

# SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

## FORM 10-Q

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 FOR THE QUARTER ENDED DECEMBER 31, 2002**

or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission file number 000-24786

### Aspen Technology, Inc.

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**04-2739697**

(IRS Employer Identification No.)

**Ten Canal Park, Cambridge, Massachusetts 02141**

(Address of principal executive office and zip code)

**(617) 949-1000**

(Registrant's telephone number, including area code)

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

As of February 10, 2003, there were 38,979,761 shares of the registrant's common stock (par value \$.10 per share) outstanding.

## PART I. FINANCIAL INFORMATION

### Item 1. Financial Statements

#### ASPEN TECHNOLOGY, INC. CONSOLIDATED CONDENSED BALANCE SHEETS

	December 31, 2002	June 30, 2002
(Unaudited and in thousands, except share data)		
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 50,610	\$ 33,571
Short-term investments	3,055	18,549
Accounts receivable, net	76,600	95,418
Unbilled services	21,745	30,569
Current portion of long-term installments receivable, net	36,418	40,404
Deferred tax asset	2,929	2,929
Prepaid expenses and other current assets	20,676	18,699
Total current assets	212,033	240,139
Long-term installments receivable, net	69,296	68,318
Property and leasehold improvements, at cost	129,245	133,676
Accumulated depreciation and amortization	(89,798)	(82,873)
	39,447	50,803

Computer software development costs, net	15,017	13,810
Purchased intellectual property, net	2,143	27,626
Other intangible assets, net	31,740	41,105
Goodwill, net	11,341	84,258
Deferred tax asset	15,576	15,576
Other assets	6,036	6,708
	\$ 402,629	\$ 548,343
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current portion of long-term debt	\$ 4,807	\$ 5,334
Amount owed to Accenture	8,300	11,100
Accounts payable and accrued expenses	93,258	94,987
Unearned revenue	17,730	20,983
Deferred revenue	35,612	38,624
Total current liabilities	159,707	171,028
Long-term debt and obligations, less current maturities	3,334	5,885
5 <sup>1</sup> / <sub>4</sub> % Convertible subordinated debentures	86,250	86,250
Obligation subject to common stock settlement	4,245	1,810
Deferred revenue, less current portion	15,797	9,548
Deferred tax liability	14,964	15,003
Other liabilities	5,268	5,031
Stockholders' equity:		
Preferred stock		
Outstanding—60,000 shares as of December 31, 2002 and June 30, 2002	54,064	50,753
Common stock		
Outstanding—38,150,608 as of December 31, 2002 and 37,500,753 as of June 30, 2002	3,838	3,773
Additional paid-in capital	313,484	310,039
Accumulated deficit	(257,448)	(107,593)
Accumulated other comprehensive loss	(372)	(2,682)
Treasury stock, at cost	(502)	(502)
Total stockholders' equity	113,064	253,788
	\$ 402,629	\$ 548,343

The accompanying notes are an integral part of these financial statements.

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## ASPEN TECHNOLOGY, INC.

### CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS

	Three Months Ended December 31,		Six Months Ended December 31,	
	2002	2001	2002	2001
	(Unaudited and in thousands, except per share data)			
Software licenses	\$ 36,781	\$ 39,939	\$ 66,427	\$ 59,170
Service and other	46,192	47,057	93,796	94,017
Total revenues	82,973	86,996	160,223	153,187
Cost of software licenses	3,511	3,054	6,846	5,498
Cost of service and other	26,823	30,261	54,831	60,403
Selling and marketing	27,031	28,451	56,185	55,075
Research and development	15,997	17,829	33,742	35,828
General and administrative	8,923	7,520	18,744	14,942
Goodwill impairment charge	74,715	—	74,715	—
Restructuring and other charges	60,529	—	60,529	2,642
Total costs and expenses	217,529	87,115	305,592	174,388
Loss from operations	(134,556)	(119)	(145,369)	(21,201)

Other income (expense), net	(313)	(171)	(814)	(355)
Interest income, net	268	144	849	897
Loss before benefit from income taxes	(134,601)	(146)	(145,334)	(20,659)
Benefit from income taxes	—	(44)	—	(6,198)
Net loss	(134,601)	(102)	(145,334)	(14,461)
Preferred stock dividend earned	(605)	—	(1,210)	—
Accretion of preferred stock discount	(1,682)	—	(3,311)	—
Net loss applicable to common shareholders	\$ (136,888)	\$ (102)	\$ (149,855)	\$ (14,461)
Basic and diluted loss applicable to common shareholders per share	\$ (3.59)	\$ (0.00)	\$ (3.93)	\$ (0.46)
Basic and diluted weighted average shares outstanding	38,128	31,748	38,092	31,740

The accompanying notes are an integral part of these financial statements.

ASPEN TECHNOLOGY, INC.

CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS

	Six Months Ended December 31,	
	2002	2001
(Unaudited and in thousands)		
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>		
Net loss	\$ (145,334)	\$ (14,461)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	14,258	11,283
Goodwill impairment charge	74,715	—
Asset impairments and write-offs under the restructuring and other charges	38,732	—
Loss on revaluation of intercompany loans denominated in foreign currencies	481	—
Research and development costs subject to common stock settlement	564	—
Deferred income taxes	509	(45)
Decrease in accounts receivable	19,484	3,164
Decrease in unbilled services	9,713	2,057
Decrease in installments receivable	1,798	15,242
Increase in prepaid expenses and other current assets	(1,952)	(1,398)
Decrease in accounts payable and accrued expenses	(1,805)	(14,381)
Increase (decrease) in unearned revenue	(3,721)	193
Increase in deferred revenue	3,689	4,148
Net cash provided by operating activities	11,131	5,802
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>		
Purchase of property and leasehold improvements	(2,901)	(5,654)
Proceeds from sale of property	—	1,725
Sale of investment securities	15,489	16,646
Decrease (increase) in other long-term assets	694	(1,199)
Increase in computer software development costs	(4,055)	(3,132)
Increase in other long-term liabilities	407	—
Net cash provided by investing activities	9,634	8,386
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>		
Issuance of common stock under employee stock purchase plans	2,219	3,052
Exercise of stock options	81	148
Payment of amount owed to Accenture	(3,100)	—
Payments of long-term debt and capital lease obligations	(3,245)	(2,443)
Net cash (used in) provided by financing activities	(4,045)	757
EFFECTS OF EXCHANGE RATE CHANGES ON CASH	319	216

DECREASE IN CASH AND CASH EQUIVALENTS	17,039	15,161
CASH AND CASH EQUIVALENTS, beginning of period	33,571	36,633
CASH AND CASH EQUIVALENTS, end of period	\$ 50,610	\$ 51,794

The accompanying notes are an integral part of these financial statements.

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## ASPEN TECHNOLOGY, INC.

### NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS (Unaudited)

#### 1. Interim Condensed and Consolidated Financial Statements

In the opinion of management, the accompanying unaudited interim consolidated condensed financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America for interim financial information and pursuant to the rules and regulations of the Securities and Exchange Commission (SEC) for reporting on Form 10-Q. Accordingly, certain information and footnote disclosures required for complete financial statements are not included herein. It is suggested that these unaudited interim consolidated condensed financial statements be read in conjunction with the audited consolidated financial statements for the year ended June 30, 2002, which are contained in the Annual Report on 10-K of Aspen Technology, Inc. (the Company), as previously filed with the SEC. In the opinion of management, all adjustments (consisting of normal, recurring adjustments) considered necessary for a fair presentation of the financial position, results of operations, and cash flows at the dates and for the periods presented have been included. The consolidated condensed balance sheet presented as of June 30, 2002 has been derived from the consolidated financial statements that have been audited by the Company's independent public accountants. The results of operations for the three- and six-month periods ended December 31, 2002 are not necessarily indicative of the results to be expected for the full year.

In November 2001, the Emerging Issues Task Force (EITF) released Issue No. 01-14, "Income Statement Characterization of Reimbursements Received for 'Out-of-Pocket' Expenses Incurred". This requires that reimbursements received for out-of-pocket expenses be recorded as revenue and not as a reduction of expenses. Reimbursable out-of-pocket expenses totaling \$4.9 million and \$10.0 million in the three and six months ended December 31, 2002, and \$5.1 million and \$10.0 million in the three and six months ended December 31, 2001, respectively, have been classified as service and other revenue and cost of service and other.

In August 2001, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards (SFAS) No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets". This statement supersedes SFAS No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of", and the accounting and reporting provisions of Accounting Principles Board Opinion No. 30, "Reporting the Results of Operations—Reporting the Effects of Disposal of a Segment of a Business, and Extraordinary, Unusual and Infrequently Occurring Events and Transactions". Under this statement, one accounting model is required to be used for long-lived assets to be disposed of by sale, whether previously held and used or newly acquired. This statement broadens the presentation of discontinued operations to include more disposal transactions. Under the provisions of this statement, several long-lived assets were reviewed for impairment in association with the October 2002 restructuring plan, resulting in an impairment charge during the three months ended December 31, 2002.

#### 2. Short-term Investments

Securities purchased to be held for indefinite periods of time, and not intended at the time of purchase to be held until maturity, are classified as available-for-sale securities. Securities classified as available-for-sale are required to be recorded at market value in the financial statements. Unrealized gains and losses have been accounted for as a separate component of stockholders' equity within accumulated other comprehensive loss. Realized investment gains and losses were not material in the three- or six- month periods ended December 31, 2002 and 2001. Investments held as of December 31, 2002 consisted of \$3.1 million in U.S. corporate bonds. The Company does not use derivative financial instruments in its investment portfolio.

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Cash equivalents totaling \$10.8 million were held by the bank as compensating balances for outstanding letters of credit as of December 31, 2002.

#### 3. Sale of Installments Receivable

Installments receivable represent the present value of future payments related to the financing of noncancelable term and perpetual license agreements that provide for payment in installments over a one-to five-year period. A portion of each installment agreement is recognized as interest income in the accompanying consolidated condensed statements of operations. The interest rates utilized for the three and six months ended December 31, 2002 were 7.0% and 7.0% to 7.5%, respectively. In the three and six months ended December 31, 2001, the rates utilized were 7.0% and 7.0% to 8.0%, respectively.

The Company has arrangements to sell its installments receivable to two financial institutions. These arrangements provide for the sale of up to a maximum of \$160.0 million, subject to the approval by the institutions, to be outstanding at any one time. The Company sold, with limited recourse, certain of its installment contracts for aggregate proceeds of approximately \$24.1 million and \$32.6 million during the three and six months ended December 31, 2002, respectively. The financial institutions have certain recourse to the Company upon non-payment by the customer under the installments receivable. The amount of recourse is determined pursuant to the provisions of the Company's contracts with the financial institutions. Collections of these receivables reduce the Company's recourse obligations, as defined. Generally, no gain or loss is recognized on the sale of the receivables, due to the consistency of the discount rates used by the Company and the financial institutions.

At December 31, 2002, the balance of the uncollected principal portion of all contracts sold was \$138.5 million. The Company expects that there will be continued availability under the arrangements, as the collection of the sold receivables will reduce this outstanding balance and the maximum limits under the arrangements can be increased. The Company's potential recourse obligation related to these contracts is within the range of \$6.8 million to \$9.2 million. In addition, the Company is obligated to pay additional costs to the financial institutions in the event of default by the customer.

#### 4. Derivative Instruments and Hedging

The Company follows the provisions of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities." SFAS No. 133 requires that all derivatives, including foreign currency exchange contracts, be recognized on the balance sheet at fair value. Derivatives that are not hedges must be recorded at fair value through earnings. If a derivative is a hedge, depending on the nature of the hedge, changes in the fair value of the derivative are either offset against the change in fair value of assets, liabilities or firm commitments through earnings or recognized in other comprehensive income until the hedged item is recognized in earnings. The ineffective portion of a derivative's change in fair value is to be immediately recognized in earnings.

Forward foreign exchange contracts are used primarily by the Company to hedge certain balance sheet exposures resulting from changes in foreign currency exchange rates. Such exposures primarily result from portions of the Company's assets that are denominated in currencies other than the U.S. dollar, primarily the British Pound, the Japanese Yen and the Euro. These foreign exchange contracts are entered into to hedge recorded installments receivable made in the normal course of business, and accordingly, are not speculative in nature. As part of its overall strategy to manage the level of exposure to the risk of foreign currency exchange rate fluctuations, the Company hedges the majority of its installments receivable denominated in foreign currencies.

At December 31, 2002, the Company had effectively hedged \$7.9 million of installments receivable denominated in foreign currency. The Company does not hold or transact in financial instruments for purposes other than risk management. The gross value of the long-term installments receivable that were denominated in foreign currency was \$25.0 million at December 31, 2002. The December 2002

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installments receivable mature through January 2007. There have been no material gains or losses recorded relating to hedge contracts for the periods presented.

The Company records its foreign currency exchange contracts at fair value in its consolidated balance sheet and the related gains or losses on these hedge contracts are recognized in earnings. Gains and losses resulting from the impact of currency exchange rate movements on forward foreign exchange contracts are designated to offset certain accounts or installments receivable and are recognized as other income or expense in the period in which the exchange rates change and offset the foreign currency losses and gains on the underlying exposures being hedged. A small portion of the forward foreign currency exchange contract is designated to hedge the future interest income of the related receivables. The gains and losses resulting from the impact of currency rate movements on forward currency exchange contracts are recognized in other comprehensive income for this portion of the hedge.

The following table provides information about the Company's foreign currency derivative financial instruments outstanding as of December 31, 2002. The information is provided in U.S. dollar amounts, as presented in the Company's consolidated condensed financial statements. The table presents the notional amount (at contract exchange rates), the estimated fair value and the weighted average contractual foreign currency rates (in thousands, except average contract rates):

	Notional Amount	Estimated Fair value	Average Contract Rate
Euro	\$ 3,289	\$ 3,570	1.08
Japanese Yen	2,143	1,981	118.88
British Pound Sterling	1,981	2,132	0.67
Swiss Franc	456	493	1.50
	\$ 7,869	\$ 8,176	

\* The estimated fair value is based on the estimated amount at which the contracts could be settled based on the spot rates as of December 31, 2002. The market risk associated with these instruments resulting from currency exchange rate movements is expected to offset the market risk of the underlying installments being hedged. The credit risk is that the Company's banking counterparties may be unable to meet the terms of the agreements. The Company minimizes such risk by limiting its counterparties to major financial institutions. In addition, the potential risk of loss with any one party resulting from this type of credit risk is monitored. Management does not expect any loss as a result of default by other parties. However, there can be no assurances that the Company will be able to mitigate market and credit risks described above.

#### 5. Net Income (Loss) Per Common Share

Basic income (loss) per common share is calculated by dividing net income (loss) applicable to common shareholders by the weighted average number of common shares outstanding during the period. Diluted earnings (loss) per common share reflect the dilutive effect, if any, of potential common shares.

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The following dilutive effect of potential common shares were excluded from the calculation of diluted weighted average shares outstanding as their effect would be anti-dilutive (in thousands):

	Three Months Ended December 31,		Six Months Ended December 31,	
	2002	2001	2002	2001
Convertible debt	1,628	1,628	1,628	1,628
Convertible preferred stock	3,135	—	3,135	—
Obligation subject to common stock settlement	1,329	—	1,114	—
Preferred stock dividend, to be settled in common stock	95	—	95	—
Options, restricted stock and warrants	8	1,648	64	1,907

Total 6,195      3,276      6,036      3,535

## 6. Comprehensive Income (Loss)

Comprehensive income (loss) is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances from non-owner sources. The components of comprehensive income (loss) for the three and six months ended December 31, 2002 and 2001 are as follows (in thousands):

	Three Months Ended		Six Months Ended	
	2002	2001	2002	2001
Net loss	\$ (134,601)	\$ (102)	\$ (145,334)	\$ (14,461)
Unrealized gain (loss) on investments	(51)	(175)	(5)	(106)
Foreign currency translation adjustment	553	(613)	2,314	829
Comprehensive loss	\$ (134,099)	\$ (890)	\$ (143,025)	\$ (13,738)

## 7. Goodwill Adjustments and Impairment Charge

During the three months ended December 31, 2002, the Company made adjustments to the purchase price allocation associated with the Hyprotech acquisition, which was completed in May 2002. These consisted of various adjustments to the opening balance sheet to accrue for certain obligations and contingencies and to write-off certain assets. These adjustments resulted in a \$1.8 million increase to goodwill. The Company intends to make final adjustments to the purchase price, as required, through May 2003.

The Company follows the provisions of SFAS No. 142, "Goodwill and Other Intangible Assets". In October 2002, management determined that the goodwill should be tested for impairment as a result of management's lowered revenue expectations and the overall decline in the Company's market value. An independent third party valued the Company's three reporting units, license, consulting services, and maintenance and training. The valuation was based on an income approach, using a five-year present value calculation of income, and a market approach, using comparable company valuations. Based on this analysis, it was determined that the full values of the goodwill associated with the license reporting unit and consulting services reporting unit were impaired. It was also determined that the fair value of the maintenance and training reporting unit exceeded its carrying value, resulting in no impairment of its goodwill. This amounted to a \$74.7 million aggregate impairment charge.

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The changes in the carrying amount of goodwill by reporting unit for the three months ended December 31, 2002 were as follows (in thousands):

	Reporting Unit			
	License	Consulting Services	Maintenance and Training	Total
Carrying amount as of September 30, 2002	\$ 67,933	\$ 5,298	\$ 11,052	\$ 84,283
Purchase price adjustment	1,407	88	264	1,759
Effect of change in rates used for translation	(17)	6	25	14
Impairment charge	(69,323)	(5,392)	—	(74,715)
Carrying amount as of December 31, 2002	\$ —	\$ —	\$ 11,341	\$ 11,341

## 8. Restructuring and Other Charges

### (a) Q2 FY03

The restructuring and other charges, totaling \$60.5 million in the accompanying consolidated condensed statements of operations for the three and six months ended December 31, 2002, consist of \$55.6 million of charges associated with the Company's October 2002 restructuring plan, and \$4.9 million of accrued legal costs related to the ongoing FTC investigation as discussed in Note 10.

In October 2002, the Company initiated a plan to further reduce operating expenses in response to first quarter revenue results that were below expectations and general economic uncertainties. In addition, the Company revised its revenue expectations for the remainder of the fiscal year and beyond, primarily related to the Company's manufacturing / supply chain product line, which has been effected the most by the current economic conditions. The plan to reduce operating expenses resulted in headcount reductions, consolidation of facilities, cancellation of certain internal capital projects and discontinuation of development and support for certain non-critical products. As a result of the discontinuation of development and support for certain products, coupled with the revised revenue expectations, certain long-lived assets were reviewed and determined to be impaired in accordance with SFAS No. 144. These actions resulted in an aggregate restructuring charge of \$55.6 million. As of December 31, 2002, there was \$12.0 million remaining in accrued expenses relating to the remaining severance obligations and lease payments. During the three months ended December 31, 2002, the following activity was recorded (in thousands):

	Closedown/ Consolidation of Facilities	Employee Severance, Benefits, and Related Costs	Impairment/ Write-off of Assets	Total
Restructuring charge	\$ 8,670	\$ 8,169	\$ 38,732	\$ 55,571
Write-off/Impairment of assets	—	—	(38,732)	(38,732)

Payments	(69)	(4,769)	—	(4,838)
Accrued expenses, December 31, 2002	\$ 8,601	\$ 3,400	\$ —	\$ 12,001

The Company expects that the remaining obligations will be paid-out by December 2010.

*Closedown/consolidation of facilities:* Approximately \$8.7 million of the restructuring charge relates to the termination of facility leases and other lease related costs. The facility leases had remaining terms ranging from several months to eight years. The amount accrued is an estimate of the remaining obligation under the lease or actual costs to buy-out leases, reduced by expected income from the sublease of the underlying properties.

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*Employee severance, benefits and related costs:* Approximately \$8.2 million of the restructuring charge relates to the reduction in headcount. Approximately 400 employees, or 20% of the workforce, were eliminated under the restructuring plan implemented by management. All geographic regions and business units were affected, including services, sales and marketing, research and development, and general and administrative.

*Impairment/write-off of assets:* Approximately \$38.7 million of the restructuring charge relates to charges associated with long-lived assets that were reviewed for impairment under the provisions of SFAS No. 144 and were either written-down to fair value or written-off due to the fact that they will no longer be utilized. The resulting charges include:

- A \$23.6 million impairment charge related to the intellectual property purchased from Accenture in February 2002. The fair value of this asset was determined by forecasting the future net cash flows associated with the asset and then was compared to its carrying value. This intellectual property is used primarily in the development of manufacturing / supply chain software products, within the Company's license line of business. As noted above, the revenue expectations for the manufacturing / supply chain product line were significantly reduced by management, which prompted the review for impairment.
- \$13.2 million in impairment charges related to acquired technology, computer software development costs and purchased software. These assets were considered to be impaired because they will either no longer be used or their carrying values were in excess of their fair values. The assets that will no longer be used were identified by management's decisions to either discontinue future development efforts associated with certain products or discontinue internal capital projects. The fair values of those assets that had carrying values in excess of their fair values, were determined by forecasting the future net cash flows associated with the products. All of these assets were part of the license line of business.
- A \$1.9 million impairment charge related to assets and liabilities associated with certain products of which the Company is divesting itself. These assets have historically been considered to be part of the license line of business. As part of the cost reductions, management decided that the Company would no longer devote resources to the development or support of these products. The fair value of the related assets was determined from letters of intent to purchase the intellectual property.

**(b) Q4 FY02**

In the fourth quarter of fiscal 2002, the Company initiated a plan to reduce its operating expenses and to restructure operations around its two primary product lines, engineering software and manufacturing/supply chain software. The Company reduced worldwide headcount by approximately 10% or 200 employees, closed-down and consolidated facilities, and disposed of certain assets, resulting in an aggregate restructuring charge of \$14.4 million. As of December 31, 2002, there was \$7.6 million remaining in accrued expenses relating to the remaining severance obligations and lease payments. During the three months ended December 31, 2002, the following activity was recorded:

	Closedown/ Consolidation of Facilities	Employee Severance, Benefits, and Related Costs	Total
Accrued expenses, September 30, 2002	\$ 4,838	\$ 4,088	\$ 8,926
Payments	(70)	(1,290)	(1,360)
Accrued expenses, December 31, 2002	\$ 4,768	\$ 2,798	\$ 7,566

The Company expects that the remaining obligations will be paid-out by December 2010.

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**(c) Q1 FY02**

During the first quarter of fiscal 2002, in light of further economic uncertainties, Company management made a decision to adjust its business plan by further reducing spending. This change in business plan consisted of a reduction in worldwide headcount of approximately 5% of the workforce and a reduction of certain future discretionary expenses. As a result of these measures, the Company recorded a restructuring charge of \$2.6 million, primarily for severance, for the quarter ended September 30, 2001. As of December 31, 2002, all obligations had been paid-out. During the three months ended December 31, 2002, the following activity was recorded:

Employee Severance, Benefits, and Related Costs	Total
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Accrued expenses, September 30, 2002	\$	47	\$	47
Payments		(47)		(47)
Accrued expenses, December 31, 2002	\$	—	\$	—

**(d) Q4 FY01**

In the third quarter of fiscal 2001, the revenues realized by the Company were below the Company's expectations as customers delayed spending in the widespread slowdown in information technology spending and the deferral of late-quarter purchasing decisions. At that time, the Company also reduced its revenue expectations for the fourth quarter of fiscal year 2001 and for the fiscal year 2002. Based on the reduced revenue expectations, Company management evaluated the business plan and made significant changes, resulting in a restructuring plan for the Company's operations. This restructuring plan included a reduction in headcount, a substantial decrease in discretionary spending and a sharpening of the Company's e-business focus to emphasize its marketplace solutions. The restructuring plan resulted in a pretax charge totaling \$7.0 million. As of December 31, 2002, there was \$0.9 million remaining in accrued expenses relating to the restructuring. During the three months ended December 31, 2002, the following activity was recorded:

		Closedown/ Consolidation of Facilities		Total
Accrued expenses, September 30, 2002	\$	1,105	\$	1,105
Payments		(190)		(190)
Accrued expenses, December 31, 2002	\$	915	\$	915

The Company expects that the remaining obligations will be paid-out by March 2008.

**(e) Q4 FY99**

In the fourth quarter of fiscal 1999, the Company undertook certain actions to restructure its business. The restructuring resulted from a lower than expected level of license revenues which adversely affected fiscal year 1999 operating results. The license revenue shortfall resulted primarily from delayed decision making driven by economic difficulties among customers in certain of the Company's core vertical markets. The restructuring plan resulted in a pre-tax restructuring charge totaling \$17.9 million. As of December 31, 2002, there was \$0.6 million remaining in the accrued expenses relating to the restructuring. During the three months ended December 31, 2002, the following activity was recorded:

		Closedown/ Consolidation of Facilities
Accrued expenses, September 30, 2002	\$	274
Net sub-lease receipts (lease payments)		324
Accrued expenses, December 31, 2002	\$	598

The Company expects that the remaining obligations will be paid-out by December 2004.

**9. Strategic Alliance**

On February 8, 2002 the Company entered into a strategic alliance with Accenture, focused on creating solutions for manufacturing and supply chain execution by chemical and petroleum manufacturers. Under the alliance, the Company will pay \$29.6 million for intellectual property and up to \$7.4 million for services. The \$29.6 million intellectual property obligation was partially settled with the payment of \$18.5 million in common stock on June 9, 2002. In August 2002, the alliance agreements were amended to provide a payment schedule for the remaining \$11.1 million. Under this revised payment schedule, the Company made cash payments totaling \$3.1 million in the six months ended December 31, 2002 and will make the remaining payments in installments of cash, due through July 2003. In addition, the unpaid balance of this obligation accrues interest at a rate of 1.5% per month and, as of December 31, 2002, was secured by a pledge of the Company's patents and software. On January 30, 2003, the agreement was modified so that the unpaid balance of the obligation will be secured by a pledge of certain installments receivable not sold to financial institutions. As discussed in Note 8(a), during the three months ended December 31, 2002 it was determined that the intellectual property was impaired, which resulted in an impairment charge of \$23.6 million.

Beginning July 1, 2002, the Company is obligated to pay Accenture a royalty on sales of certain software products over a four-year period. During the three and six months ended December 31, 2002, the Company accrued \$0.3 million and \$0.5 million, respectively, associated with this royalty obligation.

**10. Commitments and Contingencies**

**(a) FTC investigation**

By letter of June 7, 2002, the FTC informed the Company that it was conducting an investigation into the competitive effects of the Company's recent acquisition of Hyprotech. The Company completed production of all requested documents in January 2003, is currently complying with deposition requests and expects to conclude its presentation to the FTC of its market analysis and supporting arguments for the acquisition in February 2003. The FTC may determine to challenge the acquisition through an administrative civil complaint seeking to declare the acquisition in violation of Section 7 of the Clayton Act or Section 5 of the FTC Act. If the FTC were to prevail in that challenge, it could seek to impose a wide variety of remedies, some of which may have a material adverse effect on the Company's ability to continue to operate under its current business plans. These potential

remedies include divestiture of Hyprotech, as well as mandatory licensing of Hyprotech software products and the Company's other engineering software products to one or more of its competitors. The Company continues to cooperate fully with the FTC. During the quarter ended December 31, 2002, the Company provided \$4.9 million for estimated legal fees associated with the FTC investigation.

**(b) Litigation**

On May 31, 2002, the Company acquired the capital stock of Hyprotech from AEA Technology plc. AEA Technology is engaged in arbitration proceedings in England over a contract dispute with KBC Advanced Technologies PLC, an English technology and consulting services company ("KBC"). The dispute remains in arbitration and concerns the characterization of certain technology for purposes of calculating royalties, plus other contractual rights, with respect to Hysys.Refinery. Hysys.Refinery was retained by AEA Technology with support for Hysys.Refinery to be provided by Hyprotech pursuant to a contract with AEA Technology. The Company indemnified AEA under the Sale and Purchase Agreement between AEA Technology plc and the Company dated May 10, 2002 against any costs, damages or expenses in respect of a claim brought by KBC alleging damages due to AEA's i) failure to comply with its contractual obligations after the acquisition, ii) breach of non-competition clauses with respect to activities occurring after the acquisition, iii) breach of certain obligations to KBC under its agreement by virtue of the acquisition, or iv) execution of the acquisition agreement.

On September 11, 2002, the Company and Hyprotech were sued by KBC in state district court in Houston, Texas on issues related to the technology subject to review in the arbitration proceeding. KBC has requested actual and exemplary damages, costs and interest. The Company believes the causes of action to be without merit and will defend the case vigorously. The Company has filed a counterclaim against KBC requesting actual and punitive damages and attorney fees.

**11. Segment Information**

SFAS No. 131, "Disclosures about Segments of an Enterprise and Related Information", establishes standards for reporting information about operating segments in companies' financial statements. Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance. The Company's chief operating decision maker is the Chief Executive Officer of the Company.

The Company is organized geographically and by line of business. The Company has three major lines of business operating segments: license, consulting services and maintenance and training. The Company also evaluates certain subsets of business segments by vertical industries as well as by product categories. While the Executive Management Committee evaluates results in a number of different ways, the line of business management structure is the primary basis for which it assesses financial performance and allocates resources.

The accounting policies of the line of business operating segments are the same as those described in the Company's Annual Report on Form 10-K for the fiscal year ended June 30, 2002. The Company does not track assets or capital expenditures by operating segments. Consequently, it is not practical to

show assets, capital expenditures, depreciation or amortization by operating segments. The following table presents a summary of operating segments (in thousands):

	License	Consulting Services	Maintenance and Training	Total
<b>Three Months Ended December 31, 2002—</b>				
Revenues from unaffiliated customers	\$ 36,781	\$ 26,849	\$ 19,343	\$ 82,973
Controllable expenses	16,334	20,717	3,035	40,086
Controllable margin(1)	\$ 20,447	\$ 6,132	\$ 16,308	\$ 42,887
<b>Three Months Ended December 31, 2001—</b>				
Revenues from unaffiliated customers	\$ 39,939	\$ 32,250	\$ 14,807	\$ 86,996
Controllable expenses	14,562	22,618	2,873	40,053
Controllable margin(1)	\$ 25,377	\$ 9,632	\$ 11,934	\$ 46,943
<b>Six Months Ended December 31, 2002—</b>				
Revenues from unaffiliated customers	\$ 66,427	\$ 54,581	\$ 39,215	\$ 160,223
Controllable expenses	34,254	43,360	6,352	83,966
Controllable margin(1)	\$ 32,173	\$ 11,221	\$ 32,863	\$ 76,257
<b>Six Months Ended December 31, 2001—</b>				
Revenues from unaffiliated customers	\$ 59,170	\$ 64,690	\$ 29,327	\$ 153,187
Controllable expenses	29,426	44,759	5,729	79,914
Controllable margin(1)	\$ 29,744	\$ 19,931	\$ 23,598	\$ 73,273

(1) The controllable margins reported reflect only the expenses of the line of business and do not represent the actual margins for each operating segment since they do not contain an allocation for selling and marketing, general and administrative, development and other corporate expenses incurred in support of the line of business.

**Profit Reconciliation (in thousands):**

	Three Months Ending December 31,		Six Months Ending December 31,	
	2002	2001	2002	2001
Total controllable margin for reportable segments	\$ 42,887	\$ 46,943	\$ 76,257	\$ 73,273
Selling and marketing	(23,178)	(21,741)	(48,494)	(42,210)
Research and development	—	(5,242)	—	(10,281)
General and administrative and overhead	(19,021)	(20,079)	(37,888)	(39,341)
Goodwill impairment losses	(74,715)	—	(74,715)	—
Restructuring and other charges	(60,529)	—	(60,529)	(2,642)
Interest and other income and expense, net	(45)	(27)	35	542
Loss before benefit from income taxes	\$ (134,601)	\$ (146)	\$ (145,334)	\$ (20,659)

**12. Accounting Policies and Recent Accounting Pronouncements**

During the three months ended December 31, 2002 the Company adopted a policy to accrue future legal fees associated with outstanding litigation. Previously, the Company had not encountered litigation that resulted in material defense costs, and thus the Company had no established policy. Liabilities for loss contingencies arising from claims, assessments, litigation and other sources are

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recorded when it is probable that a liability has been incurred and the amount of the claim assessment or damages can be reasonably estimated.

In April 2002, the FASB issued SFAS No. 145, "Rescission of FASB Statements SFAS Nos. 4, 44 and 64, Amendment of FASB Statement No. 13 and Technical Corrections". SFAS No. 145 rescinds Statement No. 4, "Reporting Gains and Losses from Extinguishments of Debt", and an amendment of that Statement, FASB Statement No. 64, "Extinguishments of Debt Made to Satisfy Sinking-Fund Requirements". SFAS No. 145 also rescinds FASB Statement No. 44, "Accounting for Intangible Assets of Motor Carriers". SFAS No. 145 amends FASB Statement No. 13, "Accounting for Leases", to eliminate an inconsistency between the required accounting for sale-leaseback transactions and the required accounting for certain lease modifications that have economic effects that are similar to sale leaseback transactions. SFAS No. 145 also amends other existing authoritative pronouncements to make various technical corrections, clarify meanings, or describe their applicability under changed conditions. The provision of SFAS No. 145 related to the rescission of Statement No. 4 shall be applied in fiscal years beginning after May 15, 2002. The provisions of SFAS No. 145 related to Statement No. 13 should be applied for transactions occurring after May 15, 2002. Early application of the provisions of this Statement is encouraged. The adoption of SFAS No. 145 did not have a significant impact on consolidated results of operations, financial position or cash flows.

In June 2002, the FASB issued SFAS No. 146, "Accounting for Costs Associated with Exit or Disposal Activities." This statement supersedes EITF No. 94-3, "Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity." Under this statement, a liability or a cost associated with a disposal or exit activity is recognized at fair value when the liability is incurred rather than at the date of an entity's commitment to an exit plan as required under EITF 94-3. The provisions of this statement are effective for exit or disposal activities that are initiated after December 31, 2002, with early adoption permitted. As the Company's October 2002 restructuring plan was undertaken prior to December 31, 2002, the previous guidance as set forth in EITF 94-3 was followed.

In November 2002, the FASB issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others" (FIN 45). This interpretation elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. It also clarifies that a guarantor is required to recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. The initial recognition and initial measurement provisions of FIN 45 are applicable on a prospective basis to guarantees issued or modified after December 31, 2002. The disclosure requirements of FIN 45 are effective for financial statements of interim or annual periods ending after December 15, 2002. The Company is currently evaluating the impact that the adoption of the recognition provisions of FIN 45 will have on its financial statements.

**13. Subsequent events**

In January 2003, the Company executed a Loan Arrangement with Silicon Valley Bank. This arrangement provides a line of credit of up to the lesser of (i) \$15.0 million or (ii) 70% of eligible domestic receivables, and a line of credit of up to the lesser of (i) \$10.0 million or (ii) 80% of eligible foreign receivables. The lines of credit bear interest at the bank's prime rate (4.25% at December 31, 2002) plus  $\frac{1}{2}\%$ , which may be reduced to the bank's prime rate upon the achievement of two consecutive quarters of net income. The Company is required to maintain a \$4.0 million compensating cash balance with the bank, or be subject to an unused line fee and collateral handling fees. The lines of credit will initially be collateralized by nearly all of the assets of the Company, and upon achieving certain net income targets, the collateral will be reduced to a lien on the accounts receivable. The

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Company is required to meet certain financial covenants, including minimum tangible net worth, minimum cash balances and an adjusted quick ratio. The Loan Arrangement expires in January 2005.

On January 31, 2003, the Company completed the sale of the assets and liabilities associated with the Aspen Metals products. These products were originally acquired in the December 2000 acquisition of Broner Systems. The Company will receive an aggregate of £300,000 (\$494,000 as of January 31, 2003), to be paid in four semi-annual installments from June 2003 to January 2005.

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## Item 2. *Management's Discussion and Analysis of Financial Condition and Results of Operations*

**THE FOLLOWING DISCUSSION AND ANALYSIS OF OUR FINANCIAL CONDITION AND RESULTS OF OPERATIONS SHOULD BE READ IN CONJUNCTION WITH OUR CONSOLIDATED FINANCIAL STATEMENTS AND THE RELATED NOTES APPEARING ELSEWHERE IN THIS QUARTERLY REPORT ON FORM 10-Q AND IN OUR ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED JUNE 30, 2002. THIS DISCUSSION AND ANALYSIS CONTAINS FORWARD-LOOKING STATEMENTS THAT INVOLVE RISKS, UNCERTAINTIES AND ASSUMPTIONS. OUR ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THOSE ANTICIPATED IN THESE FORWARD-LOOKING STATEMENTS AS A RESULT OF A NUMBER OF FACTORS, INCLUDING THOSE SET FORTH UNDER "FACTORS THAT MAY AFFECT FUTURE RESULTS AND THE TRADING PRICE OF OUR COMMON STOCK" AND ELSEWHERE IN THIS QUARTERLY REPORT.**

### **Overview**

Since our founding in 1981, we have developed and marketed software and services to companies in the process industries. In addition to internally generated growth, we have acquired a number of businesses, including Hyprotech in the fourth quarter of fiscal 2002.

We acquired Hyprotech in a transaction accounted for as a purchase. Our operating results include the operating results of these acquisitions only for periods subsequent to their respective dates of acquisition.

We typically license our engineering solutions for terms of three to five years and license our manufacturing/supply chain solutions for terms of 99 years.

Software license revenues, including license renewals, consists principally of revenues earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence, or VSOE, of fair value exists for all undelivered elements. We determine VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates, which we charge our customers when we sell our consulting services separately. For an element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenues under license arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. We have established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenues are recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. We use installment contracts as a standard business practice and have a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services revenues are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include telephone support and unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. We do not provide specified upgrades to our customers in connection with the licensing of our software products.

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Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time-and-expense contracts and consulting and training revenues are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

We license our software in U.S. dollars and several foreign currencies. We hedge material foreign currency-denominated installments receivable with specific hedge contracts in amounts equal to those installments receivable. Historically, we experience minor foreign currency exchange gains or losses due to foreign exchange rate fluctuations, the impact of which have not been material in periods prior to the fourth quarter of fiscal 2002. During the fourth quarter of fiscal 2002, the U.S. Dollar weakened against European currencies, and we experienced foreign currency exchange losses primarily due to ineffective hedging of accounts receivable of our foreign subsidiaries, in particular Hyprotech and its subsidiaries, that were denominated in currencies other than the local functional currencies. We do not expect fluctuations in foreign currencies to have a significant impact on either our revenues or our expenses in the foreseeable future.

### ***Reclassification of Prior Period Amounts***

We adopted EITF Issue No. 01-14, "Income Statement Characterization of Reimbursements Received for "Out-of-Pocket" Expenses Incurred", in the three months ended March 31, 2002. This requires that reimbursements received for out-of-pocket expenses be recorded as revenue and not as a reduction of expenses. Reimbursable out-of-pocket expenses totaling \$4.9 million and \$10.0 million in the three and six months ended December 31, 2002 and \$5.1 million and \$10.0 million in the three and six months ended December 31, 2001, have been classified as service and other revenue and cost of service and other.

### ***Significant Events—Quarter Ended December 31, 2002***

In October 2002, we determined that the goodwill should be tested for impairment as a result of lowered revenue expectations and the overall decline in our market value. An independent third party valued our three business operating units, license, consulting services, and maintenance and training. The valuation was based on an income approach, using a five-year present value calculation of income, and a market approach, using comparable company valuations. Based on this analysis, it was determined that the full values of the goodwill associated with the license unit and consulting services unit were impaired. It was also determined that the fair value of the maintenance and training reporting unit exceeded its carrying value, resulting in no impairment of its goodwill. This amounted to a \$74.7 million aggregate impairment charge, recorded in the accompanying consolidated condensed statements of operations.

The restructuring and other charges, totaling \$60.5 million in the accompanying consolidated condensed statements of operations for the three and six months ended December 31, 2002, consist of \$55.6 million of charges associated with our October 2002 restructuring plan, and \$4.9 million of accrued legal costs, related to the FTC investigation into our acquisition of Hyprotech.

In October 2002, we initiated a plan to further reduce operating expenses in response to first quarter revenue results that were below our expectations and to general economic uncertainties. In addition, we revised our revenue expectations for the remainder of the fiscal year and beyond, primarily related to our manufacturing / supply chain product line, which has been effected the most by the current economic conditions. The plan to reduce operating expenses resulted in headcount reductions,

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consolidation of facilities, cancellation of certain internal capital projects and discontinuation of development and support for certain non-critical products. As a result of the discontinuation of development and support for certain products, coupled with the revised revenue expectations, certain long-lived assets were reviewed and determined to be impaired in accordance with SFAS No. 144. These actions resulted in an aggregate restructuring charge of \$55.6 million. As of December 31, 2002, there was \$12.0 million remaining in accrued expenses relating to the remaining severance obligations and lease payments. During the three months ended December 31, 2002, the following activity was recorded (in thousands):

	Closedown/ Consolidation of Facilities	Employee Severance, Benefits, and Related Costs	Impairment/ Write-off of Assets	Total
Restructuring charge	\$ 8,670	\$ 8,169	\$ 38,732	\$ 55,571
Write-off/Impairment of assets	—	—	(38,732)	(38,732)
Payments	(69)	(4,769)	—	(4,838)
Accrued expenses, December 31, 2002	\$ 8,601	\$ 3,400	\$ —	\$ 12,001

We expect that the remaining obligations will be paid-out by December 2010.

