FORM 10-K
MICROMUSE INC – MUSEE

Filed: May 17, 2004 (period: December 31, 2003)

Annual report which provides a comprehensive overview of the company for the past year

EXHIBIT A (continued)
PART IV

Item 15. Exhibits, Financial Statements Schedule, and Reports on Form 8-K

(a)(1) Financial Statements

See the Consolidated Statements beginning on page 48 of this Form 10-K.

(2) Financial Statement Schedule

See the Financial Statement Schedule at page 103 of this Form 10-K.

(3) Exhibits

See Exhibit Index at page 104 of this Form 10-K.

(b) Reports on Form 8-K.


A Current Report on Form 8-K was filed with the Securities and Exchange Commission by Micromuse on July 29, 2003, to report under Item 5 the appointment of Lloyd A. Carney as Chairman of the Board of Directors and Chief Executive Officer of Micromuse.

A Current Report on Form 8-K was filed with the Securities and Exchange Commission by Micromuse on August 20, 2003, to report under Item 5 that Micromuse had acquired NETWORK HARMONi, Inc., effective August 19, 2003, and that Craig Farrell was appointed Chief Technology Officer of Micromuse.

(c) See Exhibit Index at page 104 of this Form 10-K.

(d) See the Consolidated Financial Statements beginning on page 48 and Financial Statement Schedule at page 103 of this Form 10-K.
Pursuant to the requirements of the Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

By: /s/ LLOYD A. CARNEY

Lloyd A. Carney
Chairman and Chief Executive Officer

Date: May 17, 2004

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons, on behalf of the Registrant in the capacities and on the dates indicated:

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>/s/ LLOYD A. CARNEY</td>
<td>Chairman and Chief Executive Officer</td>
<td>May 17, 2004</td>
</tr>
<tr>
<td>(Lloyd A. Carney)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ MICHAEL L. LUETKEMEYER</td>
<td>Senior Vice President and Chief Financial Officer</td>
<td>May 17, 2004</td>
</tr>
<tr>
<td>(Michael L. Luetkemeyer)</td>
<td>(Principal Financial and Accounting Officer)</td>
<td></td>
</tr>
<tr>
<td>/s/ GREGORY Q. BROWN</td>
<td>Director</td>
<td>May 17, 2004</td>
</tr>
<tr>
<td>(Gregory Q. Brown)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ MICHAEL E.W. JACKSON</td>
<td>Director</td>
<td>May 17, 2004</td>
</tr>
<tr>
<td>(Michael E.W. Jackson)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ DAVID C. SCHWAB</td>
<td>Director</td>
<td>May 17, 2004</td>
</tr>
<tr>
<td>(David C. Schwab)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>/s/ KATHLEEN M.H. WALLMAN</td>
<td>Director</td>
<td>May 17, 2004</td>
</tr>
<tr>
<td>(Kathleen M.H. Wallman)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### SCHEDULE II

**VALUATION AND QUALIFYING ACCOUNTS**

*Years Ended September 30, 2003, 2002 and 2001*  
*(In thousands)*

<table>
<thead>
<tr>
<th>Description</th>
<th>Balance at Beginning of Period</th>
<th>Charged to Costs and Expenses</th>
<th>Deductions</th>
<th>Balance at End of Period</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Allowance for doubtful accounts:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Year Ended September 30, 2003</td>
<td>$ 3,827</td>
<td>(709)</td>
<td>(1,887)</td>
<td>$ 1,231</td>
</tr>
<tr>
<td>Year Ended September 30, 2002</td>
<td>$ 4,438</td>
<td>171</td>
<td>(782)</td>
<td>$ 3,827</td>
</tr>
<tr>
<td>Year Ended September 30, 2001</td>
<td>$ 1,472</td>
<td>3,975</td>
<td>(1,009)</td>
<td>$ 4,438</td>
</tr>
</tbody>
</table>

103
<table>
<thead>
<tr>
<th>Exhibit Number</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1(1)</td>
<td>Restated Certificate of Incorporation of the Registrant</td>
</tr>
<tr>
<td>3.2(2)</td>
<td>Amended and Restated Bylaws of the Registrant.</td>
</tr>
<tr>
<td>10.1</td>
<td>Form of Amended and Restated Indemnification Agreement entered into between the Registrant and its directors and officers.*</td>
</tr>
<tr>
<td>10.2</td>
<td>1997 Stock Option/Stock Issuance Plan, as amended filed herewith. (The form of award agreement is incorporated by reference from Exhibit 10.2 in the Registrant’s Form 10–Q filed with the SEC on August 13, 2003).*</td>
</tr>
<tr>
<td>10.3</td>
<td>1998 Employee Stock Purchase Plan, as amended (incorporated by reference from the exhibit of the same number in Form 10–Q as filed with the SEC on May 13, 2003).*</td>
</tr>
<tr>
<td>10.4(3)</td>
<td>Amended and Restated Investors’ Rights Agreement by and among the Registrant and certain stockholders of the Registrant, dated as of September 8, 1997.</td>
</tr>
<tr>
<td>10.5(3)</td>
<td>Office lease dated as of March 25, 1997, by and between the Registrant and SOMA Partners, L.P.</td>
</tr>
<tr>
<td>10.6</td>
<td>Employment Agreement as of January 1, 1999, by and between James B. De Golia and Micromuse Inc.*</td>
</tr>
<tr>
<td>10.7</td>
<td>Executive Employment Continuation Agreement by and between Michael Foster and Micromuse Inc.*</td>
</tr>
<tr>
<td>10.9(5)</td>
<td>First amendment to office lease, dated as of October 25, 2000, by and between the Registrant and SOMA Partners, L.P.</td>
</tr>
<tr>
<td>10.10</td>
<td>Employment Agreement as of July 28, 2003, by and between Lloyd A. Carney and Micromuse Inc.*</td>
</tr>
<tr>
<td>10.13(8)</td>
<td>Executive Employment Continuation Agreement by and between Michael Donohue and Micromuse Inc.*</td>
</tr>
<tr>
<td>10.15</td>
<td>Notice of Stock Option Grant and Stock Option Agreement dated as of February 9, 2004, by and between Lloyd A. Carney and Micromuse Inc.*</td>
</tr>
<tr>
<td>21.1</td>
<td>Subsidiaries of the Registrant.</td>
</tr>
<tr>
<td>23.1</td>
<td>Report on Schedule and Consent of Independent Auditors</td>
</tr>
<tr>
<td>31</td>
<td>Separate Certifications of the Chief Executive Officer and the Chief Financial Officer of the Registrant required by SEC Rule 13a–14(a) (pursuant to Section 302 of the Sarbanes–Oxley Act of 2002).</td>
</tr>
<tr>
<td>32</td>
<td>Combined Certification of the Chief Executive Officer and the Chief Financial Officer of the Registrant required by SEC Rule 13a–14(b) (pursuant to Section 906 of the Sarbanes–Oxley Act of 2002).</td>
</tr>
</tbody>
</table>

* This asterisk indicates management contracts.

(1) Incorporated by reference from the exhibit of the same number in the Registrant’s Form 10–K for the fiscal year ended September 30, 2001, as filed with the SEC on December 21, 2001.

(2) Incorporated by reference from the exhibit of the same number in the Registrant’s Registration Statement on Form S–1 (Registration No. 333–58975) as filed with the SEC on July 13, 1998.
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(3) Incorporated by reference from the exhibit of the same number in the Registrant’s Registration Statement on Form S-1 (Registration No. 333-42177) as filed with the SEC on December 12, 1997.

(4) Incorporated by reference from exhibit number 10.8 in the Registrant’s Form 10-K for the fiscal year ended September 30, 2001, as filed with the SEC on December 21, 2001.

(5) Incorporated by reference from exhibit number of the same number in the Registrant’s Form 10-K for the fiscal year ended September 30, 2001, as filed with the SEC on December 21, 2001.

(6) Incorporated by reference from the exhibit of the same number in the Registrant’s Form 10-K for the fiscal year ended September 30, 2002, as filed with the SEC on December 23, 2002.

(7) Incorporated by reference from the exhibit of the same number in the Registrant’s Form 10-K for the fiscal year ended September 30, 2002, as filed with the SEC on December 23, 2002.

(8) Incorporated by reference from the exhibit of the same number in the Registrant’s Form 10-K for the fiscal year ended September 30, 2002, as filed with the SEC on December 23, 2002.
AMENDED AND RESTATED INDEMNIFICATION AGREEMENT

THIS AGREEMENT (the “Agreement”) is made and entered into as of July 29, 2003, between Micromuse Inc., a Delaware corporation (“the Company”), and (‘“Indemnitee”).

WITNESSETH THAT:

WHEREAS, Indemnitee performs a valuable service for the Company; and

WHEREAS, the Board of Directors of the Company has adopted Bylaws (the “Bylaws”) providing for the indemnification of the officers and directors of the Company to the maximum extent authorized by Section 145 of the Delaware General Corporation Law, as amended (“Law”); and

WHEREAS, the Bylaws and the Law, by their nonexclusive nature, permit contracts between the Company and the officers or directors of the Company with respect to indemnification of such officers or directors; and

WHEREAS, in accordance with the authorization as provided by the Law, the Company may purchase and maintain a policy or policies of directors’ and officers’ liability insurance (“D & O Insurance”), covering certain liabilities which may be incurred by its officers or directors in the performance of their obligations to the Company; and

WHEREAS, in order to induce Indemnitee to continue to serve as an officer or director of the Company, the Company has determined and agreed to enter into this contract with Indemnitee;

NOW, THEREFORE, in consideration of Indemnitee’s service as an officer or director after the date hereof, the parties hereto agree as follows:

1. INDEMNITY OF INDEMNITEE. The Company hereby agrees to hold harmless and indemnify Indemnitee to the fullest extent authorized or permitted by the provisions of the Law, as such may be amended from time to time, and Article VII, Section 6 of the Bylaws, as such may be amended. In furtherance of the foregoing indemnification, and without limiting the generality thereof:

(a) PROCEEDINGS OTHER THAN PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(a) if, by reason of his Corporate Status (as hereinafter defined), he is or was, or is threatened to be made, a party to or participant in any Proceeding (as hereinafter defined) other than a Proceeding by or in the right of the Company. Pursuant to this Section 1(a), Indemnitee shall be indemnified against all Expenses (as hereinafter defined), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal Proceeding, had no reasonable cause to believe his conduct was unlawful.

(b) PROCEEDINGS BY OR IN THE RIGHT OF THE COMPANY. Indemnitee shall be entitled to the rights of indemnification provided in this Section 1(b) if, by reason of his Corporate Status, he is or was, or is threatened to be made, a party to or participant in any Proceeding brought by or in the right of the Company. Pursuant to this Section 1(b), Indemnitee shall be indemnified against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably
incurred by him or on his behalf in connection with such Proceeding or any claim, issue or matter therein, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company; provided, however, that, if applicable law so provides, no indemnification against such Expenses shall be made in respect of any claim, issue or matter in such Proceeding as to which Indemnitee shall have been adjudged to be liable to the Company unless and to the extent that the Court of Chancery of the State of Delaware or the court in which such Proceeding was brought shall determine that such indemnification may be made.

(c) INDEMNIFICATION FOR EXPENSES OF A PARTY WHO IS WHOLLY OR PARTLY SUCCESSFUL. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful, on the merits or otherwise, in any Proceeding referred to in Section 1(a) and 1(b) above, he shall be indemnified to the maximum extent permitted by law against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection therewith. If Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section and without limitation, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

2. ADDITIONAL INDEMNITY. In addition to, and without regard to any limitations on, the indemnification provided for in Section 1, the Company shall and hereby does indemnify and hold harmless Indemnitee against all Expenses, judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred by him or on his behalf if, by reason of his Corporate Status, he is or was, or is threatened to be made, a party to or participant in any Proceeding (including a Proceeding by or in the right of the Company), including, without limitation, all liability arising out of the negligence or active or passive wrongdoing of Indemnitee. The only limitation that shall exist upon the Company's obligations pursuant to this Agreement shall be that the Company shall not be obligated to make any payment to Indemnitee that is finally determined (under the procedures, and subject to the presumptions, set forth in Sections 6 and 7 hereof) to be unlawful under Delaware law.

