
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

Form 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): May 13, 2021

AVIAT NETWORKS, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-33278
(Commission File
Number)

20-5961564
(I.R.S. Employer
Identification No.)

200 Parker Dr., Suite C100A, Austin, Texas 78728

(Address of principal executive offices, including zip code)

(408)-941-7100

Registrant's telephone number, including area code

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, par value, \$0.01 per share	AVNW	The Nasdaq Global Select Market

- Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2)
 - If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.
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Item 1.01 Entry into a Material Definitive Agreement

On May 17, 2021, Aviat Networks, Inc. (the “Company”) entered into Amendment No. 4 to Third Amended and Restated Loan and Security Agreement (the “Amendment”) by and among the Company, Aviat U.S., Inc. (“Opco”), Aviat Networks (S) Pte. Ltd. (the “Singapore Borrower” and collectively with the Company and Opco, the “Borrowers”) and Silicon Valley Bank, as lender (the “Lender”). The Amendment amends the terms of the Company’s Third Amended and Restated Loan and Security Agreement, dated as of June 29, 2018, as amended, by and among the Borrowers and the Lender (the “Agreement”) by extending the Revolving Line Maturity Date (as defined in the Amendment) to June 28, 2024.

The foregoing description of the Amendment is not complete and is qualified in its entirety by reference to the full text of the Amendment, which is attached as Exhibit 10.2 to this Current Report on Form 8-K and incorporated in this Item 1.01 by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off Balance Sheet Arrangement of the Registrant

The disclosure in Item 1.01 of this Current Report on Form 8-K are incorporated herein by reference.

Item 2.05. Costs Associated with Exit or Disposal Activities

On May 14, 2021, the Board of Directors (the “Board”) of the Company approved a restructuring plan (the “Restructuring Plan”) to initiate discussions with local employee representatives concerning the possible closure of its Paris, France office. The precise date of the closure has not yet been fixed and is subject to consultation with the employee representative and applicable laws.

The Company estimates that Restructuring Plan charges will be approximately \$1.2 million and will be recorded as restructuring expenses which consist of one-time severance charges, facilities charges and legal costs. The foregoing estimated charges will be cash expenditures. The Company anticipates it will generate approximately \$0.8 million in annual savings, the majority of which will be allocated to support growth-related initiatives to be in a stronger position to drive both top- and bottom- line performance.

This Item 2.05 contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, including, but not limited to, statements related to the expected costs associated with termination benefits and the financial impact of the Restructuring Plan. These forward-looking statements are based on the Company’s current expectations and inherently involve significant risks and uncertainties. The Company’s actual results and the timing of events could differ materially from those anticipated in such forward-looking statements as a result of these risks and uncertainties, which include, without limitation, risks related to the closure, and other risks. In addition, the Company’s closure costs may be greater than anticipated and the Restructuring Plan may have an adverse impact on the Company’s development activities. A further description of the risks and uncertainties relating to the business of the Company is contained in the Company’s Annual Report on Form 10-K for the year ended July 3, 2020, filed with the Securities and Exchange Commission (the “SEC”) on August 27, 2020, and the Company’s subsequent current reports filed with the SEC. The Company undertakes no duty or obligation to update any forward-looking statements contained in this Item 2.05 as a result of new information, future events or changes in its expectations.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

CEO Compensation

As previously disclosed by the Company in its Current Report on Form 8-K filed with the Securities and Exchange Commission on January 2, 2020 (the “Prior Report”), the Company is party to an employment agreement with Peter Smith, the Company’s President and Chief Executive Officer, dated January 2, 2020 (the “Employment Agreement”). The Employment Agreement is described in the Prior Report. Such description is not complete and is qualified in its entirety by reference to the full text of the Employment Agreement, which was filed as Exhibit 10.1 to the Prior Report.

As described in the Prior Report, upon Mr. Smith’s termination of employment by the Company without “Cause” or resignation for “Good Reason” within 12 months following a “Change in Control” (each such quoted term as defined in the Employment

Agreement), the Employment Agreement provided Mr. Smith with the opportunity to receive cash severance payments equal to the sum of (i) his then-current base salary, payable in 12 substantially equal monthly installments, and (ii) an amount equal to his target annual incentive payment for the year in which the termination of employment occurs, payable in a lump sum (such payments, the “CIC Cash Severance Payments”). Pursuant to the Employment Agreement, the CIC Cash Severance Payments payable to Mr. Smith could not exceed \$750,000.

