eurodollar Rate Loans, Administrative Agent shall give effect thereto in apportioning payments received thereafter.

(iv) Payments on Business Days. Whenever any payment to be made hereunder shall be stated to be due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in the computation of the payment of interest hereunder or of the commitment fees hereunder, as the case may be.

(v) Notation of Payment. Each Lender agrees that before disposing of any Note held by it, or any part thereof (other than by granting participations therein), that Lender will make a notation thereon of all Loans evidenced by that Note and all principal payments previously made thereon and of the date to which interest thereon has been paid; provided that the failure to make (or any error in the making of) a notation of any Loan made under such Note shall not limit or otherwise affect the obligations of Company hereunder or under such Note with respect to any Loan or any payments of principal or interest on such Note.

D. Application of Proceeds of Collateral and Payments after Event of Default.

Upon termination of the Revolving Loan Commitments or upon the occurrence and during the continuation of an Event of Default, if requested by Requisite Lenders (a) all payments received on account of the Obligations, whether from Company, from any Subsidiary Guarantor or otherwise, shall be applied by Administrative Agent against the Obligations, and (b) all proceeds received by Administrative Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral under any Collateral Document may, in the discretion of Administrative Agent, be held by Administrative Agent as Collateral for, and/or (then or at any time thereafter) applied in full or in part by Administrative Agent against, the applicable Secured Obligations (as defined in such Collateral Document), in each case in the following order of priority:

(i) to the payment of all costs and expenses of such sale, collection or other realization, all other expenses, liabilities and advances made or incurred by Administrative Agent in connection therewith, and all amounts for which Administrative Agent is entitled to compensation (including the fees described in subsection 2.3), reimbursement and indemnification under any Loan Document and all advances made by Administrative Agent thereunder for the account of the applicable Loan Party, and to the payment of all costs and expenses paid or incurred by Administrative Agent in connection with the Loan Documents, all in accordance with subsections 9.4, 10.2 and 10.3 and the other terms of this Agreement and the Loan Documents;

(ii) thereafter, to the payment of all other Obligations for the ratable benefit of the holders thereof (subject to the provisions of subsection 2.4C(ii) hereof); and

(iii) thereafter, to the payment to or upon the order of such Loan Party or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.

2.5 USE OF PROCEEDS.

A. Term Loans. The proceeds of the Term Loans shall be applied by Company to fund the Acquisition Financing Requirements.

B. Revolving Loans; Swing Line Loans. The proceeds of any Revolving Loans and any Swing Line Loans shall be applied by Company for working capital and other general corporate purposes, which may include the making of intercompany loans to any of Company's wholly-owned Subsidiaries, in accordance with subsection 7.1(iii), for their own general corporate purposes

C. Margin Regulations. No portion of the proceeds of any borrowing under this Agreement shall be used by Company or any of its Subsidiaries in any manner that might cause the borrowing or the application of such proceeds to violate Regulation U, Regulation T or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of such Board or to violate the Exchange Act, in each case as in effect on the date or dates of such borrowing and such use of proceeds.

2.6 SPECIAL PROVISIONS GOVERNING EURODOLLAR RATE LOANS.

Notwithstanding any other provision of this Agreement to the contrary, the following provisions shall govern with respect to Eurodollar Rate Loans as to the matters covered:

A. Determination of Applicable Interest Rate. As soon as practicable after 10:00 A.M. (California time) on each Interest Rate Determination Date, Administrative Agent shall determine in accordance with the terms of this Agreement (which determination shall, absent manifest error, be conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the

applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to Company and each Lender.

B. Inability to Determine Applicable Interest Rate. In the event that Administrative Agent shall have determined (which determination shall be conclusive and binding upon all parties hereto), on any Interest Rate Determination Date, that by reason of circumstances affecting the London interbank market adequate and fair means do not exist for ascertaining the interest rate applicable to such Loans on the basis provided for in the definition of Eurodollar Rate, Administrative Agent shall on such date give notice (by telefacsimile or by telephone confirmed in writing) to Company and each Lender of such determination, whereupon (i) no Loans may be made as, or converted to, Eurodollar Rate Loans until such time as Administrative Agent notifies Company and Lenders that the circumstances giving rise to such notice no longer exist, and (ii) any Notice of Borrowing or Notice of Conversion/Continuation given by Company with respect to the Loans in respect of which such determination was made shall be deemed to be for a Base Rate Loan.

C. Illegality or Impracticability of Eurodollar Rate Loans. In the event that on any date any Lender shall have determined (which determination shall be conclusive and binding upon all parties hereto but shall be made only after consultation with Company and Administrative Agent) that the making, maintaining or continuation of its Eurodollar Rate Loans (i) has become unlawful as a result of compliance by such Lender in good faith with any law, treaty, governmental rule, regulation, guideline or order (or would conflict with any such treaty, governmental rule, regulation, guideline or order not having the force of law even though the failure to comply therewith would not be unlawful), or (ii) has become impracticable, or would cause such Lender material hardship, as a result of contingencies occurring after the date of this Agreement which materially and adversely affect the London interbank market or the position of such Lender in that market, then, and in any such event, such Lender shall be an "Affected Lender" and it shall on that day give notice (by telefacsimile or by telephone confirmed in writing) to Company and Administrative Agent of such determination (which notice Administrative Agent shall promptly transmit to each other Lender). Thereafter (a) the obligation of the Affected Lender to make Loans as, or to convert Loans to, Eurodollar Rate Loans shall be suspended until such notice shall be withdrawn by the Affected Lender, (b) to the extent such determination by the Affected Lender relates to a Eurodollar Rate Loan then being requested by Company pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, the Affected Lender shall make such Loan as (or convert such Loan to, as the case may be) a Base Rate Loan, (c) the Affected Lender's obligation to maintain its outstanding Eurodollar Rate Loans (the "Affected Loans") shall be terminated at the earlier to occur of the expiration of the Interest Period then in effect with respect to the Affected Loans or when required by law, and (d) the Affected Loans shall automatically convert into Base Rate Loans on the date of such termination. Notwithstanding the foregoing, to the extent a determination by an Affected Lender as described above relates to a Eurodollar Rate Loan then being requested by Company pursuant to a Notice of Borrowing or a Notice of Conversion/Continuation, Company shall have the option, subject to the provisions of subsection 2.6D, to rescind such Notice of Borrowing or Notice of Conversion/Continuation as to all Lenders by giving notice (by telefacsimile or by telephone confirmed in writing) to

Administrative Agent of such rescission on the date on which the Affected Lender gives notice of its determination as described above (which notice of rescission Administrative Agent shall promptly transmit to each other Lender). Except as provided in the immediately preceding sentence, nothing in this subsection 2.6C shall affect the obligation of any Lender other than an Affected Lender to make or maintain Loans as, or to convert Loans to, Eurodollar Rate Loans in accordance with the terms of this Agreement.

D. Compensation For Breakage or Non-Commencement of Interest Periods. Company shall compensate each Lender, upon written request by that Lender pursuant to subsection 2.8, for all reasonable losses, expenses and liabilities (including any interest paid by that Lender to lenders of funds borrowed by it to make or carry its Eurodollar Rate Loans and any loss, expense or liability sustained by that Lender in connection with the liquidation or re-employment of such funds) which that Lender may sustain: (i) if for any reason (other than a default by that Lender) a borrowing of any Eurodollar Rate Loan does not occur on a date specified therefor in a Notice of Borrowing or a telephonic request therefor, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Notice of Conversion/Continuation or a telephonic request therefor, (ii) if any prepayment or other principal payment or any conversion of any of its Eurodollar Rate Loans (including any prepayment or conversion occasioned by the circumstances described in subsection 2.6C) occurs on a date prior to the last day of an Interest Period applicable to that Loan, (iii) if any prepayment of any of its Eurodollar Rate Loans is not made on any date specified in a notice of prepayment given by Company, or (iv) as a consequence of any other default by Company in the repayment of its Eurodollar Rate Loans when required by the terms of this Agreement.

E. Booking of Eurodollar Rate Loans. Any Lender may make, carry or transfer Eurodollar Rate Loans at, to, or for the account of any of its branch offices or the office of an Affiliate of that Lender.

F. Assumptions Concerning Funding of Eurodollar Rate Loans. Calculation of all amounts payable to a Lender under this subsection 2.6 and under subsection 2.7A shall be made as though that Lender had funded each of its Eurodollar Rate Loans through the purchase of a Eurodollar deposit bearing interest at the rate obtained pursuant to clause (i) of the definition of Eurodollar Rate in an amount equal to the amount of such Eurodollar Rate Loan and having a maturity comparable to the relevant Interest Period, whether or not its Eurodollar Rate Loans had been funded in such manner.

G. Eurodollar Rate Loans After Default. After the occurrence of and during the continuation of a Potential Event of Default or an Event of Default, (i) Company may not elect to have a Loan be made or maintained as, or converted to, a Eurodollar Rate Loan after the expiration of any Interest Period then in effect for that Loan, and (ii) subject to the provisions of subsection 2.6D, any Notice of Borrowing or Notice of Conversion/Continuation given by Company with respect to a requested borrowing or conversion/continuation that has not yet occurred shall be deemed to be for a Base Rate Loan or, if the conditions to making a Loan set forth in subsection 4.2 cannot then be satisfied, to be rescinded by Company.

2.7 INCREASED COSTS; TAXES; CAPITAL ADEQUACY.

A. Compensation for Increased Costs. Subject to the provisions of subsection 2.7B (which shall be controlling with respect to the matters covered thereby), in the event that any Lender (including the Issuing Lender) shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that any law, treaty or governmental rule, regulation or order, or any change therein or in the interpretation, administration or application thereof (including the introduction of any new law, treaty or governmental rule, regulation or order), or any determination of a court or other Government Authority, in each case that becomes effective after the date hereof, or compliance by such Lender with any guideline, request or directive issued or made after the date hereof by any central bank or other Government Authority (whether or not having the force of law):

(i) subjects such Lender to any additional Tax with respect to this Agreement or any of its obligations hereunder (including with respect to issuing or maintaining any Letters of Credit or purchasing or maintaining any participations therein or maintaining any Commitment hereunder) or any payments to such Lender of principal, interest, fees or any other amount payable hereunder;

ii) imposes, modifies or holds applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets held by, or deposits or other liabilities in or for the account of, or advances or loans by, or other credit extended by, or any other acquisition of funds by, any office of such Lender (other than any such reserve or other requirements with respect to Eurodollar Rate Loans that are reflected in the definition of Eurodollar Rate); or

(iii) imposes any other condition (other than with respect to Taxes) on or affecting such Lender or its obligations hereunder or the London interbank market;

and the result of any of the foregoing is to increase the cost to such Lender of agreeing to make, making or maintaining its Loans or Commitments or agreeing to issue, issuing or maintaining any Letter of Credit or agreeing to purchase, purchasing or maintaining any participation therein or to reduce any amount received or receivable by such Lender with respect thereto; then, in any such case, Company shall promptly pay to such Lender, upon receipt of the statement referred to in subsection 2.8A, such additional amount or amounts (in the form of an increased rate of, or a different method of calculating, interest or otherwise as such Lender in its sole discretion shall determine) as may be necessary to compensate such Lender for any such increased cost or reduction in amounts received or receivable hereunder and any additional amounts to the extent necessary to take into account any taxes (including for these purposes any income, recordation, mortgage, stamp or documentary taxes) such Lender may incur as a result of such additional amounts.

B. TAXES.

(i) Payments to Be Free and Clear. All sums payable by Company under this Agreement and the other Loan Documents shall be paid free and clear of, and without

any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within the United States or any political subdivision in or of the United States or any other jurisdiction from or to which a payment is made by or on behalf of Company or by any federation or organization of which the United States or any such jurisdiction is a member at the time of payment.

(ii) Grossing-up of Payments. If Company or any other Person is required by law to make any deduction or withholding on account of any such Tax from any sum paid or payable by Company to Administrative Agent or any Lender under any of the Loan Documents:

(a) Company shall notify Administrative Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it;

(b) Company shall pay any such Tax when such Tax is due, such payment to be made (if the liability to pay is imposed on Company) for its own account or (if that liability is imposed on Administrative Agent or such Lender, as the case may be) on behalf of and in the name of Administrative Agent or such Lender;

(c) the sum payable by Company in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Administrative Agent or such Lender, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made, and shall be increased to the extent necessary to take into account any taxes (including for these purposes any income, recordation, mortgage, stamp and documentary taxes) Administrative Agent or such Lender, as the case may be, may incur as a result of such payment; and

(d) within 30 days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by clause (b) above to pay, Company shall deliver to Administrative Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority;

provided that no such additional amount shall be required to be paid to any Lender under clause (c) above except to the extent that any change after the date on which such Lender became a Lender in any such requirement for a deduction, withholding or payment as is mentioned therein shall result in an increase in the rate of such deduction, withholding or payment from that in effect on the date on which such Lender became a Lender, in respect of payments to such Lender.

(iii) Evidence of Exemption from U.S. Withholding Tax.

(a) Each Lender that is organized under the laws of any jurisdiction other than the United States or any state or other political subdivision thereof (a "Non-US Lender") shall deliver to Administrative Agent and to Company, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof) or on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), and at such other times as may be necessary in the determination of Company or Administrative Agent (each in the reasonable exercise of its discretion), two original copies of Internal Revenue Service Form W-8BEN or W-8ECI (or any successor forms) properly completed and duly executed by such Lender, or, in the case of a Non-US Lender claiming exemption from United States federal withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code with respect to payments of "portfolio interest", a form W-8BEN, and, in the case of a Lender that has certified in writing to Administrative Agent that it is not a "bank" (as defined in Section 881(c)(3)(A) of the Internal Revenue Code), a certificate of such Lender certifying that such Lender is not (i) a "bank" for purposes of Section 881(c) of the Internal Revenue Code, (ii) a ten-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of Company, or (iii) a controlled foreign corporation related to Company (within the meaning of Section 864(d)(4) of the Internal Revenue Code) in each case together with any other certificate or statement of exemption required under the Internal Revenue Code or the regulations issued thereunder to establish that such Lender is not subject to United States withholding tax with respect to any payments to such Lender of interest payable under any of the Loan Documents.

(b) Each Non-US Lender, to the extent it does not act or ceases to act for its own account with respect to any portion of any sums paid or payable to such Lender under any of the Loan Documents (for example, in the case of a typical participation by such Lender), shall deliver to Administrative Agent and to Company, on or prior to the Closing Date (in the case of each Lender listed on the signature pages hereof), on or prior to the date of the Assignment Agreement pursuant to which it becomes a Lender (in the case of each other Lender), or on such later date when such Lender ceases to act for its own account with respect to any portion of any such sums paid or payable, and at such other times as may be necessary in the determination of Company or Administrative Agent (each in the reasonable exercise of its discretion), (1) two original copies of the forms or statements required to be provided by such Lender under subsection 2.7B(iii)(a), properly completed and duly executed by such Lender, to establish the portion of any such sums paid or payable with respect to which such Lender acts for its own account that is not subject to United States withholding tax, and (2) two original copies of Internal Revenue Service Form W-8IMY (or any successor forms) properly completed and duly executed by such Lender, together with any information, if any, such Lender chooses to transmit with such form, and any

other certificate or statement of exemption required under the Internal Revenue Code or the regulations issued thereunder, to establish that such Lender is not acting for its own account with respect to a portion of any such sums payable to such Lender.

(c) Each Non-US Lender hereby agrees, from time to time after the initial delivery by such Lender of such forms, whenever a lapse in time or change in circumstances renders such forms, certificates or other evidence so delivered obsolete or inaccurate in any material respect, that such Lender shall promptly (1) deliver to Administrative Agent and to Company two original copies of renewals, amendments or additional or successor forms, properly completed and duly executed by such Lender, together with any other certificate or statement of exemption required in order to confirm or establish that such Lender is not subject to United States withholding tax with respect to payments to such Lender under the Loan Documents and, if applicable, that such Lender does not act for its own account with respect to any portion of such payment, or (2) notify Administrative Agent and Company of its inability to deliver any such forms, certificates or other evidence.

(d) Company shall not be required to pay any additional amount to any Non-US Lender under clause (c) of subsection 2.7B(ii), (1) with respect to any Tax required to be deducted or withheld on the basis of the information, certificates or statements of exemption such Lender chooses to transmit with an Internal Revenue Service Form W-8IMY pursuant to subsection 2.7B(iii)(b)(2), or (2) if such Lender shall have failed to satisfy the requirements of clause (a), (b) or (c)(1) of this subsection 2.7B(iii); provided that if such Lender shall have satisfied the requirements of subsection 2.7B(iii)(a) on the date such Lender became a Lender, nothing in this subsection 2.7B(iii)(d) shall relieve Company of its obligation to pay any amounts pursuant to subsection 2.7B(ii)(c) in the event that, as a result of any change in any applicable law, treaty or governmental rule, regulation or order, or any change in the interpretation, administration or application thereof, such Lender is no longer properly entitled to deliver forms, certificates or other evidence at a subsequent date establishing the fact that such Lender is not subject to withholding as described in subsection 2.7B(iii)(a).

C. Capital Adequacy Adjustment. If any Lender shall have determined that the adoption, effectiveness, phase-in or applicability after the date hereof of any law, rule or regulation (or any provision thereof) regarding capital adequacy, or any change therein or in the interpretation or administration thereof by any Government Authority charged with the interpretation or administration thereof, or compliance by any Lender with any guideline, request or directive regarding capital adequacy (whether or not having the force of law) of any such Government Authority, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of, or with reference to, such Lender's Loans or Commitments or Letters of Credit or participations therein or other obligations hereunder with respect to the Loans or the Letters of Credit to a level below that which such Lender or such controlling corporation could have achieved but for such adoption,

effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Lender or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Company from such Lender of the statement referred to in subsection 2.8A, Company shall pay to such Lender such additional amount or amounts as will compensate such Lender or such controlling corporation on an after-tax basis for such reduction increased to the extent necessary to take into account any taxes (including for these purposes any income, recordation, mortgage, stamp or documentary taxes) such Lender may incur as a result of such additional amounts.

2.8 STATEMENT OF LENDERS; OBLIGATION OF LENDERS AND THE ISSUING LENDER TO MITIGATE.

A. Statements. Each Lender claiming compensation or reimbursement pursuant to subsection 2.6D, 2.7 or 2.8B shall deliver to Company (with a copy to Administrative Agent) a written statement, setting forth in reasonable detail the basis of the calculation of such compensation or reimbursement, which statement shall be conclusive and binding upon all parties hereto absent manifest error.

B. Mitigation. Each Lender and the Issuing Lender agrees that, as promptly as practicable after the officer of such Lender or the Issuing Lender responsible for administering the Loans or Letters of Credit of such Lender or the Issuing Lender, as the case may be, becomes aware of the occurrence of an event or the existence of a condition that would cause such Lender to become an Affected Lender or that would entitle such Lender or the Issuing Lender to receive payments under subsection 2.7, use reasonable effort to make, issue, fund or maintain the Commitments of such Lender or the Affected Loans or Letters of Credit of such Lender or the Issuing Lender through another lending or letter of credit office of such Lender or the Issuing Lender, if (i) as a result thereof the circumstances which would cause such Lender to be an Affected Lender would cease to exist or the additional amounts which would otherwise be required to be paid to such Lender or the Issuing Lender pursuant to subsection 2.7 would be materially reduced, and (ii) as determined by such Lender or the Issuing Lender in its sole discretion, such action would not otherwise be disadvantageous to such Lender or the Issuing Lender; provided that such Lender or the Issuing Lender will not be obligated to utilize such other lending or letter of credit office pursuant to this subsection 2.8B unless Company agrees to pay all incremental expenses incurred by such Lender or the Issuing Lender as a result of utilizing such other lending or letter of credit office as described above.

Section 3. LETTERS OF CREDIT

3.1 ISSUANCE OF LETTERS OF CREDIT AND LENDERS' PURCHASE OF PARTICIPATIONS THEREIN.

A. Letters of Credit. In addition to Company requesting that Lenders make Revolving Loans pursuant to subsection 2.1A(ii) and that Swing Line Lender make Swing Line Loans pursuant to subsection 2.1A(iii), Company may request, in accordance with the provisions of this subsection 3.1, from time to time during the period from the Closing Date to but excluding the 30th day prior to the Revolving Loan Commitment Termination Date, that the

Issuing Lender issue Letters of Credit payable on a sight basis for the account of Company for the purposes specified in the definitions of Commercial Letters of Credit and Standby Letters of Credit. Subject to the terms and conditions of this Agreement and in reliance upon the representations and warranties of Company herein set forth, the Issuing Lender shall issue such Letters of Credit in accordance with the provisions of this subsection 3.1; provided that Company shall not request that the Issuing Lender issue (and the Issuing Lender shall not issue):

(i) any Letter of Credit if, after giving effect to such issuance, the Total Utilization of Revolving Loan Commitments would exceed the Revolving Loan Commitments then in effect;

(ii) any Letter of Credit if, after giving effect to such issuance, the Letter of Credit Usage would exceed (a) $25,000,000 at any time prior to entry of a judgment in the Benghiat Litigation and (b) $25,000,000 plus the face amount of the Benghiat Letter of Credit at any time on or after entry of a judgment in the Benghiat Litigation;

(iii) any Standby Letter of Credit having an expiration date later than the earlier of (a) ten days prior to the Revolving Loan Commitment Termination Date, and (b) the date which is one year from the date of issuance of such Standby Letter of Credit; provided that the immediately preceding clause (b) shall not prevent the Issuing Lender from agreeing that a Standby Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each unless the Issuing Lender elects not to extend for any such additional period; and provided further that the Issuing Lender shall elect not to extend such Standby Letter of Credit if it has knowledge that an Event of Default has occurred and is continuing (and has not been waived in accordance with subsection 10.6) at the time the Issuing Lender must elect whether or not to allow such extension;

(iv) any Standby Letter of Credit issued for the purpose of supporting (a) trade payables or (b) any Indebtedness constituting "antecedent debt" (as that term is used in Section 547 of the Bankruptcy Code);

(v) any Commercial Letter of Credit having an expiration date (a) later than the earlier of (1) the Revolving Loan Commitment Termination Date and (2) the date which is 180 days from the date of issuance of such Commercial Letter of Credit, or (b) that is otherwise unacceptable to the Issuing Lender in its reasonable discretion; or

(vi) any Letter of Credit for any purpose other than securing the Benghiat Appeal Bond if, after giving effect to such issuance, the Letter of Credit Usage would exceed $35,000,000.