3. CONTRIBUTION IN THE EVENT OF JOINT LIABILITY.

(a) Whether or not the indemnification provided in Sections 1 and 2 hereof is available, in respect of any threatened, pending or completed action, suit or proceeding in which Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), Company shall pay, in the first instance, the entire amount of any judgment or settlement of such action, suit or proceeding without requiring Indemnitee to contribute to such payment and Company hereby waives and relinquishes any right of contribution it may have against Indemnitee. Company shall not enter into any settlement of any action, suit or proceeding in which Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding) unless such settlement provides for a full and final release of all claims asserted against Indemnitee.

(b) Without diminishing or impairing the obligations of the Company set forth in the preceding subparagraph, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any threatened, pending or completed action, suit or proceeding in which Company is jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), Company shall contribute to the amount of expenses (including attorneys' fees), judgments, penalties, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors or employees of
the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, from the transaction from which such action, suit or proceeding arise; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, in connection with the events that resulted in such expenses, judgments, penalties, fines or settlement amounts, as well as any other equitable considerations which the law may require to be considered. The relative fault of Company and all officers, directors or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such action, suit or proceeding), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary, and the degree to which their conduct is active or passive.

(c) Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors or employees of the Company other than Indemnitee who may be jointly liable with Indemnitee.

4. INDEMNIFICATION FOR EXPENSES OF A WITNESS. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is, by reason of his Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, he shall be indemnified against all Expenses actually and reasonably incurred by him or on his behalf in connection therewith.

5. ADVANCEMENT OF EXPENSES. Notwithstanding any other provision of this Agreement, the Company shall advance all Expenses incurred by or on behalf of Indemnitee in connection with any Proceeding within ten (10) days after the receipt by the Company of a statement or statements from Indemnitee requesting such advance or advances from time to time, whether prior to or after final disposition of such Proceeding. Such statement or statements shall reasonably evidence the Expenses incurred by Indemnitee and shall include or be preceded or accompanied by an undertaking by or on behalf of Indemnitee to repay any Expenses advanced if it shall ultimately be determined that Indemnitee is not entitled to be indemnified against such Expenses. Any advances and undertakings to repay pursuant to this Section 5 shall be unsecured and interest free. Notwithstanding the foregoing, the obligation of the Company to advance Expenses pursuant to this Section 5 shall be subject to the condition that, if, when and to the extent that the Company determines that Indemnitee would not be permitted to be indemnified under applicable law, the Company shall be entitled to be reimbursed, within thirty (30) days of such determination, by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts therefore paid; provided, however, that if Indemnitee has commenced or thereafter commences legal proceedings in a court of competent jurisdiction to secure a determination that Indemnitee should be indemnified under applicable law, any determination made by the Company that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any advance of Expenses until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed).

6. PROCEDURES AND PRESUMPTIONS FOR DETERMINATION OF ENTITLEMENT TO INDEMNIFICATION. It is the intent of this Agreement to secure for Indemnitee rights of indemnity that are as favorable as may be permitted under the law and public policy of the State of Delaware. Accordingly, the parties agree that the following procedures and presumptions shall apply in the event of any question as to whether Indemnitee is entitled to indemnification under this Agreement:
(a) To obtain indemnification (including, but not limited to, the advancement of Expenses and contribution by the Company) under this Agreement, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification. Such written request shall be directed to the Secretary of the Company. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors in writing that Indemnitee has requested indemnification.

(b) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 6(a) hereof, a determination, if required by applicable law, with respect to Indemnitee’s entitlement thereto shall be made in the specific case by one of the following three methods, which shall be at the election of Indemnitee: (1) by a majority vote of the Disinterested Directors (as hereinafter defined), even though less than a quorum, or (2) by Independent Legal Counsel (as hereinafter defined) in a written opinion, or (3) by the stockholders.

(c) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 6(b) hereof, the Independent Counsel shall be selected as provided in this Section 6(c). The Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Board of Directors). Indemnitee or the Company, as the case may be, may, within ten (10) days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of “Independent Counsel” as defined in Section 15 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If a written objection is made and substanatied, the Independent Counsel selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within twenty (20) days after submission by Indemnitee of a written request for indemnification pursuant to Section 6(a) hereof, no Independent Counsel shall have been selected and not objected to, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware or other court of competent jurisdiction for resolution of any objection which shall have been made by the Company or Indemnitee to the other’s selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 6(b) hereof. The Company shall pay any and all reasonable fees and expenses of Independent Counsel incurred by such Independent Counsel in connection with acting pursuant to Section 6(b) hereof, and the Company shall pay all reasonable fees and expenses incident to the procedures of this Section 6(c), regardless of the manner in which such Independent Counsel was selected or appointed.

(d) In making a determination with respect to entitlement to indemnification hereunder, the person or persons or entity making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification in accordance with Section 6(a) of this Agreement. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion, by clear and convincing evidence.

(e) Indemnitee shall be deemed to have acted in good faith if Indemnitee’s action is based on the records or books of account of the Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Enterprise (as hereinafter defined) in the course of their duties, or on the advice of legal counsel for the Enterprise or on information or records given or reports
made to the Enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Enterprise. In addition, the knowledge and/or actions, or failure to act, of any director, officer, employee or agent or fiduciary of the Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement. Whether or not the foregoing provisions of this Section 6(e) are satisfied, it shall in any event be presumed that Indemnitee has at all times acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion, by clear and convincing evidence. The termination of any Proceeding, or any claim, issue or matter therein, by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in or not opposed to the best interests of the Company, and with respect to any criminal Proceeding, had reasonable cause to believe that Indemnitee’s conduct was unlawful.

(f) If the person, persons or entity empowered or selected under Section 6 to determine whether Indemnitee is entitled to indemnification shall not have made a determination within thirty (30) days after receipt by the Company of the request therefor, the requisite determination of entitlement to indemnification shall be deemed to have been made and Indemnitee shall be entitled to such indemnification, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee’s statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law; provided, however, that such thirty (30) day period may be extended for a reasonable time, not to exceed an additional fifteen (15) days, if the person, persons or entity making the determination with respect to entitlement to indemnification in good faith requires such additional time for the obtaining or evaluating documentation and/or information relating thereto; and provided, further, that the foregoing provisions of this Section 6(f) shall not apply if the determination of entitlement to indemnification is to be made by the stockholders pursuant to Section 6(b) of this Agreement and if (A) within fifteen (15) days after receipt by the Company of the request for such determination the Board of Directors or the Disinterested Directors, if appropriate, resolve to submit such determination to the stockholders for their consideration at an annual meeting thereof to be held within seventy five (75) days after such receipt and such determination is made thereat, or (B) a special meeting of stockholders is called within fifteen (15) days after such receipt for the purpose of making such determination, such meeting is held for such purpose within sixty (60) days after having been so called and such determination is made thereat.

(g) Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee’s entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any Independent Counsel, member of the Board of Directors, or stockholder of the Company shall act reasonably and in good faith in making a determination under the Agreement of the Indemnitee’s entitlement to indemnification. Any costs or expenses (including attorneys’ fees and disbursements) incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company (irrespective of the determination as to Indemnitee’s entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(h) The Company acknowledges that a settlement or other disposition short of final judgment may be successful if it permits a party to avoid expense, delay, distraction, disruption and uncertainty. In the event that any action, claim or proceeding to which Indemnitee is a party is resolved in any manner other than by adverse judgment against Indemnitee (including, without limitation, settlement of such action, claim or proceeding with or without payment of money or other consideration) it shall be
presumed that Indemnitee has been successful on the merits or otherwise in such action, suit or proceeding. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion, by clear and convincing evidence.

7. REMEDIES OF INDEMNITEE.

(a) In the event that (i) a determination is made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not made within ten (10) days after receipt by the Company of the request for such advance pursuant to Section 5 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 6(b) of this Agreement within ninety (90) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to this Agreement within ten (10) days after receipt by the Company of a written request therefor, or (v) payment of indemnification is not made within ten (10) days after a determination has been made that Indemnitee is entitled to indemnification or such determination is deemed to have been made pursuant to Section 6 of this Agreement, Indemnitee shall be entitled to an adjudication in an appropriate court of the State of Delaware, or in any other court of competent jurisdiction, of his entitlement to such indemnification. Indemnitee shall commence such proceeding seeking an adjudication within three hundred and sixty (360) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 7(a). The Company shall not oppose Indemnitee’s right to seek any such adjudication.

(b) In the event that a determination shall have been made pursuant to Section 6 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 7 shall be conducted in all respects as a de novo trial, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination under Section 6.

(c) If a determination shall have been made pursuant to Section 6 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 7, absent a prohibition of such indemnification under applicable law.

(d) In the event that Indemnitee, pursuant to this Section 7, seeks a judicial adjudication of his rights under, or to recover damages for breach of, this Agreement, or to recover under any directors’ and officers’ liability insurance policies maintained by the Company, the Company shall pay on his behalf, in advance, any and all expenses (of the types described in the definition of Expenses in Section 15 of this Agreement) actually and reasonably incurred by him in such judicial adjudication, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advancement of expenses or insurance recovery.

(e) The Company shall be precluded from asserting in any judicial proceeding commenced pursuant to this Section 7 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court that the Company is bound by all the provisions of this Agreement.

8. NOTICE TO INSURERS. If, at the time of the receipt by the Company of a request for indemnification, the Company has liability insurance in effect which may cover such request, the Company shall give prompt notice to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.
9. NON-EXCLUSIVITY; SURVIVAL OF RIGHTS; INSURANCE; SUBROGATION.

(a) The rights of indemnification as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the certificate of incorporation of the Company, the Bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his Corporate Status prior to such amendment, alteration or repeal. To the extent that a change in any applicable law, whether by statute or judicial decision, permits greater indemnification than would be afforded currently under the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, officers, employees, or agents or fiduciaries of the Company or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person serves at the request of the Company, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for Indemnitee.

(c) In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(d) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder if and to the extent that Indemnitee has otherwise actually received such payment under any insurance policy, contract, agreement or otherwise.

10. EXCEPTION TO RIGHT OF INDEMNIFICATION. Notwithstanding any other provision of this Agreement, Indemnitee shall not be entitled to indemnification under this Agreement with respect to any Proceeding brought by Indemnitee, or any claim therein, unless (a) the bringing of such Proceeding or making of such claim shall have been approved by the Board of Directors of the Company; (b) such Proceeding is being brought by the Indemnitee to assert, interpret or enforce his rights under this Agreement, applicable law, the certificate of incorporation of the Company, the Bylaws or any agreement now or hereafter in effect relating to any Proceeding, or any claim, issue or matter therein, for which Indemnitee may seek indemnification; or (c) as otherwise required by Law, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification.

11. DURATION OF AGREEMENT. All agreements and obligations of the Company contained herein shall continue during the period Indemnitee is a director, officer, employee or agent or fiduciary of the Company (or is or was serving at the request of the Company as a director, officer, employee or agent or fiduciary of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise) and shall continue thereafter so long as Indemnitee shall be subject to any Proceeding (or any proceeding commenced under Section 7 hereof) by reason of his Corporate Status, whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement. This Agreement shall be binding upon
and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as an officer or director of the Company or any other Enterprise at the Company's request.

