

10/10/03

10-15-2003

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RECC



HEET

102574686

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Silicon Valley Bank
Exchange Applications, Inc.Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment☐ Merger☐ Security Agreement☐ Change of Name☒ Other: Transfer of Patent RightsExecution Date: March 12, 2003

2. Name and address of receiving party(ies):

Name: Amdocs Software Systems Ltd.

Internal Address:

Street Address: Regus House, Harcourt Centre,
Harcourt Road, Dublin 2, IrelandAdditional name(s) & address(es) attached? ☐ Yes ☒ No

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.(s)

09/123,79209/248,61109/248,61610/290,547

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

OFR/FINANCE

OCT 10 AM 8:12

5. Name and address of party to whom
correspondence concerning document should be
mailed: Frederick YuBROWN RAYSMAN MILLSTEIN FELDER &
STEINER LLP

900 Third Avenue

New York, New York 10022
(212) 895-20006. Total number of applications and patents
involved: 47. Total fee (37 CFR 3.41):...\$ 160.00☒ Check enclosed☐ Authorized to be charged to deposit account8. Deposit account number: 02-4270

(Attach duplicate copy of this page by deposit account)

Please charge any additional fees required, or credit any
overpayment, to the above deposit account

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.*Frederick Yu, Reg. No. 45,251

Name of Person Signing

Signature

October 7, 2003

Date

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

Mail documents to be recorded with required cover sheet information to:

Mail Stop Assignment Recordation Services

Commissioner of Patents

P.O. Box 1450

Alexandria, VA 22313-1450

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TRANSFER OF PATENTS

This Transfer of Patent Rights (hereinafter "the Transfer"), effective as of March 12, 2003, is by and between Silicon Valley Bank (hereinafter "the Bank") and Amdocs Software Systems Ltd., an Ireland corporation, with a place of business at Regus House, Harcourt Centre, Harcourt Road, Dublin 2, Ireland (the "Assignee").

WHEREAS, Exchange Applications, Inc. (hereinafter "Grantor") is the owner of one or more inventions (hereinafter referred to as "the Invention(s)") disclosed in the Patent(s) (hereinafter "the Patents") and/or Patent Application(s) (hereinafter "the Applications") listed on the attached Schedule A;

WHEREAS, the Bank agreed to make advances of money and to extend certain financial accommodations to Grantor pursuant to a certain Loan and Security Agreement and Intellectual Property Security Agreement, both dated April 25, 2001, (as amended from time to time "the Agreements") between the Bank and Grantor;

WHEREAS, the Bank received from Grantor a security interest in the Patents and the Applications pursuant to the terms of each of the Agreements;

WHEREAS, on May 15, 2001, the Bank recorded with the United States Patent and Trademark Office its security interest in the Patents and the Applications;

WHEREAS, Grantor failed to meet its obligations under the Agreements;

WHEREAS, the Bank elected to exercise its remedies under the Massachusetts Uniform Commercial Code and the Agreements and sold the Patents and the Applications and other intellectual property assets owned by Grantor at a public sale in the City of Boston, Commonwealth of Massachusetts on March 11, 2003;

WHEREAS, the Bank has sold the Patents and the Applications without any warranty of merchantability; without any warranty of fitness for a particular purpose; and without any warranty relating to ownership, title, possession, quiet enjoyment, or the like;

WHEREAS, Assignee purchased the Patents and the Applications at the public sale on March 11, 2003;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Bank sells to Assignee all of Grantor's right, title, and interest in and to the Patents and the Applications, including the right to sue for any past infringement of the Patents, and, to the extent previously transferred to the Grantor by the inventor(s) of the Invention(s) (hereinafter the "Inventor(s)"), (a) the right to apply for patents in the United States of America and in all foreign countries for the Invention(s), (b) all applications for patents

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for the Invention(s) or based on said Applications in all countries, now filed or to be filed, including all divisional, renewal, substitute, continuation, continuation-in-part and convention applications based in whole or in part upon the Invention(s) or upon the Applications, (c) all patents which may issue on the Invention(s) and on any application transferred by this Transfer in the United States and foreign countries, and any and all reissues, extensions, divisions, renewals, substitutes, continuations or continuations-in-part of patents granted for the Invention(s) or upon the Patents and the Applications, for the full term or terms for which the patents may be issued, (d) every priority right that is or may be predicated upon or arise from the Invention(s), the Applications and such patents under any applicable international or bilateral treaty, agreement or convention. Grantor hereby authorizes Assignee to file patent applications in all countries for any or all of the Invention(s) in Grantor's name, or in Assignee's name, or otherwise as Assignee may deem advisable, under any international or bilateral treaty, agreement or convention, or otherwise.

Grantor assigns to Assignee, to the extent previously given to the Grantor by the Inventor(s), all obligations to Grantor of the Inventor(s) to, upon request of Assignee, and without further consideration but at the expense of the Assignee, communicate any facts known to the Inventor(s) relating to the Invention(s) and the history thereof, testify in any legal proceeding, execute all lawful papers required to effect the foregoing, and generally do all further acts which may be deemed necessary by Assignee to obtain and enforce proper patent protection for the Invention(s) in all countries.

IN WITNESS WHEREOF, the parties have executed this Assignment on the day and year written below.

ACCEPTED AND AGREED TO:

Silicon Valley Bank

Amdocs Software Systems Ltd.

By: *Laura H. Scott*
Name Printed: Laura H. Scott
Title: Senior Vice President
Date: 3/12/03

By: *Melinda Pissourios*
Name Printed: MELINDA PISSOURIOS
Title: DIRECTOR
Date: _____

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SCHEDULE A

- United States Patent Application, Serial No. 09/210,296, filed on December 11, 1998, and entitled "Customer Relationship Management System and Method";
- International Application No. PCT/US99/29247, filed on December 9, 1999, and entitled "Customer Relationship Management System and Method"; and
- United States Patent No. 6,240,411, issued on May 29, 2001, and entitled "Integrating Campaign Management and Data Mining".

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SECURED PARTY'S BILL OF SALE

AND

SECURITY AGREEMENTS

PATENT

REEL: 014577 FRAME: 0134

SECURED PARTY'S BILL OF SALE

For good and valuable consideration, and in consideration of \$5,100,000, the receipt and sufficiency of which are hereby acknowledged, 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, 2221 Washington Street, Suite 200, Newton, Massachusetts 02462, doing business under the name "Silicon Valley East" (the "Secured Party"), hereby sells, assigns, and transfers to Amdocs Software Systems Limited, having an address of _____ (the "Purchaser"), all of the personal property (the "Purchased Assets") described on Exhibit "A", annexed hereto and incorporated herein by reference, in which the Secured Party has been granted a security interest by Exchange Applications, Inc. d/b/a Xchange Inc. and eXstatic Software, Inc. f/k/a Gino Borland, Inc., each with a mailing address of One Lincoln Plaza, 89 South Street, Boston, Massachusetts 02110 (collectively the "Borrower").

The Purchaser and the Secured Party acknowledge and agree as follows:

(a) This secured party's sale is made **WITHOUT** any representations or warranties whatsoever by the Secured Party, whether expressed, implied, or imposed by law. Without limiting the generality of the foregoing total exclusion of representations and warranties, this secured party's sale is made **WITHOUT ANY WARRANTY OF MERCHANTABILITY, and WITHOUT ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, THERE IS NO WARRANTY RELATING TO TITLE, POSSESSION, QUIET ENJOYMENT, OR THE LIKE IN THIS DISPOSITION.**

(b) Except as specifically set forth in Paragraph (c) hereof, this secured party's sale is further made without any representations or warranties by the Secured Party as to the validity, enforceability, priority, or perfection of the Secured Party's liens on and security interests in the Purchased Assets, or the ownership of, rights in, location of, or access to, or any other matter concerning, the Purchased Assets. The Purchaser acknowledges and agrees that the Secured Party is selling only those assets in which the Secured Party has been granted a security interest by the Borrower, and not any items of leased property or other items. The Purchaser further acknowledges and agrees that the Secured Party is not selling any cash, deposit accounts, or certificates of deposit.

(c) The Secured Party solely represents and warrants to the Purchaser that: (i) the Secured Party has been granted a security interest by the Borrower, as provided in, among other things, a certain Loan and Security Agreement dated April 25, 2001, a certain Intellectual Property Security Agreement dated April 25, 2001, a certain Amended and Restated Loan and Security Agreement dated May 2, 2002, and a certain Accounts Receivable Financing Agreement dated May 2, 2002 (collectively, the "Security Agreements"); (ii) the Borrower has defaulted in connection with the obligations secured by the Purchased Assets; (iii) the Secured Party is, through this Secured Party's Bill of Sale, exercising its post-default remedies with respect to the Purchased Assets; (iv) by reason of such exercise, it is the intention of the parties hereto that the Purchaser acquire through this Secured Party's Bill of Sale all rights and interests of the Borrower in and to the Purchased Assets.

(d) The Purchaser warrants and represents that the Purchaser (i) has made its own independent investigation and evaluation as to the nature and sufficiency of the Purchased Assets and the status of title to the Purchased Assets, (ii) is acquiring the Purchased Assets AS IS and WHERE IS, (iii) has entered into this transaction after consultation with independent counsel of the Purchaser's own selection, and (iv) is not relying upon any representation or warranty of the Secured Party in consummating this transaction.

(e) Upon delivery of this Secured Party's Bill of Sale, all risk of loss with respect to the Purchased Assets shall transfer to the Purchaser. The Purchaser further acknowledges and agrees that by accepting this Secured Party's Bill of Sale, the Purchaser has received all of the Purchased Assets to be transferred hereunder and that the Secured Party has performed all and singular its obligations to the Purchaser in connection with this transaction.

(f) The Purchaser's sole and exclusive remedy, both at law and in equity, for any breach of this Secured Party's Bill of Sale by the Secured Party shall be limited to the refund of all or a portion, as may be appropriate, of the purchase price actually paid by the Purchaser to the Secured Party. In no event shall the Secured Party ever be liable to the Purchaser (or its successors or assigns) for any claims, damages, costs, expenses, or liabilities of any nature whatsoever, or for any incidental, consequential, special or punitive damages arising out of any breach by the Secured Party of the terms and conditions of this Secured Party's Bill of Sale or otherwise in any way relating to this transaction or the Purchased Assets.

(g) The Purchaser warrants and represents that the Purchaser has full power and authority to execute, deliver, and perform its agreements set forth herein, and the person executing and delivering this Secured Party's Bill of Sale in the name, on behalf of the Purchaser, has been duly authorized to do so.

(h) To the extent that any sales, use or other taxes, whether federal, state, or otherwise, excepting only income taxes, are levied or imposed by reason of the transaction contemplated hereby, the Purchaser hereby acknowledges and agrees that the Purchaser shall, in addition to all other amounts payable hereunder, pay all of such taxes, and hereby indemnifies the Secured Party against, and holds the Secured Party harmless from, any and all losses, claims, and liabilities and related expenses incurred by or arising out of any obligation to collect and/or to remit any taxes or charges which may be applicable to the transaction contemplated hereby.

(i) Upon the request of the Purchaser, Secured Party in its sole discretion may execute and deliver such further instruments and documents, which are in form and substance acceptable to the Secured Party as determined in its sole discretion, to evidence of record the transfer of title to Purchased Assets effected by this Secured Party's Bill of Sale. Any such documents must be consistent with this Secured Party's Bill of Sale and shall not require the Secured Party to make any representation or warranty. The cost of any such instruments and documents shall be borne entirely by the Purchaser.

(j) In purchasing all rights and interests of the Borrower in and to the Purchased Assets, the Purchaser does not thereby assume any obligations of the Borrower, whether arising under contracts or otherwise.

This Secured Party's Bill of Sale shall be governed by and construed in accordance with the internal law of the Commonwealth of Massachusetts (without regard to conflicts of laws principles) and is intended to take effect as a sealed instrument.

Executed as of this 12th day of March, 2003, as a sealed instrument.

"SECURED PARTY"
SILICON VALLEY BANK

By: Laura M. Scott
Laura M. Scott
Senior Vice President

Acknowledged, accepted, and agreed on the terms
set forth herein:

"PURCHASER"
AMDOCS SOFTWARE SYSTEMS LIMITED

By: R. P. Pisoni
Title: DIRECTOR

G:\data\906d\Bill of Sale (Execution)

Exhibit A

Form of Exhibit A to the Bill of Sale

Exhibit "A"

To a Certain Secured Party's Bill of Sale Dated March 12, 2003 By and Between Silicon Valley Bank and Amdocs Software Systems Limited

All of the Borrower's personal property and products thereof, and accessions thereto, in which the Borrower granted the Secured Party a security interest pursuant to a certain Loan and Security Agreement dated April 25, 2001, a certain Intellectual Property Security Agreement dated April 25, 2001, a certain Amended and Restated Loan and Security Agreement dated May 2, 2002, and a certain Accounts Receivable Financing Agreement dated May 2, 2002, copies of which agreements are collectively annexed hereto and incorporated herein by reference, but expressly excluding the following listed property:

All of the Borrower's cash, deposit accounts or certificates of deposit or any agreements, whether written or oral, to which the Borrower is or was a party.

Silicon Valley Bank

Loan and Security Agreement

Borrower: Exchange Applications, Inc. d/b/a Xchange, Inc.
Address: One Lincoln Plaza
89 South Street
Boston, Massachusetts 02110

and

Borrower: eXstatic Software, Inc., formerly known
as Gino Borland, Inc.
Address: 4555 Roosevelt Way
Seattle, Washington 98105

Date: April 25, 2001

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 (individually and collectively, jointly and severally, the "Borrower"), with offices located at the above addresses ("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"), in amounts determined by Silicon in its commercially reasonable discretion, 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 deems proper from time to time.

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 thereafter 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 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. At the request of Borrower, Silicon may, in its sole discretion, issue or arrange for the issuance of letters of credit for the account of Borrower, in each case in form and substance satisfactory to Silicon in its sole discretion (collectively, "Letters of Credit"). The aggregate face amount of all outstanding Letters of Credit from time to time (plus all Silicon exposure under any foreign exchange contracts) 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. Borrower shall pay all bank charges (including charges of Silicon) for the issuance of Letters of Credit, together with such additional fee as Silicon's letter of credit department shall charge in connection with the issuance of the Letters of Credit. Any payment by Silicon under or in connection with a Letter of Credit shall constitute a Loan hereunder on the date such payment is made. Each Letter of Credit shall have an expiry date no later than thirty days prior to the Maturity Date. Borrower hereby agrees to indemnify, save, and hold Silicon harmless from any loss, cost, expense, or liability, including payments made by Silicon, 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. 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. 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.

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, Receivables, and General Intangibles, including, without limitation, all of Borrower's Intellectual Property, 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"). The security interest granted herein shall be a first priority security interest in the Collateral. Silicon may place a "hold" on any Deposit Account pledged as collateral. 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 term is defined in the Exim Agreement) 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.

2.2 Concerning Revised Article 9 of the Uniform Commercial Code. In anticipation of the possible application, in one or more jurisdictions to the transactions contemplated hereby, of the revised Article 9 of the Uniform Commercial Code in the form or substantially in the form approved by the American Law Institute and the National Conference of Commissioners on Uniform State Law and contained in the 1999 Official Text of the Uniform Commercial Code ("Revised Article 9"), it is hereby agreed that applying the law of any jurisdiction in which Revised Article 9 is in effect, the Collateral is all assets of the Borrower, whether or not within the scope of Revised Article 9. The Collateral shall include, without limitation, the following categories of assets as defined in Revised Article 9: goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including health-care-insurance receivables, and license fees), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, general intangibles (including payment intangibles and software, but excluding Intellectual Property), supporting obligations and any and all proceeds of any thereof, wherever located, whether now owned or hereafter acquired. If the Borrower shall at any time, whether or not Revised Article 9 is in effect in any particular jurisdiction, acquire a commercial tort claim, as defined in Revised Article 9, the Borrower shall promptly notify Silicon in a writing signed by the 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.

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. 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. Borrower will give Silicon at least 30 days prior written notice before opening any additional place of business, changing its chief executive office, changing its state of formation or moving any of the Collateral to a location other than Borrower's Address or one of the locations set forth on the Schedule.

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. 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 Borrower will at all times defend Silicon and the Collateral against all 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. 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 now 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 best 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 will keep in full force and effect, and will comply with all the terms of, any lease of real property where any of the Collateral now or in the future may be located.

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.

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, 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. Borrower is now and will continue to be solvent.

3.8 Tax Returns and Payments; Pension Contributions. Borrower has timely filed, and will timely file, all tax returns and reports 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 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, 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 result in any liability of Borrower, 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. 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 \$50,000 or more, or involving \$100,000 or more in the aggregate.

