

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-Q**

(Mark One)

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

For the quarterly period ended July 30, 2005

or

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

For the transition period from to

Commission file number: 0-30877

**Marvell Technology Group Ltd.**

(Exact name of registrant as specified in its charter)

**Bermuda**

(State or other jurisdiction of  
incorporation or organization)

**77-0481679**

(I.R.S. Employer  
Identification No.)

**Canon's Court, 22 Victoria Street, Hamilton HM 12, Bermuda**

(Address, including Zip Code, of Principal Executive Offices)

**(441) 296-6395**

(Registrant's telephone number, including area code)

**N/A**

(Former name, former address, and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Sections 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 if the registrant is an accelerated filer (as defined in Rule 12b-2 of the Exchange Act). ☒ Yes ☐ No

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

Shares Outstanding of the Registrant's Common Stock

Class	Outstanding at August 31, 2005
Common stock, \$0.002 par value	283,373,947

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**PART I: FINANCIAL INFORMATION**

**Item 1. Financial Statements**

**MARVELL TECHNOLOGY GROUP LTD.**  
**UNAUDITED CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(In thousands, except par value)**

	July 31, 2005	January 31, 2005
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 251,987	\$ 166,471
Short-term investments	595,077	493,543
Accounts receivable, net of allowances of \$2,984 and \$3,132	210,209	200,954
Inventories	114,187	128,889
Prepaid expenses and other current assets	72,457	15,144
Deferred income taxes	12,793	12,793
Total current assets	1,256,710	1,017,794
Property and equipment, net	210,427	161,770
Goodwill	1,480,225	1,480,225
Acquired intangible assets	40,899	80,411
Other noncurrent assets	52,700	48,762
Total assets	\$ 3,040,961	\$ 2,788,962
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 139,674	\$ 129,728
Accrued liabilities	21,216	20,604
Accrued employee compensation	32,844	32,136
Income taxes payable	4,150	3,195
Deferred income	17,660	15,938
Current portion of capital lease obligations	15,840	13,204
Total current liabilities	231,384	214,805
Capital lease obligations, net of current portion	21,678	11,590
Non-current income taxes payable	63,841	46,648
Other long-term liabilities	33,675	18,489
Total liabilities	350,578	291,532
Commitments and contingencies (Note 6)		
Shareholders' equity:		
Common stock, \$0.002 par value; 492,000 shares authorized; 282,447 and 277,602 shares issued and outstanding	564	555
Additional paid-in capital	3,086,751	3,035,200
Deferred stock-based compensation	(1,966)	(3,400)
Accumulated other comprehensive loss	(2,682)	(1,807)
Accumulated deficit	(392,284)	(533,118)
Total shareholders' equity	2,690,383	2,497,430
Total liabilities and shareholders' equity	\$ 3,040,961	\$ 2,788,962

See accompanying notes to unaudited condensed consolidated financial statements.

**MARVELL TECHNOLOGY GROUP LTD.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF INCOME**  
**(In thousands, except per share amounts)**

	Three Months Ended July 31,		Six Months Ended July 31,	
	2005	2004	2005	2004
Net revenue	\$ 390,454	\$ 297,154	\$ 755,224	\$ 566,731
Operating costs and expenses:				
Cost of goods sold (1)	183,646	140,905	358,890	268,741

Research and development (1)	73,164	64,036	145,062	127,308
Selling and marketing (1)	21,275	19,884	42,264	38,585
General and administrative (1)	8,340	7,662	15,078	14,499
Amortization of stock-based compensation	517	1,272	1,388	2,660
Amortization and write-off of acquired intangible assets and other	19,753	29,759	39,512	63,017
Total operating costs and expenses	306,695	263,518	602,194	514,810
Operating income	83,759	33,636	153,030	51,921
Interest and other income, net	4,384	1,616	7,996	3,288
Income before income taxes	88,143	35,252	161,026	55,209
Provision for income taxes	10,841	6,628	20,192	12,088
Net income	\$ 77,302	\$ 28,624	\$ 140,834	\$ 43,121
Net income per share:				
Basic	\$ 0.28	\$ 0.11	\$ 0.50	\$ 0.16
Diluted	\$ 0.25	\$ 0.10	\$ 0.45	\$ 0.15
Weighted average shares:				
Basic	280,916	267,647	279,855	266,063
Diluted	313,107	296,025	311,921	294,600

(1) Excludes amortization of stock-based compensation as follows:

Cost of goods sold	\$ 5	\$ 29	\$ 12	\$ 60
Research and development	368	765	879	1,585
Selling and marketing	54	206	268	423
General and administrative	90	272	229	592
	\$ 517	\$ 1,272	\$ 1,388	\$ 2,660

See accompanying notes to unaudited condensed consolidated financial statements.

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**MARVELL TECHNOLOGY GROUP LTD.**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(In thousands)

	Six Months Ended July 31,	
	2005	2004
<b>Cash flows from operating activities:</b>		
Net income	\$ 140,834	\$ 43,121
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	27,589	19,390
Amortization of stock-based compensation	1,388	2,660
Amortization and write-off of acquired intangible assets	39,512	39,516
Changes in assets and liabilities:		
Accounts receivable	(9,255)	(24,594)
Inventories	14,702	(5,322)
Prepaid expenses and other assets	(65,308)	2,318
Accounts payable	9,946	(23,532)
Accrued liabilities and other	1,048	8,293
Accrued employee compensation	708	7,027
Income taxes payable	18,148	10,654
Deferred income	1,722	1,622
Net cash provided by operating activities	181,034	81,153
<b>Cash flows from investing activities:</b>		
Purchases of short-term investments	(253,023)	(202,981)
Sales and maturities of short-term investments	150,524	81,094
Purchases of property and equipment	(37,841)	(13,739)
Purchases of technology licenses and other	—	(15,869)
Net cash used in investing activities	(140,340)	(151,495)
<b>Cash flows from financing activities:</b>		
Proceeds from the issuance of common stock	51,606	52,282
Principal payments on capital lease obligations	(6,784)	(5,398)
Net cash provided by financing activities	44,822	46,884
Net increase (decrease) in cash and cash equivalents	85,516	(23,458)
Cash and cash equivalents at beginning of period	166,471	173,969
Cash and cash equivalents at end of period	\$ 251,987	\$ 150,511
<b>Supplemental cash flow information:</b>		
Acquisition of property and equipment under capital lease obligations	\$ 19,797	\$ 2,475
Long-term assets under construction	\$ 14,750	\$ —

See accompanying notes to unaudited condensed consolidated financial statements.

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**MARVELL TECHNOLOGY GROUP LTD.**  
**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**1. The Company and its Significant Accounting Policies**

**The Company**

Marvell Technology Group Ltd. (the “Company”), a Bermuda company, was incorporated on January 11, 1995. The Company is a leading global semiconductor provider of high-performance analog, mixed-signal, digital signal processing and embedded microprocessor integrated circuits. The Company’s diverse product portfolio includes switching, transceivers, wireless, PC connectivity, gateways, communications controllers, storage and power management solutions that serve diverse applications used in business enterprise, consumer electronics and emerging markets.

**Basis of presentation**

The Company’s fiscal year is the 52- or 53-week period ending on the Saturday closest to January 31. In a 52-week year, each fiscal quarter consists of 13 weeks. The additional week in a 53-week year is added to the fourth quarter, making such quarter consist of 14 weeks. Fiscal years 2006 and 2005 are comprised of 52-weeks. For presentation purposes only, the financial statements and notes refer to January 31 as the Company’s year-end and April 30, July 31 and October 31 as the Company’s quarter-ends.

On February 25, 2004, the Board of Directors approved a 2 for 1 stock split of the Company’s common stock, to be effected pursuant to the issuance of additional shares. The stock split was subject to shareholder approval of an increase in the Company’s authorized share capital at the Company’s 2004 Annual General Meeting. On May 28, 2004, shareholders at the Company’s 2004 Annual General Meeting approved an increase in the authorized share capital by 250.0 million shares of common stock. Stock certificates representing one additional share for each share held were delivered on June 28, 2004 (payment date) to all shareholders of record at the close of business on June 14, 2004 (record date). All share and per share amounts in these condensed consolidated financial statements and related notes have been retroactively adjusted to reflect the stock split for all periods presented.

The unaudited interim condensed consolidated financial statements have been prepared on the same basis as the annual consolidated financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to fairly state the Company’s financial position as of July 31, 2005, the results of its operations for the three and six months ended July 31, 2005 and 2004, and its cash flows for the three and six months ended July 31, 2005 and 2004. These condensed consolidated financial statements and related notes are unaudited and should be read in conjunction with the Company’s audited financial statements and related notes included in the Company’s Annual Report on Form 10-K for the year ended January 31, 2005. The results of operations for the three and six months ended July 31, 2005 are not necessarily indicative of the results that may be expected for any other interim period or for the full fiscal year.

