



11-01-2001



101891713

U.S. Department of Commerce
Patent and Trademark Office

File Docket No.: 80956-0003

Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

EGRAIL, Inc.
4711 Montgomery Avenue
Bethesda, MD 20814

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies)

Name: Mercator Broadband Partners, L.P.
11911 Freedom Drive, Suite 1080
Reston, VA 20190

Street address: address of assignee

Additional name(s) & address(es) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: October 10, 2001

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.

60/074,684 filed Feb. 13, 1998

09/249,061 filed Feb. 12, 1999

60/120,409 filed Feb. 12, 1999

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

5. Name and Address of party to whom correspondence concerning document should be mailed:

Celine Jimenez Crowson
Hogan & Hartson LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Customer No. 24633

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41)\$ 120.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number:

50-1349
(Attach duplicate copy of this page if paying by deposit account)

11/01/2001 6TON11 00000017 60074684

FC:581

120.00 OP

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Celine Jimenez Crowson, Reg. No. 40,357
Name of Person signing

Signature

October 29, 2001
Date

Total number of pages including cover sheet, attachments and document: 15

SECOND AMENDED AND RESTATED SECURITY AGREEMENT

THIS SECOND AMENDED AND RESTATED SECURITY AGREEMENT (this **"Agreement"**) is made this 10th day of October, 2001 by and between EGRAIL, INC., a corporation organized under the laws of the state of Delaware (hereinafter called the **"Borrower"**), whose address is 4711 Montgomery Avenue, Bethesda, Maryland, 20814, and Mercator Broadband Partners, L.P., a Delaware limited partnership whose address is 11911 Freedom Drive, Suite 1080, Reston, VA 20190 as the administrative agent (hereinafter called the **"Agent"**) under that certain Amended and Restated Secured Convertible Promissory Note and Warrant Purchase Agreement, dated the date hereof, between the Borrower, the Agent (both as Agent and Lender) and George Rich (the **"Amended Purchase Agreement"**).

Recitals

A. Reference is made to that certain Secured Convertible Promissory Note and Security Agreement dated March 14, 2001, between Mercator Broadband Partners, L.P. (**"Mercator"**) and the Borrower (the **"Original Mercator Note and Security Agreement"**). Pursuant to the Original Mercator Note and Security Agreement, Mercator made \$3,000,000 in secured loans (the **"Original Mercator Loan"**) to the Borrower and the Borrower granted Mercator a first priority security interest in certain assets of the Borrower (the **"Mercator Security Interest"**).

B. Reference is made to that certain Secured Convertible Promissory Note and Security Agreement dated April 10, 2001, between George Rich (**"Rich"**) and the Borrower (the **"Original Rich Note and Security Agreement"**). Pursuant to the Original Rich Note and Security Agreement, Rich made \$90,000 in secured loans (the **"Original Rich Loan"**) to the Borrower and the Borrower granted Rich a security interest in certain assets of the Borrower.

C. On August 28, 2001, Mercator and the Borrower entered into that certain Secured Convertible Promissory Note and Warrant Purchase Agreement (the **"Original Purchase Agreement"**). Pursuant to the terms of the Original Purchase Agreement, Mercator agreed to increase the amount of the Original Mercator Loan by up to \$4,709,778 (the **"Additional Mercator Loan"**), and the Borrower issued Mercator an Amended and Restated Secured Convertible Promissory Note to evidence both the Original Mercator Loan and the Additional Mercator Loan (collectively, the **"Mercator Loans"**). Pursuant to that certain Amended and Restated Security Agreement, dated August 28, 2001 between Mercator and the Borrower (the **"Amended Security Agreement"**), the Mercator Security Interest was continued in full force and effect and secured the full amount of the Mercator Loans.

D. The Borrower has requested and Rich has agreed, to increase the Original Rich Loan by \$141,234 (the “**Additional Rich Loan**” and, together with the Original Rich Loan, the “**Rich Loans**”), such Rich Loans to be subject to the terms of the Amended Purchase Agreement.

E. Pursuant to the terms of the Amended Purchase Agreement, Mercator shall serve as the Agent for the administration of the Mercator Loans and the Rich Loans and the security interests granted in connection therewith. The Agent and the Borrower wish to enter into this Second Amended Security Agreement pursuant to which the Borrower will continue the Mercator Security Interest in full force and effect with the Agent for the ratable benefit of the Lenders, including, but not limited to, Mercator and Rich.