3.11 Use of Proceeds. All proceeds of all Loans shall be used solely for working capital purposes. 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."

4. RECEIVABLES.

4.1 Representations Relating to Receivables. 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) represent an undisputed 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) meet the Minimum Eligibility Requirements set forth in Section 8 below.

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 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 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 applicable laws and governmental rules and regulations. All signatures and endorsements on all documents, instruments, and agreements relating to all Receivables are and shall be genuine, and all such documents, instruments and agreements are and shall be legally enforceable in accordance with their terms.

4.3 Schedules and Documents relating to Receivables. Borrower shall deliver to Silicon transaction reports and loan requests, schedules and assignments of all Receivables, and schedules of collections, all on Silicon's standard forms; 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. Loan requests received after 12:00 Noon will not be considered by Silicon until the next Business Day. Together with each such schedule and assignment, 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 request. In addition, 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 endorsements, all of which shall be with recourse. Borrower shall also provide Silicon with copies of all credit memos within two days after the date issued.

4.4 Collection of Receivables. Borrower shall cause the Account Debtors to remit all Receivables 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 specify. All such payments on, and proceeds of, Receivables shall be applied to the Obligations in such order as Silicon shall determine. Silicon or its designee may, at any time, notify Account Debtors that the Receivables have been assigned to Silicon.

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 the following Business Day after receipt by Borrower, to be applied to the Obligations in such order as Silicon shall determine; provided that, if no Default or Event of Default has occurred, 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 \$25,000 or less (for all such transactions in any fiscal year). Borrower agrees that it will not commingle proceeds of Collateral with any of Borrower's other funds or property, but will hold such proceeds 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. 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 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). In the event any attempted return occurs after the occurrence 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 its tangible personal property Collateral in the amount of not less than Ten Million Dollars (\$10,000,000.00) and carry such other business insurance, with insurers reasonably acceptable to Silicon, in such form and amounts as Silicon may reasonably require, and Borrower shall provide evidence of such insurance to Silicon, so that Silicon is 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 with respect to Equipment totaling less than \$100,000, which shall be utilized by Borrower for the replacement of the Equipment 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 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, and pursuant to any subpoena or other legal process. The foregoing inspections and audits shall be at Borrower's expense and the charge therefor shall be \$600 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. 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. Borrower waives the benefit of any accountant-client privilege or other evidentiary privilege precluding or limiting the disclosure, divulgence or delivery of any of its books and records (except that Borrower does not waive any attorney-client privilege).

5.5 Negative Covenants. Except as may be permitted in the Schedule, Borrower shall not, without Silicon's prior written consent, do any of the following: (i) merge or consolidate with another corporation or entity; (ii) acquire any assets, except in the ordinary course of business; (iii) enter into any other transaction outside the ordinary course of business; (iv) sell or transfer any Collateral, except for the sale of finished Inventory in the ordinary course of Borrower's business, and except for the sale of obsolete or unneeded Equipment in the ordinary course of business; (v) store any Inventory or other Collateral with any warehouseman or other third party; (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; (viii) incur any debts outside the ordinary course of business; (ix) guarantee or otherwise become liable with respect to the obligations of another party or entity; (x) pay or declare any dividends on Borrower's stock (except for dividends

payable solely in stock of Borrower): (xi) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of Borrower's stock; (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; (xiii) pay total compensation, including salaries, fees, bonuses, commissions, and all other payments, whether directly or indirectly, in money or otherwise, to Borrower's executives, officers and directors (or any relative thereof) in an amount in excess of the amount set forth on the Schedule; or (xiv) 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.

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.

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 the face 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 written termination of this Agreement by Silicon, 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 for three (3) business days; or (d) Borrower shall fail to comply with any of the financial covenants set forth in the Schedule in accordance with the terms thereof 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 5 Business Days after written or verbal notice to Borrower thereof after the date due; or (f) any levy, assessment, attachment, seizure, lien or encumbrance (other than a Permitted Lien) is made on all or any part of the Collateral, including, without limitation, the service of process upon Silicon seeking to attach by trustee, mesne, or other process, any of the Borrower's funds on deposit with, or assets of the Borrower in the possession of, Silicon; or (g) any default or event of default occurs under any obligation secured by a Permitted Lien, 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 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 if any Person who has subordinated such indebtedness or obligations terminates or in any way limits his subordination agreement; or (n) there shall be a change in the record or beneficial ownership of an aggregate of more than 50% of the outstanding shares of stock of Borrower, in one or more transactions, compared to the ownership of outstanding shares of stock of Borrower in effect on the date hereof, without the prior written consent of Silicon; or (o) Borrower shall generally not pay its debts as they become due (other than in the ordinary course of the Borrower's business operations), 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 may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or (p) 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; (iii) a material impairment of the prospect of repayment of any portion of the Obligations; or (iv) Silicon determines, based upon information available to it and in its reasonable judgment, that there is reasonable likelihood that Borrower shall fail to comply with one or more of the financial covenants in Section 5.1 during the next succeeding financial reporting period; or (q) 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 on the effective date or because of the occurrence of an event on or subsequent to the effective date; or (r) Borrower shall breach any term of the LP Security Agreement or the Warrant, executed in connection with this Agreement, or (s) Borrower shall breach any term of term of the Exim Agreement, as defined herein, or any event of default shall occur thereunder. Silicon may cease making any Loans hereunder during any of the above cure periods, and thereafter if an Event of Default has occurred.

7.2 Remedies. Upon the occurrence 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 (including, without limitation, all obligations under the Exim Agreement) 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, and for that purpose Borrower hereby authorizes Silicon without judicial process to enter onto any of Borrower's premises without interference to search for, take possession of, keep, store, or remove any of the Collateral, and remain on the premises or cause a custodian to remain on the premises in exclusive control thereof, without charge for so long as Silicon deems it reasonably necessary in order to complete the enforcement of its rights under this Agreement or any other agreement; 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; (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 four percent (4%) 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 seven days prior to the sale, and, in the case of a public sale, notice of the sale is published at least seven 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 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 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 time, at its option, but without obligation, with or without notice to Borrower, and at Borrower's 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, 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, director, officer, 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.

"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 9105 of the Code.

"Eligible Receivables" means Receivables arising in the ordinary course of Borrower's business from the sale of goods or rendition of services, which Silicon, in its commercially reasonable 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 commercially reasonable discretion, 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, (ii) the Receivable must not represent Progress Billings, or be due under a fulfillment or requirements contract with the Account Debtor (except as may otherwise be acceptable to Silicon in its commercially reasonable discretion), (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 material dispute, (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 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 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 (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 or services purchased from such Account Debtor or otherwise; notwithstanding the foregoing provisions of subsection (ix), such Receivable will be deemed an Eligible Receivable to the extent that the amount owed from the Account Debtor exceeds the amount for which the Borrower is or may be liable to such Account Debtor. 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 discretion, revise the Minimum Eligibility Requirements, upon written notice to the Borrower.

delinquent; (vii) 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; (viii) liens in favor of customs and revenue authorities which secure payment of customs duties in connection with the importation of goods; and (ix) liens arising from the Exim Agreement. 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 on Silicon's then standard form, acknowledge that the security interest is subordinate to the security interest in favor of Silicon, and agree not to take any action to enforce its subordinate security interest so long as any Obligations remain outstanding, and that Borrower agree that any uncured default 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.

"Progress Billings" means any billing subject to Borrower's completion or performance obligations.

"Receivables" means all of Borrower's now owned and hereafter acquired accounts (whether or not earned by performance), 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 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.

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 thirty 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

9.15. 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.

9.16 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, or any other present or future document or agreement, or any other transaction contemplated hereby or thereby or relating hereto or thereto, or any other matter, cause or thing whatsoever, occurred, done, omitted or suffered to be done by Silicon, its directors, officers, employees, agents, accountants or attorneys, 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 one year after the first act, occurrence or omission upon which such claim or cause of action, or any part thereof, 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. Borrower agrees that such one-year period is a reasonable and sufficient time for Borrower to investigate and act upon any such claim or cause of action. The one-year 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.

9.17 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.

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:

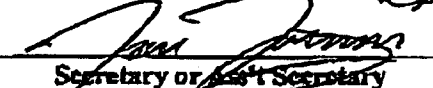
EXCHANGE APPLICATIONS, INC.

By 
President or Vice President *CEO*

By 
Secretary or Asst Secretary


EXSTATIC SOFTWARE, INC., formerly known
as GINO BORLAND, INC.

By 
President or Vice President *CEO*

By 
Secretary or Asst Secretary

Silicon:

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

By 
Title *Senior Relationship Manager*

634097.5

Silicon Valley Bank

Schedule to Loan and Security Agreement

Borrower: EXCHANGE APPLICATIONS, INC. d/b/a XCHANGE, INC.

Address: One Lincoln Plaza
89 South Street
Boston, Massachusetts 02110

and

Borrower: EXSTATIC SOFTWARE, INC., formerly known
as GINO BORLAND, INC.

Address: 4555 Roosevelt Way
Seattle, Washington 98105

Date: April 25, 2001

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

I. CREDIT LIMIT

(Section 1.1): An amount not to exceed the lesser of (A) or (B), below:

(A)

- (i) \$5,000,000 at any one time outstanding (the "Maximum Credit Limit"); minus
- (ii) the aggregate amounts then undrawn on all outstanding letters of credit, foreign exchange contracts, 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; minus
- (iii) any amounts outstanding under the Exim Agreement.

(B)

- (i) 80% of the amount of Borrower's Eligible Receivables (as defined in Section 8 above) (the "Receivables Loans"); minus
- (ii) the aggregate amounts then undrawn on all outstanding letters of credit, foreign exchange contracts, 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; minus

(iii) any amounts outstanding under the Exim Agreement

Letter of Credit/Foreign Exchange Contract Sublimit
(Section 1.5): **\$2,500,000**

2. INTEREST.

Interest Rate (Section 1.2):

A rate equal to the "Prime Rate" in effect from time to time, plus 2.00% per annum. Interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed. "Prime Rate" means 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.

Minimum Monthly
Interest (Section 1.2): N/A.

3. FEES (Section 1.4):

Loan Fee: \$57,500.00 payable concurrently herewith.

Collateral Handling Fee: \$1,000.00 per month, payable in arrears.

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 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 0.50% per annum on the difference between the amount of the Maximum Credit Limit and the average daily principal balance of the

Loans outstanding during the month, which unused line fee shall be computed and paid monthly, in arrears, on the first day of the following month.

4. MATURITY DATE

(Section 6.1): One year from the date of this Agreement.

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 and quarterly where indicated, except as otherwise specifically provided below:

a. EBITDA: The Borrower shall suffer maximum loss or maintain a minimum profit per month and per quarter in accordance with the schedule provided below:

April 2001 - (\$5,500,000)	October 2001 - (\$5,750,000)
May 2001 - (\$3,000,000)	November 2001 - (\$2,150,000)
June 2001 - \$5,000,000	December 2001 - \$8,000,000
2nd Quarter 2001	4 th Quarter 2001
Maximum Loss (\$2,600,000)	Minimum Profit \$1,700,000
July 2001 - (\$6,250,000)	January 2002 - (\$5,500,000)
August 2001 - (\$2,500,000)	February 2002 - (\$2,000,000)
September 2001 - \$7,750,000	March 2002 - \$8,500,000
3 rd Quarter 2001	1 st Quarter 2002
Minimum Profit - \$250,000	Minimum Profit \$2,000,000

- b. The Borrower will at all times maintain (i) cash on the balance sheet of the Borrower of a minimum of \$2,000,000.00, or (ii) excess "availability" hereunder, as determined by Silicon based upon the Credit Limit restrictions set forth herein, of a minimum of \$2,000,000.00.
- c. On or before June 30, 2001, the Borrower shall have received a minimum of an additional \$10,000,000.00 through a single transaction or series of related

transactions, through the sale and issuance by the Borrower of equity securities (excluding any amounts received by the Borrower from the conversion of any convertible debt securities of the Borrower outstanding as of the date hereof other than the \$4,500,000.00 received from Insight Capital and related entities prior to March 31, 2001).

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

"EBITDA" shall mean the Borrower's earnings before interest, taxes, depreciation and amortization, each as determined in accordance with generally accepted accounting principles.

6. REPORTING.

(Section 5.3):

Borrower shall provide Silicon with the following:

1. Monthly Receivable agings, aged by invoice date, and receivable reconciliations, within fifteen days after the end of each month.
2. Monthly accounts payable reports, and outstanding or held check registers, if any, within fifteen days after the end of each month.
3. Weekly, and upon each loan request, transaction reports.
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 month) 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.

9. Such additional reports and information as Silicon may from time to time specify.

7. COMPENSATION/PERMITTED LOANS

(Section 5.5): (a) Without Silicon's prior written consent, Borrower shall not pay total compensation, including salaries, withdrawals, fees, bonuses, commissions, drawing accounts and other payments, whether directly or indirectly, in money or otherwise, during any fiscal year to any of Borrower's executives, officers and directors as a group in excess of 150% of the total amount thereof in the prior fiscal year (subject to annualized adjustments for individuals commencing employment in any partial year).

(b) The following loans are outstanding and payable to Borrower as of the date of this Agreement:

(i)	Loan due from Stewart Vassie	\$436,295.04
(ii)	Loan due from Robert Hall	\$350,000.00

8. BORROWER INFORMATION:

Prior Names of
Borrower

(Section 3.2):

Prior Trade**Names of Borrower****(Section 3.2):****Existing Trade****Names of Borrower****(Section 3.2):****Other Locations and****Addresses (Section 3.3):****Material Adverse****Litigation (Section 3.10):**

9. 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, Borrower shall at all times maintain all of its operating accounts with Silicon.

(2) **Subordination of Inside Debt.** All present and future indebtedness 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 the following: Insight Capital Partners IV, L.P., Insight Capital Partners (Cayman) IV, L.P., Insight Capital Partners IV (Fund B), L.P., and Insight Capital Partners IV (Co-Investors, L.P.). 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.** Borrower shall concurrently cause such entities/individuals as Silicon may require in its commercially reasonable discretion to execute and deliver Subordination Agreements in such form as Silicon shall specify, subordinating to the Obligations the indebtedness of Borrower to such persons, and Borrower shall cause said

Subordination Agreements to continue in full force and effect at all times during the term of this Agreement.

(4) **Intellectual Property Security Agreement** As a condition precedent to the effectiveness of this Agreement, Borrower shall have executed and delivered an Intellectual Property Security Agreement (the "IP Security Agreement"), substantially in the form attached hereto as Exhibit B.

8178803458

From-Riemer & Braunstein LLP

03-10-03 17:00



03/10/2003 MON 17:45 [TX/RX NO 6112] 026

PATENT

REEL: 014577 FRAME: 0163

Borrower:

EXCHANGE APPLICATIONS, INC.

By 
President or Vice President By 
Secretary or Asst SecretaryEXSTATIC SOFTWARE, INC., formerly known as
GINO BORLAND, INC.By 
President or Vice President By 
Secretary or Asst Secretary

Silicon:

SILICON VALLEY BANK, d/b/a
SILICON VALLEY EASTBy 
Title Senior Relationship Manager

634097.5

T-348 P.027/027 1-988

6178803456

From-Riemer & Braunstein LLP

03-10-03 17:00

03/10/2003 MON 17:45 [TX/RX NO 6112] 027

PATENT

REEL: 014577 FRAME: 0164

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "IP Agreement") is made as of the 25th day of April, 2001 by and between EXCHANGE APPLICATIONS, INC., a Massachusetts corporation, with offices at One Lincoln Plaza, 89 South Street, Boston, Massachusetts 02111 ("Grantor"), and SILICON VALLEY BANK, a California banking corporation ("Lender").

RECITALS

A. Lender has agreed to make advances of money and to extend certain financial accommodations to Grantor (the "Loan"), pursuant to a certain Loan and Security Agreement of even date herewith between Grantor and Lender, as amended from time to time (as amended, the "Loan Agreement"). The Loan is secured pursuant to the terms of the Loan Agreement. Lender is willing to enter into certain financial accommodations with Borrower, but only upon the condition, among others, that Grantor shall grant to Lender a security interest in certain Copyrights, Trademarks, Patents, and Mask Works to secure the obligations of Grantor under the Loan Agreement. Defined terms used but not defined herein shall have the same meanings as in the Loan Agreement.

B. Pursuant to the terms of the Loan Agreement, Grantor has granted to Lender a security interest in all of Grantor's right title and interest, whether presently existing or hereafter acquired in, to and under all of the Collateral (as defined therein).