**Revenue recognition**

The Company recognizes revenue when persuasive evidence of an arrangement exists, delivery has occurred, the price is fixed or determinable and collection is reasonably assured. Under these criteria, product revenue is generally recognized upon shipment of product to customers, net of accruals for estimated sales returns and allowances. However, some of the Company’s sales are made through distributors under agreements allowing for price protection and rights of return on product unsold by the distributors. Product revenue on sales made through distributors with rights of return is deferred until the distributors sell the product to end customers. Additionally, collection is not deemed to be “reasonably assured” if customers receive extended payment terms. As a result, revenue on sales to customers with payment terms substantially greater than the Company’s normal payment terms is deferred and is recognized as revenue as the payments become due. Deferred revenue less the related cost of the inventories is reported as deferred income.

The provision for estimated sales returns and allowances on product sales is recorded in the same period the related revenues are recorded. These estimates are based on historical sales returns, analysis of credit memo data and other known factors. Actual returns could differ from these estimates.

The Company also enters into development agreements with some of its customers. Development revenue is recognized under the proportionate performance method, with the associated costs included in research and development expense. The Company estimates the proportionate performance of its development contracts based on an analysis of progress toward completion.

Revenue from licensed software is recognized when persuasive evidence of an arrangement exists and delivery has occurred, provided that the fee is fixed and determinable and collectibility is probable. Revenue from post-contract customer support and any other future deliverables is deferred and earned over the support period or as contract elements are delivered.

In arrangements that include a combination of hardware and software products that are also sold separately, where software is more than incidental and essential to the functionality of the product being sold, the Company follows the guidance in Emerging Issues Task Force (“EITF”) Issue No. 03-05, “Applicability of AICPA Statement of Position 97-2 to Non-Software Deliverables in an Arrangement Containing More-Than-Incidental Software.” In these situations, the Company accounts for the entire arrangement as a sale of software and software-related items and follows the revenue recognition criteria in Statement of Position (“SOP”) 97-2, “Software Revenue Recognition,” and related interpretations. Arrangements meeting the criteria are not material to the Company’s condensed consolidated financial statements.

The provisions of EITF Issue No. 00-21 “Accounting for Revenue Arrangements with Multiple Deliverables” apply to sales arrangements with multiple arrangements that include a combination of hardware, software and/or services. For multiple element arrangements, revenue is allocated to the separate elements based on fair value. If an arrangement includes undelivered elements that are not essential to the functionality of the delivered elements, the Company defers the fair value of the undelivered elements and the residual revenue is allocated to the delivered elements. If the undelivered elements are essential to the functionality of the delivered elements, no revenue is recognized. Undelivered elements typically are software warranty and maintenance services.

## Inventories

Inventories are stated at the lower of cost or market, cost being determined under the first-in, first-out method. Appropriate consideration is given to obsolescence, excessive levels, deterioration and other factors in evaluating net realizable value.

## Warranty accrual

The Company's products are generally subject to warranty, which provides for the estimated future costs of repair, replacement or customer accommodation upon shipment of the product in the accompanying statements of operations. The Company's products typically carry a standard 90-day warranty with certain exceptions in which the warranty period can range from one to five years. The warranty accrual is estimated based on historical claims compared to historical revenues and assumes that the Company will have to replace products subject to a claim. For new products, the Company uses a historical percentage for the appropriate class of product.

## Stock-based compensation

The Company's employee stock based compensation is accounted for in accordance with Accounting Principles Board Opinion No. 25 ("APB 25"), Accounting for Stock Issued to Employees, and complies with the disclosure provisions of Statement of Financial Accounting Standards No. 123 ("SFAS 123"), Accounting for Stock-Based Compensation. Expense associated with stock-based compensation is amortized on an accelerated basis over the vesting periods of the individual awards consistent with the method described in Financial Accounting Standards Board Interpretation No. 28 ("FIN 28"). Application of FIN 28 to awards that vest progressively over five years results in amortization of approximately 46% of the compensation in the first 12 months of vesting, 26% of the compensation in the second 12 months of vesting, 15% of the compensation in the third 12 months of vesting, 9% of the compensation in the fourth 12 months of vesting and 4% of the compensation in the fifth 12 months of vesting. The Company accounts for stock issued to non-employees in accordance with the provisions of SFAS 123 and Emerging Issues Task Force Consensus No. 96-18 ("EITF 96-18"), Accounting for Equity Instruments that are Offered to Other Than Employees for Acquiring or in Conjunction with Selling Goods or Services. Under SFAS 123 and EITF 96-18, stock option awards issued to non-employees are accounted for at their fair value using the Black-Scholes valuation method. The fair value of each non-employee stock award is remeasured at each period end until a commitment date is reached, which is generally the vesting date. The Company accounts for employee and director stock options in accordance with APB 25 and complies with the disclosure provisions of SFAS 123.

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In accordance with the requirements of the disclosure-only alternative of SFAS 123, set forth below are pro forma statements of operations data of the Company giving effect to the valuation of stock-based awards to employees using the Black-Scholes option pricing model instead of the guidelines provided by APB 25.

	Three Months Ended July 31,		Six Months Ended July 31,	
	2005	2004	2005	2004
Net income:				
As reported	\$ 77,302	\$ 28,624	\$ 140,834	\$ 43,121
Adjustments:				
Stock-based employee compensation expense included in reported net income, net of tax effects	607	1,272	1,478	2,660
Stock-based employee compensation expense determined under fair value based method for all awards, net of tax effects	(34,308)	(34,368)	(67,888)	(70,930)
Pro forma	\$ 43,601	\$ (4,472)	\$ 74,424	\$ (25,149)
Basic net income (loss) per share:				
As reported	\$ 0.28	\$ 0.11	\$ 0.50	\$ 0.16
Pro forma	\$ 0.16	\$ (0.02)	\$ 0.27	\$ (0.09)
Diluted net income (loss) per share:				
As reported	\$ 0.25	\$ 0.10	\$ 0.45	\$ 0.15
Pro forma	\$ 0.14	\$ (0.02)	\$ 0.24	\$ (0.09)

## Reclassifications

Certain amounts in the unaudited condensed consolidated financial statements have been reclassified to conform to the current period presentation.

## 2. Supplemental Financial Information

### Available-for-sale investments

The amortized cost and fair value of available-for-sale investments are presented in the following tables (in thousands):

	July 31, 2005			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Corporate debt securities	\$ 74,643	\$ —	\$ (1,052)	\$ 73,591
Auction rate securities	392,202	—	—	392,202
U.S. Federal, State, county and municipal debt securities	131,165	—	(1,881)	129,284
Short-term investments	\$ 598,010	\$ —	\$ (2,933)	\$ 595,077

  

	January 31, 2005			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Corporate debt securities	\$ 73,338	\$ 1	\$ (925)	\$ 72,414

Auction rate securities	298,101	—	—	298,101
U.S. Federal, State, county and municipal debt securities	124,073	3	(1,048)	123,028
Short-term investments	<u>\$ 495,512</u>	<u>\$ 4</u>	<u>\$ (1,973)</u>	<u>\$ 493,543</u>

Auction rate securities are securities that are structured with short-term reset dates of generally less than 90 days but with legally stated maturities in excess of 90 days. At the end of the reset period, investors can sell or continue to hold the securities at par. These securities are classified in the table below based on their legal stated maturity dates.

The contractual maturities of available-for-sale debt securities classified as short-term investments at July 31, 2005 are presented in the following table (in thousands):

	Amortized Cost	Estimated Fair Value
Due in one year or less	\$ 21,495	\$ 21,394
Due between one and five years	184,313	181,481
Due over five years	392,202	392,202
	<u>\$ 598,010</u>	<u>\$ 595,077</u>

The Company reclassified certain auction rate securities from cash and cash equivalents to short-term investments as of July 31, 2004 and for all prior periods presented. The reclassifications have no effect on previously disclosed net income (loss), shareholders' equity or operating cash flows. The following table summarizes the cash and cash equivalent and short-term investment balances as previously reported and as reclassified as of the six months ended July 31, 2004 (in thousands):

	Cash and Cash Equivalents		Short-Term Investments	
	As Reported	As Reclassified	As Reported	As Reclassified
Six months ended:				
July 31, 2004	\$ 298,141	\$ 150,511	\$ 184,277	\$ 331,907

As a result of these changes, the Company reclassified the following line items in the Statements of Cash Flows for the six months ended July 31, 2004 (in thousands):

	Cash Flow Activity	
	As Reported	As Reclassified
Six months ended July 31, 2004:		
Purchases of short-term investments	\$ (80,571)	\$ (202,981)
Sales and maturities of short-term investments	\$ 55,884	\$ 81,094
Net cash used in investing activities	\$ (54,295)	\$ (151,495)
Net increase (decrease) in cash and cash equivalents	\$ 73,742	\$ (23,458)