On May 13, 2021, the Board approved an amendment to the Employment Agreement (the “Employment Agreement Amendment”) to eliminate the \$750,000 limit applicable to the CIC Cash Severance Payments. The Employment Agreement Amendment also expands Mr. Smith’s relocation allowance to provide for six months of storage of his household items if needed rather than one month, as originally provided in the Employment Agreement.

The foregoing description of the Employment Agreement Amendment is not complete and is qualified in its entirety by reference to the full text of the Employment Agreement Amendment, which is attached as Exhibit 10.1 to this Current Report on Form 8-K and incorporated in this Item 5.02 by reference.

Director Compensation

On May 13, 2021 the Board approved an increase in the annual equity compensation provided to non-employee directors to \$100,000, from \$75,000 effective at the beginning of the Company’s fiscal year 2022. The Board also approved an increase in the annual retainer paid to the non-employee Chairman of the Board to \$40,000 from \$25,000 for that role effective at the beginning of fiscal year 2022. There were no changes to the other annual retainers paid to non-employee directors, namely: \$60,000 to each non-employee director \$20,000 to the Audit Committee Chairman, \$15,000 to the Governance and Nominating Committee Chairman, and \$15,000 to the Compensation Committee Chairman. Aside from such cash compensation, non-employee directors are also reimbursed for their expenses incurred in attending Board and committee meetings. There are no fees based upon number of meetings attended.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
10.1	First Amendment to the Employment Agreement between Aviat Networks, Inc. and Peter Smith, dated May 17, 2021
10.2	Amendment No. 4 to Third Amended and Restated Loan and Security Agreement
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

AMENDMENT 1 TO EMPLOYMENT

This first amendment ("Amendment") to the Employment Agreement with the effective date of January 2, 2020 ("Agreement") by and between Aviat Networks, Inc. ("Aviat") and Peter Smith ("Smith") is entered into effective May 17, 2021 (the "Effective Date").

For valuable consideration, including the promises and covenants provided in this Amendment, Aviat and Smith agree as follows:

1. Section 3(a), "Salary", is hereby amended by deleting the first sentence of that section and replacing it with the following:
"Effective on January 4, 2021, you will be paid a base salary of \$500,000 per year ("Base Salary"), less applicable taxes and withholdings, in accordance with the Company's normal payroll procedures and applicable law."
2. Section 4(c), "Relocation", is hereby amended by adding the following sentence to the section 4(c):
"The Company will also reimburse you for storage of your household goods due to the relocation to Austin for up to six months."
3. Section 5(g), "Termination or Resignation For Good Reason Following a Change of Control", is hereby amended by deleting the following sentence from the section:
"The total cash compensation pursuant to this section shall not exceed \$750,000."

Except as specifically provided for in this Amendment, all terms of the Agreement shall otherwise remain in full force and effect as they were prior to execution of this Amendment, and this Amendment shall be read as if it were part of the Agreement.

Aviat Networks, Inc.

Peter Smith

By: /s/ Eric Chang

By: /s/ Peter A. Smith

Name: Eric Chang

Name: Peter Smith

Title: Chief Financial Officer

Title: President & Chief Executive Officer

Date: May 17, 2021

Date: May 17, 2021

**FOURTH AMENDMENT
TO
THIRD AMENDED AND RESTATED
LOAN AND SECURITY AGREEMENT**

This Fourth Amendment to Third Amended and Restated Loan and Security Agreement (this “Amendment”) is entered into this 17th day of May, 2021, by and among (a) Silicon Valley Bank (“Bank”) and (b) (i) **AVIAT NETWORKS, INC.**, a Delaware corporation (“**Parent**”), (ii) **AVIAT U.S., INC.**, a Delaware corporation (“**Opco**”, together with Parent, the “**US Borrowers**” and each a “**Borrower**”), and (iii) **AVIAT NETWORKS (S) PTE. LTD.**, a private company limited by shares formed under the laws of the Republic of Singapore (“**Aviat Singapore**” or “**Singapore Borrower**”, and together with the US Borrowers, individually and collectively, jointly and severally, “**Borrower**”).

