

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

FORM 10-Q

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended June 30, 2008

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 001-33887

Orion Energy Systems, Inc.

(Exact name of Registrant as specified in its charter)

Wisconsin

(State or other jurisdiction of incorporation or organization)

39-1847269

(I.R.S. Employer Identification number)

1204 Pilgrim Road, Plymouth, Wisconsin

(Address of principal executive offices)

53073

(Zip code)

Registrant's telephone number, including area code: (920) 892-9340

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports) and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definition of "accelerated filer," "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

There were 27,011,589 shares of the Registrant's common stock outstanding on August 11, 2008.

Orion Energy Systems, Inc.
Quarterly Report On Form 10-Q
For The Quarter Ended June 30, 2008
Table Of Contents

	<u>Page(s)</u>
<u>PART I FINANCIAL INFORMATION</u>	3
<u>ITEM 1. Financial Statements (unaudited)</u>	3
<u>Condensed Consolidated Balance Sheets (Unaudited) as of March 31, 2008 and June 30, 2008</u>	3
<u>Condensed Consolidated Statements of Operations (Unaudited) for the Three Months Ended June 30, 2007 and 2008</u>	4
<u>Condensed Consolidated Statements of Cash Flows (Unaudited) For the Three Months Ended June 30, 2007 and 2008</u>	5
<u>Notes to the Condensed Consolidated Financial Statements (Unaudited)</u>	6
<u>ITEM 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations</u>	20
<u>ITEM 3. Quantitative and Qualitative Disclosures about Market Risk</u>	29
<u>ITEM 4. Controls and Procedures</u>	29
<u>PART II OTHER INFORMATION</u>	29
<u>ITEM 1. Legal Proceedings</u>	30
<u>ITEM 1A. Risk Factors</u>	30
<u>ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds</u>	30
<u>ITEM 3. Defaults Upon Senior Securities</u>	30
<u>ITEM 4. Submission Of Matters To A Vote Of Security Holders</u>	31
<u>ITEM 5. Other Information</u>	31
<u>ITEM 6. Exhibits</u>	32
<u>SIGNATURES</u>	33
<u>Exhibit 10.1</u>	
<u>Exhibit 10.2</u>	
<u>Exhibit 10.3</u>	
<u>Exhibit 31.1</u>	
<u>Exhibit 31.2</u>	
<u>Exhibit 32.1</u>	
<u>Exhibit 32.2</u>	

PART I – FINANCIAL INFORMATION**Item 1: Financial Statements**

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share amounts)
(Unaudited)

	<u>March 31, 2008</u>	<u>June 30, 2008</u>
Assets		
Cash and cash equivalents	\$ 78,312	\$ 54,215
Short-term investments	2,404	24,971
Accounts receivable, net of allowances of \$79 and \$80	17,666	12,464
Inventories	16,789	19,951
Deferred tax assets	286	578
Prepaid expenses and other current assets	1,439	2,234
Total current assets	116,896	114,413
Property and equipment, net	11,539	14,218
Patents and licenses, net	388	1,386
Investment	794	—
Deferred tax assets	1,000	977
Other long-term assets	85	362
Total assets	<u>\$ 130,702</u>	<u>\$ 131,356</u>
Liabilities and Shareholders' Equity		
Accounts payable	\$ 7,521	\$ 6,845
Accrued expenses	4,242	3,946
Current maturities of long-term debt	843	854
Total current liabilities	12,606	11,645
Long-term debt, less current maturities	4,473	4,263
Other long-term liabilities	433	419
Total liabilities	17,512	16,327
Commitments and contingencies (See Note F) Shareholders' equity:		
Preferred stock, \$0.01 par value: Shares authorized: 30,000,000 shares at March 31, 2008 and June 30, 2008		
Common stock, no par value: Shares authorized: 200,000,000 at March 31, 2008 and June 30, 2008; shares issued: 27,339,414 and 27,745,880 at March 31, 2008 and June 30, 2008; shares outstanding: 26,963,408 and 27,369,874 at March 31, 2008 and June 30, 2008		
Additional paid-in capital	114,090	115,990
Treasury stock: 376,006 common shares at March 31, 2008 and June 30, 2008	(1,739)	(1,739)
Accumulated other comprehensive loss	(6)	(101)
Retained earnings	845	879
Total shareholders' equity	113,190	115,029
Total liabilities and shareholders' equity	<u>\$ 130,702</u>	<u>\$ 131,356</u>

The accompanying notes are an integral part of these consolidated statements.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except share and per share amounts)
(Unaudited)

	Three Months Ended June 30,	
	2007	2008
Product revenue	\$ 14,505	\$ 12,889
Service revenue	2,216	3,217
Total revenue	16,721	16,106
Cost of product revenue	9,446	8,613
Cost of service revenue	1,672	2,296
Total cost of revenue	11,118	10,909
Gross profit	5,603	5,197
Operating expenses:		
General and administrative	1,571	2,615
Sales and marketing	2,111	2,652
Research and development	437	418
Total operating expenses	4,119	5,685
Income (loss) from operations	1,484	(488)
Other income (expense):		
Interest expense	(295)	(67)
Dividend and interest income	40	617
Total other income (expense)	(255)	550
Income before income tax	1,229	62
Income tax expense	481	28
Net income	748	34
Accretion of redeemable preferred stock and preferred stock dividends	(75)	—
Participation rights of preferred stock in undistributed earnings	(219)	—
Net income attributable to common shareholders	\$ 454	\$ 34
Basic net income per share attributable to common shareholders	\$ 0.05	\$ 0.00
Weighted-average common shares outstanding	9,950,486	27,038,353
Diluted net income per share attributable to common shareholders	\$ 0.04	\$ 0.00
Weighted-average common shares and share equivalents outstanding	18,087,951	30,015,198

The accompanying notes are an integral part of these consolidated statements.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)
(Unaudited)

	Three Months Ended June 30,	
	2007	2008
Operating activities		
Net income	\$ 748	\$ 34
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	270	401
Stock-based compensation expense	146	458
Deferred income tax benefit (provision)	440	(242)
Other	10	55
Changes in operating assets and liabilities:		
Accounts receivable	(2,372)	5,212
Inventories	(1,176)	(3,163)
Prepaid expenses and other current assets	315	(679)
Accounts payable	2,509	(676)
Accrued expenses	932	(451)
Net cash provided by operating activities	1,822	949
Investing activities		
Purchase of property and equipment	(614)	(3,045)
Purchase of short-term investments	—	(22,663)
Additions to patents and licenses	(78)	(1,024)
Proceeds from sales of long term asset	—	1,155
Gain on sale of long term investment	—	(361)
Note receivable from sale of long term investment	—	(297)
Net (increase) in amount due from shareholder	(14)	—
Net cash used in investing activities	(706)	(26,235)
Financing activities		
Payment of long-term debt	(175)	(198)
Net activity in revolving line of credit	(460)	—
Excess benefit for deferred taxes on stock-based compensation	33	819
Deferred financing costs and offering costs	(479)	7
Proceeds from issuance of common stock	376	561
Net cash provided by (used in) financing activities	(705)	1,189
Net increase (decrease) in cash and cash equivalents	411	(24,097)
Cash and cash equivalents at beginning of period	285	78,312
Cash and cash equivalents at end of period	<u>\$ 696</u>	<u>\$ 54,215</u>
Supplemental cash flow information:		
Cash paid for interest	\$ 267	\$ 94
Cash paid for income taxes	10	83
Supplemental disclosure of non-cash investing and financing activities		
Long term note receivable received on sale of investment	\$ —	\$ 298
Preferred stock accretion	75	—

The accompanying notes are an integral part of these consolidated statements.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE A — DESCRIPTION OF BUSINESS**Organization**

The Company includes Orion Energy Systems, Inc., a Wisconsin corporation, and all consolidated subsidiaries. The Company is a developer, manufacturer and seller of lighting and energy management systems. The corporate offices are located in Plymouth, Wisconsin and manufacturing and operations facilities are located in Plymouth and Manitowoc, Wisconsin.

Initial Public Offering

In December 2007, the Company completed its initial public offering (IPO) of common stock in which a total of 8,846,154 shares were sold, including 1,997,062 shares sold by selling shareholders, at an issuance price of \$13.00 per share. The Company raised a total of \$89.0 million in gross proceeds from the IPO, or approximately \$78.6 in net proceeds after deducting underwriting discounts and commissions of \$6.2 million and offering costs of approximately \$4.2 million. Concurrent with the closing of the initial public offering on December 24, 2007 all of the Company's then outstanding Series B preferred stock and Series C preferred stock converted on a one share to one share basis to common stock. The number of shares converted was 2,989,830 and 1,818,182 of Series B preferred stock and Series C preferred stock, respectively. On December 24, 2007, the holders of the convertible debt converted \$10.8 million of such debt and accreted interest into 2,360,802 shares of the Company's common stock.

NOTE B — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**Principles of Consolidation**

The condensed consolidated financial statements include the accounts of Orion Energy Systems, Inc. and its wholly-owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of the Company have been prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete financial statements. In the opinion of management, all adjustments, consisting of normal recurring adjustments, considered necessary for a fair presentation have been included. Interim results are not necessarily indicative of results that may be expected for the year ending March 31, 2009.

The condensed consolidated balance sheet at March 31, 2008 has been derived from the audited consolidated financial statements at that date but does not include all of the information required by U.S. GAAP for complete financial statements.

The accompanying unaudited condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and footnotes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2008 filed with the Securities and Exchange Commission on June 27, 2008.

Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America (GAAP) requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and reported amounts of revenues and expenses during that reporting period. Areas that require the use of significant management estimates include revenue recognition, inventory obsolescence and bad debt reserves, accruals for warranty expenses, income taxes and certain equity transactions. Accordingly, actual results could differ from those estimates.

Cash and cash equivalents

The Company considers all highly liquid, short-term investments with original maturities of three months or less to be cash equivalents.

Short-term investments available for sale

The amortized cost and fair value of marketable securities, with gross unrealized gains and losses, as of June 30, 2008 were as follows (in thousands):

	Amortized Cost	Unrealized Gains	Unrealized Losses	Fair Value	Cash and Cash Equivalents	Short Term Investments
Money market funds	\$ 14,697	\$ —	\$ —	\$ 14,697	\$ 14,697	\$ —
Commercial paper	37,904	—	—	37,904	37,904	—
Corporate obligations	4,511	—	(10)	4,501	—	4,501
Government agency obligations	20,561	1	(92)	20,470	—	20,470
Total	\$ 77,673	\$ 1	\$ (102)	\$ 77,572	\$ 52,601	\$ 24,971

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Fair value of financial instruments

The carrying amounts of the Company's financial instruments, which include cash and cash equivalents, short-term investments, accounts receivable, and accounts payable, approximate their respective fair values due to the relatively short-term nature of these instruments. Based upon interest rates currently available to the Company for debt with similar terms, the carrying value of the Company's long-term debt is also approximately equal to its fair value.

Accounts receivable

The majority of the Company's accounts receivable are due from companies in the commercial, industrial and agricultural industries, and wholesalers. Credit is extended based on an evaluation of a customer's financial condition. Generally, collateral is not required for end users; however, the payment of certain trade accounts receivable from wholesalers is secured by irrevocable standby letters of credit. Accounts receivable are due within 30-60 days. Accounts receivable are stated at the amount the Company expects to collect from outstanding balances. The Company provides for probable uncollectible amounts through a charge to earnings and a credit to an allowance for doubtful accounts based on its assessment of the current status of individual accounts. Balances that are still outstanding after the Company has used reasonable collection efforts are written off through a charge to the allowance for doubtful accounts and a credit to accounts receivable.

Included in accounts receivable are amounts due from a third party finance company to which the Company has sold, without recourse, the future cash flows from lease arrangements entered into with customers. Such receivables are recorded at the present value of the future cash flows discounted at 10.25%. As of June 30, 2008, the following amounts were due from the third party finance company in future periods (in thousands):

2009	\$ 73
2010	25
Total gross receivable	98
Less: amount representing interest	(5)
Net contracts receivable	<u>\$ 93</u>

Inventories

Inventories consist of raw materials and components, such as ballasts, metal sheet and coil stock and molded parts; work in process inventories, such as frames and reflectors; and finished goods, including completed fixtures or systems and accessories, such as lamps, meters and power supplies. All inventories are stated at the lower of cost or market value; with cost determined using the first-in, first-out (FIFO) method. The Company reduces the carrying value of its inventories for differences between the cost and estimated net realizable value, taking into consideration usage in the preceding 12 months, expected demand, and other information indicating obsolescence. The Company records as a charge to cost of product revenue the amount required to reduce the carrying value of inventory to net realizable value. As of March 31, 2008 and June 30, 2008, the Company had inventory obsolescence reserves of \$530,000 and \$562,000.

Costs associated with the procurement and warehousing of inventories, such as inbound freight charges and purchasing and receiving costs, are also included in cost of product revenue.

Inventories were comprised of the following (in thousands):

	<u>March 31, 2008</u>	<u>June 30, 2008</u>
Raw materials and components	\$ 9,948	\$ 11,500
Work in process	680	1,335
Finished goods	6,161	7,116
	<u>\$ 16,789</u>	<u>\$ 19,951</u>

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Property and Equipment

Property and equipment were comprised of the following (in thousands):

	<u>March 31, 2008</u>	<u>June 30, 2008</u>
Land and land improvements	\$ 703	\$ 708
Buildings	4,803	5,087
Furniture, fixtures and office equipment	2,256	2,508
Plant equipment	4,543	6,055
Construction in progress	2,918	3,916
	<u>15,223</u>	<u>18,274</u>
Less: accumulated depreciation and amortization	3,684	4,056
Net property and equipment	<u>\$ 11,539</u>	<u>\$ 14,218</u>

Equipment included above under capital leases were as follows (in thousands):

	<u>March 31, 2008</u>	<u>June 30, 2008</u>
Equipment	\$ 1,206	\$ 1,206
Less: accumulated amortization	433	467
Net equipment	<u>\$ 773</u>	<u>\$ 739</u>

Depreciation is provided over the estimated useful lives of the respective assets, using the straight-line method. Depreciable lives by asset category are as follows:

Land improvements	10 – 15 years
Buildings	10 – 39 years
Furniture, fixtures and office equipment	3 – 10 years
Plant equipment	3 – 10 years

The Company capitalized \$39,000 of interest for construction in progress for the three months ended June 30, 2008.

Patents and Licenses

In April 2008, the Company entered into a new employment agreement with our CEO, Neal Verfuert, which superceded and terminated Mr. Verfuert's former employment agreement with the Company. Under the former agreement, Mr. Verfuert was entitled to initial ownership of any intellectual work product he made or developed, subject to the Company's option to acquire, for a fee, any such intellectual work product. The Company made payments to Mr. Verfuert totaling \$144,000 per year in exchange for the rights to eight issued and pending patents. Pursuant to the new employment agreement, in exchange for a lump sum payment of \$950,000, Mr. Verfuert terminated the former agreement and irrevocably transferred ownership of his current and future intellectual property rights to the Company as the Company's exclusive property. This amount was capitalized in fiscal 2009 and is being amortized over the estimated future useful lives of the property rights.

Investment

In June 2008, the Company sold its long-term investment consisting of 77,000 shares of preferred stock of a manufacturer of specialty aluminum products. The investment was originally acquired in July 2006 by exchanging

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

products with a fair value of \$794,000. The Company received cash proceeds from the sale in the amount of \$986,000, which included accrued dividends of \$128,000, and also received a promissory note in the amount of \$298,000.

Other Long-Term Assets

Other long-term assets include \$62,000 and \$53,000 of deferred financing costs as of March 31, 2008 and June 30, 2008 and \$298,000 for a note receivable as of June 30, 2008. The note receivable is in the form of a promissory note and was received upon the sale of the long-term investment. The note provides for interest only payments at 7% for the first year and 15% for the second year and thereafter. The full principal amount of the note is due in June 2011. The note is secured by a personal guarantee from the CEO of the specialty aluminum products company.

Accrued Expenses

Accrued expenses include warranty accruals, accrued wages, accrued vacations, sales tax payable and other various unpaid expenses. Accrued subcontractor fees amounted to \$916,000 as of March 31, 2008 and accrued bonus costs amounted to \$968,000 as of March 31, 2008. No accrued expenses as of June 30, 2008 exceeded 5% of current liabilities.

The Company generally offers a limited warranty of one year on its products in addition to those standard warranties offered by major original equipment component manufacturers. The manufacturers' warranties cover lamps and ballasts, which are significant components in the Company's products.

Changes in the Company's warranty accrual were as follows (in thousands):

	Three Months Ended June 30, 2007	Three Months Ended June 30, 2008
Beginning of period	\$ 45	\$ 69
Provision to cost of revenue	170	3
Charges	(38)	(9)
End of period	<u>\$ 177</u>	<u>\$ 63</u>

Revenue Recognition

The Company recognizes revenue in accordance with Staff Accounting Bulletin, (SAB) No. 104, *Revenue Recognition*. Based upon SAB 104, revenue is recognized when the following four criteria are met:

- persuasive evidence of an arrangement exists;
- delivery has occurred and title has passed to the customer;
- the sales price is fixed and determinable and no further obligation exists; and
- collectability is reasonably assured

These four criteria are met for the Company's product only revenue upon delivery of the product and title passing to the customer. At that time, the Company provides for estimated costs that may be incurred for product warranties and sales returns. Revenues are presented net of sales tax and other sales related taxes.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

For sales contracts consisting of multiple elements of revenue, such as a combination of product sales and services, the Company determines revenue by allocating the total contract revenue to each element based on the relative fair values in accordance with Emerging Issues Task Force (EITF) No. 00-21, *Revenue Arrangements With Multiple Deliverables*.

Services other than installation and recycling that are completed prior to delivery of the product are recognized upon shipment and are included in product revenue as evidence of fair value does not exist. These services include comprehensive site assessment, site field verification, utility incentive and government subsidy management, engineering design, and project management.

Service revenue includes revenue earned from installation, which includes recycling services. Service revenue is recognized when services are complete and customer acceptance has been received. The Company primarily contracts with third-party vendors for the installation services provided to customers and, therefore, determines fair value based upon negotiated pricing with such third-party vendors. Recycling services provided in connection with installation entail disposal of the customer's legacy lighting fixtures.

Costs of products delivered, and services performed, that are subject to additional performance obligations or customer acceptance are deferred and recorded in Prepaid Expenses and Other Current Assets on the Consolidated Balance Sheet. These deferred costs are expensed at the time the related revenue is recognized. Deferred costs amounted to \$82,000 and \$157,000 as of March 31, 2008 and June 30, 2008.

Deferred revenue relates to an obligation to provide maintenance on certain sales and is classified as a liability on the Balance Sheet. The fair value of the maintenance is readily determinable based upon pricing from third-party vendors. Deferred revenue is recognized when the services are delivered, which occurs in excess of a year after the original contract.

Deferred revenue was comprised of the following (in thousands):

	<u>March 31,</u> <u>2008</u>	<u>June 30,</u> <u>2008</u>
Deferred revenue – current liability	\$ 134	\$ 141
Deferred revenue – long term liability	41	26
Total deferred revenue	<u>\$ 175</u>	<u>\$ 167</u>

Income Taxes

The Company accounts for income taxes in accordance with SFAS 109, *Accounting for Income Taxes*. SFAS 109 requires recognition of deferred tax assets and liabilities for the future tax consequences of temporary differences between financial reporting and income tax basis of assets and liabilities and are measured using the enacted tax rates and laws expected to be in effect when the temporary differences will reverse. Deferred income taxes also arise from the future tax benefits of operating loss and tax credit carryforwards. A valuation allowance is established when management determines that it is more likely than not that all or a portion of a deferred tax asset will not be realized.

The income tax provision for the three months ended June 30, 2008 was determined by applying an estimated annual effective tax rate of 42.2% to income before taxes. The estimated effective income tax rate was determined by applying statutory tax rates to pretax income adjusted for certain permanent book to tax differences and tax credits.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Below is a reconciliation of the statutory federal income tax rate and the effective income tax rate:

	Year Ended March 31, 2008	Three Months Ended June 30, 2008
Statutory federal tax rate	34.00 %	34.00 %
State taxes, net	4.20 %	5.14 %
Incentive stock options	2.70 %	2.99 %
Federal tax credit	(1.50)%	0.00 %
State tax credit	(1.00)%	0.00 %
Other, net	(0.30)%	0.08 %
Effective income tax rate	38.10 %	42.21 %

The Company is eligible for tax benefits associated with the excess of the tax deduction available for exercises of non-qualified stock options over the amount recorded at grant. The amount of the benefit is based on the ultimate deduction reflected in the applicable income tax return. The current benefit of \$.3 million was recorded as a reduction in taxes payable and a credit to additional paid-in capital based on the amount that was utilized year to date. As of June 30, 2008, the Company has approximately \$1.8 million of net operating losses that resulted from the exercise of non-qualified stock options in prior years that have not been recognized as a reduction to current income taxes payable.

The Company has issued incentive stock options for which stock compensation expense is not deductible currently for tax purposes. The non-deductible expense is considered permanent in nature. A disqualifying disposition occurs when a shareholder sells shares from an option exercise within twelve months of the exercise date or within 24 months of the option grant date. In the event of a disqualifying disposition, the option and related stock compensation expense take on the characteristics of a non-qualified stock option grant, and is deductible for income tax purposes. This deduction is a permanent tax rate differential. The Company could incur significant changes in its effective tax rate in future periods based upon incentive stock option compensation expense and disqualifying disposition events.

Stock Option Plans

The fair value of each option grant for the three months ending June 30, 2007 and 2008 was determined using the assumptions in the following table:

	For the Three Months Ended	
	June 30, 2007	June 30, 2008
Weighted average expected term	7.6 years	6.0 years
Risk-free interest rate	4.58 %	3.24 %
Expected volatility	60 %	60 %
Expected forfeiture rate	6 %	2 %
Expected dividend yield	0 %	0 %

Net Income per Common Share

Basic net income per common share is computed by dividing net income attributable to common shareholders by the weighted-average number of common shares outstanding for the period and does not consider common stock equivalents.

Prior to the Company's IPO on December 24, 2007, all series of the Company's preferred stock participated in all undistributed earnings with the common stock. The Company allocated earnings to the common shareholders and participating preferred shareholders under the two-class method as required by EITF 03-6, *Participating Securities and the Two-Class Method under FASB Statement No. 128*. The two-class method is an earnings allocation method under which basic net income per share is calculated for the Company's common stock and participating preferred stock considering both accrued preferred stock dividends and participation rights in undistributed earnings as if all such earnings had been distributed during the year. Since the Company's participating preferred stock was not contractually required to share in the Company's losses, in applying the two-class method to compute basic net income per common share, no allocation was made to the preferred stock if a net loss existed or if an undistributed net loss resulted from reducing net income by the accrued preferred stock dividends.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Diluted net income per common share reflects the dilution that would occur if preferred stock were converted, warrants and employee stock options were exercised, and shares issued per exercise of stock options for which the exercise price was paid by a non-recourse loan from the Company were outstanding. In the computation of diluted net income per common share, the Company uses the “if converted” method for preferred stock and restricted stock, and the “treasury stock” method for outstanding options and warrants. In addition, in computing the dilutive effect of the convertible notes, the numerator is adjusted to add back the after-tax amount of interest recognized in the period.

The net income per share of common stock is as follows for the three months ended June 30, 2007 and 2008 (in thousands except share amounts):

	Three Months Ended June 30,	
	2007	2008
Numerator:		
Net income	\$ 748	\$ 34
Accretion of redeemable preferred stock and preferred stock dividends	(75)	—
Participation rights of preferred stock in undistributed earnings	(219)	—
Numerator for basic net income per common share	454	34
Preferred stock dividends and participation rights of preferred stock	294	—
Numerator for diluted net income per common share	<u>\$ 748</u>	<u>\$ 34</u>
Denominator:		
Weighted-average common shares outstanding	9,950,486	27,038,353
Weighted-average effect of preferred stock, restricted stock, convertible notes and assumed conversion of stock options and warrants	8,137,465	2,976,845
Weighted-average common shares and common share equivalents outstanding	<u>18,087,951</u>	<u>30,015,198</u>

Concentration of Credit Risk and Other Risks and Uncertainties

The Company’s cash is deposited with one major financial institution. At times, deposits in this institution exceed the amount of insurance provided on such deposits. The Company has not experienced any losses in such accounts and believes that it is not exposed to any significant risk on these balances.

