

PATENT ASSIGNMENT

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SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

SECURITY AGREEMENT

CONVEYING PARTY DATA

Name	Execution Date
Tenzing Communications, Inc.	09/29/2004

RECEIVING PARTY DATA

Name:	AI Participations S.A.R.L.
Street Address:	1, Rond Point Maurice Bellonte
City:	Blagnac Cedex
State/Country:	FRANCE
Postal Code:	F-31707

PROPERTY NUMBERS Total: 5

Property Type	Number
Patent Number:	6757712
Application Number:	10112611
Application Number:	10112300
Application Number:	10785660
Application Number:	10825721

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NAME OF SUBMITTER:

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Total Attachments: 33
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PATENT

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LOAN AND SECURITY AGREEMENT

LOAN AND SECURITY AGREEMENT, dated as of September 29, 2004 between TENZING COMMUNICATIONS, INC., a corporation organized under the laws of Delaware (the "Borrower"), and AI PARTICIPATIONS S.A.R.L., a company registered in the Republic of France (the "Lender").

RECITALS

A. The Borrower and the Lender are parties to: (i) that certain Loan Agreement dated May 19, 2004, by and between the Borrower and the Lender (as such agreement has heretofore been amended, supplemented or otherwise modified as of the date hereof, the "Initial Loan Agreement"); (ii) that certain Loan Agreement dated July 20, 2004, by and between the Borrower and the Lender (as such agreement has heretofore been amended, supplemented or otherwise modified as of the date hereof, the "Second Loan Agreement"); and (iii) that certain Loan Agreement dated August 5, 2004, by and between the Borrower and the Lender (as such agreement has heretofore been amended, supplemented or otherwise modified as of the date hereof, the "Third Loan Agreement"; and together with the Initial Loan Agreement and the Second Loan Agreement, the "Existing Loan Agreements").

B. In light of (i) the Borrower's current financial condition and the failure of the Borrower's shareholders to contribute capital over the last several months for purposes of funding its working capital needs and (ii) the Borrower's need for additional loans to be made available to it to continue to fund those working capital needs, the Borrower has requested that the Lender enter into this Agreement (x) to amend and restate the Existing Loan Agreements as set forth in this Agreement in order to restructure the obligations thereunder and (y) to provide for a new term loan facility in an aggregate principal amount not to exceed \$1,800,000 on the terms, subject to the conditions, for the purposes and with the priority set forth herein.

C. To provide assurance for the repayment of the Loans hereunder and the other Obligations hereunder, the Borrower will, among other things, provide or cause to be provided to the Lender, a security interest in, Lien on, and collateral pledge of, the Collateral; and

D. Subject to the terms and conditions set forth herein, the Lender is willing to continue and combine the outstanding loans and other obligations under the Existing Loan Agreements as provided herein and to make Tranche B Loans in an aggregate principal amount not to exceed \$1,800,000 as provided herein.

In consideration of the foregoing premises, the covenants set forth in this Agreement and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINED TERMS

Section 1.01. Definitions. Each term defined in this Section 1.01, when used in this Agreement, has the meaning indicated below. All terms used herein and defined in the Uniform Commercial Code shall have the same definitions herein as specified therein; provided, however, that if a term is defined in Article 9 of the Uniform Commercial Code differently than in another Article of the Uniform Commercial Code, the term has the meaning specified in Article 9 of the Uniform Commercial Code.

“Affiliate” shall mean as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person. For purposes of this definition, control of a Person shall mean the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities, by contract or otherwise, provided that, in any event, any Person that owns directly or indirectly securities having 10% or more of the voting power for the election of directors (or Persons having similar management functions) of any other Person shall be deemed to control such other Person.

“Agreement” shall mean this Loan and Security Agreement, as amended, modified or supplemented from time to time.

“Bankruptcy Code” shall mean the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

“Budget” shall have the meaning given to such term in Section 6.01(d) hereof.

“Business Day” shall mean any day other than a Saturday, Sunday or other day on which banks located in Seattle, Washington, New York, New York or Paris, France are authorized or required to close.

“Closing Date” shall mean the date on which the conditions precedent set forth in Section 6.01 hereof have been satisfied or waived.

“Conveyance in Lieu of Foreclosure” shall have the meaning given to such term in Section 11.01 hereof.

“Copyright License” shall mean any written agreement, now or hereafter in effect, granting any right to any third party under any Copyright now or hereafter owned by the Borrower or that the Borrower otherwise has the right to license, or granting any right to the Borrower under any Copyright now or hereafter owned by any third party, and all rights of the Borrower under any such agreement.

“Copyrights” shall mean all of the following now owned or hereafter acquired by Borrower: (a) all copyright rights in any work subject to the copyright laws of the United States or any other country, whether as author, assignee, transferee or otherwise, and (b) all registrations and applications for registration of any such copyright in the United States or any other country, including registrations, recordings, supplemental registrations and pending applications for registration in the United States Copyright Office, including those listed on Schedule I.

“Covered Taxes” shall have the meaning given to such term in Section 3.03 hereof.

“Debt” of any Person shall mean, without duplication, (i) all obligations for borrowed money, including any indebtedness owed to Affiliates of such Person, (ii) all indebtedness evidenced by bonds, notes, debentures and other similar instruments, (iii) obligations that are required to be classified or accounted for as capital leases on a balance sheet of such Person under generally accepted accounting principles in the jurisdiction in which such Person is organized and existing, (iv) all obligations under conditional sale or other title retention agreements relating to property purchased by such Person, (v) all obligations issued or assumed as the deferred purchase price of property or services (other than accounts payable to suppliers incurred in the ordinary course of business) and (vi) obligations of others secured by property of such Person.

“Default” shall mean any Event of Default or any event which, with the giving of notice or lapse of time, or both, would become an Event of Default.

"Dollars" or "\$" shall mean the lawful currency of the United States of America and, in relation to any amount to be advanced or paid hereunder, funds having same day or immediate value.

"Existing Loan Agreements" shall have the meaning given to such term in Recital A hereof.

"Existing Loans" shall mean all loans outstanding on the Closing Date under the Existing Loan Agreements.

"Event of Default" shall mean each of the events set forth in Section 10.01 hereof.

"Governmental Authority" shall mean the government of the United States of America, the government of the Republic of France, any other nation or any political subdivision thereof, whether state, province or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Initial Loan Agreement" shall have the meaning given to such term in Recital A hereof.

"Initial Tranche B Loan" shall have the meaning given to such term in Section 2.02(a) hereof.

"Intellectual Property" shall mean all intellectual and similar property of the Borrower of every kind and nature now owned or hereafter acquired by the Borrower, including inventions, designs, Patents, Patent Licenses, Trademarks, Trademark Licenses, Copyrights, Copyright Licenses, domain names and domain name registrations, trade secrets, confidential or proprietary technical and business information, know-how, show-how or other data or information, software and databases and all embodiments or fixations thereof and related documentation, registrations and franchises, specification, design documents, source code, object code developed or being developed, tools, procedures needed to compile the source code in object code, tools and procedures needed to manage the configuration of the software, validation and verification documents and procedures, licenses for any of the foregoing and all license rights, and all additions, improvements and accessions to, and books, records, user's documentation and customer support procedures describing or used in connection with, any of the foregoing.

"Interest Period": shall mean with respect to any Loan, (a) initially, the period commencing on the date such Loan is made or continued and ending on the numerically corresponding day in the calendar month that is one month thereafter and (b) thereafter, each period commencing on the last day of the immediately preceding Interest Period and ending on the numerically corresponding day in the calendar month that is one month thereafter. Notwithstanding the first sentence of this definition, (i) if any Interest Period would end after the Maturity Date, such Interest Period shall end on the Maturity Date, (ii) each Interest Period which would otherwise end on a day which is not a Business Day shall end on the next succeeding Business Day (or, if such next succeeding Business Day falls in the next succeeding calendar month, on the next preceding Business Day) and (iii) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month.

"Laws" shall mean all laws, rules, regulations, orders and decrees of any Governmental Authority applicable to the Borrower or any of its subsidiaries.