Included in the Company's available-for-sale investments are fixed income securities. As market yields increase, those securities with a lower yield-at-cost show a mark-to-market unrealized loss. All unrealized losses are primarily due to changes in interest rates and bond yields. The Company does not believe any unrealized losses represent an other-than temporary impairment based on its evaluation of available evidence. The following table shows the investments' gross unrealized losses and fair value, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position, at July 31, 2005 (in thousands):

	Continuous Unrealized Losses				Total	
	Less than 12 months		12 months or more		Fair Value	Unrealized Losses
	Fair Value	Unrealized Losses	Fair Value	Unrealized Losses		
Corporate debt securities	\$ 13,178	\$ (218)	\$ 60,413	\$ (834)	\$ 73,591	\$ (1,052)
U.S. Federal, State, county and municipal debt securities	54,740	(668)	74,544	(1,213)	129,284	(1,881)
Total temporarily impaired securities	<u>\$ 67,918</u>	<u>\$ (886)</u>	<u>\$ 134,957</u>	<u>\$ (2,047)</u>	<u>\$ 202,875</u>	<u>\$ (2,933)</u>

## Inventories

The components of inventory are presented in the following table (in thousands):

	July 31, 2005	January 31, 2005
Work-in-process	\$ 63,056	\$ 63,027
Finished goods	51,131	65,862
	<u>\$ 114,187</u>	<u>\$ 128,889</u>

## Property and equipment

	July 31, 2005	January 31, 2005
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**Property and equipment (in thousands):**

Machinery and equipment	\$	117,131	\$	105,237
Computer software		91,342		79,494
Furniture and fixtures		8,893		8,430
Leasehold improvements		11,800		11,354
Buildings		7,223		7,096
Land		51,500		51,500
Construction in progress		54,007		16,471
		341,896		279,582
Less: Accumulated depreciation and amortization		(131,469)		(117,812)
	\$	210,427	\$	161,770

**Goodwill and purchased intangible assets**

The carrying amount of the goodwill and intangible assets are as follows (in thousands):

	As of July 31, 2005			As of January 31, 2005		
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Purchased technology	\$ 394,715	\$ (353,932)	\$ 40,783	\$ 394,715	\$ (314,460)	\$ 80,255
Trade name	100	(100)	—	100	(80)	20
Customer contracts	200	(84)	116	200	(64)	136
Total identified intangible assets	395,015	(354,116)	40,899	395,015	(314,604)	80,411
Goodwill	1,828,131	(347,906)	1,480,225	1,828,131	(347,906)	1,480,225
Total intangible assets	\$ 2,223,146	\$ (702,022)	\$ 1,521,124	\$ 2,223,146	\$ (662,510)	\$ 1,560,636

Identified intangible assets consist of purchased technology, trade name, and customer contracts and related relationships. Purchased technology and customer contracts and related relationships are amortized on a straight-line basis over their estimated useful lives of five years. Trade name is amortized on a straight-line basis over its estimated useful life of two years. The aggregate amortization expense of identified intangible assets was \$39.5 million in both the first six months of fiscal 2006 and 2005. The estimated total annual amortization expenses of acquired intangible assets is \$38.0 million for the remaining six months of fiscal 2006, \$1.2 million for both fiscal 2007 and 2008 and \$0.5 million for fiscal 2009.

In the first quarter of fiscal 2005, the Company entered into a technology license and non-assert agreement with a licensor pursuant to which the parties agreed to not take action against each other relative to the use of certain technologies. Under this arrangement, the Company agreed to make a one-time payment of \$13.5 million, which was included in amortization and write-off of acquired intangible assets and other. In the second quarter of fiscal 2005, the Company entered into a technology license and non-assert agreement with another company pursuant to which the parties agreed to not take action against each other relative to the use of certain technologies. Under this arrangement, the Company agreed to make a one-time payment of \$25.0 million, of which \$10.0 million related to past use of certain technologies is included in amortization and write-off of acquired intangible assets and other, while the remainder of the amount has been capitalized as licensed technology in other noncurrent assets and will be amortized to cost of goods sold over its estimated useful life of five years.

**Other long-term liabilities**

The following table presents details of other long-term liabilities (in thousands):

	July 31, 2005	January 31, 2005
Long-term facilities consolidation charge	\$ 3,419	\$ 3,793
Accrued severance	12,282	11,196
Long-term assets under construction and other	17,974	3,500
	<u>\$ 33,675</u>	<u>\$ 18,489</u>

**Warranty accrual**

The following table presents changes in the warranty accrual during the six months ended July 31, 2005 and 2004, (in thousands):

	July 31, 2005	July 31, 2004
Warranty accrual (included in accrued liabilities):		
Beginning balance	\$ 1,571	\$ 812
Warranties issued	1,942	513
Settlements	(332)	(528)
Ending balance	<u>\$ 3,181</u>	<u>\$ 797</u>

**Net income per share**

The Company reports both basic net income per share, which is based upon the weighted average number of common shares outstanding excluding contingently issuable or returnable shares, and diluted net income per share, which is based on the weighted average number of common shares outstanding and dilutive potential common shares. The computations of basic and diluted net income per share are presented in the following table (in thousands, except per share amounts):



	Three Months Ended July 31,		Six Months Ended July 31,	
	2005	2004	2005	2004
<b>Numerator:</b>				
Net income	\$ 77,302	\$ 28,624	\$ 140,834	\$ 43,121
<b>Denominator:</b>				
Weighted average shares of common stock outstanding	280,916	267,689	279,855	266,123
Less: unvested common shares subject to repurchase	—	(42)	—	(60)
Weighted average shares — basic	280,916	267,647	279,855	266,063
<b>Effect of dilutive securities</b>				
Unvested common shares subject to repurchase	—	42	—	60
Warrants	823	648	813	643
Contingently issuable shares	274	1,023	341	1,023
Common stock options and other	31,094	26,665	30,912	26,811
Weighted average shares — diluted	313,107	296,025	311,921	294,600
Basic net income per share	\$ 0.28	\$ 0.11	\$ 0.50	\$ 0.16
Diluted net income per share	\$ 0.25	\$ 0.10	\$ 0.45	\$ 0.15

Options to purchase 171,218 common shares at a weighted average exercise price of \$41.79 have been excluded from the computation of diluted net income per share for the three months ended July 31, 2005 and options to purchase 336,260 common shares at a weighted average exercise price of \$39.37 have been excluded from the computation of diluted net income per share for the six months ended July 31, 2005 because their exercise prices were greater than the average market price of the common shares for the period.

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Options to purchase 1,007,946 common shares at a weighted average exercise price of \$26.79 have been excluded from the computation of diluted net income per share for the three months ended July 31, 2004 and options to purchase 1,146,242 common shares at a weighted average exercise price of \$26.18 have been excluded from the computation of diluted net income per share for the six months ended July 31, 2004 because their exercise prices were greater than the average market price of the common shares for the period.

### Comprehensive income

The components of comprehensive income, net of tax, are presented in the following table (in thousands):

	Three Months Ended July 31,		Six Months Ended July 31,	
	2005	2004	2005	2004
Net income	\$ 77,302	\$ 28,624	\$ 140,834	\$ 43,121
Other comprehensive loss:				
Unrealized loss on available-for-sale investments and other	(145)	(619)	(875)	(2,321)
Total comprehensive income	\$ 77,157	\$ 28,005	\$ 139,959	\$ 40,800

Accumulated other comprehensive income, as presented on the accompanying condensed consolidated balance sheets, consists of the unrealized gains and losses on available-for-sale investments and other, net of tax.

### 3. Acquisitions

On June 27, 2003, the Company completed the acquisition of RADLAN Computer Communications Ltd. (RADLAN). Upon the closing, the Company issued a total of 2,635,284 shares of common stock (valued at \$24.0 million) and assumed 313,926 vested options (valued at \$2.9 million). In addition, the Company issued warrants to purchase 1,086,366 shares of its common stock at an exercise price of \$9.21 per share (valued at \$7.5 million). On October 6, 2003, the Company issued an additional 2,325,582 shares valued at \$47.4 million to former RADLAN shareholders. On December 8, 2003, certain milestones were achieved and 1,023,256 shares of common stock valued at \$19.6 million were earned and issued to former RADLAN shareholders. Additionally, 1,023,256 shares of the Company's common stock were reserved for future issuance over a one-year period to former RADLAN shareholders, which was dependent upon the Company's revenues from certain products for the year ended January 31, 2005 compared to the year ended January 31, 2004. As of July 31, 2005, all 1,023,256 shares reserved for future issuance to former RADLAN shareholders were issued. Certificates for 614,624 shares earned through August 1, 2004 were issued on December 28, 2004. The remaining 408,632 shares earned subsequent to August 1, 2004 were issued on July 1, 2005.