On and after the Closing Date, the Existing Wells Fargo Letters of Credit shall be deemed for all purposes, including for purposes of the fees to be collected pursuant to subsection 3.2, and reimbursement of all costs and expenses to the extent provided herein, to be Letters of Credit outstanding under this Agreement and entitled to the

benefits of this Agreement and the other Loan Documents, and shall be governed by the applications and agreements pertaining thereto and by this Agreement.

B. Mechanics of Issuance.

(i) Request for Issuance. Whenever Company desires the issuance of a Letter of Credit, it shall deliver to Administrative Agent a Request for Issuance no later than 12:00 Noon (California time) at least three Business Days (in the case of Standby Letters of Credit) or five Business Days (in the case of Commercial Letters of Credit), or in each case such shorter period as may be agreed to by the Issuing Lender in any particular instance, in advance of the proposed date of issuance. The Issuing Lender, in its reasonable discretion, may require changes in the text of the proposed Letter of Credit or any documents described in or attached to the Request for Issuance. In furtherance of the provisions of subsection 10.8, and not in limitation thereof, Company may submit Requests for Issuance by telefacsimile and Administrative Agent and the Issuing Lender may rely and act upon any such Request for Issuance without receiving an original signed copy thereof. No Letter of Credit shall require payment against a conforming demand for payment to be made thereunder on the same business day (under the laws of the jurisdiction in which the office of the Issuing Lender to which such demand for payment is required to be presented is located) that such demand for payment is presented if such presentation is made after 10:00 A.M. (in the time zone of such office of the Issuing Lender) on such business day.

Company shall notify Administrative Agent prior to the issuance of any Letter of Credit in the event that any of the matters to which Company is required to certify in the applicable Request for Issuance is no longer true and correct as of the proposed date of issuance of such Letter of Credit, and upon the issuance of any Letter of Credit Company shall be deemed to have re-certified, as of the date of such issuance, as to the matters to which Company is required to certify in the applicable Request for Issuance.

(ii) Determination of Issuing Lender. Upon receipt of a Request for Issuance pursuant to subsection 3.1B(i) requesting the issuance of a Letter of Credit, Administrative Agent shall be the Issuing Lender with respect to such Letter of Credit, notwithstanding the fact that the Letter of Credit Usage with respect to such Letter of Credit and with respect to all other Letters of Credit issued by Administrative Agent, when aggregated with Administrative Agent's outstanding Revolving Loans and Swing Line Loans, may exceed Administrative Agent's Revolving Loan Commitment then in effect; provided that Administrative Agent shall not be obligated to issue any Letter of Credit denominated in a foreign currency which in the judgment of Administrative Agent is not readily and freely available.

(iii) Issuance of Letter of Credit. Upon satisfaction or waiver (in accordance with subsection 10.6) of the conditions set forth in subsection 4.3, the Issuing Lender shall issue the requested Letter of Credit in accordance with the Issuing Lender's standard operating procedures.

(iv) Notification to Revolving Lenders. Upon the issuance of or amendment to any Standby Letter of Credit the Issuing Lender shall promptly notify Administrative Agent and Company of such issuance or amendment in writing and such notice shall be accompanied by a copy of such Letter of Credit or amendment. Upon receipt of such notice, Administrative Agent shall notify each Revolving Lender in writing of such issuance or amendment and the amount of such Revolving Lender's respective participation in such Standby Letter of Credit or amendment, and, if so requested by a Revolving Lender, Administrative Agent shall provide such Lender with a copy of such Letter of Credit or amendment.

C. Revolving Lenders' Purchase of Participations in Letters of Credit. Immediately upon the issuance of each Letter of Credit, each Revolving Lender shall be deemed to, and hereby agrees to, have irrevocably purchased from the Issuing Lender a participation in such Letter of Credit and any drawings honored thereunder in an amount equal to such Revolving Lender's Pro Rata Share of the maximum amount that is or at any time may become available to be drawn thereunder.

3.2 LETTER OF CREDIT FEES.

Company agrees to pay the following amounts with respect to Letters of Credit issued hereunder:

(i) with respect to each Standby Letter of Credit, (a) a fronting fee, payable directly to the Issuing Lender for its own account, equal to 0.125% per annum of the daily amount available to be drawn under such Standby Letter of Credit, and (b) a letter of credit fee, payable to Administrative Agent for the account of Revolving Lenders, equal to the applicable Eurodollar Rate Margin for Term Loans multiplied by the daily amount available to be drawn under such Standby Letter of Credit, each such fronting fee or letter of credit fee to be payable in arrears on and to (but excluding) each March 31, June 30, September 30 and December 31 of each year and computed on the basis of a 360-day year for the actual number of days elapsed;

(ii) with respect to each Commercial Letter of Credit, (a) a fronting fee, payable directly to the Issuing Lender for its own account, equal to the greater of (X) $500 and (Y) 0.125% per annum of the daily amount available to be drawn under such Commercial Letter of Credit, and (b) a letter of credit fee, payable to Administrative Agent for the account of Revolving Lenders, equal to the applicable Eurodollar Rate Margin for Term Loans multiplied by the daily amount available to be drawn under such Commercial Letter of Credit, each such fronting fee or letter of credit fee to be payable in arrears on and to (but excluding) each March 31, June 30, September 30 and December 31 of each year and computed on the basis of a 360-day year for the actual number of days elapsed; and

(iii) with respect to the issuance, amendment or transfer of each Letter of Credit and each payment of a drawing made thereunder (without duplication of the fees payable under clauses (i) and (ii) above), documentary and processing charges payable

directly to the Issuing Lender for its own account in accordance with the Issuing Lender's standard schedule for such charges in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

For purposes of calculating any fees payable under clauses (i) and (ii) of this subsection 3.2, (1) the daily amount available to be drawn under any Letter of Credit shall be determined as of the close of business on any date of determination and (2) any amount described in such clauses which is denominated in a currency other than Dollars shall be valued based on the applicable Exchange Rate for such currency as of the applicable date of determination. Promptly upon receipt by Administrative Agent of any amount described in clause (i)(b) or (ii)(b) of this subsection 3.2, Administrative Agent shall distribute to each Revolving Lender its Pro Rata Share of such amount.

3.3 DRAWINGS AND REIMBURSEMENT OF AMOUNTS PAID UNDER LETTERS OF CREDIT.

A. Responsibility of Issuing Lender With Respect to Drawings. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the Issuing Lender shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in accordance with the terms and conditions of such Letter of Credit.

B. Reimbursement by Company of Amounts Paid Under Letters of Credit. In the event the Issuing Lender has determined to honor a drawing under a Letter of Credit issued by it, the Issuing Lender shall immediately notify Company and Administrative Agent, and Company shall reimburse the Issuing Lender on or before the Business Day immediately following the date on which such drawing is honored (the "Reimbursement Date") in an amount in Dollars (which amount, in the case of a payment under a Letter of Credit which is denominated in a currency other than Dollars, shall be calculated by reference to the applicable Exchange Rate) and in same day funds equal to the amount of such payment; provided that, anything contained in this Agreement to the contrary notwithstanding, (i) unless Company shall have notified Administrative Agent and the Issuing Lender prior to 10:00 A.M. (California time) on the date such drawing is honored that Company intends to reimburse the Issuing Lender for the amount of such payment with funds other than the proceeds of Revolving Loans, Company shall be deemed to have given a timely Notice of Borrowing to Administrative Agent requesting Revolving Lenders to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars (which amount, in the case of a payment under a Letter of Credit which is denominated in a currency other than Dollars, shall be calculated by reference to the applicable Exchange Rate) equal to the amount of such payment, and (ii) subject to satisfaction or waiver of the conditions specified in subsection 4.2B, Revolving Lenders shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such payment, the proceeds of which shall be applied directly by Administrative Agent to reimburse the Issuing Lender for the amount of such payment; and provided further that if for any reason proceeds of Revolving Loans are not received by the Issuing Lender on the Reimbursement Date in an amount equal to the amount of such payment, Company shall reimburse the Issuing Lender, on demand, in an amount in same day funds equal to the excess of the amount of such payment over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in

this subsection 3.3B shall be deemed to relieve any Revolving Lender from its obligation to make Revolving Loans on the terms and conditions set forth in this Agreement, and Company shall retain any and all rights it may have against any Revolving Lender resulting from the failure of such Revolving Lender to make such Revolving Loans under this subsection 3.3B.

C. Payment by Lenders of Unreimbursed Amounts Paid Under Letters of Credit.

(i) Payment by Revolving Lenders. In the event that Company shall fail for any reason to reimburse the Issuing Lender as provided in subsection 3.3B in an amount (calculated, in the case of a payment under a Letter of Credit denominated in a currency other than Dollars, by reference to the applicable Exchange Rate) equal to the amount of any payment by the Issuing Lender under a Letter of Credit issued by it, the Issuing Lender shall promptly notify each other Lender of the unreimbursed amount of such honored drawing and of such other Revolving Lender's respective participation therein based on such Revolving Lender's Pro Rata Share. Each Revolving Lender shall make available to the Issuing Lender an amount equal to its respective participation, in Dollars and in same day funds, at the office of the Issuing Lender specified in such notice, not later than 12:00 Noon (California time) on the first business day (under the laws of the jurisdiction in which such office of the Issuing Lender is located) after the date notified by the Issuing Lender. In the event that any Revolving Lender fails to make available to the Issuing Lender on such business day the amount of such Revolving Lender's participation in such Letter of Credit as provided in this subsection 3.3C, the Issuing Lender shall be entitled to recover such amount on demand from such Revolving Lender together with interest thereon at the rate customarily used by the Issuing Lender for the correction of errors among banks for three Business Days and thereafter at the Base Rate. Nothing in this subsection 3.3C shall be deemed to prejudice the right of any Lender to recover from the Issuing Lender any amounts made available by such Revolving Lender to the Issuing Lender pursuant to this subsection 3.3C in the event that it is determined by the final judgment of a court of competent jurisdiction that the payment with respect to a Letter of Credit by the Issuing Lender in respect of which payment was made by such Revolving Lender constituted gross negligence or willful misconduct on the part of the Issuing Lender.

(ii) Distribution to Lenders of Reimbursements Received From Company. In the event the Issuing Lender shall have been reimbursed by other Revolving Lenders pursuant to subsection 3.3C(i) for all or any portion of any payment by the Issuing Lender under a Letter of Credit issued by it, the Issuing Lender shall distribute to each other Revolving Lender that has paid all amounts payable by it under subsection 3.3C(i) with respect to such payment such other Revolving Lender's Pro Rata Share of all payments subsequently received by the Issuing Lender from Company in reimbursement of such payment under the Letter of Credit when such payments are received. Any such distribution shall be made to a Revolving Lender at its primary address set forth below its name on the appropriate signature page hereof or at such other address as such Revolving Lender may request.

D. Interest on Amounts Paid Under Letters of Credit.

(i) Payment of Interest by Company. Company agrees to pay to the Issuing Lender, with respect to payments under any Letters of Credit issued by it, interest on the amount paid by the Issuing Lender in respect of each such payment from the date a drawing is honored to but excluding the date such amount is reimbursed by Company (including any such reimbursement out of the proceeds of Revolving Loans pursuant to subsection 3.3B) at a rate equal to (a) for the period from the date such drawing is honored to but excluding the Reimbursement Date, the rate then in effect under this Agreement with respect to Revolving Loans that are Base Rate Loans, and (b) thereafter, a rate which is 2% per annum in excess of the rate of interest otherwise payable under this Agreement with respect to Revolving Loans that are Base Rate Loans. Interest payable pursuant to this subsection 3.3D(i) shall be computed on the basis of a 360-day year for the actual number of days elapsed in the period during which it accrues and shall be payable on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full.

(ii) Distribution of Interest Payments by Issuing Lender. Promptly upon receipt by the Issuing Lender of any payment of interest pursuant to subsection 3.3D(i) with respect to a payment under a Letter of Credit issued by it, (a) the Issuing Lender shall distribute to each other Revolving Lender, out of the interest received by the Issuing Lender in respect of the period from the date such drawing is honored to but excluding the date on which the Issuing Lender is reimbursed for the amount of such payment (including any such reimbursement out of the proceeds of Revolving Loans pursuant to subsection 3.3B), the amount that such other Revolving Lender would have been entitled to receive in respect of the letter of credit fee that would have been payable in respect of such Letter of Credit for such period pursuant to subsection 3.2 if no drawing had been honored under such Letter of Credit, and (b) in the event the Issuing Lender shall have been reimbursed by other Revolving Lenders pursuant to subsection 3.3C(i) for all or any portion of such payment, the Issuing Lender shall distribute to each other Revolving Lender that has paid all amounts payable by it under subsection 3.3C(i) with respect to such payment such other Revolving Lender's Pro Rata Share of any interest received by the Issuing Lender in respect of that portion of such payment so reimbursed by other Revolving Lenders for the period from the date on which the Issuing Lender was so reimbursed by other Revolving Lenders to but excluding the date on which such portion of such payment is reimbursed by Company. Any such distribution shall be made to a Revolving Lender at its primary address set forth below its name on the appropriate signature page hereof or at such other address as such Revolving Lender may request.

3.4 OBLIGATIONS ABSOLUTE.

The obligation of Company to reimburse the Issuing Lender for payments under the Letters of Credit issued by it and to repay any Revolving Loans made by Revolving Lenders pursuant to subsection 3.3B and the obligations of Revolving Lenders under subsection 3.3C(i) shall be unconditional and irrevocable and shall be paid strictly in accordance with the terms of this Agreement under all circumstances including any of the following circumstances:

(i) any lack of validity or enforceability of any Letter of Credit;

(ii) the existence of any claim, set-off, defense or other right which Company or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), the Issuing Lender or other Revolving Lender or any other Person or, in the case of a Revolving Lender, against Company, whether in connection with this Agreement, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between Company or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured);

(iii) any draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(iv) payment by the Issuing Lender under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit;

(v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company or any of its Subsidiaries;

(vi) any breach of this Agreement or any other Loan Document by any party thereto;

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or

(viii) the fact that an Event of Default or a Potential Event of Default shall have occurred and be continuing;

provided, in each case, that payment by the Issuing Lender under the applicable Letter of Credit shall not have constituted gross negligence or willful misconduct of the Issuing Lender under the circumstances in question (as determined by a final judgment of a court of competent jurisdiction).

3.5 NATURE OF ISSUING LENDER'S DUTIES.

As between Company and the Issuing Lender, Company assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the Issuing Lender by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Issuing Lender shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any

such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Issuing Lender, including any act or omission by a Government Authority, and none of the above shall affect or impair, or prevent the vesting of, any of the Issuing Lender's rights or powers hereunder.

In furtherance and extension and not in limitation of the specific provisions set forth in the first paragraph of this subsection 3.5, any action taken or omitted by the Issuing Lender under or in connection with the Letters of Credit issued by it or any documents and certificates delivered thereunder, if taken or omitted in good faith, shall not put the Issuing Lender under any resulting liability to Company.

Notwithstanding anything to the contrary contained in this subsection 3.5, Company shall retain any and all rights it may have against the Issuing Lender for any liability arising solely out of the gross negligence or willful misconduct of the Issuing Lender, as determined by a final judgment of a court of competent jurisdiction.

## SECTION 4. CONDITIONS TO LOANS AND LETTERS OF CREDIT

The obligations of Lenders to make Loans and the issuance of Letters of Credit hereunder are subject to the satisfaction of the following conditions.

### 4.1 CONDITIONS TO TERM LOANS AND INITIAL REVOLVING LOANS AND SWING LINE LOANS.

The obligations of Lenders to make the Term Loans and any Revolving Loans and Swing Line Loans to be made, and to issue any Letters of Credit to be issued, on the Closing Date are, in addition to the conditions precedent specified in subsection 4.2, subject to prior or concurrent satisfaction of the following conditions:

A. Loan Party Documents. On or before the Closing Date, Company shall, and shall cause each other Loan Party to, deliver to Lenders (or to Administrative Agent with sufficient originally executed copies, where appropriate, for each Lender) the following with respect to Company or such Loan Party, as the case may be, each, unless otherwise noted, dated the Closing Date:

(i) Copies of the Organizational Documents of such Person, certified by the Secretary of State of its jurisdiction of organization or, if such document is of a type that may not be so certified, certified by the secretary or similar officer of the applicable Loan

Party, together with a good standing certificate from the Secretary of State of its jurisdiction of organization and each other state in which such Person is qualified to do business and, to the extent generally available, a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of each of such jurisdictions, each dated a recent date prior to the Closing Date;

(ii) Resolutions of the Governing Body of such Person approving and authorizing the execution, delivery and performance of the Loan Documents to which it is a party, certified as of the Closing Date by the secretary or similar officer of such Person as being in full force and effect without modification or amendment;

(iii) Signature and incumbency certificates of the officers of such Person executing the Loan Documents to which it is a party;

(iv) Executed originals of the Loan Documents to which such Person is a party; and

(v) Such other documents as Administrative Agent may reasonably request.

B. Fees. Company shall have paid to Administrative Agent, for distribution (as appropriate) to Administrative Agent and Lenders, the fees payable on the Closing Date referred to in subsection 2.3.

C. Corporate and Capital Structure; Ownership.

(i) Corporate Structure. The corporate organizational structure of Company and its Subsidiaries, both before and after giving effect to the Merger, shall be as set forth on Schedule 4.1C annexed hereto.

(ii) Capital Structure and Ownership. The capital structure and ownership of Company and its Subsidiaries, both before and after giving effect to the Merger, shall be as set forth on Schedule 4.1C annexed hereto.

D. Related Agreements. Administrative Agent shall have received a fully executed or conformed copy of the Merger Agreement and each other Related Agreement and any documents executed in connection therewith, and the Merger Agreement and each other Related Agreement shall be in full force and effect, in compliance in all material respects with applicable laws and regulations, and no provision thereof shall have been amended, supplemented, waived or otherwise modified in any respect determined by Administrative Agent to be material, in each case without the prior written consent of Administrative Agent.

E. Officer's Certificate. Administrative Agent shall have received an Officer's Certificate from each of the parties to the Merger Agreement to the effect that (i) the representations and warranties of such party, if any, in the Merger Agreement are true, correct and complete in all material respects on and as of the Closing Date to the same extent as though made on and as of that date, (ii) the Merger Agreement is in full force and effect and no

provision thereof has been modified or waived in any respect without the consent of Administrative Agent, and (iii) each such Person has complied with all agreements and conditions contained in the Merger Agreement and any agreements or documents referred to therein required to be performed or complied with by each of them on or before the Closing Date and none of such Persons is in default in their performance or compliance with any of the terms or provisions thereof.

F. Representations and Warranties; Performance of Agreements. Company shall have delivered to Administrative Agent an Officer's Certificate, in form and substance satisfactory to Administrative Agent, to the effect that the representations and warranties in Section 5 are true, correct and complete in all material respects on and as of the Closing Date to the same extent as though made on and as of that date (or, to the extent such representations and warranties specifically relate to an earlier date, that such representations and warranties were true, correct and complete in all material respects on and as of such earlier date) and that Company shall have performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before the Closing Date except as otherwise disclosed to and agreed to in writing by Administrative Agent; provided that, if a representation and warranty, covenant or condition is qualified as to materiality, with respect to such representation and warranty, covenant or condition the applicable materiality qualifier set forth above shall be disregarded for purposes of this condition.