"Lending Office" shall mean (i) 1, Rond Point Maurice Bellonte, F-31707 Blagnac Cedex, France or (ii) such other office or offices as the Lender shall designate to be its lending office for purposes of this Agreement.

"LIBO Rate": shall mean, for any Interest Period, the rate per annum (rounded upwards, if necessary, to the next higher 1/16th of a percent) for deposits in U.S. Dollars for a period equal to such Interest Period, which appears on the Telerate Page 3750 as of 11:00 a.m. (London, England time) two Business Days prior to the first day of such Interest Period. In the event such rate does not so appear, "LIBO Rate" shall mean the rate per annum determined by the Lender to be the arithmetic mean, rounded upwards, if necessary, to the nearest 1/16 of a percent, of the rates of interest per annum quoted to the Lender by each of two or more Reference Banks (as hereinafter defined) as the rate of interest at which deposits in U.S. Dollars in an amount approximately equal to the principal amount of the Loan to be outstanding during such Interest Period and having a maturity equal to such Interest Period offered by such Reference Bank to leading banks in the London interbank market at or about 11:00 a.m. (London, England time) on the second Business Day prior to the commencement of such Interest Period. As used herein, "Reference Bank" means a leading bank engaged in transactions in the London interbank market as selected by the Lender. Each determination of the LIBO Rate by Lender pursuant hereto shall be conclusive absent manifest error.

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Loans" shall mean, collectively, the Tranche A Loans and the Tranche B Loans. A "Loan" shall mean any one of such Loans individually.

"Material Adverse Effect" shall mean, with respect to any Person, a material adverse effect on (a) the business, assets, operations, prospects or condition (financial or otherwise) of such Person, (b) the ability of such Person to perform any of its obligations under this Agreement or (c) the rights of or benefits available to the Lender hereunder.

"Material Debt" shall mean Debt in an aggregate principal amount exceeding \$150,000.

"Maturity Date" shall mean the earliest of (i) December 15, 2004, (ii) such date on which the Loans become due and payable pursuant to Article X hereof; and (iii) the commencement of any case, proceeding or other action under the Bankruptcy Code seeking to have an order for relief entered on behalf of the Borrower as a debtor or to adjudicate it a bankrupt or insolvent or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization or relief of debtors or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property or filing an answer or other pleading in any such case, proceeding or other action admitting the material allegations of any petition, complaint or similar pleading filed against it or consenting to the relief sought therein.

"Note" shall have the meaning given to such term in Section 2.03(e) hereof.

"Notice of Borrowing" shall mean a notice of borrowing, substantially in the form of Exhibit B hereto, to be delivered by the Borrower to the Lender in connection with the Tranche B Loan then being requested.

"Obligations" shall mean (a) all obligations whether, direct or indirect, contingent or absolute, of every type or description and at any time existing, of the Borrower to make due and punctual payment of principal of, and all interest on, the Loans, costs and attorneys' fees and all other monetary obligations of

the Borrower to the Lender under or in respect of this Agreement, any Note (including interest accruing at the then applicable rate provided in this Agreement after the maturity of any of the Loans and Post-Petition Interest accruing or payable at the then applicable rate provided in this Agreement) and (b) all other obligations, liabilities and duties of the Borrower pursuant to this Agreement.

"Patent License" shall mean any written agreement, now or hereafter in effect, granting to any third party any right to make, use or sell any invention on which a Patent, now or hereafter owned by the Borrower or that the Borrower otherwise has the right to license, is in existence, or granting to the Borrower any right to make, use or sell any invention on which a Patent, now or hereafter owned by any third party, is in existence, and all rights of the Borrower under any such agreement.

"Patents" shall mean all of the following now owned or hereafter acquired by the Borrower: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including registrations, recordings and pending applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State or Territory thereof, of in any other country, including those listed on Schedule II, and (b) all reissues, continuations, divisions, continuations-in-part, renewals or extensions thereof, and the inventions disclosed or claimed therein, including the right to make, use and/or sell the inventions disclosed or claimed therein.

"Person" shall mean any natural person, corporation, association, company or other business entity, Governmental Authority or other entity.

"Post-Petition Interest" shall mean interest accruing after the filing of any petition in bankruptcy, or the commencement of any case, proceeding or action relating to the bankruptcy, reorganization or insolvency of Borrower (or interest that would accrue but for the operation of applicable bankruptcy, reorganization or insolvency laws), whether or not a claim for post-filing or post-petition interest is allowed or allowable as a claim in any such case, proceeding or action.

"Second Loan Agreement" shall have the meaning given to such term in Recital A hereof.

"Secured Obligations" shall have the meaning given to such term in Section 5.01 hereof.

"Taxes" shall mean any and all taxes, levies, imposts, duties or other charges of a similar nature.

"Third Loan Agreement" shall have the meaning given to such term in Recital A hereof.

"Trademark License" shall mean any written agreement, now or hereafter in effect, granting to any third party any right to use any Trademark now or hereafter owned by the Borrower or that the Borrower otherwise has the right to license, or granting to the Borrower any right to use any Trademark now or hereafter owned by any third party, and all rights of the Borrower under any such agreement.

"Trademarks" shall mean all of the following now owned or hereafter acquired by the Borrower: (a) all trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all registration and recording applications filed in connection therewith, including registrations and registration applications in the United States Patent and Trademark Office, any State of the United States or any similar offices in any other country or any political subdivision thereof, and all extensions or renewals thereof, including those listed on Schedule III, (b) all goodwill associated

therewith or symbolized thereby and (c) all other assets, rights and interests that uniquely reflect or embody such goodwill.

“Tranche A Loans” shall have the meaning given to such term in Section 2.01 hereof.

“Tranche B Loans” shall have the meaning given to such term in Section 2.02 hereof.

“Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect on the date hereof in the State of New York; provided, that if by reason of mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such perfection or effect of perfection or non-perfection.

Section 1.02. Interpretation. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference to any law, rule or regulation herein shall be construed as referring to any amendment or modification of such law, rule or regulation, (c) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (d) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (e) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (f) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

ARTICLE II

THE LOANS

Section 2.01. Tranche A Loans.

(a) On the terms and subject to the conditions set forth herein, each of the parties hereto agrees that, on the Closing Date, \$3,000,000 of the aggregate outstanding principal amount of the Existing Loans together with accrued and unpaid interest through and including the Closing Date in the amount of \$38,137 shall be continued and combined into a single tranche of term loans (the “Tranche A Loans”) hereunder. The Borrower hereby confirms and acknowledges to the Lender that it is validly and justly indebted to the Lender for the payment of all Existing Loans without offset, defense, cause of action or counterclaim of any kind or nature whatsoever.

(b) On the Closing Date, the Tranche A Loans shall be held by the Lender in such amounts as are set forth in Section 2.01(a) above.

(c) Once repaid, the Tranche A Loans may not be re-borrowed.

Section 2.02. Tranche B Loans.

(a) On the terms and subject to the conditions set forth herein, the Lender agrees to make loans (the "Tranche B Loans") to the Borrower from time to time commencing on the Closing Date and ending on November 1, 2004, in an aggregate principal amount not to exceed \$1,800,000. The Lender shall make an initial Tranche B Loan in an aggregate amount of \$900,000 within 2 Business Days of the date of this Agreement (the "Initial Tranche B Loan").

(b) Once repaid, the Tranche B Loans may not be reborrowed.

(c) Other than with respect to the Initial Tranche B Loan, the Borrower shall give the Lender prior written notice (in the form of a duly completed Notice of Borrowing) of each proposed borrowing of Tranche B Loans hereunder; such notice to be received by the Lender not later than 12:00 p.m., Paris time, on the third Business Day preceding the date on which such Tranche B Loans are to be made. Each such Notice of Borrowing shall specify (A) the amount of the proposed Tranche B Loan, (B) the date thereof (which shall be a Business Day) and (C) the location and number of the account to which funds are to be disbursed.