Recitals

A. Borrowers and Bank have entered into that certain Third Amended and Restated Loan and Security Agreement dated as of June 29, 2018, as amended by that certain Amendment No. 1 to Third Amended and Restated Loan and Security Agreement dated as of September 28, 2018 by and among Borrowers and Bank, as further amended by that certain Amendment No. 2 to Third Amended and Restated Loan and Security Agreement, dated as of June 10, 2019 by and among Borrower and Bank, and as further amended by that certain Third Amendment to Third Amended and Restated Loan and Security Agreement dated as of May 4, 2020, by and among Borrower and Bank (as the same may from time to time be further amended, modified, supplemented or restated, the “Loan Agreement”).

B. Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has requested that Bank amend the Loan Agreement to (i) extend the Revolving Line Maturity Date, and (ii) make certain other revisions to the Loan Agreement as more fully set forth herein.

D. Bank has agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

Agreement

Now, Therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. Amendments to Loan Agreement.

2.1 Section 2.7 (Fees). Section 2.7 is amended by inserting the following new clause (f) to appear immediately following clause (e) thereof:

“ (f) Anniversary Fee. For each twelve (12) month anniversary of the Fourth Amendment Effective Date, a non-refundable anniversary fee (each, an “**Anniversary Fee**” and, collectively, the “**Anniversary Fees**”) in the amount of Twenty Thousand Dollars (\$20,000.00), which shall be fully earned as of the Fourth Amendment Effective Date and due and payable on the earliest to occur of (i) each such twelve (12) month anniversary of the Effective Date, (ii) the termination of this Agreement, (iii) the occurrence of an Event of Default, and (iv) the Revolving Line Maturity Date.”

2.2 Section 6.2(a) (Financial Statements, Reports, Certificates). Section 6.2(a) is amended in its entirety and replaced with the following:

“ (a) a Borrowing Base Report (and any schedules related thereto and including any other information requested by Bank with respect to Borrowers’ Accounts) (i) with each request for an Advance, (ii) when a Streamline Period is in effect and (A) when no Advances are outstanding under the Revolving Line or have been requested, within forty-five (45) days after the last day of each fiscal quarter of Borrower and (B) when Advances are outstanding under the Revolving Line or have been requested, within thirty (30) days after the last day of each month, and (iii) when a Streamline Period is not in effect, (A) when no Advances are outstanding under the Revolving Line or have been requested, within forty-five (45) days after the last day of each fiscal quarter of Borrower and (B) when Advances are outstanding under the Revolving Line or have been requested, no later than Friday of each week.”

2.3 Section 6.2(d) (Financial Statements, Reports, Certificates). Section 6.2(d) is amended in its entirety and replaced with the following:

“ (d) included with any Borrowing Base Report pursuant to Section 6.2(a), weekly, monthly, or quarterly (as applicable), Domestic accounts receivable agings, aged by invoice date, (ii) weekly, monthly, or quarterly (as applicable), accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, and (iii) weekly, monthly, or quarterly (as applicable), reconciliation of accounts receivable agings (aged by invoice date), transaction reports, Deferred Revenue report, and unbilled accounts report;”

2.4 Section 6.2(f) (Financial Statements, Reports, Certificates). Section 6.2(f) is amended in its entirety and replaced with the following:

“ (f) (i) when no Advances are outstanding under the Revolving Line or have been requested, within forty-five (45) days after the last day of each fiscal quarter of Borrower and (ii) when Advances are outstanding under the Revolving Line or have been requested, within thirty (30) days after the last day of each month, a cash holdings report;”

2.5 Section 6.2(g) (Financial Statements, Reports, Certificates). Section 6.2(g) is amended in its entirety and replaced with the following:

“ (g) (1) when no Advances are outstanding under the Revolving Line or have been requested, within forty-five (45) days after the last day of each fiscal quarter of Borrower and (2) when Advances are outstanding under the Revolving Line or have been requested, within thirty (30) days after the last day of each month, together with a company prepared consolidated balance sheet covering Borrowers’ and each of their Subsidiary’s operations for such month in a form acceptable to Bank (“**Monthly Financial Statements**”), a duly completed Compliance Certificate signed by a Responsible Officer, (i) certifying as of the end of such month (A) calculations showing compliance with the financial covenant set forth in Section 6.9(a) and (B) that Borrowers were in full compliance with all of the terms and conditions of this Agreement; *provided* that, with respect to the financial covenants set forth in this Agreement, Borrowers shall only be required to certify compliance with the financial covenant set forth in Section 6.9(a), and (ii) setting forth and such other information as Bank may reasonably request;”

2.6 Section 6.9(a) (Financial Covenants). Section 6.9(a) is amended in its entirety and replaced with the following:

“ (a) Adjusted Quick Ratio. An Adjusted Quick Ratio of at least 1.05 to 1.00 as of the last day of: (i) when no Advances are outstanding under the Revolving Line or have been requested, each fiscal quarter and (ii) when Advances are outstanding under the Revolving Line or have been requested, each month.”