12. SECURITY. To the extent requested by the Indemnitee and approved by the Board of Directors of the Company, the Company may at any time and from time to time provide security to the Indemnitee for the Company's obligations hereunder through an irrevocable bank line of credit, funded trust or other collateral. Any such security, once provided to the Indemnitee, may not be revoked or released without the prior written consent of the Indemnitee.

13. PERIOD OF LIMITATIONS. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against Indemnitee, Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of two (2) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two (2) year period; provided, however, that if any shorter period of limitations is otherwise applicable to any such cause of action, such shorter period shall govern.

14. ENFORCEMENT.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as an officer or director of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as an officer or director of the Company.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

15. DEFINITIONS. For purposes of this Agreement:

(a) "Company" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents or fiduciaries, so that if Indemnitee is or was a director, officer, employee or agent or fiduciary of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent or fiduciary of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise, Indemnitee shall stand in the same position under the provisions of this Agreement with respect to the resulting or surviving corporation as Indemnitee would have with respect to such constituent corporation if its separate existence had continued.

(b) "Corporate Status" describes the status of a person who is or was a director, officer, employee or agent or fiduciary of the Company, or any subsidiary of the Company, or of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the Company.

(c) "Disinterested Director" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.
(d) "Enterprise" shall mean the Company and any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

(e) "Expenses" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, participating, or being or preparing to be a witness in a Proceeding.

(f) "Independent Counsel" means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement, or of other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(g) "Proceeding" includes any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, investigation, inquiry, hearing (including an administrative hearing) or any other actual, threatened or completed proceeding, whether brought by or in the right of the Company or otherwise and whether civil, criminal, administrative or investigative, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of Indemnitee’s Corporate Status or by reason of any action taken by him or of any inaction on his part while serving in such capacity; in each case whether or not he is acting or serving in any such capacity at the time any liability or expense is incurred for which indemnification can be provided under this Agreement; including one pending on or before the date of this Agreement; and excluding one initiated by an Indemnitee pursuant to Section 7 of this Agreement to enforce his rights under this Agreement.

16. SEVERABILITY. If any provision or provisions of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, illegal or otherwise unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

17. MODIFICATION AND WAIVER. No supplement, modification, termination or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.
18. NOTICE BY INDEMNITEE. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification covered hereunder. The failure to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise unless and only to the extent that such failure or delay materially prejudices the Company.

19. NOTICES. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (i) delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed:

(a) If to Indemnitee, to the address set forth below Indemnitee signature hereto.

(b) If to the Company, to:

   Micromuse Inc.
   139 Townsend Street
   San Francisco, California
   Attention: Chief Financial Officer

or to such other address as may have been furnished to Indemnitee by the Company or to the Company by Indemnitee, as the case may be.

20. IDENTICAL COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

21. HEADINGS. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

22. GOVERNING LAW. The parties agree that this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware without application of the conflict of laws principles thereof.

23. GENDER. Use of the masculine pronoun shall be deemed to include usage of the feminine pronoun where appropriate.

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24. TERMINATION OF PRIOR INDEMNIFICATION AGREEMENTS. Upon the effectiveness of this Agreement, any prior Indemnification Agreements between the parties hereto shall terminate and be of no further force and effect, and shall be superseded and replaced in its entirety by this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on and as of the day and year first above written.

MICROMUSE INC.

By: ____________________________

Name: James B. De Golia
Title: Senior Vice President & Secretary

AGREED TO AND ACCEPTED:

INDEMNITEE

Address:

______________________________

______________________________

Signature Page to Micromuse Inc.– Amended and Restated Indemnification Agreement

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MICROMUSE INC.
1997 STOCK OPTION/STOCK ISSUANCE PLAN
(As amended and restated October 1, 2003)

ARTICLE I
GENERAL PROVISIONS

I. PURPOSE OF THE PLAN
This 1997 Stock Option/Stock Issuance Plan is intended to promote the interests of Micromuse Inc., a Delaware corporation, by providing eligible persons with the opportunity to acquire a proprietary interest, or otherwise increase their proprietary interest, in the Corporation as an incentive for them to remain in the service of the Corporation.

Capitalized terms shall have the meanings assigned to such terms in the attached Appendix.

II. STRUCTURE OF THE PLAN
A. The Plan shall be divided into two separate equity programs:
   (i) the Discretionary Option Grant Program under which eligible persons may, at the discretion of the Plan Administrator, be granted options to purchase shares of Common Stock, and
   (ii) the Stock Issuance Program under which eligible persons may, at the discretion of the Plan Administrator, be issued shares of Common Stock directly, either through the immediate purchase of such shares or as a bonus for services rendered to the Corporation (or any Parent or Subsidiary).

B. The provisions of Articles One and Four shall apply to all equity programs under the Plan and shall accordingly govern the interests of all persons under the Plan.

III. ADMINISTRATION OF THE PLAN
A. Prior to the Section 12(g) Registration Date, the Discretionary Option Grant and Stock Issuance Programs shall be administered by the Board.

B. Beginning with the Section 12(g) Registration Date, the Primary Committee shall have sole and exclusive authority to administer the Discretionary Option Grant and Stock Issuance Programs with respect to Section 16 Insiders. Administration of the Discretionary Option Grant and Stock Issuance Programs with respect to all other persons eligible to participate in those programs may, at the Board’s discretion, be vested in the Primary Committee or a Secondary Committee, or the Board may retain the power to administer those programs with respect to all such persons.
C. Members of the Primary Committee or any Secondary Committee shall serve for such period of time as the Board may determine and may be removed by the Board at any time. The Board may also at any time terminate the functions of any Secondary Committee and reassume all powers and authority previously delegated to such committee.

D. Each Plan Administrator shall, within the scope of its administrative functions under the Plan, have full power and authority to establish such rules and regulations as it may deem appropriate for proper administration of the Discretionary Option Grant and Stock Issuance Programs and to make such determinations under, and issue such interpretations of, the provisions of such programs and any outstanding options or stock issuances thereunder as it may deem necessary or advisable. Decisions of the Plan Administrator within the scope of its administrative functions under the Plan shall be final and binding on all parties who have an interest in the Discretionary Option Grant or Stock Issuance Program under its jurisdiction or any option or stock issuance thereunder.

E. Service on the Primary Committee or the Secondary Committee shall constitute service as a Board member, and members of each such committee shall accordingly be entitled to full indemnification and reimbursement as Board members for their service on such committee. No member of the Primary Committee or the Secondary Committee shall be liable for any act or omission made in good faith with respect to the Plan or any option grants or stock issuances under the Plan.

IV. ELIGIBILITY

A. The persons eligible to participate in the Discretionary Option Grant and Stock Issuance Programs are as follows:

(i) Employees,

(ii) non-employee members of the Board or the board of directors of any Parent or Subsidiary, and

(iii) consultants and other independent advisors who provide services to the Corporation (or any Parent or Subsidiary).

B. Each Plan Administrator shall, within the scope of its administrative jurisdiction under the Plan, have full authority (subject to the provisions of the Plan) to determine, (i) with respect to the option grants under the Discretionary Option Grant Program, which eligible persons are to receive option grants, the time or times when such option grants are to be made, the number of shares to be covered by each such grant, the status of the granted option as either an Incentive Option or a Non-Statutory Option, the time or times at which each option is to become exercisable, the vesting schedule (if any) applicable to the option shares and the maximum term for which the option is to remain outstanding and (ii) with respect to stock
issuances under the Stock Issuance Program, which eligible persons are to receive stock issuances, the time or times when such issuances are to be made, the number of shares to be issued to each Participant, the vesting schedule (if any) applicable to the issued shares and the consideration to be paid for such shares.

C. The Plan Administrator shall have the absolute discretion either to grant options in accordance with the Discretionary Option Grant Program or to effect stock issuances in accordance with the Stock Issuance Program.

V. STOCK SUBJECT TO THE PLAN

A. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Corporation on the open market. The maximum number of shares of Common Stock which may be issued over the term of the Plan shall not exceed three million three hundred twelve thousand (3,312,600) shares.

B. The number of shares of Common Stock available for issuance under the Plan shall automatically increase on October 1 of each fiscal year during the term of the Plan, beginning with October 1, 1999, by an amount equal to the lesser of (i) one million (1,000,000) shares of Common Stock (subject to adjustment for stock splits) or (ii) five percent (5%) of the total number of shares of Common Stock then outstanding.

C. No one person participating in the Plan may receive options, separately exercisable stock appreciation rights and direct stock issuances for more than 500,000 shares of Common Stock per calendar year beginning with the 1997 calendar year.

D. Shares of Common Stock subject to outstanding options shall be available for subsequent issuance under the Plan to the extent (i) the options expire or terminate for any reason prior to exercise in full or (ii) the options are cancelled in accordance with the cancellation–regrant provisions of Section IV of Article Two. Unvested shares issued under the Plan and subsequently repurchased by the Corporation at the original issue price paid per share pursuant to the Corporation’s repurchase rights under the Plan shall be added back to the number of shares of Common Stock reserved for issuance under the Plan and shall accordingly be available for reissuance through one or more subsequent option grants or direct stock issuances under the Plan. However, should the exercise price of an option under the Plan be paid with shares of Common Stock or should shares of Common Stock otherwise issuable under the Plan be withheld by the Corporation in satisfaction of the withholding taxes incurred in connection with the exercise of an option or the vesting of a stock issuance under the Plan, then the number of shares of Common Stock available for issuance under the Plan shall be reduced by the gross number of shares for which the option is exercised or which vest under the stock issuance, and not by the net number of shares of Common Stock issued to the holder of such option or stock issuance.

E. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation’s receipt of
consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the number and/or class of
securities for which any one person may be granted options, separately exercisable stock appreciation rights and direct stock issuances per calendar year and (iii)
the number and/or class of securities and the exercise price per share in effect under each outstanding option in order to prevent the dilution or enlargement of
benefits thereunder. The adjustments determined by the Plan Administrator shall be final, binding and conclusive.
ARTICLE II
DISCRETIONARY OPTION GRANT PROGRAM

I. OPTION TERMS

Each option shall be evidenced by one or more documents in the form approved by the Plan Administrator; provided, however, that each such document shall comply with the terms specified below. Each document evidencing an Incentive Option shall, in addition, be subject to the provisions of the Plan applicable to such options.

A. Exercise Price.

1. The exercise price per share shall be fixed by the Plan Administrator in accordance with the following provisions:

   (i) To the extent required by applicable tax or securities laws, the exercise price per share shall not be less than eighty-five percent (85%) of the Fair Market Value per share of Common Stock on the option grant date; otherwise, the exercise price per share shall be determined in the sole discretion of the Plan Administrator.

   (ii) To the extent required by applicable tax or securities laws, if the person to whom the option is granted is a 10% Stockholder, then the exercise price per share shall not be less than one hundred ten percent (110%) of the Fair Market Value per share of Common Stock on the option grant date; otherwise, the exercise price per share shall be determined in the sole discretion of the Plan Administrator.

2. The exercise price shall become immediately due upon exercise of the option and shall, subject to the provisions of Section 1 of Article Four and the documents evidencing the option, be payable in cash or check made payable to the Corporation. Should the Common Stock be registered under Section 12(g) of the 1934 Act at the time the option is exercised, then the exercise price may also be paid as follows:

   (i) in shares of Common Stock held for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date, or

   (ii) to the extent the option is exercised for vested shares, through a special sale and remittance procedure pursuant to which the Optionee shall concurrently provide irrevocable written instructions to (a) a Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate exercise price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (b) the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.
Except to the extent such sale and remittance procedure is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

B. Exercise and Term of Options. Each option shall be exercisable at such time or times, during such period and for such number of shares as shall be determined by the Plan Administrator and set forth in the documents evidencing the option. However, no option shall have a term in excess of ten (10) years measured from the option grant date or, if required by the United Kingdom or Australian tax or securities laws, a term in excess of seven (7) years.