F. The Borrower hereby acknowledges that it has derived and will continue to derive substantial benefit from the Rich Loans and Mercator Loans and that the Lenders and the Agent would not have entered into the Amended Purchase Agreement if the Borrower had not agreed to execute and deliver this Agreement which amends and restates the security agreement between the parties as set forth in Amended Security Agreement which amended and restated the security agreement between the parties as originally set forth in the Original Mercator Note and Security Agreement.

G. All capitalized terms not otherwise defined herein shall have the meaning attributed to such terms in the Amended Purchase Agreement.

Agreement

Accordingly, the Borrower and the Agent hereby agree as follows:

ARTICLE I DEFINITIONS

As used herein the following terms have the following meanings:

“**Collateral**” shall mean the following property of the Borrower (words in quotes being as defined in the UCC (as defined herein) as adopted and amended in the State of Maryland from time to time): furniture, “equipment,” “inventory,” equity, equity interests, “accounts,” accounts receivable, contract receivables, contract rights, notes, “documents,” drafts, acceptances, “instruments,” “letters of credit,” “certificated securities,” “uncertificated securities,” “chattel paper” and “general intangibles,” all deposit accounts of the Borrower maintained with any bank or financial institution, all books, records, files, disks and related data processing software that at any time evidence or contain evidence or contain information relating to any of the foregoing, all intellectual and similar property of

the Borrower of every kind and nature, including inventions, designs, patents, including, but not limited to, (i) that certain U.S. Provisional Application Serial Number 60/074,684, Web Management Methods, filed with the United States Patent and Trademark Office (the "PTO") on February 13, 1998, (ii) that certain U.S. Utility Patent Application, Serial Number 09/249,061, filed with the PTO on February 12, 1999, and (iii) that certain U.S. Provisional Application Serial Number 60/120,409 filed with the PTO on February 12, 1999, copyrights, trademarks, licenses, domain names, trade secrets, confidential or proprietary technical and business information, know-how, show-how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, and all additions, improvements and accessions to, and books and records describing or used in connection with any of the foregoing (collectively, the "Intellectual Property") and all guarantees and suretyship agreements relating thereto and all security for payment thereof, now or hereafter existing or arising; together with (a) any profits now or hereafter acquired from or through any of the foregoing; and (b) any and all "proceeds" received should any of the foregoing be sold, exchanged, collected or otherwise disposed of (all of which is hereafter called the "Collateral"); provided, however, no provisions herein shall be construed as or deemed authority for the Borrower to sell, exchange or otherwise dispose of the Collateral or any portion thereof (other than in the ordinary course of business).

"Obligations" shall mean all present and future debts, liabilities and obligations of the Borrower to the Lenders hereunder and under the other Loan Documents and all other present and future debts, liabilities and obligations of the Borrower to the Lenders of every kind and description, matured or unmatured, direct or indirect, absolute or contingent, joint or several and whether or not now contemplated, including all extensions and renewals thereof and substitutions therefor including all costs and expenses and reasonable attorneys' fees and legal expenses payable by the Borrower in connection herewith or therewith.

ARTICLE II

GRANT OF SECURITY INTEREST; NO ASSUMPTION OF LIABILITY; NO LIMITATION

2.1 Security Interest Grant. The Borrower hereby bargains, sells, conveys, assigns, sets over, mortgages, pledges, hypothecates, transfers and grants to the Agent, for the ratable benefit of all of the Lenders, a security interest in the Collateral and in the proceeds thereof in order to secure the due payment and performance of the Obligations. Contemporaneously herewith, and at such other times hereafter as may be required by the Agent, the Borrower shall execute and deliver to the Agent (in blank if required by the Agent) such financing statements or other instruments as may be required by the Agent to further evidence or perfect the security interest of the Agent in the Collateral.

2.2 No Assumption of Liability. The security interest is granted as security only and shall not subject the Agent or any Lender to, or in any way alter or modify, any obligation or liability of the Borrower with respect to or rising out of the Collateral.

2.3 No Limitation. The execution and delivery of this Agreement in no manner shall impair or affect any other security (by endorsement or otherwise) for the payment of the Obligations and no security taken hereafter as security for payment of any part or all of the Obligations shall impair in any manner or affect this Agreement, all such present and future additional security to be considered as cumulative security. Any of the Collateral may be released from this Agreement without altering, varying or diminishing in any way the force, effect, lien, security interest or charge of this Agreement as to the Collateral not expressly released, and this Agreement shall continue as a first lien security interest and charge on all of the Collateral not expressly released until all sums and indebtedness secured hereby have been paid in full. Any future assignment or attempted assignment or transfer of the interest of the Agent in and to any of the Collateral shall not deprive the Agent of the right to sell or otherwise dispose of or utilize all of the Collateral as above provided or necessitate the sale or disposition thereof in parcels or in severalty.