### 4. Facilities Consolidation Charge

During fiscal 2003, the Company recorded a \$19.6 million charge associated with costs of consolidation of its facilities. These charges included \$12.6 million in lease abandonment charges relating to the consolidation of its three facilities in California into one location. The lease abandonment charge included the remaining lease commitments for these facilities reduced by the estimated sublease income throughout the duration of the lease term. The Company incurred charges of \$1.0 million during the quarter ended April 30, 2002, as a result of duplicate lease and other costs associated with the dual occupation of its current and abandoned facilities. The facilities consolidation charge also included \$6.0 million associated with the write-down of certain property and leasehold improvements related to the abandoned facilities, which reduced the carrying amount of the impaired assets. During the quarter ended July 31, 2003, the Company subleased the abandoned facilities. Actual sublease income approximated the estimated sublease income.

As of July 31, 2005, cash payments of \$9.5 million, net of sublease income, had been made in connection with these charges relating to the consolidation of the Company's facilities in California. Approximately \$4.0 million is accrued for this facilities consolidation charge as of July 31, 2005, of which \$0.6 million is the current portion included in accrued liabilities, while the long-term portion, totaling \$3.4 million, is payable through 2010 and is included in other long-term liabilities.

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A summary of the facilities consolidation accrual related to the fiscal 2003 charge during the six months ended July 31, 2005 is as follows (in thousands):

	Balance at January 31, 2005	Net Cash Payments	Non-Cash Charges	Remaining Liability at July 31, 2005
Accrued losses on abandoned leased facilities:				
Non-cancelable lease commitments	\$ 5,053	\$ (1,072)	\$ —	\$ 3,981

During the third quarter of fiscal 2005, the Company recorded a facility consolidation charge of \$2.4 million relating to costs associated with consolidating and relocating operations in Israel. The charges included \$2.3 million associated with the write-down of certain property and leasehold improvements related to the abandoned facilities, which reduced the carrying amount of the impaired assets, and \$0.1 million of remaining lease commitments for these facilities.

## 5. Recent Accounting Pronouncements

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004), “Share-Based Payment” (“FAS 123R”) that addresses the accounting for share-based payment transactions in which an enterprise receives employee services in exchange for either equity instruments of the enterprise or liabilities that are based on the fair value of the enterprise’s equity instruments or that may be settled by the issuance of such equity instruments. The statement eliminates the ability to account for share-based compensation transactions using the intrinsic value method as prescribed by Accounting Principles Board, or APB, Opinion No. 25, “Accounting for Stock Issued to Employees,” and generally requires that such transactions be accounted for using a fair-value-based method and recognized as expenses in the Company’s consolidated statement of income. The statement requires companies to assess the most appropriate model to calculate the value of the options. The Company currently uses the Black-Scholes option pricing model to value options and is currently assessing which model it may use in the future under the statement and may deem an alternative model to be the most appropriate. The use of a different model to value options may result in a different fair value than the use of the Black-Scholes option pricing model. In addition, there are a number of other requirements under the new standard that will result in differing accounting treatment than currently required. These differences include, but are not limited to, the accounting for the tax benefit on employee stock options and for stock issued under our employee stock purchase plan. In addition to the appropriate fair value model to be used for valuing share-based payments, we will also be required to determine the transition method to be used at date of adoption. The allowed transition methods include prospective and retroactive adoption options. Under the retroactive options, prior periods may be restated either as of the beginning of the year of adoption or for all periods presented. The prospective method requires that compensation expense be recorded for all unvested stock options and restricted stock at the beginning of the first quarter of adoption of FAS 123R, while the retroactive methods would record compensation expense for all unvested stock options and restricted stock beginning with the first period restated. The effective date of the new standard for the Company’s consolidated financial statements is its quarter ended April 30, 2006.

Upon adoption, this statement will have a significant impact on the Company’s consolidated financial statements because the Company will be required to expense the fair value of its stock option grants and stock purchases under its employee stock option and stock purchase plans rather than disclose the impact on its consolidated net income within the footnotes as is the Company’s current practice (see Note 1). The amounts disclosed within the Company’s footnotes are not necessarily indicative of the amounts that will be expensed upon the adoption of FAS 123R. Compensation expense calculated under FAS 123R may differ from amounts currently disclosed within the Company’s footnotes based on changes in the fair value of its common stock, changes in the number of options granted or the terms of such options, the treatment of tax benefits and changes in interest rates or other factors. In addition, upon adoption of FAS 123R the Company may choose to use a different valuation model to value the compensation expense associated with employee stock options.

In March 2005, the SEC issued Staff Accounting Bulletin No. 107 (“SAB 107”). SAB 107 includes interpretive guidance for the initial implementation of FAS 123R. The Company will apply the principles of SAB 107 in conjunction with its adoption of FAS 123R.

In May 2005, the FASB issued Statement of Financial Accounting Standards No. 154 (“SFAS 154”), Accounting Changes and Error Corrections, a replacement of APB Opinion No. 20 and Statement No. 3. The statement applies to all voluntary changes in accounting principle and changes the requirements for the accounting for and reporting of a change in accounting principle. SFAS 154 requires retrospective application to prior periods’ financial statements of a voluntary change in accounting principle unless it is

impracticable. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. The Company does not expect the adoption of SFAS 154 will have a material impact on its financial position and results of operations.

## 6. Commitments and Contingencies

### Purchase Commitments

The Company’s manufacturing relationships with its foundries allow for the cancellation of all outstanding purchase orders, but requires repayment of all expenses incurred through the date of cancellation. As of July 30, 2005, foundries had incurred approximately \$122.6 million of manufacturing expenses on the Company’s outstanding purchase orders. As of July 30, 2005, the Company also had approximately \$42.8 million of other outstanding non-cancelable purchase orders for capital purchase obligations.

On February 28, 2005 and as amended on March 31, 2005, the Company entered into an agreement with a foundry to reserve and secure foundry fabrication capacity for a fixed number of wafers at agreed upon prices for a period of five and half years beginning on July 1, 2005. In return, the Company agreed to pay the foundry \$174.2 million over a period of eighteen months. The amendment extends the term of the agreement and the agreed upon pricing terms until December 31, 2015. As of July 31, 2005, payments totaling \$60.0 million (included in prepaid expenses and other current assets) have been made and approximately \$1.8 million of the prepayment has been amortized as of the six months ending July 31, 2005. At July 31, 2005, remaining commitments under the agreement were approximately \$114.2 million.

### Contingencies

On July 31, 2001, a putative class action suit was filed against two investment banks that participated in the underwriting of the Company’s initial public offering, or IPO, on June 29, 2000. That lawsuit, which did not name the Company or any of its officers or directors as defendants, was filed in the United

States District Court for the Southern District of New York. Plaintiffs allege that the underwriters received “excessive” and undisclosed commissions and entered into unlawful “tie-in” agreements with certain of their clients in violation of Section 10(b) of the Securities Exchange Act of 1934. Thereafter, on September 5, 2001, a second putative class action was filed in the Southern District of New York relating to the Company’s IPO. In this second action, plaintiffs named three underwriters as defendants and also named as defendants the Company and two of its officers, one of whom is also a director. Relying on many of the same allegations contained in the initial complaint in which the Company was not named as a defendant, plaintiffs allege that the defendants violated various provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. In both actions, plaintiffs seek, among other items, unspecified damages, pre-judgment interest and reimbursement of attorneys’ and experts’ fees. These two actions relating to the Company’s IPO have been consolidated with hundreds of other lawsuits filed by plaintiffs against approximately 55 underwriters and approximately 300 issuers across the United States. A consolidated amended class action complaint against the Company and its two officers was filed on April 19, 2002. Subsequently, defendants in the consolidated proceedings moved to dismiss the actions. In February 2003, the trial court issued its ruling on the motions, granting the motions in part, and denying them in part. Thus, the cases may proceed against the underwriters and the Company as to alleged violations of section 11 of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934. Claims against the individual officers have been voluntarily dismissed without prejudice by agreement with plaintiffs. On June 26, 2003, the plaintiffs announced that a settlement among plaintiffs, the issuer defendants and their directors and officers, and their insurers had been structured, a part of which the insurers for all issuer defendants would guarantee up to \$1 billion to investors who are class members, depending upon plaintiffs’ success against non-settling parties. The Company’s board of directors has approved the proposed settlement, which will result in the plaintiffs’ dismissing the case against the Company and granting releases that extend to all of its officers and directors. Definitive settlement documentation was completed in early June 2004 and first presented to the court on June 14, 2004. On February 15, 2005, the court issued an opinion preliminarily approving the proposed settlement, contingent upon certain modifications being made to one aspect of the proposed settlement — the proposed “bar order”. The court ruled that it had no authority to deviate from the wording of the Plaintiff’s Securities Law Reform Act of 1995 and that any bar order that may issue should the proposed settlement be finally approved must be limited to the express wording of 15 U.S.C. section 78u-4(f)(7)(A). On May 2, 2005 the issuer defendants and plaintiffs jointly submitted an amendment to the settlement agreement conforming the language of the settlement agreement with the court’s February 15, 2005 ruling regarding the bar order. The court on August 31, 2005 issued an order preliminarily approving the settlement and setting a public hearing on its fairness for April 24, 2006 due to difficulties in mailing the required notice to class members. Based on currently available information, the Company does not believe that the ultimate disposition of this lawsuit will have a material adverse impact on its business, results of operations, financial condition or cash flows.