C. Effect of Termination of Service.

1. The following provisions shall govern the exercise of any options held by the Optionee at the time of cessation of Service or death:

(i) Should the Optionee cease to remain in Service for any reason other than death, Disability or Misconduct, then the Optionee shall have a period of three (3) months following the date of such cessation of Service during which to exercise each outstanding option held by such Optionee.

(ii) Should Optionee’s Service terminate by reason of Disability, then the Optionee shall have a period of twelve (12) months following the date of such cessation of Service during which to exercise each outstanding option held by such Optionee.

(iii) If the Optionee dies while holding an outstanding option, then the personal representative of his or her estate or the person or persons to whom the option is transferred pursuant to the Optionee’s will or the laws of inheritance shall have a twelve (12)-month period following the date of the Optionee’s death to exercise such option.

(iv) Under no circumstances, however, shall any such option be exercisable after the specified expiration of the option term.

(v) During the applicable post-Service exercise period, the option may not be exercised in the aggregate for more than the number of vested shares for which the option is exercisable on the date of the Optionee’s cessation of Service. Upon the expiration of the applicable exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the Optionee’s cessation of Service, terminate and cease to be outstanding to the extent the option is not otherwise at that time exercisable for vested shares.

(vi) Should the Optionee’s Service be terminated for Misconduct, then all outstanding options held by the Optionee shall terminate immediately and cease to be outstanding.

2. The Plan Administrator shall have the discretion, exercisable either at the time an option is granted or at any time while the option remains outstanding, to:
(i) extend the period of time for which the option is to remain exercisable following the Optionee's cessation of Service from the period otherwise in effect for that option to such greater period of time as the Plan Administrator shall deem appropriate, but in no event beyond the expiration of the option term, and/or

(ii) permit the option to be exercised, during the applicable post-Service exercise period, not only with respect to the number of vested shares of Common Stock for which such option is exercisable at the time of the Optionee's cessation of Service but also with respect to one or more additional installments in which the Optionee would have vested under the option had the Optionee continued in Service.

D. Stockholder Rights. The holder of an option shall have no stockholder rights with respect to the shares subject to the option until such person shall have exercised the option, paid the exercise price and become a holder of record of the purchased shares.

E. Repurchase Rights. The Plan Administrator shall have the discretion to grant options which are exercisable for unvested shares of Common Stock. Should the Optionee cease Service while holding such unvested shares, the Corporation shall have the right to repurchase, at the exercise price paid per share, any or all of those unvested shares. The terms upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Plan Administrator and set forth in the document evidencing such repurchase right. The Plan Administrator may not impose a vesting schedule upon the option grant or any shares of Common Stock subject to that option which is more restrictive than twenty percent (20%) per year vesting, with the initial vesting to occur not later than one (1) year after the option grant date. However, such limitation shall not be applicable to any option grants made to individuals who are officers of the Corporation, non-employee Board members or independent consultants.

F. First Refusal Rights. Until such time as the Common Stock is first registered under Section 12(g) of the 1934 Act, the Corporation shall have the right of first refusal with respect to any proposed disposition by the Optionee (or any successor in interest) of any shares of Common Stock issued under the Plan. Such right of first refusal shall be exercisable in accordance with the terms established by the Plan Administrator set forth in the document evidencing such right.

G. Limited Transferability of Options. During the lifetime of the Optionee, the option shall be exercisable only by the Optionee and shall not be assignable or transferable other than by will or by the laws of descent and distribution following the Optionee's death. The foregoing notwithstanding, the Plan Administrator shall have the discretion, exercisable either at the time the option is granted or at any time while the option remains outstanding, to provide for the limited or unlimited transferability of a Non-Statutory Option.

II. INCENTIVE OPTIONS

The terms specified below shall be applicable to all Incentive Options. Except as modified by the provisions of this Section II, all the provisions of Articles One, Two and Four shall be applicable to Incentive Options. Options which are specifically designated as Non-Statutory Options when issued under the Plan shall not be subject to the terms of this Section II.
A. **Eligibility.** Incentive Options may only be granted to Employees.

B. **Exercise Price.** The exercise price per share shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.

C. **Dollar Limitation.** The aggregate Fair Market Value of the shares of Common Stock (determined as of the respective date or dates of grant) for which one or more options granted to any Employee under the Plan (or any other option plan of the Corporation or any Parent or Subsidiary) may for the first time become exercisable as Incentive Options during any one (1) calendar year shall not exceed the sum of One Hundred Thousand Dollars ($100,000). To the extent the Employee holds two (2) or more such options which become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

D. **10% Stockholder.** If any Employee to whom an Incentive Option is granted is a 10% Stockholder, then the option term shall not exceed five (5) years measured from the option grant date.

III. **CORPORATE TRANSACTION/CHANGE IN CONTROL.**

A. In the event of any Corporate Transaction, each outstanding option shall automatically accelerate so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become fully exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully—vested shares of Common Stock. However, an outstanding option shall not so accelerate if and to the extent: (i) such option is, in connection with the Corporate Transaction, either to be assumed by the successor corporation (or parent thereof) or to be replaced with a comparable option to purchase shares of the capital stock of the successor corporation (or parent thereof), (ii) such option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested option shares at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same vesting schedule applicable to such option or (iii) the acceleration of such option is subject to other limitations imposed by the Plan Administrator at the time the option grant. The determination of option comparability under clause (i) above shall be made by the Plan Administrator, and its determination shall be final, binding and conclusive.

B. All outstanding repurchase rights shall also terminate automatically, and the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent: (i) those repurchase rights are to be assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed by the Plan Administrator at the time the repurchase right is issued.
C. Notwithstanding Section III.A. and Section III.B. of this Article Two, the Plan Administrator shall have the discretion, exercisable either at the time the option is granted or at any time while the option remains outstanding, to provide for the automatic acceleration of one or more outstanding options (and the automatic termination of one or more outstanding repurchase rights with the immediate vesting of the shares of Common Stock subject to those rights) upon the occurrence of a Corporate Transaction, whether or not those options are to be assumed or replaced (or those repurchase rights are to be assigned) in the Corporate Transaction. The Plan Administrator shall also have the discretion to grant options which do not accelerate whether or not such options are assumed (and to provide for repurchase rights that do not terminate whether or not such rights are assigned) in connection with a Corporate Transaction.

D. Immediately following the consummation of the Corporate Transaction, all outstanding options shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof).

E. Each option which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to (i) the number and class of securities available for issuance under the Plan following the consummation of such Corporate Transaction, (ii) the exercise price payable per share under each outstanding option, provided the aggregate exercise price payable for such securities shall remain the same and (iii) the maximum number of securities and/or class of securities for which any one person may be granted stock options, separately exercisable stock appreciation rights and direct stock issuances under the Plan.

F. The Plan Administrator shall have the discretion, exercisable at the time the option is granted or at any time while the option remains outstanding, to provide for the automatic acceleration of any options which are assumed or replaced in a Corporate Transaction and do not otherwise accelerate at that time (and the termination of any of the Corporation’s outstanding repurchase rights which do not otherwise terminate at the time of the Corporate Transaction) in the event the Optionee’s Service should subsequently terminate by reason of an Involuntary Termination within eighteen (18) months following the effective date of such Corporate Transaction. Any options so accelerated shall remain exercisable for fully-vested shares until the earlier of (i) the expiration of the option term or (ii) the expiration of the one (1)-year period measured from the effective date of the Involuntary Termination.

G. The Plan Administrator shall have the discretion, exercisable either at the time the option is granted or at any time while the option remains outstanding, to (i) provide for the automatic acceleration of one or more outstanding options (and the automatic termination of one or more outstanding repurchase rights with the immediate vesting of the shares of Common Stock subject to those rights) upon the occurrence of a Change in Control or (ii) condition any
such option acceleration (and the termination of any outstanding repurchase rights) upon the subsequent Involuntary Termination of the Optionee’s Service within a specified period (not to exceed eighteen (18) months) following the effective date of such Change in Control. Any options accelerated in connection with a Change in Control shall remain fully exercisable until the expiration or sooner termination of the option term.

H. The portion of any Incentive Option accelerated in connection with a Corporate Transaction or Change in Control shall remain exercisable as an Incentive Option only to the extent the applicable One Hundred Thousand Dollar ($100,000) limitation is not exceeded. To the extent such dollar limitation is exceeded, the accelerated portion of such option shall be exercisable as a Non-Statutory Option under the Federal tax laws.

I. The grant of options under the Discretionary Option Grant Program shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

IV. CANCELLATION AND REGRANT OF OPTIONS

The Plan Administrator shall have the authority to effect, at any time and from time to time, with the consent of the affected option holders, the cancellation of any or all outstanding options under the Discretionary Option Grant Program and to grant in substitution new options covering the same or different number of shares of Common Stock but with an exercise price per share based on the Fair Market Value per share of Common Stock on the new grant date.

V. STOCK APPRECIATION RIGHTS

A. The Plan Administrator shall have full power and authority to grant to selected Optionees tandem stock appreciation rights and/or limited stock appreciation rights.

B. The following terms shall govern the grant and exercise of tandem stock appreciation rights:

(i) One or more Optionees may be granted the right, exercisable upon such terms as the Plan Administrator may establish, to elect between the exercise of the underlying option for shares of Common Stock and the surrender of that option in exchange for a distribution from the Corporation in an amount equal to the excess of (a) the Fair Market Value (on the option surrender date) of the number of shares in which the Optionee is at the time vested under the surrendered option (or surrendered portion thereof) over (b) the aggregate exercise price payable for such shares.

(ii) No such option surrender shall be effective unless it is approved by the Plan Administrator. If the surrender is so approved, then the distribution to which the Optionee shall be entitled may be made in shares of Common Stock valued at Fair Market Value on the option surrender date, in cash, or partly in shares and partly in cash, as the Plan Administrator shall in its sole discretion deem appropriate.
(iii) If the surrender of an option is rejected by the Plan Administrator, then the Optionee shall retain whatever rights the Optionee had under the surrendered option (or surrendered portion thereof) on the option surrender date and may exercise such rights at any time prior to the later of (a) five (5) business days after the receipt of the rejection notice or (b) the last day on which the option is otherwise exercisable in accordance with the terms of the documents evidencing such option, but in no event may such rights be exercised more than ten (10) years after the option grant date.

C. The following terms shall govern the grant and exercise of limited stock appreciation rights:

(i) One or more Section 16 Insiders may be granted limited stock appreciation rights with respect to their outstanding options.

(ii) Upon the occurrence of a Hostile Take-Over, each such individual holding one or more options with such a limited stock appreciation right shall have the unconditional right (exercisable for a thirty (30)-day period following such Hostile Take-Over) to surrender each such option to the Corporation, to the extent the option is at the time exercisable for vested shares of Common Stock. In return for the surrendered option, the Optionee shall receive a cash distribution from the Corporation in an amount equal to the excess of (a) the Take-Over Price of the shares of Common Stock which are at the time vested under each surrendered option (or surrendered portion thereof) over (b) the aggregate exercise price payable for such shares. Such cash distribution shall be paid within five (5) days following the option surrender date.

(iii) Neither the approval of the Plan Administrator nor the consent of the Board shall be required in connection with such option surrender and cash distribution.

(iv) The balance of the option (if any) shall continue in full force and effect in accordance with the documents evidencing such option.
ARTICLE II
STOCK ISSUANCE PROGRAM

1. STOCK ISSUANCE TERMS

Shares of Common Stock may be issued under the Stock Issuance Program through direct and immediate issuances without any intervening option grants. Each such stock issuance shall be evidenced by a Stock Issuance Agreement which complies with the terms specified below.

A. Purchase Price.

1. The purchase price per share shall be fixed by the Plan Administrator, but shall not be less than eighty-five percent (85%) of the Fair Market Value per share of Common Stock on the issue date. However, the purchase price per share of Common Stock issued to a 10% Stockholder shall not be less than one hundred and ten percent (110%) of such Fair Market Value.