(d) The Lender shall have the sole and absolute discretion whether to make any Tranche B Loan or any portion of any Tranche B Loan requested by Borrower; provided, however, that this Section 2.02(d) shall not apply to the Initial Tranche B Loan.

Section 2.03. Repayment of Principal; Evidence of Debt.

(a) The outstanding principal balance of the Tranche A Loans shall be payable in full in cash on the Maturity Date (subject to adjustment for the application of prepayments (if any) of the Tranche A Loans made pursuant to Section 2.05, as provided in such Section 2.05). The Borrower hereby unconditionally promises to pay to the Lender on the Maturity Date, the then aggregate unpaid principal amount of all Tranche A Loans plus accrued interest and all other unpaid amounts then owing in respect of the Tranche A Loans.

(b) The outstanding principal balance of the Tranche B Loans shall be payable in full in cash on the Maturity Date (subject to adjustment for the application of prepayments (if any) of the Tranche B Loans made pursuant to Section 2.05, as provided in such Section 2.05). The Borrower hereby unconditionally promises to pay to the Lender on the Maturity Date, the then aggregate unpaid principal amount of all Tranche B Loans plus accrued interest and all other unpaid amounts then owing in respect of the Tranche B Loans.

(c) The Lender shall maintain accounts in which it shall record (i) the amount of each outstanding Loan hereunder, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to the Lender hereunder and (iii) the amount of any sum received by the Lender hereunder.

(d) The entries made in the accounts maintained pursuant to paragraph (c) of this Section 2.03 shall be prima facie evidence of the existence and amounts of the Obligations recorded therein and shall be conclusive absent manifest error; provided, however, that the failure of the Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay its Loans and other Obligations hereunder in accordance with the terms of this Agreement.

(e) No promissory notes evidencing Tranche A Loans or Tranche B Loans, as the case may be, hereunder will be issued unless the Lender requests that the Tranche A Loans or Tranche B Loans (as

applicable) made by it be evidenced by a promissory note. In such event, the Borrower shall promptly prepare, execute and deliver to the Lender a promissory note payable to the order of the Lender (or, if requested by the Lender, to the Lender and its registered assigns permitted by Section 11.01) in the amount of the aggregate outstanding principal amount of such Lender's Tranche A Loans or its Tranche B Loans (as applicable), and, in substantially the form of Exhibit A hereto (any such note as amended, modified, supplemented, replaced, renewed or extended from time to time in accordance with the terms hereof being referred to herein as a "Note"). Thereafter, the Tranche A Loans or Tranche B Loans, as the case may be, evidenced by such promissory note and interest thereon (as applicable) shall at all times (including after assignment pursuant to Section 11.01 hereof) be represented by one or more promissory notes in such form payable to the order of the payee named therein.

Section 2.04. Interest on Loans.

(a) The Borrower shall pay interest on the unpaid principal amount of the Loans at a rate per annum equal to the sum of the LIBO Rate in effect for the applicable Interest Period plus 4% (computed on the basis of the actual number of days elapsed over a year of 360 days). Accrued interest on the Loans shall be payable on the Maturity Date.

(b) Interest in respect of the Tranche A Loans hereunder shall accrue from and including the Closing Date, to but excluding, the date on which such Tranche A Loans are paid.

(c) Interest in respect of any Tranche B Loan hereunder shall accrue from and including the date on which such Tranche B Loan is made, to but excluding, the date on which such Tranche B Loan is paid.

(d) Notwithstanding the foregoing, if an Event of Default has occurred and is continuing, then all outstanding Loans shall bear interest at the then applicable rate provided in this Agreement plus 2% per annum.

(e) Anything in this Agreement or in any Note hereunder to the contrary notwithstanding, the interest rate on the Loans shall in no event be in excess of the maximum rate permitted by applicable law.

Section 2.05. Voluntary Prepayment. The Borrower may prepay the Loans in whole or in part at any time, provided that (a) the Borrower shall give the Lender not less than 1 Business Day's irrevocable prior notice of each prepayment and (b) each prepayment shall be accompanied by the payment of accrued interest on the amount prepaid to the date of prepayment and any additional amount owing under Section 2.06 hereof.

Section 2.06. Funding Losses. The Borrower will indemnify the Lender against, and on demand reimburse the Lender for, any loss, premium, penalty or expense that the Lender may pay or incur (including, without limitation, any loss or expense incurred by reason of the relending, depositing or other employment of funds acquired by the Lender to fund the Loans) as a result of any failure by the Borrower to prepay the Loans on the date specified therefor in a notice of prepayment delivered by the Borrower pursuant to Section 2.05 hereof. The Lender shall furnish the Borrower with a certificate setting forth the basis for determining any additional amount to be paid to it hereunder, and such certificate shall be conclusive, absent manifest error, as to the contents thereof.

ARTICLE III

CHANGE IN CIRCUMSTANCES

Section 3.01. Increased Costs. If, after the date of this Agreement, (i) the introduction of, or any change in, any applicable law, rule or regulation or in the interpretation or administration thereof by any Governmental Authority or (ii) compliance by the Lender with any request, guideline, policy or directive of any Governmental Authority issued after the date of this Agreement (whether or not having the force of law) shall: (A) subject the Lender to any tax, duty or other charge or shall change the basis of taxation of payments to the Lender of any amount due under this Agreement (except for changes in the tax on the overall net income of the Lender imposed by the jurisdiction of its organization or the jurisdiction in which its Lending Office is located); (B) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets or liabilities of, deposits with or for the account of, or commitments issued by, the Lender (including, without limitation, any such requirement imposed by the Board of Governors of the Federal Reserve System); or (C) impose on the Lender or the money markets any other condition affecting the Loans; and the result of any of the foregoing is to increase the cost to the Lender of making or maintaining the Loans, or to reduce the amount of any sum received or receivable by the Lender under this Agreement, then the Borrower shall from time to time pay to the Lender within 10 Business Days of the Lender's demand therefor such additional amount or amounts as will compensate it for such increased cost or reduction.

Section 3.02. Illegality. If, after the date of this Agreement, the introduction of, or any change in, any applicable law, rule or regulation or in the interpretation or administration thereof by any Governmental Authority shall make it unlawful for the Lender to make or maintain the Loans, then, provided no Default shall have occurred and be continuing, the Lender shall give notice thereof to the Borrower and commence good faith negotiations with the Borrower to determine a substitute basis for determining a rate of interest payable to the Lender which would cure such illegality hereunder. If within 30 days of such notice to the Borrower, the Borrower and the Lender shall not have agreed in writing to such a substitute basis, the Lender may declare the Loans to be due and payable and the Borrower shall prepay the Loans in full on the last day of the Interest Period applicable thereto unless the Loans are required by law to be sooner repaid, in which case the Borrower shall repay the Loans on such earlier date, together with accrued interest thereon and any additional amount owing under Section 2.05 hereof. The Lender will promptly notify the Borrower of any event of which the Lender has knowledge which will entitle it to the provisions of this Section 3.02 and will designate a different Lending Office if, in the sole opinion of the Lender, such designation will avoid the need for such prepayment and will not be otherwise disadvantageous to it or contrary to its internal policies.

Section 3.03. Taxes.

(a) Each payment by the Borrower to the Lender under this Agreement shall be made free and clear of and without deduction for any Taxes, other than any Taxes imposed on the overall net income of the Lender by the jurisdiction of its organization or by the jurisdiction in which its Lending Office is located (all such non-excluded Taxes being hereinafter referred to as "Covered Taxes"). If the Borrower shall be required by law to deduct any Covered Taxes from or in respect of any such payment, then (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay on a timely basis the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) The Borrower will indemnify the Lender for the full amount of Covered Taxes required to be paid by, or imposed, levied or assessed against the Lender. In addition, the Borrower shall pay to the Lender such amounts as may be necessary to hold the Lender harmless on an after-tax basis from any Taxes (including without limitation, income or franchise taxes) imposed by any jurisdiction as a result of the receipt or accrual by the Lender of any payment under this Section 3.03 (including any payment under this sentence). Any indemnification pursuant to this Section 3.03(b) shall be made within 30 days from the date the Lender makes written demand therefor. A certificate setting forth any amount payable to the Lender under this Section 3.03 and the basis therefor submitted by the Lender to the Borrower shall, absent manifest error, be conclusive and binding.