The Company currently depends on one supplier for a number of components necessary for its products, including ballasts and lamps. If the supply of these components were to be disrupted or terminated, or if this supplier were unable to supply the quantities of components required, the Company may have short-term difficulty in locating alternative suppliers at required volumes. Purchases from this supplier accounted for 28% of total cost of revenue for three months ended June 30, 2007 and 30% for the three months ended June 30, 2008.

For the three months ended June 30, 2007 one customer accounted for 20% of revenue. For the three months ended June 30, 2008 no customers accounted for more than 10% of revenue.

One customer accounted for 19% of accounts receivable as of March 31, 2008. As of June 30, 2008 no customer accounted for more than 10% of the accounts receivable balance.

Segment Information

The Company has determined that it operates in only one segment in accordance with SFAS 131, *Disclosures about Segments of an Enterprise and Related Information*, as it does not disaggregate profit and loss information on a segment basis for internal management reporting purposes to its chief operating decision maker.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

The Company's revenue and long-lived assets outside the United States are insignificant.

Recent Accounting Pronouncements

In September 2006, the FASB issued SFAS 157, *Fair Value Measurement*. SFAS No. 157 is effective for years beginning after November 15, 2007. SFAS No. 157 defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles and enhances disclosures about fair value measurements. Fair value is defined under SFAS No. 157 as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value under SFAS No. 157 must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value which are the following:

Level 1 – Quoted prices in active markets for identical assets or liabilities.

Level 2 – Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

Level 3 – Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The adoption of SFAS No. 157 in fiscal 2009, did not have an impact on the Company's results of operations or financial position.

In February 2008, the FASB issued FASB Staff Position No. 157-2 ("FSP 157-2"), which delayed the effective date by which companies must adopt the provisions of SFAS 157. FSP 157-2 defers the effective date of SFAS 157 to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years. The adoption of this standard is not anticipated to have a material impact on our financial position, results of operations, or cash flows.

In February 2007, the FASB issued SFAS 159, *The Fair Value Option for Financial Assets and Financial Liabilities*. SFAS No. 109 permits entities to choose to measure at fair value some financial instruments and certain other items that are not currently required to be measured at fair value. Subsequent changes in fair value for designated items will be required to be reported in earnings in the current period. SFAS 159 also establishes presentation and disclosure requirements for similar type of assets and liabilities measured at fair value. SFAS 159 is effective for years beginning after November 15, 2007. The adoption of SFAS No. 159 in fiscal 2009 did not have an impact on the Company's results of operations or financial position.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations* ("SFAS 141R") which establishes principles and requirements for how the acquirer of a business recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree. SFAS 141R also provides guidance for recognizing and measuring goodwill acquired in the business combination and determines what information to disclose to enable users of the financial statements to evaluate the nature and financial effects of the business combination. SFAS 141R is effective for fiscal years beginning after December 15, 2008. Early adoption is not permitted. The Company is currently evaluating the effect of the adoption of SFAS 141R, but does not presently anticipate that it will have a material impact on its consolidated financial statements.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements – An Amendment to ARB No. 51* ("SFAS 160"). The objective of this statement is to improve the relevance, comparability and transparency of the financial information that a reporting entity provides in its consolidated financial statements by establishing accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS 160 requires reclassifying noncontrolling interests,

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

also referred to as minority interest, to the equity section of the consolidated balance sheet presented upon adoption. This pronouncement is effective for fiscal years beginning after December 15, 2008. The Company has determined that there is no current impact of adopting SFAS 160.

In March 2008, the FASB issued SFAS No. 161, *Disclosures about Derivative Instruments and Hedging Activities — an Amendment of FASB Statement No. 133* (“SFAS 161”). SFAS 161 requires companies to provide qualitative disclosures about the objectives and strategies for using derivatives, quantitative data about the fair value of and gains and losses on derivative contracts, and details of credit-risk-related contingent features in their hedged positions. The statement also requires companies to disclose more information about the location and amounts of derivative instruments in financial statements; how derivatives and related hedges are accounted for under SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* (SFAS 133); and how the hedges affect the entity’s financial position, financial performance and cash flows. SFAS 161 is effective for years beginning after November 15, 2008. The Company is in the process of evaluating what effect, if any, adoption of SFAS 161 may have on the consolidated financial statements.

In April 2008, the FASB issued FASB Staff Position (“FSP”) FAS 142-3, *Determination of Useful Life of Intangible Assets* (“FSP FAS 142-3”), which amends the factors that should be considered in developing the renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS 142, “Goodwill and Other Intangible Assets.” FSP FAS 142-3 also requires expanded disclosure related to the determination of intangible asset useful lives. FSP FAS 142-3 is effective for fiscal years beginning after December 15, 2008. The Company is currently evaluating the potential impact, if any, of the adoption of FSP FAS 142-3 on its financial position and results of operations.

In May 2008, the FASB issued SFAS No. 162, *The Hierarchy of Generally Accepted Accounting Principles*. SFAS No. 162 defines the order in which accounting principles that are generally accepted should be followed. SFAS No. 162 is effective 60 days following the SEC’s approval of the Public Company Accounting Oversight Board (“PCAOB”) amendments to AU Section 411, *The Meaning of Presented Fairly in Conformity with Generally Accepted Accounting Principles*. The Company does not expect the adoption of SFAS No. 162 to have a material impact on the consolidated financial statements.

NOTE C — RELATED PARTY TRANSACTIONS

As of March 31, 2007, the Company had non-interest bearing advances of \$157,000 to a shareholder, and also held an unsecured, 1.46% note receivable due from the same shareholder in the amount of \$67,000, including interest receivable. These advances and this note were repaid on August 2, 2007. For the three months ended June 30, 2007 the Company forgave \$9,000 of shareholder advances as part of a contractual employment relationship.

The Company incurred fees of \$18,000, and none for the three months ended June 30, 2007 and 2008, which were paid to a shareholder as consideration for guaranteeing notes payable and certain accounts payable. These guarantees were released in fiscal 2008.

The Company incurred fees of \$5,000 and \$12,000 for the three months ended June 30, 2007 and 2008 respectively, which were paid to an executive for intellectual property fees pursuant to an employment agreement. In April 2008, the intellectual property rights were purchased from the executive for a cash payment of \$950,000.

The Company leases, on a month-to-month basis, an aircraft owned by an entity controlled by a former director. Amounts paid for the three months ended June 30, 2007 and 2008 were \$16,000 and none.

During the three months ended June 30, 2007 and 2008, the Company recorded revenue of \$42,000 and \$6,000 for products and services sold to an entity for which the Company’s Chairman of the Board was the executive chairman.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

NOTE D — LONG-TERM DEBT

Long-term debt as of March 31, 2008 and June 30, 2008 consisted of the following (in thousands):

	<u>March 31, 2008</u>	<u>June 30, 2008</u>
Term note	\$ 1,440	\$ 1,390
First mortgage note payable	1,045	1,033
Debenture payable	922	913
Lease obligations	536	464
Other long-term debt	1,373	1,317
Total long-term debt	5,316	5,117
Less current maturities	(843)	(854)
Long-term debt, less current maturities	<u>\$ 4,473</u>	<u>\$ 4,263</u>

Revolving Credit Agreement

On March 18, 2008, the Company entered into a credit agreement (“Credit Agreement”) to replace a previous agreement between the Company and Wells Fargo. The Credit Agreement provides for a revolving credit facility (“Line of Credit”) that matures on August 31, 2010. The initial maximum aggregate amount of availability under the Line of Credit is \$25.0 million. The Company has a one-time option to increase the maximum aggregate amount of availability under the Line of Credit to up to \$50.0 million, although any advance from the Line of Credit over \$25.0 million is discretionary to Wells Fargo even if no event of default has occurred. Borrowings are limited to a percentage of eligible trade accounts receivables and inventories, less any borrowing base reserve that may be established from time to time. As of June 30, 2008 the Company had not drawn any funds on the Line of Credit. Borrowings allowed under the line of credit as of June 30, 2008 were \$15.8 million based upon available working capital, as defined.

The Company must pay a fee of 0.20% on the average daily unused amount of the Line of Credit, fees upon the issuance of each letter of credit equal to 1.25% per annum of the principal amount thereof, and a fee equal to 1.0% of the principal amount of the Line of Credit then in effect if the Company terminates the Line of Credit prior to December 23, 2008.

The agreement provides that the Company has the option to select the interest rate applicable to all or a portion of the outstanding principal balance of the Note either (i) at a fluctuating rate per annum one percent (1.00%) below the prime rate in effect from time to time, or (ii) at a fixed rate per annum determined by Wells Fargo to be one and one quarter percent (1.25%) above LIBOR. Interest is payable on the last day of each month, commencing March 31, 2008.

The Credit Agreement is secured by a first lien security interest in all of the Company’s accounts receivable, general intangibles and inventory, and a second lien priority in all of the Company’s equipment and fixtures and contains certain financial covenants including minimum net income requirements and requirements that the Company maintain net worth and fixed charge coverage ratios at prescribed levels. The Credit Agreement also contains certain restrictions on the ability of the Company to make capital or lease expenditures over prescribed limits, incur additional indebtedness, consolidate or merge, guarantee obligations of third parties, make loans or advances, declare or pay any dividend or distribution on its stock, redeem or repurchase shares of its stock, or pledge assets.

NOTE E — INCOME TAXES

As of March 31, 2008, the Company had U.S. Federal net operating loss carryforwards of approximately \$1.8 million that are associated with the exercise of non-qualified stock options that have not yet been recognized by the Company in its financial statements. The Company also has U.S. state net operating loss carryforwards of approximately \$2.3 million, of which \$1.3 million are associated with the exercise of non-qualified stock options. The Company also has federal and state tax credit carryforwards of approximately \$296,000 and \$472,000 as of March 31, 2008. Both the net operating losses and tax credit carryforwards expire between 2016 and 2027.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

In fiscal 2007 and prior to its IPO, the Company's past issuances and transfers of stock caused an ownership change. When certain ownership changes occur, tax laws require that a calculation be made to establish a limitation on the use of net operating loss carryforwards created in periods prior to such ownership change. For the fiscal year ended March 31, 2008, utilization of the federal loss carryforwards was limited to \$3.0 million. For the fiscal year 2009, there is only \$1.8 million of net operating loss carryforward remaining from periods prior to the ownership change, however, if there were more net operating loss available from those time periods, the Company believes that utilization of the federal loss carryforwards would again be limited to \$3.0 million.

NOTE F — COMMITMENTS AND CONTINGENCIES

Operating Leases and Purchase Commitments

The Company leases vehicles and equipment under operating leases. Rent expense under operating leases was \$245,000 and \$262,000 for the three months ended June 30, 2007 and 2008. Total annual commitments under non-cancelable operating leases as of June 30, 2008 were \$1.1 million. In addition, the Company enters into non-cancellable purchase commitments for certain inventory items in order to secure better pricing and ensure materials on hand and capital expenditures. As of June 30, 2008, the Company had entered into \$8.8 million of purchase commitments related to fiscal 2009, including \$5.5 million related to the remaining capital committed for construction of the technology center and \$1.6 million for inventory purchases.

Litigation

In February and March 2008, three class action lawsuits were filed in the United States District Court for the Southern District of New York against the Company, several of its officers, all members of the board of directors, and certain underwriters relating to the Company's December 2007 initial public offering. The plaintiffs claim to represent those persons who purchased shares of the Company's common stock from December 18, 2007 through February 6, 2008. The plaintiffs allege, among other things, that the defendants made misstatements and failed to disclose material information in the registration statement and prospectus. The claims allege various claims under the Securities Act of 1933, as amended. The complaints seek, among other relief, class certification, unspecified damages, fees, and such other relief as the court may deem just and proper.

The Company believes that it and the other defendants have substantial legal and factual defenses to the claims and allegations contained in the complaints, and the Company intends to pursue these defenses vigorously. There can be no assurance, however, that the Company will be successful, and an adverse resolution of any of the lawsuits could have a material effect on the Company's consolidated financial position and results of operations. In addition, although the Company carries insurance for these types of claims, a judgment significantly in excess of the Company's insurance coverage could materially and adversely affect the Company's financial condition, results of operations and cash flows. The Company is not presently able to reasonably estimate potential losses, if any, related to the lawsuits.

NOTE G — SHAREHOLDERS' EQUITY

Conversion of Preferred Stock Upon Completion of Initial Public Offering

Upon completion of the Company's IPO, all preferred shares were converted into common stock. Prior to the IPO, the Company had issued various classes of preferred stock. Series B and Series C preferred stock carried terms allowing for liquidation preference, voting rights, and conversion into common stock at a one-to-one ratio upon certain qualifying exit events. Series C preferred shares carried a redemption provision and a dividend preference at a non-compounded rate of 6% resulting in the carrying value of the preferred Series C stock being increased by an accretion each period.

NOTE H — STOCK OPTIONS AND WARRANTS

The Company grants stock options and restricted stock awards under its 2003 Stock Option and 2004 Stock and Incentive Awards Plans (the Plans). Under the terms of the Plans, the Company has reserved 9,000,000 shares for issuance to key employees, consultants and directors. The options generally vest and become exercisable ratably

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

between one month and five years although longer vesting periods have been used in certain circumstances. The options are contingent on the employees' continued employment and are subject to forfeiture if employment terminates for any reason. Options under the Plans have a maximum life of ten years. In the past, the Company has granted both incentive stock options and non-qualified stock options. Restricted stock awards have no vesting period and have been issued to certain non-employee directors pursuant to elections made under the non-employee director compensation plan, which became effective upon the closing of our IPO. The Plans also provide to certain employees accelerated vesting in the event of certain changes of control of the Company. In December 2007, upon the closing of our initial public offering, an additional 1,500,000 option shares were made available for grant under our 2004 Stock and Incentive Awards plan.

Prior to our IPO, certain non-employee directors elected to receive stock awards in lieu of cash compensation under the non-employee director compensation plan which became effective upon the closing of our IPO. The Company granted 4,738 shares from the 2004 Stock Incentive Awards Plan as compensation for the three months ended June 30, 2008. The shares were issued in May 2008 and valued at the market price as of the grant date of \$11.61 per share.

In accordance with the adoption of SFAS 123(R), the following amounts of stock-based compensation were recorded (in thousands):

	Three months ended June 30,	
	2007	2008
Cost of product revenue	\$ 21	\$ 65
General and administrative	65	254
Sales and marketing	53	126
Research and development	8	13
Total	\$ 147	\$ 458

As of June 30, 2008, compensation cost related to non-vested common stock-based compensation amounted to \$5.4 million over a remaining weighted average expected term of 6.6 years.

The following table summarizes information with respect to the Company's Plans:

(In thousands, except per share amounts)	Options Outstanding				
	Shares Available for Grant	Number of Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic value
Balance at March 31, 2008	1,482	4,716	\$ 2.30		
Authorized	—	—	—		
Granted	(238)	238	11.54		
Cancelled or expired	114	(114)	2.73		
Exercised	—	(336)	1.21		
Balance at June 30, 2008	<u>1,358</u>	<u>4,504</u>	2.86	6.6	\$32,153
Exercisable at June 30, 2008		2,086	1.25	4.3	\$18,258

The aggregate intrinsic value represents the total pre-tax intrinsic value, which is calculated as the difference between the exercise price of the underlying stock options and the fair value of the Company's closing common stock price of \$10.00 as of June 30, 2008.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

A summary of the status of the Company's outstanding non-vested stock options as of June 30, 2008 is as follows (in thousands):

Non-vested at March 31, 2008	2,307
Granted	238
Vested	(13)
Forfeited	(114)
Non-vested at June 30, 2008	<u>2,418</u>

Prior to the Company's IPO, the Company issued warrants in connection with various stock offerings and services rendered. The warrants grant the holder the option to purchase common stock at specified prices for a specified period of time. No warrants were issued in fiscal 2008 or for the three months ended June 30, 2008.

ORION ENERGY SYSTEMS, INC. AND SUBSIDIARIES
NOTES TO THE CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

Outstanding warrants are comprised of the following:

	<u>Number of Shares</u>	<u>Weighted Average Exercise Price</u>
Balance at March 31, 2008	578,788	\$2.31
Issued	—	—
Exercised	(65,580)	2.33
Cancelled	—	—
Balance at June 30, 2008	513,208	\$2.31

A summary of outstanding warrants follows:

<u>Exercise Price</u>	<u>June 30, 2008</u>	<u>Expiration</u>
\$2.25	38,980	Fiscal 2014
\$2.30	436,968	Fiscal 2010
\$2.50	37,260	Fiscal 2011
Total	513,208	

NOTE I — SUBSEQUENT EVENTS

In July 2008, the Company's board of directors approved a share repurchase program authorizing the Company to repurchase in the aggregate up to a maximum of \$20 million of their outstanding common stock. As of August 8th, 2008, the Company had repurchased 415,023 shares of common stock at a cost of \$2.3 million.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis of our financial condition and results of operations should be read together with our unaudited condensed consolidated financial statements and related notes included elsewhere in the Form 10-Q. It should also be read in conjunction with our audited consolidated financial statements and related notes included in our Annual Report on Form 10-K for the year ended March 31, 2008.

Cautionary Note Regarding Forward-Looking Statements

Any statements in this Quarterly Report on Form 10-Q about our expectations, beliefs, plans, objectives, prospects, financial condition, assumptions or future events or performance are not historical facts and are "forward-looking statements" as that term is defined under the Federal Securities Laws. These statements are often, but not always, made through the use of words or phrases such as "believe", "anticipate", "should", "intend", "plan", "will", "expects", "estimates", "projects", "positioned", "strategy", "outlook" and similar words. You should read the statements that contain these types of words carefully. Such forward-looking statements are subject to a number of risks, uncertainties and other factors that could cause actual results to differ materially from what is expressed or implied in such forward-looking statements. There may be events in the future that we are not able to predict accurately or over which we have no control. Potential risks and uncertainties include, but are not limited to, those discussed below under "Financial Performance" and elsewhere in this Quarterly Report. We urge you not to place undue reliance on these forward-looking statements, which speak only as the date of this report. We do not undertake any obligation to release publicly any revisions to such forward-looking statements to reflect events or uncertainties after the date hereof or to reflect the occurrence of unanticipated events.

Overview

We design, manufacture and implement energy management systems consisting primarily of high-performance, energy-efficient lighting systems, controls and related services.

We currently generate the substantial majority of our revenue from sales of high intensity fluorescent, or HIF, lighting systems and related services to commercial and industrial customers. We typically sell our HIF lighting systems in replacement of our customers' existing high intensity discharge, or HID, fixtures. We call this replacement process a "retrofit." We frequently engage our customer's existing electrical contractor to provide installation and project management services. We also sell our HIF lighting systems on a wholesale basis, principally to electrical contractors and value-added resellers to sell to their own customer bases.

We have sold and installed more than 1,203,000 of our HIF lighting systems in over 3,700 facilities from December 1, 2001 through June 30, 2008. We have sold our products to 94 Fortune 500 companies, many of which have installed our HIF lighting systems in multiple facilities. Our top customers by revenue in fiscal 2008 included Coca-Cola Enterprises Inc., Kraft Foods Inc., Sherwin Williams Co., Kroger Co., SYSCO Corp. and Anheuser-Busch Companies, Inc.

Our fiscal year ends on March 31. We call our fiscal year ended March 31, 2008, "fiscal 2008". We call our current fiscal year, which will end on March 31, 2009, "fiscal 2009." Our fiscal first quarter ends on June 30, our fiscal second quarter ends on September 30, our fiscal third quarter ends on December 31 and our fiscal fourth quarter ends on March 31.

Revenue and Expense Components

Revenue. We sell our energy management products and services directly to commercial and industrial customers, and indirectly to end users through wholesale sales to electrical contractors and value-added resellers. We currently generate the substantial majority of our revenue from sales of HIF lighting systems and related services to commercial and industrial

Table of Contents

customers. While our services include comprehensive site assessment, site field verification, utility incentive and government subsidy management, engineering design, project management, installation and recycling in connection with our retrofit installations, we separately recognize service revenue only for our installation and recycling services. Except for our installation and recycling services, all other services historically have been completed prior to product shipment and revenue from such services was included in product revenue because evidence of fair value for these services did not exist. We are continuing to increase our efforts in selling through our contractor and value-added reseller channels with marketing through mass mailings, participating in national trade organizations and providing training to channel partners on our sales methodologies. These wholesale channels accounted for approximately 25% of our total revenue volume in fiscal 2008 and we expect the growth of these channels to keep pace with overall company growth in fiscal 2009.

We recognize revenue on product only sales at the time of shipment. For projects consisting of multiple elements of revenue, such as a combination of product sales and services, we separate the project into separate units of accounting based on their relative fair values for revenue recognition purposes. Additionally, the deferral of revenue on a delivered element may be required if such revenue is contingent upon the delivery of the remaining undelivered elements. We recognize revenue at the time of product shipment on product sales and on services completed prior to product shipment. We recognize revenue associated with services provided after product shipment, based on their fair value, when the services are completed and customer acceptance has been received. When other significant obligations or acceptance terms remain after products are delivered, revenue is recognized only after such obligations are fulfilled or acceptance by the customer has occurred. We also offer our products under a sales-type financing program where we finance our customer's purchase. The contractual future cash flows and residual rights to the related equipment are then sold without recourse to a third party finance company. We recognize revenue for the net present value of the future payments from the finance company upon completion of the project. See "— Critical Accounting Policies and Estimates." Revenue recognized from our sales-type financing program has historically been immaterial as a percentage of our total revenue. In the future, we expect an increase in volume of sales that utilize the financing program.

Our dependence on individual key customers can vary from period to period as a result of the significant size of some of our retrofit and multi-facility roll-out projects. Our top 10 customers accounted for approximately 55% and 38% of our total revenue for the first three months of fiscal 2008 and fiscal 2009, respectively. One customer accounted for approximately 20% of our total revenue for the first three months of fiscal 2008. As large retrofit and roll-out projects become a greater component of our total revenue, we may experience more customer concentration in given periods. The loss of, or substantial reduction in sales volume to, any of our significant customers could have a material adverse effect on our total revenue in any given period and may result in significant annual and quarterly revenue variations.

Our level of total revenue for any given period is dependent upon a number of factors, including (i) the demand for our products and systems; (ii) the number and timing of large retrofit and multi-facility retrofit, or "roll-out," projects; (iii) the level of our wholesale sales; (iv) our ability to realize revenue from our services and our sales-type financing program; (v) our execution of our sales process; (vi) the selling price of our products and services; (vii) changes in capital investment levels by our customers and prospects; and (viii) customer sales cycles. As a result, our total revenue may be subject to quarterly variations and our total revenue for any particular fiscal quarter may not be indicative of future results. We expect our total revenue to increase in fiscal 2009 primarily as we solicit new customers, expand our joint lead generation and sales initiative with electrical contractors and value-added resellers, expand our sales force and sales locations, roll-out our products and services to multiple customer locations and attempt to expand implementation of all aspects of our energy management system for existing national customers.

Backlog. We define backlog as the total contractual value of all firm orders received for our lighting products and services. Such orders must be evidenced by a signed proposal acceptance or purchase order from the customer. Our backlog does not include national contracts that have been negotiated, but we have not yet received a purchase order for the specific location. As of June 30, 2008, we had a backlog of firm purchase orders of approximately \$1.9 million. We generally expect this level of firm purchase order backlog to be converted into revenue within the following quarter. Principally as a result of the continued shortening of our installation cycles and the increasing number of projects sold through national contracts, a comparison of backlog from period to period is not necessarily meaningful and may not be indicative of actual revenue recognized in future periods.