On September 12, 2001, Jasmine Networks, Inc. (“Jasmine”) filed a lawsuit in the Santa Clara County Superior Court asserting claims against Company personnel and the Company for improperly obtaining and using information and technologies during the course of the negotiations with Company personnel regarding the potential acquisition of certain Jasmine assets by the Company. The lawsuit claims that Company officers improperly obtained and used such information and technologies after the Company signed a non-disclosure agreement with Jasmine. The Company believes the claims asserted against its officers and it are without merit and the Company intends to defend all claims vigorously.

On June 21, 2005, the Company filed a cross complaint in the above disclosed action in the Santa Clara County Superior Court asserting claims against Jasmine and unnamed Jasmine officers and employees. Among other actions, the cross complaint alleges that Jasmine and its personnel engaged in fraud in connection with their effort to sell to Marvell technology that Jasmine and its personnel wrongfully obtained from a third party in violation of such third party’s rights. The cross complaint seeks declaratory judgment that Marvell’s technology does not incorporate any of Jasmine’s alleged technology. The cross complaint seeks further declaratory judgment that Jasmine and its personnel misappropriated certain aspects of Jasmine’s alleged technology. The Company intends to prosecute the cross complaint against Jasmine and its personnel vigorously. The Company cannot predict the outcome of this litigation. Any litigation could be costly, divert Company management’s attention and could have a material adverse effect on its business, results of operations, financial condition or cash flows.

On March 11, 2004, Trinity Technologies, Inc. (“Trinity”) filed a lawsuit against the Company’s subsidiary, Marvell Semiconductor, Inc. (“MSI”), in the Superior Court of California, alleging violations of the California Independent Wholesale Sales Representatives Contractual Relations Act of 1990, as well as breach of contract, breach of the implied covenant of good faith and fair dealing and fraud in connection with the termination by MSI of certain agreements it had entered into with Trinity. The complaint seeks declaratory relief, \$25.0 million in monetary damages, special and punitive damages and trebling of damages as well as costs and attorneys’ fees. By order entered January 25, 2005, the court granted the Company’s motion for summary adjudication and dismissed one claim for violation of a statute, in which plaintiff sought damages exceeding \$12 million. On May 2, 2005, Trinity filed an amended complaint. On August 29, 2005, the case was settled and a dismissal of the entire action with prejudice is to be entered. The terms of the settlement are confidential, but it will have no material adverse effect on the Company’s business, results of operations, financial condition or cash flows.

On October 7, 2004, Realtek Semiconductor Corporation (“Realtek”) filed a lawsuit against Marvell Technology Group Ltd. (“MTGL”) and MSI in the U.S. District Court for the Northern District of California (“the Court”), alleging that certain Marvell products infringe one of Realtek’s patents. The parties stipulated to the dismissal of MTGL, leaving the lawsuit between Realtek and MSI. Certain of the accused Marvell products were made and sold before Realtek’s patent was filed. On July 15, 2005, MSI filed a motion requesting summary judgment that Realtek’s patent was invalid. In response to that motion, on July 28, 2005 Realtek provided MSI with a Covenant Not To Sue for patent infringement of the Realtek patent in-suit as against any Marvell product now made or ever made. In response to Realtek’s Covenant Not to Sue and a request by Realtek, on August 12, 2005, the Court entered an order dismissing the underlying patent infringement action, but allowing MSI to file a motion seeking fees, costs, and other sanctions. On August 26, 2005 MSI filed a motion against Realtek seeking fees, costs, and other sanctions. The hearing for this motion has not yet occurred.

On October 11, 2004 Realtek filed a lawsuit similar to the Northern District lawsuit in Taiwan. On December 17, 2004, Marvell International Ltd. initiated a patent infringement action in the United States International Trade Commission (“ITC”), alleging that Realtek infringes two Marvell patents. Effective August 17, 2005, the parties entered a Confidential Settlement Agreement. On August 29, 2005, Realtek publicly announced that it will drop the case it initiated in Taiwan. On August 31, 2005, Marvell filed a motion initiating the dismissal of the case it brought in the ITC. On September 2, 2005 Realtek filed the necessary papers in the courts in Taiwan to dismiss its Taiwan lawsuit against Marvell. The terms of the settlement are confidential, but it will have no material adverse effect on the Company’s business, results of operations, financial condition or cash flows.

The Company is also party to other claims and litigation proceedings arising in the normal course of business. Although the legal responsibility and financial impact with respect to such claims and litigation cannot currently be ascertained, the Company does not believe that these matters will result in the payment of monetary damages, net of any applicable insurance proceeds that, in the aggregate, would be material in relation to the Company’s consolidated financial position or results of operations. There can be no assurance that these matters will be resolved without costly litigation, in a manner that is not adverse to the Company’s financial position, results of operations or cash flows, or without requiring royalty payments in the future, which may adversely impact gross margins.

## 7. Related Party Transactions

During the six months ended July 31, 2005 and 2004, the Company incurred approximately \$0.4 million and \$0.4 million, respectively, of expenses from an unrelated third-party entity, ACM Aviation, Inc. ("ACM"), for charter aircraft services provided to MSI. The aircraft provided by ACM to the Company for such services is owned by Estopia Air LLC ("Estopia Air"). The Company's Chairman, President and Chief Executive Officer, Dr. Sehat Sutardja, Ph.D, and the Company's Director, Secretary and Executive Vice President, Weili Dai, through their control and ownership of Estopia Air, own the aircraft provided by ACM. The expenses incurred were the result of the Company's use of the aircraft for business travel purposes. The cost of such usage to the Company was determined based on market prices.

On February 19, 2005, the Company, through its subsidiaries MSI and Marvell Asia Pte. Ltd., entered into a development agreement with MagnetoX ("MagnetoX"). The development agreement is on substantially similar terms as other development agreements with other third parties. The Company recognized approximately \$0.8 million of revenue from the development agreement and product revenue during the first six months fiscal 2006. Total revenue expected to be recognized from the development agreement is \$1.0 million. Herbert Chang, one of the Company's directors, is Chairman of the Board, President and Chief Executive Officer of MagnetoX. Estopia LLC ("Estopia") is also a shareholder of MagnetoX. Dr. Sehat Sutardja, Ph.D. and Weili Dai, through their ownership and control of Estopia, are indirect shareholders of MagnetoX.

On August 19, 2005, the Company, through its subsidiaries MSI and Marvell International Ltd., entered into a License and Manufacturing Services Agreement (the "License Agreement") with C2 Microsystems, Inc. ("C2Micro"). The License Agreement is on substantially similar terms as other license and manufacturing services agreements with other third parties. Dr. Sehat Sutardja, Ph.D., and Weili Dai, through their ownership and control of Estopia are indirect shareholders of C2Micro. Herbert Chang, through his ownership and control of C-Squared venture entities, is also an indirect shareholder of C2Micro. Dr. Pantas Sutardja, Ph.D., the Company's Chief Technology Officer, is also a shareholder in C2Micro.

## 8. Subsequent Event

On August 29, 2005, the Company announced that it had signed a definitive agreement to acquire the hard disk and tape drive controller semiconductor business of QLogic Corporation. Under terms of the agreement, the Company will issue a combination of \$180.0 million in cash and shares of the Company's common stock valued at \$45.0 million for total consideration of \$225.0 million. The Company may record a one-time charge for purchased in-process research and development expenses related to the acquisition. The amount of that charge, if any, and the period in which it would be recorded has not yet been determined.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