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged and intending to be legally bound, as collateral security for the prompt and complete payment when due of Grantor's Indebtedness (as defined below), Grantor hereby represents, warrants, covenants and agrees as follows:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Lender (hereinafter, the "Indebtedness"), including, without limitation, under the Loan Agreement, Grantor hereby grants a security interest in all of Grantor's right, title and interest in, to and under its intellectual property collateral (all of which shall collectively be called the "Intellectual Property Collateral"), including, without limitation, the following:

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or 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, including without limitation those set forth on EXHIBIT A attached hereto (collectively, the "Copyrights");

(b) 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;

(c) Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on EXHIBIT B attached hereto (collectively, the "Patents");

(e) 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 Grantor connected with and symbolized by such trademarks, including without limitation those set forth on EXHIBIT C attached hereto (collectively, the "Trademarks");

(f) All mask works or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired, including, without limitation those set forth on EXHIBIT D attached hereto (collectively, the "Mask Works");

(g) 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;

(h) 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, including, without limitation those set forth on EXHIBIT E attached hereto; and

(i) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents, or Mask Works; and

(j) 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.

2. Authorization and Request. Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this IP Agreement.

3. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Intellectual Property Collateral, except for non-exclusive licenses granted by Grantor to its customers in the ordinary course of business.

(b) Performance of this IP Agreement does not conflict with or result in a breach of any IP Agreement to which Grantor is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this IP Agreement constitutes a security interest.

(c) During the term of this IP Agreement, Grantor will not transfer or otherwise encumber any interest in the Intellectual Property Collateral, except for non-exclusive licenses granted by Grantor in the ordinary course of business or as set forth in this IP Agreement;

(d) To its knowledge, each of the Patents is valid and enforceable, and no part of the Intellectual Property Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property Collateral violates the rights of any third party;

(e) Grantor shall promptly advise Lender of any material adverse change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent, Copyright, or Mask Work specified in this IP Agreement;

(f) Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents, Copyrights, and Mask Works, (ii) use its best efforts to detect infringements of the Trademarks, Patents, Copyrights, and Mask Works and promptly advise Lender in writing of material infringements detected and (iii) not allow any Trademarks, Patents, Copyrights, or Mask Works to be abandoned, forfeited or dedicated to the public without the written consent of Lender, which shall not be unreasonably withheld, unless Grantor determines that reasonable business practices suggest that abandonment is appropriate.

(g) Grantor shall promptly register the most recent version of any of Grantor's Copyrights, if not so already registered, and shall, from time to time, execute and file such other instruments, and take such further actions as Lender may reasonably request from time to time to perfect or continue the perfection of Lender's interest in the Intellectual Property Collateral;

(h) This IP Agreement creates, and in the case of after acquired Intellectual Property Collateral, this IP Agreement will create at the time Grantor first has rights in such after acquired Intellectual Property Collateral, in favor of Lender a valid and perfected first priority security interest in the Intellectual Property Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Agreement upon making the filings referred to in clause (i) below;

(i) To its knowledge, except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights and Mask Works necessary to perfect the security interests created hereunder and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Grantor of the security interest granted hereby or for the execution, delivery or performance of this IP Agreement by Grantor in the U.S. or (ii) for the perfection in the United States or the exercise by Lender of its rights and remedies thereunder;

(j) All information heretofore, herein or hereafter supplied to Lender by or on behalf of Grantor with respect to the Intellectual Property Collateral is accurate and complete in all material respects.

(k) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Lender's prior written consent, which consent shall not be unreasonably withheld. Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Grantor's rights and interest in any property included within the definition of the Intellectual property Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts.

(l) Upon any executive officer of Grantor obtaining actual knowledge thereof, Grantor will promptly notify Lender in writing of any event that materially adversely affects the value of any material Intellectual Property Collateral, the ability of Grantor to dispose of any material Intellectual Property Collateral of the rights and remedies of Lender in relation thereto, including the levy of any legal process against any of the Intellectual Property Collateral.

4. Lender's Rights. Lender shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this IP Agreement to take but which Grantor fails to take, after fifteen (15) days' notice to Grantor. Grantor shall reimburse and indemnify Lender for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 4.

5. Inspection Rights. Grantor hereby grants to Lender and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Grantor, any of Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Intellectual Property Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Grantor and as often as may be reasonably requested, but not more than once in every six (6) months; provided, however, nothing herein shall entitle Lender access to Grantor's trade secrets and other proprietary information.

6. Further Assurances: Attorney in Fact.

(a) On a continuing basis, Grantor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademarks Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Lender, to perfect Lender's security interest in all Copyrights, Patents, Trademarks, and Mask Works and otherwise to carry out the intent and purposes of this

IP Agreement, or for assuring and confirming to Lender the grant or perfection of a security interest in all Intellectual Property Collateral.

(b) Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Lender or otherwise, from time to time in Lender's discretion, upon Grantor's failure or inability to do so, to take any action and to execute any instrument which Lender may deem necessary or advisable to accomplish the purposes of this IP Agreement, including:

(i) To modify, in its sole discretion, this IP Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, Exhibit B, Exhibit C, and Exhibit D hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents, Trademarks or Mask Works acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents, Trademarks, or Mask Works in which Grantor no longer has or claims any right, title or interest; and

(ii) To file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Intellectual Property Collateral without the signature of Grantor where permitted by law.

7. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this IP Agreement:

(a) An Event of Default occurs under the Loan Agreement; or any document from Grantor to Lender; or

(b) Grantor breaches any warranty or agreement made by Grantor in this IP Agreement.

8. Remedies. Upon the occurrence and continuance of an Event of Default, Lender shall have the right to exercise all the remedies of a secured party under the Massachusetts Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Intellectual Property Collateral and any tangible property in which Lender has a security interest and to make it available to Lender at a place designated by Lender. Lender shall have a nonexclusive, royalty free license to use the Copyrights, Patents, Trademarks, and Mask Works to the extent reasonably necessary to permit Lender to exercise its rights and remedies upon the occurrence of an Event of Default. Grantor will pay any expenses (including reasonable attorney's fees) incurred by Lender in connection with the exercise of any of Lender's rights hereunder, including without limitation any expense incurred in disposing of the Intellectual Property Collateral. All of Lender's rights and remedies with respect to the Intellectual Property Collateral shall be cumulative.

9. Indemnity. Grantor agrees to defend, indemnify and hold harmless Lender 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 IP Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Lender as a result of or in any way arising out of, following or consequential to transactions between Lender and Grantor, whether under this IP Agreement or otherwise (including without limitation, reasonable attorneys fees and reasonable expenses), except for losses arising from or out of Lender's gross negligence or willful misconduct.

10. Reassignment. At such time as Grantor shall completely satisfy all of the obligations secured hereunder, Lender shall execute and deliver to Grantor all deeds, assignments, and other instruments as may be necessary or proper to reinvest in Grantor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Lender pursuant hereto.

11. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

12. Attorneys' Fees. If any action relating to this IP Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys fees, costs and disbursements.

13. Amendments. This IP Agreement may be amended only by a written instrument signed by both parties hereto.

14. Counterparts. This IP Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

15. Law and Jurisdiction. This IP Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. GRANTOR 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 LENDER CANNOT AVAIL ITSELF OF THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS, GRANTOR ACCEPTS JURISDICTION OF THE COURTS AND VENUE IN SANTA CLARA COUNTY, CALIFORNIA.

GRANTOR AND LENDER 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.

16. Confidentiality. In handling any confidential information, Lender shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (i) to Lender's subsidiaries or affiliates in connection with their present or prospective business relations with Borrower; (ii) to prospective transferees or purchasers of any interest in the Loans; (iii) as required by law, regulation, subpoena, or other order; (iv) as required in connection with Lender's examination or audit; and (v) as Lender considers appropriate in exercising remedies under this Agreement. Confidential information does not include information that either: (a) is in the public domain or in Lender's possession when disclosed to Lender, or becomes part of the public domain after disclosure to Lender; or (b) is disclosed to Lender by a third party, if Lender does not know that the third party is prohibited from disclosing the information.

EXECUTED as a sealed instrument under the laws of the Commonwealth of Massachusetts on the day and year first written above.

Address of Grantor:

89 South Street
Boston, MA 02111

GRANTOR:

EXCHANGE APPLICATIONS, INC.

By: 

Name: George Albert Goss

Title: Chief Financial Officer

EXHIBIT "A"

COPYRIGHTS

SCHEDULE A - ISSUED COPYRIGHTS

<u>COPYRIGHT DESCRIPTION</u>	<u>REGISTRATION NUMBER</u>	<u>DATE OF ISSUANCE</u>
------------------------------	----------------------------	-------------------------

SCHEDULE B - PENDING COPYRIGHT APPLICATIONS

<u>COPYRIGHT DESCRIPTION</u>	<u>APPLICATION NUMBER</u>	<u>DATE OF FILING</u>	<u>DATE OF CREATION</u>	<u>FIRST DATE OF PUBLIC DISTRIBUTION</u>
------------------------------	---------------------------	-----------------------	-------------------------	--

SCHEDULE C - UNREGISTERED COPYRIGHTS (Where No Copyright Application is Pending)

<u>COPYRIGHT DESCRIPTION</u>	<u>DATE OF CREATION</u>	<u>FIRST DATE OF DISTRIBUTION</u>	<u>DATE AND RECORDATION NUMBER OF IP AGREEMENT WITH OWNER OR ORIGINAL GRANTOR IF AUTHOR OR OWNER OF COPYRIGHT IS DIFFERENT FROM GRANTOR</u>	<u>ORIGINAL AUTHOR OR OWNER OF COPYRIGHT IS DIFFERENT FROM GRANTOR</u>
------------------------------	-------------------------	-----------------------------------	---	--

EXHIBIT B**Exchange Applications
Summary of Patents
as of April 16, 2001**

Application No.	Date Filed	Entitled
PCT/US99/29247	12/09/99	Customer Relationship Management System and Method
	active but not filed	New and Improved Customer Relationship Management System and Method
09/210,296	12/11/98	Customer Relationship Management System and Method

© 2000 trademark.com

Reference: 999999-998105 ems-13544

Database(s): Federal

Owner: EXCHANG* APP*

12 records.



Search

Table of Contents

Preferences

Final Report Format

Federal

1. 76-071134	XCHANGE OPTIMIZER	Int'l 35	Pending
2. 76-066349	XCHANGE DIALOGUE FOR EMESSAGING	Int'l 9	Pending
3. 76-066348	XCHANGE REAL TIME	Int'l 9	Pending
4. 76-066347	XCHANGE DIALOGUE FOR MARKETING	Int'l 9	Pending
5. 75-899289	EXSTATIC	Int'l 35	Published
6. 75-922568	XCHANGE (and Design)	Int'l 35	Pending
7. 75-888054	EXSTATIC	Int'l 9	Pending, Passed by Examiner
8. 75-887316	NEXTRICITY	Int'l 9	Abandoned
9. 75-847720	NEXTRICITY	Int'l 35	Abandoned
10. 75-768992	VALEX	Int'l 9	Pending, Passed by Examiner
11. 75-759533	E*PRISE (and Design)	Int'l 9	Abandoned
12. 75-759525	VELOCITY	Int'l 9	Abandoned

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Record 1

Mark	XCHANGE OPTIMIZER
Status	Pending - Non-final action
Status Date	Dec 7, 2000
Register	Principal
Serial No.	76-071134
Int'l Class	35 - Advertising and Business
Goods/Services	SERVICE WHICH ENABLES AND AUTOMATES THE PLANNING, DESIGN, EXECUTION, SCHEDULING AND DISSEMINATION OF TARGETED ELECTRONIC MARKETING VIA A GLOBAL COMPUTER NETWORK
U.S. Class	100, 101, 102
1st Use	Apr 3, 2000
Commerce Use	Apr 3, 2000
Filing Date	Jun 15, 2000
Correspondent	ALFRED C. FRAWLEY PACHIOS & HALEY, LLC ONE CITY CENTER, P.O. BOX 9546 PORTLAND, MAINE 04112
Applicant	EXCHANGE APPLICATIONS, INC (DE CORP.) ONE LINCOLN PLAZA, 89 SOUTH STREET BOSTON, MA 02111

[Return to Table of Contents](#)**Record 2**

Mark XCHANGE DIALOGUE FOR EMESSAGING

Status Pending - Non-final action
Status Date Dec 29, 2000
Register Principal

Serial No. 76-066349

Int'l Class 9 - Electrical and Scientific Apparatus
Goods/Services COMPUTER SOFTWARE WHICH ENABLES THE CREATION AND EXECUTION OF CUSTOMER COMMUNICATIONS VIA A GLOBAL COMPUTER NETWORK

U.S. Class 21, 23, 26, 36, 38
1st Use Apr 3, 2000
Commerce Use Apr 3, 2000

Filing Date Jun 8, 2000

Correspondent ALFRED C. FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS & HAL
ONE CITY CENTER
P.O. BOX 9546
PORTLAND, MAINE 4112

Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

[Return to Table of Contents](#)**Record 3**

Mark XCHANGE REAL TIME

Status Pending - Non-final action
Status Date Jan 10, 2001
Register Principal

Serial No. 76-066348

Int'l Class 9 - Electrical and Scientific Apparatus
Goods/Services COMPUTER SOFTWARE WHICH ENABLES THE PLANNING AND SYNCHRONIZING OF REAL-TIME CUSTOMER COMMUNICATIONS ACROSS MANY CHANNELS OF COMMUNICATIONS

U.S. Class 21, 23, 26, 36, 38
1st Use Apr 3, 2000
Commerce Use Apr 3, 2000

Filing Date Jun 8, 2000

Correspondent ALFRED C. FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS & HAL
ONE CITY CENTER
P.O. BOX 9546
PORTLAND, MAINE 4112

Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 4

Mark XCHANGE DIALOGUE FOR MARKETING

Status Pending - Non-final action
Status Date Dec 29, 2000
Register Principal

Serial No. 76-066347

Int'l Class 9 - Electrical and Scientific Apparatus
Goods/Services COMPUTER SOFTWARE WHICH ENABLES THE CREATION AND
EXECUTION OF ENTERPRISE CUSTOMER RELATIONSHIP MANAGEMENT
THROUGH MANY CHANNELS OF COMMUNICATIONS

U.S. Class 21, 23, 26, 36, 38
1st Use Apr 3, 2000
Commerce Use Apr 3, 2000

Filing Date Jun 8, 2000

Correspondent ALFRED C. FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS & HAL
ONE CITY CENTER
P.O. BOX 9546
PORTLAND, MAINE 4112

Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 5

Mark EXSTATIC

Status Published
Status Date Mar 6, 2001
Register Principal

Serial No. 75-899289

Int'l Class 35 - Advertising and Business

Goods/Services COMPUTER CONSULTATION SERVICES, NAMELY PROVIDING
ELECTRONIC CUSTOMER RELATIONSHIP MANAGEMENT TO ENABLE AND
AUTOMATE THE PLANNING, DESIGN, EXECUTION AND SCHEDULING OF
TARGETED ELECTRONIC MARKETING VIA A GLOBAL COMPUTER NETWORK

U.S. Class 100, 101, 102
1st Use Oct 18, 1999
Commerce Use Oct 18, 1999

Filing Date Jan 18, 2000
Published Mar 6, 2001

Correspondent ALFRED C. FRAWLEY
PACHIOS & HALEY, LLC
ONE CITY CENTER
P.O. BOX 9546
PORTLAND, MAINE 4112

Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 6



Mark XCHANGE (and Design)

Status Pending - Non-final action
Status Date Aug 17, 2000
Register Principal

Serial No. 75-922568

Int'l Class 35 - Advertising and Business
Goods/Services SERVICES WHICH ASSIST THE PLANNING, DESIGN, EXECUTION
AND SCHEDULING OF MULTI-PHASE MARKETING CAMPAIGNS

U.S. Class 100, 101, 102

Filing Date Feb 17, 2000
Filed I-T-U Yes

Design Codes 020102 - Men, shadows or silhouettes of
020133 - Men, grotesque
020302 - Women, shadows and silhouettes
020326 - Women, grotesque
270302 - Humans forming letters or numerals

Correspondent ALFRED C. FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS & HAL

ONE CITY CENTER
P.O. BOX 9546
PORTLAND, MAINE 4112

Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 7

Mark EXSTATIC

Status Pending, Passed by Examiner - Publication/issue review complete

Status Date Mar 6, 2001

Register Principal

Serial No. 75-888054

Int'l Class 9 - Electrical and Scientific Apparatus

Goods/Services COMPUTER SOFTWARE WHICH ENABLES AND AUTOMATES THE PLANNING, DESIGN, EXECUTION AND SCHEDULING OF TARGETED ELECTRONIC MARKETING