ARTICLE III

PERFECTION OF SECURITY INTEREST; ADDITIONAL ASSURANCES

3.1 Continuing Perfection and Priority. If after the date hereof any asset acquired, owned or held by or on behalf of the Borrower that constitutes or would constitute Collateral is not subject to a perfected lien hereunder by the Agent with the priority required hereby, the Borrower agrees and covenants that it shall, at its own expense (a) notify the Agent thereof and (b) execute and deliver all agreements, instruments and other documents, and take all further action (including the filing and recording of financing statements and other documents), that may be necessary or requested by the Agent to subject such asset to a perfected lien of the Agent hereunder (including, where applicable, perfection by establishing "sole dominion and control" within the meaning or the common law and "control" within the meaning of the UCC) with the priority required hereby.

3.2 Actions by the Agent. The Borrower hereby authorizes the Agent to file, in jurisdictions where this authorization will be given effect, a financing statement signed only by the Agent describing the Collateral in the same manner as it is described herein; and from time to time, at the request of the Agent, the Borrower will execute one or more financing statements and such other documents (and pay the cost of filing or recording the same in all public offices deemed necessary or desirable by the Agent) and do such other acts and things, all as the Agent may request, to establish and maintain a valid security interest in the Collateral (free of all other liens and claims whatsoever except as otherwise provided herein) to secure the payment of the Obligations. In connection with the foregoing, it is agreed and

understood between the parties hereto that the Borrower irrevocably authorizes the Agent to file one or more financing statements or continuation statements, and amendments thereto which the Agent deems reasonably necessary or desirable to create and protect its security interest in the Collateral without the signature of the Borrower and that (and the Agent is hereby authorized to carry out and implement the following agreements and understandings and the Borrower hereby agrees to pay the costs thereof) the Agent may, at any time or times, if the Agent shall elect so to file (or sign and file) as a financing statement any carbon copy of, or photographic or other reproduction of, this Agreement or of any financing statement executed in connection with this Agreement.

3.3 Additional Assurances. The Borrower hereby covenants and agrees, at its own cost and expense, to execute, acknowledge, deliver and/or cause to be duly filed all such further agreements, instruments and other documents (including using its best efforts to cause the issuance of favorable legal opinions), and take all such further actions, that the Agent may from time to time reasonably request to preserve, protect and perfect (including as a result of Revised Article 9 of the UCC or any other change in applicable law) the security interest granted by it and the rights and remedies created hereby, the granting by it of the security interest and the filing of any financing statements or other documents in connection herewith or therewith.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower hereby represents and warrants to the Agent that:

(a) It is the sole owner and holder of the Collateral free and clear of all liens and security interests except the security interest granted hereby and Permitted Liens.

(b) It has the authority to enter into and perform this Agreement and to grant the security interests created hereby.

(c) The Collateral is being used or acquired for use primarily for business purposes.

(d) The chief executive office of the Borrower is the address for the Borrower shown in the preamble of this Agreement, and the Borrower's places of business in the State of Maryland are located exclusively in Montgomery County.

(e) Except for those in favor of the Agent and George Rich, no financing statement or security agreement covering any Collateral or any proceeds thereof is currently on file in any public office.

(f) The Borrower represents and warrants to the Agent that the value of the consideration received and to be received, directly or indirectly, by the Borrower as a result of the credit or other financial accommodations granted and extended by the Lenders to the Borrower is fair consideration to the Borrower and reasonably worth at least as much as the Obligations, and that the financial accommodations granted and extended by the Lenders have benefited and may reasonably be expected to benefit the Borrower, directly or indirectly.

ARTICLE V COVENANTS AND AGREEMENTS OF THE BORROWER

The Borrower hereby covenants and agrees as follows:

(a) The Collateral and all records documenting the Collateral will be kept at the Borrower's place of business listed in the preamble of this Agreement and the Borrower will give the Agent at least 30 days prior written notice of any change in the location of the Collateral.

(b) The Borrower will immediately notify the Agent in writing of any change in the Borrower's place of business or chief executive office, and of any additional place of business.

