

# SECURITIES AND EXCHANGE COMMISSION

## FORM 8-K

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### FILER

#### **RHYTHMS NET CONNECTIONS INC**

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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

Date of Report (Date of earliest event reported)

December 3, 2001

Rhythms NetConnections Inc.  
(Exact name of Registrant as specified in charter)

Delaware  
(State or other jurisdiction of incorporation)

000-25685  
(Commission File Number)

33-0747515  
(IRS Employee Identification No.)

9100 East Mineral Circle, Englewood, Colorado  
(Address of principal executive offices)

80112  
(Zip Code)

Registrant's telephone number, including area code

(303) 876-6500

Not Applicable  
(Former name or former address, if changed since last report)

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Item 2. ACQUISITION OR DISPOSITION OF ASSETS.

GENERAL

On August 1, 2001, Rhythms NetConnections Inc. ("RHYTHMS"), Rhythms Leasing Inc. ("LEASING"), Rhythms Links Inc. ("LINKS"), Rhythms Links Inc. - Virginia ("LINKS VIRGINIA") and RCanada Inc. ("RCANADA") (Rhythms, Leasing, Links, Links Virginia and RCanada are collectively referred to herein as the "COMPANIES") commenced voluntary cases (the "CASES") under Chapter 11 of Title

11 of the U.S. Code (the "BANKRUPTCY CODE") in the U.S. Bankruptcy Court for the Southern District of New York (the "COURT").

At the sale order hearing held on September 25, 2001 (the "SALE ORDER HEARING"), the Court entered orders approving, among other things, (1) the sale (the "SALE") of certain assets (the "ASSETS") of Rhythms, Leasing, Links and Links Virginia (the "Sellers") to MCI WorldCom Network Services, Inc. ("WORLDCOM"), effective as of September 24, 2001 (the "EFFECTIVE DATE"), and (2) up to a \$32 million debtor-in-possession financing from WorldCom to the Sellers (the "DIP LOAN"), the proceeds of which were to be used by the Sellers to fund the operation of the Assets, certain other liabilities and certain other operating expenses associated therewith (together, the "BUSINESS") from the Effective Date until the earlier of the date of the closing of the transactions contemplated in the Purchase Agreement (the "CLOSING") or December 31, 2001 Agreement (the "CLOSING DATE").

The terms and conditions of the Sale are set forth in that certain Asset Purchase Agreement, dated as of September 24, 2001, by and among the Sellers and WorldCom, as buyer (the "PURCHASE AGREEMENT"). The terms and conditions of the DIP Loan are set forth in that certain Credit and Security Agreement, dated as of September 24, 2001, by and among the Sellers, as borrowers, and WorldCom, as lender (the "LOAN AGREEMENT"). The principal terms of the Sale are summarized in that certain Current Report on Form 8-K, as filed with the Securities and Exchange Commission on October 10, 2001.

The Sale closed on December 3, 2001. By closing the Sale approximately one month early, WorldCom reduced its DIP Loan obligation, thereby reducing the aggregate purchase price to approximately \$28 million, rather than the \$40 million estimated as of September 25, 2001.

In connection with the Closing, approximately 5 employees are remaining with the Companies to wind up the Companies' operations, dispose of their remaining assets, resolve claims by the Companies against third parties and claims by third parties against the Companies and then liquidate and dissolve the Company.

At the Closing, WorldCom assumed Rhythms' sublease of its headquarters office in Englewood, Colorado. Following the Closing, Rhythms has agreed to sublease a small amount of space from WorldCom at this facility and has entered into a Transition Services Agreement with WorldCom whereby WorldCom will agree to provide certain services and personnel to Rhythms through June 30, 2002, for a nominal monthly fee, plus the payment to WorldCom of certain shared personnel costs.

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Item 5. OTHER EVENTS.

Effective December 15, 2001:

1. The Board of Directors of Rhythms (the "BOARD") terminated, without cause, the employment of (a) Mr. Steve Stringer, the President, Chief Operating

Officer and Acting Chief Executive Officer of Rhythms, and (b) Mr. J.W. Braukman, the Executive Vice President and Chief Financial Officer of Rhythms.

2. The Board appointed the following officers of Rhythms to the following new positions with Rhythms:

- a. Mr. Brian Farley (formerly Vice President and Deputy General Counsel) - President and Chief Executive Officer ("CEO");
- b. Ms. Susan Richart (formerly Vice President, Controller and Assistant Secretary) - Executive Vice President, Chief Operating Officer ("COO") and Secretary; and
- c. Mr. Jeff Eikelberner (formerly Vice President, Finance) - Executive Vice President and Chief Financial Officer ("CFO") and Assistant Secretary.

3. The Board appointed Mr. Farley a director of Rhythms.

4. The three independent members of the Board (being all of the directors, other than Mr. Farley) tendered their resignations from the Board.

5. Mr. Farley, acting in his capacity as the President and CEO of Rhythms, voted Rhythms' shares of each of the Subsidiaries in favor of (a) the removal of Mr. Braukman as the sole director of Links, Links Virginia, Leasing and Rhythms Canada, Inc. (the "SUBSIDIARIES"), and (b) the appointment of himself as the sole director of each of the Subsidiaries.

6. Mr. Farley, acting in his capacity as the sole director of each of the Subsidiaries, (a) removed all of the existing officers of each of the Subsidiaries and (b) appointed the following persons to the following executive officer positions with each of the Subsidiaries:

- a. Mr. Brian Farley - President and Chief Executive Officer ("CEO");
- b. Ms. Susan Richart - Executive Vice President, Chief Operating Officer ("COO") and Secretary;
- c. Mr. Jeff Eikelberner - Executive Vice President and Chief Financial Officer ("CFO") and Assistant Secretary.

Subject to obtaining Court approval (which Rhythms is currently seeking), the executive officers of Rhythms will be executing executive employment agreements, and the other employees of Rhythms will be executing employment agreements with Rhythms, that provide for the payment to each of such officers and employees base salary (in accordance with Rhythms' standard and customary payroll practices), a retention bonus (in accordance with Rhythms' 2002

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Retention Plan), employee benefits (including paid time off), reimbursement of business expenses and severance (pursuant to Rhythms' existing severance

policy).

The terms of such agreements will begin on December 27, 2001, and will end on the earlier to occur of (1) the date of the executive's/employee's termination for the reasons set forth in his or her agreement, (2) the termination of the executive/employee by Rhythms or (3) June 30, 2001. The total base salary costs for five executives/employees for the six month period is \$380,000, and Rhythms is seeking Court authority that would allow it to hire additional full-time employees necessary to effectuate the orderly wind-down of Rhythms, at a cost to Rhythms of no more than \$100,000. Under Rhythms' existing severance policy, the executives are entitled to three months severance and the employees are entitled to between four and six weeks severance. The 2002 Retention Plan provides that Rhythms will pay retention bonuses ("BONUSES") to the executives/employees, in an amount equal to 50% of their annual base salary, in two installments - 25% of the Bonus on January 1, 2002, and the remaining 75% of the Bonus on June 30, 2002. In addition, the executive employment agreements require Rhythms to indemnify the executives to the fullest extent (a) not prohibited by the Delaware General Corporation Law and (b) permitted under the Debtors' bylaws as if the executives were an executive officer and/or director. The indemnification benefits set forth in the executive employment agreements extend to any and all claims relating to, in connection with, or arising from, out of or under the Colorado Wage Act, Colo. Rev. Stat., ss. 8-4-104 (1996), ET. SEQ.

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

- (a) Not applicable.
- (b) Not applicable.
- (c) EXHIBITS:

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EXHIBIT NUMBER -----	DESCRIPTION: -----
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- 2.1 Asset Purchase Agreement by and between Rhythms NetConnections Inc., Rhythms Links Inc., Rhythms Links Inc. - Virginia and Rhythms Leasing Inc., as Sellers, and MCI WorldCom Network Solutions Inc., as Buyer, dated as of September 24, 2001.
- 2.2 Credit and Security Agreement by and between Rhythms NetConnections Inc., Rhythms Links Inc., Rhythms Links Inc. - Virginia and Rhythms Leasing Inc., as Borrowers, and MCI WorldCom Network Solutions Inc., as Lender, dated as of September 24, 2001.

- 2.3 Transition Services Agreement by and between Rhythms NetConnections Inc. and MCI WorldCom Network Solutions Inc., dated as of December 3, 2001.
- 99.1 Form of Executive Employment Agreement, with the form of the 2002 Retention Plan attached thereto.
- 99.2 Form of Employment Agreement, with the form of the 2002 Retention Plan attached thereto.

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SIGNATURES

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

Rhythms NetConnections Inc.  
(Registrant)

Date: December 18, 2001

/s/ Jeff Eikelberner

-----  
By: Jeff Eikelberner  
Title: Chief Financial Officer

ASSET PURCHASE AGREEMENT

dated as of September 24, 2001

by and among

RHYTHMS NETCONNECTIONS INC.

RHYTHMS LINKS INC.

RHYTHMS LINKS INC. - VIRGINIA

RHYTHMS LEASING INC.

AND

MCI WORLDCOM NETWORK SERVICES, INC.

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "AGREEMENT") is dated as of September 24, 2001 by and among Rhythms NetConnections Inc., a Delaware corporation, Rhythms Links Inc., a Delaware corporation, Rhythms Links Inc. - Virginia, a Virginia corporation and Rhythms Leasing, Inc., a Nevada corporation (collectively with Rhythms, "SELLERS"), and MCI WorldCom Network Services, Inc., a Delaware corporation ("BUYER").

WITNESSETH:

WHEREAS, the Sellers are engaged in the business of providing high speed data transmission through digital subscriber line technology;

WHEREAS, Sellers commenced cases (collectively the "CASE") under chapter 11 of title 11 of the United States Code, 11 U.S.C. Sections 101 ET SEQ. (the "BANKRUPTCY CODE") on August 1, 2001 by filing voluntary petitions with the United States Bankruptcy Court for the Southern District of New York (the "BANKRUPTCY COURT");

WHEREAS, the sale of assets and liabilities of the business are subject to the supervision and control of Sellers subject to the approval of the Bankruptcy Court;

WHEREAS, on August 8, 2001, the Bankruptcy Court entered an order authorizing, among other things, procedures for a proposed auction sale of all or substantially all of the debtors' assets (the "PROCEDURE ORDER");

WHEREAS, the Buyer and the Sellers have entered into that certain Credit and Security Agreement, pursuant to which the Buyer has agreed to provide Post-Petition Financing (as defined below) to the Sellers through the Closing Date on the terms and subject to the conditions set forth therein;

WHEREAS, Sellers wish to sell to Buyer and Buyer wishes to purchase from Sellers certain tangible and intangible assets necessary to provide high speed data transmission to customers through digital subscriber line technology in markets served by the 710 central offices identified in SCHEDULE 2.1(e) herein (the "ASSUMED CENTRAL OFFICE LOCATIONS") and the network operations center ("NETWORK OPERATIONS CENTER") located at Sellers' headquarters in Englewood, Colorado (the "BUSINESS"), and to assume from Seller certain Liabilities of the Business, all in the manner and subject to the terms and conditions set forth herein, and pursuant to, INTER ALIA, Sections 105, 363, 364 and 365 of the Bankruptcy Code and the applicable Federal Rules of Bankruptcy Procedure.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereof, the parties, intending to be legally bound, hereby agree as follows:

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### I. DEFINITIONS

1.1. DEFINED TERMS. As used herein, the terms below shall have the

following respective meanings:

"AFFILIATE" shall have the meaning set forth in (i) Rule 12b-2 of the General Rules and Regulations of the Securities Exchange Act of 1934, as amended, or (ii) Section 101 of the Bankruptcy Code.

"AGREEMENT" shall mean this Asset Purchase Agreement (together with all Schedules and exhibits referenced herein).

"APPROVAL ORDER" shall have the meaning ascribed to such term in Section 7.1(b).

"BREAKUP FEE" shall mean that fee payable to Buyer by Sellers in the event a Competing Transaction is approved and consummated, such fee shall equal two percent (2%) of the Purchase Price.

"BUSINESS DAY" shall mean any day other than a Saturday, Sunday or a legal holiday on which banking institutions in the State of New York are not required to open.

"COMMUNICATIONS LICENSES" shall mean the FCC Licenses and the State PUC Licenses.

"FCC" shall mean the Federal Communications Commission.

"FCC LICENSES" shall mean all licenses, permits, certificates, franchises, registrations and other authorizations issued by the FCC held by a Seller.

"GOVERNMENTAL ENTITY" shall mean any (i) federal, state, local, municipal, foreign or other government; (ii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); or (iii) body exercising, or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature, including any arbitral tribunal.

"HSR" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and any successor Law and the rules and regulations thereunder or under any successor law.

"INTERCONNECTION AND COLLOCATION AGREEMENTS" shall mean those executory contracts between Sellers and Incumbent Local Exchange Carriers that specify, INTER ALIA, the parties' rights, duties and obligations with respect to collocation facilities and ancillary services.

"LAW" shall mean any federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, principle of common law, judgment enacted, promulgated, issued, enforced or entered by any Governmental Entity, or other requirement or rule of law.

"LIABILITIES" shall mean, as to any Person, all debts, adverse claims, liabilities, commitments, responsibilities, and obligations of any kind or nature whatsoever, direct, indirect,

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absolute or contingent, of such Person, whether accrued, vested or otherwise, whether known or unknown and whether or not actually reflected, or required to be reflected, in such Person's balance sheets or other books and records.

"LIEN" shall mean any claim, pledge, option, charge, hypothecation, easement, security interest, right-of-way, encroachment, mortgage, deed of trust or other encumbrance.

"MATERIAL ADVERSE EFFECT" shall mean a material adverse effect on the Business, taken as a whole, or any development which could be reasonably expected to delay or prevent the consummation of the transactions contemplated hereby or which could be reasonably expected to materially and adversely affect the value of the Assets, taken as a whole.

"MATERIAL DECISION" shall mean any of the following to the extent the same may affect the Assets, the Assumed Liabilities, or the Business following the Closing: (i) any entering into any material contract, including purchase orders the payment of which shall become due after the Closing, involving in excess of \$10,000; (ii) termination of any executory contract or lease that involves future payments in excess of \$10,000; (iii) material amendment or waiver of any Seller's rights in respect of any executory contract or lease (for purposes of the clause (iii), "material" shall mean a value in excess of \$10,000); (iv) any action to respond to any material customer or regulatory complaint outside of the normal course of business; (v) any communication with customers of the Business, concerning the transaction contemplated herein and/or the status of the operation of the Business; or (vi) any material change of any Seller's methods of collecting accounts receivable or any making or agreeing to make any settlement concerning an account receivable in excess of \$1,000.

"NETWORK EQUIPMENT ASSETS" shall mean all the communications and computer equipment owned by Sellers, including, without limitation, routers, ATM switches, digital subscriber line access multiplexers, modems and consumer premises equipment owned by the Sellers, and in service at the Network Operations Center or the Assumed Central Office Locations, or held in inventory or storage at any location other than a discontinued central office location.

"OPERATING EXPENSES" shall mean operating expenses related to the Business that are incurred by a Seller in the ordinary course of its business, related to the period after September 24, 2001 at 11:59 p.m. If and to the extent that an operating expense relates to both (a) the Business and (b) Sellers' other activities, only that portion of the operating expense that is reasonably allocable to the Business shall be included as an Operating Expense.

"ORDER" shall mean any judgment, order, injunction, writ, ruling, decree, stipulation or award of any Governmental Entity or private arbitration tribunal.

"PERSON" shall mean an individual, a partnership, a joint venture, a corporation, a business trust, a limited liability company, a trust, an unincorporated organization, a joint stock company, a labor union, an estate, a Governmental Entity or any other entity.

"POST-PETITION" shall mean any time after the commencement of the Case.

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"POST-PETITION FINANCING" shall mean the financing extended by Buyer or one of its Affiliates to Sellers, pursuant to Section 364 of the Bankruptcy Code and as approved by the Bankruptcy Court pursuant to one or more orders entered in the Case.

"PROCEEDING" shall mean any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Entity or arbitrator.

"REPRESENTATIVE" shall mean, with respect to any Person, such Person's officers, directors, employees, agents and representatives (including any investment banker, financial advisor, accountant, legal counsel, agent, representative or expert retained by or acting on behalf of such Person or its subsidiaries).

"SALE MOTION" shall mean the motion or motions of Sellers, seeking approval and entry of the Approval Order.

"STATE PUC" shall mean any state and local public service and public utilities commission having regulatory authority over the Business, as conducted in any given jurisdiction.

"STATE PUC LICENSES" shall mean all licenses, permits, certificates, franchises, consents, waivers, registrations or other regulatory authorizations from the appropriate governmental authority in each applicable jurisdiction including, without limitation, the State PUCs held by the Sellers.

"TAX" or "TAXES" shall mean any federal, state, county, local, foreign and other income, profits, gains, net worth, sales and use, ad valorem, gross receipts, business and occupation, license, estimated, stamp, custom duties, occupation, property (real or personal), franchise, capital stock, license, excise, value added, payroll, employees, income withholding, social security, unemployment or other tax, any penalty, addition to tax and interest on the foregoing.

"TRANSFER TAX" or "TRANSFER TAXES" shall mean any federal, state, county, local, foreign and other sales, use, transfer, conveyance, documentary transfer, recording or other similar tax, fee or charge imposed upon the sale, transfer or assignment of property or any interest therein or the recording thereof, and any penalty, addition to tax or interest with respect thereto, but such term shall not include any tax on, based upon or measured by, the net income, gains or profits from such sale, transfer or assignment of the property or any interest therein.

"WARN" shall mean the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any successor Law, and the rules and regulations thereunder and under any successor Law and/or similar state Law.

1.2. OTHER DEFINED TERMS. The following additional terms shall have the meanings defined for such terms in the Sections set forth below:

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Assumed Equipment Leases	2.1 (b)
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Sellers' Plans	4.9
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### 1.3. OTHER DEFINITIONAL PROVISIONS.

(a) The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section and Schedule references are to this Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both singular and plural forms of such terms.

## II. TRANSFER OF ASSETS AND LIABILITIES

2.1. ASSETS TO BE SOLD. Subject to Section 2.2, the other provisions of this Agreement and the Approval Order, at Closing, Sellers shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase, acquire, and accept from Sellers all of Sellers' right, title and interest in and to all of the assets of Sellers, including all assets comprising or relating to the Business, other than the Excluded Assets, free and clear of all Liens and Liabilities, collectively, the "ASSETS," including:

(a) The leases or subleases and all amendments thereto under which any Seller is a lessor or lessee or sublessor or sublessee of real property which are used in the operation of the Business as set forth on SCHEDULE 2.1(a) (collectively, the "ASSUMED REAL PROPERTY LEASES");

(b) The equipment leases which relate to equipment used in the operation of the Business as set forth on SCHEDULE 2.1(b) (the "ASSUMED EQUIPMENT LEASES");

(c) The furniture, fixtures, equipment (including customer premises equipment), machinery, vehicles, computers and associated hardware, supplies, spare parts, equipment inventory and other tangible personal property owned by Sellers, including the Network Equipment Assets (collectively, the "EQUIPMENT"), and all warranties, representations and guarantees if any, express or implied, existing for the benefit of such Sellers from third parties relating to the Equipment, to the extent the same are transferable or assignable;

(d) All licenses, permits, franchises, certificates of occupancy, registrations and approvals and other authorizations of any Governmental Entity to the extent the same are transferable or assignable, which are used in the operation of the Business as set forth on SCHEDULE 2.1(d);

(e) The contracts and agreements of the Sellers pertaining to and necessary for the operation of the Business in the ordinary course as set forth on SCHEDULE 2.1(e) (collectively, the "ASSUMED CONTRACTS"), subject to the limitation that the Buyer shall assume the Interconnection and Collocation Agreements set forth on SCHEDULE 2.1(e) only with respect to the Assumed Central Office Locations;

(f) Accounts receivable of the Sellers (including all accounts receivable payable to Sellers by Buyer or any of its Affiliates) existing on the



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(g) All books, records, files or papers of Sellers, whether in hard copy or computer format, relating to the Assets or to the operation of the Business, including, without limitation, engineering information, sales and promotional literature, manuals and data, sales and purchase correspondence, personnel and employment records, customer lists, vendor lists, catalogs, research material, technical information, trade secrets, technology, know-how, specifications, designs, drawings, processes and quality control data, if any, or any other intangible property and applications for the same used in the operation of the Business as set forth on SCHEDULE 2.1(g);

(h) All of Sellers' Intellectual Property and the rights to sue for, and remedies against, past, present and future infringements thereof and the rights of priority and protection of interests therein under applicable laws used in the operation of the Business as set forth on SCHEDULE 2.1(h), to the extent the same is transferable or assignable;

(i) Intentionally omitted;

(j) All computer software programs, management information systems, URLs, source codes and databases used by the Sellers whether owned, licensed, leased, or internally developed (in each case, subject to applicable restrictions) used in the operation of the Business as set forth on SCHEDULE 2.1(j) (the "SOFTWARE");

(k) All telephone numbers and electronic mail addresses owned and used by the Sellers in the conduct of the Business as set forth on SCHEDULE 2.1(k);

(l) All rights, demands, claims and causes of action that Sellers may have against Buyer or any of its Affiliates, including, but not limited to, causes of action based on Chapter 5 of the Bankruptcy Code;

(m) All credits, prepaid expenses, advance payments and other prepaid items related to the operation of the Business as set forth on SCHEDULE 2.1(m);

(n) cash and cash equivalents constituting the proceeds of the collateral securing the Post-Petition Financing; and

(o) All shares of Series D Preferred Stock of Megapath Networks, Inc., owned by Rhythms.

2.2. EXCLUDED ASSETS. The Assets shall not include any of Sellers' right, title or interest in or to any of the following assets, properties and rights expressly enumerated (collectively, the "EXCLUDED ASSETS"):

(a) Any cash and cash equivalents (other than cash and cash equivalents that constitute the proceeds of the collateral securing the Post-Petition Financing), certificates of deposit, Treasury bills and other marketable securities owned by Sellers as of the Closing Date;



(b) Any security, vendor, utility or other deposits posted or paid by any Seller other than those set forth on SCHEDULE 2.1(m);

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(c) Any contracts or agreements other than the Assumed Contracts, the Assumed Central Office Locations, the Assumed Equipment Leases or the Assumed Real Property Leases;

(d) Any assets and any rights under any plan or any agreement relating to employee benefits, employment or compensation of any Seller or its respective employees;

(e) All rights, demands, claims, actions and causes of action (collectively, the "CLAIMS") that Sellers may have against any third party, including any Governmental Entity, including, but not limited to, causes of action based on Chapter 5 of the Bankruptcy Code (subject to the limitation that Sellers shall waive any such claims that arise from or relate to any Assumed Contract, any Assumed Equipment Leases or any Assumed Real Property Leases) and for refund or credit of any type with respect to Taxes accrued with respect to periods ending on or prior to the Closing Date;

(f) All Claims which Sellers may have against any third Person with respect to any Excluded Assets, excluding accounts receivable;

(g) All Claims and defenses (other than warranty Claims relating to Equipment referred to in Section 2.1(c)) which Sellers may have against any Person with respect to any Contract which has not been expressly assumed;

(h) Any insurance policy, insurance claims, and insurance proceeds (other than insurance proceeds arising from damages to an Asset, which insurance proceeds shall constitute an Asset), except as otherwise provided herein;

(i) The capital stock of the Sellers;

(j) Any real property interests, whether owned or leased, of any Seller, other than the Assumed Real Property Leases, and the Excluded Assets specifically including, among others, the real property located at 7801 South Chester, Englewood, Colorado 80112;

(k) The shares of Series B Preferred Stock of At Home Network Solution, Inc, owned by Rhythms; and

(l) The Cisco General Unsecured Claim Payment Obligation Escrow and the funds contained therein (but subject to Buyer's contingent payment right under Section 2.3(i)).

2.3. LIABILITIES TO BE ASSUMED BY BUYER. On the terms and subject to the conditions set forth in this Agreement (including Section 9.1 hereof), at the Closing, Buyer shall assume and thereafter pay, perform when due and discharge only the following Liabilities of Sellers (collectively, the "ASSUMED LIABILITIES"):

(a) Liabilities arising out of the ownership of the Assets and the operation of the Business by Buyer, including, without limitation, Liability for personal injury of customers or employees, but only to the extent that the event or state of facts giving rise to such Liability occurs after the Closing Date;

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(b) Liabilities under the Assumed Real Property Leases arising from and related to the period after the Closing Date;

(c) Liabilities under the Assumed Contracts, including with respect to the Assumed Central Office Locations, arising from and related to the period after the Closing Date;

(d) Liabilities under the Assumed Equipment Leases arising from and related to the period after the Closing Date;

(e) Liabilities for Operating Expenses accrued as of the Closing Date;

(f) Liabilities related to the termination of employment of any Buyer Hire, including, but not limited to any Liability arising under WARN, with respect to the termination of any Buyer Hire;

(g) Liabilities under Section 4980B of the Internal Revenue Code or similar state law ("COBRA") and as otherwise set forth in Section 6.8(e);

(h) To the extent the transfer of the Assets is not exempt pursuant to Section 1146 of the Bankruptcy Code and the Approval Order, Liabilities for any and all Transfer Taxes due as a result of the transactions contemplated by this Agreement; and

(i) With respect to the allowed, general unsecured claim of Cisco Systems Capital Corporation in the amount of \$25,000,000 (the "CISCO GENERAL UNSECURED CLAIM"), Buyer shall assume the obligation to pay ten percent (10%) of the distribution otherwise payable by the Sellers under a liquidating plan of reorganization (or by any chapter 7 trustee appointed for Sellers) on account of the Cisco General Unsecured Claim, but in no event shall such assumed obligation exceed the amount of \$250,000 (the "CISCO GENERAL UNSECURED CLAIM PAYMENT OBLIGATION"). To secure its obligation under this Section 2.3(i), Buyer shall fund an escrow in the amount of \$250,000 (the "CISCO GENERAL UNSECURED CLAIM PAYMENT OBLIGATION ESCROW"), on or before the Closing Date. In the event the Cisco General Unsecured Claim Payment Obligation is fixed at less than \$250,000, an amount equal to \$250,000 minus the Cisco General Unsecured Claim Payment Obligation shall be released to Buyer from the Cisco General Unsecured Claim Payment Obligation Escrow.

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2.4. EXCLUDED LIABILITIES. Notwithstanding anything to the contrary contained herein, but subject to Section 9.1 hereof, Buyer shall not assume, or

in any way be liable or responsible for, and shall be deemed not to have assumed any Liabilities except for the Assumed Liabilities (it being understood that Buyer is expressly disclaiming any express or implied assumption of any Liabilities of the Sellers of any kind, character or description other than the Assumed Liabilities), and without limiting the generality of the foregoing, Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers other than the Assumed Liabilities (collectively, the "EXCLUDED LIABILITIES"), including, but not limited to, those Liabilities set forth below:

(a) Any Liabilities which arise, out of, or in connection with, the Excluded Assets;

(b) Any Liabilities under the Assumed Contracts that arose or accrued prior to the Closing Date;

(c) Any Liabilities under the Assumed Equipment Leases and the Assumed Real Property Leases that arose or accrued prior to the Closing Date;

(d) Any Liabilities arising out of, or in connection with, any Proceedings arising out of the operation of the Business prior to the Closing Date;

(e) Any Liabilities arising out of or in connection with any indebtedness of Sellers to their lenders;

(f) Except for Liabilities set forth in Sections 2.3(f) and 2.3(g) and as provided in Section 6.8, any Liabilities attributable to, incurred in connection with, arising from, or relating to, any collective bargaining agreement, or any bonus, incentive, deferred compensation, medical, health, life or other insurance, welfare, fringe benefit, severance, termination, retention, consulting, change of control, employment, stock option, stock appreciation right, stock purchase, phantom stock or other equity-based, performance, pension, retirement or any other incentive, compensation or benefit plan, program, policy, agreement or arrangement (including, but not limited to, any "employee benefit plan" as defined in Section 3(3) of ERISA), sponsored, maintained, contributed to or required to be contributed to at any time by Sellers or any trade or business which together with Sellers would be deemed (or at any time would have been) a "single employer" within the meaning of section 4001 of ERISA (each, an "ERISA AFFILIATE"), for the benefit of any current or former employee, officer, director, agent or consultant of Sellers, or any ERISA Affiliate, whether formal or informal and whether legally binding or not; and

(g) Any Liabilities for income Taxes of Seller and any other Taxes of Sellers of any kind (other than Transfer Taxes referred to in Section 2.3(h)), including, but not limited to, all Taxes attributable to, incurred in connection with or arising out of the operation of the Business or the ownership of the Assets, prior to the Closing Date, regardless of when due or assessed.

2.5. ASSUMED REAL PROPERTY LEASES, ASSUMED EQUIPMENT LEASES AND ASSUMED CONTRACTS. At Closing and pursuant to Section 365 of the Bankruptcy Code, Sellers shall assume

and assign to Buyer the Assumed Real Property Leases, the Assumed Equipment Leases and the Assumed Contracts. The cure amounts, as determined by the Bankruptcy Court, if any (the "CURE AMOUNTS"), necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Assumed Real Property Leases, the Assumed Equipment Leases and the Assumed Contracts, and payable in order to effectuate the assumption and assignment of the Assumed Real Property Leases, the Assumed Equipment Leases and the Assumed Contracts by Sellers to the Buyer under the Approval Order shall be paid by Sellers from the Purchase Price and, except as set forth in the next sentence, Buyer shall have no Liability therefor. In the event the sum of (a) the aggregate Cure Amount PLUS (b) \$500,000 exceeds (c) \$8,000,000, then in such event the Purchase Price shall be adjusted upward in the cash amount (the "CURE AMOUNT PURCHASE PRICE ADJUSTMENT") equal to the difference of ((a) + (b) - (c)), subject to the limitation that in no event shall the Cure Amount Purchase Price Adjustment exceed \$500,000.

### III. CLOSING

#### 3.1. CLOSING; TRANSFER OF POSSESSION; CERTAIN DELIVERIES.

(a) Unless this Agreement shall have been terminated and the transactions herein contemplated shall have been abandoned pursuant to Article VIII hereof, the closing of the transactions contemplated herein (the "CLOSING") shall take place on the second Business Day after the conditions set forth in Article VII shall have been satisfied or waived or on such other date as the parties hereto shall mutually agree, such date to be as soon as practicable following entry of the Approval Order. The Closing shall be held at the offices of Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, at 10:00 a.m., local time, unless the parties hereto otherwise agree. The actual time and date of the Closing are herein called the "CLOSING DATE."

(b) At the Closing, Sellers shall deliver to Buyer:

(i) A duly executed bill of sale in form and substance reasonably satisfactory to Buyer;

(ii) A certified copy of the Approval Order;

(iii) The officer's certificates required to be delivered pursuant to Section 7.2(c) hereof; and

(iv) All other documents, certificates, instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be reasonably necessary to transfer and convey the Assets to Buyer or Buyer's designee, free and clear of any Liens and Liabilities thereon including: (i) a duly executed Assignment and Assumption Agreement in form and substance reasonably satisfactory to Buyer; and (ii) an assignment of lease, dated as of the Closing Date, with respect to each Assumed Contract that is a lease, in form and substance reasonably satisfactory to Buyer.

(c) At the Closing, Buyer shall deliver to Sellers:

(i) The Purchase Price;

(ii) All certificates required by all relevant taxing authorities that are necessary to support any claimed exemption from the imposition of Transfer Taxes;

(iii) The officer's certificate required to be delivered pursuant to Section 7.3(c) hereof;

(iv) An assumption agreement dated as of the Closing Date, in form and substance reasonably satisfactory to Sellers pursuant to which Buyer shall assume all Assumed Liabilities;

(v) All other instruments of transfer, in form and substance reasonably satisfactory to Sellers, as may be necessary to assume the Assumed Liabilities; and

(vi) The Cisco General Unsecured Claim Payment Obligation Escrow agreement.

3.2. PURCHASE PRICE. In consideration for the Assets, and subject to the terms and conditions of this Agreement, Buyer shall (i) assume the Assumed Liabilities as provided in Section 2.3; (ii) for itself and on behalf of its Affiliates, waive all accounts payable owed by any Seller as of the commencement of the Case to the Buyer and/or its Affiliates; and (iii) at the Closing shall pay to Sellers in immediately available funds, by wire transfer to an account or accounts designated by Sellers, an amount in cash equal to \$40,000,000 plus the Cure Amount Purchase Price Adjustment, if any (the "PURCHASE PRICE"); PROVIDED, HOWEVER, upon the date hereof, Buyer shall tender to Sellers in immediately available funds, by wire transfer to an account or accounts designated by Sellers an earnest money deposit equal to \$1,900,000, which sum combined with the deposit submitted in accordance with the Procedure Order shall be referred to collectively as the "EARNEST MONEY DEPOSIT." The Earnest Money Deposit and the principal amount outstanding under the Post-Petition Financing (in full satisfaction thereof) on the Closing Date shall be deducted from the total Purchase Price payable at the Closing. Moreover, the Purchase Price shall be adjusted downward in an amount equal to any unfunded commitment under the Post-Petition Financing. The Purchase Price shall be deemed adjusted upward in an amount equal to the sum released to Sellers from the Cisco General Unsecured Claim Payment Obligation Escrow, which the Buyer agrees shall be maintained until such time as the amount of the Cisco General Unsecured Claim has been fully and finally resolved by a non-appealable decision of a court of competent jurisdiction or by such other means or arrangement as agreed to by the Sellers, the Buyer and Cisco. If Sellers terminate this Agreement pursuant to Section 8.1(b) (provided the Closing has not occurred due to a breach by Buyer) or Section 8.1(e), then Sellers shall be entitled to retain the Earnest Money Deposit and shall have no further obligations to Buyer. If Buyer terminates this Agreement pursuant to Section 8.1 hereof, provided that Buyer is not in breach of this Agreement, or if Sellers terminate this Agreement pursuant to Section 8.1(a), (b) (provided the failure to have a Closing on the date specified is not due to a breach by Buyer), (c), (h), or (i), then Sellers shall be obligated to return the Earnest Money Deposit and all accrued interest thereon to Buyer.

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3.3. ALLOCATION OF PURCHASE PRICE. Sellers shall, within 120 days after the Closing Date, prepare and deliver to Buyer a schedule (the "ALLOCATION SCHEDULE") allocating the Purchase Price and the Assumed Liabilities among the Assets in accordance with Treas. Reg. 1.1060-1T (or any comparable provisions of state or local tax law) or any successor provision. Buyer will have the right to raise reasonable objections to the Allocation Schedule within 10 days after its receipt thereof, in which event Buyer and Sellers will negotiate in good faith to resolve such objections. If Buyer and Sellers cannot mutually resolve Buyer's reasonable objections to the Allocation Schedule within 10 days after Sellers' receipt of such objections, such dispute with respect to the Allocation Schedule shall be presented to an accounting firm to be mutually selected by Buyer and Sellers, on the next day for a decision that shall be rendered by such accounting firm within 30 calendar days thereafter and shall be final and binding upon all of the parties. The fees, costs and expenses incurred in connection therewith shall be shared in equal amounts by Buyer and Sellers. Buyer and Sellers each shall report and file all Tax returns (including amended Tax returns and claims for refund) consistent with the Allocation Schedule, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any taxing authority or any other proceedings). Buyer and Sellers shall cooperate in the filing of any forms (including Form 8594) with respect to such allocation, including any amendments to such forms required with respect to any adjustment to the Purchase Price, pursuant to this Agreement. Notwithstanding any other provisions of this Agreement, the foregoing agreement shall survive the Closing Date without limitation. Sellers and Buyer further agree that the payment contemplated by Section 3.2 may be made to a single Seller that is designated in writing on or before the second Business Day prior to Closing as being authorized to act as agent for all entities that are Sellers, whereupon each entity shall be deemed to have received the Purchase Price allocable to the Assets owned by such Seller in accordance with the allocation determination herein.

#### IV. REPRESENTATIONS AND WARRANTIES OF SELLERS

The Buyer specifically acknowledges and agrees to the following with respect to the representations and warranties of the Sellers:

A. The Buyer will not have any recourse to the Sellers or to any of the officers or directors of the Sellers in the event any of the representations and warranties made herein or deemed made are untrue as at any time of expression thereof. The only remedy for a breach of such representations and warranties shall be the Buyer's option, under certain circumstances, not to close in accordance with and subject to the limitations in Article VIII hereof and, without limiting the foregoing, the Buyer shall have no remedy whatsoever for any such breach after the Closing.

B. The Buyer has conducted its own due diligence investigations of the Business or has waived its right to conduct such due diligence, subject to the qualification that Sellers shall deliver complete copies of SCHEDULES on or before two Business days prior to the hearing on the Sale Motion, and subject to Buyer's rights to terminate under Article VIII hereof.



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Sellers hereby represent and warrant to Buyer as follows (it being understood that each of the following representations and warranties shall apply only to the extent it relates to the Business):

4.1. EXISTENCE, GOOD STANDING AND POWER. Each Seller is a corporation validly existing and in good standing under the laws of the State of its incorporation, and has all requisite power and authority to own, lease and operate its Assets to be sold hereunder and to carry on its business as it is now being conducted. Subject to entry of the Approval Order, each Seller has all requisite power and authority to execute and deliver this Agreement and the other documents and instruments to be executed and delivered by such Seller and to perform its obligations hereunder and thereunder.

4.2. AUTHORITY. The execution, delivery and performance of this Agreement and the consummation by each Seller of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of each Seller.

4.3. EXECUTION AND BINDING EFFECT. This Agreement has been duly and validly executed and delivered by each Seller and constitutes, and, following the entry of the Approval Order, this Agreement and the transaction contemplated hereby will constitute (assuming in each case the due and valid authorization, execution and delivery thereof by Buyer), a valid and legally binding obligation of each Seller enforceable against each Seller in accordance with its terms.

4.4. NO VIOLATION. Except as disclosed in SCHEDULE 4.4, the execution, delivery and performance by each Seller of this Agreement and the transactions contemplated hereby, do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, any violation of, or constitute a breach or default, or give rise to any right of acceleration, payment, amendment, cancellation or termination, under (a) the certificate of incorporation or bylaws of such Seller or any resolution adopted by the board of directors of such Seller and not rescinded, (b) subject to entry of the Approval Order, any material agreement or other instrument to which Seller is a party or by which such Seller or any of its respective properties or assets is bound, (c) subject to entry of the Approval Order, any Order to which Seller is bound or subject, (d) subject to entry of the Approval Order, any Law applicable to each Seller or any of its respective properties or assets or (e) except as provided for herein, result in the imposition or creation of any Lien upon or with respect to any of the Assets.

4.5. THIRD PARTY APPROVALS. Except for (i) any approvals required in order to comply with the provisions of the HSR, if necessary, (ii) the Approval Order, (iii) any other third party approvals as are reflected on SCHEDULE 4.5 hereto, and (iv) any consent or approval of a Governmental Entity in respect to the transfer of any Communications License and the transfer of the Assets, the execution, delivery and performance by each Seller of this Agreement and the transactions contemplated hereby do not require any consents, waivers, authorizations or approvals of, or filings with, any third Persons which have not been obtained by Seller.

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4.6. BROKERS AND FINDERS. The Sellers have engaged the firm of Lazard Freres & Co. LLC to assist them in connection with the matters contemplated by this Agreement and will be responsible for the fees and expenses of such firm.

4.7. FCC/STATE PUC MATTERS.

(a) SCHEDULE 4.7(a) sets forth each of the FCC Licenses and State PUC Licenses that are required for the conduct of the Business and for the operation and holding of the Assets as presently conducted, except where failure to hold such State PUC Licenses or FCC Licenses would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect.

(b) Other than Communications Licenses the loss of which would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect and except to the extent excused by or unenforceable as a result of the commencement or pendency of the Case or the application of any provision of the Bankruptcy Code (but only to the extent such excuse, lack of enforceability or application of law will continue to apply in favor of Buyer and its successors and assigns following Closing), each of the Communications Licenses was duly issued, is valid and in full force and effect, has not been suspended, canceled, revoked, or modified in any adverse manner other than in a manner which is immaterial, and is not subject to conditions or requirements that are not generally imposed on such authorizations.