G. Financial Statements; Pro Forma Financial Statements. Lenders shall have received from Company (i) audited financial statements of Silicon Energy Corp. and its Subsidiaries for Fiscal Years 2000 and 2001, consisting of balance sheets and the related consolidated statements of income, stockholders' equity and cash flows for such Fiscal Years, (ii) unaudited financial statements of Silicon Energy Corp. and its Subsidiaries as at September 30, 2002, consisting of a balance sheet and the related consolidated statements of income, stockholders' equity and cash flows for the nine-month period ending on such date, all in reasonable detail and certified by the chief financial officer of Company that they fairly present the financial condition of Silicon Energy Corp. and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments, (iii) a pro forma consolidated balance sheet of Company and its Subsidiaries as at the Closing Date, prepared in accordance with GAAP and reflecting the consummation of the Merger and the transactions contemplated by the Loan Documents and the Related Agreements, and (iv) projected financial statements (including a consolidated balance sheet, income statements and cash flow statements) of Company and its Subsidiaries for Fiscal Years 2002 through and including 2006, giving effect to the Merger and the transactions contemplated by the Loan Documents, all of the foregoing in form and substance satisfactory to Administrative Agent.

H. Opinions of Counsel to Loan Parties. Lenders shall have received originally executed copies of one or more favorable written opinions of Perkins Coie LLP, counsel for Loan Parties, in form and substance reasonably satisfactory to Administrative Agent and its counsel, dated as of the Closing Date and setting forth substantially the matters in the opinions designated in Exhibit VIII annexed hereto and as to such other matters

as Administrative Agent acting on behalf of Lenders may reasonably request (this Credit Agreement constituting a written request by Company to such counsel to deliver such opinions to Lenders).

I. Opinion of Administrative Agent's Counsel. Lenders shall have received originally executed copies of a favorable written opinion of O'Melveny & Myers LLP, counsel to Administrative Agent, dated as of the Closing Date, substantially in the form of Exhibit X annexed hereto.

J. Opinion of Counsel Delivered Under Related Agreements. Administrative Agent shall have received copies of each of the opinions of counsel delivered to the parties under the Related Agreements, together with a letter from each such counsel authorizing Lenders to rely upon such opinion to the same extent as though it were addressed to Lenders.

K. Solvency Assurances. On the Closing Date, Administrative Agent and Lenders shall have received an Officer's Certificate of Company dated the Closing Date, substantially in the form of Exhibit XI annexed hereto and with appropriate attachments, in each case demonstrating that, after giving effect to the consummation of the transactions contemplated by the Loan Documents, Company and each Subsidiary Guarantor will be Solvent.

L. Evidence of Insurance. Administrative Agent shall have received a certificate from Company's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to subsection 6.4 is in full force and effect and that Administrative Agent on behalf of Lenders has been named as additional insured and/or loss payee thereunder to the extent required under subsection 6.4.

M. Necessary Governmental Authorizations and Consents; Expiration of Waiting Periods, Etc. Company shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the Merger and other transactions contemplated by the Loan Documents and the continued operation of the business conducted by Company and its Subsidiaries in substantially the same manner as conducted prior to the Closing Date. Each such Governmental Authorization and consent shall be in full force and effect, except in a case where the failure to obtain or maintain a Governmental Authorization or consent, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority that would restrain, prevent or otherwise impose adverse conditions on the Merger or the financing thereof. No action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable Government Authority to take action to set aside its consent on its own motion shall have expired.

N. Consummation of Merger.

(i) All conditions to the Merger set forth in the Merger Agreement shall have been satisfied or the fulfillment of any such conditions shall have been waived and in the case of a waiver of a material condition to the performance of the obligations of Company with the consent of the Administrative Agent;

(ii) The Merger shall become effective concurrently with the making of the Loans in accordance with the terms of the Merger Agreement and any documents executed or delivered in connection therewith and in accordance with the laws of the State of Delaware and the State of Washington; and

(iii) The cash consideration paid by Company and its Subsidiaries for the Capital Stock of Silicon Energy Corp. shall not exceed $71,200,000.

Administrative Agent shall have received satisfactory evidence of the filing of the documents with the Delaware Secretary of State and the Washington Secretary of State effecting the Merger.

O. Environmental Reports. Administrative Agent shall have received reports and other information, in form, scope and substance satisfactory to Administrative Agent, regarding environmental matters relating to Company, Silicon Energy Corp. and their respective Subsidiaries and the Facilities, which reports shall include (i) a Phase I environmental assessment for each of the Facilities currently owned by Company, Silicon Energy Corp. or any of their respective Subsidiaries which (a) conforms to the ASTM Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, E 1527, (b) was conducted no more than six months prior to the Closing Date by one or more environmental consulting firms reasonably satisfactory to Administrative Agent, (c) includes an assessment of asbestos-containing materials at such Facilities, and (d) is accompanied by an estimate of the reasonable worst-case cost of investigating and remediating any Hazardous Materials Activity identified in such Phase I environmental assessments as giving rise to an actual or potential material violation of any Environmental Law or as presenting a material risk of giving rise to a material Environmental Claim, and (ii) a current compliance audit setting forth an assessment of Company's, Silicon Energy Corp.'s and their respective Subsidiaries' and such Facilities' current and past compliance with Environmental Laws and an estimate of the cost of rectifying any non-compliance with current Environmental Laws identified therein and the cost of compliance with reasonably anticipated future Environmental Laws identified therein.

P. Security Interests in Collateral. To the extent not otherwise satisfied pursuant to subsection 4.1Q, Administrative Agent shall have received evidence satisfactory to it that Company and Subsidiary Guarantors shall have taken or caused to be taken all such actions, executed and delivered or caused to be executed and delivered all such agreements, documents and instruments, and made or caused to be made all such filings and recordings (other than the filing or recording of items described in clauses (ii), (iii), and (iv) below) that may be necessary or, in the opinion of Administrative Agent, desirable in order to create in favor of Administrative Agent, for the benefit of Lenders, a valid and (upon such filing and recording) perfected First Priority security interest in all Collateral. Such actions shall include the following:

(i) Stock Certificates and Instruments. Delivery to Administrative Agent of (a) certificates (which certificates shall be accompanied by irrevocable undated stock powers, duly endorsed in blank and otherwise satisfactory in form and substance to Administrative Agent) representing all Capital Stock pledged pursuant to the Security Agreement and any Foreign Pledge Agreement, and (b) all promissory notes or other instruments (duly endorsed, where appropriate, in a manner satisfactory to Administrative Agent) evidencing any Collateral;

(ii) Lien Searches and UCC Termination Statements. Delivery to Administrative Agent of (a) the results of a recent search, by a Person satisfactory to Administrative Agent, of all effective UCC financing statements and fixture filings and all judgment and tax lien filings which may have been made with respect to any personal or mixed property of any Loan Party, together with copies of all such filings disclosed by such search, and (b) UCC termination statements duly executed by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements or fixture filings disclosed in such search (other than any such financing statements or fixture filings in respect of Liens permitted to remain outstanding pursuant to the terms of this Agreement);

(iii) UCC Financing Statements and Fixture Filings. Delivery to Administrative Agent of UCC financing statements and, where appropriate, fixture filings, duly authorized by each applicable Loan Party with respect to all personal and mixed property Collateral of such Loan Party, for filing in all jurisdictions as may be necessary or, in the opinion of Administrative Agent, desirable to perfect the security interests created in such Collateral pursuant to the Collateral Documents;

(iv) PTO Cover Sheets, Etc. Delivery to Administrative Agent of all cover sheets or other documents or instruments required to be filed with the PTO in order to create or perfect Liens in respect of any IP Collateral;

(v) Control Agreements. Delivery to Administrative Agent of such control agreements with financial institutions and other Persons in order to perfect Liens in respect of Deposit Accounts, securities accounts and other Collateral pursuant to the Collateral Documents; and

(vi) Foreign Pledge Agreements. Execution and delivery to Administrative Agent of Foreign Pledge Agreements with respect to 66% of the Capital Stock owned by Company or a Domestic Subsidiary of all Significant Foreign Subsidiaries with respect to which Administrative Agent deems a Foreign Pledge Agreement necessary or advisable to perfect or otherwise protect the First Priority Liens granted to Administrative Agent on behalf of Lenders in such Capital Stock, and the taking of all such other actions under the laws of such jurisdictions as Administrative Agent may deem necessary or advisable to perfect or otherwise protect such Liens.

Q. Closing Date Mortgage; Closing Date Mortgage Policy, Etc. Administrative Agent shall have received from Company:

(i) Closing Date Mortgage. A fully executed and notarized Mortgage (the "Closing Date Mortgage"), in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering the Real Property Asset listed in Schedule 4.1Q annexed hereto (the "Closing Date Mortgaged Property");

(ii) Opinions of Local Counsel. An opinion of counsel (which counsel shall be reasonably satisfactory to Administrative Agent) in each state in which the Closing Date Mortgaged Property is located with respect to the enforceability of the form of Closing Date Mortgage to be recorded in such state and such other matters as Administrative Agent may reasonably request, in each case in form and substance reasonably satisfactory to Administrative Agent;

(iii) Title Insurance. (a) an ALTA mortgagee title insurance policy or unconditional commitments therefor (the "Closing Date Mortgage Policy") issued by the Title Company with respect to the Closing Date Mortgaged Property listed in Part A of Schedule 4.1Q annexed hereto, in amounts not less than the respective amounts designated therein with respect to the Closing Date Mortgaged Property, insuring fee simple title to, or a valid leasehold interest in such Closing Date Mortgaged Property vested in such Loan Party and assuring Administrative Agent that the Closing Date Mortgage creates a valid and enforceable First Priority mortgage Lien on the Closing Date Mortgaged Property encumbered thereby, subject only to a standard survey exception, which the Closing Date Mortgage Policy (1) shall include an endorsement for mechanics' liens, for future advances under this Agreement and for any other matters reasonably requested by Administrative Agent and (2) shall provide for affirmative insurance and such reinsurance as Administrative Agent may reasonably request, all of the foregoing in form and substance reasonably satisfactory to Administrative Agent; and (b) evidence satisfactory to Administrative Agent that Company has (i) delivered to the Title Company all certificates and affidavits required by the Title Company in connection with the issuance of the Closing Date Mortgage Policy, and (ii) paid to the Title Company or to the appropriate governmental authorities all expenses and premiums of the Title Company in connection with the issuance of the Closing Date Mortgage Policy and all recording and stamp taxes (including mortgage recording and intangible taxes) payable in connection with recording the Closing Date Mortgage in the appropriate real estate records;

(iv) Title Reports. With respect to the Closing Date Mortgaged Property listed in Part B of Schedule 4.1Q annexed hereto, a title report issued by the Title Company with respect thereto, dated not more than 30 days prior to the Closing Date and satisfactory in form and substance to Administrative Agent;

(v) Copies of Documents Relating to Title Exceptions. Copies of all recorded documents listed as exceptions to title or otherwise referred to in the Closing Date Mortgage Policy or in the title reports delivered pursuant to subsection 4.1Q(iv); and

(vi) Matters Relating to Flood Hazard Properties. (a) Evidence, which may be in the form of a letter from an insurance broker or a municipal engineer, as to whether

(1) the Closing Date Mortgaged Property is a Flood Hazard Property and (2) the community in which any such Flood Hazard Property is located is participating in the National Flood Insurance Program, (b) if there are any such Flood Hazard Properties, Company's written acknowledgement of receipt of written notification from Administrative Agent (1) as to the existence of each such Flood Hazard Property and (2) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program, and (c) in the event any such Flood Hazard Property is located in a community that participates in the National Flood Insurance Program, evidence that Company has obtained flood insurance in respect of such Flood Hazard Property to the extent required under the applicable regulations of the Board of Governors of the Federal Reserve System.

R. Collateral Access Agreements. A Collateral Access Agreement with respect to each leased Real Property Asset identified on Schedule 5.5B annexed hereto.

S. Termination of Existing Credit Agreements and Related Liens. On the Closing Date, Company, Silicon Energy Corp. and their respective Subsidiaries shall have (a) repaid in full all Indebtedness outstanding under the Existing Company Credit Agreement and the Existing Silicon Energy Corp. Credit Agreements, (b) terminated any commitments to lend or make other extensions of credit thereunder, (c) delivered to Administrative Agent all documents or instruments necessary to release all Liens securing Indebtedness or other obligations of Company, Silicon Energy Corp. and their respective Subsidiaries thereunder, and (d) made arrangements satisfactory to Administrative Agent with respect to the letters of credit outstanding thereunder.

T. Completion of Proceedings. All corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Administrative Agent, acting on behalf of Lenders, and its counsel shall be satisfactory in form and substance to Administrative Agent and such counsel, and Administrative Agent and such counsel shall have received all such counterpart originals or certified copies of such documents as Administrative Agent may reasonably request.

U. No Material Adverse Change. There shall not have occurred any Material Adverse Effect since December 31, 2001 relating to Company and its Subsidiaries, taken as a whole, or Silicon Energy Corp. and its Subsidiaries, taken as a whole.

4.2 CONDITIONS TO ALL LOANS.

The obligations of Lenders to make Loans on each Funding Date are subject to the following further conditions precedent:

A. Administrative Agent shall have received before that Funding Date, in accordance with the provisions of subsection 2.1B, an originally executed Notice of Borrowing, in each case signed by a duly authorized Officer of Company.

B. As of that Funding Date:

(i) The representations and warranties contained herein and in the other Loan Documents shall be true, correct and complete in all material respects on and as of that Funding Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true, correct and complete in all material respects on and as of such earlier date; provided, that, if a representation and warranty is qualified as to materiality, with respect to such representation and warranty the materiality qualifier set forth above shall be disregarded for purposes of this condition;

(ii) No event shall have occurred and be continuing or would result from the consummation of the borrowing contemplated by such Notice of Borrowing that would constitute an Event of Default or a Potential Event of Default;

(iii) Each Loan Party shall have performed in all material respects all agreements and satisfied all conditions which this Agreement provides shall be performed or satisfied by it on or before that Funding Date; and

(iv) No order, judgment or decree of any arbitrator or Government Authority shall purport to enjoin or restrain any Lender from making the Loans to be made by it on that Funding Date.

4.3 CONDITIONS TO LETTERS OF CREDIT.

The issuance of any Letter of Credit hereunder (whether or not the Issuing Lender is obligated to issue such Letter of Credit) is subject to the following conditions precedent:

A. On or before the date of issuance of the initial Letter of Credit pursuant to this Agreement, the initial Loans shall have been made.

B. On or before the date of issuance of such Letter of Credit, Administrative Agent shall have received, in accordance with the provisions of subsection 3.1B(i), an originally executed Request for Issuance (or a facsimile copy thereof) in each case signed by a duly authorized Officer of Company, together with all other information specified in subsection 3.1B(i) and such other documents or information as the Issuing Lender may reasonably require in connection with the issuance of such Letter of Credit.

C. On the date of issuance of such Letter of Credit, all conditions precedent described in subsection 4.2B shall be satisfied to the same extent as if the issuance of such Letter of Credit were the making of a Loan and the date of issuance of such Letter of Credit were a Funding Date.

SECTION 5. COMPANY'S REPRESENTATIONS AND WARRANTIES

In order to induce Lenders to enter into this Agreement and to make the Loans, to induce the Issuing Lender to issue Letters of Credit and to induce Revolving Lenders to purchase participations therein, Company (for purposes of this Section 5, references to Company and its Subsidiaries shall be deemed to include Silicon Energy Corp. and its respective Subsidiaries, whether or not the Merger has occurred) represents and warrants to each Lender:

5.1 ORGANIZATION, POWERS, QUALIFICATION, GOOD STANDING, BUSINESS AND SUBSIDIARIES.

A. Organization and Powers. Each of Company, Silicon Energy Corp. and their respective Subsidiaries is a corporation , partnership, trust or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of organization as specified in Schedule 5.1 annexed hereto, as such Schedule 5.1 may be supplemented from time to time pursuant to the provisions of subsection 6.1(xiv). Each of Company, Silicon Energy Corp. and their respective Subsidiaries has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

B. Qualification and Good Standing. Each of Company, Silicon Energy Corp. and their respective Subsidiaries is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, in each case except in jurisdictions where the failure to be so qualified or in good standing has not had and could not reasonably be expected to result in a Material Adverse Effect.

C. Conduct of Business. Company, Silicon Energy Corp. and their respective Subsidiaries are engaged only in the businesses permitted to be engaged in pursuant to subsection 7.11

D. Subsidiaries. All of the Subsidiaries of Company (including Silicon Energy Corp. and its Subsidiaries) and their jurisdictions of organization are identified in Schedule 5.1 annexed hereto, as said Schedule 5.1 may be supplemented from time to time pursuant to the provisions of subsection 6.1(xiv). The Capital Stock of each of the Subsidiaries of Company identified in Schedule 5.1 annexed hereto (as so supplemented) is duly authorized, validly issued, fully paid and nonassessable and none of such Capital Stock constitutes Margin Stock. Each of the Subsidiaries of Company identified in Schedule 5.1 annexed hereto (as so supplemented) is a corporation, partnership, trust or limited liability company duly organized, validly existing and in good standing under the laws of its respective jurisdiction of organization set forth therein, has all requisite power and authority to own and operate its properties and to carry on its business as now conducted and as proposed to be conducted, and is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, in each case except where failure to be so qualified or in good standing or a lack of such power and authority has not had and could not reasonably be expected to result in a Material Adverse Effect. Schedule 5.1 annexed hereto (as

so supplemented) correctly sets forth the ownership interest of Company, Silicon Energy Corp. and each of their respective Subsidiaries in each of the Subsidiaries of Company and Silicon Energy Corp. identified therein.

5.2 AUTHORIZATION OF BORROWING, ETC.

A. Authorization of Borrowing. The execution, delivery and performance of the Loan Documents and Related Agreements have been duly authorized by all necessary action on the part of each Loan Party that is a party thereto.

B. No Conflict. The execution, delivery and performance by Loan Parties of the Loan Documents and Related Agreements to which they are parties and the consummation of the transactions contemplated by the Loan Documents do not and will not (i) violate any provision of any law or any governmental rule or regulation applicable to Company or any of its Subsidiaries, the Organizational Documents of Company or any of its Subsidiaries or any order, judgment or decree of any court or other Government Authority binding on Company or any of its Subsidiaries, (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of Company or any of its Subsidiaries, (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets of Company or any of its Subsidiaries (other than any Liens created under any of the Loan Documents in favor of Administrative Agent on behalf of Lenders), or (iv) require any approval of stockholders or any approval or consent of any Person under any Contractual Obligation of Company or any of its Subsidiaries, except for such approvals or consents which will be obtained on or before the Closing Date and disclosed in writing to Lenders.

C. Governmental Consents. The execution, delivery and performance by Loan Parties of the Loan Documents and Related Agreements to which they are parties and the consummation of the transactions contemplated by the Loan Documents and such Related Agreements do not and will not require any Governmental Authorization.

D. Binding Obligation. Each of the Loan Documents and the Related Agreements has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

5.3 FINANCIAL CONDITION.

Company has heretofore delivered to Lenders, at Lenders' request (i) the annual report on Form 10-K for Company and its Subsidiaries for the Fiscal Year ended December 31, 2001, and (ii) the quarterly report on Form 10-Q for Company and its Subsidiaries for the Fiscal Quarter ended September 30, 2002. All such statements other than pro forma financial statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position (on a consolidated basis) of the entities described in such financial statements as at the respective dates thereof and the results of operations and cash flows (on a

consolidated basis) of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments. Except for the accrual of $7,400,000 taken in the fourth Fiscal Quarter of 2002 in connection with the Benghiat Litigation, neither Company nor any of its Subsidiaries has (and will not have following the funding of the initial Loans) any Contingent Obligation, contingent liability or liability for taxes, long-term lease or unusual forward or long-term commitment that, as of the Closing Date, is not reflected in the foregoing financial statements or the notes thereto and, as of any Funding Date, is not reflected in the most recent financial statements delivered to Lenders pursuant to subsection 6.1 or the notes thereto and that, in any such case, is material in relation to the business, operations, properties, assets, condition (financial or otherwise) or prospects of Company or any of its Subsidiaries.

5.4 NO MATERIAL ADVERSE CHANGE; NO RESTRICTED JUNIOR PAYMENTS.

Since December 31, 2001, no event or change has occurred that has resulted in or evidences, either in any case or in the aggregate, a Material Adverse Effect. Neither Company nor any of its Subsidiaries has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted by subsection 7.5.