(c) The Borrower will defend the Collateral against any claims and demands of all persons at any time claiming the same or any interest therein.

(d) The Borrower will not (i) permit any liens, encumbrances or security interests (other than Permitted Liens) to attach to any of the Collateral; (ii) permit any of the Collateral to be levied upon under any legal process; (iii) sell, transfer, lease or otherwise dispose of any of the Collateral or any interest therein (other than in the ordinary course of business), or offer to do so, without the prior express written consent of the Agent; and (iv) permit anything to be done that may impair the value of any of the Collateral or the security intended to be afforded thereby or hereby.

(e) The Borrower will at all times keep the Collateral and any records documenting the Collateral in good order and repair (ordinary wear and tear excepted) and will not waste or destroy the Collateral or any part thereof.

(f) In no event shall the Borrower, either directly or through any agent, employee, licensee or designee, file an application for any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar offices in the United States or any other country, unless it promptly notifies the Agent in writing thereof and, upon request of the

Agent, executes and delivers any and all agreements, instruments, documents and papers as the Agent may request to evidence the Agent's security interest in such Intellectual Property, and the Borrower hereby appoints the Agent as its attorney-in-fact to execute and file such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power, being coupled with an interest, is irrevocable.

(g) The Borrower will protect the title and possession of the Collateral and will, at the Borrower's own cost and expense, promptly pay when due all taxes, assessments, maintenance charges and other impositions of every kind and character charged, levied, assessed or imposed against the Collateral, as the same become payable and before they become delinquent, and upon request of the Agent, shall furnish due proof of such payment to the Agent promptly after payment; provided, however, the Agent shall not pay any such charges for so long as such charges are being challenged in good faith through appropriate procedures by the Borrower.

(h) The Borrower will pay promptly when due all taxes and assessments upon the Collateral, its use or operation, upon this Agreement and upon any note or notes or other writing evidencing the Obligations, or any of them, including documentary or other taxes.

(i) The Borrower will not use the Collateral or permit the Collateral to be used in violation of any statute, ordinance or other law which could result in a material adverse effect upon its business or financial condition or which could result in loss or forfeiture of the Collateral or which could result in loss or impairment of (or priority with respect to) the Agent's interest in the Collateral; and the Borrower will permit the Agent and its agents, representatives and employees to examine the Collateral at all reasonable times, upon reasonable prior notice, and for such purpose, the Agent and its agents may enter upon or into any premises where the Collateral may be located without being guilty of a trespass. The Borrower will furnish to the Agent upon request all pertinent information regarding the Collateral.

(j) If any certificate of title or similar document is, at any time and pursuant to the laws of any jurisdiction, issued or outstanding with respect to the Collateral or any part thereof, the Borrower will promptly advise the Agent thereof, and the Borrower will promptly cause the interest of the Agent to be properly noted thereon; and the Borrower will further promptly deliver to the Agent any such certificate of title or similar document issued or outstanding at any time with respect to such Collateral. If any instruments, chattel paper, money or monies, or documents are, at any time or times, included in the Collateral, whether as proceeds or otherwise, the Borrower will promptly deliver the same to the Agent without demand therefor by the Agent.

ARTICLE VI SECURITY INTEREST ABSOLUTE

All rights of the Agent hereunder, the security interest and all obligations of the Borrower hereunder shall be absolute and unconditional irrespective of (a) any lack of validity or enforceability of the Loan Documents or any agreement with respect to any of the Obligations, or any other agreement or instrument relating to any of the foregoing, (b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations, or any other waiver, amendment, supplement or other modification of, or any consent to any departure from, the Loan Documents or any other agreement or instrument relating to any of the foregoing, (c) any exchange, release or non-perfection of any lien on any Collateral, or any release or waiver, amendment, supplement or other modification of, or consent under, or departure from, any guaranty, securing or guaranteeing all or any of the Obligations, or (d) any other circumstance that might otherwise constitute a defense available to, or a discharge of, any grantor in respect of the Obligations or in respect of this Agreement, the other Loan Documents or any other related agreement.

ARTICLE VII ADMINISTRATION OF COLLATERAL

7.1 Possession of Collateral. Until an Event of Default, the Borrower may have possession of the Collateral and use it in any lawful manner.