*This Form 10-Q contains forward-looking statements within the meaning of Section 21E of the Securities Exchange Act of 1934 and Section 27A of the Securities Act of 1933. These forward-looking statements include, but are not limited to, statements regarding the utilization of our products in a wide array of enterprise and consumer applications, our expectations as to growth in revenue from our products and reasons for such expectations, sources of revenue, our expectations as to research and development, sales and marketing and general and administrative expense, potential fluctuations in our gross margin and gross profit, the impact, if any, of legal proceedings, customer concentration and expected revenue concentration from Asia, working capital needs, our expectations as to the number of days in inventory, accounts receivable, inventory, the rate of new orders, adequacy of capital resources, funding of capital requirements, factors impacting our capital requirements, liquidity, expected impact of our contractual obligations, the use of recently purchased land, commitments and costs to improve the buildings on recently purchased land, the impact of the adoption of accounting pronouncements, future acquisitions, strategic alliances or joint ventures, sources of competition, future design features and uses of our current and future products, strategic relationships with customers, the need for new and upgraded operational and financial systems, procedures and controls, reasons for decreases in gross profits, and payment of income taxes in foreign jurisdictions. These forward-looking statements are subject to risks and uncertainties which may cause actual results to differ materially from those expressed or implied by the forward-looking statements. These risks and uncertainties include, but are not limited to the impact of international conflict and continued economic downturns in either domestic or foreign markets, our dependence upon the hard disk drive industry and integrated circuit industry, both of which are highly cyclical, our dependence on a small number of customers, our ability to develop new and enhanced products, our success in integrating businesses we acquire and the impact such acquisitions may have on our operating results, our ability to estimate customer demand accurately, the success of our strategic relationships with customers, our reliance on independent foundries and subcontractors for the manufacture, assembly and testing of our products, our ability to manage future growth, the development and evolution of markets for our integrated circuits, our ability to protect our intellectual property, the impact of any change in our application of the United States federal income tax laws and the loss of any beneficial tax treatment that we currently enjoy, the outcome of pending or future litigation and other risks discussed in the section of this Form 10-Q titled "Additional Factors That May Affect Future Results." Forward-looking statements in this Form 10-Q are identified by words such as "believes," "expects," "anticipates," "intends," "estimates," "should," "will," "may" and similar expressions. In addition, any statements which refer to expectations, projections or other characterizations of future events or circumstances are forward-looking statements. We undertake no obligation to release publicly the results of any revisions to these forward-looking statements that could occur after the filing of this Form 10-Q. You are urged to review carefully our various disclosures in this Form 10-Q and our other reports filed with the SEC, including our Annual Report on Form 10-K for the year ended January 31, 2005, that attempt to advise you of the risks and factors that may affect our business.*

## Overview

We are a leading global semiconductor provider of high-performance analog, mixed-signal, digital signal processing and embedded microprocessor integrated circuits. Our diverse product portfolio includes switching, transceiver, wireless, PC connectivity, gateways, communications controller and storage and power management solutions that serve diverse applications used in business enterprises, consumer electronics and emerging markets. We were founded in 1995. We are a fabless integrated circuit company, which means that we rely on independent, third-party contractors to perform manufacturing, assembly and test functions. This approach allows us to focus on designing, developing and marketing our products and significantly reduces the amount of capital we need to invest in manufacturing products. In January 2001, we acquired Galileo Technology Ltd. (now Marvell Semiconductor Israel Ltd, or MSIL) in a stock-for-stock transaction for aggregate consideration of approximately \$2.5 billion. MSIL develops high-performance internetworking and switching

products for the broadband communications market. The acquisition was accounted for using the purchase method of accounting, and the operating results of MSIL have been included in our consolidated financial statements from the date of acquisition. In June 2003, we acquired RADLAN Computer Communications Ltd. (RADLAN), a leading provider of embedded networking software, for aggregate consideration to date of approximately \$134.7 million.

We offer our customers a wide range of high-performance analog, mixed-signal, digital signal processing and embedded microprocessor integrated circuits. Our products can be utilized in a wide array of enterprise applications including hard disk drives, high-speed networking equipment, PCs, wireless solutions for SOHO and residential gateway solutions, and consumer applications such as cell phones, printers, digital cameras, MP3 devices, speakers, game consoles and PDAs.

Our sales have historically been made on the basis of purchase orders rather than long-term agreements. In addition, the sales cycle for our products is long, which may cause us to experience a delay between the time we incur expenses and the time revenue is generated from these expenditures. We expect to increase our research and development, selling and marketing, and general and

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administrative expenditures as we seek to expand our operations. We anticipate that the rate of new orders may vary significantly from quarter to quarter. Consequently, if anticipated sales and shipments in any quarter do not occur when expected, expenses and inventory levels could be disproportionately high, and our operating results for that quarter and future quarters may be adversely affected.

For the past four years, we have been able to report significant sequential quarterly growth in revenues; however, our revenues have grown at a slower sequential rate since the third quarter of fiscal 2005 compared to the double digit sequential growth rate of the previous eleven quarters. This slower growth rate is due, among other things, to the larger base of revenue and market share we now enjoy, which makes continuation of double digit revenue growth on a sequential quarterly basis unlikely in the current market.

Our fiscal year is the 52- or 53-week period ending on the Saturday closest to January 31. In a 52-week year, each fiscal quarter consists of 13 weeks. The additional week in a 53-week year is added to the fourth quarter, making such quarter consist of 14 weeks. Fiscal year 2006 is comprised of 52 weeks. For presentation purposes, our financial statements and notes and this "Management's Discussion and Analysis of Financial Condition and Results of Operations" refer to January 31 as our year-end and April 30, July 31 and October 31 as our quarter-ends.

### Critical Accounting Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates, and such differences could affect the results of operations reported in future periods. For a description of our critical accounting policies and estimates, please refer to the "Critical Accounting 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 January 31, 2005, as filed with the U.S. Securities and Exchange Commission. There have been no material changes in any of our accounting policies since January 31, 2005.

### Results of Operations

The following table sets forth information derived from our unaudited condensed consolidated statements of operations expressed as a percentage of net revenue:

	Three Months Ended July 31,		Six Months Ended July 31,	
	2005	2004	2005	2004
Net revenue	100.0%	100.0%	100.0%	100.0%
Operating costs and expenses:				
Cost of goods sold*	47.0	47.4	47.5	47.4
Research and development*	18.7	21.6	19.2	22.5
Selling and marketing*	5.5	6.7	5.6	6.8
General and administrative*	2.1	2.6	2.0	2.6
Amortization of stock-based compensation	0.1	0.4	0.2	0.5
Amortization and write-off of acquired intangible assets and other	5.1	10.0	5.2	11.1
Total operating costs and expenses	78.5	88.7	79.7	90.9
Operating income	21.5	11.3	20.3	9.1
Interest and other income, net	1.1	0.5	1.0	0.6
Income before income taxes	22.6	11.8	21.3	9.7
Provision for income taxes	2.8	2.2	2.7	2.1
Net income	19.8%	9.6%	18.6%	7.6%

\* Excludes stock-based compensation

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### Three and Six Months Ended July 31, 2005 and 2004

#### Net Revenue

Three Months Ended July 31,	Percent	Six Months Ended July 31,	Percent
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	2005	2004	Change	2005	2004	Change
Net revenue	\$ 390,454	\$ 297,154	31.4%	\$ 755,224	\$ 566,731	33.3%

Net revenue consists primarily of product revenue from sales of our semiconductor devices, and to a much lesser extent, development revenue derived from development contracts with our customers. Net revenue is gross revenue, net of accruals for estimated sales returns and allowances. The increases in net revenue in the second quarter of fiscal 2006 compared to the second quarter of fiscal 2005 reflects a significant increase in volume shipments of our storage System-on-Chips, or SOC, which increased \$73.0 million, wireless products, which increased \$15.5 million, and system controllers, which increased \$6.2 million. The increases in net revenue in the first six months of fiscal 2006 compared to the first six months of fiscal 2005 reflects a significant increase in volume shipments of our storage SOC, which increased \$136.9 million, wireless products, which increased \$33.0 million, and system controllers, which increased \$12.6 million. The increases in net revenue are primarily due to increased acceptance of our storage SOC products by hard disk drive manufacturers, increased market share gains in the PC desktop and consumer product markets with our storage SOC products and volume shipments of our wireless products and system controllers from new design wins. Revenue derived from development contracts increased in absolute dollars during the second quarter and first six months of fiscal 2006 as compared to the second quarter and first six months of fiscal 2005, but represented less than 10% of net revenue for each period.

We expect that revenue for fiscal 2006 will continue to increase on a quarterly basis from the level of revenue that we have previously reported in fiscal 2006 due to increases in shipments and volume production of our storage SOC into the PC desktop and consumer product markets, increases in shipments of our wireless products from new consumer market design wins and increases in shipments of our system controllers and Gigabit Ethernet products.

A portion of our revenue is concentrated with a relatively small number of customers. For the three and six months ended July 31, 2005, three customers each represented more than 10% of our net revenues. For the three months ended July 31, 2005, three customers combined for a total of 46% of our net revenue while for the six months ended July 31, 2005, three customers accounted for a total of 45% of our net revenue. For both of the three and six months ended July 31, 2004, four customers each represented more than 10% of our net revenue for a combined total of 51% of our net revenue. In addition, one distributor accounted for approximately 11% and 14% of our net revenue in the three and six months ended July 31, 2005 and 2004, respectively.

Because we sell our products to many OEM manufacturers who have manufacturing operations located in Asia, a significant percentage of our sales are made to customers located outside of the United States. Sales to customers located in Asia represented 94% and 92% for both of the three and six months ended July 31, 2005 and July 31, 2004, respectively. The rest of our sales are to customers located in the United States and other geographic regions. We expect that a significant portion of our revenue will continue to be represented by sales to our customers in Asia. Substantially all of our sales to date have been denominated in United States dollars.