(c) (i) Each holder of a Communications License has operated in all material respects in compliance with all terms thereof; and (ii) each holder of a Communications License is in all material respects in compliance with, and the conduct of its businesses have been and are in compliance with, the Communications Act and any applicable state or local regulations, and each such holder has filed all registrations and reports and paid all required fees, including any renewal applications, required by the Communications Act or any applicable state or local regulations. Except as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect and except to the extent excused by or unenforceable as a result of the commencement or pendency of the Case or the application of any provision of the Bankruptcy Code (but only to the extent such excuse, lack of enforceability or application of law will continue to apply in favor of Buyer and its successors and assigns following Closing), (x) there is no pending or, to the knowledge of the Sellers, threatened action by or before the FCC or any State PUC to revoke, cancel, suspend, modify, or refuse to renew any of the Communications Licenses, and (y) there is not now issued, outstanding or, to the knowledge of the Sellers, threatened any notice by the FCC or any State PUC of violation or complaint, or any application, complaint, or proceeding (other than applications, proceedings, or complaints that generally affect the Sellers' industry as a whole) relating to the Business.

(d) Except as set forth in SCHEDULE 4.7(d) or as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect and except to the extent excused by or unenforceable as a result of the commencement or pendency of the Case or the application of any provision of the



Bankruptcy Code (but only to the extent such excuse, lack of enforceability or application of law will continue to apply in favor of Buyer and its successors and assigns following Closing), no event has occurred which permits the revocation or termination of any of the Communications Licenses or the imposition of any restriction

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thereon, or that would prevent any of the Communications Licenses from being renewed on a routine basis or in the ordinary course. There are no facts that would disqualify any of the Sellers, under either the Communications Act or any applicable state or local regulations, as an assignor in connection with the approval of any Governmental Entity.

4.8. ENVIRONMENTAL MATTERS. Except as set forth in SCHEDULE 4.8 and except as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, (a) each Seller has all permits required by or under all federal, state, and local laws governing the pollution or protection of the environment ("ENVIRONMENTAL LAWS") and is, and for the past 12 months has been, in compliance with such permits and is otherwise in compliance with all applicable Environmental Laws, (b) no Seller has received any written notice not subsequently resolved with respect to the business of, or any property owned or leased by the Sellers from any governmental entity or third party alleging that any Seller or any aspect of the Business is not in compliance with any Environmental Law and no such condition of non-compliance exists, (c) there has been no release of a hazardous substance, as these terms are defined under Environmental Laws, in excess of a reportable quantity on any real property that is used in the Business and (d) there is no obligation under Environmental Laws to perform remedial action relating to any release of a hazardous substance, waste, pollutant or contaminant.

#### 4.9. EMPLOYEE BENEFITS; LABOR MATTERS.

(a) SCHEDULE 4.9 contains a true and complete list of each "employee benefit plan" as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is sponsored, maintained, or contributed to or required to be contributed to by any Seller or by any trade or business, whether or not incorporated (an "ERISA AFFILIATE"), that together with any Seller would be deemed a "single employer" within the meaning of Section 4001(b) of ERISA, or to which the Sellers or an ERISA Affiliate is party, for the benefit of any employee of each Seller engaged in the Business (individually, a "SELLER PLAN," and collectively, the "SELLERS' PLANS"). The Buyer is not assuming and shall have no liability in connection with any Seller Plan.

(b) No Seller Plan is (i) subject to Title IV of ERISA; (ii) a multiemployer plan within the meaning of Section 3(37) of ERISA, (iii) maintained in connection with any trust described in Section 501(c)(9) of the Internal Revenue Code (the "CODE") or (iv) subject to the minimum funding standards of ERISA Section 302 or Code Section 412. Further, neither the Sellers nor any ERISA Affiliate have ever contributed to or been obligated to contribute to a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA.

(c) Except as set forth in SCHEDULE 4.9(c), the Sellers and each ERISA Affiliate are in material compliance with, and each Seller Plan has been operated in accordance with, the provisions of such Seller Plan, and the Sellers and each ERISA Affiliate are in material compliance with ERISA, the Code and all legal requirements governing each such Seller Plan, including but not limited to rules and regulations promulgated by the Department of Labor, the Pension Benefit Guaranty Corporation and the Department of the Treasury pursuant to the provisions of ERISA and the Code.

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(d) None of the Sellers nor any ERISA Affiliate is a party to any collective bargaining agreements and there are no labor unions or other organizations representing, purporting to represent, or attempting to represent, any employee of the Sellers.

(e) Except as set forth in SCHEDULE 4.9(e), no Seller has, with respect to employees engaged in the Business, violated any provision of federal or state law or any governmental rule or regulation, or any order, decree, judgment arbitration award of any court, arbitrator or any government agency regarding the terms and conditions of employment of employees, former employees or prospective employees or other labor related matters, including, without limitation, laws, rules, regulations, orders, rulings, decrees, judgments and awards relating to discrimination, fair labor standards and occupational health and safety, wrongful discharge or violation of the person rights of employees, former employees or prospective employees.

(f) There are no pending claims or lawsuits by, against, or relating to any Seller Plan that would, if successful, result in liability of any Seller, any ERISA Affiliate or the Buyer, and no claims or lawsuits have been asserted, instituted or, to the knowledge of each Seller, threatened in writing by, against, or relating to any Seller Plan, against the assets of any trust or other funding arrangement under any such Seller Plan, by or against any Seller with respect to any Seller Plan, or by or against the plan administrator or any fiduciary of any Seller Plan, and the Sellers do not have knowledge of any fact that could form the basis for any such claim or lawsuit. The Sellers' Plans are not presently under audit or examination (nor has notice been received of a potential audit or examination) by the IRS, the Department of Labor, or any other governmental agency or entity, and no matters are pending with respect to any Seller Plan under the IRS's Voluntary Compliance Resolution program, its Closing Agreement Program, or other similar programs.

4.10. REAL PROPERTY. The Sellers have delivered to the Buyer a true, correct and complete copy of the lease for premises containing the Network Operations Center located at 9100 Mineral Drive, Englewood, Colorado 80112. The lease is in full force and effect, and no party to the lease or sublease is in breach or default, and no event has occurred which, with notice or lapse of time, would constitute a breach or default or permit termination, modification or acceleration thereunder.

#### 4.11. TITLE TO AND USE OF PROPERTY.

(a) At the Closing, Buyer will acquire all of each Seller's right,

title and interest in, to and under all of the Assets, in each case free and clear of Liens and Liabilities (including, without limitation, any and all claims that may arise by reason of the execution, delivery or performance by Sellers of this Agreement);

(b) Except for any assets that are Excluded Assets, and except with respect to the equipment that is leased from Cisco Systems Capital Corporation, the Assets include, without limitation, all personal property of the Sellers, both tangible and intangible, materially necessary to conduct the Business, and none of such Assets are owned by any subsidiary or Affiliate of Rhythms that is not identified as one of the Sellers or any unrelated third party.

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#### 4.12. INTELLECTUAL PROPERTY.

(a) "INTELLECTUAL PROPERTY" shall mean all of the following as they exist in all jurisdictions throughout the world, in each case, to the extent used in the conduct of the Business and owned by, licensed to, or otherwise used by the Sellers:

(i) patents, patent applications, and other patent rights (including any divisions, continuations, continuations-in-part, substitutions, or reissues thereof, whether or not patents are issued on any such applications and whether or not any such applications are modified, withdrawn, or resubmitted);

(ii) trademarks, service marks, trade dress, trade names, brand names, designs, logos, or corporate names, whether registered or unregistered, and all registrations and applications for registration thereof;

(iii) copyright registrations and applications for registration thereof and non-registered copyrights;

(iv) trade secrets, designs, research, processes, procedures, techniques, methods, know-how, data, mask works, inventions, and other proprietary rights (whether or not patentable or subject to copyright, mask work, or trade secret protection); and

(v) computer software programs, including, without limitation, all source codes, object codes, and material documentation related thereto (the "SOFTWARE").

(b) Intellectual Property Disclosure. SCHEDULE 4.12(b) sets forth all United States and foreign patents and patent applications, trademark and service mark registrations and applications, and copyright registrations and applications owned or licensed by any Seller, specifying as to each owned item, as applicable: (i) the nature of the item, including the title; (ii) the owner of the item; (iii) the jurisdictions in which the item is issued or registered or in which an application for issuance or registration has been filed; and (iv) the issuance, registration, or application numbers and dates.

(c) Ownership. Except as would not reasonably be expected to, individually

or in the aggregate, result in a Material Adverse Effect, each Seller will own or have the right to use as of the Closing Date and transfer to the Buyer, free and clear of Liens and Liabilities, and as of the Closing Date will have the unrestricted right to use, sell, or license, all Intellectual Property used in the conduct of the Business to the maximum extent permissible by operation of Section 363 of the Bankruptcy Code.

(d) Claims. Except as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, no Seller has been, during the three (3) years preceding the date hereof, a party to any claim or action, nor, to the knowledge of any Seller, is any claim or action threatened that challenges the validity, enforceability, ownership, or right to use, sell, or license any Intellectual Property. Except as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, to the knowledge of any Seller, no third party is infringing upon any Intellectual Property.

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(e) Administration and Enforcement. Except as would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Effect, the Sellers have taken all necessary and desirable action to maintain and protect each item of Intellectual Property owned by the Sellers.

(f) Software. All Software set forth on SCHEDULE 2.1(j) is, to the best knowledge of Sellers, held by the Sellers legitimately, is fully and freely transferable to the Purchaser without any third party consent (except as set forth in SCHEDULE 2.1(j)), and to the best knowledge of Sellers is free from any significant software defect, performs in conformance with its documentation, and does not contain any bugs or viruses or any code or mechanism that may be reasonably likely to materially interfere with the operation of such Software.

#### 4.13. NETWORK EQUIPMENT ASSETS.

(a) To the best knowledge of Sellers and except as would not result in Material Adverse Effect, the Sellers have good and marketable title to all of the Network Equipment Assets that they own. To the best knowledge of each Seller, except as set forth on SCHEDULE 4.13, each of the material Network Equipment Assets owned by such Seller: (i) is free and clear of any Lien or Liabilities (or will be conveyed, pursuant to the Approval Order, free and clear of any Lien or Liabilities); (ii) is not subject to any pending lawsuits or administrative actions relating to any such property, (iii) has received all approvals of Governmental Authorities (including franchises, licenses and permits) required in connection with the ownership or operation thereof and has been operated and maintained in accordance with applicable laws; and (iv) is not subject to any lease, sublease, license, concession, or other agreement, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Network Equipment Assets.

4.14. ASSUMED CONTRACTS AND EQUIPMENT LEASES. As of the date hereof, no Seller has received written notice, nor does it otherwise have knowledge, that any party to the Assumed Contracts or Assumed Equipment Leases intends to cancel, terminate or refuse to renew such contract or equipment lease or to

exercise or decline to exercise any option or right thereunder and each such contract or equipment lease is valid and binding upon such parties in accordance with its terms except (x) as set forth in SCHEDULE 4.14, (y) to the extent excused by or unenforceable as a result of the commencement or pendency of the Case or the application of any provision of the Bankruptcy Code, or (z) to the extent that the failure of such Contracts to be valid and binding would not have a Material Adverse Effect.

4.15. LIMITATION ON SELLER'S REPRESENTATIONS AND WARRANTIES. Buyer represents and hereby covenants and shall accept the Assets "AS IS," "WHERE IS" and "WITH ALL FAULTS" on the date hereof and on the Closing Date, subject to the terms and conditions of this Agreement. Except for the representations and warranties contained in this Agreement, the Sellers make no other express or implied representation or warranty, including, without limitation, representations or warranties as to the condition of the Assets, their contents, the income derived or potentially to be derived from the Assets or the Business, or the expenses incurred or potentially to be incurred in connection with the Assets or the

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Business. Each Seller is not, and will not be, liable or bound in any manner by express or implied warranties, guarantees, statements, promises, representations or information pertaining to the Assets or the Business, made or furnished by any broker, agent, employee, servant or other person representing or purporting to represent any Seller, unless and to the extent the same is expressly set forth in this Agreement.

#### V. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers as follows:

5.1. EXISTENCE, GOOD STANDING AND POWER. Buyer is a corporation validly existing and in good standing under the laws of the State of Georgia and has all requisite power and authority to own, lease and operate the property it now owns, leases and operates. Buyer has all requisite power and authority to conduct its business as presently conducted, to execute and deliver this Agreement and the other documents and instruments to be executed and delivered by Buyer pursuant hereto and to perform its obligations hereunder and thereunder. Buyer is duly authorized to transact business as a foreign corporation, and is in good standing, in the states in which the Business is conducted.

5.2. AUTHORITY. The execution, delivery and performance of this Agreement and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Buyer.

5.3. EXECUTION AND BINDING EFFECT. This Agreement has been duly and validly executed and delivered by Buyer and constitutes, and (assuming, in each case, the due and valid authorization, execution and delivery thereof by the other parties thereto), a valid and legally binding obligation of Buyer, enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or

affecting the rights and remedies of creditors generally and to general principles of equity (regardless of whether considered in a proceeding in equity or at law).

5.4. NO VIOLATION. Except as disclosed in SCHEDULE 5.4, the execution, delivery and performance by Buyer of this Agreement and the transactions contemplated hereby, do not and will not conflict with or result in, with or without the giving of notice or lapse of time or both, any violation of or constitute a breach or default, or give rise to any right of acceleration, payment, amendment, cancellation or termination, under (a) the certificate of incorporation or bylaws of Buyer or any resolution adopted by the board of directors of Buyer and not rescinded, (b) any agreement or other instrument to which Buyer is a party or by which Buyer or any of its respective properties or assets is bound, (c) any Order to which Buyer is bound or subject or (d) any Law applicable to Buyer or any of its respective properties or assets.

5.5. THIRD PARTY APPROVALS. Except for (i) any approvals required in order to comply with the provisions of HSR, if necessary; (ii) the consent or approval of Governmental Entities with respect to the Communication Licenses and the transfer of the Assets, and (iii) any other third party approvals as are reflected on SCHEDULE 5.5 hereto, the execution, delivery and performance by Buyer of this Agreement and the transactions contemplated hereby do not require any consents, waivers, authorizations or approvals of, or filings with, any third Persons which have not been obtained by the Buyer.

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5.6. BROKERS AND FINDERS. Buyer has not employed any broker or finder or incurred any liability for any brokerage fees, commissions, finders, or similar fees in connection with the transactions contemplated by this Agreement.

5.7. NO CONTINUATION OF BUSINESS. Buyer's business is neither a continuation of, nor is it related to, the business of the Sellers, and Buyer covenants that it will not, in any way, represent that its business is a continuation of or related to the business of the Sellers.

5.8. FINANCING. On the Closing Date, Buyer will have sufficient unrestricted funds on hand or committed lines of credit to consummate the transactions contemplated by this Agreement.

## VI. COVENANTS OF THE PARTIES

6.1. CONDUCT OF BUSINESS BY SELLERS PENDING THE CLOSING. From and after the date hereof and until the Closing Date, and subject to any obligations of any Seller as a debtor in possession under the Bankruptcy Code, each of the Sellers shall use commercially reasonable efforts in the context of the Case to cause the Business to be conducted in the ordinary course and consistent with the present conduct of the Business (except for the suspension of services from collocation sites other than the Assumed Central Office Locations), including meeting its Post-Petition Liabilities as they become due (with respect to all contract obligations between the parties accruing during the period from the commencement of the Case through the entry of the Approval Order, and promptly after the entry of the Approval Order, the Sellers and the Buyer and its



Affiliates shall reconcile all such accruals, and Sellers shall promptly remit to Buyer the net amount owed, if any); PROVIDED, HOWEVER, that from and after the date of the entry of the Approval Order and the interim order approving the Post-Petition Financing, the Sellers shall only use funds made available to them by Buyer either under the Post-Petition Financing (including proceeds of the Collateral) or Section 9.1 hereof to fund the operations of the Business and the Sellers' obligations under this Agreement shall be subject to this proviso. Sellers shall also use all commercially reasonable efforts to preserve intact their Business relationships with third parties (other than in respect of contracts that expire by their terms prior to Closing and except for the suspension of services from collocation sites other than the Assumed Central Office Locations) and to keep available the services of its key employees, who work in the Business, subject to the terms of this Agreement; provided, that the foregoing shall not prevent any Seller from rejecting contracts that are not contracts being assumed by Buyer hereunder, so long as such rejection will not interrupt, in any material respect, the operation of the Assets and/or the Business prior to Closing or otherwise prevent, in any material respect, an orderly transfer of the Business to Buyer. Without limiting the generality of the foregoing, and except with respect to immaterial delays, each Seller shall pay when due its obligations to vendors, in connection with the Business, as permitted by the Bankruptcy Code. Except as otherwise contemplated under this Agreement or ordered by the Bankruptcy Court, from the date hereof until the Closing Date, without the prior written consent of the Buyer, which consent will not be unreasonably withheld or delayed:

(a) other than as a result of asset transfers solely among or between the Sellers, no Seller shall merge or consolidate with any other Person;

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(b) no Seller shall lease, license, or otherwise surrender, relinquish, encumber, or dispose of any material Assets other than the disposition of obsolete or damaged immaterial Assets in the ordinary course of its business;

(c) no Seller shall establish or increase the benefits under, or promise to establish, modify or increase the benefits under, any agreement, plan or policy relating to employees or employment matters, including but not limited to any Seller Plan or any consulting, severance, change in control or similar agreements, or otherwise increase the compensation payable to any directors, officers, or employees of such Seller, or establish, adopt or enter into any collective bargaining agreement, except (i) in accordance with existing plans and agreements or consistent with past practice, and (ii) for benefits and compensation payable to any directors, officers, or employees of such Seller established, modified or increased after commencement of the Case in order to retain such directors, officers, or employees through the pendency of the Case;

(d) no Seller shall make a Material Decision;

(e) no Seller shall agree or commit to do any of the foregoing; and

(f) except to the extent necessary to comply with the requirements of applicable Laws or Bankruptcy Court Orders, Sellers shall not (i) take, agree,

or commit to take, any action that would make any representation or warranty of the Sellers hereunder materially inaccurate in any respect at, or as of any time prior to, the Closing Date, (ii) omit, or agree or commit to omit, to take any action necessary to prevent any such representation or warranty from being materially inaccurate in any respect on the Closing Date, or (iii) take, agree, or commit to take, any action that would result in, or is reasonably likely to result in, any of the conditions set forth in Article VII not being satisfied, in all material respects.

6.2. ACCESS AND INFORMATION. Prior to the Closing Date, each Seller shall allow Buyer's employees, agents and Representatives during regular business hours to make such investigation of the Business and Sellers' books and records related thereto, as Buyer reasonably deems necessary or advisable, and each Seller shall instruct its employees to cooperate in any such investigation, including to provide such financial, operational or other information concerning the Business as the Purchaser may reasonably request; provided no such investigation shall affect any representations or warranties made herein or the conditions to the obligations of the parties to consummate the transactions contemplated by this Agreement.

6.3. PUBLIC ANNOUNCEMENTS; THIRD PARTY CONTACTS.

(a) No party shall issue a press release or respond in writing to any press inquiry with respect to this Agreement or the transaction contemplated hereby or otherwise make any public statements with respect to the transactions contemplated hereby, except as may be required by Law, by obligations pursuant to any listing agreement with any national securities exchange or over-the-counter market or with respect to filings to be made with the Bankruptcy Court in connection with this Agreement (in which case the party required to make such public statement shall notify the other party prior to making such public statement), without the prior consent of the others, which consent shall not be unreasonably withheld.

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(b) Sellers acknowledge and agree that after the entry of the Approval Order Buyer is entitled to enter into direct communication with Sellers' vendors, suppliers, lessors and existing customers regarding existing or replacement contracts, Assumed Equipment Leases and Assumed Real Property Leases

6.4. HSR. If necessary, each party shall make an appropriate filing of a notification and report form pursuant to HSR with respect to the transactions contemplated hereby within five (5) Business Days after the date hereof and to supply promptly any additional information and documentary material that may be requested pursuant to HSR. In addition, each party shall promptly make any other filing that may be required under any other antitrust law or by any antitrust authority. All such filings shall comply in all material respects with the requirements of the respective Laws pursuant to which they are filed. Each party hereto shall promptly inform the other of any communication from the Department of Justice (the "DOJ") regarding any of the transactions contemplated by this Agreement. If any party or Affiliate thereof receives a request for additional information or documentary material from the DOJ with respect to the



transactions contemplated by this Agreement, then such party will use its reasonable efforts to make, or cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request. Each party shall bear its respective filing fees associated with the HSR filings. Neither the Buyer nor any Affiliate of Buyer shall be required to divest itself of any business operations, assets or properties or agree to limit its freedom to conduct or expand any such business operations in order to obtain any clearance, approval or waiver.

#### 6.5. ENTRY OF APPROVAL ORDER.

(a) As soon as practicable after the date hereof, the Sellers shall file a copy of this Agreement and a form of Approval Order with the Bankruptcy Court.

(b) In connection with the entry of the Approval Order, Sellers shall use their reasonable, good faith efforts to obtain prompt Bankruptcy Court approval of reimbursement of Buyer's actual fees and expenses incurred in connection with the transaction contemplated by this Agreement in an amount not to exceed \$250,000 (the "EXPENSE REIMBURSEMENT"), payable to Buyer in cash, by wire transfer of immediately available funds to an account designated by Buyer, promptly after Buyer has provided notice that it has terminated the Agreement in accordance with Section 8.1(e).

(c) Buyer and the Sellers shall cooperate with prosecuting the Sale Motion and obtaining entry of the Approval Order, and the Sellers shall deliver to Buyer prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for Buyer and its counsel for review and comment, the proposed form of Approval Order and copies of all proposed pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed by the Sellers in connection with the Sale Motion and the relief requested therein.

6.6. REASONABLE EFFORTS. Upon the terms and subject to the conditions herein provided, each of the parties hereto shall use its respective reasonable, good faith efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with

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the other parties hereto in doing, all things necessary, proper or advisable under applicable Laws to ensure that the conditions set forth in this Agreement are satisfied and to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, the parties hereto shall furnish to each other such necessary information and reasonable assistance, as each may request in connection with Sellers' preparation and filing of applications and motion papers, including the Sale Motion needed to obtain Bankruptcy Court approval of the transactions contemplated by this Agreement and shall execute any additional instruments necessary to consummate the transactions contemplated hereby, whether before or after the Closing.

6.7. NOTIFICATION OF CERTAIN MATTERS. Each Seller shall give prompt notice

to Buyer, and Buyer shall give prompt notice to each Seller, of (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any written objection, litigation or administrative proceeding that challenges the transactions contemplated hereby or the entry of the Approval Order; and (iii) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would be likely to cause any representation or warranty to be materially untrue or inaccurate; and (iv) any failure of Sellers or Buyer, as the case may be, to comply materially or satisfy materially any covenant, condition or agreement to be complied with or satisfied hereunder.

#### 6.8. EMPLOYEES.

(a) Subject to the limitations in Section 6.1(c), Sellers shall use their commercially reasonable efforts to retain such employees engaged in the Business as are necessary and/or desirable to perform the Sellers' obligations hereunder, and to maintain in good standing through the Closing all relationships and agreements with employees, independent contractors, or consultants necessary to the Business, in each case from the date hereof through the Closing Date and to cooperate with the Buyer in hiring employees engaged in the Business who are offered employment by the Buyer; provided, that the foregoing shall not require (i) that any Seller offer, nor shall it prevent any Seller from offering any compensation or other incentives in addition to the compensation and benefits being provided or required to be provided as of the date of this Agreement, and (ii) that any Seller shall be required to retain any employee who is no longer necessary or desirable to perform Sellers' obligations hereunder, in the sole discretion of the Sellers.

(b) The Sellers will terminate all Buyer Hires (as defined below) as of the Closing Date. It is the intention of the Buyer to hire some, and perhaps all, of the persons employed by Sellers in the Business as of the Closing Date. Sellers agree that the Buyer retains sole and complete discretion with respect to which employees of the Sellers the Buyer shall offer employment. From the date hereof through the Closing, the Sellers shall permit the Buyer to communicate in writing with the Sellers' employees and consultants, at reasonable times and upon reasonable notice, concerning the Buyer's plans, operations, business, customer relations, and general personnel matters and to interview the Sellers' employees and consultants and review the personnel records and such other information concerning the Sellers' employees and consultants as the Buyer may reasonably request (subject to obtaining any legally required written permission of any affected employee or consultant and to other applicable law). The

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Sellers shall be solely responsible for any notification and liability under WARN relating to any termination of any of Sellers' employees occurring on or after the date of this Agreement. Employees hired by the Buyer effective on or after the Closing Date shall be referred to herein as a "BUYER HIRE." The Sellers shall indemnify and hold Buyer harmless from any and all damages, liabilities, claims or expenses incurred by the Buyer as a result of the failure of the Sellers to comply with any of the requirements of WARN, including

applicable notice requirements. Sellers will provide Buyer with copies of all notices it proposes to give to employees regarding the transactions contemplated by this Agreement as promptly as practicable (and in the case of notices required by WARN or other statutes, at least five (5) Business Days) in advance of giving such notice to employees.

(c) Sellers will be responsible for all liabilities for employee or agent compensation and benefits accrued or otherwise arising out of services rendered prior to Closing or arising by reason of actual, constructive or deemed termination at Closing. Without limitation of the preceding sentence, on the Closing Date Sellers shall pay all of the Buyer Hires engaged in the Business the full amount, if any, to which they may be entitled for any compensation or accrued benefits, including but not limited to vacation, sick leave or other leave, accrued bonuses and commissions, and for severance benefits. No accrued vacation, sick leave or other leave shall carry over to any employment of such employees by Buyer.

(d) The Buyer will recognize all years of service of the Buyer Hires with the Sellers for purposes of eligibility to participate in and to vest under those employee benefit plans, within the meaning of Section 3(3) of ERISA, of the Buyer in which the Buyer Hires are eligible to participate in after the Closing Date. The Buyer shall recognize all years of service of the Buyer Hires with the Sellers for purposes of vacation accrual under the Buyer's vacation policies. The Buyer shall cause all pre-existing condition exclusions under any medical and dental plans made available by the Buyer to Buyer Hires to be waived in respect of such employees and dependents, but only to the extent Sellers' medical and dental plans recognize such Buyer Hires and their dependents as having satisfied any pre-existing conditions exclusion under Sellers' medical and dental plans. The Buyer shall take commercially reasonable efforts to ensure that the medical and dental plans made available by Buyer to Buyer Hires credit such Buyer Hires' and their dependents with the amount of deductibles satisfied under the Sellers' medical and dental plans in the same plan year.

(e) Prior to the Closing Date, so long as Sellers provide their employees with coverage under any group health plan of any Seller, Sellers shall be responsible for providing continuation coverage as required by COBRA, under a group health plan maintained by the Seller(s) ("Continuation Coverage"), to all COBRA Eligible Beneficiaries who have, or have had, prior to the Closing Date, a COBRA qualifying event due to termination of employment with any Seller, or otherwise ("Event"). From and after the Closing Date, the Buyer shall be responsible for providing Continuation Coverage as required by COBRA, under a group health plan maintained by Buyer, to (i) all COBRA Eligible Beneficiaries who had an Event prior to the Closing Date and (ii) those persons who become COBRA Eligible Beneficiaries due to the occurrence of Event at any time following the Closing Date. To the extent any COBRA Eligible Beneficiary who is described in (ii) of the immediately preceding sentence and who would be entitled to Continuation Coverage under both the Sellers' plan and the Buyer's plan simultaneously, such coverage shall be provided under the Sellers' plan until

such coverage is no longer available, and under the Buyer's plan thereafter.

Buyer shall indemnify and hold Sellers harmless from any and all damages, liabilities, claims or expenses incurred by Sellers as a result of the failure of Buyer to comply with any of the requirements of COBRA, including applicable notice requirements. The term "COBRA Eligible Beneficiaries" shall mean any current or former employee of any of Sellers and all other qualified beneficiaries under COBRA with respect to such employee (and former employee).

(f) As soon as is practical after the Closing Date, Sellers shall (i) take all actions as are necessary or appropriate to fully vest, as of the Closing Date, the interests of the Buyer Hires under Sellers' defined contribution retirement plan(s); (ii) provide such employees an election to roll over their vested interests to Buyer's defined contribution retirement plan, including appropriate arrangements for loans provided to them under Sellers' plan; and (iii) roll over the full amount of the vested interests which the employees have elected to roll over, as soon as possible but not later than six (6) months after the Closing Date, to the accounts of such employees under Buyer's defined contribution retirement plan, in accordance with Section 402 of the Internal Revenue Code, Buyer shall reasonably cooperate with Sellers in respect of the foregoing actions and shall accept such rollovers and have no liability for any discontinuance, termination or other charges that may be due to any investment option or management providers or to any plan record keeping or other agents with respect to such termination and rollover of such employees' interests from Sellers' retirement plan(s) to Purchaser's retirement plan.

(g) Notwithstanding Sections 2.3(e) and 2.3(f) of this Agreement, Sellers and Buyer shall reasonably cooperate and use commercially reasonable efforts to give any notices required under applicable Law to mitigate Sellers' liability for COBRA and WARN obligations to Sellers' employees. Sellers shall provide Buyer with copies of all notices required to be given to the employees regarding the transaction contemplated herein by WARN or other statutes at least five business days in advance of giving such notice to employees.

(h) No provision of this Section 6.8 shall create any third party beneficiary or other rights in any employee or former employee (including any beneficiary or dependent thereof) of the Sellers or of any of its subsidiaries in respect of continued employment (or resumed employment) with either the Business, the Buyer any of its Affiliates and no provision of this Section 6.8 shall create any such rights in any such Persons in respect of any benefits that may be provided, directly or indirectly, under any of Sellers' Plans or any plan or arrangement which may be established by the Buyer or any of its Affiliates. No provision of this Agreement shall constitute a limitation on rights to amend, modify or terminate after the Closing Date any such plans or arrangements of the Buyer or any of its Affiliates.

#### 6.9. PAYMENT OF TRANSFER TAXES AND TAX FILINGS.

(a) In the event, notwithstanding the operation of Section 1146 of the Bankruptcy Code, Transfer Taxes arising out of the transfer of the Assets are assessed, any Transfer Taxes required to effect any recording or filing with respect thereto shall be borne by Buyer. The Transfer Taxes shall be calculated assuming that no exemption from Transfer Taxes is available, unless otherwise indicated in the Approval Order or, at Closing, Buyer shall provide an appropriate resale exemption certificate or other evidence acceptable to the Sellers of exemption from such Transfer Taxes. The Sellers and Buyer shall

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and file any returns or other filings relating to such Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes.

(b) Each party shall furnish or cause to be furnished to the others, upon request, as promptly as practicable, such information and assistance relating to the Assets and the Business as is reasonably necessary for filing of all Tax returns, including any claim for exemption or exclusion from the application or imposition of any Taxes or making of any election related to Taxes, the preparation for any audit by any taxing authority and the prosecution or defense of any claim, suit or proceeding relating to any Tax return. Each Seller shall prepare all of its Tax returns for all periods and shall be responsible for paying all of its Taxes for all periods (or portions thereof) ending on or prior to the Closing Date.

6.10. UTILITIES. To the extent practicable, the parties shall notify the gas, water, telephone and electric utility companies that Buyer shall be responsible for the payment of all obligations incurred for utility services on or after the Closing Date with respect to the operation of the Business. Sellers shall request the gas, water and electric utility companies to cause meters to be read as of the Closing Date, and the Sellers shall be responsible for the payment of all charges for such services incurred and provided through the Closing Date. Each Seller shall cause the telephone companies to render a bill for telephone service incurred through the Closing Date, and each Seller shall be responsible for the payment of such bills.

6.11. PRORATION OF TAXES AND CERTAIN CHARGES.

(a) Except as provided in Section 6.9, all real property Taxes, personal property Taxes or similar ad valorem obligations levied with respect to the Assets for any taxable period that includes the day before the Closing Date and ends after the Closing Date, whether imposed or assessed before or after the Closing Date, shall be prorated between the Sellers and Buyer as of 12:01 A.M. on the Closing Date. If any Taxes subject to proration are paid by Buyer, on the one hand, or the Sellers, on the other hand, the proportionate amount of such Taxes paid (or in the event a refund of any portion of such Taxes previously paid is received, such refund) shall be paid promptly by (or to) the other after the payment of such Taxes (or promptly following the receipt of any such refund).

(b) Except as provided in Section 6.10, all installments of special assessments or other charges on or with respect to the Assets payable by the Sellers for any period in which the Closing Date shall occur, including, without limitation, base rent, common area maintenance, royalties, all municipal, utility or authority charges for water, sewer, electric or gas charges, garbage or waste removal, and cost of fuel, shall be apportioned as of the Closing Date and each party shall pay its proportionate share promptly upon the receipt of any bill, statement or other charge with respect thereto. If such charges or rates are assessed either based upon time or for a specified period, such

charges or rates shall be prorated as of 12:01 A.M. on the Closing Date. If such charges or rates are assessed based upon usage of utility or similar services, such charges shall be prorated based upon meter readings taken on the Closing Date.

(c) All refunds, reimbursements, installments of base rent, additional rent, license fees or other use related revenue receivable by any party to the extent attributable to the operation of the Business for any period in which the Closing shall occur shall be prorated so

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that any Seller shall be entitled to that portion of any such installment applicable to the period up to but not including the Closing Date and Buyer shall be entitled to that portion of any such installment applicable to any period from and after the Closing Date, and if Buyer or any Seller, as the case may be, shall receive any such payments after the Closing Date, they shall promptly remit to such other parties their share of such payments.

(d) The prorations pursuant to this Section may be calculated after the Closing Date, as each item to be prorated (including without limitation any such Tax, obligation, assessment, charge, refund, reimbursement, rent installment, fee or revenue) accrues or comes due, provided that, in any event, any such proration shall be calculated not later than thirty (30) days after the party requesting proration of any item obtains the information required to calculate such proration of such item.

6.12. COMMUNICATIONS LICENSES. Except as otherwise directed by the Bankruptcy Court or any other court of competent jurisdiction, each Seller shall use its reasonable, good faith efforts not by any act or omission to surrender, or to permit an adverse modification of, forfeiture of, or failure to renew under regular terms, any of the Communications Licenses, cause the FCC or any other governmental authority to institute any proceeding for the revocation, suspension, or modification of any such authorization, or to fail to prosecute with due diligence any pending applications with respect to Communications Licenses, including any renewals thereof. The Sellers shall make all filings and reports and pay all fees necessary or reasonably appropriate for the continued operation of the Business, as and when such approvals, consents, permits, licenses, filings, or reports or other authorizations are necessary or appropriate.

6.13. REJECTED CONTRACTS. Sellers shall not reject any Assumed Contract, Assumed Equipment Lease or Assumed Real Property Lease in any bankruptcy proceeding following the date hereof unless this Agreement is terminated in accordance with its terms. Notwithstanding the foregoing, Sellers shall be entitled to reject the Interconnection and Collocation agreements identified on SCHEDULE 2.1(e) to the extent they pertain to the provision and operation of central offices that are not identified on SCHEDULE 2.1(e), and the Sellers shall be entitled to reject the Enterprises Solutions Agreement with Cisco on the terms and subject to the conditions set forth in the Order Resolving the Contracts and Claims of the Cisco Companies, dated September 25, 2001.

6.14. COMPETING TRANSACTION. From the date hereof (and any prior time) and



until the Approval Order is entered, Seller is permitted to cause its Representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates, agents and Representatives) in connection with any sale or other disposition of the Assets (a "COMPETING TRANSACTION"). In addition, the Seller shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Assets and perform any and all other acts related thereto which are required under the Bankruptcy Code or other applicable law, including, without limitation, supplying information relating to the Business and Assets to prospective buyers. Seller shall promptly notify Buyer of the existence of any proposal received by Seller, with respect to any Competing Transaction, and Seller shall communicate to Buyer the material terms of any proposal that it may receive with respect to any Competing Transaction.

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6.15. DISCLOSURE SUPPLEMENTS. From time to time prior to the Closing, Sellers shall promptly supplement the Schedules hereto with respect to any matter hereafter arising or any information obtained after the date hereof of which, if existing, occurring or known at or prior to the date of this Agreement, would have been required to be set forth or described in the Schedules, or which is necessary to complete or correct any information in such schedule or in any representation and warranty of the Sellers which has been rendered inaccurate thereby. For purposes of determining the satisfaction of the conditions set forth in Article VII hereof, no such supplement or amendment shall be considered.

6.16. FCC APPLICATIONS/STATE PUC APPLICATIONS.

(a) As promptly as practicable after the execution and delivery of this Agreement and in any event within five Business Days thereafter, the Buyer shall prepare and deliver to the Sellers, the Buyer's completed portion of all appropriate applications for FCC approval, and such other documents as may be required, with respect to the assignment of each of the Sellers' FCC Licenses set forth in SCHEDULE 4.7(a) hereto to the Buyer (collectively, the "FCC APPLICATIONS"). As promptly as practicable thereafter and in any event within five Business Days thereafter, each Seller shall prepare and deliver to the Buyer, the Seller's completed portion of all appropriate FCC Applications. As soon as practicable after the execution and delivery of this Agreement, the parties shall file, or cause to be filed, the FCC Applications. If the Closing shall not have occurred for any reason within any applicable initial consummation period relating to the FCC's grant of the FCC Applications, and neither the Sellers nor the Buyer shall have terminated this Agreement pursuant to Article VIII, the Buyer and the Sellers shall jointly request one or more extensions of the consummation period of such grant.

(b) The Buyer and the Sellers shall cooperate to determine a plan to expeditiously obtain applicable governmental approvals, clearances, consents and authorizations necessary to effectuate the transaction contemplated hereby. Subject to the determination of such plan, as promptly as practicable after the execution and delivery of this Agreement, the Buyer shall prepare and deliver to the Sellers, the Buyer's portions of all required applications for approval by

State PUCs, and such other documents as may be required, with respect to the assignment of the Seller's State PUC Licenses set forth in SCHEDULE 4.7(a) hereto (collectively, the "STATE PUC APPLICATIONS"). As promptly as practicable thereafter and in any event within five Business Days thereafter, the Sellers shall prepare and deliver to the Buyer the State PUC Applications. Subject to the first sentence of this SECTION 4.7(a), as soon as practicable after the execution and delivery of this Agreement, the parties shall file, or cause to be filed, the State PUC Applications. If the Closing shall not have occurred for any reason within any applicable consummation period relating to any State PUCs grant of any State PUC Application, and neither the Buyer nor any of the Sellers shall have terminated this Agreement pursuant to Article VIII, the Buyer and the Sellers shall jointly request one or more extensions of the consummation period of such grant.

(c) Each of the Buyer and the Sellers shall bear its own expenses in connection with the preparation and prosecution of the FCC Applications and the State PUC Applications. The Buyer and the Sellers shall each use their commercially reasonable efforts to prosecute the FCC Applications and the State PUC Applications in good faith and with due

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diligence before the FCC and the State PUCs and in connection therewith shall take such action or actions as may be necessary or reasonably required in connection with the FCC Applications and the State PUC Applications, including furnishing to the FCC and the State PUCs any documents, materials, or other information requested by the FCC and the State PUCs in order to obtain such approvals as expeditiously as practicable. No party hereto shall knowingly take, or fail to take, any action if the intent or reasonably anticipated consequence of such action or failure to act is, or would be, to cause the FCC, any State PUC, or other regulatory authority not to grant approval of any FCC Application or of any State PUC Application or materially delay either such approval or the consummation of the assignment of Communications Licenses of the Sellers.

6.17. USE OF NAME. Each Seller covenants that at the Closing, or as soon as practicable thereafter, it will not use any name, mark, logo, tradename or trademark incorporating "Rhythms NetConnections Inc.", "Rhythms Net" or "Rhythms" in any business activity except as is necessary for the administration of the Case.

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#### VI-A ADDITIONAL POST-CLOSING COVENANTS

6A.1 ALTERNATIVE TAX PROCEDURE. Pursuant to the "Alternative Procedure" provided in section 5 of Revenue Procedure 96-60, 1996-2 C.B. 399, (i) Buyer and Sellers shall report on a predecessor/successor basis as set forth therein, (ii) Sellers will be relieved from filing a Form W-2 with respect to each Buyer Hire and (iii) Buyer will undertake to file (or cause to be filed) a Form W-2 for each such Buyer Hire for the year that includes the Closing Date (including the portion of such year that such employee was employed by such Seller). Sellers shall provide Buyer on a timely basis with all payroll and employment-related



information with respect to each employee of each Seller who accepts employment with Buyer.

6A.2 FURTHER ASSURANCES. On and after the Closing Date, the parties shall take all appropriate action and shall execute and deliver all documents, instruments or conveyances of any kind that may be reasonably necessary or advisable to carry out any of the provisions hereof, including the conveyance and transfer of the Assets.