Cost of Revenue. Our total cost of revenue consists of costs for: (i) raw materials, including sheet, coiled and specialty reflective aluminum; (ii) electrical components, including ballasts, power supplies and lamps; (iii) wages and related

Table of Contents

personnel expenses, including stock-based compensation charges, for our fabricating, coating, assembly, logistics and project installation service organizations; (iv) manufacturing facilities, including depreciation on our manufacturing facilities and equipment, taxes, insurance and utilities; (v) warranty expenses; (vi) installation and integration; and (vii) shipping and handling. Our cost of aluminum can be subject to commodity price fluctuations, which we attempt to mitigate with forward fixed-price, minimum quantity purchase commitments with our suppliers. We also purchase many of our electrical components through forward purchase contracts. We buy most of our specialty reflective aluminum from a single supplier, and most of our ballast and lamp components from a single supplier, although we believe we could obtain sufficient quantities of these raw materials and components on a price and quality competitive basis from other suppliers if necessary. Purchases from our current primary supplier of ballast and lamp components constituted 30% of our total cost of revenue for the first three months of fiscal 2009. Our production labor force is non-union and, as a result, our production labor costs have been relatively stable. We have been expanding our network of qualified third-party installers to realize efficiencies in the installation process. Toward the end of fiscal 2008, we began to bring some of our processes performed at outside suppliers internal to help us better manage delivery lead time, control process quality and manage inventory supply. We installed a coating line and acquired production fabrication equipment. Each of these production items provide us with additional capacity to continue to support our anticipated revenue growth. We expect that these processes will reduce overall unit costs as the equipment becomes fully utilized.

Gross Margin. Our gross profit has been and will continue to be, affected by the relative levels of our total revenue and our total cost of revenue, and as a result, our gross profit may be subject to quarterly variation. Our gross profit as a percentage of total revenue, or gross margin, is affected by a number of factors, including: (i) our mix of large retrofit and multi-facility roll-out projects with national accounts; (ii) the level of our wholesale sales (which generally have historically resulted in higher relative gross margins, but lower relative net margins, than our sales to direct customers); (iii) our realization rate on our billable services; (iv) our project pricing; (v) our level of warranty claims; (vi) our level of utilization of our manufacturing facilities and related absorption of our manufacturing overhead costs; (vii) our level of efficiencies in our manufacturing operations; and (viii) our level of efficiencies from our subcontracted installation service providers.

Operating Expenses. Our operating expenses consist of: (i) general and administrative expenses; (ii) sales and marketing expenses; and (iii) research and development expenses. Personnel related costs are our largest operating expense and we expect these costs to increase on an absolute dollar basis in fiscal 2009 as a result of our planned expansion of our sales force, as well as contemplated additions to our personnel infrastructure, as we attempt to generate and support additional revenue growth.

Our general and administrative expenses consist primarily of costs for: (i) salaries and related personnel expenses, including stock-based compensation charges, related to our executive, finance, human resource, information technology and operations organizations; (ii) occupancy expenses; (iii) professional services fees; (iv) technology related costs and amortization; and (v) corporate-related travel.

Our sales and marketing expenses consist primarily of costs for: (i) salaries and related personnel expenses, including stock-based compensation charges, related to our sales and marketing organization; (ii) internal and external sales commissions and bonuses; (iii) travel, lodging and other out-of-pocket expenses associated with our selling efforts; (iv) marketing programs; (v) pre-sales costs; and (vi) other related overhead.

Our research and development expenses consist primarily of costs for: (i) salaries and related personnel expenses, including stock-based compensation charges, related to our engineering organization; (ii) payments to consultants; (iii) the design and development of new energy management products and enhancements to our existing energy management system; (iv) quality assurance and testing; and (v) other related overhead. We expense research and development costs as incurred.

In addition to expected increased administrative personnel costs, we expect to incur increased general and administrative expenses in connection with our becoming a public company, including increased accounting, audit, legal and support services and Sarbanes-Oxley compliance fees and expenses. Additionally, we anticipate operating expenses to increase at the end of fiscal 2009 based upon the completion of our new technology center and the related building occupancy costs. We also expect our sales and marketing expenses to increase in the near term as we continue to increase the number of our sales people and sales locations and market our products, brands and trade names, including our planned expanded advertising and promotional campaign. Additionally, we expense all pre-sale costs incurred in connection with our sales process prior to obtaining a purchase order. These pre-sale costs may reduce our net income in a given period prior to recognizing any

[Table of Contents](#)

corresponding revenue. We also intend to continue to invest in our research and development of new and enhanced energy management products and services.

In fiscal 2007, we began recognizing compensation expense for the fair value of our stock option awards granted over their related vesting period using the modified prospective method of adoption under the provisions of the Statement of Financial Accounting Standards No. 123(R), *Share-Based Payment*. Prior to fiscal 2007, we accounted for our stock option awards under the intrinsic value method under the provisions of Accounting Principles Board Opinion (APB) No. 25, *Accounting for Stock Issued to Employees*, and we did not recognize the fair value expense of our stock option awards in our statements of operations, although we did report our pro forma stock option award fair value expense in the footnotes to our financial statements. We recognized \$1.4 million of stock-based compensation expense in fiscal 2008 and \$0.5 million in the first three months of fiscal 2009. As a result of prior option grants, including option grants in fiscal 2008, we expect to recognize an additional \$5.4 million of stock-based compensation over a weighted average period of approximately 6.6 years, including \$1.1 million in the last nine months of fiscal 2009. These charges have been, and will continue to be, allocated to cost of product revenue, general and administrative expenses, sales and marketing expenses and research and development expenses based on the departments in which the personnel receiving such awards have primary responsibility. A substantial majority of these charges have been, and likely will continue to be, allocated to general and administrative expenses and sales and marketing expenses.

Interest Expense. Our interest expense is comprised primarily of interest expense on outstanding borrowings under our revolving credit facility and our other long-term debt obligations described under “— Liquidity and Capital Resources — Indebtedness” below, including the amortization of previously incurred financing costs. Our interest expense also has historically included guarantee fees previously paid to our chief executive officer in connection with his guarantees of various of our debt obligations. These guarantees were released during fiscal 2008. We amortize deferred financing costs to interest expense over the life of the related debt instrument, ranging from six to fifteen years. We have incurred no interest expense under our revolving credit agreement since December 2007.

Dividend and Interest Income. Our dividend income consists of dividends paid on preferred shares that we acquired in July 2006. The terms of these preferred shares provided for annual dividend payments to us of \$0.1 million. The preferred shares were sold back to the issuer in June 2008 and all dividends accrued were paid upon sale. We also report interest income earned on our cash and cash equivalents. We expect our interest income to increase in fiscal 2009 as a result of our investment of the net proceeds from our initial public offering in short-term, interest-bearing, investment-grade securities until final application of such net proceeds.

Income Taxes. As of March 31, 2008, we had net operating loss carryforwards of approximately \$1.8 million for federal tax purposes and \$2.3 million for state tax purposes. Included in these loss carryforwards were \$1.8 million for federal and \$1.3 million for state tax purposes of compensation expenses that were associated with the exercise of nonqualified stock options. The benefit from our net operating losses created from these compensation expenses has not yet been recognized in our financial statements and will be accounted for in our shareholders’ equity as a credit to additional paid-in capital as the deduction reduces our income taxes payable. We also had federal and state credit carryforwards of approximately \$0.3 million and \$0.5 million, respectively, as of March 31, 2008. These federal and state net operating losses and credit carryforwards are available, subject to the discussion in the following paragraph, to offset future taxable income and, if not utilized, will begin to expire in varying amounts between 2016 and 2027. Our income before income tax in fiscal 2008 was \$7.2 million. If we maintain this level of income before income tax in future fiscal years, we would expect to utilize our federal net operating loss carryforwards in fiscal 2009. State net operating loss carryforwards would be utilized over approximately 5 fiscal years or a shorter period if our income before income taxes increases further.

Generally, a change of more than 50% in the ownership of a company’s stock, by value, over a three year period constitutes an ownership change for federal income tax purposes. An ownership change may limit a company’s ability to use its net operating loss carryforwards attributable to the period prior to such change. In fiscal 2007 and prior to the IPO, past issuances and transfers of our stock caused an ownership change. When certain ownership changes occur, tax laws require that a calculation be made to establish a limitation on the use of net operating loss carryforwards created in periods prior to such ownership change. For the fiscal year ended March 31, 2008, utilization of the federal loss carryforwards was limited to \$3.0 million. For the fiscal year 2009, there is only \$1.8 million of net operating loss carryforward remaining from periods prior to the ownership change, however, if there were more net operating loss available from those time periods, we believe that utilization of the federal loss carryforwards would again be limited to \$3.0 million.

[Table of Contents](#)

Accretion of Preferred Stock and Preferred Stock Dividends. Our accretion of redeemable preferred stock and preferred stock dividends consisted of accumulated unpaid dividends on our Series A and Series C preferred stock during the periods that such shares remained outstanding. The terms of our Series C preferred stock provided for a 6% per annum cumulative dividend unless we completed a qualified initial public offering or sale. As a result, the carrying amount of our Series C preferred stock was increased each period to reflect the accretion of accumulated unpaid dividends. The obligation to pay these accumulated unpaid dividends was extinguished upon conversion of the Series C preferred stock because our completed initial public offering constituted a qualified initial public offering under the terms of our Series C preferred stock. The Series C preferred stock automatically converted into common stock upon closing of our initial public offering, and the carrying amount of our Series C preferred stock, along with accumulated unpaid dividends, was credited to additional paid-in capital at that time. Our Series A preferred stock was issued beginning in fiscal 2000 and provided for a 12% per annum cumulative dividend. Our Series A preferred stock was converted into shares of our common stock in fiscal 2005 and fiscal 2007.

Results of Operations

The following table sets forth the line items of our consolidated statements of operations on an absolute dollar basis and as a relative percentage of our revenue for each applicable period, together with the relative percentage change in such line item between applicable comparable periods set forth below (dollars in thousands):

	Three Months Ended June 30,				
	2007		2008		% Change
	Amount	% of Revenue	Amount	% of Revenue	
Product revenue	\$14,505	86.7%	\$12,889	80.0%	(11.1)%
Service revenue	2,216	13.3%	3,217	20.0%	45.2%
Total revenue	16,721	100.0%	16,106	100.0%	(3.7)%
Cost of product revenue	9,446	56.5%	8,613	53.5%	(8.8)%
Cost of service revenue	1,672	10.0%	2,296	14.3%	37.3%
Total cost of revenue	11,118	66.5%	10,909	67.7%	(1.9)%
Gross profit	5,603	33.5%	5,197	32.3%	(7.2)%
General and administrative expenses	1,571	9.4%	2,615	16.2%	66.5%
Sales and marketing expenses	2,111	12.6%	2,652	16.4%	25.6%
Research and development expenses	437	2.7%	418	2.6%	(4.3)%
Income (loss) from operations	1,484	8.8%	(488)	(3.0)%	(132.9)%
Interest expense	295	1.8%	67	0.4%	(77.3)%
Dividend and interest income	40	0.2%	617	3.8%	NM
Income before income tax	1,229	7.2%	62	0.4%	(95.0)%
Income tax expense	481	2.9%	28	0.2%	(94.2)%
Net income	748	4.3%	34	0.2%	(95.5)%
Accretion of redeemable preferred stock and preferred stock dividends	(75)	(.4)%	—	0.0%	100.0%
Participation rights of preferred stock in undistributed earnings	(219)	(1.3)%	—	0.0%	100.0%
Net income attributable to common shareholders	<u>\$ 454</u>	<u>2.6%</u>	<u>\$ 34</u>	<u>0.2%</u>	<u>(92.5)%</u>

NM = Not meaningful

Three Months Ended June 30, 2008 Compared to Three Months Ended June 30, 2007

Revenue. Product revenue decreased from \$14.5 million for the three months ended June 30, 2007 to \$12.9 million for the three months ended June 30, 2008, a decrease of \$1.6 million or 11%. The decrease in revenue was a result of a lengthening sales cycle in the marketplace and training of our sales staff that reduced their time in the field with customers. After the close of our first quarter of fiscal 2009, we identified that customers were slower to make purchase decisions. We attribute this to general conservatism in the marketplace concerning capital spending. Service revenue increased from \$2.2 million for the three months ended June 30, 2007 to \$3.2 million for the three months ended June 30, 2008, an increase of \$1.0 million or 45%. The increase in service revenues was a result of completed projects where we provided installation and recycling services and the full quarter benefit of an emphasis on achieving higher billing rates for our services which was initiated during the first quarter of fiscal 2008.

Table of Contents

Cost of Revenue and Gross Margin. Our cost of product revenue decreased from \$9.4 million for the three months ended June 30, 2007 to \$8.6 million for the three months ended June 30, 2008, a decrease of \$0.8 million or 9%. Our cost of service revenues increased from \$1.7 million for the three months ended June 30, 2007 to \$2.3 million for the three months ended June 30, 2008, an increase of \$0.6 million or 37%. Total gross margin percentage decreased from 33.5% for the three months ended June 30, 2007 to 32.3% for the three months ended June 30, 2008. The decrease in gross margin was attributable to the decreased utilization of our manufacturing assets resulting from the volume reduction in product revenues and manufacturing capacity costs related to additions of new process capabilities added in the fiscal 2008 fourth quarter for product coating and fabrication equipment. We anticipate gross margins to increase in the near future as production volumes increase to support our planned roll-out programs and proposal pipeline and as we reduce excess capacity in our new manufacturing process equipment.

Operating Expenses

General and Administrative. Our general and administrative expenses increased for the three months ended June 30, 2008 from the three months ended June 30, 2007 on an absolute dollar basis and as a percentage of revenue principally as a result of: (i) increased compensation and accrued bonus costs as a result of executive employment contracts (ii) increased compensation costs related to hiring additional employees in our accounting, information technology and administration departments; (iii) additional legal expenses including \$0.1 million incurred for costs related to the class action litigation; (iv) increased consulting and depreciation costs for technology improvements; and (v) increased public company costs for audit and tax support, compliance and SOX initiatives that were not incurred in the first quarter of fiscal 2008. For the quarter ended June 30, 2008, we recorded a \$0.4 million gain on the sale of an asset in our general and administrative expenses.

Sales and Marketing. Our sales and marketing expenses increased for the three months ended June 30, 2008 from the three months ended June 30, 2007 on an absolute dollar basis and as percentage of total revenue primarily as a result of increased employee compensation and stock option compensation expenses resulting from our hiring additional sales and marketing personnel. Our marketing costs increased as a result of our efforts to increase our brand awareness through direct mail campaigns and participation in national trade shows.

Research and Development. Our research and development expenses decreased for the three months ended June 30, 2008 from the three months ended June 30, 2007 on an absolute dollar basis and as a percentage of total revenue as a result of decreased research consulting expenses and transition of our wireless control projects into production stages.

Interest Expense. Our interest expense decreased for the three months ended June 30, 2008 from the three months ended June 30, 2007 primarily as a result of reduced interest expense of \$0.2 million due to the payoff of our revolving line of credit balance in December 2007. For the three months ended June 30, 2008 we capitalized \$39,000 of interest for construction in progress.

Dividend and Interest Income. Dividend and interest income increased for the three months ended June 30, 2008 from the three months ended June 30, 2007 due to interest income earned on the invested proceeds from our initial public offering completed in December 2007.

Income Taxes. Our income tax expense decreased for the three months ended June 30, 2008 from the three months ended June 30, 2007 due to the reduction in taxable income. Our effective income tax rate for the three months ended June 30, 2008 was 42.2%, compared to 39.2% for the three months ended June 30, 2007. The increase in our effective tax rate was due to a mix change in state tax rates, an increase in non-deductible stock compensation expense and a reduction in federal tax credits due to credit phase-outs as a result of higher threshold requirements which are based upon our most recent four year revenue average.

Accretion of Preferred Stock and Preferred Stock Dividends. We recognized accretion of accumulated unpaid dividends on our preferred stock during the three months ended June 30, 2007. All preferred series stock was converted into common shares upon the completion of our initial public offering in December 2007.

Liquidity and Capital Resources

Overview

Prior to completion of our recent initial public offering, we historically funded our operations and capital expenditures primarily through issuances of an aggregate of \$5.4 million common stock, an aggregate of \$10.8 million of preferred stock and borrowings under our revolving credit facility and the other debt instruments and obligations described under “— Indebtedness” below. We applied the net proceeds from these offerings and borrowings to fund (i) our operations and capital expenditures as well as our product development and research capabilities; (ii) the purchase of our manufacturing facility and related investments in equipment and personnel; and (iii) expenses relating to the development of our management, sales and marketing teams. In addition, on August 3, 2007, we completed a placement of \$10.6 million of 6% convertible subordinated notes. We used the proceeds from these notes to pay off our revolving line of credit.

On December 24, 2007, we completed an initial public offering of 8,846,154 shares of common stock at a price of \$13.00 per share (which includes the exercise of the underwriters’ over-allotment option to purchase 1,153,846 shares and the sale of 1,997,062 shares by certain of our shareholders). Net proceeds to us from the offering were approximately \$82.8 million (net of underwriting discounts and commissions but before the deduction of offering expenses). We invested the net proceeds from the IPO in money market funds. We currently plan to use the net proceeds from the offering for working capital and general corporate purposes, including to fund potential future acquisitions. As of the date of this Quarterly Report on Form 10-Q, we have not entered into any purchase agreements, understandings or commitments with respect to any acquisitions.

We had approximately \$54.2 million in cash and cash equivalents and \$25.0 million in short term investments as of June 30, 2008. Our cash equivalents are invested in money market accounts with maturities of less than 90 days and an average yield of 2.8%. Our short-term investment account consists of high-grade government agency bonds and corporate debt with expiration dates ranging from October 2008 through May 2009 and an average yield of 3.8%.

Cash Flows

The following table summarizes our cash flows for the three months ended June 30, 2008 and 2007 (in thousands):

	Three Months Ended June 30,	
	2007	2008
Operating activities	\$ 1,822	\$ 949
Investing activities	(706)	(26,235)
Financing activities	(705)	1,189
Increase (decrease) in cash and cash equivalents	\$ 411	\$ (24,097)

Cash Flows Related to Operating Activities. Cash used in operating activities primarily consists of net income adjusted for certain non-cash items including depreciation and amortization, stock based compensation expenses, income taxes and the effect of changes in working capital and other activities.

Cash provided by operating activities for the three months ended June 30, 2008 was \$0.9 million and consisted of net cash of \$0.2 million provided by working capital purposes and net income adjusted for non-cash expense items of \$0.7 million. Cash provided by working capital purposes consisted of a decrease in trade receivables of \$5.2 million as a result of decreased revenue and the timing of cash receipts. This amount was offset by an increase of \$3.2 million in inventory to support revenue growth and provide safety stock inventories on key components, a \$0.7 million increase in prepaids due to advanced payments for income taxes and services, a decrease of \$0.7 million in accounts payable for payments to inventory suppliers and service providers, and a \$0.5 million decrease in accrued expenses due to payments of prior year accrued bonuses.

Cash provided by operating activities for the three months ended June 30, 2007 was \$1.8 million and consisted of net income adjusted for non-cash expense items of \$ 1.6 million, and \$0.2 million provided by working capital purposes. Cash provided by working capital purposes consisted of an increase of \$2.5 million in accounts payable as a result of increased inventories and services, an increase in accrued expenses of \$0.9 million due to increased service contracting activities and an increase of \$0.3 million for prepaid insurance and services. These amounts were offset by a \$2.4 million increase in trade receivables as result of increased revenues and an increase of \$1.2 million in inventory due to purchases of raw materials to support sales order backlogs.

Table of Contents

Cash Flows Related to Investing Activities. For the three months ended June 30, 2008 cash used in investing activities was \$26.2 million. This included \$22.6 million for short-term investments with maturity dates ranging from 91 to 360 days, \$3.0 million for capital expenditures related to the technology center, operating software systems and processing equipment for capacity and cost improvement measures, \$1.0 million for the purchase of intellectual property rights from an executive, offset by net proceeds from the sale of an investment of \$0.9 million.

Cash used in investing activities for the three months ended June 30, 2007 was \$0.7 million. This included \$0.6 million for capital expenditures for purchases of processing equipment for capacity and cost improvement measures and \$0.1 million for the continued development of intellectual property.

Cash Flows Related to Financing Activities. For the three months ended June 30, 2008 cash flows provided by financing activities was \$1.2 million. This included \$0.6 million of proceeds received from stock option and warrant exercises and \$0.8 million in deferred tax benefits from non-qualified stock option exercises, offset by \$0.2 million for repayment of long term debt.

Cash used in financing activities for the three months ended June 30, 2007 was \$0.7 million. This included \$0.6 million for repayment of the revolving line of credit and long-term debt and \$0.5 million paid in equity offering costs related to our initial public offering. These were offset by \$0.4 million in proceeds from the exercise of stock option and warrants.

Working Capital

Our net working capital as of June 30, 2008 was \$102.8 million, consisting of \$114.4 million in current assets and \$11.6 million in current liabilities. Our net working capital as of March 31, 2008 was \$104.3 million, consisting of \$116.9 million in current assets and \$12.6 million in current liabilities. We expect to continue to increase our inventories of raw materials and components to support our anticipated increase in sales volumes in the back half of fiscal 2009, to reduce our risk of unexpected raw material or component shortages or supply interruptions and to continue to purchase component inventory as our wireless technology moves into the production stages. We attempt to maintain a three-month supply of on-hand inventory of purchased components and raw materials to meet anticipated demand. We also expect that our accounts receivable and payables will continue to increase as a result of our anticipated revenue growth and increased inventory levels. We had available borrowing capacity under our revolving credit facility in excess of \$15.8 million as of June 30, 2008, based upon our revolving credit facility borrowing base formula described below.

We believe that our existing cash and cash equivalents, our anticipated cash flows from operating activities, our borrowing capacity under our revolving credit facility and the net proceeds from our recent initial public offering and convertible subordinated note placement will be sufficient to meet our anticipated cash needs for the remainder of fiscal 2009. Our future working capital requirements for the remainder of fiscal 2009 and thereafter on a longer-term basis will depend on many factors, including the rate of our anticipated revenue growth, our introduction of new products and services and enhancements to our existing energy management system, the timing and extent of our planned expansion of our sales force and other administrative and production personnel, the timing and extent of our planned advertising and promotional campaign, and our research and development activities. To the extent that our cash and cash equivalents, cash flows from operating activities, borrowing capacity under our revolving credit facility and net proceeds from our recent initial public offering and convertible subordinated note placement are insufficient to fund our future activities, we may need to raise additional funds through additional public or private equity or debt financings. We also may need to raise additional funds in the event we decide to acquire product lines, businesses or technologies. In the event additional funding is required, we may not be able to obtain the financing on terms acceptable to us, or at all.

Indebtedness

On March 18, 2008, we entered into a credit agreement (“Credit Agreement”) to replace a previous agreement between us and Wells Fargo Bank, N.A. The Credit Agreement provides for a revolving credit facility (“Line of Credit”) that matures on August 31, 2010. The initial maximum aggregate amount of availability under the Line of Credit is \$25.0 million. The Company has a one-time option to increase the maximum aggregate amount of availability under the Line of Credit to up to \$50.0 million, although any advance from the Line of Credit over \$25.0 million is discretionary to Wells Fargo even if no event of default has occurred. Borrowings are limited to a percentage of eligible trade accounts receivables and inventories, less any borrowing base reserve that may be established from time to time. Borrowings allowed under the Line of Credit as of June 30, 2008 were \$15.8 million based upon available working capital as defined. There were no amounts outstanding as of June 30, 2008.

[Table of Contents](#)

The Company must pay a fee of 0.20% on the average daily unused amount of the Line of Credit, fees upon the issuance of each letter of credit equal to 1.25% per annum of the principal amount thereof, and a fee equal to 1.0% of the principal amount of the Line of Credit then in effect if the Company terminates the Line of Credit prior to December 23, 2008.

The agreement provides that the Company has the option to select the interest rate applicable to all or a portion of the outstanding principal balance of the Note either (i) at a fluctuating rate per annum one percent (1.00%) below the prime rate in effect from time to time, or (ii) at a fixed rate per annum determined by Wells Fargo to be one and one quarter percent (1.25%) above LIBOR. Interest is payable on the last day of each month, commencing March 31, 2008.