5.5 TITLE TO PROPERTIES; LIENS; REAL PROPERTY; INTELLECTUAL PROPERTY.

A. Title to Properties; Liens. Company and its Subsidiaries (including Silicon Energy Corp. and its Subsidiaries) have (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), or (iii) good title to (in the case of all other personal property), all of their respective properties and assets reflected in the financial statements referred to in subsection 5.3 or in the most recent financial statements delivered pursuant to subsection 6.1, in each case except for assets disposed of since the date of such financial statements in the ordinary course of business or as otherwise permitted under subsection 7.7. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

B. Real Property. As of the Closing Date, Schedule 5.5B annexed hereto, as such Schedule 5.5B may be supplemented from time to time pursuant to the provisions of subsection 6.1(xv), contains a true, accurate and complete list of (i) all fee interests in any Real Property Assets, and (ii) all leases, subleases or assignments of leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting each Real Property Asset, regardless of whether a Loan Party is the landlord or tenant (whether directly or as an assignee or successor in interest) under such lease, sublease or assignment. Except as specified in Schedule 5.5B annexed hereto, each agreement listed in clause (ii) of the immediately preceding sentence is in full force and effect and Company does not have knowledge of any default that has occurred and is continuing thereunder, and each such agreement constitutes the legally valid and binding obligation of each applicable Loan Party, enforceable against such Loan Party in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

C. Intellectual Property. As of the Closing Date, Company and its Subsidiaries (including Silicon Energy Corp. and its Subsidiaries) own or have the right to use, all Intellectual Property used in the conduct of their business, except where the failure to own or have such right to use in the aggregate could not reasonably be expected to result in a Material Adverse Effect. Except for the Intellectual Property pertaining to the Benghiat Litigation identified in Schedule 5.6 annexed hereto, no claim has been asserted and is pending by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does Company know of any valid basis for any such claim, except for such claims that in the aggregate could not reasonably be expected to result in a Material Adverse Effect. The use of such Intellectual Property by Company and its Subsidiaries (including Silicon Energy Corp. and its Subsidiaries) does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. All federal and state and all foreign registrations of and applications for Intellectual Property, and all unregistered Intellectual Property, that are owned or licensed by Company or any of its Subsidiaries (including Silicon Energy Corp. and its Subsidiaries) on the Closing Date are described on Schedule 5.5C annexed hereto.

5.6 LITIGATION; ADVERSE FACTS.

Except as set forth in Schedule 5.6 annexed hereto, there are no Proceedings (whether or not purportedly on behalf of Company, Silicon Energy Corp. or any of their respective Subsidiaries) at law or in equity, or before or by any court or other Government Authority (including any Environmental Claims) that are pending or, to the knowledge of Company, threatened against or affecting Company, Silicon Energy Corp. or any of their respective Subsidiaries or any property of Company, Silicon Energy Corp. or any of their respective Subsidiaries and that, individually or in the aggregate, would be likely to result in a Material Adverse Effect. None of Company, Silicon Energy Corp. or any of their Subsidiaries (i) is in violation of any applicable laws (including Environmental Laws) that, individually or in the aggregate, would be likely to result in a Material Adverse Effect, or (ii) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or other Government Authority, that, individually or in the aggregate, would be likely to result in a Material Adverse Effect.

5.7 PAYMENT OF TAXES.

Except to the extent permitted by subsection 6.3, all tax returns and reports of Company and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon Company, Silicon Energy Corp. and their respective Subsidiaries and upon their respective properties, assets, income, businesses and franchises that are due and payable have been paid when due and payable. Company knows of no proposed tax assessment against Company, Silicon Energy Corp. or any of their respective Subsidiaries that is not being actively contested by Company, Silicon Energy Corp. or any of their respective Subsidiaries in good faith and by appropriate proceedings; provided that such reserves or other appropriate

provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

5.8 PERFORMANCE OF AGREEMENTS.

Neither Company nor any of its Subsidiaries (including Silicon Energy Corp. and its Subsidiaries) is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists that, with the giving of notice or the lapse of time or both, would constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, would not be likely to result in a Material Adverse Effect.

5.9 GOVERNMENTAL REGULATION.

Neither Company, Silicon Energy Corp. nor any of their respective Subsidiaries is subject to regulation under the Public Utility Holding Company Act of 1935, the Federal Power Act, the Interstate Commerce Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable.

5.10 SECURITIES ACTIVITIES.

A. Neither Company nor any of its Subsidiaries is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock.

B. Following application of the proceeds of each Loan, not more than 25% of the value of the assets (either of Company only or of Company and its Subsidiaries on a consolidated basis) subject to the provisions of subsection 7.2 or 7.7 or subject to any restriction contained in any agreement or instrument, between Company and any Lender or any Affiliate of any Lender, relating to Indebtedness and within the scope of subsection 8.2, will be Margin Stock.

5.11 EMPLOYEE BENEFIT PLANS.

A. Except as set forth in Schedule 5.11 annexed hereto, Company, each of its Subsidiaries and each of their respective ERISA Affiliates are in compliance with all applicable provisions and requirements of ERISA and the regulations and published interpretations thereunder with respect to each Employee Benefit Plan, and have performed all their obligations under each such Employee Benefit Plan. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the Internal Revenue Code is so qualified.

B. Except as set forth in Schedule 5.11 annexed hereto, no ERISA Event has occurred or is reasonably expected to occur.

C. Except to the extent required under Section 4980B of the Internal Revenue Code, no Employee Benefit Plan provides health or welfare benefits (through the purchase of

insurance or otherwise) for any retired or former employee of Company, any of its Subsidiaries or any of their respective ERISA Affiliates.

D. As of the most recent valuation date for any Pension Plan, the amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually or in the aggregate for all such Pension Plans (excluding for purposes of such computation any such Pension Plans with respect to which assets exceed benefit liabilities), does not exceed $2,500,000.

E. As of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, the potential liability of Company, its Subsidiaries and their respective ERISA Affiliates for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA, does not exceed $2,500,000.

5.12 CERTAIN FEES.

No broker's or finder's fee or commission will be payable with respect to this Agreement or any of the transactions contemplated hereby, other than those payable in connection with the Merger, and Company hereby indemnifies Lenders against, and agrees that it will hold Lenders harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

5.13 ENVIRONMENTAL PROTECTION.

Except as set forth in Schedule 5.13 annexed hereto:

(i) neither Company nor any of its Subsidiaries nor any of their respective Facilities or operations are subject to any outstanding written order, consent decree or settlement agreement with any Person relating to (a) any Environmental Law, (b) any Environmental Claim, or (c) any Hazardous Materials Activity that, individually or in the aggregate, would be likely to result in a Material Adverse Effect;

(ii) neither Company nor any of its Subsidiaries has received any letter or request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C.ss. 9604) or any comparable state law;

(iii) there are and, to Company's knowledge, have been no conditions, occurrences, or Hazardous Materials Activities that would be likely to form the basis of an Environmental Claim against Company or any of its Subsidiaries that, individually or in the aggregate, would be likely to result in a Material Adverse Effect;

(iv) neither Company nor any of its Subsidiaries nor, to Company's knowledge, any predecessor of Company or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, and none of Company's or any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260-270 or any state equivalent;

(v) Company maintains an environmental management system for its and each of its Subsidiaries' operations that demonstrates a commitment to environmental compliance and includes procedures for (a) preparing and updating written compliance manuals covering pertinent regulatory areas, (b) tracking changes in applicable Environmental Laws and modifying operations to comply with new requirements thereunder, (c) training employees to comply with applicable environmental requirements and updating such training as necessary, (d) performing regular internal compliance audits of each Facility and ensuring correction of any incidents of non-compliance detected by means of such audits, and (e) reviewing the compliance status of off-site waste disposal facilities; and

(vi) compliance by Company and its Subsidiaries with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws would not, individually or in the aggregate, be likely to result in a Material Adverse Effect.

5.14 EMPLOYEE MATTERS.

There is no strike or work stoppage in existence or threatened involving Company or any of its Subsidiaries that would be likely to result in a Material Adverse Effect.

5.15 SOLVENCY.

Each Loan Party, upon the incurrence of any Obligations by such Loan Party on any date on which this representation is made, will be, Solvent.

5.16 MATTERS RELATING TO COLLATERAL.

A. Creation, Perfection and Priority of Liens. The execution and delivery of the Collateral Documents by Loan Parties, together with (i) the actions taken on or prior to the Closing Date pursuant to subsections 4.1P, 4.1Q, 6.8 and 6.9, and (ii) the delivery to Administrative Agent of any Pledged Collateral not delivered to Administrative Agent at the time of execution and delivery of the applicable Collateral Document (all of which Pledged Collateral has been so delivered) are effective to create in favor of Administrative Agent for the benefit of Lenders, as security for the respective Secured Obligations (as defined in the applicable Collateral Document in respect of any Collateral), a valid First Priority Lien on all of the Collateral, and all filings and other actions necessary or desirable to perfect and maintain the perfection and First Priority status of such Liens have been duly made or taken and remain in full force and effect, other than the filing of any UCC financing statements delivered to

Administrative Agent for filing (but not yet filed) and the periodic filing of UCC continuation statements in respect of UCC financing statements filed by or on behalf of Administrative Agent.

B. Governmental Authorizations. No authorization, approval or other action by, and no notice to or filing with, any Government Authority is required for either (i) the pledge or grant by any Loan Party of the Liens purported to be created in favor of Administrative Agent pursuant to any of the Collateral Documents, or (ii) the exercise by Administrative Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to any of the Collateral Documents or created or provided for by applicable law), except for filings or recordings contemplated by subsection 5.16A and except as may be required, in connection with the disposition of any Pledged Collateral, by laws generally affecting the offering and sale of securities.

C. Absence of Third-Party Filings. Except such as may have been filed in favor of Administrative Agent as contemplated by subsection 5.16A and to evidence permitted lease obligations and other Liens permitted pursuant to subsection 7.2, (i) no effective UCC financing statement, fixture filing or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office, and (ii) no effective filing covering all or any part of the IP Collateral is on file in the PTO.

D. Margin Regulations. The pledge of the Pledged Collateral pursuant to the Collateral Documents does not violate Regulation T, U or X of the Board of Governors of the Federal Reserve System.

E. Information Regarding Collateral. All information supplied to Administrative Agent by or on behalf of any Loan Party with respect to any of the Collateral (in each case taken as a whole with respect to any particular Collateral) is accurate and complete in all material respects.

5.17 RELATED AGREEMENTS.

A. Delivery of Related Agreements. Company has delivered to Lenders complete and correct copies of each Related Agreement and of all exhibits and schedules thereto.

B. Silicon Energy Corp.'s Warranties. Except to the extent otherwise set forth herein, each of the representations and warranties given by Silicon Energy Corp. to Company and Shadow Combination, Inc. in the Merger Agreement is true and correct as of the date hereof (or as of any earlier date to which such representation and warranty specifically relates) and will be true and correct as of the Closing Date and the Merger Date (or as of such earlier date, as the case may be), in each case subject to the qualifications set forth in the schedules to the Merger Agreement, except to the extent the failure of any such representation or warranty to be true and correct would not be likely to result in a Material Adverse Affect.

C. Warranties of Company. Subject to the qualifications set forth therein, each of the representations and warranties given by Company to Silicon Energy Corp. in the

Merger Agreement is true and correct in all material respects as of the date hereof and will be true and correct in all material respects as of the Closing Date.

D. Survival. Notwithstanding anything in the Merger Agreement to the contrary, the representations and warranties of Company set forth in subsections 5.17B and 5.17C shall, solely for purposes of this Agreement, survive the Closing Date for the benefit of Lenders.

5.18 DISCLOSURE.

No representation or warranty of Company or any of its Subsidiaries (including Silicon Energy Corp. and its Subsidiaries) contained in the Confidential Information Memorandum as of its date or in any Loan Document or Related Agreement or in any other document, certificate or written statement furnished to Lenders by or on behalf of Company or any of its Subsidiaries (including Silicon Energy Corp. and its Subsidiaries) for use in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact or omits to state a material fact (known to Company, in the case of any document not furnished by it) necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Company to be reasonable at the time made, it being recognized by Lenders that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Company (other than matters of a general economic nature) that, individually or in the aggregate, would be likely to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the transactions contemplated hereby.

SECTION 6. COMPANY'S AFFIRMATIVE COVENANTS

Company covenants and agrees that, so long as any of the Commitments hereunder shall remain in effect and until payment in full of all of the Loans and other Obligations and the cancellation or expiration of all Letters of Credit, unless Requisite Lenders shall otherwise give prior written consent, Company shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 6.

6.1 FINANCIAL STATEMENTS AND OTHER REPORTS.

Company and each of its Subsidiaries will, on a consolidated basis, maintain a system of accounting established and administered in accordance with sound business practices to permit preparation of financial statements in conformity with GAAP. Company will deliver to Administrative Agent and Lenders:

(i) Events of Default, etc.: promptly upon any officer of Company obtaining knowledge (a) of any condition or event that constitutes an Event of Default or Potential

Event of Default, or becoming aware that any Lender has given any notice (other than to Administrative Agent) or taken any other action with respect to a claimed Event of Default or Potential Event of Default, (b) that any Person has given any notice to Company or any of its Subsidiaries or taken any other action with respect to a claimed default or event or condition of the type referred to in subsection 8.2, or (c) of the occurrence of any event or change that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect, an Officer's Certificate specifying the nature and period of existence of such condition, event or change, or specifying the notice given or action taken by any such Person and the nature of such claimed Event of Default, Potential Event of Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;

(ii) Quarterly Financials: as soon as available and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year the consolidated balance sheet of Company and its Subsidiaries as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year and the corresponding figures from the Financial Plan for the current Fiscal Year, all in reasonable detail and certified by the chief financial officer of Company that they fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, subject to changes resulting from audit and normal year-end adjustments;

(iii) Year-End Financials: as soon as available and in any event within 90 days after the end of each Fiscal Year, (a) the consolidated balance sheet of Company and its Subsidiaries as at the end of such Fiscal Year and the related consolidated statements of income, stockholders' equity and cash flows of Company and its Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year and the corresponding figures from the Financial Plan for the Fiscal Year covered by such financial statements, all in reasonable detail and certified by the chief financial officer of Company that they fairly present, in all material respects, the financial condition of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated, and (b) in the case of such consolidated financial statements, a report thereon of Deloitte & Touche LLP or other independent certified public accountants of recognized national standing selected by Company and satisfactory to Administrative Agent, which report shall be unqualified, shall express no doubts about the ability of Company and its Subsidiaries to continue as a going concern, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Company and its Subsidiaries as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the

examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards;

(iv) Compliance and Pricing Certificates: together with each delivery of financial statements pursuant to subdivisions (ii) and (iii) above, (a) an Officer's Certificate of Company stating that the signers have reviewed the terms of this Agreement and have made, or caused to be made under their supervision, a review in reasonable detail of the transactions and condition of Company and its Subsidiaries during the accounting period covered by such financial statements and that such review has not disclosed the existence during or at the end of such accounting period, and that the signers do not have knowledge of the existence as at the date of such Officer's Certificate, of any condition or event that constitutes an Event of Default or Potential Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action Company has taken, is taking and proposes to take with respect thereto; and (b) a Compliance Certificate demonstrating in reasonable detail compliance during and at the end of the applicable accounting periods with the restrictions contained in Section 7, in each case to the extent compliance with such restrictions is required to be tested at the end of the applicable accounting period; in addition, on or before the 45th day following the end of each Fiscal Quarter, a Pricing Certificate demonstrating in reasonable detail the calculation of the Consolidated Leverage Ratio as of the end of the four-Fiscal Quarter period then ended;

(v) Reconciliation Statements: if, as a result of any change in accounting principles and policies from those used in the preparation of the audited financial statements referred to in subsection 5.3, the consolidated financial statements of Company and its Subsidiaries delivered pursuant to subdivisions (ii), (iii), or (xii) of this subsection 6.1 will differ in any material respect from the consolidated financial statements that would have been delivered pursuant to such subdivisions had no such change in accounting principles and policies been made, then (a) together with the first delivery of financial statements pursuant to subdivision (ii), (iii), or (xii) of this subsection 6.1 following such change, consolidated financial statements of Company and its Subsidiaries for (y) the current Fiscal Year to the effective date of such change and (z) the two full Fiscal Years immediately preceding the Fiscal Year in which such change is made, in each case prepared on a pro forma basis as if such change had been in effect during such periods, and (b) together with each delivery of financial statements pursuant to subdivision (ii), (iii), or (xii) of this subsection 6.1 following such change, if required pursuant to subsection 1.2, a written statement of the chief accounting officer or chief financial officer of Company setting forth the differences (including any differences that would affect any calculations relating to the financial covenants set forth in subsection 7.6) which would have resulted if such financial statements had been prepared without giving effect to such change;

(vi) Accountants' Reports: promptly upon receipt thereof (unless restricted by applicable professional standards), copies of all reports submitted to Company by independent certified public accountants in connection with each annual, interim or special audit of the financial statements of Company and its Subsidiaries made by such

accountants, including any comment letter submitted by such accountants to management in connection with their annual audit;

(vii) SEC Filings and Press Releases: promptly upon their becoming available, copies of (a) all financial statements, reports, notices and proxy statements sent or made available generally by Company to its security holders or by any Subsidiary of Company to its security holders other than Company or another Subsidiary of Company, (b) all regular and periodic reports and all registration statements (other than on Form S-8 or a similar form) and prospectuses, if any, filed by Company or any of its Subsidiaries with any securities exchange or with the Securities and Exchange Commission or any governmental or private regulatory authority, and (c) all press releases and other statements made available generally by Company or any of its Subsidiaries to the public concerning material developments in the business of Company or any of its Subsidiaries;

(viii) Litigation or Other Proceedings: (a) promptly upon any Officer of Company obtaining knowledge of (1) the institution of, or non-frivolous threat of, any Proceeding against or affecting Company or any of its Subsidiaries or any property of Company or any of its Subsidiaries not previously disclosed in writing by Company to Lenders, or (2) any material development in any Proceeding that, in any case:

(x) if adversely determined, has a reasonable possibility of giving rise to a Material Adverse Effect; or

(y) seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby;

written notice thereof together with such other information as may be reasonably available to Company to enable Lenders and their counsel to evaluate such matters; and (b) within twenty days after the end of each Fiscal Year, a schedule of all Proceedings involving an alleged individual liability of, or claims against or affecting, Company or any of its Subsidiaries equal to or greater than $2,500,000, and promptly after request by Administrative Agent such other information as may be reasonably requested by Administrative Agent to enable Administrative Agent and its counsel to evaluate any of such Proceedings;

(ix) ERISA Events: promptly upon becoming aware of the occurrence of or forthcoming occurrence of any ERISA Event, a written notice specifying the nature thereof, what action Company, any of its Subsidiaries or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the Internal Revenue Service, the Department of Labor or the PBGC with respect thereto;

(x) ERISA Notices: with reasonable promptness, copies of (a) all notices received by Company, any of its Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and (b) copies of such

other documents or governmental reports or filings relating to any Employee Benefit Plan as Administrative Agent shall reasonably request;

(xi) Financial Plans: as soon as practicable and in any event no later than 30 days after the end of each Fiscal Year, a consolidated plan and financial forecast for the next Fiscal Year (the "Financial Plan" for such Fiscal Year), including, (a) a forecasted consolidated balance sheet and forecasted consolidated statements of income and cash flows of Company and its Subsidiaries for such Fiscal Year, together with a projected Compliance Certificate for such Fiscal Year and an explanation of the assumptions on which such forecasts are based, (b) forecasted consolidated statements of income and cash flows of Company and its Subsidiaries for each Fiscal Quarter of such Fiscal Year, together with an explanation of the assumptions on which such forecasts are based, and (c) such other information and projections as any Lender may reasonably request;

(xii) Insurance: as soon as practicable after any material change in insurance coverage maintained by Company and its Subsidiaries notice thereof to Administrative Agent specifying the changes and reasons therefor;

(xiii) Governing Body: with reasonable promptness, written notice of any change in the Governing Body of Company;

(xiv) New Subsidiaries: promptly upon any Person becoming a Subsidiary of Company, a written notice setting forth with respect to such Person (a) the date on which such Person became a Subsidiary of Company, and (b) all of the data required to be set forth in Schedule 5.1 annexed hereto with respect to all Subsidiaries of Company (it being understood that such written notice shall be deemed to supplement Schedule 5.1 annexed hereto for all purposes of this Agreement);

(xv) Real Property Assets: promptly upon Company or any Subsidiary acquiring any new Real Property Asset, a written notice setting forth all of the data required to be set forth in Schedule 5.5B annexed hereto with respect to all Real Property Assets of Company and its Subsidiaries (it being understood that such written notice shall be deemed to supplement Schedule 5.5B annexed hereto for all purposes of this Agreement);

(xvi) Good Standing Certificates: upon request by Administrative Agent, good standing certificates as to each Loan Party from its jurisdiction of organization; and

(xvii) Other Information: with reasonable promptness, such other information and data with respect to Company or any of its Subsidiaries as from time to time may be reasonably requested by any Lender.

6.2 EXISTENCE, ETC..

Except as permitted under subsection 7.7, Company will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect its existence in the

jurisdiction of organization specified on Schedule 5.1 and all rights and franchises material to its business; provided, however that neither Company nor any of its Subsidiaries shall be required to preserve any such right or franchise if the Governing Body of Company or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of Company or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to Company, such Subsidiary or Lenders.

6.3 PAYMENT OF TAXES AND CLAIMS; TAX .

A. Company will, and will cause each of its Subsidiaries to, pay all taxes, assessments and other governmental charges imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto; provided that no such tax, assessment, charge or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (i) such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, and (ii) in the case of a tax, assessment, charge or claim which has or may become a Lien against any of the Collateral, such proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such charge or claim.