U.S. Class 21, 23, 26, 36, 38

1st Use Oct 18, 1999

Commerce Use Oct 18, 1999

Filing Date Jan 5, 2000

Correspondent ALFRED C FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS ET AL
PO BOX 9546
1 CITY CTR
PORTLAND ME 4112-9546

Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 8

Mark NEXTRICITY

Status Abandoned - Express

Status Date May 23, 2000

Register Principal

Serial No. 75-887316

Int'l Class 9 - Electrical and Scientific Apparatus

Goods/Services COMPUTER SOFTWARE THAT PROVIDES MULTI-CHANNEL

DECISION MAKING CAPABILITY FOR ENTERPRISE CUSTOMER
RELATIONSHIP MANAGEMENT

U.S. Class 21, 23, 26, 36, 38
1st Use Nov 9, 1999
Commerce Use Nov 9, 1999

Filing Date Jan 5, 2000

Correspondent ALFRED C. FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS & HAL
ONE CITY CTR
P.O. BOX 9546
PORTLAND, ME 4112-9546

Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 9

Mark NEXTRICITY

Status Abandoned - Express
Status Date May 23, 2000
Register Principal

Serial No. 75-847720

Int'l Class 35 - Advertising and Business
Goods/Services TARGETED MARKETING SERVICES VIA E-MAIL OVER A GLOBAL
COMPUTER NETWORK;

U.S. Class 100, 101, 102

Filing Date Nov 12, 1999
Filed I-T-U Yes

Correspondent ALFRED C. FRAWLEY,
PRETI, FLAHERTY, BELIVEAU, PACHIOS ET AL
ONE CITY CENTER,
P.O. BOX 9546,
PORTLAND, MAINE 4112,

Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 10

Mark VALEX

Status Pending, Passed by Examiner - Publication/issue

review complete
Status Date Mar 17, 2001
Register Principal
Serial No. 75-768992
Int'l Class 9 - Electrical and Scientific Apparatus
Goods/Services COMPUTER SOFTWARE WHICH AUTOMATES THE PLANNING,
DESIGN, EXECUTION AND SCHEDULING OF MULTI-PHASE MARKETING
CAMPAIGNS
U.S. Class 21, 23, 26, 36, 38
1st Use Sep 6, 1996
Commerce Use Sep 26, 1996
Filing Date Aug 5, 1999
Correspondent ALFRED C. FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS &
HALEY, LLC
ONE CITY CENTER, P.O. BOX 9546
PORTLAND, MAINE 4112
Applicant EXCHANGE APPLICATIONS, INC. (DE CORP.)
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 11

E*PRISE

Mark E*PRISE (and Design)
Status Abandoned - Express
Status Date May 22, 2000
Register Principal
Serial No. 75-759533
Int'l Class 9 - Electrical and Scientific Apparatus
Goods/Services COMPUTER SOFTWARE WHICH AUTOMATES THE PLANNING,
DESIGN, EXECUTION AND SCHEDULING OF MULTI-PHASE MARKETING
CAMPAIGNS
U.S. Class 21, 23, 26, 36, 38

Filing Date Jul 26, 1999
Filed I-T-U Yes

Design Codes 241714 - Punctuation marks, including commas, question marks, exclamation points and ampersands

Correspondent ALFRED C. FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS & HAL
ONE CITY CENTER
P.O. BOX 9546
PORTLAND, MAINE 4112-9546

Applicant EXCHANGE APPLICATIONS, INC..
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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Record 12

Mark VELOCITY

Status Abandoned - Express
Status Date Jul 20, 2000
Register Principal

Serial No. 75-759525

Int'l Class 9 - Electrical and Scientific Apparatus
Goods/Services COMPUTER SOFTWARE WHICH AUTOMATES THE PLANNING, DESIGN, EXECUTION AND SCHEDULING OF MULTI-PHASE MARKETING CAMPAIGNS

U.S. Class 21, 23, 26, 36, 38

Filing Date Jul 26, 1999
Filed I-T-U Yes

Correspondent ALFRED C. FRAWLEY
PRETI, FLAHERTY, BELIVEAU, PACHIOS & HAL
ONE CITY CENTER
P.O. BOX 9546
PORTLAND, MAINE 4112-9544

Applicant EXCHANGE APPLICATIONS, INC..
ONE LINCOLN PLAZA, 89 SOUTH STREET
BOSTON, MA 02111

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EXHIBIT "D"

MASK WORKS

<u>MASK WORK</u> <u>DESCRIPTION</u>	<u>COUNTRY</u>	<u>SERIAL NO.</u>	<u>REG. NO</u>	<u>STATUS</u>
--	----------------	-------------------	----------------	---------------

Exhibit "E" attached to that certain Intellectual Property Security Agreement dated _____, 2001.

EXHIBIT "E"

LICENSES

634535.1

EXHIBIT C

CUSTOMER ANALYTICS + ACTION SYSTEMS

Thursday, April 12, 2001						
Trademark List						
Trademark Name	Client	Attorneys	Case Number	Status	Application Number / Filing Date	Reg. Numb.
CUSTOMER ANALYTICS	XCHAN EFC	AWR EMS	XCHAN-002	Abandoned	75/654,540	
Country: United States of America	Owner: Customer Analytics, Inc.				05-Mar-1999	
	Classes: 9, 42		Agent: X	X		
ENACT	XCHAN EFC	AWR EMS	XCHAN-005	Office Act	76/052,774	
Country: United States of America	Owner: ActionSystems, Inc.				22-May-2000	
	Classes: 35		Agent: X	X		
ENACT	XCHAN EFC	AWR EMS	XCHAN-006	Registered	75/365,548	2,419,469
Country: United States of America	Owner: ActionSystems, Inc.				30-Sep-1997	09-Jan-2001
	Classes: 41		Agent: X	X		
ENACT (& Design)	XCHAN EFC	AWR EMS	XCHAN-007	Registered	75/502,186	2,337,395
Country: United States of America	Owner: ActionSystems, Inc.				15-Jun-1998	04-Apr-2000
	Classes: 35		Agent: X	X		
ENACT THE MARKET OPTIMIZATION SYS	XCHAN EFC	AWR EMS	XCHAN-008	Registered	75/502,233	2,337,396
Country: United States of America	Owner: ActionSystems, Inc.				15-Jun-1998	04-Apr-2000
	Classes: 35		Agent: X	X		
ERM CENTRAL	XCHAN EFC	AWR EMS	XCHAN-001	Pending	1,451,368	
Country: European Community	Owner: Customer Analytics, Inc.				07-Jan-2000	
	Classes: 9, 42		Agent: FRK	F. R. Kelly & Co.		
ERM CENTRAL	XCHAN EFC	AWR EMS	XCHAN-003	Office Act	75/746,528	
Country: United States of America	Owner: Customer Analytics, Inc.				09-Jul-1999	
	Classes: 9, 35, 41, 42		Agent: X	X		
MISC. DESIGN OF A BOX WITH SWIRL	XCHAN EFC	AWR EMS	XCHAN-004	Office Act	75/654,586	
Country: United States of America	Owner: Customer Analytics, Inc.				05-Mar-1999	
	Classes: 9, 35, 41, 42		Agent: X	X		

Ⓢ Note that assignments of the ownership of these trademark rights to Xchange, Inc. are pending.

Emilia F. Cannella
Direct Dial: 617-951-8854
E-Mail: efcannella@bingham.com

CONFIRMATION

May 17, 2001

Bingham Dana LLP
150 Federal Street
Boston, MA
02110-1726

T 617.951.8000
F 617.951.8736

www.bingham.com

Boston
New York
Washington
Los Angeles
Hartford
London
Singapore

Via Facsimile - 617-880-3456
Confirmation By First Class Mail

Charles W. Stavros, Esq.
Riemer & Braunstein LLP
3 Center Plaza
Boston, Massachusetts 02108

Re: Exchange Applications, Inc.
Recordation of Silicon Valley Bank's Security Interest
with the United States Patent and Trademark Office
Our Ref.: XCHAN-000

Dear Chuck:

I enclose a copy of two U.S. Express Mail receipts, evidencing that on May 15, 2001, we filed with the U.S. Patent and Trademark Office requests for recordation of Silicon Valley Bank's security interest in Exchange Applications, Inc.'s patent applications and trademark applications and registrations. You will note that the recordation form cover sheets also were executed on this date.

We will promptly send you copies of the Notices of Recordation when we receive them. In the meantime, please feel free to call me if you need any additional information.

Very truly yours,



Emilia F. Cannella

Enclosure
cc: Joseph E. Fournier, Esq.
(w/ encl.)

BUSDOCS:996174.1



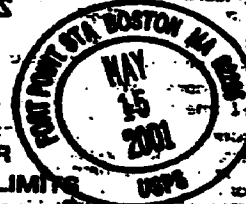
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METHOD OF PAYMENT Express Mail Corporate Acct. No.		Total Postage & Fees \$ 12.75

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NO DELIVERY	<input type="checkbox"/> Weekend <input type="checkbox"/> Holiday

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E. Sullivan 13544-EMS
BINGHAM DANA LLP
150 FEDERAL ST FL 15
BOSTON MA 02110-1726
USA
168792/108219

TO: (PLEASE PRINT) PHONE
Commissioner of Patents & Trademarks
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Weight 5 lbs	Int'l Alpha Country Code	Return Receipt Fee
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials [Signature]	COD Fee Insurance Fee
METHOD OF PAYMENT Express Mail Corporate Acct. No.		Total Postage & Fees \$ 12.75

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Label 11-F August 2000

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NO DELIVERY	<input type="checkbox"/> Weekend <input type="checkbox"/> Holiday

FROM: (PLEASE PRINT) PHONE 617 951 8450
E. Sullivan 13544-EMS
BINGHAM DANA LLP
150 FEDERAL ST FL 15
BOSTON MA 02110-1726
USA
168792/108219
xchan-000 TAKES

TO: (PLEASE PRINT) PHONE
Commissioner of Patents & Trademarks
Box Assignments
Washington, D.C. 20231

RECORDATION FORM COVER SHEET
TRADEMARKS ONLYU.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Exchange Applications, Inc.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State Massachusetts
☐ Other _____

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

3. Nature of conveyance:

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

Execution Date: April 25, 2001

2. Name and address of receiving party(ies)

Name: Silicon Valley Bank

Internal

Address: _____

Street Address: 3003 Tasman DriveCity: Santa Clara State: CA Zip: 95054

- ☐ Individual(s) citizenship _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☐ Corporation-State _____
☒ Other California Chartered Bank

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☒ No
 (Designations must be a separate document from assignment)
 Additional name(s) & address(es) attached? ☐ Yes ☒ No

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

A. Trademark Application No.(s)

See attached Schedule A

B. Trademark Registration No.(s)

See Attached Schedule A

Additional number(s) attached ☒ Yes ☐ No

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

Name: Emilia F. Cannella, Esq.Internal Address: Bingham Dana LLPStreet Address: 150 Federal StreetCity: Boston State: MA Zip: 02110

6. Total number of applications and registrations involved:

197. Total fee (37 CFR 3.41).....\$ 515.00

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number:

500927

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

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.

Emilia F. Cannella, Esq.

Name of Person Signing

Signature

5-15-01

Date

Total number of pages including cover sheet, attachments, and document: 20

Mail documents to be recorded with required cover sheet information to:
 Commissioner of Patent & Trademarks, Box Assignments
 Washington, D.C. 20231

PATENT

REEL: 014577 FRAME: 0185

SCHEDULE A

U.S. Registration Nos.: 2,419,469
2,337,395
2,337,396

U.S. Serial Nos: 75/654,540
76/052,774
75/746,528
75/654,586
76/071,134
76/066,349
76/066,348
76/066,347
75/899,289
75/922,568
75/888,054
75/887,316
75/847,720
75/768,992
75/759,533
75/759,525

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Exchange Applications, Inc.

2. Name and address of receiving party(ies)

Name: Silicon Valley Bank

Internal Address: _____

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

3. Nature of conveyance:

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

Street Address: 3003 Tasman DriveCity: Santa Clara State: CA Zip: 95054Execution Date: April 25, 2001Additional name(s) & address(es) attached? ☐ Yes ☒ No

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.(s)

PCT/US99/29247

09/210,296

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

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

Name: Emilia F. Cannella, Esq.Internal Address: Bingham Dana LLPStreet Address: 150 Federal StreetCity: Boston State: MA Zip: 021106. Total number of applications and patents involved: 27. Total fee (37 CFR 3.41).....\$ 80.00☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

500927

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

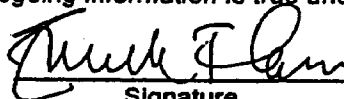
DO NOT USE THIS SPACE

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.

Emilia F. Cannella, Esq.

Name of Person Signing



Signature

5-15-01

Date

Total number of pages including cover sheet, attachments, and documents: 19

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

Amended and Restated Loan and Security Agreement

Borrower: Exchange Applications, Inc. d/b/a Xchange, Inc.
Address: One Lincoln Plaza
89 South Street
Boston, Massachusetts 02110

and

Borrower: eXstatic Software, Inc., formerly known
as Gino Borland, Inc.
Address: 4555 Roosevelt Way
Seattle, Washington 98105

Date: May 2, 2002

THIS AMENDED AND RESTATED 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 (individually and collectively, jointly and severally, the "Borrower"), with offices located at the above addresses ("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 Guarantied Loans. Upon request by Borrower, Silicon will make loans to Borrower (the "Guarantied Loans") up to the amount (the "Credit Limit") shown on the Schedule, provided no Default or Event of Default has occurred and is continuing. Amounts borrowed may be repaid and reborrowed during the term of this Agreement.

1.2 Interest. All Guarantied 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 thereafter bear interest at the same rate as the Guarantied Loans. Silicon may, in its discretion, charge interest to Borrower's Deposit Accounts maintained with Silicon.

1.3 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.

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, including, without limitation, all of Borrower's Intellectual Property, 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"). The security interest granted herein shall be a first priority security interest in the Collateral. Silicon may place a "hold" on any Deposit Account pledged as collateral. If Borrower shall at any time, acquire a commercial tort claim, 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.

3. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE BORROWER.

In order to induce Silicon to enter into this Agreement and to make Guaranteed 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. 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 a certain Perfection Certificate dated April 25, 2001 (the "Perfection Certificate") are all prior names of Borrower and all of Borrower's present and prior trade names. In addition, Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in the Perfection Certificate dated as of April 25, 2001 between Bank and Borrower, and acknowledges, confirms and agrees that the disclosures and information Borrower provided to Bank in the Perfection Certificate has not changed, as of the date hereof. 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 Perfection Certificate. Borrower will give Silicon at least 30 days prior written notice before opening any additional place of business, changing its chief executive office, changing its state of formation or moving any of the Collateral to a location other than Borrower's Address or one of the locations set forth on the Schedule.

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. 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 Borrower will at all times defend Silicon and the Collateral against all 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. 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 now 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 best 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 will keep in full force and effect, and will comply with all the terms of, any lease of real property where any of the Collateral now or in the future may be located.

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.

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 in all material respects, 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. Borrower is now and will continue to be solvent.

3.8 Tax Returns and Payments; Pension Contributions. Borrower has timely filed, and will timely file, all tax returns and reports 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 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, 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 result in any liability of Borrower, 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. 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 \$50,000 or more, or involving \$100,000 or more in the aggregate.

3.11 Use of Proceeds. All proceeds of all Guaranteed Loans shall be used solely for working capital purposes. 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."

4. RESERVED.

5. ADDITIONAL DUTIES OF THE BORROWER.

5.1 Insurance. Borrower shall, at all times insure its tangible personal property Collateral in the amount of not less than Ten Million Dollars (\$10,000,000.00) and carry such other business insurance, with insurers reasonably acceptable to Silicon, in such form and amounts as Silicon may reasonably require, and Borrower shall provide evidence of such insurance to Silicon, so that Silicon is 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 with respect to Equipment totaling less than \$100,000, which shall be utilized by Borrower for the replacement of the Equipment 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 reports made to insurance companies.

5.2 Reports and Financial Covenants. 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. Borrower shall also comply with all financial covenants set forth on the Schedule.

5.3 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, and pursuant to any subpoena or other legal process. The foregoing inspections and audits shall be at Borrower's expense.