6A.3 FURTHER AGREEMENTS. Each Seller authorizes and empowers Buyer on and after the Closing Date to receive and to open all mail received by Buyer relating to the Assets, the Business or the Assumed Liabilities and to deal with the contents of such communications in any proper manner. Each Seller shall promptly deliver to Buyer any mail or other communication received by such Seller after the Closing Date pertaining to the Assets, the Business or the Assumed Liabilities and shall remit all payments received on or after the Closing Date with respect to any account receivable. Buyer shall promptly deliver to Sellers any mail or other communication received by it after the Closing Date pertaining to the Excluded Assets or any Excluded Liabilities and any cash, checks or other instruments of payment in respect thereof. From and after the Closing Date, the Sellers shall refer all inquiries with respect to the Business, the Assets and the Assumed Liabilities to Buyer, and Buyer shall refer all calls with respect to the Excluded Assets and the Excluded Liabilities to the Sellers.

6A.4 REMOVAL OF EXCLUDED ASSETS. Within a reasonable period of time after the Closing, Sellers shall remove all Excluded Assets from the locations used by Buyer in the operation of the Business.

6A.5 POST-CLOSING ACCESS TO RECORDS AND PERSONNEL. Buyer hereby acknowledges that it shall grant to each Seller, from and after the Closing Date, reasonable access during regular business hours, as promptly as practicable but in no event no later than five days after receiving notice, to any records related to Sellers' operation of the Business prior to the Closing Date upon Sellers' written request. Buyer shall keep such records in a manner consistent with Buyer's past practice and such records shall not be destroyed until the later of three years from the Closing Date or the conclusion of all bankruptcy proceedings related to the Business. Sellers shall have the right to make copies of any such records, provided that any such access or copying shall be had or done (i) at Sellers' expense, (ii) in such a manner not to interfere with the normal conduct of the Buyer's business, and (iii) Sellers shall not disclose or divulge confidential or proprietary information about the Business without Buyer's written consent.

6A.6 CONTINUED COOPERATION. If the Closing occurs at a time when not all regulatory approvals have been obtained, the parties shall (i) continue to abide by their obligations hereunder to obtain all regulatory approvals and (ii) cooperate in continuing to operate the Business, to the extent commercially reasonable, in the ordinary course in the states with respect to which regulatory approvals have not been obtained, with Buyer receiving the economic benefits of such operation.

## VII. CONDITIONS TO OBLIGATIONS OF THE PARTIES

7.1. CONDITIONS PRECEDENT TO OBLIGATIONS OF THE SELLERS AND BUYER. The respective obligations of each party to close under this Agreement shall be subject to the satisfaction at or prior to the Closing Date of the following conditions:

(a) NO INJUNCTION OR STAY. No preliminary or permanent injunction or other order issued by, and no Proceeding or Order nor any Law or Order promulgated or enacted by any United States Governmental Entity shall be in effect or pending which materially delays, restrains, enjoins or otherwise prohibits or seeks to restrain, enjoin or otherwise prohibit the transactions contemplated hereby.

(b) THE APPROVAL ORDER. The Approval Order shall have been entered by the Bankruptcy Court and shall not have been reversed, stayed, modified or amended in any manner materially adverse to Buyer. The "APPROVAL ORDER" shall be an order or orders of the Bankruptcy Court in form and substance reasonably acceptable to the Sellers and Buyer approving this Agreement and all of the terms and conditions hereof, and approving and authorizing the Sellers to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, such order shall find and provide, among other things, that (i) the Assets sold to Buyer pursuant to this Agreement shall be transferred to Buyer free and clear of all Liens and Liabilities of any Person, such Liens and Liabilities to attach to the Purchase Price payable pursuant to Section 3.2; (ii) Buyer has acted in good faith within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to the protections afforded thereby; (iii) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm's length bargaining positions; (iv) Buyer is not acquiring or assuming any of Sellers' or any other Person's Liabilities except as expressly provided in this Agreement; (v) all Assumed Contracts, Assumed Equipment Leases and Assumed Real Property Leases (and any additional executory contracts and unexpired leases that Buyer designates for assumption and assignment) shall be assumed by the Sellers and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code and, as required by this Agreement, the Sellers shall be obligated to pay all Cure Amounts in respect thereof, and Buyer shall have no obligation to pay, or any Liability for, such Cure Amounts and, thereafter shall have no further Liability under such Assumed Contracts, the Assumed Equipment Leases and the Assumed Real Property Leases pursuant to Section 365(k) of the Bankruptcy Code; (vi) Buyer is entitled to assume the Interconnection and Collocation Agreements and perform post-closing obligations thereunder only with respect to the Assumed Central Office Locations listed on SCHEDULE 2.1(e) that Buyer will operate after the Closing Date; (vii) the Sellers are authorized and directed to discontinue active Business operations in the event that this Agreement is terminated; (viii) the Bankruptcy Court shall retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach hereof as provided in Section 10.11 hereof; (ix) this Agreement and the transactions

and instruments contemplated hereby shall be specifically performable and

enforceable against and binding upon, and not subject to rejection or avoidance by, Seller or any chapter 7 or chapter 11 trustee of any Seller and its estate; and (x) from and after the date of the entry of the Approval Order and the interim order approving the Post-Petition Financing, the Sellers shall only use funds made available to them by Buyer either under the Post-Petition Financing (including proceeds of the Collateral) or Section 9.1 hereof to fund the operations of the Business and the Sellers' obligations under this Agreement shall be subject to the foregoing limitation.

(c) HSR. Any waiting period applicable to the consummation of the transaction contemplated by this Agreement under the HSR Act shall have expired or shall have been terminated.

(d) CONSENTS RELATED TO COMMUNICATIONS LICENSES. All consents (including consents to assignments of permits and rights of way), waivers, approvals, certificates, and other authorizations required to be obtained with respect to the Communications Licenses and the transfer of the Assets shall have been obtained by a Final Order (or either (i) waived in whole or in part in a writing executed by the parties hereto, unless such a waiver is prohibited by law, or (ii) if applicable, the Buyer shall have received adequate assurances satisfactory to it that all such approvals, clearances, consents, and authorizations will be given) and all parties shall have complied with the conditions, if any, imposed in connection therewith.

(e) CONSENTS AND APPROVALS. All consents, waivers, authorizations and approvals of third Persons as are necessary in connection with the transactions contemplated by this Agreement shall have been obtained, except for such consents, waivers, authorizations and approvals which would not have a Material Adverse Effect and such consents and approvals which are not required due to the entry by the Bankruptcy Court of the Approval Order.

7.2. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER. The obligation of Buyer to close under this Agreement is subject to the satisfaction (or waiver by Buyer) at or prior to the Closing Date of each of the following additional conditions:

(a) ACCURACY OF REPRESENTATIONS AND WARRANTIES. The representations and warranties of the Sellers contained herein shall be true and correct in all material respects on the date hereof and on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct in all material respects as of such date.

(b) PERFORMANCE OF AGREEMENTS. Sellers shall have performed in all material respects all obligations and agreements contained in this Agreement required to be performed by them prior to or at the Closing Date.

(c) OFFICER'S CERTIFICATE. Buyer shall have received a certificate, dated the Closing Date, of an officer of the Sellers to the effect that the conditions specified in Sections 7.2(a) and (b) above have been fulfilled.

(d) SUPPLEMENTAL NOTICE OF SALE MOTION AND HEARING. Sellers shall have given good and sufficient published notice of the Sale Motion to all creditors and parties in interest, which notice shall refer specifically to the proposed assumption of the Interconnection and Collocation Agreements with respect to the Assumed Central Office Locations and the discontinuance of the operations of the Business in the event that the Agreement is terminated.

(e) Buyer shall have entered into an agreement with Cisco Systems Capital Corporation to acquire all or substantially all of the network equipment assets leased to the Sellers by Cisco Systems Capital Corporation, which agreement shall be satisfactory to Buyer in its sole and absolute discretion, on or before the date of the hearing on the Sale Motion.

(f) Buyer shall have entered into new contracts with Sellers' existing customers, excluding Buyer and its Affiliates, that shall result in 40,000 digital subscriber lines, which contracts shall be in service effective as of the Closing Date.

7.3. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE SELLERS. The obligation of the Sellers to close under this Agreement is subject to the satisfaction (or waiver by the Sellers) at or prior to the Closing Date of each of the following additional conditions:

(a) ACCURACY OF REPRESENTATIONS AND WARRANTIES. The representations and warranties of Buyer contained herein shall be true and correct in all material respects on the date hereof and on and as of the Closing Date, with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, except to the extent that any such representations or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct as of such date.

(b) PERFORMANCE OF AGREEMENTS. Buyer shall have performed in all material respects all obligations and agreements contained in this Agreement and the agreements evidencing the Post-Petition Financing required to be performed by it prior to or at the Closing Date.

(c) OFFICER'S CERTIFICATE. Sellers shall have received a certificate, dated the Closing Date, of an officer of Buyer to the effect that the conditions specified in subsections (a) and (b) above have been fulfilled.

(d) All claims of Cisco Systems Capital Corporation and its Affiliates against Sellers shall have been fixed as to amount and priority, and allowed by an Order of the Bankruptcy Court, in a manner reasonably satisfactory to Sellers on or before the date of the hearing on the Sale Motion.

#### VIII. TERMINATION

8.1. TERMINATION OF AGREEMENT. This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Closing:

(a) By mutual written consent of Buyer and Sellers;

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(b) By any party if the Closing shall not have occurred on or before December 31, 2001; PROVIDED, HOWEVER, that, if the Closing shall not have occurred due to the failure of the Bankruptcy Court to enter the Approval Order on or before September 25, 2001, then Buyer may terminate this Agreement; PROVIDED, FURTHER, HOWEVER, that if the Closing shall not have occurred on or before December 31, 2001 due to a breach of this Agreement by Buyer or the Sellers, the breaching party may not terminate this Agreement pursuant to this Section 8.1(b).

(c) By any party not in breach of this Agreement, if there shall be any Law or regulation that makes the consummation of the transactions contemplated hereby illegal or otherwise prohibited or if consummation of the transactions contemplated hereby would violate any nonappealable final Order;

(d) By Buyer, if the Bankruptcy Court approves a Competing Transaction, subject to Buyer's right to payment of the Breakup Fee in cash, by wire transfer of immediately available funds to an account designated by Buyer, on the Business Day following the date of the consummation of any Competing Transaction; or

(e) By the Sellers, on the one hand, or Buyer, on the other, (i) if Buyer or the Sellers, as the case may be, materially breach any of its obligations under this Agreement, unless such breach shall be cured within ten (10) Business Days after such other party shall have received notice of such breach in accordance with the terms hereof; or (ii) if Buyer or the Sellers, as the case may be, materially breach any of its obligations under the documents evidencing the Post-Petition Financing.

(f) By Buyer, if Sellers shall not have delivered completed Schedules to this Agreement pursuant to Article IV.B. and on or before the date of the Sale Hearing, the Buyer, in its sole and absolute discretion, determines that it is not satisfied with such Schedules and is terminating this Agreement pursuant to this Section 8.1(f).

(g) By Buyer, if the condition to Closing in Section 7.2(e) is not satisfied within the time period stated therein.

(h) By Buyer, if the condition to Closing in Section 7.2(f) is not satisfied or waived prior to, or within ten (10) Business Days of, the date of the entry of the Approval Order. In the event Buyer does not exercise its termination right as prescribed herein, then in such event, the condition to Closing in Section 7.2(f) shall be deemed waived.

(i) By Sellers, if the condition to Closing in Section 7.3(d) is not satisfied within the respective time period stated therein.

8.2. NO LIABILITIES IN EVENT OF TERMINATION. Subject to Section 9.1 hereof, in the event of any termination of the Agreement pursuant to Section 8.1, written notice thereof shall as promptly as practicable be given to the other party specifying the provision hereof pursuant to which such termination is made, this Agreement shall terminate and be of no further force and effect, and

there shall be no liability on the part of Buyer or the Sellers, except that if (i) this Agreement shall be terminated pursuant to Section 8.1(d) the Break-Up Fee shall be payable to Buyer; (ii) this Agreement shall be terminated by Sellers pursuant to Section 8.1(e)

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hereof, the Earnest Money Deposit shall be retained by the Sellers as liquidated damages, and (iii) this Agreement shall be terminated by Buyer pursuant to Section 8.1(e) hereof, the Sellers shall pay the Expense Reimbursement to Buyer.

#### IX. OPERATING EXPENSES

9.1. BUYER'S OBLIGATION TO FUND OPERATING EXPENSES. Notwithstanding any provision to the contrary contained herein or in that certain Credit and Security Agreement, dated as of September 24, 2001, by and among Buyer and the Sellers (the "CREDIT AND SECURITY AGREEMENT"), and regardless of the termination of this Agreement or the Credit and Security Agreement, Buyer shall, subject to the entry of the Approval Order and the entry of the interim order approving the Post-Petition Financing, fund all Operating Expenses incurred by Sellers in the operation of the Business that accrue through the later to occur of (i) the effective date of the termination of this Agreement, and (ii) the date that the Sellers obtain authority, under applicable law, to discontinue active operations of the Business provided that such authority shall not have expired or be revoked or rescinded (including pursuant to any appeal of a decision granting discontinuance authority); provided, however, that to the extent such expenses are paid by Sellers using advances made to Sellers under the Credit and Security Agreement, then such expenses shall be deemed to be paid pursuant to this Section 9.1. For the avoidance of doubt, Buyer acknowledges and agrees that (i) it shall be obligated to pay all Operating Expenses of the Business that accrue prior to the effective date of the termination of this Agreement regardless of when such expenses become payable, and (ii) that Buyer's obligations under this Section 9.1 are absolute and shall not be subject to any rights, defenses, conditions or claims of Buyer against the Sellers including the right of setoff and any counterclaims.

#### X. GENERAL PROVISIONS

10.1. EXPENSES. Except as set forth in this Agreement and whether or not the transactions contemplated hereby are consummated, each party shall bear all costs and expenses incurred or to be incurred by such party in connection with this Agreement and the consummation of the transactions contemplated hereby.

10.2. ASSIGNMENT. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by the Sellers without the prior written consent of Buyer, or by Buyer without the prior written consent of Sellers; PROVIDED, HOWEVER, that, Buyer may assign its rights and obligations hereunder, in whole or in part, to any Affiliate of Buyer, provided that no such assignment shall relieve Buyer of its Liabilities and obligations hereunder if such assignee does not perform such obligations and PROVIDED, FURTHER that this Agreement may be assigned to one or more trustees appointed by the Bankruptcy Court to succeed to the rights of the Sellers. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto



and their respective successors and assigns, and except as otherwise expressly provided herein, no other Person shall have any right, benefit or obligation hereunder.

10.3. PARTIES IN INTEREST. This Agreement shall be binding upon and inure solely to the benefit of the Sellers and Buyer, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. Without limiting the foregoing, no direct or

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indirect holder of any equity interests or securities of either the Sellers or Buyer (whether such holder is a limited or general partner, member, stockholder or otherwise), nor any Affiliate of either the Sellers or Buyer, nor any director, officer, employee, representative, agent or other controlling person of each of the parties hereto and their respective Affiliates shall have any liability or obligation arising under this Agreement or the transactions contemplated thereby.

10.4. NOTICES. Unless otherwise provided herein, any notice, request, instruction or other document to be given hereunder by any party to any other party shall be in writing and shall be delivered in person or by courier or facsimile transmission or mailed by certified mail, postage prepaid, return receipt requested and shall be deemed given upon (a) confirmation of receipt of a facsimile transmission, (b) confirmed delivery by hand or standard overnight mail or (c) upon the expiration of three (3) business days after the day mailed by certified mail, as follows:

If to Sellers: Rhythms NetConnections, Inc.  
9100 East Mineral Circle  
Englewood, CO 80112  
Attention: J.W. Braukman, III  
Fax: (303) 476-5700

With a copy to: Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Paul Basta, Esq.  
Fax: (212) 735-8007

and: Brownstein, Hyatt & Farber, P.C.  
410 Seventeenth St., 22nd Floor  
Denver, CO 80202  
Attention: John Ruppert, Esq.  
Fax: (303) 223-0970

and: Milbank, Tweed, Hadley & MCCloy LLP  
One Chase Manhattan Plaza  
New York, New York 10005  
Attention: Luc A. Despins, Esq.  
Fax: (212) 822-5660



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If to Buyer: WorldCom, Inc.  
500 Clinton Center Drive  
Clinton, MS 39056  
Attention: K. William Grothe, Jr.  
Fax: (601) 460-5239

WorldCom, Inc.  
1133 19th Street, N.W.  
9th Floor  
Washington, D.C. 20036  
Attention: Roland J. Behm, Esq.  
Fax: (202) 736-6085

With a copy to: Piper Marbury Rudnick & Wolfe LLP  
6225 Smith Avenue  
Baltimore, MD 21209  
Attention: Eric B. Miller, Esq.  
Fax: (410) 580-3216

or to such other place and with such other copies as either party may designate as to itself by written notice to the other party. Rejection, any refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

10.5. CHOICE OF LAW. This Agreement shall be governed and construed, and the rights of the parties shall be determined, in accordance with the Bankruptcy Code and the substantive laws of the State of New York, except that any provisions contained herein relating to the conveyance of interests in real property shall be governed by the substantive laws of the State in which the Real Property is located, in each case without regard to the conflict of law principles thereof or of any other jurisdiction.

10.6. NON-SURVIVAL OF REPRESENTATIONS, WARRANTIES AND AGREEMENTS. All representations, warranties and (except as set forth in the following sentence) covenants set forth in this Agreement or in any certificate, document or other instrument delivered in connection herewith other than those covenants and agreements set forth in Article X hereof, shall terminate at the earlier of (i) the Closing and (ii) termination of this Agreement in accordance with Article VIII hereof. Only those covenants that contemplate actions to be taken or obligations in effect after the Closing or termination of this Agreement, as the case may be, including in respect of Article IX, and the obligations of the parties to the Cisco General Unsecured Claim Payment Obligation Escrow agreement, shall survive Closing in accordance with their terms and to the extent so contemplated.

10.7. ENTIRE AGREEMENT; AMENDMENTS AND WAIVERS. This Agreement (including the Schedules hereto) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the parties. Except as set forth herein or in any certificate delivered pursuant

hereto, no party (or any employee or agent thereof) makes any representation

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or warranty, express or implied, to any other party with respect to this Agreement or the transactions contemplated hereby. No supplement, modification or waiver of this Agreement (including, without limitation, any schedule hereto) shall be binding unless the same is executed in writing by all parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), and no such waiver shall constitute a continuing waiver unless otherwise expressly provided.

10.8. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be as effective as delivery of a manually executed counterpart of this Agreement. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

10.9. SEVERABILITY; INVALIDITY. If any one or more of the provisions contained in this Agreement (other than any of the provisions contained in Article II or Article III hereof), unless waived by the party benefited thereby or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, the remainder of this Agreement shall not be affected thereby, and to such end, the provisions of this Agreement are agreed to be severable.

10.10. HEADINGS. The table of contents and the headings of the Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of, or to affect the meaning or interpretation of, this Agreement.

10.11. EXCLUSIVE JURISDICTION. Without limiting any party's right to appeal any order of the Bankruptcy Court, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all claims, actions, causes of action, suits and proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 10.4 hereof.

10.12. WAIVER OF RIGHT TO TRIAL BY JURY. Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

10.13. BENEFICIARIES. Nothing in this Agreement, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature under or by reason of this Agreement, except as expressly provided in herein.

10.14. SPECIFIC PERFORMANCE. Each of the parties hereto acknowledges that the other party hereto would be irreparably damaged in the event any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this

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Agreement and the terms and provisions thereof in any action instituted in any court of the United States or any state thereof having subject matter jurisdiction, in addition to any other remedy to which the parties may be entitled, at law, in equity or pursuant to this Agreement.

10.15. COUNTING. If the due date for any action to be taken under this Agreement (including, without limitation, the delivery of notices) is not a Business Day, then such action shall be considered timely taken if performed on or prior to the next Business Day following such due date.

10.16. SERVICE OF PROCESS. Each party irrevocably consents to the service of process in any action or proceeding by receipt of mailed copies thereof by national courier service or registered United States mail, postage prepaid, return receipt requested, to its address as specified in or pursuant to Section 10.4 hereof. However, the foregoing shall not limit the right of a party to effect service of process on the other party by any other legally available method.

10.17. AMENDMENT. This Agreement may not be amended except by an instrument in writing signed on behalf of the parties hereto.

10.18. TIME OF ESSENCE. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

10.19. WAIVER. At any time prior to the Closing Date, any party hereto may (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto 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 assert any of its rights hereunder shall not constitute a waiver of any such rights.

10.20. SCHEDULES. The Schedules attached to, delivered with and identified to this Agreement are a part of this Agreement the same as if fully set forth herein and all references herein to any Section of this Agreement shall be deemed to include a reference to any Schedule named therein.

10.21. INTERPRETATION.

(a) Whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without

limitation."

(b) Words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(c) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.

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(d) A reference to any legislation or to any provision of any legislation shall include any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(e) All references to "\$" and dollars shall be deemed to refer to United States currency unless otherwise specifically provided.

(f) All references to any financial or accounting terms shall be defined in accordance with United States Generally Accepted Accounting Principles.

10.22. PREPARATION OF THIS AGREEMENT. Buyer and Sellers hereby acknowledge that (i) Buyer and Sellers jointly and equally participated in the drafting of this Agreement and all other agreements contemplated hereby, (ii) both Buyer and Sellers have been adequately represented and advised by legal counsel with respect to this Agreement and the transactions contemplated hereby, and (iii) no presumption shall be made that any provision of this Agreement shall be construed against either party by reason of such role in the drafting of this Agreement and any other agreement contemplated hereby.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of Sellers and Buyer as of the date first above written.

RHYTHMS NETCONNECTIONS, INC.

By:

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Name:

Title:

RHYTHMS LINKS INC.

By:

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Name:

Title:

RHYTHMS LINKS - VIRGINIA INC.

By:

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Name:

Title:

RHYTHMS LEASING, INC.

By:

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Name:

Title:

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MCI WORLDCOM NETWORK SERVICES, INC.

By:

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Name:

Title:

CREDIT AND SECURITY AGREEMENT

This Credit and Security Agreement (this "AGREEMENT") is made as of the 24th day of September, 2001, (the "EFFECTIVE DATE") between MCI WorldCom Network Services, Inc., a Delaware corporation ("LENDER"), and (i) Rhythms Netconnections Inc., a Delaware corporation, (ii) Rhythms Links Inc. - Virginia, a Virginia corporation, (iii) Rhythms Links Inc., a Delaware corporation, and (iv) Rhythms Leasing Inc., a Nevada corporation (referred to herein individually as "BORROWER" and collectively as "BORROWERS" or individually as "CORPORATE GUARANTOR" and collectively as "CORPORATE GUARANTORS," as the context requires).

In consideration of the premises and the mutual promises herein contained, the parties intending to be legally bound agree as follows:

ARTICLE I  
CONSTRUCTION AND DEFINED TERMS

SECTION 1.01. ARTICLES AND SECTIONS. The Article and Section headings and captions in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement. The references in this Agreement to Articles and Sections shall be read as Articles or Sections of this Agreement unless otherwise specifically provided.

SECTION 1.02. EXHIBITS AND SCHEDULES. The references in this Agreement to specific Exhibits and Schedules shall be read as references to such specific Exhibits and Schedules attached, or intended to be attached, to this Agreement and any counterpart of this Agreement and regardless of whether they are in fact attached to this Agreement, and including any amendments, supplements, and replacements thereto from time to time.

SECTION 1.03. CREDIT DOCUMENTS. References in this Agreement to Credit Documents, and any of the documents that are included within the definition of Credit Documents, shall include such amendments, supplements, and replacements as may be made thereto or therefor from time to time.

SECTION 1.04. DISCRETIONARY CONSENTS. Wherever a provision of this Agreement or any other Credit Document provides for Lender's consent, any such consent may be provided or withheld in Lender's sole and absolute discretion (unless otherwise expressly provided herein or in such other Credit Document), and the granting of consent in one instance shall not constitute or imply the granting of consent in any similar or other instance.

SECTION 1.05. ACCOUNTING TERMS. Accounting terms used but not otherwise defined in this Agreement shall have the meanings provided by, and be construed in accordance with, GAAP.

SECTION 1.06. DEFINED TERMS. Unless otherwise expressly stated in this

Agreement, or otherwise defined in the Asset Purchase Agreement, capitalized terms used in this Agreement shall have the following meanings:

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"ACCOUNTS" As defined in Section 4A.01.

"ACCOUNT DEBTOR" A Person obligated on an Account, Chattel Paper, or General Intangible, other than a Person obligated to pay a negotiable instrument, even if the instrument constitutes part of Chattel Paper.

"AFFILIATE" As defined in Section 3.05.

"APPLICABLE LAW" As to any Person, all Laws applicable to such Person and all Laws applicable to any Property or activity of such Person.

"APPROVAL ORDER" As defined in the Asset Purchase Agreement.

"ARTICLE 5" Article 5 of the UCC.

"ARTICLE 8" Article 8 of the UCC.

"ARTICLE 9" Article 9 of the UCC.

"ARTICLES OF INCORPORATION" As to any corporation, the Articles of Incorporation or Certificate of Incorporation, or similar charter document, and all amendments thereto.

"ASSET DISPOSITION" Any sale, exchange, assignment, conveyance, lease, license, transfer, or other disposition (including any transfer effected by recapitalization, merger, reorganization, share exchange, or other capital transaction) of any Collateral, including any issuance of Ownership Interest of any Borrower or any Subsidiary of any Borrower, other than in the ordinary course of business; provided, however, that it shall not include the consummation of the transactions contemplated in the Asset Purchase Agreement.

"ASSET PURCHASE AGREEMENT" The Asset Purchase Agreement dated as of September 24, 2001 by and among Borrowers and Lender, as it may be amended from time to time.

"ASSET PURCHASE AGREEMENT ARTICLE IX OBLIGATIONS" All obligations, indebtedness and liabilities of any Borrower for advances made to any Borrower under Article IX of the Asset Purchase Agreement (if and to the extent that advances made to any Borrower under Article IX of the Asset Purchase Agreement are not made as loan advances under this Agreement), whether primary, secondary, contingent, direct or indirect, joint or several, or for payment or for performance. The Asset Purchase Agreement Article IX Obligations include the Borrowers' obligations under Section 7.16(c) of this Agreement to repay to Lender all amounts advanced to any Borrower under Article IX of the Asset Purchase Agreement.



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"AUTHENTICATE" or "AUTHENTICATED" or "AUTHENTICATING" or "AUTHENTICATION" To sign (or to have signed), or to execute or otherwise adopt (or to have executed or otherwise adopted) a symbol, or encrypt or similarly process (or to have encrypted or similarly processed) a Record in whole or in part, with the present intent of the authenticating Person to identify the Person and adopt or accept a Record.

"BANK" As defined in Article 9, and any organization that is engaged in the business of banking, including commercial banks, savings banks, savings and loan associations, credit unions, and trust companies.

"BANKRUPTCY CODE" The United States Bankruptcy Codes, as amended from time to time, and any successor legislation, and all rules and regulations entered, promulgated or approved thereunder.

"BANKRUPTCY COURT" The United States Bankruptcy Court for the Southern District of New York or any other court having jurisdiction over the Chapter 11 Cases from time to time.

"BORROWER GROUP LIEN" Any Lien that (a) is held by a Borrower, (b) encumbers Property of another Borrower, and (c) secures only Indebtedness of one or more Borrowers to the Borrower that holds the Lien.

"BORROWER INFORMATION" As defined in Section 3.27.

"BUDGET" As defined in Section 2.12.

"BUSINESS" The provision of high speed data transmission through digital subscriber line technology in markets served by the 710 Assumed Central Office Locations and the Network Operations Center, both as identified in the Asset Purchase Agreement.

"CAPITAL EXPENDITURE" For any Person, expenditures (including the aggregate amount of all payments made in respect of capital lease obligations and operating lease obligations during such period) made by such Person to acquire, use, or construct fixed assets, plant or equipment (including office equipment, software, hardware and other computer equipment), or real estate and including renewals, improvements and replacements, but excluding repairs, computed in accordance with GAAP.

"CASE CONVERSION" Any Borrower becoming the debtor in any case under Chapter 7 of the Bankruptcy Code, whether as a result of conversion of any of the Chapter 11 Cases to a case under Chapter 7 of the Bankruptcy Code, or otherwise.

"CASUALTY EVENT" With respect to any Collateral of any Person, (a) any loss or damage to, or any condemnation or other taking of, such Collateral for

which such Person or any other Person receives insurance proceeds, or proceeds of a condemnation award or other compensation by judgment, award or otherwise, and (b) any loss or damage to, or condemnation

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or other taking of, any Collateral of any Person, not within the scope of clause (a) of this definition, if the amount of such loss, damage or taking exceeds \$20,000 in any one event or \$50,000 in the aggregate in any calendar year.

"CHAPTER 11 CASE" Case No. 01-14283-brl, Case No. 01-14284-brl, Case No. 01-14285-brl, Case No. 01-14286-brl and Case No. 01-14287-brl, being jointly administered under Case No. 01-14283-brl under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court and shall include any case under Chapter 11 of the Bankruptcy Code in which any Borrower is a debtor as a result of the termination of the joint administration of such Case No. 01-14283-brl.

"CHATTEL PAPER" As defined in Section 4A.01.

"COLLATERAL" As defined in Section 4A.01.

"COLLECTION COLLATERAL" Accounts, Chattel Paper, Deposit Accounts, General Intangibles, Instruments, Documents, Investment Property, Letter-of-credit rights, Commercial Tort Claims, and Supporting Obligations. Collection Collateral does not include (a) the Restricted Cash, or (b) so long as the Restricted Cash Account contains no Property other than the Restricted Cash, the Restricted Cash Account.

"COLLECTION COLLATERAL DEBTOR" Each Account Debtor with respect to any Collection Collateral that is an Account, Chattel Paper, or General Intangible, and each Person obligated to Debtor with respect to any Collection Collateral other than an Account, Chattel Paper, or General Intangible.

"COLLECTION COSTS" As defined in Section 4.10.

"COMMERCIAL TORT CLAIM" As defined in Article 9, and any claim arising in tort with respect to which: (a) the claimant is an organization; or (b) the claimant is an individual and the claim: (i) arose in the course of the claimant's business or profession; and (ii) does not include damages arising out of personal injury to or the death of an individual.

"COMMITTED AMOUNT" \$32,000,000.

"CONCENTRATION ACCOUNT" Account #12330-01173 maintained by Lender with Bank of America, N.A.

"CONSOLIDATED" When used with reference to the consolidated financial statements of any Borrower, shall mean the financial statements of such Borrower and its consolidated Subsidiaries as consolidated in accordance with GAAP, after the elimination of intercompany items.

"CONSOLIDATED SUBSIDIARIES" When used with reference to any Borrower, any Person the assets and liabilities of which are required to be consolidated with those of such Borrower in such Borrower's Consolidated financial statements in accordance with GAAP.

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"CONTROL AGREEMENT" (a) As applicable to Collateral that is Investment Property (other than a commodity contract), "Control Agreement" means a written agreement (or other Authenticated Record), in form and substance satisfactory to Lender, between any Borrower, Lender, and the securities intermediary, that gives Lender "control" (within the meaning of Article 8 and Article 9) over such Investment Property, and which contains such additional provisions as Lender may deem necessary or appropriate for the protection of Lender's rights to such Collateral.

(b) As applicable to Collateral that is a commodity contract, "Control Agreement" means a written agreement (or other Authenticated Record), in form and substance satisfactory to Lender, between any Borrower, Lender, and the commodity intermediary, that gives Lender "control" (within the meaning of Article 9) over such commodity contract, and which contains such additional provisions as Lender may deem necessary or appropriate for the protection of Lender's rights to such Collateral.

(c) As applicable to Collateral that is a Deposit Account, "Control Agreement" means a written agreement (or other Authenticated Record), in form and substance satisfactory to Lender, between any Borrower, Lender, and the Bank with which the Deposit Account is maintained, that gives Lender "control" (within the meaning of Article 9) over such Deposit Account, and which contains such additional provisions as Lender may deem necessary or appropriate for the protection of Lender's rights to such Collateral.

"CONTROL CONSENT" As applicable to Collateral that is a Letter-of-credit right, "Control Consent" means a written consent (or other Authenticated Record) in form and substance satisfactory to Lender, pursuant to which a letter of credit issuer (or any nominated person with respect to a letter of credit) consents to an assignment of the proceeds of the letter of credit, which written consent shall contain such provisions as Lender may deem necessary or appropriate for the protection of Lender's rights to such Collateral.

"COPYRIGHT" or "COPYRIGHTS" Any copyright protected under any Law, including any original works of authorship, or other Property, or rights comprised therein, that may be entitled to copyright protection under any Law.

"CREDIT ADMINISTRATION COSTS" As defined in Section 4.10.

"CREDIT DOCUMENT" or "CREDIT DOCUMENTS" This Agreement, the Note, each Control Agreement, each Control Consent, each Loan Funding Request, and

each and every other agreement of any kind, promissory note, instrument, assignment, certificate, guaranty, indemnity, bond, financing statement, exhibit, schedule, notice, request or other document, made by any Person, that evidences, secures, guarantees or otherwise relates directly or indirectly to the Loan Obligations or Lender's rights and remedies with respect thereto, or that is given to Lender to induce Lender to make, issue or extend the Loan Obligations or any thereof, or that is made to perfect (by control or otherwise) the security interests and other rights of Lender in and to the Collateral, or that is made to memorialize or escrow any Collateral, or that is made to

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induce Lender to make, fund, or extend loans or other financial accommodations to or for the account of Borrower, and all amendments, modifications, supplements, extensions and replacements hereof and thereof, from time to time.

"CREDIT TERMINATION DATE" As defined in Section 2.01.

"DEPOSIT ACCOUNTS" As defined in Section 4A.01.

"DEFAULT" Any event, occurrence, circumstance, act, or failure to act which is or with the giving of notice and/or the passage of time would become an Event of Default.

"DOCUMENTS" As defined in Section 4A.01.

"DOCUMENTARY CREDIT" Any Letter of Credit, and to the extent not included within the term Letter of Credit, any "standby" letter of credit (as such term is defined in International Standby Practices 1998, ICC Publication No. 590), any documentary credits (as such term is defined in the Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication No. 500), and any other arrangement, however named or described, whereby a bank or other Person (the "issuing bank") acting at the request and on the instructions of a customer (the "applicant") or on its own behalf (i) is to make a payment to or to the order of a third party (the "beneficiary"), or is to accept and pay bills of exchange ("drafts") drawn by the beneficiary, or (ii) authorizes another bank or other Person to effect such payment, or to accept and pay such bills of exchange ("drafts"), or (iii) authorizes another bank or other Person to negotiate, against stipulated documents, provided that the terms and conditions of the credit are complied with.

"DOLLARS" The lawful currency of the United States of America.

"EFFECTIVE DATE" The Effective Date as set forth on the first page of this Agreement.

"ENVIRONMENTAL CLAIM" means with respect to any Person, any written or oral notice, claim, suit, order, information request, demand or other

communication (referred to in this definition collectively as a "claim") by any other Person alleging, asserting or relating to such Person's liability for investigatory costs, cleanup costs, governmental response costs, damages to natural resources or other Property, personal injuries, fines or penalties arising out of, based on or resulting from (i) the presence, release, or threatened release into the environment, of any Regulated Substance at any location, whether or not owned by such Person, or (ii) circumstances forming the basis of any liability or violation under any Environmental Law. Environmental Claim shall include any claim by any governmental authority or other person for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and any claim by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from the presence of

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Regulated Substances or arising from alleged injury or threat of injury to health, safety or the environment.

"ENVIRONMENTAL LAWS" Any Law, permit, order or judgment of any applicable federal, state, local or foreign jurisdiction relating to pollution, hazardous substances, hazardous wastes, petroleum or otherwise relating to protection of the environment, natural resources or human health, including, by way of example and not by way of limitation, the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Toxic Substances Control Act, and the Emergency Planning and Community Right-to-Know Act, all as amended.

"EQUIPMENT" As defined in Section 4A.01.

"EQUITY INTEREST" As defined in Section 3.05.

"EQUITY RIGHTS" As defined in Section 3.05.

"EVENT OF DEFAULT" An Event of Default set forth in Article VI.

"FILING DATE" August 1, 2001.

"FINAL ORDER" An order of the Bankruptcy Court in form and content satisfactory to Lender authorizing the transactions contemplated by this Agreement, which order shall have been entered in the Chapter 11 Case after notice and a final hearing in accordance with Bankruptcy Rule 4001(c), the operation and effect of which order has not been reversed or modified in any respect, and which order is not the subject in any respect of a pending appeal or, if the subject in any respect of a pending appeal, is not the subject in any respect of any stay pending appeal.

"GAAP" or "GENERALLY ACCEPTED ACCOUNTING PRINCIPLES" Generally accepted accounting principles in the United States of America as in effect from

time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the statements and pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied.

"GENERAL INTANGIBLES" As defined in Section 4A.01.

"GOVERNMENTAL AUTHORITY" Any executive, judicial, legislative or other branch, department, office, commission, board, bureau, agency, or instrumentality of the government of any jurisdiction, including the federal government of the United States and any foreign country, and any state, provincial, local or municipal government, and including any monetary authority, and including the Persons holding or exercising the powers, privileges, discretions, titles, offices or authorities of any thereof, and including any central bank or comparable authority or agency.

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"GOODS" As defined in Article 9, and all things that are movable when a security interest attaches, including (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, (v) manufactured homes, and (vi) any computer program embedded in Goods and any supporting information provided in connection with a transaction relating to the program if (A) the program is associated with the Goods in such a manner that it customarily is considered part of the Goods, or (B) by becoming the owner of the Goods, a Person acquires a right to use the program in connection with the Goods. The term "Goods" does not include a computer program embedded in Goods that consist solely of the medium in which the program is embedded, and does not include accounts (as "account" is defined in Article 9), chattel paper (as "chattel paper" is defined in Article 9), commercial tort claims (as "commercial tort claim" is defined in Article 9), deposit accounts (as "deposit account" is defined in Article 9), documents (as "document" is defined in Article 9), general intangibles (as "general intangible" is defined in Article 9), instruments (as "instrument" is defined in Article 9), investment property (as "investment property" is defined in Article 9), letter-of-credit rights (as "letter-of-credit right" is defined in Article 9), letters of credit (as "letter of credit" is defined in Article 5), money, or oil, gas, or other minerals before extraction.

"GUARANTOR OBLIGATIONS" As to any Corporate Guarantor, all obligations, liabilities and indebtedness of such Corporate Guarantor arising under Article IV-B of this Agreement.

"HELD ITEMS" As defined in Section 4A.01.

"INCLUDE" and "INCLUDING" Unless otherwise expressly limited herein (and except where used in the context of "does not include," "shall not include," or "not included"), the words "include" and "including" shall be read

to mean "include, without limitation," and "including, without limitation," as the case may be.

"INDEBTEDNESS" As defined in Section 3.09.

"INDEBTEDNESS FOR BORROWED MONEY" As defined in Section 3.09.

"INITIAL ADVANCE COMMITTED AMOUNT" As defined in Section 2.01(a).

"INSTRUMENTS" As defined in Section 4A.01.

"INTELLECTUAL PROPERTY" Copyrights, Patents, and Trademarks, and all rights relating to any of the foregoing, and all applications, registrations, re-applications, and re-registrations for any of the foregoing, and all amendments, reissues, renewals, or supplementations of, or substitutions or replacements for, any of the foregoing, and including any other rights or interests in any of the foregoing, and including rights to sue for past, present or future violations or infringements of any of the foregoing.

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"INTEREST RATE" The fixed interest rate of ten percent (10%) per annum.

"INTERIM ORDER" An order of the Bankruptcy Court in form and content satisfactory to Lender authorizing the transactions contemplated by this Agreement, which order shall have been entered in the Chapter 11 Case after notice and a preliminary hearing in accordance with Bankruptcy Rule 4001(c), the operation and effect of which order has not been reversed or modified in any respect, and which order is not the subject in any respect of a pending appeal or, if the subject in any respect of a pending appeal, is not the subject in any respect of any stay pending appeal.

"INVENTORY" As defined in Section 4A.01.

"INVESTMENT PROPERTY" As defined in Section 4A.01.

"INVESTMENTS" As defined in Section 3.07.

"ITEMS OF PAYMENTS" All checks, drafts, cash, and other remittances of payment of, or on account of, any Accounts, Instruments, Chattel Paper, Documents, Investment Property, or General Intangibles, or received as proceeds of the sale or lease of any of Borrowers' Property or as payment for any services rendered by any Borrower to any Person.