#### *Cost of Goods Sold*

	Three Months Ended July 31,		Percent	Six Months Ended July 31,		Percent
	2005	2004	Change	2005	2004	Change
Cost of goods sold	\$ 183,646	\$ 140,905	30.3%	\$ 358,890	\$ 268,741	33.5%
% of net revenue	47.0%	47.4%		47.5%	47.4%	
Gross margin	53.0%	52.6%		52.5%	52.6%	

Cost of goods sold consists primarily of the costs of manufacturing, assembly and test of integrated circuit devices and related overhead costs, and compensation and associated costs relating to manufacturing support, logistics and quality assurance personnel. Gross margin is calculated as net revenue less cost of goods sold as a percentage of net revenue. The increase in gross margin percentage in the three months ended July 31, 2005 compared to the three months ended July 31, 2004 was primarily due to a product mix change, which included production ramps of our storage SOC and wireless products as well as product cost savings resulting from manufacturing efficiencies and better yields from our foundries. Gross margin percentage remained consistent in the first six months of fiscal 2006 compared to the first six months of fiscal 2005. The costs associated with contracted development work are included in research and development expense. Our gross margins are primarily driven by product mix; however, our margins may fluctuate in

future periods due to, among other things, increased pricing pressures from our customers and competitors, particularly in the consumer product markets that we are targeting, charges for obsolete or potentially excess inventory, changes in the costs charged by our manufacturing and test subcontractors and changes in the amount of development revenue recognized.

#### *Research and Development*

	Three Months Ended July 31,		Percent	Six Months Ended July 31,		Percent
	2005	2004	Change	2005	2004	Change
Research and development	\$ 73,164	\$ 64,036	14.3%	\$ 145,062	\$ 127,308	13.9%
% of net revenue	18.7%	21.6%		19.2%	22.5%	

Research and development expense consists primarily of compensation and associated costs relating to development personnel, prototype costs, depreciation and amortization expense, and allocated occupancy costs for these operations. The increase in research and development expense in absolute dollars in the second quarter of fiscal 2006 compared to the second quarter of fiscal 2005 was primarily due to the net hiring of 154 additional development personnel, which contributed to an increase in salary and related costs of \$6.1 million. Additionally, we incurred increased costs for depreciation and amortization expense of \$2.3 million arising from purchases of property, equipment and technology licenses, increased costs of \$1.2 million for patent filing fees to protect newly developed intellectual property and expenses of \$1.7 million related to our expanding operations. Offsetting the increase in research and development expense was decreased costs of \$2.2 million for prototype and related product tape-out costs, primarily due to the timing and quantity of tape-outs in the comparable quarters.

The increase in research and development expense in absolute dollars in the first six months of fiscal 2006 compared to the first six months of fiscal 2005 was primarily due to the net hiring of 154 additional development personnel, which contributed to an increase in salary and related costs of \$11.2 million. Additionally, we incurred increased costs for depreciation and amortization expense of \$4.1 million arising from purchases of property, equipment and technology licenses, increased costs of \$1.3 million for patent filing fees to protect newly developed intellectual property and other allocated expenses of \$3.3 million related to our expanding operations. Offsetting the increase in research and development expense was decreased costs of \$2.8 million for prototype and related product tape-out costs, primarily due to the timing and quantity of tape-outs in the comparable periods.

We expect that research and development expense will increase in absolute dollars in future periods as we continue to devote resources to develop new and more complex products and systems, migrate to lower process geometries, meet the changing requirements of our customers, expand into new markets and technologies and hire additional personnel.

#### *Selling and Marketing*

	Three Months Ended July 31,		Percent Change	Six Months Ended July 31,		Percent Change
	2005	2004		2005	2004	
Selling and marketing	\$ 21,275	\$ 19,884	7.0%	\$ 42,264	\$ 38,585	9.5%
% of net revenue	5.5%	6.7%		5.6%	6.8%	

Selling and marketing expense consists primarily of compensation and associated costs relating to sales and marketing personnel, sales commissions, promotional and other marketing expenses, and allocated occupancy costs for these operations. The increase in selling and marketing expense in absolute dollars in the second quarter of fiscal 2006 compared to the second quarter of fiscal 2005 was primarily due to the net hiring of 48 additional sales and marketing personnel, which contributed to an increase in salary and related costs of \$1.7 million.

The increase in selling and marketing expense in absolute dollars in the first six months of fiscal 2006 compared to the first six months of fiscal 2005 was primarily due to the net hiring of 48 additional sales and marketing personnel, which contributed to an increase in salary and related costs of \$2.6 million. Additionally, we incurred increased commission costs of \$0.5 million due primarily to an increase in sales.

We expect that selling and marketing expense will increase in absolute dollars in future periods as we hire additional sales and marketing personnel and expand our sales and marketing efforts in emerging product markets such as power management and consumer applications for our wireless and storage products.

#### *General and Administrative*

	Three Months Ended July 31,		Percent Change	Six Months Ended July 31,		Percent Change
	2005	2004		2005	2004	
General and administrative	\$ 8,340	\$ 7,662	8.8%	\$ 15,078	\$ 14,499	4.0%
% of net revenue	2.1%	2.6%		2.0%	2.6%	

General and administrative expense consists primarily of compensation and associated costs relating to general and administrative personnel, fees for professional services and allocated occupancy costs for these operations. The increase in absolute dollars in general administrative expense in the second quarter of fiscal 2006 compared to the second quarter of fiscal 2005 was primarily due to the net hiring of 33 additional general and administrative personnel, which contributed to an increase in salary and related costs of \$1.5 million. Offsetting the increase in general and administrative expense was a decrease of \$0.6 million in professional fees and a \$0.2 million decrease in legal fees. The decrease in professional fees is due to the hiring of additional personnel resulting in lower professional fees from outside service providers.

The increase in absolute dollars in general administrative expense in the first six months of fiscal 2006 compared to the first six months of fiscal 2005 was primarily due to the net hiring of 33 additional administrative personnel, which contributed to an increase in salaries and related costs of \$2.3 million. Offsetting the increase in general and administrative expense was a decrease in professional and legal fees of \$1.9 million due to lower licensing fee payments and the hiring of additional personnel resulting in lower professional fees from outside service providers.

We expect that general and administrative expenses will increase in absolute dollars in future periods as we spend on our increasing infrastructure to support expanding operations.

#### *Amortization of Stock-Based Compensation*

	Three Months Ended July 31,		Percent Change	Six Months Ended July 31,		Percent Change
	2005	2004		2005	2004	
Amortization of stock-based compensation	\$ 517	\$ 1,272	(59.3)%	\$ 1,388	\$ 2,660	(47.8)%
% of net revenue	0.1%	0.4%		0.2%	0.5%	

We have recorded deferred stock-based compensation in connection with the grant of stock options to our employees and directors prior to our initial public offering of common stock and in connection with the assumption and grant of stock options as a result of our acquisitions. Deferred stock-based compensation is being amortized using an accelerated method over the remaining option vesting period. The decrease in amortization expense in both absolute dollars and percentage of net revenue in the second quarter of fiscal 2006 and first six months of fiscal 2006 compared to the second quarter of fiscal 2005 and first six months of fiscal 2005 primarily resulted from a lower balance of deferred stock-based compensation being amortized in the second quarter and first six months of fiscal 2006 compared to the second quarter and first six months of fiscal 2005. For a discussion of the effects of future expensing of stock options, see "Recent Accounting Pronouncements" below.

#### *Amortization and Write-off of Acquired Intangible Assets and Other*

	Three Months Ended July 31,		Percent Change	Six Months Ended July 31,		Percent Change
	2005	2004		2005	2004	
Amortization of acquired intangible assets and other	\$ 19,753	\$ 29,759	(33.6)%	\$ 39,512	\$ 63,017	(37.3)%
% of net revenue	5.1%	10.0%		5.2%	11.1%	

In connection with the acquisition of MSIL in the fourth quarter of fiscal 2001, we recorded \$434.7 million of acquired intangible assets. In connection with the acquisition of RADLAN in June 2003, we recorded \$5.7 million of acquired intangible assets. The acquired intangible assets from the RADLAN acquisition are being amortized over their estimated economic lives of two to five years.