2.7 Section 13 (Definitions). The definition of Permitted Acquisitions (which appears in clause (j) of the definition of Permitted Investments) appearing in Section 13.1 is amended by (a) deleting the word “and” appearing at the end of clause (iii) thereof, (b) amending clause (iv) thereof in its entirety as follows, and (c) inserting the following clause (v) to appear immediately following clause (iv) thereof:

“ (iv) the total cash consideration for all such purchases and acquisitions shall not exceed Ten Million Dollars (\$10,000,000.00) in the aggregate in any fiscal year, provided that, upon Borrower delivering to Bank, evidence satisfactory to Bank in its sole and absolute discretion, that Borrower’s Adjusted Quick Ratio is greater than or equal to 1.25 to 1.0 on a pro forma basis for the

ensuing twelve (12) month period commencing as of the date of such transaction, Borrower shall be permitted to use an additional Fifty Million Dollars (\$50,000,000.00) in cash consideration for such purchases and acquisitions during the term of this Agreement; and

(v) Borrower shall be in pro-forma covenant compliance with the financial covenants set forth in Section 6.9 of this Agreement for the ensuing twelve (12) month period commencing as of the date of such transaction.”

2.8 Section 13 (Definitions). Clause (b) of the definition of Permitted Distributions appearing in Section 13.1 is amended in its entirety and replaced with the following:

“ (b) purchases of capital stock in cash in an aggregate amount not to exceed Twelve Million Five Hundred Thousand Dollars (\$12,500,000.00) in the aggregate in any fiscal year, provided that Borrower has delivered, evidence satisfactory to Bank in its sole and absolute discretion, that Borrower is in pro-forma covenant compliance with the financial covenants set forth in Section 6.9 of this Agreement for the ensuing twelve (12) month period commencing as of the date of such purchase.”

2.9 Section 13 (Definitions). The following terms and their respective definitions set forth in Section 13.1 are deleted in their entirety and replaced with the following:

“ **“Obligations”** are Borrowers’ obligations to pay when due any debts, principal, interest, fees, the Unused Revolving Line Facility Fee, each Anniversary Fee, Bank Expenses, and other amounts Borrowers owe Bank now or later, whether under this Agreement, the other Loan Documents, or otherwise, including, without limitation, the Singapore Obligations, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrowers assigned to Bank, and to perform Borrowers’ duties under the Loan Documents; provided, however, that the “Obligations” shall not include any Excluded Swap Obligations.”

“ **“Revolving Line Maturity Date”** is June 28, 2024.”

2.10 Section 13 (Definitions). The following new defined term is hereby inserted alphabetically in Section 13.1:

“ **“Anniversary Fee”** and **“Anniversary Fees”** are defined in Section 2.7(f).”

“ **“Fourth Amendment Effective Date”** is May 17, 2021.”

2.11 Exhibit B (Compliance Certificate). The Compliance Certificate is amended and restated in its entirety and replaced with the Compliance Certificate in the form attached as **Schedule 1** hereto.

3. Limitation of Amendments.

3.1 The amendments set forth in Section 2, above, are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

3.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

4.1 Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

4.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

4.3 The organizational documents of Borrower delivered to Bank on the Effective Date remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

4.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;

4.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

4.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Ratification of Perfection Certificate. Each Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in that certain Perfection Certificate of such Borrower dated as of May 4, 2020 and acknowledges, confirms and agrees that the disclosures and information Borrower provided to Bank in such Perfection Certificate have not changed, as of the date hereof.

6. Integration. This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

7. Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

8. Effectiveness. This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of this Amendment by each party hereto, and (b) Borrower's payment to Bank of (i) a fully-earned, non-refundable amendment fee in an amount equal to Twenty Thousand Dollars (\$20,000.00) and (ii) Bank's reasonable legal fees and expenses incurred in connection with this Amendment.