B. Company will not, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Company or any of its Subsidiaries).

6.4 MAINTENANCE OF PROPERTIES; INSURANCE; APPLICATION OF NET INSURANCE/CONDEMNATION PROCEEDS.

A. Maintenance of Properties. Company will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Company and its Subsidiaries (including all Intellectual Property) and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

B. Insurance. Company will maintain or cause to be maintained, with financially sound and reputable insurers, such public liability insurance, third party property damage insurance, business interruption insurance and casualty insurance with respect to liabilities, losses or damage in respect of the assets, properties and businesses of Company and its Subsidiaries as may customarily be carried or maintained under similar circumstances by corporations of established reputation engaged in similar businesses, in each case in such amounts (giving effect to self-insurance), with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for corporations similarly situated in the industry. Without limiting the generality of the foregoing, Company will maintain or cause to be maintained (i) flood insurance with respect to each Flood Hazard Property that is located in a community that participates in the National Flood Insurance Program,

in each case in compliance with any applicable regulations of the Board of Governors of the Federal Reserve System, and (ii) replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times satisfactory to Administrative Agent in its commercially reasonable judgment. Each such policy of insurance shall (a) name Administrative Agent for the benefit of Lenders as an additional insured thereunder as its interests may appear, and (b) in the case of each business interruption and casualty insurance policy, contain a loss payable clause or endorsement, satisfactory in form and substance to Administrative Agent, that names Administrative Agent for the benefit of Lenders as the loss payee thereunder for any covered loss in excess of $2,500,000 and provides for at least 30 days prior written notice to Administrative Agent of any modification or cancellation of such policy.

C. Application of Net Insurance/Condemnation Proceeds.

(i) Business Interruption Insurance. Upon receipt by Company or any of its Subsidiaries of any business interruption insurance proceeds constituting Net Insurance/Condemnation Proceeds, (a) so long as no Event of Default or Potential Event of Default shall have occurred and be continuing, Company or such Subsidiary may retain and apply such Net Insurance/Condemnation Proceeds for working capital purposes, and (b) if an Event of Default or Potential Event of Default shall have occurred and be continuing, Company shall apply an amount equal to such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in subsection 2.4B;

(ii) Net Insurance/Condemnation Proceeds Received by Company. Upon receipt by Company or any of its Subsidiaries of any Net Insurance/Condemnation Proceeds other than from business interruption insurance, (a) so long as no Event of Default or Potential Event of Default shall have occurred and be continuing, Company shall, or shall cause one or more of its Subsidiaries to, promptly and diligently apply such Net Insurance/Condemnation Proceeds to pay or reimburse the costs of repairing, restoring or replacing the assets in respect of which such Net Insurance/Condemnation Proceeds were received or, to the extent not so applied, to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in subsection 2.4B, and (b) if an Event of Default or Potential Event of Default shall have occurred and be continuing, Company shall apply an amount equal to such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in subsection 2.4B.

(iii) Net Insurance/Condemnation Proceeds Received by Administrative Agent. Upon receipt by Administrative Agent of any Net Insurance/Condemnation Proceeds as loss payee, (a) if the aggregate amount of Net Insurance/Condemnation Proceeds received (and reasonably expected to be received) by Administrative Agent in respect of any covered loss exceeds $2,500,000, or if and to the extent Company would have been required to apply such Net Insurance/Condemnation Proceeds (if it had received them directly) to prepay the Loans and/or reduce the Revolving Loan Commitments, Administrative Agent shall, and Company hereby authorizes

Administrative Agent to, apply such Net Insurance/Condemnation Proceeds to prepay the Loans (and/or the Revolving Loan Commitments shall be reduced) as provided in subsection 2.4B, and (b) to the extent the foregoing clause (a) does not apply and (1) the aggregate amount of such Net Insurance/Condemnation Proceeds received (and reasonably expected to be received) by Administrative Agent in respect of any covered loss does not exceed $2,500,000, Administrative Agent shall deliver such Net Insurance/Condemnation Proceeds to Company, and Company shall, or shall cause one or more of its Subsidiaries to, promptly apply such Net Insurance/Condemnation Proceeds to the costs of repairing, restoring, or replacing the assets in respect of which such Net Insurance/Condemnation Proceeds were received, and (2) if the aggregate amount of Net Insurance/Condemnation Proceeds received (and reasonably expected to be received) by Administrative Agent in respect of any covered loss exceeds $2,500,000, Administrative Agent shall hold such Net Insurance/Condemnation Proceeds pursuant to the terms of the Security Agreement and, so long as Company or any of its Subsidiaries proceeds diligently to repair, restore or replace the assets of Company or such Subsidiary in respect of which such Net Insurance/Condemnation Proceeds were received, Administrative Agent shall from time to time disburse to Company or such Subsidiary from the Collateral Account, to the extent of any such Net Insurance/Condemnation Proceeds remaining therein in respect of the applicable covered loss, amounts necessary to pay the cost of such repair, restoration or replacement after the receipt by Administrative Agent of invoices or other documentation reasonably satisfactory to Administrative Agent relating to the amount of costs so incurred and the work performed (including, if required by Administrative Agent, lien releases and architects' certificates); provided, however that if at any time Administrative Agent reasonably determines (A) that Company or such Subsidiary is not proceeding diligently with such repair, restoration or replacement, or (B) that such repair, restoration or replacement cannot be completed with the Net Insurance/Condemnation Proceeds then held by Administrative Agent for such purpose, together with funds otherwise available to Company for such purpose, or that such repair, restoration or replacement cannot be completed within 180 days after the receipt by Administrative Agent of such Net Insurance/Condemnation Proceeds, Administrative Agent shall, and Company hereby authorizes Administrative Agent to, apply such Net Insurance/Condemnation Proceeds to prepay the Loans as provided in subsection 2.4B.

6.5 INSPECTION RIGHTS; LENDER MEETING.

A. Inspection Rights. Company shall, and shall cause each of its Subsidiaries to, permit- any authorized representatives designated by any Lender to visit and inspect any of the properties of Company or of any of its Subsidiaries, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants (provided that Company may, if it so chooses, be present at or participate in any such discussion), all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.

B. Lender Meeting. Company will, upon the request of Administrative Agent or Requisite Lenders, participate in a meeting of Administrative Agent and Lenders once during each Fiscal Year to be held at Company's principal offices (or at such other location as may be agreed to by Company and Administrative Agent) at such time as may be agreed to by Company and Administrative Agent.

6.6 COMPLIANCE WITH LAWS, ETC.

Company shall comply, and shall cause each of its Subsidiaries and all other Persons on or occupying any Facilities to comply, with the requirements of all applicable laws, rules, regulations and orders of any Government Authority (including all Environmental Laws), noncompliance with which would be likely to result in, individually or in the aggregate, a Material Adverse Effect.

6.7 ENVIRONMENTAL MATTERS.

A. Environmental Disclosure. Company will deliver to Administrative Agent and Lenders:

(i) Environmental Audits and Reports. As soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Company or any of its Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to significant environmental matters at any Facility that, individually or in the aggregate, would be likely to result in a Material Adverse Effect or with respect to any Environmental Claims that, individually or in the aggregate, would be likely to result in a Material Adverse Effect;

(ii) Notice of Certain Releases, Remedial Actions, Etc. Promptly upon the occurrence thereof, written notice describing in reasonable detail (a) any Release required to be reported to any federal, state or local governmental or regulatory agency under any applicable Environmental Laws, and (b) any remedial action taken by Company or any other Person in response to (1) any Hazardous Materials Activities the existence of which would be likely to result in one or more Environmental Claims having, individually or in the aggregate, a Material Adverse Effect, or (2) any Environmental Claims that, individually or in the aggregate, would be likely to result in a Material Adverse Effect.

(iii) Written Communications Regarding Environmental Claims, Releases, Etc. As soon as practicable following the sending or receipt thereof by Company or any of its Subsidiaries, a copy of any and all written communications with respect to (a) any Environmental Claims that, individually or in the aggregate, would be likely to result in a Material Adverse Effect, (b) any Release required to be reported to any federal, state or local governmental or regulatory agency, and (c) any request for information from any governmental agency that suggests such agency is investigating whether Company or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity.

(iv) Notice of Certain Proposed Actions Having Environmental Impact. Prompt written notice describing in reasonable detail (a) any proposed acquisition of stock, assets, or property by Company or any of its Subsidiaries that would be likely to (1) expose Company or any of its Subsidiaries to, or result in, Environmental Claims that would be likely to result in, individually or in the aggregate, a Material Adverse Effect, or (2) affect the ability of Company or any of its Subsidiaries to maintain in full force and effect all material Governmental Authorizations required under any Environmental Laws for their respective operations, and (b) any proposed action to be taken by Company or any of its Subsidiaries to modify current operations in a manner that would be likely to subject Company or any of its Subsidiaries to any additional obligations or requirements under any Environmental Laws that would be likely to result in, individually or in the aggregate, a Material Adverse Effect.

B. Company's Actions Regarding Hazardous Materials Activities, Environmental Claims and Violations of Environmental Laws.

(i) Remedial Actions Relating to Hazardous Materials Activities. Company shall, in compliance with all applicable Environmental Laws, promptly undertake, and shall cause each of its Subsidiaries promptly to undertake, any and all investigations, studies, sampling, testing, abatement, cleanup, removal, remediation or other response actions necessary to remove, remediate, clean up or abate any Hazardous Materials Activity on, under or about any Facility that is in violation of any Environmental Laws or that presents a material risk of giving rise to an Environmental Claim. (ii) Actions with Respect to Environmental Claims and Violations of Environmental Laws. Company shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by Company or its Subsidiaries that would be likely to result in, individually or in the aggregate, a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against Company or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so would be likely to result in, individually or in the aggregate, a Material Adverse Effect.

6.8 EXECUTION OF SUBSIDIARY GUARANTY AND PERSONAL PROPERTY COLLATERAL DOCUMENTS AFTER THE CLOSING DATE.

A. Execution of Subsidiary Guaranty and Personal Property Collateral Documents. In the event that any Person becomes a Domestic Subsidiary of Company (other than an Outsourcing Project Subsidiary) after the date hereof, Company will promptly notify Administrative Agent of that fact and cause such Domestic Subsidiary to execute and deliver to Administrative Agent a counterpart of the Subsidiary Guaranty and Security Agreement and to take all such further actions and execute all such further documents and instruments (including actions, documents and instruments comparable to those described in subsection 4.1P) as may be necessary or, in the opinion of Administrative Agent, desirable to create in favor of Administrative Agent, for the benefit of Lenders, a valid and perfected First Priority Lien on all

of the personal and mixed property assets of such Domestic Subsidiary described in the applicable forms of Collateral Documents. In addition, as provided in the Security Agreement, Company shall, or shall cause the Subsidiary that owns the Capital Stock of such Domestic Subsidiary, to execute and deliver to Administrative Agent a supplement to the Security Agreement and to deliver to Administrative Agent all certificates representing such Capital Stock of such Domestic Subsidiary (accompanied by irrevocable undated stock powers, duly endorsed in blank).

B. Significant Foreign Subsidiaries. In the event that any Person becomes a Significant Foreign Subsidiary of Company after the date hereof, Company will promptly notify Administrative Agent of that fact and, if such Subsidiary is directly owned by Company or a Domestic Subsidiary, cause such Domestic Subsidiary to execute and deliver to Administrative Agent such documents and instruments and take such further actions (including actions, documents and instruments comparable to those described in subsection 4.1P) as may be necessary, or in the reasonable opinion of Administrative Agent, desirable to create in favor of Administrative Agent, for the benefit of Lenders, a valid and perfected First Priority Lien on 66% of the capital stock of such Foreign Subsidiary.

C. Subsidiary Organizational Documents, Legal Opinions, Etc. Company shall deliver to Administrative Agent, together with such Loan Documents, (i) certified copies of such Subsidiary's Organizational Documents, together with, if such Subsidiary is a Domestic Subsidiary, a good standing certificate from the Secretary of State of the jurisdiction of its organization and each other state in which such Person is qualified to do business and, to the extent generally available, a certificate or other evidence of good standing as to payment of any applicable franchise or similar taxes from the appropriate taxing authority of each of such jurisdictions, each to be dated a recent date prior to their delivery to Administrative Agent, (ii) a certificate executed by the secretary or similar officer of such Subsidiary as to (a) the fact that the attached resolutions of the Governing Body of such Subsidiary approving and authorizing the execution, delivery and performance of such Loan Documents are in full force and effect and have not been modified or amended and (b) the incumbency and signatures of the officers of such Subsidiary executing such Loan Documents, (iii) an executed supplement to the Security Agreement evidencing the pledge of the Capital Stock of such Subsidiary by Company or a Subsidiary of Company that owns such Capital Stock, accompanied by certificate evidencing such Capital Stock, together with an irrevocable undated stock powers duly endorsed in blank and satisfactory in form and substance to Administrative Agent, and (iv) a favorable opinion of counsel to such Subsidiary, in form and substance satisfactory to Administrative Agent and its counsel, as to (a) the due organization and good standing of such Subsidiary, (b) the due authorization, execution and delivery by such Subsidiary of such Loan Documents, (c) the enforceability of such Loan Documents against such Subsidiary, and (d) such other matters (including matters relating to the creation and perfection of Liens in any Collateral pursuant to such Loan Documents) as Administrative Agent may reasonably request, all of the foregoing to be satisfactory in form and substance to Administrative Agent and its counsel.

6.9 MATTERS RELATING TO REAL PROPERTY COLLATERAL.

A. Additional Mortgages, Etc. From and after the Closing Date, in the event that (i) Company or any Subsidiary Guarantor acquires any Real Property Asset or (ii) at the time any Person becomes a Subsidiary Guarantor, such Person owns or holds any Real Property Asset, in either case excluding any such Real Property Asset the encumbrancing of which requires the consent of any applicable lessor or then-existing senior lienholder, where Company and its Subsidiaries have attempted in good faith, but are unable, to obtain such lessor's or senior lienholder's consent (any such non-excluded Real Property Asset described in the foregoing clause (i) or (ii) being an "Additional Mortgaged Property"), Company or such Subsidiary Guarantor shall, upon request of Administrative Agent, deliver to Administrative Agent, as soon as practicable after such Person acquires such Additional Mortgaged Property or becomes a Subsidiary Guarantor, as the case may be, a fully executed and notarized Mortgage (an "Additional Mortgage"), in proper form for recording in all appropriate places in all applicable jurisdictions, encumbering the interest of such Loan Party in such Additional Mortgaged Property; and such opinions, appraisal, documents, title insurance, environmental reports that would have been delivered on the Closing Date if such Additional Mortgaged Property were a Closing Date Mortgaged Property or that may be reasonably required by Administrative Agent.

B. Real Estate Appraisals. Company shall, and shall cause each of its Subsidiaries to, permit an independent real estate appraiser satisfactory to Administrative Agent, upon reasonable notice, to visit and inspect any Additional Mortgaged Property for the purpose of preparing an appraisal of such Additional Mortgaged Property satisfying the requirements of any applicable laws and regulations (in each case to the extent required under such laws and regulations as determined by Administrative Agent in its discretion).

6.10 MATTERS RELATING TO LEASED REAL PROPERTY ASSETS.

From and after the Closing Date, in the event that Company or any Subsidiary acquires any leased Real Property Asset, Company shall, upon request of Administrative Agent, deliver to Administrative Agent, as soon as practicable thereafter, a Collateral Access Agreement relating to such leased Real Property Asset.

6.11 INTEREST RATE PROTECTION.

At all times after the date that is 90 days after the Closing Date, Company shall maintain in effect one or more Interest Rate Agreements with respect to the Term Loans, in an aggregate notional principal amount of not less than 50% of the aggregate principal amount of the Term Loans, each such Interest Rate Agreement to be in form and substance satisfactory to Administrative Agent and with a term of not less than two years.

6.12 DEPOSIT ACCOUNTS AND CASH MANAGEMENT SYSTEMS.

From and after the Closing Date in the case of Company and its Subsidiaries, and from and after the date that is 90 days after the Closing Date in the case of Company, Silicon

Energy Corp. and its Subsidiaries, Company shall, and shall cause each of its Domestic Subsidiaries to, use and maintain its Deposit Accounts and cash management systems in a manner reasonably satisfactory to Administrative Agent. Company shall not permit any of such Deposit Accounts or any account in which Investment Property is maintained at any time to have a principal balance in excess of $1,000,000 unless Company or such Domestic Subsidiary, as the case may be, has (i) executed and delivered to Administrative Agent a Control Agreement, and (ii) taken all other steps necessary or, in the opinion of Administrative Agent, desirable to ensure that Administrative Agent has a perfected security interest in such Deposit Account or other account; provided that, if Company or such Domestic Subsidiary is unable to obtain a Control Agreement from the financial institution at which the Deposit Account or other account is maintained, Company shall, or shall cause such Domestic Subsidiary to, within 30 days after receiving a written request by Administrative Agent to do so, transfer all amounts in the applicable Deposit Account or other account to a Deposit Account or other account maintained at a financial institution from which Company or such Domestic Subsidiary has obtained a Control Agreement. Company shall not permit the aggregate amount on deposit in all Deposit Accounts of Company and of its Domestic Subsidiaries (other than Deposit Accounts maintained with Administrative Agent) at any time to exceed $1,000,000.

6.13 POST CLOSING MATTERS.

A. Employee Benefit Plans. Company shall (i) within 90 days of the Closing Date file with the IRS a request for a compliance statement(s) under the IRS's Employee Plan Compliance Resolution System, described in Revenue Procedure 2002-47, addressing applicable compliance failures under the defined contribution plans of Silicon Energy Corp., SRC Systems, Inc. and EPS Solutions, Inc. and (ii) use commercially reasonable efforts to resolve the compliance failures under the defined contribution plans of Silicon Energy Corp., SRC Systems, Inc. and EPS Solutions, Inc.

B. EPS Solutions, Inc. Stock Certificate. Within 14 days of the Closing Date, Company shall deliver to Administrative Agent the original stock certificate (which certificate shall be accompanied by an irrevocable and undated stock power, duly endorsed in blank and otherwise in form and substance satisfactory to Administrative Agent) representing all the Capital Stock of EPS Solutions, Inc., a Subsidiary of Silicon Energy Corp.

C. Consent of Alameda Real Estate Investments, L.P. If required by Administrative Agent in its discretion, Company shall obtain as soon as possible, but in no event later than 90 days following the Closing Date, the acknowledgement and consent of Alameda Real Estate Investments, L.P. (in form and substance satisfactory to Administrative Agent), to that certain Collateral Access Agreement dated as of the date hereof by and between Wind River Systems, Inc. and Silicon Energy Corp.

SECTION 7. COMPANY'S NEGATIVE COVENANTS

Company covenants and agrees that, so long as any of the Commitments hereunder shall remain in effect and until payment in full of all of the Loans and other Obligations and the cancellation or expiration of all Letters of Credit, unless Requisite Lenders shall otherwise give prior written consent, Company shall perform, and shall cause each of its Subsidiaries to perform, all covenants in this Section 7.

7.1 INDEBTEDNESS.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness, except:

(i) Company may become and remain liable with respect to the Obligations;

(ii) Company and its Subsidiaries may become and remain liable with respect to Contingent Obligations permitted by subsection 7.4 and, upon any matured obligations actually arising pursuant thereto, the Indebtedness corresponding to the Contingent Obligations so extinguished;

(iii) Company may become and remain liable with respect to Indebtedness to any Subsidiary Guarantor, and any Subsidiary Guarantor may become and remain liable with respect to Indebtedness to Company or any other Subsidiary Guarantor; provided that (a) a Lien on all such intercompany Indebtedness shall have been granted to Administrative Agent for the benefit of Lenders, (b) if such intercompany Indebtedness is evidenced by a promissory note or other instrument, such promissory note or instrument shall have been pledged to Administrative Agent pursuant to the Security Agreement, and (c) the aggregate principal amount of all such Indebtedness does not exceed $2,500,000 at any time outstanding;

(iv) Company and its Subsidiaries, as applicable, may remain liable with respect to Indebtedness described in Schedule 7.1 annexed hereto;

(v) Outsourcing Project Subsidiaries may become and remain liable with respect to Indebtedness obtained to finance Outsourcing Projects in an aggregate principal amount not to exceed $35,000,000 at any time outstanding;

(vi) Company and its Domestic Subsidiaries may become and remain liable with respect to other Indebtedness (including Capital Leases) in an aggregate principal amount not to exceed $5,000,000 at any time outstanding; and

(vii) Foreign Subsidiaries may become and remain liable with respect to other Indebtedness in an aggregate principal amount not to exceed $2,500,000 at any time outstanding.

7.2 LIENS AND RELATED MATTERS.

A. Prohibition on Liens. Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of Company or any of its Subsidiaries, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the UCC or under any similar recording or notice statute, except:

(i) Permitted Encumbrances;

(ii) Liens granted pursuant to the Collateral Documents;

(iii) Liens on any asset existing at the time of acquisition of such asset by Company or a Subsidiary, or Liens to secure the payment of all or any part of the purchase price of an asset upon the acquisition of such asset by Company or a Subsidiary or to secure any Indebtedness permitted hereby incurred by Company or a Subsidiary at the time of or within ninety days after the acquisition of such asset, which Indebtedness is incurred for the purpose of financing all or any part of the purchase price thereof; provided, however, that (a) the Lien shall apply only to the asset so acquired and proceeds thereof and (b) the aggregate amount of all Indebtedness secured thereby does not exceed $5,000,000 at any time;

(iv) Liens described in Schedule 7.2 annexed hereto;

(v) Liens on Outsourcing Project Assets securing Indebtedness permitted by subsection 7.1(v); and

(vi) Liens on Cash and Cash Equivalents with a fair market value not to exceed $1,103,000 securing Contingent Obligations permitted by subsection 7.4(vi).