(c) Within 60 days after the date of any payment of Covered Taxes made under this Section 3.03, or the withholding of any Taxes excluded from indemnification under subsection (a) above, the Borrower will furnish to the Lender the original or a certified copy of a receipt, evidencing payment thereof, a statement signed by an officer responsible for the Borrower's financial or accounting records setting forth the amount and identity of such Taxes (specifying the particular provisions of law requiring such withholding), and all additional information and documents that the Lender shall reasonably and in writing request to establish that full and timely payment of such Covered Taxes or other Taxes has been made. The Borrower will promptly notify the Lender of any reports or returns that the Lender is required to file with respect to Covered Taxes.

(d) Without prejudice to the survival of any other agreement of the Borrower hereunder, the agreements and obligations of the Borrower contained in this Section 3.03 shall survive the prepayment or payment in full or in part of the Loans and the interest thereon and the termination of this Agreement.

ARTICLE IV

PAYMENTS

Section 4.01. Manner of Payments. Each payment required to be made by the Borrower under this Agreement shall be made by transferring the amount thereof in Dollars to the Lender not later than 12:00 p.m. (Paris time) on the date on which such payment shall become due. Each such payment shall be made without defense, set-off or counterclaim. Any payment received after 12:00 p.m. (Paris time) on any Business Day shall be deemed to have been received on the next following Business Day. If any payment under this Agreement shall become due on a day that is not a Business Day, then the due date thereof shall be extended to the next following day that is a Business Day, and such extension shall be taken into account in computing the amount of any interest then due and payable hereunder.

ARTICLE V

COLLATERAL SECURITY

Section 5.01. Collateral; Security Interest. To secure the repayment of principal of and interest on all Loans and all other amounts owing to Lender hereunder and under any Note (collectively, the "Secured Obligations"), the Borrower hereby grants to the Lender, its successors and assigns, a security interest in and mortgage on and pledges and assigns to the Lender, its successors and assigns the following properties, assets and rights of the Borrower, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof (all of the same being hereinafter called the "Collateral"): all personal and fixture property of every kind and nature including, without limitation, all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts, chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), money, commercial

tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, tort claims, and all general intangibles (including all Intellectual Property and payment intangibles). It is the intention of the Borrower that the description of the Collateral set forth above be construed to include the broadest possible range of assets.

Section 5.02. Further Assurances.

(a) Borrower shall undertake, with respect to each item of Collateral pledged hereunder as security for the Loans, any and all actions deemed necessary by Lender for the granting by Borrower to Lender of a valid first priority security interest in such Collateral. Without limiting the generality of the foregoing, Borrower shall take such steps as are necessary for the granting and perfection of a first priority security interest in the Collateral. Borrower also irrevocably authorizes the Lender at any time and from time to time to file in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto necessary or desirable, in the exercise of Lender's sole and exclusive discretion, to perfect Lender's security interest in the Collateral or any portion thereof.

(b) At any time and from time to time, upon the written request of Lender, and at the sole expense of Borrower, Borrower will promptly and duly execute and deliver, or will promptly cause to be executed and delivered, such further instruments and documents and take such further action as Lender may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Uniform Commercial Code in effect in any jurisdiction with respect to the Liens created hereby.

Section 5.03. Lender's Appointment as Attorney-in-Fact.

(a) The Borrower hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Borrower and in the name of the Borrower or in its own name, from time to time in Lender's discretion, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, the Borrower hereby gives Lender the power and right, on behalf of the Borrower, without assent by, but with notice to, the Borrower, if an Event of Default shall have occurred and be continuing, to do the following:

(i) to pay or discharge Taxes and Liens levied or placed on or threatened against the Collateral; and

(ii) (A) to direct any party liable for any payment under any Collateral to make payment of any and all moneys due or to become due thereunder directly to Lender or as Lender shall direct; (B) to ask or demand for, collect, receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) to sign and endorse any invoices, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (E) to defend any suit, action or proceeding brought against the Borrower with respect to any Collateral; (F) to settle, compromise or adjust any suit, action or proceeding described in clause (E) above and, in connection therewith, to give such discharges or releases as Lender may deem appropriate; and (G) generally, to sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the

absolute owner thereof for all purposes, and to do, at Lender's option and the Borrower's expense, at any time, and from time to time, all acts and things which Lender deems reasonably necessary to protect, preserve or realize upon the Collateral and Lender's Liens thereon and to effect the intent of this Agreement, all as fully and effectively as the Borrower might do.

The Borrower hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and shall be irrevocable until the repayment in full in cash of all Secured Obligations hereunder.

(b) The Borrower also authorizes Lender, at any time and from time to time, to execute, in connection with any sale provided for in Section 5.05 hereof, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

(c) The powers conferred on Lender are solely to protect Lender's interests in the Collateral and shall not impose any duty upon Lender to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers, and neither Lender nor any of its officers, directors, or employees shall be responsible to Borrower for any act or failure to act hereunder, except for its own gross negligence or willful misconduct.

Section 5.04. Proceeds. If an Event of Default shall have occurred and be continuing, (a) all proceeds of Collateral received by Borrower shall be held by Borrower in trust for Lender, segregated from other funds of Borrower, and, within 2 Business Days of receipt by Borrower, shall be turned over to Lender in the exact form received by Borrower (duly endorsed by Borrower to Lender, if required, in order to be negotiated by Lender) and (b) any and all such proceeds received by Lender (whether from Borrower or otherwise) may, in the sole discretion of Lender, be held by Lender as collateral security for, and/or then or at any time thereafter may be applied by Lender against, the Secured Obligations (whether matured or unmatured), such application to be in such order as Lender shall elect. Any balance of such proceeds remaining after the Secured Obligations shall have been paid in full and this Agreement shall have been terminated shall be paid over to Borrower or to whomsoever may be lawfully entitled to receive the same. For purposes hereof, proceeds shall include, but not be limited to, all principal and interest payments, all prepayments and payoffs, insurance claims, condemnation awards, sale proceeds, real estate owned rents and any other income and all other amounts received with respect to the Collateral.

Section 5.05. Remedies. If an Event of Default shall occur and be continuing, Lender may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a Lender under the Uniform Commercial Code. Without limiting the generality of the foregoing, Lender without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon Borrower or any other Person (each and all of which demands, presentments, protests, advertisements and notices are hereby waived), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels or as an entirety at public or private sale or sales, at any exchange, broker's board or office of Lender or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in Borrower, which right or equity is hereby waived or released. Borrower further agrees, at Lender's request, to assemble the Collateral and make it available to Lender at

places which Lender shall reasonably select, whether at Borrower's premises or elsewhere. Lender shall apply the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale, after deducting all reasonable costs and expenses of every kind incurred therein or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of Lender hereunder, including without limitation reasonable attorneys' fees and disbursements, to the payment in whole or in part of the Secured Obligations, in such order as Lender may elect, and only after such application and after the payment by Lender of any other amount required or permitted by any provision of law, including without limitation Section 9-608(a)(1)(c) of the Uniform Commercial Code, need Lender account for the surplus, if any, to Borrower. To the extent permitted by applicable law, Borrower waives all claims, damages and demands it may acquire against Lender arising out of the exercise by Lender of any of its rights hereunder, other than those claims, damages and demands arising from the gross negligence or willful misconduct of Lender. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least 10 days before such sale or other disposition. Borrower shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral (net of costs incurred in connection with such sale or other disposition) are insufficient to pay the Secured Obligations and the fees and disbursements of any attorneys employed by Lender to collect such deficiency.

Section 5.06. Limitation on Duties Regarding Preservation of Collateral. Lender's duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the Uniform Commercial Code or otherwise, shall be to deal with it in the same manner as Lender deals with similar property for its own account. Neither Lender nor any of its directors, officers or employees shall be liable for failure to demand, collect or realize upon all or any part of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of Borrower or otherwise.