"LAW" or "LAWS" At any time, all laws, statutes, regulations, ordinances, rules, codes, decrees, orders, and other directives of any federal, state, district, territorial, or local government within the United States of America (or any national, state, provincial or local government outside the United States), or any branch, department, agency or office thereof, applicable



to any party to any Credit Document, or to any Property of any party to any Credit Document, or to any business, industry, or other activity in which any party to the Credit Documents may be engaged from time to time, including all Environmental Laws.

"LETTER OF CREDIT" or "LETTERS OF CREDIT" As "letter of credit" is defined in Article 5.

"LETTER OF CREDIT ISSUER" A Bank or other Person that issues a Letter of Credit.

"LETTER-OF-CREDIT RIGHT" As defined in Article 9, and any right to payment or performance under a Letter of Credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance, excluding, however, from the definition of Letter-of-credit right, any right of a beneficiary to demand payment or performance under a Letter of Credit.

"LIEN" As defined in Section 3.10.

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"LOAN" The loan advances made pursuant to Article II to this Agreement, including each advance thereof made under Section 2.02.

"LOAN FUNDING REQUEST" A written request for a loan advance of all or part of the "Initial Advance Committed Amount" (as defined in Section 2.01) or the "Subsequent Advance Committed Amount" (as defined in Section 2.01) in the form of EXHIBIT A, including the SCHEDULE 1 referred to in EXHIBIT A, and given to Lender by Borrower in accordance with the notice provisions of this Agreement.

"LOAN OBLIGATIONS" The obligations, indebtedness, and liabilities of any Borrower to Lender under this Agreement, the Note, and the other Credit Documents, whether primary, secondary, contingent, direct or indirect, joint or several, or for payment or for performance, and including each Borrower's obligations to pay to Lender as and when due all principal, interest, costs and expenses (including Credit Administration Costs) evidenced by, arising under, or relating to, the Note, this Agreement, and the other Credit Documents. Without limiting the generality of the foregoing, the Loan Obligations include (i) the Loan, and (ii) all Guarantor Obligations relating to the Loan.

"MARGIN STOCK" As defined in Section 3.16.

"MATERIAL ADVERSE EFFECT" A material adverse effect on the Business, taken as a whole, or any development which could be reasonably expected to delay or prevent the consummation of the transactions contemplated hereby or which could be reasonably expected to materially and adversely affect the value of the Assets, taken as a whole, or the rights and remedies of Lender under any Credit Documents, other than matters arising out of or because of the Chapter 11 Case.

"MATURITY DATE" The earlier to occur of (a) December 31, 2001, or (b) the Closing Date.

"NOMINATED PERSON" With respect to any Letter of Credit, any Person whom a Letter of Credit Issuer (a) designates or authorizes to pay, accept, negotiate, or otherwise give value under a Letter of Credit and (b) undertakes by agreement or custom and practice to reimburse.

"NECESSARY PERMITS" As defined in Section 3.02.

"NET PROCEEDS" means, as to any Asset Disposition, the proceeds of such Asset Disposition in form of cash or cash equivalents, including payments in respect of deferred obligations when received in the form of cash or cash equivalents and proceeds from the conversion of other property received when converted to cash or cash equivalents, net of: (i) brokerage commissions and other costs of disposition, if any, directly related to such Asset Disposition, excluding any such commissions paid to any affiliate of any Borrower, (ii) provisions for taxes, if any, payable as a result of such Asset Disposition without regard to the Consolidated results of operations of any Borrower or any Subsidiary of any Borrower, taken as

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a whole, and (iii) payments, if any, made to repay indebtedness for borrowed money that is secured by a senior lien or security interest on the Property that is the subject of the Asset Disposition.

"NOTE" A Promissory Note (Limited Recourse) in the form of EXHIBIT B attached hereto, or in such other form as may be satisfactory to Lender, executed and delivered to Lender by each Borrower to further evidence Borrowers' agreement and obligation to repay the Loan.

"NOTIFICATION EVENT" As defined in Section 4.02.

"OBLIGATIONS" All now existing and hereafter arising obligations, indebtedness, and liabilities of any Borrower to Lender of any kind, whether primary, secondary, contingent, direct or indirect, joint or several, or for payment or for performance, and including each Borrower's obligations to pay to Lender as and when due all principal, interest, costs and expenses (including all Credit Administration Costs), and fees arising from or relating to loans made, or other credits granted or created, or financial accommodations extended, by Lender to any Borrower at any time and in any amount, and including all of each Borrower's obligations, indebtedness, and liabilities to Lender for payment or performance under this Agreement, the Note and the other Credit Documents, and including any other claims or judgments that Lender may have against any Borrower at any time, and including any of the foregoing arising before, during, or after the initial or any renewal term of the Credit Documents, and including any Guarantor Obligations of any Corporate Guarantor. Without limiting the generality of the foregoing, the Obligations include the Asset Purchase Agreement Article IX Obligations, the Loan, and the Loan Obligations.

"OBLIGOR" Each Borrower and each Corporate Guarantor.

"OPERATING EXPENSE" or "OPERATING EXPENSES" Operating expenses related to the Business that are incurred by a Borrower in the ordinary course of its business, relate solely to the period after September 24, 2001 at 11:59 p.m. and until the Closing, and are identified in the Budget in reasonable detail. If and to the extent that an operating expense relates to both (a) the Business and (b) Borrowers' other activities, only that portion of the operating expense that is reasonably allocable to the Business shall be included as an Operating Expense.

"OPERATING LEASE" Any lease of Property other than a lease that is a capital lease obligation as determined in accordance with GAAP.

"OTHER PERSONALTY" As defined in Section 4A.01.

"OWNERSHIP INTEREST" As to any Person, any Equity Interest or Equity Rights in such Person.

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"PATENT" or "PATENTS" Any patent issued under any Law for any invention or discovery, and any discovery of a new or useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, or other Property, that may be entitled to a patent or patent protection under any Law.

"PAYMENT OFFICE" Any location, designated by Lender upon written notice to Borrowers, to which payments are to be made under this Agreement.

"PERMITTED INDEBTEDNESS FOR BORROWED MONEY" As defined in Section 3.09.

"PERMITTED INVESTMENTS" As defined in Section 3.07.

"PERMITTED LIEN" As defined in Section 3.10.

"PERSON" Any natural person, corporation, limited liability company, partnership, joint venture, entity, association, joint-stock company, trust or unincorporated organization and any Governmental Authority.

"PROCEEDS" As defined in Section 4A.01.

"PRODUCTS" As defined in Section 4A.01.

"PROPERTY" Any right or interest in or to property of any kind whatsoever, whether real, personal, or mixed, and whether tangible or intangible.

"RECORD" and "RECORDS" As defined in Article 9, and, except as used in

"for record," "of record," "record or legal title," and "record owner," any information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

"REGULATED SUBSTANCE" or "REGULATED SUBSTANCES" Any substance, material, or waste that is regulated or listed under any Environmental Laws, and such substances, materials, or wastes include, but are not limited to, any whose release or threatened release may pose a risk to human health or the environment, and also include (a) asbestos in any form, (b) urea formaldehyde foam insulation, (c) paint containing lead, (d) transformers or other equipment that contain dielectric fluid polychlorinated biphenyls at levels of fifty (50) parts per million or more, (e) radioactive materials, and (f) petroleum or petroleum hydrocarbons in any form.

"RESPONSIBLE OFFICER" With respect to the subject matter of any representation, warranty, covenant, agreement, obligation, notification requirement, or certificate contained in or delivered to Lender pursuant to any of the Credit Documents, the President, Chief Operating Officer, Chief Executive Officer, Chief Financial Officer, Executive Vice President or Vice President, or Secretary of any Borrower.

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"RESPONSIBLE OFFICER'S CERTIFICATE" A certificate in form and substance satisfactory to Lender and signed by a Responsible Officer to the effect that no Default or Event of Default exists, or if any Default or Event of Default does exist, specifying the nature and extent thereof and what action such Borrower proposes to take with respect thereto, and which certificate shall also demonstrate compliance with the financial covenants of this Agreement.

"RESTRICTED CASH" As defined in Section 4A.11.

"RESTRICTED CASH ACCOUNT" As defined in Section 4A.11.

"SCHEDULED EXCLUDED PROPERTY" As defined in Section 4A.12.

"SECURED OBLIGATIONS" The Asset Purchase Agreement Article IX Obligations and the Loan Obligations.

"SUBSEQUENT ADVANCE COMMITTED AMOUNT" As defined in Section 2.01(b).

"SUBSIDIARY" As defined in Section 3.05.

"SUPPORTING OBLIGATION" As defined in Article 9, and any Letter-of-credit right or secondary obligation that supports the payment or performance of an Account, Chattel Paper, a Document, a General Intangible, an Instrument, or Investment Property.

"TEMPORARY CASH INVESTMENTS" As defined in Section 3.07.

"TRADEMARK" or "TRADEMARKS" Any trademark, service mark, collective mark, certification mark, or other distinctive mark, or other Property, that may be entitled to trademark protection under any Law.

"UCC" The Uniform Commercial Code, as in effect in the State of New York; provided that if and to the extent that the Uniform Commercial Code of a jurisdiction other than New York governs the perfection and the effect of perfection or nonperfection of a security interest under this Agreement, then "UCC" shall refer to the Uniform Commercial Code of such other jurisdiction to the extent applicable to the perfection and the effect of perfection or nonperfection of such security interest.

ARTICLE II  
CREDIT FACILITY

SECTION 2.01. LOAN. Upon the terms and subject to the conditions of this Agreement (including, without limitation, the provisions of Section 2.12 and Section 2.13), during the period commencing on the Effective Date and ending on the last Business Day prior to the Maturity Date (such last Business Day prior to the Maturity Date being referred to herein as the "CREDIT

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TERMINATION DATE"), Lender agrees to make loans to Borrowers in an aggregate amount not to exceed the Committed Amount, as follows:

(a) Upon and after the entry of the Interim Order and prior to the Credit Termination Date, \$10,000,000 of the Committed Amount or such other amount of the Committed Amount as may be authorized in the Interim Order (the "INITIAL ADVANCE COMMITTED AMOUNT"), shall be made available by Lender to be loaned to Borrowers in accordance with the terms of this Agreement.

(b) Upon and after the entry of the Final Order and prior to the Credit Termination Date, additional loan advances, in an aggregate amount of \$22,000,000 or such other aggregate amount as equals the difference between the Committed Amount and the Initial Advance Committed Amount (the "SUBSEQUENT ADVANCE COMMITTED AMOUNT"), shall be made available by Lender to be loaned to Borrowers in accordance with the terms of this Agreement.

SECTION 2.02. LOAN FUNDING REQUESTS. From time to time on or after the Effective Date and before the Credit Termination Date, Borrowers may request loan advances of the Initial Advance Committed Amount (when available in accordance with the terms of Section 2.01(a)) and the Subsequent Advance Committed Amount (when available in accordance with the terms of Section 2.01(b)), as the case may be, in accordance with the following procedure:

(a) Each loan advance shall be requested by Borrowers giving Lender a completed and signed Loan Funding Request, in accordance with the notice procedures of this Agreement, at least three Business Days prior to the proposed date of such Loan advance.

(b) Amounts loaned to Borrowers shall be disbursed to Borrowers by wire transfer to the Concentration Account.

(c) Borrowers shall not give Lender more than one Loan Funding Request during any calendar week and Lender shall not be obligated to make more than one loan advance during any calendar week.

(d) Loan advances shall not exceed the amount necessary on a weekly basis to pay Borrowers' Operating Expenses as set forth in a Budget (or updated Budget, as the case may be) prepared by Borrowers and approved by Lender.

SECTION 2.03. COVENANT TO PAY; NOTE. Each Borrower, severally and jointly, covenants and agrees to execute and deliver to Lender the Note immediately upon the execution and delivery of this Agreement and to repay the Loan to Lender, together with all accrued interest at the Interest Rate, and all Credit Administration Costs and fees relating thereto, without set-off, defense or counterclaim of any kind, in accordance with the terms of this Agreement, the Note and the other Credit Documents.

SECTION 2.04. INTEREST PAYMENTS. Upon and after the occurrence of an Event of Default, all accrued and unpaid interest on the Loan shall be due and payable on demand. In the

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event the Buyer acquires the Assets pursuant to the terms of the Asset Purchase Agreement, the accrued and unpaid interest as of the Closing Date shall be credited against the Purchase Price.

SECTION 2.05. PRINCIPAL PAYMENTS. Subject to acceleration upon the occurrence of an Event of Default, and unless sooner paid in full in connection with the Closing, the outstanding principal balance of the Loan shall be due and payable on the Maturity Date. In the event the Buyer acquires the Assets pursuant to the terms of the Asset Purchase Agreement, the outstanding principal balance of the Loan as of the Closing Date shall be credited against the Purchase Price.

SECTION 2.06. PREPAYMENTS. Borrowers may prepay the Loan in whole or in part at any time without premium or penalty.

SECTION 2.07. MANNER OF PAYMENTS. All payments to be made to Lender shall be made in Dollars in immediately available funds without set-off, defense, counterclaim or deduction of any kind, at the Payment Office on the dates specified for such payments under this Agreement, the Note or the other Credit Documents. If any payment on the Loan shall be due and payable on any day which is not a Business Day, such payment shall be deemed due on the next following Business Day and interest shall be payable at the applicable rate specified herein through such Business Day. Payments made in other than Dollars shall be accepted subject to collection.

SECTION 2.08. APPLICATION OF PAYMENTS. Payments made by Borrowers to Lender shall be applied in such order as Lender may determine in Lender's discretion.

SECTION 2.09. USE OF LOAN PROCEEDS. The proceeds of the Loan shall be used solely by Borrowers to fund Borrowers' Operating Expenses that are not funded from proceeds of Collection Collateral.

SECTION 2.10. COMPUTATION OF INTEREST. All interest shall accrue based on a 360-day year for the actual number of days outstanding.

SECTION 2.11. Intentionally omitted.

SECTION 2.12. CONDITIONS TO INITIAL ADVANCE. The following are conditions precedent to the making of any advance of the Initial Advance Committed Amount and must be fulfilled to Lender's satisfaction:

(a) Lender shall have received the following:

(i) copies of resolutions of the Board of Directors (or other applicable governing body of any Borrower that is not a corporation) of each Borrower, authorizing the execution, delivery and performance of this Agreement and the other Credit Documents, and the borrowing hereunder, and such other matters as Lender may require, in form and substance satisfactory to Lender, certified by a Responsible Officer of such Borrower; and

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(ii) a certificate of the Secretary or Assistant Secretary of each Borrower as to the correctness and completeness of the copy of the By-laws of such Borrower attached thereto and as to the incumbency and signatures of the officers of such Borrower who execute the Credit Documents on behalf of such Borrower; and

(iii) a copy of the Articles of Incorporation of each Borrower, certified by an officer of such Borrower as being correct and complete, together with a certificate of the appropriate officer or department of the state in which such Borrower is incorporated as to the good standing of such Borrower, with copies of the Articles of Incorporation of such Borrower on file certified by such appropriate officer or department; and

(iv) certificates of the appropriate officers or departments of the states in which each Borrower is not incorporated or formed but does business as to such Borrower's qualification and good standing to conduct business as a foreign corporation or limited liability company, as the case may be, in such States;

(v) such additional supporting certifications and other documents as Lender may request;



(b) Lender shall have received fully executed originals of this Agreement and of each of the other Credit Documents;

(c) Lender shall have received from Borrowers a budget prepared by Borrowers' Responsible Officer reasonably detailing Borrowers' anticipated cash receipts and projected accrued operating expenses for the period commencing on the date of entry of the Interim Order and ending on December 31, 2001, and setting forth the anticipated use of the proceeds of the Loan, all on a weekly and biweekly basis and satisfactory in form and substance to Lender (the "BUDGET");

(d) The Bankruptcy Court shall have entered the Interim Order;

(e) The Bankruptcy Court shall have entered the Approval Order; and

(f) Borrowers shall have given Lender a complete listing of each Borrower's Deposit Accounts and securities accounts (as "securities account" is defined in Article 8), copies of the account agreements relating to such Deposit Accounts and securities accounts, and copies of the most recent monthly or other periodic account statements for such Deposit Accounts and securities accounts.

SECTION 2.13. CONDITIONS TO ALL ADVANCES. The following are conditions precedent to the making of each advance of the Initial Advance Committed Amount and each advance of the Subsequent Advance Committed Amount, and must be fulfilled to Lender's satisfaction:

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(a) Borrowers shall have given Lender a properly completed and signed Loan Funding Request for the requested advance; and

(b) On and as of the date the advance is made, each representation and each warranty made in this Agreement and in any other Credit Documents shall be true, accurate, and complete in all material respects; and

(c) Borrowers shall have fulfilled in all material respects each and all of Borrowers' covenants in this Agreement and the other Credit Documents; and

(d) On and as of the date each advance is made, no Default or Event of Default shall have occurred and be continuing; and

(e) The applicable advance shall have been authorized by the Interim Order or the Final Order, as the case may be; and

(f) Borrowers shall have provided to Lender an updated Budget prepared by Borrowers' Responsible Officer showing that after making the requested advance, the unadvanced portion of the Committed Amount (and assuming such unadvanced portion of the Committed Amount were to be advanced under this Agreement), together with Borrowers' other reasonably anticipated sources of

funds, will provide Borrowers with sufficient working capital to operate in compliance with the requirements of the Asset Purchase Agreement until December 31, 2001; and

(g) Lender shall have a perfected first priority security interest in each Borrower's Accounts and General Intangibles; and

(h) Lender shall have a perfected first priority security interest in each Borrower's Deposit Accounts, which security interests shall have been perfected by control pursuant to a Control Agreement. The preceding sentence shall not apply to a Restricted Cash Account that is a Deposit Account so long as such Restricted Cash Account contains no Property other than the Restricted Cash; and

(i) If any Borrower has a securities account (as "securities account" is defined in Article 8), Lender shall have a perfected first priority security interest in each such securities account, which security interest shall have been perfected by control pursuant to a Control Agreement. The preceding sentence shall not apply to a Restricted Cash Account that is a securities account so long as such Restricted Cash Account contains no Property other than the Restricted Cash; and

(j) If any Borrower has a Letter-of-credit right, Lender shall have a perfected first priority security interest in each such Letter-of-credit right, which security interest shall have been perfected by control pursuant to a Control Consent; and

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(k) With regard to Collateral other than Accounts, General Intangibles, Deposit Accounts, securities accounts, or Letter-of-credit rights within the scope of clauses (g), (h), (i), and (j) of this Section, Lender shall have either (1) a perfected first priority Lien upon such Collateral pursuant to Section 364(c)(2) of the Bankruptcy Code, or (2) if such Collateral is subject to (x) a valid and perfected Permitted Lien in existence on the Filing Date or (y) valid Liens in existence on the Filing Date that are perfected subsequent to the Filing Date as permitted by Section 546(b) of the Bankruptcy Code, a perfected Lien pursuant to Section 364(c)(3) of the Bankruptcy Code; and

(l) The aggregate amount of Indebtedness secured by Permitted Liens (other than (i) Liens in favor of Lender and (ii) Borrower Group Liens) on any Collateral shall not exceed \$250,000; and

(m) All Borrower Group Liens on any Property that is Collateral shall be subordinate to the Lender's security interest in the Collateral.

SECTION 2.14. DESIGNATION OF AGENT AND ATTORNEY-IN-FACT. Each Borrower that is a party to any Credit Document hereby irrevocably appoints Rhythms as the agent and attorney-in-fact for such Borrower with full power and authority to act on behalf of such Borrower in all respects with respect to any actions,

waivers, consents, payments, receipts, or notices, whether or not required under this Agreement or the other Credit Documents, or as Rhythms may engage in, provide, give or take in its sole and unfettered discretion. Each such Borrower agrees that all actions taken, waivers or consents provided, payments made or received, or notices given or received, by Lender, in each case by or to Rhythms, shall be effective as to such Borrower regardless of whether such action, waiver, consent or notice was taken or approved by, or given or received by, any Person other than Rhythms. In all respects and circumstances Lender is entitled to rely without limitation on any and all actions, waivers, consents, and notices of Rhythms as actions, waivers, consents or notices of each Borrower, including any and all agreements to modify or amend in any respect, or grant any waiver or consent under, or to give or receive any notice with respect to, this Agreement or any other Credit Documents, and Lender is under no expectation or obligation whatsoever to inquire as to whether any such action or waiver was approved or ratified by, or notice given or received by, any such Borrower, and may act as if any such action, waiver, consent, or notice was engaged in, provided, taken, given or received by each such Borrower. In this respect, absent prior written notice to the contrary with respect to a specified matter, it is agreed that, in each and every circumstance insofar as Lender is concerned, any action taken, waiver or consent given, or notice given or received by, Rhythms, shall be deemed taken, given or received by, each such Borrower even absent an express indication that such action is taken, such waiver or consent is given, or such notice is given or received by any such Borrower other than Rhythms.

SECTION 2.15. DEFAULT. Notwithstanding anything to the contrary set forth in this Agreement or any other Credit Document, upon and after the occurrence of a Default Lender shall have no obligation to make any loan advances to Borrower under this Agreement; provided however, upon and after the occurrence of a Default, Lender may continue to make loan advances in Lender's sole and absolute discretion.

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### ARTICLE III REPRESENTATIONS AND WARRANTIES

Each Borrower hereby makes the following representations and warranties to Lender (a) on and as of the Effective Date, and (b) at the time that any advance of the Initial Advance Committed Amount or the Subsequent Advance Committed Amount is made, and Lender shall be entitled to rely upon the truth, accuracy, and completeness of the following representations and warranties without regard to any other information that may be now or hereafter known by or disclosed to Lender or any of Lender's shareholders, directors, officers, employees, agents, attorneys or other advisors:

SECTION 3.01. CONDITIONS. All conditions precedent to the making of each loan advance as set forth in Article II have been satisfied in full.

SECTION 3.02. EXISTENCE. Each Borrower: (a) is a corporation duly

organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b) has all requisite corporate or limited liability company, and has all material governmental licenses, authorizations, consents and approvals, including all Necessary Permits, to own its Assets and carry on its Business as now being or as proposed to be conducted; and (c) is qualified to do business and is in good standing in all jurisdictions in which the nature of the business conducted by it makes such qualification necessary and where failure so to qualify could (either individually or in the aggregate) have a Material Adverse Effect. "NECESSARY PERMITS" means all rights, permits, easements, licenses, franchises, patents, privileges, authorizations, permissions, consents, agreements, or approvals of or issued by any Governmental Authority, or any other Person, that may be required by any Law or are otherwise necessary or advisable for the ownership or operation of the businesses and properties of any Borrower.

SECTION 3.03. ACTION. (a) Each Borrower shall have all necessary corporate power, authority and legal right to execute, deliver and perform Borrowers' obligations under each of the Credit Documents; (b) the execution, delivery and performance by each Borrower of each of the Credit Documents shall have been duly authorized by all necessary corporate or other action on each Borrower's part (including any required shareholder approvals); and (c) this Agreement shall have been duly and validly executed and delivered by each Borrower and constitutes, and the Note and other Credit Documents, when executed and delivered by each Borrower, will constitute, each Borrower's legal, valid and binding obligation, enforceable against each Borrower, as the case may be, in accordance with its terms.

SECTION 3.04. APPROVALS. Other than the entry of the Interim Order, the Approval Order, and the Final Order by the Bankruptcy Court, no authorizations, approvals or consents of, and no filings or registrations with any Governmental Authority, or any securities exchange, are necessary for the execution, delivery or performance of the Credit Documents by any Borrower or for the legality, validity or enforceability thereof, or the perfection of the security interests created in favor of Lender pursuant to this Agreement and the other Credit Documents. The

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borrowings hereunder, and the execution, delivery and performance of each of the Credit Documents will not (a) contravene any provision of law, any order of any court or other agency of government, or (b) contravene the Articles of Incorporation or by-laws of any Borrower, or any indenture, agreement or other instrument binding upon any Borrower, or (c) to the best knowledge of each Borrower, be in conflict with, result in the breach of or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument binding upon any Borrower, or (d) to the best knowledge of each Borrower, result in the creation or imposition of any Lien of any nature whatsoever upon any of the Collateral, except any Liens created pursuant to this Agreement and the other Credit Documents.

SECTION 3.05. OWNERSHIP. SCHEDULE 3.05 contains a true, accurate, and complete description of the capital structure of each Borrower and each of its Subsidiaries and Affiliates, (except in the case of Rhythms, which is a publicly traded corporation), and identifies each Person who owns or holds an Equity Interest or Equity Rights in each Borrower.

"EQUITY INTEREST" means, with respect to any Person, any ownership interest in such Person, including all shares, participations, rights or other equivalents of corporate stock and all partnership and membership interests of any kind.

"EQUITY RIGHTS" means, with respect to any Person, any subscriptions, options, warrants, commitments, purchase rights, preemptive rights or agreements of any kind (including any stockholders' or voting trust agreements) for the issuance, sale, registration or voting of, or securities convertible into, any additional shares of capital stock of any class, or partnership, membership or other ownership interests of any type in, such Person.

"AFFILIATE" means, as to any Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, and including any Subsidiary of such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlling," "controlled by," and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through ownership of voting securities, by agreement or otherwise; provided that legal or beneficial ownership of ten percent (10%) or more of the voting securities (or other ownership interests other than limited partnership interests) of a Person shall in any event be deemed to be control.

"SUBSIDIARY" means, as to any Person, (i) any corporation or limited liability company (A) that is directly or indirectly controlled by such Person or any Subsidiary of such Person or (B) if more than 10% of the voting and/or non-voting stock or other ownership shares of such corporation or limited liability company is owned by such Person or any Subsidiary of such Person, (ii) any joint venture or partnership (A) in which such Person or any Subsidiary of such Person is a general partner or (B) if more than 10% of the partnership interests in such venture or partnership are owned by such Person or any Subsidiary of such Person, (iii) any trust for the benefit of such Person or any Subsidiary of such Person, or any other organization, trust or other entity as to which such Person or any Subsidiary of such Person

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is in a position of management, trust, or control, and (iv) to the extent not otherwise included by the preceding clauses, any Subsidiary of any corporation, limited liability company, partnership, organization, trust or other entity described in clauses (i), (ii), or (iii).

SECTION 3.06. Intentionally omitted.

SECTION 3.07. INVESTMENTS. SCHEDULE 3.07 contains a true, accurate, and complete listing of each Investment of each Borrower. No Borrower has Investments other than Permitted Investments.

"INVESTMENTS" means, with respect to any Person, (a) any Indebtedness for Borrowed Money of any other Person owed to such Person, (b) the acquisition (whether for cash, Property, services or securities or otherwise) of capital stock, bonds, notes, debentures, partnership interests or other ownership interests or other securities of any other Person or any agreement to make any such acquisition (including any "short sale" or any sale of any securities at a time when such securities are not owned by the Person entering into such sale), (c) the making of any deposit with, or advance, loan or extension of credit to, any other Person (including the purchase of Property from another Person subject to an understanding or agreement, contingent or otherwise, to resell such Property to such Person, but excluding trade credit extended by a Person arising from inventory sold or services provided in the ordinary course of such Person's business), or (d) the making of any guarantee of, or other contingent obligation with respect to, Indebtedness or other liability of any other Person and any amount committed to be advanced, lent or extended to such Person.

"PERMITTED INVESTMENTS" means with respect to each Borrower (a) endorsements of negotiable instruments and similar negotiable documents in the ordinary course of such Borrower's business; (b) Temporary Cash Investments; and (c) any Investments specifically listed on SCHEDULE 3.07 on the Effective Date.

"TEMPORARY CASH INVESTMENTS" means any Investment in (a) the direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof; (b) commercial paper rated at least A-1 by Standard & Poor's Corporation and P-1 by Moody's Investors Service, Inc.; (c) time deposits with, including certificates of deposits issued by, any office located in the United States of any bank or trust company which is organized under the laws of the United States or any State thereof and has capital, surplus and undivided profits aggregating at least Five hundred million Dollars (\$500,000,000) and which issues (or the parent of which issues) certificates of deposit or commercial paper with a rating described in clause (b) above; (d) money market mutual funds with a right of redemption on a daily basis and having assets of at least Five hundred million Dollars (\$500,000,000), substantially all of which assets consist of investments of a type described in the foregoing clauses; provided in each case that any Investment referred to in clauses (a) through (c) above matures within six (6) months from the day of acquisition thereof by any Borrower, and that any Investments referred to in this definition shall (i) provide for the payment of principal and interest (and not principal alone or interest alone) and (ii) are not subject to any contingency regarding the payment of principal or interest.

SECTION 3.08. DEPOSIT ACCOUNTS. (a) SCHEDULE 3.08(a) contains a true,



accurate, and complete listing of each Borrower's Deposit Accounts and securities accounts that are not Restricted Cash Accounts.

(b) SCHEDULE 3.08(b) contains a true, accurate, and complete listing of each Borrower's Restricted Cash Accounts.

(c) SCHEDULE 3.08(a) and SCHEDULE 3.08(b) together constitute a complete listing of each Borrower's Deposit Accounts and securities accounts.

(d) No Property other than Restricted Cash is maintained in any Restricted Cash Account.

SECTION 3.09. INDEBTEDNESS. SCHEDULE 3.09 contains a true, accurate, and complete listing of each Borrower's Indebtedness for Borrowed Money.

"INDEBTEDNESS" means, as applied to any Person, and as measured without duplication, all items (except items of capital stock, capital or paid-in-surplus or of retained earnings) which in accordance with GAAP, would be included in determining total liabilities as shown on the liability side of a balance sheet of such Person, including all of such Person's (i) Indebtedness for Borrowed Money, (ii) trade accounts payable, (iii) Indebtedness of another Person secured by any Lien to which any Property owned or held by such Person is subject, whether or not the Indebtedness secured thereby shall have been assumed, and (iv) obligations under any guarantee.

"INDEBTEDNESS FOR BORROWED MONEY" means, as applied to any Person, and as measured without duplication, all of such Person's Indebtedness from (a) obligations in respect of money borrowed, and including those evidenced by bonds, debentures, notes and other debt instruments, (b) capital lease obligations, (c) Indebtedness on which interest is accrued or charged, (d) reimbursement obligations under letters of credit, liquidated, contingent or otherwise, (e) obligations of, or Indebtedness issued or assumed by, such Person, to pay the deferred purchase price or acquisition price of Property or services, and including (i) Capital Expenditures, (ii) trade accounts that are payable more than thirty (30) days after the date the respective goods are delivered or the respective services are rendered, and (iii) trade accounts payable that have been outstanding more than thirty (30) days, and (f) obligations as a guarantor, surety, or accommodation party of items of another Person that as to such other Person would constitute Indebtedness for Borrowed Money of such other Person under the preceding clauses of this definition.

"PERMITTED INDEBTEDNESS FOR BORROWED MONEY" means any of the following Indebtedness for Borrowed Money: (a) the Obligations, (b) any other Indebtedness for Borrowed Money specifically listed on SCHEDULE 3.09 on the Effective Date, and (c) any other Indebtedness payable solely out of Restricted Cash.

SECTION 3.10. LIENS. Each Borrower has good title to its Property free of all Liens, except for Permitted Liens and Liens which if foreclosed upon



individually or in the aggregate would not have a Material Adverse Effect on the Collateral. SCHEDULE 3.10 contains a true, accurate, and complete listing of each Lien on each Borrower's Property.

"LIEN" means any security interest, security agreement, real estate mortgage, chattel mortgage, deed of trust, title retention contract, security title, factor's lien, assignment, pledge, grant or conveyance for security purposes or in settlement of debt, or other arrangement for security purposes, deed-in-lieu of foreclosure or to secure debt, transfer for other than fair consideration, judgment lien or other lien, charge or encumbrance of any kind, and including any of the foregoing arising by operation of statute or other law or the application of equitable principles, whether perfected or unperfected, avoidable or unavoidable, consensual or non-consensual.

"PERMITTED LIEN" means (i) any Lien in favor of Lender, (ii) Borrower Group Liens that are subordinate to Lender's security interest in the Collateral, (iii) Liens for taxes which are not yet delinquent, (iv) deposits or pledges to secure obligations under worker's compensation, social security or similar laws, or under unemployment insurance in the ordinary course of business of any Borrower, (v) each Lien listed on SCHEDULE 3.10, and (vi) if the aggregate amount of the Indebtedness secured by Liens within the scope of clauses (iii), (iv) and (v) of this definition is less than \$250,000, such other Liens, if any, as may exist on the Effective Date, provided that the aggregate amount of all Indebtedness secured by Liens within the scope of clauses (iii), (iv), and (v) of this definition, plus the aggregate amount of all Indebtedness secured by Liens under this clause (vi), shall not exceed \$250,000.

SECTION 3.11. INSURANCE. SCHEDULE 3.11 contains a true, accurate, and complete listing of each insurance policy (including policies of worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) maintained in full force and effect by each Borrower.

SECTION 3.12. NAME, STRUCTURE. Except as listed on SCHEDULE 3.12, no Borrower has changed its name or organizational structure or purchased or acquired any Property from any Person other than Property which in the hands of such Person was such Person's inventory and was sold to such Borrower in the ordinary course of such Person's business.

SECTION 3.13. Intentionally omitted.

SECTION 3.14. Intentionally omitted.

SECTION 3.15. Intentionally omitted.

SECTION 3.16. MARGIN STOCK. No Borrower is engaged principally, or as one of its activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock, and no part of the proceeds of any extension of credit hereunder will be used to buy or carry any Margin Stock. "MARGIN STOCK" means margin

stock within the meanings of Regulations T, U and X of the Board of Governors of the Federal Reserve System (or any successor) as the same may be modified and supplemented and in effect from time to time.

SECTION 3.17. TAX IDENTIFICATION NUMBERS. The tax identification number for each Borrower is listed on SCHEDULE 3.17.

SECTION 3.18. Intentionally omitted.

SECTION 3.19. Intentionally omitted.

SECTION 3.20. TAXES. Each Borrower has filed and will continue to file all United States income tax returns and all state income tax returns which are required to be filed, and has paid, or made adequate provisions for the payment of, all taxes which have or may become due pursuant to said returns or pursuant to any assessment received by any Borrower except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided.

SECTION 3.21. INVESTMENT COMPANY ACT. No Borrower is an "investment company," or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

SECTION 3.22. PUBLIC UTILITY HOLDING COMPANY ACT. No Borrower is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

SECTION 3.23. COMMERCIAL LOAN. The Loan made under this Agreement is made solely for a business or commercial purpose, and not for any personal, family, or household purpose. The terms of this Agreement do not violate any Laws that regulate credit, including any Laws regarding usury and the charging of interest, late charges, fees, or any costs and charges of the types included within the definition of Credit Administration Costs under this Agreement.

SECTION 3.24. APPLICABLE LAWS. To the best knowledge of each Borrower, each Borrower is in compliance, in all material respects, with all Applicable Laws.

SECTION 3.25. NO BROKER. The Sellers have engaged the firm of Lazard Freres & Co. LLC to assist them in connection with the matters contemplated by this Agreement and the Asset Purchase Agreement and will be solely responsible for the fees and expenses of such firm.

SECTION 3.26. Intentionally omitted.

SECTION 3.27. BORROWER INFORMATION. There is no fact or circumstance or anticipated event known to any Responsible Officer that could have a Material Adverse Effect that has not been disclosed to Lender in this Agreement, the other Credit Documents, or in another writing furnished to Lender on or before

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contemplated by this Agreement and the other Credit Documents. The Borrower Information furnished to Lender on or before the Effective Date is true, accurate, and complete in all material respects, and does not omit any material fact or facts necessary to make the Borrower Information not misleading, and all Borrower Information furnished to Lender after the Effective Date shall be true, accurate and complete in all material respects. "BORROWER INFORMATION" means any information furnished to Lender by or on behalf of any Borrower at any time, including all such information furnished to Lender in connection with Borrowers' application for the credits and other accommodations contemplated by this Agreement and the other Credit Documents, including any information contained in any credit or loan application, and in any financial statements, tax returns, appraisals, environmental audits, reports, correspondence, opinion letters, annexes, schedules, lists and exhibits relating to such application or otherwise relating to the matters and transactions contemplated by the Credit Documents, and including all representations and other information made to or furnished to Lender in the Credit Documents and in the Exhibits, Schedules and certificates relating thereto, and including any and all financial statements, tax returns, reports, certificates, notices, annexes, schedules, lists (including any listings or descriptions of any of Borrowers' Property) and exhibits, furnished to Lender from time to time in accordance with the terms of the Credit Documents or otherwise relating to any Borrower.

SECTION 3.28. SECURITY INTEREST. The security interests created by each Borrower under Article IV-A of this Agreement shall be either:

(a) a perfected first priority Lien, pursuant to Section 364(c)(2) of the Bankruptcy Code, upon all Collateral; or

(b) a perfected Lien, pursuant to Section 364(c)(3) of the Bankruptcy Code, upon all Collateral of each Borrower that is subject to a valid and perfected Permitted Lien in existence on the Filing Date or that is subject to valid Liens in existence on the Filing Date that are perfected subsequent to the Filing Date as permitted by Section 546(b) of the Bankruptcy Code or that is subject to Permitted Liens, junior to such valid and perfected Liens.

SECTION 3.29. CHIEF EXECUTIVE OFFICE. Each Borrower's chief executive office (a) is located in either the State of Colorado (or the state in which the Borrower is incorporated), and (b) has not been located in any jurisdiction other the State of Colorado (or the state in which the Borrower is incorporated).

SECTION 3.30. COMMERCIAL TORT CLAIMS. Except as listed on SCHEDULE 4A.01(d), no Borrower has any Commercial Tort Claims.

SECTION 3.31. LETTER-OF-CREDIT RIGHTS. Except as listed on SCHEDULE 3.31, no Borrower has any Commercial Tort Claims.

ARTICLE IV  
AFFIRMATIVE COVENANTS

Each Borrower covenants and agrees that from the date hereof and until the later of the Maturity Date or payment in full of all Secured Obligations owed by each Borrower to Lender, unless Lender shall otherwise consent in writing:

SECTION 4.01. INFORMATION. Each Borrower shall deliver to Lender, or cause to be delivered to Lender, the following:

(a) Monthly Bankruptcy Trustee Reports, as filed with the U.S. Trustee's Office in the Southern District of New York, within two Business Days of the filing date of such reports;

(b) the Budget, as required under Article II;

(c) on each Wednesday of each week, weekly and bi-weekly budgets itemizing the following week's disbursements in reasonable detail;

(d) on Wednesday of each week, current cash receipts and accounts receivables aging reports;

(e) on Wednesday of each week, current accounts payable aging reports;

(f) promptly upon transmission thereof, copies of any filings and registrations with, and reports to, the Securities and Exchange Commission, or any successor agency, by any Borrower, and copies of all financial statements, proxy statements, notices and reports as such Borrower shall send to its shareholders or to the holders of any other Indebtedness of such Borrower in their capacity as holders;

(g) concurrently with each filing by each Borrower of any tax return pursuant to the taxing authority of any Governmental Authority, a photocopy of each such tax return, with all related forms, schedules, and related information; and

(h) with reasonable promptness upon any such request, such other information regarding the business, properties or financial or operating condition of any Borrower, or regarding the Collateral, or regarding the Restricted Cash Accounts, as Lender may request.

SECTION 4.02. REPORTING NOTIFICATION EVENTS. Immediately upon any Responsible Officer obtaining knowledge thereof, but in any event within two Business Days after any Responsible Officer obtains such knowledge, each Borrower shall give Lender written notice of each Notification Event, which written notice shall include (i) a description of the Notification Event

(including an estimate of any anticipated liability or Material Adverse Effect that may

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arise from such Notification Event other than the occurrence of a Default or Event of Default), (ii) the date of the Notification Event and the date that the Responsible Officer first obtained knowledge of the Notification Event, and (iii) a description of the manner in which such Borrower has addressed or otherwise responded to the Notification Event or intends to address or otherwise respond to the Notification Event. "NOTIFICATION EVENT" means any of the following events or occurrences: (a) any Default or Event of Default; or (b) any Lien upon any Collateral other than Permitted Liens; or (c) any Casualty Event; or (d) the occurrence of any event or condition which, with respect to any Borrower, gives rise to unfunded pension liabilities or similar liabilities, severance liabilities, unemployment liabilities, wage claims, or the like, in favor of any individual, entity, organization, association or group, including, without limitation, any tax authority or governmental authority, if such claims or liabilities could, individually or in the aggregate, have a Material Adverse Effect; or (e) the occurrence of any event or condition which constitutes a Default or Event of Default under any Indebtedness of any Borrower (other than the Obligations) if the acceleration of such Indebtedness as a result of such Default or Event of Default would have a Material Adverse Effect; or (f) the receipt of notice by a Responsible Officer of any Borrower, of potential liability or responsibility for the violation (or alleged violation) of any Laws, if such violation could (in view of any possible penalties, fines, liabilities, damage awards, settlement costs and expenses, and any possible equitable relief) have a Material Adverse Effect; or (g) any event or fact (or change of fact) or any circumstance (or change of circumstance) that warrants the revision of any Borrower Information in order to cause such Borrower Information to be, and to continue to be, true, accurate and complete in all material respects at all times; or (h) any change in incumbency in one or more of the following offices of any Borrower's management: President, Treasurer, Chief Financial Officer, or any other office named in the incumbency certificate given to Lender; or (i) any occurrence, that would not be a Notification Event within the scope of the foregoing clauses of this definition of Notification Event, which has or reasonably may have a Material Adverse Effect.