B. No Further Negative Pledges. Neither Company nor any of its Subsidiaries shall enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired, except with respect to specific property encumbered to secure payment of particular Indebtedness or to be sold pursuant to an executed agreement with respect to an Asset Sale or Outsourcing Project Assets.

C. No Restrictions on Subsidiary Distributions to Company or Other Subsidiaries. Company will not, and will not permit any of its Subsidiaries to, create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any such Subsidiary to (i) pay dividends or make any other distributions on any of such Subsidiary's Capital Stock owned by Company or any other

Subsidiary of Company, (ii) repay or prepay any Indebtedness owed by such Subsidiary to Company or any other Subsidiary of Company, (iii) make loans or advances to Company or any other Subsidiary of Company, or (iv) transfer any of its property or assets to Company or any other Subsidiary of Company, except (a) as provided in this Agreement, (b) as may be provided in an agreement with respect to an Asset Sale, and (c) as provided in an agreement with respect to Indebtedness incurred by an Outsourcing Project Subsidiary.

7.3 INVESTMENTS; ACQUISITIONS.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, or acquire, by purchase or otherwise, all or substantially all the business, property or fixed assets of, or Capital Stock or other ownership interest of any Person, or any division or line of business of any Person except:

(i) Company and its Subsidiaries may make and own Investments in Cash Equivalents;

(ii) Company and its Subsidiaries may continue to own the Investments owned by them as of the Closing Date in any Subsidiaries of Company and Company and Subsidiary Guarantors may make and own additional equity Investments in Company and Subsidiary Guarantors;

(iii) Company and its Subsidiaries may make intercompany loans to the extent permitted under subsection 7.1(iii);

(iv) Company and its Subsidiaries may make Consolidated Capital Expenditures permitted by subsection 7.8;

(v) Company and its Subsidiaries may continue to own the Investments owned by them and described in Schedule 7.3 annexed hereto;

(vi) Company may make additional Investments, in the equity or debt Securities of other Persons, directly or in the form of advances on royalty payments that Company expects would be due to it in due course in an aggregate amount for all such Investments and all Contingent Obligations permitted by subsection 7.4(v) not to exceed $5,000,000 at any time;

(vii) So long as no Event of Default shall have occurred and be continuing or would result either before or after giving effect thereto, Company and its Subsidiaries may from time to time acquire (each, a "Permitted Acquisition") assets (including Capital Stock and including Capital Stock of Subsidiaries formed in connection with any such acquisition); provided that (a) the target of such acquisition (1) is in the same or related business as Company and its Subsidiaries and (2) has generated Consolidated EBITDA over the twelve month period ending prior to the date of acquisition of not less than negative $5,000,000, (b) the Cash consideration for any such acquisition shall not exceed $10,000,000 and the total consideration for any such acquisition shall not

exceed $25,000,000, (c) Company shall, and shall cause its Subsidiaries to, comply with the requirements of subsections 6.8 and 6.9 with respect to each such acquisition that results in a Person becoming a Subsidiary, and (d) Company shall deliver to Administrative Agent a Compliance Certificate demonstrating in reasonable detail pro forma compliance with the provisions of subsection 7.6 after giving effect to such acquisition;

(viii) Company may acquire and hold obligations of one or more officers or other employees of Company or its Subsidiaries in connection with such officers' or employees' acquisition of shares of Company's Capital Stock, so long as no cash is actually advanced by Company or any of its Subsidiaries to such officers or employees in connection with the acquisition of any such obligations;

(ix) Company and its Subsidiaries may receive and hold promissory notes and other non-cash consideration received in connection with any Asset Sale permitted by subsection 7.7;

(x) Company and its Subsidiaries may acquire Securities in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to Company or any of its Subsidiaries or as security for any such Indebtedness or claim;

(xi) Company and its Subsidiaries may consummate the Merger; and

(xii) Company may make Investments in Outsourcing Project Assets with the proceeds of Indebtedness permitted by subsection 7.1(v) in an aggregate amount not to exceed $35,000,000.

7.4 CONTINGENT OBLIGATIONS.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, create or become or remain liable with respect to any Contingent Obligation, except:

(i) Subsidiaries of Company may become and remain liable with respect to Contingent Obligations in respect of the Subsidiary Guaranty;

(ii) Company may become and remain liable with respect to Contingent Obligations under Hedge Agreements required under subsection 6.11;

(iii) Company and its Subsidiaries, as applicable, may remain liable with respect to Contingent Obligations described in Schedule 7.4 annexed hereto;

(iv) Company may become and remain liable with respect to Contingent Obligations under guaranties of Indebtedness of Outsourcing Project Subsidiaries permitted under subsection 7.1(v);

(v) Company and its Subsidiaries may become and remain liable with respect to Contingent Obligations under guarantees of additional Indebtedness in an aggregate

amount for all such Contingent Obligations and all Investments permitted by subsection 7.3(vi) not to exceed $5,000,000 at any time; and

(vi) For a period not to exceed 90 days following the Closing Date, Contingent Obligations in respect of the Existing Silicon Energy Corp. Letters of Credit in an aggregate face amount not to exceed $1,103,000.

7.5 RESTRICTED JUNIOR PAYMENTS.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Junior Payment; provided that so long as no Potential Event of Default or Event of Default shall have occurred and be continuing either before or after giving effect thereto, Company may repurchase Capital Stock from employee stockholders of Company in an aggregate amount not to exceed $500,000 in any Fiscal Year.

7.6 FINANCIAL COVENANTS.

A. Minimum Fixed Charge Coverage Ratio. Company shall not permit the ratio of (i) Consolidated EBITDA plus Consolidated Operating Lease Payments minus the sum of (a) Consolidated Capital Expenditures, (b) repurchases of Capital Stock permitted hereunder, and (c) current taxes based on income of Company and its Subsidiaries paid in Cash to (ii) Consolidated Fixed Charges for any four-Fiscal Quarter period ending during any of the periods set forth below to be less than the correlative ratio indicated:

| PERIOD | MINIMUM FIXED CHARGE COVERAGE RATIO |
|---|---|
| Closing Date to December 31, 2003 | 1.50:1.00 |
| January 1, 2004 and thereafter | 1.75:1.00 |

B. Maximum Leverage Ratio. Company shall not permit the Consolidated Leverage Ratio as of the last day of the most recently ended Fiscal Quarter during any of the periods set forth below to exceed the correlative ratio indicated:

| PERIOD | MAXIMUM LEVERAGE RATIO |
|---|---|
| Closing Date to December 31, 2003 | 2.25:1.00 |
| January 1, 2004 and thereafter | 2.00:1.00 |

C. Minimum Consolidated Tangible Net Worth. Company shall not permit Consolidated Tangible Net Worth at any time to be less than the sum of (i) 85% of Consolidated Tangible Net Worth at the Closing Date plus (ii) 75% of Consolidated Net Income (to the extent positive) for each Fiscal Quarter ending after the Closing Date plus (iii) 100% of the proceeds of any issuance of the Capital Stock of Company after the Closing Date.

7.7 RESTRICTION ON FUNDAMENTAL CHANGES; ASSET SALES.

Company shall not, and shall not permit any of its Subsidiaries to, alter the corporate, capital or legal structure of Company or any of its Subsidiaries, or enter into any transaction of merger or consolidation, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or convey, sell, lease or sub-lease (as lessor or sublessor), transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of its business, property or assets (including its notes or receivables and Capital Stock of a Subsidiary, whether newly issued or outstanding), whether now owned or hereafter acquired, except:

(i) any Subsidiary of Company (other than an Outsourcing Project Subsidiary) may be merged with or into Company or any wholly-owned Subsidiary Guarantor, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any wholly-owned Subsidiary Guarantor; provided that, in the case of such a merger, Company or such wholly-owned Subsidiary Guarantor shall be the continuing or surviving Person;

(ii) Company and its Subsidiaries may sell or otherwise dispose of assets in transactions that do not constitute Asset Sales; provided that the consideration received for such assets shall be in an amount at least equal to the fair market value thereof;

(iii) Company and its Subsidiaries may dispose of obsolete, worn out or surplus property in the ordinary course of business;

(iv) Company and its Subsidiaries may make Asset Sales of assets having a fair market value not in excess of $5,000,000; provided that (a) the consideration received for such assets shall be in an amount at least equal to the fair market value thereof; (b) the consideration received shall be Cash or non-Cash consideration permitted by subsection 7.3; and (c) the proceeds of such Asset Sales shall be applied as required by subsection 2.4B(iii)(a) or subsection 2.4D;

(v) Company or a Subsidiary may sell or dispose of shares of Capital Stock of any of its Subsidiaries in order to qualify members of the Governing Body of the Subsidiary if required by applicable law; and

(vi) any Person may be merged with or into any Subsidiary of Company if the acquisition of the Capital Stock of such Person by Company or such Subsidiary would have been permitted pursuant to subsection 7.3; provided that if a Subsidiary is not the surviving or continuing Person, the surviving Person becomes a Subsidiary and complies

with the provisions of subsection 6.8 and (c) no Potential Event of Default or Event of Default shall have occurred or be continuing after giving effect thereto.

7.8 CONSOLIDATED CAPITAL EXPENDITURES.

Company shall not, and shall not permit its Subsidiaries to, make or incur Consolidated Capital Expenditures, in any Fiscal Year indicated below, in an aggregate amount in excess of the corresponding amount set forth below opposite such Fiscal Year:

| FISCAL YEAR | MAXIMUM CONSOLIDATED CAPITAL EXPENDITURES |
|---|---|
| 2003 | $25,000,000 |
| 2004 | $25,000,000 |
| 2005 | $25,000,000 |

7.9 TRANSACTIONS WITH SHAREHOLDERS AND AFFILIATES.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 5% or more of any class of equity Securities of Company or with any Affiliate of Company or of any such holder, on terms that are less favorable to Company or that Subsidiary, as the case may be, than those that might be obtained at the time from Persons who are not such a holder or Affiliate; provided that the foregoing restriction shall not apply to (i) any transaction between Company and any of its wholly-owned Subsidiaries or between any of its wholly-owned Subsidiaries, or (ii) reasonable and customary fees paid to members of the Governing Bodies of Company and its Subsidiaries.

7.10 SALES AND LEASE-BACKS.

Company shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease, whether an Operating Lease or a Capital Lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) that Company or any of its Subsidiaries has sold or transferred or is to sell or transfer to any other Person (other than Company or any of its Subsidiaries), or (ii) that Company or any of its Subsidiaries intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by Company or any of its Subsidiaries to any Person (other than Company or any of its Subsidiaries) in connection with such lease.

7.11 CONDUCT OF BUSINESS.

From and after the Closing Date, Company shall not, and shall not permit any of its Subsidiaries to, engage in any business other than (i) the businesses engaged in by Company, Silicon Energy Corp. and their respective Subsidiaries on the Closing Date, and similar or related businesses, and (ii) such other lines of business as may be consented to by Requisite Lenders.

7.12 AMENDMENTS OR WAIVERS OF RELATED AGREEMENTS.

Neither Company nor any of its Subsidiaries will agree to any material amendment to, or waive any of its material rights under, any Related Agreement after the Closing Date without in each case obtaining the prior written consent of Requisite Lenders to such amendment or waiver.

7.13 FISCAL YEAR.

Company shall not change its Fiscal Year-end from December 31.

SECTION 8. EVENTS OF DEFAULT

If any of the following conditions or events ("Events of Default") shall occur:

8.1 FAILURE TO MAKE PAYMENTS WHEN DUE.

Failure by Company to pay any installment of principal of or interest on any Loan when due, whether at stated maturity, by acceleration, by notice of voluntary prepayment, by mandatory prepayment or otherwise; failure by Company to pay when due any amount payable to the Issuing Lender in reimbursement of any drawing under a Letter of Credit; or failure by Company to pay any fee or any other amount due under this Agreement within five days after the date due; or

8.2 DEFAULT IN OTHER AGREEMENTS.

(i) Failure of Company or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in subsection 8.1) or Contingent Obligations in an individual principal amount of $500,000 or more or with an aggregate principal amount of $500,000 or more, in each case beyond the end of any grace period provided therefor; or

(ii) breach or default by Company or any of its Subsidiaries with respect to any other material term of (a) one or more items of Indebtedness or Contingent Obligations in the individual or aggregate principal amounts referred to in clause (i) above, or (b) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness or Contingent Obligation(s), if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness or Contingent Obligation(s) (or a trustee on behalf of such holder or holders) to cause, that Indebtedness

or Contingent Obligation(s) to become or be declared due and payable prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be (upon the giving or receiving of notice, lapse of time, both, or otherwise); or

8.3 BREACH OF CERTAIN COVENANTS.

Failure of Company to perform or comply with any term or condition contained in subsection 2.5 or 6.2 or Section 7 of this Agreement; or

8.4 BREACH OF WARRANTY.

Any representation, warranty, certification or other statement made by Company or any of its Subsidiaries in any Loan Document or in any statement or certificate at any time given by Company or any of its Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false in any material respect on the date as of which made; or

8.5 OTHER DEFAULTS UNDER LOAN DOCUMENTS.

Any Loan Party shall default in the performance of or compliance with any term contained in this Agreement or any of the other Loan Documents, other than any such term referred to in any other subsection of this Section 8, and such default shall not have been remedied or waived within 20 days after the earlier of (i) an Officer of Company or such Loan Party becoming aware of such default or (ii) receipt by Company and such Loan Party of notice from Administrative Agent or any Lender of such default; or

8.6 INVOLUNTARY BANKRUPTCY; APPOINTMENT OF RECEIVER, ETC..

(i) A court having jurisdiction in the premises shall enter a decree or order for relief in respect of Company or any of its Subsidiaries in an involuntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, which decree or order is not stayed; or any other similar relief shall be granted under any applicable federal or state law; or

(ii) an involuntary case shall be commenced against Company or any of its Subsidiaries under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over Company or any of its Subsidiaries, or over all or a substantial part of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of Company or any of its Subsidiaries for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of Company or any of its Subsidiaries, and any such event described in this clause (ii) shall continue for 60 days unless dismissed, bonded or discharged; or

8.7 VOLUNTARY BANKRUPTCY; APPOINTMENT OF RECEIVER, ETC..

(i) Company or any of its Subsidiaries shall have an order for relief entered with respect to it or commence a voluntary case under the Bankruptcy Code or under any other applicable bankruptcy, insolvency or similar law now or hereafter in effect, or shall consent to the entry of an order for relief in an involuntary case, or to the conversion of an involuntary case to a voluntary case, under any such law, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or Company or any of its Subsidiaries shall make any assignment for the benefit of creditors; or

(ii) Company or any of its Subsidiaries shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due; or the Governing Body of Company or any of its Subsidiaries (or any committee thereof) shall adopt any resolution or otherwise authorize any action to approve any of the actions referred to in clause (i) above or this clause (ii); or

8.8 JUDGMENTS AND ATTACHMENTS.

Except for the Benghiat Litigation described in Schedule 5.6 annexed hereto, any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of $2,500,000 or (ii) in the aggregate at any time an amount in excess of $2,500,000 (in either case not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against Company or any of its Subsidiaries or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 45 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

8.9 DISSOLUTION.

Any order, judgment or decree shall be entered against Company or any of its Subsidiaries decreeing the dissolution or split up of Company or that Subsidiary and such order shall remain undischarged or unstayed for a period in excess of 30 days; or

8.10 EMPLOYEE BENEFIT PLANS.

There shall occur one or more ERISA Events or similar events in respect of any Foreign Plans that individually or in the aggregate results in or might reasonably be expected to result in liability of Company, any of its Subsidiaries or any of their respective ERISA Affiliates in excess of $2,500,000 during the term of this Agreement; or there shall exist an amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA) and unfunded liabilities in respect of Foreign Plans, individually or in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), which exceeds $2,500,000; or

8.11 MATERIAL ADVERSE EFFECT.

Any event or change shall occur that has caused or evidences, either in any case or in the aggregate, a Material Adverse Effect; or

8.12 CHANGE IN CONTROL.

A Change in Control shall have occurred; or

8.13 INVALIDITY OF LOAN DOCUMENTS; FAILURE OF SECURITY; REPUDIATION OF OBLIGATIONS.

At any time after the execution and delivery thereof, (i) any Loan Document or any provision thereof, for any reason other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void, (ii) Administrative Agent shall not have or shall cease to have a valid and perfected First Priority Lien in any Collateral purported to be covered by the Collateral Documents having a fair market value, individually or in the aggregate, exceeding $1,000,000, in each case for any reason other than the failure of Administrative Agent or any Lender to take any action within its control, or (iii) any Loan Party shall contest the validity or enforceability of any Loan Document or any provision thereof in writing or deny in writing that it has any further liability, including with respect to future advances by Lenders, under any Loan Document or any provision thereof to which it is a party; or

8.14 FAILURE TO CONSUMMATE MERGER.

The Merger shall not be consummated in accordance with the Merger Agreement or the Merger shall be unwound, reversed or otherwise rescinded in whole or in part for any reason;

THEN (i) upon the occurrence of any Event of Default described in subsection 8.6 or 8.7, each of (a) the unpaid principal amount of and accrued interest on the Loans, (b) an amount equal to the maximum amount that may at any time be drawn under all Letters of Credit then outstanding (whether or not any beneficiary under any such Letter of Credit shall have presented, or shall be entitled at such time to present, the drafts or other documents or certificates required to draw under such Letter of Credit), and (c) all other Obligations shall automatically become immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company, and the obligation of each Lender to make any Loan and the obligation of the Issuing Lender to issue any Letter of Credit hereunder shall thereupon terminate, and (ii) upon the occurrence and during the continuation of any other Event of Default, Administrative Agent shall, upon the written request or with the written consent of Requisite Lenders, by written notice to Company, declare all or any portion of the amounts described in clauses (a) through (c) above to be, and the same shall forthwith become, immediately due and payable, without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by Company, and the obligation of each Lender to make any Loan and the obligation of the Issuing Lender to issue any Letter of Credit hereunder shall thereupon terminate; provided that the foregoing shall not affect

in any way the obligations of Revolving Lenders under subsection 3.3C(i) or the obligations of Revolving Lenders to purchase assignments of any unpaid Swing Line Loans as provided in subsection 2.1A(iii).

Any amounts described in clause (b) above, when received by Administrative Agent, shall be held by Administrative Agent pursuant to the terms of the Security Agreement and shall be applied as therein provided.

## SECTION 9. ADMINISTRATIVE AGENT

### 9.1 APPOINTMENT.

A. Appointment of Administrative Agent. Wells Fargo is hereby appointed Administrative Agent hereunder and under the other Loan Documents. Each Lender hereby authorizes Administrative Agent to act as its agent in accordance with the terms of this Agreement and the other Loan Documents. Administrative Agent agrees to act upon the express conditions contained in this Agreement and the other Loan Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Administrative Agent and Lenders and no Loan Party shall have rights as a third party beneficiary of any of the provisions thereof. In performing its functions and duties under this Agreement, Administrative Agent shall act solely as an agent of Lenders and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for Company or any other Loan Party.

B. Appointment of Supplemental Collateral Agents. It is the purpose of this Agreement and the other Loan Documents that there shall be no violation of any law of any jurisdiction denying or restricting the right of banking corporations or associations to transact business as agent or trustee in such jurisdiction. It is recognized that in case of litigation under this Agreement or any of the other Loan Documents, and in particular in case of the enforcement of any of the Loan Documents, or in case Administrative Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the rights, powers or remedies granted herein or in any of the other Loan Documents or take any other action which may be desirable or necessary in connection therewith, it may be necessary that Administrative Agent appoint an additional individual or institution as a separate trustee, co-trustee, collateral agent or collateral co-agent (any such additional individual or institution being referred to herein individually as a "Supplemental Collateral Agent" and collectively as "Supplemental Collateral Agents").

In the event that Administrative Agent appoints a Supplemental Collateral Agent with respect to any Collateral, (i) each and every right, power, privilege or duty expressed or intended by this Agreement or any of the other Loan Documents to be exercised by or vested in or conveyed to Administrative Agent with respect to such Collateral shall be exercisable by and vest in such Supplemental Collateral Agent to the extent, and only to the extent, necessary to enable such Supplemental Collateral Agent to exercise such rights, powers and privileges with respect to such Collateral and to perform such duties with respect to such Collateral, and every covenant and obligation contained in the Loan Documents and necessary to the exercise or

performance thereof by such Supplemental Collateral Agent shall run to and be enforceable by either Administrative Agent or such Supplemental Collateral Agent, and (ii) the provisions of this Section 9 and of subsections 10.2 and 10.3 that refer to Administrative Agent shall inure to the benefit of such Supplemental Collateral Agent and all references therein to Administrative Agent shall be deemed to be references to Administrative Agent and/or such Supplemental Collateral Agent, as the context may require.