*Closedown/consolidation of facilities:* Approximately \$8.7 million of the restructuring charge relates to the termination of facility leases and other lease related costs. The facility leases had remaining terms ranging from several months to eight years. The amount accrued is an estimate of the remaining obligation under the lease or actual costs to buy-out leases, reduced by expected income from the sublease of the underlying properties.

*Employee severance, benefits and related costs:* Approximately \$8.2 million of the restructuring charge relates to the reduction in headcount. Approximately 400 employees, or 20% of the workforce, were eliminated under the restructuring plan. All geographic regions and business units were affected, including services, sales and marketing, research and development, and general and administrative.

*Impairment/write-off of assets:* Approximately \$38.7 million of the restructuring charge relates to charges associated with long-lived assets that were reviewed for impairment under the provisions of SFAS No. 144 and were either written-down to fair value or written-off due to the fact that they will no longer be utilized. The resulting charges include:

- A \$23.6 million impairment charge related to the intellectual property purchased from Accenture in March 2002. The fair value of this asset was determined by forecasting the future net cash flows associated with the asset and was then compared to its carrying value. This intellectual property is used primarily in the development of manufacturing / supply chain software products, within our license line of business. As noted above, the revenue expectations for the manufacturing / supply chain product line were significantly reduced, which prompted the review for impairment.
- \$13.2 million in impairment charges related to acquired technology, computer software development costs and purchased software. These assets were considered to be impaired because they will either no longer be used or their carrying values were in excess of their fair values. The assets that will no longer be used were identified by decisions to either discontinue future development efforts associated with certain products or discontinue internal capital projects. The fair values of those assets that had carrying values in excess of their fair values, were determined by forecasting the future net cash flows associated with the products. All of these assets were part of the license line of business.

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- A \$1.9 million impairment charge related to assets and liabilities associated with certain products of which we are divesting ourselves. These assets have historically been considered to be part of our license line of business. As part of the cost reductions, we decided that we would no longer devote resources to the development or support of these products. The fair value of the related assets was determined from letters of intent to purchase the intellectual property.

### Summary of Restructuring Accruals

In the fourth quarter of fiscal 2002, we initiated a plan to reduce operating expenses and to restructure operations around our two primary product lines, engineering software and manufacturing/supply chain software. We reduced worldwide headcount by approximately 10% or 200 employees, closed-down and consolidated facilities, and disposed of certain assets, resulting in an aggregate restructuring charge of \$14.4 million. As of December 31, 2002, there was \$7.6 million remaining in accrued expenses relating to the remaining severance obligations and lease payments. During the three months ended December 31, 2002, the following activity was recorded:

	Closedown/ Consolidation of Facilities	Employee Severance, Benefits, and Related Costs	Total
Accrued expenses, September 30, 2002	\$ 4,838	\$ 4,088	\$ 8,926
Payments	(70)	(1,290)	(1,360)
Accrued expenses, December 31, 2002	\$ 4,768	\$ 2,798	\$ 7,566

We expect that the remaining obligations will be paid-out by December 2010.

During the first quarter of fiscal 2002, in light of further economic uncertainties, our management made a decision to adjust our business plan by further reducing spending. This change in business plan consisted of a reduction in worldwide headcount of approximately 5% of the workforce and a reduction of certain future discretionary expenses. As a result of these measures, we recorded a restructuring charge of \$2.6 million, primarily for severance, for the quarter ended September 30, 2001. As of December 31, 2002, all obligations had been paid-out. During the three months ended December 31, 2002, the following activity was recorded:

	Employee Severance, Benefits, and Related Costs	Total
Accrued expenses, September 30, 2002	\$ 47	\$ 47
Payments	(47)	(47)
Accrued expenses, December 31, 2002	\$ —	\$ —

In the third quarter of fiscal 2001, the revenues realized were below expectations as customers delayed spending in the widespread slowdown in information technology spending and the deferral of late-quarter purchasing decisions. At that time, we also reduced our revenue expectations for the fourth quarter of fiscal year 2001 and for the fiscal year 2002. Based on the reduced revenue expectations, management evaluated the business plan and made significant changes, resulting in a restructuring plan for our operations. This restructuring plan included a reduction in headcount, a substantial decrease in discretionary spending and a sharpening of our e-business focus to emphasize our marketplace solutions. The restructuring plan resulted in a pretax charge totaling \$7.0 million. As of December 31,

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2002, there was \$0.9 million remaining in accrued expenses relating to the restructuring. During the three months ended December 31, 2002, the following activity was recorded:

	Closedown/ Consolidation of Facilities	Total
Accrued expenses, September 30, 2002	\$ 1,105	\$ 1,105
Payments	(190)	(190)
Accrued expenses, December 31, 2002	\$ 915	\$ 915

We expect that the remaining obligations will be paid-out by March 2008.

In the fourth quarter of fiscal 1999, we undertook certain actions to restructure our business. The restructuring resulted from a lower than expected level of license revenues which adversely affected fiscal year 1999 operating results. The license revenue shortfall resulted primarily from delayed decision making driven by economic difficulties among customers in certain of our core vertical markets. The restructuring plan resulted in a pre-tax restructuring charge totaling \$17.9 million. As of December 31, 2002, there was \$0.6 million remaining in the accrued expenses relating to the restructuring. During the three months ended December 31, 2002, the following activity was recorded:

	Closedown/ Consolidation of Facilities
Accrued expenses, September 30, 2002	\$ 274
Net sub-lease receipts (lease payments)	324
Accrued expenses, December 31, 2002	\$ 598

We expect that the remaining obligations will be paid-out by December 2004.

### Critical Accounting Estimates and Judgments

Our consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of our financial statements requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. The significant accounting policies that we believe are the most critical to aid in fully understanding and evaluating our reported financial results include the following:

- Revenue recognition for both software licenses and fixed-fee consulting services,
- Impairment of long-lived assets, goodwill and intangible assets,
- Accounting for income taxes, and
- Allowance for doubtful accounts.

## **Revenue Recognition—Software Licenses**

We recognize software license revenue in accordance with American Institute of Certified Public Accountants (AICPA) Statement of Position, or SOP, No. 97-2, "Software Revenue Recognition", as amended by SOP No. 98-4 and SOP No. 98-9, as well as the various interpretations and clarifications

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of those statements. These statements require that four basic criteria must be satisfied before software license revenue can be recognized:

- persuasive evidence of an arrangement between ourselves and a third party exists;
- delivery of our product has occurred;
- the sales price for the product is fixed or determinable; and
- collection of the sales price is probable.

Our management uses its judgment concerning the satisfaction of these criteria, particularly the criteria relating to the determination of whether the fee is fixed and determinable and the criteria relating to the collectibility of the receivables relating to such sales. Should changes and conditions cause management to determine that these criteria are not met for certain future transactions, all or substantially all of the software license revenue recognized for such transactions could be deferred.

## **Revenue Recognition—Consulting Services**

We recognize revenue associated with fixed-fee service contracts in accordance with AICPA SOP No. 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type Contracts", using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount of the anticipated loss is provided currently. Our management uses its judgment concerning the estimation of the total costs to complete the contract, considering a number of factors, including the experience of the personnel that are performing the services and the overall complexity of the project. Should changes and conditions cause actual results to differ significantly from management's estimates, revenue recognized in future periods could be adversely affected.

## **Impairment of Long-lived Assets, Goodwill and Intangible Assets**

In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets", we review the carrying value of long-lived assets periodically, based upon the expected future operating cash flows of our business. These future cash flow estimates are based on historical results, adjusted to reflect our best estimate of future markets and operating conditions, and are continuously reviewed based on actual operating trends. Actual results may differ materially from these estimates.

In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets", we conduct at least an annual assessment of the carrying value of our goodwill assets. We obtain a third-party valuation of the reporting units associated with the goodwill assets, which is based on either estimates of future income from the reporting units or estimates of the market value of the units, based on comparable recent transactions. These estimates of future income are based upon historical results, adjusted to reflect our best estimate of future markets and operating conditions, and are continuously reviewed based on actual operating trends. Actual results may differ materially from these estimates. In addition, the relevancy of recent transactions used to establish market value for our reporting units is based on management's judgment.

During the three months ended December 31, 2002, we recorded charges related to the impairment of certain long-lived assets and intangible assets and a portion of our goodwill. The timing and size of future impairment charges involves the application of management's judgment and estimates and could result in the write-off of all or substantially all of our long-lived assets, intangible assets and goodwill.

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## **Accounting for Income Taxes**

As part of the process of preparing our consolidated financial statements we are required to estimate our income taxes in each of the jurisdictions in which we operate. This process involves us estimating our actual current tax liabilities together with assessing temporary differences resulting from differing treatment of items, such as deferred revenue, for tax and accounting purposes. These differences result in deferred tax assets and liabilities, which are included within our consolidated balance sheet. Tax assets also result from net operating losses, research and development tax credits and foreign tax credits. We must then assess the likelihood that our deferred tax assets will be recovered from future taxable income and to the extent we believe that recovery is not likely, we must establish a valuation allowance. To the extent we establish a valuation allowance or increase this allowance in a period, the impact will be included in the tax provision in the statement of operations.

Significant management judgment is required in determining our provision for income taxes, our deferred tax assets and liabilities and any valuation allowance recorded against our deferred tax assets. The valuation allowance is based on our estimates of taxable income by jurisdiction in which we operate and the period over which our deferred tax assets will be recoverable. In the event that actual results differ from these estimates or we adjust these estimates in future periods we may need to establish an additional valuation allowance which could result in a tax provision equal to the carrying value of our deferred tax assets.

### **Allowance for Doubtful Accounts**

We make judgments as to our ability to collect outstanding receivables and provide allowances for the portion of receivables when collection becomes doubtful. Provisions are made based upon a specific review of all significant outstanding invoices. For those invoices not specifically reviewed, provisions are provided at differing rates, based upon the age of the receivable. In determining these percentages, we analyze our historical collection experience and current economic trends. If the historical data we use to calculate the allowance provided for doubtful accounts do not reflect the future ability to collect outstanding receivables, additional provisions for doubtful accounts may be required for all or substantially all of certain receivable balances.

## Results of Operations

The following table sets forth the percentages of total revenues represented by certain consolidated condensed statement of operations data for the periods indicated:

	Three Months Ended		Six Months Ended	
	December 31, 2002	December 31, 2001	December 31, 2002	December 31, 2001
<b>Revenues:</b>				
Software licenses	44.3%	45.9%	41.5%	38.6%
Service and other	55.7	54.1	58.5	61.4
<b>Total revenues</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Expenses:</b>				
Cost of software licenses	4.2	3.5	4.3	3.6
Cost of service and other	32.3	34.8	34.2	39.3
Selling and marketing	32.6	32.7	35.1	36.0
Research and development	19.3	20.5	21.1	23.4
General and administrative	10.8	8.6	11.7	9.8
Goodwill impairment loss	90.0	—	46.5	—
Restructuring and other charges	73.0	—	37.8	1.7
<b>Total expenses</b>	<b>262.2</b>	<b>100.1</b>	<b>190.7</b>	<b>113.8</b>
Income (loss) from operations	(162.2)	(0.1)	(90.7)	(13.8)
Other income (expense), net	(0.4)	(0.3)	(0.5)	(0.2)
Interest income, net	0.4	0.2	0.5	0.5
<b>Income (loss) before provision for (benefit from) income taxes</b>	<b>(162.2)</b>	<b>(0.2)</b>	<b>(90.7)</b>	<b>(13.5)</b>
Provision for (benefit from) income taxes	—	(0.1)	—	(4.1)
<b>Net income (loss)</b>	<b>(162.2)</b>	<b>(0.1)</b>	<b>(90.7)</b>	<b>(9.4)</b>
Accretion of preferred stock discount and dividend	(2.8)	—	(2.8)	—
<b>Net income (loss) applicable to common stockholders</b>	<b>(165.0)%</b>	<b>(0.1)%</b>	<b>(93.5)%</b>	<b>(9.4)%</b>

### Comparison of the Three and Six Months Ended December 31, 2002 and 2001

#### Total Revenues

Revenues are derived from software licenses and maintenance and other services. Total revenues for the three months ended December 31, 2002 decreased 4.6% to \$83.0 million from \$87.0 million in the three months ended December 31, 2001. Total revenues for the six months ended December 31, 2002 increased 4.6% to \$160.2 million from \$153.2 million in the six months ended December 31, 2001.

Total revenues from customers outside the United States were \$41.7 million and \$82.3 million, or 50.3% and 51.4% of total revenues, for the three and six months ended December 31, 2002 respectively, as compared to \$31.5 million and \$65.3 million, or 36.2% and 42.6% of total revenues, for the three and six months ended December 31, 2001. The geographical mix of license revenues can vary from quarter to quarter; however, for fiscal 2003, the overall geographical mix of revenues from customers outside the United States is expected to be relatively consistent with the prior fiscal year.

#### Software License Revenues

Software license revenues represented 44.3% of total revenues for the three months ended December 31, 2002, as compared to 45.9% in the three months ended December 31, 2001. Revenues from software licenses for the three months ended December 31, 2002 decreased 7.9% to \$36.8 million from \$39.9 million in the three months ended December 31, 2001. This decrease primarily was due to the overall decline in demand for our manufacturing/supply chain products, in addition to the inclusion in the three months ended December 31, 2001 of software license revenue from a significant purchase by The Dow Chemical Company, offset by the inclusion of software license revenue associated with Hyprotech, which we acquired in May 2002.

Software license revenues represented 41.5% of total revenues for the six months ended December 31, 2002, as compared to 38.6% in the six months ended December 31, 2001. Revenues from software licenses for the six months ended December 31, 2002 increased 12.3% to \$66.4 million from \$59.2 million in the six months ended December 31, 2001. This increase for the comparable six month periods was due a 54.2% increase in license revenue in the three months ended September 30, 2002, as compared to the three months ended September 30, 2001. This increase was due to the inclusion in the three months ended September 30, 2002 of software license revenue associated with Hyprotech, and the negative impact of the September 11, 2001 attacks on the closure rate of license agreements in the final weeks of the three months ended September 30, 2001.

## ***Service and Other Revenues***

Revenues from service and other consist of consulting services, post contract support on software licenses, training and sales of documentation. Revenues from service and other for the three months ended December 31, 2002 decreased 1.8% to \$46.2 million, from \$47.1 million in the three months ended December 31, 2001. Revenues from service and other for the six months ended December 31, 2002 decreased 0.2% to \$93.8 million, from \$94.0 million in the six months ended December 31, 2001.

These decreases reflect a decline in revenues from our consulting business, partially offset by the inclusion in the three and six months ended December 31, 2002 of service and other revenue associated with Hyprotech, which we acquired in May 2002. The decline in consulting revenue primarily was related to the decline in demand for our manufacturing/supply chain software products, along with which we typically sell consulting projects. The decline is also due to reductions in headcount, offset by the inclusion of service and other revenue from Hyprotech.

## ***Cost of Software Licenses***

Cost of software licenses consists of royalties, amortization of previously capitalized software costs, costs related to the delivery of software, including disk duplication and third party software costs, printing of manuals and packaging. Cost of software licenses for the three months ended December 31, 2002 increased 15.0% to \$3.5 million, from \$3.1 million in the three months ended December 31, 2001. Cost of software licenses for the six months ended December 31, 2002 increased 24.5% to \$6.8 million, from \$5.5 million in the six months ended December 31, 2001. Cost of software licenses as a percentage of revenues from software licenses was 9.5% and 10.3% for the three and six months ended December 31, 2002, respectively, as compared to 7.6% and 9.3% for the three and six months ended December 31, 2001, respectively.

The increases in software license costs, in both absolute dollars and as a percentage of revenues from software licenses, were due to the July 2002 inception of the Accenture royalty agreement and a general increase in the amortization of capitalized software costs.

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## ***Cost of Service and Other***

Cost of service and other consists of the cost of execution of application consulting services, technical support expenses and the cost of training services. Cost of service and other for the three months ended December 31, 2002 decreased 11.4% to \$26.8 million from \$30.3 million in the three months ended December 31, 2001. Cost of service and other for the six months ended December 31, 2002 decreased 9.2% to \$54.8 million from \$60.4 million in the six months ended December 31, 2001. Cost of service and other as a percentage of service and other revenues was 58.1% and 58.5% in the three and six months ended December 31, 2002, respectively, as compared to 64.3% and 64.2% in the three and six months ended December 31, 2001.

This decrease in absolute dollars was due to the reductions in headcount that occurred in May 2002 and October 2002. The decrease as a percentage of service and other revenues was due to the headcount reductions, as well as the increase of revenues from software maintenance as a percentage of service and other revenue, a service that provides higher margins than consulting services.

## ***Selling and Marketing Expenses***

Selling and marketing expenses for the three months ended December 31, 2002 decreased 5.0% to \$27.0 million from \$28.5 million in the three months ended December 31, 2001. Selling and marketing expenses for the six months ended December 31, 2002 increased 2.0% to \$56.2 million from \$55.1 million in the six months ended December 31, 2001. As a percentage of total revenues, selling and marketing expenses were 32.6% and 35.1% for the three and six months ended December 31, 2002, respectively, as compared to 32.7% and 36.0% for the three and six months ended December 31, 2001, respectively.

The decrease in absolute dollars for the comparable three-month periods was attributable to the headcount reductions that took place in October 2002, offset by the amortization of costs associated with our October 2002 AspenWorld conference and by the inclusion of Hyprotech costs in the three months ended December 31, 2002. The increase in absolute dollars for the comparable six-month periods was primarily due to an increase in sales commissions related to higher license revenues in the three months ended September 30, 2002 as compared to the three months ended September 30, 2001 in addition to abovementioned AspenWorld and Hyprotech costs in the six months ended December 31, 2002.

## ***Research and Development Expenses***

Research and development expenses consist primarily of personnel and outside consultancy costs required to conduct our product development efforts. Capitalized research and development costs are amortized over the estimated remaining economic life of the relevant product, not to exceed three years. Research and development expenses during the three months ended December 31, 2002 decreased 10.3% to \$16.0 million from \$17.8 million in the three months ended December 31, 2001. Research and development expenses during the six months ended December 31, 2002 decreased 5.8% to \$33.7 million from \$35.8 million in the six months ended December 31, 2001. As a percentage of revenues, research and development costs were 19.3% and 21.1% for the three and six months ended December 31, 2002, respectively, as compared to 20.5% and 23.4% for the three and six months ended December 31, 2001, respectively.

The decrease in absolute dollars was attributable to the effect of reductions in headcount from the September 2001, May 2002 and October 2002 restructuring plans, partially offset by the inclusion in the three and six months ended December 31, 2002 of costs associated with Hyprotech. We capitalized 13.6% and 16.8% of our total research and development costs during the three and six months ended December 31, 2002, respectively. Of these amounts, 8.0% and 2.5%, respectively, related to

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development costs incurred by Accenture and the amortization of the purchased intellectual property. The remaining 11.1% and 11.2%, respectively, related to our internal development costs, as compared to 8.0% and 7.9% in the three and six months ended December 31, 2001. This increase in capitalized costs was due to two large development projects that were nearing completion during the six months ended December 31, 2002, for which nearly all costs incurred were eligible for capitalization.

## ***General and Administrative Expenses***

General and administrative expenses consist primarily of salaries of administrative, executive, financial and legal personnel, outside professional fees, and amortization of intangible assets. General and administrative expenses for the three months ended December 31, 2002 increased 18.7% to \$8.9 million from \$7.5 million for the three months ended December 31, 2001. General and administrative expenses for the six months ended December 31, 2002 increased 25.4% to \$18.7 million from \$14.9 million for the six months ended December 31, 2001.

These increases were attributable primarily to a higher level of amortization relating to other intangible assets arising from our acquisition of Hyprotech in May 2002 and the inclusion of Hyprotech costs in fiscal 2003, both offset by the effect of reductions in headcount from the September 2001, May 2002 and October 2002 restructuring plans.

### **Interest Income**

Interest income is generated from the investment of excess cash in short-term and long-term investments and from the license of software pursuant to installment contracts. Under these installment contracts, we offer customers the option to make annual payments for its term licenses instead of a single license fee payment at the beginning of the license term. Historically, a substantial majority of the engineering software customers have elected to license our products through installment contracts, while significantly all of our manufacturing/supply chain customers have selected perpetual licenses for which payment is generally made up-front. Included in the annual payments of the installment contracts is an implicit interest charge based upon the interest rate established by us at the time of the license. If the mix of sales moves away from installment contracts, the interest income from these contracts in future periods will be reduced. We sell a portion of the installment contracts to unrelated financial institutions. The interest earned by us on the installment contract portfolio in any period is the result of the implicit interest established by us on installment contracts and the size of the contract portfolio. Interest income was \$2.5 million and \$4.6 million for the three and six months ended December 31, 2002, respectively, as compared to \$1.5 and \$3.6 for the three and six months ended December 31, 2001. These increases are due to the increase of installment contracts associated with Hyprotech, which we acquired in May 2002.

### **Interest Expense**

Interest expense is generated from interest charged on our 5<sup>1</sup>/<sub>4</sub>% convertible debentures, notes payable and capital lease obligations. Interest expense was \$2.3 million and \$3.8 million for the three and six months ended December 31, 2002, respectively, as compared to \$1.3 million and \$2.6 million for the three and six months ended December 31, 2001. This increase was due to interest on the amounts owed to Accenture and a general increase in the amount of capital leases.

### **Tax Rate**

We did not record an income tax provision or benefit for the three or six months ended December 31, 2002, as we provided a full valuation against the tax loss carryforwards that were generated during the period. The effective tax rate for the three and six months ended December 31, 2001 was approximately 30.0% of pretax loss.

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### **Liquidity and Capital Resources**

During the six months ended December 31, 2002, our cash and cash equivalents balance increased by \$17.0 million. Net cash provided by operations was \$11.1 million due primarily to the decrease in accounts receivable and unbilled services, offset by the net loss. Net cash provided by investing activities was \$9.6 million due to the sale of investment securities of \$15.5 million, partially offset by capital purchases of \$2.9 million and an increase in computer software development of \$4.1 million. Net cash used in financing activities was \$4.0 million, consisting primarily of \$3.2 million in payments on long-term debt and capital leases and \$3.1 million in payments to Accenture, offset by \$2.2 million in proceeds from the issuance of common stock under our employee stock purchase plan. During the six months ended December 31, 2002, we acquired \$1.1 million of equipment and software by entering into capital lease arrangements.

Historically, we have had arrangements to sell long-term contracts to two financial institutions, General Electric Capital Corporation and Fleet Business Credit Corporation. These contracts represent amounts due over the life of existing term licenses. During the six months ended December 31, 2002, installment contracts decreased by \$3.0 million to \$105.7 million, net of \$32.6 million of installment contracts sold to General Electric Credit Corporation and Fleet Business Credit Corporation. Our arrangements with these two financial institutions provide for the sale of installment contracts up to a maximum of \$160.0 million, subject to approval by the institutions, having certain recourse obligations. At December 31, 2002, the balance of the uncollected principal portion of the contracts sold to these two financial institutions was \$138.5 million, for which we had a partial recourse obligation that was within the range of \$6.8 million to \$9.2 million. We expect that there will be continued availability under the arrangements, as the collection of the sold receivables will reduce this outstanding balance, and the maximum limits under the arrangements can be increased.

In January 2003, we executed a Loan Arrangement with Silicon Valley Bank. This arrangement provides a line of credit of up to the lesser of (i) \$15.0 million or (ii) 70% of eligible domestic receivables, and a line of credit of up to the lesser of (i) \$10.0 million or (ii) 80% of eligible foreign receivables. The lines of credit bear interest at the bank's prime rate (4.25% at December 31, 2002) plus 1/2%, which may be reduced to the bank's prime rate upon the achievement of two consecutive quarters of net income. We are required to maintain a \$4.0 million compensating cash balance with the bank, or be subject to an unused line fee and collateral handling fees. The lines of credit will initially be collateralized by nearly all of our assets, and upon achieving certain net income targets, the collateral will be reduced to a lien on our accounts receivable. We are required to meet certain financial covenants, including minimum tangible net worth, minimum cash balances and an adjusted quick ratio. The Loan Arrangement expires in January 2005.

In February and March 2002, we issued and sold 40,000 shares of Series B-I convertible preferred stock and 20,000 shares of Series B-II convertible preferred stock, together with warrants to purchase 791,044 shares of common stock, for an aggregate purchase price of \$60.0 million. The Series B preferred stock accrues dividends at an annual rate of 4% that is payable quarterly, commencing in June 30, 2002, in either cash or common stock, at our option (subject to our satisfaction of specified conditions set forth in our charter). On January 2, 2003, we issued 196,971 shares of common stock in satisfaction of this obligation for the three months ended December 31, 2002.

As of December 31, 2002, we had cash and cash-equivalents totaling \$50.6 million, as well as short-term investments totaling \$3.1 million. Our commitments as of December 31, 2002, consisted primarily of amounts owed to Accenture, capital lease obligations and leases on our headquarters and other facilities. Other than these, there were no other material commitments for capital or other

expenditures. Our obligations related to these items as of December 31, 2002 are as follows (in thousands):

	2003	2004	2005	2006	2007	Thereafter
Non-cancelable operating leases	\$ 8,704	\$ 12,932	\$ 11,373	\$ 11,480	\$ 11,405	\$ 45,888
Non-cancelable capital leases and debt obligations	2,934	4,016	689	312	300	568
Amounts owed to Accenture	6,667	1,333	—	—	—	—
Total commitments	\$ 18,304	\$ 18,281	\$ 12,062	\$ 11,792	\$ 11,705	\$ 46,456

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We believe our current cash balances, availability of sales of our installment contracts, availability under the Silicon Valley Bank line of credit and cash flows from our operations will be sufficient to meet our working capital and capital expenditure requirements for at least the next 12 months. However, we may need to obtain additional financing thereafter or earlier, if our current plans and projections prove to be inaccurate or our expected cash flows prove to be insufficient to fund our operations because of lower-than-expected revenues, unanticipated expenses or other unforeseen difficulties. In addition, we may seek to take advantage of favorable market conditions by raising additional funds from time to time through public or private security offerings, debt financings, strategic alliances or other financing sources. Our ability to obtain additional financing will depend on a number of factors, including market conditions, our operating performance and investor interest. These factors may make the timing, amount, terms and conditions of any financing unattractive. They may also result in our incurring additional indebtedness or accepting stockholder dilution. If adequate funds are not available or are not available on acceptable terms, we may have to forego strategic acquisitions or investments, reduce or defer our development activities, or delay our introduction of new products and services. Any of these actions may seriously harm our business and operating results.

#### Factors that may Affect Future Results and the Trading Price of Our Common Stock

**INVESTING IN OUR COMMON STOCK INVOLVES A HIGH DEGREE OF RISK. YOU SHOULD CAREFULLY CONSIDER THE RISKS AND UNCERTAINTIES DESCRIBED BELOW BEFORE PURCHASING OUR COMMON STOCK. THE RISKS AND UNCERTAINTIES DESCRIBED BELOW ARE NOT THE ONLY ONES FACING OUR COMPANY. ADDITIONAL RISKS AND UNCERTAINTIES MAY ALSO IMPAIR OUR BUSINESS OPERATIONS. IF ANY OF THE FOLLOWING RISKS ACTUALLY OCCUR, OUR BUSINESS, FINANCIAL CONDITION OR RESULTS OF OPERATIONS WOULD LIKELY SUFFER. IN THAT CASE, THE TRADING PRICE OF OUR COMMON STOCK COULD FALL, AND YOU MAY LOSE ALL OR PART OF THE MONEY YOU PAID TO BUY OUR COMMON STOCK.**

##### *Our lengthy sales cycle makes it difficult to predict quarterly revenue levels and operating results.*

Because license fees for our software products are substantial and the decision to purchase our products typically involves members of our customers' senior management, the sales process for our solutions is lengthy and can exceed one year. Accordingly, the timing of our license revenues is difficult to predict, and the delay of an order could cause our quarterly revenues to fall substantially below expectations. Moreover, to the extent that we succeed in shifting customer purchases away from individual software products and toward more costly integrated suites of software and services, our sales cycle may lengthen, which could increase the likelihood of delays and cause the effect of a delay to become more pronounced. We have limited experience in forecasting the timing of sales of our integrated suites of software and services. Delays in sales could cause significant shortfalls in our revenues and operating results for any particular period.

##### *Fluctuations in our quarterly revenues, operating results and cash flow may cause the market price of our common stock to fall.*

Our revenues, operating results and cash flow have fluctuated in the past and may fluctuate significantly in the future as a result of a variety of factors, many of which are outside of our control, including:

- our customers' purchasing patterns;
- the length of our sales cycle;
- changes in the mix of our license revenues and service revenues;

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- the timing of introductions of new solutions and enhancements by us and our competitors;
- seasonal weakness in the first quarter of each fiscal year, primarily caused by a slowdown in business in some of our international markets;
- the timing of our investments in new product development;
- changes in our operating expenses; and
- fluctuating economic conditions, particularly as they affect companies in the chemicals, petrochemicals and petroleum industries.

We ship software products within a short period after receipt of an order and typically do not have a material backlog of unfilled orders for software products. Consequently, revenues from software licenses in any quarter are substantially dependent on orders booked and shipped in that quarter. Historically, a majority of each quarter's revenues from software licenses has come from license agreements that have been entered into in the final weeks of the quarter. Therefore, even a short delay in the consummation of an agreement may cause our revenues to fall below public expectations for that quarter.

Since our expense levels are based in part on anticipated revenues, we may be unable to adjust spending quickly enough to compensate for any revenue shortfall and any revenue shortfall would likely have a disproportionately adverse effect on our operating results. We expect that these factors will continue to affect our

operating results for the foreseeable future. Because of the foregoing factors, we believe that period-to-period comparisons of our operating results are not necessarily meaningful and should not be relied upon as indications of future performance.

If, due to one or more of the foregoing factors or an unanticipated cause, our operating results fail to meet the expectations of public market analysts and investors in a future quarter, the market price of our common stock would likely decline. Since April 5, 2002, the date on which we preliminarily announced our estimated results for the three months ended March 31, 2002, through the close of business on February 10, 2003, the price per share of our common stock, as reported by the Nasdaq National Market, decreased from \$17.37 to \$2.95.

***The Federal Trade Commission may challenge our acquisition of Hyprotech.***

By letter of June 7, 2002, the Federal Trade Commission, or FTC, informed us that it was conducting an investigation into the competitive effects of our recent acquisition of Hyprotech. The FTC may determine to challenge the acquisition through an administrative civil complaint seeking to declare the acquisition in violation of Section 7 of the Clayton Act or Section 5 of the FTC Act. If the FTC were to prevail in that challenge, it could seek to impose a wide variety of remedies, some of which may have a material adverse effect on our ability to continue to operate under our current business plans. These potential remedies include divestiture of Hyprotech, as well as mandatory licensing of Hyprotech software products and our other engineering software products to one or more of our competitors.

We can provide no assurance as to the outcome of the FTC's investigation. Any conclusion of this investigation in a manner adverse to us would have a material adverse effect on our business and results of operations. In addition, the cost to us of continuing to cooperate in the investigation or of defending any litigation or other proceeding that may result from the investigation, even if resolved in our favor, could be substantial. The continuance of the investigation or any commencement of litigation or any other proceeding would continue to divert the attention of our management. Uncertainties resulting from the continuation of this investigation or the initiation of litigation or other proceedings could harm our ability to compete in the marketplace.

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***Because we derive a majority of our total revenues from customers in the cyclical chemicals, petrochemicals and petroleum industries, our operating results may suffer if these industries experience an economic downturn.***

We derive a majority of our total revenues from companies in the chemicals, petrochemicals and petroleum industries. Accordingly, our future success depends upon the continued demand for manufacturing optimization software and services by companies in these process manufacturing industries. The chemicals, petrochemicals and petroleum industries are highly cyclical and highly reactive to the price of oil, as well as general economic conditions. In the past, worldwide economic downturns and pricing pressures experienced by chemical, petrochemical and petroleum companies have led to consolidations and reorganizations. These downturns, pricing pressures and restructurings have caused delays and reductions in capital and operating expenditures by many of these companies. These delays and reductions have reduced demand for products and services like ours. A recurrence of these industry patterns, as well as general domestic and foreign economic conditions and other factors that reduce spending by companies in these industries, could harm our operating results in the future.

***If economic conditions and the markets for our products do not improve, sales of our product lines, particularly our manufacturing and supply chain product suites, will be adversely affected.***

Adverse changes in the economy and continuing global uncertainty have caused delays and reductions in information technology spending by our customers and a consequent deterioration of the markets for our products and services, particularly our manufacturing and supply chain product suites. If these adverse economic conditions continue or worsen, we will experience further reductions, delays, and postponements of customer purchases that will negatively impact our revenue and operating results. If economic and political conditions and the market for our products do not improve and our revenues decline, our business could be harmed, and we may not be able to further reduce our costs to align them with these decreased revenues.

***We may require additional capital.***

We may need to raise additional capital in order to fund the continued development and marketing of our solutions. We expect our current cash balances, cash-equivalents, short-term investments, availability of sales of our installment contracts, availability under the Silicon Valley Bank lines of credit and cash flows from operations will be sufficient to meet our working capital and capital expenditure requirements for at least the next twelve months. However, we may need to obtain additional financing thereafter or earlier, if our current plans and projections prove to be inaccurate or our expected cash flows prove to be insufficient to fund our operations because of lower-than-expected revenues, unanticipated expenses or other unforeseen difficulties. An important part of our cash management program is the sale of receivables. Historically, we have had arrangements to sell long-term contracts to two financial institutions, General Electric Capital Corporation and Fleet Business Credit Corporation. These contracts represent amounts due over the life of existing term licenses. During the six months ended December 31, 2002, installment contracts decreased by \$3.0 million to \$105.7 million, net of \$32.6 million of installment contracts sold to General Electric Credit Corporation and Fleet Business Credit Corporation. Our ability to continue these arrangements or replace them with similar arrangements is important to maintaining adequate funding. In addition, in August 2002, we amended several of the terms of our strategic alliance with Accenture, which will require us to make monthly cash payments totaling \$11.1 million, \$8.0 million of which is outstanding as of December 31, 2002 and payable in installments through July 2003, instead of the originally agreed-to stock payment in August 2002. Our ability to obtain additional financing will depend on a number of factors, including market conditions, our operating performance and investor interest. These factors may make the timing, amount, terms and conditions of any financing unattractive. They may also result in our incurring additional indebtedness or accepting stockholder dilution. In 2002, we

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issued convertible preferred stock and common stock warrants that contain anti-dilution provisions, rights of first refusal and other terms that may limit or impair our ability to raise additional funds through future financings. If adequate funds are not available or are not available on acceptable terms, we may have to forego strategic acquisitions or investments, reduce or defer our development activities, or delay our introduction of new products and services. Any of these actions may seriously harm our business and operating results.

***If we do not compete successfully, we may lose market share.***

Our markets are highly competitive. Our engineering software competes with products of businesses such as Simulation Sciences, a division of Invensys, Shell Global Solutions, ABB, MDC Technology, Cadcentre, WinSim, Inc. (formerly ChemShare) and Process Systems Enterprise Ltd. As we expand our engineering solutions into the collaborative Process asset Lifecycle Management (PLM) market we may see competition from companies that we have not typically competed

against in the past, such as Agile, PTC, and EDS. Our manufacturing/supply chain software competes with products of companies such as Honeywell's Hi-Spec division, Invensys, ABB, Rockwell, i2 Technologies, Manugistics and certain components of SAP's supply chain offering. We also face competition in all three areas from large companies in the process industries that have developed their own proprietary software solutions.

Some of our current competitors have significantly greater financial, marketing and other resources than we have. In addition, many of our current competitors have established, and may in the future continue to establish, cooperative relationships with third parties to improve their product offerings and to increase the availability of their products to the marketplace. The entry of new competitors or alliances into our market could reduce our market share, require us to lower our prices, or both. Many of these factors are outside our control, and we may not be able to maintain or enhance our competitive position against current and future competitors.

***If we fail to integrate the operations of the companies we acquire, we may not realize the anticipated benefits and our operating costs could increase.***

We intend to continue to pursue strategic acquisitions that will provide us with complementary products, services and technologies and with additional personnel. The identification and pursuit of these acquisition opportunities and the integration of acquired personnel, products, technologies and businesses require a significant amount of management time and skill. There can be no assurance that we will identify suitable acquisition candidates, consummate any acquisition on acceptable terms or successfully integrate any acquired business into our operations. Additionally, in light of the consolidation trend in our industry, we expect to face competition for acquisition opportunities, which may substantially increase the cost of any potential acquisition.

We have experienced in the past, and may experience again in the future, problems integrating the operations of a newly acquired company with our own operations. Acquisitions also expose us to potential risks, including diversion of management's attention, failure to retain key acquired personnel, assumption of legal or other liabilities and contingencies, and the amortization of acquired intangible assets. Moreover, customer dissatisfaction with, or problems caused by, the performance of any acquired products or technologies could hurt our reputation.

In particular, on May 31, 2002, we purchased the capital stock of Hyprotech Ltd. and related subsidiaries of AEA for £66.2 million (or \$96.6 million, based on the exchange rate as of May 9, 2002, the date of the agreement) in cash. The Hyprotech business operates globally and is the second largest acquisition we have made. The integration of the personnel, products and technologies of Hyprotech will require significant management time and skill, and our inability to complete the acquisition effectively and efficiently could cause our operating results to suffer.

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We funded the Hyprotech acquisition substantially from the proceeds of convertible preferred stock and common stock financings effected in 2002. We may issue additional equity securities or incur long-term indebtedness to finance future acquisitions. The issuance of equity securities could result in dilution to existing stockholders, while the use of cash reserves or significant debt financing could reduce our liquidity and weaken our financial condition.

***Our operating results may be harmed if our restructuring plans and cost reduction measures do not achieve the anticipated results or cause undesirable consequences.***

Since the fourth quarter of fiscal 1999, we have implemented restructuring plans and cost reduction measures, which have included, among other things, significant workforce reductions. Because of the nature and extent of the restructuring actions we have taken to date, we may be unable to initiate additional, significant restructuring measures in future periods. If we fail to achieve the desired results of our restructuring plans and our cost reduction measures, we may suffer material harm to our business.

Our recent cost reduction initiative may yield unintended consequences, such as attrition beyond our planned reduction in workforce and reduced employee morale. In addition, the recent trading levels of our stock have decreased the value of our stock options granted to employees under our stock option plans. As a result of these factors, our employees may seek alternate employment. Attrition beyond our planned reduction in workforce could have a material adverse effect on our financial performance.

***If we do not continue to make the technological advances required by the marketplace, our business could be seriously harmed.***

Enterprises are requiring their application software vendors to provide greater levels of functionality and broader product offerings. Moreover, competitors continue to make rapid technological advances in computer hardware and software technology and frequently introduce new products, services and enhancements. We must continue to enhance our current product line and develop and introduce new products and services that keep pace with the technological developments of our competitors. Our business and operating results could suffer if we cannot successfully respond to the technological advances of others or if our new products or product enhancements and services do not achieve market acceptance.

We must also satisfy increasingly sophisticated customer requirements. Under our business plan, we are investing significantly in the development of new business process products that are intended to anticipate and meet the emerging needs of our target market. We are focusing significantly on development of these products, which means we will not invest as substantially in the continued enhancement of our current products. We cannot assure you that our new product development will result in products that will meet market needs and achieve market acceptance.

Moreover, a portion of our product development for enterprise solutions in the foreseeable future is expected to be conducted through co-development arrangements with Accenture LLP that we entered into in February 2002. Our business and operating results will be harmed if this co-development arrangement does not result in our being able to deliver timely products sought by companies in the process industries.

***If we are unable to successfully market our products to senior executives of potential customers, our revenue growth may be limited.***

With the development of our integrated manufacturing/supply chain solutions and the new solutions we are developing with Accenture, we are increasingly focused on selling the strategic value of our technology to the highest executive levels of customer organizations, typically the chief executive

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officer, chief financial officer or chief information officer. We have limited experience in selling and marketing at these levels. If we are not successful at selling and marketing to senior executives, our revenue growth and operating results could suffer.