2. Subject to the provisions of Section I of Article Four, shares of Common Stock may be issued under the Stock Issuance Program for any of the following items of consideration which the Plan Administrator may deem appropriate in each individual instance:

(i) cash or check made payable to the Corporation, or

(ii) past services rendered to the Corporation (or any Parent or Subsidiary).


1. Shares of Common Stock issued under the Stock Issuance Program may, in the discretion of the Plan Administrator, be fully and immediately vested upon issuance or may vest in one or more installments over the Participant’s period of Service or upon attainment of specified performance objectives. However, the Plan Administrator may not impose a vesting schedule upon any stock issuance effected under the Stock Issuance Program which is more restrictive than twenty percent (20%) per year vesting, with initial vesting to occur not later than one (1) year after the issuance date. Such limitation shall not apply to any Common Stock issuances made to the officers of the Corporation, non-employee Board members or independent consultants.

2. Any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) which the Participant may have the right to receive with respect to the Participant’s unvested shares of Common Stock by reason of any stock dividend, stock split, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation’s receipt of consideration shall be issued subject to (i) the same vesting requirements applicable to the Participant’s unvested shares of Common Stock and (ii) such escrow arrangements as the Plan Administrator shall deem appropriate.
3. The Participant shall have full stockholder rights with respect to any shares of Common Stock issued to the Participant under the Stock Issuance Program, whether or not the Participant’s interest in those shares is vested. Accordingly, the Participant shall have the right to vote such shares and to receive any regular cash dividends paid on such shares.

4. Should the Participant cease to remain in Service while holding one or more unvested shares of Common Stock issued under the Stock Issuance Program or should the performance objectives not be attained with respect to one or more such unvested shares of Common Stock, then those shares shall be immediately surrendered to the Corporation for cancellation, and the Participant shall have no further stockholder rights with respect to those shares. To the extent the surrendered shares were previously issued to the Participant for consideration paid in cash or cash equivalent (including the Participant’s purchase-money indebtedness), the Corporation shall repay to the Participant the cash consideration paid for the surrendered shares and shall cancel the unpaid principal balance of any outstanding purchase-money note of the Participant attributable to the surrendered shares.

5. The Plan Administrator may in its discretion waive the surrender and cancellation of one or more unvested shares of Common Stock (or other assets attributable thereto) which would otherwise occur upon the cessation of the Participant’s Service or the non-attainment of the performance objectives applicable to those shares. Such waiver shall result in the immediate vesting of the Participant’s interest in the shares of Common Stock as to which the waiver applies. Such waiver may be effected at any time, whether before or after the Participant’s cessation of Service or the attainment or non-attainment of the applicable performance objectives.

II. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. All of the Corporation’s outstanding repurchase rights under the Stock Issuance Program shall terminate automatically, and all the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent (i) those repurchase rights are assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed in the Stock Issuance Agreement.

B. Notwithstanding Section II.A. of this Article Three, the Plan Administrator shall have the discretionary authority, exercisable either at the time the unvested shares are issued or any time while the Corporation’s repurchase rights remain outstanding under the Stock Issuance Program, to provide that those rights shall automatically terminate in whole or in part, and the shares of Common Stock subject to those terminated rights shall immediately vest, in the event of a Corporate Transaction, whether or not those repurchase rights are to be assigned to the successor corporation (or its parent) in connection with such Corporate Transaction. The Plan Administrator shall also have the discretion to provide for repurchase rights with terms different from those in effect under this Section II in connection with a Corporate Transaction.
C. The Plan Administrator shall have the discretion, exercisable either at the time the unvested shares are issued or at any time while the Corporation’s repurchase rights remain outstanding, to provide that any repurchase rights that are assigned in the Corporate Transaction shall automatically terminate, and the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event the Participant’s Service should subsequently terminate by reason of an Involuntary Termination within eighteen (18) months following the effective date of such Corporate Transaction.

D. The Plan Administrator shall have the discretion, exercisable either at the time the unvested shares are issued or at any time while the Corporation’s repurchase right remains outstanding, to (i) provide for the automatic termination of one or more outstanding repurchase rights and the immediate vesting of the shares of Common Stock subject to those rights upon the occurrence of a Change in Control or (ii) condition any such accelerated vesting upon the subsequent Involuntary Termination of the Participant’s Service within a specified period (not to exceed eighteen (18) months) following the effective date of such Change in Control.

III. SHARE ESCROW/LEGENDS

Unvested shares may, in the Plan Administrator’s discretion, be held in escrow by the Corporation until the Participant’s interest in such shares vests or may be issued directly to the Participant with restrictive legends on the certificates evidencing those unvested shares.
ARTICLE IV

MISCELLANEOUS

I. FINANCING

A. The Plan Administrator may permit any Optionee or Participant to pay the option exercise price under the Discretionary Option Grant Program or the purchase price for shares issued under the Stock Issuance Program by delivering a full-recourse, interest bearing promissory note payable in one or more installments. The terms of any such promissory note (including the interest rate and the terms of repayment) shall be established by the Plan Administrator in its sole discretion. In all events, the maximum credit available to the Optionee or Participant may not exceed the sum of (i) the aggregate option exercise price or purchase price payable for the purchased shares plus (ii) any Federal, state and local income and employment tax liability incurred by the Optionee or the Participant in connection with the option exercise or share purchase.

B. The Plan Administrator may, in its discretion, determine that one or more such promissory notes shall be subject to forgiveness by the Corporation in whole or in part upon such terms as the Plan Administrator may deem appropriate.

II. TAX WITHHOLDING

A. The Corporation’s obligation to deliver shares of Common Stock upon the exercise of options or upon the issuance or vesting of such shares under the Plan shall be subject to the satisfaction of all applicable Federal, state and local income and employment tax withholding requirements and any United Kingdom or Australian income or employment tax withholding requirements.

B. The Plan Administrator may, in its discretion, provide any or all holders of Non-Statutory Options or unvested shares of Common Stock under the Plan with the right to use shares of Common Stock in satisfaction of all or part of the Taxes incurred by such holders in connection with the exercise of their options or the vesting of their shares. Such right may be provided to any such holder in either or both of the following formats:

(i) Stock Withholding: The election to have the Corporation withhold, from the shares of Common Stock otherwise issuable upon the exercise of such Non-Statutory Option or the vesting of such shares, a portion of those shares with an aggregate Fair Market Value equal to the percentage of the Taxes (not to exceed one hundred percent (100%)) designated by the holder.

(ii) Stock Delivery: The election to deliver to the Corporation, at the time the Non-Statutory Option is exercised or the shares vest, one or more shares of Common Stock previously acquired by such holder (other than in connection with the option exercise or share vesting triggering the Taxes) with an aggregate Fair Market Value equal to the percentage of the Taxes (not to exceed one hundred percent (100%)) designated by the holder.
III. EFFECTIVE DATE AND TERM OF THE PLAN

A. The Plan shall become effective on the Plan Effective Date. Options may be granted at any time on or after the Plan Effective Date. However, no options granted under the Plan may be exercised, and no shares shall be issued under the Plan, until the Plan is approved by the Corporation’s stockholders. If such stockholder approval is not obtained within twelve (12) months after the Plan Effective Date, then all options previously granted under this Plan shall terminate and cease to be outstanding, and no further options shall be granted and no shares shall be issued under the Plan.

B. The Plan shall terminate upon the earliest of (i) March 6, 2006, (ii) the date on which all shares available for issuance under the Plan shall have been issued as fully-vested shares or (iii) the termination of all outstanding options in connection with a Corporate Transaction. Upon such Plan termination, all outstanding options and unvested stock issuances shall continue to have force and effect in accordance with the provisions of the documents evidencing such options or issuances.

IV. AMENDMENT OF THE PLAN

A. The Board shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects. However, no such amendment or modification shall adversely affect any rights and obligations with respect to options, stock appreciation rights or unvested stock issuances at the time outstanding under the Plan unless the Optionee or the Participant consents to such amendment or modification. In addition, amendments to the Plan shall be subject to approval of the Corporation’s stockholders to the extent required by applicable laws or regulations.

B. Options to purchase shares of Common Stock may be granted under the Discretionary Option Grant Program and shares of Common Stock may be issued under the Stock Issuance Program that are in each instance in excess of the number of shares then available for issuance under the Plan, provided any excess shares actually issued under those programs are held in escrow until there is obtained stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock available for issuance under the Plan. If such stockholder approval is not obtained within twelve (12) months after the date the first such excess grants or issuances are made, then (i) any unexercised options granted on the basis of such excess shares shall terminate and cease to be outstanding and (ii) the Corporation shall promptly refund to the Optionees and the Participants the exercise or purchase price paid for any excess shares issued under the Plan and held in escrow, together with interest (at the applicable Short Term Federal Rate) for the period the shares were held in escrow, and such shares shall thereupon be automatically cancelled and cease to be outstanding.
V. USE OF PROCEEDS

Any cash proceeds received by the Corporation from the sale of shares of Common Stock under the Plan shall be used for general corporate purposes.

VI. REGULATORY APPROVALS

A. The implementation of the Plan, the granting of any option or stock appreciation right under the Plan and the issuance of any shares of Common Stock (i) upon the exercise of any option or stock appreciation right or (ii) under the Stock Issuance Program shall be subject to the Corporation’s procurement of all approvals and permits required by regulatory authorities having jurisdiction over the Plan, the options and stock appreciation rights granted under it and the shares of Common Stock issued pursuant to it.

B. No shares of Common Stock or other assets shall be issued or delivered under the Plan unless and until there shall have been compliance with all applicable requirements of Federal and state securities laws and all applicable listing requirements of any stock exchange (or the Nasdaq National Market, if applicable) on which Common Stock is then listed for trading.

VII. NO EMPLOYMENT/SERVICE RIGHTS

Nothing in the Plan shall confer upon the Optionee or the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary employing or retaining such person) or of the Optionee or the Participant, which rights are hereby expressly reserved by each, to terminate such person’s Service at any time for any reason, with or without cause.

VIII. FINANCIAL REPORTS

The Corporation shall deliver a balance sheet and an income statement at least annually to each individual holding an outstanding option under the Plan, unless such individual is a key Employee whose duties in connection with the Corporation (or any Parent or Subsidiary) assure such individual access to equivalent information.

APPENDIX

The following definitions shall be in effect under the Plan:

A. Board shall mean the Corporation’s Board of Directors.

B. Change in Control shall mean a change in ownership or control of the Corporation effected through either of the following transactions:

(i) the acquisition, directly or indirectly, by any person or related group of persons (other than the Corporation or a person that directly or indirectly controls, is
controlled by, or is under common control with, the Corporation), of beneficial ownership (within the meaning of Rule 13d–3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation’s outstanding securities pursuant to a tender or exchange offer made directly to the Corporation’s stockholders, which the Board does not recommend such stockholders to accept; or

(ii) a change in the composition of the Board over a period of thirty-six (36) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (A) who were still in office at the time the Board approved such election or nomination.

C. Code shall mean the Internal Revenue Code of 1986, as amended.

D. Common Stock shall mean the Corporation’s common stock.

E. Corporate Transaction shall mean either of the following stockholder-approved transactions to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation’s outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction; or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation’s assets in complete liquidation or dissolution of the Corporation.

F. Corporation shall mean Micromuse Inc., a Delaware corporation, and any corporate successor to all or substantially all of the assets or voting stock of Micromuse Inc. which shall by appropriate action adopt the Plan.

G. Disability shall mean the inability of the Optionee or the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment and shall be determined by the Plan Administrator on the basis of such medical evidence as the Plan Administrator deems warranted under the circumstances.