Should any instrument in writing from Company or any other Loan Party be required by any Supplemental Collateral Agent so appointed by Administrative Agent for more fully and certainly vesting in and confirming to him or it such rights, powers, privileges and duties, Company shall, or shall cause such Loan Party to, execute, acknowledge and deliver any and all such instruments promptly upon request by Administrative Agent. In case any Supplemental Collateral Agent, or a successor thereto, shall die, become incapable of acting, resign or be removed, all the rights, powers, privileges and duties of such Supplemental Collateral Agent, to the extent permitted by law, shall vest in and be exercised by Administrative Agent until the appointment of a new Supplemental Collateral Agent.

9.2 POWERS AND DUTIES; GENERAL IMMUNITY.

A. Powers; Duties Specified. Each Lender irrevocably authorizes Administrative Agent to take such action on such Lender's behalf and to exercise such powers, rights and remedies hereunder and under the other Loan Documents as are specifically delegated or granted to Administrative Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Administrative Agent shall have only those duties and responsibilities that are expressly specified in this Agreement and the other Loan Documents. Administrative Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Administrative Agent shall not have, by reason of this Agreement or any of the other Loan Documents, a fiduciary relationship in respect of any Lender or Company; and nothing in this Agreement or any of the other Loan Documents, expressed or implied, is intended to or shall be so construed as to impose upon Administrative Agent any obligations in respect of this Agreement or any of the other Loan Documents except as expressly set forth herein or therein.

B. No Responsibility for Certain Matters. No Agent shall be responsible to any Lender for the execution, effectiveness, genuineness, validity, enforceability, collectibility or sufficiency of this Agreement or any other Loan Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by such Agent to Lenders or by or on behalf of Company to such Agent or any Lender in connection with the Loan Documents and the transactions contemplated thereby or for the financial condition or business affairs of Company or any other Person liable for the payment of any Obligations, nor shall such Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Loan Documents or as to the use of the proceeds of the Loans or the use of the Letters of Credit or as to the existence or possible existence of any Event of Default or Potential Event of Default. Anything contained in this Agreement to the contrary

notwithstanding, Administrative Agent shall not have any liability arising from confirmations of the amount of outstanding Loans or the Letter of Credit Usage or the component amounts thereof.

C. Exculpatory Provisions. No Agent or any of its officers, directors, employees or agents shall be liable to Lenders for any action taken or omitted by such Agent under or in connection with any of the Loan Documents except to the extent caused by such Agent's gross negligence or willful misconduct. An Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection with this Agreement or any of the other Loan Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until such Agent shall have received instructions in respect thereof from Requisite Lenders (or such other Lenders as may be required to give such instructions under subsection 10.6) and, upon receipt of such instructions from Requisite Lenders (or such other Lenders, as the case may be), such Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) each Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of attorneys (who may be attorneys for Company and its Subsidiaries), accountants, experts and other professional advisors selected by it; and (ii) no Lender shall have any right of action whatsoever against an Agent as a result of such Agent acting or (where so instructed) refraining from acting under this Agreement or any of the other Loan Documents in accordance with the instructions of Requisite Lenders (or such other Lenders as may be required to give such instructions under subsection 10.6).

D. Agents Entitled to Act as Lender. The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, an Agent in its individual capacity as a Lender hereunder. With respect to its participation in the Loans and the Letters of Credit, an Agent shall have the same rights and powers hereunder as any other Lender and may exercise the same as though it were not performing the duties and functions delegated to it hereunder, and the term "Lender" or "Lenders" or any similar term shall, unless the context clearly otherwise indicates, include each Agent in its individual capacity. An Agent and its Affiliates may accept deposits from, lend money to, acquire equity interests in and generally engage in any kind of commercial banking, investment banking, trust, financial advisory or other business with Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection with this Agreement and otherwise without having to account for the same to Lenders.

9.3 INDEPENDENT INVESTIGATION BY LENDERS; NO RESPONSIBILITY FOR APPRAISAL OF CREDITWORTHINESS.

Each Lender agrees that it has made its own independent investigation of the financial condition and affairs of Company and its Subsidiaries in connection with the making of the Loans and the issuance of Letters of Credit hereunder and that it has made and shall continue

to make its own appraisal of the creditworthiness of Company and its Subsidiaries. No Agent shall have any duty or responsibility, either initially or on a continuing basis, to make any such investigation or any such appraisal on behalf of Lenders or to provide any Lender with any credit or other information with respect thereto, whether coming into its possession before the making of the Loans or at any time or times thereafter, and no Agent shall have any responsibility with respect to the accuracy of or the completeness of any information provided to Lenders.

9.4 RIGHT TO INDEMNITY.

Each Lender, in proportion to its Pro Rata Share, severally agrees to indemnify each Agent and its officers, directors, employees, agents, attorneys, professional advisors and Affiliates to the extent that any such Person shall not have been reimbursed by Company, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements and fees and disbursements of any financial advisor engaged by Agents) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against an Agent or and other such Persons in exercising the powers, rights and remedies of an Agent or performing the duties of an Agent hereunder or under the other Loan Documents or otherwise in its capacity as an Agent in any way relating to or arising out of this Agreement or the other Loan Documents; provided that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of an Agent resulting solely from such Agent's gross negligence or willful misconduct as determined by a final judgment of a court of competent jurisdiction. If any indemnity furnished to an Agent or any other such Person for any purpose shall, in the opinion of such Agent, be insufficient or become impaired, such Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished.

9.5 SUCCESSOR ADMINISTRATIVE AGENT AND SWING LINE LENDER.

A. Successor Administrative Agent. Any Agent may resign at any time by giving 30 days' prior written notice thereof to Lenders and Company. Upon any such notice of resignation, Requisite Lenders shall have the right, upon five Business Days' notice to Company, to appoint a successor Administrative Agent. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, that successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement. After any retiring Agent's resignation hereunder as an Agent, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was an Agent under this Agreement.

B. Successor Swing Line Lender. Any resignation of Administrative Agent pursuant to subsection 9.5A shall also constitute the resignation or removal of Wells Fargo or its successor as Swing Line Lender, and any successor Administrative Agent appointed pursuant to subsection 9.5A shall, upon its acceptance of such appointment, become the successor Swing Line Lender for all purposes hereunder. In such event (i) Company shall prepay any outstanding

Swing Line Loans made by the retiring or removed Administrative Agent in its capacity as Swing Line Lender, (ii) upon such prepayment, the retiring Administrative Agent and Swing Line Lender shall surrender any Swing Line Note held by it to Company for cancellation, and (iii) if so requested by the successor Administrative Agent and Swing Line Lender in accordance with subsection 2.1E, Company shall issue a new Swing Line Note to the successor Administrative Agent and Swing Line Lender substantially in the form of Exhibit VI annexed hereto, in the principal amount of the Swing Line Loan Commitment then in effect and with other appropriate insertions.

9.6 COLLATERAL DOCUMENTS AND GUARANTIES.

Each Lender hereby further authorizes Administrative Agent, on behalf of and for the benefit of Lenders, to enter into each Collateral Document as secured party and to be the agent for and representative of Lenders under the Subsidiary Guaranty, and each Lender agrees to be bound by the terms of each Collateral Document and the Subsidiary Guaranty; provided that Administrative Agent shall not (i) enter into or consent to any material amendment, modification, termination or waiver of any provision contained in any Collateral Document or the Subsidiary Guaranty, or (ii) release any Collateral (except as otherwise expressly permitted or required pursuant to the terms of this Agreement or the applicable Collateral Document), in each case without the prior consent of Requisite Lenders (or, if required pursuant to subsection 10.6, all Lenders); provided further, however, that, without further written consent or authorization from Lenders, Administrative Agent may execute any documents or instruments necessary to (a) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted by this Agreement or to which Requisite Lenders have otherwise consented, (b) release any Subsidiary Guarantor from the Subsidiary Guaranty if all of the Capital Stock of such Subsidiary Guarantor is sold to any Person (other than an Affiliate of Company) pursuant to a sale or other disposition permitted hereunder or to which Requisite Lenders have otherwise consented, or (c) subordinate the Liens of Administrative Agent, on behalf of Lenders, to any Liens permitted by subsection 7.2; provided that, in the case of a sale of such item of Collateral or stock referred to in subdivision (a) or (b), the requirements of subsection 10.14 are satisfied. Anything contained in any of the Loan Documents to the contrary notwithstanding, Company, Administrative Agent and each Lender hereby agree that (1) no Lender shall have any right individually to realize upon any of the Collateral under any Collateral Document or to enforce any the Subsidiary Guaranty, it being understood and agreed that all powers, rights and remedies under the Collateral Documents and the Subsidiary Guaranty may be exercised solely by Administrative Agent for the benefit of Lenders in accordance with the terms thereof, and (2) in the event of a foreclosure by Administrative Agent on any of the Collateral pursuant to a public or private sale, Administrative Agent or any Lender may be the purchaser of any or all of such Collateral at any such sale and Administrative Agent, as agent for and representative of Lenders (but not any Lender or Lenders in its or their respective individual capacities unless Requisite Lenders shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Administrative Agent at such sale.

9.7 DUTIES OF OTHER AGENTS.

None of the Lenders identified in this Agreement as a "co-agent" or Syndication Agent shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender.

9.8 ADMINISTRATIVE AGENT MAY FILE PROOFS OF CLAIM.

In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to Company or any of the Subsidiaries of Company, Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether Administrative Agent shall have made any demand on Company) shall be entitled and empowered, by intervention in such proceeding or otherwise

(i) to file and prove a claim for the whole amount of principal and interest owing and unpaid in respect of the Loans and any other Obligations that are owing and unpaid and to file such other papers or documents as may be necessary or advisable in order to have the claims of Lenders and Agents (including any claim for the reasonable compensation, expenses, disbursements and advances of Lenders and Agents and their agents and counsel and all other amounts due Lenders and Agents under subsections 2.3 and 10.2) allowed in such judicial proceeding, and

(ii) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to Lenders, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Agents and their agents and counsel, and any other amounts due Agents under subsections 2.3 and 10.2.

Nothing herein contained shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lenders or to authorize Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

SECTION 10. MISCELLANEOUS

10.1 SUCCESSORS AND ASSIGNS; ASSIGNMENTS AND PARTICIPATIONS IN LOANS AND LETTERS OF CREDIT.

A. General. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Lenders (it being understood that Lenders' rights of assignment are subject to the further provisions of this subsection 10.1). Neither Company's rights or obligations hereunder nor any interest therein may be assigned or delegated by Company without the prior written consent of all Lenders (and any attempted assignment or transfer by Company without such consent shall be null and void). No sale, assignment or transfer or participation of any Letter of Credit or any participation therein may be made separately from a sale, assignment, transfer or participation of a corresponding interest in the Revolving Loan Commitment and the Revolving Loans of the Revolving Lender effecting such sale, assignment, transfer or participation. Anything contained herein to the contrary notwithstanding, except as provided in subsection 2.1A(iii) and subsection 10.5, the Swing Line Loan Commitment and the Swing Line Loans of Swing Line Lender may not be sold, assigned or transferred as described below to any Person other than a successor Administrative Agent and Swing Line Lender to the extent contemplated by subsection 9.5. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Affiliates of each of Administrative Agent and Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

B. ASSIGNMENTS.

(i) Amounts and Terms of Assignments. Any Lender may assign to one or more Eligible Assignees all or any portion of its rights and obligations under this Agreement; provided that (a), except (1) in the case of an assignment of the entire remaining amount of the assigning Lender's rights and obligations under this Agreement, or (2) in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund of a Lender, the aggregate amount of the Revolving Loan Exposure or Term Loan Exposure of the assigning Lender and the assignee subject to each such assignment shall not be less than $3,000,000, unless each of Administrative Agent and, so long as no Event of Default has occurred and is continuing, Company otherwise consents each such consent not to be unreasonably withheld or delayed), (b) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned, (c) the parties to each assignment shall execute and deliver to Administrative Agent an Assignment Agreement, together with a processing and recordation fee of $3,500 (unless the assignee is an Affiliate or an Approved Fund of the assignor, in which case no fee shall be required), and the Eligible Assignee, if it shall not be a Lender, shall deliver to Administrative Agent information reasonably requested by Administrative Agent, including such forms, certificates or other evidence, if any, with respect to United States federal income tax withholding matters as the assignee under such Assignment

Agreement may be required to deliver to Administrative Agent pursuant to subsection 2.7B(iii), and (d), except in the case of an assignment to another Lender, an Affiliate of a Lender or an Approved Fund of a Lender, Administrative Agent and, if no Event of Default has occurred and is continuing, Company, shall have consented thereto (which consent shall not be unreasonably withheld). Upon such execution and delivery and consent, from and after the effective date specified in such Assignment Agreement, (y) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder and (z) the assigning Lender thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination of this Agreement under subsection 10.9B) and be released from its obligations under this Agreement (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto; provided that, anything contained in any of the Loan Documents to the contrary notwithstanding, if such Lender is the Issuing Lender with respect to any outstanding Letters of Credit such Lender shall continue to have all rights and obligations of the Issuing Lender with respect to such Letters of Credit until the cancellation or expiration of such Letters of Credit and the reimbursement of any amounts drawn thereunder). The assigning Lender shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its Notes, if any, to Administrative Agent for cancellation, and thereupon new Notes shall, if so requested by the assignee and/or the assigning Lender in accordance with subsection 2.1E, be issued to the assignee and/or to the assigning Lender, substantially in the form of Exhibit IV or Exhibit V annexed hereto, as the case may be, with appropriate insertions, to reflect the new Commitments and/or outstanding Revolving Loans and/or outstanding Term Loans of the assignee and/or the assigning Lender. Other than as provided in subsection 2.1A(iii) and subsection 10.5, any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection 10.1B shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection 10.1C.

(ii) Acceptance by Administrative Agent; Recordation in Register. Upon its receipt of an Assignment Agreement executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with the processing and recordation fee referred to in subsection 10.1B(i) and any forms, certificates or other evidence with respect to United States federal income tax withholding matters that such assignee may be required to deliver to Administrative Agent pursuant to subsection 2.7B(iii), Administrative Agent shall, if Administrative Agent and Company have consented to the assignment evidenced thereby (in each case to the extent such consent is required pursuant to subsection 10.1B(i)), (a) accept such Assignment Agreement by executing a counterpart thereof as provided therein (which acceptance shall evidence any required consent of Administrative Agent to such assignment), (b) record the information contained therein in the Register, and (c) give prompt notice thereof to Company.

Administrative Agent shall maintain a copy of each Assignment Agreement delivered to and accepted by it as provided in this subsection 10.1B(ii).

(iii) Deemed Consent by Company. If the consent of Company to an assignment or to an Eligible Assignee is required hereunder (including a consent to an assignment which does not meet the minimum assignment thresholds specified in subsection 10.1B(i)), Company shall be deemed to have given its consent five Business Days after the date notice thereof has been delivered by the assigning Lender (through Administrative Agent) unless such consent is expressly refused by Company prior to such fifth Business Day.

C. Participations. Any Lender may, without the consent of, or notice to, Company or Administrative Agent, sell participations to one or more Persons (other than a natural Person or Company or any of its Affiliates) in all or a portion of such Lender's rights and/or obligations under this Agreement; provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) Company, Administrative Agent and Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver directly affecting (i) the extension of the regularly scheduled maturity of any portion of the principal amount of or interest on any Loan allocated to such participation, or (ii) a reduction of the principal amount of or the rate of interest payable on any Loan allocated to such participation. Subject to the further provisions of this subsection 10.1C, Company agrees that each Participant shall be entitled to the benefits of subsections 2.6D and 2.7 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection 10.1B. To the extent permitted by law, each Participant also shall be entitled to the benefits of subsection 10.4 as though it were a Lender, provided such Participant agrees to be subject to subsection 10.5 as though it were a Lender. A Participant shall not be entitled to receive any greater payment under subsections 2.6D and 2.7 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant unless the sale of the participation to such Participant is made with Company's prior written consent. A Participant that would be a Non-US Lender if it were a Lender shall not be entitled to the benefits of subsection 2.7 unless Company is notified of the participation sold to such Participant and such Participant agrees, for the benefit of Company, to comply with subsection 2.7B(iii) as though it were a Lender.

D. Pledges and Assignments. Any Lender may at any time pledge or assign a security interest in all or any portion of its Loans, and the other Obligations owed to such Lender, to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to any Federal Reserve Bank; provided that (i) no Lender shall be relieved of any of its obligations hereunder as a result of any such assignment or pledge and (ii) in no event shall any assignee or pledgee be considered to be a "Lender" or be entitled to require the assigning Lender to take or omit to take any action hereunder.

E. Information. Each Lender may furnish any information concerning Company and its Subsidiaries in the possession of that Lender from time to time to assignees and participants (including prospective assignees and participants), subject to subsection 10.19.

F. Agreements of Lenders. Each Lender listed on the signature pages hereof hereby agrees (i) that it is an Eligible Assignee described in clause (ii) of the definition thereof; (ii) that it has experience and expertise in the making of loans such as the Loans; and (iii) that it will make its Loans for its own account in the ordinary course of its business and without a view to distribution of such Loans within the meaning of the Securities Act or the Exchange Act or other federal securities laws (it being understood that, subject to the provisions of this subsection 10.1, the disposition of such Loans or any interests therein shall at all times remain within its exclusive control). Each Lender that becomes a party hereto pursuant to an Assignment Agreement shall be deemed to agree that the agreements of such Lender contained in Section 2(c) of such Assignment Agreement are incorporated herein by this reference.

10.2 EXPENSES.

Whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly (i) all actual costs and reasonable expenses of negotiation, preparation and execution of the Loan Documents and any consents, amendments, waivers or other modifications thereto; (ii) all costs and expenses of furnishing all opinions by counsel for Company (including any opinions requested by Agents or Lenders as to any legal matters arising hereunder) and of Company's performance of and compliance with all agreements and conditions on its part to be performed or complied with under this Agreement and the other Loan Documents including with respect to confirming compliance with environmental, insurance and solvency requirements; (iii) all reasonable fees, expenses and disbursements of counsel to Administrative Agent (including allocated costs of internal counsel) in connection with the negotiation, preparation, execution and administration of the Loan Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (iv) all actual costs and reasonable expenses of creating and perfecting Liens in favor of Administrative Agent on behalf of Lenders pursuant to any Collateral Document, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums, and reasonable fees, expenses and disbursements of counsel to Administrative Agent and of counsel providing any opinions that Administrative Agent or Requisite Lenders may request in respect of the Collateral Documents or the Liens created pursuant thereto; (v) all actual costs and reasonable expenses (including the reasonable fees, expenses and disbursements of any auditors, accountants or appraisers and any environmental or other consultants, advisors and agents employed or retained by Administrative Agent or its counsel) of obtaining and reviewing any environmental audits or reports provided for under subsection 4.1O or 6.9A; (vi) all actual costs and reasonable expenses incurred by Administrative Agent in connection with the custody or preservation of any of the Collateral; (vii) all other actual costs and reasonable expenses incurred by Administrative Agent in connection with the syndication of the Commitments; (viii) all actual costs and reasonable expenses, including reasonable attorneys' fees (including allocated costs of internal counsel) and fees, costs and expenses of accountants, advisors and consultants, incurred by Administrative Agent and its counsel relating to efforts to (a) evaluate or assess any Loan Party, its business or

financial condition and (b) protect, evaluate, assess or dispose of any of the Collateral; and (ix) all costs and expenses, including reasonable attorneys' fees (including allocated costs of internal counsel), fees, costs and expenses of accountants, advisors and consultants and costs of settlement, incurred by Administrative Agent and Lenders in enforcing any Obligations of or in collecting any payments due from any Loan Party hereunder or under the other Loan Documents (including in connection with the sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Loan Documents) or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings.

10.3 INDEMNITY.

In addition to the payment of expenses pursuant to subsection 10.2, whether or not the transactions contemplated hereby shall be consummated, Company agrees to defend (subject to Indemnitees' selection of counsel), indemnify, pay and hold harmless Agents and Lenders (including the Issuing Lender), and the officers, directors, employees, agents and Affiliates of Agents and Lenders (collectively called the "Indemnitees"), from and against any and all Indemnified Liabilities (as hereinafter defined); provided that Company shall not have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise solely from the gross negligence or willful misconduct of that Indemnitee as determined by a final judgment of a court of competent jurisdiction.

As used herein, "Indemnified Liabilities" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, actions, judgments, suits, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the reasonable fees and disbursements of counsel for Indemnitees in connection with any investigative, administrative or judicial proceeding commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations (including securities and commercial laws, statutes, rules or regulations and Environmental Laws), on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including Lenders' agreement to make the Loans hereunder or the use or intended use of the proceeds thereof or the issuance of Letters of Credit hereunder or the use or intended use of any thereof, the failure of the Issuing Lender to honor a drawing under a Letter of Credit as a result of any act or omission, whether rightful or wrongful, of any present or future de jure or de facto Government Authority, or any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Subsidiary Guaranty)), (ii) the statements contained in the commitment letter delivered by any Lender to Company with respect thereto, or (iii) any Environmental Claim or any Hazardous Materials Activity relating to or arising from, directly or

indirectly, any past or present activity, operation, land ownership, or practice of Company or any of its Subsidiaries.