***If we are unable to develop relationships with strategic partners, our revenue growth may be harmed.***

An element of our growth strategy is to strategically partner with a few select third-party implementation partners who market and integrate our products. The most significant of these partnerships is our joint marketing and development alliance with Accenture. If we do not adequately train a sufficient number of systems integrator partners, or if potential partners focus their efforts on integrating or co-selling competing products to the process industries, our future revenue growth could be limited and our operating results could be harmed. If our partners fail to implement our solutions for our customers properly, the reputations of our solutions and our company could be harmed and we might be subject to claims by our customers. We intend to continue to establish business relationships with technology companies to accelerate the development and marketing of our solutions. To the extent that we are unsuccessful in maintaining our existing relationships and developing new relationships, our revenue growth may be harmed.

***We may suffer losses on fixed-price engagements.***

We derive a substantial portion of our total revenues from service engagements and a significant percentage of these engagements have been undertaken on a fixed-price basis. We bear the risk of cost overruns and inflation in connection with fixed-price engagements, and as a result, any of these engagements may be unprofitable. In the past, we have had cost overruns on fixed-price service engagements. In addition, to the extent that we are successful in shifting customer purchases to our integrated suites of software and services and we price those engagements on a fixed-price basis, the size of our fixed-price engagements may increase, which could cause the impact of an unprofitable fixed-price engagement to have a more pronounced impact on our operating results.

***Our business may suffer if we fail to address the challenges associated with international operations.***

We derived approximately 50% of our total revenues from customers outside the United States in each of the past three fiscal years. We anticipate that revenues from customers outside the United States will continue to account for a significant portion of our total revenues for the foreseeable future. Our operations outside the United States are subject to additional risks, including:

- unexpected changes in regulatory requirements, exchange rates, tariffs and other barriers;
- political and economic instability;
- difficulties in managing distributors and representatives;
- difficulties in staffing and managing foreign subsidiary operations;
- difficulties and delays in translating products and product documentation into foreign languages;
- difficulties and delays in negotiating software licenses compliant with U.S. accounting revenue recognition requirements; and
- potentially adverse tax consequences.

The impact of future exchange rate fluctuations on our operating results cannot be accurately predicted. In recent years, we have increased the extent to which we denominate arrangements with international customers in the currencies of the countries in which the software or services are provided. From time to time we have engaged in, and may continue to engage in, hedges of a significant portion of installment contracts denominated in foreign currencies. Any hedging policies

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implemented by us may not be successful, and the cost of these hedging techniques may have a significant negative impact on our operating results.

***We may not be able to protect our intellectual property rights, which could make us less competitive and cause us to lose market share.***

We regard our software as proprietary and rely on a combination of copyright, patent, trademark and trade secret laws, license and confidentiality agreements, and software security measures to protect our proprietary rights. We have registered or have applied to register several of our significant trademarks in the United States and in certain other countries. We generally enter into non-disclosure agreements with our employees and customers, and historically have restricted access to our software products' source codes, which we regard as proprietary information. In a few cases, we have provided copies of the source code for some of our products to customers solely for the purpose of special product customization and have deposited copies of the source code for some of our products in third-party escrow accounts as security for ongoing service and license obligations. In these cases, we rely on non-disclosure and other contractual provisions to protect our proprietary rights.

The steps we have taken to protect our proprietary rights may not be adequate to deter misappropriation of our technology or independent development by others of technologies that are substantially equivalent or superior to our technology. Any misappropriation of our technology or development of competitive technologies could harm our business, and could force us to incur substantial costs in protecting and enforcing our intellectual property rights. The laws of some countries in which our products are licensed do not protect our products and intellectual property rights to the same extent as the laws of the United States.

We may have to defend against intellectual property infringement claims, which could be expensive and, if we are not successful, could disrupt our business.

Third parties may assert patent, trademark, copyright and other intellectual property rights to technologies that are important to us. In such an event, we may be required to incur significant costs in litigating a resolution to the asserted claims. The outcome of any litigation could require us to pay damages or obtain a license to a third party's proprietary rights in order to continue licensing our products as currently offered. If such a license is required, it might not be available on terms acceptable to us, if at all.

***Our software is complex and may contain undetected errors.***

Like many other complex software products, our software has on occasion contained undetected errors or "bugs." Because new releases of our software products are initially installed only by a selected group of customers, any errors or "bugs" in those new releases may not be detected for a number of months after the delivery of the software. These errors could result in loss of customers, harm to our reputation, adverse publicity, loss of revenues, delay in market acceptance, diversion of development resources, increased insurance costs or claims against us by customers.

***We may be subject to significant expenses and damages because of liability claims.***

The sale and implementation of certain of our software products and services, particularly in the areas of advanced process control and optimization, may entail the risk of product liability claims. Our software products and services are used in the design, operation and management of manufacturing processes at large facilities, and any failure of our software could result in significant claims against us for damages or for violations of environmental, safety and other laws and regulations. Our agreements with our customers generally contain provisions designed to limit our exposure to potential product liability claims. It is possible, however, that the limitation of liability provisions in our agreements may

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not be effective as a result of federal, state or local laws or ordinances or unfavorable judicial decisions. A substantial product liability claim against us could harm our operating results and financial condition.

***Implementation of our products can be difficult and time-consuming, and customers may be unable to implement our products successfully or otherwise achieve the benefits attributable to our products.***

Our products are intended to work with complex business processes. Some of our software, such as customized scheduling applications and integrated supply chain products, must integrate with the existing computer systems and software programs of our customers. This can be complex, time-consuming and expensive. As a result, some customers may have difficulty in implementing or be unable to implement these products successfully or otherwise achieve the benefits attributable to these products. Customers may also make claims against us relating to the functionality, performance or implementation of this software. Delayed or ineffective implementation of the software products or related services may limit our ability to expand our revenues and may result in customer dissatisfaction, harm to our reputation and may result in customer unwillingness to pay the fees associated with these products.

***If we are not successful in our management transition or in attracting and retaining management team members and other highly qualified individuals in our industry, we may not be able to successfully implement our business strategy.***

Our ability to establish and maintain a position of technology leadership in the highly competitive e-business software market depends in large part upon our ability to attract and retain highly qualified managerial, sales and technical personnel. We have historically relied on the services of Lawrence B. Evans, our principal founder and our Chairman, President and Chief Executive Officer. On October 1, 2002, David L. McQuillin, became our Chief Executive Officer. McQuillin had been serving as one of our co-chief operating officer and had not previously served as the chief executive officer of a publicly traded corporation. Most of our executive officers have not entered into an employment agreement with us. In the future, we may experience the departure of other senior executives due to competition for talent from start-ups and other companies. Our future success depends on a successful management transition and will also depend on our continuing to attract, retain and motivate highly skilled employees. Competition for employees in our industry is intense. We may be unable to retain our key employees or attract, assimilate or retain other highly qualified employees in the future. We have from time to time in the past experienced, and we expect to continue to experience in the future, difficulty in hiring and retaining highly skilled employees with appropriate qualifications.

***Our common stock may experience substantial price and volume fluctuations.***

The equity markets have from time to time experienced extreme price and volume fluctuations, particularly in the high technology sector, and those fluctuations have often been unrelated to the operating performance of particular companies. In addition, factors such as our financial performance, announcements of technological innovations or new products by us or our competitors, as well as market conditions in the computer software or hardware industries, may have a significant impact on the market price of our common stock. Since April 5, 2002, the date on which we preliminarily announced our estimated results for the three months ended March 31, 2002, the price per share of our common stock, as reported by the Nasdaq National Market, decreased from \$17.90 to a low of \$0.59 on October 11, 2002. On February 10, 2003, the last reported sale price of our common stock on the Nasdaq National Market was \$2.95.

In the past, following periods of volatility in the market price of a public companies securities, securities class action litigation has often been instituted against companies. This type of litigation could result in substantial costs and a diversion of management's attention and resources.

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***Our common stockholders may experience further dilution and the price of our common stock may decline as a result of our convertible preferred stock and common stock financings.***

In 2002, we issued convertible preferred stock, together with warrants to purchase 791,044 shares of common stock. We currently have outstanding 40,000 shares of Series B-I convertible preferred stock and 20,000 shares of Series B-II convertible preferred stock.

Each share of Series B-I and B-II convertible preferred stock is convertible into a number of shares of common stock equal to the stated value, which initially is \$1,000, divided by a conversion price of \$19.97 in the case of the Series B-1 convertible preferred stock and \$17.66 in the case of the Series B-2 convertible preferred stock, subject to antidilution and other adjustments for events affecting our capital structure. If we issue additional shares of common stock, or instruments convertible or exchangeable for common stock, at an effective net price less than the lesser of (a) \$17.75, in the case of the Series B-I convertible preferred stock, or \$15.69 in the case of the Series B-II convertible preferred stock and (b) the then-applicable conversion price for such series, the conversion price for that series will be reduced to equal that effective net price. These adjustments do not apply to the issuance of common stock or such instruments in specified firm commitment underwritten public offerings, strategic arrangements, mergers or acquisitions, and grants and purchases of securities pursuant to equity incentive plans.

The Series B-I and B-II convertible preferred stock accrues dividends at an annual rate of 4% that is payable quarterly, commencing June 30, 2002, in either cash or common stock, at our option (subject to our satisfaction of specified conditions set forth in our charter). From August 6, 2003 until February 6, 2004, for the Series B-I convertible preferred stock, and from August 28, 2003 until February 17, 2004, for the Series B-II convertible preferred stock, holders may require that we redeem up to a total of 20,000 shares of Series B-I convertible preferred stock and 10,000 shares of Series B-II convertible preferred stock if the average closing price of the common stock for the 20 consecutive trading days immediately preceding August 7, 2003 and August 28, 2003, respectively, or any date thereafter is below the then-applicable conversion price. Beginning on February 8, 2004 and February 28, 2004, holders of Series B-I convertible preferred stock and Series B-II convertible preferred stock, respectively, may require that we redeem any or all of their shares. We will be required to redeem all of the then-outstanding Series B-I and B-II convertible preferred stock on February 7, 2009 at a price equal to the stated value plus all accrued but unpaid dividends. In each instance, the redemption price may

be paid in cash, stock or both, at our option. The stock payment will consist of either common stock or Series C preferred stock, subject to our satisfaction of specified conditions set forth in our charter.

In May 2002, we sold 4,166,665 shares of common stock, together with five-year warrants to purchase up to 750,000 shares of common stock, in a private placement. If we issue additional shares of common stock, or instruments convertible or exchangeable for common stock, in specified transactions at an effective net price less than the exercise price of any of the five-year warrants, then the exercise price of the warrants will be adjusted pursuant to a weighted average anti-dilution formula. As the result of these and other provisions, these warrants may be exercised at a price per share that may be less than the then-current market price of the stock, which may cause dilution to our existing common stockholders.

As a result of these and other provisions of the Series B-I and B-II convertible preferred stock and the warrants issued in the preferred and common stock financings, the Series B-I and B-II convertible preferred stock may be converted, and the warrants may be exercised, at a price per share that may be less than the then-current market price of the common stock, which may cause substantial dilution to our existing common stockholders. If the conversion price of the Series B-I and B-II convertible preferred stock or the exercise price of the warrants decreases as a result of antidilution

provisions, the number of shares of common stock issuable in connection with any dividends conversion or redemption could increase significantly.

As part of our obligations under these financings, we registered for public resale by the holders of the Series B-I and B-II convertible preferred stock and common stock issued in the financings a total of 13,776,392 shares of common stock, including shares issuable upon conversion of the Series B-I and B-II convertible preferred stock and exercise of the warrants and shares that may become issuable as a result of antidilution provisions. If all of these registered shares were to be issued (disregarding limitations on the right of a holder to acquire shares of common stock upon the conversion of Series B-I or B-II convertible preferred stock or the exercise of warrants if the conversion or exercise would result in this holder beneficially owning more than 4.99% of our outstanding common stock without first providing us proper notice), these shares would represent 35.3% shares of our common stock issued and outstanding as of February 10, 2003. Any sale of these shares of common stock into the public market could cause a decline in the trading price of our common stock.

### Item 3. Quantitative and Qualitative Disclosures About Market Risk

Information relating to quantitative and qualitative disclosure about market risk is set forth under the caption "Notes to Consolidated Condensed Financial Statements," [2., 3. and 4.] and below under the captions "Investment Portfolio" and "Foreign Exchange Hedging."

#### Investment Portfolio

We do not use derivative financial instruments in our investment portfolio. We place our investments in instruments that meet high credit quality standards, as specified in our investment policy guidelines; the policy also limits the amount of credit exposure to any one issuer and the types of instruments approved for investment. We do not expect any material loss with respect to our investment portfolio. The following table provides information about our investment portfolio. For investment securities, the table presents principal cash flows and related weighted average interest rates by expected maturity dates.

Principal (Notional) Amounts by Expected Maturity in U.S. Dollars(\$)

	Fair Value at 12/31/2002	FY2003	FY2004
Cash Equivalents	\$ 50,610	\$ 50,610	\$ —
Weighted Average Interest Rate	1.38%	1.38%	—
Investments	\$ 3,055	\$ 2,015	\$ 1,040
Weighted Average Interest Rate	2.57%	2.52%	2.66%
Total Portfolio	\$ 53,665	\$ 52,625	\$ 1,040
Weighted Average Interest Rate	1.45%	1.42%	2.66%

#### Impact of Foreign Currency Rate Changes

During the first six months of fiscal 2003, the U.S. dollar generally weakened against Asia/Pacific and European currencies. The translation of the parent company's intercompany receivables and foreign entities assets and liabilities did not have a material impact on our consolidated results. Foreign exchange forward contracts are only purchased to hedge certain customer accounts and installment receivable amounts denominated in a foreign currency.

#### Foreign Exchange Hedging

We enter into foreign exchange forward contracts to reduce our exposure to currency fluctuations on customer accounts receivables denominated in foreign currency. The objective of these contracts is

to neutralize the impact of foreign currency exchange rate movements on our operating results. We do not use derivative financial instruments for speculative or trading purposes. We had \$7.9 million of foreign exchange forward contracts denominated in British, Japanese, Swiss, Netherlands, and Euro currencies, which represented underlying customer accounts receivable transactions at December 31, 2002. At each balance sheet date, the foreign exchange forward contracts and the related installments receivable denominated in foreign currency are revalued based on the current market exchange rates. Resulting gains and losses are included in earnings or deferred as a component of other comprehensive income. These deferred gains and losses are recognized in income in the period in which the underlying anticipated transaction occurs. Gains and losses related to these instruments for the six months ended December 31, 2002 were not material to our financial position. We do not anticipate any material adverse effect on our consolidated financial position, results of operations, or cash flows resulting from the use of these instruments. However, we cannot assure you that these strategies will be effective or that transaction losses can be minimized or forecasted accurately.

The following table provides information about our foreign exchange forward contracts at December 31, 2002. The table presents the value of the contracts in U.S. dollars at the contract exchange rate as of the contract maturity date. The average contract rate approximates the weighted average contractual foreign currency exchange rate and the forward position in U.S. dollars approximates the fair value of the contract at December 31, 2002.

Forward Contracts to Sell Foreign Currencies for U.S. Dollars Related to Customer Installments Receivable:

Currency	Average Contract Rate	Forward Amount in U.S. Dollars (in thousands)	Contract Origination Date	Contract Maturity Date
Euro	1.08	\$ 3,289	Various: Jan 01 — Dec 02	Various: Jan 03 — May 04
Japanese Yen	118.88	2,143	Various: Jan 01 — Jul 02	Various: Jan 03 — Aug 04
British Pound Sterling	0.67	1,981	Various: Jan 01 — Dec 02	Various: Feb 03 — Jul 04
Swiss Franc	1.50	456	Various: Aug 02 — Nov 02	Various: Feb 03 — Mar 04
<b>Total</b>		<b>\$ 7,869</b>		

**Item 4. Controls and Procedures**

(a) *Evaluation of disclosure controls and procedures.* Based on their evaluation of our disclosure controls and procedures (as defined in Rules 13a-14(c) and 15d-14(c) under the Securities Exchange Act of 1934) as of a date within 90 days of the filing date of this quarterly report, our chief executive officer and chief financial officer have concluded that our disclosure controls and procedures are designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and are operating in an effective manner.

(b) *Changes in internal controls.* There were no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their most recent evaluation.

**PART II. OTHER INFORMATION**

**Item 1. Legal Proceedings**

By letter of June 7, 2002, the FTC informed us that it was conducting an investigation into the competitive effects of our recent acquisition of Hyprotech. We completed production of all requested documents in January 2003, are currently complying with deposition requests and expect to conclude our presentation to the FTC of our market analysis and supporting arguments for the acquisition in February 2003. We continue to cooperate fully with the FTC.

We cannot be certain whether the FTC might seek any relief from us or the nature of any such relief that might be sought. The FTC may determine to challenge the acquisition through an administrative civil complaint seeking to declare the acquisition in violation of Section 7 of the Clayton Act or Section 5 of the FTC Act. If the FTC were to prevail in that challenge, it could seek to impose a wide variety of remedies, some of which may have a material adverse effect on our ability to continue to operate under our current business plans. These potential remedies include divestiture of Hyprotech, as well as mandatory licensing of Hyprotech software products and our other engineering software products to one or more of our competitors.

On May 31, 2002, we acquired the capital stock of Hyprotech from AEA Technology plc. AEA is engaged in arbitration proceedings in England over a contract dispute with KBC Advanced Technologies PLC, an English technology and consulting services company. The dispute remains in arbitration and concerns the characterization of certain technology for purposes of calculating royalties, plus other contractual rights with respect to Hysys.Refinery. Hysys.Refinery was retained by AEA with support for Hysys.Refinery to be provided by Hyprotech pursuant to a contract with AEA. We indemnified AEA under the Sale and Purchase Agreement with AEA dated May 10, 2002 against any costs, damages or expenses in respect of a claim brought by KBC alleging damages due to AEA's (a) failure to comply with its contractual obligations after the acquisition, (b) breach of non-competition clauses with respect to activities occurring after the acquisition, (c) breach of certain obligations to KBC under its agreement by virtue of the acquisition, or (d) execution of the acquisition agreement.

On September 11, 2002, we and Hyprotech were sued by KBC in state district court in Houston, Texas on issues related to the technology subject to review in the arbitration proceeding. KBC has requested actual and exemplary damages, costs and interest. We believe the causes of action to be without merit and will defend the case vigorously. We have filed a counterclaim against KBC requesting actual and punitive damages and attorney fees.

**Item 2. Changes in Securities and Use of Proceeds**

In accordance with the terms of our Series B preferred stock, on October 1, 2002 and January 2, 2003, we elected to issue to the holders of our Series B preferred stock a total of 189,468 and 196,971 shares of our common stock in payment of the dividends accrued in the amounts of \$604,932 on our Series B preferred stock for the quarterly dividend periods ended September 30, 2002 and December 31, 2002, respectively. The issuance of these dividend shares was made in reliance on Section 4(2) of the Securities Act of 1933, as amended, which provides an exemption from the registration provisions of the Securities Act for sales by an issuer not involving a public offering. We have registered these dividend shares for resale under the Securities Act on a shelf registration statement on Form S-3 (registration no. 333-90066).

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

We held our annual meeting of stockholders on December 10, 2002 to elect two directors to hold office until our 2005 annual meeting of stockholders. Proxies for the meeting were solicited in



## CERTIFICATIONS

I, David L. McQuillin, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Aspen Technology, Inc.;
2. based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of Aspen Technology, Inc. as of, and for, the periods presented in this quarterly report;
4. Lisa W. Zappala, the Senior Vice President and Chief Financial Officer of Aspen Technology, Inc., and I:
  - are responsible for establishing and maintaining disclosure controls and procedures (as defined for purposes of Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934, as amended) for Aspen Technology, Inc.;
  - have designed such disclosure controls and procedures to ensure that material information relating to Aspen Technology, Inc., including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report was prepared;
  - have evaluated the effectiveness of the disclosure controls and procedures of Aspen Technology, Inc as of a date within 90 days prior to the filing date of this quarterly report; and
  - have presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation as of that date;
5. Ms. Zappala and I have disclosed to the auditors of Aspen Technology, Inc. and to the audit committee of the board of directors of Aspen Technology, Inc.:
  - all significant deficiencies in the design or operation of internal controls that could adversely affect the ability of Aspen Technology, Inc. to record, process, summarize and report financial data and have identified for such auditors any material weaknesses in internal controls; and
  - any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of Aspen Technology, Inc.; and
6. Ms. Zappala and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 14, 2003

/s/ DAVID L. MCQUILLIN

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David L. McQuillin  
President and Chief Executive Officer  
(principal executive officer)

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I, Lisa W. Zappala, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Aspen Technology, Inc.;
2. based on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report;
3. based on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of Aspen Technology, Inc. as of, and for, the periods presented in this quarterly report;
4. David L. McQuillin, the President and Chief Executive Officer of Aspen Technology, Inc., and I:
  - are responsible for establishing and maintaining disclosure controls and procedures (as defined for purposes of Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934, as amended) for Aspen Technology, Inc.;
  -

have designed such disclosure controls and procedures to ensure that material information relating to Aspen Technology, Inc., including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this quarterly report was prepared;

- have evaluated the effectiveness of the disclosure controls and procedures of Aspen Technology, Inc. as of a date within 90 days prior to the filing date of this quarterly report; and
- have presented in this quarterly report our conclusions about the effectiveness of the disclosure controls and procedures based on the required evaluation as of that date;

5. Mr. McQuillin and I have disclosed to the auditors of Aspen Technology, Inc. and to the audit committee of the board of directors of Aspen Technology, Inc.:

- all significant deficiencies in the design or operation of internal controls that could adversely affect the ability of Aspen Technology, Inc. to record, process, summarize and report financial data and have identified for such auditors any material weaknesses in internal controls; and
- any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of Aspen Technology, Inc.; and

6. Mr. McQuillin and I have indicated in this quarterly report whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of our evaluation, including any corrective actions with regard to significant deficiencies and material weaknesses.

Date: February 14, 2003

/s/ LISA W. ZAPPALA

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Lisa W. Zappala  
Senior Vice President and Chief Financial Officer  
(principal financial and accounting officer)

## QuickLinks

[PART I. FINANCIAL INFORMATION](#)

[ASPEN TECHNOLOGY, INC. CONSOLIDATED CONDENSED STATEMENTS OF OPERATIONS](#)

[ASPEN TECHNOLOGY, INC. CONSOLIDATED CONDENSED STATEMENTS OF CASH FLOWS](#)

[ASPEN TECHNOLOGY, INC. NOTES TO CONSOLIDATED CONDENSED FINANCIAL STATEMENTS \(Unaudited\)](#)

[PART II. OTHER INFORMATION](#)

[SIGNATURE](#)

[CERTIFICATIONS](#)

SILICON VALLEY BANK

LOAN AND SECURITY AGREEMENT

BORROWER: ASPEN TECHNOLOGY, INC., A DELAWARE CORPORATION  
ADDRESS: TEN CANAL PARK  
CAMBRIDGE, MASSACHUSETTS 02141

BORROWER: ASPENTECH, INC., A TEXAS CORPORATION  
ADDRESS: TEN CANAL PARK  
CAMBRIDGE, MASSACHUSETTS 02141

BORROWER: HYPROTECH COMPANY, A CORPORATION ORGANIZED UNDER THE LAWS OF  
NOVA SCOTIA, CANADA  
ADDRESS: TEN CANAL PARK  
CAMBRIDGE, MASSACHUSETTS 02141

DATE: JANUARY 30, 2003

THIS LOAN AND SECURITY AGREEMENT is entered into on the above date between SILICON VALLEY BANK, a California-chartered bank, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at One Newton Executive Park, Suite 200, 2221 Washington Street, Newton, Massachusetts 02462 ("Silicon") and the borrowers named above (jointly and severally, individually and collectively, "Borrower"), with offices located at the above address ("Borrower's Address"). The Schedule and Exhibits to this Agreement (the "Schedule" and the "Exhibits," respectively) shall for all purposes be deemed to be part of this Agreement, and the same are integral parts of this Agreement. (Definitions of certain terms used in this Agreement are set forth in Section 8 below.)

1. LOANS.

1.1 LOANS. Silicon will make loans to Borrower (the "Loans"), up to the amounts (the "Credit Limit") shown on the Schedule, provided no Default or Event of Default has occurred and is continuing, and subject to deduction of any Reserves for accrued interest and such other Reserves as Silicon (upon prior written notice to Borrower setting forth the basis of such deduction) deems proper from time to time. Amounts borrowed may be repaid and reborrowed during the term of this Agreement.

1.2 INTEREST. All Loans and all other monetary Obligations shall bear interest at the rate shown on the Schedule, except where expressly set forth to the contrary in this Agreement. Interest shall be payable monthly, on the last day of the month. Interest may, in Silicon's discretion, be charged to Borrower's loan account, and the same shall, after being due and payable, bear interest at the same rate as the other Loans. Silicon may, in its discretion, charge interest to Borrower's Deposit Accounts maintained with Silicon.

1.3 OVERADVANCES. If at any time or for any reason the total of all outstanding Loans and all other Obligations (other than pursuant to the Exim Agreement) exceeds the Credit Limit (an "Overadvance"), Borrower shall immediately pay the amount of the excess to Silicon, without notice or demand. Without limiting Borrower's obligation to repay to Silicon on demand the amount of any Overadvance, Borrower agrees to pay Silicon interest on the outstanding amount of any Overadvance, on demand, at a rate equal to the interest rate which would otherwise be applicable to the Overadvance, plus an additional two percent (2%) per annum.

1.4 FEES. Borrower shall pay Silicon the fees shown on the Schedule, which are in addition to all interest and other sums payable to Silicon and are not refundable.

1.5 LETTERS OF CREDIT. In addition to Section 1.6 and Section 1.7, at the request of Borrower and provided no Default or Event of Default has occurred and is continuing, Silicon shall issue or arrange for the issuance of letters of credit for the account of Borrower, in each case in form and substance reasonably satisfactory to Silicon in its sole discretion (collectively, "Letters of Credit"). The aggregate undrawn amount of all outstanding Letters of Credit from time to time (plus all Silicon exposure under any foreign exchange contracts and Cash Management Services entered into under Sections 1.6 and 1.7 hereof) shall not exceed the amount shown on the Schedule (the "Letter of Credit Sublimit"), and shall be reserved against Loans which would otherwise be available hereunder. Each Letter of Credit may have an expiry date later than the Maturity Date provided, as further set forth in Section 6.2 hereof, Borrower's Letter of Credit reimbursement obligation shall be secured by cash (in such amounts as set forth in Section 6.2) on terms acceptable to Silicon on and after (i) the Maturity Date or (ii) the occurrence and continuance of an Event of Default hereunder. Borrower shall pay all customary bank charges (including charges of Silicon) for the issuance of Letters of Credit, including those charges described on the Schedule. Any payment by Silicon under or in connection with a draw on any Letter of Credit shall constitute a Loan hereunder on the date such payment is made. Borrower hereby agrees to indemnify, save, and hold Silicon harmless from any loss, cost, expense, or liability, including payments made by Silicon, reasonable expenses, and reasonable attorneys' fees incurred by Silicon arising out of or in connection with any Letters of Credit. Borrower agrees to be bound by the regulations and interpretations of the issuer of any Letters of Credit guaranteed by Silicon and opened for Borrower's account or by Silicon's interpretations of any Letter of Credit issued by Silicon for Borrower's account, and Borrower understands and agrees that Silicon shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower's instructions or those contained in the Letters of Credit or any modifications, amendments, or supplements thereto except any such arising out of the gross negligence or willful misconduct of Silicon or its agents. Borrower understands that Letters of Credit may require Silicon to indemnify the issuing bank for certain costs or liabilities arising out of claims by Borrower against such issuing bank. Borrower hereby agrees to indemnify and hold Silicon harmless with respect to any loss, cost, expense, or liability incurred by Silicon under any Letter of Credit as a result of Silicon's indemnification of any such issuing bank except any such arising out of the gross negligence or willful misconduct of Silicon or its agents. The provisions of this Loan Agreement, as it pertains to Letters of Credit, and any other present or future documents or agreements between Borrower and Silicon relating to Letters of Credit are cumulative.

1.6 FOREIGN EXCHANGE SUBLIMIT. In addition to Section 1.5 and Section 1.7, Borrower may use up to the amount set forth on the Schedule in connection with foreign exchange forward contracts with Silicon under which Borrower commits to purchase from or sell to Silicon a set amount of foreign currency more than one business day after the contract date (the "FX Contract"). Silicon shall subtract up to a maximum of 10% of the amount of each outstanding FX Contract from the foreign exchange sublimit (the "FX Reserve"). Silicon may terminate the FX Contracts if an Event of Default occurs.

1.7 CASH MANAGEMENT SERVICES SUBLIMIT. In addition to Section 1.5 and Section 1.6, Borrower may use up to the amount set forth on the Schedule for Cash Management Services. Such aggregate amounts utilized under the Cash Management Services Sublimit shall at all times reduce the amount otherwise available for Loans hereunder. Any amounts Silicon pays on behalf of Borrower or any amounts that are not paid by Borrower for any Cash Management Services will be treated as Loans hereunder and will accrue interest at the interest rate applicable to Loans.

1.8 DESIGNATION OF AGENT. Each Borrower hereby designates Aspen Technology, Inc. (the "Agent") as the agent of that Borrower to discharge the duties and responsibilities of the Agent as provided herein.

1.9 OPERATION OF AGREEMENT. (a) Except as otherwise permitted by Silicon or as directed by the Agent in writing, loans hereunder shall be requested solely by the Agent as agent for each Borrower.

(b) Any Loan which may be made by Silicon under this Agreement and which is directed to the Agent is received by the Agent in trust for the Borrowers. The Agent shall distribute the proceeds of any such Loan solely to, or for the benefit of, a Borrower in accordance with the terms of this Agreement. Each Borrower shall be directly indebted to Silicon for each Loan distributed to any Borrower by the Agent, together with all accrued interest thereon, as if that amount had been advanced directly by Silicon to a Borrower (whether or not the subject Loan was based upon the accounts and/or inventory or other assets of the Borrower which actually received such distribution), in addition to which each Borrower shall be liable to Silicon for all Obligations under this Agreement, whether or not the proceeds of the Loan are distributed to any particular Borrower.

(c) Silicon shall have no responsibility to inquire as to the distribution of Loans made by Silicon through the Agent as described herein.

1.10 LOANS DIRECTLY TO BORROWER. (a) If, for any reason, and at any time during the term of this Agreement,

(i) any Borrower, including the Agent, as agent for each Borrower, shall be unable to, or prohibited from carrying out the terms and conditions of this Agreement (as determined by Silicon in Silicon's reasonable discretion); or

(ii) Silicon deems it inexpedient (in Silicon's reasonable discretion) to continue making Loans to or for the account of any particular Borrower, or to channel such loans and Loans through the Agent, then Silicon may make Loans directly to such Borrower as Silicon determines to be expedient.

(b) Each Borrower shall remain liable to Silicon for the payment and performance of all Obligations (which payment and performance shall continue to be secured by all Collateral) notwithstanding any determination by Silicon to cease making Loans to or for the benefit of any Borrower.

1.11 CONTINUATION OF AUTHORITY OF AGENT. The authority of the Agent to request Loans on behalf of, and to bind, each Borrower, shall continue unless and until Silicon acts as provided in Section 1.10, above, or Silicon actually receives:

(a) written notice of: (i) the termination of such authority, and (ii) the subsequent appointment of a successor Agent, which notice is executed by the respective Officers of each Borrower (other than the President of the Agent being replaced) then eligible for borrowing under this Agreement; and

(b) written notice from the successor Agent (i) accepting such appointment; (ii) acknowledging that the removal and appointment has been effected by the respective Officers of each Borrower eligible for borrowing under the within Agreement; and (iii) acknowledging that from and after the date of appointment, the newly appointed Agent shall be bound by the terms hereof, and that as used herein, the term "Agent" shall mean and include the newly appointed Agent.

1.12 INDEMNIFICATION. The Agent and each Borrower respectively shall indemnify, defend, and save and hold Silicon harmless from and against any liabilities, claims, demands, reasonable expenses, or losses made against or suffered by Silicon on account of, or arising out of, this Agreement, Silicon's reliance upon Loan requests made by the Agent, or any other action taken by Silicon hereunder or under any of Silicon's various agreements with the Agent and/or any Borrower and/or any other person arising under this Agreement, except any such arising out of the gross negligence or willful misconduct of Silicon or its agents.

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## 2. SECURITY INTEREST.

2.1 SECURITY INTEREST. To secure the payment and performance of all of the Obligations when due, and the performance of each of the Borrower's duties under this Agreement and all documents executed in connection herewith, Borrower hereby grants to Silicon a continuing security interest in all of Borrower's interest in the following, whether now owned or hereafter acquired, and wherever located: All Inventory, Equipment, Payment Intangibles, Letter-of-Credit Rights, Supporting Obligations, Receivables, and General Intangibles, all of Borrower's Deposit Accounts, and all money, and all property now or at any time in the future in Silicon's possession (including claims and credit balances), and all proceeds (including proceeds of any insurance policies, proceeds of proceeds and claims against third parties), all products and all books and records related to any of the foregoing (all of the foregoing, together with all other property in which Silicon may now or in the future be granted a lien or security interest, is referred to herein, collectively, as the "Collateral"). Subject to this Section 2.1, Section 8 of the Schedule and the definition of Permitted Liens, the security interest granted herein shall be a first priority security interest in the Collateral. The Collateral may also be subject to Permitted Liens. Borrower may also maintain Deposit Accounts and securities accounts at other financial institutions in accordance with the Section 8 of the Schedule, Silicon may, while an Event of Default continues, place a "hold" on any Deposit Account pledged as collateral. Borrower is not a party to, nor is bound by, any material license or other material agreement with respect to which the Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property. Without prior consent from Silicon, Borrower shall not enter into, or become bound by, any such license or agreement which is reasonably likely to have a material impact on Silicon's business or financial condition. Borrower shall take such steps as Silicon reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for all such licenses or contract rights to be deemed "Collateral" and for Silicon to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement, whether now existing or entered into in the future. Notwithstanding the foregoing, it is expressly acknowledged and agreed that the security interest created in this Agreement only with respect to Exim Eligible Foreign Accounts (as such terms are defined in the Exim Agreement) related thereto is subject to and subordinate to the security interest granted to Silicon in the Exim Agreement with respect to such Exim Eligible Foreign Accounts, but only to the extent any advances are actually made to the Borrower under the Exim Agreement based upon such Exim Eligible Foreign Accounts. If Borrower shall at any time, acquire a commercial tort claim in excess of \$250,000, Borrower shall promptly notify Silicon in a writing signed by Borrower of the brief details thereof and grant to Silicon in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance satisfactory to Silicon. The Collateral, however, does not include Intellectual Property. Notwithstanding the foregoing, the Collateral shall include all accounts, license and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the Intellectual Property. As used herein, (i) "Intellectual Property" means: any and all Copyrights, any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held, any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held, all Mask Works or similar rights available for the protection of semiconductor chips, all Patents; any Trademarks, all licenses or other rights to use any of the Copyrights, Patents, Trademarks, or Mask Works, and all amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents, or Mask Works; (ii) "Copyrights" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held; (iii) "Mask Works" means all mask work or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired; (iv) "Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same and (v) "Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks. Notwithstanding the foregoing, with respect to the shares of stock of Borrower's subsidiaries organized under a jurisdiction outside of the United States (each, a "Foreign Subsidiary"), the term Collateral shall include only 65% of the shares owned by Borrower in each such Foreign Subsidiary. Notwithstanding the foregoing, the Collateral shall not include the New Accenture Collateral.



2.2. RELEASE OF CERTAIN COLLATERAL. Provided no Default then exists, Silicon agrees to enter into an amendment to this Agreement in form and substance reasonably satisfactory to Silicon and Borrower (the "Amendment") to modify the Collateral to a first priority security interest only on Borrower's Payment Intangibles, Receivables and proceeds thereof, upon Borrower's achievement of net income in excess of \$2,500,000 per quarter for two (2) consecutive quarters. Any such modification of the Collateral shall only be effective upon execution of the Amendment by Silicon and Borrower.

2.3 ACCENTURE COLLATERAL Notwithstanding anything to the contrary contained in this Agreement, the Exim Agreement or the Negative Pledge Agreement, Silicon acknowledges that Accenture LLP ("Accenture") currently has a lien on certain of Borrower's personal property (the "Old Accenture Collateral") pursuant to the terms of the security agreement between Accenture and Borrower dated August 16, 2002, which lien secures not more than \$8,000,000 (the "Accenture Debt"). Simultaneously with the execution of this Agreement, Borrower shall cause Accenture to release and terminate its lien on the Old Accenture Collateral and Borrower will grant to Accenture a lien on the New Accenture Collateral to secure the Accenture Debt. As used in this Agreement, "New Accenture Collateral" shall mean specific Receivables and the proceeds thereof with a face amount of not more than the lesser of (i) \$13,415,000 or (ii) two (2) times the outstanding principal amount of the Accenture Debt, which Receivables (A) have been disclosed in writing to Silicon within five Business Days of giving such lien, (B) are not included for borrowing hereunder as an Eligible Receivable, and (C) do not, in any event, meet Minimum Eligibility Requirements hereunder. As further described in Section 2.1 hereof, the Collateral does not include the New Accenture Collateral; provided, however, after the Accenture Debt has been repaid, Borrower shall grant to Silicon a security interest in the New Accenture Collateral or such portion of the New Accenture Collateral that then exists.

### 3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE BORROWER.

In order to induce Silicon to enter into this Agreement and to make Loans, Borrower represents and warrants to Silicon as follows, and Borrower covenants that the following representations will continue to be true, and that Borrower will at all times comply with all of the following covenants:

3.1 CORPORATE EXISTENCE AND AUTHORITY. Borrower, if a corporation, is and will continue to be, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Borrower is and will continue to be qualified and licensed to do business in all jurisdictions in which any failure to do so would have a material adverse effect on Borrower taken as a whole. The execution, delivery and performance by Borrower of this Agreement, and all other documents contemplated hereby (i) have been duly and validly authorized, (ii) are enforceable against Borrower in accordance with their terms (except as enforcement may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to creditors' rights generally), (iii) do not violate Borrower's articles or certificate of incorporation, Borrower's by-laws, or any law or any material agreement or instrument which is binding upon Borrower or its property, and (iv) do not constitute grounds for acceleration of any material indebtedness or obligation under any material agreement or instrument which is binding upon Borrower or its property.

3.2 NAME; TRADE NAMES AND STYLES. The name of Borrower set forth in the heading to this Agreement is its correct name. Listed on the Schedule are all prior names of Borrower and all of Borrower's present and prior trade names. Borrower shall give Silicon 30 days' prior written notice before changing its name or doing business under any other name. Borrower has complied, and will in the future comply, with all laws relating to the conduct of business under a fictitious business name.

3.3 PLACE OF BUSINESS; LOCATION OF COLLATERAL. The address set forth in the heading to this Agreement is Borrower's chief executive office. In addition, Borrower has places of business and Collateral is located only at the locations set forth on the Schedule except for Collateral in transit or Collateral which moves in the ordinary course of business. Borrower will give Silicon at least 30 days prior written notice before opening any additional place of business with assets with a value in excess of \$500,000, changing its chief executive office, changing its state of formation or moving any of the Collateral in excess of \$500,000 to a location other than Borrower's Address or one of the locations set forth on the Schedule, except for Collateral in transit or Collateral which moves in the ordinary course of business.



3.4 TITLE TO COLLATERAL; PERMITTED LIENS. Borrower is now, and will at all times in the future be, the sole owner of all the Collateral, except for items of Equipment which are leased by Borrower and except as otherwise permitted hereunder. The Collateral now is and will remain free and clear of any and all liens, charges, security interests, encumbrances and adverse claims, except for Permitted Liens. Silicon now has, and will continue to have, a first-priority perfected and enforceable security interest in all of the Collateral, subject only to the Permitted Liens and Deposit Accounts and securities accounts held at other financial institutions in accordance with Section 8 of the Schedule, and Borrower will at all times defend Silicon and the Collateral against all material claims of others. None of the Collateral now is or will be affixed to any real property in such a manner, or with such intent, as to become a fixture, other than trade fixtures. Borrower is not and will not become a lessee under any real property lease pursuant to which the lessor may obtain any rights in any of the Collateral and no such lease to which Borrower is a party as of the date hereof prohibits, restrains, impairs or will prohibit, restrain or impair Borrower's right to remove any Collateral from the leased premises. Whenever any Collateral is located upon premises in which any third party has an interest (whether as owner, mortgagee, beneficiary under a deed of trust, lien or otherwise), Borrower shall, whenever requested by Silicon, use its reasonable efforts to cause such third party to execute and deliver to Silicon, in form acceptable to Silicon, such waivers and subordinations as Silicon shall specify, so as to ensure that Silicon's rights in the Collateral are, and will continue to be, superior to the rights of any such third party. Borrower, subject to its reasonable commercial judgment, will keep in full force and effect, and will comply with all the material terms of, any lease of real property where any of the Collateral now or in the future may be located. All of Borrower's subsidiaries' assets are now and will hereafter remain free and clear of any and all liens, charges, security interests, encumbrances and adverse claims, other than Permitted Liens; provided, however, (i) AspenTech UK Limited may incur liens on substantially all of its assets, provided such liens shall secure not more than the principal amount of \$5,000,000 and (ii) other non-Borrower subsidiaries may incur other liens which secure not more than \$3,000,000 in the aggregate.