In addition to our revolving credit facility, we also have other existing long-term indebtedness and obligations under various debt instruments and capital lease obligations, including pursuant to a bank term note, a bank first mortgage, a debenture to a community development organization, a federal block grant loan, two city industrial revolving loans and various capital leases and equipment purchase notes. As of June 30, 2008, the total amount of principal outstanding on these various obligations was \$5.1 million. These obligations have varying maturity dates between 2010 and 2024 and bear interest at annual rates of between 2.0% and 16.2%. The weighted average annual interest rate of such obligations as of June 30, 2008 was 6.0%. Based on interest rates in effect as of June 30, 2008, we expect that our total debt service payments on such obligations for fiscal 2009, including scheduled principal, lease and interest payments, but excluding the repayment of our revolving line of credit, will approximate \$1.1 million. All of these obligations are subject to security interests on our assets. Several of these obligations have covenants, such as customary financial and restrictive covenants, including maintenance of a minimum debt service coverage ratio; a minimum current ratio; minimum net worth requirements; limitations on executive compensation and advances; limits on capital expenditures per year; limits on distributions; and restrictions on our ability to make loans, advances, extensions of credit, investments, capital contributions, incur additional indebtedness, create liens, guaranty obligations, merge or consolidate or undergo a change in control. As of June 30, 2008, we were in compliance with all such covenants, as amended.

Capital Spending

We expect to incur approximately \$7.5 million in capital expenditures during the remainder of fiscal 2009 to complete our new technology center and other improvements at our manufacturing facility. We also plan to incur \$0.5 million in capital expenditures to expand and improve our accounting and operating information technology systems. We expect to finance the production equipment expenditures primarily through equipment secured loans and leases, long-term debt financing, using cash on hand or by using our available capacity under our revolving credit facility.

Contractual Obligations and Commitments

The following table is a summary of our long-term contractual obligations as of June 30, 2008 (dollars in thousands):

	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
Cash interest payments on debt					
Bank debt obligations	\$ 5,117	\$ 854	\$ 1,368	\$ 1,079	\$ 1,816
Cash interest payments on debt	1,397	285	436	237	439
Operating lease obligations	2,252	662	1,044	546	—
Purchase order and cap-ex commitments (1)	7,797	7,797	—	—	—
Total	\$ 16,563	\$ 9,598	\$ 2,848	\$ 1,862	\$ 2,255

- (1) Reflects non-cancellable purchase order commitment in the amount of \$1.6 million for certain inventory items entered into in order to secure better pricing and ensure materials on hand and capital expenditure commitments in the amount of \$6.2 million for construction of the new technology center at our Manitowoc facility and improvements to information technology systems.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements.

Inflation

Our results from operations have not been, and we do not expect them to be, materially affected by inflation.

Critical Accounting Policies and Estimates

The discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States. The preparation of our consolidated financial statements requires us to make certain estimates and judgments that affect our reported assets, liabilities, revenue and expenses, and our related disclosure of contingent assets and liabilities. We re-evaluate our estimates on an ongoing basis, including those related to revenue recognition, inventory valuation, the collectability of receivables, stock-based compensation, warranty reserves and income taxes. We base our estimates on historical experience and on various assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates. A summary of our critical accounting policies is set forth in the “Critical Accounting Policies and Estimates” section of our Management’s Discussion and Analysis of Financial Condition and Results of Operations contained in our Annual Report on Form 10-K for the year ended March 31, 2008. There have been no material changes in any of our accounting policies since March 31, 2008.

Recent Accounting Pronouncements

For a complete discussion of recent accounting pronouncements, refer to Note B in the condensed consolidated financial statements included elsewhere in this report.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Our exposure to market risk was discussed in the “Quantitative and Qualitative Disclosures About Market Risk” section contained in our Annual Report on Form 10-K for the year ended March 31, 2008. There have been no material changes to such exposures since March 31, 2008.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

We maintain a system of disclosure controls and procedures designed to provide reasonable assurance as to the reliability of our published financial statements and other disclosures included in this report. Our management evaluated, with the participation of our Chief Executive Officer and our Chief Financial Officer, the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the quarter ended June 30, 2008 pursuant to Rule 13a-15(b) of the Securities Exchange Act of 1934 (the “Exchange Act”). Based upon their evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the quarter ended June 30, 2008 to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Securities and Exchange Commission’s rules and forms, and to ensure that information required to be disclosed by us in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosures.

There was no change in our internal control over financial reporting that occurred during the quarter ended June 30, 2008 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

This quarterly report does not include a report of management’s assessment regarding internal control over financial reporting or an attestation report of the Company’s registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.

PART II OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

We are subject to various claims and legal proceedings arising in the ordinary course of our business. In addition to ordinary-course litigation, we are a party to the litigation described below.

In February and March 2008, three class action lawsuits were filed in the United States District Court for the Southern District of New York against us, several of our officers, all members of our board of directors, and certain underwriters from our December 2007 initial public offering. The plaintiffs claim to represent certain persons who purchased shares of our common stock from December 18, 2007 through February 6, 2008. The plaintiffs allege, among other things, that the defendants made misstatements and failed to disclose material information in the registration statement and prospectus. The claims allege various claims under the Securities Act of 1933, as amended. The complaints seek, among other relief, class certification, unspecified damages, fees, and such other relief as the court may deem just and proper.

We believe that we and the other defendants have substantial legal and factual defenses to the claims and allegations contained in the complaints, and we intend to pursue these defenses vigorously. There can be no assurance, however, that we will be successful, and an adverse resolution of any of the lawsuits could have a material effect on our consolidated financial position and the results of operations in the period in which a lawsuit is resolved. In addition, although we carry insurance for these types of claims, a judgment significantly in excess of our insurance coverage could materially and adversely affect our financial condition, results of operations and cash flows. We are not presently able to reasonably estimate potential losses, if any, related to the lawsuits.

ITEM 1A. RISK FACTORS

During the three months ended June 30, 2008 there were no material changes to the risk factors set forth and discussed in “Part I, Item 1A. Risk Factors” in our 2008 Annual Report filed on Form 10-K for the year ended March 31, 2008 as filed with the SEC on June 27, 2008.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

(a) Unregistered Sales of Equity Securities

None

(b) Use of Proceeds

We registered shares of our common stock in connection with our IPO under the Securities Act. The registration statement on Form S-1 (File No. 333-145569) filed in connection with our IPO was declared effective by the SEC on December 18, 2007. Including shares sold pursuant to the exercise by the underwriters of their over-allotment option, 6,849,092 shares of our common stock were registered and sold in the IPO by us and an additional 1,997,062 shares of our common stock were registered and sold by the selling stockholders named in the registration statement. All the shares were sold at a price to the public of \$13.00 per share. The net offering proceeds received by us, after deducting underwriting discounts and commissions and expenses incurred in connection with the offering, were approximately \$78.6 million. Through June 30, 2008, approximately \$1.1 million of the proceeds from our IPO have been used to fund operations of our business and for general corporate purposes. The remainder of the net proceeds from the IPO are invested in short-term investment grade securities and money market accounts. There has been no material change in the planned use of proceeds from our IPO as described in our final prospectus filed with the SEC on December 18, 2007 pursuant to Rule 424(b).

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

ITEM 5. OTHER INFORMATION**Statistical Data**

The following table presents certain statistical data, cumulative from December 1, 2001 through June 30, 2008, regarding sales of our HIF lighting systems, total units sold (including HIF lighting systems), customer kilowatt demand reduction, customer kilowatt hours saved, customer electricity costs saved, indirect carbon dioxide emission reductions from customers' energy savings, and square footage we have retrofitted. The assumptions behind our calculations are described in the footnotes to the table below.

	Cumulative From December 1, 2001 Through June 30, 2008 (in thousands, unaudited)
HIF lighting systems sold(1)	1,204
Total units sold (including HIF lighting systems)	1,554
Customer kilowatt demand reduction(2)	357
Customer kilowatt hours saved(2)(3)	5,215,555
Customer electricity costs saved(4)	\$ 401,598
Indirect carbon dioxide emission reductions from customers' energy savings (tons)(5)	3,554
Square footage retrofitted(6)	621,046

- (1) "HIF lighting systems" includes all HIF units sold under the brand name "Compact Modular" and its predecessor, "Illuminator."
- (2) A substantial majority of our HIF lighting systems, which generally operate at approximately 224 watts per six-lamp fixture, are installed in replacement of HID fixtures, which generally operate at approximately 465 watts per fixture in commercial and industrial applications. We calculate that each six-lamp HIF lighting system we install in replacement of an HID fixture generally reduces electricity consumption by approximately 241 watts (the difference between 465 watts and 224 watts). In retrofit projects where we replace fixtures other than HID fixtures, or where we replace fixtures with products other than our HIF lighting systems (which other products generally consist of products with lamps similar to those used in our HIF systems, but with varying frames, ballasts or power packs), we generally achieve similar wattage reductions (based on an analysis of the operating wattages of each of our fixtures compared to the operating wattage of the fixtures they typically replace). We calculate the amount of kilowatt demand reduction by multiplying (i) 0.241 kilowatts per six-lamp equivalent unit we install by (ii) the number of units we have installed in the period presented, including products other than our HIF lighting systems (or a total of approximately 1.55 million units).
- (3) We calculate the number of kilowatt hours saved on a cumulative basis by assuming the reduction of 0.241 kilowatts of electricity consumption per six-lamp equivalent unit we install and assuming that each such unit has averaged 7,500 annual operating hours since its installation.
- (4) We calculate our customers' electricity costs saved by multiplying the cumulative total customer kilowatt hours saved indicated in the table by \$0.077 per kilowatt hour. The national average rate for 2006, which is the most current full year for which this information is available, was \$0.089 per kilowatt hour according to the United States Energy Information Administration.
- (5) We calculate this figure by multiplying (i) the estimated amount of carbon dioxide emissions that result from the generation of one kilowatt hour of electricity (determined using the Emissions and Generation Resource Integration Database, or EGrid, prepared by the United States Environmental Protection Agency), by (ii) the number of customer kilowatt hours saved as indicated in the table. The calculation of indirect carbon dioxide emissions reductions reflects the most recent Environmental Protection Agency eGrid data. Using the prior eGrid data, cumulative indirect carbon emission reductions from customers' energy savings from December 1, 2001 through June 30, 2008 would have equaled 5,084,957 tons.
- (6) Based on 1.554 million total units sold, which contain a total of approximately 7.8 million lamps. Each lamp illuminates approximately 75 square feet. The majority of our installed fixtures contain six lamps and typically illuminate approximately 450 square feet.

Executive Employment Agreement

On August 12, 2008, the Company entered into an Executive Employment and Severance Agreement (the “Employment Agreement”) with Scott R. Jensen.

Under the Employment Agreement, which will become effective on August 14, 2008, the Company will employ Mr. Jensen for an initial term through March 31, 2009, after which the Employment Agreement will automatically renew for successive terms of a specified duration (indicated in the table below) unless either party provides advance notice of non-renewal. The Employment Agreement entitles Mr. Jensen to a specified base salary amount (indicated in the table below) for the Company’s fiscal year 2009 and provides that the base salary may be increased thereafter from time to time by the Board of Directors of the Company.

The Employment Agreement also specifies the position with the Company in which Mr. Jensen will serve (indicated in the table below), and provides that Mr. Jensen will devote his full business time and best efforts to the performance of his duties under the Employment Agreement. The Employment Agreement provides (i) that Mr. Jensen will receive certain Company-provided insurance benefits and (ii) that Mr. Jensen will be entitled to participate in incentive plans and programs and other employee benefit plans that are generally provided to senior executives of the Company.

Under the Employment Agreement, if Mr. Jensen’s employment is terminated without “Cause” (as defined in the Employment Agreement) or for “Good Reason” (as defined in the Employment Agreement) prior to the end of the employment period, then Mr. Jensen will be entitled to (i) a lump sum severance benefit equal to a multiple (indicated in the table below) of the sum of his base salary plus the average of the prior three years’ bonuses; (ii) a pro rata bonus for the year of the termination; and (iii) COBRA premiums at the active employee rate for the duration of his COBRA continuation coverage period. The Employment Agreement also requires Mr. Jensen not to, during his employment and for two years following the termination of his employment, (x) disclose any confidential information of the Company, (y) compete with the Company or (z) solicit the employees or other persons with business relationships with the Company.

The Employment Agreement provides that, upon a Change of Control (as defined in the Employment Agreement), Mr. Jensen’s employment term would automatically be extended for the period indicated in the table below. Following the Change of Control, Mr. Jensen would be guaranteed the same base salary and a bonus opportunity at least equal to 100% of the prior year’s target award and with the same general probability of achieving performance goals as prior to the Change of Control. In addition, Mr. Jensen would be guaranteed participation in salaried and executive benefit plans that provide benefits, in the aggregate, at least as great as the benefits being provided prior to the Change of Control. The severance provisions would remain the same as in the pre-Change of Control context as described above, except that the multiplier used to determine the severance amount and the post-Change of Control employment term would increase, as is shown in the table below.

The position, base salary, renewal period and severance multiplier specified by the Employment Agreement are as follows:

Name	Position	Fiscal Year 2009 Base Salary (\$)	Pre-Change of Control		Post-Change of Control	
			Renewal Period (years)	Severance Multiplier	Renewal Period (years)	Severance Multiplier
Scott R. Jensen	Chief Financial Officer and Treasurer	165,000	1	1/2	1	1

The Employment Agreement contains “valley” excise tax provisions that provide that all amounts payable to Mr. Jensen under his Employment Agreement and any other of the Company’s agreements or plans that constitute change of control payments will be cut back to one dollar less than three times Mr. Jensen’s “base amount,” as defined by Internal Revenue Code (“Code”) Section 280G, unless he would retain a greater amount by receiving the full amount of the payment and personally paying the excise taxes. Under the Employment Agreement, the Company would not be obligated to gross up Mr. Jensen for any excise taxes imposed on excess parachute payments under Code Section 280G or 4999.

The foregoing description of the Employment Agreement is qualified in its entirety by reference to the full text of the Employment Agreement, a copy of which is filed with this Quarterly Report on Form 10-Q as Exhibit 10.1 and incorporated herein by reference.

ITEM 6. EXHIBITS

(a) Exhibits

- 10.1 Executive Employment and Severance Agreement, dated August 12, 2008, by and between Orion Energy Systems, Inc. and Scott R. Jensen.
- 10.2 Executive Employment and Severance Agreement, dated August 12, 2008, by and between Orion Energy Systems, Inc. and Daniel J. Waibel.
- 10.3 Executive Employment and Severance Agreement, dated August 12, 2008, by and between Orion Energy Systems, Inc. and Erik G. Birkerts.
- 31.1 Certification of Chief Executive Officer of Orion Energy Systems, Inc. pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 31.2 Certification of Chief Financial Officer of Orion Energy Systems, Inc. pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 32.1 Certification of Chief Executive Officer of Orion Energy Systems, Inc. pursuant to Rule 13a-14(b) promulgated under the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer of Orion Energy Systems, Inc. pursuant to Rule 13a-14(b) promulgated under the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

SIGNATURE

Pursuant to the requirements 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, on August 14, 2008.

ORION ENERGY SYSTEMS, INC.
Registrant

By /s/ Scott R. Jensen

Scott R. Jensen
Chief Financial Officer

Exhibit Index to Form 10-Q for the Period Ended June 30, 2008

- 10.1 Executive Employment and Severance Agreement, dated August 12, 2008, by and between Orion Energy Systems, Inc. and Scott R. Jensen.
- 10.2 Executive Employment and Severance Agreement, dated August 12, 2008, by and between Orion Energy Systems, Inc. and Daniel J. Waibel.
- 10.3 Executive Employment and Severance Agreement, dated August 12, 2008, by and between Orion Energy Systems, Inc. and Erik G. Birkerts.
- 31.1 Certification of Chief Executive Officer of Orion Energy Systems, Inc. pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 31.2 Certification of Chief Financial Officer of Orion Energy Systems, Inc. pursuant to Rule 13a-14(a) or Rule 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
- 32.1 Certification of Chief Executive Officer of Orion Energy Systems, Inc. pursuant to Rule 13a-14(b) promulgated under the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
- 32.2 Certification of Chief Financial Officer of Orion Energy Systems, Inc. pursuant to Rule 13a-14(b) promulgated under the Securities Exchange Act of 1934, as amended, and 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

Name of Executive:	Scott R. Jensen
Position:	Chief Financial Officer and Treasurer
Fiscal Year 2009 Base Salary:	\$165,000
Effective Date of Agreement:	August 14, 2008
Initial Term:	Effective Date Through March 31, 2009
Renewal Periods are:	One (1) Year
Post-Change of Control Renewal Period is:	One (1) Year
Severance Multiplier is:	0.5x
Post-Change of Control Severance Multiplier is:	1x

EXECUTIVE EMPLOYMENT AND SEVERANCE AGREEMENT

This Agreement ("Agreement") is between the Executive named above ("Executive"), on the one hand, and Orion Energy Systems, Inc. ("Orion" and, together with its subsidiaries, the "Company"), on the other.

WHEREAS, the Executive is employed by Orion in a key employee capacity and the Executive's services are valuable to the conduct of the business of the Company; and

WHEREAS, Orion and Executive desire to specify the terms and conditions on which Executive will continue employment now that the Company's common stock has been sold to the public pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "IPO"), and under which Executive will receive severance in the event that Executive separates from service with the Company;

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Effective Date; Term.** This Agreement shall become effective on the date set forth above and continue until the end of the initial term set forth above. Thereafter, the Agreement shall renew automatically for successive renewal periods as set forth above unless and until either party provides written notice to the other party of the intent not to renew the Agreement at least ninety (90) days prior to the end of any term. Notwithstanding the foregoing, if a Change of Control occurs prior to the end of any term, the Agreement shall be automatically extended for the post- Change of Control renewal period set forth above beginning on the date of the Change of Control. Expiration of this Agreement will not affect the rights or obligations of the parties hereunder arising out of, or relating to, circumstances occurring prior to the expiration of this Agreement, which rights and obligations will survive the expiration of this Agreement.

2. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings ascribed to them:

(a) **"Accrued Benefits"** shall mean the following amounts, payable as described herein: (i) all base salary for the time period ending with the Termination Date; (ii) reimbursement for any and all monies advanced in connection with the Executive's employment for reasonable and necessary expenses incurred by the Executive on behalf

of the Company for the time period ending with the Termination Date; (iii) any and all other cash earned through the Termination Date and deferred at the election of the Executive or pursuant to any deferred compensation plan then in effect; and (iv) all other payments and benefits to which the Executive (or in the event of the Executive's death, the Executive's surviving spouse or other beneficiary), including those provided pursuant to Exhibit A, is entitled on the Termination Date under the terms of any benefit plan of the Company, excluding severance payments under any Company severance policy, practice or agreement in effect on the Termination Date. Payment of Accrued Benefits shall be made promptly in accordance with the Company's prevailing practice with respect to clauses (i) and (ii) or, with respect to clauses (iii) and (iv), pursuant to the terms of the benefit plan or practice establishing such benefits.

(b) "**Base Salary**" shall mean the Executive's annual base salary with the Company as in effect from time to time.

(c) "**Board**" shall mean the board of directors of Orion or a committee of such Board authorized to act on its behalf in certain circumstances, including the Compensation Committee of the Board.

(d) "**Cause**" shall mean a good faith finding by the Board that Executive has (i) failed, neglected, or refused to perform the lawful employment duties related to his or her position or as from time to time assigned to him (other than due to Disability); (ii) committed any willful, intentional, or grossly negligent act having the effect of materially injuring the interest, business, or reputation of the Company; (iii) violated or failed to comply in any material respect with the Company's published rules, regulations, or policies, as in effect or amended from time to time; (iv) committed an act constituting a felony or misdemeanor involving moral turpitude, fraud, theft, or dishonesty; (v) misappropriated or embezzled any property of the Company (whether or not an act constituting a felony or misdemeanor); or (vi) breached any material provision of this Agreement or any other applicable confidentiality, non-compete, non-solicit, general release, covenant not-to-sue, or other agreement with the Company.

(e) "**Change of Control**" shall mean and be limited to any of the following:

(i) any Person (other than (A) the Company or any of its subsidiaries, (B) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its subsidiaries, (C) an underwriter temporarily holding securities pursuant to an offering of such securities or (D) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company ("Excluded Persons")) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the IPO Date, pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors of the Company then serving: (A) individuals

who, on the IPO Date, constituted the Board and (B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A under the Act) whose appointment or election by the Board or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the IPO Date, or whose appointment, election or nomination for election was previously so approved (collectively the "Continuing Directors"); *provided, however*, that individuals who are appointed to the Board pursuant to or in accordance with the terms of an agreement relating to a merger, consolidation, or share exchange involving the Company (or any direct or indirect subsidiary of the Company) shall not be Continuing Directors for purposes of this Agreement until after such individuals are first nominated for election by a vote of at least two-thirds (2/3) of the then Continuing Directors and are thereafter elected as directors by the shareholders of the Company at a meeting of shareholders held following consummation of such merger, consolidation, or share exchange; *and, provided further*, that in the event the failure of any such persons appointed to the Board to be Continuing Directors results in a Change of Control, the subsequent qualification of such persons as Continuing Directors shall not alter the fact that a Change of Control occurred; or

(iii) the consummation of a merger, consolidation or share exchange of the Company with any other corporation or the issuance of voting securities of the Company in connection with a merger, consolidation or share exchange of the Company (or any direct or indirect subsidiary of the Company), in each case, which requires approval of the shareholders of the Company, other than (A) a merger, consolidation or share exchange which would result in the voting securities of the Company outstanding immediately prior to such merger, consolidation or share exchange continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, consolidation or share exchange, or (B) a merger, consolidation or share exchange effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than an Excluded Person) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the IPO Date, pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(iv) the consummation of a plan of complete liquidation or dissolution of the Company or a sale or disposition by the Company of all or substantially all of the Company's assets (in one transaction or a series of related transactions within any period of 24 consecutive months), in each case, which requires approval of the shareholders of the Company, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at

least seventy-five percent (75%) of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

Notwithstanding the foregoing, no “Change of Control” shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to own, directly or indirectly, in the same proportions as their ownership in the Company, an entity that owns all or substantially all of the assets or voting securities of the Company immediately following such transaction or series of transactions.

For purposes of this Section 2(e):

(i) the term “Person” shall mean any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity, or a group of any of the foregoing acting in concert;

(ii) the terms “Affiliate” and “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations of the Act;

(iii) the term “Act” means the Securities Exchange Act of 1934, as amended; and

(iv) a Person shall be deemed to be the “Beneficial Owner” of any securities which:

a) such Person or any of such Person’s Affiliates or Associates has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person’s Affiliates or Associates until such tendered securities are accepted for purchase;

b) such Person or any of such Person’s Affiliates or Associates, directly or indirectly, has the right to vote or dispose of or has “beneficial ownership” of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Act), including pursuant to any agreement, arrangement or understanding; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this clause b) as a result of an agreement, arrangement or understanding to vote such security if the agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Act and (B) is not also then reportable on a Schedule 13D under the Act (or any comparable or successor report); or

c) are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in clause b) above) or disposing of any voting securities of the Company.

(f) **"COBRA"** shall mean the provisions of Code Section 4980B.

(g) **"Code"** shall mean the Internal Revenue Code of 1986, as amended, as interpreted by rules and regulations issued pursuant thereto, all as amended and in effect from time to time. Any reference to a specific provision of the Code shall be deemed to include reference to any successor provision thereto.

(h) **"Competitive Business Activity"** shall mean the design and manufacture of lighting systems and controls for industrial, commercial and agricultural facilities.

(i) **"Disability"** shall mean, subject to applicable law, a total and permanent disability consisting of a mental or physical disability which precludes the disabled Executive from performing the material and substantial duties of his employment. Payment of benefits for total disability under a disability insurance policy shall be conclusive as to the existence of total disability, although such payments are not required in order to establish total disability for purposes of this Agreement. The Executive has a "total and permanent disability" if he is precluded by mental or physical disability for 180 days during any twelve (12) month period. For purposes of this Agreement, an Executive shall be deemed totally and permanently disabled at the end of such 180th day. In case of a disagreement as to whether an Executive is totally and permanently disabled and, at the request of any party, the matter shall be submitted to arbitration as provided for herein, and judgment upon the award may be entered in any court having jurisdiction thereof. Any costs of such proceedings (including the reasonable legal fees of the prevailing party) shall be borne by the non-prevailing party to such arbitration.