Section 5.07. Powers Coupled with an Interest. All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

Section 5.08. Release of Security Interest. Upon termination of this Agreement and repayment to Lender of all Secured Obligations and the performance of all obligations under this Agreement, Lender shall release its security interest in any remaining Collateral.

ARTICLE VI

CONDITIONS PRECEDENT

Section 6.01. Conditions Precedent to the Effectiveness of This Agreement. This Agreement will become effective as of the date hereof subject to the satisfaction (or waiver in accordance with Section 11.02) of each of the following conditions precedent:

(a) Agreement. The Lender shall have received an executed counterpart of this Agreement, duly executed by the Borrower.

(b) Borrower Documents. The Lender shall have received (i) a certificate from a Governmental Authority of the jurisdiction of the Borrower's organization certifying that the Borrower is in good standing under the laws of such jurisdiction; (ii) such information, materials and documents as the Lender or its counsel may reasonably request, which information, materials and documents shall demonstrate that the Borrower is duly authorized to execute and deliver this Agreement and enter into the transactions contemplated hereby and (iii) a certificate from an appropriate officer of the Borrower certifying that, to

the best knowledge of such officer, the representations and warranties contained in Article VII hereof are true and complete and no Default has occurred and is continuing.

(c) Consents. All governmental consents, approvals and authorizations necessary or, in the opinion of the Lender, advisable in connection with the Borrower's performance under this Agreement shall have been obtained by the Borrower, all necessary consents of any other third party shall have been obtained or entered into and there shall be no governmental or judicial action, actual or threatened, that could reasonably be expected to restrain, prevent or impose materially burdensome conditions on the transactions contemplated hereby.

(d) Budget. The Borrower shall have delivered to the Lender an operating budget (the "Budget"), in form and substance satisfactory to the Lender.

(e) Conveyance in Lieu of Foreclosure. The Lender shall have received an executed copy of the Conveyance in Lieu of Foreclosure in the form attached as Exhibit C hereto.

(f) Representations and Warranties. The representations and warranties contained in Article VII hereof are true and correct with the same force and effect as though made on and as of the date hereof.

(g) No Default. No Default has occurred and is continuing.

(h) Additional Documents. The Lender shall have received such other instruments, documents, opinions, assurances or other information as the Lender or its counsel may reasonably request.

Section 6.02. Conditions Precedent to Each Tranche B Loan. The obligation of the Lender to make any Tranche B Loan hereunder is subject to the satisfaction of all of the following conditions precedent on the date such Tranche B Loan is to be made:

(a) Notice. The Lender shall have received a notice with respect to such Tranche B Loan (which notice shall be in the form of a duly completed Notice of Borrowing), except that a notice shall not be required with respect to the Initial Tranche B Loan. It is a condition precedent under this Section 6.02 that any Notice of Borrowing shall be accompanied by a schedule setting forth the proposed use of proceeds of the Tranche B Loans which shall be consistent with the Budget and upon request of the Lender, the Borrower shall provide additional details regarding the proposed use of proceeds of the Tranche B Loans.

(b) Representations and Warranties. The representations and warranties set forth in Article VII hereof shall be true and correct in all material respects on and as of the date of each Borrowing, (except to the extent that such representations and warranties expressly relate to an earlier date) with the same effect as if made on and as of such date.

(c) No Event of Default. On the date of each borrowing of a Tranche B Loan, no Default or Event of Default shall have occurred and be continuing, nor shall any such event occur by reason of the making of the requested Tranche B Loan.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lender that:

Section 7.01. Status. The Borrower (a) is a duly organized and validly existing corporation in good standing under the laws of the State of Delaware, (b) is duly licensed or qualified to do business and in good standing in each jurisdiction where the failure to be so licensed or qualified could have a Material Adverse Effect, and (c) has all requisite power and authority to own its properties and conduct its business as presently conducted and to execute and deliver, and to perform its obligations under, this Agreement.

Section 7.02. Organizational Structure. Schedule 7.02 sets forth, as of the date hereof, the complete organizational structure of the Borrower (including its parents, if any, and subsidiaries, if any).

Section 7.03. No Litigation, Etc. No suit, action or other proceeding, investigation or injunction, or final judgment relating thereto, is pending or, to the Borrower's knowledge, threatened before any court, governmental or administrative agency or arbitrator in which it is sought to restrain or prohibit or to obtain damages or other relief in connection with this Agreement.

Section 7.04. Binding Agreement. The execution, delivery and performance of this Agreement have been duly authorized by all necessary action of the Borrower. This Agreement has been duly executed and delivered by the Borrower and constitutes the legal, valid and binding obligation of the Borrower, enforceable according to its terms, subject, as to enforceability, to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

Section 7.05. Authorizations. Except for those that have been obtained as of the date hereof, no authorization, consent, approval, registration, filing, exemption or license with or from any Governmental Authority or any other third party is necessary for the borrowing hereunder, for the execution and delivery of this Agreement, or for the performance by the Borrower of its obligations hereunder.

Section 7.06. Compliance with Laws. The Borrower is in compliance with the requirements of all applicable Laws, except those the non-compliance with which would not, singly or in the aggregate, have a Material Adverse Effect.

Section 7.07. Existing Liens. Except for the Liens permitted under Section 9.01 hereof, there are no Liens of any kind whatsoever with respect to the Collateral.

Section 7.08. Collateral. Upon the filing of a financing statement describing the Collateral in the office located in the jurisdiction where the Borrower is incorporated, the Lender will have a valid and perfected first priority security interest in the Collateral to the extent such security interest can be perfected by filing a financing statement or obtaining possession in accordance with the Uniform Commercial Code of the jurisdiction the law of which governs the perfection of such interest.

Section 7.09. Properties. The Borrower has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

Section 7.10. Full Disclosure. All written information heretofore furnished by the Borrower for purposes of or in connection with this Agreement or any transaction contemplated hereby is, and all written information hereafter furnished by the Borrower in connection herewith will be, true and accurate in all material respects on the date as of which such information is stated or certified or, in the case of projections, is or will be based on reasonable assumptions.

ARTICLE VIII

AFFIRMATIVE COVENANTS

The Borrower hereby covenants and agrees that until the Loans and all other amounts owing by the Borrower in connection herewith have been paid in full:

Section 8.01. Payment of Taxes. The Borrower will pay and discharge all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or properties, prior to the date on which penalties attach thereto, except to the extent that any such tax, assessment, charge or levy is being contested in good faith by appropriate proceedings and for which adequate reserves have been established by the Borrower.

Section 8.02. Preservation of Existence. The Borrower will preserve and maintain its existence, rights, franchises and privileges, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

Section 8.03. Compliance with Laws. The Borrower will comply with the requirements of all applicable Laws, non-compliance with which could, singly or in the aggregate, have a Material Adverse Effect.

Section 8.04. Notice of Certain Events. The Borrower will promptly and in any event not more than three (3) Business Days after obtaining knowledge thereof notify the Lender of (a) the occurrence of any Default or (b) the commencement of any litigation or governmental proceeding affecting the Borrower which, if adversely determined, would have a Material Adverse Effect.

Section 8.05. Use of Proceeds. The Borrower will use the proceeds of the Tranche B Loans solely for working capital and general funding purposes in accordance with the Budget.

Section 8.06. Promissory Notes and Tangible Chattel Paper. If the Borrower shall at any time hold or acquire any promissory notes or tangible chattel paper, the Borrower shall forthwith endorse, assign and deliver the same to the Lender, accompanied by such instruments of transfer or assignment duly executed in blank as the Lender may from time to time specify.

Section 8.07. Miscellaneous. The Borrower will:

(a) exercise its reasonable best efforts to pay and perform all of its obligations under this Agreement;

(b) take all actions necessary to perfect or protect the Lender's security interests as required by the Lender, including filing financing statements or other appropriate instruments and enforcing all rights under this Agreement; and

(c) maintain good title to all of its assets free and clear of any Liens, except as permitted pursuant to Section 9.01.