H. Discretionary Option Grant Program shall mean the discretionary option grant program in effect under the Plan.

I. Employee shall mean an individual who is in the employ of the Corporation (or any Parent or Subsidiary), subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

J. Exercise Date shall mean the date on which the Corporation shall have received written notice of the option exercise.
K. Fair Market Value per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the Nasdaq National Market, then the Fair Market Value shall be the closing price per share of Common Stock on the date in question, as such price is reported by the National Association of Securities Dealers on the Nasdaq National Market or any successor system. If there is no closing price for the Common Stock on the date in question, then the Fair Market Value shall be the closing price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) For purposes of any option grants made on the Underwriting Date, the Fair Market Value shall be deemed to be equal to the price per share at which the Common Stock is sold in the initial public offering pursuant to the Underwriting Agreement.

(iv) For purposes of any option grants made prior to the Underwriting Date, the Fair Market Value shall be determined by the Plan Administrator after taking into account such factors as the Plan Administrator shall deem appropriate.

L. Hostile Take-Over shall mean the acquisition, directly or indirectly, by any person or related group of persons (other than the Corporation or a person that directly or indirectly controls, is controlled by, or is under common control with, the Corporation) of beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation’s outstanding securities pursuant to a tender or exchange offer made directly to the Corporation’s stockholders which the Board does not recommend such stockholders to accept.

M. Incentive Option shall mean an option which satisfies the requirements of Code Section 422.

N. Involuntary Termination shall mean the termination of the Service of any individual which occurs by reason of:

(i) such individual’s involuntary dismissal or discharge by the Corporation for reasons other than Misconduct, or

(ii) such individual’s voluntary resignation following (A) a change in his or her position with the Corporation which materially reduces his or her level of responsibility, (B) a reduction in his or her level of compensation (including base salary, fringe benefits and participation in corporate—performance based bonus or incentive programs) by more
than fifteen percent (15%) or (C) a relocation of such individual's place of employment by more than fifty (50) miles, provided and only if such change, reduction or relocation is effected by the Corporation without the individual's consent.

O. **Misconduct** shall mean the commission of any act of fraud, embezzlement or dishonesty by the Optionee or Participant, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Corporation (or any Parent or Subsidiary), or any other intentional misconduct by such person adversely affecting the business or affairs of the Corporation (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Corporation (or any Parent or Subsidiary) may consider as grounds for the dismissal or discharge of any Optionee, Participant or other person in the Service of the Corporation (or any Parent or Subsidiary).

P. **1934 Act** shall mean the Securities Exchange Act of 1934, as amended.

Q. **Non-Statutory Option** shall mean an option not intended to satisfy the requirements of Code Section 422.

R. **Optionee** shall mean any person to whom an option is granted under the Plan.

S. **Parent** shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

T. **Participant** shall mean any person who is issued shares of Common Stock under the Stock Issuance Program.

U. **Plan** shall mean the Corporation's 1997 Stock Option/Stock Issuance Plan, as set forth in this document.

V. **Plan Administrator** shall mean the particular entity, whether the Primary Committee, the Board or the Secondary Committee, which is authorized to administer the Discretionary Option Grant and Stock Issuance Programs with respect to one or more classes of eligible persons, to the extent such entity is carrying out its administrative functions under those programs with respect to the persons under its jurisdiction.

W. **Plan Effective Date** shall mean March 7, 1997, the date on which the Plan was adopted by the Board.

X. **Primary Committee** shall mean the committee of two (2) or more non-employee Board members appointed by the Board to administer the Discretionary Option Grant and Stock Issuance Programs with respect to Section 16 Insiders.
Y. **Secondary Committee** shall mean a committee of one (1) or more Board members appointed by the Board to administer the Discretionary Option Grant and Stock Issuance Programs with respect to eligible persons other than Section 16 Insiders.

Z. **Section 12(g) Registration Date** shall mean the date on which the Common Stock is first registered under Section 12(g) of the 1934 Act.

AA. **Section 16 Insider** shall mean an officer or director of the Corporation subject to the short-swing profit liabilities of Section 16 of the 1934 Act.

BB. **Service** shall mean the performance of services to the Corporation (or any Parent or Subsidiary) by a person in the capacity of an Employee, a non-employee member of the board of directors or a consultant or independent advisor, except to the extent otherwise specifically provided in the documents evidencing the option grant or stock issuance.

CC. **Stock Exchange** shall mean either the American Stock Exchange or the New York Stock Exchange.

DD. **Stock Issuance Agreement** shall mean the agreement entered into by the Corporation and the Participant at the time of issuance of shares of Common Stock under the Stock Issuance Program.

EE. **Stock Issuance Program** shall mean the stock issuance program in effect under the Plan.

FF. **Subsidiary** shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain own, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

GG. **Take-Over Price** shall mean the greater of (i) the Fair Market Value per share of Common Stock on the date the option is surrendered to the Corporation in connection with a Hostile Take-Over or (ii) the highest reported price per share of Common Stock paid by the tender offeror in effecting such Hostile Take-Over. However, if the surrendered option is an Incentive Option, the Take-Over Price shall not exceed the clause (i) price per share.

HH. **Taxes** shall mean the Federal, state and local income and employment tax liabilities incurred by the holder of Non-Statutory Options or unvested shares of Common Stock in connection with the exercise of those options or the vesting of those shares.

II. **10% Stockholder** shall mean the owner of stock (as determined under Code Section 424(d)) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Corporation (or any Parent or Subsidiary).
JJ. Underwriting Agreement shall mean the agreement between the Corporation and the underwriter or underwriters managing the initial public offering of the Common Stock.

KK. Underwriting Date shall mean the date on which the Underwriting Agreement is executed and the initial public offering price of the Common Stock is established.
1. **Introduction**

The Board of Directors of Micromuse Inc. (the “Company”) has established the Micromuse Inc. 1997 Stock Option/Stock Issuance Plan (the “U.S. Plan”) for the benefit of certain employees of the Company, its parent and subsidiary companies, including its French subsidiaries, (the “Subsidiary” or the “Subsidiaries”) of which the Company holds directly or indirectly at least 10% of the capital. Article I Section III of the U.S. Plan specifically authorizes the Plan Administrator to establish rules applicable to options granted under the U.S. Plan (including those in France) (the “Board”) to adopt procedures and forms relating to the U.S. Plan as it deems advisable. The Plan Administrator has determined that it is advisable to establish a sub-plan of the U.S. Plan for France for the purpose of permitting such Options, to qualify for French favorable local tax and social security treatment. The Plan Administrator, therefore, intends to establish a sub-plan of the U.S. Plan for the purpose of granting options which qualify for the favorable tax and social security treatment in France applicable to Options granted under Sections L 225-177 to L 225-186 of the French Commercial Code to qualifying employees who are resident in France for French tax purposes (the “French Optionees”). The terms of the U.S. Plan, effective as of March 7, 1997, and as set out in Appendix 1 hereto, shall, subject to the modifications in the following rules, constitute the Micromuse Inc. 1997 Stock Incentive Plan for French Employees (the “French Plan”).

Under the French Plan, the qualifying employees will be granted only Stock Options as defined in Section 2 hereunder. The provisions of Article I Section II(ii), Article II Section V, and Article III of the U.S. Plan permitting the grant of stock appreciation rights or direct issuance of Common Stock are not applicable to grants made under the French Plan. In addition, in no case will grants under the French Plan include any other substitute awards, e.g., stock bonuses, cash awards or other similar awards.

2. **Definitions**

Capitalized terms used in the French Plan shall have the same meanings as set forth in the U.S. Plan.

In addition, the term “Option” shall have the following meaning:

A. Purchase Stock Options, that are rights to acquire Common Stock repurchased by the Company prior to the vesting of the Options; or

B. Subscription Stock Options, that are rights to subscribe newly issued Common Stock.
The term “Closed Period” means specific periods as set forth by section L. 225-177 of the French commercial code as amended during which French qualifying Options cannot be granted.

Notwithstanding any provisions in the U.S. Plan, the term “Grant Date” shall be the date on which the board both (a) designates the Optionee and (b) specifies the terms and conditions of the Option including the number of shares and the modalities to determine the Option Price.

Notwithstanding any provisions in the U.S. Plan to the contrary, for Options granted to French Optionees under the French Plan, no preferred stock in lieu of Common Stock may be issued.

The term “Effective Grant Date” shall be the date on which option is effectively granted, i.e. the date on which the condition precedent of the expiration of a Closed Period, if any, under which the option is granted, is satisfied. Such condition precedent shall be satisfied when the Committee or the body entitled thereto shall so determine, i.e. shall determine that the granting of options is no longer prevented under a Closed Period. If the Date of Grant does not occur within a Closed Period, the “Effective Grant Date” shall be the same day as the “Grant Date”.

The term “Vesting Date” shall mean the date on which an Optionee’s right to all or a portion of an Option granted under the French Plan becomes non-forfeitable. The Vesting Date or Vesting Schedule shall be noted on the Stock Option Agreement entered into with each optionee.

The term “Exercise Date” shall mean the date on which a portion of Optionee’s Option becomes exercisable.

The term “Disposition Date” shall mean the first date on which the Optionee may make a Disposition of Shares.

The term “Disposition” shall mean a sale of Shares or transfer, assignment or any other similar event.

Under the French Plan, the Disposition Date shall be the fourth anniversary of the Effective Grant Date or, if different, on the date specified in Section 163 bis of the French Tax Code, as subsequently amended.

3. Entitlement to Participate

Any individual who is salaried employee or corporate Officer of a Subsidiary at the date of grant of the Option under the French Plan shall be eligible to receive Options under the French Plan provided that he or she also satisfies the eligibility conditions of Article I, section IV of the U.S. Plan. Options may not be issued under the French Plan to employees or officers owning more than ten percent (10%) of the Company’s share capital or to individuals other than employees and corporate officers of the Subsidiary. Options may not be issued to directors of the Subsidiary, other than managing directors (Président du Conseil d’Administration, Directeur Général, Directeur Général Délégué, Membre du Directoire, Gérant de sociétés par actions), unless they are employed by the Subsidiary.
4. Conditions and exercise of the Option / Option Price

Notwithstanding any provision in the U.S. Plan to the contrary, the conditions of the U.S. Plan, of the French Plan and of any Options granted thereunder (and as determined in the respective Stock Option Agreement) shall not be modified after the Effective Grant Date unless authorized by French law and subject to the prior written consent of the Optionee, and except that the Option price and number of shares may be modified as provided under Section 7 of the French plan. In this respect, the fact that French Optionees approve or would have approved such modification is irrelevant.

Notwithstanding any provision in the U.S. Plan to the contrary and since Common Stock of the Company are traded on a regulated securities market, no option may be granted to eligible optionees in France during specific Closed Periods as set forth by section L. 225–177 of the French commercial code as amended.

4.1. Vesting and exercisability

Vesting and exercisability of the option may be modified as provided in Section 5 of the French Plan.

The Options will vest and be exercisable pursuant to the terms and conditions set forth in the U.S Plan, the French Plan and under the respective Stock Option Agreement entered into with each Optionee.

I. The Vesting and exercisability of Options may be accelerated in accordance with the provisions of Section II, III A of the U.S. Plan. Notwithstanding any provisions of the U.S. Plan, the Disposition Date shall continue to be the fourth anniversary of the Effective Grant Date or, if different, on the date specified in Section 163 bis of the French Tax Code, as subsequently amended. The Vesting Date shall not be accelerated to any date that would result in the time period between the Disposition Date and the date of Vesting or exercisability which exceeds the maximum time allowed between such events under French law (i.e., under current law, restrictions on sale may continue for only three years from the date of exercise, so Vesting or exercisability shall be accelerated to a date no earlier than three years preceding the Disposition Date set forth above), except in the cases of dismissal, forced retirement, disability or death as defined by section 91–ter of Exhibit II to the French tax code and as construed by Tax Circulars and subject to the fulfilment of the related condition.