SECTION 4.03. EXISTENCE. Each Borrower shall maintain its corporate or other legal existence, in each jurisdiction in which it is incorporated or otherwise formed, and in each jurisdiction where it is required to register or qualify to do business, except for failures to register or qualify which, individually or in the aggregate, would not have a Material Adverse Effect.

SECTION 4.04. Intentionally omitted.

SECTION 4.05. COLLATERAL. Each Borrower shall maintain, preserve and protect all Collateral and keep such Collateral in good repair, working order and condition, normal wear and tear excepted, and from time to time as necessary make, or cause to be made, all repairs, renewals, and replacements thereto as

necessary in order that the business carried on in connection therewith may be properly conducted at all times.

SECTION 4.06. INSURANCE. Each Borrower shall maintain in full force and effect at all times insurance (including worker's compensation insurance, liability insurance, casualty insurance and business interruption insurance) in such amounts, covering such risks and liabilities, and with such deductibles as are in accordance with normal industry practice unless higher limits or other types of coverage are required by the terms of the other Credit Documents.

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Each Borrower shall provide to Lender promptly upon Lender's request from time to time certificates, policies or endorsements as Lender shall require as proof of such insurance, and if such Borrower fails to do so, Lender is authorized, but not required, to obtain such insurance at the expense of Borrowers. All insurance policies shall provide for at least 30 days' prior written notice to Lender of any cancellation or reduction in coverage and Lender may act as attorney-in-fact for each Borrower in obtaining, and at any time an Event of Default exists, adjusting, settling, amending and canceling such insurance. Each Borrower shall cause Lender to be named as a loss payee and an additional insured (but without any liability for any premiums) with respect to the Collateral under all such insurance policies and shall cause such Borrower to obtain non-contributory lender's loss payable endorsements to all such insurance policies with respect to the Collateral in form and substance satisfactory to Lender. Such lender's loss payable endorsements shall specify that the proceeds of such insurance with respect to the Collateral shall be payable to Lender as its interests may appear and further specify that Lender shall be paid regardless of any act or omission by any Borrower or any other Person. All proceeds of such casualty insurance with respect to the Collateral shall be paid to Lender for application to the Obligations in accordance with the terms of this Agreement and the other Credit Documents or otherwise. Lender shall not be responsible for any failure to collect any insurance proceeds due under the terms of any policy regardless of the cause of such failure.

SECTION 4.07. CASUALTY EVENT PROCEEDS. If any Casualty Event shall occur and be covered in whole or in part by insurance, and any Borrower shall be entitled, in accordance with the terms of any insurance policy, or in accordance with any agreement with or decision of any Person other than Lender, to receive any proceeds of such Casualty Event and insurance, then, so long as no Event of Default has occurred and is continuing, such proceeds shall promptly be applied or paid at such Borrower's election either (a) to restore or replace the Collateral so damaged or destroyed in such Casualty Event if such proceeds shall be sufficient to pay the full cost and expense of such restoration or replacement, or (b) as a prepayment on the Secured Obligations; provided, however, that upon and during the continuance of an Event of Default, such Borrower shall cause all such proceeds attributable to Collateral, immediately upon receipt by such Borrower or any other Person, to be paid to Lender to be applied at Lender's election, in Lender's discretion either (a) to restore or replace the Collateral so damaged or destroyed or (b) as a prepayment on the



Secured Obligations. If any Casualty Event shall occur for which any Borrower is entitled to a condemnation award or other similar compensation, then, at Lender's election, in Lender's discretion, such Borrower shall cause any proceeds of such award or other similar compensation, immediately upon receipt by such Borrower or any other Person, to be paid to Lender to be applied as a prepayment on the Secured Obligations.

SECTION 4.08. TAXES. Each Borrower shall pay and discharge or cause to be paid and discharged promptly all taxes, assessments, and governmental charges or levies imposed upon such Borrower or upon such Borrower's income and profits, or upon any of its Collateral or any part thereof, before the same shall become in default, as well as all lawful claims for labor, materials and supplies or otherwise which, if unpaid, might become a Lien upon such Collateral or any part thereof; PROVIDED, HOWEVER, that no Borrower shall be required to pay and discharge or to cause to be paid and discharged any such tax, assessment, charge, levy or claim so long as the validity thereof shall be contested in good faith by appropriate proceedings and such

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Borrower shall have set aside on its books adequate reserves with respect to any such tax, assessment, charge, levy or claim, so contested.

SECTION 4.09. COMPLIANCE WITH LAWS. Each Borrower shall comply, in all material respects, with all Applicable Laws.

SECTION 4.10. CREDIT ADMINISTRATION COSTS; BROKERS. Each Borrower shall pay and cause each other Borrower to pay all Credit Administration Costs promptly upon Lender's demand from time to time. Each Borrower shall indemnify and hold harmless Lender from and against any claim by any Person for a commission or finder's fee or other compensation of any kind attributable to any extensions of credit or other matters or transactions contemplated under this Agreement and the other Credit Documents, and shall pay Lender's attorney's fees, litigation expenses and court costs in defending any such claim for a commission or finder's fee other compensation.

"COLLECTION COSTS" means all costs and expenses of administering and enforcing this Agreement and the other Credit Documents, and including any and all costs and expenses of collecting the Obligations and exercising Lender's rights and remedies under the Credit Documents as against any Collateral, or as against any Borrower or other party to any Credit Documents, or any trustee, receiver or debtor-in-possession, and any and all costs and expenses incurred by Lender at any time in enforcing, defending, protecting, perfecting, and maintaining Lender's security interests and the priority thereof in any Collateral, and any other costs and expenses incurred by Lender after the occurrence of any Default, with regard to any matters relating to the Credit Documents, and regardless of whether an Event of Default shall have been declared, any Obligations shall have been accelerated or declared due or any other remedies shall have been exercised, and including any and all such costs and expenses incurred by Lender in or relating to any bankruptcy or insolvency



proceedings. Collection Costs include court costs, filing fees, attorney's fees, paralegal fees, litigation expenses of any kind, the fees and expenses of experts, consultants, accountants, engineers, appraisers, surveyors, receivers, trustees, warehousemen, and auctioneers, and the costs and expenses of repossessing, transporting, storing, maintaining, insuring, repairing, advertising, marketing, and selling any Collateral, including all applicable transfer taxes, recordation taxes, documentary stamps, and sales taxes relating to the creation or perfection of Lender's security interests in any Collateral, and all costs of inspecting, studying, testing, and monitoring the condition of any Collateral, and all costs of response, remediation, or clean-up regarding the condition of any Collateral.

"CREDIT ADMINISTRATION COSTS" means all Collection Costs and any other costs and expenses (including Lender's attorney's fees and expenses) incurred by Lender from time to time relating to the preparation, modification, supplementation, review, and interpretation of the Credit Documents, or the monitoring, processing, and servicing of the Secured Obligations, or any Collateral and the transactions and other matters contemplated by the Credit Documents, and including any such costs and expenses incurred in Lender's due diligence and other preparation for the closing of the Loan.

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SECTION 4.11. REVIEW AND AUDIT. Each Borrower shall maintain its financial books and records in accordance with GAAP. Lender shall be permitted access to all of Borrowers' books and records at any location during normal business hours and shall be permitted to take copies, at Borrowers' expense, of such books and records as Lender may request. Each Borrower shall permit and authorize Lender through any Person designated by Lender, at such times and as often as Lender may request, to visit, inspect, examine, audit and verify any of the properties, books and records of such Borrower relevant to the subject matter of this Agreement or any other Credit Documents or any Borrower Information or the financial condition of such Borrower.

SECTION 4.12. USE OF LOAN PROCEEDS. The proceeds of the Loan shall be used solely for the purpose expressly permitted in Article II.

SECTION 4.13. Intentionally omitted.

SECTION 4.14. ENVIRONMENTAL MATTERS. Each Borrower shall cause all Collateral owned or operated by any Borrower to be kept free of contamination from Regulated Substances and any other harmful or physical conditions except as otherwise would be in compliance with applicable Environmental Laws. If any Borrower receives notice or becomes aware of any Environmental Claim or any violation of Environmental Laws or any contamination with Regulated Substances that relates to any of them or any Collateral, then such Borrower shall promptly provide written notice thereof to Lender and, upon written request of Lender, shall provide Lender with such reports, certificates, engineering studies or other written material or data as Lender may require so as to satisfy Lender that such Borrower is in compliance with its obligations under this Agreement.

SECTION 4.15. Intentionally omitted.

SECTION 4.16. ASSET PURCHASE AGREEMENT. Each Borrower shall comply with, perform, and fulfill all of such Borrower's covenants, agreements and other obligations under the Asset Purchase Agreement.

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ARTICLE IV-A  
ADDITIONAL SECURITY PROVISIONS

SECTION 4A.01. SECURITY INTEREST. To further secure the Asset Purchase Agreement Article IX Obligations and the Loan Obligations, and without limiting the legal operation and effect of any other Credit Document, each Borrower hereby collaterally assigns to Lender, and grants Lender a security interest in, all of such Borrower's now owned and hereafter acquired, created or arising Property described below, and in each case regardless of where such Property may be located and whether such Property may be in the possession of such Borrower, Lender, or a third party, and, if any of such Property may be held or stored with any third party, together with all of such Borrower's rights now owned and hereafter acquired, created or arising relating to the storage, withdrawal and retrieval thereof and access thereto (all of which Property described below and all such rights of storage, withdrawal, retrieval and access, in each case both now owned and hereafter acquired, created or arising, being referred to herein as "COLLATERAL"):

(a) All of Borrowers' now owned and hereafter acquired, created or arising (i) "accounts" (as "account" is defined in Article 9), (ii) rights to payment of any monetary obligation, whether or not earned by performance, (A) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (B) for services rendered or to be rendered, (C) for a policy of insurance issued or to be issued, (D) for a secondary obligation incurred or to be incurred, (E) for energy provided or to be provided, (F) for the use or hire of a vessel under a charter or other contract, (G) arising out of the use of a credit or charge card or information contained on or for use with the card, or (H) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or Person licensed or authorized to operate the game by a state or governmental unit of a state, (iii) health-care-insurance receivables, and (iv) rights of stoppage in transit, replevin, repossession and reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, and all guaranties or other contracts of suretyship with respect to any of the foregoing property, and all deposits, letters of credit, and other security for the obligation of any Account Debtor relating in any way to any of the foregoing property, and all credit and other insurance for any of the foregoing property ("ACCOUNTS"). The term Accounts does not include (i) rights to payment evidenced by chattel paper or an instrument (as "chattel paper" and "instrument" are defined in Article 9), (ii) commercial tort claims (as "commercial tort claim" is defined in Article 9), (iii) deposit accounts (as "deposit account" is defined in Article 9), (iv) investment

property (as "investment property" is defined in Article 9), (v) letter-of-credit rights or letters of credit (as "letter-of-credit right" and "letter of credit" are defined in Article 9 and Article 5, as the case may be), or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card; and

(b) All of Borrowers' now owned and hereafter acquired, created or arising (i) "chattel paper" (as "chattel paper" is defined in Article 9) and (ii) Records that evidence both a Monetary Obligation and a security interest in specific Goods, a security interest in specific Goods and software used in the Goods, a security interest in specific Goods and license of software used in the Goods, a lease of specific Goods, or a lease of specific Goods and license of software used in the Goods (and if a transaction is evidenced by Records that include

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an instrument or series of instruments, the group of Records taken together constitutes Chattel Paper) and any thereof evidenced by a Record or Records consisting of information stored in an electronic medium (as used in this clause "Monetary Obligation" means a monetary obligation secured by the Goods or owed under a lease of the Goods and includes a monetary obligation with respect to software used in the Goods); excluding, however, from the definition of Chattel Paper, (x) charters or other contracts involving the use or hire of a vessel and (y) Records that evidence a right to payment arising out of the use of a credit card or information contained on or for use with the card ("CHATTEL PAPER"); and

(c) All of Borrowers' now owned and hereafter acquired, created or arising (i) "deposit accounts" (as "deposit account" is defined in Article 9) and (ii) demand, time, savings, passbook, or similar accounts maintained with any Bank (and including lockboxes and lockbox accounts), and all amounts, balances, and contents therein and thereof and all of Borrowers' rights under agreements relating thereto ("DEPOSIT ACCOUNTS") (provided however, if the Restricted Cash Account is a Deposit Account, the Restricted Cash Account shall be excluded from the Collateral so long as the Restricted Cash Account contains no Property other than the Restricted Cash); and

(d) All of Borrowers' Commercial Tort Claims now or hereafter identified on SCHEDULE 4A.01(d) to this Agreement; and

(e) All of Borrowers' now owned and hereafter acquired, created or arising (i) "documents" (as "document" is defined in Article 9), (ii) documents of title (as "document of title" is defined in Section 1-201 of the UCC), and (iii) receipts of the type described in Section 7-201(2) of the UCC (for goods including distilled spirits and agricultural commodities stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of warehouse receipts) ("DOCUMENTS"); and

(f) All of Borrowers' now owned and hereafter acquired, created or

arising (i) "instruments" (as "instrument" is defined in Article 9), (ii) any negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary endorsement or assignment, and (iii) Promissory Notes or other instruments or agreements evidencing Borrowers' right to payment from any Person or Persons ("INSTRUMENTS"). The term "Instruments" does not include (i) investment property (as "investment property" is defined in Article 9), (ii) letters of credit (as "letter of credit" is defined in Article 5), or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card; and

(g) All of Borrowers' now owned and hereafter acquired, created or arising (i) "investment property" (as "investment property" is defined in Article 9), (ii) securities (as "security" is defined in Article 8), whether certificated or uncertificated, (iii) security entitlements (as "security entitlement" is defined in Article 8), (iv) securities accounts (as "securities account" is defined in Article 8), (v) commodity contracts (as "commodity contract" is defined in Article

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9), (vi) commodity accounts (as "commodity account" is defined in Article 9), and (vii) including ,without limitation, all of Borrowers' shares of Series D Preferred Stock of Megapath Networks, Inc. ("INVESTMENT PROPERTY") (provided however, if the Restricted Cash Account is a securities account, the Restricted Cash Account shall be excluded from the Collateral so long as the Restricted Cash Account contains no Property other than the Restricted Cash); and

(h) All of Borrowers' now owned and hereafter acquired, created or arising Letter-of-credit rights and all of Borrowers' now owned and hereafter acquired, created or arising Documentary Credits; and

(i) All of Borrowers' now owned and hereafter acquired, created or arising (i) "inventory" (as "inventory" is defined in Article 9) and (ii) other Goods (other than, as to this clause (ii), farm products (as "farm products" is defined in Article 9) which (A) are leased by any Borrower as lessor, (B) are held by any Borrower for sale or lease or to be furnished under a contract of service, (C) are furnished by any Borrower under a contract of service, or (D) consist of raw materials, work in process, or materials used or consumed in Borrowers' business, including all Accessions to such inventory and other Goods ("INVENTORY")); and

(j) All of Borrowers' now owned and hereafter acquired, created or arising (i) "equipment" (as "equipment" is defined in Article 9) and (ii) other Goods (other than, as to this clause (ii), Inventory, farm products (as "farm products" is defined in Article 9), or consumer goods (as "consumer goods" is defined in Article 9)), including fixtures and including all accessions to such equipment and other Goods ("EQUIPMENT"); and

(k) All of Borrowers' now owned and hereafter acquired, created or arising (i) "general intangibles" (as "general intangible" is defined in Article 9) and (ii) personal property, including things in action, other than accounts (as "account" is defined in Article 9), chattel paper (as "chattel paper" is defined in Article 9), commercial tort claims (as "commercial tort claim" is defined in Article 9), deposit accounts (as "deposit account" is defined in Article 9), documents (as "document" is defined in Article 9), goods (as "goods" are defined in Article 9), instruments (as "instrument" is defined in Article 9), investment property (as "investment property" is defined in Article 9), letter-of-credit rights (as "letter-of-credit right" is defined in Article 9), letters of credit (as "letter of credit" is defined in Article 5), money, and oil, gas, or other minerals before extraction ("GENERAL INTANGIBLES"). Without limiting the generality of the preceding sentence, General Intangibles include Borrowers' now owned and hereafter acquired, created or arising payment intangibles, rights or claims in respect of refunds for taxes paid, Intellectual Property (including, as to any Trademark, the goodwill of the business in which the Trademark is used, or that part of the goodwill of the business connected with the use of and symbolized by the Trademark); and

(l) All of Borrowers' now owned and hereafter acquired, created or arising moneys, securities and other property, now or hereafter held or received by, or in transit to, Lender, whether for safekeeping, pledge, custody, transmission, collection or otherwise, and any balances, sums and credits of Borrowers held by Lender at any time existing ("HELD ITEMS"); and

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(m) All of Borrowers' now owned and hereafter acquired, created or arising right, title and interest in any tangible or intangible personal property that is not described within the other defined terms included within the definition of Collateral ("OTHER PERSONALTY"); and

(n) All of Borrowers' now owned and hereafter acquired, created or arising products of Collateral, including any product or mass that results when any Goods that are Collateral become commingled goods ("PRODUCTS"); and

(o) All of Borrowers' now owned and hereafter acquired, created or arising Records, and Borrowers' books, records, documents, ledger cards, invoices, bills of lading and other shipping evidence, credit files, computer programs, tapes, discs, diskettes, and other data and software storage medium and devices, and other property and general intangibles evidencing or relating to Collateral or any Account Debtor (including any rights of Borrower with respect to the foregoing maintained with or by any other Person) ("BUSINESS RECORDS"); and

(p) All of Borrowers' now owned and hereafter acquired, created or arising cash and non-cash proceeds (as "proceeds" is defined in Article 9), and all Property received in respect of any sale, lease, license, exchange, transfer, redemption, or other disposition of any Collateral, and any other thing or item of value paid, received or collected in respect of any Collateral,

including any cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under a letter of credit, and including interest and dividend payments made on or in respect of any Collateral, and distributions made in respect of any Collateral, and rights arising out of any Collateral, and claims arising out of the loss, nonconformity, or interference with the use of, defects or infringements of rights in, or damage to, any Collateral, and insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, any Collateral ("PROCEEDS").

SECTION 4A.02. DEPOSIT ACCOUNTS; CONTROL. (a) To further secure the Asset Purchase Agreement Article IX Obligations and the Loan Obligations, and to more fully protect the security interest of Lender against Liens of other creditors of any Borrower, each Borrower hereby (i) transfers and assigns exclusively to Lender all of Borrowers' now owned and hereafter acquired rights of ownership, dominion and control of all of Borrowers' Deposit Accounts, including all of Borrowers' Deposit Accounts disclosed or listed on any schedule to this Agreement or any other Credit Document and all of Borrowers' other Deposit Accounts whether or not so disclosed or listed, and (ii) agrees that Lender shall have the right to direct the disposition of funds in each of Borrowers' Deposit Accounts without further consent of any Borrower. Promptly upon Lender's request from time to time, Borrowers shall Authenticate and deliver to Lender, and shall cause each Bank with which any Deposit Account is maintained to Authenticate and deliver to Lender, such Control Agreements as Lender may request to further confirm and perfect Lender's Lien upon Borrowers' Deposit Accounts.

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(b) With respect to any of Borrowers' Deposit Accounts maintained with Lender, Lender shall have the right, at any time, to (i) terminate Borrowers' right to direct the disposition of funds from the Deposit Accounts and (ii) block Borrowers' access to the Deposit Accounts and any funds in the Deposit Accounts.

(c) With respect to any of Borrowers' Deposit Accounts not maintained with Lender, Borrowers shall not have the right to direct the disposition of any funds from the Deposit Accounts unless Lender has agreed in writing that Borrowers retain the right to direct the disposition of funds from the Deposit Accounts. If Lender has agreed in writing that Borrowers retain the right to direct the disposition of funds from a Deposit Account not maintained with Lender, Lender shall be entitled to terminate Borrowers' right to direct the disposition of funds from such Deposit Account at any time in Lender's sole discretion by giving the Bank with which such Deposit Account is maintained a written notice ("blocked account notice") terminating Borrowers' right to direct the disposition of funds from such Deposit Account.

(d) If the Restricted Cash Account is a Deposit Account, then so long as the Restricted Cash Account contains no Property other than the Restricted Cash, the provisions of this Section 4A.02 shall not apply to the Restricted



Cash Account.

SECTION 4A.03. INVESTMENT PROPERTY; CONTROL. (a) Promptly upon Lender's request from time to time, Borrowers shall Authenticate and deliver to Lender, and shall cause any securities intermediary, commodity intermediary, and any other appropriate parties to Authenticate and deliver to Lender, such Control Agreements as Lender may request relating to any Collateral that is Investment Property. If Lender has agreed in writing that Borrowers retain the right to make substitutions for an uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement, Lender shall be entitled to terminate Borrowers' right to make substitutions for such uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with such uncertificated security or security entitlement, at any time in Lender's sole discretion by giving the issuer or securities intermediary a written notice ("notice of exclusive control") terminating Borrowers' right to make substitutions for such uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(b) If the Restricted Cash Account is a securities account, then so long as the Restricted Cash Account contains no Property other than the Restricted Cash, the provisions of this Section 4A.03 shall not apply to the Restricted Cash Account.

SECTION 4A.04. LETTER-OF-CREDIT RIGHTS; CONTROL. Promptly upon Borrowers obtaining any Letter-of-credit rights, Borrowers shall notify Lender in writing of such Letter-of-credit rights. Promptly upon Lender's request from time to time, Borrowers shall Authenticate and deliver to Lender, and shall cause any Letter of Credit Issuer or Nominated Person, as the case may be, and any other appropriate parties to Authenticate and deliver to Lender, such

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Control Consents as Lender may request relating to any Collateral that is Letter-of-credit rights. Without limiting any other provision of this Agreement (or any other Credit Document), and to further secure the Asset Purchase Agreement Article IX Obligations and the Loan Obligations, Borrowers hereby assign to Lender Borrowers' now owned and hereafter acquired, created or arising rights to all of the Proceeds of Borrowers' now owned and hereafter acquired, created or arising Letters of Credit.

SECTION 4A.05. ELECTRONIC CHATTEL PAPER; CONTROL. Borrowers shall create, store and assign the Record or Records comprising Borrowers' Electronic Chattel Paper in such a manner that Lender shall have control of Borrowers' Electronic Chattel Paper.

SECTION 4A.06. COMMERCIAL TORT CLAIMS. Promptly upon Borrowers obtaining



rights to any Commercial Tort Claim, Borrowers shall (a) notify Lender in writing of the Commercial Tort Claim and (b) Authenticate and deliver to Lender an amendment to this Agreement (and SCHEDULE 4A.01(d)) in form and substance satisfactory to Lender, which amendment shall add to the description of Collateral covered by this Agreement a description of such Commercial Tort Claim that reasonably identifies such Commercial Tort Claim and grant to Lender a security interest in such Commercial Tort Claim, and (c) if requested by Lender, Authenticate in recordable form and deliver to Lender one or more financing statements or financing statement amendments or other lien notices covering such Commercial Tort Claim.

SECTION 4A.07. COLLATERAL IN POSSESSION OF THIRD PARTY. If the Collateral is in the possession of a third party, Borrowers shall join with Lender in notifying such third party of Lender's security interest in the Collateral, and Borrowers shall obtain for Lender a written acknowledgement from such third party that such third party is holding the Collateral for the benefit of Lender.

SECTION 4A.08. PERFECTION BY FILING. (a) Notwithstanding any provisions in the Interim Order and Final Order that establish a perfected security interest in and lien on the Collateral by operation of law, upon Lender's request from time to time, Borrowers shall Authenticate, in recordable form, and deliver to Lender any financing statement or other lien notice or other document, and cause any third party to Authenticate and deliver to Lender any other document (including financing statement termination statements), requested by Lender to further evidence the security interests created under this Agreement and to maintain, and continue the first priority of the security interests created under this Agreement.

(b) Borrowers hereby appoint Lender as Borrowers' attorney-in-fact, with power of substitution, which appointment is irrevocable and coupled with an interest, to Authenticate in the name of each Borrower, and to transmit to, or file, record, or register with, any Person, and at any time, any lien notice, instrument or document that Lender may deem necessary or advisable to further evidence, enforce, defend, protect, perfect, continue, or maintain any security interest, or to further evidence the perfection or priority of any security interest, created under this Agreement.

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(c) Lender shall not be required to obtain Borrowers' consent or authorization for Lender to file, and Lender shall be entitled to file, with or without Authentication by Borrowers (or by Lender as Borrowers' attorney-in-fact), any financing statement, amendment, or other Record that Lender may be authorized to file in accordance with the terms of Article 9, including any financing statement, amendment, or other Record that Lender may be authorized to file based on any Borrower having Authenticated this Agreement or based on any Borrower having Authenticated any other security agreement.

(d) Any financing statement or other Record filed to further evidence

the perfection or priority of the security interests granted by this Agreement may, at Lender's option, describe or indicate the Collateral in the manner that the Collateral is described in this Agreement, or as all assets of Borrowers, or as all personal property of Borrowers, or by any other description or indication of the Collateral that may be sufficient for a financing statement under Article 9.

SECTION 4A.09. PERFECTION BY POSSESSION. If Collateral is of a type as to which it is necessary or advisable, as determined by Lender, for Lender to take possession of such Collateral in order to protect, perfect, or maintain the first priority of Lender's security interest or other Lien in such (or any other) Collateral, then, promptly upon Lender's request from time to time, Borrower shall deliver such Collateral to Lender.

SECTION 4A.10. LIEN WAIVERS. Promptly upon Lender's request from time to time, Borrowers shall provide to Lender landlord collateral agreements, mortgagee collateral agreements, and other instruments and lien waivers, in form and substance satisfactory to Lender, and in favor of Lender, and Authenticated by any Persons (including any owners, contract purchasers, option holders, easement holders, lessors, lessees, sublessees, occupants, or mortgagees) having or claiming any interest in any real estate owned, leased or otherwise used or occupied by Borrowers, whereby such Persons shall expressly waive, or subordinate to Lender's security interest in the Collateral, all Liens against the Collateral and provide to Lender, without cost to Lender, and on terms satisfactory to Lender, rights of access to such real estate for purposes of storage, holding, retaking, processing, maintenance, marketing, selling, leasing, licensing, and otherwise disposing of such Collateral.

SECTION 4A.11. RESTRICTED CASH; RESTRICTED CASH ACCOUNT. Notwithstanding anything to the contrary set forth in this Agreement, Lender acknowledges and agrees that the Collateral shall not include any cash and cash equivalents and Temporary Cash Investments owned by Borrowers and on hand as of the date of the entry of the Interim Order (the "RESTRICTED CASH"). All Restricted Cash shall be maintained separately in a segregated deposit account or a segregated securities account (each such deposit account or securities account that holds Restricted Cash is referred to herein as a "RESTRICTED CASH ACCOUNT") and at no time shall be commingled with any Collateral or Proceeds. Lender agrees that so long as the Restricted Cash Account contains no Property other than the Restricted Cash, the Restricted Cash Account shall not be part of the Collateral.

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SECTION 4A.12. SCHEDULED EXCLUDED PROPERTY. Notwithstanding anything to the contrary set forth in this Agreement, Lender acknowledges and agrees that the Collateral shall not include any Property listed on SCHEDULE 4A.12 to this Agreement (the "SCHEDULED EXCLUDED PROPERTY").

SECTION 4A.13. USE OF PROCEEDS OF COLLECTION COLLATERAL PRIOR TO DEFAULT. Prior to the occurrence of a Default, Borrowers shall be privileged to use, and shall use, Proceeds of Collection Collateral solely for payment of Operating

Expenses. Upon and after the occurrence of a Default, Lender shall be entitled to revoke Borrowers' privilege to use the Proceeds of Collection Collateral by giving notice of such revocation to Borrowers, whereupon and thereafter Borrower shall not use Proceeds of Collection Collateral for any purpose without Lender's prior written consent. Borrower shall not use proceeds of Collection Collateral for any purpose other than payment of Operating Expenses.

ARTICLE IV-B  
GUARANTY AGREEMENT

SECTION 4B.01. GUARANTY AGREEMENT. Subject to the limitations on recourse set forth in Section 7.16 of this Agreement, each Corporate Guarantor hereby jointly and severally guarantees to Lender the prompt payment of the Secured Obligations of each other Corporate Guarantor in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise) strictly in accordance with the terms thereof. Each Corporate Guarantor hereby further agrees that if any of the Secured Obligations of any other Corporate Guarantor are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration or otherwise), such Corporate Guarantor will, jointly and severally, promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Secured Obligations of any other Corporate Guarantor, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

SECTION 4B.02. OBLIGATIONS UNCONDITIONAL. The Obligations of the Corporate Guarantors under Section 4B.01 hereof are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Credit Documents, or any substitution, release or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 4B.02 that the obligations of the Corporate Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that, to the fullest extent permitted by law, the occurrence of any one or more of the following shall not alter or impair the liability of any Corporate Guarantor hereunder which shall remain absolute and unconditional as described above:

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(i) at any time or from time to time, without notice to any Corporate Guarantor, the time for any performance of or compliance with any of the Secured Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any of the Credit Documents or the Asset Purchase Agreement or any other agreement or

instrument referred to therein shall be done or omitted;

(iii) the maturity of any of the Secured Obligations shall be accelerated, or any of the Secured Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Credit Documents or any other agreement or instrument referred to therein shall be waived or any other guarantee of any of the Secured Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien granted to, or in favor of, Lender as security for any of the Secured Obligations shall fail to attach or be perfected;

(v) any of the Secured Obligations shall be determined to be void or voidable (including, without limitation, for the benefit of any creditor of any Corporate Guarantor) or shall be subordinated to the claims of any Person (including, without limitation, any creditor of any Corporate Guarantor);

(vi) the full or partial release of any Collateral; or

(vii) the full or partial release of liability of any Obligor.

With respect to its Obligations hereunder, each Corporate Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices whatsoever, and any requirement that Lender exhaust any right, power or remedy or proceed against any Person under any of the Credit Documents or the Asset Purchase Agreement or any other agreement or instrument referred to therein, or against any other Person under any other guarantee of, or security for, any of the Secured Obligations. Lender shall have no present or future duty or obligation, and the Corporate Guarantors waive any right to claim or assert any such duty or obligation, to discover or to disclose to the Corporate Guarantors any information, financial or otherwise, concerning such Corporate Guarantor, any other Obligor, or any Collateral or other security the Secured Obligations.

SECTION 4B.03. REMEDIES. The Corporate Guarantors agree that, to the fullest extent permitted by law, as between the Corporate Guarantors, on the one hand, and the Lender, on the other hand, the Secured Obligations may be declared to be forthwith due and payable as provided in Article VI hereof (and shall be deemed to have become automatically due and payable as provided in Article VI hereof, and shall be deemed to have become automatically due and payable in the circumstances provided in said Article VI) notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing such Secured Obligations from

becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or such Secured Obligations being deemed to have become automatically due and payable), such Secured Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by

the Corporate Guarantors.

SECTION 4B.04. CONTINUING GUARANTY. The guarantee in this Article IV-B is a continuing guarantee, and shall apply to all Secured Obligations whenever arising.

ARTICLE V  
NEGATIVE COVENANTS

Each Borrower covenants and agrees that from the date hereof and until the later of the Maturity Date or payment in full of all Secured Obligations owed by Borrowers to Lender, unless Lender shall otherwise consent in writing:

SECTION 5.01. INVESTMENTS. No Borrower shall make, acquire or hold any Investments other than Permitted Investments.

SECTION 5.02. INDEBTEDNESS. No Borrower shall incur, create, assume or suffer to exist any Indebtedness other than Permitted Indebtedness for Borrowed Money.

SECTION 5.03. MAINTENANCE OF PERMITTED INDEBTEDNESS. No Borrower shall prepay any Permitted Indebtedness for Borrowed Money, excepting any prepayments of the Secured Obligations. Borrower shall not modify any agreement relating to any Permitted Indebtedness for Borrowed Money.

SECTION 5.04. Intentionally omitted.

SECTION 5.05. LINE OF BUSINESS; NAME; STRUCTURE. No Borrower shall engage in any business other than the business engaged in by such Borrower on the Effective Date. No Borrower shall refuse, or divert or refer to any other Person any Business or Business opportunity that any Borrower could profit from in the ordinary course of any Borrower's business. No shareholder, officer, director, member or employee of any Borrower shall divert from such Borrower, or refer to any person other than any other Borrower, any Business or Business opportunity that could be served by any other Borrower in the ordinary course of such Borrower's business. No Borrower shall change its name or organizational structure.

SECTION 5.06. Intentionally omitted.

SECTION 5.07. Intentionally omitted.

SECTION 5.08. Intentionally omitted

SECTION 5.09. Intentionally omitted.

SECTION 5.10. CONSOLIDATIONS; MERGERS; DISPOSITIONS; ACQUISITIONS. Except as expressly contemplated in the Asset Purchase Agreement, no Borrower shall (i)

enter into any transaction of merger or consolidation, or liquidate, wind up or dissolve itself, or suffer any liquidation or dissolution, or (ii) make any Asset Disposition, except that any Borrower may make (a) sales of inventory or services in the ordinary course of such Borrower's business, and (b) sales for fair consideration of equipment that is obsolete and no longer useful in such Borrower's business, or (iii) acquire by purchase or otherwise any of the outstanding capital stock of, or all or substantially all of the business, Property or assets of, any Person. Notwithstanding anything to the contrary set forth in this Agreement, Borrowers shall promptly pay to Lender or cause to be paid to Lender, as prepayments of the Secured Obligations, all Net Proceeds of any Asset Dispositions that may be permitted under this Agreement or the Asset Purchase Agreement; provided that if the Net Proceeds of permitted Asset Dispositions exceed the amount of outstanding Secured Obligations, the excess Net Proceeds after payment of all outstanding Secured Obligations shall continue to be part of the Collateral, shall be maintained until used in a Deposit Account in which Lender has a first priority security interest which security interest is perfected by control pursuant to a Control Agreement, and shall be used by Borrowers solely for payment of Operating Expenses.

SECTION 5.11. LIENS; BAILMENTS; CERTAIN SALES. No Borrower shall (a) store any Collateral with, or give possession or control of any Collateral to, any holder, bailee, warehouseman or other Person without Lender's prior written consent, which consent may be withheld in Lender's discretion, or (b) create, incur, assume or suffer to exist any Lien upon any Collateral other than Permitted Liens, or (c) license any Collateral to any other Person, or (d) directly or indirectly, sell with or without recourse, or discount or factor, any Collateral.

SECTION 5.12. RESTRICTED CASH ACCOUNT. No Borrower shall maintain any Property, other than Restricted Cash, in any Restricted Cash Account.

#### ARTICLE VI EVENTS OF DEFAULT; CERTAIN REMEDIES UPON DEFAULT

SECTION 6.01. EVENTS OF DEFAULT. Each of the following events shall constitute an Event of Default attributable to all Borrowers:

- (a) Any Borrower's failure to pay as and when due any amount of principal or interest of the Loan or the Asset Purchase Agreement Article IX Obligations; or
- (b) Any Borrower's failure to pay any fees due in accordance with the terms of this Agreement or the other Credit Documents as and when due; or
- (c) Any Borrower's failure to pay any Credit Administration Costs within five (5) Business Days after Lender's demand for such payments; or

(d) If any representation or warranty made by any Borrower in any Credit Document is not true, accurate and complete in all material respects; or

(e) Intentionally omitted;

(f) Any Borrower's failure to notify Lender of any Notification Event as required in accordance with the requirements of Section 4.02; or

(g) The failure by any Borrower to fulfill in all material respect a covenant of this Agreement or any other Credit Document, which failure is not within the scope of clauses (a) through (f) of this Section; or

(h) If any statement, report, appraisal, certificate, opinion, or other information furnished to Lender by any Person in connection with Borrowers' request for the Loan was not true, accurate and complete in all material respects when so furnished to Lender and on the Effective Date; or

(i) If any statement, report, certificate, opinion, or other information furnished to Lender with or in accordance with the terms of this Agreement (including all annexes, schedules, and exhibits to the Credit Documents and all materials delivered to Lender to satisfy any condition of this Agreement) is not true, accurate and complete in all material respects when so furnished to Lender; or

(j) If any Chapter 11 Case shall be dismissed or subject to a Case Conversion (or if any Borrower shall otherwise become subject to a Case Conversion) or any Borrower shall file a motion or other pleading seeking the dismissal of any of the Chapter 11 Cases under Section 1112 of the Bankruptcy Code or otherwise; or

(k) A trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, a responsible officer, or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a) (3) an (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Chapter 11 Cases and the order appointing such trustee, responsible officer or examiner shall not be reversed or vacated within 30 days after the entry thereof; or

(l) The Bankruptcy Court shall enter, over the objection of any Borrower, an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to the holder or holders of any security interest to permit foreclosure (or the granting of a deed in lieu of foreclosure or the like) on any Collateral of a Borrower which has value in excess of \$100,000 in the aggregate; or

(m) Any order of the Bankruptcy Court shall be entered reversing, amending, supplementing, staying for a period in excess of 10 days, vacating or otherwise modifying the Interim Order, the Final Order, or the Approval Order; or



(n) If any Credit Documents shall for any reason be asserted by any Borrower not to be a legal, valid and binding obligation of the respective parties thereto, enforceable in accordance with its terms; or

(o) Intentionally omitted; or

(p) The Bankruptcy Court has not entered the Final Order within 15 Business Days after the Effective Date; or

(q) If any Seller under the Asset Purchase Agreement shall materially breach any of its obligations under the Asset Purchase Agreement, and such breach is not cured within any applicable cure period under the Asset Purchase Agreement; or

(r) The termination of the Asset Purchase Agreement by any party to the Asset Purchase Agreement.

SECTION 6.02. ACCELERATION. Upon the occurrence of an Event of Default, and at any time thereafter unless and until such Event of Default has been waived by Lender in writing or cured to the satisfaction of Lender as expressly acknowledged by Lender in writing, Lender may take any or all of the following actions against any or all Borrowers: (a) declare the Maturity Date accelerated (without the necessity of any notice) on the Loan; and/or (b) declare the unpaid principal of, and all accrued and unpaid interest on, the Loan and any and all other outstanding and unpaid Secured Obligations to be due, whereupon the same shall be immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower; and/or (c) enforce any and all rights and interests created and existing under the Credit Documents and all rights of set-off; provided, however, without limiting the generality of the foregoing, upon the occurrence of an Event of Default described in Section 6.01(j) through (m) above, (i) the Maturity Date shall be immediately accelerated (without the necessity of any notice), and (ii) the unpaid principal of, and all accrued and unpaid interest on, the Loan and any and all other outstanding and unpaid Secured Obligations shall be immediately due and payable to Lender without any action on the part of Lender, and without presentment, demand, protest, or other notice of any kind, all of which are hereby waived.

SECTION 6.03. RIGHT TO ENFORCE CLAIM; LENDER IN POSSESSION OR CONTROL.

(a) Upon and after the occurrence of a Default or an Event of Default, and in addition to such other rights and remedies as Lender may have under other provisions of this Agreement or any other Credit Documents, or under common or statutory law, Lender may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure, and if the Collateral is Documents, Lender may proceed either as to the Documents or as to the Goods the Documents cover.

(b) If Lender has possession of Collateral (i) reasonable expenses,

including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the Collateral are chargeable to Borrower and are secured by

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the Collateral, (ii) the risk of accidental loss or damage is upon Borrower to the extent of a deficiency in any effective insurance coverage, (iii) Lender shall keep the Collateral identifiable, but fungible Collateral may be commingled, and (iv) Lender may use or operate the Collateral (A) for the purpose of preserving the Collateral or its value, or (B) as permitted by an order of a court having competent jurisdiction, or (C) for the purpose of transporting the Collateral, or (D) for the purposes of demonstrating the use or operation of the Collateral.