To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this subsection 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, Company shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

10.4 SET-OFF; SECURITY INTEREST IN DEPOSIT ACCOUNTS.

In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, upon the occurrence of any Event of Default each Lender is hereby authorized by Company at any time or from time to time, without notice to Company or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and to apply any and all deposits (general or special, time or demand, provisional or final, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by that Lender or any Affiliate of that Lender to or for the credit or the account of Company and each other Loan Party against and on account of the Obligations of Company or any other Loan Party to that Lender (or any Affiliate of that Lender) or to any other Lender (or any Affiliate of any other Lender) under this Agreement, the Letters of Credit and participations therein and the other Loan Documents, including all claims of any nature or description arising out of or connected with this Agreement, the Letters of Credit and participations therein or any other Loan Document, irrespective of whether or not (i) that Lender shall have made any demand hereunder or (ii) the principal of or the interest on the Loans or any amounts in respect of the Letters of Credit or any other amounts due hereunder shall have become due and payable pursuant to Section 8 and although said obligations and liabilities, or any of them, may be contingent or unmatured. Company hereby further grants to Administrative Agent and each Lender a security interest in all deposits and accounts maintained with Administrative Agent or such Lender as security for the Obligations.

10.5 RATABLE SHARING.

Lenders hereby agree among themselves that if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Loans made and applied in accordance with the terms of this Agreement), by realization upon security, through the exercise of any right of set-off or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Loan Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Bankruptcy Code, receive payment or reduction of a proportion of the aggregate amount of principal, interest, amounts payable in respect of Letters of Credit, fees and other amounts then due and owing to that Lender hereunder or under the other Loan Documents (collectively, the "Aggregate Amounts Due" to such Lender) that is greater than the proportion received by any other Lender in respect of the Aggregate Amounts Due to such other Lender, then the Lender receiving such proportionately greater payment shall (i) notify Administrative Agent and each other Lender of the receipt of such payment and (ii) apply a portion of such

payment to purchase assignments (which it shall be deemed to have purchased from each seller of an assignment simultaneously upon the receipt by such seller of its portion of such payment) of the Aggregate Amounts Due to the other Lenders so that all such recoveries of Aggregate Amounts Due shall be shared by all Lenders in proportion to the Aggregate Amounts Due to them; provided that if all or part of such proportionately greater payment received by such purchasing Lender is thereafter recovered from such Lender upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such assignments shall be returned to such purchasing Lender ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any purchaser of an assignment so purchased may exercise any and all rights of a Lender as to such assignment as fully as if that Lender had complied with the provisions of subsection 10.1B with respect to such assignment. In order to further evidence such assignment (and without prejudice to the effectiveness of the assignment provisions set forth above), each purchasing Lender and each selling Lender agree to enter into an Assignment Agreement at the request of a selling Lender or a purchasing Lender, as the case may be, in form and substance reasonably satisfactory to each such Lender.

10.6 AMENDMENTS AND WAIVERS.

No amendment modification, termination or waiver of any provision of this Agreement or of the Notes, and no consent to any departure by Company therefrom, shall in any event be effective without the written concurrence of Requisite Lenders; provided that no such amendment, modification, termination, waiver or consent shall, without the consent of (a) each Lender with Obligations directly affected whose consent shall be required for any such amendment, modification, termination or waiver in addition to that of Requisite Lenders) (1) reduce the principal amount of any Loan, (2) increase the maximum aggregate amount of Letters of Credit, (3) postpone the date or reduce the amount of any scheduled payment (but not prepayment) of principal of any Loan, (4) postpone the date on which any interest or any fees are payable, (5) decrease the interest rate borne by any Loan (other than any waiver of any increase in the interest rate applicable to any of the Loans pursuant to subsection 2.2E) or the amount of any fees payable hereunder including any change in the manner in which any financial ratio used in determining any interest rate or fee is calculated that would result in a reduction of any such rate or fee), (6) reduce the amount or postpone the due date of any amount payable in respect of any Letter of Credit, (7) extend the expiration date of any Letter of Credit beyond the Revolving Loan Commitment Termination Date, or (8) change in any manner the obligations of Revolving Lenders relating to the purchase of participations in Letters of Credit; (b) each Lender, (1) change in any manner the definition of "Pro Rata Share" or the definition of "Requisite Lenders" (except for any changes resulting solely from an increase in Commitments approved by Requisite Lenders), (2) change in any manner any provision of this Agreement that, by its terms, expressly requires the approval or concurrence of all Lenders, (3) increase the maximum duration of Interest Periods permitted hereunder, (4) release any Lien granted in favor of Administrative Agent with respect to all or substantially all of the Collateral or release all or substantially all of the Subsidiary Guarantors from their obligations under the Subsidiary Guaranty, in each case other than in accordance with the terms of the Loan Documents, or (5) change in any manner or waive the provisions contained in subsection 8.1 or this subsection

10.6. In addition, (i) any amendment, modification, termination or waiver of any of the provisions contained in Section 4 shall be effective only if evidenced by a writing signed by or on behalf of Administrative Agent and Requisite Lenders, (ii) no amendment, modification, termination or waiver of any provision of any Note shall be effective without the written concurrence of the Lender which is the holder of that Note, (iii) no amendment, modification, termination or waiver of any provision of subsection 2.1A(iii) or of any other provision of this Agreement relating to the Swing Line Loan Commitment or the Swing Line Loans shall be effective without the written concurrence of Swing Line Lender, (iv) no amendment, modification, termination or waiver of any provision of Section 3 shall be effective without the written concurrence of Administrative Agent and, with respect to the purchase of participations in Letters of Credit, without the written concurrence of the Issuing Lender that has issued an outstanding Letter of Credit or has not been reimbursed for a payment under a Letter of Credit, (v) no amendment, modification, termination or waiver of any provision of Section 9 or of any other provision of this Agreement which, by its terms, expressly requires the approval or concurrence of Administrative Agent shall be effective without the written concurrence of Administrative Agent, and (vi) no Commitment of a Lender shall be increased without the consent of such Lender. Administrative Agent may, but shall have no obligation to, with the concurrence of any Lender, execute amendments, modifications, waivers or consents on behalf of that Lender. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Company in any case shall entitle Company to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this subsection 10.6 shall be binding upon each Lender at the time outstanding, each future Lender and, if signed by Company, on Company. Notwithstanding the foregoing, after consulting with Company, Administrative Agent may cause amendment documents to be prepared and all parties hereto agree to execute such documents in order to change the pricing, terms and structure either of the Loans or other Obligations hereunder (provided that the Administrative Agent shall not change the aggregate amount of the Commitments hereunder), if Administrative Agent determines that such changes are necessary in order to successfully complete the syndication of the Obligations hereunder and to reduce the final Commitment of Wells Fargo to $40,000,000. These rights will survive the execution and delivery of this Agreement and the Closing Date until the Commitment of Wells Fargo has been reduced to $40,000,000.

10.7 INDEPENDENCE OF COVENANTS.

All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of an Event of Default or Potential Event of Default if such action is taken or condition exists.

10.8 NOTICES; EFFECTIVENESS OF SIGNATURES.

Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, or sent

by telefacsimile or United States mail or courier service and shall be deemed to have been given when delivered in person or by courier service, upon receipt of telefacsimile in complete and legible form, or three Business Days after depositing it in the United States mail with postage prepaid and properly addressed; provided that notices to Administrative Agent, Swing Line Lender and the Issuing Lender shall not be effective until received. For the purposes hereof, the address of each party hereto shall be as set forth under such party's name on the signature pages hereof or (i) as to Company and Administrative Agent, such other address as shall be designated by such Person in a written notice delivered to the other parties hereto and (ii) as to each other party, such other address as shall be designated by such party in a written notice delivered to Administrative Agent. Electronic mail and Internet and intranet websites may be used to distribute routine communications, such as financial statements and other information as provided in subsection 6.1; provided, however, that no signature with respect to any notice, request, agreement, waiver, amendment or other document or any notice that is intended to have binding effect may be sent by electronic mail.

Loan Documents and notices under the Loan Documents may be transmitted and/or signed by telefacsimile. The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as an original copy with manual signatures and shall be binding on all Loan Parties, Agents and Lenders. Administrative Agent may also require that any such documents and signature be confirmed by a manually-signed copy thereof; provided, however, that the failure to request or deliver any such manually-signed copy shall not affect the effectiveness of any facsimile document or signature.

10.9 SURVIVAL OF REPRESENTATIONS, WARRANTIES AND AGREEMENTS.

A. All representations, warranties and agreements made herein shall survive the execution and delivery of this Agreement and the making of the Loans and the issuance of the Letters of Credit hereunder.

B. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements of Company set forth in subsections 2.6D, 2.7, 10.2, 10.3, 10.4, 10.17 and 10.18 and the agreements of Lenders set forth in subsections 9.2C, 9.4, 10.5 and 10.18 shall survive the payment of the Loans, the cancellation or expiration of the Letters of Credit and the reimbursement of any amounts drawn thereunder, and the termination of this Agreement.

10.10 FAILURE OR INDULGENCE NOT WAIVER; REMEDIES CUMULATIVE.

No failure or delay on the part of an Agent or any Lender in the exercise of any power, right or privilege hereunder or under any other Loan Document shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement and the other Loan Documents are cumulative to, and not exclusive of, any rights or remedies otherwise available.

10.11 MARSHALLING; PAYMENTS SET ASIDE.

Neither any Agent nor any Lender shall be under any obligation to marshal any assets in favor of Company or any other party or against or in payment of any or all of the Obligations. To the extent that Company makes a payment or payments to Administrative Agent or Lenders (or to Administrative Agent for the benefit of Lenders), or Agents or Lenders enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.12 SEVERABILITY.

In case any provision in or obligation under this Agreement or the Notes shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.13 OBLIGATIONS SEVERAL; INDEPENDENT NATURE OF LENDERS' RIGHTS; DAMAGE WAIVER.

The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Commitments of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders, or Lenders and Company, as a partnership, an association, a Joint Venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out of this Agreement and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

To the extent permitted by law, Company shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with or as a result of this Agreement (including, without limitation, subsection 2.1C hereof), any other Loan Document, any transaction contemplated by the Loan Documents, any Loan or the use of proceeds thereof.

10.14 RELEASE OF SECURITY INTEREST OR GUARANTY.

Upon the proposed sale or other disposition of any Collateral to any Person (other than an Affiliate of Company) that is permitted by this Agreement or to which Requisite Lenders have otherwise consented, or the sale or other disposition of all of the Capital Stock of a

Subsidiary Guarantor to any Person (other than an Affiliate of Company) permitted by this Agreement or to which Requisite Lenders have otherwise consented, for which a Loan Party desires to obtain a security interest release or a release of the Subsidiary Guaranty from Administrative Agent, such Loan Party shall deliver an Officer's Certificate (i) stating that the Collateral or the Capital Stock subject to such disposition is being sold or otherwise disposed of in compliance with the terms hereof and (ii) specifying the Collateral or Capital Stock being sold or otherwise disposed of in the proposed transaction. Upon the receipt of such Officer's Certificate, Administrative Agent shall, at such Loan Party's expense, so long as Administrative Agent (a) has no reason to believe that the facts stated in such Officer's Certificate are not true and correct and (b), if the sale or other disposition of such item of Collateral or Capital Stock constitutes an Asset Sale, shall have received evidence satisfactory to it that arrangements satisfactory to it have been made for delivery of the Net Asset Sale Proceeds if and as required by subsection 2.4, execute and deliver such releases of its security interest in such Collateral or such Subsidiary Guaranty, as may be reasonably requested by such Loan Party.

10.15 APPLICABLE LAW.

THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF CALIFORNIA (INCLUDING SECTION 1646.5 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA), WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF ANOTHER LAW.

10.16 CONSTRUCTION OF AGREEMENT; NATURE OF RELATIONSHIP.

Each of the parties hereto acknowledges that (i) it has been represented by counsel in the negotiation and documentation of the terms of this Agreement, (ii) it has had full and fair opportunity to review and revise the terms of this Agreement, (iii) this Agreement has been drafted jointly by all of the parties hereto, and (iv) neither Administrative Agent nor any Lender or other Agent has any fiduciary relationship with or duty to Company arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between Administrative Agent, the other Agents and Lenders, on one hand, and Company, on the other hand, in connection herewith or therewith is solely that of debtor and creditor. Accordingly, each of the parties hereto acknowledges and agrees that the terms of this Agreement shall not be construed against or in favor of another party.

10.17 CONSENT TO JURISDICTION AND SERVICE OF PROCESS.

ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST COMPANY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY OBLIGATIONS THEREUNDER, MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO. BY EXECUTING AND DELIVERING THIS AGREEMENT, COMPANY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY

(I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE NONEXCLUSIVE JURISDICTION AND VENUE OF SUCH COURTS;

(II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;

(III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO COMPANY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SUBSECTION 10.8;

(IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER COMPANY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT;

(V) AGREES THAT LENDERS RETAIN THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST COMPANY IN THE COURTS OF ANY OTHER JURISDICTION; AND

(VI) AGREES THAT THE PROVISIONS OF THIS SUBSECTION 10.17 RELATING TO JURISDICTION AND VENUE SHALL BE BINDING AND ENFORCEABLE TO THE FULLEST EXTENT PERMISSIBLE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 410.40 OR OTHERWISE.

10.18 WAIVER OF JURY TRIAL.

EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS LOAN TRANSACTION OR THE LENDER/BORROWER RELATIONSHIP THAT IS BEING ESTABLISHED. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SUBSECTION 10.18 AND

EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE LOANS MADE HEREUNDER. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

10.19 CONFIDENTIALITY.

Each Lender shall hold all non-public information obtained pursuant to the requirements of this Agreement that has been identified in writing as confidential by Company in accordance with such Lender's customary procedures for handling confidential information of this nature, it being understood and agreed by Company that in any event a Lender may make disclosures (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential), (b) to the extent requested by any Government Authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this subsection 10.19, to (i) any Eligible Assignee of or participant in, or any prospective Eligible Assignee of or Participant in, any of its rights or obligations under this Agreement, or (ii) any direct or indirect contractual counterparty or prospective counterparty (or such contractual counterparty's or prospective counterparty's professional advisor) to any credit derivative transaction relating to obligations of Company, (g) with the consent of Company, (h) to the extent such information (i) becomes publicly available other than as a result of a breach of this subsection 10.19, or (ii) becomes available to Administrative Agent or any Lender on a nonconfidential basis from a source other than Company, or (i) to the National Association of Insurance Commissioners or any other similar organization or any nationally recognized rating agency that requires access to information about a Lender's or its Affiliates' investment portfolio in connection with ratings issued with respect to such Lender or its Affiliates and that no written or oral communications from counsel to an Agent and no information that is or is designated as privileged or as attorney work product may be disclosed to any Person unless such Person is a Lender or a participant hereunder; provided that, unless specifically prohibited by applicable law or court order, each Lender shall notify Company of any request by any Government Authority or representative thereof (other than any such request in connection with any examination of the financial condition of such Lender by such Government Authority) for disclosure of any such non-public information prior to disclosure of such information; and provided, further that in no event shall any Lender be obligated or required to return any materials furnished by Company or any of its Subsidiaries. In addition, Administrative Agent and Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry, and service providers to Administrative Agent and Lenders. Notwithstanding anything to contrary herein, Company and Administrative Agent hereby agree that Company (and each of its employees, representatives and agents) is permitted

to disclose to any and all Persons, without limitation of any kind, the structure and tax aspects of the transactions contemplated by the Loan Documents, and all materials of any kind (including opinions and other tax analyses) that are provided to Company related to such structure and tax aspects. In this regard, Company acknowledges and agrees that the Company's disclosure of the structure or tax aspects of such transactions is not limited in any way by an express or implied understanding or agreement, oral or written (whether or not such agreement or understanding is legally binding). Furthermore, Company acknowledges and agrees that it does not know or have reason to know that its use or disclosure of information relating to the structure or tax aspects of the transactions contemplated by the Loan Documents is limited in any other manner for the benefit of any other Person.

10.20 COUNTERPARTS; EFFECTIVENESS

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. This Agreement shall become effective upon the execution of a counterpart hereof by each of the parties hereto.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

COMPANY:

ITRON, INC.

By: /s/ David G. Remington
---
Title: Vice President and Chief Financial Officer

Notice Address:
2818 North Sullivan Road
Spokane, Washington 99216-1867
Attention: Mr. David G. Remington
Vice President and
Chief Financial Officer
Facsimile: (509) 891-3334

LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, individually and as Administrative Agent

By: /s/ Tom Beil
---
Title: Vice President and Senior Relationship Manager

Notice Address: 221 North Wall Street, Suite 310
Spokane, Washington 99201

Attention: Tom Beil
Vice President and Senior Relationship Manager
Facsimile: (509) 363-6875

Payment Instructions:

WELLS FARGO BANK, NATIONAL ASSOCIATION

Spokane, Washington

ABA#
---
For Acct.:
---
Ref: Itron, Inc.

SCHEDULE 2.1

LENDERS' COMMITMENTS AND PRO RATA SHARES

| Lender | Term Loan Commitment | Revolving Loan Commitment | Pro Rata Share |
|---|---|---|---|
| Wells Fargo Bank, National Association | $50,000,000 | $55,000,000 | 100% |
| TOTAL | $50,000,000 | $55,000,000 | 100% |

EXHIBIT 99.1

[LETTER HEAD OF ITRON]

FOR IMMEDIATE RELEASE

# ITRON COMPLETES ACQUISITION OF SILICON ENERGY

## Acquisition Strengthens Itron's Energy Management Solutions and Expands Itron Into A New Market - Selling to Energy and Water End Users

SPOKANE, WA. -- March 4, 2003 -- Itron, Inc. (NASDAQ:ITRI) announced today that it has completed the acquisition of Silicon Energy for a total consideration of $71.2 million. Silicon Energy is a leading provider of enterprise energy management software solutions that enable utilities, energy service providers, state and local government, and large energy users to efficiently manage and apply energy consumption data and rate information, optimize the delivery and use of energy, mitigate risk, control energy costs, and optimize energy procurement.

Silicon Energy software enables utilities to streamline the process of collecting, validating, and warehousing meter information; calculate and validate bills; optimize distribution assets; improve customer service; and manage peak demand. For large commercial and industrial energy users, Silicon Energy software uses billing, metering, production and weather information from multiple, geographically dispersed sources to forecast and budget energy consumption, allocate costs, and control overall energy demand and costs. In addition to software, Silicon Energy offers a comprehensive selection of professional and support services to its customer base.

The $71.2 million in consideration includes payment for the outstanding shares of stock of Silicon Energy, repayment of approximately $4.2 million in convertible debt, and other consideration. Itron will finance a portion of the purchase price with a $50 million term bank loan, which will bear interest of approximately 4.5% per year, and will be payable over three years.

During the last week of February, Silicon Energy signed two important EEM Suite software license agreements with a large regulated electric and gas utility and with a Fortune 10 manufacturer. The $1.3 million utility order was placed for Silicon Energy's Distribution Asset Optimization solution, while the EEM order will support the manufacturer's financial management, operations and procurement initiatives on a global basis to assist in lowering operating expenses and mitigating risk. Commenting on these orders, LeRoy Nosbaum, Itron chairman and CEO said, "Receiving these big wins is a great start to this acquisition. We are delighted with the interest we are seeing in our distribution asset optimization solutions and the growing acceptance of enterprise energy management with large energy users."

[LETTER HEAD OF ITRON]

"With the acquisition of Silicon Energy, we now have a knowledge platform that makes it easy for our customers to gather, manage, and exchange relevant data among all market participants - both within the utility and outside the utility operation," said Nosbaum. "Itron's knowledge platform provides the information our customers need to reduce costs, defer capital expenditures, maximize the use of existing assets and resources, integrate their systems and operations, and optimize their reliability and efficiency."

ABOUT ITRON
Itron is a leading technology provider and critical source of knowledge to the global energy and water industries. More than 2,800 utilities worldwide rely on Itron technology to deliver the knowledge they require to optimize the delivery and use of energy and water. Itron delivers value to its clients by providing industry-leading solutions for meter data collection, energy information management, demand side management and response, load forecasting, analysis and consulting services, transmission and distribution system design and optimization, web-based workforce automation, commercial and industrial customer care and residential energy management. Itron's website can be found at www.itron.com

Caution concerning forward-looking statements:

> This release contains forward-looking statements concerning Itron's operations and financial performance. These statements reflect the Company's current plans and expectations and are based on information currently available to it. They rely on a number of assumptions and estimates, which could be inaccurate, and which are subject to risks and uncertainties that could cause the Company's actual results to vary materially from those anticipated. Risks and uncertainties include the ability of the Company to effectuate additional initiatives for improving growth and profitability, including expected transaction synergies, the rate and timing of customer demand and signing of orders for the Company's products, and other factors which are more fully described in the Company's Annual Report on Form 10-K for the year ended December 31, 2001 and Forms 10-Q for 2002 on file with the Securities and Exchange Commission. Itron undertakes no obligation to update publicly or revise any forward-looking statements.

For more information please contact:

Mima Scarpelli
Vice-president, Investor Relations and Corporate Communications
(509) 891-3565
mima.scarpelli@itron.com

Additional information about Silicon Energy can be found at www.siliconenergy.com.