(j) **"General Release"** shall mean a release of all claims that Executive, and anyone who may succeed to any claims of Executive, has or may have against Orion, its board of directors, any of its subsidiaries or affiliates, or any of their employees, directors, officers, employees, agents, plan sponsors, administrators, successors (including the Successor), fiduciaries, or attorneys, including but not limited to claims arising out of Executive's employment with, and termination of employment from, the Company, but excluding claims for (i) severance payments and benefits due pursuant to this Agreement and (ii) any salary, bonus, equity, accrued vacation, expense reimbursement and other ordinary payments or benefits earned or otherwise due with respect to the period prior to the date of any Separation from Service. The General Release shall be in a form that is reasonably acceptable to the Company or the Board.

(k) **"Good Reason"** shall mean the occurrence of any of the following without the consent of Executive: (i) a material diminution in the Executive's Base Salary; (ii) a material diminution in the Executive's authority, duties or responsibilities; (iii) a material diminution in the authority, duties or responsibilities of Neal Verfuert; (iv) a material diminution in the budget over which the Executive retains authority; (v) a material change in the geographic location at which the Executive must perform services;

or (vi) a material breach by Orion of any provisions of this Agreement or any option agreement with the Company to which the Executive is a party.

(l) **“Separation from Service”** shall mean Executive’s termination of employment from Orion and each entity that is required to be included in Orion’s controlled group of corporations within the meaning of Code Section 414(b), or that is under common control with Orion within the meaning of Code Section 414(c); *provided* that the phrase “at least 50 percent” shall be used in place of the phrase “ at least 80 percent” each place it appears therein or in the regulations thereunder (collectively, “409A affiliates”). Notwithstanding the foregoing:

(i) If Executive takes a leave of absence for purposes of military leave, sick leave or other bona fide leave of absence, Executive will not be deemed to have incurred a Separation from Service for the first six (6) months of the leave of absence, or if longer, for so long as Executive’s right to reemployment is provided either by statute or by contract.

(ii) Subject to paragraph (i), Executive shall incur a Separation from Service when the level of bona fide services provided by Executive to Orion and its 409A affiliates permanently decreases to a level of twenty percent (20%) or less of the level of services rendered by Executive, on average, during the immediately preceding 12 months of employment.

(iii) If, following Executive’s termination of employment, Executive continues to provide services to the Company or a 409A Affiliate in a capacity other than as an employee, Executive will not be deemed to have Separated from Service as long as Executive is providing bona fide services at a rate that is greater than twenty percent (20%) of the level of services rendered by Executive, on average, during the immediately preceding 12 months of service.

(m) **“Severance Payment”** shall mean the Executive’s Base Salary at the time of the Termination Date plus the average of the annual bonuses earned by the Executive with respect to each of the three completed fiscal years of the Company preceding the year in which the Termination Date occurs (or such lesser number of fiscal years for which the Executive was employed by the Company, with any partial year’s bonus being annualized with respect to such fiscal year) multiplied by the severance multiplier set forth above; *provided* that if Executive’s Termination Date occurs on or following a Change of Control, the multiplier described above shall be increased to the post-Change of Control severance multiplier set forth above and any reduction in Executive’s Base Salary since the date of the Change of Control shall be ignored.

(n) **“Successor”** shall mean the person to which this Agreement is assigned upon a Sale of Business within the meaning of Section 10.

(o) **“Termination Date”** shall mean the date of the Executive’s termination of employment from the Company, as further described in Section 4.

3. Employment of Executive

(a) **Position.**

(i) Executive shall serve in the position set forth above in a full-time capacity. In such position, Executive shall have such duties and authority as is customarily associated with such position and shall have such other titles and duties, consistent with Executive's position, as may be assigned from time to time by the Board.

(ii) Executive will devote Executive's full business time and best efforts to the performance of Executive's duties hereunder and will not engage in any other business, profession or occupation for compensation or otherwise which would conflict or interfere with the rendition of such services either directly or indirectly, without the prior written consent of the Board; *provided* that nothing herein shall preclude Executive, subject to the prior approval of the Board, from accepting appointment to or continue to serve on any board of directors or trustees of any business organization or any charitable organization; *further provided* in each case, and in the aggregate, that such activities do not conflict or interfere with the performance of Executive's duties hereunder or conflict with Section 7.

(b) **Base Salary.** Orion shall pay Executive a Base Salary at the annual rate set forth above for Fiscal Year 2009, payable in regular installments in accordance with the Company's usual payroll practices. Executive shall be entitled to such increases in Executive's base salary, if any, as may be determined from time to time by the Board.

(c) **Bonus Incentives.** Executive shall be entitled to participate in such annual and/or long-term cash and equity incentive plans and programs of Orion as are generally provided to the senior executives of Orion. On and after a Change of Control, to assure that Executive will have an opportunity to earn incentive compensation, the Executive shall be included in a bonus plan of the Employer which shall satisfy the standards described below (such plan, the "Bonus Plan"). Bonuses under the Bonus Plan shall be payable with respect to achieving such financial or other goals reasonably related to the business of the Company as the Company shall establish (the "Goals"), all of which Goals shall be attainable, prior to the end of the post-Change of Control renewal period (as set forth above), with approximately the same degree of probability as the most attainable goals under the Company's bonus plan or plans as in effect at any time during the 180-day period immediately prior to the Change of Control (whether one or more, the "Company Bonus Plan") and in view of the Company's existing and projected financial and business circumstances applicable at the time. The amount of the bonus (the "Bonus Amount") that Executive is eligible to earn under the Bonus Plan shall be no less than 100% of the Executive's target award provided in such Company Bonus Plan (such bonus amount herein referred to as the "Targeted Bonus"), and in the event the Goals are not achieved such that the entire Targeted Bonus is not payable, the Bonus Plan shall provide for a payment of a Bonus Amount equal to a portion of the Targeted Bonus reasonably related to that portion of the Goals which were achieved. Payment of the Bonus Amount shall not be affected by any circumstance occurring subsequent to the end of the post-Change of Control renewal period, including termination of Executive's employment.

(d) **Employee Benefits.** Executive shall be entitled to participate in the Company's employee benefit plans (other than annual and/or long-term incentive programs, which are addressed in subsection (c)) as in effect from time to time on the same basis as those benefits are generally made available to other senior executives of Orion. On and after a Change of Control, Executive shall be included: (i) to the extent eligible thereunder (which eligibility shall not be conditioned on Executive's salary grade or on any other requirement which excludes persons of comparable status to the Executive unless such exclusion was in effect for such plan or an equivalent plan immediately prior to the Change in Control of the Company), in any and all plans providing benefits for the Company's salaried employees in general (including but not limited to group life insurance, hospitalization, medical, dental, and long-term disability plans) and (ii) in plans provided to executives of the Company of comparable status and position to Executive (including but not limited to deferred compensation, split-dollar life insurance, supplemental retirement, stock option, stock appreciation, stock bonus, cash bonus and similar or comparable plans); provided, that, in no event shall the aggregate level of benefits under the plans described in clause (i) and the plans described in clause (ii), respectively, in which Executive is included be less than the aggregate level of benefits under plans of the Company of the type referred to in such clause, respectively, in which Executive was participating immediately prior to the Change in Control.

(e) **Business Expenses.** The reasonable business expenses incurred by Executive in the performance of Executive's duties hereunder shall be reimbursed by the Company in accordance with Company policies.

(f) **Other Perquisites.** Executive shall be entitled to receive the other benefits and perquisites set forth in Exhibit A.

4. **Termination of Employment.** Executive's employment with the Company will terminate during the term of the Agreement, and this Agreement will terminate on the date of such termination, as follows:

(a) Executive's employment will terminate upon Executive's death.

(b) If Executive is Disabled, and if within thirty (30) days after Orion notifies the Executive in writing that it intends to terminate the Executive's employment, the Executive shall not have returned to the performance of the Executive's duties hereunder on a full-time basis, Orion may terminate the Executive's employment, effective immediately following the end of such thirty-day period.

(c) Orion may terminate Executive's employment with or without Cause (other than as a result of Disability which is governed by subsection (b)) by providing written notice to Executive that indicates in reasonable detail the facts and circumstances alleged to provide a basis for such termination. If the termination is without Cause, Executive's employment will terminate on the date specified in the written notice of termination. If the termination is for Cause, the Executive shall have thirty (30) days from the date the written notice is provided, or such longer period as Orion may determine to be appropriate, to cure any conduct or act, if curable, alleged to provide grounds for termination of Executive's employment for Cause. If the alleged conduct or act constituting Cause is not curable, Executive's employment will terminate on the date specified in the written notice of termination. If the alleged conduct or act constituting

Cause is curable but Executive does not cure such conduct or act within the specified time period, Executive's employment will terminate on the date immediately following the end of the cure period. Notwithstanding the foregoing, a determination of Cause shall only be made in good faith by the Board, and after a Change-of-Control, by the Board of Directors of the Successor, which may terminate Executive for Cause only after providing Executive (i) written notice as set forth above, (ii) the opportunity to appear before such board and provide rebuttal to such proposed termination, and (iii) written notice following such appearance confirming such termination and certifying that the decision to terminate Executive for Cause was approved in good faith by at least sixty-six percent (66%) of the members of such board, excluding Executive. Unless otherwise directed by Orion, from and after the date of the written notice of proposed termination, Executive shall be relieved of his or her duties and responsibilities and shall be considered to be on a paid leave of absence pending any final action by the Board or the Board of Directors of the Successor confirming such proposed termination.

(d) Executive may terminate his or her employment for or without Good Reason by providing written notice of termination to Orion that indicates in reasonable detail the facts and circumstances alleged to provide a basis for such termination. If Executive is alleging a termination for Good Reason, Executive must provide written notice to Orion of the existence of the condition constituting Good Reason within ninety (90) days of the initial existence of such condition, and Orion must have a period of at least thirty (30) days following receipt of such notice to cure such condition. If such condition is not cured by Orion within such thirty-day period, Executive's termination of employment from the Company shall be effective on the date immediately following the end of such cure period.

5. Payments upon Termination.

(a) **Entitlement to Severance.** Subject to the other terms and conditions of this Agreement, Executive shall be entitled to the Accrued Benefits, and to the severance benefits described in subsection (c), in either of the following circumstances while this Agreement is in effect:

- (i) Executive's employment is terminated by Orion without Cause, except in the case of death or Disability; or
- (ii) Executive terminates his or her employment with the Company for Good Reason.

If Executive dies after receiving a notice by Orion that Executive is being terminated without Cause, or after providing notice of termination for Good Reason, the Executive's estate, heirs and beneficiaries shall be entitled to the Accrued Benefits and the severance benefits described in subsection (c) at the same time such amounts would have been paid or benefits provided to Executive had he or she lived.

(b) **General Release Requirement.** As an additional prerequisite for receipt of the severance benefits described in subsection (c), Executive must execute, deliver to Orion, and not revoke (to the extent Executive is allowed to do so) a General Release.

(c) **Severance Benefits; Timing and Form of Payment.** Subject to the limitations imposed by Section 6, if Executive is entitled to severance benefits, then:

(i) Company shall pay Executive the Severance Payment in a lump sum within ten (10) days following the Executive's Separation from Service, or if later, the date on which the General Release is no longer revocable, or if later, the date on which the amount payable under Section 6 is determined, but in no event may be payment be made more than 2½ months after the year in which Executive's Separation from Service occurs;

(ii) At the same time that the Severance Payment is made, Company shall pay Executive a lump sum amount equal to the Executive's annual target cash bonus opportunity (if any) as established by the Board or the Compensation Committee of the Board for the fiscal year in which the Separation from Service occurs, multiplied by a fraction, the numerator of which is the number of days that have elapsed during the annual performance period to the date of the Executive's Separation from Service and the denominator of which is 365; and

(iii) Executive shall be entitled to pay premiums for COBRA continuation coverage for the length of such coverage at the same rate as is being charged to active employees for similar coverage.

All payments shall be subject to payroll taxes and other withholdings in accordance with the Company's (or the applicable employer of record's) standard payroll practices and applicable law.

(d) **Other Termination of Employment.** If Executive's employment terminates for any reason other than those described in subsection (a), the Executive (or the Executive's estate in the event of his or her death), shall be entitled to receive only the Accrued Benefits. Executive must be terminated for Cause pursuant to and in accordance with Section 4(c) of this Agreement in order for the consequences of such a Cause termination to apply to Executive under any stock option or similar equity award agreement with the Company to which Executive is then a party. The Company's obligations under this Section 5 shall survive the termination of this Agreement.

6. **Limitations on Severance Payments and Benefits.** Notwithstanding any other provision of this Agreement, if any portion of the Severance Payment or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "Total Payments"), would constitute an "excess parachute payment," then the Total Payments to be made to Executive shall be reduced such that the value of the aggregate Total Payments that Executive is entitled to receive shall be One Dollar (\$1) less than the maximum amount which Executive may receive without becoming subject to the tax imposed by Code Section 4999 or which the Company may pay without loss of deduction under Code Section 280G(a); *provided* that the foregoing reduction in the amount of Total Payments shall not apply if the After-Tax Value to Executive of the Total Payments prior to reduction in accordance herewith is greater than the After-Tax Value to Executive if Total Payments are reduced in accordance herewith. For purposes of this Agreement, the terms "excess parachute payment" and "parachute payments" shall have the meanings assigned to them in Code Section 280G, and such "parachute payments" shall be valued as provided therein. Present value for purposes of this Agreement shall be calculated in accordance with Code Section 1274(b)(2). Within twenty (20) business days following delivery of the notice of termination or notice by Orion to Executive of its belief that there is a payment or benefit due Executive that will result in an excess parachute payment as defined in Code Section 280G, Executive and Orion, at Orion's

expense, shall obtain the opinion (which need not be unqualified) of nationally recognized tax counsel selected by Orion's independent auditors and acceptable to Executive in Executive's sole discretion, which opinion sets forth: (A) the amount of the Base Period Income, (B) the amount and present value of Total Payments, (C) the amount and present value of any excess parachute payments without regard to the limitations of this Section 6, (D) the After-Tax Value of the Total Payments if the reduction in Total Payments contemplated under this Section 6 did not apply, and (E) the After-Tax Value of the Total Payments taking into account the reduction in Total Payments contemplated under this Section 6. As used in this Section 6, the term "Base Period Income" means an amount equal to Executive's "annualized includible compensation for the base period" as defined in Code Section 280G(d)(1). For purposes of such opinion, the value of any noncash benefits or any deferred payment or benefit shall be determined by Orion's independent auditors in accordance with the principles of Code Sections 280G(d)(3) and (4), which determination shall be evidenced in a certificate of such auditors addressed to Orion and Executive. For purposes of determining the After-Tax Value of Total Payments, Executive shall be deemed to pay federal income taxes and employment taxes at the highest marginal rate of federal income and employment taxation in the calendar year in which the Termination Payment is to be made and state and local income taxes at the highest marginal rates of taxation in the state and locality of Executive's domicile for income tax purposes on the date the Termination Payment is to be made, net of the maximum reduction in federal income taxes that may be obtained from deduction of such state and local taxes. Such opinion shall be dated as of the Termination Date and addressed to Orion and Executive and shall be binding upon the Company and Executive. If such opinion determines that there would be an excess parachute payment and that the After-Tax Value of the Total Payments taking into account the reduction contemplated under this Section is greater than the After-Tax Value of the Total Payments if the reduction in Total Payments contemplated under this Section did not apply, then the Termination Payment hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated as specified by Executive in writing delivered to Orion within five business days of Executive's receipt of such opinion or, if Executive fails to so notify Orion, then as Orion shall reasonably determine, so that under the bases of calculations set forth in such opinion there will be no excess parachute payment. If such legal counsel so requests in connection with the opinion required by this Section, Executive and Orion shall obtain, at Orion's expense, and the legal counsel may rely on in providing the opinion, the advice of a firm of recognized executive compensation consultants as to the reasonableness of any item of compensation to be received by Executive. Notwithstanding the foregoing, the provisions of this Section 6, including the calculations, notices and opinions provided for herein, shall be based upon the conclusive presumption that the following are reasonable: (1) the compensation and benefits provided for in Section 3 and (2) any other compensation, including but not limited to the Accrued Benefits, earned prior to the date of Executive's Separation from Service by the Executive pursuant to the Company's compensation programs if such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change in Control or the Executive's Separation from Service. If the provisions of Code Sections 280G and 4999 are repealed without succession, then this Section 6 shall be of no further force or effect.

7. Covenants by Executive.

(a) **Confidentiality and Non-Disclosure.** During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, he or she agrees that he or she will not, except in furtherance of the business of the Company, disclose, furnish, or make available to any person or use for the benefit of

himself or herself or any other person any confidential or proprietary information or data of the Company including, but not limited to, trade secrets, customer and supplier lists, pricing policies, operational methods, marketing plans or strategies, product development techniques or plans, business acquisition or disposition plans, new personnel employment plans, methods of manufacture, technical process, and formulae, designs and design projects, inventions and research projects and financial budgets and forecasts except (i) information which at the time is available to others in the business or generally known to the public other than as a result of disclosure by Executive not permitted hereunder, and (ii) when required to do so by a court of competent jurisdiction, by any governmental agency or by any administrative, legislative or regulatory body; *provided* that in this instance Executive shall make reasonable efforts to inform the Company of any such request prior to any disclosure so as to permit the Company a meaningful opportunity to seek a protective order or similar adjudication. Upon termination of his or her employment with the Company, Executive will immediately return to the Company all written or electronically stored confidential or proprietary information in whatever format it is contained.

(b) Non-Competition/Non-Solicitation.

(i) During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, Executive agrees not to directly or indirectly engage, or assist any business or entity, in Competitive Business Activity in any capacity, including without limitation as an employee, officer, or director of, or consultant or advisor to, any person or entity engaged directly or indirectly in a business which engages in Competitive Business Activity, in North America or anywhere that Orion or its Successor does business at the time of Executive's termination of employment, without the written consent of the Board.

(ii) During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, Executive agrees not to, in any form or manner, directly or indirectly, on his or her own behalf or in combination with others (1) solicit, induce or influence any customer, supplier, lender, lessor or any other person with a business relationship with the Company to discontinue or reduce the extent of such business relationship, or (2) recruit, solicit or otherwise induce or influence any employee of the Company to discontinue their employment with the Company.

(c) Disclosure and Assignment to the Company of Inventions and Innovations.

(i) Executive agrees to disclose and assign to the Company as the Company's exclusive property, all inventions and technical or business innovations, including but not limited to all patentable and copyrightable subject matter (collectively, the "Innovations") developed, authored or conceived by Executive solely or jointly with others during the period of Executive's employment, including during Executive's employment prior to the date of this Agreement, (1) that are along the lines of the business, work or investigations of the Company to which Executive's employment relates or as to which Executive may receive information due to Executive's employment with the Company, or

(2) that result from or are suggested by any work which Executive may do for the Company or (3) that are otherwise made through the use of Company time, facilities or materials. To the extent any of the Innovations is copyrightable, each such Innovation shall be considered a “work for hire.”

(ii) Executive agrees to execute all necessary papers and otherwise provide proper assistance (at the Company’s expense), during and subsequent to Executive’s employment, to enable the Company to obtain for itself or its nominees, all right, title, and interest in and to patents, copyrights, trademarks or other legal protection for such Innovations in any and all countries.

(iii) Executive agrees to make and maintain for the Company adequate and current written records of all such Innovations;

(iv) Upon any termination of Executive’s employment, employee agrees to deliver to the Company promptly all items which belong to the Company or which by their nature are for the use of Company employees only, including, without limitation, all written and other materials which are of a secret or confidential nature relating to the business of the Company.

(v) In the event Company is unable for any reason whatsoever to secure Executive’s signature to any lawful and necessary documents required, including those necessary for the assignment of, application for, or prosecution of any United States or foreign application for letters patent or copyright for any Innovation, Executive hereby irrevocably designates and appoints Company and its duly authorized officers and agents as Executive’s agent and attorney-in-fact, to act for and in Executive’s behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the assignment, prosecution, and issuance of letters patent or registration of copyright thereon with the same legal force and effect as if executed by Executive. Executive hereby waives and quitclaims to Company any and all claims, of any nature whatsoever, which Executive may now have or may hereafter have for infringement of any patent or copyright resulting from any such application.

(d) **Remedies Not Exclusive.** In the event that Executive breaches any terms of this Section 7, Executive acknowledges and agrees that said breach may result in the immediate and irreparable harm to the business and goodwill of the Company and that damages, if any, and remedies of law for such breach may be inadequate and indeterminable. The Company, upon Executive’s breach of this Section 7, shall therefore be entitled (in addition to and without limiting any other remedies that the Company may seek under this Agreement or otherwise at law or in equity) to (1) seek from any court of competent jurisdiction equitable relief by way of temporary or permanent injunction and without being required to post a bond, to restrain any violation of this Section 7, and for such further relief as the court may deem just or proper in law or equity, and (2) in the event that the Company shall prevail, its reasonable attorneys fees and costs and other expenses in enforcing its rights under this Section 7.

(e) **Severability of Provisions.** If any restriction, limitation, or provision of this Section 7 is deemed to be unreasonable, onerous, or unduly restrictive by a court of competent jurisdiction, it shall not be stricken in its entirety and held totally void and

unenforceable, but shall remain effective to the maximum extent possible within the bounds of the law. If any phrase, clause or provision of this Section 7 is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause, or provision shall be deemed severed from this Section 7, but will not affect any other provision of this Section 7, which shall otherwise remain in full force and effect. The provisions of this Section 7 are each declared to be separate and distinct covenants by Executive.

8. **Notice.** Any notice, request, demand or other communication required or permitted herein will be deemed to be properly given when personally served in writing or when deposited in the United States mail, postage prepaid, addressed to Executive at the address appearing at the end of this Agreement and to the Company with attention to the Chief Executive Officer of Orion and the General Counsel of Orion. Either party may change its address by written notice in accordance with this paragraph.

9. **Set Off; Mitigation.** The Company's obligation to pay Executive the amounts and to provide the benefits hereunder shall be subject to set-off, counterclaim or recoupment of amounts owed by Executive to the Company. However, Executive shall not be required to mitigate the amount of any payment provided for pursuant to this Agreement by seeking other employment or otherwise.

10. **Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, successors and assigns. If Orion experiences a Change of Control, or otherwise sells, assigns or transfers all or substantially all of its business and assets to any person or if Orion merges into or consolidates or otherwise combines (where Orion does not survive such combination) with any person (any such event, a "Sale of Business"), then Orion shall assign all of its right, title and interest in this Agreement as of the date of such event to such person, and Orion shall cause such person, by written agreement in form and substance reasonably satisfactory to Executive, to expressly assume and agree to perform from and after the date of such assignment all of the terms, conditions and provisions imposed by this Agreement upon the Company. Failure of Orion to obtain such agreement prior to the effective date of such Sale of Business shall be a breach of this Agreement constituting "Good Reason" hereunder, except that for purposes of implementing the foregoing the date upon which such Sale of Business becomes effective shall be the Termination Date. In case of such assignment by Orion and of assumption and agreement by such person, as used in this Agreement, "Orion" shall thereafter mean the person which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law, and this Agreement shall inure to the benefit of, and be enforceable by, such person. Executive shall, in his or her discretion, be entitled to proceed against any or all of such persons, any person which theretofore was such a successor to Orion, and Orion (as so defined) in any action to enforce any rights of Executive hereunder. Except as provided in this Section 10, this Agreement shall not be assignable by Orion. This Agreement shall not be terminated by the voluntary or involuntary dissolution of Orion.

11. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement that cannot be mutually resolved by the Executive and the Company, including any dispute as to the calculation of the Executive's Benefits, Base Salary, Bonus Amount or any Severance Payment hereunder, shall be submitted to arbitration in Milwaukee, Wisconsin, in accordance with the procedures of the American Arbitration Association. The determination of the arbitrator shall be conclusive and binding on the

Company and the Executive, and judgment may be entered on the arbitrator's award in any court having jurisdiction.