5.4 Negative Covenants. Except as may be permitted in the Schedule, Borrower shall not, without Silicon's prior written consent, do any of the following: (i) merge or consolidate with another corporation or entity; (ii) acquire any assets, except in the ordinary course of business; (iii) enter into any other transaction outside the ordinary course of business; (iv) sell or transfer any Collateral, except for the sale of finished Inventory in the ordinary course of Borrower's business, and except for the sale of obsolete or unneeded Equipment in the ordinary course of business; (v) store any Inventory or other Collateral with any warehouseman or other third party; (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; (viii) incur any debts outside the ordinary course of business; (ix) guarantee or otherwise become liable with respect to the obligations of another party or entity; (x) pay or declare any dividends on Borrower's stock (except for dividends payable solely in stock of Borrower); (xi) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of Borrower's stock; (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 5.4 are only permitted if no Default or Event of Default would occur as a result of such transaction.

5.5 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.

5.6 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.

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. 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. 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 written termination of this Agreement by Silicon, 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) Borrower shall fail to comply with any of the financial covenants set forth in the Schedule in accordance with the terms thereof or shall fail to perform any other non-monetary Obligation which by its nature cannot be cured; or (d) Borrower shall fail to perform any other non-monetary Obligation, which failure is not cured within 10 Business Days after written or verbal notice to Borrower thereof after the date due; or (e) any levy, assessment, attachment, seizure, lien or encumbrance (other than a Permitted Lien) in excess of \$100,000 is made on all or any part of the Collateral, including, without limitation, the service of process upon Silicon seeking to attach by trustee, mesne, or other process, any of the Borrower's funds on deposit with, or assets of the Borrower in the possession of, Silicon in excess of \$100,000; or (f) any default or event of default occurs under any obligation secured by a Permitted Lien, which is not cured within any applicable cure period or waived in writing by the holder of the Permitted Lien; or (g) 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 (h) 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 (i) 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 45 days after the date commenced; or (j) 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 (k) 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 (l) 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 if any Person who has subordinated such indebtedness or obligations terminates or in any way limits his subordination agreement; or (m) there shall be a change in the record or beneficial ownership of an aggregate of more than 50% of the outstanding shares of stock of Borrower, in one or more transactions, compared to the ownership of outstanding shares of stock of Borrower in effect on the date hereof, without the prior written consent of Silicon; or (n) Borrower defaults under any agreement evidencing any indebtedness to any third party in excess of \$100,000; or (o) Borrower shall generally not pay its debts as they become due (other than in the ordinary course of the Borrower's business operations), 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 may be fraudulent under any bankruptcy, fraudulent conveyance or similar law; or (p) 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; (iii) a material impairment of the prospect of repayment of any portion of the Obligations, taking into account the value of any guaranties of the Obligations available to Silicon; or (iv) Silicon determines, based upon information available to it and in its reasonable judgment, that there is reasonable likelihood that Borrower shall fail to comply with one or more of the financial covenants in Section 5.2 during the next succeeding financial reporting period; or (q) 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 on the effective date or because of the occurrence of an event on or subsequent to the effective date; or (r) Borrower shall breach any term of the IP Security Agreement or a certain Warrant to Purchase Stock dated April 24, 2001 or (s) any default or event of default under the AR Financing Agreement. Silicon may cease making any Guaranteed Loans hereunder during any of the above cure periods, and thereafter if an Event of Default has occurred and is continuing.

7.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, 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 Guaranteed 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, and for that purpose Borrower hereby authorizes Silicon without judicial process to enter onto any of Borrower's premises without interference to search for, take possession of, keep, store, or remove any of the Collateral, and remain on the premises or cause a custodian to remain on the premises in exclusive control thereof, without charge for so long as Silicon deems it reasonably necessary in order to complete the enforcement of its rights under this Agreement or any other agreement; 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; (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 four percent (4%) 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 seven days prior to the sale, and, in the case of a public sale, notice of the sale is published at least seven 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 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 during the 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 time, at its option, but without obligation, with or without notice to Borrower, and at Borrower's 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, 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, director, officer, or any parent or subsidiary of such Person, or any Person controlling, controlled by or under common control with such Person.

"AR Financing Agreement" means the Accounts Receivable Financing Agreement of even date herewith by and between the Borrower and Silicon, as amended from time to time.

"Business Day" means a day on which Silicon is open for business.

"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 9105 of the Code.

"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.

"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, causes of action, corporate or other business records, 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 Guaranteed Loans, all other advances, debts, liabilities, obligations, guaranties, covenants, duties and indebtedness at any time owing by Borrower to Silicon, whether evidenced by this Agreement or the AR Financing Agreement or any note or other instrument, or document entered into with respect to the transactions contemplated by this Agreement or the AR Financing Agreement, including, without limitation, the Borrower's obligations pursuant to the IP Security Agreement, whether arising from an extension of credit, opening of a letter of credit, banker's acceptance, foreign exchange contracts, loan, guaranty, indemnification or otherwise, whether direct or indirect (including, without limitation, those acquired by assignment and any participation by Silicon in Borrower's debts owing to others), absolute or contingent, due or to become due, including, without limitation, all interest, charges, expenses, fees, attorney's fees, 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.

"Permitted Liens" means the following: (i) purchase money security interests in specific items of Equipment; (ii) leases of specific items of Equipment; (iii) liens for taxes not yet payable; (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) liens of materialmen, mechanics, warehousemen, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent; (vii) 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; and (viii) liens in favor of customs and revenue authorities which secure payment of customs duties in connection with the importation of goods. 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 on Silicon's then standard form, acknowledge that the security interest

is subordinate to the security interest in favor of Silicon, and agree not to take any action to enforce its subordinate security interest so long as any Obligations remain outstanding, and that Borrower agree that any uncured default in any obligation secured by the subordinate security interest shall also constitute an Event of Default under this Agreement.

"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.

"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), 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.

"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 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 Guaranteed 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 thirty 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. 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 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 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 even though unmatured 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.

9.15 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.

9.16 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.

9.17 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.

9.18 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.

9.19 Amended and Restated Agreement. This Agreement amends and restates in their entirety the following: (i) a certain Loan and Security Agreement dated as of April 25, 2001 by and among Borrower and Silicon, as amended from time to time and (ii) a certain Export-Import Bank Loan and Security Agreement dated April 25, 2001 between Borrower and Silicon, as amended from time to time. Accordingly, Silicon hereby waives any financial performance covenant defaults which existed under said agreements. Borrower acknowledges that any security agreements, liens and/or security interests securing payment of Borrower's Obligations also secure Borrower's Obligations under this Agreement and are not adversely affected by this Agreement. Additionally, (a) any Collateral under other agreements or documents between Borrower and Silicon secures Borrower's Obligations under this Agreement and (b) a default by Borrower under this Agreement is a default under agreements between Borrower and Silicon.

Silicon Valley Bank

**Amended and Restated Loan and
Security Agreement**

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:

EXCHANGE APPLICATIONS, INC.

By: 
Name:
Title:

Silicon:

SILICON VALLEY BANK, d.b.a.
SILICON VALLEY EAST

By: _____
Name:
Title:

EXSTATIC SOFTWARE, INC.

By: 
Name:
Title:

Silicon Valley Bank

**Schedule to
Loan and Security Agreement**

Borrower: EXCHANGE APPLICATIONS, INC. d/b/a XCHANGE, INC.
Address: One Lincoln Plaza
89 South Street
Boston, Massachusetts 02110

and

Borrower: EXSTATIC SOFTWARE, INC., formerly known
as GINO BORLAND, INC.
Address: 4555 Roosevelt Way
Seattle, Washington 98105

Date: April __, 2002

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

1. CREDIT LIMIT

(Section 1.1): An amount not to exceed **\$4,000,000** at any one time outstanding.

2. INTEREST.

Interest Rate (Section 1.2):

A rate equal to the "Prime Rate" in effect from time to time, plus 0.50% per annum. Interest shall be calculated on the basis of a 360-day year for the actual number of days elapsed. "Prime Rate" means 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.

3. FEES (Section 1.4):

Guaranteed Loan Fee: \$10,000.00 payable concurrently herewith.

4. MATURITY DATE

(Section 6.1): One year from the date of this Agreement.

5. REPORTING AND FINANCIAL COVENANTS.

(Section 5.2):

Borrower shall provide Silicon with the reports specified in the AR Financing Agreement and shall comply with

all financial covenants set forth therein (which provisions are specifically incorporated herein by reference), including, without limitation, Borrower shall have EBITDA of not less than \$1.00 for the quarter ending June 30, 2002 and each quarter thereafter. As used herein, "EBITDA" means earnings before interest, taxes, depreciation and amortization in accordance with GAAP. For the purposes of calculating EBITDA hereunder, Borrower's non-cash restructuring charges for such period shall not be included as an expense.

6. PERMITTED LOANS

(Section 5.4): The following loans are outstanding and payable to Borrower as of the date of this Agreement:

- (i) Loan due from Stewart Vassie
 - (ii) Loan due from Robert Hall
-
-

7. OTHER COVENANTS

(Section 5.2): 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, Borrower shall at all times maintain all of its operating accounts with Silicon.

(2) **Subordination of Inside Debt.** All present and future indebtedness 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 the following: Insight Capital Partners IV, L.P., Insight Capital Partners (Cayman) IV, L.P., Insight Capital Partners IV (Fund B), L.P., and Insight Capital Partners IV (Co-Investors, L.P.). 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) **Ratification of Intellectual Property Security Agreement.** Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Intellectual Property Security Agreement dated as of April 25, 2001 between Borrower and Silicon (the "IP Security Agreement"), and acknowledges, confirms and agrees that the IP Security Agreement remains in full force and effect and contains an accurate and complete listing of all Intellectual Property Collateral as defined in the IP Security Agreement.

Borrower:

EXCHANGE APPLICATIONS, INC.

By: 
Name:
Title:

Silicon:

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

By: _____
Name:
Title:

EXSTATIC SOFTWARE, INC.

By: 
Name:
Title:

The undersigned ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Unconditional Guaranty dated April 24, 2001 (the "Guaranty") and a certain Security Agreement dated April 24, 2001 (the "Security Agreement") and acknowledges, confirms and agrees that the Guaranty and the Security Agreement remain in full force and effect and shall in no way be limited by the execution of this Agreement, or any other documents, instruments and/or agreements executed and/or delivered in connection herewith.

EXCHANGE APPLICATIONS SECURITIES CORPORATION

By: 

Name:

Title:

**FIRST LOAN MODIFICATION AGREEMENT TO
AMENDED AND RESTATED LOAN AND SECURITY AGREEMENT**

This First Loan Modification Agreement to Amended and Restated Loan and Security Agreement (this "Loan Modification Agreement") is entered into as of Sept 17, 2002, by and 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 **EXCHANGE APPLICATIONS, INC.**, d/b/a Xchange, Inc., with offices at One Lincoln Plaza, 89 South Street, Boston, Massachusetts 02110 and **EXSTATIC SOFTWARE, INC.**, formerly known as Gino Borland, Inc., with offices at 4555 Roosevelt Way, Seattle, Washington 98015 (individually and collectively, "Borrower").

1. **DESCRIPTION OF EXISTING INDEBTEDNESS AND OBLIGATIONS.** Among other indebtedness and obligations which may be owing by Borrower to Bank, Borrower is indebted to Bank pursuant to a certain Amended and Restated Loan and Security Agreement dated as of May 2, 2002, between Borrower and Bank, as amended from time to time (as amended, the "Loan Agreement"). Capitalized terms used but not otherwise defined herein shall have the same meaning as in the Loan Agreement.

2. **DESCRIPTION OF COLLATERAL.** Repayment of the Obligations is secured by the Collateral as described in the Loan Agreement (together with any other collateral security granted to Bank, the "Security Documents").

Hereinafter, the Security Documents, together with all other documents evidencing or securing the Obligations shall be referred to as the "Existing Loan Documents".

3. **DESCRIPTION OF CHANGE IN TERMS.**

Modification to Loan Agreement. The Loan Agreement shall be amended by deleting Section 1 of the Schedule thereto and inserting in lieu thereof the following:

"1. CREDIT LIMIT

(Section 1.1): An amount not to exceed **\$5,500,000** at any one time outstanding."

4. **FEES.** Borrower shall pay to Bank a modification fee equal to Fifteen Thousand Dollars (\$15,000.00), which fee shall be due on the date hereof and shall be deemed fully earned as of the date hereof. The Borrower shall also reimburse Bank for all legal fees and expenses incurred in connection with this amendment to the Existing Loan Documents.

5. **CONSISTENT CHANGES.** The Existing Loan Documents are hereby amended wherever necessary to reflect the changes described above.

6. **RATIFICATION OF LOAN DOCUMENTS.** Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of all security or other collateral granted to the Bank, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations.

7. **NO DEFENSES OF BORROWER.** Borrower agrees that, as of this date, it has no defenses against the obligations to pay any amounts under the Obligations.

8. **CONTINUING VALIDITY.** Borrower understands and agrees that in modifying the existing Obligations, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the Existing Loan Documents. Except as expressly modified pursuant to this Loan Modification Agreement, the terms of the Existing Loan Documents remain unchanged and in full force and effect. Bank's agreement to modifications to the existing Obligations pursuant to this Loan Modification Agreement in no way shall obligate Bank to make any future modifications to the Obligations. Nothing in this Loan Modification Agreement shall constitute a satisfaction of the Obligations. It is the intention of Bank and Borrower to retain as liable parties all makers of Existing Loan Documents, unless the party is expressly released

by Bank in writing. No maker will be released by virtue of this Loan Modification Agreement.

9. JURISDICTION/VENUE. Borrower accepts for itself and in connection with its properties, unconditionally, the 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 Loan Modification Agreement; provided, however, that if for any reason Bank cannot avail itself of the courts of the Commonwealth of Massachusetts, then venue shall lie 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.

10. COUNTERSIGNATURE. This Loan Modification Agreement shall become effective only when it shall have been executed by Borrower and Bank.

[The remainder of this page is intentionally left blank]

This Loan Modification Agreement is executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first written above.

BORROWER:**EXCHANGE APPLICATIONS, INC.**By: [Signature]Name: J. CHRIS WAGNERTitle: President/CEO**BANK:****SILICON VALLEY BANK**

By: _____

Name: _____

Title: _____

EXETATIC SOFTWARE, INC.By: [Signature]Name: J. CHRIS WAGNERTitle: President/CEO

731808.1

ACCOUNTS RECEIVABLE FINANCING AGREEMENT

This ACCOUNTS RECEIVABLE FINANCING AGREEMENT is entered into this 2nd day of May, 2002 by and among (i) **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" (FAX 617-969-5965) ("Bank") and (ii) **EXCHANGE APPLICATIONS, INC.** d/b/a Xchange, Inc., One Lincoln Plaza, 89 South Street, Boston, Massachusetts 02110 and **EXSTATIC SOFTWARE, INC.**, formerly known as Gino Borland, Inc., 4555 Roosevelt Way Seattle, Washington 98105 (FAX 206-675-8554) (individually and collectively, "Borrower") and provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

1. **Definitions.** In this Agreement:

"Accounts" are all existing and later arising accounts, contract rights, and other obligations owed Borrower in connection with its sale or lease of goods (including licensing software and other technology) or provision of services, all credit insurance, guaranties, other security and all merchandise returned or reclaimed by Borrower and Borrower's Books relating to any of the foregoing.

"Account Balance" is the aggregate outstanding Advances made hereunder.

"Account Debtor" is as defined in the Code and shall include, without limitation, any person liable on any Financed Receivable, such as, a guarantor of the Financed Receivable and any issuer of a letter of credit or banker's acceptance.

"Adjustments" are all discounts, allowances, returns, disputes, counterclaims, offsets, defenses, rights of recoupment, rights of return, warranty claims, or short payments, asserted by or on behalf of any Account Debtor for any Financed Receivable.

"Advance" is defined in Section 2.2.

"Advance Rate" is eighty percent (80.0%), net of any offsets related to each specific Account Debtor, or such other percentage as Bank establishes under Section 2.2.

"Applicable Rate" is a per annum rate equal to the "Prime Rate" plus two and one half percent (2.50%).

"Borrower's Books" are all Borrower's books and records including ledgers, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition and all computer programs or discs or any equipment containing the information.

"Code" is the Uniform Commercial Code as adopted by The Commonwealth of Massachusetts (presently, Mass. Gen. Laws, Ch. 106), as may be amended and in effect from time to time.

"Collateral" is attached as Exhibit "A".

"Collateral Handling Fee" is defined in Section 4.4.

"Collections" are all funds received by Bank from or on behalf of an Account Debtor for Financed Receivables.

"Compliance Certificate" is attached as Exhibit "B".