(c) If Lender has possession of Collateral or control of Collateral that is Deposit Accounts, Electronic Chattel Paper, Investment Property, or Letter-of-credit rights, then Lender (i) may hold as additional security any Proceeds, except money or funds, received from the Collateral, (ii) shall apply money or funds received from the Collateral to reduce the Secured Obligations unless remitted to Borrower, and (iii) may create a security interest in the Collateral.

(d) If Lender has possession of Collateral that is Chattel Paper or an Instrument, then as to any such Chattel Paper or Instrument, Lender shall not be obligated to take any necessary steps to preserve rights against prior parties.

SECTION 6.04. COLLECTION AND ENFORCEMENT. At any time after the occurrence of a Default or an Event of Default, Lender may:

(a) notify any Collection Collateral Debtor or other Person obligated on Collateral to make payment or otherwise render performance to or for the benefit of Lender;

(b) take any Proceeds to which Lender is entitled under Section 9-315 of Article 9;

(c) enforce the obligations of any Collection Collateral Debtor or other Person obligated on Collateral and exercise the rights of Borrower with respect to the obligations of the Collection Collateral Debtor or other Person obligated on Collateral to make payment or otherwise render performance to Borrower, and with respect to any property that secures the obligations of the Collection Collateral Debtor or other Person obligated on the Collateral; and

(d) if Lender holds a security interest in a Deposit Account perfected by control pursuant to an agreement among Borrower, Lender and the Bank with which the Deposit Account is maintained, or if Lender becomes the Bank's customer with respect to the Deposit Account, instruct the Bank with which the Deposit Account is maintained to pay the balance of the Deposit

Account to or for the benefit of Lender.

SECTION 6.05. APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT. (a) Lender shall apply or pay over for application the cash Proceeds of collection of Collateral, or enforcement of the obligations of a Collection Collateral Debtor, in the following order to:

(1) the reasonable expenses of collection and enforcement and the reasonable attorney's fees and legal expenses incurred by Lender;

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(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(3) the satisfaction of obligations secured by any subordinate security interest in or other lien on the Collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if Lender receives an Authenticated demand for Proceeds before distribution of the Proceeds is completed.

(b) Lender need not apply or pay over for application non-cash Proceeds of collection and enforcement unless the failure to do so would be commercially unreasonable.

(c) Lender shall account to and pay Borrower for any surplus and any Obligor is liable for any deficiency.

SECTION 6.06. POSSESSION OF COLLATERAL. (a) At any time after the occurrence of a Default or an Event of Default, Lender may require each Borrower to assemble the Collateral and make the Collateral available to Lender at a place designated by Lender which is reasonably convenient to Lender and such Borrower. If Lender requires any Borrower to assemble the Collateral and make the Collateral available to Lender, as described in the preceding sentence, such Borrower shall do so promptly, and in any event within three days after Lender gives such Borrower a notice requesting such Borrower to assemble the Collateral and make the Collateral available to Lender at the place designated by Lender. Without limiting Lender's right to designate any place which is reasonably convenient to Borrowers for making Collateral available to Lender, each Borrower agrees that any place designated by Lender and located within 100 miles of any place where such Borrower stores, uses, sells, leases, licenses, or maintains Collateral in the ordinary course of such Borrower's business shall be conclusively deemed to be a place reasonably convenient to such Borrower for making the Collateral available to Lender.

(b) At any time after the occurrence of a Default or an Event of Default, Lender may, pursuant to judicial process, or without judicial process if Lender proceeds without breach of peace, (1) take possession of the Collateral and, (2) without removal, render Equipment unusable and dispose of

Collateral on any Borrower's premises in accordance with Section 6.07.

SECTION 6.07. DISPOSITION OF COLLATERAL. (a) At any time after the occurrence of a Default or an Event of Default, Lender may sell, lease, license, or otherwise dispose of any or all of the Collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Lender may dispose of Collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

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(c) Lender may purchase Collateral (1) at a public disposition or (2) if the Collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations, at a private disposition.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract; provided, however, Lender may disclaim or modify such warranties (1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition, or (2) by communicating to the purchaser a Record evidencing the contract for disposition and including an express disclaimer or modification of the warranties, and provided further that a Record is sufficient to disclaim such warranties if such Record indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

(e) Prior to a disposition of Collateral, Lender shall give Borrowers, and any other parties required to receive notice under Article 9, notification as required under Article 9 before a sale, lease, license, or other disposition of Collateral.

SECTION 6.08. APPLICATION OF PROCEEDS OF DISPOSITION OF COLLATERAL. (a) Lender shall apply or pay over for application the cash Proceeds of disposition of Collateral in the following order:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and reasonable attorney's fees and legal expenses incurred by Lender;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made; and

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the Collateral if:

(A) Lender receives from the holder of the subordinate security interest or other lien an Authenticated demand for Proceeds before distribution of the Proceeds is completed;

(B) in a case in which a consignor has an interest in the Collateral, the subordinated security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the Collateral if Lender receives from the consignor an Authenticated demand for Proceeds before distribution of the Proceeds is completed.

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(b) Lender need not apply or pay over for application non-cash Proceeds of disposition unless the failure to do so would be commercially unreasonable.

(c) Unless Lender is required to apply or pay over cash Proceeds to a consignor under subsection (a) (4) of this Section, Lender shall account to and pay Borrowers for any surplus, and any Obligor is liable for any deficiency.

SECTION 6.09. ADDITIONAL PROVISIONS REGARDING SALES AND OTHER DISPOSITIONS. In the event that Lender shall sell or otherwise dispose of the Collateral, or any part thereof, the following additional provisions shall be applicable to such sale or other disposition:

(a) Such sale or other disposition may be at public or private sale (or at any broker's board or on any securities exchange) for cash, upon credit or for future delivery as Lender shall deem appropriate. Lender shall be authorized at any such sale (if Lender deems it advisable to do so with regard to any type or item of Collateral) to restrict the prospective bidders or purchasers to Persons who will represent and agree that they are purchasing the Collateral for their own use (or for their own account for investment, as applicable) and not with a view to the distribution or sale thereof, and upon consummation of any such sale, Lender shall have the right to assign, transfer and deliver to the purchaser or purchasers thereof the Collateral so sold. Each such purchaser at any such sale shall hold the property sold absolutely, free from any claim or right on the part of Borrowers, and Borrowers hereby waive (to the extent permitted by law) all rights of redemption, stay and appraisal which Borrowers now has or may at any time in the future have under any rule of law or statute now existing or hereafter enacted. Lender shall give Borrowers at least ten (10) days' written notice (which Borrowers agree is reasonable notice) of Lender's intention to make any sale of Collateral owned by Borrowers. Such notice, in the case of a public sale, shall state the time and place for such sale and, in the case of a sale at a broker's board or on a securities exchange, shall state the board or exchange at which such sale is to be made and the day on which the Collateral, or portion thereof, will first be offered for sale at such board or exchange. Any such public sale shall be held at such time or times within ordinary business hours and at such place or places as Lender may fix and

state in the notice of such sale, and Lender shall not be obligated to make any sale of any Collateral if Lender shall determine not to do so, regardless of the fact that notice of sale of such Collateral shall have been given, and Lender may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for sale, and such sale may, without further notice to Borrowers or anyone else, be made at the time and place to which the same was so adjourned.

(b) In case any sale of all or any part of the Collateral is made on credit or for future delivery, the Collateral so sold may be retained by Lender until the sale price is paid by the purchaser or purchasers thereof, but Lender shall not incur any liability in case any such purchaser or purchasers shall fail to take up and pay for Collateral so sold and, in case of any such failure, such of the Collateral may be sold again upon notice to Borrowers as set forth in this Section.

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(c) At any public sale, Lender may bid for or purchase, free (to the extent permitted by law) from any right of redemption, stay or appraisal on the part of Borrowers (all said rights being also hereby waived and released to the extent permitted by law), the Collateral or any part thereof offered for sale and may make payment on account thereof by using any claim then due and payable to Lender from Borrowers as a credit against the purchase price, and Lender may, upon compliance with the terms of sale, hold, retain and dispose of such property without further accountability to Borrowers therefor.

(d) For purposes of any sale of Collateral in accordance with this Agreement, a written agreement to purchase the Collateral or any portion thereof shall be treated as a sale thereof. Lender shall be free to carry out such sale pursuant to such agreement, and Borrower shall not be entitled to the return of the Collateral or any portion thereof subject thereto, notwithstanding the fact that after Lender shall have entered into such an agreement, all Events of Default shall have been remedied and the Secured Obligations paid in full.

(e) Upon any sale of Collateral by Lender (including a sale pursuant to a power of sale granted by statute or under a judicial proceeding), the receipt of Lender or of the officer making the sale shall be a sufficient discharge to the purchaser or purchasers of the Collateral being sold, and such purchaser or purchasers shall not be obligated to see to the application of any part of the purchase money paid over to Lender or such officer or be answerable in any way for the misapplication thereof.

SECTION 6.10. LICENSE TO USE INTELLECTUAL PROPERTY. Each Borrower agrees that Lender and any receiver, and any designee of Lender or any receiver, each shall have, and each is hereby granted, an irrevocable, royalty-free, perpetual, and worldwide license to reproduce, distribute, publicly perform, publicly display, create derivative works of, make, have made, sell, offer to sell, or otherwise use (including the right to sublicense) such Borrower's Intellectual Property (and including such Borrower's rights to any Intellectual Property to

the extent that the license granted in this Section would not violate the rights granted to such Borrower), including, as to any Trademark, the goodwill of such Borrower's business in which the Trademark is used, or that part of the goodwill of such Borrower's business connected with the use of and symbolized by the Trademark, in and in connection with (i) collecting Collateral, (ii) manufacturing, completing, and repairing Collateral, (iii) marketing, selling, leasing, licensing, or disposing of Collateral, and (iv) exercising Lender's rights and remedies under this Agreement (or otherwise) relating to Collateral.

SECTION 6.11. WAIVERS. Each Borrower waives presentment, demand, notice of dishonor, and protest, and all demands and notices of any action taken by Lender under this Agreement, except as otherwise provided herein, are hereby waived, and any indulgence of Lender, substitution for, exchange of or release of collateral, or addition or release of any person liable on the collateral is hereby assented and consented to and shall not operate or be claimed to operate to release or exonerate any other collateral or person or any claim of Lender.

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ARTICLE VII  
MISCELLANEOUS

SECTION 7.01. FURTHER ASSURANCES. Each Borrower shall execute and deliver to Lender such further assurances of this Agreement and the matters contemplated by this Agreement and the other Credit Documents, including any agreements, assignments, instruments or other documents in favor of Lender, promptly from time to time upon Lender's written request.

SECTION 7.02. SUCCESSORS AND ASSIGNS. This Agreement and the other Credit Documents shall be binding upon and inure to the benefit of Lender and its successors and assigns and any holders of the Note. No Borrower shall, without Lender's prior written consent, which consent may be withheld in Lender's discretion, assign such Borrower's rights under this Agreement or any of the other Credit Documents to any Person, and any attempt of such an assignment by any Borrower without Lender's prior written consent shall be void.

SECTION 7.03. SEVERABILITY. Any provision of this Agreement prohibited by the laws of any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, or modified to conform with such laws, without invalidating the remaining provisions of this Agreement, and any such prohibition in any jurisdiction shall not invalidate such provisions in any other jurisdiction.

SECTION 7.04. GOVERNING LAW. This Agreement and the other Credit Documents and the rights and obligations of the parties hereunder and thereunder shall be governed by and construed and interpreted in accordance with the laws of the State of New York (excluding New York conflict of laws rules), including all matters of construction, validity and performance, regardless of the location of the parties or any Property, excepting, however, that the UCC (or decisional law) of a jurisdiction other than New York may provide the method of perfection



of liens and security interests created under this Agreement and the other Credit Documents.

SECTION 7.05. JURISDICTION; VENUE; SERVICE. Each Borrower and Lender acknowledge that the Bankruptcy Court shall have exclusive jurisdiction; provided, however, if the Chapter 11 Case is dismissed, then each Borrower shall consent to the jurisdiction as provided in this Section. Each Borrower irrevocably consents to the non-exclusive personal jurisdiction of the courts of the State of New York and, if a basis for federal jurisdiction exists, the non-exclusive jurisdiction of the United States District Court for the Southern District of New York. Each Borrower agrees that venue shall be proper in any circuit court of the State of New York selected by Lender or, if a basis for federal jurisdiction exists, in any Division of the United States District Court for the Southern District of New York. Each Borrower waives any right to object to the maintenance of any suit or claim in any of the state or federal courts of the State of New York on the basis of improper venue or of inconvenience of forum. Any suit or claim brought by any Borrower against Lender that is based, in whole or in part, directly or indirectly, on this Agreement or any matters relating to this Agreement or the other Credit Documents, shall be brought in a court only in the State of New York. No Borrower shall file any counterclaim against Lender in any suit or claim brought by Lender against any Borrower in

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a jurisdiction outside of the State of New York unless under the rules of the court in which Lender brought such suit or claim the counterclaim is mandatory, and not permissive, and would be considered waived unless filed as a counterclaim in the claim or suit instituted by Lender against such Borrower. Each Borrower agrees that any forum outside the State of New York is an inconvenient forum and that a suit brought by any Borrower against Lender in any court outside the State of New York should be dismissed or transferred to a court located in the State of New York. Each of the parties hereto further irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at the address set out for notices in this Agreement, such service to become effective 30 days after such mailing. Nothing herein shall affect the right of Lender to serve process in any other manner permitted by law or to commence legal proceedings or to otherwise proceed against any Borrower or any other Person in any other jurisdiction.

SECTION 7.06. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all of which shall constitute one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart. A photocopy, facsimile or telecopy of this Agreement shall be effective as an original.

SECTION 7.07. SURVIVAL. All representations and warranties and indemnities made by Borrowers herein shall survive delivery of the Note and the making of the Loan.

SECTION 7.08. NOTICES. Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by telecopy, or by hand delivery, or by overnight delivery service, or by certified mail, return receipt requested, postage prepaid, addressed to the parties at the appropriate address set forth below or to such other address as may be hereafter specified by written notice by the parties to each other. Notice shall be considered given as of the earlier of the date of actual receipt, or the date of the telecopy or hand delivery, one calendar day after delivery to an overnight delivery service, or three calendar days after the date of mailing, independent of the date of actual delivery or whether delivery is ever in fact made, as the case may be, provided the giver of notice can establish that notice was given as provided herein. Each undersigned Borrower hereby appoints Rhythms as its agent for purposes of receiving notices under this Agreement and the other Credit Documents, so that notices given to Rhythms shall be fully effective notice to Rhythms and to each such other undersigned Borrower (other than Rhythms).

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If to Lender: WorldCom, Inc.  
500 Clinton Center Drive  
Clinton, MS 39056  
Attention: K. William Grothe, Jr.  
Fax: (601) 460-8051

WorldCom, Inc.  
1133 19th Street, N.W.  
9th Floor  
Washington, DC 20036  
Attention: Roland J. Behm, Esq.  
Fax: (202) 736-6085

If to Borrowers: Rhythms NetConnections Inc.  
9100 East Mineral Circle  
Englewood, CO 80112  
Attention: J.W. Braukman, III  
Fax: (303) 476-5700

With a copy to: Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153  
Attention: Paul Basta, Esq.  
Fax: (212) 735-8007

and: Brownstein, Hyatt & Farber, P.C.  
410 Seventeenth St., 22nd Floor  
Denver, CO 80202  
Attention: John Ruppert, Esq.  
Fax: (303) 223-0970

and:

Milbank, Tweed, Hadley & MCCloy LLP  
One Chase Manhattan Plaza  
New York, New York 10005  
Attention: Luc A. Despins, Esq.  
Fax: (212) 822-5660

SECTION 7.09. LENDER APPOINTED ATTORNEY-IN-FACT. Each Borrower hereby appoints Lender as each Borrower's attorney-in-fact, with power of substitution, which appointment is coupled with an interest and irrevocable, to do each of the following in the name of any Borrower or in the name of Lender or otherwise, for the use and benefit of Lender, but at the cost and expense of Borrowers, and with or without notice to any Borrower, upon and after the occurrence of a Default: (a) notify the Collection Collateral Debtors to make payments directly to Lender, and to take control of the cash and non-cash proceeds of any Collateral; (b) compromise, extend, or renew any of the Collateral or deal with the same as it may deem advisable; (c) release, make exchanges, substitutions, or surrender of all or any part of the

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Collateral; (d) remove from any Borrower's place of business all Records relating to or evidencing any of the Collateral or without cost or expense to Lender, make such use of Borrowers' places of business as may be reasonably necessary to administer, control and collect the Collateral; (e) repair, alter or supply goods, if any, necessary to fulfill in whole or in part the purchase order or similar order of any Account Debtor; (f) demand, collect, receipt for and give renewals, extensions, discharges and releases of any of the Collateral; (g) institute and prosecute legal and equitable proceedings to enforce collection of, or realize upon, any of the Collateral; (h) settle, renew, extend compromise, compound, exchange or adjust claims with respect to any of the Collateral or any legal proceedings brought with respect thereto; (i) endorse the name of any Borrower upon any Items of Payment relating to the Collateral or upon any proof of claim in bankruptcy against an Collection Collateral Debtor; (j) institute and prosecute legal and equitable proceedings to reclaim any of the goods sold to any Account Debtor obligated on an Account at a time when such Account Debtor was insolvent; and (k) receive and open all mail addressed to any Borrower and notify the postal authorities to change the address for the delivery of mail to Borrowers to such address as Lender may designate.

SECTION 7.10. REMEDIES CUMULATIVE. No failure or delay on the part of Lender in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between any Borrower and Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights and remedies provided herein are cumulative and not exclusive of any rights or remedies which Lender would otherwise have. No notice to or demand on any Borrower in any case shall entitle any Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Lender to any other or

further action in any circumstances without notice or demand.

SECTION 7.11. AMENDMENTS, WAIVERS AND CONSENTS. Neither this Agreement nor any other Credit Document nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing signed by Lender.

SECTION 7.12. WAIVERS OF CLAIMS; CONSEQUENTIAL AND PUNITIVE DAMAGES. Each Borrower and Lender hereby waive to the fullest extent permitted by law all claims to consequential and punitive damages in any lawsuit or other legal action brought by either of them against the other of them in respect of any claim between them arising under this Agreement, the other Credit Documents, or any other agreement or agreements between them at any time, including any such agreements, whether written or oral, made or alleged to have been made at any time prior to the date hereof, and all agreements made hereafter or otherwise, and any and all claims arising under common law or under any statute of any state or the United States of America, whether any such claims be now existing or hereafter arising, now known or unknown. In making this waiver Lender and each Borrower each acknowledge and agree that there shall be no claims for consequential or punitive damages made by Lender against any Borrower and there shall be no claims for consequential or punitive damages made against Lender by any Borrower. Lender and each Borrower acknowledge and agree that this waiver of

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claims for consequential damages and punitive damages is a material element of the consideration for this Agreement.

SECTION 7.13. NO THIRD PARTY BENEFICIARIES. There shall be no third-party beneficiaries of this Agreement.

SECTION 7.14. ENTIRE AGREEMENT. Each Borrower agrees that the Credit Documents are a complete and exclusive expression of all the terms of the Loan and agrees that all prior agreements, statements, and representations, whether written or oral, which relate in any way to the Loan are hereby superseded and shall be given no force and effect, and that no promise, inducement, or representation has been made to any Borrower which relates in any way to the Loan, other than what is expressly stated in the Credit Documents. Each Borrower has executed the Credit Documents in full, understands the terms therein, and is executing this Agreement after the opportunity to have full consultation with counsel of Borrowers' choice.

SECTION 7.15. WAIVER OF JURY TRIAL. EACH BORROWER AND LENDER HEREBY WAIVE ALL RIGHT TO TRIAL BY JURY OF ANY AND ALL CLAIMS BETWEEN THEM OF ANY TYPE, INCLUDING CLAIMS ARISING UNDER AND/OR RELATING IN ANY WAY TO THIS AGREEMENT AND/OR THE OTHER CREDIT DOCUMENTS AND/OR THE TRANSACTIONS CONTEMPLATED BY THE CREDIT DOCUMENTS. EACH BORROWER AND LENDER ACKNOWLEDGE THAT THIS IS A WAIVER OF A LEGAL RIGHT AND THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH COUNSEL OF ITS CHOICE. EACH BORROWER AND LENDER AGREES THAT ALL SUCH CLAIMS SHALL BE TRIED BEFORE A JUDGE OF A COURT HAVING JURISDICTION,

SECTION 7.16. PROVISIONS REGARDING LIMITATIONS ON RECOURSE. (a) Except as otherwise provided below, Lender shall not enforce the Secured Obligations or any Credit Document by any suit, claim, action or proceeding ("action") wherein a money judgment, deficiency judgment or other judgment for personal liability shall be sought against Borrower, and Lender for itself, its successors and assigns irrevocably waives any and all right to sue for, seek or demand any such damages, money judgment, deficiency judgment or personal judgment against Borrower under or in connection with the Secured Obligations or any other Credit Document and agrees to look solely to the Collateral and/or any other property given to Lender as security for the Secured Obligations (all of which being referred to herein as "COLLATERAL PROPERTY") for the enforcement of any liability or obligation of Borrower in respect of the Secured Obligations, provided that nothing contained herein shall be construed to prevent Lender from bringing a foreclosure action, action for specific performance or other appropriate action or proceeding to enable Lender to enforce and realize upon this Agreement or any other Credit Document or the Asset Purchase Agreement in respect of the Secured Obligations, and any lien, pledge, or security interest in the Collateral Property given to Lender created by this Agreement or any other Credit Document; provided, further, however, that any judgment in any such action or proceeding shall be enforceable against Borrower only to the extent of Borrower's interest in the Collateral Property. Lender agrees that Lender shall not, except as otherwise provided in this Section 7.16, sue for, seek or demand any deficiency judgment against Borrower in respect of the

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Secured Obligations in any action or proceeding, under or by reason of or in connection with this Agreement or any other Credit Document or the Asset Purchase Agreement, and shall not have an administrative claim against any of the Borrowers or Corporate Guarantors by any suit, claim, action, proof of claim, request for administrative payment or proceeding.

(b) The provisions of this Section 7.16 shall not (i) constitute a waiver, release or impairment of any obligation evidenced or secured by this Agreement, the Note, any other Credit Document, or the Asset Purchase Agreement; (ii) impair the right of Lender to obtain a deficiency judgment in any action or proceeding in order to preserve its rights and remedies, including, without limitation, an action against Borrower under this Agreement or the Note or the Asset Purchase Agreement in respect of the Secured Obligations, foreclosure, non-judicial foreclosure, or the exercise of a power of sale under any Credit Document; however, Lender agrees that Lender shall not enforce such deficiency judgment against any assets of Borrower other than the Collateral Property or in the exercise of its rights and remedies to the Collateral Property; (iii) impair the right of Lender to name Borrower as a party defendant in any action or suit for judicial foreclosure and sale under any Credit Document; (iv) affect the validity or enforceability of, or impair the right of Lender to enforce, any indemnity, representation or warranty made in connection with this Agreement or any other Credit Documents or the Asset Purchase Agreement; or (v) affect the

validity or enforceability of, or impair the right of Lender to enforce this Agreement, the Note, the other Credit Documents, and the Asset Purchase Agreement in accordance with their terms.

(c) Subject to the forgoing provisions of this Section 7.16, Borrowers shall repay to Lender, on the same date and in the same manner as the Loan Obligations are due and payable, all amounts advanced to any Borrower under Article IX of the Asset Purchase Agreement.

#### SECTION 7.17. PROVISIONS REGARDING SPECIFIED TERMINATION EVENT.

(a) As used in this Section, the following terms have the following meanings:

"EXCESS LOAN AMOUNT" means the amount, determined as of the Termination Event Date, equal to the lesser of:

(i) the outstanding balance of the Loan Obligations, or

(ii) the amount equal to the difference between (A) the aggregate of all Loan advances made under this Agreement prior to the Termination Event Date, and (B) the total amount of Operating Expenses accruing during the Termination Event Period.

"TERMINATION EVENT" means the termination of the Asset Purchase Agreement by Lender pursuant to Section 8.1(h) of the Asset Purchase Agreement.

"TERMINATION EVENT DATE" means the date of the Termination Event.

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"TERMINATION EVENT PERIOD" the period from September 24, 2001 at 11:59 p.m. to and including the Termination Event Date.

(b) Upon the occurrence of the Termination Event, and provided that the Borrowers shall have paid to Lender the Excess Loan Amount within three Business Days after the Termination Event Date:

(A) Lender shall apply the Excess Loan Amount payment as a prepayment on the Loan Obligations; and

(B) Lender shall release Lender's security interests in the Collateral; and

(C) Section 7.16 of this Agreement (and Section 15 of the Note) shall not be applicable as to any remaining outstanding Obligations, and Lender shall have an allowed general unsecured claim in respect of any remaining outstanding Obligations.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, Lender and each Borrower, intending to be legally bound hereby, have caused this Agreement to be duly executed and delivered under seal as of the date first above written.

LENDER:

WITNESS:

MCI WorldCom Network Services, Inc.,  
a Delaware corporation

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By: (SEAL)

-----  
Name:  
Title:

BORROWERS/CORPORATE GUARANTORS:

WITNESS:

Rhythms NetConnections Inc.,  
a Delaware corporation

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By: (SEAL)

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Name:  
Title:

WITNESS:

Rhythms Links Inc. - Virginia,  
a Virginia corporation

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By: (SEAL)

-----  
Name:  
Title:

WITNESS:

Rhythms Links Inc.,  
a Delaware corporation

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By: (SEAL)

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Name:  
Title:



WITNESS:

Rhythms Leasing, Inc.,  
a Nevada corporation

By: \_\_\_\_\_ (SEAL)

Name:  
Title:

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ATTACHMENTS:

- Exhibit A (Form of Loan Funding Request)
- Exhibit B (Form of Promissory Note)
- Schedule 3.05 (Ownership)
- Schedule 3.07 (Investments)
- Schedule 3.08(a) (Deposit Accounts and securities accounts other than Restricted Cash Accounts)
- Schedule 3.08(b) (Restricted Cash Accounts)
- Schedule 3.09 (Indebtedness for Borrowed Money)
- Schedule 3.10 (Permitted Lien)
- Schedule 3.11 (Insurance)
- Schedule 3.12 (Name, Structure)
- Schedule 3.17 (Tax Identification Numbers)
- Schedule 3.31 (Letter-of-credit rights)
- Schedule 4A.01(d) (Commercial Tort Claims)
- Schedule 4A.12 (Scheduled Excluded Property)

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EXHIBIT A

[FORM OF LOAN FUNDING REQUEST]

MCI WorldCom Network Services, Inc.  
 c/o WorldCom, Inc.  
 500 Clinton Center Drive  
 Clinton, Mississippi 39056  
 Attention: K. William Grothe, Jr.  
 Fax: (601) 460-8051

Re: LOAN FUNDING REQUEST

Gentlemen:

The undersigned Borrowers request the following advance pursuant to Section 2.02 of the Credit and Security Agreement by and among the undersigned and MCI WorldCom Network Services, Inc., dated as of September 24, 2001 (the "CREDIT

AGREEMENT"). Capitalized terms used in this Loan Funding Request shall have the meanings given them in the Credit Agreement:

Borrower requests an advance (the "REQUESTED ADVANCE") under the [Initial Advance Committed Amount] [the Subsequent Advance Committed Amount] in the principal amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to be made on or after \_\_\_\_\_, 2001 by wire transfer to the Concentration Account in accordance with the following wire transfer instructions:

Bank of America, N.A.  
San Francisco, CA  
ABA No. 121000358  
Account No.: 12330-01173

In support of this Loan Funding Request, Borrowers hereby represent and warrant to Lender that:

1. The representations and warranties contained in the Credit Agreement are true and correct in all material respects on and as of the date hereof, and will be true and correct in all material respects on the date that the Requested Advance is made (both before and after the Requested Advance is made).

2. If the Requested Advance is the initial loan advance under the Credit Agreement, each of the conditions of Section 2.12 of the Credit Agreement have been satisfied.

3. Each of the conditions of Section 2.13 of the Credit Agreement have been satisfied for the Requested Advance.

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4. No Default or Event of Default has occurred and is continuing or will exist on the date that the Requested Advance is made (whether before or after the Requested Advance is made).

5. When the Requested Advance is made, the total aggregate outstanding principal balance of all advances made under the Credit Agreement will not exceed the Committed Amount.

6. The Requested Advance shall be used solely for the following working capital purposes:

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7. The proceeds of all loan advances made to Borrower under the Credit Agreement prior to the date of this Loan Funding Request have been used solely for the working capital purposes described in the Loan Funding Requests related to such prior advances.

Attached to this Exhibit as SCHEDULE 1 is the [Budget] [updated Budget] required by the terms of Section [2.12] or [2.13] of the Credit Agreement, certified by the Responsible Officer of Borrower. Borrowers represent and warrant to Lender that the information set forth on SCHEDULE 1 is true accurate and complete in all material respects as of the date of this Loan Funding Request.

This Loan Funding Request may be signed in counterparts and each shall be effective as an original, and a photocopy, facsimile or telecopy of this Loan Funding Request shall be effective as an original. In making proof of this Loan Funding Request, it shall not be necessary to produce more than one counterpart, photocopy, facsimile, or telecopy of this Loan Funding Request.

Any Borrower's receipt of the proceeds of the Requested Advance shall be deemed to be a further representation and warranty that the representations and warranties made in this Loan Funding Request are true and correct in all material requests.

Sincerely,

Rhythms Netconnections Inc.  
Rhythms Links Inc.  
Rhythms Links Inc. - Virginia  
Rhythms Leasing Inc.

By:

-----  
Name:  
Title: President

SCHEDULE 1 TO LOAN FUNDING REQUEST

[ATTACH BUDGET OR UPDATED BUDGET]

PROMISSORY NOTE  
(LIMITED RECOURSE)

\$32,000,000

September 24, 2001

FOR VALUE RECEIVED, (i) Rhythms Netconnections Inc., a Delaware corporation, (ii) Rhythms Links Inc. - Virginia, a Virginia corporation, (iii) Rhythms Links Inc., a Delaware corporation, and (iv) Rhythms Leasing Inc., a Nevada corporation (each referred to herein individually as and collectively as "BORROWER"), promises to pay to the order of MCI WorldCom Network Services, Inc., a Delaware corporation (referred to herein as "LENDER," which term shall also include any subsequent holder of this Note) the principal sum of Thirty-Two Million and 00/100 Dollars (\$32,000,000), or so much thereof as may be advanced to Borrower in accordance with the terms of the Credit Agreement (herein defined), together with interest until paid, as set forth in this Note and in the Credit Agreement.

This Promissory Note (this "NOTE") is the Note referred to in and secured by that certain Credit and Security Agreement between Borrower and Lender and dated the same date as this Note (referred to herein as the "CREDIT AGREEMENT," which term shall include such amendments, supplements, and replacements as may be made thereto or therefor from time to time). Capitalized terms that are used in this Note, but not defined in this Note, which are defined in the Credit Agreement, shall have the meanings given to such terms in the Credit Agreement. Capitalized terms that are used in this Note, but not defined in this Note, which are defined in the Asset Purchase Agreement shall have the meanings given to such terms in the Asset Purchase Agreement.

1. FIXED INTEREST RATE. Interest shall accrue and be payable on the outstanding unpaid principal balance of this Note at the fixed interest rate of ten percent (10%) per annum. All interest shall accrue based on a 360-day year for the actual number of days outstanding.

2. PAYMENTS.

(a) In the event the Buyer acquires the Assets pursuant to the terms of the Asset Purchase Agreement, all principal outstanding under this Note, together with the accrued and unpaid interest thereon as of the Closing Date, shall be credited against the Purchase Price.

(b) Unless sooner paid in full, the entire unpaid principal balance of this Note, together with all outstanding and unpaid accrued interest, expenses, and fees, shall be due and payable on the Maturity Date.

3. MANNER OF PAYMENT. All payments shall be made in U.S. dollars in immediately available funds without set-off or counterclaim or deduction of any kind on the due dates of such payments. Payments shall be made to the address set forth herein for notices, except that if the Credit Agreement requires payments to be made to a different address, then payments shall be made to the address required by the terms of the Credit Agreement. Any payments by check shall be accepted subject to collection in immediately available funds. Payments shall be applied to interest, principal, late charges, costs, expenses and fees in such order as Lender may determine in Lender's discretion.

4. PREPAYMENT. Borrower shall be privileged to prepay this Note in whole or in part at any time without premium or penalty. All partial prepayments shall be applied in inverse order of maturity.

5. CREDIT ADMINISTRATION COSTS. Borrower shall pay all Credit Administration Costs incurred by Lender after the occurrence of any default under this Note, and regardless of whether an Event of Default shall have been declared.

6. DEFAULT; ACCELERATION. The occurrence of any of the following events shall be an "EVENT OF DEFAULT" under this Note: (a) failure of Borrower to make any payment of principal or interest under this Note when due; or (b) the occurrence of any Event of Default under the Credit Agreement. Upon the occurrence of an Event of Default, the unpaid principal with interest and all other sums evidenced by this Note shall, at the option of Lender, and in Lender's discretion, become immediately due and payable; provided that if in accordance with the terms of the Credit Agreement the occurrence of such Event of Default would cause the unpaid principal, interest, or other sums evidenced by this Note to be immediately due and payable, such amounts shall become immediately due and payable without any action on the part of Lender.

7. NOTICES. Any notice or demand required or permitted by or in connection with this Note shall be in writing and shall be given in accordance with the terms of the Credit Agreement

8. CERTAIN WAIVERS. As to this Note, Borrower waives all applicable exemption rights, whether under any state constitution, homestead laws or otherwise, and also waives valuation and appraisal, presentment, notice of dishonor, and protest, notice of demand and nonpayment of this Note, and notice of acceleration and expressly agrees that the maturity of this Note, or any payment under this Note, may be extended from time to time without in any way affecting the liability of Borrower. If Lender transfers this Note to another holder who takes this Note for value and without actual knowledge of a claim or defense of Borrower against any prior holder of this Note, such transferee shall not be subject to any claims, set-offs or defenses that Borrower may have against any holder of this Note prior to such transfer, and such transferee shall have all of the rights of a holder in due course against Borrower even if, absent this provision, such transferee would not qualify as a holder in due course under applicable law.

9. PRESERVATION OF LENDER RIGHTS. No failure on the part of Lender to exercise any right or remedy hereunder, whether before or after the happening of an Event of Default shall constitute a waiver thereof, and no waiver of any past Event of Default shall constitute waiver of any future default or of any other Event of Default. No failure to accelerate the indebtedness evidenced hereby by reason of any Event of Default, or acceptance of a past due payment, or indulgence granted from time to time, shall be construed to be a waiver of the right to insist upon prompt payment thereafter or to impose late charges retroactively or prospectively, or shall be deemed to be a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or any other right, or be construed so as to preclude the exercise of any right that Lender may have, whether by the laws of the State of New York, by agreement, or otherwise; and Borrower hereby expressly waives the benefit of any statute or rule of law or equity that would produce a result contrary to or in conflict with the foregoing. This Note may not be changed orally, but only by an agreement in writing signed by the party against whom such agreement is sought to be enforced.

10. GOVERNING LAW. This Note shall be governed by the laws of the State of New York (without regard to New York conflicts of laws rules).

11. JURISDICTION; VENUE. Borrower acknowledges that the Bankruptcy Court shall have exclusive jurisdiction over any action, suit, claim or proceeding arising out of or relating to this Note and/or the Credit Agreement; provided, however if the Chapter 11 Case is dismissed, then Borrower shall consent to the jurisdiction as provided in this Section. Borrower hereby irrevocably consents to the non-exclusive personal jurisdiction of the courts of the State of New York and, if a basis for federal jurisdiction exists, the non-exclusive jurisdiction of the United States District Court for the Southern District of New York. Borrower agrees that venue shall be proper in any circuit court of the State of New York selected by Lender or, if a basis for federal jurisdiction exists, in any Division of the United States District Court for the Southern District of New York. Borrower waives any right to object to the maintenance of any suit or claim in any of the state or federal courts of the State of New York on the basis of improper venue or of inconvenience of forum. Any suit or claim brought by Borrower against Lender that is based, in whole or in part, directly or indirectly, on this Note or any matters relating to this Note, shall be brought in a court only in the State of New York. Borrower shall not file any counterclaim against Lender in any suit or claim brought by Lender against Borrower in a jurisdiction outside of the State of New York unless under the rules of the court in which Lender brought such suit or claim the counterclaim is mandatory, and not permissive, and would be considered waived unless filed as a counterclaim in the claim or suit instituted by Lender against Borrower. Borrower agrees that any forum outside the State of New York is an inconvenient forum and that a suit brought by Borrower against Lender in any court outside the State of New York should be dismissed or transferred to a court located in the State of New York.

12. SEVERABILITY. In case any provision (or any part of any provision)

contained in this Note shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision (or remaining part of the affected provision) of this Note, but this Note shall be construed as if such invalid, illegal, or

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unenforceable provision (or part thereof) had never been contained herein but only to the extent such provision (or part thereof) is invalid, illegal, or unenforceable.

13. JOINT AND SEVERAL LIABILITY. If there is more than one person signing this Note as Borrower, the liability of each such person shall be joint and several, and without limiting the operation or effect of any other provision of this Note each such person waives: (a) any right to require Lender to: (i) proceed against any other Obligor, (ii) proceed against any particular property or collateral given by any person to secure this Note; or (iii) notify such person of any default by any other person in the payment of any amounts due under this Note or in the performance of any other agreement of any Obligor; and (b) any defense arising by reason of any of the following: (i) any disability or any counterclaim or right of set-off or other defense of any Obligor, (ii) the invalidity, illegality or lack of enforceability of this Note or any provision thereof from any cause whatsoever, including any action or inaction by Lender, (iii) the failure of Lender to perfect or maintain perfection of any security interest in any property securing this Note, (iv) the cessation from any cause whatsoever of the liability of any Obligor, including the release by Lender of such Obligor's liability hereunder, (v) that this Note shall be void or voidable as against any Obligor or any Obligor's creditors, including a trustee in bankruptcy of any Obligor, by reason of any fact or circumstance, (vi) any event or circumstance which might otherwise constitute a legal or equitable discharge of any Obligor's obligations hereunder, or (viii) any act or omission of Lender (except acts or omissions in bad faith) which changes the scope of such person's risk hereunder.

14. MUTUAL WAIVER OF JURY TRIAL. BORROWER AND LENDER WAIVE ALL RIGHTS TO TRIAL BY JURY OF ANY CLAIMS OF ANY KIND ARISING UNDER OR RELATING IN ANY WAY TO THIS NOTE. BORROWER AND LENDER ACKNOWLEDGE THAT THIS IS A WAIVER OF A LEGAL RIGHT AND REPRESENT TO EACH OTHER THAT THESE WAIVERS ARE MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH COUNSEL OF THEIR CHOICE. BORROWER AND LENDER AGREE THAT ALL SUCH CLAIMS SHALL BE TRIED BEFORE A JUDGE OF A COURT HAVING JURISDICTION, WITHOUT A JURY.

15. PROVISIONS REGARDING LIMITATIONS ON RECOURSE. This Note is subject to the provisions regarding limitations on recourse set forth in Section 7.16 of the Credit Agreement.

16. PROVISIONS REGARDING SPECIFIED TERMINATION EVENT. Section 15 of this Note is subject to the provisions set forth in Section 7.17 of the Credit Agreement.



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IN WITNESS WHEREOF, and intending to be legally bound hereby, each undersigned Borrower executes this Note under seal as of the date first written above.

BORROWERS:

WITNESS:

Rhythms Netconnections Inc.,  
a Delaware corporation

By: \_\_\_\_\_ (SEAL)

Name:  
Title:

WITNESS:

Rhythms Links Inc. - Virginia,  
a Virginia corporation

By: \_\_\_\_\_ (SEAL)

Name:  
Title:

WITNESS:

Rhythms Links Inc.,  
a Delaware corporation

By: \_\_\_\_\_ (SEAL)

Name:  
Title:

WITNESS:

Rhythms Leasing Inc.,  
a Nevada corporation

By: \_\_\_\_\_ (SEAL)

Name:  
Title:



TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this "AGREEMENT") is entered into as of December 3, 2001 (the "EFFECTIVE DATE"), between Rhythms NetConnections Inc., a Delaware corporation (the "SELLER"), and MCI WorldCom Network Services, Inc. (the "BUYER"). Each of Buyer and Seller is sometimes referred to herein as a "PARTY" and, together, as the "PARTIES."