12. **Applicable Law and Jurisdiction.** This Agreement is to be governed by and construed under the laws of the United States and of the State of Wisconsin without resort to Wisconsin's choice of law rules. Each party hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, this Agreement will lie in the appropriate federal or state courts in the State of Wisconsin and specifically waives any and all objections to such jurisdiction and venue.

13. **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and will not be used in construing it.

14. **Invalid Provisions.** Subject to Section 7(e), should any provision of this Agreement for any reason be declared invalid, void, or unenforceable by a court of competent jurisdiction, the validity and binding effect of any remaining portion will not be affected, and the remaining portions of this Agreement will remain in full force and effect as if this Agreement had been executed with said provision eliminated.

15. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement except where other agreements are specifically noted, adopted, or incorporated by reference. This Agreement otherwise supersedes any and all other agreements (including with respect to the definition of Cause and the process for Cause termination, any stock option or similar equity awards agreements with the Company to which Executive may now or hereafter be a party), either oral or in writing, between the parties hereto with respect to the employment of Executive by Company, and all such agreements shall be void and of no effect. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding.

17. **Modification.** This Agreement may not be modified or amended by oral agreement, but only by an agreement in writing signed by Orion and Executive.

18. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

WHEREAS, this Agreement is effective as of the effective date hereof first set forth above.

EXECUTIVE

/s/ Scott R. Jensen

Signature

Name: Scott R. Jensen

Date: August 12, 2008

ORION ENERGY SYSTEMS, INC.

By: /s/ Neal R. Verfueth

Name: Neal R. Verfueth

Title: President and CEO

Name of Executive:	Daniel J. Waibel
Position:	President, Orion Asset Management Division
Fiscal Year 2009 Base Salary:	\$225,000
Effective Date of Agreement:	August 14, 2008
Initial Term:	Effective Date Through March 31, 2009
Renewal Periods are:	One (1) Year
Post-Change of Control Renewal Period is:	Two (2) Years
Severance Multiplier is:	1x
Post-Change of Control Severance Multiplier is:	2x

EXECUTIVE EMPLOYMENT AND SEVERANCE AGREEMENT

This Agreement ("Agreement") is between the Executive named above ("Executive"), on the one hand, and Orion Energy Systems, Inc. ("Orion" and, together with its subsidiaries, the "Company"), on the other.

WHEREAS, the Executive is employed by Orion in a key employee capacity and the Executive's services are valuable to the conduct of the business of the Company; and

WHEREAS, Orion and Executive desire to specify the terms and conditions on which Executive will continue employment now that the Company's common stock has been sold to the public pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "IPO"), and under which Executive will receive severance in the event that Executive separates from service with the Company;

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Effective Date; Term.** This Agreement shall become effective on the date set forth above and continue until the end of the initial term set forth above. Thereafter, the Agreement shall renew automatically for successive renewal periods as set forth above unless and until either party provides written notice to the other party of the intent not to renew the Agreement at least ninety (90) days prior to the end of any term. Notwithstanding the foregoing, if a Change of Control occurs prior to the end of any term, the Agreement shall be automatically extended for the post- Change of Control renewal period set forth above beginning on the date of the Change of Control. Expiration of this Agreement will not affect the rights or obligations of the parties hereunder arising out of, or relating to, circumstances occurring prior to the expiration of this Agreement, which rights and obligations will survive the expiration of this Agreement.

2. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings ascribed to them:

(a) "**Accrued Benefits**" shall mean the following amounts, payable as described herein: (i) all base salary for the time period ending with the Termination Date; (ii) reimbursement for any and all monies advanced in connection with the Executive's employment for reasonable and necessary expenses incurred by the Executive on behalf

of the Company for the time period ending with the Termination Date; (iii) any and all other cash earned through the Termination Date and deferred at the election of the Executive or pursuant to any deferred compensation plan then in effect; and (iv) all other payments and benefits to which the Executive (or in the event of the Executive's death, the Executive's surviving spouse or other beneficiary), including those provided pursuant to Exhibit A, is entitled on the Termination Date under the terms of any benefit plan of the Company, excluding severance payments under any Company severance policy, practice or agreement in effect on the Termination Date. Payment of Accrued Benefits shall be made promptly in accordance with the Company's prevailing practice with respect to clauses (i) and (ii) or, with respect to clauses (iii) and (iv), pursuant to the terms of the benefit plan or practice establishing such benefits.

(b) "**Base Salary**" shall mean the Executive's annual base salary with the Company as in effect from time to time.

(c) "**Board**" shall mean the board of directors of Orion or a committee of such Board authorized to act on its behalf in certain circumstances, including the Compensation Committee of the Board.

(d) "**Cause**" shall mean a good faith finding by the Board that Executive has (i) failed, neglected, or refused to perform the lawful employment duties related to his or her position or as from time to time assigned to him (other than due to Disability); (ii) committed any willful, intentional, or grossly negligent act having the effect of materially injuring the interest, business, or reputation of the Company; (iii) violated or failed to comply in any material respect with the Company's published rules, regulations, or policies, as in effect or amended from time to time; (iv) committed an act constituting a felony or misdemeanor involving moral turpitude, fraud, theft, or dishonesty; (v) misappropriated or embezzled any property of the Company (whether or not an act constituting a felony or misdemeanor); or (vi) breached any material provision of this Agreement or any other applicable confidentiality, non-compete, non-solicit, general release, covenant not-to-sue, or other agreement with the Company.

(e) "**Change of Control**" shall mean and be limited to any of the following:

(i) any Person (other than (A) the Company or any of its subsidiaries, (B) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its subsidiaries, (C) an underwriter temporarily holding securities pursuant to an offering of such securities or (D) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company ("Excluded Persons")) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the IPO Date, pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors of the Company then serving: (A) individuals

who, on the IPO Date, constituted the Board and (B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A under the Act) whose appointment or election by the Board or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the IPO Date, or whose appointment, election or nomination for election was previously so approved (collectively the "Continuing Directors"); *provided, however,* that individuals who are appointed to the Board pursuant to or in accordance with the terms of an agreement relating to a merger, consolidation, or share exchange involving the Company (or any direct or indirect subsidiary of the Company) shall not be Continuing Directors for purposes of this Agreement until after such individuals are first nominated for election by a vote of at least two-thirds (2/3) of the then Continuing Directors and are thereafter elected as directors by the shareholders of the Company at a meeting of shareholders held following consummation of such merger, consolidation, or share exchange; *and, provided further,* that in the event the failure of any such persons appointed to the Board to be Continuing Directors results in a Change of Control, the subsequent qualification of such persons as Continuing Directors shall not alter the fact that a Change of Control occurred; or

(iii) the consummation of a merger, consolidation or share exchange of the Company with any other corporation or the issuance of voting securities of the Company in connection with a merger, consolidation or share exchange of the Company (or any direct or indirect subsidiary of the Company), in each case, which requires approval of the shareholders of the Company, other than (A) a merger, consolidation or share exchange which would result in the voting securities of the Company outstanding immediately prior to such merger, consolidation or share exchange continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, consolidation or share exchange, or (B) a merger, consolidation or share exchange effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than an Excluded Person) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the IPO Date, pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(iv) the consummation of a plan of complete liquidation or dissolution of the Company or a sale or disposition by the Company of all or substantially all of the Company's assets (in one transaction or a series of related transactions within any period of 24 consecutive months), in each case, which requires approval of the shareholders of the Company, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at

least seventy-five percent (75%) of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

Notwithstanding the foregoing, no “Change of Control” shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to own, directly or indirectly, in the same proportions as their ownership in the Company, an entity that owns all or substantially all of the assets or voting securities of the Company immediately following such transaction or series of transactions.

For purposes of this Section 2(e):

(i) the term “Person” shall mean any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity, or a group of any of the foregoing acting in concert;

(ii) the terms “Affiliate” and “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations of the Act;

(iii) the term “Act” means the Securities Exchange Act of 1934, as amended; and

(iv) a Person shall be deemed to be the “Beneficial Owner” of any securities which:

a) such Person or any of such Person’s Affiliates or Associates has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person’s Affiliates or Associates until such tendered securities are accepted for purchase;

b) such Person or any of such Person’s Affiliates or Associates, directly or indirectly, has the right to vote or dispose of or has “beneficial ownership” of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Act), including pursuant to any agreement, arrangement or understanding; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this clause b) as a result of an agreement, arrangement or understanding to vote such security if the agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Act and (B) is not also then reportable on a Schedule 13D under the Act (or any comparable or successor report); or

c) are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in clause b) above) or disposing of any voting securities of the Company.

(f) **"COBRA"** shall mean the provisions of Code Section 4980B.

(g) **"Code"** shall mean the Internal Revenue Code of 1986, as amended, as interpreted by rules and regulations issued pursuant thereto, all as amended and in effect from time to time. Any reference to a specific provision of the Code shall be deemed to include reference to any successor provision thereto.

(h) **"Competitive Business Activity"** shall mean the design and manufacture of lighting systems and controls for industrial, commercial and agricultural facilities.

(i) **"Disability"** shall mean, subject to applicable law, a total and permanent disability consisting of a mental or physical disability which precludes the disabled Executive from performing the material and substantial duties of his employment. Payment of benefits for total disability under a disability insurance policy shall be conclusive as to the existence of total disability, although such payments are not required in order to establish total disability for purposes of this Agreement. The Executive has a "total and permanent disability" if he is precluded by mental or physical disability for 180 days during any twelve (12) month period. For purposes of this Agreement, an Executive shall be deemed totally and permanently disabled at the end of such 180th day. In case of a disagreement as to whether an Executive is totally and permanently disabled and, at the request of any party, the matter shall be submitted to arbitration as provided for herein, and judgment upon the award may be entered in any court having jurisdiction thereof. Any costs of such proceedings (including the reasonable legal fees of the prevailing party) shall be borne by the non-prevailing party to such arbitration.

(j) **"General Release"** shall mean a release of all claims that Executive, and anyone who may succeed to any claims of Executive, has or may have against Orion, its board of directors, any of its subsidiaries or affiliates, or any of their employees, directors, officers, employees, agents, plan sponsors, administrators, successors (including the Successor), fiduciaries, or attorneys, including but not limited to claims arising out of Executive's employment with, and termination of employment from, the Company, but excluding claims for (i) severance payments and benefits due pursuant to this Agreement and (ii) any salary, bonus, equity, accrued vacation, expense reimbursement and other ordinary payments or benefits earned or otherwise due with respect to the period prior to the date of any Separation from Service. The General Release shall be in a form that is reasonably acceptable to the Company or the Board.

(k) **"Good Reason"** shall mean the occurrence of any of the following without the consent of Executive: (i) a material diminution in the Executive's Base Salary; (ii) a material diminution in the Executive's authority, duties or responsibilities; (iii) a material diminution in the authority, duties or responsibilities of Neal Verfuert; (iv) a material diminution in the budget over which the Executive retains authority; (v) a material change in the geographic location at which the Executive must perform services;

or (vi) a material breach by Orion of any provisions of this Agreement or any option agreement with the Company to which the Executive is a party.

(l) **“Separation from Service”** shall mean Executive’s termination of employment from Orion and each entity that is required to be included in Orion’s controlled group of corporations within the meaning of Code Section 414(b), or that is under common control with Orion within the meaning of Code Section 414(c); *provided* that the phrase “at least 50 percent” shall be used in place of the phrase “ at least 80 percent” each place it appears therein or in the regulations thereunder (collectively, “409A affiliates”). Notwithstanding the foregoing:

(i) If Executive takes a leave of absence for purposes of military leave, sick leave or other bona fide leave of absence, Executive will not be deemed to have incurred a Separation from Service for the first six (6) months of the leave of absence, or if longer, for so long as Executive’s right to reemployment is provided either by statute or by contract.

(ii) Subject to paragraph (i), Executive shall incur a Separation from Service when the level of bona fide services provided by Executive to Orion and its 409A affiliates permanently decreases to a level of twenty percent (20%) or less of the level of services rendered by Executive, on average, during the immediately preceding 12 months of employment.

(iii) If, following Executive’s termination of employment, Executive continues to provide services to the Company or a 409A Affiliate in a capacity other than as an employee, Executive will not be deemed to have Separated from Service as long as Executive is providing bona fide services at a rate that is greater than twenty percent (20%) of the level of services rendered by Executive, on average, during the immediately preceding 12 months of service.

(m) **“Severance Payment”** shall mean the Executive’s Base Salary at the time of the Termination Date plus the average of the annual bonuses earned by the Executive with respect to each of the three completed fiscal years of the Company preceding the year in which the Termination Date occurs (or such lesser number of fiscal years for which the Executive was employed by the Company, with any partial year’s bonus being annualized with respect to such fiscal year) multiplied by the severance multiplier set forth above; *provided* that if Executive’s Termination Date occurs on or following a Change of Control, the multiplier described above shall be increased to the post-Change of Control severance multiplier set forth above and any reduction in Executive’s Base Salary since the date of the Change of Control shall be ignored.

(n) **“Successor”** shall mean the person to which this Agreement is assigned upon a Sale of Business within the meaning of Section 10.

(o) **“Termination Date”** shall mean the date of the Executive’s termination of employment from the Company, as further described in Section 4.

3. Employment of Executive

(a) **Position.**

(i) Executive shall serve in the position set forth above in a full-time capacity. In such position, Executive shall have such duties and authority as is customarily associated with such position and shall have such other titles and duties, consistent with Executive's position, as may be assigned from time to time by the Board.

(ii) Executive will devote Executive's full business time and best efforts to the performance of Executive's duties hereunder and will not engage in any other business, profession or occupation for compensation or otherwise which would conflict or interfere with the rendition of such services either directly or indirectly, without the prior written consent of the Board; *provided* that nothing herein shall preclude Executive, subject to the prior approval of the Board, from accepting appointment to or continue to serve on any board of directors or trustees of any business organization or any charitable organization; *further provided* in each case, and in the aggregate, that such activities do not conflict or interfere with the performance of Executive's duties hereunder or conflict with Section 7.

(b) **Base Salary.** Orion shall pay Executive a Base Salary at the annual rate set forth above for Fiscal Year 2009, payable in regular installments in accordance with the Company's usual payroll practices. Executive shall be entitled to such increases in Executive's base salary, if any, as may be determined from time to time by the Board.

(c) **Bonus Incentives.** Executive shall be entitled to participate in such annual and/or long-term cash and equity incentive plans and programs of Orion as are generally provided to the senior executives of Orion. On and after a Change of Control, to assure that Executive will have an opportunity to earn incentive compensation, the Executive shall be included in a bonus plan of the Employer which shall satisfy the standards described below (such plan, the "Bonus Plan"). Bonuses under the Bonus Plan shall be payable with respect to achieving such financial or other goals reasonably related to the business of the Company as the Company shall establish (the "Goals"), all of which Goals shall be attainable, prior to the end of the post-Change of Control renewal period (as set forth above), with approximately the same degree of probability as the most attainable goals under the Company's bonus plan or plans as in effect at any time during the 180-day period immediately prior to the Change of Control (whether one or more, the "Company Bonus Plan") and in view of the Company's existing and projected financial and business circumstances applicable at the time. The amount of the bonus (the "Bonus Amount") that Executive is eligible to earn under the Bonus Plan shall be no less than 100% of the Executive's target award provided in such Company Bonus Plan (such bonus amount herein referred to as the "Targeted Bonus"), and in the event the Goals are not achieved such that the entire Targeted Bonus is not payable, the Bonus Plan shall provide for a payment of a Bonus Amount equal to a portion of the Targeted Bonus reasonably related to that portion of the Goals which were achieved. Payment of the Bonus Amount shall not be affected by any circumstance occurring subsequent to the end of the post-Change of Control renewal period, including termination of Executive's employment.

(d) **Employee Benefits.** Executive shall be entitled to participate in the Company's employee benefit plans (other than annual and/or long-term incentive programs, which are addressed in subsection (c)) as in effect from time to time on the same basis as those benefits are generally made available to other senior executives of Orion. On and after a Change of Control, Executive shall be included: (i) to the extent eligible thereunder (which eligibility shall not be conditioned on Executive's salary grade or on any other requirement which excludes persons of comparable status to the Executive unless such exclusion was in effect for such plan or an equivalent plan immediately prior to the Change in Control of the Company), in any and all plans providing benefits for the Company's salaried employees in general (including but not limited to group life insurance, hospitalization, medical, dental, and long-term disability plans) and (ii) in plans provided to executives of the Company of comparable status and position to Executive (including but not limited to deferred compensation, split-dollar life insurance, supplemental retirement, stock option, stock appreciation, stock bonus, cash bonus and similar or comparable plans); provided, that, in no event shall the aggregate level of benefits under the plans described in clause (i) and the plans described in clause (ii), respectively, in which Executive is included be less than the aggregate level of benefits under plans of the Company of the type referred to in such clause, respectively, in which Executive was participating immediately prior to the Change in Control.

(e) **Business Expenses.** The reasonable business expenses incurred by Executive in the performance of Executive's duties hereunder shall be reimbursed by the Company in accordance with Company policies.

(f) **Other Perquisites.** Executive shall be entitled to receive the other benefits and perquisites set forth in Exhibit A.

4. **Termination of Employment.** Executive's employment with the Company will terminate during the term of the Agreement, and this Agreement will terminate on the date of such termination, as follows:

(a) Executive's employment will terminate upon Executive's death.

(b) If Executive is Disabled, and if within thirty (30) days after Orion notifies the Executive in writing that it intends to terminate the Executive's employment, the Executive shall not have returned to the performance of the Executive's duties hereunder on a full-time basis, Orion may terminate the Executive's employment, effective immediately following the end of such thirty-day period.

(c) Orion may terminate Executive's employment with or without Cause (other than as a result of Disability which is governed by subsection (b)) by providing written notice to Executive that indicates in reasonable detail the facts and circumstances alleged to provide a basis for such termination. If the termination is without Cause, Executive's employment will terminate on the date specified in the written notice of termination. If the termination is for Cause, the Executive shall have thirty (30) days from the date the written notice is provided, or such longer period as Orion may determine to be appropriate, to cure any conduct or act, if curable, alleged to provide grounds for termination of Executive's employment for Cause. If the alleged conduct or act constituting Cause is not curable, Executive's employment will terminate on the date specified in the written notice of termination. If the alleged conduct or act constituting

Cause is curable but Executive does not cure such conduct or act within the specified time period, Executive's employment will terminate on the date immediately following the end of the cure period. Notwithstanding the foregoing, a determination of Cause shall only be made in good faith by the Board, and after a Change-of-Control, by the Board of Directors of the Successor, which may terminate Executive for Cause only after providing Executive (i) written notice as set forth above, (ii) the opportunity to appear before such board and provide rebuttal to such proposed termination, and (iii) written notice following such appearance confirming such termination and certifying that the decision to terminate Executive for Cause was approved in good faith by at least sixty-six percent (66%) of the members of such board, excluding Executive. Unless otherwise directed by Orion, from and after the date of the written notice of proposed termination, Executive shall be relieved of his or her duties and responsibilities and shall be considered to be on a paid leave of absence pending any final action by the Board or the Board of Directors of the Successor confirming such proposed termination.

(d) Executive may terminate his or her employment for or without Good Reason by providing written notice of termination to Orion that indicates in reasonable detail the facts and circumstances alleged to provide a basis for such termination. If Executive is alleging a termination for Good Reason, Executive must provide written notice to Orion of the existence of the condition constituting Good Reason within ninety (90) days of the initial existence of such condition, and Orion must have a period of at least thirty (30) days following receipt of such notice to cure such condition. If such condition is not cured by Orion within such thirty-day period, Executive's termination of employment from the Company shall be effective on the date immediately following the end of such cure period.

5. Payments upon Termination.

(a) **Entitlement to Severance.** Subject to the other terms and conditions of this Agreement, Executive shall be entitled to the Accrued Benefits, and to the severance benefits described in subsection (c), in either of the following circumstances while this Agreement is in effect:

- (i) Executive's employment is terminated by Orion without Cause, except in the case of death or Disability; or
- (ii) Executive terminates his or her employment with the Company for Good Reason.

If Executive dies after receiving a notice by Orion that Executive is being terminated without Cause, or after providing notice of termination for Good Reason, the Executive's estate, heirs and beneficiaries shall be entitled to the Accrued Benefits and the severance benefits described in subsection (c) at the same time such amounts would have been paid or benefits provided to Executive had he or she lived.

(b) **General Release Requirement.** As an additional prerequisite for receipt of the severance benefits described in subsection (c), Executive must execute, deliver to Orion, and not revoke (to the extent Executive is allowed to do so) a General Release.

(c) **Severance Benefits; Timing and Form of Payment.** Subject to the limitations imposed by Section 6, if Executive is entitled to severance benefits, then:

(i) Company shall pay Executive the Severance Payment in a lump sum within ten (10) days following the Executive's Separation from Service, or if later, the date on which the General Release is no longer revocable, or if later, the date on which the amount payable under Section 6 is determined, but in no event may be payment be made more than 2½ months after the year in which Executive's Separation from Service occurs;

(ii) At the same time that the Severance Payment is made, Company shall pay Executive a lump sum amount equal to the Executive's annual target cash bonus opportunity (if any) as established by the Board or the Compensation Committee of the Board for the fiscal year in which the Separation from Service occurs, multiplied by a fraction, the numerator of which is the number of days that have elapsed during the annual performance period to the date of the Executive's Separation from Service and the denominator of which is 365; and

(iii) Executive shall be entitled to pay premiums for COBRA continuation coverage for the length of such coverage at the same rate as is being charged to active employees for similar coverage.

All payments shall be subject to payroll taxes and other withholdings in accordance with the Company's (or the applicable employer of record's) standard payroll practices and applicable law.

(d) **Other Termination of Employment.** If Executive's employment terminates for any reason other than those described in subsection (a), the Executive (or the Executive's estate in the event of his or her death), shall be entitled to receive only the Accrued Benefits. Executive must be terminated for Cause pursuant to and in accordance with Section 4(c) of this Agreement in order for the consequences of such a Cause termination to apply to Executive under any stock option or similar equity award agreement with the Company to which Executive is then a party. The Company's obligations under this Section 5 shall survive the termination of this Agreement.

6. Limitations on Severance Payments and Benefits. Notwithstanding any other provision of this Agreement, if any portion of the Severance Payment or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "Total Payments"), would constitute an "excess parachute payment," then the Total Payments to be made to Executive shall be reduced such that the value of the aggregate Total Payments that Executive is entitled to receive shall be One Dollar (\$1) less than the maximum amount which Executive may receive without becoming subject to the tax imposed by Code Section 4999 or which the Company may pay without loss of deduction under Code Section 280G(a); *provided* that the foregoing reduction in the amount of Total Payments shall not apply if the After-Tax Value to Executive of the Total Payments prior to reduction in accordance herewith is greater than the After-Tax Value to Executive if Total Payments are reduced in accordance herewith. For purposes of this Agreement, the terms "excess parachute payment" and "parachute payments" shall have the meanings assigned to them in Code Section 280G, and such "parachute payments" shall be valued as provided therein. Present value for purposes of this Agreement shall be calculated in accordance with Code Section 1274(b)(2). Within twenty (20) business days following delivery of the notice of termination or notice by Orion to Executive of its belief that there is a payment or benefit due Executive that will result in an excess parachute payment as defined in Code Section 280G, Executive and Orion, at Orion's

expense, shall obtain the opinion (which need not be unqualified) of nationally recognized tax counsel selected by Orion's independent auditors and acceptable to Executive in Executive's sole discretion, which opinion sets forth: (A) the amount of the Base Period Income, (B) the amount and present value of Total Payments, (C) the amount and present value of any excess parachute payments without regard to the limitations of this Section 6, (D) the After-Tax Value of the Total Payments if the reduction in Total Payments contemplated under this Section 6 did not apply, and (E) the After-Tax Value of the Total Payments taking into account the reduction in Total Payments contemplated under this Section 6. As used in this Section 6, the term "Base Period Income" means an amount equal to Executive's "annualized includible compensation for the base period" as defined in Code Section 280G(d)(1). For purposes of such opinion, the value of any noncash benefits or any deferred payment or benefit shall be determined by Orion's independent auditors in accordance with the principles of Code Sections 280G(d)(3) and (4), which determination shall be evidenced in a certificate of such auditors addressed to Orion and Executive. For purposes of determining the After-Tax Value of Total Payments, Executive shall be deemed to pay federal income taxes and employment taxes at the highest marginal rate of federal income and employment taxation in the calendar year in which the Termination Payment is to be made and state and local income taxes at the highest marginal rates of taxation in the state and locality of Executive's domicile for income tax purposes on the date the Termination Payment is to be made, net of the maximum reduction in federal income taxes that may be obtained from deduction of such state and local taxes. Such opinion shall be dated as of the Termination Date and addressed to Orion and Executive and shall be binding upon the Company and Executive. If such opinion determines that there would be an excess parachute payment and that the After-Tax Value of the Total Payments taking into account the reduction contemplated under this Section is greater than the After-Tax Value of the Total Payments if the reduction in Total Payments contemplated under this Section did not apply, then the Termination Payment hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated as specified by Executive in writing delivered to Orion within five business days of Executive's receipt of such opinion or, if Executive fails to so notify Orion, then as Orion shall reasonably determine, so that under the bases of calculations set forth in such opinion there will be no excess parachute payment. If such legal counsel so requests in connection with the opinion required by this Section, Executive and Orion shall obtain, at Orion's expense, and the legal counsel may rely on in providing the opinion, the advice of a firm of recognized executive compensation consultants as to the reasonableness of any item of compensation to be received by Executive. Notwithstanding the foregoing, the provisions of this Section 6, including the calculations, notices and opinions provided for herein, shall be based upon the conclusive presumption that the following are reasonable: (1) the compensation and benefits provided for in Section 3 and (2) any other compensation, including but not limited to the Accrued Benefits, earned prior to the date of Executive's Separation from Service by the Executive pursuant to the Company's compensation programs if such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change in Control or the Executive's Separation from Service. If the provisions of Code Sections 280G and 4999 are repealed without succession, then this Section 6 shall be of no further force or effect.