Specific provisions apply in the event of termination of employment/service and death as provided in Articles 6 and 8 below and as provided in the Stock Option Agreement entered into with each Optionee.
4.2. **Option Price**

II. The modalities of determination of the Option Price payable pursuant to Options issued hereunder shall be fixed by the Plan Administrator on the date the Option is granted. If Options are considered as granted on the Effective Date of Grant, Option Price will be determined in accordance with the modalities of the Option Price's determination set forth by the Board on the Grant Date. In no event shall the Option price per share be less than the greater of:

A. with respect to Purchase Options over Common Stock, the higher of either 80% of the average quotation price of such Common Stock during the 20 days of quotation immediately preceding the Effective Grant Date or 80% of the average purchase price paid for such Common Stock by the Company;

B. with respect to Subscription Options over the Common Stock, 80% of the average quotation price of such Common Stock during the 20 days of quotation immediately preceding the Effective Grant Date; and

C. the minimum Option Price permitted under the U.S. Plan.

4.3. **Exercise of an Option**

The Options will become vested on the Vesting Date as defined under Section 2 above. However, notwithstanding the above, special provisions apply in the event of termination of employment due to death and disability (as defined hereunder) as follows:

In the event of the death of a French Optionee, outstanding Options shall be immediately vested and exercisable under the conditions set forth in Section 8 of the French Plan.

Notwithstanding any provisions in the U.S. Plan to the contrary, shares issued upon exercise of an Option shall be issued in the name of the French Optionee only, except in the event of death as referred to under Section 8 of the French Plan.

4.4. **Payment of the Option Price**

Notwithstanding any provisions in the U.S. Plan to the contrary, upon exercise of an Option, the full Option Price will be paid either in cash, by check or by credit transfer, exclusive of any other method of payment. Under a cashless exercise program, the French Optionee may give irrevocable instructions to a stockbroker to properly deliver the Option price to the Company. Notwithstanding any provisions in the U.S. Plan to the contrary, no delivery of prior owned shares having a fair market value on the date of delivery equal to the aggregate exercise price of the shares may be used as consideration for exercising the Options.

Furthermore, notwithstanding any provisions in the U.S. Plan to the contrary, shares owed to the French Optionee upon exercise may not be withheld in order to meet the tax.
and/or social security contributions which might be due at the time of exercise or sale of the underlying Shares. However, upon sale of the underlying Shares, the Company and/or the Subsidiary shall have the right to withhold, or request any third party to withhold, from the proceeds to be paid to the French Optionee the sums corresponding to any social security contributions due at exercise or sale by the French Optionee. If such amounts are due and are not withheld, the French Optionee agrees to submit the amount due to the Subsidiary by means of check, cash or credit transfer.

The Shares acquired upon exercise of an Option will be recorded in an account in the name of the shareholder with a broker or in such other manner as the Company may otherwise determine in order to ensure compliance with applicable law, and any other applicable limitations or restrictions in the U.S. Plan, the French Plan, and the Stock Option Agreement, including limitations and restrictions on the Disposition or Disposition Date.

ARTICLE V 5. Non-transferability of Options

Notwithstanding any provision in the U.S. Plan to the contrary and except in the case of death, Options cannot be transferred to any third party. In addition, the Options are only exercisable by the French Optionee during the lifetime of the French Optionee.

ARTICLE VI 6. Termination of Employment/Service

If a termination of eligibility status is due to death, the Options shall be exercisable as set forth by Article 8 below.

In case of termination of eligibility status for other reasons than death, specific provisions regarding the exercise of the options by the Optionee are provided for in the Stock Option Agreement entered into with each Optionee.

ARTICLE VII 7. Changes In Capitalization

Notwithstanding any provisions of the U.S. Plan to the contrary, adjustments to the Option Price and/or the number of Shares subject to an Option issued hereunder shall be made to preclude the dilution or enlargement of benefits under the Option only in the event of one or more of the transactions listed below by the Company. Furthermore, even upon occurrence of one or more of the transactions listed below, no adjustment to the kind of shares to be granted shall be made (i.e., only shares of Common Stock shall be granted to French Optionees). The transactions are as follows:
A. an issuance of new shares for cash consideration reserved to the Company's already existing shareholders;

B. an issuance of convertible or exchangeable bonds reserved to the Company's existing shareholders;

C. a capitalization of retained earnings, profits, or issuance premiums;

D. a distribution of reserves by payment in cash or shares;

E. a cancellation of shares in order to absorb losses;

F. the repurchase of its own shares by a listed company at a price higher than the stock quotation price in the open market.

An increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company is not within the scope of the prohibition of the first paragraph of this Section 7.

ARTICLE VIII 8. Death

ARTICLE IX

ARTICLE X In the event of the death of a French Optionee, the Options shall become immediately vested, exercisable and available for Disposition. The French Optionee's heirs may exercise the Option within six months following the death, even if the Option that was held by the deceased Optionee expires during this 6 month period, but any Option which remains unexercised shall expire six months following the date of the Optionee's death.

9. Term of the Option

The Term of the Option will be nine years and six months. This term can only be extended in the event of the death of the French Optionee.

ARTICLE XI 10. Interpretation

It is intended that Options granted under the French Plan shall qualify for the favorable tax and social security treatment applicable to stock options granted under Sections L225–177 to 225–186 of the French Commercial Code, as subsequently amended, and in accordance with the relevant provisions set forth by French tax law and the French tax administration. The terms of the French Plan shall be interpreted accordingly and in accordance with the relevant provisions set forth by French tax and social security laws, as well as the French tax and social security administrations.
In the event of any conflict between the provisions of the present French Plan and the U.S. Plan, the provisions of the French Plan shall control for any grants made thereunder to Optionees.

ARTICLE XII 11. Employment Rights

The adoption of this French sub-plan shall not confer upon the Participants any employment rights and shall not be construed as a part of the Participants employment contracts.

ARTICLE XIII 12. Adoption

The French Plan is effective as of July 1, 2001
AMENDMENT 2
AUSTRALIA ADDENDUM

1. Purpose

This Addendum (the "Australian Addendum") to the Micromuse Inc. 1997 Stock Option/Stock Issuance Plan is adopted to set forth certain rules which, together with those provisions of the U.S. Plan which are not modified by this addendum to ensure compliance with the Class Order (see below), shall govern the operation of the Plan with respect to Australian-resident employees of Micromuse and its Australian subsidiary(ies). The Plan is intended to comply with the provisions of the Corporations Act 2001, ASIC Policy Statement 49 and Class Order 03/184 (the "Class Order").

2. Definitions

Except as set out below, capitalized terms used herein shall have the meaning ascribed to them in the U.S. Plan. In the event of any conflict between these provisions and the U.S. Plan, these provisions shall prevail.

For the purposes of this Australian Addendum:

"ASIC" means the Australian Securities & Investments Commission;

"Australian Subsidiary(ies)" means Micromuse Australia Pty Ltd.;

"Common Stock" means the common stock of the Company;

"Company" means Micromuse Inc.;

"Micromuse" means Micromuse Inc.;

"Option" means an option to acquire, by way of issue, a share of Common Stock of the Company. It excludes a right to acquire a stock appreciation right referred to in section V of the U.S. Plan;

"Plan" means the U.S. Plan as modified for implementation in Australia by the Australian Addendum; and

"U.S. Plan" means the Micromuse Inc. 1997 Stock Option/Stock Issuance Plan.

3. Forms of Awards

Only shares of Common Stock and options to acquire shares of Common Stock shall be awarded or offered under the Plan in Australia. Options must be granted at no monetary cost.
4. Employees

In Australia, the Plan must be extended only to persons who at the time of the offer are full or part-time employees or directors of the Company or an Australian Subsidiary.

5. No Contribution Plan or Trust

An offer of shares of Common Stock or Options under the Plan must not involve a contribution plan or any offer, issue or sale being made through a trust.

6. Form of Offer

6.1 Any offer made in Australia to participate in the Plan must be included in a document ("Offer Document") which sets out the terms of the offer and which must include or be accompanied by a copy of the rules of the Plan, or a summary of the rules of the Plan. Where a summary only is provided with the offer, the Offer Document must include an undertaking that during the period (the "offer period") during which an Optionee may exercise Options acquired under the Plan, the Company or its Australian subsidiary will, within a reasonable period of the Optionee so requesting, provide the Optionee without charge with a copy of the rules of the Plan.

6.2 The Company must take reasonable steps to ensure that any Optionee to whom an offer is made is given a copy of the Offer Document.

7. Australian Dollar Equivalent of Exercise Price or Purchase Price at Offer Date

For the Options, the Offer Document must specify the Australian dollar equivalent of the exercise price of the Options the subject of the Offer Document ("Exercise Price") as at the date of the offer.

For the offer of shares of Common Stock, the Offer Document must specify the Australian dollar equivalent of the purchase price of the shares the subject of the Offer Document ("Purchase Price") as at the date of the offer.

8. Updated Pricing Information

The Offer Document must include an undertaking that, and an explanation of the way in which the Company will, during the offer period and within a reasonable period of an Optionee so requesting, make available to the Optionee the following information:

(i) the Australian dollar equivalent of the current market price of a share of Common Stock; and

(ii) in the case of Options, the Australian dollar equivalent of the Exercise Price, as at the date of the Optionee's request; and
(iii) in the case of shares of Common Stock, the Australian dollar equivalent of the Purchase Price, as at the date of the Optionee's request.

For the purposes of this clause, the current market price of a share of Common Stock shall be taken as the closing price published by the National Association of Securities Dealers on the Nasdaq National Market for the previous trading day.

9. Exchange Rate for Australia Dollar Equivalent of a Price

For the purposes of clauses 7 and 8, the Australian dollar equivalent of the Exercise Price or Purchase Price and current market price of shares of Common Stock shall be calculated by reference to the Australian/U.S. dollar exchange rate published by an Australian bank (the "Bank") no earlier than the business day before the day to which the price relates.

10. Loan or Financial Assistance

If the Company or any Australian subsidiary offers an Optionee any loan or other financial assistance for the purpose of acquiring the Common Stock to which the offer relates, the Offer Document must disclose the conditions, obligations and risks associated with such loan or financial assistance.

11. Restriction on Capital Raising: 5% limit

In the case of any offer that will involve the issue of shares of Common Stock including as a result of an exercise of an Option, the number of shares of Common Stock that are the subject of the offer under the Plan, or to be received on exercise of an Option when aggregated with:

(a) the number of shares of Common Stock in the same class which would be issued were each outstanding offer of shares of Common Stock or Option to acquire unissued shares of Common Stock under the Plan or any other employee share scheme of the Company, accepted or exercised (as the case may be); and

(b) the number of shares of Common Stock in the same class issued during the previous five years pursuant to the Plan or any other employee share scheme extended only to employees or directors of the Company or of associated bodies corporate of the Company;

but disregarding any offer made, or option acquired or shares of Common Stock issued by way or as a result of:

(c) an offer to a person situated at the time of receipt of the offer outside Australia;

(d) an offer that was an excluded offer or invitation within the meaning of the Corporations Law as it stood prior to 13 March 2000;
(e) an offer that did not require disclosure to investors because of section 708 of the Corporations Act 2001;

(f) an offer that did not require the giving of a Product Disclosure Statement because of section 1012D of the Corporations Act 2001; or

(g) an offer made under a disclosure document or a Product Disclosure Statement,

must not exceed 5% of the total number of issued shares in that class of shares of the Company as at the time of the offer or invitation.

12. Lodgment of Offer Document with the ASIC

A copy of the Offer Document (which need not contain details of the offer particular to the Optionee such as the identity or entitlement of that Optionee) and each accompanying document must be provided to ASIC not later than 7 days after the provision of that material to the Optionee.