ARTICLE IX

NEGATIVE COVENANTS

The Borrower hereby covenants and agrees that, until the Loans and all other amounts owing by the Borrower in connection herewith have been paid in full:

Section 9.01. Liens. The Borrower will not create, incur, assume or permit to exist any Lien upon the Collateral, other than (a) Liens created under this Agreement; (b) Liens for taxes, assessments, charges or other governmental levies not delinquent or which are being contested in good faith by appropriate proceedings and for which adequate reserves have been established by the Borrower to the extent required by generally accepted accounting principles; (c) Liens in connection with worker's compensation, unemployment insurance or social security obligations; and (d) mechanics', workers', materialmen's, operators', carriers', or other like Liens arising in the ordinary and normal course of business with respect to obligations which are not due or which are being contested in good faith by appropriate proceedings.

Section 9.02. Consolidations, Mergers, etc. The Borrower will not (a) merge with or into, or consolidate with, any other Person or (b) sell all or substantially all of its assets, whether in one transaction or a series of transactions.

Section 9.03. Subsidiaries. The Borrower will not form any new subsidiary if such formation could reasonably be expected to result in a Material Adverse Effect; provided that, in any case, the Borrower shall provide 10 Business Days' prior notice to the Lender of its intent to create any new subsidiary.

Section 9.04. Changes in Jurisdiction of Organization, Name, etc. The Borrower shall not (i) change its name from that indicated in the public record of its jurisdiction of organization, (ii) change its location (within the meaning of Section 9-307 of the Uniform Commercial Code) or (iii) change its name, identity or corporate structure so as to make any financing statement seriously misleading, unless in any such case it shall have given Lender at least 10 days prior written notice thereof and shall have delivered to Lender all Uniform Commercial Code financing statements and amendments thereto as Lender shall request and taken all other actions deemed necessary by Lender to continue its perfected status in the Collateral with the same or better priority.

ARTICLE X

EVENTS OF DEFAULT

Section 10.01. Events of Default. If any one or more of the following events (an "Event of Default") shall occur and be continuing, the Lender shall be entitled to exercise the remedies set forth in Section 10.02 hereof.

(a) The Borrower shall default in the payment of any principal, interest or other amount owing under this Agreement when due; or

(b) The Borrower shall fail to perform or observe any covenant or obligation contained in Article VII of this Agreement; or

(c) The Borrower shall fail to perform or observe any other covenant or obligation of the Borrower pursuant to this Agreement, and such failure shall continue for 30 days after the earlier of notice from the Lender and the date the Borrower had actual knowledge thereof; or

(d) Any representation or warranty made or deemed made by the Borrower in this Agreement, or any certificate, financial statement or other document delivered pursuant hereto shall be false in any material respect on any date as of which made or deemed made or shall be breached; or

(e) The entry of a decree or order for relief in respect of the Borrower by a court having jurisdiction in the premises, or the appointment of a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of the Borrower or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, in an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law; or the commencement against the Borrower of an involuntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, and the continuance of any such case unstayed and in effect for a period of 60 consecutive days; or

(f) The commencement by the Borrower of a voluntary case under the Federal bankruptcy laws, as now or hereafter constituted, or any other applicable Federal, state or foreign bankruptcy, insolvency or other similar law, or the consent by any such Person to the entry of an order for relief in an involuntary case under any such law or the consent by any such Person to the appointment of or taking possession by a receiver, liquidator, assignee, custodian, trustee, sequestrator (or other similar official) of any such Person or of any substantial part of any such Person's property or the making by any such Person of a general assignment for the benefit of creditors, or the failure of any such Person generally to pay its debts as such debts become due or the taking of any corporate action in furtherance of any of the foregoing; or

(g) The Borrower shall admit in writing its inability or fail generally to pay its debts as they become due; or

(h) The Borrower shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Debt, when and as the same shall become due and payable beyond the period of grace, if any, applicable thereto; or any event or condition occurs that results in any Material Debt becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Debt or any trustee or agent on its or their behalf to cause any Material Debt to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided, that this subclause (iii) shall not apply to secured Debt that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Debt to the extent such Debt is paid when due; or

(i) Any Lien upon the Collateral created in favor of the Lender under this Agreement shall cease to be, or shall be asserted by the Borrower not to be, a valid and perfected first priority security interest, except as permitted by this Agreement and such failure shall not have been cured within 15 days after written notice thereof shall have been given to the Borrower by the Lender.

Section 10.02. Default Remedies. If any Event of Default shall occur and be continuing, then and in every such event, and at any time thereafter during the continuance of such Event of Default, the Lender may, by notice to the Borrower, declare the Loans to be forthwith due and payable, whereupon the Loans shall become forthwith due and payable both as to principal and interest together with all other amounts payable by the Borrower to the Lender in connection with this Agreement, without presentment, demand, protest or any other notice of any kind, all of which are expressly waived; provided, that if any

Event of Default set forth in paragraph (e) or (f) of Section 10.01 hereof shall occur with respect to the Borrower, then without any notice to the Borrower or any other act by any other Person, the Loans, interest thereon and all such other amounts shall become forthwith due and payable, all without presentment, demand, protest or notice of any kind, all of which are expressly waived.

Section 10.03. Setoff. The Lender is hereby authorized at any time and from time to time, upon the occurrence and during the continuance of any Event of Default, without prior notice to the Borrower, to the fullest extent permitted by law, to set off and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by the Lender at any of its branches or affiliates to or for the account of the Borrower against any and all of the amounts owing by the Borrower under this Agreement, whether or not the Lender shall have made any demand hereunder or thereunder. The rights of the Lender under this Section 10.03 are in addition to, and do not derogate from or impair, other rights and remedies (including, without limitation, other rights of setoff) which the Lender may have.

Section 10.04. Default Interest. Any amount (whether of principal, interest, fees or otherwise) payable hereunder that is not paid when due shall bear interest, payable on demand, from and including the date of default until paid in full at a rate equal to the rate then payable prior to the date of such default plus 2% per annum.

ARTICLE XI

ADDITIONAL AGREEMENTS

Section 11.01. Exercise of Certain Remedies. In consideration for the Lender's agreement to (i) amend and restate the Existing Loan Agreements and (ii) to provide the Tranche B Loans, in each case, on the terms and subject to the conditions set forth in this Agreement, the Borrower acknowledges and agrees that in the event it is unable to repay the outstanding principal amount of Secured Obligations in cash in full on the Maturity Date, the Borrower shall consent to the foreclosure by the Lender of its first priority security interest in the Collateral without the requirement that the Lender obtain a judgment against the Borrower or pursue any other legal or judicial remedies. The Borrower further acknowledges and agrees that it shall execute and deliver to the Lender a conveyance in lieu of foreclosure (the "Conveyance in Lieu of Foreclosure"), pursuant to which the Borrower shall convey title to all of its Collateral to the Lender or its nominee in full satisfaction of the Secured Obligations. The Lender agrees that it shall hold the Conveyance in Lieu of Foreclosure in escrow and shall not release it unless and until the Borrower is unable to repay the outstanding principal amount of Secured Obligations in full in cash on the Maturity Date.

Section 11.02. Effect of Non-Repayment of Secured Obligations. In the event that the Borrower is unable to repay the outstanding principal amount of Secured Obligations in full in cash on the Maturity Date, then the following shall occur:

- (a) the obligations of the Lender under this Agreement shall automatically terminate and be of no further force or effect; and
- (b) the Conveyance in Lieu of Foreclosure shall become immediately effective.

ARTICLE XII

GENERAL PROVISIONS

Section 12.01. Assignment.

(a) The Borrower may not assign its rights or obligations under this Agreement without the prior written consent of the Lender, which consent may be given or withheld in the sole and absolute discretion of the Lender. The Lender may at any time assign or participate all or part of its rights and obligations under this Agreement to a bank or financial institution, in the ordinary course of its commercial banking business and in accordance with applicable law. Subject to the foregoing, all provisions contained in this Agreement or any document or agreement referred to herein or relating hereto shall inure to the benefit of, and shall be binding upon, the Borrower, the Lender and their respective successors and permitted assigns.