7. Covenants by Executive.

(a) **Confidentiality and Non-Disclosure.** During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, he or she agrees that he or she will not, except in furtherance of the business of the Company, disclose, furnish, or make available to any person or use for the benefit of

himself or herself or any other person any confidential or proprietary information or data of the Company including, but not limited to, trade secrets, customer and supplier lists, pricing policies, operational methods, marketing plans or strategies, product development techniques or plans, business acquisition or disposition plans, new personnel employment plans, methods of manufacture, technical process, and formulae, designs and design projects, inventions and research projects and financial budgets and forecasts except (i) information which at the time is available to others in the business or generally known to the public other than as a result of disclosure by Executive not permitted hereunder, and (ii) when required to do so by a court of competent jurisdiction, by any governmental agency or by any administrative, legislative or regulatory body; *provided* that in this instance Executive shall make reasonable efforts to inform the Company of any such request prior to any disclosure so as to permit the Company a meaningful opportunity to seek a protective order or similar adjudication. Upon termination of his or her employment with the Company, Executive will immediately return to the Company all written or electronically stored confidential or proprietary information in whatever format it is contained.

(b) Non-Competition/Non-Solicitation.

(i) During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, Executive agrees not to directly or indirectly engage, or assist any business or entity, in Competitive Business Activity in any capacity, including without limitation as an employee, officer, or director of, or consultant or advisor to, any person or entity engaged directly or indirectly in a business which engages in Competitive Business Activity, in North America or anywhere that Orion or its Successor does business at the time of Executive's termination of employment, without the written consent of the Board.

(ii) During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, Executive agrees not to, in any form or manner, directly or indirectly, on his or her own behalf or in combination with others (1) solicit, induce or influence any customer, supplier, lender, lessor or any other person with a business relationship with the Company to discontinue or reduce the extent of such business relationship, or (2) recruit, solicit or otherwise induce or influence any employee of the Company to discontinue their employment with the Company.

(c) Disclosure and Assignment to the Company of Inventions and Innovations.

(i) Executive agrees to disclose and assign to the Company as the Company's exclusive property, all inventions and technical or business innovations, including but not limited to all patentable and copyrightable subject matter (collectively, the "Innovations") developed, authored or conceived by Executive solely or jointly with others during the period of Executive's employment, including during Executive's employment prior to the date of this Agreement, (1) that are along the lines of the business, work or investigations of the Company to which Executive's employment relates or as to which Executive may receive information due to Executive's employment with the Company, or

(2) that result from or are suggested by any work which Executive may do for the Company or (3) that are otherwise made through the use of Company time, facilities or materials. To the extent any of the Innovations is copyrightable, each such Innovation shall be considered a “work for hire.”

(ii) Executive agrees to execute all necessary papers and otherwise provide proper assistance (at the Company’s expense), during and subsequent to Executive’s employment, to enable the Company to obtain for itself or its nominees, all right, title, and interest in and to patents, copyrights, trademarks or other legal protection for such Innovations in any and all countries.

(iii) Executive agrees to make and maintain for the Company adequate and current written records of all such Innovations;

(iv) Upon any termination of Executive’s employment, employee agrees to deliver to the Company promptly all items which belong to the Company or which by their nature are for the use of Company employees only, including, without limitation, all written and other materials which are of a secret or confidential nature relating to the business of the Company.

(v) In the event Company is unable for any reason whatsoever to secure Executive’s signature to any lawful and necessary documents required, including those necessary for the assignment of, application for, or prosecution of any United States or foreign application for letters patent or copyright for any Innovation, Executive hereby irrevocably designates and appoints Company and its duly authorized officers and agents as Executive’s agent and attorney-in-fact, to act for and in Executive’s behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the assignment, prosecution, and issuance of letters patent or registration of copyright thereon with the same legal force and effect as if executed by Executive. Executive hereby waives and quitclaims to Company any and all claims, of any nature whatsoever, which Executive may now have or may hereafter have for infringement of any patent or copyright resulting from any such application.

(d) **Remedies Not Exclusive.** In the event that Executive breaches any terms of this Section 7, Executive acknowledges and agrees that said breach may result in the immediate and irreparable harm to the business and goodwill of the Company and that damages, if any, and remedies of law for such breach may be inadequate and indeterminable. The Company, upon Executive’s breach of this Section 7, shall therefore be entitled (in addition to and without limiting any other remedies that the Company may seek under this Agreement or otherwise at law or in equity) to (1) seek from any court of competent jurisdiction equitable relief by way of temporary or permanent injunction and without being required to post a bond, to restrain any violation of this Section 7, and for such further relief as the court may deem just or proper in law or equity, and (2) in the event that the Company shall prevail, its reasonable attorneys fees and costs and other expenses in enforcing its rights under this Section 7.

(e) **Severability of Provisions.** If any restriction, limitation, or provision of this Section 7 is deemed to be unreasonable, onerous, or unduly restrictive by a court of competent jurisdiction, it shall not be stricken in its entirety and held totally void and

unenforceable, but shall remain effective to the maximum extent possible within the bounds of the law. If any phrase, clause or provision of this Section 7 is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause, or provision shall be deemed severed from this Section 7, but will not affect any other provision of this Section 7, which shall otherwise remain in full force and effect. The provisions of this Section 7 are each declared to be separate and distinct covenants by Executive.

8. **Notice.** Any notice, request, demand or other communication required or permitted herein will be deemed to be properly given when personally served in writing or when deposited in the United States mail, postage prepaid, addressed to Executive at the address appearing at the end of this Agreement and to the Company with attention to the Chief Executive Officer of Orion and the General Counsel of Orion. Either party may change its address by written notice in accordance with this paragraph.

9. **Set Off; Mitigation.** The Company's obligation to pay Executive the amounts and to provide the benefits hereunder shall be subject to set-off, counterclaim or recoupment of amounts owed by Executive to the Company. However, Executive shall not be required to mitigate the amount of any payment provided for pursuant to this Agreement by seeking other employment or otherwise.

10. **Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, successors and assigns. If Orion experiences a Change of Control, or otherwise sells, assigns or transfers all or substantially all of its business and assets to any person or if Orion merges into or consolidates or otherwise combines (where Orion does not survive such combination) with any person (any such event, a "Sale of Business"), then Orion shall assign all of its right, title and interest in this Agreement as of the date of such event to such person, and Orion shall cause such person, by written agreement in form and substance reasonably satisfactory to Executive, to expressly assume and agree to perform from and after the date of such assignment all of the terms, conditions and provisions imposed by this Agreement upon the Company. Failure of Orion to obtain such agreement prior to the effective date of such Sale of Business shall be a breach of this Agreement constituting "Good Reason" hereunder, except that for purposes of implementing the foregoing the date upon which such Sale of Business becomes effective shall be the Termination Date. In case of such assignment by Orion and of assumption and agreement by such person, as used in this Agreement, "Orion" shall thereafter mean the person which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law, and this Agreement shall inure to the benefit of, and be enforceable by, such person. Executive shall, in his or her discretion, be entitled to proceed against any or all of such persons, any person which theretofore was such a successor to Orion, and Orion (as so defined) in any action to enforce any rights of Executive hereunder. Except as provided in this Section 10, this Agreement shall not be assignable by Orion. This Agreement shall not be terminated by the voluntary or involuntary dissolution of Orion.

11. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement that cannot be mutually resolved by the Executive and the Company, including any dispute as to the calculation of the Executive's Benefits, Base Salary, Bonus Amount or any Severance Payment hereunder, shall be submitted to arbitration in Milwaukee, Wisconsin, in accordance with the procedures of the American Arbitration Association. The determination of the arbitrator shall be conclusive and binding on the

Company and the Executive, and judgment may be entered on the arbitrator's award in any court having jurisdiction.

12. **Applicable Law and Jurisdiction.** This Agreement is to be governed by and construed under the laws of the United States and of the State of Wisconsin without resort to Wisconsin's choice of law rules. Each party hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, this Agreement will lie in the appropriate federal or state courts in the State of Wisconsin and specifically waives any and all objections to such jurisdiction and venue.

13. **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and will not be used in construing it.

14. **Invalid Provisions.** Subject to Section 7(e), should any provision of this Agreement for any reason be declared invalid, void, or unenforceable by a court of competent jurisdiction, the validity and binding effect of any remaining portion will not be affected, and the remaining portions of this Agreement will remain in full force and effect as if this Agreement had been executed with said provision eliminated.

15. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement except where other agreements are specifically noted, adopted, or incorporated by reference. This Agreement otherwise supersedes any and all other agreements (including with respect to the definition of Cause and the process for Cause termination, any stock option or similar equity awards agreements with the Company to which Executive may now or hereafter be a party), either oral or in writing, between the parties hereto with respect to the employment of Executive by Company, and all such agreements shall be void and of no effect. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding.

17. **Modification.** This Agreement may not be modified or amended by oral agreement, but only by an agreement in writing signed by Orion and Executive.

18. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

WHEREAS, this Agreement is effective as of the effective date hereof first set forth above.

EXECUTIVE

/s/ Daniel J. Waibel

Signature

Name: Daniel J. Waibel

Date: August 12, 2008

ORION ENERGY SYSTEMS, INC.

By: /s/ Neal R. Verfueth

Name: Neal R. Verfueth

Title: President and CEO

Name of Executive:	Erik G. Birkerts
Position:	Chief Operating Officer
Fiscal Year 2009 Base Salary:	\$155,000
Effective Date of Agreement:	August 14, 2008
Initial Term:	Effective Date Through March 31, 2009
Renewal Periods are:	One (1) Year
Post-Change of Control Renewal Period is:	One (1) Year
Severance Multiplier is:	0.5x
Post-Change of Control Severance Multiplier is:	1x

EXECUTIVE EMPLOYMENT AND SEVERANCE AGREEMENT

This Agreement ("Agreement") is between the Executive named above ("Executive"), on the one hand, and Orion Energy Systems, Inc. ("Orion" and, together with its subsidiaries, the "Company"), on the other.

WHEREAS, the Executive is employed by Orion in a key employee capacity and the Executive's services are valuable to the conduct of the business of the Company; and

WHEREAS, Orion and Executive desire to specify the terms and conditions on which Executive will continue employment now that the Company's common stock has been sold to the public pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the "IPO"), and under which Executive will receive severance in the event that Executive separates from service with the Company;

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. **Effective Date; Term.** This Agreement shall become effective on the date set forth above and continue until the end of the initial term set forth above. Thereafter, the Agreement shall renew automatically for successive renewal periods as set forth above unless and until either party provides written notice to the other party of the intent not to renew the Agreement at least ninety (90) days prior to the end of any term. Notwithstanding the foregoing, if a Change of Control occurs prior to the end of any term, the Agreement shall be automatically extended for the post- Change of Control renewal period set forth above beginning on the date of the Change of Control. Expiration of this Agreement will not affect the rights or obligations of the parties hereunder arising out of, or relating to, circumstances occurring prior to the expiration of this Agreement, which rights and obligations will survive the expiration of this Agreement.

2. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings ascribed to them:

(a) "**Accrued Benefits**" shall mean the following amounts, payable as described herein: (i) all base salary for the time period ending with the Termination Date; (ii) reimbursement for any and all monies advanced in connection with the Executive's employment for reasonable and necessary expenses incurred by the Executive on behalf

of the Company for the time period ending with the Termination Date; (iii) any and all other cash earned through the Termination Date and deferred at the election of the Executive or pursuant to any deferred compensation plan then in effect; and (iv) all other payments and benefits to which the Executive (or in the event of the Executive's death, the Executive's surviving spouse or other beneficiary), including those provided pursuant to Exhibit A, is entitled on the Termination Date under the terms of any benefit plan of the Company, excluding severance payments under any Company severance policy, practice or agreement in effect on the Termination Date. Payment of Accrued Benefits shall be made promptly in accordance with the Company's prevailing practice with respect to clauses (i) and (ii) or, with respect to clauses (iii) and (iv), pursuant to the terms of the benefit plan or practice establishing such benefits.

(b) "**Base Salary**" shall mean the Executive's annual base salary with the Company as in effect from time to time.

(c) "**Board**" shall mean the board of directors of Orion or a committee of such Board authorized to act on its behalf in certain circumstances, including the Compensation Committee of the Board.

(d) "**Cause**" shall mean a good faith finding by the Board that Executive has (i) failed, neglected, or refused to perform the lawful employment duties related to his or her position or as from time to time assigned to him (other than due to Disability); (ii) committed any willful, intentional, or grossly negligent act having the effect of materially injuring the interest, business, or reputation of the Company; (iii) violated or failed to comply in any material respect with the Company's published rules, regulations, or policies, as in effect or amended from time to time; (iv) committed an act constituting a felony or misdemeanor involving moral turpitude, fraud, theft, or dishonesty; (v) misappropriated or embezzled any property of the Company (whether or not an act constituting a felony or misdemeanor); or (vi) breached any material provision of this Agreement or any other applicable confidentiality, non-compete, non-solicit, general release, covenant not-to-sue, or other agreement with the Company.

(e) "**Change of Control**" shall mean and be limited to any of the following:

(i) any Person (other than (A) the Company or any of its subsidiaries, (B) a trustee or other fiduciary holding securities under any employee benefit plan of the Company or any of its subsidiaries, (C) an underwriter temporarily holding securities pursuant to an offering of such securities or (D) a corporation owned, directly or indirectly, by the shareholders of the Company in substantially the same proportions as their ownership of stock in the Company ("Excluded Persons")) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the IPO Date, pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(ii) the following individuals cease for any reason to constitute a majority of the number of directors of the Company then serving: (A) individuals

who, on the IPO Date, constituted the Board and (B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company, as such terms are used in Rule 14a-11 of Regulation 14A under the Act) whose appointment or election by the Board or nomination for election by the Company's shareholders was approved by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the IPO Date, or whose appointment, election or nomination for election was previously so approved (collectively the "Continuing Directors"); *provided, however,* that individuals who are appointed to the Board pursuant to or in accordance with the terms of an agreement relating to a merger, consolidation, or share exchange involving the Company (or any direct or indirect subsidiary of the Company) shall not be Continuing Directors for purposes of this Agreement until after such individuals are first nominated for election by a vote of at least two-thirds (2/3) of the then Continuing Directors and are thereafter elected as directors by the shareholders of the Company at a meeting of shareholders held following consummation of such merger, consolidation, or share exchange; *and, provided further,* that in the event the failure of any such persons appointed to the Board to be Continuing Directors results in a Change of Control, the subsequent qualification of such persons as Continuing Directors shall not alter the fact that a Change of Control occurred; or

(iii) the consummation of a merger, consolidation or share exchange of the Company with any other corporation or the issuance of voting securities of the Company in connection with a merger, consolidation or share exchange of the Company (or any direct or indirect subsidiary of the Company), in each case, which requires approval of the shareholders of the Company, other than (A) a merger, consolidation or share exchange which would result in the voting securities of the Company outstanding immediately prior to such merger, consolidation or share exchange continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger, consolidation or share exchange, or (B) a merger, consolidation or share exchange effected to implement a recapitalization of the Company (or similar transaction) in which no Person (other than an Excluded Person) is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates after the IPO Date, pursuant to express authorization by the Board that refers to this exception) representing twenty percent (20%) or more of either the then outstanding shares of common stock of the Company or the combined voting power of the Company's then outstanding voting securities; or

(iv) the consummation of a plan of complete liquidation or dissolution of the Company or a sale or disposition by the Company of all or substantially all of the Company's assets (in one transaction or a series of related transactions within any period of 24 consecutive months), in each case, which requires approval of the shareholders of the Company, other than a sale or disposition by the Company of all or substantially all of the Company's assets to an entity at

least seventy-five percent (75%) of the combined voting power of the voting securities of which are owned by Persons in substantially the same proportions as their ownership of the Company immediately prior to such sale.

Notwithstanding the foregoing, no “Change of Control” shall be deemed to have occurred if there is consummated any transaction or series of integrated transactions immediately following which the record holders of the common stock of the Company immediately prior to such transaction or series of transactions continue to own, directly or indirectly, in the same proportions as their ownership in the Company, an entity that owns all or substantially all of the assets or voting securities of the Company immediately following such transaction or series of transactions.

For purposes of this Section 2(e):

(i) the term “Person” shall mean any individual, firm, partnership, corporation or other entity, including any successor (by merger or otherwise) of such entity, or a group of any of the foregoing acting in concert;

(ii) the terms “Affiliate” and “Associate” shall have the respective meanings ascribed to such terms in Rule 12b-2 of the General Rules and Regulations of the Act;

(iii) the term “Act” means the Securities Exchange Act of 1934, as amended; and

(iv) a Person shall be deemed to be the “Beneficial Owner” of any securities which:

a) such Person or any of such Person’s Affiliates or Associates has the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such Person or any of such Person’s Affiliates or Associates until such tendered securities are accepted for purchase;

b) such Person or any of such Person’s Affiliates or Associates, directly or indirectly, has the right to vote or dispose of or has “beneficial ownership” of (as determined pursuant to Rule 13d-3 of the General Rules and Regulations under the Act), including pursuant to any agreement, arrangement or understanding; *provided, however*, that a Person shall not be deemed the Beneficial Owner of, or to beneficially own, any security under this clause b) as a result of an agreement, arrangement or understanding to vote such security if the agreement, arrangement or understanding: (A) arises solely from a revocable proxy or consent given to such Person in response to a public proxy or consent solicitation made pursuant to, and in accordance with, the applicable rules and regulations under the Act and (B) is not also then reportable on a Schedule 13D under the Act (or any comparable or successor report); or

c) are beneficially owned, directly or indirectly, by any other Person with which such Person or any of such Person's Affiliates or Associates has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except pursuant to a revocable proxy as described in clause b) above) or disposing of any voting securities of the Company.

(f) "**COBRA**" shall mean the provisions of Code Section 4980B.

(g) "**Code**" shall mean the Internal Revenue Code of 1986, as amended, as interpreted by rules and regulations issued pursuant thereto, all as amended and in effect from time to time. Any reference to a specific provision of the Code shall be deemed to include reference to any successor provision thereto.

(h) "**Competitive Business Activity**" shall mean the design and manufacture of lighting systems and controls for industrial, commercial and agricultural facilities.

(i) "**Disability**" shall mean, subject to applicable law, a total and permanent disability consisting of a mental or physical disability which precludes the disabled Executive from performing the material and substantial duties of his employment. Payment of benefits for total disability under a disability insurance policy shall be conclusive as to the existence of total disability, although such payments are not required in order to establish total disability for purposes of this Agreement. The Executive has a "total and permanent disability" if he is precluded by mental or physical disability for 180 days during any twelve (12) month period. For purposes of this Agreement, an Executive shall be deemed totally and permanently disabled at the end of such 180th day. In case of a disagreement as to whether an Executive is totally and permanently disabled and, at the request of any party, the matter shall be submitted to arbitration as provided for herein, and judgment upon the award may be entered in any court having jurisdiction thereof. Any costs of such proceedings (including the reasonable legal fees of the prevailing party) shall be borne by the non-prevailing party to such arbitration.

(j) "**General Release**" shall mean a release of all claims that Executive, and anyone who may succeed to any claims of Executive, has or may have against Orion, its board of directors, any of its subsidiaries or affiliates, or any of their employees, directors, officers, employees, agents, plan sponsors, administrators, successors (including the Successor), fiduciaries, or attorneys, including but not limited to claims arising out of Executive's employment with, and termination of employment from, the Company, but excluding claims for (i) severance payments and benefits due pursuant to this Agreement and (ii) any salary, bonus, equity, accrued vacation, expense reimbursement and other ordinary payments or benefits earned or otherwise due with respect to the period prior to the date of any Separation from Service. The General Release shall be in a form that is reasonably acceptable to the Company or the Board.

(k) "**Good Reason**" shall mean the occurrence of any of the following without the consent of Executive: (i) a material diminution in the Executive's Base Salary; (ii) a material diminution in the Executive's authority, duties or responsibilities; (iii) a material diminution in the authority, duties or responsibilities of Neal Verfuert; (iv) a material diminution in the budget over which the Executive retains authority; (v) a material change in the geographic location at which the Executive must perform services;

or (vi) a material breach by Orion of any provisions of this Agreement or any option agreement with the Company to which the Executive is a party.

(l) **“Separation from Service”** shall mean Executive’s termination of employment from Orion and each entity that is required to be included in Orion’s controlled group of corporations within the meaning of Code Section 414(b), or that is under common control with Orion within the meaning of Code Section 414(c); *provided* that the phrase “at least 50 percent” shall be used in place of the phrase “ at least 80 percent” each place it appears therein or in the regulations thereunder (collectively, “409A affiliates”). Notwithstanding the foregoing:

(i) If Executive takes a leave of absence for purposes of military leave, sick leave or other bona fide leave of absence, Executive will not be deemed to have incurred a Separation from Service for the first six (6) months of the leave of absence, or if longer, for so long as Executive’s right to reemployment is provided either by statute or by contract.

(ii) Subject to paragraph (i), Executive shall incur a Separation from Service when the level of bona fide services provided by Executive to Orion and its 409A affiliates permanently decreases to a level of twenty percent (20%) or less of the level of services rendered by Executive, on average, during the immediately preceding 12 months of employment.

(iii) If, following Executive’s termination of employment, Executive continues to provide services to the Company or a 409A Affiliate in a capacity other than as an employee, Executive will not be deemed to have Separated from Service as long as Executive is providing bona fide services at a rate that is greater than twenty percent (20%) of the level of services rendered by Executive, on average, during the immediately preceding 12 months of service.

(m) **“Severance Payment”** shall mean the Executive’s Base Salary at the time of the Termination Date plus the average of the annual bonuses earned by the Executive with respect to each of the three completed fiscal years of the Company preceding the year in which the Termination Date occurs (or such lesser number of fiscal years for which the Executive was employed by the Company, with any partial year’s bonus being annualized with respect to such fiscal year) multiplied by the severance multiplier set forth above; *provided* that if Executive’s Termination Date occurs on or following a Change of Control, the multiplier described above shall be increased to the post-Change of Control severance multiplier set forth above and any reduction in Executive’s Base Salary since the date of the Change of Control shall be ignored.

(n) **“Successor”** shall mean the person to which this Agreement is assigned upon a Sale of Business within the meaning of Section 10.