RECITALS

WHEREAS, Buyer and Seller (along with certain of its subsidiaries) are parties to that certain Asset Purchase Agreement, dated September 24, 2001 (the "PURCHASE AGREEMENT"), providing for the sale, assignment and transfer by Seller, and the acquisition and assumption by Buyer, of the Acquired Assets and Assumed Liabilities (as defined in the Purchase Agreement) (the "WCOM TRANSACTION"); and

WHEREAS, following the Closing of the WCOM Transaction, Seller will continue to operate its remaining business pending (1) the completion of the sale of its remaining assets, (2) the resolution of claims, if any, asserted by third parties against Seller, (3) resolution of claims asserted against third parties by Seller, (4) the satisfaction of its remaining liabilities and (5) the wind down and liquidation of Seller (the "WIND DOWN"); and

WHEREAS, one of the acquired Assets to be transferred to Buyer is Seller's lease for the premises located at 9100 East Mineral Circle, Englewood, Colorado 80112 (the "SUBLEASED PREMISES"); and

WHEREAS, at Seller's request, following the Closing of the WCOM Transaction, Buyer has agreed to permit Seller to occupy certain space located within the Subleased Premises while Seller completes the Wind Down (the "SUB-SUBLEASED PREMISES"), which agreement is memorialized in that certain Sub-Sublease Agreement, of even date herewith, by and between Buyer and Seller, as defined therein (the "SUB-SUBLEASE," a copy of which is attached hereto as EXHIBIT A); and

WHEREAS, at Seller's request, following the Closing of the WCOM Transaction, Buyer has agreed to provide certain transition services to Seller while Seller completes the Wind Down, on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the representations and warranties and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows.

## AGREEMENT

1. DEFINED TERMS. Capitalized terms used herein and not otherwise defined have the meanings assigned to them in the Purchase Agreement.

### 2. TRANSITION SERVICES AND COOPERATION.

a. During the Transition Period (as defined below), Buyer shall, on the terms and subject to the conditions of this Agreement, provide to Seller the services described in EXHIBIT B attached hereto and incorporated herein, as amended at any time and from time to time in a writing executed and delivered by Buyer and Seller (the "TRANSITION SERVICES").

b. All Transition Services provided by Buyer to Seller shall be of the same general commercial type and of equivalent commercial quality used by Buyer in the operation of its own business at the Leased Premises, taking into account operational differences between Seller's and Buyer's businesses, the difference in sizes of Buyer's and Seller's businesses following the Effective Date, the difference in number of employees in Buyer's and Seller's business following the Effective Date.

c. Following the Closing of the WCOM Transaction, Buyer and Seller shall cooperate with each other, to the extent commercially reasonable, with respect to other post-Closing matters to assist (i) the Buyer in the timely and cost effective transition of the Business to Buyer and (ii) the Seller in the timely and cost effective Wind Down of the Seller's business.

d. Within 3 business days following the Closing of the WCOM Transaction, Buyer and Seller shall each appoint one transition representative who shall be responsible for identifying, communicating about, coordinating and resolving disputes concerning transition matters that arise during the Transition Period.

e. The Transition Services will be available only for the purpose of the operation of the Wind Down and not for the benefit of any third party.

f. Buyer shall not be required to provide any Transition Service to the extent that the performance of such Transition Service becomes impracticable as a result of a cause or causes outside the reasonable control of Buyer, including unfeasible technological requirements, or to the extent the performance of such Transition Services would require Buyer to violate applicable laws, rules, or regulations, court orders, arbitration orders, etc., or would result in the breach of any contract, agreement, license, arrangement, or other applicable document.

g. In performing Transition Services hereunder, Buyer shall not be obligated to (a) hire any additional employees; (b) maintain the employment of any specific employee; (c) purchase, lease or license any additional equipment or software; or (d) pay any costs related to the transfer or conversion of Seller's data to Buyer or any alternative supplier of Transition Services.

### 3. TRANSITION PERIOD AND COOPERATION.

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a. The term of this Agreement shall commence on the Effective Date and shall continue until the earlier to occur of (i) the 12 month anniversary of the Effective Date, or (ii) the 30th day after the date upon which either Party gives written notice of termination in accordance with the notice provisions of Section 12(b) of this Agreement; PROVIDED, HOWEVER, that, as to any Transition Service or Additional Transition Service (as defined below) other than Continuing Access Services (as defined below), the term of this Agreement as to such Transition Service shall end on the date of termination of the Sub-Sublease, in accordance with its terms (the "INITIAL TERM").

b. The Parties may mutually agree in writing to extend the Initial Term on such terms and conditions and for such period of time as they mutually agree (any such extension is an "EXTENDED TERM").

c. The Initial Term and all Extended Terms are collectively referred to herein as the "TRANSITION PERIOD."

d. The Transition Period shall terminate automatically upon the termination of the Sub-Sublease Agreement.

e. Upon termination of this Agreement, the Parties' rights, benefits, privileges, duties, obligations and responsibilities hereunder shall immediately terminate; PROVIDED, HOWEVER, that notwithstanding the foregoing, Sections 4, 5, 6, 7 and 8 hereof shall survive the termination of this Agreement.

### 4. TRANSITION SERVICES FEES AND COSTS.

a. INITIAL TERM FEE. On the first day of each fiscal quarter during the Transition Period, Seller shall prepay to Buyer, in immediately available funds, \$9,000 representing the transition services fee for the Initial Term (the "INITIAL TERM FEE").

b. SHARED PERSONNEL FEE. Within 5 business days following the last day of each calendar month during the Transition Period, Seller shall reimburse Buyer for the shared personnel expenses, including apportioned payroll expense, benefits, and tax withholdings (the "SHARED PERSONNEL FEE") for the shared employees identified on EXHIBIT B or any supplement to Exhibit B that Seller delivers to Buyer (the "SHARED EMPLOYEES"). In the event a Shared Employee ceases to be employed by Buyer or a subsidiary of Buyer for any reason during the Transition Period, Seller shall pay to Buyer for the month in which such termination occurs only the daily pro rated amount representing the portion of the Shared Personnel Fee attributable to such Shared Employee for the period prior to his termination by Buyer or Buyer's subsidiary. Buyer shall be responsible for paying with respect to all Shared Employees all (i) payroll obligations, (ii) employee benefits, including but not limited to insurance premiums and (iii) federal, state and local tax and all other employee and

employer withholdings, whether required by law or at the request of an employee. The Seller's will not be obligated to reimburse Buyer for Shared Personnel Fees under this Section 4(b), with respect to a Shared Employee, if that Shared Employee shall cease to work at least a majority of his time for Buyer at 9100 East

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Mineral Circle, Englewood, Colorado 80112. Buyer and Seller agree to negotiate in good faith an adjustment to the Shared Personnel Fee for any month during the Transition Period in which Buyer is unable, for reasons due to the operation of its own business, to provide all of the Shared Personnel services described on EXHIBIT B.

c. EXTENDED TERM FEE. On or before the first day of each Extended Term, Seller shall prepay to Buyer, in immediately available funds, the entire fee for Transition Services for each Extended Term, in an amount equal to the Initial Term Fee divided by the number of months in the Initial Term multiplied by the number of months in the applicable Extended Term (the "EXTENDED TERM FEE").

d. ADDITIONAL TRANSITION SERVICES FEE. Seller and Buyer shall negotiate in good faith the cost of any Transition Service requested by Seller that is not included on EXHIBIT B attached hereto (an "ADDITIONAL TRANSITION SERVICE"); PROVIDED, that Buyer shall have no obligation to provide any Additional Transition Service for less than 125% of the actual cost to Buyer of providing such Additional Transition Service.

#### 5. CONTINUING TRANSITION SERVICES.

a. CONTINUED ACCESS. Notwithstanding anything contained herein to the contrary, during the Transition Period and for the 3 year period following the termination of the Transition Period (the "ACCESS PERIOD"), and after 3 days written notice to Buyer, Buyer shall (i) provide Seller's employees, agents and representatives ("SELLER REPRESENTATIVES") reasonable access to the business records, data, information and materials that exist electronically or in paper form that are identified on Exhibit C hereto (the "Continued Access Materials") during normal business hours, and (ii) permit Seller Representatives to copy, download, duplicate or otherwise export the Continued Access Materials, and Buyer shall instruct its employees and agents to cooperate with any such access and/or copying, downloading or duplication of Continued Access Materials (the "Continued Access Services"). Such Continued Access Materials shall be made available to Seller Representatives by Buyer pursuant to this Section 5 regardless of whether such Continued Access Materials exist on paper or electronically, and regardless of whether such Continued Access Materials exist at the Subleased Premises or not.

b. ACCESS FEE. For each day after the termination of the Transition Services Period in which a Seller Representative actually accesses, copies, downloads, duplicates or otherwise exports Continued Access Materials Seller shall pay to Buyer a fee in the amount of 1/30 (.0333) of the monthly portion of the Initial Term Fee or the Extended Term Fee, whichever is in force as of the

termination of the Transition Services Period.

6. INDEPENDENT CONTRACTOR.

a. Buyer and its employees that provide the Transition Services described herein shall be independent contractors in the performance of Buyer's obligations hereunder, shall not be employees of Seller or have any right to become employees of Seller and shall have no authority to assume or create any obligation or liability, express or implied, on behalf of

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Seller or any of its affiliates, or to bind Seller or such affiliates in any manner whatsoever, without the express prior written consent of Seller. Buyer shall use commercial reasonableness in performing the Transition Services.

b. This Agreement is not intended to create and shall not be construed as creating between Buyer and Seller the relationship of principal and agent, joint venturers, partners or any other similar relationship, and the existence of any such relationship is expressly denied.

7. CONFIDENTIALITY. Each Party will hold, and will cause its employees, consultants, advisors and agents to hold, in confidence the terms of this Agreement and any information concerning the Transition Services provided pursuant to this Agreement or in connection with the negotiation hereof. Notwithstanding the preceding provision, a Party may disclose such information to the extent required by an applicable law (including disclosure required in connection with any judicial or administrative proceeding of any governmental authority), but the Party proposing to disclose such information will first notify and consult with the other Party concerning the proposed disclosure, to the extent reasonably feasible. Each Party also may disclose such information to employees, consultants, advisors, agents and actual or potential lenders whose knowledge is necessary to facilitate the consummation of the transactions contemplated by this Agreement. Each Party's obligation to hold information in confidence will be satisfied if it exercises the same care with respect to such information as it would exercise to preserve the confidentiality of its own similar information.

8. CERTAIN SUBLEASE PROVISIONS. Notwithstanding anything in the Sub-Sublease to the contrary, Buyer and Seller agree that Seller shall not be obligated to make any payments under the Prime Lease or the Sublease (as those terms are defined in the Sub-Sublease), including but not limited to the payment of utilities, taxes or additional rent.

9. REPRESENTATIONS AND WARRANTIES. Each Party hereby represents and warrants to each of the other Parties as follows:

a. DUE ORGANIZATION. The Party is a corporation duly organized, validly existing and in good standing under the laws of the State of its formation or incorporation, as the case may be. The Party has all requisite power and authority to enter into this Agreement and to perform all of its obligations hereunder. The Party is duly qualified to do business and is in good



standing in all jurisdictions where the conduct of its business or the ownership of its assets makes such qualifications necessary, except where failure to be so qualified would not have a material adverse effect on the Party or its financial condition or the transactions contemplated hereby.

b. POWER AND AUTHORITY; NO VIOLATION. The Party has full power and authority to execute, deliver and perform all of its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement and all transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of the Party, and this Agreement constitutes a legal, valid and binding obligation of the Party enforceable against the Party in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency, moratorium, fraudulent conveyance,  
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reorganization or other similar laws from time to time in effect affecting or relating to the enforcement of creditors' rights generally or by principles governing the availability of equitable remedies. Neither the execution, delivery or performance of this Agreement by the Party nor the consummation of the transactions contemplated herein by the Party will, with or without the giving of notice or the passage of time, or both, conflict with, breach, result in a default or loss of rights (or give rise to any rights of termination, cancellation or acceleration) under, or result in the creation of any lien, pursuant to (a) any provision of the articles (or certificate) of incorporation, as the case may be, or other constituent documents of the Party; (b) any material note, bond, indenture, mortgage, deed of trust, contract, agreement, lease or other instrument or obligation to which the Party is a party or by which the Party's properties may be bound or affected; or (c) any legal requirements to which the Party is a party or by which the Party's properties are bound or affected. No permit, consent, approval, authorization, qualification or registration of, or declaration to or filing with any governmental authority or third party is required to be obtained or made by the Party in connection with the execution and delivery of this Agreement by the Party or the consummation by the Party of the transactions contemplated hereby in order to render this Agreement or the transactions contemplated hereby valid and effective.

c. LEGAL MATTERS. There is no claim, legal action, counterclaim, suit, arbitration, governmental investigation or other legal, administrative or tax proceeding, nor any order, writ, injunction, decree or judgment of any court, governmental authority or arbitration tribunal, in progress or pending, or to the knowledge of the Party threatened, against or relating to the right of the Party to perform its obligations under this Agreement, nor does the Party know or have reason to be aware of any basis for the same. There are outstanding no orders which would, individually or in the aggregate, have a material adverse effect on the ability of the Party to perform its duties and obligations hereunder or on the transactions contemplated by this Agreement other than orders involving the telecommunications industry in general.

EXCEPT AS SET FORTH IN THIS SECTION 9, NOTHING CONTAINED IN THIS AGREEMENT OR IN THE SCHEDULES HERETO SHALL BE DEEMED TO BE A REPRESENTATION OR WARRANTY OF OR BY

ANY OF SELLER OR BUYER OR THEIR SUBSIDIARIES AND AFFILIATES.

10. COVENANTS. Buyer shall keep all records and data received from Seller pursuant to the Purchase Agreement in a manner consistent with Buyer's past practice and such records and data shall not be destroyed until the third anniversary of the termination of the Transition Services Period; PROVIDED, HOWEVER, that Buyer shall notify Seller of its intent to destroy any such records or data at least 60 days prior to the scheduled date of destruction, and if so requested in writing by Seller, deliver the records or data to be destroyed to Seller at Seller's expense. Seller shall have the right to make copies of any such records, PROVIDED that any such access or copying shall be had or done (i) at Seller's expense, (ii) in such a manner not to interfere with the normal conduct of the Buyer's business, and (iii) Seller shall not disclose or divulge confidential or proprietary information about the Business without Buyer's written consent. In the event of a proposed disposition of such records or data by the Buyer, directly or indirectly, to any party  
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other than a subsidiary of Buyer shall be treated as a proposed destruction of such records or data.

11. INDEMNIFICATION. To the fullest extent not prohibited by law, Seller shall protect, defend, indemnify and hold harmless Buyer (including its subsidiaries and affiliates) and each of its representatives (collectively, the "BUYER INDEMNITEES") from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including reasonable attorneys' fees and disbursements), judgments, fines, settlements, and other amounts (collectively "LOSSES"), by reason of any proceeding initiated by any third person, arising or alleged to have arisen out of the performance by Buyer of its duties and obligations under and/or in accordance with this Agreement, except, in the case of any Buyer Indemnitee, to the extent such losses result directly from the actual fraud, intentional misconduct, a willful violation of law by or gross negligence of such Buyer Indemnitee. In the event any proceeding is brought against any Buyer Indemnitee with respect to which Seller may have liability under any indemnity contained herein, Seller shall have the right, at its sole cost and expense, to defend such proceeding in the name and on behalf of the Buyer Indemnitee and in connection with any such proceeding, the Parties agree to render to each other such assistance as may reasonably be required in order to insure the proper and adequate defense of any such proceeding. The Buyer Indemnitee shall have the right to participate, at its own expense and with counsel of its choosing, in the defense of any proceeding against which it is indemnified hereunder and it shall be kept fully informed with respect thereto.

## 12. MISCELLANEOUS.

a. HEADINGS. The headings in this Agreement are provided for convenience only and will not affect the construction or interpretation of this Agreement.

b. NOTICE. All notices to be provided under this Agreement shall be

provided as follows:

To Buyer:

WorldCom, Inc.  
500 Clinton Center Drive  
Clinton, MS 39056  
Attn: K. William Grother, Jr.  
Fax: (601) 460-5239

WorldCom, Inc.  
1133 19th Street, N.W.  
9th Floor  
Washington, D.C. 20036  
Attn: Roland J. Behm  
Fax: (202) 736-6085

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with a copy to:

Piper Marbury Rudnick & Wolfe LLP  
6225 Smith Avenue  
Baltimore, MD 21209  
Attn: Eric B. Miller, Esq.  
Fax: (410) 580-3216

To Seller:

Rhythms NetConnections Inc.  
9100 East Mineral Circle  
Englewood, Colorado 80112  
Attn: Brian Farley  
Telephone No.: (303) 876-5288  
Fax No.: (303) 476-2272

With a copy to:

Brownstein Hyatt & Farber, P.C.  
410 17th Street, Suite 2200  
Denver, Colorado 80202  
Attn: John L. Ruppert, Esq.  
Telephone No.: (303) 223-1170  
Fax: (303) 223-0970  
E-Mail: jruppert@bhfs.com

All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand delivery or sent by registered mail, certified mail or express mail service, postage prepaid and return receipt requested, or by nationally utilized overnight delivery service (such as Federal Express) or by telephone facsimile transmission, PROVIDED that an original copy of any facsimile transmission shall be delivered to the addressee by hand

delivery or by a nationally utilized overnight delivery service on the business day following such transmission. Facsimile notices shall be deemed given on the date of transmission. Any other notice shall be deemed given when delivery is received or refused, as the case may be. For purposes hereof, (i) a notice that is delivered during business hours shall be deemed delivered when actually delivered and (ii) a notice that is delivered outside of business hours shall be deemed to have been delivered at the beginning of business hours or the immediately succeeding business day.

A party may change its address by giving the other party notice of the new address, PROVIDED that the new address must be a place in the Continental United States where the mails, telegrams, mailgrams, facsimile transmissions, hand deliveries and deliveries by private delivery services are regularly received. The change of address shall be effective on the date specified

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therefor in the notice, PROVIDED that the effective date shall be not sooner than 5 days or later than 30 days after notice thereof is delivered.

c. APPLICABLE LAW; VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The Parties agree that any dispute pertaining to or arising under this Agreement shall be commenced and prosecuted either in the state or federal courts located in the State of Colorado.

d. SUCCESSORS. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, subject to the restrictions upon assignment and subletting set forth herein. Neither Party shall assign any of its rights or delegate any of its duties under this Agreement (by operation of law or otherwise) without the prior written consent of the other Party, not to be unreasonably withheld; PROVIDED that Buyer (as indicated) may assign its rights hereunder to any affiliate or subsidiary of Buyer, PROVIDED that Buyer shall remain responsible for the performance of all of its duties, obligations and responsibilities hereunder following such assignment. Any other assignment of rights or delegation of duties under this Agreement by a Party without the prior written consent of the other Party, if such consent is required hereby, shall be void.

e. ENTIRE AGREEMENT; AMENDMENT. This Agreement and the exhibits, riders, and/or addenda, if any, set forth the entire agreement between the parties. Any prior or contemporaneous conversations or writings are merged herein, superseded and extinguished. Buyer and Seller acknowledge that neither Party has relied upon any oral or written representations, warranties or agreements in connection with this Agreement other than those expressly written in this Agreement. No subsequent amendment to this Agreement shall be binding upon Buyer or Seller unless it is reduced to writing and signed by Buyer and Seller.

f. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which is an original and all of which, taken together, constitute one and the same instrument.

g. PARTIAL INVALIDITY. If a provision of this Agreement or application thereof to a person or circumstance is invalid or unenforceable, the remainder of this Agreement or the application of the provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

h. RULES OF CONSTRUCTION. Unless the context clearly indicates otherwise, the terms defined in this Agreement shall have the meanings specified herein for all purposes of this Agreement and the Schedules hereto. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms, and male, female and neuter genders of such terms, whenever and wherever necessary or appropriate. References to "Sections,"

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"Subsections," "Exhibits" and "Schedules" are to the Sections and Subsections of, and Exhibits and Schedules to, this Agreement, respectively, unless otherwise specifically provided. Unless the context of this Agreement clearly indicates otherwise, the terms "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." Unless the context of this Agreement clearly indicates otherwise, any reference to this Agreement herein, in the Purchase Agreement or in any of the other documents referenced in this Agreement and in the Purchase Agreement shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions and supplements hereto and thereto, as applicable, made in accordance with the terms hereof or thereof, respectively.

[The remainder of this page left intentionally blank.]

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IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.

BUYER:

MCI WorldCom Network Services, Inc.,  
a Delaware corporation

By:

-----  
Name:

-----  
Title:

SELLER:

Rhythms NetConnections Inc.,  
a Delaware corporation

By:

-----  
Name:

-----  
Title:

[SIGNATURE PAGE TO TRANSITION SERVICES AGREEMENT]

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EXHIBIT A

SUB-SUBLEASE AGREEMENT

See attached.

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EXHIBIT B

TRANSITION SERVICES

Buyer shall provide to Seller the following corporate, operational and infrastructure services:

1. OFFICE SERVICES:

- a. Telephone;
- b. Fax equipment;
- c. Computers;
- d. Office furniture, fixtures and other equipment;
- e. Utilities;
- f. Building access cards;
- g. Building security;
- h. Files storage;

- i. Shared MIS access;
- j. Shared accounting services and data;
- k. Shared HR services and data;
- l. Shared payroll services and data;
- m. Other shared data services and files;
- n. Shared server support;
- o. Shared business software applications;
- p. Shared hardware;
- q. Any other reasonable services requested by Seller from Buyer in connection with the Wind Down.
- r. All necessary insurance that Buyer will carry in the ordinary course of business as tenant of such premises.

2. SHARED PERSONNEL:

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Sharing Formula: [NAME] will devote \_\_\_% of his regular 40-hour work week with WorldCom to assisting Seller in the Wind Down. [NAME] will report directly to \_\_\_\_\_ of Seller. [NAME]'s base salary with Buyer is \$\_\_\_\_\_ per month. Seller will reimburse Buyer for \_\_\_% of [NAME]'s base salary in accordance with Section 4(b) of the Transition Services Agreement.

The schedule of Shared Employees and his/her base salary is attached hereto.

NONE OF BUYER'S FURNITURE, FIXTURES, EQUIPMENT, INTELLECTUAL PROPERTY, SYSTEMS, OTHER TANGIBLE OR INTANGIBLE ASSETS OR EMPLOYEES BEING USED BY SELLER OR MADE AVAILABLE FOR USE BY SELLER OR USED BY BUYER IN PROVIDING TRANSITION SERVICES TO SELLER UNDER THIS AGREEMENT ("BUYER'S PROPERTY") IS BEING TRANSFERRED TO SELLER HEREBY, SELLER IS NOT ACQUIRING ANY OWNERSHIP INTEREST IN ANY OF BUYER'S PROPERTY AND SELLER AGREES TO RETURN ALL OF BUYER'S PROPERTY TO SELLER AT THE END OF THE TRANSITION PERIOD in the same condition in which it was provided at the inception of the Agreement, reasonable wear and tear excepted. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING ANY OF THE TRANSITION SERVICES OR ANY OF BUYER'S PROPERTY LISTED ABOVE.

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EXHIBIT C



## CONTINUING TRANSITION SERVICES

The Continuing Transition Services include the following:

1. Customer files which relate or related to the Business;
2. Personnel files which relate or related to the Business;
3. MIS and data which relate or related to the Business;
4. accounting services and data which relate or related to the Business;
5. Human Resource services and data which relate or related to the Business;
6. Payroll services and data which relate or related to the Business;
7. All other information data bases, files, storage facilities, data services and other reasonable services requested by Seller in connection with the Wind Down which relate or related to the Business, whether stored on paper, electronically or otherwise, where ever located.

EXECUTIVE EMPLOYMENT AGREEMENT

This EXECUTIVE EMPLOYMENT AGREEMENT (this "AGREEMENT") is effective as of December \_\_, 2001 (the "EFFECTIVE DATE"), by and between Rhythms NetConnections Inc., a Delaware corporation with offices at 9100 East Mineral Circle, Englewood, Colorado 80112 (the "COMPANY"), and [FILL IN EXECUTIVE NAME] ("EXECUTIVE"). Each of the Company and Executive are sometimes referred to herein as a "PARTY," and the two of them, together, are collectively referred to herein as the "PARTIES".

RECITALS

WHEREAS, on December 3, 2001, the Company closed the transactions contemplated in that certain Asset Purchase Agreement, dated as of September 24, 2001, by and among the Company, Rhythms Links Inc. Rhythms Links Inc. - Virginia, Rhythms Leasing Inc. and MCI WorldCom Network Services, Inc.; and

WHEREAS, on December \_\_, 2001, the Company adopted and approved the Company's 2002 Retention Plan, a copy of which is attached as EXHIBIT A hereto (the "2002 RETENTION PLAN"); and

WHEREAS, the Company desires Executive to remain in the employ of the Company, and Executive desires to remain in the employ of the Company, from the Effective Date through June 30, 2002, to assist in the disposition of the Company's remaining assets, the resolution of the Company's remaining liabilities and the ultimate dissolution and liquidation of the Company; and

WHEREAS, as an inducement to Executive to remain in the employ of the Company to continue to perform all of Executive's duties, responsibilities and obligations of his/her employment, as set forth herein, the Company has agreed to enter into this Agreement with Executive, and Executive, in turn, has agreed to continue in the employ of the Company by entering into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be bound hereby, agree as follows:

1. EMPLOYMENT. The Company hereby agrees to continue to employ Executive, and Executive hereby agrees to continue in the employ of the Company, upon the terms and subject to the conditions set forth in this Agreement for the Employment Period (as defined in Section 4). This Agreement supercedes any and all prior agreements (written or oral) between Executive and the Company or the Company's predecessors in interest with respect to Executive's employment or any matters related thereto, and any such prior agreements shall be void and of no further force and effect as of the Effective Date; PROVIDED, HOWEVER, that notwithstanding anything herein to the contrary, the Company shall remain obligated to (a) make all payments

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now due and owing to Executive or that hereafter become due and owing to Executive pursuant to the Company's 2001 Key Executive Retention Program in accordance with and subject to all of the terms and conditions of such program and (b) to "cash out" on January 2, 2002, all of Executive's PTO (as defined below) accrued through and including December 31, 2001.

2. POSITION AND DUTIES.

a. During the Employment Period (as defined in Section 4(a) below), Executive shall be employed by the Company [AS THE \_\_\_\_\_ (TITLE)] of the Company and shall report directly to, shall be subject to the direct supervision of and shall perform such functions on behalf of the Company and its Subsidiaries (collectively referred to herein as "RHYTHMS") pursuant to the instructions of the [BOARD OF DIRECTORS OF THE COMPANY (THE "BOARD") [[FOR THE CEO]]/ PRESIDENT OR CHIEF EXECUTIVE OFFICER [[FOR ALL OTHER OFFICERS]]].

b. Executive shall devote (i) his/her best efforts and (ii) his/her full time and attention to the business and affairs of Rhythms and the performance of his/her duties. Executive shall perform his/her duties and responsibilities to the best of his/her abilities in a timely, diligent, trustworthy, businesslike and efficient manner.

### 3. BASE SALARY; RETENTION BONUS; AND SEVERANCE.

a. BASE SALARY. During the Employment Period, Executive's base salary shall be \$\_\_\_\_\_, on an annualized basis ("BASE SALARY"), payable in accordance with the Company's standard and customary payroll practices. Executive 's Base Salary shall be subject to review and adjustment as determined by the Board, acting in its sole and absolute discretion.

b. RETENTION BONUS. Executive shall be entitled to participate, and is hereby designated a Participant, in the 2002 Retention Plan.

c. SEVERANCE. The Company's Severance Policy (the "SEVERANCE POLICY," a copy of which is attached hereto as EXHIBIT B) shall remain in full force and effect throughout the Employment Period, Executive shall be deemed to be an "Officer (other than an Executive Officer)" for all purposes under the Severance Policy and Executive shall be entitled to be paid severance in accordance with the terms and conditions of the Severance Policy. For purposes of the Severance Policy, expiration of this Agreement shall be deemed to be a termination of Executive's employment on an Involuntary No Fault basis.

4. EMPLOYMENT PERIOD. The term of this Agreement shall commence as of the Effective Date and shall terminate on the earliest to occur of (i) the date of Executive's termination of employment with the Company for any reason under Section 7 below, (ii) the termination of Executive's employment by the Company for any reason under Section 7 below or (iii) June 30, 2002 (the "EMPLOYMENT PERIOD"). All compensation and other benefits shall cease to accrue upon termination of the Employment Period and in accordance with Section 7 below.

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### 5. BENEFITS AND OTHER MATTERS.

a. INSURANCE. The Company will provide retirement, employee health and welfare, and fringe benefit plans to Executive no less favorable than those generally made available to the Company's other executive employees generally. Executive will be fully vested for all purposes under all such plans, other than any tax-qualified Company retirement plans.

b. PAID TIME OFF. Executive will be entitled to 80 hours of paid time off ("PTO") between January 2, 2002, and June 30, 2002, all of which will be fully vested as of January 1, 2002. Upon expiration of this Agreement or termination of Executive's employment for any reason, Executive will be entitled to receive payment (at the then applicable hourly rate, which shall be equal to annual Base Salary divided by 2,080 hours) for any accrued but unused PTO through the date of termination. PTO will cease to accrue on Executive's date of termination.

c. REIMBURSEMENT OF EXPENSES. The Company will reimburse Executive for all reasonable out-of-pocket expenses actually incurred by Executive (in accordance with the Company's expense reimbursement policies, as amended from time to time) in connection with performing his/her obligations hereunder upon receipt from Executive of standard documentation supporting such expenses.

6. CONFIDENTIAL INFORMATION. Executive acknowledges that the information, observations and data obtained by him while employed by the Company and its Subsidiaries concerning the business or affairs of the Company and its Subsidiaries that are not generally available to the public other than as a result of a breach of this Agreement by Executive ("CONFIDENTIAL INFORMATION") are the property of Rhythms. Executive agrees that he or she shall not disclose to any unauthorized person or use for his/her own account any Confidential Information without the prior written consent of the Company unless, and in such case only to the extent that, such matters become generally known to and available for use by the public other than as a result of Executive's acts or omissions to act. Notwithstanding the foregoing, in the event Executive becomes legally compelled to disclose Confidential Information pursuant to judicial or administrative subpoena or process or other legal obligation, Executive may make such disclosure only to the extent required, in the opinion of counsel for Executive, to comply with such subpoena, process or other obligation. Executive shall, as promptly as possible and in any event prior to the making of such disclosure, notify the Company of any such subpoena, process or obligation and shall cooperate with the Company in seeking a protective order or other means of protecting the confidentiality of the Confidential Information.

7. TERMINATION. The Company may terminate Executive's employment at any time, with or without Cause (as defined below), subject to the provisions hereof. Executive may terminate his/her employment at any time, with or without Good Reason (as defined below), subject to the provisions hereof.

a. EXPIRATION OF THE EMPLOYMENT PERIOD ON JUNE 30, 2002. If this  
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Agreement expires on June 30, 2002 (without having expired or been terminated prior to that date) and Executive is in the employ of the Company on June 30, 2002, Executive shall be entitled to receive, on June 30, 2002, (A) the Second Retention Payment as defined in, and payable under, 2002 Retention Plan , (B) the amount of any accrued but unpaid Base Salary, accrued but unused PTO and all other accrued but unpaid Executive benefits to which Executive is entitled through the date of termination (C) severance pursuant to Section 3.c. above plus (D) unreimbursed expenses properly incurred through the date of termination.

b. TERMINATION BY THE COMPANY WITH CAUSE OR TERMINATION BY EXECUTIVE WITHOUT GOOD REASON PRIOR TO JUNE 30, 2002. If, prior to June 30, 2002, (i) the Company terminates the employment of Executive with Cause or (ii) the Executive terminates his/her employment without Good Reason, Executive shall be entitled to receive (A) the amount of any accrued but unpaid Base Salary, accrued but unpaid PTO and all other accrued but unpaid Executive benefits to which Executive is entitled through the date of termination plus (B) unreimbursed expenses properly incurred through the date of termination. If Executive's employment with the Company is terminated pursuant to this Section 7.b., Executive agrees to return to the Company, within 5 business days of the date of his/her termination, the First Retention Payment (as defined in the 2002 Retention Plan), and acknowledges that he/she forever and irrevocably forfeits all right, title and interest in and to the First Retention Payment and the Second Retention Payment (each as defined in the 2002 Retention Plan).

c. TERMINATION BY THE COMPANY WITHOUT CAUSE OR BY EXECUTIVE FOR GOOD

REASON PRIOR TO JUNE 30, 2002. If, prior to June 30, 2002, (i) the Company terminates the employment of Executive without Cause or (ii) Executive terminates his/her employment for Good Reason, Executive shall be entitled to receive (A) all remaining amounts payable to Executive under the 2002 Retention Plan , (B) the amount of any accrued but unpaid Base Salary, accrued but unpaid PTO and all other accrued but unpaid Executive benefits to which Executive is entitled through the date of termination, (C) severance pursuant to Section 3.c. above plus (D) unreimbursed expenses properly incurred through the date of termination.

d. DEFINED TERMS.

i. "CAUSE" shall be limited to the following: (A) deliberate dishonesty or willful misconduct in the performance of Executive's responsibilities resulting in a material adverse effect on the Company's business, financial condition or operational results; or (B) Executive's substantial failure to satisfactorily perform your reasonably assigned duties to the Company after receiving written notice thereof detailing the alleged failures and the expiration of a reasonable cure period not to be less than 10 business days, without such failure(s) being substantially remedied by Executive, (C) an act or acts on Executive's part constituting a felony under the laws of the United States or any state thereof or crime involving moral turpitude. A determination that Cause exists shall be made by the Board, acting reasonably and in good faith, which determination shall be final and binding on all Parties.

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ii. "GOOD REASON" shall mean termination at the election of Executive based on (A) or (B) below (provided that Executive gives written notice of his/her intention to terminate employment within 30 days of the date on which the event described in (A) or (B) occurs and that the Company shall have 30 days from the receipt of such notice to cure any such defects) or by reason of the occurrence of an event described in (C) below:

(A) Without Executive's express written consent, the assignment of Executive to a position functionally below, on the Company's corporate organizational chart, his or her position of \_\_\_\_\_ or material diminution in Executive's duties as \_\_\_\_\_, except in connection with the termination of his/her employment by the Company with Cause, normal retirement, death or disability of Executive (see clause (C) below) or termination by the Executive without Good Reason;

(B) (1) any reduction by the Company in Executive's Base Salary or Retention Bonus (as defined in the 2002 Retention Plan) amount or (2) any reduction in the indemnification protection and benefits afforded to Executive under Section 8 hereof or under the Amended and Restated Bylaws of the Company (the "Bylaws") or any amendment of the Bylaws to reduce the indemnification protections afforded Executive thereunder or (3) any requirement that Executive return to the Company any previously received Base Salary or Retention Bonus (as defined in the 2002 Retention Plan) amount; or

(C) Executive dies or becomes mentally or physically disabled for such period of time and under circumstances which entitle Executive to receive disability benefits under the terms of the Company's long-term disability insurance policy then maintained by the Company.

iii. "SUBSIDIARY" of an entity shall mean any corporation, limited liability company, limited partnership or other business organization of which the securities having a majority of the normal voting power in electing the board of directors, board of managers, general partner or similar governing

body of such entity are, at the time of determination, owned by such entity directly or indirectly through one or more Subsidiaries.

8. INDEMNIFICATION. The Company shall indemnify Executive to the fullest extent (a) not prohibited by the Delaware General Corporation Law and (b) permitted under the Bylaws as in effect on the date hereof as if Executive were an executive officer and/or director of the Company. It is the express intent of the Parties that the indemnification benefits provided for herein shall extend to any and all claims relating to, in connection with, or arising from, out of or under the Colorado Wage Act. The Company shall use its reasonable best efforts to make provision for the payment of any and all obligations to employees that could give rise to claims against Executive under the Colorado Wage Act, including but not limited to setting aside funds in a reserve account to pay such claims or acquiring insurance to cover all such claims and maintaining such arrangements in place until such time as all such pending or threatened claims have been settled, released, and/or dismissed with prejudice by a court of competent jurisdiction pursuant to a final, binding, non-appealable order.

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9. MISCELLANEOUS.

a. SURVIVAL. Sections 3, 4, 5, 6, 7 and 8 hereof shall survive and continue in full force and effect in accordance with their terms notwithstanding any termination of the Employment Period.

b. ENTIRE AGREEMENT. Subject to Section 1 above, this Agreement and those documents expressly referred to herein embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.

c. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF COLORADO, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF COLORADO OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF COLORADO.

d. ARBITRATION. The Parties hereto agree to submit any dispute hereunder to binding arbitration. Arbitration shall be conducted in Denver, Colorado, under the commercial rules of the American Arbitration Association ("AAA") by a panel of three arbitrators. The aforementioned arbitrators shall be chosen as follows: The Company and Executive shall each designate one arbitrator from a list of acceptable and qualified arbitrators which will be provided by the AAA. The two arbitrators so designated shall then choose the panel's third arbitrator who shall be an attorney-at-law and who shall serve as the Chairman of the panel; provided that if either Party fails to designate an arbitrator within 10 days of receipt of AAA's list or if the two arbitrators are unable to agree on the appointment of the third arbitrator within 10 days of the later of the date of their respective appointments, such arbitrator shall be designated by AAA. If any arbitrator resigns or is unable to continue serving as such, the successor to such arbitrator shall be appointed by the Party who appointed such arbitrator or by the remaining arbitrators if they appointed such arbitrator, or by the AAA, as the case may be. A stenographic record of the arbitration must be maintained, the panel, including the successor arbitrator, may rely on such record and no rehearing shall be required. Each of the Parties shall pay the fees and expenses of the arbitrator appointed by it and each shall pay one-half of the fees and expenses of the third arbitrator and any other expenses of the arbitration, unless the arbitrators determine that the losing Party shall bear the cost of the arbitration. The decision of the arbitrators with respect to any

issues subject to arbitration shall be final and binding on the Parties and may be entered into any court of competent jurisdiction by either Party, or application may be made to such court for judicial confirmation of the award and order of enforcement, as the case may be. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. Notwithstanding the foregoing, it is hereby agreed that no arbitration panel shall have any power to (a) add to, alter or modify the terms and conditions of this Agreement,

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(b) decide any issue which does not arise from the interpretation or application of the provisions of this Agreement or (c) award any punitive damages under this Agreement.

e. SEVERABILITY. The Company and Executive agree that the agreements and provisions contained in this Agreement are severable and divisible, that each such agreement and provision does not depend upon any other provision or agreement for its enforceability, and that each such agreement and provision set forth herein constitutes an enforceable obligation between the Parties. Consequently, the Parties agree that neither the invalidity nor the unenforceability of any provision of this Agreement shall affect the other provisions, and this Agreement shall remain in full force and effect and be construed in all respects as if such invalid or unenforceable provision were omitted.

f. SPECIFIC PERFORMANCE. Company acknowledges and agrees that Executive's remedies at law for a breach or threatened breach of Section 8 hereof would be inadequate and, in recognition of this fact, Company agrees that, in the event of such a breach or threatened breach, Executive, without posting any bond, shall be entitled to obtain equitable relief in the form of specific performance, temporary restraining order, temporary or permanent injunction or any other equitable remedy which may then be available.

g. WAIVER, MODIFICATION. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Executive and the Company or such officer as may be specifically designated by the Board. No waiver by either Party hereto at any time of any breach by the other Party of, or compliance with, any condition or provision of this Agreement shall be deemed a waiver of similar or dissimilar provisions or conditions of this Agreement at the same or any prior or subsequent time.

h. SUCCESSORS; BINDING AGREEMENT. Executive hereby consents and agrees that the Company may require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company or any division of the Company to expressly assume and agree in writing to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place or, in the event the Company remains in existence, the Company may continue to employ the Executive under the terms hereof. Except in accordance with the foregoing sentence, this Agreement may not be assigned by the Company. This Agreement shall inure to the benefit of and be enforceable by Executive's personal or legal representatives, executors, estate, trustees, administrators, successors, heirs, distributees, devisees and legatees. This Agreement is personal to Executive and neither this Agreement nor any rights hereunder may be assigned by the Executive.

i. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.



j. HEADINGS. The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

k. WITHHOLDING TAXES. Notwithstanding anything herein to the contrary, all amounts payable to Executive under this Agreement shall be subject to withholding by the Company for federal, state, local and other withholding taxes, as well as for the portion of the cost of such employee benefits elected by Executive for which Executive is responsible for paying (such as, Executive 's portion of any life or health, dental or other insurance premiums, etc.). In addition, the Company shall have the right to offset against any amounts payable to Executive hereunder all amounts, if any owed, by Executive to the Company.

l. ENFORCEMENT. If either Party is required to arbitrate or seek judicial enforcement of his/her or its rights under this Agreement, the Party prevailing in such proceeding shall be entitled to be reimbursed by the other for all reasonable attorneys' fees and expenses.

m. VALID AND BINDING. The Company represents that it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement, and that this Agreement is valid, binding and enforceable against the Company in accordance with its terms.

n. NOTICES. All notices or other communications in connection with the Agreement shall be in writing and may be given by personal delivery or mailed, certified mail, return receipt requested, postage prepaid or delivered by a nationally recognized overnight courier to the Parties at the addresses set forth below (or at such other address as the Company or Executive may specify in a notice to the Executive or Company, as the case may be):

If to the Company:

Rhythms NetConnections Inc.  
9100 East Mineral Circle  
Englewood, Colorado 80112  
Fax No.: 303/476-5700  
Attention: President or Chief Operating Officer

with a copy to:

Brownstein Hyatt & Farber, P.C.  
410 17th Street, Suite 2200  
Denver, Colorado 80202  
Fax No: 303/223-0970  
Attn: John L. Ruppert, Esq.