(b) The Lender may from time to time upon prior written notice to the Borrower change the Lending Office of the Lender at which the Loans are made or carried; provided, that if at the time of any change from one Lending Office to another the effect thereof would be to increase any amount payable by the Borrower under this Agreement then such change shall not be made without the prior written consent of the Borrower.

Section 12.02. Amendments and Waivers. Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Borrower and the Lender.

Section 12.03. Notices. All notices, requests, demands and other communications to any party hereunder shall be in writing (including facsimile or similar writing) and shall be given to such party at its address, or facsimile number set forth below or such other address or telecopier number as such party may hereafter specify by notice to the other party.

If to the Lender: AI Participations S.A.R.L.
1, Rond Point Maurice Bellonte,
F-31707 Blagnac Cedex, France
Attention: Oliver Furtak
Facsimile: +33 561 93 49 77
Telephone: +33 561 93 28 30

with a copy to:

Clifford Chance US LLP
31 West 52nd Street
New York, New York 10019
Attention: Mark F. Liscio, Esq.
Facsimile: +1 212 878 8375
Telephone: +1 212 878 4991

If to the Borrower: Tenzing Communications, Inc.
705 Fifth Avenue South, Suite 700,
Seattle, Washington 98104
Attention: Chief Financial Officer
Facsimile: +1 206 607 2839
Telephone: +1 206 607 2929

with a copy to:

Davis Wright Tremaine LLP
1501 Fourth Avenue, Suite 2600
Seattle, Washington 98101-1688
Attention: Stuart C. Campbell, Esq.
Facsimile: +1 206 903 3785
Telephone: +1 206 628 7685

Each such notice, request or other communication shall be effective when actually received.

Section 12.04. Expenses; Indemnification. The Borrower agrees to pay all out-of-pocket costs and expenses, including the reasonable fees and disbursements of counsel, incurred by the Lender in connection with (i) the preparation, execution and delivery of this Agreement or the transactions contemplated hereby and (ii) any amendments and waivers hereof or thereof on the Maturity Date. The Borrower also agrees to pay all out-of-pocket costs and expenses, including the fees and disbursements of counsel, incurred by the Lender in connection with the enforcement of this Agreement and the collection of any amounts owing hereunder. In addition, the Borrower will indemnify the Lender against, and on demand reimburse the Lender for, any and all liabilities, obligations, losses, damages, penalties, stamp and other similar taxes, actions, judgments, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against the Lender in any way relating to or arising out of this Agreement; provided, that the Borrower shall not be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Lender. Notwithstanding anything in this Agreement to the contrary, the provisions of this Section 11.04 shall survive the termination of this Agreement.

Section 12.05. Cumulative Rights; No Waiver. The rights, powers and remedies of the Lender hereunder are cumulative and in addition to all rights, powers and remedies provided under any and all agreements relating hereto, at law, in equity or otherwise. Neither any delay nor any omission by the Lender to exercise any right, power or remedy shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or any exercise of any other right, power or remedy.

Section 12.06. Counterparts. This Agreement may be executed in any number of counterparts and by each party hereto on separate counterparts, and each such counterpart, when executed and delivered, shall be deemed an original and all such counterparts, taken together, shall constitute one and the same Agreement. Delivery of an executed signature page hereof by facsimile transmission shall be as effective as delivery of a manually executed counterpart thereof.

Section 12.07. Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

Section 12.08. Headings. The Article and Section headings in this Agreement are for convenience of reference only and shall not affect the interpretation hereof.

Section 12.09. **GOVERNING LAW**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ALL RESPECTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

Section 12.10. Consent to Jurisdiction. The Borrower irrevocably submits to the non-exclusive jurisdiction of the Federal courts of the United States for the Southern District of New York and any court of the State of New York located in the County of New York in any action, suit or proceeding against the Borrower relating in any way to this Agreement and agrees that service of process in any such action, suit or proceeding may be effected by mailing a copy thereof by registered or certified mail, or a form of mail substantially equivalent thereto, addressed to it at its address as provided for notices hereunder. The Borrower hereby irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of venue of any action or proceeding in the Federal Courts of the United States for the Southern District of New York or the Supreme Court of the State of New York, County of New York and any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 12.11. **WAIVER OF JURY TRIAL**. THE BORROWER AND THE LENDER EACH IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

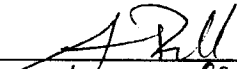
Section 12.12. **CONFIRMATION AND ACKNOWLEDGMENT OF THE OBLIGATIONS; RELEASE**. THE BORROWER HEREBY (I) CONFIRMS AND ACKNOWLEDGES TO THE LENDER THAT AS OF THE CLOSING DATE, IT IS VALIDLY AND JUSTLY INDEBTED TO THE LENDER FOR THE PAYMENT OF ALL OBLIGATIONS WITHOUT OFFSET, DEFENSE, CAUSE OF ACTION OR COUNTERCLAIM OF ANY KIND OR NATURE WHATSOEVER AND (II) REAFFIRMS AND ADMITS THE VALIDITY AND ENFORCEABILITY OF THE EXISTING LOAN AGREEMENTS. THE BORROWER, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES AND DISCHARGES THE LENDER AND ALL OF THE AFFILIATES, RELATED PARTIES, SUCCESSORS AND ASSIGNS OF THE LENDER FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS OR CAUSES OF ACTION (KNOWN AND UNKNOWN) ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, THE EXISTING LOAN AGREEMENTS, AND ANY DOCUMENTS, AGREEMENTS, DEALINGS OR OTHER MATTERS CONNECTED WITH THIS AGREEMENT OR THE EXISTING LOAN AGREEMENTS, IN EACH CASE TO THE EXTENT ARISING (X) ON OR PRIOR TO THE CLOSING DATE OR (Y) OUT OF, OR RELATING TO, ACTIONS, DEALINGS OR MATTERS OCCURRING ON OR PRIOR TO THE CLOSING DATE.

Section 12.13. Successors. This Agreement shall be binding on and inure to the benefit of each of the Borrower and the Lender and their respective permitted successors and assigns.

[Remainder of page left blank intentionally; signatures follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

TENZING COMMUNICATIONS, INC.

By: 
Name: Alex Duff
Title: CFO Sept 28 '04

AI PARTICIPATIONS S.A.R.L.

By: _____
Name: _____
Title: _____


NYA 691048.5

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

TENZING COMMUNICATIONS, INC.

By: _____
Name:
Title:

AI PARTICIPATIONS S.A.R.L.

By:  _____
Name: Simon Bourcier
Title: Managing-Partner

NYA 691048.5

PATENT
REEL: 015271 FRAME: 0377

SCHEDULE I

COPYRIGHTS

None.

NYA 691048.5

PATENT
REEL: 015271 FRAME: 0378

PATENTS

Client Matter:	Country	Status	Application Number & Filing Date	Patent Number & Issue Date	Remarks:
58479-5	US	Granted	09/487,752	6,757,712	29-Jun-2004
58479-8	US	Published	10/112,611		
58479-15	US	Published	10/112,300		
58479-49	AU	Allowed	60694/99	768107	
58479-50	EP	Pending	99947100.6		
58479-51	SG	Granted	200101399-4	79581	30-Apr-2004
58479-57	EP	Published	02721676.1		
58479-59	US	Published	10/785,660		This App is a CON of 09/487,752 filed Jan 19, 2000
58479-63	US	Pending	10/825,721		This is a DIV of 10/112,300 filed Mar 28, 2002

TRADEMARKS

Client Ref.	Country	Application No. & Filing Date	Registration No. & Registration Date	Status	Classes:	Goods:
58479-36	EU	1767557 21-Jul-2000	001767557 18-Dec-2003	Registered	9, 38, 39	<p>computers; computer hardware; computer software; computer software for connecting global computer networks; computer software for connecting computer network users; computer e-commerce software to allow users to perform electronic business transactions via a global computer network; computer search engine software; computer software to enhance audio-visual capabilities of multimedia applications; computer software used to create web sites; computer software for providing security on a computer network; computer software used to monitor access onto a network; computer game software, interactive video games of virtual reality comprised of computer hardware and software; computer programs in the field of aviation; computer programs in the field of aviation that may be downloaded from a computer network; all of the aforesaid goods only for use in connection with connectivity and communication solutions and systems and in any case not relating to time and attendance systems, access control systems and production data collection systems, in Class 9</p> <p>telecommunications; providing multiple user access to a global computer information network; providing on-line chat rooms and electronic bulletin boards for transmission of messages among computer users concerning current events, news travel, lifestyle and entertainment; providing electronic mail services, in Class 38</p> <p>transport; packaging and storage of goods; travel</p>