(o) **“Termination Date”** shall mean the date of the Executive’s termination of employment from the Company, as further described in Section 4.

3. Employment of Executive

(a) **Position.**

(i) Executive shall serve in the position set forth above in a full-time capacity. In such position, Executive shall have such duties and authority as is customarily associated with such position and shall have such other titles and duties, consistent with Executive's position, as may be assigned from time to time by the Board.

(ii) Executive will devote Executive's full business time and best efforts to the performance of Executive's duties hereunder and will not engage in any other business, profession or occupation for compensation or otherwise which would conflict or interfere with the rendition of such services either directly or indirectly, without the prior written consent of the Board; *provided* that nothing herein shall preclude Executive, subject to the prior approval of the Board, from accepting appointment to or continue to serve on any board of directors or trustees of any business organization or any charitable organization; *further provided* in each case, and in the aggregate, that such activities do not conflict or interfere with the performance of Executive's duties hereunder or conflict with Section 7.

(b) **Base Salary.** Orion shall pay Executive a Base Salary at the annual rate set forth above for Fiscal Year 2009, payable in regular installments in accordance with the Company's usual payroll practices. Executive shall be entitled to such increases in Executive's base salary, if any, as may be determined from time to time by the Board.

(c) **Bonus Incentives.** Executive shall be entitled to participate in such annual and/or long-term cash and equity incentive plans and programs of Orion as are generally provided to the senior executives of Orion. On and after a Change of Control, to assure that Executive will have an opportunity to earn incentive compensation, the Executive shall be included in a bonus plan of the Employer which shall satisfy the standards described below (such plan, the "Bonus Plan"). Bonuses under the Bonus Plan shall be payable with respect to achieving such financial or other goals reasonably related to the business of the Company as the Company shall establish (the "Goals"), all of which Goals shall be attainable, prior to the end of the post-Change of Control renewal period (as set forth above), with approximately the same degree of probability as the most attainable goals under the Company's bonus plan or plans as in effect at any time during the 180-day period immediately prior to the Change of Control (whether one or more, the "Company Bonus Plan") and in view of the Company's existing and projected financial and business circumstances applicable at the time. The amount of the bonus (the "Bonus Amount") that Executive is eligible to earn under the Bonus Plan shall be no less than 100% of the Executive's target award provided in such Company Bonus Plan (such bonus amount herein referred to as the "Targeted Bonus"), and in the event the Goals are not achieved such that the entire Targeted Bonus is not payable, the Bonus Plan shall provide for a payment of a Bonus Amount equal to a portion of the Targeted Bonus reasonably related to that portion of the Goals which were achieved. Payment of the Bonus Amount shall not be affected by any circumstance occurring subsequent to the end of the post-Change of Control renewal period, including termination of Executive's employment.

(d) **Employee Benefits.** Executive shall be entitled to participate in the Company's employee benefit plans (other than annual and/or long-term incentive programs, which are addressed in subsection (c)) as in effect from time to time on the same basis as those benefits are generally made available to other senior executives of Orion. On and after a Change of Control, Executive shall be included: (i) to the extent eligible thereunder (which eligibility shall not be conditioned on Executive's salary grade or on any other requirement which excludes persons of comparable status to the Executive unless such exclusion was in effect for such plan or an equivalent plan immediately prior to the Change in Control of the Company), in any and all plans providing benefits for the Company's salaried employees in general (including but not limited to group life insurance, hospitalization, medical, dental, and long-term disability plans) and (ii) in plans provided to executives of the Company of comparable status and position to Executive (including but not limited to deferred compensation, split-dollar life insurance, supplemental retirement, stock option, stock appreciation, stock bonus, cash bonus and similar or comparable plans); provided, that, in no event shall the aggregate level of benefits under the plans described in clause (i) and the plans described in clause (ii), respectively, in which Executive is included be less than the aggregate level of benefits under plans of the Company of the type referred to in such clause, respectively, in which Executive was participating immediately prior to the Change in Control.

(e) **Business Expenses.** The reasonable business expenses incurred by Executive in the performance of Executive's duties hereunder shall be reimbursed by the Company in accordance with Company policies.

(f) **Other Perquisites.** Executive shall be entitled to receive the other benefits and perquisites set forth in Exhibit A.

4. **Termination of Employment.** Executive's employment with the Company will terminate during the term of the Agreement, and this Agreement will terminate on the date of such termination, as follows:

(a) Executive's employment will terminate upon Executive's death.

(b) If Executive is Disabled, and if within thirty (30) days after Orion notifies the Executive in writing that it intends to terminate the Executive's employment, the Executive shall not have returned to the performance of the Executive's duties hereunder on a full-time basis, Orion may terminate the Executive's employment, effective immediately following the end of such thirty-day period.

(c) Orion may terminate Executive's employment with or without Cause (other than as a result of Disability which is governed by subsection (b)) by providing written notice to Executive that indicates in reasonable detail the facts and circumstances alleged to provide a basis for such termination. If the termination is without Cause, Executive's employment will terminate on the date specified in the written notice of termination. If the termination is for Cause, the Executive shall have thirty (30) days from the date the written notice is provided, or such longer period as Orion may determine to be appropriate, to cure any conduct or act, if curable, alleged to provide grounds for termination of Executive's employment for Cause. If the alleged conduct or act constituting Cause is not curable, Executive's employment will terminate on the date specified in the written notice of termination. If the alleged conduct or act constituting

Cause is curable but Executive does not cure such conduct or act within the specified time period, Executive's employment will terminate on the date immediately following the end of the cure period. Notwithstanding the foregoing, a determination of Cause shall only be made in good faith by the Board, and after a Change-of-Control, by the Board of Directors of the Successor, which may terminate Executive for Cause only after providing Executive (i) written notice as set forth above, (ii) the opportunity to appear before such board and provide rebuttal to such proposed termination, and (iii) written notice following such appearance confirming such termination and certifying that the decision to terminate Executive for Cause was approved in good faith by at least sixty-six percent (66%) of the members of such board, excluding Executive. Unless otherwise directed by Orion, from and after the date of the written notice of proposed termination, Executive shall be relieved of his or her duties and responsibilities and shall be considered to be on a paid leave of absence pending any final action by the Board or the Board of Directors of the Successor confirming such proposed termination.

(d) Executive may terminate his or her employment for or without Good Reason by providing written notice of termination to Orion that indicates in reasonable detail the facts and circumstances alleged to provide a basis for such termination. If Executive is alleging a termination for Good Reason, Executive must provide written notice to Orion of the existence of the condition constituting Good Reason within ninety (90) days of the initial existence of such condition, and Orion must have a period of at least thirty (30) days following receipt of such notice to cure such condition. If such condition is not cured by Orion within such thirty-day period, Executive's termination of employment from the Company shall be effective on the date immediately following the end of such cure period.

5. Payments upon Termination.

(a) **Entitlement to Severance.** Subject to the other terms and conditions of this Agreement, Executive shall be entitled to the Accrued Benefits, and to the severance benefits described in subsection (c), in either of the following circumstances while this Agreement is in effect:

- (i) Executive's employment is terminated by Orion without Cause, except in the case of death or Disability; or
- (ii) Executive terminates his or her employment with the Company for Good Reason.

If Executive dies after receiving a notice by Orion that Executive is being terminated without Cause, or after providing notice of termination for Good Reason, the Executive's estate, heirs and beneficiaries shall be entitled to the Accrued Benefits and the severance benefits described in subsection (c) at the same time such amounts would have been paid or benefits provided to Executive had he or she lived.

(b) **General Release Requirement.** As an additional prerequisite for receipt of the severance benefits described in subsection (c), Executive must execute, deliver to Orion, and not revoke (to the extent Executive is allowed to do so) a General Release.

(c) **Severance Benefits; Timing and Form of Payment.** Subject to the limitations imposed by Section 6, if Executive is entitled to severance benefits, then:

(i) Company shall pay Executive the Severance Payment in a lump sum within ten (10) days following the Executive's Separation from Service, or if later, the date on which the General Release is no longer revocable, or if later, the date on which the amount payable under Section 6 is determined, but in no event may be payment be made more than 2½ months after the year in which Executive's Separation from Service occurs;

(ii) At the same time that the Severance Payment is made, Company shall pay Executive a lump sum amount equal to the Executive's annual target cash bonus opportunity (if any) as established by the Board or the Compensation Committee of the Board for the fiscal year in which the Separation from Service occurs, multiplied by a fraction, the numerator of which is the number of days that have elapsed during the annual performance period to the date of the Executive's Separation from Service and the denominator of which is 365; and

(iii) Executive shall be entitled to pay premiums for COBRA continuation coverage for the length of such coverage at the same rate as is being charged to active employees for similar coverage.

All payments shall be subject to payroll taxes and other withholdings in accordance with the Company's (or the applicable employer of record's) standard payroll practices and applicable law.

(d) **Other Termination of Employment.** If Executive's employment terminates for any reason other than those described in subsection (a), the Executive (or the Executive's estate in the event of his or her death), shall be entitled to receive only the Accrued Benefits. Executive must be terminated for Cause pursuant to and in accordance with Section 4(c) of this Agreement in order for the consequences of such a Cause termination to apply to Executive under any stock option or similar equity award agreement with the Company to which Executive is then a party. The Company's obligations under this Section 5 shall survive the termination of this Agreement.

6. Limitations on Severance Payments and Benefits. Notwithstanding any other provision of this Agreement, if any portion of the Severance Payment or any other payment under this Agreement, or under any other agreement with or plan of the Company (in the aggregate "Total Payments"), would constitute an "excess parachute payment," then the Total Payments to be made to Executive shall be reduced such that the value of the aggregate Total Payments that Executive is entitled to receive shall be One Dollar (\$1) less than the maximum amount which Executive may receive without becoming subject to the tax imposed by Code Section 4999 or which the Company may pay without loss of deduction under Code Section 280G(a); *provided* that the foregoing reduction in the amount of Total Payments shall not apply if the After-Tax Value to Executive of the Total Payments prior to reduction in accordance herewith is greater than the After-Tax Value to Executive if Total Payments are reduced in accordance herewith. For purposes of this Agreement, the terms "excess parachute payment" and "parachute payments" shall have the meanings assigned to them in Code Section 280G, and such "parachute payments" shall be valued as provided therein. Present value for purposes of this Agreement shall be calculated in accordance with Code Section 1274(b)(2). Within twenty (20) business days following delivery of the notice of termination or notice by Orion to Executive of its belief that there is a payment or benefit due Executive that will result in an excess parachute payment as defined in Code Section 280G, Executive and Orion, at Orion's

expense, shall obtain the opinion (which need not be unqualified) of nationally recognized tax counsel selected by Orion's independent auditors and acceptable to Executive in Executive's sole discretion, which opinion sets forth: (A) the amount of the Base Period Income, (B) the amount and present value of Total Payments, (C) the amount and present value of any excess parachute payments without regard to the limitations of this Section 6, (D) the After-Tax Value of the Total Payments if the reduction in Total Payments contemplated under this Section 6 did not apply, and (E) the After-Tax Value of the Total Payments taking into account the reduction in Total Payments contemplated under this Section 6. As used in this Section 6, the term "Base Period Income" means an amount equal to Executive's "annualized includible compensation for the base period" as defined in Code Section 280G(d)(1). For purposes of such opinion, the value of any noncash benefits or any deferred payment or benefit shall be determined by Orion's independent auditors in accordance with the principles of Code Sections 280G(d)(3) and (4), which determination shall be evidenced in a certificate of such auditors addressed to Orion and Executive. For purposes of determining the After-Tax Value of Total Payments, Executive shall be deemed to pay federal income taxes and employment taxes at the highest marginal rate of federal income and employment taxation in the calendar year in which the Termination Payment is to be made and state and local income taxes at the highest marginal rates of taxation in the state and locality of Executive's domicile for income tax purposes on the date the Termination Payment is to be made, net of the maximum reduction in federal income taxes that may be obtained from deduction of such state and local taxes. Such opinion shall be dated as of the Termination Date and addressed to Orion and Executive and shall be binding upon the Company and Executive. If such opinion determines that there would be an excess parachute payment and that the After-Tax Value of the Total Payments taking into account the reduction contemplated under this Section is greater than the After-Tax Value of the Total Payments if the reduction in Total Payments contemplated under this Section did not apply, then the Termination Payment hereunder or any other payment determined by such counsel to be includible in Total Payments shall be reduced or eliminated as specified by Executive in writing delivered to Orion within five business days of Executive's receipt of such opinion or, if Executive fails to so notify Orion, then as Orion shall reasonably determine, so that under the bases of calculations set forth in such opinion there will be no excess parachute payment. If such legal counsel so requests in connection with the opinion required by this Section, Executive and Orion shall obtain, at Orion's expense, and the legal counsel may rely on in providing the opinion, the advice of a firm of recognized executive compensation consultants as to the reasonableness of any item of compensation to be received by Executive. Notwithstanding the foregoing, the provisions of this Section 6, including the calculations, notices and opinions provided for herein, shall be based upon the conclusive presumption that the following are reasonable: (1) the compensation and benefits provided for in Section 3 and (2) any other compensation, including but not limited to the Accrued Benefits, earned prior to the date of Executive's Separation from Service by the Executive pursuant to the Company's compensation programs if such payments would have been made in the future in any event, even though the timing of such payment is triggered by the Change in Control or the Executive's Separation from Service. If the provisions of Code Sections 280G and 4999 are repealed without succession, then this Section 6 shall be of no further force or effect.

7. Covenants by Executive.

(a) **Confidentiality and Non-Disclosure.** During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, he or she agrees that he or she will not, except in furtherance of the business of the Company, disclose, furnish, or make available to any person or use for the benefit of

himself or herself or any other person any confidential or proprietary information or data of the Company including, but not limited to, trade secrets, customer and supplier lists, pricing policies, operational methods, marketing plans or strategies, product development techniques or plans, business acquisition or disposition plans, new personnel employment plans, methods of manufacture, technical process, and formulae, designs and design projects, inventions and research projects and financial budgets and forecasts except (i) information which at the time is available to others in the business or generally known to the public other than as a result of disclosure by Executive not permitted hereunder, and (ii) when required to do so by a court of competent jurisdiction, by any governmental agency or by any administrative, legislative or regulatory body; *provided* that in this instance Executive shall make reasonable efforts to inform the Company of any such request prior to any disclosure so as to permit the Company a meaningful opportunity to seek a protective order or similar adjudication. Upon termination of his or her employment with the Company, Executive will immediately return to the Company all written or electronically stored confidential or proprietary information in whatever format it is contained.

(b) Non-Competition/Non-Solicitation.

(i) During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, Executive agrees not to directly or indirectly engage, or assist any business or entity, in Competitive Business Activity in any capacity, including without limitation as an employee, officer, or director of, or consultant or advisor to, any person or entity engaged directly or indirectly in a business which engages in Competitive Business Activity, in North America or anywhere that Orion or its Successor does business at the time of Executive's termination of employment, without the written consent of the Board.

(ii) During Executive's employment with the Company and for a period of two years following Executive's Separation from Service, Executive agrees not to, in any form or manner, directly or indirectly, on his or her own behalf or in combination with others (1) solicit, induce or influence any customer, supplier, lender, lessor or any other person with a business relationship with the Company to discontinue or reduce the extent of such business relationship, or (2) recruit, solicit or otherwise induce or influence any employee of the Company to discontinue their employment with the Company.

(c) Disclosure and Assignment to the Company of Inventions and Innovations.

(i) Executive agrees to disclose and assign to the Company as the Company's exclusive property, all inventions and technical or business innovations, including but not limited to all patentable and copyrightable subject matter (collectively, the "Innovations") developed, authored or conceived by Executive solely or jointly with others during the period of Executive's employment, including during Executive's employment prior to the date of this Agreement, (1) that are along the lines of the business, work or investigations of the Company to which Executive's employment relates or as to which Executive may receive information due to Executive's employment with the Company, or

(2) that result from or are suggested by any work which Executive may do for the Company or (3) that are otherwise made through the use of Company time, facilities or materials. To the extent any of the Innovations is copyrightable, each such Innovation shall be considered a “work for hire.”

(ii) Executive agrees to execute all necessary papers and otherwise provide proper assistance (at the Company’s expense), during and subsequent to Executive’s employment, to enable the Company to obtain for itself or its nominees, all right, title, and interest in and to patents, copyrights, trademarks or other legal protection for such Innovations in any and all countries.

(iii) Executive agrees to make and maintain for the Company adequate and current written records of all such Innovations;

(iv) Upon any termination of Executive’s employment, employee agrees to deliver to the Company promptly all items which belong to the Company or which by their nature are for the use of Company employees only, including, without limitation, all written and other materials which are of a secret or confidential nature relating to the business of the Company.

(v) In the event Company is unable for any reason whatsoever to secure Executive’s signature to any lawful and necessary documents required, including those necessary for the assignment of, application for, or prosecution of any United States or foreign application for letters patent or copyright for any Innovation, Executive hereby irrevocably designates and appoints Company and its duly authorized officers and agents as Executive’s agent and attorney-in-fact, to act for and in Executive’s behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the assignment, prosecution, and issuance of letters patent or registration of copyright thereon with the same legal force and effect as if executed by Executive. Executive hereby waives and quitclaims to Company any and all claims, of any nature whatsoever, which Executive may now have or may hereafter have for infringement of any patent or copyright resulting from any such application.

(d) **Remedies Not Exclusive.** In the event that Executive breaches any terms of this Section 7, Executive acknowledges and agrees that said breach may result in the immediate and irreparable harm to the business and goodwill of the Company and that damages, if any, and remedies of law for such breach may be inadequate and indeterminable. The Company, upon Executive’s breach of this Section 7, shall therefore be entitled (in addition to and without limiting any other remedies that the Company may seek under this Agreement or otherwise at law or in equity) to (1) seek from any court of competent jurisdiction equitable relief by way of temporary or permanent injunction and without being required to post a bond, to restrain any violation of this Section 7, and for such further relief as the court may deem just or proper in law or equity, and (2) in the event that the Company shall prevail, its reasonable attorneys fees and costs and other expenses in enforcing its rights under this Section 7.

(e) **Severability of Provisions.** If any restriction, limitation, or provision of this Section 7 is deemed to be unreasonable, onerous, or unduly restrictive by a court of competent jurisdiction, it shall not be stricken in its entirety and held totally void and

unenforceable, but shall remain effective to the maximum extent possible within the bounds of the law. If any phrase, clause or provision of this Section 7 is declared invalid or unenforceable by a court of competent jurisdiction, such phrase, clause, or provision shall be deemed severed from this Section 7, but will not affect any other provision of this Section 7, which shall otherwise remain in full force and effect. The provisions of this Section 7 are each declared to be separate and distinct covenants by Executive.

8. **Notice.** Any notice, request, demand or other communication required or permitted herein will be deemed to be properly given when personally served in writing or when deposited in the United States mail, postage prepaid, addressed to Executive at the address appearing at the end of this Agreement and to the Company with attention to the Chief Executive Officer of Orion and the General Counsel of Orion. Either party may change its address by written notice in accordance with this paragraph.

9. **Set Off; Mitigation.** The Company's obligation to pay Executive the amounts and to provide the benefits hereunder shall be subject to set-off, counterclaim or recoupment of amounts owed by Executive to the Company. However, Executive shall not be required to mitigate the amount of any payment provided for pursuant to this Agreement by seeking other employment or otherwise.

10. **Benefit of Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, administrators, successors and assigns. If Orion experiences a Change of Control, or otherwise sells, assigns or transfers all or substantially all of its business and assets to any person or if Orion merges into or consolidates or otherwise combines (where Orion does not survive such combination) with any person (any such event, a "Sale of Business"), then Orion shall assign all of its right, title and interest in this Agreement as of the date of such event to such person, and Orion shall cause such person, by written agreement in form and substance reasonably satisfactory to Executive, to expressly assume and agree to perform from and after the date of such assignment all of the terms, conditions and provisions imposed by this Agreement upon the Company. Failure of Orion to obtain such agreement prior to the effective date of such Sale of Business shall be a breach of this Agreement constituting "Good Reason" hereunder, except that for purposes of implementing the foregoing the date upon which such Sale of Business becomes effective shall be the Termination Date. In case of such assignment by Orion and of assumption and agreement by such person, as used in this Agreement, "Orion" shall thereafter mean the person which executes and delivers the agreement provided for in this Section 10 or which otherwise becomes bound by all the terms and provisions of this Agreement by operation of law, and this Agreement shall inure to the benefit of, and be enforceable by, such person. Executive shall, in his or her discretion, be entitled to proceed against any or all of such persons, any person which theretofore was such a successor to Orion, and Orion (as so defined) in any action to enforce any rights of Executive hereunder. Except as provided in this Section 10, this Agreement shall not be assignable by Orion. This Agreement shall not be terminated by the voluntary or involuntary dissolution of Orion.

11. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement or the breach of this Agreement that cannot be mutually resolved by the Executive and the Company, including any dispute as to the calculation of the Executive's Benefits, Base Salary, Bonus Amount or any Severance Payment hereunder, shall be submitted to arbitration in Milwaukee, Wisconsin, in accordance with the procedures of the American Arbitration Association. The determination of the arbitrator shall be conclusive and binding on the

Company and the Executive, and judgment may be entered on the arbitrator's award in any court having jurisdiction.

12. **Applicable Law and Jurisdiction.** This Agreement is to be governed by and construed under the laws of the United States and of the State of Wisconsin without resort to Wisconsin's choice of law rules. Each party hereby agrees that the forum and venue for any legal or equitable action or proceeding arising out of, or in connection with, this Agreement will lie in the appropriate federal or state courts in the State of Wisconsin and specifically waives any and all objections to such jurisdiction and venue.

13. **Captions and Paragraph Headings.** Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and will not be used in construing it.

14. **Invalid Provisions.** Subject to Section 7(e), should any provision of this Agreement for any reason be declared invalid, void, or unenforceable by a court of competent jurisdiction, the validity and binding effect of any remaining portion will not be affected, and the remaining portions of this Agreement will remain in full force and effect as if this Agreement had been executed with said provision eliminated.

15. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

16. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement except where other agreements are specifically noted, adopted, or incorporated by reference. This Agreement otherwise supersedes any and all other agreements (including with respect to the definition of Cause and the process for Cause termination, any stock option or similar equity awards agreements with the Company to which Executive may now or hereafter be a party), either oral or in writing, between the parties hereto with respect to the employment of Executive by Company, and all such agreements shall be void and of no effect. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement will be valid or binding.

17. **Modification.** This Agreement may not be modified or amended by oral agreement, but only by an agreement in writing signed by Orion and Executive.

18. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

WHEREAS, this Agreement is effective as of the effective date hereof first set forth above.

EXECUTIVE

/s/ Erik G. Birkerts

Signature

Name: Erik G. Birkerts

Date: August 12, 2008

ORION ENERGY SYSTEMS, INC.

By: /s/ Neal R. Verfuert

Name: Neal R. Verfuert

Title: President and CEO

Certification

I, Neal R. Verfueth, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for Orion Energy Systems, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2008

/s/ Neal R. Verfueth

Neal R. Verfueth

President and Chief Executive Officer

Certification

I, Scott R. Jensen, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for Orion Energy Systems, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - c. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 14, 2008

/s/ Scott R. Jensen
Scott R. Jensen
Chief Financial Officer

Certification of CEO Pursuant To
18 U.S.C. Section 1350,
As Adopted Pursuant To
Section 906 Of The Sarbanes-Oxley Act Of 2002

In connection with the Quarterly Report of Orion Energy Systems, Inc., a Wisconsin corporation (the "Company"), on Form 10-Q for the period ended June 30, 2008, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Neal R. Verfuert, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, based on my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 14, 2008

/s/ Neal R. Verfuert

Neal R. Verfuert

President and Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Certification of CFO Pursuant To**18 U.S.C. Section 1350,****As Adopted Pursuant To****Section 906 Of The Sarbanes-Oxley Act Of 2002**

In connection with the Quarterly Report of Orion Energy Systems, Inc., a Wisconsin corporation (the "Company"), on Form 10-Q for the period ended June 30, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Scott R. Jensen, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, based on my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 14, 2008

/s/ Scott R. Jensen

Scott R. Jensen

Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.