3.5 MAINTENANCE OF COLLATERAL. Borrower will maintain the Collateral in good working condition, and Borrower will not use the Collateral for any unlawful purpose. Borrower will immediately advise Silicon in writing of any material loss or damage to the Collateral.

3.6 BOOKS AND RECORDS. Borrower has maintained and will maintain at Borrower's Address complete and accurate books and records, comprising an accounting system in accordance with generally accepted accounting principles. Notwithstanding the foregoing, Borrower may move its books and records older than 1 year to an off-site storage facility.

3.7 FINANCIAL CONDITION, STATEMENTS AND REPORTS. All financial statements now or in the future delivered to Silicon have been, and will be, prepared in conformity with generally accepted accounting principles and now and in the future will completely and accurately reflect the financial condition of Borrower as required by GAAP, at the times and for the periods therein stated. Between the last date covered by any such statement provided to Silicon and the date hereof, there has been no material adverse change in the financial condition or business of Borrower taken as a whole. Borrower is solvent taken as a whole.

3.8 TAX RETURNS AND PAYMENTS; PENSION CONTRIBUTIONS. Borrower has timely filed (or timely filed extensions thereof), and will timely file, all material tax returns required by foreign, federal, state and local law, and Borrower has timely paid, and will timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions now or in the future owed by Borrower. Borrower may, however, defer payment of any contested taxes, provided that Borrower (i) in good faith contests Borrower's obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (ii) notifies Silicon in writing of the commencement of, and any material development in, the proceedings, and (iii) posts bonds or takes any other steps required to keep the contested taxes from becoming a lien upon any of the Collateral. Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes in excess of

\$750,000 becoming due and payable by Borrower. Borrower has paid, and shall continue to pay all amounts necessary to fund all present and future pension, profit sharing and deferred compensation plans in accordance with their terms or applicable law, and Borrower has not and will not withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower in excess of \$500,000, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency. Borrower shall, at all times, utilize the services of an outside payroll service providing for the automatic deposit of all payroll taxes payable by Borrower.

3.9 COMPLIANCE WITH LAW. Except as disclosed in the Schedule, Borrower has complied, and will comply, in all material respects, with all provisions of all foreign, federal, state and local laws and regulations relating to Borrower, including, but not limited to, those relating to Borrower's ownership of real or personal property, the conduct and licensing of Borrower's business, and all environmental matters.

3.10 LITIGATION. Except as disclosed in the Schedule, there is no claim, suit, litigation, proceeding or investigation pending or (to best of Borrower's knowledge) threatened by or against or affecting Borrower in any court or before any governmental agency (or any basis therefor known to Borrower) which may result, either separately or in the aggregate, in any material adverse change in the financial condition or business of Borrower, or in any material impairment in the ability of Borrower to carry on its business in substantially the same manner as it is now being conducted. Borrower will promptly inform Silicon in writing of any claim, proceeding, litigation or investigation in the future threatened or instituted by or against Borrower involving any single claim of \$250,000 or more, or involving \$1,500,000 or more in the aggregate.

3.11 USE OF PROCEEDS. All proceeds of all Loans shall be used solely for working capital purposes of Borrower and its subsidiaries. Borrower is not purchasing or carrying any "margin stock" (as defined in Regulation U of the Board of Governors of the Federal Reserve System) and no part of the proceeds of any Loan will be used to purchase or carry any "margin stock" or to extend credit to others for the purpose of purchasing or carrying any "margin stock."

3.12 WITHHOLDING FOR HYPROTECH COMPANY. In the event any payments are received by Silicon from Hyprotech Company (the "Cdn Borrower") hereunder such payments will be made subject to applicable withholding for any taxes, levies, fees, deductions, withholding, restrictions or conditions of any nature whatsoever. Specifically, if at any time any governmental authority, applicable law, regulation or international agreement requires the Cdn Borrower to make any such withholding or deduction from any such payment or other sum payment hereunder to Silicon, the Cdn Borrower hereby covenants and agrees that the amount due from the Cdn Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Silicon receives a net sum equal to the sum which it would have received had no withholding or deduction been required and the Cdn Borrower shall pay the full amount withheld or deducted to the relevant governmental authority. The Cdn Borrower will, upon request, furnish Silicon with proof satisfactory to Silicon indicating that the Cdn Borrower has made such withholding payment provided, however, that the Cdn Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by the Cdn Borrower. The agreements and obligations of the Cdn Borrower contained in this Section shall survive the Maturity Date.

#### 4. RECEIVABLES.

4.1 REPRESENTATIONS RELATING TO RECEIVABLES. To the best of Borrower's knowledge after due inquiry, Borrower represents and warrants to Silicon as follows: Each Receivable with respect to which Loans are requested by Borrower shall, on the date each Loan is requested and made, (i) represents an undisputed (except to the extent that any disputed portion is excluded from such Receivable in determining Minimum Eligibility Requirements) bona fide existing unconditional obligation of the Account Debtor created by the sale, delivery, and acceptance of goods or the rendition of services in the ordinary course of Borrower's business, and (ii) meets the Minimum Eligibility Requirements set forth in Section 8 below.



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#### 4.2 REPRESENTATIONS RELATING TO DOCUMENTS AND LEGAL COMPLIANCE.

Borrower represents and warrants to Silicon as follows: All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Receivables are and shall be true and correct in all material respects and all such invoices, instruments and other documents and all of Borrower's books and records are and shall be genuine and in all respects what they purport to be, and, to Borrower's knowledge, all signatories and endorsers have the capacity to contract. All sales and other transactions underlying or giving rise to each Receivable shall fully comply with all material applicable laws and governmental rules and regulations. All signatures and endorsements on all documents, instruments, and agreements relating to all Receivables are and shall, to the best of Borrower's knowledge, be genuine, and all such documents, instruments and agreements are and shall be legally enforceable in accordance with their terms (subject to the laws affecting creditors generally).

4.3 SCHEDULES AND DOCUMENTS RELATING TO RECEIVABLES. Borrower shall deliver to Silicon transaction reports and loan requests and schedules of all Receivables, and schedules of collections, all on Silicon's standard forms, in accordance with Section 5.3 and Section 6 of the Schedule; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Silicon's security interest and other rights in all of Borrower's Receivables, nor shall Silicon's failure to advance or lend against a specific Receivable affect or limit Silicon's security interest and other rights therein. In the event Borrower has elected to be on "non-borrowing reporting status" (see Section 6 of the Schedule), Borrower shall furnish Silicon with a Loan request at least fifteen (15) days prior to the requested funding date. Otherwise, Loan requests received after 12:00 Noon will not be considered by Silicon until the next Business Day. Upon Silicon's request, together with each such schedule, or later if requested by Silicon, Borrower shall furnish Silicon with copies (or, at Silicon's request, originals) of all contracts, orders, invoices, and other similar documents, and all original shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Receivables, and Borrower warrants the genuineness of all of the foregoing. Borrower shall also furnish to Silicon an aged accounts receivable trial balance in such form and at such intervals as Silicon shall reasonably request. In addition, upon Silicon's request, Borrower shall deliver to Silicon the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Receivables, immediately upon receipt thereof and in the same form as received, with all necessary indorsements, all of which shall be with recourse. Upon Silicon's request, Borrower shall also provide Silicon with copies of all credit memos.

4.4 COLLECTION OF RECEIVABLES. Borrower shall cause the Account Debtors to remit all Receivables owned by Borrower to Silicon and Silicon shall hold all payments on, and proceeds of, Receivables in a lockbox account, or such other "blocked account" as Silicon may specify, pursuant to a blocked account agreement in such form as Silicon may reasonably require. All such payments on, and proceeds of, Receivables shall be first applied to the Obligations in such order as Silicon shall determine, with the excess, if any, deposited on a daily basis into an operating account of Borrower with Silicon. Silicon or its designee may, at any time (i) after the occurrence and continuance of a Default or (ii) in connection with verifications as described in Section 4.8, notify Account Debtors that the Receivables are subject to the security interest of Silicon. Notwithstanding the foregoing, proceeds of Receivables owing to Hyprotech (the "Hyprotech Receivables"), at Borrower's option, shall not be subject to this Section 4.4 regarding a lockbox account or other "blocked account"; provided, however, if the Hyprotech Receivables are not remitted to Silicon in accordance with this Section 4.4, the Hyprotech Receivables shall not be deemed to meet Minimum Eligibility Requirements (as described in the definition of Eligible Receivable in Section 8 hereof).

4.5. REMITTANCE OF PROCEEDS. All proceeds arising from the disposition of any Collateral shall be delivered, in kind, by Borrower to Silicon in the original form in which received by Borrower not later than three (3) Business Days after receipt by Borrower, to be first applied to the Obligations in such order as Silicon shall determine, with the excess, if any, to be deposited on a daily basis into an operating account of Borrower with

Silicon; provided that, if no Default or Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Silicon the proceeds of the sale of worn out or obsolete equipment disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of \$750,000 or less (for all such transactions in any fiscal year). Until forwarded to Silicon, Borrower agrees that it will hold the proceeds of the sale of Collateral received directly by Borrower separate and apart from such other funds and property and in an express trust for Silicon. Nothing in this Section 4.5 limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

4.6 DISPUTES. Borrower shall notify Silicon promptly of all disputes or claims relating to Receivables owned by Borrower involving amounts in excess of \$500,000. Borrower shall not forgive (completely or partially), compromise or settle any Receivable for less than payment in full, or agree to do any of the foregoing, except that Borrower may do so, provided that: (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, and in arm's length transactions, which are reported to Silicon on the regular reports provided to Silicon; (ii) no Default or Event of Default has occurred and is continuing; and (iii) taking into account all such discounts settlements and forgiveness, the total outstanding Loans will not exceed the Credit Limit. Silicon may, at any time after the occurrence and continuance of an Event of Default, settle or adjust disputes or claims directly with Account Debtors for amounts and upon terms which Silicon considers advisable in its reasonable credit judgment and, in all cases, Silicon shall credit Borrower's Loan account with only the net amounts received by Silicon in payment of any Receivables.

4.7 RETURNS. Provided no Event of Default has occurred and is continuing, if any Account Debtor returns any Inventory to Borrower in the ordinary course of its business, Borrower shall promptly determine the reason for such return and promptly issue a credit memorandum to the Account Debtor in the appropriate amount (sending a copy to Silicon upon Silicon's request). In the event any attempted return occurs after the occurrence and continuance of any Event of Default, Borrower shall (i) hold the returned Inventory in trust for Silicon, (ii) segregate all returned Inventory from all of Borrower's other property, (iii) conspicuously label the returned Inventory as Silicon's property, and (iv) immediately notify Silicon of the return of any Inventory, specifying the reason for such return, the location and condition of the returned Inventory, and on Silicon's request deliver such returned Inventory to Silicon.

4.8 VERIFICATION. Silicon may, from time to time, verify directly with the respective Account Debtors the validity, amount and other matters relating to the Receivables, by means of mail, telephone or otherwise, either in the name of Borrower or Silicon or such other name as Silicon may choose.

4.9 NO LIABILITY. Silicon shall not under any circumstances be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to a Receivable, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Receivable, or for settling any Receivable in good faith for less than the full amount thereof, nor shall Silicon be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to a Receivable. Nothing herein shall, however, relieve Silicon from liability for its own gross negligence or willful misconduct.

## 5. ADDITIONAL DUTIES OF THE BORROWER.

5.1 FINANCIAL AND OTHER COVENANTS. Borrower shall at all times comply with the financial and other covenants set forth in the Schedule.

5.2 INSURANCE. Borrower shall, at all times insure all of the tangible personal property Collateral and carry such other business insurance, with insurers reasonably acceptable to Silicon, in such form and amounts as Silicon may reasonably require having regard to comparable businesses, and Borrower shall provide evidence of such insurance to Silicon, so that Silicon is reasonably satisfied that such insurance is, at all times, in full force and effect.

All such insurance policies shall name Silicon as an additional loss payee, and shall contain a lenders loss payee endorsement in form reasonably acceptable to Silicon. Upon receipt of the proceeds of any such insurance, Silicon shall apply such proceeds in reduction of the Obligations as Silicon shall determine in its sole discretion, except that, provided no Default or Event of Default has occurred and is continuing, Silicon shall release to Borrower insurance proceeds totaling less than \$500,000 in aggregate during the term of this Agreement, which shall be utilized by Borrower for the replacement or repair of the Collateral with respect to which the insurance proceeds were paid. Silicon may require reasonable assurance that the insurance proceeds so released will be so used. If Borrower fails to provide or pay for any insurance, Silicon may, but is not obligated to, obtain the same at Borrower's expense. Borrower shall promptly deliver to Silicon copies of all material reports made to insurance companies.

5.3 REPORTS. Borrower, at its expense, shall provide Silicon with the written reports set forth in the Schedule, and such other written reports with respect to Borrower (including budgets, sales projections, operating plans and other financial documentation), as Silicon shall from time to time reasonably specify.

5.4 ACCESS TO COLLATERAL, BOOKS AND RECORDS. At reasonable times, and on one Business Day's notice, Silicon, or its agents, shall have the right to inspect the Collateral, and the right to audit and copy Borrower's books and records. Silicon shall take reasonable steps to keep confidential all information obtained in any such inspection or audit, but Silicon shall have the right to disclose any such information to its auditors, regulatory agencies, and attorneys on a confidential basis, and pursuant to any subpoena or other legal process. The foregoing inspections and audits shall be at Borrower's expense (provided, however, Silicon shall conduct no more than four (4) such audits in any calendar year prior to the occurrence and during the continuance of an Event of Default) and the charge therefor shall be \$750 per person per day (or such higher amount as shall represent Silicon's then current standard charge for the same), plus reasonable out of pocket expenses. Except as permitted pursuant to Section 3.6 hereof, Borrower will not enter into any agreement with any accounting firm, service bureau or third party to store Borrower's books or records at any location other than Borrower's Address, without first obtaining Silicon's written consent, which may be conditioned upon such accounting firm, service bureau or other third party agreeing to give Silicon the same rights with respect to access to books and records and related rights as Silicon has under this Loan Agreement.

5.5 NEGATIVE COVENANTS. Borrower shall not, without Silicon's prior written consent, do any of the following: (i) merge or consolidate with another corporation or entity; provided, however, upon prior notice to Silicon, any Borrower, or any subsidiary of any Borrower, may merge into, or consolidate with, a Borrower (provided a Borrower is the surviving legal entity); (ii) acquire any assets or stock of another Person valued in excess of \$5,000,000 in the aggregate in any calendar year, except in the ordinary course of business; (iii) enter into any other transaction outside the ordinary course of business (other than with respect to Permitted Transfers or as otherwise permitted hereunder); (iv) sell or transfer any Collateral other than Permitted Transfers; (v) store any Inventory or other Collateral in excess of \$500,000 with any warehouseman or other third party except as permitted pursuant to Sections 3.3 and 3.6 hereof); (vi) sell any Inventory on a sale-or-return, guaranteed sale, consignment, or other contingent basis; (vii) make any loans of any money or other assets other than loans and advances to or for the benefit of Borrower's subsidiaries in amounts not to exceed the lesser of (A) the usual and necessary operating expenses of its subsidiaries or (B) \$10,000,000 per fiscal quarter of the Agent; provided, however, each Borrower may make unlimited intercompany loans or advances to, or for the benefit of, any other Borrower; (viii) incur any debts outside the ordinary course of business except as permitted hereunder; (ix) guarantee or otherwise become liable with respect to the obligations of another party or entity, provided, however, Borrower may guarantee the debts and performance obligations of its subsidiaries on an unsecured basis in amounts equal to or less than \$8,000,000 in the aggregate amount outstanding at any time; (x) pay or declare any dividends on Borrower's stock (except for dividends payable solely in stock of Borrower), provided, however, Borrower may make cash dividends pursuant to the terms of Borrower's Series B Preferred Stock provided that at the time of such payment there is then no Event of Default continuing, or would be continuing after giving effect to such payment; (xi) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of Borrower's stock, and/or any of Borrower's 5 1/4% Convertible Subordinated Debentures or other subordinated debt instruments; provided, however, Borrower may (A) make cash repurchases of Borrower's Series B Preferred Stock pursuant to the terms of Borrower's Series B



Preferred Stock and (B) redeem, retire, purchase or acquire, directly or indirectly, any of Borrower's 5 1/4% Convertible Subordinated Debentures pursuant to the terms of the Indenture, provided that at the time of such payment, redemption, retirement, acquisition or purchase there is then no Event of Default continuing, or would be continuing after giving effect to such payment, redemption, retirement, acquisition or purchase; (xii) make any change in Borrower's capital structure which would have a material adverse effect on Borrower or on the prospect of repayment of the Obligations; or (xiii) dissolve or elect to dissolve. Transactions permitted by the foregoing provisions of this Section 5.5 are only permitted if no Default or Event of Default would occur as a result of such transaction.

5.6 LITIGATION COOPERATION. Should any third-party suit or proceeding be instituted by or against Silicon with respect to any Collateral or in any manner relating to Borrower, Borrower shall, without expense to Silicon, make available Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Silicon may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding. Any confidential information shall be treated as such by Silicon pursuant to Section 9.20 hereof.

5.7 FURTHER ASSURANCES. Borrower agrees, at its expense, on request by Silicon, to execute all documents and take all actions, as Silicon may deem reasonably necessary or useful in order to perfect and maintain Silicon's perfected security interest in the Collateral, and in order to fully consummate the transactions contemplated by this Agreement.

## 6. TERM.

6.1 MATURITY DATE. This Agreement shall continue in effect until the maturity date set forth on the Schedule (the "Maturity Date"); provided that the Maturity Date may be extended upon written agreement of the parties hereto. Subject to the cancellation fees set forth in Section 3 of the Schedule, Borrower may terminate this Agreement at any time upon three (3) business days' notice to Silicon.

6.2 PAYMENT OF OBLIGATIONS. On the Maturity Date or on any earlier effective date of termination, Borrower shall pay and perform in full all Obligations, whether evidenced by installment notes or otherwise, and whether or not all or any part of such Obligations are otherwise then due and payable. Without limiting the generality of the foregoing, if on the Maturity Date, or on any earlier effective date of termination, there are any outstanding Letters of Credit issued by Silicon or issued by another institution based upon an application, guarantee, indemnity or similar agreement on the part of Silicon, then on such date Borrower shall provide to Silicon cash collateral in an amount equal to 100% of the undrawn amount of all such Letters of Credit plus all interest, fees and cost due or to become due in connection therewith, to secure all of the Obligations relating to said Letters of Credit, pursuant to Silicon's then standard form cash pledge agreement. Notwithstanding any termination of this Agreement, all of Silicon's security interests in all of the Collateral and all of the terms and provisions of this Agreement shall continue in full force and effect until all Obligations have been paid and performed in full; provided that, without limiting the fact that Loans are subject to the discretion of Silicon, Silicon may, in its sole discretion, refuse to make any further Loans after termination. No termination shall in any way affect or impair any right or remedy of Silicon, nor shall any such termination relieve Borrower of any Obligation to Silicon, until all of the Obligations have been paid and performed in full. Upon payment and performance in full of all the Obligations and the termination of Silicon's commitment to lend hereunder, Silicon shall promptly deliver to Borrower termination statements, requests for reconveyances and such other documents as may be required to fully terminate Silicon's security interests.

## 7. EVENTS OF DEFAULT AND REMEDIES.

7.1 EVENTS OF DEFAULT. The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement, and Borrower shall give Silicon immediate written notice thereof: (a) Any warranty, representation, statement, report or certificate made or delivered to Silicon by Borrower or any of Borrower's officers, employees or agents, now or in the future, shall be untrue or misleading in a material respect; or (b) Borrower shall fail to pay when due any Loan or any interest thereon or any other monetary Obligation; or (c) the total Loans and other Obligations outstanding at any time shall exceed the Credit Limit and such excess is not repaid; or (d) Borrower shall fail to comply with any of the financial covenants set forth in the Schedule or shall fail to perform any other non-monetary Obligation which by its nature cannot be cured; or (e) Borrower shall fail to perform any other non-monetary Obligation, which failure is not cured within twenty (20) Business Days after the date due; or (f) any levy, assessment, attachment, seizure, lien or encumbrance (other than a Permitted Lien) in excess of \$500,000 is made on all or any part of the Collateral which is not cured within 20 days after the occurrence of the same, or immediately upon the service of process upon Silicon seeking to attach by trustee, mesne or other process, any of Borrower's funds in excess of \$250,000 on deposit with, or assets in excess of \$250,000 of the Borrower in the possession of, Silicon; or (g) any default or event of default under any obligation in excess of \$1,000,000 secured by a Permitted Lien entitling the holder of such lien to accelerate, which is not cured within any applicable cure period or waived in writing by the holder of the Permitted Lien; or (h) Borrower breaches any material contract or obligation, which has or may reasonably be expected to have a material adverse effect on Borrower's business or financial condition; or (i) Dissolution, termination of existence, insolvency or business failure of Borrower; or appointment of a receiver, trustee or custodian, for all or any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding by Borrower under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect; or (j) the commencement of any proceeding against Borrower or any guarantor of any of the Obligations under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect, which is not cured by the dismissal thereof within 30 days after the date commenced; or (k) revocation or termination of, or limitation or denial of liability upon, any guaranty of the Obligations or any attempt to do any of the foregoing, or commencement of proceedings by any guarantor of any of the Obligations under any bankruptcy or insolvency law; or (l) revocation or termination of, or limitation or denial of liability upon, any pledge of any certificate of deposit, securities or other property or asset of any kind pledged by any third party to secure any or all of the Obligations, or any attempt to do any of the foregoing, or commencement of proceedings by or against any such third party under any bankruptcy or insolvency law; or (m) Borrower defaults under any agreement evidencing any indebtedness for borrowed money in excess of \$1,000,000 to any third party entitling the holder to accelerate; or (n) Borrower makes any payment on account of any indebtedness or obligation which has been subordinated to the Obligations other than as permitted in the applicable subordination agreement or the terms of such subordinated debt instrument (if no separate subordination agreement was required by Silicon), or if any Person who has subordinated such indebtedness or obligations terminates or in any way limits his subordination agreement; or (o) there shall be a change in the record or beneficial ownership of the outstanding shares of stock of Agent, in one or more transactions, compared to the ownership of outstanding shares of stock of Agent in effect on the date hereof, which results in a change of voting control of Agent, without the prior written consent of Silicon; or (p) Borrower shall generally not pay its debts as they become due, or Borrower shall conceal, remove or transfer any part of its property, with intent to hinder, delay or defraud its creditors, or make or suffer any transfer of any of its property which is reasonably likely to be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or (q) there shall be (i) a material impairment in the perfection or priority of Silicon's security interest in the Collateral or in the value of such Collateral, (ii) a material adverse change in the business, operations or condition (financial or otherwise) of the Borrower taken as a whole, or (iii) a material impairment of the prospect of repayment of any portion of the Obligations; or (r) Silicon, acting in good faith and in a commercially reasonable manner, deems itself insecure because of the occurrence of an event prior to the effective date hereof of which Silicon had no knowledge or notice of on the effective date; or (s) Borrower shall breach any material term of the Negative Pledge Agreement or an Event of Default shall exist under the Exim Agreement (other than an Event of Default under Section 8.3 of the Exim Agreement, unless such default was directly or indirectly caused by Borrower).



7.2 REMEDIES. Upon the occurrence and continuance of any Event of Default, and at any time thereafter, Silicon, at its option, and without notice or demand of any kind (all of which are hereby expressly waived by Borrower), may do any one or more of the following: (a) Cease making Loans or otherwise extending credit to Borrower under this Agreement or any other document or agreement; (b) Accelerate and declare all or any part of the Obligations to be immediately due, payable, and performable, notwithstanding any deferred or installment payments allowed by any instrument evidencing or relating to any Obligation; (c) Take possession of any or all of the Collateral wherever it may be found; provided, however, that should Silicon seek to take possession of any of the Collateral by Court process, Borrower hereby irrevocably waives: (i) any bond and any surety or security relating thereto required by any statute, court rule or otherwise as an incident to such possession; (ii) any demand for possession prior to the commencement of any suit or action to recover possession thereof; and (iii) any requirement that Silicon retain possession of, and not dispose of, any such Collateral until after trial or final judgment; (d) Require Borrower to assemble any or all of the Collateral and make it available to Silicon at places designated by Silicon which are reasonably convenient to Silicon and Borrower, and to remove the Collateral to such locations as Silicon may deem advisable; (e) Complete the processing, manufacturing or repair of any Collateral prior to a disposition thereof and, for such purpose and for the purpose of removal, Silicon shall have the right to use Borrower's premises, vehicles, hoists, lifts, cranes, equipment and all other property without charge; (f) Sell, lease or otherwise dispose of any of the Collateral, in its condition at the time Silicon obtains possession of it or after further manufacturing, processing or repair, at one or more public and/or private sales, in lots or in bulk, for cash, exchange or other property, or on credit, and to adjourn any such sale from time to time without notice other than oral announcement at the time scheduled for sale. Silicon shall have the right to conduct such disposition on Borrower's premises without charge, for such time or times as Silicon deems reasonable, or on Silicon's premises, or elsewhere and the Collateral need not be located at the place of disposition. Silicon may directly or through any affiliated company purchase or lease any Collateral at any such public disposition, and if permissible under applicable law, at any private disposition. Any sale or other disposition of Collateral shall not relieve Borrower of any liability Borrower may have if any Collateral is defective as to title or physical condition or otherwise at the time of sale; (g) Demand payment of, and collect any Receivables and General Intangibles comprising Collateral and, in connection therewith, Borrower irrevocably authorizes Silicon to endorse or sign Borrower's name on all collections, receipts, instruments and other documents, to take possession of and open mail addressed to Borrower and remove therefrom payments made with respect to any item of the Collateral or proceeds thereof, and, in Silicon's sole discretion, to grant extensions of time to pay, compromise claims and settle Receivables and the like for less than face value in a commercially reasonable manner; (h) Offset against any sums in any of Borrower's general, special or other Deposit Accounts with Silicon; and (i) Demand and receive possession of any of Borrower's federal and state income tax returns and the books and records utilized in the preparation thereof or referring thereto. All reasonable attorneys' fees, expenses, costs, liabilities and obligations incurred by Silicon with respect to the foregoing shall be added to and become part of the Obligations, shall be due on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations. Without limiting any of Silicon's rights and remedies, from and after the occurrence of any Event of Default, the interest rate applicable to the Obligations shall be increased by an additional three percent (3%) per annum.

7.3 STANDARDS FOR DETERMINING COMMERCIAL REASONABLENESS. Borrower and Silicon agree that a sale or other disposition (collectively, "sale") of any Collateral which complies with the following standards will conclusively be deemed to be commercially reasonable: (i) Notice of the sale is given to Borrower at least ten (10) days prior to the sale, and, in the case of a public sale, notice of the sale is published at least ten (10) days before the sale in a newspaper of general circulation in the county where the sale is to be conducted; (ii) Notice of the sale describes the collateral in accurate, general, non-specific terms; (iii) The sale is conducted at a place designated by Silicon, with or without the Collateral being present; (iv) The sale commences at any time between 8:00 a.m. and 6:00 p.m.; (v) Payment of the purchase price in cash or by cashier's check or wire transfer is required; (vi) With respect to any sale of any of the Collateral, Silicon may (but is not obligated to) direct any prospective purchaser to ascertain directly from Borrower any and all information concerning the same. Silicon shall be free to employ other methods of noticing and selling the Collateral, in its discretion, if they are commercially reasonable.

7.4 POWER OF ATTORNEY. Upon the occurrence and continuance of any Event

of Default, without limiting Silicon's other rights and remedies, Borrower grants to Silicon an irrevocable power of attorney coupled with an interest, authorizing and permitting Silicon (acting through any of its employees, attorneys or agents) at any such time, at its option, but without obligation, with or without notice to Borrower, and at Borrower's reasonable

expense, to do any or all of the following, in Borrower's name or otherwise, but Silicon agrees to exercise the following powers in a commercially reasonable manner: (a) Execute on behalf of Borrower any documents that Silicon may, in its sole discretion, deem advisable in order to perfect and maintain Silicon's security interest in the Collateral, or in order to exercise a right of Borrower or Silicon, or in order to fully consummate all the transactions contemplated under this Agreement, and all other present and future agreements; (b) Execute on behalf of Borrower any document exercising, transferring or assigning any option to purchase, sell or otherwise dispose of or to lease (as lessor or lessee) any real or personal property which is part of Silicon's Collateral or in which Silicon has an interest; (c) Execute on behalf of Borrower, any invoices relating to any Receivable, any draft against any Account Debtor and any notice to any Account Debtor, any proof of claim in bankruptcy, any Notice of Lien, claim of mechanic's, materialman's or other lien, or assignment or satisfaction of mechanic's, materialman's or other lien; (d) Take control in any manner of any cash or non-cash items of payment or proceeds of Collateral; endorse the name of Borrower upon any instruments, or documents, evidence of payment or Collateral that may come into Silicon's possession; (e) Endorse all checks and other forms of remittances received by Silicon; (f) Pay, contest or settle any lien, charge, encumbrance, security interest and adverse claim in or to any of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; (g) Grant extensions of time to pay, compromise claims and settle Receivables and General Intangibles for less than face value and execute all releases and other documents in connection therewith; (h) Pay any sums required on account of Borrower's taxes or to secure the release of any liens therefor, or both; (i) Settle and adjust, and give releases of, any insurance claim that relates to any of the Collateral and obtain payment therefor; (j) Instruct any third party having custody or control of any books or records belonging to, or relating to, Borrower to give Silicon the same rights of access and other rights with respect thereto as Silicon has under this Agreement; and (k) Take any action or pay any sum required of Borrower pursuant to this Agreement and any other present or future agreements. Any and all reasonable sums paid and any and all reasonable costs, expenses, liabilities, obligations and attorneys' fees incurred by Silicon with respect to the foregoing shall be added to and become part of the Obligations, shall be payable on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations. In no event shall Silicon's rights under the foregoing power of attorney or any of Silicon's other rights under this Agreement be deemed to indicate that Silicon is in control of the business, management or properties of Borrower.

7.5 APPLICATION OF PROCEEDS. All proceeds realized as the result of any sale of the Collateral shall be applied by Silicon first to the reasonable costs, expenses, liabilities, obligations and attorneys' fees incurred by Silicon in the exercise of its rights under this Agreement, second to the interest due upon any of the Obligations, and third to the principal of the Obligations, in such order as Silicon shall determine in its sole discretion. Any surplus shall be paid to Borrower or other persons legally entitled thereto; Borrower shall remain liable to Silicon for any deficiency. If, Silicon, in its sole discretion, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Silicon shall have the option, subject always to commercial reasonableness, exercisable at any time, in its sole discretion, of either reducing the Obligations by the principal amount of purchase price or deferring the reduction of the Obligations until the actual receipt by Silicon of the cash therefor.

7.6 REMEDIES CUMULATIVE. In addition to the rights and remedies set forth in this Agreement, Silicon shall have all the other rights and remedies accorded a secured party under the Massachusetts Uniform Commercial Code and under all other applicable laws, and under any other instrument or agreement now or in the future entered into between Silicon and Borrower, and all of such rights and remedies are cumulative and none is exclusive. Exercise or partial exercise by Silicon of one or more of its rights or remedies shall not be deemed an election, nor bar Silicon from subsequent exercise or partial exercise of any other rights or remedies. The failure or delay of Silicon to exercise any rights or remedies shall not operate as a waiver thereof, but all rights and remedies shall continue in full force and effect until all of the Obligations have been fully paid and performed.

## 8. DEFINITIONS.

As used in this Agreement, the following terms have the following meanings:

"ACCOUNT DEBTOR" means the obligor on a Receivable.

"AFFILIATE" means, with respect to any Person, a partner, 10% shareholder, director, or senior officer of such Person, or any parent or subsidiary of such Person, or any Person controlling, controlled by or under common control with such Person.

"BUSINESS DAY" means a day on which Silicon is open for business.

"CASH MANAGEMENT SERVICES" means amounts owing to Silicon in connection with Silicon's cash management services, direct deposit of payroll, business credit card, and check cashing services as may be further identified in the various cash management services agreements related to such Cash Management Services.

"CODE" means the Uniform Commercial Code as adopted and in effect in the Commonwealth of Massachusetts from time to time.

"COLLATERAL" has the meaning set forth in Section 2.1 above.

"DEFAULT" means any event which with notice or passage of time or both, would constitute an Event of Default.

"DEPOSIT ACCOUNT" has the meaning set forth in Section 9-102 of the Code.

"DEFERRED REVENUE" is all amounts received in advance of performance under contracts and not yet recognized as revenue.

"ELIGIBLE RECEIVABLES" means Receivables arising in the ordinary course of Borrower's business from the sale of goods or rendition of services, in which Silicon has a first priority perfected lien (subject to Permitted Liens), which Silicon, in its good faith business judgment, shall deem eligible for borrowing, based on such considerations as Silicon may from time to time deem appropriate. Without limiting the fact that the determination of which Receivables are eligible for borrowing is a matter of Silicon's good faith business judgment, the following (the "MINIMUM ELIGIBILITY REQUIREMENTS") are the minimum requirements for a Receivable to be an Eligible Receivable: (i) the Receivable must not be outstanding for more than 90 days from its invoice date (or 60 days from its due date if an invoice aging is not available), (ii) the Receivable must not be due under a fulfillment or requirements contract with the Account Debtor or represent Deferred Revenue (provided, however, Deferred Revenue offsets will not be deemed ineligible (if otherwise eligible hereunder) as long as Borrower maintains, at all times, an Adjusted Quick Ratio of at least 1.25 to 1.0), (iii) the Receivable must not be subject to any contingencies (including Receivables arising from sales on consignment, guaranteed sale or other terms pursuant to which payment by the Account Debtor may be conditional, except as may otherwise be acceptable to Silicon in its discretion), (iv) the Receivable must not be owing from an Account Debtor with whom the Borrower has any dispute (whether or not relating to the particular Receivable), up to the disputed amount, (v) the Receivable must not be owing from an Affiliate of Borrower, (vi) the Receivable must not be owing from an Account Debtor which is subject to any insolvency or bankruptcy proceeding, or whose financial condition is not reasonably acceptable to Silicon, or which, fails or goes out of a material portion of its business, (vii) the Receivable must not be owing from the United States or any department, agency or instrumentality thereof (unless there has been compliance, to Silicon's reasonable satisfaction, with the United States Assignment of Claims Act), (viii) the Receivable must not be owing from an Account Debtor located outside the United States or Canada (unless pre-approved by Silicon in its discretion in writing, or backed by a letter of credit satisfactory to Silicon, or FCIA insured satisfactory to Silicon); and (ix) the Receivable must not be owing from an Account Debtor to whom Borrower is or may be liable for goods purchased from such Account Debtor or otherwise. Receivables owing from one Account Debtor will not be deemed Eligible Receivables to the extent they exceed 25% of the total Receivables outstanding. In addition, if more than 50% of the Receivables owing from an Account Debtor are outstanding more than 90 days from their invoice date (without regard to unapplied credits) or



are otherwise not eligible Receivables, then all Receivables owing from that Account Debtor will be deemed ineligible for borrowing. Silicon may, from time to time, in its good faith business judgment, revise the Minimum Eligibility Requirements, upon five business days' written notice to the Borrower. Notwithstanding the foregoing, Hyprotech Receivables shall be not be deemed to meet Minimum Eligibility Requirements if Borrower has not elected to forward proceeds of same to a lockbox or other "blocked account" in accordance with Section 4.4.

"EQUIPMENT" means all of Borrower's present and hereafter acquired machinery, molds, machine tools, motors, furniture, equipment, furnishings, fixtures, trade fixtures, motor vehicles, tools, parts, dies, jigs, goods and other tangible personal property (other than Inventory) of every kind and description used in Borrower's operations or owned by Borrower and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions or improvements to any of the foregoing, wherever located.

"EVENT OF DEFAULT" means any of the events set forth in Section 7.1 of this Agreement.

"EXIM AGREEMENT" means the Export-Import Bank Loan and Security Agreement of even date between Silicon, Aspen Technology, Inc. and AspenTech, Inc., as may be amended, restated, extended or replaced from time to time.

"GENERAL INTANGIBLES" means all general intangibles of Borrower, whether now owned or hereafter created or acquired by Borrower, including, without limitation, all choses in action, rights to payment for credit extended, amounts due to Borrower, credit memoranda in favor of Borrower, warranty claims, causes of action, corporate or other business records, deposits, Deposit Accounts, inventions, designs, drawings, blueprints, patents, patent applications, trademarks and the goodwill of the business symbolized thereby, names, trade names, trade secrets, goodwill, copyrights, registrations, licenses, franchises, customer lists, security and other deposits, rights in all litigation presently or hereafter pending for any cause or claim (whether in contract, tort or otherwise), and all judgments now or hereafter arising therefrom, all claims of Borrower against Silicon, rights to purchase or sell real or personal property, rights as a licensor or licensee of any kind, royalties, telephone numbers, proprietary information, purchase orders, and all insurance policies and claims (including without limitation life insurance, key man insurance, credit insurance, liability insurance, property insurance and other insurance), tax refunds and claims, computer programs, discs, tapes and tape files, claims under guaranties, security interests or other security held by or granted to Borrower, all rights to indemnification and all other intangible property of every kind and nature (other than Receivables).

"INVENTORY" means all of Borrower's now owned and hereafter acquired goods, merchandise or other personal property, wherever located, to be furnished under any contract of service or held for sale or lease (including without limitation all raw materials, work in process, finished goods and goods in transit), and all materials and supplies of every kind, nature and description which are or might be used or consumed in Borrower's business or used in connection with the manufacture, packing, shipping, advertising, selling or finishing of such goods, merchandise or other personal property, and all warehouse receipts, documents of title and other documents representing any of the foregoing.

"LETTER-OF-CREDIT RIGHTS" means all letter-of-credit rights including, without limitation, "letter-of-credit rights" as defined in the Code and also 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.

"OBLIGATIONS" means all present and future Loans, advances, debts, liabilities, obligations, guaranties, covenants, duties and indebtedness at any time owing by Borrower to Silicon, under or in connection with this Agreement, the Exim Agreement, the Negative Pledge Agreement or any note or other instrument or document executed in connection herewith, whether arising from an extension of credit, opening of a letter of credit, banker's acceptance, foreign exchange contracts, loan, Cash Management Services, guaranty, indemnification or otherwise, whether direct or indirect, absolute or contingent, due or to become due, including, without limitation, all interest, charges, reasonable expenses, reasonable fees, reasonable attorney's fees, reasonable expert witness fees, audit fees,



letter of credit fees, collateral monitoring fees, closing fees, facility fees, termination fees, minimum interest charges and any other sums chargeable to Borrower under this Agreement or under any other present or future instrument or agreement between Borrower and Silicon.

"PAYMENT INTANGIBLES" means all payment intangibles including, without limitation, "payment intangibles" as defined in the Code and also any general intangible under which the Account Debtor's primary obligation is a monetary obligation.

"PERMITTED TRANSFERS" means the following: (A) the sale of finished Inventory in the ordinary course of Borrower's business, (B) the sale of obsolete or unneeded Equipment in the ordinary course of business in amounts not to exceed \$750,000 in the aggregate in any calendar year, (C) the sale of other assets outside of the ordinary course valued at not more than \$5,000,000 during the term of this Agreement, provided, however, the proceeds of such sale are promptly remitted first to Silicon for application to the Obligations then outstanding, if any, and then to an operating account of Borrower at Silicon or (D) the sale (free and clear of any lien or security interest of Silicon, other than the proceeds of such sale) of Borrower's Receivables to Fleet Business Credit, General Electric Capital Corporation, or other reputable and comparable financial institutions, provided (i) such sale of Receivables is made on a "true sale", non-recourse basis consistent with Borrower's past practices, (ii) Silicon has been, prior to the sale of any such Receivable, notified in writing with reasonable detail identifying the Receivables to be sold, (iii) no such Receivables are included for borrowing hereunder as an Eligible Receivable from and after the date of such sale, (iv) either (x) such Receivable (or the portion thereof which is sold) does not meet Minimum Eligibility Requirements hereunder or (y) Borrower receives in cash at least 90% of the face amount of such Receivable as proceeds from such sale (if such Receivable (or the portion thereof which is sold) was otherwise eligible for borrowing hereunder) and (v) all proceeds of such sale are promptly remitted first to Silicon for application to the Obligations then outstanding, if any, and then to an operating account of Borrower at Silicon. Silicon agrees that provided all conditions precedent to the transfers permitted herein have been satisfied, Silicon will promptly thereafter execute all appropriate consents and releases, as reasonably requested by Borrower and/or the purchaser of any such items, rights or Receivables.