"Contingent Obligation" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (i) any indebtedness, lease, dividend, letter of credit or other obligation of another Person such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (ii) any obligations for undrawn letters of credit for the account of that Person; and (iii) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under the guarantee or other support arrangement.

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

"Early Termination Fee" is defined in Section 5.3.

"EBITDA" means earnings before interest, taxes, depreciation and amortization in accordance with GAAP. For the purposes of calculating EBITDA hereunder, Borrower's non-cash restructuring charges for such period shall not be included as an expense.

"Event of Default" is defined in Section 10.

"Facility Amount" is Four Million Dollars (\$4,000,000.00).

"Facility Fee" is defined in Section 4.3.

"Facility Period" is the period beginning on this date and continuing until one year from the date of this Agreement, unless the period is terminated sooner by Bank with notice to Borrower or by Borrower pursuant to Section 5.3.

"Finance Charges" is defined in Section 4.2.

"Financed Receivables" are all those accounts, receivables, chattel paper, instruments, contract rights, documents, general intangibles, letters of credit, drafts, bankers acceptances, and rights to payment, and all proceeds, including their proceeds (collectively "receivables"), which Bank finances and make an Advance. A Financed Receivable stops being a Financed Receivable (but remains Collateral) when the Advance made for the Financed Receivable has been finally paid.

"Financed Receivable Balance" is the total outstanding amount, at any time, of all Financed Receivables.

"GAAP" is generally accepted accounting principles as adopted by the Financial Accounting Standards Board.

"Good Faith Deposit" is described in Section 4.8.

"Guaranteed Loan" is described in Section 3.

"Indebtedness" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations and (d) Contingent Obligations.

"Ineligible Receivable" is any accounts receivable:

- (a) that is unpaid (90) calendar days after the invoice date; or
- (b) that is owed by an Account Debtor that has filed, or has had filed against it, any bankruptcy case, assignment for the benefit of creditors, receivership, or Insolvency Proceeding or who has become insolvent (as defined in the United States Bankruptcy Code) or who is generally not paying its debts as they become due; or
- (c) for which there has been any breach of warranty or representation in Section 7 or any breach of any covenant in this Agreement; or
- (d) for which the Account Debtor asserts any discount, allowance, return, dispute, counterclaim, offset, defense, right of recoupment, right of return, warranty claim, or short payment, unless cured by an Adjustment.

"Insolvency Proceeding" are proceedings by or against any person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Invoice Transmittal" shows accounts receivable which Bank may finance and, for each receivable, includes the Account Debtor's, name, address, invoice amount, invoice date and invoice number and is signed by Borrower's authorized representative.

"Lockbox" is described in Section 7.3(J).

"Minimum Finance Charge" is a minimum monthly Finance Charge of \$4,000.00 payable to the Bank.

"Obligations" are all advances, liabilities, obligations, covenants and duties owing, arising, due or payable by Borrower to Bank now or later under this Agreement or any other document, instrument or agreement, account (including those acquired by assignment) primary or secondary, such as all Advances, the Guaranteed Loan, Finance Charges, Facility Fee, Early Termination Fee, Collateral Handling Fee, interest, fees, expenses, professional fees and attorneys' fees, or other amounts now or hereafter owing by Borrower to Bank.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Prime Rate" is Bank's most recently announced "Prime Rate," even if it is not Bank's lowest rate.

"Reconciliation Day" is the last calendar day of each month.

"Reconciliation Period" is each calendar month.

"Schedule" is the schedule of exceptions attached hereto.

"Subordinated Debt" is debt incurred by Borrower subordinated to Borrower's debt to Bank (and identified as subordinated by Borrower and Bank, pursuant to a subordination agreement entered into between the Bank, the Borrower and the subordinated creditor), on terms acceptable to Bank.

"Subsidiary" is for any Person, joint venture, or any other business entity of which more than 50% of the voting stock or other equity interests is owned or controlled, directly or indirectly, by the Person or one or more Affiliates of the Person.

2. Financing of Accounts Receivable.

2.1. Request for Advances. During the Facility Period, Borrower may offer accounts receivable to Bank and request that the Bank finance such accounts receivables, if there is not an Event of Default. Borrower will deliver an Invoice Transmittal for each accounts receivable it offers. Bank may rely on information on or with the Invoice Transmittal.

2.2. Acceptance of Accounts Receivable. Subject to the terms of this Agreement, Bank may, in its sole discretion, finance accounts receivable. Bank may approve any Account Debtor's credit before agreeing to finance any accounts receivable. When Bank agrees to finance a receivable, it will extend credit to Borrower in an amount up to the result of the Advance Rate multiplied by the face amount of the receivable (the "Advance"). Bank may, in its discretion, change the percentage of the Advance Rate. When Bank makes an Advance, the receivable becomes a "Financed Receivable." All representations and warranties in Section 7 must be true as of the date of the Invoice Transmittal and of the Advance and no Event of Default exists or would occur as a result of the Advance. The aggregate amount of all Financed Receivables outstanding at any time may not exceed the Facility Amount. Although Bank's obligation to make an Advance is discretionary in each instance, Bank acknowledges that (subject to verifications and other terms and conditions provided herein with respect to Account Debtors generally), it is the usual practice of Bank to finance accounts receivable due and owing from those Account Debtors that are Fortune 1000 type companies.

3. Guaranteed Loan. The Bank has made a loan to the Borrower pursuant to a certain Amended and Restated Loan and Security Agreement of even date herewith (the "Guaranteed Loan").

4. Collections, Finance Charges, Remittances and Fees. The Obligations shall be subject to the following fees and Finance Charges. Fees and Finance Charges may, in Bank's discretion, be charged as an Advance, and shall thereafter accrue fees and Finance Charges as described below. Bank may, in its discretion, charge fees and Finance Charges to Borrower's deposit account maintained with Bank.

4.1. Collections. Collections will be credited to the Financed Receivables Balance, but if there is an Event of Default, Bank may apply Collections to the Obligations in any order it chooses. If Bank receives a payment for both a Financed Receivable and a non Financed Receivable, the funds will first be applied to the Financed Receivable and, if there is not an Event of Default, the excess will be remitted to the Borrower, subject to Section 4.7.

4.2. Finance Charges. In computing Finance Charges on the Obligations, all Collections received by Bank shall be deemed applied by Bank on account of the Obligations three (3) Business Days after receipt of the Collections. Borrower will pay a finance charge (the "Finance Charge"), which is equal to the greater of (i) the Applicable Rate multiplied by the number of days in the Reconciliation Period multiplied by the outstanding average daily Financed Receivable Balance for that Reconciliation Period, or (ii) the Minimum Finance Charge.

4.3. Facility Fee. A fully earned, non-refundable facility fee of Forty Thousand Dollars (\$40,000.00) is due upon execution of this Agreement.

4.4. Collateral Handling Fee. On each Reconciliation Day, Borrower will pay to Bank a collateral handling fee, equal to 0.25% per month of the average daily Financed Receivable Balance outstanding during the applicable Reconciliation Period. During the continuance of an Event of Default, the Collateral Handling Fee will increase an additional 0.375% effective immediately before the Event of Default.

4.5. Accounting. After each Reconciliation Period, Bank will provide an accounting of the transactions for that Reconciliation Period, including the amount of all Financed Receivables, all Collections, Adjustments, Finance Charges, Collateral Handling Fee and the Facility Fee. If Borrower does not object to the accounting in writing within thirty (30) days it is presumed correct. All Finance Charges and other interest and fees are calculated on the basis of a 360 day year and actual days elapsed.

4.6. Deductions. Bank may deduct fees, Finance Charges and other amounts due pursuant to this Agreement from any Advances made or Collections received by Bank.

4.7. Account Collection Services. All Borrower's receivables are to be paid to the same address/or party and Borrower and Bank must agree on such address. If Bank collects all receivables and there is not an Event of Default or an event that with notice or lapse of time will be an Event of Default, not later than three (3) days of receipt of those collections, Bank will give Borrower the receivables collections it receives for receivables other than Financed Receivables and/or amount in excess of the amount for which Bank has made an Advance to Borrower, less any amount due to Bank, such as the Finance Charge, the Facility Fee, other fees and expenses, or otherwise. This Section does not impose any affirmative duty on Bank to do any act other than to turn over amounts. All receivables and collections are Collateral and if an Event of Default occurs, Bank need not remit collections of Collateral and may apply them to the Obligations.

4.8. Good Faith Deposit. Borrower has paid to Bank a Good Faith Deposit of \$10,000.00 to initiate Bank's due diligence review process. Any portion of the deposit not utilized to pay expenses will be applied to the Facility Fee.

5. Repayment of Obligations.

5.1. Repayment on Maturity. Borrower will repay each Advance on the earliest of: (a) payment of the Financed Receivable in respect which the Advance was made, (b) the Financed Receivable becomes an Ineligible Receivable, (c) when any Adjustment is made to the Financed Receivable (but only to the extent of the Adjustment if the Financed Receivable is not otherwise an Ineligible Receivable), or (d) the last day of the Facility Period (including any early termination). Each payment will also include all accrued Finance Charges on the Advance and all other amounts due hereunder.

5.2. Repayment on Event of Default. When there is an Event of Default, Borrower will, if Bank demands (or, in an Event of Default under Section 10(B), immediately without notice or demand from Bank) repay all of the Advances. The demand may, at Bank's option, include the Advance for each Financed Receivable then outstanding and all accrued Finance Charges, the Early Termination Fee, Collateral Handling Fee, attorneys and professional fees, court costs and expenses, and any other Obligations.

5.3. Early Termination of Agreement. This Agreement may be terminated prior to the last day of the Facility Period as follows: (i) by Borrower, effective three Business Days after written notice of termination is given to Bank; or (ii) by Bank at any time after the occurrence and during the continuance of an Event of Default, without notice, effective immediately. If this Agreement is terminated by Bank (after the occurrence and during the continuance of an Event of Default) or Borrower, Borrower shall pay to Bank a termination fee in an amount equal to \$50,000.00 (the "Early Termination Fee"). The termination fee shall be due and payable on the effective date of termination and thereafter shall bear interest at a rate equal to the highest rate applicable to any of the Obligations. Notwithstanding the foregoing, Bank agrees to waive the Early Termination Fee if Bank agrees to refinance the Obligations (in its sole and exclusive discretion) prior to the last day of the Facility Period.

6. Power of Attorney. Borrower irrevocably appoints Bank and its successors and assigns its attorney-in-fact and authorizes Bank, regardless of whether there has been an Event of Default, to:

(A) sell, assign, transfer, pledge, compromise, or discharge all or any part of the Financed Receivables:

(B) demand, collect, sue, and give releases to any Account Debtor for monies due and compromise, prosecute, or defend any action, claim, case or proceeding about the Financed Receivables, including filing a claim or voting a claim in any bankruptcy case in Bank's or Borrower's name, as Bank chooses:

(C) prepare, file and sign Borrower's name on any notice, claim, assignment, demand, draft, or notice of or satisfaction of lien or mechanics' lien or similar document;

(D) notify all Account Debtors to pay Bank directly;

(E) receive, open, and dispose of mail addressed to Borrower;

(F) endorse Borrower's name on check or other instruments (to the extent necessary to pay amounts owed pursuant to this Agreement); and

(G) execute on Borrower's behalf any instruments, documents, financing statements to perfect Bank's interests in the Financed Receivables and Collateral and do all acts and things necessary or expedient, as determined solely and exclusively by the Bank, to protect, preserve, and otherwise enforce the Bank's rights and remedies under this Agreement, as directed by the Bank.

7. Representations, Warranties and Covenants.

7.1. Representations and Warranties. Borrower represents and warrants for each Financed Receivable:

(A) Borrower is the owner with legal right to sell, transfer and assign it;

(B) The correct amount is on the Invoice Transmittal and is not disputed;

(C) Payment is not contingent on any obligation or contract and it has fulfilled all its obligations as of the Invoice Transmittal date, provided, however, certain obligations may be outstanding pursuant to maintenance contracts with the Account Debtor which have been disclosed to Bank; provided, however, not more than 40% of the aggregate amount the Financed Receivables outstanding shall be subject to maintenance contracts;

(D) It is based on an actual sale and delivery of goods and/or services rendered, due to Borrower, it is not more than ninety (90) days past the invoice date or in default, has not been previously sold, assigned, transferred, or pledged and is free of any liens, security interests and encumbrances;

(E) There are no defenses, offsets, counterclaims or agreements for which the Account Debtor may claim any deduction or discount;

(F) Borrower reasonably believes no Account Debtor is insolvent or subject to any Insolvency Proceedings;

(G) Borrower has not filed or had filed against it Insolvency Proceedings and does not anticipate any filing;

(H) Bank has the right to endorse and/ or require Borrower to endorse all payments received on Financed Receivables and all proceeds of Collateral; and

(I) No representation, warranty or other statement of Borrower with respect to such Financed Receivables in any certificate or written statement given to Bank contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement contained in the certificates or statement not materially misleading.

7.2. Additional Representations and Warranties. Borrower represents and warrants as follows:

(A) Borrower is duly existing and in good standing in its state of formation and qualified and licensed to do business in, and in good standing in, each jurisdiction for which the failure to so qualify would have a material adverse effect on Borrower's business or operations. The execution, delivery and performance of this Agreement has been duly authorized, and does not conflict with Borrower's organizational documents or constitute an Event of Default under any material agreement by which Borrower is bound. Borrower is not in default under any material agreement to which or by which it is bound.

(B) Borrower has good title to the Collateral. All inventory is in all material respects of good and marketable quality, free from material defects.

(C) Except as set forth on the Schedule hereto, there are no material actions or proceedings pending or, to Borrower's knowledge, threatened by or against Borrower or any Subsidiary of Borrower.

(D) All consolidated financial statements for Borrower and any Subsidiary of Borrower delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

(E) Borrower is generally able to pay its debts (including trade debts) as they mature.

(F) No representation, warranty or other statement of Borrower in any certificate or written statement given to Bank contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not materially misleading.

(G) Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, for which the failure to comply with would have a material adverse effect on Borrower's business or operations. None of Borrower's properties or assets has been used by Borrower, to the best of Borrower's knowledge, by previous persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower has timely filed all required tax returns and paid, or made adequate provision to pay, all taxes. Borrower has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all government authorities for which the failure to so obtain would have a material adverse effect on Borrower's business or operations.

7.3. Affirmative Covenants. Borrower will do all of the following:

(A) Maintain its corporate existence and good standing in its jurisdiction of incorporation and maintain its qualification in each jurisdiction for which the failure to so qualify would have a material adverse effect on Borrower's business or operations.

(B) Pay all its taxes including gross payroll, withholding and sales taxes when due and will deliver satisfactory evidence of payment if requested, except for those taxes being contested in good faith for which Borrower maintains adequate reserves in accordance with GAAP.

(C) Provide a written report within sixty (60) days after the invoice date respecting any Financed Receivable (or as and when otherwise directed by the Bank), if payment of any Financed Receivable does not occur by its due date and include, if known, the reasons for the delay.

(D) Borrower shall deliver to Bank: (i) as soon as available, but no later than thirty(30) days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations during the period, in a form acceptable to Bank and certified Borrower; (ii) as soon as available, but no later than one hundred twenty (120) days after the end of Borrower's fiscal year or with respect to Borrower's 2001 statements, by May 15, 2002, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm acceptable to Bank (provided, however, Bank acknowledges that Borrower's fiscal year 2001 statement will have a qualification); (iii) within five (5) days of filing, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission; and (iv) budgets, sales projections, operating plans or other financial information Bank requests.

(E) Borrower shall, at all times insure its tangible personal property Collateral in the amount of not less than Ten Million Dollars (\$10,000,000.00) and carry such other business insurance, with insurers reasonably acceptable to Bank, in such form and amounts as Bank may reasonably require, and Borrower shall provide evidence of such insurance to Bank, so that Bank is satisfied that such insurance is, at all times, in full force and effect. All such insurance policies shall name Bank as an additional loss payee, and shall contain a lenders loss payee endorsement in form reasonably acceptable to Bank. Upon receipt of the proceeds of any such insurance, Bank shall apply such proceeds in reduction of the Obligations as Bank shall determine in its sole discretion, except that, provided no Event of Default has occurred and is continuing, Bank shall release to Borrower insurance proceeds with respect to equipment totaling less than \$100,000, which shall be utilized by Borrower for the replacement of the equipment with respect to which the insurance proceeds were paid. Bank may require reasonable assurance that the insurance proceeds so released will be so used. If Borrower fails to provide or pay for any insurance, Bank may, but is not obligated to, obtain the same at Borrower's expense. Borrower shall promptly deliver to Bank copies of all reports made to insurance companies.