7.2 Proof of Sale by the Agent. All recitals in any instrument executed by the Agent incident to the sale, transfer, assignment, lease or other disposition or utilization of the Collateral or any part thereof hereunder shall, absent manifest error, be full proof of the matters stated therein and no other proof shall be requisite to establish full legal propriety of the sale or other action taken by the Agent or of any fact, condition or thing incident thereto and all prerequisites of such sale or other action or any fact, condition or thing incident thereto shall be presumed conclusively to have been performed or to have occurred.

7.3 Preservation of Collateral. The Agent may at its option, but without any obligation to do so, pay for the account of the Borrower, any taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, pay for the maintenance and preservation of the Collateral, prosecute or defend any suits in relation to the security interests arising pursuant to this Agreement and insure and keep insured the Collateral in an amount not to exceed the Obligations hereunder. Any such amounts which may be so paid out by the Agent and all sums paid for insurance premiums, as aforesaid, including, without limitation, the costs, expenses and attorneys' fees paid in any suit affecting the Collateral when necessary to protect the security interest hereof shall be a part of the Obligations hereby secured and recoverable in all respects.

ARTICLE VIII
EVENTS OF DEFAULT; REMEDIES UPON AN EVENT OF DEFAULT

8.1 Events of Default. The Borrower shall be in default upon the happening of any of the following (each an “**Event of Default**”) (i) failure by the Borrower to perform any of its obligations under this Agreement; or (ii) an event of default under the terms of any of the Loan Documents.

8.2 Rights Upon an Event of Default. Upon the occurrence of any Event of Default specified in this Agreement, the Agent may, in addition to any other rights and remedies which it may have, immediately and without demand, exercise any or all of the rights and remedies granted to a secured party upon default under the UCC or any other writing evidencing any of the Obligations secured hereby; and upon the request or demand of the Agent, the Borrower shall, at the Borrower's expense, assemble the Collateral and make it available to the Agent at a convenient place acceptable to the Agent; and the Borrower shall promptly pay to the Agent any and all costs and expenses, including reasonable legal expenses and attorneys' fees as specified in any note or any other evidence of the Obligations held by the Agent, but in any event, which shall include attorneys' fees of the suit, out of court, in trial, on appeal, or in bankruptcy proceedings, incurred or paid by the Agent and/or the Lenders in protecting and enforcing the rights of the Agent hereunder, including the Agent's right to take possession of the Collateral and to hold, prepare for sale, sell and dispose of such Collateral. Any notice of sale, disposition or other intended action by the Agent sent to the Borrower at the address specified in the preamble of this Agreement, or to such other address of the Borrower as may from time to time be shown on the Agent's records, at least ten (10) days prior to such action, shall constitute reasonable notice to Borrower. Upon disposition by the Agent of any property in which the Agent has a security interest hereunder, the Borrower shall be and remain liable for any deficiency; and the Agent shall account to the Borrower for any surplus, but the Agent shall have the right to apply all or any part of such surplus to or to hold the same as a reserve against all or any of the Obligations of the Borrower to the Lenders, whether or not they or any of them be then due, and in such order of application as the Agent may from time to time elect.

8.3 Exercise of Remedies. The right of the Agent to take possession or control of the Collateral upon the happening of any of the events or conditions constituting a Event of Default may be exercised without resort to any court proceeding or judicial process whatever and without any hearing whatever thereon and, in this connection, TO THE EXTENT NOT PROHIBITED BY LAW, THE BORROWER EXPRESSLY WAIVES ANY CONSTITUTIONAL RIGHTS OF THE BORROWER WITH REGARD TO NOTICE OR ANY JUDICIAL PROCESS OR HEARING PRIOR TO THE EXERCISE OF THE RIGHTS OF THE AGENT TO TAKE POSSESSION OR CONTROL OF THE COLLATERAL UPON THE

HAPPENING OF ANY OF THE EVENTS OR CONDITIONS CONSTITUTING A DEFAULT.

8.4 License of Intellectual Property. For the purpose of enabling the Agent to exercise rights and remedies under this Agreement, at such time as the Agent shall be lawfully entitled to exercise such rights and remedies, the Borrower hereby grants to the Agent an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Borrower) to use, license or sub-license any of the Collateral consisting of Intellectual Property now owned or held hereafter acquired or held by or on behalf of the Borrower, and wherever the same may be located, and including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. The use of such license by the Agent shall be exercised, at the option of the Agent, upon the occurrence and during the continuation of an Event of Default; provided, however, that any license, sub-license or other transaction entered into by the Agent in accordance herewith shall be binding upon the Borrower notwithstanding any subsequent cure of an Event of Default.