"PERMITTED LIENS" means the following: (i) purchase money security interests in specific items of Equipment in an amount not to exceed \$3,000,000 in the aggregate at any time outstanding during the term of this Agreement; (ii) leases of specific items of Equipment in an amount not to exceed \$12,000,000 in the aggregate at any time outstanding during the term of this Agreement; (iii) liens for taxes, assessments or other governmental charges or levies not delinquent, or, being contested in good faith and by appropriate proceedings and with respect to which proper reserves have been taken by Borrower; PROVIDED, THAT, the lien shall have no effect on the priority of the liens in favor of Silicon; (iv) additional security interests and liens consented to in writing by Silicon, which consent shall not be unreasonably withheld; (v) security interests being terminated substantially concurrently with this Agreement; (vi) deposits or pledges securing obligations under worker's compensation, unemployment insurance, social security or public liability laws or similar legislation; (vii) deposits or pledges securing bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of Borrower's business; (viii) liens of materialmen, mechanics, warehousemen, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent; (ix) liens incurred in connection with the extension, renewal or refinancing of the indebtedness secured by liens of the type described above in clauses (i) or (ii) above, provided that any extension, renewal or replacement lien is limited to the property encumbered by the existing lien and the principal amount of the indebtedness being extended, renewed or refinanced does not increase; (x) liens in favor of customs and revenue authorities which secure payment of customs duties in connection with the importation of goods, (xi) [intentionally omitted], (xii) liens of Fleet National Bank in specific cash (or cash equivalents) pledged to Fleet National Bank to secure Borrower's obligations to Fleet National Bank (the "Fleet Debt") pursuant to certain letters of credit issued by Fleet National Bank (the "Fleet L/Cs") and foreign exchange forward contracts issued by Fleet National Bank (the "Fleet FX Contracts"), (xiii) liens of The Royal Bank of Scotland and/or National Westminster Bank or other reputable, comparable financial institution (collectively, "Nat West") in specific cash (or cash equivalents) pledged to Nat West to secure Borrower's obligations pursuant to that certain guaranty of certain



letters of credit issued on behalf of AspenTech UK Limited in an amount not to exceed UK(pound)1,300,000.00 (the "Nat West Debt"); (xiv) liens under the Exim Agreement and (xv) lien on a long term Receivable due from Air Products in favor of General Electric Capital Corporation to secure Borrower's performance under a capital lease, provided such lien shall secure not more than the principal amount of \$1,200,000. Silicon will have the right to require, as a condition to its consent under subsection (iv) above, that the holder of the additional security interest or lien sign an intercreditor agreement acceptable to Silicon (in its sole discretion), acknowledging that the security interest is subordinate to the security interest in favor of Silicon, and agreeing not to take any action to enforce its subordinate security interest so long as any Obligations remain outstanding, and that Borrower agree that default (after the expiration of any applicable notice or cure period) in any obligation secured by the subordinate security interest shall also constitute an Event of Default under this Agreement.

"PERSON" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, government, or any agency or political division thereof, or any other entity.

"RECEIVABLES" means all of Borrower's now owned and hereafter acquired accounts (whether or not earned by performance), accounts receivable, health-care insurance receivables, rights to payment, letters of credit, contract rights, chattel paper, instruments, securities, securities accounts, investment property, documents and all other forms of obligations at any time owing to Borrower, all guaranties and other security therefor, all merchandise returned to or repossessed by Borrower, and all rights of stoppage in transit and all other rights or remedies of an unpaid vendor, lienor or secured party.

"RESERVES" means, as of any date of determination, such amounts as Silicon may from time to time establish and revise in good faith reducing the amount of Loans, Letters of Credit and other financial accommodations which would otherwise be available to Borrower under the lending formula(s) provided in the Schedule: (a) to reflect events, conditions, contingencies or risks which, as determined by Silicon in good faith, do or may reasonably be expected to affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Receivables), (ii) the assets, business or prospects of Borrower or any Guarantor, or (iii) the security interests and other rights of Silicon in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Silicon's good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or any guarantor to Silicon is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Silicon determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

"SUPPORTING OBLIGATIONS" means all supporting obligations including, without limitation, "supporting obligations" as defined in the Code and also any letter-of-credit right or secondary obligation which supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

OTHER TERMS. All accounting terms used in this Agreement, unless otherwise indicated, shall have the meanings given to such terms in accordance with generally accepted accounting principles, consistently applied. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code, to the extent such terms are defined therein.

## 9. GENERAL PROVISIONS.

9.1 INTEREST COMPUTATION. In computing interest on the Obligations, all checks, wire transfers and other items of payment received by Silicon (including proceeds of Receivables and payment of the Obligations in full) shall be deemed applied by Silicon on account of the Obligations three Business Days after receipt by Silicon of immediately available funds, and, for purposes of the foregoing, any such funds received after 12:00 Noon on any day shall be deemed received on the next Business Day. Silicon shall not, however, be required to credit Borrower's

account for the amount of any item of payment which is unsatisfactory to Silicon in its sole discretion, and Silicon may charge Borrower's loan account for the amount of any item of payment which is returned to Silicon unpaid.

9.2 APPLICATION OF PAYMENTS. All payments with respect to the Obligations may be applied, and in Silicon's sole discretion reversed and re-applied, to the Obligations, in such order and manner as Silicon shall determine in its sole discretion.

9.3 CHARGES TO ACCOUNTS. Silicon may, in its discretion, require that Borrower pay monetary Obligations in cash to Silicon, or charge them to Borrower's Loan account, in which event they will bear interest at the same rate applicable to the Loans. Silicon may also, in its discretion, charge any monetary Obligations to Borrower's Deposit Accounts maintained with Silicon.

9.4 MONTHLY ACCOUNTINGS. Silicon shall provide Borrower monthly with an account of advances, charges, expenses and payments made pursuant to this Agreement. Such account shall be deemed correct, accurate and binding on Borrower and an account stated (except for reverses and reapplications of payments made and corrections of errors discovered by Silicon), unless Borrower notifies Silicon in writing to the contrary within sixty (60) days after each account is rendered, describing the nature of any alleged errors or admissions.

9.5 NOTICES. All notices to be given under this Agreement shall be in writing and shall be given either personally or by reputable private delivery service or by regular first-class mail, or certified mail return receipt requested, addressed to Silicon or Borrower at the addresses shown in the heading to this Agreement, or at any other address designated in writing by one party to the other party. Notices to Silicon shall be directed to the Commercial Finance Division, to the attention of the Division Manager or the Division Credit Manager. All notices shall be deemed to have been given upon delivery in the case of notices personally delivered, or at the expiration of one Business Day following delivery to the private delivery service, or two Business Days following the deposit thereof in the United States mail, with postage prepaid.

9.6 SEVERABILITY. Should any provision of this Agreement be held by any court of competent jurisdiction to be void or unenforceable, such defect shall not affect the remainder of this Agreement, which shall continue in full force and effect.

9.7 INTEGRATION. This Agreement and such other written agreements, documents and instruments as may be executed in connection herewith are the final, entire and complete agreement between Borrower and Silicon and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Agreement. There are no oral understandings, representations or agreements between the parties which are not set forth in this Agreement or in other written agreements signed by the parties in connection herewith.

9.8 WAIVERS. The failure of Silicon at any time or times to require Borrower to strictly comply with any of the provisions of this Agreement or any other present or future agreement between Borrower and Silicon shall not waive or diminish any right of Silicon later to demand and receive strict compliance therewith. Any waiver of any default shall not waive or affect any other default, whether prior or subsequent, and whether or not similar. None of the provisions of this Agreement or any other agreement now or in the future executed by Borrower and delivered to Silicon shall be deemed to have been waived by any act or knowledge of Silicon or its agents or employees, but only by a specific written waiver signed by an authorized officer of Silicon and delivered to Borrower. Borrower waives demand, protest, notice of protest and notice of default or dishonor, notice of payment and nonpayment, release, compromise, settlement, extension or renewal of any commercial paper, instrument, account, General Intangible, document or guaranty at any time held by Silicon on which Borrower is or may in any way be liable, and notice of any action taken by Silicon, unless expressly required by this Agreement.

9.9 NO LIABILITY FOR ORDINARY NEGLIGENCE. Neither Silicon, nor any of its directors, officers, employees, agents, attorneys or any other Person affiliated with or representing Silicon shall be liable for any claims, demands, losses or damages, of any kind whatsoever, made, claimed, incurred or suffered by Borrower or any other party through the ordinary negligence of Silicon, or any of its directors, officers, employees, agents, attorneys or any other Person affiliated with or representing Silicon, but nothing herein shall relieve Silicon from liability for its own gross negligence or willful misconduct.

9.10 AMENDMENT. The terms and provisions of this Agreement may not be waived or amended, except in a writing executed by Borrower and a duly authorized officer of Silicon.

9.11 TIME OF ESSENCE. Time is of the essence in the performance by Borrower of each and every obligation under this Agreement.

9.12 ATTORNEYS FEES AND COSTS. Borrower shall reimburse Silicon for all reasonable attorneys' fees and all filing, recording, search, title insurance, appraisal, audit, and other reasonable costs incurred by Silicon, pursuant to, or in connection with, or relating to this Agreement (whether or not a lawsuit is filed), including, but not limited to, any reasonable attorneys' fees and costs Silicon incurs in order to do the following: prepare and negotiate this Agreement and the documents relating to this Agreement; obtain legal advice in connection with this Agreement or Borrower; enforce, or seek to enforce, any of its rights; prosecute actions against, or defend actions by, Account Debtors; commence, intervene in, or defend any action or proceeding; initiate any complaint to be relieved of the automatic stay in bankruptcy; file or prosecute any probate claim, bankruptcy claim, third-party claim, or other claim; examine, audit, copy, and inspect any of the Collateral or any of Borrower's books and records; protect, obtain possession of, lease, dispose of, or otherwise enforce Silicon's security interest in, the Collateral; and otherwise represent Silicon in any litigation relating to Borrower. In satisfying Borrower's obligation hereunder to reimburse Silicon for such attorneys fees, Borrower may, for convenience, issue checks directly to Silicon's attorneys, Riemer & Braunstein, LLP, but Borrower acknowledges and agrees that Riemer & Braunstein, LLP is representing only Silicon and not Borrower in connection with this Agreement. If either Silicon or Borrower files any lawsuit against the other predicated on a breach of this Agreement, Silicon shall be entitled to recover its reasonable costs and attorneys' fees, including (but not LIMITED to) reasonable attorneys' fees and costs incurred in the enforcement of, execution upon or defense of any order, decree, award or judgment. All attorneys' fees and costs to which Silicon may be entitled pursuant to this Section 9.12 shall immediately become part of Borrower's Obligations, shall be due on demand, and shall bear interest at a rate equal to the highest interest rate applicable to any of the Obligations.

9.13 BENEFIT OF AGREEMENT. The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of Borrower and Silicon; provided, however, that Borrower may not assign or transfer any of its rights under this Agreement without the prior written consent of Silicon, and any prohibited assignment shall be void. No consent by Silicon to any assignment shall release Borrower from its liability for the Obligations.

9.14 JOINT AND SEVERAL LIABILITY. If Borrower consists of more than one Person, their liability shall be joint and several, and the compromise of any claim with, or the release of, any Borrower shall not constitute a compromise with, or a release of, any other Borrower.

9.15 LIMITATION OF ACTIONS. Any claim or cause of action by Borrower against Silicon, its directors, officers, employees, agents, accountants or attorneys, based upon, arising from, or relating to this Loan Agreement shall be barred unless asserted by Borrower by the commencement of an action or proceeding in a court of competent jurisdiction by the filing of a complaint within the earlier to occur of (i) one year after the discovery of the act, occurrence or omission upon which such claim or cause of action is based, and the service of a summons and complaint on an officer of Silicon, or on any other person authorized to accept service on behalf of Silicon, within thirty (30) days thereafter, or (ii) two years from the date of this Agreement, or if later, two years from the date of any amendment or modification of this Agreement which extends the Maturity Date. Borrower agrees that such period is a reasonable and sufficient time for Borrower to investigate and act upon any such claim or cause of action. The period provided herein shall not be waived, tolled, or extended except by the written consent of Silicon in its sole discretion. This provision shall survive any termination of this Loan Agreement or any other present or future agreement.



9.16 RIGHT OF SET-OFF. Borrower and any guarantor hereby grant to Silicon a lien, security interest, and right of setoff as security for all Obligations to Silicon, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping, or control of Silicon or any entity under the control of Silicon Valley Bank or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Silicon may set off the same or any part thereof and apply the same to any liability or obligation of Borrower and any guarantor then due and regardless of the adequacy of any other collateral securing the loan. ANY AND ALL RIGHTS TO REQUIRE SILICON TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOAN, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS, OR OTHER PROPERTY OF THE BORROWER OR ANY GUARANTOR, ARE HEREBY KNOWINGLY, VOLUNTARILY, AND IRREVOCABLY WAIVED.

9.17 SECTION HEADINGS; CONSTRUCTION. Section headings are only used in this Agreement for convenience. Borrower and Silicon acknowledge that the headings may not describe completely the subject matter of the applicable section, and the headings shall not be used in any manner to construe, limit, define or interpret any term or provision of this Agreement. The term "including", whenever used in this Agreement, shall mean "including (but not limited to)". This Agreement has been fully reviewed and negotiated between the parties and no uncertainty or ambiguity in any term or provision of this Agreement shall be construed strictly against Silicon or Borrower under any rule of construction or otherwise.

9.18 GOVERNING LAW; JURISDICTION; VENUE. This Agreement and all acts and transactions hereunder and all rights and obligations of Silicon and Borrower shall be governed by the laws of the Commonwealth of Massachusetts. As a material part of the consideration to Silicon to enter into this Agreement, Borrower (i) agrees that all actions and proceedings relating directly or indirectly to this Agreement shall, at Silicon's option, be litigated in state or federal courts located within Massachusetts; (ii) consents to the jurisdiction and venue of any such court and consents to service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (iii) waives any and all rights Borrower may have to object to the jurisdiction of any such court, or to transfer or change the venue of any such action or proceeding, provided, however, that if for any reason Silicon cannot avail itself of such courts in the Commonwealth of Massachusetts, Borrower accepts jurisdiction of the courts and venue in Santa Clara, California.

9.19 MUTUAL WAIVER OF JURY TRIAL. BORROWER AND SILICON EACH HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO, THIS AGREEMENT OR ANY OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN SILICON AND BORROWER, OR ANY CONDUCT, ACTS OR OMISSIONS OF SILICON OR BORROWER OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS OR ANY OTHER PERSONS AFFILIATED WITH SILICON OR BORROWER, IN ALL OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE.

9.20 CONFIDENTIALITY. In handling any confidential information, Silicon shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (i) to Silicon's subsidiaries or affiliates in connection with their present or prospective business relations with Borrower (provided such subsidiaries or affiliates shall comply with comparable confidentiality provisions); (ii) to prospective transferees or purchasers of any interest in the Loans (provided such transferees or purchasers shall comply with comparable confidentiality provisions); (iii) as required by law, regulation, subpoena, or other order; (iv) as required in connection with Silicon's examination or audit; and (v) as Silicon considers appropriate in exercising remedies under this Agreement. Confidential information does not include information that either: (a) is in the public domain or in Silicon's possession when disclosed to Silicon, or becomes part of the public domain after disclosure to Silicon (through no act or omission of Silicon); or (b) is disclosed to Silicon by a third party, which third party is not under any non-disclosure obligation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first above written.

BORROWER:

ASPEN TECHNOLOGY, INC.

BY: /s/ LISA W. ZAPPALA

-----  
NAME: Lisa W. Zappala  
TITLE: Senior Vice President and  
Chief Financial Officer

ASPENTECH, INC.

BY: /s/ LISA W. ZAPPALA

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NAME: Lisa W. Zappala  
TITLE: Treasurer

HYPROTECH COMPANY

BY: /s/ D. E. MOULT

-----  
NAME: D. E. Moulton  
TITLE: Chief Financial Officer

SILICON:

SILICON VALLEY BANK, D/B/A  
SILICON VALLEY EAST

BY: /s/ JOHN V. ATANASOFF

-----  
NAME: John V. Atanasoff  
TITLE: Vice President

SILICON VALLEY BANK

SCHEDULE TO  
LOAN AND SECURITY AGREEMENT

BORROWER: ASPEN TECHNOLOGY, INC., A DELAWARE CORPORATION  
ADDRESS: TEN CANAL PARK  
CAMBRIDGE, MASSACHUSETTS 02141  
BORROWER: ASPENTECH, INC., A TEXAS CORPORATION  
ADDRESS: TEN CANAL PARK  
CAMBRIDGE, MASSACHUSETTS 02141  
BORROWER: HYPROTECH COMPANY, A CORPORATION ORGANIZED UNDER THE LAWS OF  
NOVA SCOTIA, CANADA  
ADDRESS: TEN CANAL PARK  
CAMBRIDGE, MASSACHUSETTS 02141  
DATE: JANUARY 30, 2003

This Schedule forms an integral part of the Loan and Security Agreement between Silicon Valley Bank and the above-borrower of even date.

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1. CREDIT LIMIT  
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(Section 1.1): An amount not to exceed the lesser of (A) or (B), below:  
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(A)  
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(i) \$15,000,000 (the "Maximum Credit Limit"); MINUS  
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(ii) the aggregate amounts of all Loans (including Cash Management Services), then undrawn outstanding Letters of Credit, the FX Reserve, or any other accommodations issued or incurred, or caused to be issued or incurred by Silicon for the account and/or benefit of the Borrower.  
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(B)  
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(i) 70% (which percentage may increase pursuant to the results of Silicon's field audit of Borrower's Receivables in accordance with the Advance Rate Chart) (the "Domestic Advance Rate") of the amount of the Borrower's Eligible Receivables (as defined in Section 8 above); PLUS  
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(ii) the following amount to be included at all times other than as of 12/31, 3/31, 6/30 and 9/30 of each calendar year: the lesser of (x) 50% of the current portion of Borrower's long term domestic contract receivables that will be billed within the following 90 days, but that are otherwise Eligible Receivables hereunder or (y) \$5,000,000.00; MINUS  
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(iii) the aggregate amounts of all Loans (including Cash Management Services), then undrawn outstanding Letters of Credit, the FX Reserve, or any other accommodations issued or incurred, or caused to be issued or incurred by Silicon for the account and/or benefit of the Borrower.  
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Notwithstanding the foregoing, Silicon may, from time to time, increase or decrease the advance rate(s) set forth herein in its good faith business judgment upon notice to Borrower based on changes in collection experience with respect to the Receivables or other issues or factors relating to the Receivables or the Collateral.

As used herein, the "Advance Rate Chart" is as follows:

DILUTION	DOMESTIC ADVANCE RATE	NON-HEDGED EXIM ADVANCE RATE	HEDGED EXIM ADVANCE RATE
15% - 20%	70%	70%	80%
10% - 14.99%	75%	75%	85%
less than or equal to 10%	80%	80%	90%

Dilution will be determined by Silicon's periodic field audits and the Advance Rates will be adjusted by Silicon thereafter in its good faith business judgment.

LETTER OF CREDIT/FX CONTRACT/CASH MANAGEMENT SERVICES SUBLIMIT

(Section 1.5, 1.6, 1.7): \$11,000,000 (OF WHICH ONLY \$2,000,000 MAY BE USED FOR FX RESERVE)

2. INTEREST.

INTEREST RATE (Section 1.2):

A rate equal to the "Prime Rate" in effect from time to time, plus 0.5% per annum. Interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed "Prime Rate" is the greater of (i) 4.25% or (ii) the rate announced from time to time by Silicon as its "prime rate;" it is a base rate upon which other rates charged by Silicon are based, and it is not necessarily the best rate available at Silicon. The interest rate applicable to the Obligations shall change on each date there is a change in the Prime Rate. Notwithstanding the foregoing, upon Borrower's achievement of two consecutive quarters of positive net income (as reasonably determined by Silicon), the interest rate hereunder shall be reduced to the Prime Rate in effect from time to time, plus zero percent (0.0%) per annum. Such reduction in the interest rate shall be effective five (5) business days after Silicon receives sufficient (in its reasonable discretion) evidence of such achievement of positive net income.

3. FEES (Section 1.4):

Initial Loan Fee: \$150,000 payable concurrently herewith.

Supplemental Loan Fee: A fully earned as of the date hereof, non-refundable annual fee of \$75,000.00 due on January 29, 2004.

Collateral Handling Fee: \$2,000.00 (\$1,000.00 when not borrowing and Borrower has advised Silicon that it has elected to be on "non-borrowing reporting status" pursuant to Section 6, below) per month, payable in arrears. Notwithstanding the foregoing, if Borrower maintains at least \$4,000,000.00 on deposit with Silicon during such period in a non-interest bearing account, no Collateral Handling Fee shall be due hereunder.

Unused Line Fee: In the event, in any calendar month (or portion thereof at the beginning and end of the term hereof), the average daily principal balance of the Loans outstanding (including Letters of Credit, Cash Management Services and the FX Reserve) during the month is less than the amount of the Maximum Credit Limit, Borrower shall pay Silicon an unused line fee in an amount equal to 0.25% per annum on the difference between the amount of the Maximum Credit Limit and the average daily principal balance of the Loans outstanding (including Letters of Credit, Cash Management Services and the FX Reserve) during the month, which unused line fee shall be computed and paid monthly, in arrears, on the first day of the following month. Notwithstanding the foregoing, if Borrower maintains at least \$4,000,000.00 on deposit with Silicon during such month in a non-interest bearing account, no Unused Line Fee shall be due hereunder.



Cancellation Fee: If the Obligations are voluntarily or involuntarily (in the event of Bankruptcy) prepaid or if this Agreement is otherwise terminated prior to January 29, 2004, the Borrower shall pay to Silicon a termination fee of \$250,000.00. If the Obligations are voluntarily or involuntarily (in the event of Bankruptcy) prepaid or if this Agreement is otherwise terminated after January 29, 2004 but prior to the Maturity Date, Borrower shall pay to Silicon a termination fee of \$125,000.00. Notwithstanding the foregoing, no such termination fee shall be charged if the credit facility hereunder is replaced or transferred to another division of Silicon. The termination fee shall be due and payable upon prepayment by the Borrower in the case of voluntary prepayments or upon demand by Silicon in the event of involuntary prepayment (in the event of Bankruptcy), and if not paid immediately shall bear interest at a rate equal to the highest rate applicable to any of the Obligations.

Letter of Credit Fees (Section 1.5): Borrower shall pay Silicon's customary fees and expenses for the issuance of Letters of Credit, including, without limitation, a Letter of Credit Fee of 1.5% per annum of the face amount of each Letter of Credit issued, upon the issuance or renewal of such Letter of Credit by Silicon; provided, however, Silicon may (in its sole discretion) reduce the Letter of Credit Fee for Letters of Credit with an expiry date of not more than eight months and issued within ninety days of date hereof.

#### 4. MATURITY DATE

(Section 6.1): January 29, 2005

#### 5. FINANCIAL COVENANTS

(Section 5.1): Borrower shall comply with each of the following covenant(s). Compliance shall be determined as of the end of each month, except as otherwise specifically provided below:

##### a. MINIMUM TANGIBLE NET WORTH:

Borrower shall maintain, as of the last day of each month, to be tested monthly, a Tangible Net Worth of not less than the sum of (i) plus (ii) below:

- (i)
- (a) as of December 31, 2002 - \$137,000,000
  - (b) from January 1, 2003 through and including January 31, 2003 - \$117,000,000
  - (c) from February 1, 2003 through and including February 28, 2003 - \$102,000,000
  - (d) from March 1, 2003 through and including March 31, 2003 - \$137,000,000
  - (e) from April 1, 2003 through and including April 30, 2003 - \$122,000,000
  - (f) from May 1, 2003 through and including May 31, 2003 - \$107,000,000
  - (g) from June 1, 2003 through and including June 30, 2003 - \$142,000,000
  - (h) from July 1, 2003 through and including July 31, 2003 - \$127,000,000
  - (i) from August 1, 2003 through and including August 31, 2003 - \$112,000,000
  - (j) from September 1, 2003 through and including September 30, 2003 - \$142,000,000
  - (k) from October 1, 2003 through and including October 31, 2003 - \$127,000,000
  - (l) from November 1, 2003 through and including November 30, 2003 - \$112,000,000
  - (m) from December 1, 2003 through and including December 31, 2003 - \$147,000,000
  - (n) from January 1, 2004 through and including January 31, 2004 - \$137,000,000
  - (o) from February 1, 2004 through and including February 28, 2004 - \$127,000,000
  - (p) from March 1, 2004 through and including March 31, 2004 - \$147,000,000

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(q) from April 1, 2004 through and including April 30, 2004 - \$137,000,000  
(r) from May 1, 2004 through and including May 31, 2004 - \$127,000,000  
(s) from June 1, 2004 through and including June 30, 2004 - \$147,000,000  
(t) from July 1, 2004 through and including July 31, 2004 - \$137,000,000  
(u) from August 1, 2004 through and including August 31, 2004 - \$127,000,000  
(v) from September 1, 2004 through and including September 30, 2004 - \$147,000,000  
(w) from October 1, 2004 through and including October 31, 2004 - \$137,000,000  
(x) from November 1, 2004 through and including November 30, 2004 - \$127,000,000  
(y) from December 1, 2004 and thereafter - \$147,000,000

(ii) 75% of all consideration received after the date hereof from proceeds from the issuance of any equity securities of the Borrower (other than (i) the issuance of stock options under Borrower's employee stock option plan or (ii) stock purchases under Borrower's employee stock purchase plan) and/or subordinated debt incurred by the Borrower (net of refinanced amounts of existing subordinated debt).

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b. MINIMUM CASH OR EXCESS AVAILABILITY:

The Borrower shall at all times maintain \$5,000,000.00 in (i) cash deposits maintained at Silicon, and/or (ii) excess "availability" under this Agreement (net of Loans, Letters of Credit or other indebtedness under this Agreement), as determined by Silicon based upon the Credit Limit restrictions set forth in Section 1 above).

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c. ADJUSTED QUICK RATIO:

Borrower shall maintain, at all times, to be tested quarterly, an Adjusted Quick Ratio of at least 1.0 to 1.0.

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DEFINITIONS. For purposes of the foregoing financial covenants, the following term shall have the following meaning:

"Adjusted Quick Ratio" is the ratio of (i) Quick Assets to (ii) Current Liabilities PLUS the face amount of all issued Letters of Credit (both hereunder and under the Exim Agreement), LESS the current portion of Deferred Revenue and other income received in advance.

"Current Liabilities" are the aggregate amount of Borrower's Liabilities which mature within one (1) year, which shall include, without limitation, all Obligations.

"Liabilities" shall have the meaning ascribed thereto by generally accepted accounting principles.

"Quick Assets" is, on any date, the Borrower's consolidated, unrestricted cash, cash equivalents, net billed accounts receivable (plus the current portion of long-term installment receivables, net of unamortized discounts) and investments with maturities of fewer than 12 months determined according to GAAP.

"Tangible Net Worth" shall mean the excess of total assets over total liabilities, determined in accordance with generally accepted accounting principles, with the following adjustments:

(A) there shall be excluded from assets: (i) notes, accounts receivable and other obligations owing to the Borrower from its officers or other Affiliates, and (ii) all assets which would be classified as intangible assets under generally accepted accounting principles, including without limitation goodwill, licenses, patents, trademarks, trade names, copyrights, capitalized software and organizational costs, licenses and franchises

(B) there shall be excluded from liabilities: all indebtedness which is subordinated to the Obligations under a subordination agreement in form specified by Silicon or by language in the instrument evidencing the indebtedness which is acceptable to Silicon in its discretion.

6. REPORTING.

(Section 5.3):

Borrower shall provide Silicon with the following:

1. From the date hereof through June 30, 2003, weekly and upon each loan request, borrowing base certificates. From July 1, 2003 and thereafter, weekly and upon each loan request, borrowing base certificates and transaction reports. Notwithstanding the foregoing, (i) if Borrower is on "non-borrowing reporting status" and maintains at least \$10,000,000 in cash on deposit at Silicon and/or excess "availability" hereunder, such reports shall be due bi-weekly and (ii) if Borrower is on "non-borrowing reporting status" and maintains at least \$20,000,000 in cash on deposit at Silicon and/or excess "availability" hereunder, such reports shall be due monthly.
2. Monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, within twenty days after the end of each month.
3. Monthly Receivable agings, aged by invoice date, and receivable reconciliations, within twenty days after the end of each month.
4. Monthly unaudited financial statements, as soon as available, and in any event within thirty days after the end of each month.
5. Monthly Compliance Certificates, within thirty days after the end of each month, in such form as Silicon shall reasonably specify, signed by the Chief Financial Officer of Borrower, certifying that as of the end of such month Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Silicon shall reasonably request, including, without limitation, a statement that at the end of such month there were no held checks.
6. Quarterly unaudited financial statements, as soon as available, and in any event within forty-five days after the end of each fiscal quarter of Borrower.
7. Annual operating budgets (including income statements, balance sheets and cash flow statements, by quarter) for the upcoming fiscal year of Borrower within thirty days prior to the end of each fiscal year of Borrower.
8. Annual financial statements, as soon as available, and in any event within 120 days following the end of Borrower's fiscal year, certified by independent certified public accountants acceptable to Silicon, together with an unqualified opinion on the financial statements.
9. Such additional reports and information as Silicon may from time to time specify.

Borrower may elect to be on "non-borrowing reporting status" if Borrower notifies Silicon in writing that it so elects and there are no Loans or other Obligations outstanding hereunder (other than issued, but undrawn, Letters of Credit). After Borrower has notified Silicon of its intention to be on "non-borrower reporting status", as further set forth in Section 4.3 of this Agreement, Borrower must provide Silicon at least fifteen (15) days prior written notice of its intention to borrow.

## 7. BORROWER INFORMATION:

PRIOR NAMES OF  
BORROWER

(Section 3.2): See Perfection Certificates of even date herewith

PRIOR TRADE  
NAMES OF BORROWER

(Section 3.2): See Perfection Certificates of even date herewith

EXISTING TRADE  
NAMES OF BORROWER

(Section 3.2): See Perfection Certificates of even date herewith

OTHER LOCATIONS AND

ADDRESSES (Section 3.3): See Perfection Certificates of even date  
herewith

COMPLIANCE WITH

LAWS (Section 3.9): See Exhibit B hereto

MATERIAL ADVERSE

LITIGATION (Section 3.10): See Exhibit B hereto

## 8. OTHER COVENANTS

(Section 5.1): Borrower shall at all times comply with all of the following additional covenants:

(1) BANKING RELATIONSHIP. In order for Silicon to properly monitor its loan arrangement with the Borrower, except as otherwise provided below, Borrower and all of its direct or indirect subsidiaries shall at all times maintain with Silicon (or its affiliate, SVB Securities, Inc.) all of their operating, deposit, investment and other securities accounts. Notwithstanding the foregoing, prior to the occurrence and continuance of an Event of Default, Borrower and its direct or indirect subsidiaries may maintain (without a control agreement in favor of Silicon):

a. up to \$750,000 at other financial institutions in the United States;

b. amounts at other financial institutions in the United States, which amounts are to be used exclusively for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of the Borrower's employees;

c. up to the lesser of (A) \$10,000,000 or (B) 40% of Borrower's and all of its direct or indirect subsidiaries unrestricted cash and cash equivalents, at financial institutions located outside of the United States; provided, however, Borrower may maintain up to the lesser of (A) \$15,000,000 or (B) 40% of Borrower's and all of its direct or indirect subsidiaries unrestricted cash and cash equivalents, at financial institutions located outside of the United States during any period in which Borrower is on "non-borrowing reporting status";

d. up to \$11,000,000 at Fleet National Bank to secure the Fleet Debt, until the Fleet L/Cs and Fleet FX Contracts have expired and/or transferred to Silicon, all in accordance with the schedule annexed hereto as Exhibit A; and

e. up to UK(pound)1,300,000.00 at Nat West to secure the Nat West Debt.

(2) SUBORDINATION OF INSIDE DEBT. Other than holders of Borrower's 5 1/4% Convertible Subordinated Debentures, all present and future indebtedness for money borrowed of the Borrower to its officers, directors and shareholders ("Inside Debt") shall, at all times, be subordinated to the Obligations pursuant to a subordination agreement on Silicon's standard form. Borrower represents and warrants that there is no Inside Debt presently outstanding, except for holders of Borrower's 5 1/4% Convertible Subordinated Debentures. Prior to incurring any Inside Debt in the future, Borrower shall cause the person to whom such Inside Debt will be owed to execute and deliver to Silicon a subordination agreement on Silicon's standard form.

(3) SUBORDINATION AGREEMENTS. Prior to incurring any indebtedness for money borrowed (other than indebtedness secured by Permitted Liens), Borrower shall cause each creditor to execute and deliver to Silicon a subordination agreement on Silicon's standard form subordinating to the Obligations the indebtedness of Borrower to any such creditor. Borrower and Silicon hereby acknowledge and agree that the Obligations are and shall at all times constitute "Senior Debt" of Borrower with respect to each of its subordinated creditors, including, without limitation, those subordinated creditors party to a certain Indenture dated June 17, 1998 (the "Indenture"). Borrower hereby represents, warrants and certifies that the Obligations constitute Senior Debt under the Indenture. Silicon shall have the right as a holder of Senior Debt to send notices of Events of Default hereunder to the Trustee under the Indenture from time to time in its reasonable discretion and Silicon agrees to promptly give Borrower a copy of such notices sent to the Trustee. Borrower hereby agrees that it will not materially modify any of the terms and conditions of the Indenture in a manner that could reasonably be expected to adversely affect Silicon without Silicon's prior written consent in each instance. Other than redemptions, retirements, acquisitions or purchases to the extent permitted pursuant to Section 5.5 (xi) hereof, Borrower shall not make any payments of any kind to, or for the benefit of, any of the holders of Borrower's 5 1/4% Convertible Subordinated Debentures or the Trustee under the Indenture without Silicon's prior written consent in each instance; provided, however, Borrower may make regularly scheduled payments in accordance with the terms of the Indenture provided that at the time of such payment there is then no Event of Default continuing, or would be continuing after giving effect to such payment.

(4) NEGATIVE PLEDGE AGREEMENT. As a condition precedent to the effectiveness of this Agreement, Borrower shall have executed and delivered to Silicon a Negative Pledge Agreement (the "Negative Pledge Agreement") regarding Borrower's Intellectual Property, substantially in the form attached hereto as Exhibit B.

BORROWER:

ASPEN TECHNOLOGY, INC.

BY: /s/ LISA W. ZAPPALA

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NAME: Lisa W. Zappala  
TITLE: Senior Vice President and  
Chief Financial Officer

ASPENTECH, INC.

BY: /s/ LISA W. ZAPPALA

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NAME: Lisa W. Zappala  
TITLE: Senior Vice President and  
Chief Financial Officer

HYPROTECH COMPANY

BY: /s/ D. E. MOULT

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NAME: D. E. Moulton  
TITLE: Chief Financial Officer

SILICON:

SILICON VALLEY BANK, D/B/A  
SILICON VALLEY EAST

BY: /s/ JOHN V. ATANASOFF

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NAME: John V. Atanasoff  
TITLE: Vice President

## EXPORT-IMPORT BANK LOAN AND SECURITY AGREEMENT

THIS EXPORT-IMPORT BANK LOAN AND SECURITY AGREEMENT (this "Exim Agreement") dated as of January 30, 2003, between SILICON VALLEY BANK, a California chartered bank, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at One Newton Executive Park, Suite 200, 2221 Washington Street, Newton, Massachusetts 02462, doing business under the name "Silicon Valley East" ("Bank") and (i) ASPEN TECHNOLOGY, INC., a Delaware corporation with offices at Ten Canal Park, Cambridge, Massachusetts 02141 and (ii) ASPENTECH, INC., a Texas corporation with offices at Ten Canal Park, Cambridge, Massachusetts 02141 (jointly and severally, individually and collectively, "Borrower"), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

## SECTION 1. RECITALS.

A. Borrower and Bank are parties to that certain Loan and Security Agreement of even date, as may be amended from time to time (as may be amended, the "Domestic Agreement"), together with related documents executed in conjunction therewith.

B. Borrower and Bank desire in this Exim Agreement to set forth their agreement with respect to a working capital facility to be guaranteed by the Export-Import Bank of the United States (the "Exim Bank").

## SECTION 2. LOAN AND TERMS OF PAYMENT

2.1 PROMISE TO PAY. Borrower hereby unconditionally promises to pay Bank the unpaid principal amount of all Advances and interest on the unpaid principal amount of the Advances as and when due in accordance with this Exim Agreement.

2.2 REVOLVING ADVANCES. Subject to the terms and conditions of this Exim Agreement, Bank agrees to make Advances to Borrower in an amount not to exceed, at any time outstanding, the Exim Committed Line or the Borrowing Base, whichever is less, as determined by the Borrowing Base Certificate to be delivered to the Bank.

To evidence the Advances, Borrower shall execute and deliver to Bank on the date hereof a promissory note (the "Note") in substantially the form attached hereto as EXHIBIT B.

Whenever Borrower desires an Advance, Borrower will notify Bank by facsimile transmission or telephone no later than 3:00 p.m. Eastern time, on the Business Day that the Advance is to be made together with any additional documentation required under the Borrower Agreement, including without limitation, as set forth in Section 2.03 of the Borrower Agreement. In addition to the procedure set forth in the preceding sentence, Bank is authorized to make Advances under this Exim Agreement, based upon instructions received from a Responsible Officer or without instructions if in Bank's discretion such Advances are necessary to meet Obligations which have become due and remain unpaid. Bank shall be entitled to rely on any telephonic notice given by a person who Bank reasonably believes to be a Responsible Officer or a designee (as designated in writing by a Responsible Officer) thereof, and Borrower shall indemnify and hold Bank harmless for any damages or loss suffered by Bank as a result of such reliance. Bank will credit the amount of Advances made under this Section to Borrower's deposit account. Amounts borrowed pursuant to this Section may be repaid at any time and re-borrowed at any time during the term of this Exim Agreement so long as no Event of Default has occurred and is continuing.

2.3 FOREIGN EXCHANGE. If there is availability under the Exim Committed Line and the Borrowing Base, then Borrower may enter in foreign exchange forward contracts with the Bank under which Borrower commits to purchase from or sell to Bank a set amount of foreign currency more than one business day after the contract date (the "FX Contract"). Bank shall subtract up to 10% of each outstanding FX Contract from the L/C - FX Sublimit (the "FX Reserve"). The total FX Contracts at any one time may not exceed 10 times the amount of the FX Reserve. Bank may terminate the FX Contracts if an Event of Default occurs and is continuing.

## 2.4 LETTERS OF CREDIT.

(a) If there is availability under the Exim Committed Line and the Borrowing Base and no Event of Default then exists, Bank shall issue or have issued Commercial Letters of Credit (as defined in the Borrower Agreement) or Standby Letters of Credit (as defined in the Borrower Agreement) for Borrower's account for the purposes set forth in the Borrower Agreement (collectively, the "Letters of Credit"). Each Letter of Credit may have an expiry date later than the Exim Maturity Date provided that Borrower's Letter of Credit reimbursement obligation shall be secured by cash on terms acceptable to Bank (consistent with the procedures set forth in Section 6.2 of the Domestic Agreement) on and after (i) the Exim Maturity Date or (ii) the occurrence and the continuation of an Event of Default hereunder. All Letters of Credit shall be, in form and substance, acceptable to Bank in its sole discretion and shall be subject to the terms and conditions of Bank's form of standard Application and Letter of Credit Agreement. Borrower agrees to execute any further documentation in connection with the Commercial Letters of Credit as Bank may reasonably request.

(b) The obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Exim Agreement and such Letters of Credit, under all circumstances whatsoever. Borrower shall indemnify, defend, protect, and hold Bank harmless from any loss, cost, expense or liability, including, without limitation, reasonable attorneys' fees, arising out of or in connection with any Letters of Credit, other than those costs, expenses or liabilities directly caused by Bank's gross negligence or willful misconduct. Any payment by Bank under or in connection with a draw on any Letter of Credit shall constitute an Advance hereunder on the date such payment is made.

(c) Borrower may request that Bank issue a Letter of Credit payable in a currency other than United States Dollars. If a demand for payment is made under any such Letter of Credit, Bank shall treat such demand as an Advance to Borrower of the equivalent of the amount thereof (plus cable charges) in United States currency at the then prevailing rate of exchange in San Francisco, California, for sales of that other currency for cable transfer to the country of which it is the currency.

(d) Upon the issuance of any letter of credit payable in a currency other than United States Dollars, Bank shall create a reserve (the "Letter of Credit Reserve") hereunder for letters of credit against fluctuations in currency exchange rates, in an amount equal to ten percent (10%) of the face amount of such letter of credit. The amount of such reserve may be amended by Bank from time to time to account for fluctuations in the exchange rate as reasonably determined by Bank upon five (5) days' written notice to Borrower. The availability of funds hereunder shall be reduced by the amount of such reserve for so long as such letter of credit remains outstanding.