[Signature page follows.]

In Witness Whereof, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

BANK BORROWER

SILICON VALLEY BANK AVIAT NETWORKS, INC.

By: /s/ Alex Grotevant By: /s/ Eric Chang
Name: Alex Grotevant Name: Eric Chang
Title: Vice President Title: Sr. Vice President and Chief Financial Officer

AVIAT U.S., INC.

By: /s/ Eric Chang
Name: Eric Chang
Title: Director

AVIAT NETWORKS (S) PTE. LTD.

By: /s/ Keith Fanneron
Name: Keith Fanneron
Title: Director

Schedule 1

FORM OF COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK
FROM: AVIAT NETWORKS, INC.

Date:

The undersigned authorized officer of Aviat Networks, Inc. ("**Administrative Borrower**") certifies that under the terms and conditions of the Third Amended and Restated Loan and Security Agreement dated as of June 29, 2018 (as amended, modified, supplemented or restated from time to time, the "**Loan Agreement**"), by and among Administrative Borrower, Aviat U.S., Inc. ("**Opco**"), Aviat Networks (S) Pte. Ltd. ("**Singapore Borrower**" and together with the Administrative Borrower and Opco, each a "**Borrower**" and collectively, "**Borrowers**") and Silicon Valley Bank ("**Bank**"):

(1) Each Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below; (2) there are no Events of Default in existence; (3) all representations and warranties in the Loan Agreement are true and correct in all material respects on this date except as noted below; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; (4) each Borrower, and each of its Subsidiaries, has timely filed all material tax returns and reports that are required to be filed, and each Borrower has timely paid all material foreign, federal, state and local taxes, assessments, deposits and contributions owed by each Borrower except as otherwise permitted pursuant to the terms of Section 5.9 of the Loan Agreement; (5) (a) there are no collective bargaining agreements covering the employees of any Borrower or any of their domestic Subsidiaries, (b) there is not pending, nor (to the knowledge of any Borrower) is there threatened, any strike, walkout, slowdown or work stoppage, or any unfair labor practice complaint or grievance or arbitration proceeding arising out of or under any collective bargaining agreement covering the employees of any Borrower or any of their Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, and (c) the hours worked and payments made to employees of Borrowers and their domestic Subsidiaries have not been in violation in any material respect of the Fair Labor Standards Act or any other applicable law dealing with such matters; and (6) Borrowers are in compliance with Sections 6.1(b) and 6.8 and of the Loan Agreement.

Attached are the required documents supporting the certification. The undersigned certifies that the attached financial statements are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end adjustments. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Loan Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement.

Please indicate compliance status by circling Yes/No under “Complies” column.

<u>Reporting Covenant</u>	<u>Required</u>	<u>Complies</u>
Borrowing Base Report, Domestic A/R Agings, A/P Agings, Deferred Revenue Report, transaction reports, and unbilled accounts report	(i) with each request for an Advance, (ii) when a Streamline Period is in effect and (A) when no Advances are outstanding under the Revolving Line or have been requested, within forty-five (45) days after the last day of each fiscal quarter of Borrower and (B) when Advances are outstanding under the Revolving Line or have been requested, within thirty (30) days after the last day of each month, and (iii) when a Streamline Period is not in effect, (A) when no Advances are outstanding under the Revolving Line or have been requested, within forty-five (45) days after the last day of each fiscal quarter of Borrower and (B) when Advances are outstanding under the Revolving Line or have been requested, no later than Friday of each week	Yes No
Cash holdings report	(i) when no Advances are outstanding under the Revolving Line or have been requested, within forty-five (45) days after the last day of each fiscal quarter of Borrower and (ii) when Advances are outstanding under the Revolving Line or have been requested, within thirty (30) days after the last day of each month, a cash holdings report	Yes No
Quarterly financial statements with Compliance Certificate	Within 5 days of filing with the SEC, but no later than 45 days after fiscal quarter end	Yes No
Monthly financial statements with Compliance Certificate	(i) when no Advances are outstanding under the Revolving Line or have been requested, within forty-five (45) days after the last day of each fiscal quarter of Borrower and (ii) when Advances are outstanding under the Revolving Line or have been requested, within thirty (30) days after the last day of each month	Yes No
Annual financial statement (CPA Audited) + Compliance Certificate, 10Q, 10K and 8-K	Within 5 days of filings with the SEC but no later than 90 days after FYE	Yes No
Annual operating budgets for upcoming fiscal year and board approval of such annual operating budgets	Within the earlier to occur of 45 days after FYE or 10 days after approval by Parent’s Board of Directors	Yes No
Report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, \$1,000,000 or more	Promptly	Yes No