(F) Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's security interest in the Collateral or to effect the purposes of this Agreement.

(G) Provide Bank with a Compliance Certificate no later than thirty (30) days following each quarter end or as requested by Bank.

(H) Provide Bank with, as soon as available, but no later than thirty (30) days following each fiscal quarter, a company prepared balance sheet and income statement, prepared under GAAP, consistently applied, covering Borrower's operations during the period together with an aged listing of accounts receivables and accounts payable. All of the foregoing shall be in form and substance reasonably satisfactory to the Bank.

(I) Provide Bank with, as soon as available, but no later than thirty (30) days following each month, a schedule of Deferred Revenue.

(J) Immediately notify, transfer and deliver to Bank all collections Borrower receives for

Financed Receivables (and, as and when required hereunder, for all receivables).

(K) Borrower shall direct each Account Debtor (and each depository institution where proceeds of accounts receivable are on deposit) to make payments with respect to all receivables to a lockbox account established with the Bank ("Lockbox") or to wire transfer payments to a cash collateral account that Bank controls, as and when directed by the Bank from time to time, at its option and at the sole and exclusive discretion of the Bank.

(L) Borrower will allow Bank to audit Borrower's Collateral, including, but not limited to, Borrower's Accounts and accounts receivable, at Borrower's expense, no later than ninety (90) days after the execution of this Agreement and annually thereafter, upon reasonable notice. Provided, however, if an Event of Default has occurred and is continuing, Bank may audit Borrower's Collateral, including, but not limited to, Borrower's Accounts and accounts receivable at Bank's sole and exclusive discretion and without notification and authorization from Borrower.

(M) Borrower shall have EBITDA of not less than \$1.00 for the quarter ending June 30, 2002 and each quarter thereafter.

(N) Maintain its primary operating and depository accounts with Bank.

7.4. Negative Covenants. Except as disclosed on the Schedule, Borrower will not do any of the following without Bank's prior written consent:

(A) Assign, transfer, sell or grant, or permit any lien or security interest in the Collateral, except for transfers (i) of inventory in the ordinary course of business and (ii) of worn-out or obsolete equipment.

(B) Create, incur, assume, or be liable for any indebtedness for borrowed money other than indebtedness to Bank or Subordinated Debt.

(C) Directly or indirectly enter into or permit to exist any material transaction with any affiliate or Subsidiary of Borrower or make any distributions to any affiliate or Subsidiary, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a nonaffiliated person. Notwithstanding the foregoing, Borrower may make transfers to Exchange Applications Securities Corporation.

(D) 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. Notwithstanding the foregoing, a Subsidiary may merge or consolidate into another Subsidiary or into Borrower.

(E) Become an "investment company" or a company controlled by an "investment company," under the Investment Company Act of 1940 or 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 for which the failure to so comply would have a material adverse effect on Borrower's business or operations, or permit any of its Subsidiaries to do so.

(F) Without at least thirty (30) days prior written notice, relocate its principal executive office or add any new offices or business locations or keep any Collateral in any additional

locations, or (ii) change its state of formation, or (iii) change its organizational structure, or (iv) change its legal name, or (v) change any organizational number (if any) assigned by its state of formation.

(G) Keep any Collateral in the possession of any third party bailee (such as at a warehouse). In the event that Borrower, after the date hereof, intends to store or otherwise deliver any Collateral to such a bailee, then Borrower shall receive the prior written consent of Bank and such bailee must acknowledge in writing that the bailee is holding such Collateral for the benefit of Bank.

(H) Borrower agrees that any disposition of the Collateral in violation of this Agreement, by either the Borrower or any other Person, shall be deemed to violate the rights of the Bank under the Code.

8. **Adjustments.** If any Account Debtor asserts a discount, allowance, return, offset, defense, warranty claim, or the like on a Financed Receivable (an "Adjustment") or if Borrower breaches any of the representations, warranties or covenants set forth in Section 7, Borrower will promptly advise Bank. Borrower will resell any rejected, returned, or recovered personal property for Bank, at Borrower's expense, and pay proceeds to Bank. While Borrower has returned goods that are Borrower property, Borrower will segregate and mark them "Subject to a Security Interest on behalf of Silicon Valley Bank." Bank has a security interest in the Financed Receivables and until receipt of payment, has the right to take possession of any rejected, returned, or recovered personal property.

9. **Security Interest.** Borrower grants Bank a continuing security interest in all presently existing and later acquired Collateral to secure all Obligations and performance of each of Borrower's duties under this Agreement. Any security interest shall be a first priority security interest in the Collateral. Bank may place a "hold" on any deposit account pledged as Collateral.

10. **Events of Default.** Any one or more of the following is an Event of Default.

(A) Borrower fails to pay any amount owed to Bank when due;

(B) Borrower files or has filed against it any Insolvency Proceedings or any assignment for the benefit of creditors, or appointment of a receiver or custodian for any of its assets;

(C) Borrower becomes insolvent or is generally not paying its debts as they become due;

(D) Any involuntary lien, garnishment, attachment attaches to the Financed Receivables or any involuntary lien, garnishment, attachment in excess of \$100,000 attaches to any other Collateral or the service of process upon Bank seeking to attach, by mesne or trustee process any funds of Borrower in excess of \$100,000 on deposit with Bank;

(E) Borrower breaches any covenant, agreement, warranty, or representation set forth in this Agreement or any other agreement between Borrower and Bank is an immediate Event of Default;

(F) Borrower is in default under any document, instrument or agreement evidencing any debt, obligation or liability in favor of Bank its affiliates or vendors regardless of whether the debt, obligation or liability is direct or indirect, primary or secondary, or fixed or contingent;

(G) An event of default occurs under the Guaranteed Loan.

(H) An event of default occurs under any guaranty of the Obligations or any material provision of any guaranty of the Obligations is not valid or enforceable or a guaranty is repudiated

or terminated;

(I) A material default or Event of Default occurs under any agreement between Borrower and any creditor of Borrower that signed a subordination agreement with Bank;

(J) Any creditor that has signed a subordination agreement with Bank breaches any terms of the subordination agreement; or

(K) Any of the following occurs: (i) a material impairment in the perfection or priority of Bank's security interest in the Collateral or in the value of such Collateral taken as a whole; or (ii) a material adverse change in the business, operations, or condition (financial or otherwise) of the Borrower occurs; or (iii) a material impairment of the prospect of repayment of any portion of the Obligations; or (iv) Bank determines, based upon information available to it and in its reasonable judgment, that there is a reasonable likelihood that Borrower shall fail to comply with one or more of the financial covenants in Section 7.3 during the next succeeding financial reporting period.

11. Remedies.

11.1. **Remedies Upon Default.** When an Event of Default exists, (1) Bank may stop financing receivables or extending credit to Borrower; (2) at Bank's option and on demand, all or a portion of the Obligations (or, for to an Event of Default described in Section 10(B), automatically and without demand) are due and payable in full; (3) the Bank may 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; (4) Bank may exercise all rights and remedies under this Agreement and applicable law, including those of a secured party under the Code, power of attorney rights in Section 6 for the Collateral, and the right to ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, collect, dispose of, sell, lease, use, and realize upon all Financed Receivables and Collateral in any commercial manner; and (5) Bank may 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 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. Borrower agrees that any notice of sale required to be given to Borrower is deemed given if at least ten (10) days before the sale may be held.

11.2. **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 guaranties held by Bank on which Borrower is liable.

11.3. **Default Rate.** After the occurrence and during the continuance of an Event of Default, all Obligations shall accrue interest at the Applicable Rate plus five percent (5.0%) per annum.

12. **Fees, Costs and Expenses.** The Borrower will pay on demand all reasonable out-of-pocket fees, costs and expenses (including attorneys' and professionals fees with costs and expenses) that Bank incurs from: (a) preparing, negotiating, administering, and enforcing this Agreement or related agreement, including any amendments, waivers or consents, (b) any litigation or dispute relating to the Financed Receivables, the Collateral, this Agreement or any other agreement, (c) enforcing any rights against Borrower or any guarantor, or any Account Debtor, (d) protecting or enforcing its interest in the Financed Receivables or other Collateral, (e) collecting the Financed Receivables and the Obligations, and (f) any bankruptcy case or insolvency proceeding involving Borrower, any Financed Receivable, the Collateral, any Account Debtor.

13. **Choice of Law, Venue and Jury Trial Waiver.** This Agreement shall be construed, governed, and enforced pursuant to the laws (without regard to conflict of law principles) of The Commonwealth of

Massachusetts. Borrower and Bank each submits to the exclusive jurisdiction of the State and Federal courts in Suffolk County, Massachusetts.

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 AGREEMENT 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.

14. **Notices.** Notices or demands by either party about this Agreement must be in writing and personally delivered or sent by an overnight delivery service, by certified mail postage prepaid return receipt requested, or by FAX to the addresses listed at the beginning of this Agreement. A party may change notice address by written notice to the other party.

15. **General Provisions.**

15.1. **Successors and Assigns.** This Agreement binds and is for the benefit of successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights under it without Bank's prior written consent which may be granted or withheld in Bank's discretion. Bank may, without the consent of or notice to Borrower, sell, transfer, or grant participation in any part of Bank's obligations, rights or benefits under this Agreement.

15.2. **Indemnification.** Borrower will indemnify, defend and hold harmless Bank and its officers, employees, and agents against: (a) obligations, demands, claims, and liabilities asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) losses or expenses incurred, or paid by Bank from or consequential to transactions between Bank and Borrower (including reasonable attorneys fees and expenses), except for any of the foregoing arising as a result of Bank's gross negligence or willful misconduct.

15.3. **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 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, 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 unmaturing and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, 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.

15.4. **Ratification of Intellectual Property Security Agreement.** Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Intellectual Property Security Agreement dated as of April 25, 2001 between Borrower and Bank, and acknowledges, confirms and agrees that said Intellectual Property Security Agreement remains in full force and effect and contains an accurate and complete listing of all Intellectual Property Collateral as defined in said Intellectual Property Security Agreement.

15.5. **Ratification of Perfection Certificate.** Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in a certain Perfection Certificate dated as of April 25, 2001 between Bank and Borrower, and acknowledges, confirms and agrees that the disclosures and information Borrower provided to Bank in the Perfection Certificate has not changed, as of the date hereof.

15.6. **Time of Essence.** Time is of the essence for performance of all obligations in this Agreement.

15.7. Application of Funds. Borrower agrees that any disposition of the Collateral in violation of this Agreement, by either the Borrower or any other Person, shall be deemed to violate the rights of the Bank under the Code.

15.8. Severability of Provision. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

15.9. Amendments in Writing, Integration. All amendments to this Agreement must be in writing. This Agreement is the entire agreement about this subject matter and supersedes prior negotiations or agreements.

15.10. Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts and when executed and delivered are one Agreement.

15.11. Remedies Cumulative. Bank's rights and remedies under this Agreement, or any other documents, instruments and agreement by and between Borrower and Bank are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay is not a waiver, election, or acquiescence. No waiver hereunder shall be effective unless signed by Bank and then is only effective for the specific instance and purpose for which it was given.

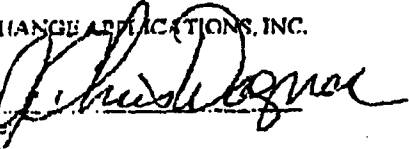
15.12. Survival. All covenants, representations and warranties made in this Agreement continue in force while any Financed Receivable amount remains outstanding. Borrower's indemnification obligations survive until all statutes of limitations for actions that may be brought against Bank have run.

15.13. Confidentiality. Bank will use the same degree of care handling Borrower's confidential information that it uses for its own confidential information, but may disclose information; (i) to its subsidiaries or affiliates in connection with their business with Borrower, (ii) to prospective transferees or purchasers of any interest in the Agreement, (iii) as required by law, regulation, subpoena, or other order, (iv) as required in connection with an examination or audit and (v) as it considers appropriate exercising the remedies under this Agreement. Confidential information does not include information that is either: (a) in the public domain or in Bank's possession when disclosed, or becomes part of the public domain after disclosure to Bank; or (b) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

EXECUTED under seal as of the date first written above.

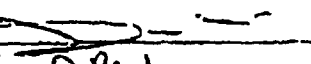
EXCHANGE APPLICATIONS, INC.

By: _____
Name: _____
Title: _____




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

By: _____
Name: _____
Title: _____


O. Reich
SVP

EXSTATIC SOFTWARE, INC.

By: _____
Name: _____
Title: _____


JEF

The undersigned ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Unconditional Guaranty dated April 24, 2001 (the "Guaranty") and a certain Security Agreement dated April 24, 2001 (the "Security Agreement") and acknowledges, confirms and agrees that the Guaranty and the Security Agreement remain in full force and effect and shall in no way be limited by the execution of this Agreement, or any other documents, instruments and/or agreements executed and/or delivered in connection herewith.

EXCHANGE APPLICATIONS SECURITIES CORPORATION

By: 

Name:

Title:

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; and

Any copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, now owned or later acquired; any patents, trademarks, service marks and applications therefor; trade styles, trade names, any trade secret rights, including any rights to unpatented inventions, know-how, operating manuals, license rights and agreements and confidential information, now owned or hereafter acquired; or any claims for damages by way of any past, present and future infringement of any of the foregoing; and

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.



**SILICON VALLEY BANK
SPECIALTY FINANCE DIVISION**

Compliance Certificate

I, as authorized officer of _____ ("Borrower") certify under the Accounts Receivable Financing Agreement (the "Agreement") between Borrower and Silicon Valley Bank ("Bank") as follows.

Borrower represents and warrants for each Financed Receivable:

It is the owner with legal right to sell, transfer and assign it;

The correct amount is on the Invoice Transmittal and is not disputed;

Payment is not contingent on any obligation or contract and, except as disclosed to Bank, it has fulfilled all its obligations as of the Invoice Transmittal date;

It is based on an actual sale and delivery of goods and/or services rendered, due to Borrower, it is not more than ninety (90) days past the invoice date or in default, has not been previously sold, assigned, transferred, or pledged and is free of any liens, security interests and encumbrances;

There are no defenses, offsets, counterclaims or agreements for which the Account Debtor may claim any deduction or discount;

It reasonably believes no Account Debtor is insolvent or subject to any Insolvency Proceedings;

It has not filed or had filed against it proceedings and does not anticipate any filing;

Bank has the right to endorse and/ or require Borrower to endorse all payments received on Financed Receivables and all proceeds of Collateral.

No representation, warranty or other statement of Borrower in any certificate or written statement given to Bank with respect to any Financed Receivables contains any untrue statement of a material fact or omits to state a material fact necessary to make the statement contained in the certificates or statement not materially misleading.

Additionally, Borrower represents and warrants as follows:

Borrower is duly existing and in good standing in its state of formation and qualified and licensed to do business in, and in good standing in, each jurisdiction for which the failure to so qualify would have a material adverse effect on Borrower's business or operations. The execution, delivery and performance of this Agreement has been duly authorized, and does not conflict with Borrower's organizational documents or constitute an Event of Default under any material agreement by which Borrower is bound. Borrower is not in default under any material agreement to which or by which it is bound.

Borrower has good title to the Collateral. All inventory is in all material respects of good and marketable quality,

free from material defects.

Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, for which the failure to comply with would have a material adverse effect on Borrower's business or operations. None of Borrower's properties or assets has been used by Borrower, to the best of Borrower's knowledge, by previous persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower has timely filed all required tax returns and paid, or made adequate provision to pay, all taxes. Borrower has obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all government authorities for which the failure to so obtain would have a material adverse effect on Borrower's business or operations.

All representations and warranties in the Agreement are true and correct in all material respects on this date.

Sincerely,

SIGNATURE

TITLE

DATE

708679.1

**FIRST AMENDMENT TO
ACCOUNTS RECEIVABLE FINANCING AGREEMENT**

This Amendment No. 1 (the "Amendment No. 1") to the Accounts Receivable Financing Agreement is entered into as of Aug 13, 2002, by and 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 **EXCHANGE APPLICATIONS, INC.**, d/b/a Xchange, Inc., with offices at One Lincoln Plaza, 89 South Street, Boston, Massachusetts 02110 and **EXSTATIC SOFTWARE, INC.**, formerly known as Gino Borland, Inc., with offices at 4555 Roosevelt Way, Seattle, Washington 98015 (individually and collectively, "Borrower").

1. **DESCRIPTION OF EXISTING INDEBTEDNESS AND OBLIGATIONS.** Among other indebtedness and obligations which may be owing by Borrower to Bank, Borrower is indebted to Bank pursuant to a certain Accounts Receivable Financing Agreement dated May 2, 2002 (as amended from time to time, the "Loan Agreement"). Capitalized terms used but not otherwise defined herein shall have the same meaning as in the Loan Agreement.