2.5 L/C - FX SUBLIMIT. Notwithstanding anything to the contrary contained herein, the face amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve) issued under this Exim Agreement plus the amount of the FX Reserve may not exceed \$7,000,000 in the aggregate (the "L/C - FX Sublimit"). In addition, the aggregate amount of FX Reserve hereunder and the FX Reserve (as defined in the Domestic Agreement) under the Domestic Agreement shall not exceed \$2,000,000.

2.6 OVERADVANCES. If, at any time or for any reason, the amount of Obligations under this Exim Agreement owed by Borrower to Bank is greater than the lesser of (i) the Borrowing Base or (ii) the Exim Committed Line, the Borrower shall immediately pay to Bank, in cash, the amount of such excess.

## 2.7 INTEREST RATE; PAYMENTS.

(a) INTEREST RATE. Advances accrue interest on the outstanding principal balance at a per annum rate equal to the Prime Rate (as defined herein) plus one-half percent (0.50%). Notwithstanding the foregoing, upon Borrower's achievement of two consecutive quarters of positive net income (as determined by Bank), the interest rate hereunder shall be reduced to the Prime Rate in effect from time to time, plus

zero percent (0.0%) per annum. Such reduction in the interest rate shall be effective five (5) business days after Bank receives sufficient (in its reasonable discretion) evidence of such achievement of positive net income. The interest rate applicable to the Obligations shall change on each date there is a change in the Prime Rate. After an Event of Default, Obligations shall bear interest at three percent (3.0%) above the rate effective immediately before the Event of Default. The interest rate shall increase or decrease when the Prime Rate changes. Interest is computed on the basis of a 360 day year for the actual number of days elapsed.

(b) PAYMENTS. Interest is payable on the Payment Date of each month. Bank may debit any of Borrower's deposit accounts including Account Number 3300388194 for principal and interest payments or any amounts Borrower owes Bank, including, without limitation, Bank Expenses. Bank shall promptly notify Borrower when it debits Borrower's accounts. These debits are not a set-off. Payments received after 12:00 noon Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional fees or interest, as applicable, shall continue to accrue.

2.8 FEES. Borrower shall pay to Bank:

(i) INITIAL FEE. A fully earned, non-refundable Initial Loan Fee (as defined in, and without duplication of, the Domestic Agreement) due on the date hereof;

(ii) SUPPLEMENTAL FEE. A fully earned as of the date hereof, non-refundable Supplemental Loan Fee (as defined in, and without duplication of, the Domestic Agreement) due on January 29, 2004;

(iii) LETTER OF CREDIT FEES. Borrower shall pay Bank's customary fees and expenses for the issuance of Letters of Credit; and

(iv) BANK EXPENSES. All Bank Expenses (including reasonable attorneys' fees and expenses incurred through and after the date of this Exim Agreement) when due.

2.9 USE OF PROCEEDS. Borrower will use the proceeds of Advances only for the purposes specified in the Borrower Agreement. Borrower shall not use the proceeds of the Advances for any purpose prohibited herein or by the Borrower Agreement.

2.10 TERM. This Exim Agreement shall become effective once duly executed and authorized by Borrower and Bank and shall continue in full force and effect for a term ending on the Exim Maturity Date, on which date all Obligations shall become immediately due and payable. Borrower may terminate this Exim Agreement at any time upon three (3) days prior written notice to Bank and upon full payment and performance of all Obligations outstanding hereunder, including, without limitation, the delivery of cash or cash equivalents as security for any outstanding, but undrawn, Letters of Credit consistent with Section 6.2 of the Domestic Agreement.

### SECTION 3. CONDITIONS OF LOANS

3.1 CONDITIONS PRECEDENT TO ALL ADVANCES. The obligation of Bank to make each Advance, including the initial Advance, is subject to the following conditions:

(a) timely receipt by Bank of a Borrowing Base Certificate as defined in the Borrower Agreement;

(b) the Exim Guarantee shall be in full force and effect; and

(c) except as otherwise disclosed to the Bank, the representations and warranties contained in Section 5 hereof shall be true and accurate in all material respects on and as of the date of such Advance as though made at and as of each such date (except to the extent they relate specifically to an earlier date, in which case such representations and warranties shall continue to have been true and accurate as of such date), and no potential Event of Default or Event of Default shall have occurred and be continuing, or would result from such Advance.

The making of each Advance shall be deemed to be a representation and warranty by Borrower on the date of such Advance as to the accuracy of the facts referred to in this Section 3.1.

#### SECTION 4. CREATION OF SECURITY INTEREST

4.1 GRANT OF SECURITY INTEREST. Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations and the performance of each of Borrower's duties under the Loan Documents, a continuing security interest in, and pledges and assigns to the Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Subject to this Section 4.1, the terms of the Domestic Agreement and Permitted Liens, the security interest granted herein shall be a first priority security interest in the Collateral. Notwithstanding the foregoing, it is expressly acknowledged and agreed that the security interest created in this Exim Agreement in all of the Collateral (with the exception of Exim Eligible Foreign Accounts, but only to the extent any Advances are actually made by the Bank to the Borrower based upon such Exim Eligible Foreign Accounts), is subject to and subordinate to the security interest granted to the Bank in the Domestic Agreement with respect to the Collateral. The Collateral may also be subject to Permitted Liens. Bank may, while an Event of Default continues, place a "hold" on any Deposit Account pledged as collateral. Except as described on the Schedule, Borrower is not a party to, nor is bound by, any material license or other material agreement with respect to which the Borrower is the licensee that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property. Without prior consent from Bank, Borrower shall not enter into, or become bound by, any such license or agreement which is reasonably likely to have a material impact on Borrower's business or financial condition. Borrower shall take such steps as Bank reasonably requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for all such licenses or contract rights to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement, whether now existing or entered into in the future. If Borrower shall at any time, acquire a commercial tort claim in excess of \$250,000 Borrower shall promptly notify Bank in a writing signed by Borrower of the brief details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Exim Agreement, with such writing to be in form and substance reasonably satisfactory to Bank. Borrower agrees that any disposition of the Collateral in violation of this Exim Agreement (unless permitted pursuant to the Domestic Agreement), by either the Borrower or any other Person, shall be deemed to violate the rights of the Bank under the Code. If this Exim Agreement is terminated, Bank's lien and security interest in the Collateral shall continue until Borrower fully satisfies its Obligations.

4.2 RELEASE OF CERTAIN COLLATERAL. If Bank releases certain Collateral from the Domestic Agreement pursuant to Section 2.2 or Section 2.3 thereof, Bank shall also enter into a substantially identical amendment to this Exim Agreement to modify the Collateral granted hereunder consistent with Section 2.2 and Section 2.3 of the Domestic Agreement.

#### SECTION 5. REPRESENTATIONS AND WARRANTIES

Borrower represents, warrants and covenants as follows:

5.1 DOMESTIC LOAN DOCUMENTS. The representations and warranties contained in the Domestic Loan Documents, which are incorporated by reference into this Exim Agreement, are true and correct.

## SECTION 6. AFFIRMATIVE COVENANTS

Borrower covenants and agrees that, until payment in full of all Obligations, it shall do all of the following:

6.1 DOMESTIC LOAN DOCUMENTS. Borrower shall comply in all respects with the terms and provisions of the Domestic Loan Documents, which terms and provisions are incorporated into this Exim Agreement and shall survive the termination of Domestic Agreement, which shall include, without limitation, compliance with the financial reporting requirements set forth in the Domestic Agreement and the financial covenants set forth the Domestic Agreement.

6.2 BORROWER AGREEMENT. Unless otherwise waived in writing by Exim Bank, Borrower shall comply with all of the terms of the Borrower Agreement, including without limitation, the delivery of any and all notices required pursuant to Sections 2.11 and/or 2.18 of the Borrower Agreement. In the event of any conflict or inconsistency between any provision contained in the Borrower Agreement with any provision contained in this Exim Agreement, the more strict provision, with respect to Borrower, shall control.

6.3 NOTICE IN EVENT OF FILING OF ACTION FOR DEBTOR'S RELIEF. Borrower shall notify Bank in writing within five (5) days of the occurrence of any of the following: (1) Borrower begins or consents in any manner to any proceeding or arrangement for its liquidation in whole or in part or to any other proceeding or arrangement whereby any of its assets are subject generally to the payment of its liabilities or whereby any receiver, trustee, liquidator or the like is appointed for it or any substantial part of its assets (including without limitation the filing by Borrower of a petition for appointment as debtor-in-possession under Title 11 of the U.S. Code); (2) Borrower fails to obtain the dismissal or stay on appeal within forty-five (45) calendar days of the commencement of any proceeding arrangement referred to in (1) above; (3) Borrower begins any other procedure for the relief of insolvent debtors, or such procedure has been commenced against it, whether voluntarily or involuntarily, and such procedure has not been effectively terminated, dismissed or stayed within thirty (30) calendar days after the commencement thereof, or (4) Borrower begins any procedure for its dissolution, or a procedure therefor has been commenced against it.

6.4 CURRENCY. Borrower shall require payment in United States Dollars or an Accpetable Foreign Currency for the products, unless the Exim Bank otherwise agrees in writing hereafter.

6.5 FURTHER ASSURANCES. At any time and from time to time Borrower shall (i) execute and deliver such further instruments, (ii) take such further action as may reasonably be requested by Bank, and (iii) deliver such additional information, reports, contracts, invoices and other data concerning the Collateral in each case as may reasonably be requested by Bank, all of the foregoing in furtherance of the purposes of this Exim Agreement.

## SECTION 7. NEGATIVE COVENANTS

Prior to the (i) payment in full of outstanding Obligations, and (ii) termination of Bank's commitment to make any Advance, Borrower shall not do any of the following without the Bank's written consent:

7.1 DOMESTIC LOAN DOCUMENTS. Violate or otherwise fail to comply with any provisions of the Domestic Loan Documents, which provisions are incorporated into this Exim Agreement.

7.2 BORROWER AGREEMENT. Violate or otherwise fail to comply with any provision of the Borrower Agreement, including without limitation the negative covenants set forth in Section 2.15.

7.3 EXIM GUARANTEE. Take any action, or permit any action to be taken, that causes or, with the passage of time, could reasonably be expected to cause, the Exim Guarantee to cease to be in full force and effect.

## SECTION 8. EVENTS OF DEFAULT

Any one of the following is an Event of Default:

8.1 PAYMENT DEFAULT. If Borrower fails to pay when due, any of the monetary Obligations.

8.2 COVENANT DEFAULT; CROSS DEFAULT. If Borrower fails or neglects to perform, keep, or observe(i) any material non-monetary Obligations, term, provision, condition, covenant, or agreement contained in this Exim Agreement or the Borrower Agreement, which failure is not cured within twenty (20) Business Days after the earlier of (x) Borrower's knowledge of same or (y) Bank's notice to Borrower, or (ii) an Event of Default occurs under any of the Domestic Loan Documents past any applicable cure periods, which terms and provisions are incorporated into this Exim Agreement and shall survive the termination of the Domestic Agreement; or

8.3 EXIM GUARANTEE. If the Exim Guarantee ceases for any reason to be in full force and effect, or if the Exim Bank declares the Exim Guarantee void or revokes or purports to revoke any obligations under the Exim Guarantee.

## SECTION 9. BANK'S RIGHTS AND REMEDIES

9.1 RIGHTS AND REMEDIES. When an Event of Default occurs and continues beyond any applicable notice and cure period, Bank may, without notice or demand, do any or all of the following:

(a) Declare all Obligations immediately due and payable (but if an Event of Default described in Section 7.1(i) of the Domestic Agreement occurs all Obligations are immediately due and payable without any action by Bank);

(b) Stop advancing money or extending credit for Borrower's benefit under this Exim Agreement or under any other agreement between Borrower and Bank;

(c) Settle or adjust disputes and claims directly with account debtors for amounts, on terms and in any order that Bank considers advisable;

(d) Make any payments and do any acts it considers necessary or reasonable to protect its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may, in accordance with applicable law and in a commercially reasonable manner, enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(e) Apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower;

(f) Ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral.

(g) Dispose of the Collateral according to the Code.

9.2 EXIM DIRECTION. Upon the occurrence and during the continuance of an Event of Default, Exim Bank shall have a right to: (i) direct Bank to exercise the remedies specified in Section 9.1 and (ii) request that Bank accelerate the maturity of any other loans to Borrower as to which Bank has a right to accelerate.

9.3 EXIM NOTIFICATION. Bank shall have the right to immediately notify Exim Bank in writing if it has knowledge of the occurrence of any of the following events: (1) any failure to pay any amount due under this Exim Agreement or the Note; (2) the Borrowing Base is less than the sum of outstanding Advances hereunder; (3) any failure to pay when due any amount payable to Bank by the Borrower under any loan(s) extended by Bank to Borrower; (4) the filing of an action for debtor's relief by, against, or on behalf of Borrower; or (5) any threatened or pending material litigation against Borrower, or any material dispute involving Borrower.

In the event that it sends such a notification to Exim Bank, Bank shall have the right to thereafter send Exim Bank a written report on the status of the events covered by said notification on each Business Day which occurs every thirty (30) calendar days after the date of said notification, until such time as Bank files a claim with Exim Bank or said default or other events have been cured. Bank shall not have any obligation to make any Advances following said notification to Exim Bank, unless Exim Bank gives its written approval thereto. If directed to do so by Exim Bank, Bank shall have a right promptly to exercise any rights it may have against Borrower to demand the immediate repayment of all amounts outstanding under the Exim Loan Documents.

9.4 REMEDIES CUMULATIVE. Bank's rights and remedies under this Exim Agreement, the Exim Loan Documents, the Domestic Loan Documents and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Borrower's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it. No waiver by Bank shall be effective unless made in a written document signed on behalf of Bank and then shall be effective only in the specific instance and for the specific purpose for which it was given.

9.5 POWER OF ATTORNEY. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, to be effective upon the occurrence and during the continuance of an Event of Default, to: (i) endorse Borrower's name on any checks or other forms of payment or security; (ii) sign Borrower's name on any invoice or bill of lading for any Account or drafts against account debtors; (iii) settle and adjust disputes and claims about the Accounts directly with account debtors, for amounts and on terms Bank determines reasonable; (iv) make, settle, and adjust all claims under Borrower's insurance policies; and (v) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank its power of attorney to sign Borrower's name on any documents necessary to perfect or continue the perfection of any security interest regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Bank is under no further obligation to make Advances hereunder. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Bank's obligation to provide Advances terminates.

9.6 ACCOUNTS COLLECTION. In the event that an Event of Default occurs and is continuing, Bank may notify any Person owing Borrower money of Bank's security interest in the funds and verify and/or collect the amount of the Account. Any amounts received by Borrower shall be held in trust by Borrower for Bank, and, if requested by Bank, Borrower shall immediately deliver such receipts to Bank in the form received from the account debtor, with proper endorsements for deposit.

9.7 BANK EXPENSES. Any amounts paid by Bank as provided herein are Bank Expenses and are immediately due and payable, and shall bear interest at the then applicable rate and be secured by the Collateral. No payments by Bank shall be deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.8 BANK'S LIABILITY FOR COLLATERAL. So long as the Bank complies with reasonable banking practices regarding the safekeeping of collateral, the Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other person. Subject to the foregoing, Borrower bears all risk of loss, damage or destruction of the Collateral.

9.9 DEMAND WAIVER. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

## SECTION 10. NOTICES

Unless otherwise provided in this Exim Agreement, all notices or demands by any party relating to this Exim Agreement or any other agreement entered into in connection herewith shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by a recognized overnight delivery service, by certified mail, postage prepaid, return receipt requested, or by telefacsimile to Borrower or to Bank, as the case may be, at the address set forth in the Domestic Loan Documents. The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

## SECTION 11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER

Massachusetts law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the non-exclusive jurisdiction of the State and Federal courts in Massachusetts; provided, however, that if for any reason Bank cannot avail itself of such courts in the Commonwealth of Massachusetts, Borrower accepts jurisdiction of the courts and venue in Santa Clara County, California.

BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS EXIM AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS EXIM AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

## SECTION 12. GENERAL PROVISIONS

12.1 SUCCESSORS AND ASSIGNS. This Exim Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Exim Agreement or any rights or Obligations under it without Bank's prior written consent. Bank has the right, without the consent of or notice to Borrower, to sell, transfer, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights and benefits under this Exim Agreement, the Loan Documents or any related agreement.

12.2 INDEMNIFICATION. Borrower hereby indemnifies, defends and holds the Bank and its officers, employees and agents harmless against: (a) all obligations, demands, claims, and liabilities asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or Bank Expenses incurred, or paid by Bank from, following, or consequential to transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct.

12.3 RIGHT OF SET-OFF. Borrower and any guarantor hereby grant to Bank, a lien, security interest and right of setoff as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of the Bank or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may set off the same or any part thereof and apply the same to any liability or obligation of Borrower and any guarantor even though unmatured and regardless of the adequacy of any other collateral securing the loan. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOAN, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE BORROWER OR ANY GUARANTOR, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.4 TIME OF ESSENCE. Time is of the essence for the performance of all Obligations in this Exim Agreement.

12.5 SEVERABILITY OF PROVISION. Each provision of this Exim Agreement is severable from every other provision in determining the enforceability of any provision.

12.6 AMENDMENTS IN WRITING; INTEGRATION. All amendments to this Exim Agreement must be in writing signed by both Bank and Borrower. This Exim Agreement and the Loan Documents represent the entire agreement about this subject matter, and supersede prior negotiations or agreements. Without the prior written consent of Exim Bank, no material amendment or deviation from the terms of this Exim Agreement or the Note shall be made that would adversely affect the interests of Exim Bank under the Exim Guarantee, including without limitation the rescheduling of any payment terms provided for in this Exim Agreement. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Exim Agreement and the Loan Documents merge into this Exim Agreement and the Loan Documents.

12.7 COUNTERPARTS. This Exim Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, are an original, and all taken together, constitute one agreement.

12.8 CONFIDENTIALITY. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (i) to Bank's subsidiaries or affiliates in connection with their present or prospective business relations with Borrower (provided such subsidiaries or affiliates shall comply with comparable confidentiality provisions); (ii) to prospective transferees or purchasers of any interest in this Exim Agreement (provided such transferees or purchasers shall comply with comparable confidentiality provisions); (iii) as required by law, regulation, subpoena, or other order; (iv) as required in connection with Bank's examination or audit; and (v) as Bank considers appropriate in exercising remedies under this Exim Agreement. Confidential information does not include information that either: (a) is in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank (through no act or omission of Bank); or (b) is disclosed to Bank by a third party, which third party is not under any non-disclosure obligation.

12.9 SURVIVAL. All covenants, representations and warranties made in this Exim Agreement continue in full force while any Obligations remain outstanding. The obligation of Borrower in Section 12.2 to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

## SECTION 13. DEFINITIONS

13.1 DEFINITIONS. EXCEPT AS OTHERWISE DEFINED, TERMS THAT ARE CAPITALIZED IN THIS EXIM AGREEMENT SHALL HAVE THE MEANINGS ASSIGNED IN THE DOMESTIC LOAN DOCUMENTS. As used in this Exim Agreement, the following terms shall have the following definitions:

"ACCEPTABLE FOREIGN CURRENCY" means any one of Swiss Francs, British Pounds, the Euro and Japanese Yen.

"ACCOUNTS" means all presently existing and hereafter arising accounts, contract rights, and all other forms of obligations owing to Borrower arising out of the sale or lease of goods (including, without limitation, the licensing of software and other technology) or the rendering of services by Borrower, whether or not earned by performance, and any and all credit insurance, guaranties, and other security therefor, as well as all merchandise returned to or reclaimed by Borrower and Borrower's books relating to any of the foregoing.

"ADVANCES" means any loans or other extensions of credit hereunder.

"BANK EXPENSES" means all: reasonable costs or expenses (including reasonable attorneys' fees and expenses) incurred in connection with the preparation, negotiation, and administration of the Exim Loan Documents, including any reasonable costs incurred in relation to opposing or seeking to obtain relief from any stay or restructuring order prohibiting Bank from exercising its rights as a secured creditor, foreclosing upon or disposing of Collateral, or such related matters; and Bank's reasonable attorneys' fees and reasonable expenses incurred in enforcing or defending the Exim Loan Documents, whether or not suit is brought, unless a final court of competent jurisdiction finds the Bank acted with gross negligence or willful misconduct.

"BORROWER AGREEMENT" means the Export-Import Bank of the United States Working Capital Guarantee Program Borrower Agreement between Borrower and Bank.

"BORROWING BASE" means an amount equal to (A) eighty percent (80%) (which percentage may increase pursuant to the results of Bank's field audit of Borrower's Accounts in accordance with the Advance Rate Chart, as defined in the Domestic Agreement)(the "Hedged Exim Advance Rate") of Exim Eligible Foreign Accounts which Exim Eligible Foreign Accounts (i) are billed and collected by the Borrower in the United States AND (ii) if payable in an Acceptable Foreign Currency, Borrower has made arrangements satisfactory to the Bank in its reasonable discretion with respect to a hedge on such Exim Eligible Foreign Accounts, PROVIDED HOWEVER that such percentage shall be reduced to seventy percent (70%) (which percentage may increase pursuant to the results of Bank's field audit of Borrower's Accounts in accordance with the Advance Rate Chart, as defined in the Domestic Agreement)(the "Non-Hedged Exim Advance Rate") with respect to Exim Eligible Foreign Accounts which (x) are billed and collected by the Borrower in the United States, (y) are billed in any Acceptable Foreign Currency and (z) Borrower has NOT made arrangements satisfactory to the Bank in its reasonable discretion with respect to a hedge on such Exim Eligible Foreign Accounts, MINUS (B) the aggregate amount of all Advances outstanding hereunder, MINUS (C) twenty-five percent (25%) of the face amount all issued but undrawn Letters of Credit issued hereunder, minus (D) the FX Reserve.

"COLLATERAL" is the property described on EXHIBIT A.

"DOMESTIC AGREEMENT" has the meaning set forth in recital paragraph A.

"DOMESTIC LOAN DOCUMENTS" means the Domestic Agreement and all instruments, documents, and agreements executed in connection with the Domestic Agreement.

"EXIM BANK" means Export-Import Bank of the United States.

"EXIM COMMITTED LINE" means Ten Million Dollars (\$10,000,000), MINUS (i) the aggregate amount of all Advances outstanding hereunder, MINUS (ii) the aggregate face amount of all issued but undrawn Letters of Credit issued hereunder, MINUS (iii) the FX Reserve.

"EXIM ELIGIBLE FOREIGN ACCOUNTS" means those Accounts payable in United States Dollars or an Acceptable Foreign Currency that arise in the ordinary course of Borrower's business and are derived from exports originating in the United States AND (i) with respect to which the account debtor is not a resident of the United States; (ii) that have been validly assigned or pledged to Bank in a manner satisfactory to the Bank giving the Bank a first priority perfected security interest, or its equivalent, in such Accounts, (iii) comply with all of Borrower's representations and warranties to Bank, and (iv) that either (A) the Bank approves on a case by case basis (which shall be required for Accounts on open account terms with respect to an Account Debtor whose total obligations exceed twenty-five percent (25%) of the aggregate dollar amount of all foreign Accounts), or (B) are supported by letter(s) of credit acceptable to Bank. Standards of eligibility may be fixed revised from time to time by Bank in Bank's reasonable judgment and upon notification thereof to the Borrower in accordance with the provisions hereof. Exim Eligible Foreign Accounts shall NOT include the following:

(a) Accounts with a term in excess of one hundred twenty (120) days from the date of invoice;

(b) Accounts that the account debtor has failed to pay within sixty (60) calendar days of the original due date of the invoice unless such accounts are insured through Exim Bank export credit insurance for comprehensive commercial and political risk, or through Exim Bank approved private insurers for comparable coverage, in which case ninety (90) calendar days shall apply;

(c) Account which arise for the sales of items not in the ordinary course of Borrower's business;

(d) Accounts not owned by Borrower or which are subject to any rights, claim or interest of another Person or than the lien in favor of Bank, to the extent of such right, claim or interest;

(e) Accounts with respect to which an invoice has not been sent;

(f) Accounts billed and payable outside of the United States;

(g) Accounts with respect to an account debtor, fifty percent (50%) or more of whose Accounts the account debtor has failed to pay within sixty (60) days of the invoice due date;

(h) Accounts with respect to an account debtor, including Subsidiaries and Affiliates, whose total obligations to Borrower exceed twenty-five percent (25%) of the aggregate dollar amount of all foreign Accounts, for the amounts that exceed that percentage, unless Bank approves in writing;

(i) Accounts payable in currency other than United States Dollars or an Acceptable Foreign Currency;

(j) Accounts generated by the sale of products purchased for military purposes or that are due and payable from a military Buyer;

(k) Accounts, if any, generated by sales of Inventory which constitutes defense articles or defense services;

(l) Accounts with respect to which the account debtor is located in a country in which Exim Bank is legally prohibited from doing business as designated in the Country Limitation Schedule (as such term is defined in the Borrower Agreement);

(m) Accounts with respect to which the account debtor is an Affiliate;

(n) Accounts backed by a letter of credit unacceptable to Bank or not negotiated by Bank;

(o) Accounts evidenced by a letter of credit until the date of shipment of the items covered by the subject letter of credit;

(p) The equivalent portion of Accounts with credit balances over sixty (60) days from invoice due date;

(q) So called contra Accounts, accounts payable, customer deposit or credit accounts, to the extent of such offset;

(r) Accounts from demonstration or promotional equipment, or in which goods are consigned, sales guaranteed, sales or return, sales on approval, bill and hold, or other terms if the Account Debtor's payment may be conditional or subject to acceptance;

(s) Accounts with respect to which the account debtor has disputed liability or makes any claim with respect thereto (but only to the extent of the amount subject to such dispute or claim), or is subject to any Insolvency Proceeding, or becomes insolvent, or goes out of business, or the Account is uncollectible for any reason;

(t) Accounts as to which any covenant, representation or warranty contained in the Loan Documents with respect to such Account has been breached.

(u) Accounts as to which Bank does not have a valid, perfected first priority lien, subject to Permitted Liens.

(v) Accounts for which the items giving rise to such Account have not been shipped and delivered to and accepted by the Account Debtor or the services giving rise to such Account have not been performed by Borrower and accepted by the Account Debtor or the Account does not represent a final sale of goods or services.

(w) Accounts for which Borrower has made any agreement with the Account Debtor for any deduction therefrom, except for discounts or allowances made in the ordinary course of business for prompt payment, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto.

(x) Accounts for which any of the items giving rise to such Accounts have been returned, rejected or repossessed, to the extent of such returned, rejected or repossessed of items;

(y) Accounts due under a fulfillment or requirements contract with the Account Debtor or represent Deferred Revenue (provided, however, Deferred Revenue offsets will not be deemed ineligible (if otherwise eligible hereunder) as long as Borrower maintains, at all times, an Adjusted Quick Ratio of at least 1.25 to 1.0);

(z) Accounts the collection of which Bank or Exim Bank determines in its reasonable judgment to be doubtful; and

(aa) Accounts which are not "Eligible Export-Related Accounts Receivable", as such term is defined in the Borrower Agreement.

"EXIM GUARANTEE" means that certain Master Guarantee Agreement or other agreement, as amended from time to time, the terms of which are incorporated by reference into this Exim Agreement, pursuant to which Exim Bank guarantees Borrower's obligations under this Exim Agreement.

"EXIM LOAN DOCUMENTS" means, collectively, this Exim Agreement, the Domestic Loan Documents, any note or notes executed by Borrower, and any other agreement entered into between Borrower and Bank in connection with this Exim Agreement, all as amended or extended from time to time.

"EXIM MATURITY DATE" is January 29, 2005.

"FX CONTRACTS" as defined in Section 2.3.

"FX RESERVE" as defined in Section 2.3.

"L/C - FX SUBLIMIT" is defined in Section 2.5.

"NOTE" is defined in Section 2.2.

"OBLIGATIONS" shall mean all debts, principal, interest, Advances, Commercial Letters of Credit, FX Contracts, Bank Expenses arising under the Exim Loan Documents, the Borrower Agreement, the Domestic Loan Documents, including interest accruing after Insolvency Proceedings begin.

"PAYMENT DATE" means the first calendar day of each month commencing on the first such date after the date hereof and ending on the Exim Maturity Date.

"PRIME RATE" means the greater of (i) 4.25% or (ii) the rate announced from time to time by Bank as its "prime rate;" it is a base rate upon which other rates charged by Bank are based, and it is not necessarily the best rate available at Bank.

"RESPONSIBLE OFFICER" means each of the Chief Executive Officer and Chief Financial Officer of the Borrower.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first above written.

BORROWER:

ASPEN TECHNOLOGY, INC.

By: /s/ LISA W. ZAPPALA

-----  
Name: Lisa W. Zappala  
Title: Senior Vice President and  
Chief Financial Officer

ASPENTECH, INC.

By: /s/ LISA W. ZAPPALA

-----  
Name: Lisa W. Zappala  
Title: Treasurer

Bank:

SILICON VALLEY BANK, d/b/a

SILICON VALLEY EAST

By: /s/ JOHN V. ATANASOFF

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Name: John V. Atanasoff  
Title: Vice President

## EXHIBIT A

The Collateral consists of all of Borrower's right, title and interest in and to the following:

All goods, equipment, inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, general intangibles (including payment intangibles), accounts (including health-care receivables), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located.

All Borrower's Books relating to the foregoing and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

The Collateral, however, does not include Intellectual Property. Notwithstanding the foregoing, the Collateral shall include all accounts, license and royalty fees and other revenues, proceeds, or income arising out of or relating to any of the Intellectual Property. As used herein, (i) "Intellectual Property" means: any and all Copyrights, any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held, any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held, all Mask Works or similar rights available for the protection of semiconductor chips, all Patents; any Trademarks, all licenses or other rights to use any of the Copyrights, Patents, Trademarks, or Mask Works, and all amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents, or Mask Works; (ii) "Copyrights" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held; (iii) "Mask Works" means all mask work or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired; (iv) "Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same and (v) "Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

Notwithstanding the foregoing, with respect to the shares of stock of Borrower's subsidiaries organized under the laws of a jurisdiction outside of the United States (each, a "Foreign Subsidiary"), the term Collateral shall include only 65% of the shares owned by Borrower in each such Foreign Subsidiary.

Notwithstanding the foregoing, the Collateral shall not include the New Accenture Collateral (as defined in the Domestic Agreement).

EXPORT-IMPORT BANK OF THE UNITED STATES  
WORKING CAPITAL GUARANTEE PROGRAM

BORROWER AGREEMENT

THIS BORROWER AGREEMENT (this "Agreement") is made and entered into by the entities identified as Borrower on the signature page hereof (jointly and severally and individually and collectively, the "Borrower") in favor of the Export-Import Bank of the United States ("Ex-Im Bank") and the institution identified as Lender on the signature page hereof ("Lender").

RECITALS

Borrower has requested that Lender establish a Loan Facility in favor of Borrower for the purposes of providing Borrower with pre-export working capital to finance the manufacture, production or purchase and subsequent export sale of Items.

It is a condition to the establishment of such Loan Facility that Ex-Im Bank guarantee the payment of ninety percent (90%) of certain credit accommodations subject to the terms and conditions of a Master Guarantee Agreement, the Loan Authorization Agreement, and to the extent applicable, the Delegated Authority Letter Agreement.

Borrower is executing this Agreement for the benefit of Lender and Ex-Im Bank in consideration for and as a condition to Lender's establishing the Loan Facility and Ex-Im Bank's agreement to guarantee such Loan Facility pursuant to the Master Guarantee Agreement.

NOW, THEREFORE, Borrower hereby agrees as follows:

ARTICLE I  
DEFINITIONS

1.1 DEFINITION OF TERMS. As used in this Agreement, including the Recitals to this Agreement and the Loan Authorization Agreement, the following terms shall have the following meanings:

"Accounts Receivable" shall mean all of Borrower's now owned or hereafter acquired (a) "accounts" (as such term is defined in the UCC), other receivables, book debts and other forms of obligations, whether arising out of goods sold or services rendered or from any other transaction; (b) rights in, to and under all purchase orders or receipts for goods or services; (c) rights to any goods represented or purported to be represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods); (d) moneys due or to become due to such Borrower under all purchase orders and contracts for the sale of goods or the performance of services or both by Borrower (whether or not yet earned by performance on the part of Borrower), including the proceeds of the foregoing; (e) any notes, drafts, letters of credit, insurance proceeds or other instruments, documents and writings evidencing or supporting the foregoing; and (f) all collateral security and guarantees of any kind given by any other Person with respect to any of the foregoing.

"Advance Rate" shall mean the rate specified in Section 5(C) of the Loan Authorization Agreement for each category of Collateral.

"Business Day" shall mean any day on which the Federal Reserve Bank of New York is open for business.

"Buyer" shall mean a Person that has entered into one or more Export Orders with Borrower.

"Collateral" shall mean all property and interest in property in or upon which Lender has been granted a Lien as security for the payment of all the Loan Facility Obligations including the Collateral identified in Section 6 of the Loan Authorization Agreement and all products and proceeds (cash and non-cash) thereof.

"Commercial Letters of Credit" shall mean those letters of credit subject to the UCP payable in Dollars and issued or caused to be issued by Lender on behalf of Borrower under a Loan Facility for the benefit of a supplier(s) of Borrower in connection with Borrower's purchase of goods or services from the supplier in support of the export of the Items.

"Country Limitation Schedule" shall mean the schedule published from time to time by Ex-Im Bank and provided to Borrower by Lender which sets forth on a country by country basis whether and under what conditions Ex-Im Bank will provide coverage for the financing of export transactions to countries listed therein.

"Credit Accommodation Amount" shall mean, the sum of (a) the aggregate outstanding amount of Disbursements and (b) the aggregate outstanding face amount of Letter of Credit Obligations.

"Credit Accommodations" shall mean, collectively, Disbursements and Letter of Credit Obligations.

"Debarment Regulations" shall mean, collectively, (a) the Governmentwide Debarment and Suspension (Nonprocurement) regulations (Common Rule), 53 Fed. Reg. 19204 (May 26, 1988), (b) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. 9.400-9.409 and (c) the revised Governmentwide Debarment and Suspension (Nonprocurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995).

"Delegated Authority Letter Agreement" shall mean the Delegated Authority Letter Agreement, if any, between Ex-Im Bank and Lender.

"Disbursement" shall mean, collectively, (a) an advance of a working capital loan from Lender to Borrower under the Loan Facility, and (b) an advance to fund a drawing under a Letter of Credit issued or caused to be issued by Lender for the account of Borrower under the Loan Facility.

"Dollars" or "\$" shall mean the lawful currency of the United States.

"Effective Date" shall mean the date on which (a) the Loan Documents are executed by Lender and Borrower or the date, if later, on which agreements are executed by Lender and Borrower adding the Loan Facility to an existing working capital loan arrangement between Lender and Borrower and (b) all of the conditions to the making of the initial Credit Accommodations under the Loan Documents or any amendments thereto have been satisfied.

"Eligible Export-Related Accounts Receivable" shall mean an Export-Related Account Receivable which is acceptable to Lender and which is deemed to be eligible pursuant to the Loan Documents, but in no event shall Eligible Export-Related Accounts Receivable include any Account Receivable:

(a) that does not arise from the sale of Items in the ordinary course of Borrower's business;

(b) that is not subject to a valid, perfected first priority Lien in favor of Lender;

(c) as to which any covenant, representation or warranty contained in the Loan Documents with respect to such Account Receivable has been breached;

(d) that is not owned by Borrower or is subject to any right, claim or interest of another Person other than the Lien in favor of Lender;

(e) with respect to which an invoice has not been sent;

(f) that arises from the sale of defense articles or defense services;

(g) that is due and payable from a Buyer located in a country with which Ex-Im Bank is prohibited from doing business as designated in the Country Limitation Schedule;

(h) that does not comply with the requirements of the Country Limitation Schedule;

(i) that is due and payable more than one hundred eighty (180) days from the date of the invoice;

(j) that is not paid within sixty (60) calendar days from its original due date, unless it is insured through Ex-Im Bank export credit insurance for comprehensive commercial and political risk, or through Ex-Im Bank approved private insurers for comparable coverage, in which case it is not paid within ninety (90) calendar days from its due date;

(k) that arises from a sale of goods to or performance of services for an employee of Borrower, a stockholder of Borrower, a subsidiary of Borrower, a Person with a controlling interest in Borrower or a Person which shares common controlling ownership with Borrower;

(l) that is backed by a letter of credit unless the Items covered by the subject letter of credit have been shipped;

(m) that Lender or Ex-Im Bank, in its reasonable judgment, deems uncollectible for any reason;

(n) that is due and payable in a currency other than Dollars, except as may be approved in writing by Ex-Im Bank;

(o) that is due and payable from a military Buyer, except as may be approved in writing by Ex-Im Bank;

(p) that does not comply with the terms of sale set forth in Section 7 of the Loan Authorization Agreement;

(q) that is due and payable from a Buyer who (i) applies for, suffers, or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property or calls a meeting of its creditors, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due or ceases operations of its present business, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesces to, or fails to have dismissed, any petition which is filed against it in any involuntary case under such bankruptcy laws, or (viii) takes any action for the purpose of effecting any of the foregoing;

(r) that arises from a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment or any other repurchase or return basis or is evidenced by chattel paper;

(s) for which the Items giving rise to such Account Receivable have not been shipped and delivered to and accepted by the Buyer or the services giving rise to such Account Receivable have not been performed by Borrower and accepted by the Buyer or the Account Receivable otherwise does not represent a final sale;

(t) that is subject to any offset, deduction, defense, dispute, or counterclaim or the Buyer is also a creditor or supplier of Borrower or the Account Receivable is contingent in any respect or for any reason;

(u) for which Borrower has made any agreement with the Buyer for any deduction therefrom, except for discounts or allowances made in the ordinary course of business for prompt payment, all of which discounts or allowances are reflected in the calculation of the face value of each respective invoice related thereto; or

(v) for which any of the Items giving rise to such Account Receivable have been returned, rejected or repossessed.

"Eligible Export-Related Inventory" shall mean Export-Related Inventory which is acceptable to Lender and which is deemed to be eligible pursuant to the Loan Documents, but in no event shall Eligible Export-Related Inventory include any Inventory:

(a) that is not subject to a valid, perfected first priority Lien in favor of Lender;

(b) that is located at an address that has not been disclosed to Lender in writing;

(c) that is placed by Borrower on consignment or held by Borrower on consignment from another Person;

(d) that is in the possession of a processor or bailee, or located on premises leased or subleased to Borrower, or on premises subject to a mortgage in favor of a Person other than Lender, unless such processor or bailee or mortgagee or the lessor or sublessor of such premises, as the case may be, has executed and delivered all documentation which Lender shall require to evidence the subordination or other limitation or extinguishment of such Person's rights with respect to such Inventory and Lender's right to gain access thereto;

(e) that is produced in violation of the Fair Labor Standards Act or subject to the "hot goods" provisions contained in 29 U.S.C. Section 215 or any successor statute or section;

(f) as to which any covenant, representation or warranty with respect to such Inventory contained in the Loan Documents has been breached;

(g) that is not located in the United States;

(h) that is demonstration Inventory;

(i) that consists of proprietary software (i.e. software designed solely for Borrower's internal use and not intended for resale);

(j) that is damaged, obsolete, returned, defective, recalled or unfit for further processing;

(k) that has been previously exported from the United States;

(l) that constitutes defense articles or defense services;

(m) that is to be incorporated into Items destined for shipment to a country as to which Ex-Im Bank is prohibited from doing business as designated in the Country Limitation Schedule;

(n) that is to be incorporated into Items destined for shipment to a Buyer located in a country in which Ex-Im Bank coverage is not available for commercial reasons as designated in the Country Limitation Schedule, unless and only to the extent that such Items are to be sold to such country on terms of a letter of credit confirmed by a bank acceptable to Ex-Im Bank; or

(o) that is to be incorporated into Items whose sale would result in an Account Receivable which would not be an Eligible Export-Related Account Receivable.

"Eligible Person" shall mean a sole proprietorship, partnership, limited liability partnership, corporation or limited liability company which (a) is domiciled, organized, or formed, as the case may be, in the United States; (b) is in good standing in the state of its formation or otherwise authorized to conduct business in the United States; (c) is not currently suspended or debarred from doing business with the United States government or any instrumentality, division, agency or department thereof; (d) exports or plans to export Items; (e) operates and has operated as a going concern for at least one (1) year; (f) has a positive tangible net worth determined in accordance with GAAP; and (g) has revenue generating operations relating to its core business activities for at least one year.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974 and the rules and regulations promulgated thereunder.

"Export Order" shall mean a written export order or contract for the purchase by the Buyer from Borrower of any of the Items.

"Export-Related Accounts Receivable" shall mean those Accounts Receivable arising from the sale of Items which are due and payable to Borrower in the United States.