13. Compliance with Undertakings

The Company or an Australian Subsidiary must comply with any undertaking required to be made in the Offer Document by reason of the Class Order.
Exhibit 10.6

Private and Confidential

November 24, 1998

James B. DeGolia
52 Pierce St.
San Francisco, CA 94117

Dear Jim,

Further to our recent discussions, Micromuse Inc. is pleased to offer you the position of VP, Secretary and General Counsel. Your terms of employment will be as follows:

- Your starting date will be January 1, 1999

- You will be paid a base salary of $15,000.00 per month, the equivalent of $180,000.00 per annum, with a review falling due twelve (12) months after your commencement date and annually thereafter.

- You are entitled to a $30,000.00 discretionary bonus based on objectives to be determined, which may be replaced by an Executive bonus program, when and if it is adopted by the Board.

- You will be entitled to a twelve (12) month Notice of Termination if your employment is terminated without cause or you resign following one of these events: (i) Your job location is changed more than 50 miles; (ii) Your compensation is substantially reduced or your responsibilities are materially reduced (collectively “Termination”) by Micromuse or by any successor within one year after the close of a change of control transaction. During such notice period you will be entitled to, base salary, discretionary bonus, officer level employee health, insurance and other benefits and stock option vesting. In the event such employment Termination is in conjunction with or within one year after the close of a change in control, then vesting of outstanding unvested stock options shall accelerate at the time of such Termination vested options shall be exercisable as if your employment persisted until the end of the notice period. In order to receive the foregoing, you agree to execute Micromuse’s release and non-competition agreement at the time of any such Termination.

- Cause means the commission of any act of fraud, embezzlement or dishonesty, conviction of a felony under the laws of the United States or any state thereof, gross misconduct, continued failure to perform assigned duties for 30 days after receiving written notification from the Board, and unauthorized use or disclosure of confidential information or trade secrets of the Company (or any parent or subsidiary), or any other intentional misconduct adversely affecting the business affairs of the Company for any parent or subsidiary) in a material manner.

- Subject to the approval of the Board of Directors of Micromuse Inc., you will be granted options to purchase 70,000 shares of the Common Stock of Micromuse Inc. at the current fair value of the stock as represented by the closing price of the stock publicly traded on the NASDAQ Stock Exchange on the later of the date that you join or the date on which the option is granted.

- Your position with the Company will be reviewed after three months to ensure that our relationship with you is proceeding to our mutual satisfaction.
You are required to work exclusively for Micromuse Inc. and to accept totally the confidential and proprietary nature of our business.

Office hours are normally 9:00 a.m. to 6:00 p.m. Monday through Friday. As an exempt, salaried employee, you will not be eligible for overtime pay, however, some flexibility is expected in order to complete your tasks as assigned.

Normal business expenses incurred in the execution of your duties will be reimbursed.

Your vacation entitlement is 20 days per annum. Vacation accrues at 1.66 days per complete month worked. The Company’s vacation year runs to December 31st. With the approval of your immediate superior, you may carry forward up to five (5) days of unused leave.

Company medical, dental, and AD&D insurance is available.

We have implemented a 401(k) plan as well as an Employee Stock Purchase Plan in which you will be entitled to participate in subject to the terms and conditions of the plans.

This offer will remain open for acceptance until December 8, 1998 and is conditional to you signing the enclosed proprietary information, inventions and non-solicitation agreement. I look forward to the possibility of welcoming you as a member of our team and I appreciate the time you have taken, and your patience in getting to this point with us.

Please indicate your acceptance of these terms by signing and returning a signed copy of this letter to me.

With best regards,

Pamela Carifée for Stephen Allott
Human Resources

I hereby acknowledge receipt of this letter, and hereby accept the terms and conditions set out in the letter and agree they shall form the terms and conditions of my employment with Micromuse Inc.

/s/ James B. De Golia

James B. De Golia

Date
EXECUTIVE EMPLOYMENT CONTINUATION AGREEMENT

Micromuse Ltd ("the Company"), a wholly owned subsidiary of Micromuse Inc. and Michael Foster ("Executive" or "you" or "your"), in recognition of your contributions to the past success of the Company and in order to promote continuing contributions in the future, agree effective December 13, 2002, as follows concerning your employment by the Company:

1. Executive agrees to continue to devote Executive's full time efforts to promote the success of the Company. The Company agrees that it shall provide to Executive twelve months notice of termination of employment ("Notice Period"). Provided that Executive's employment termination satisfies the criteria set forth in paragraph 2, Executive shall be entitled to the compensation and benefits summarized below in Paragraph 4. During such Notice Period, the Company shall have the right to limit Executive's access to Company facilities. Executive agrees to provide the Company six months notice of termination ("Executive's Notice Period"), other than termination for Good Reason as defined below. Subject to the provisions of this Agreement, the Company may advance the date of termination to any date for any reason, whether before or after the Company or Executive has already given notice of termination, provided that in such case the Company or its successor pays and provides the compensation and other benefits under paragraph 4 below during the Notice Period or Executive's Notice Period, whichever is applicable. Notwithstanding the foregoing or other provisions in this Agreement, if the Company terminates Executive's employment for Cause (as defined below), no advance notice need be given and no compensation or benefits need be provided to Executive under this Agreement.

2. If (i) the Company terminates Executive's employment without Cause (as defined below) or Executive voluntarily terminates employment with Good Reason (as defined below), Executive shall be entitled to the compensation and benefits summarized below in Paragraph 4, provided that (i) Executive executes (and does not revoke within any statutory period of revocation) the Company's current standard form of release and non-competition agreement and (ii) there is no "Cause" for termination at the beginning of or during the Notice Period or, if no advance notice of termination is given, at the time of termination. Notwithstanding any provisions of this Agreement, Executive shall not be entitled to and the Company shall not be obligated to provide any compensation or benefits if Executive voluntarily terminates employment for other than Good Reason (as defined below).

3. For purposes of this Agreement, "Cause" means the commission of any act of fraud, embezzlement or dishonesty, conviction of a criminal offence on indictment (other than motoring offence) under the laws of England, gross misconduct, continued failure to perform assigned duties that are substantially equivalent to Executive's recent responsibilities (other than due to physical or mental disability) for 30 days after receiving written notification from the Board or the CEO of Micromuse Inc. or their designee(s), any material unauthorized use or disclosure of confidential information or trade secrets of the Company or any parent or subsidiary or any other material intentional misconduct or breach of Executive's employment obligations or commitments under this Agreement (or other signed agreements related to Executive's employment) that adversely and materially affect the finances or business of the Company or its successor. For purposes of this Agreement, "Good Reason" shall be deemed to occur when one of the following occurs and is not cured by the Company within 15 days of receipt of written notice from Executive that such a circumstance has occurred: Executive's base salary or total cash compensation is materially reduced (other than in conjunction with either identical or larger percentage compensation reductions to substantially all Company and successor company (if applicable) executives of equal and higher title or documented performance deficiencies that materially and adversely affected the Company); or Executive's public company responsibilities or job content are substantially reduced or changed by the Company or by any successor to the Company without express consent of Executive in conjunction with or within twelve months after the close of a Change of Control; Executive is required to relocate to an office more than 25 miles from his/her then current office. A termination of employment shall not occur pursuant to a Corporate Transaction, Change of Control or Hostile Take-Over (as those terms are defined in the
Micromuse Inc. shareholder approved 1997 Stock Option/Stock Issuance Plan, collectively referred to in this Agreement as "Change of Control") in which Executive is offered comparable employment the terms of which would not constitute Good Reason, provided that if the successor to the Company in such a Change of Control transaction does not remain expressly obligated under, assume or otherwise become bound by this Agreement, such transaction shall constitute Good Reason.

4. In the event of termination of employment and execution and non-revocation of a release both of which satisfies the criteria of paragraph 2 of this Agreement, whether before or after a Change of Control, the Company or its successor will provide the following benefits for the applicable Notice Period commencing on the earlier of the commencement of the applicable Notice Period under this Agreement or actual termination of employment:

a. Twelve months of Executive's base salary,

b. Twelve months of Executive's target bonus/commissions (the intent of a. and b. is that Executive shall receive the value of his/her then current base salary and bonus (or, where applicable, bonus and/or commission payments at the higher of bonus and commissions achieved during the immediately preceding twelve months or the target bonus and commissions for the forthcoming twelve months), thus a and b are collectively referred to as "salary continuance"), which shall be pro-rated in the year of termination to assure receipt by Executive of twelve months full value of expected compensation,

c. Executive level medical, dental, life and disability insurance during the expected twelve month period of salary continuance, and

d. Continued vesting of outstanding stock options during the expected twelve month period of salary continuance;

provided that if it is impractical for the Company or its successor to provide any such benefit, it shall make Executive whole by paying an amount in cash equal to the value of the benefit not provided. It is the intent of this Paragraph 4 that Executive shall receive the full financial and other benefit of this Agreement irrespective of whether Executive secures employment during the Notice Period or the agreed period of salary continuation.

5. This Agreement and Executive's offer letter and the Proprietary Information and Inventions Agreement signed by Executive set forth all of the terms of Executive's employment by the Company. Terms of Executive's employment relationship can be modified only in a written document signed by Executive and the Company's CEO, Secretary or their designee.

6. This Agreement is entered into in London, England. You and the Company mutually agree to arbitrate before a neutral arbitrator any and all disputes or claims arising out of or in connection with the formation, interpretation or claimed breach of this agreement and any and all disputes or claims arising from or relating to your recruitment to or employment with the Company, or the termination of that employment, including claims against any current or former agent or employee of the Company, whether the disputes or claims arise in tort, contract, or pursuant to a statute, regulation or ordinance now in existence or which may in the future be enacted or recognized, including, but not limited to claims for fraud, claims for wrongful termination of employment, infliction of emotional distress, misrepresentation, interference with contract or prospective economic advantage, defamation, unfair business practices, and any other tort or tort-like cause of action relating to or arising from the employment relationship or the formation or termination thereof; claims of discrimination, harassment, or retaliation under any and all statutes, regulations, or ordinances; and claims for non-payment or incorrect payment of wages, bonuses, severance, employee fringe benefits, stock options and the like.

You and the Company agree that the following disputes and claims are not covered by this Agreement and shall therefore be resolved as required by the law then in effect: 1) statutory claims for benefits or claims that by law cannot be subject to arbitration as provided hereunder; 2) claims concerning the validity, infringement, enforceability, or misappropriation of any trade secret, patent right, copyright, trademark, or any other intellectual or confidential property held or
sought by you or the Company; and 3) any other dispute or claim that has been expressly excluded from arbitration by statute. Also, nothing in this arbitration provision should be interpreted as restricting or prohibiting you from filing a charge or complaint with a federal, state, or local administrative agency charged with investigating and/or prosecuting complaints under any applicable federal, state or municipal law or regulation.

You and the Company agree that all of the disputes that the parties have agreed to arbitrate will be finally settled by binding arbitration in London, England. The Arbitrator's award shall be final and binding on both the Company and you and it shall provide the exclusive remedy(ies) for resolving any and all disputes and claims subject to arbitration under this Agreement.

The Company will bear cost of the Arbitrator's fee and any other type of expense or cost that you would not be required to bear if you were free to bring the dispute(s) or claim(s) in court as well as any other expense or cost that is unique to arbitration. Each party shall bear its own attorney fees, unless otherwise determined by the Arbitrator or required by law. The Arbitrator shall apply English law, without reference to rules of conflicts of law, to the resolution of any dispute. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction for preliminary or interim equitable relief, or to compel arbitration in accordance with this paragraph, without breach of this arbitration provision.

MICROMUSE INC.

By: ____________________________
   (Signature)

Title: ____________________________

MICHAEL FOSTER (Executive)

By: ____________________________
   (Signature)

Title: ____________________________