<u>Financial Covenant</u>	<u>Required</u>		<u>Actual</u>	<u>Complies</u>
Adjusted Quick Ratio (when no Advances are outstanding under the Revolving Line or have been requested, tested quarterly when Advances are outstanding under the Revolving Line or have been requested, tested monthly)	1.05:1.00		____:1.00	Yes No
Maintain on a Quarterly Basis:				
EBITDA	Fiscal Quarter End	EBITDA		Yes No
	Each quarter after December 30, 2016*	\$1.00		

*Measured on a trailing two fiscal quarter basis

The following financial covenant analysis[is][es] and information set forth in Schedule 1 attached hereto are true and accurate as of the date this Certificate is delivered to Bank as set forth in the first line of this Certificate.

Schedule 1 to Compliance Certificate

Financial Covenants of Borrower

In the event of a conflict between this Schedule and the Loan Agreement, the terms of the Loan Agreement shall govern.

Dated: _____

I. Adjusted Quick Ratio (Section 6.9(a))

Required: 1.05:1.00

Actual:

A.1.	The Borrowers' consolidated (i) unrestricted cash and Cash Equivalents, (ii) net billed accounts receivable, (iii) investments with Bank with maturities of fewer than 12 months determined according to GAAP and (iv) the lesser of (a) 50% of unbilled accounts receivable or (b) \$7,000,000	\$ _____
B.1.	All obligation and liabilities of Borrowers to Bank	\$ _____
B.2.	Aggregate amount of Borrowers' Total Liabilities maturing within 1 year (without duplication)	\$ _____
B.3.	Current Liabilities (B.1. plus B.2.)	\$ _____
C.1.	Deferred Revenue	\$ _____
D.1.	Current operating lease obligations	\$ _____
E.1.	Consolidated Funded Indebtedness (without duplication)	\$ _____
F.1.	Current Liabilities (less Deferred Revenue and current operating lease obligations) <i>plus</i> , without duplication, Consolidated Funded Indebtedness (B.3. <i>minus</i> C.1. <i>minus</i> D.1. <i>plus</i> E.1.)	\$ _____
G.	Adjusted Quick Ratio (ratio of A.1. to F.1.)	<u>1.05</u> :1.00

Is line G at least 1.05?

No, not in compliance Yes, in compliance

II. EBITDA (Section 6.9(b))

Required:

Fiscal Quarter End	EBITDA
Each quarter after December 30, 2016*	\$1.00

*measured on a trailing two fiscal quarter basis

Actual:

A.	Consolidated Net Income	\$ _____
	To the extent deducted in the calculation of Net Income (Line A):	
	(i) Consolidated Interest Charges	\$ _____
	(ii) Income tax expense	\$ _____
	(iii) Depreciation and amortization expense	\$ _____
	(iv) Restructuring charges incurred in connection with impairment of real estate (to the extent agreed to by Bank in writing)	\$ _____
	(v) Non-cash stock-based compensation expense	\$ _____
	(vi) Non-cash charges for customer inventory due to downward revaluation	\$ _____
	(vii) Non-cash charges related to discontinued operations occurring prior to the Effective Date	\$ _____
	(viii) Other non-recurring non-cash expenses	\$ _____
B.	Sum of (i) through (viii)	\$ _____
	To the extent included in calculating Consolidated Net Income (Line A):	
	(i) Income tax credits	\$ _____
	(ii) Other non-cash items increasing Consolidated Net Income	\$ _____
C.	Sum of Line (i) through (ii)	\$ _____
D.	EBITDA for Fiscal Quarter Ended __ (A. plus B. minus C.)	\$ _____
E.	EBITDA for Fiscal Quarter Ended __ (Last Fiscal Quarter End)	\$ _____
F.	EBITDA on Trailing Two Fiscal Quarter Basis (D. plus E.)	\$ _____

Is Line F at least the amount required (see chart above)?

No, not in compliance Yes, in compliance