"Export-Related Accounts Receivable Value" shall mean, at the date of determination thereof, the aggregate face amount of Eligible Export-Related Accounts Receivable less taxes, discounts, credits, allowances and Retainages, except to the extent otherwise permitted by Ex-Im Bank in writing.

"Export-Related Borrowing Base" shall mean, at the date of determination thereof, the sum of (a) the Export-Related Inventory Value multiplied by the Advance Rate applicable to Export-Related Inventory set forth in Section 5(C)(1) of the Loan Authorization Agreement, (b) the Export-Related Accounts Receivable Value multiplied by the Advance Rate applicable to Export-Related Accounts Receivable set forth in Section 5(C)(2) of the Loan Authorization Agreement, (c) if permitted by Ex-Im Bank in writing, the Retainage Value multiplied by the Retainage Advance Rate set forth in Section 5(C)(3) of the Loan Authorization Agreement and (d) the Other Assets Value multiplied by the Advance Rate applicable to Other Assets set forth in Section 5(C)(4) of the Loan Authorization Agreement.

"Export-Related Borrowing Base Certificate" shall mean a certificate in the form provided or approved by Lender, executed by Borrower and delivered to Lender pursuant to the Loan Documents detailing the Export-Related Borrowing Base supporting the Credit Accommodations which reflects, to the extent included in the Export-Related Borrowing Base, Export-Related Accounts Receivable, Eligible Export-Related Accounts Receivable, Export-Related Inventory and Eligible Export-Related Inventory balances that have been reconciled with Borrower's general ledger, Accounts Receivable aging report and Inventory schedule.

"Export-Related General Intangibles" shall mean those General Intangibles necessary or desirable to or for the disposition of Export-Related Inventory.

"Export-Related Inventory" shall mean the Inventory of Borrower located in the United States that has been purchased, manufactured or otherwise acquired by Borrower for resale pursuant to Export Orders.

"Export-Related Inventory Value" shall mean, at the date of determination thereof, the lower of cost or market value of Eligible Export-Related Inventory of Borrower as determined in accordance with GAAP.

"Final Disbursement Date" shall mean, unless subject to an extension of such date agreed to by Ex-Im Bank, the last date on which Lender may make a Disbursement set forth in Section 10 of the Loan Authorization Agreement or, if such date is not a Business Day, the next succeeding Business Day; PROVIDED, HOWEVER, to the extent that Lender has not received cash collateral or an indemnity with respect to Letter of Credit Obligations outstanding on the Final Disbursement Date, the Final Disbursement Date with respect to an advance to fund a drawing under a Letter of Credit shall be no later than thirty (30) Business Days after the expiry date of the Letter of Credit related thereto.

"GAAP" shall mean the generally accepted accounting principles issued by the American Institute of Certified Public Accountants as in effect from time to time.

"General Intangibles" shall mean all intellectual property and other "general intangibles" (as such term is defined in the UCC) necessary or desirable to or for the disposition of Inventory.

"Guarantor" shall mean each Person, if any, identified in Section 3 of the Loan Authorization Agreement who shall guarantee (jointly and severally if more than one) the payment and performance of all or a portion of the Loan Facility Obligations.

"Guaranty Agreement" shall mean a valid and enforceable agreement of guaranty executed by each Guarantor in favor of Lender.

"Inventory" shall mean all "inventory" (as such term is defined in the UCC), now or hereafter owned or acquired by Borrower, wherever located, including all inventory, merchandise, goods and other personal property which are held by or on behalf of Borrower for sale or lease or are furnished or are to be furnished under a contract of service or which constitute raw materials, work in process or materials used or consumed or to be used or consumed in Borrower's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including other supplies.

"ISP" shall mean the International Standby Practices-ISP98, International Chamber of Commerce Publication No. 590 and any amendments and revisions thereof.

"Issuing Bank" shall mean the bank that issues a Letter of Credit, which bank is Lender itself or a bank that Lender has caused to issue a Letter of Credit by way of guarantee.

"Items" shall mean the finished goods or services which are intended for export from the United States, as specified in Section 4(A) of the Loan Authorization Agreement.

"Letter of Credit" shall mean a Commercial Letter of Credit or a Standby Letter of Credit.

"Letter of Credit Obligations" shall mean all outstanding obligations incurred by Lender, whether direct or indirect, contingent or otherwise, due or not due, in connection with the issuance or guarantee by Lender or the Issuing Bank of Letters of Credit.

"Lien" shall mean any mortgage, security deed or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, security title, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any lease or title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of, or agreement to give, any financing statement perfecting a security interest under the UCC or comparable law of any jurisdiction) by which property is encumbered or otherwise charged.

"Loan Agreement" shall mean a valid and enforceable agreement between Lender and Borrower setting forth the terms and conditions of the Loan Facility.

"Loan Authorization Agreement" shall mean the Loan Authorization Agreement entered into between Lender and Ex-Im Bank or the Loan Authorization Notice setting forth certain terms and conditions of the Loan Facility, a copy of which is attached hereto as Annex A.

"Loan Authorization Notice" shall mean the Loan Authorization Notice executed by Lender and delivered to Ex-Im Bank in accordance with the Delegated Authority Letter Agreement setting forth the terms and conditions of each Loan Facility.

"Loan Documents" shall mean the Loan Authorization Agreement, the Loan Agreement, this Agreement, each promissory note (if applicable), each Guaranty Agreement, and all other instruments, agreements and documents now or hereafter executed by Borrower or any Guarantor evidencing, securing, guaranteeing or otherwise relating to the Loan Facility or any Credit Accommodations made thereunder.

"Loan Facility" shall mean the Revolving Loan Facility, the Transaction Specific Loan Facility or the Transaction Specific Revolving Loan Facility established by Lender in favor of Borrower under the Loan Documents.

"Loan Facility Obligations" shall mean all loans, advances, debts, expenses, fees, liabilities, and obligations for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or amounts are liquidated or determinable) owing by Borrower to Lender, of any kind or nature, present or future, arising in connection with the Loan Facility.

"Loan Facility Term" shall mean the number of months from the Effective Date to the Final Disbursement Date as originally set forth in the Loan Authorization Agreement.

"Master Guarantee Agreement" shall mean the Master Guarantee Agreement between Ex-Im Bank and Lender, as amended, modified, supplemented and restated from time to time.

"Material Adverse Effect" shall mean a material adverse effect on (a) the business, assets, operations, prospects or financial or other condition of Borrower or any Guarantor, (b) Borrower's ability to pay or perform the Loan Facility Obligations in accordance with the terms thereof, (c) the Collateral or Lender's Liens on the Collateral or the priority of such Lien or (d) Lender's rights and remedies under the Loan Documents.

"Maximum Amount" shall mean the maximum principal balance of Credit Accommodations that may be outstanding at any time under the Loan Facility specified in Section 5(A) of the Loan Authorization Agreement.

"Other Assets" shall mean the Collateral, if any, described in Section 5(C)(4) of the Loan Authorization Agreement.

"Other Assets Value" shall mean, at the date of determination thereof, the value of the Other Assets as determined in accordance with GAAP.

"Permitted Liens" shall mean (a) Liens for taxes, assessments or other governmental charges or levies not delinquent, or, being contested in good faith and by appropriate proceedings and with respect to which proper reserves have been taken by

Borrower; PROVIDED, THAT, the Lien shall have no effect on the priority of the Liens in favor of Lender or the value of the assets in which Lender has such a Lien and a stay of enforcement of any such Lien shall be in effect; (b) deposits or pledges securing obligations under worker's compensation, unemployment insurance, social security or public liability laws or similar legislation; (c) deposits or pledges securing bids, tenders, contracts (other than contracts for the payment of money), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the ordinary course of Borrower's business; (d) judgment Liens that have been stayed or bonded; (e) mechanics', workers', materialmen's or other like Liens arising in the ordinary course of Borrower's business with respect to obligations which are not due; (f) Liens placed upon fixed assets hereafter acquired to secure a portion of the purchase price thereof, provided, that, any such Lien shall not encumber any other property of Borrower; (g) security interests being terminated concurrently with the execution of the Loan Documents; (h) Liens in favor of Lender securing the Loan Facility Obligations; and (i) Liens disclosed in Section 6(D) of the Loan Authorization Agreement.

"Person" shall mean any individual, sole proprietorship, partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, entity or government (whether national, federal, provincial, state, county, city, municipal or otherwise, including any instrumentality, division, agency, body or department thereof), and shall include such Person's successors and assigns.

"Principals" shall mean any officer, director, owner, partner, key employee, or other Person with primary management or supervisory responsibilities with respect to Borrower or any other Person (whether or not an employee) who has critical influence on or substantive control over the transactions covered by this Agreement.

"Retainage" shall mean that portion of the purchase price of an Export Order that a Buyer is not obligated to pay until the end of a specified period of time following the satisfactory performance under such Export Order.

"Retainage Accounts Receivable" shall mean those portions of Eligible Export-Related Accounts Receivable arising out of a Retainage.

"Retainage Advance Rate" shall mean the percentage rate specified in Section 5(C)(3) of the Loan Authorization Agreement as the Advance Rate for the Retainage Accounts Receivable of Borrower.

"Retainage Value" shall mean, at the date of determination thereof, the aggregate face amount of Retainage Accounts Receivable, less taxes, discounts, credits and allowances, except to the extent otherwise permitted by Ex-Im Bank in writing.

"Revolving Loan Facility" shall mean the credit facility or portion thereof established by Lender in favor of Borrower for the purpose of providing pre-export working capital in the form of loans and/or Letters of Credit to finance the manufacture, production or purchase and subsequent export sale of Items pursuant to Loan Documents under which Credit Accommodations may be made and repaid on a continuous basis based solely on the Export-Related Borrowing Base during the term of such credit facility.

"Special Conditions" shall mean those conditions, if any, set forth in Section 13 of the Loan Authorization Agreement.

"Specific Export Orders" shall mean those Export Orders specified in Section 5(D) of the Loan Authorization Agreement.

"Standby Letter of Credit" shall mean those letters of credit subject to the ISP or UCP issued or caused to be issued by Lender for Borrower's account that can be drawn upon by a Buyer only if Borrower fails to perform all of its obligations with respect to an Export Order.

"Transaction Specific Loan Facility" shall mean a credit facility or a portion thereof established by Lender in favor of Borrower for the purpose of providing pre-export working capital in the form of loans and/or Letters of Credit to finance the manufacture, production or purchase and subsequent export sale of Items pursuant to Loan Documents under which Credit Accommodations are made based solely on the Export-Related Borrowing Base relating to Specific Export Orders and once such Credit Accommodations are repaid they may not be reborrowed.

"Transaction Specific Revolving Loan Facility" shall mean a Revolving Credit Facility established to provide financing of Specific Export Orders.

"UCC" shall mean the Uniform Commercial Code as the same may be in effect from time to time in the jurisdiction in which Borrower or Collateral is located.

"UCP" shall mean the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 and any amendments and revisions thereof.

"U.S." or "United States" shall mean the United States of America and its territorial possessions.

"U.S. Content" shall mean with respect to any Item all the labor, materials and services which are of U.S. origin or manufacture, and which are incorporated into an Item in the United States.

"Warranty" shall mean Borrower's guarantee to Buyer that the Items will function as intended during the warranty period set forth in the applicable Export Order.

"Warranty Letter of Credit" shall mean a Standby Letter of Credit which is issued or caused to be issued by Lender to support the obligations of Borrower with respect to a Warranty or a Standby Letter of Credit which by its terms becomes a Warranty Letter of Credit.

1.2 RULES OF CONSTRUCTION. For purposes of this Agreement, the following additional rules of construction shall apply, unless specifically indicated to the contrary: (a) wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter; (b) the term "or" is not exclusive; (c) the term "including" (or any form thereof) shall not be limiting or exclusive; (d) all references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations; (e) the words "this Agreement", "herein", "hereof", "hereunder" or other words of similar import refer to this Agreement as a whole including the schedules, exhibits, and

annexes hereto as the same may be amended, modified or supplemented; (f) all references in this Agreement to sections, schedules, exhibits, and annexes shall refer to the corresponding sections, schedules, exhibits, and annexes of or to this Agreement; and (g) all references to any instruments or agreements, including references to any of the Loan Documents, or the Delegated Authority Letter Agreement shall include any and all modifications, amendments and supplements thereto and any and all extensions or renewals thereof to the extent permitted under this Agreement.

1.3 INCORPORATION OF RECITALS. The Recitals to this Agreement are incorporated into and shall constitute a part of this Agreement.

ARTICLE II  
OBLIGATIONS OF BORROWER

Until payment in full of all Loan Facility Obligations and termination of the Loan Documents, Borrower agrees as follows:

2.1 USE OF CREDIT ACCOMMODATIONS. (a) Borrower shall use Credit Accommodations only for the purpose of enabling Borrower to finance the cost of manufacturing, producing, purchasing or selling the Items. Borrower may not use any of the Credit Accommodations for the purpose of: (i) servicing or repaying any of Borrower's pre-existing or future indebtedness unrelated to the Loan Facility (unless approved by Ex-Im Bank in writing); (ii) acquiring fixed assets or capital goods for use in Borrower's business; (iii) acquiring, equipping or renting commercial space outside of the United States; (iv) paying the salaries of non U.S. citizens or non-U.S. permanent residents who are located in offices outside of the United States; or (v) in connection with a Retainage or Warranty (unless approved by Ex-Im Bank in writing).

(b) In addition, no Credit Accommodation may be used to finance the manufacture, purchase or sale of any of the following:

(i) Items to be sold or resold to a Buyer located in a country as to which Ex-Im Bank is prohibited from doing business as designated in the Country Limitation Schedule;

(ii) that part of the cost of the Items which is not U.S. Content unless such part is not greater than fifty percent (50%) of the cost of the Items and is incorporated into the Items in the United States;

(iii) defense articles or defense services; or

(iv) without Ex-Im Bank's prior written consent, any Items to be used in the construction, alteration, operation or maintenance of nuclear power, enrichment, reprocessing, research or heavy water production facilities.

2.2 LOAN DOCUMENTS AND LOAN AUTHORIZATION AGREEMENT. (a) Each Loan Document and this Agreement have been duly executed and delivered on behalf of Borrower, and each such Loan Document and this Agreement are and will continue to be a legal and valid obligation of Borrower, enforceable against it in accordance with its terms.

(b) Borrower shall comply with all of the terms and conditions of the Loan Documents, this Agreement and the Loan Authorization Agreement.

2.3 EXPORT-RELATED BORROWING BASE CERTIFICATES AND EXPORT ORDERS. In order to receive Credit Accommodations under the Loan Facility, Borrower shall have delivered to Lender an Export-Related Borrowing Base Certificate as frequently as required by Lender but at least within the past thirty (30) calendar days and a copy of the Export Order(s) (or, for Revolving Loan Facilities, if permitted by Lender, a written summary of the Export Orders) against which Borrower is requesting Credit Accommodations. If Lender permits summaries of Export Orders, Borrower shall also deliver promptly to Lender copies of any Export Orders requested by Lender. In addition, so long as there are any Credit Accommodations outstanding under the Loan Facility, Borrower shall deliver to Lender at least once each month no later than the twentieth (20th) day of such month or more frequently as required by the Loan Documents, an Export-Related Borrowing Base Certificate.

2.4 EXCLUSIONS FROM THE EXPORT-RELATED BORROWING BASE. In determining the Export-Related Borrowing Base, Borrower shall exclude therefrom Inventory which is not Eligible Export-Related Inventory and Accounts Receivable which are not Eligible Export-Related Accounts Receivable. Borrower shall promptly, but in any event within five (5) Business Days, notify Lender (a) if any then existing Export-Related Inventory no longer constitutes Eligible Export-Related Inventory or (b) of any event or circumstance which to Borrower's knowledge would cause Lender to consider any then existing Export-Related Accounts Receivable as no longer constituting an Eligible Export-Related Accounts Receivable.

2.5 FINANCIAL STATEMENTS. Borrower shall deliver to Lender the financial statements required to be delivered by Borrower in accordance with Section 11 of the Loan Authorization Agreement.

2.6 SCHEDULES, REPORTS AND OTHER STATEMENTS. Borrower shall submit to Lender in writing each month (a) an Inventory schedule for the preceding month and (b) an Accounts Receivable aging report for the preceding month detailing the terms of the amounts due from each Buyer. Borrower shall also furnish to Lender promptly upon request such information, reports, contracts, invoices and other data concerning the Collateral as Lender may from time to time specify.

2.7 ADDITIONAL SECURITY OR PAYMENT. (a) Borrower shall at all times ensure that the Export-Related Borrowing Base equals or exceeds the Credit Accommodation Amount. If informed by Lender or if Borrower otherwise has actual knowledge that the Export-Related Borrowing Base is at any time less than the Credit Accommodation Amount, Borrower shall, within five (5) Business Days, either (i) furnish additional Collateral to Lender, in form and amount satisfactory to Lender and Ex-Im Bank or (ii) pay to Lender an amount equal to the difference between the Credit Accommodation Amount and the Export-Related Borrowing Base.

(b) For purposes of this Agreement, in determining the Export-Related Borrowing Base there shall be deducted from the Export-Related Borrowing Base (i) an amount equal to twenty-five percent (25%) of the outstanding face amount of Commercial Letters of Credit and Standby Letters of Credit and (ii) one hundred percent (100%) of the face amount of Warranty Letters of Credit less the amount of cash collateral held by Lender to secure Warranty Letters of Credit.

(c) Unless otherwise approved in writing by Ex-Im Bank, for Revolving Loan Facilities (other than Transaction Specific Revolving Loan Facilities), Borrower shall at all times ensure that the outstanding principal balance of the Credit Accommodations that is supported by Export-Related Inventory does not exceed sixty percent (60%) of the sum of the total outstanding principal balance of the Disbursements and the undrawn face amount of all outstanding Commercial Letters of Credit. If informed by Lender or if Borrower otherwise has actual knowledge that the outstanding principal balance of the Credit Accommodations that is supported by Inventory exceeds sixty percent (60%) of the sum of the total outstanding principal balance of the Disbursements and the undrawn face amount of all outstanding Commercial Letters of Credit, Borrower shall, within five (5) Business Days, either (i) furnish additional non-Inventory Collateral to Lender, in form and amount satisfactory to Lender and Ex-Im Bank, or (ii) pay down the applicable portion of the Credit Accommodations so that the above described ratio is not exceeded.

2.8 CONTINUED SECURITY INTEREST. Borrower shall not change (a) its name or identity in any manner, (b) the location of its principal place of business, (c) the location of any of the Collateral or (d) the location of any of the books or records related to the Collateral, in each instance without giving thirty (30) days prior written notice thereof to Lender and taking all actions deemed necessary or appropriate by Lender to continuously protect and perfect Lender's Liens upon the Collateral.

2.9 INSPECTION OF COLLATERAL. Borrower shall permit the representatives of Lender and Ex-Im Bank to make at any time during normal business hours inspections of the Collateral and of Borrower's facilities, activities, and books and records, and shall cause its officers and employees to give full cooperation and assistance in connection therewith.

2.10 GENERAL INTANGIBLES. Borrower represents and warrants that it owns, or is licensed to use, all General Intangibles necessary to conduct its business as currently conducted except where the failure of Borrower to own or license such General Intangibles could not reasonably be expected to have a Material Adverse Effect.

2.11 NOTICE OF CERTAIN EVENTS. Borrower shall promptly, but in any event within five (5) Business Days, notify Lender in writing of the occurrence of any of the following:

(a) Borrower or any Guarantor (i) applies for, consents to or suffers the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or similar fiduciary of itself or of all or a substantial part of its property or calls a meeting of its creditors, (ii) admits in writing its inability, or is generally unable, to pay its debts as they become due or ceases operations of its present business, (iii) makes a general assignment for the benefit of creditors, (iv) commences a voluntary case under any state or federal bankruptcy laws (as now or hereafter in effect), (v) is adjudicated as bankrupt or insolvent, (vi) files a petition seeking to take advantage of any other law providing for the relief of debtors, (vii) acquiesces to, or fails to have dismissed within thirty (30) days, any petition filed against it in any involuntary case under such bankruptcy laws, or (viii) takes any action for the purpose of effecting any of the foregoing;

(b) any Lien in any of the Collateral, granted or intended by the Loan Documents to be granted to Lender, ceases to be a valid, enforceable, perfected, first priority Lien (or a lesser priority if expressly permitted pursuant to Section 6 of the Loan Authorization Agreement) subject only to Permitted Liens;

(c) the issuance of any levy, assessment, attachment, seizure or Lien, other than a Permitted Lien, against any of the Collateral which is not stayed or lifted within thirty (30) calendar days;

(d) any proceeding is commenced by or against Borrower or any Guarantor for the liquidation of its assets or dissolution;

(e) any litigation is filed against Borrower or any Guarantor which has had or could reasonably be expected to have a Material Adverse Effect and such litigation is not withdrawn or dismissed within thirty (30) calendar days of the filing thereof;

(f) any default or event of default under the Loan Documents;

(g) any failure to comply with any terms of the Loan Authorization Agreement;

(h) any material provision of any Loan Document or this Agreement for any reason ceases to be valid, binding and enforceable in accordance with its terms;

(i) any event which has had or could reasonably be expected to have a Material Adverse Effect; or

(j) the Credit Accommodation Amount exceeds the applicable Export-Related Borrowing Base.

2.12 INSURANCE. Borrower will at all times carry property, liability and other insurance, with insurers acceptable to Lender, in such form and amounts, and with such deductibles and other provisions, as Lender shall require, and Borrower will provide evidence of such insurance to Lender, so that Lender is satisfied that such insurance is, at all times, in full force and effect. Each property insurance policy shall name Lender as loss payee and shall contain a lender's loss payable endorsement in form acceptable to Lender and each liability insurance policy shall name Lender as an additional insured. All policies of insurance shall provide that they may not be cancelled or changed without at least ten (10) days' prior written notice to Lender and shall otherwise be in form and substance satisfactory to Lender. Borrower will promptly deliver to Lender copies of all reports made to insurance companies.

2.13 TAXES. Borrower has timely filed all tax returns and reports required by applicable law, has timely paid all applicable taxes, assessments, deposits and contributions owing by Borrower and will timely pay all such items in the future as they became due and payable. Borrower may, however, defer payment of any contested taxes; provided, that Borrower (a) in good faith contests Borrower's obligation to pay such taxes by appropriate proceedings promptly and diligently instituted and conducted; (b) notifies Lender in writing of the commencement of,

and any material development in, the proceedings; (c) posts bonds or takes any other steps required to keep the contested taxes from becoming a Lien upon any of the Collateral; and (d) maintains adequate reserves therefor in conformity with GAAP.

2.14 COMPLIANCE WITH LAWS. Borrower represents and warrants that it has complied in all material respects with all provisions of all applicable laws and regulations, including those relating to Borrower's ownership of real or personal property, the conduct and licensing of Borrower's business, the payment and withholding of taxes, ERISA and other employee matters, safety and environmental matters.

2.15 NEGATIVE COVENANTS. Without the prior written consent of Ex-Im Bank and Lender, Borrower shall not (a) merge, consolidate or otherwise combine with any other Person; (b) acquire all or substantially all of the assets or capital stock of any other Person; (c) sell, lease, transfer, convey, assign or otherwise dispose of any of its assets, except for the sale of Inventory in the ordinary course of business and the disposition of obsolete equipment in the ordinary course of business; (d) create any Lien on the Collateral except for Permitted Liens; (e) make any material changes in its organizational structure or identity; or (f) enter into any agreement to do any of the foregoing.

2.16 REBORROWINGS AND REPAYMENT TERMS. (a) If the Loan Facility is a Revolving Loan Facility, provided that Borrower is not in default under any of the Loan Documents, Borrower may borrow, repay and reborrow amounts under the Loan Facility until the close of business on the Final Disbursement Date. Unless the Revolving Loan Facility is renewed or extended by Lender with the consent of Ex-Im Bank, Borrower shall pay in full the outstanding Loan Facility Obligations and all accrued and unpaid interest thereon no later than the first Business Day after the Final Disbursement Date.

(b) If the Loan Facility is a Transaction Specific Loan Facility, Borrower shall, within two (2) Business Days of the receipt thereof, pay to Lender (for application against the outstanding Loan Facility Obligations and accrued and unpaid interest thereon) all checks, drafts, cash and other remittances it may receive in payment or on account of the Export-Related Accounts Receivable or any other Collateral, in precisely the form received (except for the endorsement of Borrower where necessary). Pending such deposit, Borrower shall hold such amounts in trust for Lender separate and apart and shall not commingle any such items of payment with any of its other funds or property.

2.17 CROSS DEFAULT. Borrower shall be deemed in default under the Loan Facility if Borrower fails to pay when due any amount payable to Lender under any loan or other credit accommodations to Borrower whether or not guaranteed by Ex-Im Bank.

2.18 MUNITIONS LIST. If any of the Items are articles, services, or related technical data that are listed on the United States Munitions List (part 121 of title 22 of the Code of Federal Regulations), Borrower shall send a written notice promptly, but in any event within five (5) Business Days, of Borrower learning thereof to Lender describing the Items(s) and the corresponding invoice amount.

2.19 SUSPENSION AND DEBARMENT, ETC. On the date of this Agreement neither Borrower nor its Principals are (a) debarred, suspended, proposed for debarment with a final determination

still pending, declared ineligible or voluntarily excluded (as such terms are defined under any of the Debarment Regulations referred to below) from participating in procurement or nonprocurement transactions with any United States federal government department or agency pursuant to any of the Debarment Regulations or (b) indicted, convicted or had a civil judgment rendered against Borrower or any of its Principals for any of the offenses listed in any of the Debarment Regulations. Unless authorized by Ex-Im Bank, Borrower will not knowingly enter into any transactions in connection with the Items with any person who is debarred, suspended, declared ineligible or voluntarily excluded from participation in procurement or nonprocurement transactions with any United States federal government department or agency pursuant to any of the Debarment Regulations. Borrower will provide immediate written notice to Lender if at any time it learns that the certification set forth in this Section 2.19 was erroneous when made or has become erroneous by reason of changed circumstances.

### ARTICLE III RIGHTS AND REMEDIES

3.1 INDEMNIFICATION. Upon Ex-Im Bank's payment of a Claim to Lender in connection with the Loan Facility pursuant to the Master Guarantee Agreement, Ex-Im Bank may assume all rights and remedies of Lender under the Loan Documents and may enforce any such rights or remedies against Borrower, the Collateral and any Guarantors. Borrower shall hold Ex-Im Bank and Lender harmless from and indemnify them against any and all liabilities, damages, claims, costs and losses incurred or suffered by either of them resulting from (a) any materially incorrect certification or statement knowingly made by Borrower or its agent to Ex-Im Bank or Lender in connection with the Loan Facility, this Agreement, the Loan Authorization Agreement or any other Loan Documents or (b) any material breach by Borrower of the terms and conditions of this Agreement, the Loan Authorization Agreement or any of the other Loan Documents. Borrower also acknowledges that any statement, certification or representation made by Borrower in connection with the Loan Facility is subject to the penalties provided in Article 18 U.S.C. Section 1001.

3.2 LIENS. Borrower agrees that any and all Liens granted by it to Lender are also hereby granted to Ex-Im Bank to secure Borrower's obligation, however arising, to reimburse Ex-Im Bank for any payments made by Ex-Im Bank pursuant to the Master Guarantee Agreement. Lender is authorized to apply the proceeds of, and recoveries from, any property subject to such Liens to the satisfaction of Loan Facility Obligations in accordance with the terms of any agreement between Lender and Ex-Im Bank.

### ARTICLE IV MISCELLANEOUS

4.1 GOVERNING LAW. This Agreement and the Loan Authorization Agreement and the obligations arising under this Agreement and the Loan Authorization Agreement shall be governed by, and construed in accordance with, the law of the state governing the Loan Documents.

4.2 NOTIFICATION. All notices required by this Agreement shall be given in the manner and to the parties provided for in the Loan Agreement.

4.3 PARTIAL INVALIDITY. If at any time any of the provisions of this Agreement becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, the validity nor the enforceability of the remaining provisions hereof shall in any way be affected or impaired.

4.4 WAIVER OF JURY TRIAL. BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT, PROCEEDING OR OTHER LITIGATION BROUGHT TO RESOLVE ANY DISPUTE ARISING UNDER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN AUTHORIZATION AGREEMENT, ANY LOAN DOCUMENT, OR ANY OTHER AGREEMENT, DOCUMENT OR INSTRUMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THEREWITH OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OR OMISSIONS OF LENDER, EX-IM BANK, OR ANY OTHER PERSON, RELATING TO THIS AGREEMENT, THE LOAN AUTHORIZATION AGREEMENT OR ANY OTHER LOAN DOCUMENT.

IN WITNESS WHEREOF, Borrower has caused this Agreement to be duly executed as of the 30th day of January, 2003.

ASPEN TECHNOLOGY, INC.

By: /s/ LISA W. ZAPPALA

-----  
(Signature)

Name: LISA W. ZAPPALA

-----  
(Print or Type)

Title: Senior Vice President and  
Chief Financial Officer

-----  
(Print or Type)

ASPENTECH, INC.

By: /s/ LISA W. ZAPPALA

-----  
(Signature)

Name: LISA W. ZAPPALA

-----  
(Print or Type)

Title: Treasurer

(Print or Type)

ACKNOWLEDGED:

SILICON VALLEY BANK, d/b/a  
SILICON VALLEY "EAST"

By: /s/ JOHN V. ATANASOFF

-----  
(Signature)

Name: JOHN V. ATANASOFF

-----  
(Print or Type)

Title: Vice President

-----  
(Print or Type)

ANNEXES:

Annex A - Loan Authorization Agreement or Loan Authorization Notice

PROMISSORY NOTE  
(Exim)

\$10,000,000.00

January 30, 2003

FOR VALUE RECEIVED, the undersigned (jointly and severally, individually and collectively, the "Borrower"), jointly and severally promises to pay to the order of Silicon Valley Bank ("Bank"), at such place as the holder hereof may designate, in lawful money of the United States of America, the aggregate unpaid principal amount of all advances ("Advances") made by Bank to Borrower, up to a maximum principal amount of Ten Million Dollars (\$10,000,000.00), plus interest on the aggregate unpaid principal amount of such Advances, at the rates and in accordance with the terms of the Export-Import Bank Loan and Security Agreement between Borrower and Bank of even date herewith, as amended from time to time (the "Loan Agreement") on the first calendar day of each month after an Advance has been made. The entire principal amount and all accrued interest shall be due and payable on January 29, 2005, or on such earlier date, as provided for in the Loan Agreement.

Borrower irrevocably waives the right to direct the application of any and all payments at any time hereafter received by Bank from or on behalf of Borrower, and Borrower irrevocably agrees that Bank shall have the continuing exclusive right to apply any and all such payments against the then due and owing obligations of Borrower as Bank may deem advisable. In the absence of a specific determination by Bank with respect thereto, all payments shall be applied in the following order: (a) then due and payable fees and expenses; (b) then due and payable interest payments and mandatory prepayments; and (c) then due and payable principal payments and optional prepayments.

Bank is hereby authorized by Borrower to endorse on Bank's books and records each Advance made by Bank under this Note and the amount of each payment or prepayment of principal of each such Advance received by Bank; it being understood, however, that failure to make any such endorsement (or any errors in notation) shall not affect the obligations of Borrower with respect to Advances made hereunder, and payments of principal by Borrower shall be credited to Borrower notwithstanding the failure to make a notation (or any errors in notation) thereof on such books and records.

Borrower promises to pay Bank all reasonable costs and reasonable expenses including all reasonable attorneys' fees, incurred in such collection or in any suit or action to collect this Note or in any appeal thereof, unless a final court of competent jurisdiction finds that the Bank acted with gross negligence or willful misconduct. Borrower waives presentment, demand, protest, notice of protest, notice of dishonor, notice of nonpayment, and any and all other notices and demands in connection with the delivery, acceptance, performance, default or enforcement of this Note, as well as any applicable statute of limitations. No delay by Bank in exercising any power or right hereunder shall operate as a waiver of any power or right. Time is of the essence as to all obligations hereunder.

This Note is issued pursuant to the Loan Agreement, which shall govern the rights and obligations of Borrower with respect to all obligations hereunder.

The law of the Commonwealth of Massachusetts shall apply to this Agreement. BORROWER AND BANK EACH ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH OF MASSACHUSETTS IN ANY ACTION, SUIT, OR PROCEEDING OF ANY KIND, AGAINST IT WHICH ARISES OUT OF OR BY REASON OF THIS NOTE OR THE LOAN AGREEMENT; PROVIDED, HOWEVER, THAT IF FOR ANY REASON BANK CANNOT AVAIL ITSELF OF THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS, BORROWER ACCEPTS JURISDICTION OF THE COURTS AND VENUE IN SANTA CLARA COUNTY, CALIFORNIA.

BORROWER WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION

BASED UPON OR ARISING OUT OF ANY OF THE EXIM LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. BORROWER RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. BORROWER REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

ASPEN TECHNOLOGY, INC.

By: /s/ Lisa W. Zappala

-----  
Name: Lisa W. Zappala  
Title: Senior Vice President and  
Chief Financial Officer

ASPENTECH, INC.

By: /s/ Lisa W. Zappala

-----  
Name: Lisa W. Zappala  
Title: Treasurer

FORM OF NEGATIVE PLEDGE AGREEMENT

This Negative Pledge Agreement is made as of January 30, 2003, by and between \_\_\_\_\_ with offices at \_\_\_\_\_ ("Borrower") and SILICON VALLEY BANK, a California-chartered bank, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at One Newton Executive Park, Suite 200, 2221 Washington Street, Newton, Massachusetts 02462, doing business under the name "Silicon Valley East" ("Bank").

In connection with, among other documents, the Loan and Security Agreement (the "Loan Documents") being concurrently executed herewith between Borrower and Bank, Borrower agrees as follows:

1. Except (i) for the granting of non-exclusive licenses or sublicenses by Borrower in the ordinary course of business, (ii) as otherwise permitted in the Loan Documents and (iii) entering into escrow and similar arrangements with respect to source code in the ordinary course of business, Borrower has not, and shall not, sell, transfer, assign, mortgage, pledge, lease, grant a security interest in, or encumber any of Borrower's Intellectual Property (as defined below).
2. As of the date hereof, Borrower has not, and from and after the date hereof shall not, enter into a negative pledge agreement, or similar agreement, affecting the rights of the Intellectual Property with any other party.
3. It shall be an event of default under the Loan Documents between Borrower and Bank if there is a breach of any term of this Negative Pledge Agreement.
4. As used herein,
  - a. "Intellectual Property" means:
    - (i) Any and all Copyrights;
    - (ii) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;
    - (iii) Any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held;
    - (iv) All Mask Works or similar rights available for the protection of semiconductor chips;
    - (v) All Patents;
    - (vi) Any Trademarks;
    - (vii) Any and all claims for damages by way of past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;
    - (viii) All licenses or other rights to use any of the Copyrights, Patents, Trademarks, or Mask Works and all license fees and royalties arising from such use to the extent permitted by such license or rights; and
    - (ix) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents, or Mask Works; and

- (x) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.
  - b. "Copyrights" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held.
  - c. "Mask Works" means all mask work or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired;
  - d. "Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.
  - e. "Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.
5. Capitalized terms used but not otherwise defined herein shall have the same meaning as in the Loan Documents.
6. The laws of the Commonwealth of Massachusetts shall apply to this Agreement. BORROWER AND BANK EACH ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH OF MASSACHUSETTS IN ANY ACTION, SUIT, OR PROCEEDING OF ANY KIND, AGAINST IT WHICH ARISES OUT OF OR BY REASON OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT IF FOR ANY REASON BANK CANNOT AVAIL ITSELF OF THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS, BORROWER ACCEPTS JURISDICTION OF THE COURTS AND VENUE IN SANTA CLARA COUNTY, CALIFORNIA. NOTWITHSTANDING THE FOREGOING, THE BANK SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST THE BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH THE BANK DEEMS NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE THE BANK'S RIGHTS AGAINST THE BORROWER OR ITS PROPERTY.
7. This Agreement shall become effective only when it shall have been executed by Borrower and Bank.

EXECUTED as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first written above.

BORROWER:

[NAME]

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

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

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

BANK:

SILICON VALLEY BANK D/B/A SILICON VALLEY EAST

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

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

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

## SECURITY AGREEMENT

This SECURITY AGREEMENT is entered into as of January 30, 2003, by and among SILICON VALLEY BANK, a California-based bank (the "Bank") with its principal place of business at 3003 Tasman Drive, Santa Clara, CA 95054, and with a loan production office located at One Newton Executive Park, Suite 200, 2221 Washington Street, Newton, Massachusetts, doing business under the name "Silicon Valley East" and ASPENTECH SECURITIES CORP., a Massachusetts corporation with its chief executive office located at Ten Canal Park, Cambridge, Massachusetts 02141 (the "Debtor").

## RECITALS

Debtor has executed and delivered a certain instrument of Unconditional Guaranty to Bank of even date herewith (as may be amended from time to time, the "Guaranty"), pursuant to which the Debtor unconditionally guaranteed the payment and performance of the obligations and liabilities (hereinafter, the "Liabilities") of ASPEN TECHNOLOGY, INC., a Delaware corporation, ASPENTECH, INC., a Texas corporation and HYPROTECH COMPANY, a company organized under the laws of Nova Scotia, Canada (collectively, "Borrower") to Bank (as may be amended from time to time, the "Guaranty"). Bank has agreed to lend money to Borrower, but only upon the condition that Debtor execute and deliver this Security Agreement to secure the payment and performance of the Guaranty. Capitalized terms used but not otherwise defined herein shall have the same meaning as in the Loan and Security Agreement by and between the Bank and Borrower of even date herewith, as amended from time to time (the "Loan Agreement")

## AGREEMENT

The parties agree as follows:

## 1. CREATION OF SECURITY INTEREST

1.1 GRANT OF SECURITY INTEREST. Debtor grants to Bank a security interest in the property described in EXHIBIT A attached hereto (the "Collateral") to secure the Guaranty, and any and all liabilities and obligations of Debtor to Bank under the Guaranty and any other agreements entered into between Debtor and Bank in connection therewith (the "Loan Documents"). Such security interest constitutes a first priority security interest in the presently existing Collateral subject to Permitted Liens, and will constitute a first priority security interest in Collateral acquired after the date hereof subject to Permitted Liens.

1.2 FINANCING STATEMENTS. This Agreement constitutes an authenticated record which authorizes the Bank to file such financing statements as Bank reasonably determines appropriate. Without limiting the generality of the foregoing, Debtor hereby expressly authorizes Bank to file financing statements without notice to Debtor, with all appropriate jurisdictions, as Bank in its reasonable discretion deems appropriate from time to time, in order to further perfect, protect, or vest more securely Bank's interest in the Collateral.

1.3 DELIVERY OF ADDITIONAL DOCUMENTATION REQUIRED. Debtor shall from time to time execute and deliver to Bank, at the request of Bank, all financing statements and other documents that Bank may reasonably request, in form satisfactory to Bank, to perfect and continue perfected Bank's security interests in the Collateral and in order to fully consummate all of the transactions contemplated under the Loan Documents.

## 2. REPRESENTATIONS AND WARRANTIES

Debtor represents and warrants as follows:

2.1 DUE ORGANIZATION AND QUALIFICATION. Debtor is a corporation duly existing and in good standing under the laws of its state of incorporation and qualified and licensed to do business in, and is in good standing in, any state in which the conduct of its business or its ownership of property requires that it be so qualified and where the failure to be so qualified would have a material adverse effect on the Debtor. Debtor represents and warrants that its legal name, type of organization, jurisdiction or incorporation, organizational identification number and place of business are indicated on its perfection certificate. Debtor shall not, without at least thirty (30) days prior written notice to Bank: (i) relocate its chief executive office, or add any new offices or business locations with assets in excess of \$100,000, or (ii) change its jurisdiction of organization, or (iii) change its organizational structure or type, or (iv) change its legal name, or (v) change any organizational number (if any) assigned by its jurisdiction of organization.

2.2 DUE AUTHORIZATION; NO CONFLICT. The execution, delivery, and performance of this Agreement are within Debtor's powers, have been duly authorized, and are not in conflict with nor constitute a breach of any provision contained in Debtor's organizational documents, nor will they constitute an event of default under any material agreement to which Debtor is a party or by which Debtor is bound.

2.3 NO PRIOR ENCUMBRANCES. Debtor has good and indefeasible title to the Collateral, free and clear of any liens, security interests, or other encumbrances (other than the Permitted Liens).

### 3. AFFIRMATIVE COVENANTS

Debtor covenants and agrees that, until payment in full of all outstanding obligations and liabilities under the Guaranty and this Agreement, Debtor shall do all of the following:

3.1 GOOD STANDING. Debtor shall maintain its corporate existence and its good standing in its jurisdiction of incorporation and maintain qualification in each jurisdiction in which the failure to so qualify could reasonably be expected to have a material adverse effect on Debtor's business. Debtor shall maintain in force all licenses, approvals and agreements, the loss of which could reasonably be expected to have a material adverse effect on Debtor's business.