SCHEDULE III

Client Ref.	Country	Application No. & Filing Date	Registration No. & Registration Date	Status	Classes:	Goods:
58479-33	US	75/785,602 26-Aug-1999	2,615,706 03-Sep-2002	Registered	42	arrangement; air transportation of passengers and freight; commuter air transport services; electronic storage of information, messages, data for others; providing a web site on global computer networks featuring information concerning travel and travel related subjects over a global computer network; providing a web page of information relating to tourist attractions in places of interest to the traveler, sight seeing tours, travel tips, and car rentals, in Class 39
58479-42	SG	T00/19094G 30-Oct-2000	T00/19094G 30-Oct-2000	Registered	38	hosting the web sites of others on a computer server for a global computer network; association services, namely, promoting the interests of aviation enthusiasts; promoting public awareness of the use of the global computer networks in the aviation field; promoting public awareness of the need for courage, self reliance and determination in personal achievement; computer software design for others; maintenance, installation, and updating of computer software; providing a web page of information regarding restaurants, hotels, bed and breakfast places and other interesting places for temporary lodging, in International Class 42 providing multiple user access to a global computer information network; providing telecommunications connections and electronic bulletin boards services for transmission of messages among computer users concerning current event, news travel, lifestyle and entertainment; providing electronic mail services, in International Class 38
58479-41	SG	T00/19095E 30-Oct-2000	T00/19095E 30-Oct-2000	Registered	39	air transportation services for passengers and freight; air transport services; storage of electronically-stored data or documents; arranging travel and information therefor, all provided on-line from a computer database or via the global communications network, in International Class

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SCHEDULE III

Client Ref.	Country	Application No. & Filing Date	Registration No. & Registration Date	Status	Classes:	Goods:
58479-43	JP	2000-116951 27-Oct-2000	4589668 26-Jul-2002	Registered	38, 39, 42	39 providing access to a global computer information network, providing chat rooms and electronic bulletin boards for transmission of messages, providing electronic mail services, communication by computer terminals, cellular telephone communications, telex communication, communication by telegram, communication by telephone, facsimile communication, radio/telephone paging services, in Class 38; air transportation of passengers and freight, providing information concerning travel and travel related subject through a web site on global computer networks, providing information concerning tourist attractions in places of interest to the traveler/sightseeing tours/car rentals, agencies or brokerage for travel contracts (except for lodging contracts), electronic storage of information/message/data for others, in Class 39; rental/leasing of storage space of computer servers for storage of information/message/data for others, in Class 42
58479-44	IN	969744 10-Nov-2000	969744 15-Dec-2003	Registered	9	computer hardware; computer software for use in tracking travel and flight related information; communications software for connecting global computer networks; communications software for connecting computer network users; computer e-commerce software to allow users to perform electronic business transactions via a global computer network; computer search engine software; computer software to enhance audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; computer software used to create web sites; computer software for providing security on a computer network; computer software used to monitor access onto a network;

SCHEDULE III

Client Ref.	Country	Application No. & Filing Date	Registration No. & Registration Date	Status	Classes:	Goods:
58479-38	HK	23919/2000 30-Oct-2000	14022/2001 19-Dec-2001	Registered	39	computer game software; interactive video games of virtual reality comprised of computer hardware and software, computer programs in the field of aviation for use in tracking travel and flight related information; computer software in the field of aviation for use in tracking travel and flight related information that may be downloaded from a computer network
58479-37	HK	23918/2000 30-Oct-2000	9869/2001 28-Aug-2001	Registered	38	air transportation of passengers and freight; commuter air transport services; information services relating to travel, provided on-line from a computer database or the Internet; information services relating to tourist attractions, places of interest to travelers, sightseeing tours, travel tips and car rentals, provided on line from a computer database or the Internet
58479-35	CN	2000110540 25-Jul-2000	1719596 21-Feb-2002	Registered	39	telecommunications services; providing multiple user access to a global computer information network; providing on-line chat rooms and electronic bulletin boards services for transmission of messages among computer users concerning current events, news travel, lifestyle and entertainment; providing electronic mail services
58479-34	CN	2999110539 25-Jul-2000	1711469 07-Feb-2002	Registered	38	air transportation of passengers and freight; commuter air transport services, electronic storage of information, messages and data for others, providing information concerning travel and travel-related subjects over a global computer network, providing information over global computer networks relating to tourist attractions, sightseeing tours, travel tips, providing information over global computer networks relating to car rentals
						providing multiple user access to a global computer information network; providing on-line chat rooms and electronic bulletin boards services for transmission of messages among computer users concerning current events, news travel, lifestyle and entertainment;

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SCHEDULE III

Client Ref.	Country	Application No. & Filing Date	Registration No. & Registration Date	Status	Classes:	Goods:
58479-32	US	75/785,846 26-Aug-1999	2,582,909 18-Jun-2002	Registered	41	providing electronic mail services educational and entertainment services, namely, providing a web site on global computer networks featuring information on air show entertainment, history and culture; organizing and presentation of air shows and flying competitions; providing instruction in the field of flying; providing a web page of information regarding entertainment events and shows in particular places of interest to the traveler in International Class 41
58479-31	US	75/902,229 27-Jan-2000	2,564,310 23-Apr-2002	Registered	39	air transportation of passengers and freight; commuter air transport services; electronic storage of information, messages, data for others; providing a web site on global computer networks featuring information concerning travel and travel related subjects over a global computer network; providing a web page of information relating to tourist attractions in places of interest to the traveler, sight seeing tours, travel tips, and car rental
58479-26	US	75/785,848 26-Aug-1999	2,493,337 25-Sep-2001	Registered	38	providing multiple user access to a global computer information network; providing on-line chat rooms and electronic bulletin boards for transmission of messages among computer users concerning current events, news, travel, lifestyle and entertainment; providing electronic mail services
58479-29	US	75/785,717 26-Aug-1999	2,564,176 23-Apr-2002	Registered	35	dissemination of advertising for others via an online electronic communications network; electronic billboard advertising; providing advertising space online to others; licensing of software
58479-30	US	75/785,934 26-Aug-1999	2,500,858 23-Oct-2001	Registered	9	computer hardware; computer software for use in tracking travel and flight related information; communications software for connecting global computer networks; communications software for connecting computer network users; computer e-commerce software to allow users to perform electronic business transactions via a global computer network;

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SCHEDULE III

Client Ref.	Country	Application No. & Filing Date	Registration No. & Registration Date	Status	Classes:	Goods:
						computer search engine software; computer software to enhance audio-visual capabilities of multimedia applications, namely, for the integration of text, audio, graphics, still images and moving pictures; computer software used to create web sites; computer software for providing security on a computer network, computer software used to monitor access onto a network; computer game software; interactive video games of virtual reality comprised of computer hardware and software. Computer programs in the field of aviation for use in tracking travel and flight related information; computer software in the field of aviation for use in tracking travel and flight related information that may be downloaded from a computer network
58479-60	AU	990048 20-Feb-2004		Allowed	38	electronic mail services, instant messaging services, and short message services (SMS)
58479-61	AE	59703 28-Mar-2004		Pending	38	electronic mail services, instant messaging services, and short message services (SMS)

SCHEDULE 7.02

ORGANIZATIONAL STRUCTURE OF BORROWER

<u>Subsidiary Name</u>	<u>State</u>	<u>Parent Name</u>	<u>% Owned</u>	
Tenzing Global Services, Inc	WA	Tenzing Communications, Inc.	100%	To be dissolved.

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