If to Executive:

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

RHYTHMS NETCONNECTIONS INC.

By:

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Name:

-----  
Title:

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[EXECUTIVE ]  
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EXHIBIT A

2002 RETENTION PROGRAM

See attached.

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RHYTHMS NETCONNECTIONS INC.  
2002 RETENTION PLAN

Executive shall be entitled to participate in this 2002 Retention Plan (this "PLAN") (each of the participants in the Plan are "PARTICIPANTS").

Participant shall be entitled to receive a retention bonus ("RETENTION BONUS") in the amount set forth opposite his or her name on SCHEDULE I attached hereto at the times, in such Installments (as defined below) and subject to the terms and conditions set forth in this Plan.

The aggregate amount of each Participant's Retention Bonus shall be set forth opposite such Participant's name on SCHEDULE I attached hereto.

Subject to the immediately following paragraph, each Participant's Retention Bonus, to the extent earned (as described below), shall be paid to such Participant in two installments. The first installment, in the amount of 25% of the Participant's Retention Bonus (the "FIRST RETENTION PAYMENT"), shall be paid to the Participant, to the extent earned (as described below), in cash on January 2, 2002. The second installment, in the amount of the remaining 75% of the Participant's Retention Bonus (the "SECOND RETENTION PAYMENT"), shall be paid to the Participant, to the extent earned (as described below), in cash on June 30, 2002. Each of the First Retention Payment and the Second Retention Payment are sometimes individually referred to herein as an "INSTALLMENT," and both of them, together, are sometimes collectively referred to herein as the "INSTALLMENTS."

In order to be entitled to receive the First Retention Payment of his or her Retention Bonus, a Participant must be employed by the Company on January 1, 2002. In order to be entitled to receive the Second Retention Payment of his or her Retention Bonus, a Participant must be employed by the Company on June 30, 2002. Notwithstanding anything herein to the contrary, a Participant shall be entitled to receive all unpaid Installments of his or her Retention Bonus (determined as of the "TERMINATION DATE" (as defined below) of such Employee's employment with the Company) if such Participant's employment with the Company is terminated, prior to June 30, 2002, by reason of the occurrence of an "INVOLUNTARY NO FAULT" event (as defined below).

Notwithstanding anything herein to the contrary, if a Participant receives the First Retention Payment of his or her Retention Bonus and then such Participant's Employment with the Company is terminated, after January 1, 2002, and prior to June 30, 2002, for any reason other than the occurrence of an "INVOLUNTARY NO FAULT" event (as defined below), then the Participant shall be required to return the full amount of his or her First Retention Payment to the Company promptly following the Participant's Termination Date ("REFUND AMOUNT"). Each Participant hereby agrees and authorizes the Company to deduct from any and all amounts due and owing from the Company to the Participant (i.e., base salary, bonus, paid time off, expense reimbursements, etc.) an aggregate amount equal to such Refund Amount. In the event that the amounts owed to the Participant are insufficient to return to the Company the full Refund Amount, then the Participant shall be personally liable to the Company for the shortfall.

The Company reserves the right, in its sole and absolute discretion, to increase the Retention Bonus of selected Participants or groups of Participants (over and above the amount shown on SCHEDULE I hereto for such Participants or groups of Participants) at any time and from time to time; provided, however, that nothing herein shall (a) entitle any Employee to receive any such increased Retention

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Bonus or (b) require the Company to treat similarly situated Participants similarly under this Plan or otherwise.

In addition to the rights described in the preceding paragraph, the Company reserves the right, in its sole and absolute discretion, to change, modify or amend the terms of this Plan at any time, including, but not limited to, changing the amount of the Retention Bonuses shown on SCHEDULE I hereto, changing the number of Installments and/or the timing of the payment of such Installments, adding additional Participants to SCHEDULE I hereto and/or terminating this Plan, in its entirety; provided, however, that any change, modification or amendment to this Plan shall not adversely affect any Participant in the Plan who is a Participant on the last "BUSINESS DAY" (as defined below) immediately preceding the effective date of such change, modification or amendment, without such Participant's prior written consent.

Nothing in this Plan shall confer upon any Participant any right to continue in the employ of the Company for any period of specific duration or otherwise interfere with or otherwise restrict in any way the rights of the Company or the Participant, which rights are hereby expressly reserved by each, to terminate such Participant's service at any time for any reason, with or without cause.

Any benefits provided to Participants under this Plan are in addition to, and not in lieu of, any other benefits provided to Participants under the Participants' employment agreements with the Company (if any), the Company's Paid Time Off and Family and Medical Leave Policy and/or any other employee

benefit plan, policy or arrangement in effect for employees at any time and from time to time.

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DEFINED TERMS:

1. "BUSINESS DAY" means any day other than a Saturday, Sunday or state or federal holiday in the State of Colorado.
2. "INVOLUNTARY NO FAULT" events means termination of a Participant's employment by the Company or by the Participant for any reason other than a termination of Participant's employment (a) by the Company with "Cause," as defined in the Participant's employment agreement, or (b) by the Participant "without Good Reason," as defined in the Participant's employment agreement.
3. "TERMINATION DATE" means the date that a Participant's employment with the Company terminates for payroll purposes

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SCHEDULE I  
TO THE 2002 RETENTION PLAN

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	RETENTION BONUS		
PARTICIPANT	RETENTION BONUS	FIRST RETENTION PAYMENT	SECOND RETENTION PAYMENT
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EXHIBIT B  
SEVERANCE POLICY

See attached.

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SEVERANCE POLICY  
RHYTHMS NETCONNECTIONS INC.

An EMPLOYEE whose EMPLOYMENT with the COMPANY is terminated by the Company, on an INVOLUNTARY NO FAULT basis, shall be entitled to receive the following SEVERANCE BENEFITS:

1. In lieu of notice, an Employee shall be entitled to two weeks of BASE COMPENSATION payable in accordance with the Company's normal and customary payroll practices.
2. In addition to the Base Compensation described in 1. above, upon

executing and delivering a GENERAL RELEASE to the Company, Employees shall be entitled to receive SEVERANCE. The amount of Severance shall be as follows:

a. Employees (other than OFFICERS) who have been employed with the Company for twenty four (24) full calendar months or less (starting with the DATE OF HIRE, as reflected in the Company's records) as of the Termination Date shall be entitled to receive two (2) weeks of Base Compensation.

b. Employees (other than Officers) who have been employed with the Company for more than twenty four (24) full calendar months (starting with the Date of Hire, as reflected in the Company's records) as of the Termination Date shall be entitled to receive four (4) weeks of Base Compensation.

c. Officers (other than EXECUTIVE OFFICERS) shall be entitled to receive eleven (11) weeks of Base Compensation, regardless of their length of Employment with the Company.

d. Executive Officers shall be entitled to receive fifty (50) weeks of Base Compensation, regardless of their length of Employment with the Company.

3. In addition to the Base Compensation and Severance payments described in 1. and 2. above, each Employee whose Employment with the Company is terminated by the Company shall be entitled to be paid (a) the accrued balance in the Employee's account under the Company's PTO PLAN as of the Termination Date, (b) the cash balance in the Employee's "book account" under the Company's ESPP as of the Termination Date, (c) the balance in the Employee's account under the Company's 401K PLAN as of the Termination Date, if the Employee properly elects to rollover such balance to another plan or to receive a distribution of such balance, and (d) accrued and unpaid Base Compensation, if any, owed as of the Termination Date, in all cases in accordance with the terms and conditions set forth in the PTO Plan, ESPP, 401K Plan, or as shown in the Company's payroll records, as the case may be.

4. Notwithstanding anything herein to the contrary, (a) if an Employee's offer letter from, or employment agreement with, the Company provides for severance benefits that are more favorable to the Employee than the Severance Benefits described in this Severance Policy, the terms of the Employee's offer letter or employment agreement, as the case may be, shall govern, and (b) if the Severance Benefits described in this Severance Policy are more favorable to the Employee than the severance benefits provided for in an Employee's offer letter from, or employment agreement with, the Company, the terms  
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of this Severance Policy shall govern.

5. The Company reserves the right, in its sole and absolute discretion, to pay or agree to pay to selected Employees or groups of Employees EXCESS BENEFITS in connection with the termination of their Employment; provided, however, that nothing herein shall (a) entitle any Employee to receive any Excess Benefits or (b) require the Company to treat similarly situated Employees similarly under this Severance Policy or otherwise. Past examples of such discretionary additional payments include reimbursement for COBRA benefits for affected Employees with current and potentially disabling medical conditions and additional severance amounts to compensate for partially completed bonus periods.

6. The Company reserves the right, in its sole and absolute discretion, to change, modify or amend the terms of this Severance Policy at any time, including, but not limited to, terminating this Severance Policy, in its entirety; provided, however, that any change, modification or amendment to this

Severance Policy shall only apply to those Employees whose Termination Date occurs after the effective date of such change, modification or amendment.

7. Nothing in this Severance Policy shall confer upon any Employee any right to continue in the employ of the Company for any period of specific duration or otherwise interfere with or otherwise restrict in any way the rights of the Company or the Employee, which rights are hereby expressly reserved by each, to terminate such Employee's service at any time for any reason, with or without cause.

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DEFINED TERMS:

1. BASE COMPENSATION means (a) base salary for exempt bonused Employees, (b) regularly scheduled hours, not to exceed forty hours (40) hours, of compensation at the base rate for non-exempt Employees and (c) regular draw, plus 70% of target commission, for commissioned Employees, as shown on the Company's books and records as of the Employee's Termination Date.

2. COMPANY means Rhythms NetConnections Inc.

3. DATE OF HIRE means the date first worked by a new Employee, as reflected in the Company's payroll records.

4. EMPLOYEE means any full-time or part-time (as so treated in the Company's payroll records) employee of the Company or any of the Company's wholly-owned corporate subsidiaries.

5. EMPLOYMENT means employment as an Employee for payroll purposes, and shall not include independent contractors, consultants, directors, partners or other third-party relationships that are not considered "employment" for payroll purposes.

6. ESPP means the Company's 1999 Employee Stock Purchase Plan, as amended.

7. EXCESS BENEFITS means any and all severance benefits paid, or agreed to be paid, by the Company to an Employee in excess of the Severance payable under this Severance Policy.

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8. EXECUTIVE OFFICERS means Executive Vice Presidents, Senior Vice Presidents, the President, the Chief Information Officer, the Chief Financial Officer, Chief Legal Counsel and the Chief Executive Officer.

9. 401K PLAN means the Company's 401K Plan, as described in the Company's Plan Summary Booklet - Rhythms NetConnections Inc. 401K Savings Plan.

10. GENERAL RELEASE means the Company's standard form of employee general release, in effect as of the Employee's termination Date, or such other form of general release as mutually agreed to by the Company and the Employee.

11. INVOLUNTARY NO FAULT basis means termination of the Employee's Employment by the Company as a result of (a) elimination of the Employee's position by the Company, (b) a reduction in force by the Company or (c) a downsizing of department(s) by the Company.

12. OFFICERS means all Vice Presidents, including Area and Regional Vice Presidents, Executive Officers and any other persons legally designated as

officers of the Company.

13. PTO PLAN means the Company's Paid Time Off (PTO) Plan, as described in the Employee Policies Section of the Company's Intranet "The Beat."

14. SEVERANCE means the benefits described in Section 2. Of this Severance Policy.

15. SEVERANCE BENEFITS means all of the benefits provided in this Severance Policy.

16. TERMINATION DATE means the date that an Employee's employment with the Company terminates for payroll purposes.



EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT (this "AGREEMENT") is effective as of December \_\_, 2001 (the "EFFECTIVE DATE"), by and between Rhythms NetConnections Inc., a Delaware corporation with offices at 9100 East Mineral Circle, Englewood, Colorado 80112 (the "COMPANY"), and [FILL IN EMPLOYEE NAME] ("EMPLOYEE"). Each of the Company and Employee are sometimes referred to herein as a "PARTY," and the two of them, together, are collectively referred to herein as the "PARTIES".

RECITALS

WHEREAS, on December 3, 2001, the Company closed the transactions contemplated in that certain Asset Purchase Agreement, dated as of September 24, 2001, by and among the Company, Rhythms Links, Inc. Rhythms Links Inc. - Virginia, Rhythms Leasing Inc. and MCI WorldCom Network Services, Inc.; and

WHEREAS, on December \_\_, 2001, the Company adopted and approved the Company's 2002 Retention Plan, a copy of which is attached as Exhibit as EXHIBIT A hereto (the "2002 RETENTION PLAN"); and

WHEREAS, the Company desires Employee to remain in the employ of the Company, and Employee desires to remain in the employ of the Company, from the Effective Date through June 30, 2002, to assist in the disposition of the Company's remaining assets, the resolution of the Company's remaining liabilities and the ultimate dissolution and liquidation of the Company; and

WHEREAS, as an inducement to Employee to remain in the employ of the Company to continue to perform all of Employee's duties, responsibilities and obligations of his/her employment, as set forth herein, the Company has agreed to enter into this Agreement with Employee, and Employee, in turn, has agreed to continue in the employ of the Company by entering into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be bound hereby, agree as follows:

1. EMPLOYMENT. The Company hereby agrees to continue to employ Employee, and Employee hereby agrees to continue in the employ of the Company, upon the terms and subject to the conditions set forth in this Agreement for the Employment Period (as defined in Section 4(a)). This Agreement supercedes any and all prior agreements (written or oral) between Employee and the Company or the Company's predecessors in interest with respect to Employee's employment or any matters related thereto, and any such prior agreements shall be void and of no further force and effect as of the Effective Date; PROVIDED, HOWEVER, that notwithstanding anything herein to the contrary, the Company shall remain obligated to [(a) MAKE ALL PAYMENTS NOW DUE AND OWING TO EMPLOYEE OR THAT HEREAFTER BECOME DUE AND OWING

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TO EMPLOYEE PURSUANT TO THE COMPANY'S 2001 KEY EMPLOYEE RETENTION PROGRAM IN ACCORDANCE WITH AND SUBJECT TO ALL OF THE TERMS AND CONDITIONS OF SUCH PROGRAM; AND (b)] "cash out" on January 2, 2002, all of Employee's PTO (as defined below) accrued through and including December 31, 2001.

2. POSITION AND DUTIES.

a. During the Employment Period (as defined in Section 4(a) below),

Employee shall be employed by the Company and shall report directly to, shall be subject to the direct supervision, and shall perform such functions on behalf of the Company and its Subsidiaries pursuant to the instructions [FILL IN THE TITLE OF THE DIRECT SUPERVISOR].

b. Employee shall devote (i) his/her best efforts and (ii) his/her full time and attention to the business and affairs of the Company and its Subsidiaries (collectively referred to herein as "RHYTHMS") and the performance of his/her duties. Employee shall perform his/her duties and responsibilities to the best of his/her abilities in a timely, diligent, trustworthy, businesslike and efficient manner.

3. BASE SALARY; RETENTION BONUS; AND SEVERANCE.

a. BASE SALARY. During the Employment Period, Employee's base salary shall be \$\_\_\_\_\_, on an annualized basis ("BASE SALARY"), payable in accordance with the Company's standard and customary payroll practices. Employee's Base Salary shall be subject to review and adjustment as determined by the Board of Directors of the Company (the "BOARD"), acting in its sole and absolute discretion.

b. RETENTION BONUS. Employee shall be entitled to participate, and is hereby designated a Participant, in the 2002 Retention Plan.

c. SEVERANCE. The Company's Severance Policy (the "SEVERANCE POLICY," a copy of which is attached hereto as EXHIBIT B) shall remain in full force and effect throughout the Employment Period, Employee shall be deemed to be an "Employee (other than an Officer)" for all purposes under the Severance Policy and Employee shall be entitled to be paid severance in accordance with the terms and conditions of the Severance Policy. For purposes of the Severance Policy, expiration of this Agreement shall be deemed to be a termination of Employee's employment on an Involuntary No Fault basis.

4. EMPLOYMENT PERIOD. The term of this Agreement shall commence as of the Effective Date and shall terminate on the earliest to occur of (i) the date of Employee's termination of employment with the Company for any reason under Section 7 below, (ii) the termination of Employee's employment by the Company under Section 7 below or (iii) June 30, 2002 (the "EMPLOYMENT PERIOD"). All compensation and other benefits shall cease to accrue upon termination of the Employment Period, and in accordance with Section 7 below.

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5. BENEFITS AND OTHER MATTERS.

a. INSURANCE. The Company will provide retirement, employee health and welfare, and fringe benefit plans to Employee no less favorable than those generally made available to the Company's employees. Employee will be fully vested for all purposes under all such plans, other than any tax-qualified Company retirement plans.

b. PAID TIME OFF. Employee will be entitled to 80 hours of paid time off ("PTO") between January 2, 2002, and June 30, 2002, all of which will be fully vested as of January 1, 2002. Upon expiration of this Agreement or termination of Employee's employment for any reason, Employee will be entitled to receive payment (at the then applicable hourly rate, which shall be equal to annual Base Salary divided by 2,080 hours) for any accrued but unused PTO through the date of termination. PTO will cease to accrue on Employee's date of termination.

c. REIMBURSEMENT OF EXPENSES. The Company will reimburse Employee

for all reasonable out-of-pocket expenses actually incurred by Employee (in accordance with the Company's expense reimbursement policies, as amended from time to time) in connection with performing his/her obligations hereunder upon receipt from Employee of standard documentation supporting such expenses.

6. CONFIDENTIAL INFORMATION. Employee acknowledges that the information, observations and data obtained by him or her while employed by the Company and its Subsidiaries concerning the business or affairs of the Company and its Subsidiaries that are not generally available to the public other than as a result of a breach of this Agreement by Employee ("CONFIDENTIAL INFORMATION") are the property of Rhythms. Employee agrees that he shall not disclose to any unauthorized person or use for his/her own account any Confidential Information without the prior written consent of the Company unless, and in such case only to the extent that, such matters become generally known to and available for use by the public other than as a result of Employee's acts or omissions to act. Notwithstanding the foregoing, in the event Employee becomes legally compelled to disclose Confidential Information pursuant to judicial or administrative subpoena or process or other legal obligation, Employee may make such disclosure only to the extent required, in the opinion of counsel for Employee, to comply with such subpoena, process or other obligation. Employee shall, as promptly as possible and in any event prior to the making of such disclosure, notify the Company of any such subpoena, process or obligation and shall cooperate with the Company in seeking a protective order or other means of protecting the confidentiality of the Confidential Information.

7. TERMINATION. The Company may terminate Employee's employment at any time, with or without Cause (as defined below), subject to the provisions hereof. Employee may terminate his/her employment at any time, with or without Good Reason (as defined below), subject to the provisions hereof.

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a. EXPIRATION OF THE EMPLOYMENT PERIOD ON JUNE 30, 2002. If this Agreement expires on June 30, 2002 (without having expired or been terminated prior to that date) and Employee is in the employ of the Company on June 30, 2002, Employee shall be entitled to receive, on June 30, 2002, (A) the Second Retention Payment (as defined in, and payable under, the 2002 Retention Plan), (B) the amount of any accrued but unpaid Base Salary, accrued but unused PTO and all other accrued but unpaid employee benefits to which Employee is entitled through the date of termination, (C) severance pursuant to Section 3.c. above plus (D) unreimbursed expenses properly incurred through the date of termination

b. TERMINATION BY THE COMPANY WITH CAUSE OR TERMINATION BY EMPLOYEE WITHOUT GOOD REASON PRIOR TO JUNE 30, 2002. If, prior to June 30, 2002, (i) the Company terminates the employment of Employee with Cause or (ii) the Employee terminates his/her employment without Good Reason, Employee shall be entitled to receive (A) the amount of any accrued but unpaid Base Salary, accrued but unpaid PTO and all other accrued but unpaid employee benefits to which Employee is entitled through the date of termination plus (B) unreimbursed expenses properly incurred through the date of termination. If Employee's employment with the Company is terminated pursuant to this Section 7.b., Employee agrees to return to the Company, within 5 business days of the date of his/her termination, the First Retention Payment (as defined in the 2002 Retention Plan), and acknowledges that he/she forever and irrevocably forfeits all right, title and interest in and to the First Retention Payment and the Second Retention Payment (each as defined in the 2002 Retention Plan).

c. TERMINATION BY THE COMPANY WITHOUT CAUSE OR BY EMPLOYEE FOR GOOD REASON PRIOR TO JUNE 30, 2002. If, prior to June 30, 2002, (i) the Company terminates the employment of Employee without Cause or (ii) Employee terminates his/her employment for Good Reason, Employee shall be entitled to receive (A)

all remaining amounts payable to Employee under the 2002 Retention Plan, (B) the amount of any accrued but unpaid Base Salary, accrued but unpaid PTO and all other accrued but unpaid employee benefits to which Employee is entitled through the date of termination, (C) severance pursuant to Section 3.c. above plus (D) unreimbursed expenses properly incurred through the date of termination.

d. DEFINED TERMS.

i. "CAUSE" shall be limited to the following: (A) deliberate dishonesty or willful misconduct in the performance of Employee's responsibilities resulting in a material adverse effect on the Company's business, financial condition or operational results; or (B) Employee's substantial failure to satisfactorily perform your reasonably assigned duties to the Company after receiving written notice thereof detailing the alleged failures and the expiration of a reasonable cure period not to be less than 10 business days, without such failure(s) being substantially remedied by Employee, (C) an act or acts on Employee's part constituting a felony under the laws of the United States or any state thereof or crime involving moral turpitude. A determination that Cause exists shall be made by the Board, acting reasonably and in good faith, which determination shall be final and binding on all Parties.

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ii. "GOOD REASON" shall mean termination at the election of Employee based on (A) or (B) below (provided that Employee gives written notice of his/her intention to terminate employment within 30 days of the date on which the event described in (A) or (B) occurs and that the Company shall have 30 days from the receipt of such notice to cure any such defects) or by reason of the occurrence of an event described in (C) below:

(A) Without Employee's express written consent, the assignment of Employee to a position functionally below, on the Company's organizational chart, his or her position of \_\_\_\_\_ material diminution in Employee's duties as \_\_\_\_\_, except in connection with the termination of his/her employment by the Company with Cause, normal retirement, death or disability of Employee (see clause (C) below) or termination by the Employee without Good Reason;

(B) (1) any reduction by the Company in Employee's Base Salary or Retention Bonus (as defined in the 2002 Retention Plan) amount or (2) any requirement that Employee return to the Company any previously received Base Salary or Retention Bonus (as defined in the 2002 Retention Plan) amount; or

(C) Employee dies or becomes mentally or physically disabled for such period of time and under circumstances which entitle Employee to receive disability benefits under the terms of the Company's long-term disability insurance policy then maintained by the Company.

iii. "SUBSIDIARY" of an entity shall mean any corporation, limited liability company, limited partnership or other business organization of which the securities having a majority of the normal voting power in electing the board of directors, board of managers, general partner or similar governing body of such entity are, at the time of determination, owned by such entity directly or indirectly through one or more Subsidiaries.

8. [Reserved.]

9. MISCELLANEOUS.

a. SURVIVAL. Sections 3, 4, 5, 6 and 7 hereof shall survive and

continue in full force and effect in accordance with their terms notwithstanding any termination of the Employment Period.

b. ENTIRE AGREEMENT. Subject to Section 1 above, this Agreement and those documents expressly referred to herein embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way.  
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c. GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE DOMESTIC LAWS OF THE STATE OF COLORADO, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW PROVISION OR RULE (WHETHER OF THE STATE OF COLORADO OR ANY OTHER JURISDICTION) THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF COLORADO.

d. ARBITRATION. The Parties hereto agree to submit any dispute hereunder to binding arbitration. Arbitration shall be conducted in Denver, Colorado, under the commercial rules of the American Arbitration Association ("AAA") by a panel of three arbitrators. The aforementioned arbitrators shall be chosen as follows: The Company and Employee shall each designate one arbitrator from a list of acceptable and qualified arbitrators which will be provided by the AAA. The two arbitrators so designated shall then choose the panel's third arbitrator who shall be an attorney-at-law and who shall serve as the Chairman of the panel; provided that if either Party fails to designate an arbitrator within 10 days of receipt of AAA's list or if the two arbitrators are unable to agree on the appointment of the third arbitrator within 10 days of the later of the date of their respective appointments, such arbitrator shall be designated by AAA. If any arbitrator resigns or is unable to continue serving as such, the successor to such arbitrator shall be appointed by the Party who appointed such arbitrator or by the remaining arbitrators if they appointed such arbitrator, or by the AAA, as the case may be. A stenographic record of the arbitration must be maintained, the panel, including the successor arbitrator, may rely on such record and no rehearing shall be required. Each of the Parties shall pay the fees and expenses of the arbitrator appointed by it and each shall pay one-half of the fees and expenses of the third arbitrator and any other expenses of the arbitration, unless the arbitrators determine that the losing Party shall bear the cost of the arbitration. The decision of the arbitrators with respect to any issues subject to arbitration shall be final and binding on the Parties and may be entered into any court of competent jurisdiction by either Party, or application may be made to such court for judicial confirmation of the award and order of enforcement, as the case may be. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. Notwithstanding the foregoing, it is hereby agreed that no arbitration panel shall have any power to (a) add to, alter or modify the terms and conditions of this Agreement, (b) decide any issue which does not arise from the interpretation or application of the provisions of this Agreement or (c) award any punitive damages under this Agreement.

e. SEVERABILITY. The Company and Employee agree that the agreements and provisions contained in this Agreement are severable and divisible, that each such agreement and provision does not depend upon any other provision or agreement for its enforceability, and that each such agreement and provision set forth herein constitutes an enforceable obligation between the Parties. Consequently, the Parties agree that neither the invalidity nor the unenforceability of any provision of this Agreement shall affect the other provisions, and this Agreement shall remain in full force and effect and be construed in all respects as if such invalid or unenforceable provision were omitted.

f. [Reserved]

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g. WAIVER, MODIFICATION. No provisions of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by the Employee and the Company or such officer as may be specifically designated by the Board. No waiver by either Party hereto at any time of any breach by the other Party of, or compliance with, any condition or provision of this Agreement shall be deemed a waiver of similar or dissimilar provisions or conditions of this Agreement at the same or any prior or subsequent time.

h. SUCCESSORS; BINDING AGREEMENT. Employee hereby consents and agrees that the Company may require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company or any division of the Company to expressly assume and agree in writing to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place or, in the event the Company remains in existence, the Company may continue to employ the Employee under the terms hereof. Except in accordance with the foregoing sentence, this Agreement may not be assigned by the Company. This Agreement shall inure to the benefit of and be enforceable by Employee's personal or legal representatives, executors, estate, trustees, administrators, successors, heirs, distributees, devisees and legatees. This Agreement is personal to Employee and neither this Agreement nor any rights hereunder may be assigned by the Employee.

i. COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument.

j. HEADINGS. The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation hereof.

k. WITHHOLDING TAXES. Notwithstanding anything herein to the contrary, all amounts payable to Employee under this Agreement shall be subject to withholding by the Company for federal, state, local and other withholding taxes, as well as for the portion of the cost of such employee benefits elected by Employee for which Employee is responsible for paying (such as, Employee's portion of any life or health, dental or other insurance premiums, etc.). In addition, the Company shall have the right to offset against any amounts payable to Employee hereunder all amounts, if any owed, by Employee to the Company.

l. ENFORCEMENT. If either Party is required to arbitrate or seek judicial enforcement of his/her or its rights under this Agreement, the Party prevailing in such proceeding shall be entitled to be reimbursed by the other for all reasonable attorneys' fees and expenses.

m. VALID AND BINDING. The Company represents that it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement, and that this Agreement is valid, binding and enforceable against the Company in accordance with its terms.

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n. NOTICES. All notices or other communications in connection with the Agreement shall be in writing and may be given by personal delivery or mailed, certified mail, return receipt requested, postage prepaid or delivered by a nationally recognized overnight courier to the Parties at the addresses set forth below (or at such other address as the Company or Employee may specify in

a notice to the Employee or Company, as the case may be):

If to the Company:

Rhythms NetConnections Inc.  
9100 East Mineral Circle  
Englewood, Colorado 80112  
Fax No.: 303/476-5700  
Attention: President or Chief Operating Officer

with a copy to:

Brownstein Hyatt & Farber, P.C.  
410 17th Street, Suite 2200  
Denver, Colorado 80202  
Fax No: 303/223-0970  
Attn: John L. Ruppert, Esq.

If to Employee:

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IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

RHYTHMS NETCONNECTIONS INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[EMPLOYEE]  
\_\_\_\_\_

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EXHIBIT A

2002 RETENTION PROGRAM

See attached.



RHYTHMS NETCONNECTIONS INC.  
2002 RETENTION PLAN

Employee shall be entitled to participate in this 2002 Retention Plan (this "PLAN") (each of the participants in the Plan are "PARTICIPANTS").

Participant shall be entitled to receive a retention bonus ("RETENTION BONUS") in the amount set forth opposite his or her name on SCHEDULE I attached hereto at the times, in such Installments (as defined below) and subject to the terms and conditions set forth in this Plan.

The aggregate amount of each Participant's Retention Bonus shall be set forth opposite such Participant's name on SCHEDULE I attached hereto.

Subject to the immediately following paragraph, each Participant's Retention Bonus, to the extent earned (as described below), shall be paid to such Participant in two installments. The first installment, in the amount of 25% of the Participant's Retention Bonus (the "FIRST RETENTION PAYMENT"), shall be paid to the Participant, to the extent earned (as described below), in cash on January 2, 2002. The second installment, in the amount of the remaining 75% of the Participant's Retention Bonus (the "SECOND RETENTION PAYMENT"), shall be paid to the Participant, to the extent earned (as described below), in cash on June 30, 2002. Each of the First Retention Payment and the Second Retention Payment are sometimes individually referred to herein as an "INSTALLMENT," and both of them, together, are sometimes collectively referred to herein as the "INSTALLMENTS."

In order to be entitled to receive the First Retention Payment of his or her Retention Bonus, a Participant must be employed by the Company on January 1, 2002. In order to be entitled to receive the Second Retention Payment of his or her Retention Bonus, a Participant must be employed by the Company on June 30, 2002. Notwithstanding anything herein to the contrary, a Participant shall be entitled to receive all unpaid Installments of his or her Retention Bonus (determined as of the "TERMINATION DATE" (as defined below) of such Employee's employment with the Company) if such Participant's employment with the Company is terminated, prior to June 30, 2002, by reason of the occurrence of an "INVOLUNTARY NO FAULT" event (as defined below).

Notwithstanding anything herein to the contrary, if a Participant receives the First Retention Payment of his or her Retention Bonus and then such Participant's Employment with the Company is terminated, after January 1, 2002, and prior to June 30, 2002, for any reason other than the occurrence of an "INVOLUNTARY NO FAULT" event (as defined below), then the Participant shall be required to return the full amount of his or her First Retention Payment to the Company promptly following the Participant's Termination Date ("REFUND AMOUNT"). Each Participant hereby agrees and authorizes the Company to deduct from any and all amounts due and owing from the Company to the Participant (i.e., base salary, bonus, paid time off, expense reimbursements, etc.) an aggregate amount equal to such Refund Amount. In the event that the amounts owed to the Participant are insufficient to return to the Company the full Refund Amount, then the Participant shall be personally liable to the Company for the shortfall.

The Company reserves the right, in its sole and absolute discretion, to increase the Retention Bonus of selected Participants or groups of Participants (over and above the amount shown on SCHEDULE I hereto for such Participants or groups of Participants) at any time and from time to time; provided, however, that nothing herein shall (a) entitle any Employee to receive any such increased

Bonus or (b) require the Company to treat similarly situated Participants similarly under this Plan or otherwise.

In addition to the rights described in the preceding paragraph, the Company reserves the right, in its sole and absolute discretion, to change, modify or amend the terms of this Plan at any time, including, but not limited to, changing the amount of the Retention Bonuses shown on SCHEDULE I hereto, changing the number of Installments and/or the timing of the payment of such Installments, adding additional Participants to SCHEDULE I hereto and/or terminating this Plan, in its entirety; provided, however, that any change, modification or amendment to this Plan shall not adversely affect any Participant in the Plan who is a Participant on the last "BUSINESS DAY" (as defined below) immediately preceding the effective date of such change, modification or amendment, without such Participant's prior written consent.

Nothing in this Plan shall confer upon any Participant any right to continue in the employ of the Company for any period of specific duration or otherwise interfere with or otherwise restrict in any way the rights of the Company or the Participant, which rights are hereby expressly reserved by each, to terminate such Participant's service at any time for any reason, with or without cause.

Any benefits provided to Participants under this Plan are in addition to, and not in lieu of, any other benefits provided to Participants under the Participants' employment agreements with the Company (if any), the Company's Paid Time Off and Family and Medical Leave Policy and/or any other employee benefit plan, policy or arrangement in effect for employees at any time and from time to time.

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DEFINED TERMS:

1. "BUSINESS DAY" means any day other than a Saturday, Sunday or state or federal holiday in the State of Colorado.
2. "INVOLUNTARY NO FAULT" events means termination of a Participant's employment by the Company or by the Participant for any reason other than a termination of Participant's employment (a) by the Company with "Cause," as defined in the Participant's employment agreement, or (b) by the Participant "without Good Reason," as defined in the Participant's employment agreement.
3. "TERMINATION DATE" means the date that a Participant's employment with the Company terminates for payroll purposes

SCHEDULE I  
TO THE 2002 RETENTION PLAN

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RETENTION BONUS

PARTICIPANT	RETENTION BONUS	FIRST RETENTION PAYMENT	SECOND RETENTION PAYMENT
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EXHIBIT B

SEVERANCE POLICY

See attached.

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SEVERANCE POLICY

RHYTHMS NETCONNECTIONS INC.

An EMPLOYEE whose EMPLOYMENT with the COMPANY is terminated by the Company, on an INVOLUNTARY NO FAULT basis, shall be entitled to receive the following SEVERANCE BENEFITS:

1. In lieu of notice, an Employee shall be entitled to two weeks of BASE COMPENSATION payable in accordance with the Company's normal and customary payroll practices.

2. In addition to the Base Compensation described in 1. above, upon executing and delivering a GENERAL RELEASE to the Company, Employees shall be entitled to receive SEVERANCE. The amount of Severance shall be as follows:

a. Employees (other than OFFICERS) who have been employed with the Company for twenty four (24) full calendar months or less (starting with the DATE OF HIRE, as reflected in the Company's records) as of the Termination Date shall be entitled to receive two (2) weeks of Base Compensation.

b. Employees (other than Officers) who have been employed with the Company for more than twenty four (24) full calendar months (starting with the Date of Hire, as reflected in the Company's records) as of the Termination Date shall be entitled to receive four (4) weeks of Base Compensation.

c. Officers (other than EXECUTIVE OFFICERS) shall be entitled to receive eleven (11) weeks of Base Compensation, regardless of their length of Employment with the Company.

d. Executive Officers shall be entitled to receive fifty (50) weeks of Base Compensation, regardless of their length of Employment with the Company.

3. In addition to the Base Compensation and Severance payments described in 1. and 2. above, each Employee whose Employment with the Company is terminated by the Company shall be entitled to be paid (a) the accrued balance in the Employee's account under the Company's PTO PLAN as of the Termination Date, (b) the cash balance in the Employee's "book account" under the Company's ESPP as of the Termination Date, (c) the balance in the Employee's account under the Company's 401K PLAN as of the Termination Date, if the Employee properly elects to rollover such balance to another plan or to receive a distribution of such balance, and (d) accrued and unpaid Base Compensation, if any, owed as of

the Termination Date, in all cases in accordance with the terms and conditions set forth in the PTO Plan, ESPP, 401K Plan, or as shown in the Company's payroll records, as the case may be.

4. Notwithstanding anything herein to the contrary, (a) if an Employee's offer letter from, or employment agreement with, the Company provides for severance benefits that are more favorable to the Employee than the Severance Benefits described in this Severance Policy, the terms of the Employee's offer letter or employment agreement, as the case may be, shall govern, and (b) if the Severance Benefits described in this Severance Policy are more favorable to the Employee than the severance benefits provided for in an Employee's offer letter from, or employment agreement with, the Company, the terms

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of this Severance Policy shall govern.

5. The Company reserves the right, in its sole and absolute discretion, to pay or agree to pay to selected Employees or groups of Employees EXCESS BENEFITS in connection with the termination of their Employment; provided, however, that nothing herein shall (a) entitle any Employee to receive any Excess Benefits or (b) require the Company to treat similarly situated Employees similarly under this Severance Policy or otherwise. Past examples of such discretionary additional payments include reimbursement for COBRA benefits for affected Employees with current and potentially disabling medical conditions and additional severance amounts to compensate for partially completed bonus periods.

6. The Company reserves the right, in its sole and absolute discretion, to change, modify or amend the terms of this Severance Policy at any time, including, but not limited to, terminating this Severance Policy, in its entirety; provided, however, that any change, modification or amendment to this Severance Policy shall only apply to those Employees whose Termination Date occurs after the effective date of such change, modification or amendment.

7. Nothing in this Severance Policy shall confer upon any Employee any right to continue in the employ of the Company for any period of specific duration or otherwise interfere with or otherwise restrict in any way the rights of the Company or the Employee, which rights are hereby expressly reserved by each, to terminate such Employee's service at any time for any reason, with or without cause.

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DEFINED TERMS:

1. BASE COMPENSATION means (a) base salary for exempt bonused Employees, (b) regularly scheduled hours, not to exceed forty hours (40) hours, of compensation at the base rate for non-exempt Employees and (c) regular draw, plus 70% of target commission, for commissioned Employees, as shown on the Company's books and records as of the Employee's Termination Date.

2. COMPANY means Rhythms NetConnections Inc.

3. DATE OF HIRE means the date first worked by a new Employee, as reflected in the Company's payroll records.

4. EMPLOYEE means any full-time or part-time (as so treated in the Company's payroll records) employee of the Company or any of the Company's wholly-owned corporate subsidiaries.

5. EMPLOYMENT means employment as an Employee for payroll purposes, and shall not include independent contractors, consultants, directors, partners or other third-party relationships that are not considered "employment" for payroll purposes.

6. ESPP means the Company's 1999 Employee Stock Purchase Plan, as amended.

7. EXCESS BENEFITS means any and all severance benefits paid, or agreed to be paid, by the Company to an Employee in excess of the Severance payable under this Severance Policy.

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8. EXECUTIVE OFFICERS means Executive Vice Presidents, Senior Vice Presidents, the President, the Chief Information Officer, the Chief Financial Officer, Chief Legal Counsel and the Chief Executive Officer.

9. 401K PLAN means the Company's 401K Plan, as described in the Company's Plan Summary Booklet - Rhythms NetConnections Inc. 401K Savings Plan.

10. GENERAL RELEASE means the Company's standard form of employee general release, in effect as of the Employee's termination Date, or such other form of general release as mutually agreed to by the Company and the Employee.

11. INVOLUNTARY NO FAULT basis means termination of the Employee's Employment by the Company as a result of (a) elimination of the Employee's position by the Company, (b) a reduction in force by the Company or (c) a downsizing of department(s) by the Company.

12. OFFICERS means all Vice Presidents, including Area and Regional Vice Presidents, Executive Officers and any other persons legally designated as officers of the Company.

13. PTO PLAN means the Company's Paid Time Off (PTO) Plan, as described in the Employee Policies Section of the Company's Intranet "The Beat."

14. SEVERANCE means the benefits described in Section 2. Of this Severance Policy.

15. SEVERANCE BENEFITS means all of the benefits provided in this Severance Policy.

16. TERMINATION DATE means the date that an Employee's employment with the Company terminates for payroll purposes.