3.2 GOVERNMENT COMPLIANCE. Debtor shall comply with all statutes, laws, ordinances and government rules and regulations to which it is subject, noncompliance with which could reasonably be expected to have a material adverse effect on Debtor's business.

#### 3.3 INSURANCE.

(a) Debtor, at its expense, shall keep the Collateral insured against loss or damage by fire, theft, explosion, sprinklers, and all other hazards and risks, and in such amounts, as ordinarily insured against by other owners in similar businesses conducted in the locations where Debtor's business is conducted on the date hereof. Debtor shall also maintain insurance relating to Debtor's ownership and use of the Collateral in amounts and of a type that are customary to businesses similar to Debtor's.

(b) All such policies of insurance shall be in such form, with such companies, and in such amounts as reasonably satisfactory to Bank. All such policies of property insurance shall contain a lender's loss payable endorsement, in a form satisfactory to Bank, showing Bank as an additional loss payee thereof and all liability insurance policies shall show the Bank as an additional insured, and shall specify that the insurer must give at least twenty (20) days notice to Bank before canceling its policy for any reason.

#### 4. NEGATIVE COVENANTS

Debtor covenants and agrees that until payment in full of all outstanding obligations and liabilities under the Guaranty and this Agreement, Debtor will not do any of the following:

4.1 DISPOSITIONS. Convey, sell, lease, transfer or otherwise dispose of (collectively, a "Transfer"), all or any part of the Collateral other than: (i) Transfers in the ordinary course of business; (ii) Transfers of non-exclusive licenses and similar arrangements for the use of the Collateral; or (iii) Transfers of worn-out or obsolete Equipment.

4.2 MERGERS OR ACQUISITIONS. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person.

4.3 INDEBTEDNESS. Create, incur, assume, or be liable for any indebtedness for borrowed money, or permit any Subsidiary to do so, other than indebtedness subject to a subordination agreement between the Bank and the holder of such indebtedness ("Subordinated Debt").

4.4 ENCUMBRANCE. Create, incur, or allow any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Receivables, or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to Bank's first priority security interest.

4.5 INVESTMENTS; DISTRIBUTIONS. (i) Directly or indirectly acquire or own any Person, or make any Investment in any Person, other than investments permitted in writing by Bank or consistent with Debtor's current board approved investment policy, or permit any of its Subsidiaries to do so; or (ii) pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock (except for dividends payable solely in stock of Debtor).

4.6 TRANSACTIONS WITH AFFILIATES. Directly or indirectly enter or permit any material transaction with any Affiliate, except transactions that are in the ordinary course of Debtor's business, on terms no less favorable to Debtor than would be obtained in an arm's length transaction with a non-affiliated Person (except the foregoing shall not restrict Debtor's ability to transfer or have transferred to it cash or securities or other property consistent with its role as a securities corporation).

4.7 SUBORDINATED DEBT. Make or permit any payment on any Subordinated Debt, except under the terms of the Subordinated Debt, or amend any material provision in any document relating to the Subordinated Debt, without Bank's prior written consent.

4.8 COMPLIANCE. Undertake as one of its important activities extending credit to purchase or carry margin stock, or use the proceeds of any Advance for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Debtor's business or operations, or permit any of its Subsidiaries to do so.

#### 5. EVENTS OF DEFAULT

Any one or more of the following events shall constitute an Event of Default by Debtor under this Agreement:

5.1 LOAN DOCUMENTS. If an Event of Default occurs under the Guaranty or any of the Loan Documents.

5.2 COVENANT DEFAULT. Debtor does not perform any obligation in Article 3 or violates any covenant in Article 4 or does not perform or observe any other material term, condition or covenant in this Agreement, any Loan Documents, or in any agreement between Debtor and Bank within twenty (20) days of becoming aware of such default (or within three (3) Business Days of such default if the default can not be cured).

5.3 ATTACHMENT. (i) Any material portion of Debtor's assets is attached, seized, levied on, or comes into possession of a trustee or receiver and the attachment, seizure or levy is not removed in thirty (30) days; (ii) Debtor is enjoined, restrained, or prevented by court order from conducting a material part of its business; (iii) a judgment or other claim becomes a Lien on a material portion of Debtor's assets other than Permitted Liens; or (iv) a notice of lien, levy, or assessment is filed against a material portion of Debtor's assets by any government agency and not paid or contested in good faith in compliance with appropriate procedures within thirty (30) days after Debtor receives notice. These are not Events of Default if stayed or if a bond is posted pending contest by Debtor.

5.4 INSOLVENCY. (i) Dissolution, termination of existence, insolvency or business failure of Debtor; or appointment of a receiver, trustee or custodian, for all or any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding by Debtor under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect; or (ii) the commencement of any proceeding against Debtor under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect, which is not cured by the dismissal thereof within 45 days after the date commenced.

5.5 OTHER AGREEMENTS. If there is a default in any agreement to which Debtor is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any indebtedness for borrowed money of Debtor in an amount in excess of One Hundred Thousand Dollars (\$100,000), including, without limitation, any Subordinated Debt.

5.6 JUDGMENTS. If a final judgment or judgments for the payment of money in an amount, individually or in the aggregate, of at least Two Hundred Thousand Dollars (\$200,000) which is not covered by insurance shall be rendered against Debtor and shall remain unsatisfied and unstayed for a period of thirty (30) days.

5.7 MISREPRESENTATIONS. If Debtor or any Person acting for Debtor makes any material misrepresentation or material misstatement now or later in any warranty or representation in this Agreement or in any communication delivered to Bank or to induce Bank to enter this Agreement or any Loan Document.

## 6. BANK'S RIGHTS AND REMEDIES

6.1 RIGHTS AND REMEDIES. Upon the occurrence and during the continuance of an Event of Default, Bank may, at its election, without notice of its election and without demand, do any one or more of the following, all of which are authorized by Debtor:

(a) Exercise all rights available to it under the Massachusetts Uniform Commercial Code and applicable law;

(b) Set off and apply to the obligations any and all (i) balances and deposits of Debtor held by Bank, or (ii) indebtedness at any time owing to or for the credit or the account of Debtor held by Bank; and

(c) Sell the Collateral at either a public or private sale, or both, by way of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Debtor's premises) as is commercially reasonable pursuant to such standards for commercial reasonableness as described in Section 7.3 of the Loan Agreement.

6.2 REMEDIES CUMULATIVE. Bank's rights and remedies under this Agreement, the Loan Documents, and all other agreements shall be cumulative. Bank shall have all other rights and remedies not inconsistent herewith as provided under the Code, by law, or in equity. No exercise by Bank of one right or remedy shall be deemed an election, and no waiver by Bank of any Event of Default on Debtor's part shall be deemed a continuing waiver. No delay by Bank shall constitute a waiver, election, or acquiescence by it.

6.3 DEMAND; PROTEST. Except as set forth herein or in the Guaranty, Debtor waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees at any time held by Bank on which Debtor may in any way be liable.

#### 7. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER

The laws of the Commonwealth of Massachusetts shall apply to this Agreement. DEBTOR AND BANK ACCEPT FOR THEMSELVES AND IN CONNECTION WITH THEIR PROPERTIES, UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH OF MASSACHUSETTS IN ANY ACTION, SUIT, OR PROCEEDING OF ANY KIND, AGAINST IT WHICH ARISES OUT OF OR BY REASON OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT IF FOR ANY REASON BANK CANNOT AVAIL ITSELF OF THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS, DEBTOR AND BANK ACCEPT JURISDICTION OF THE COURTS AND VENUE IN SANTA CLARA COUNTY, CALIFORNIA. NOTWITHSTANDING THE FOREGOING, THE BANK SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST THE BORROWER OR ITS PROPERTY IN THE COURTS OR ANY OTHER JURISDICTION WHICH THE BANK REASONABLY DEEMS NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE THE BANK'S RIGHT AGAINST THE DEBTOR OR ITS PROPERTY.

DEBTOR AND BANK EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

#### 8. GENERAL PROVISIONS

8.1 SUCCESSORS AND ASSIGNS. This Agreement shall bind and inure to the benefit of the respective successors and permitted assigns of each of the parties; PROVIDED, HOWEVER, that neither this Agreement nor any rights hereunder may be assigned by Debtor without Bank's prior written consent, which consent may be granted or withheld in Bank's reasonable discretion. Bank shall have the right without the consent of or notice to Debtor to sell, transfer, negotiate, or grant participations in all or any part of, or any interest in Bank's obligations, rights and benefits hereunder.

8.2 INDEMNIFICATION. Debtor shall defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all reasonable losses or Bank Expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following, or consequential to transactions between Bank and Debtor whether under this Agreement, or otherwise (including without limitation reasonable attorneys' fees and expenses), except for losses caused by Bank's gross negligence or willful misconduct.

8.3 RIGHT OF SET-OFF. Debtor hereby grants to Bank, a lien, security interest and right of setoff as security for all obligations and liabilities to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of the Bank or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may set off the same or any part thereof and apply the same to any liability or obligation of Debtor even though unmatured and regardless of the adequacy of any other collateral securing the loan. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LIABILITIES OF DEBTOR TO BANK, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE Debtor, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

8.4 TIME OF ESSENCE. Time is of the essence for the performance of all obligations set forth in this Agreement.

8.5 SEVERABILITY OF PROVISIONS. Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

8.6 AMENDMENTS IN WRITING, INTEGRATION. This Agreement cannot be changed or terminated orally. All prior agreements, understandings, representations, warranties, and negotiations between the parties hereto with respect to the subject matter of this Agreement, if any, are merged into this Agreement and the Loan Documents.

8.7 COUNTERPARTS. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement.

8.8 SURVIVAL. All covenants, representations and warranties made in this Agreement shall continue in full force and effect so long as any liabilities and obligations under the Guaranty and this Agreement remain outstanding. The obligations of Debtor to indemnify Bank with respect to the expenses, damages, losses, costs and liabilities described in this Agreement shall survive until all applicable statute of limitations periods with respect to actions that may be brought against Bank have run.

8.9 DEBTOR WAIVERS. Debtor waives any right to require Bank to (a) proceed against Borrower, the Debtor, any other guarantor or any other person; (b) proceed against or exhaust any security held from Borrower or Debtor; (c) marshal any assets of Borrower or Debtor; or (d) pursue any other remedy in Bank's power whatsoever. Bank may, at its election, exercise or decline or fail to exercise any right or remedy it may have against Borrower or Debtor or any security held by Bank, including without limitation the right to foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way the liability of Debtor hereunder. Debtor waives any defense arising by reason of any disability or other defense of Borrower or Debtor or by reason of the cessation from any cause whatsoever of the liability of Borrower or Debtor. Debtor waives any setoff, defense or counterclaim that Borrower or Debtor may have against Bank. Debtor waives any defense arising out of

the absence, impairment or loss of any right of reimbursement or subrogation or any other rights against Borrower or Debtor. Until Bank is paid in full for the Obligations, Debtor shall have no right of subrogation or reimbursement, contribution or other rights against Borrower, and Debtor waives any right to enforce any remedy that Bank now has or may hereafter have against Borrower. Until Bank is paid in full for the Obligations, Debtor waives all rights to participate in any security now or hereafter held by Bank. Debtor waives all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Agreement and of the existence, creation, or incurring of new or additional indebtedness. Debtor assumes the responsibility for being and keeping itself informed of the financial condition of Borrower and of all other circumstances bearing upon the risk of nonpayment of any indebtedness or nonperformance of any obligation of Borrower, warrants to Bank that it will keep so informed, and agrees that absent a request for particular information by Debtor, Bank shall have no duty to advise Debtor of information known to Bank regarding such condition or any such circumstances.

8.10 INSOLVENCY. If Borrower becomes insolvent or is adjudicated bankrupt or files a petition for reorganization, arrangement, composition or similar relief under any present or future provision of the United States Bankruptcy Code, or if such a petition is filed against Borrower, and in any such proceeding some or all of any indebtedness or obligations under the Loan Documents are terminated or rejected or any obligation of Borrower is modified or abrogated, or if Borrower's obligations are otherwise avoided for insolvency, bankruptcy or any similar reason, Debtor agrees that Debtor's liability hereunder shall not thereby be affected or modified and such liability shall continue in full force and effect as if no such action or proceeding had occurred. This Agreement shall continue to be effective or be reinstated, as the case may be, if any payment must be returned by Bank upon the insolvency, bankruptcy or reorganization of Borrower or Debtor, any other person, or otherwise, as though such payment had not been made.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

("Debtor")

ASPENTECH SECURITIES CORP.

By: /s/ Lisa W. Zappala

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Name: Lisa W. Zappala

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Title: Treasurer  
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("Bank")

SILICON VALLEY BANK

By: /s/ John V. Atanasoff

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Name: John V. Atanasoff

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Title: Vice President  
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EXHIBIT A

The Collateral shall consist of all right, title and interest of Debtor in and to the following:

All assets, including without limitation, all goods, equipment, inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, general intangibles (including payment intangibles), accounts (including health-care receivables), documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Debtor's books relating to the foregoing and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

## UNCONDITIONAL GUARANTY

For and in consideration of certain loans by SILICON VALLEY BANK, a California-chartered bank, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at One Newton Executive Park, Suite 200, 2221 Washington Street, Newton, Massachusetts 02462, doing business under the name "Silicon Valley East" ("Bank") to ASPEN TECHNOLOGY, INC., a Delaware corporation, ASPENTECH, INC., a Texas corporation and HYPROTECH COMPANY, a company organized under the laws of Nova Scotia, Canada (collectively, "Borrower") , which loans were made pursuant to a certain Loan and Security Agreement and Export-Import Loan and Security Agreement between Borrower and Bank dated each of even date herewith as each may be amended from time to time (hereinafter, collectively, the "Agreement"), the undersigned guarantor, ASPENTECH SECURITIES CORP., a Massachusetts corporation with its chief executive office located at Ten Canal Park, Cambridge, Massachusetts 02141 ("Guarantor"), hereby unconditionally and irrevocably guarantees the prompt and complete payment of all amounts that Borrower owes to Bank and performance by Borrower of the Agreement and any other agreements now existing or hereafter arising between Borrower and Bank, as each may be amended from time to time (collectively referred to as the "Agreements"), in strict accordance with their respective terms.

1. If Borrower does not perform its obligations under the Agreements, Guarantor will, upon demand by Bank, immediately pay all amounts due (including, without limitation, all principal, interest, and fees) and satisfy all Borrower's obligations under the Agreements.

2. These obligations are independent of Borrower's obligations and separate actions that may be brought against Guarantor (whether action is brought against Borrower or whether Borrower is joined in the action). Guarantor's liability is not contingent on the genuineness or enforceability of the Agreements.

3. Bank may, without notice to Guarantor and without affecting Guarantor's obligations under this Guaranty: (a) renew, extend, or otherwise change the terms of the Agreements; (b) take security for the payment of this Guaranty or the Agreements; (c) exchange, enforce, waive and release any security; and (d) apply the security and direct its sale as Bank, in its reasonable discretion, chooses.

4. Until all obligations and liabilities of Borrower to Bank have been paid in full and the Agreements have been terminated, Guarantor waives to the extent permitted by law:

(a) Any right to require Bank to: (i) proceed against Borrower or any other person; (ii) proceed against or exhaust any security; or (iii) pursue any other remedy. Bank may exercise or not exercise any right or remedy it has against Borrower or any security it holds (including the right to foreclose by judicial or non-judicial sale) without affecting Guarantor's liability.

(b) Any defenses from disability or other defense of Borrower or from the cessation of Borrowers liabilities.

(c) Any right of setoff or right to counterclaim against Bank.

(d) Any defense from the absence, impairment or loss of any right of reimbursement or subrogation or any other rights against Borrower. Until Borrower's obligations to Bank have been paid, Guarantor has no right of subrogation or reimbursement or subrogation or other rights against Borrower.

(e) Any right to enforce any remedy that Bank has against Borrower.

(f) Any rights to participate in any security held by Bank.

(g) Any demands for performance, notices of nonperformance or of new or additional indebtedness. Guarantor is responsible for being and keeping itself informed of Borrower's financial

condition. Unless Guarantor requests particular information, Bank has no duty to provide information to Guarantor.

5. Guarantor acknowledges that, to the extent Guarantor has or may have rights of subrogation or reimbursement against Borrower for claims arising out of this Guaranty, those rights may be impaired or destroyed if Bank elects to proceed against any real property security of Borrower by non-judicial foreclosure. That impairment or destruction could, under certain judicial cases and based on equitable principles of estoppel, give rise to a defense by Guarantor against its obligations under this Guaranty. Guarantor waives that defense and any others arising from Bank's election to pursue non-judicial foreclosure.

6. If Borrower becomes insolvent or is adjudicated bankrupt or files a petition for reorganization or similar relief under the United States Bankruptcy Code, or if a petition is filed against Borrower and/or any obligation under the Agreements is terminated or rejected, or any obligation of Borrower is modified or if Borrower's obligations are avoided Guarantor's liability will not be affected and its liability will continue. If Bank must return any payment because of the insolvency, bankruptcy or reorganization of Borrower, Guarantor or any other guarantor, this Guaranty will remain effective or be reinstated.

7. Guarantor subordinates any indebtedness of Borrower it holds to Bank; and Guarantor will collect, enforce and, upon the occurrence of an Event of Default, receive payments as Bank's trustee and will pay Bank those payments without reducing or affecting its liability under this Guaranty.

8. Guarantor will pay Bank's reasonable attorneys' fees and other costs and expenses incurred enforcing this Guaranty. This Guaranty may not be waived, revoked or amended without Bank's prior written consent. If any provision of this Guaranty is unenforceable, all other provisions remain effective. This Guaranty represents the entire agreement among the parties about this guaranty. No prior dealings, no usage of trade, and no parol or extrinsic evidence may supplement or vary this Guaranty. Bank may assign this Guaranty. This Guaranty benefits Bank, its successors and assigns. This Guaranty is in addition to any other guaranties Bank obtains.

9. Guarantor represents and warrants that (i) it has taken all action necessary to authorize execute, deliver and perform this Guaranty; (ii) execution, delivery and performance of this Guaranty do not conflict with any organizational documents or agreements to which it is a party; and (iii) this Guaranty is a valid and binding obligation, enforceable against Guarantor according to its terms.

10. Guarantor will do all of the following:

(a) Maintain its corporate existence, remain in good standing in Massachusetts, and continue to qualify in each jurisdiction in which the failure to qualify could reasonably be expected to have a material adverse effect on the financial condition, operations or business. Maintain all licenses, approvals, and agreements, the loss of which could reasonably be expected to have a material adverse effect on its financial condition, operations or business.

(b) Comply with all statutes and regulations if non-compliance could reasonably be expected to adversely and materially affect its financial condition, operations or business.

(c) Execute other instruments and take action Bank reasonably requests to effect the purposes of this Agreement.

11. Guarantor hereby grants to Bank, a lien, security interest and right of setoff as security for all obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a Bank subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default (as defined in the Agreement), without demand or notice, Bank may set off the same or any part thereof and apply the same to any liability or obligation of Guarantor even though unmatured and regardless of the adequacy of any other collateral securing the loan. ANY AND ALL RIGHTS TO REQUIRE

BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE LOAN, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF THE GUARANTOR, ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12. Massachusetts law governs this Guaranty without regard to principles of conflicts of law. Guarantor and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Massachusetts; provided, however, that if for any reason Bank cannot avail itself of such courts in the Commonwealth of Massachusetts, Guarantor accepts jurisdiction of the courts and venue in Santa Clara County, California. NOTWITHSTANDING THE FOREGOING, THE BANK SHALL HAVE THE RIGHT TO BRING ANY ACTION OR PROCEEDING AGAINST THE GUARANTOR OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION WHICH THE BANK REASONABLY DEEMS NECESSARY OR APPROPRIATE IN ORDER TO REALIZE ON THE COLLATERAL OR TO OTHERWISE ENFORCE THE BANK'S RIGHTS AGAINST THE GUARANTOR OR ITS PROPERTY. GUARANTOR AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

IN WITNESS WHEREOF, the undersigned Guarantor has executed this Guaranty as an instrument under seal under the laws of the Commonwealth of Massachusetts, as of this 30th day of January, 2003.

ASPENTECH SECURITIES CORP.

By: /s/ Lisa W. Zappala

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Name: Lisa W. Zappala

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Title: Treasurer  
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AMENDMENT NO. 1 TO SECURITY AGREEMENT

This Amendment No. 1, dated as of January 30, 2003 ("Amendment No. 1"), to the Security Agreement, dated August 16, 2002 (the "Agreement"), by and between Accenture LLP, an Illinois general partnership registered as a limited liability partnership with an office at 1000 Peachtree Street, N.E., Suite 1300, Atlanta, Georgia 30303 ("Accenture") and Aspen Technology, Inc., a Delaware corporation with an office at Ten Canal Park, Cambridge, Massachusetts 02141 ("AspenTech"), is entered into by and between Accenture and AspenTech. Terms used and not otherwise defined herein shall have the meanings given them in the Agreement.

WHEREAS, the Parties previously entered into the Agreement, pursuant to which AspenTech granted to Accenture a lien on and security interest in the Initial Collateral to secure repayment of the Outstanding Debt;

WHEREAS, pursuant to the Agreement, AspenTech agreed that if it had not established a Lender's Line of Credit by December 31, 2002, it would grant to Accenture a lien and security interest in its accounts receivable as specified in the Agreement and that such accounts receivable would thereafter replace the Initial Collateral in securing the Outstanding Debt; and

WHEREAS, the Parties desire to amend the Security Agreement to provide that Accenture shall have a first priority security interest in certain installment receivables of AspenTech to secure repayment of the Outstanding Debt, and that such collateral shall replace the Initial Collateral and any other security interest to which Accenture otherwise would have been entitled pursuant to the Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged; the each of the Parties hereby agrees as follows:

1. Sections 1 through 5 of the Agreement are hereby deleted in their entirety and replace with the following sections:
  - "1. To secure the prompt payment of the Outstanding Debt, AspenTech hereby grants to Accenture a lien and first priority security interest in AspenTech's right, title and interest in and to the installment receivables or other rights to receive payment listed on SCHEDULE 1 attached hereto together with the proceeds therefrom (the "Installment Collateral"). The Parties agree that the security interest in the Installment Collateral granted hereby replaces and supercedes Accenture's security interest in the collateral set forth on EXHIBIT A of the original Agreement (the "Original Collateral") and any other security interest to which Accenture otherwise would have been entitled pursuant to the terms of the original Agreement.

2. AspenTech represents and warrants to Accenture that (i) AspenTech is the legal and beneficial owner of the Installment Collateral free and clear of all liens, security interests or other encumbrances, (ii) there is no dispute, right of setoff, counterclaim or defense exists with respect to all or any part of the Installment Collateral, and (iii) this Agreement creates a valid security interest in the Installment Collateral, securing the payment of the Outstanding Debt.
3. AspenTech will collect, in the ordinary course of business, at its own expense, all amounts due or to become due under each of the Installment Collateral. In the event that AspenTech fails to repay the Outstanding Debt in accordance with the schedule set forth in the License Fee Agreement, as amended, then all proceeds collected with respect to the Installment Collateral shall be paid to Accenture to satisfy the portion of the Outstanding Debt then due.
4. After February 1, 2003, in the event that the aggregate amounts outstanding and owed to AspenTech pursuant to the Installment Collateral is less than an amount equal to twice the amount of the Outstanding Debt, AspenTech shall grant to Accenture, on a first priority basis, a lien and security interest in additional installment receivables (the "Additional Collateral") in such amounts so that the aggregate amounts outstanding and owed to AspenTech pursuant to the Installment Collateral and such Additional Collateral are equal to an amount equal to twice the Outstanding Debt. AspenTech and Accenture shall mutually agree on those certain installment receivables that shall constitute Additional Collateral upon which AspenTech will grant a lien and security interest to Accenture.
5. Notwithstanding anything in this Agreement to the contrary, AspenTech expressly agrees that it shall remain liable under each of the contracts and agreements in the Installment Collateral and that it shall perform, in all material respects, all of its duties and obligations thereunder, all in accordance with and pursuant to the terms and provisions of each such contract or agreement. Accenture shall not have any obligation or liability under any contract or agreement in the Installment Collateral by reason of or arising out of this Agreement or the granting to Accenture of a lien therein or the receipt by Accenture of any payment relating to the Installment Collateral.
6. Accenture hereby releases its security interest in the Original Collateral and authorizes AspenTech's filing of Uniform Commercial Code ("UCC") termination statements to evidence such termination and release of its security interest in the Original Collateral.
7. Accenture agrees that it shall from time to time, upon reasonable request by AspenTech, (a) release its security interest in that portion of

the Installment Collateral and Additional Collateral that is in excess of twice the amount of the Outstanding Debt and (b) authorize AspenTech to file UCC termination statements to evidence such termination and release of Accenture's security interest in such excess portion of the Installment Collateral and Additional Collateral.

8. For so long as the Outstanding Debt remains outstanding, Accenture shall have the right, upon default by AspenTech of any of the material provisions of the Amended Agreements and the continuance of such default, to enforce the provisions of this Agreement and exercise remedies hereunder in such a manner as it may determine reasonable, including, without limitation, the rights to take possession, sell or otherwise dispose of the Installment Collateral or Additional Collateral, to incur other expenses with respect to such possession, sale or disposition and to exercise all rights and remedies as a secured lender under the Uniform Commercial Code of any applicable jurisdiction.
9. From time to time, upon the reasonable request of Accenture, AspenTech shall promptly execute and deliver any and all such further instruments and documents and take such further action as Accenture may reasonably deem necessary or desirable to obtain the full benefits of this Agreement, including, without limitation, facilitating the filing of UCC-1 Financing Statements in all applicable jurisdictions.
10. This Agreement shall terminate upon the full and final payment of the Outstanding Debt in accordance with the terms set forth in the License Fee Agreement, as amended.
11. No failure on the part of any of Accenture to exercise, and no delay in exercising any right hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The wavier by Accenture of any breach of any provision of this Agreement or warranty or representation herein set forth will not be construed as a waiver of any subsequent breach. The failure to exercise any right hereunder by Accenture will not operate as a waiver of such right. All rights and remedies herein provided are cumulative. This Agreement may not be altered or amended except by a writing signed by all the parties hereto. This Agreement binds AspenTech, its successors and assigns, and inures to the benefit of Accenture, its successors and assigns."

2. AspenTech acknowledges and confirms that it shall pay to Accenture on February 1, 2003 the amounts which would otherwise be due to Accenture on February 28, 2003 pursuant to the terms of the License Fee Agreement, as amended. AspenTech further acknowledges and confirms that, prior to April 1, 2003, it shall pay to Accenture all amounts due on or before March 31, 2003 pursuant to the Amended Agreements.

3. This Amendment No.1 may be executed in counterparts, each of which so executed shall be deemed an original and both of which taken together shall constitute one and the same Agreement. In the event that a signature is executed and delivered by facsimile transmission, such signature shall create a binding obligation of the party on whose behalf such signature is executed with the same force and effect as if such facsimile signature were the original thereof.

IN WITNESS WHEREOF, the undersigned have each executed this Amendment No. 1 as of the date first set forth above.

ACCENTURE LLP

ASPEN TECHNOLOGY, INC.

By: /s/ David A. Crow

By: /s/ Lisa W. Zappala

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Name: David A. Crow

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Lisa W. Zappala

Title: Partner

Senior Vice President and  
Chief Financial Officer

SCHEDULE A

DEBTOR: ASPEN TECHNOLOGY, INC.  
 SECURED PARTY: ACCENTURE LLP

CUSTOMER#	COUNTRY	INVOICE	TYPE	DUE DATE
3852	China	124286	License	05/31/03
3852	China	124286	License	09/30/03
3852	China	124286	License	05/31/04
3852	China	124286	License	09/30/04
3852	China	124286	License	05/31/05
1211	Japan	122005	License	10/31/03
1211	Japan	122005	License	10/31/04
1211	Japan	122005	License	10/31/05
1211	Japan	123647	License	04/30/03
1211	Japan	123647	License	07/31/03
1211	Japan	123647	License	04/30/04
1211	Japan	123647	License	07/31/04
1211	Japan	123647	License	04/30/05
1211	Japan	123647	License	07/31/05
1211	Japan	123647	License	04/30/06
1211	Japan	123647	License	07/31/06
1211	Japan	123647	License	04/30/07
1045	United Kingdom	112488	License	07/01/03
1045	United Kingdom	112488	License	07/01/04
1045	United Kingdom	113626	License	10/01/03
1045	United Kingdom	113626	License	10/01/04
1095	United States	115683	License	04/01/03
1095	United States	115683	License	04/01/04
1095	United States	115683	License	04/01/05
3928	United States	124220	License	04/15/03
3928	United States	124220	License	06/15/03
6365	France	122549	License	04/01/03
6365	France	122549	License	04/01/04
6365	France	122549	License	04/01/05
6365	France	122549	License	04/01/06
6365	France	122549	License	04/01/07
7710	Germany	122618	License	01/01/04
7710	Germany	122618	License	01/01/05
7710	Germany	122618	License	01/01/06
7710	Germany	122618	License	01/01/07

SCHEDULE A

DEBTOR: ASPEN TECHNOLOGY, INC.  
 SECURED PARTY: ACCENTURE LLP

CUSTOMER#	COUNTRY	INVOICE	TYPE	DUE DATE
9677	Germany	122653	License	01/01/04
9677	Germany	122653	License	01/01/05
9677	Germany	122653	License	01/01/06
9677	Germany	122653	License	01/01/07
10851	Belgium	124278	License	10/01/03
10851	Belgium	124278	License	10/01/04
10851	Belgium	124278	License	10/01/05
10851	Belgium	124278	License	10/01/06
10851	Belgium	124278	License	10/01/07
2587	Netherlands	124277	License	10/01/03
2587	Netherlands	124277	License	10/01/04
2587	Netherlands	124277	License	10/01/05
2587	Netherlands	124277	License	10/01/06
2587	Netherlands	124277	License	10/01/07

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT dated as of November 26, 2002 (this "Agreement") is entered into between Aspen Technology, Inc., a Delaware corporation ("Aspen") and David L. McQuillin (the "Employee").

## 1. BASIS FOR AGREEMENT

This agreement replaces the letter of September 30, 2002, and further supplements the existing terms of employment between Aspen and the Employee, including the Change in Control Agreement dated August 12, 1997 ("Change in Control Agreement"), which remains in full force and effect. Aspen is continuing to employ the Employee as a key employee of Aspen and has determined that Employee's services are essential to the successful operation and future of Aspen. Employee currently holds the position of President and Chief Executive Officer. Aspen has determined that it is in its best interests to secure certain employment commitments from Employee in consideration of providing certain severance and compensation commitments to Employee.

## 2. COMPENSATION

Employee's compensation will be as agreed to by the Compensation Committee of the Board of Directors.

## 3. TERMINATION: NOTICE AND SEVERANCE

- (a) Upon termination of employment for any reason other than death, resignation without Good Reason, or for Cause, Aspen shall, in addition to any benefits due under written plans, pay you your base salary for 18 months after termination of employment.
- (b) "For Cause," means (A) a good faith finding by Aspen that the Employee has failed to perform his reasonably assigned duties for Aspen and has failed to remedy such failure within 30 days following written notice from Aspen to the Employee notifying him of such failure, (B) a good faith finding by the Board of Directors of Aspen that the Employee has engaged in dishonesty, gross negligence or misconduct, or (C) the conviction of the Employee of, or the entry of a pleading of guilty or NOLO CONTENDERE by the Employee to, any felony; or
- (c) "Good Reason" means termination by the Employee of the Employee's employment upon the occurrence (without the Employee's express written consent) of any one of the following acts or failures to act by Aspen unless, in the case of any act or failure to act described in paragraph (i), (v), or (vi) below, such act or failure to act is corrected prior to the date of termination specified in the notice of termination given in respect thereof or, in the case of paragraph (iii) below, such act is not objected to in writing by the Employee within four months after notification by Aspen to Employee of Aspen's intention to take the action contemplated by such paragraph (iii):

- (i) the assignment to the Employee of any duties inconsistent with the Employee's status as a senior Employee officer of Aspen or a meaningful alteration, adverse to the Employee, in the nature or status of the Employee's responsibilities (other than reporting responsibilities) from those in effect;
- (ii) a reduction by Aspen in the Employee's annual base salary as in effect on the date hereof or as the same may be increased from time to time except for across-the-board salary reductions similarly affecting all senior Employees of Aspen and all senior Employees of any Person in control of Aspen;
- (iii) Aspen's requiring Employee to be based anywhere other than the Boston Metropolitan Area except for required travel on Aspen business to an extent substantially consistent with Employee's present business travel obligations;
- (iv) the failure by Aspen, without the Employee's consent, to pay to the Employee any portion of the Employee's current compensation, or to pay to the Employee any portion of an installment of deferred compensation under any deferred compensation program of Aspen, within fourteen days of the date such compensation is due;
- (v) the failure by Aspen to continue in effect any compensation plan in which the Employee participates which is material to the Employee's total compensation, or the failure by Aspen to continue the Employee's participation therein on a basis not materially less favorable, both in terms of the amount of benefits provided and the level of the Employee's participation relative to other participants;
- (vi) the failure by Aspen to continue to provide Employee with benefits substantially similar to those enjoyed by Employee under any of Aspen's pension, life insurance, medical, health and accident, or disability plans in which Employee is at any time participating, the taking of any action by Aspen which would directly or indirectly materially reduce any of such benefits or deprive Employee of any material fringe benefit enjoyed by Employee, or the failure by Aspen to provide Employee with the number of paid vacation days to which the Employee is entitled on the basis of years of service with Aspen in accordance with Aspen's normal vacation policy.

#### 4. APPLICATION OF CHANGE IN CONTROL AGREEMENT

Notwithstanding anything to the contrary herein, this Agreement shall not apply in the event that Employee's Change in Control Agreement is deemed to be valid, enforceable, and

applicable, and further that Employee receives the compensation provided for thereunder equal to or in excess of the amount provided for under this Agreement.

5. MISCELLANEOUS

(a) AMENDMENTS AND WAIVERS. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by both of the parties hereto. No waiver of any right or remedy hereunder shall be valid unless the same shall be in writing and signed by the party giving such waiver. No waiver by either party hereto with respect to any condition or breach hereunder shall be deemed to extend to any prior or subsequent condition or breach hereunder or affect in any way any rights arising by virtue of any prior or subsequent condition or breach. No failure on the part of any party hereto to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

(b) CONSTRUCTION.

- (i) The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
- (ii) The language used in this Agreement shall be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rule of strict construction shall be applied against a party hereto.
- (iii) The term "including" as used herein shall not be construed so as to exclude any other thing not referred to or described.
- (iv) References herein to "Sections" shall be deemed to be to sections of this Agreement, unless otherwise specified.

(c) ENTIRE AGREEMENT; SUCCESSORS. This Agreement, including the exhibits hereto, (i) constitutes the entire agreement, and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and (ii) is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder, except as otherwise expressly provided herein. For purposes of clarification, this Agreement does not replace or otherwise amend your Change in Control Agreement dated August 12, 1997, which remains in full force and effect. In the event of a termination that qualifies you for compensation under both agreements, then the terms of the Change in Control Agreement shall control.

(d) The obligations of Aspen may be assigned by Aspen, provided that such obligations shall be assumed by such subsidiary without modification. For all purposes of this Agreement, the term "Aspen" shall include any successor to the business of Aspen (whether direct or indirect and whether by merger, consolidation, sale of assets or otherwise).

(e) GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Massachusetts) or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the Commonwealth of Massachusetts.

(f) NOTICES. All notices, instructions, demands, claims, requests and other communications given hereunder or in connection herewith shall be in writing. Any such communication shall be sent either (a) by registered or certified mail, return receipt requested, postage prepaid, or (b) via a reputable nationwide overnight courier service, in each case to the address set forth below. Any such communication shall be deemed to have been delivered two business days after it is sent by registered or certified mail, return receipt requested, postage prepaid, or one business day after it is sent via a reputable nationwide overnight courier service.

To Aspen: Aspen Technology, Inc.  
Ten Canal Park  
Cambridge, Massachusetts 02141  
Facsimile: 617.577.0722  
Attention: Chief Employee Officer

To the Employee: Mr. David L. McQuillin  
[home address]

Either party hereto may give any notice, instruction, demand, claim, request or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such communication shall be deemed to have been duly given unless and until it actually is received by the party for which it is intended. Either party hereto may change the address to which notices, instructions, demands, claims, requests and other communications hereunder are to be delivered by giving the other party hereto notice in the manner set forth in this Section.

(g) SEVERABILITY. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making the determination of invalidity or unenforceability shall have the power to limit the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

(h) SIGNATURES. This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature.

\* \* \*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

ASPEN TECHNOLOGY, INC.

By: /s/ Lawrence B. Evans

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Name: Lawrence B. Evans

Title: Chairman

/s/ David McQuillin

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David McQuillin

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT dated as of November 26, 2002 (this "Agreement") is entered into between Aspen Technology, Inc., a Delaware corporation ("Aspen") and Stephen J. Doyle (the "Employee").

## 1. BASIS FOR AGREEMENT

This agreement supplements the existing terms of employment between Aspen and the Employee, including the Change in Control Agreement dated August 12, 1997 ("Change in Control Agreement"), which remains in full force and effect. Aspen is continuing to employ the Employee as a key employee of Aspen and has determined that Employee's services are essential to the successful operation and future of Aspen. Employee currently holds the positions of Chief Legal Officer and General Counsel, and Chief Strategy Officer. Aspen has determined that it is in its best interests to secure certain financial and employment commitments from Employee in consideration of providing certain severance and compensation commitments to Employee.

## 2. COMPENSATION

Employee's compensation will be determined by the Chief Executive Officer and, if applicable, the Compensation Committee of the Board of Directors.

## 3. TERMINATION: NOTICE AND SEVERANCE

- (a) Employee hereby agrees to give Aspen four (4) months prior notice of his intent to terminate employment with Aspen, except where Employee has Good Reason.
- (b) Upon termination of employment for any reason other than death, resignation without Good Reason, or for Cause, Aspen shall, in addition to any benefits due under written plans, pay Employee your base salary plus your life, disability, accident and health insurance benefits for 12 months after termination of employment, and thereafter for such period up to the earlier of (i) 6 additional months or (ii) such time as Employee has started new employment in a position offering equivalent compensation to Employee's compensation with Aspen.
- (c) "For Cause," means (A) a good faith finding by Aspen that the Employee has failed to perform his reasonably assigned duties for Aspen and has failed to remedy such failure within 30 days following written notice from Aspen to the Employee notifying him of such failure, (B) a good faith finding by the Board of Directors of Aspen that the Employee has engaged in dishonesty, gross negligence or misconduct, or (C) the conviction of the Employee of, or the entry of a pleading of guilty or NOLLO CONTENDERE by the Employee to, any felony; or
- (d) "Good Reason" means termination by the Employee of the Employee's employment upon the occurrence (without the Employee's express written consent) of any one of the following acts or failures to act by Aspen unless, in the case of any act or failure to act described in paragraph (i), (v), or (vi) below, such act or failure to act is corrected prior to the date of termination specified in the

notice of termination given in respect thereof or, in the case of paragraph (iii) below, such act is not objected to in writing by the Employee within four months after notification by Aspen to Employee of Aspen's intention to take the action contemplated by such paragraph (iii):

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- (vi) the failure by Aspen to continue to provide Employee with benefits substantially similar to those enjoyed by Employee under any of Aspen's pension, life insurance, medical, health and accident, or disability plans in which Employee is at any time participating, the taking of any action by Aspen which would directly or indirectly materially reduce any of such benefits or deprive Employee of any material fringe benefit enjoyed by Employee, or the failure by Aspen to provide Employee with the number of paid vacation days to which the Employee is entitled on the basis of years of service with Aspen in accordance with Aspen's normal vacation policy.

4. APPLICATION OF CHANGE IN CONTROL AGREEMENT

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To Aspen: Aspen Technology, Inc.  
Ten Canal Park  
Cambridge, Massachusetts 02141  
Facsimile: 617.577.0722  
Attention: Chief Employee Officer

To the Employee: Stephen J. Doyle  
[home address]

Either party hereto may give any notice, instruction, demand, claim, request or other communication hereunder using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such communication shall be deemed to have been duly given unless and until it actually is received by the party for which it is intended. Either party hereto may change the address to which notices, instructions, demands, claims, requests and other communications hereunder are to be delivered by giving the other party hereto notice in the manner set forth in this Section.

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(h) SIGNATURES. This Agreement may be executed in counterparts, each of which shall be deemed an original but both of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature.

\* \* \*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

ASPEN TECHNOLOGY, INC.

By: /s/ David L. McQuillin

-----  
Name: David McQuillin  
Title: President and CEO

/s/ Stephen J. Doyle

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Stephen J. Doyle