Hereinafter, all indebtedness and obligations owing by Borrower to Bank shall be referred to as the "Obligations".

2. **DESCRIPTION OF COLLATERAL.** Repayment of the Obligations is secured by the Collateral as described in the Loan Agreement dated May 2, 2002 (together with any other collateral security granted to Bank, the "Security Documents").

Hereinafter, the Security Documents, together with all other documents evidencing or securing the Obligations shall be referred to as the "Existing Loan Documents".

3. **DESCRIPTION OF CHANGE IN TERMS.**

A. **Modifications to Loan Agreement.**

1. The Loan Agreement shall be amended by inserting the following definitions to appear alphabetically in Section 1 thereof:

"Capitalization Event" is receipt by the Borrower of cash proceeds of at least Ten Million Dollars (\$10,000,000.00), from the issuance of its equity securities after August 14, 2002.

"Investor Term Sheet" shall mean a signed term sheet(s) in favor of and accepted by Borrower in writing, from an investor(s) acceptable to the Bank, evidencing such investor(s) commitment to purchase capital stock of the Borrower on terms and conditions acceptable to the Bank, which would result in a Capitalization Event."

2. The Loan Agreement shall be amended by deleting the following definition appearing in Section 1 thereof:

"Facility Amount" is Four Million Dollars (\$4,000,000.00)."

and inserting in lieu thereof the following:

"Facility Amount" is One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00)."

3. The Loan Agreement shall be amended by inserting the following provision, appearing as Section 7.3 thereof:

"(N) Borrower shall deliver to the Bank an Investor Term Sheet on or before September 4, 2002."

4. FEES. Borrower shall pay to Bank an amendment fee equal to Fifteen Thousand Dollars (\$15,000.00), which fee shall be due on the date hereof and shall be deemed fully earned as of the date hereof. The Borrower shall also reimburse Bank for all legal fees and expenses incurred in connection with this amendment to the Existing Loan Documents.
5. RATIFICATION OF INTELLECTUAL PROPERTY SECURITY AGREEMENT. Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Intellectual Property Security Agreement dated as of 9/25/01 ~~2002~~ between Borrower and Bank, and acknowledges, confirms and agrees that said Intellectual Property Security Agreement contains an accurate and complete listing of all Intellectual Property Collateral as defined in said Intellectual Property Security Agreement, shall remain in full force and effect.
6. CONSISTENT CHANGES. The Existing Loan Documents are hereby amended wherever necessary to reflect the changes described above.
7. RATIFICATION OF LOAN DOCUMENTS. Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of all security or other collateral granted to the Bank, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations.
8. NO DEFENSES OF BORROWER. Borrower agrees that, as of this date, it has no defenses against the obligations to pay any amounts under the Obligations.
9. CONTINUING VALIDITY. Borrower understands and agrees that in modifying the existing Obligations, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the Existing Loan Documents. Except as expressly modified pursuant to this Amendment No. 1, the terms of the Existing Loan Documents remain unchanged and in full force and effect. Bank's agreement to modifications to the existing Obligations pursuant to this Amendment No. 1 in no way shall obligate Bank to make any future modifications to the Obligations. Nothing in this Amendment No. 1 shall constitute a satisfaction of the Obligations. It is the intention of Bank and Borrower to retain as liable parties all makers of Existing Loan Documents, unless the party is expressly released by Bank in writing. No maker will be released by virtue of this Amendment No. 1.
10. COUNTERSIGNATURE. This Amendment No. 1 shall become effective only when it shall have been executed by Borrower and Bank (provided, however, in no event shall this Amendment No. 1 become effective until signed by an officer of Bank in California).

[The remainder of this page is intentionally left blank]

This Amendment No. 1 is executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first written above.

BORROWER:**EXCHANGE APPLICATIONS, INC.**

By: John Fleming
Name: John Fleming
Title: Corporate Controller

EXSTATIC SOFTWARE, INC.

By: John Fleming
Name: John Fleming
Title: Corporate Controller

BANK:**SILICON VALLEY BANK, doing business as
SILICON VALLEY EAST**

By: _____
Name: _____
Title: _____

SILICON VALLEY BANK

By: _____
Name: _____
Title: _____
(signed in Santa Clara County, California)

727857.1

**SECOND AMENDMENT TO
ACCOUNTS RECEIVABLE FINANCING AGREEMENT**

This Second Amendment (the "Second Amendment") to the Accounts Receivable Financing Agreement is entered into as of December 2, 2002, by and 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 EXCHANGE APPLICATIONS, INC., d/b/a Xchange, Inc., with offices at One Lincoln Plaza, 89 South Street, Boston, Massachusetts 02110 and EXSTATIC SOFTWARE, INC., formerly known as Gino Borland, Inc., with offices at 4555 Roosevelt Way, Seattle, Washington 98015 (individually and collectively, "Borrower").

1. **DESCRIPTION OF EXISTING INDEBTEDNESS AND OBLIGATIONS.** Among other indebtedness and obligations which may be owing by Borrower to Bank, Borrower is indebted to Bank pursuant to a certain Accounts Receivable Financing Agreement dated as of May 2, 2002, as amended by a certain First Amendment to Accounts Receivable Financing Agreement dated as of August 15, 2002 (as amended from time to time, the "Loan Agreement"). Capitalized terms used but not otherwise defined herein shall have the same meaning as in the Loan Agreement.

Hereinafter, all indebtedness and obligations owing by Borrower to Bank shall be referred to as the "Obligations".

2. **DESCRIPTION OF COLLATERAL.** Repayment of the Obligations is secured by the Collateral as described in the Loan Agreement (together with any other collateral security granted to Bank, the "Security Documents").

Hereinafter, the Security Documents, together with all other documents evidencing or securing the Obligations shall be referred to as the "Existing Loan Documents".

3. **DESCRIPTION OF CHANGE IN TERMS.**

A. **Modifications to Loan Agreement.**

1. The Loan Agreement shall be amended by deleting the definitions of "Capitalization Event" and "Investor Term Sheet" appearing in Section 1, thereof, and inserting in lieu thereof the following:

"Capitalization Event" is the receipt by the Borrower of cash proceeds of at least Twenty Million Dollars (\$20,000,000.00), from the issuance of its equity securities after November 26, 2002.

"Investor Term Sheet" shall mean a signed term sheet(s) in favor of and accepted by Borrower in writing, from an investor(s) acceptable to the Bank, evidencing such investor(s) commitment to purchase capital stock of the Borrower on terms and conditions acceptable to the Bank, which would result in a Capitalization Event by March 31, 2003."

2. The Loan Agreement shall be deleting the following text appearing in Section 7.3, thereof:

"(N) Borrower shall deliver to the Bank an Investor Term Sheet on or before September 4, 2002."

and inserting in lieu thereof the following:

"(N) Borrower shall deliver to the Bank an Investor Term Sheet on or before December 31, 2002."

(O) Maintain its primary operating and depository accounts with Bank

B. Acknowledgment of Default; Forbearance by Bank.

1. Borrower acknowledges that it is currently in default under the Loan Agreement by: (a) its failure to comply with the EBITDA covenant set forth in Section 7.3(M) thereof, to the extent Bank has been advised of such defaults, and (b) its default under its agreements with subordinated debt holders. Bank, however, hereby agrees to forbear from exercising its rights and remedies with respect to such defaults until the earlier to occur of (i) an Event of Default under the Loan Agreement (other than the failure of the Borrower to comply with (a) or (b) above) or (ii) December 31, 2002. The Borrower hereby acknowledges and agrees that except as specifically provided herein, nothing in this section or anywhere in this Second Amendment shall be deemed or otherwise construed as a waiver by the Bank of any of its rights and remedies pursuant to the Existing Loan Documents, applicable law or otherwise. Notwithstanding anything contained herein to the contrary, all of Borrower's outstanding Obligations to Bank shall be due and payable on December 31, 2002.
4. **FEES.** Borrower shall pay to Bank an amendment fee equal to Five Thousand Dollars (\$5,000.00), which fee shall be due on the date hereof and shall be deemed fully earned as of the date hereof. The Borrower shall also reimburse Bank for all legal fees and expenses incurred in connection with this amendment to the Existing Loan Documents.
5. **RATIFICATION OF INTELLECTUAL PROPERTY SECURITY AGREEMENT.** Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Intellectual Property Security Agreement dated as of April 25, 2001 between Borrower and Bank, and acknowledges, confirms and agrees that said Intellectual Property Security Agreement contains an accurate and complete listing of all Intellectual Property Collateral as defined in said Intellectual Property Security Agreement, shall remain in full force and effect.
6. **CONSISTENT CHANGES.** The Existing Loan Documents are hereby amended wherever necessary to reflect the changes described above.
7. **RATIFICATION OF LOAN DOCUMENTS.** Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of all security or other collateral granted to the Bank, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations.
8. **NO DEFENSES OF BORROWER.** Borrower agrees that, as of this date, it has no defense against the obligations to pay any amounts under the Obligations.
9. **CONTINUING VALIDITY.** Borrower understands and agrees that in modifying the existing Obligations, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the Existing Loan Documents. Except as expressly modified pursuant to this Second Amendment, the terms of the Existing Loan Documents remain unchanged and in full force and effect. Bank's agreement to modifications to the existing Obligations pursuant to this Second Amendment in no way shall obligate Bank to make any future modifications to the Obligations. Nothing in this Second Amendment shall constitute a satisfaction of the Obligations. It is the intention of Bank and Borrower to retain as liable parties all makers of Existing Loan Documents, unless the party is expressly released by Bank in writing. No maker will be released by virtue of this Second Amendment.
10. **COUNTERSIGNATURE.** This Second Amendment shall become effective only when it shall have been executed by Borrower and Bank (provided, however, in no event shall this Second Amendment become effective until signed by an officer of Bank in California).

[The remainder of this page is intentionally left blank]

This Second Amendment is executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first written above.

BORROWER:**EXCRANG APPLICATIONS, INC.**

By: [Signature]
Name: John Fleming
Title: Corporate Controller

EXSTATIC SOFTWARE, INC.

By: [Signature]
Name: John Fleming
Title: Corporate Controller

BANK:**SILICON VALLEY BANK, doing business as
SILICON VALLEY EAST**

By: [Signature]
Name: Dan Kohn
Title: SVP

SILICON VALLEY BANK

By: [Signature]
Name: Maggie Garcia
Title: Loan Admin. Team Leader
(signed in Santa Clara County, California)

740991.1

**THIRD AMENDMENT TO
ACCOUNTS RECEIVABLE FINANCING AGREEMENT**

This Third Amendment to the Accounts Receivable Financing Agreement (this "Amendment") is entered into as of December 2, 2002, by and 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 Bank" ("Bank") and EXCHANGE APPLICATIONS, INC., d/b/a Xchange, Inc., with offices at One Lincoln Plaza, 89 South Street, Boston, Massachusetts 02110 and EXSTATIC SOFTWARE, INC., formerly known as Gino Borland, Inc., with offices at 4555 Roosevelt Way, Seattle, Washington 98015 (individually and collectively, "Borrower").

1. **DESCRIPTION OF EXISTING INDEBTEDNESS AND OBLIGATIONS.** Among other indebtedness and obligations which may be owing by Borrower to Bank, Borrower is indebted to Bank pursuant to a certain Accounts Receivable Financing Agreement dated as of May 2, 2002, as amended by a certain First Amendment to Accounts Receivable Financing Agreement dated as of August 15, 2002, as further amended by a certain Second Amendment to Accounts Receivable Financing Agreement dated as of December 2, 2002 (as amended from time to time, the "Loan Agreement"). Capitalized terms used but not otherwise defined herein shall have the same meaning as in the Loan Agreement.

2. **DESCRIPTION OF COLLATERAL.** Repayment of the Obligations is secured by the Collateral as described in the Loan Agreement (together with any other collateral security granted to Bank, the "Security Documents").

Hereinafter, the Security Documents, together with all other documents evidencing or securing the Obligations shall be referred to as the "Existing Loan Documents".

3. **DESCRIPTION OF CHANGE IN TERMS.**

A. **Modifications to Loan Agreement.**

1. The Loan Agreement shall be amended by deleting the following definition appearing in Section 1 thereof:

"**Facility Amount**" is One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00)."

and inserting in lieu thereof the following:

"**Facility Amount**" is Three Million One Hundred Twenty-Five Thousand Dollars (\$3,125,000.00)."

2. The Loan Agreement shall be deleting the following text appearing in Section 7.3, thereof:

"(N) Borrower shall deliver to the Bank an Investor Term Sheet on or before December 31, 2002."

and inserting in lieu thereof the following:

"(N) Borrower shall deliver to the Bank an Investor Term Sheet on or before January 15, 2003."

B. **Acknowledgment of Default: Forbearance by Bank.** Borrower acknowledges that it is currently in default under the Loan Agreement by: (a) its failure to comply with the EBITDA covenant set forth in Section 7.3(M) thereof, to the extent Bank has been advised of such default, and (b) its default under its agreements

with subordinated debt holders. Bank, however, hereby agrees to forbear from exercising its rights and remedies with respect to such defaults until the earlier to occur of (i) an Event of Default under the Loan Agreement (other than the failure of the Borrower to comply with (a) or (b) above) or (ii) January 15, 2003. The Borrower hereby acknowledges and agrees that except as specifically provided herein, nothing in this section or anywhere in this Amendment shall be deemed or otherwise construed as a waiver by the Bank of any of its rights and remedies pursuant to the Existing Loan Documents, applicable law or otherwise. Notwithstanding anything contained herein to the contrary, all of Borrower's outstanding Obligations to Bank shall be due and payable on January 15, 2003.

4. **FEES.** Borrower shall pay to Bank an amendment fee equal to Fifteen Thousand Dollars (\$15,000.00), which fee shall be due on the date hereof and shall be deemed fully earned as of the date hereof. The Borrower shall also reimburse Bank for all legal fees and expenses incurred in connection with this amendment to the Existing Loan Documents.

5. **COLLATERAL AUDIT.** Borrower acknowledges and agrees that in accordance with Bank's right to audit Borrower's Collateral as set forth in Section 7.3(L) of the Loan Agreement, Borrower will provide Bank access to its financial records so that Bank may audit Borrower's Collateral on or before sixty (60) days from the date of this Amendment.

6. **RATIFICATION OF INTELLECTUAL PROPERTY SECURITY AGREEMENT.** Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and conditions of a certain Intellectual Property Security Agreement dated as of April 25, 2001 between Borrower and Bank, and acknowledges, confirms and agrees that said Intellectual Property Security Agreement contains an accurate and complete listing of all Intellectual Property Collateral as defined in said Intellectual Property Security Agreement, shall remain in full force and effect.

7. **CONSISTENT CHANGES.** The Existing Loan Documents are hereby amended wherever necessary to reflect the changes described above.

8. **RATIFICATION OF LOAN DOCUMENTS.** Borrower hereby ratifies, confirms, and reaffirms all terms and conditions of all security or other collateral granted to the Bank, and confirms that the indebtedness secured thereby includes, without limitation, the Obligations.

9. **NO DEFENSES OF BORROWER.** Borrower agrees that, as of this date, it has no defenses against the obligations to pay any amounts under the Obligations.

10. **CONTINUING VALIDITY.** Borrower understands and agrees that in modifying the existing Obligations, Bank is relying upon Borrower's representations, warranties, and agreements, as set forth in the Existing Loan Documents. Except as expressly modified pursuant to this Amendment, the terms of the Existing Loan Documents remain unchanged and in full force and effect. Bank's agreement to modifications to the existing Obligations pursuant to this Amendment in no way shall obligate Bank to make any future modifications to the Obligations. Nothing in this Amendment shall constitute a satisfaction of the Obligations. It is the intention of Bank and Borrower to retain as liable parties all makers of Existing Loan Documents, unless the party is expressly released by Bank in writing. No maker will be released by virtue of this Amendment.

11. **COUNTERSIGNATURE.** This Amendment shall become effective only when it shall have been executed by Borrower and Bank (provided, however, in no event shall this Amendment become effective until signed by an officer of Bank in California).

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This Amendment is executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the date first written above.

BORROWER:**BANK:****EXCHANGE APPLICATIONS, INC.****SILICON VALLEY BANK**By: 

By: _____

Name: John Fleming

Name: _____

Title: Corporate Controller

Title: _____

EXSTATIC SOFTWARE, INC.By: Name: John FlemingTitle: Corporate Controller

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RECORDED: 10/10/2003

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