8.5 Waiver of the Borrower to Marshalling of its Assets. All rights to marshalling of assets of the Borrower, including any such right with respect to the Collateral, are hereby waived by the Borrower.

ARTICLE IX ADDITIONAL PROVISIONS

9.1 Miscellaneous. No waiver by the Agent of any Event of Default shall operate as a waiver of any other Event of Default or of the same Event of Default on a future occasion. No delay or omission on the part of the Agent in exercising any right or remedy shall operate as a waiver thereof, and no single or partial exercise by the Agent of any right or remedy shall preclude or affect any other or further exercise thereof or the exercise of any other right or remedy. The provisions of this Agreement are cumulative to the provisions of and any other writing evidencing or pertaining to any of the Obligations secured by this Agreement, and the Agent shall have all the benefits, rights and remedies of and under any writing evidencing any of the Obligations secured hereby. The singular pronoun, when used herein, shall include the singular and plural, as applicable, and the use of any gender shall include all genders. All rights of the Agent hereunder shall inure to the benefit of its successors and assigns; and all obligations of the Borrower shall bind its successors and assigns. The Borrower waives all rights to the marshalling of its assets including, without limitation, the Collateral.

9.2 Governing Law. This agreement has been delivered in the State of Maryland and shall be construed in accordance with the laws of the State of Maryland, including the UCC and applicable federal law; provided, however, that if additional rights or remedies are hereafter granted to secured parties by the laws of the State of Delaware or by applicable federal law, the Agent shall also have and may exercise any such rights or remedies; provided, further, however, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the Agent's security interest in any Collateral or the availability of any remedy hereunder is governed by the Uniform Commercial Code as in effect on or after the date hereof in any jurisdiction other than Maryland, for purposes of the grant of the security interest in the opening paragraph of this Agreement and the terms in such paragraph which are cross-referenced to their definitions in the UCC, "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection or availability of such remedy. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by, or invalid under, applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. To the extent permitted by applicable law, the Borrower hereby waives any provision of law that renders any provision hereof prohibited or unenforceable in any respect. TO THE EXTENT LAWFUL, ANY LITIGATION ARISING HEREUNDER OR RELATED HERETO OR TO THE NOTE EXECUTED IN CONNECTION HERewith SHALL BE TRIED BY THE STATE COURTS FOR THE COUNTY OR THE FEDERAL COURT OF THE UNITED STATES FEDERAL DISTRICT WHERE THE PRINCIPAL OFFICE OF THE AGENT IS LOCATED, WHICHEVER IS APPLICABLE, AND THE BORROWER HEREBY IRREVOCABLY SUBMITS TO THE PERSONAL JURISDICTION OF SUCH COURTS AND WAIVES ALL OBJECTIONS TO VENUE THEREIN.

9.3 Reimbursement of Expenses. The Borrower will promptly reimburse the Agent for all amounts expended, advanced or incurred by the Agent to satisfy any obligation of the Borrower under this Agreement or any of the other Loan Documents or to collect the Amended Notes executed herewith, or to enforce the rights of the Agent under this Agreement, or any of the other Loan Documents (whether or not any legal or other proceeding is instituted), which amounts will include all court costs, reasonable attorneys' fees, fees of auditors and accountants, and investigation expenses reasonably incurred by the Agent to third parties in connection with any such matters.

9.4 Counterparts. This agreement may be executed in one or more counterparts, each of which shall constitute an original, but when taken together shall constitute but one and the same agreement. This agreement has been substantially negotiated in, delivered and accepted at, and the proceeds of the loan will be disbursed in Bethesda, Maryland.

IN WITNESS WHEREOF, this Agreement is executed the 10th day of ~~September~~^{October} 2001.

“BORROWER”

EGRAIL, INC.

By: 

Joseph Payne
President and CEO

“AGENT”

MERCATOR BROADBAND PARTNERS, L.P.

By: Mercator Management, LLC
Its: General Partner

By: _____

John Baring
Managing Partner

IN WITNESS WHEREOF, this Agreement is executed the ^{October} 10th day of ~~September~~ 2001.

“BORROWER”

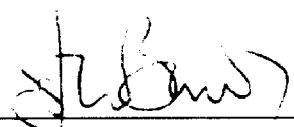
EGRAIL, INC.

By: _____
Joseph Payne
President and CEO

“AGENT”

MERCATOR BROADBAND PARTNERS, L.P.

By: Mercator Management, LLC
Its: General Partner

By:  _____
John Baring
Managing Partner