During the first quarter of fiscal year 2005, we entered into a technology license and non-assert agreement with a licensor pursuant to which the parties agreed to not take action against each other relative to the use of certain technologies. Under this arrangement, we agreed to make a one-time payment of \$13.5 million, which was included in amortization and write-off of acquired intangible assets and other. During the second quarter of fiscal 2005, we entered into a technology license and non-assert agreement with another company pursuant to which the parties agreed to not take action against each other relative to the use of certain technologies. Under

this arrangement, we agreed to make a one-time payment of \$25.0 million, of which \$10.0 million related to past use of certain technologies was included in amortization and write-off of acquired intangible assets and other, while the remaining \$15.0 million was capitalized as licensed technology and will be amortized to cost of goods sold over its estimated useful life of five years. The decrease in amortization and write-off of acquired intangible assets and other in the second quarter of fiscal 2006 compared to the second quarter of fiscal 2005 was due mainly to this \$10.0 million charge for payment made on the technology license and non-assert agreement recorded in the second quarter of fiscal 2005. The decrease in amortization and write-off of acquired intangible assets and other in first six months of fiscal 2006 compared to the first six months of fiscal 2005 was due to \$23.5 million of charges for payments made on technology license and non-assert agreements recorded in the first six months of fiscal 2005 as described above.

#### Interest and Other Income, net

	Three Months Ended July 31,		Percent Change	Six Months Ended July 31,		Percent Change
	2005	2004		2005	2004	
Interest and other income, net	\$ 4,384	\$ 1,616	171.3%	\$ 7,996	\$ 3,288	143.2%
% of net revenue	1.1%	0.5%		1.0%	0.6%	

Interest and other income, net consists primarily of interest earned on cash, cash equivalents and short-term investment balances, offset by interest paid on capital lease obligations. The increase in interest and other income, net for the second quarter and first six months of fiscal 2006 compared to the second quarter and first six months of fiscal 2005 is primarily due to higher interest income due to higher invested cash and marketable securities balances and higher yields on our investments.

#### Provision for Income Taxes

	Three Months Ended July 31,		Percent Change	Six Months Ended July 31,		Percent Change
	2005	2004		2005	2004	
Provision for income taxes	\$ 10,841	\$ 6,628	63.6%	\$ 20,192	\$ 12,088	67.0%
% of net revenue	2.8%	2.2%		2.7%	2.1%	

Our effective tax rate was 12.3% and 12.5% for the three and six months ended July 31, 2005 compared to 18.8% and 21.9% for the three and six months ended July 31, 2004. The effective tax rate decreased due to an increase in profits earned in jurisdictions where the tax rate is lower than the U.S. tax rate and a decrease in non tax-deductible expenses or other, such as stock based compensation, nondeductible acquisition related expenses and asset impairment.

#### Liquidity and Capital Resources

Our principal source of liquidity as of July 31, 2005 consisted of \$847.1 million of cash, cash equivalents and short-term investments. Since our inception, we have financed our operations through a combination of sales of equity securities, cash generated by operations and cash assumed in acquisitions.

#### Net Cash Provided by Operating Activities

Net cash provided by operating activities was \$181.0 million for the six months ended July 31, 2005 compared to \$81.2 million for the six months ended July 31, 2004. The cash inflow from operations in the six months of fiscal 2006 was primarily a result of our generation of income during the period and changes in working capital. Non-cash charges in the first six months of fiscal 2006 included \$39.5 million related to amortization of acquired intangible assets, \$27.6 million of depreciation and amortization expense and \$1.4 million of amortization of stock-based compensation. Significant working capital changes contributing to positive cash inflow in the first six months of fiscal 2006 included an increase in income taxes payable of \$18.1 million resulting from higher taxable income in the first six months of fiscal 2006 and a decrease in inventory of \$14.7 million, primarily as a result of the timing of wafer starts at foundries, as well as increased cycle times from our foundry vendors. Accordingly, the number of days in inventory has decreased at the end of the second quarter of fiscal 2006 to 56 days compared to 62 days at the end of the second quarter of fiscal 2005. We expect the number of days in inventory to increase in future quarters as we increase our wafer starts and inventory purchases in anticipation of increased customer demand and longer production lead times.

Significant working capital changes offsetting positive cash flows in the first six months of fiscal 2006 included an increase in prepaid and other assets of \$65.3 million due primarily to a \$60.0 million payment in connection with a capacity reservation agreement with a foundry. Also contributing to working capital changes offsetting positive cash flow in the first six months of fiscal

2006 was an increase in accounts receivable of \$9.3 million primarily due to higher total net revenue in the first six months of fiscal 2006 compared to the first six months of fiscal 2005. Although accounts receivable has increased, the days sales outstanding metric, or DSO, has remained consistent at the end of the second quarter of fiscal 2006 at 48 days, as compared to a DSO of 49 days at the end of the second quarter of fiscal 2005. Many of our larger customers have regularly scheduled payment dates with some of the dates falling immediately before or after our fiscal quarter-end. As a result, our accounts receivable balance and DSO may fluctuate depending on the timing of large payments made by our customers.

During the first six months of fiscal 2005, net cash provided by operating activities was \$81.2 million. The cash inflow from operations in the first six months of fiscal 2005 was primarily a result of our generation of income during the period and changes in working capital. Non-cash charges in the first six months of fiscal 2005 included \$39.5 million related to amortization of acquired intangible assets and other, \$19.4 million of depreciation and amortization



expense and \$2.7 million of amortization of stock-based compensation. Significant working capital changes contributing to positive cash inflow in the first six months of fiscal 2005 included an increase of \$10.7 million in income tax payable resulting from taxable income in the first six months of fiscal 2005, an increase of \$8.3 million in accrued liabilities and other primarily related to an accrual for a technology license and an increase of \$7.0 million in accrued employee compensation primarily related to the timing of payroll and higher benefit related obligations as a result of the increase in number of employees. Significant working capital changes offsetting positive cash flows in the first six months of fiscal 2005 included a \$23.5 million decrease in accounts payable due primarily to payments made on outstanding balances during the period. Inventory increased by \$5.3 million primarily as a result of increased volumes of sales and associated purchases of inventory required to meet customer demand. Accounts receivable increased by \$24.6 million primarily due to higher total net revenue in the first six months of fiscal 2005 as compared to the first six months of fiscal 2004.

Due to the nature of our business, we experience working capital needs for accounts receivable and inventory. We typically bill customers on an open account basis with net thirty to sixty day payment terms. If our sales levels were to increase as they have in prior fiscal years, it is likely that our levels of accounts receivable would also increase. Our levels of accounts receivable would also increase if customers delayed their payments or if we offered extended payment terms to our customers. Additionally, in order to maintain an adequate supply of product for our customers, we must carry a certain level of inventory. Our inventory level may vary based primarily upon orders received from our customers and our forecast of demand for these products, as well as the initial production ramp for significant design wins. Other considerations in determining inventory levels may include the product life cycle stage of our products, foundry lead times and available capacity, and competitive situations in the marketplace. Such considerations are balanced against risk of obsolescence or potentially excess inventory levels.

#### ***Net Cash Used in Investing Activities***

Net cash used in investing activities was \$140.3 million for the first six months of fiscal 2006 and \$151.5 million for the first six months of fiscal 2005. The net cash used in investing activities in the first six months of fiscal 2006 was due to purchases of property and equipment of \$37.8 million and purchases of short-term investments of \$253.0 million, partially offset by the proceeds from the sales and maturities of short-term investments of \$150.5 million. The net cash used in investing activities in the first six months of fiscal 2005 was due to purchases of property and equipment of \$13.7 million, purchases of short-term investments of \$203.0 million and purchases of technology licenses and other of \$15.9 million, partially offset by the proceeds from the sales and maturities of short-term investments of \$81.1 million.

#### ***Net Cash Provided by Financing Activities***

Net cash provided by financing activities was \$44.8 million for the six months of fiscal 2006 and \$46.9 million for the first six months of fiscal 2005. In the first six months of fiscal 2006 and 2005, net cash provided by financing activities was attributable to proceeds from the issuance of common stock under our stock option plans, partially offset by principal payments on capital lease obligations. The proceeds from the issuance of common stock are primarily due to the exercises of stock options as a result of the increase in our stock price. The increase in capital lease obligations is due to additional computer-aided design software licenses, which we have acquired for use in research and development activities.

#### ***Contractual Obligations and Commitments***

Our relationships with our foundries allow us to cancel all outstanding purchase orders, provided we pay the foundries for all expenses they have incurred in connection with our purchase orders through the date of cancellation. As of July 31, 2005, foundries had incurred approximately \$122.6 million of manufacturing expenses on our outstanding purchase orders. The purchase obligations are included in outstanding purchase commitments as of July 31, 2005.

On February 28, 2005 and as amended on March 31, 2005, we entered into an agreement with a foundry to reserve and secure foundry fabrication capacity for a fixed number of wafers at agreed upon prices for a period of five and a half years beginning on July 1, 2005. In return, we agreed to pay the foundry \$174.2 million over a period of eighteen months. The amendment extends the term of the agreement and the agreed upon pricing terms until December 31, 2015. As of July 31, 2005, payments totaling \$60.0 million (included in prepaid expenses and other current assets) have been made and approximately \$1.8 million of the prepayment has been amortized as of July 31, 2005. At July 31, 2005, remaining commitments under the agreement were approximately \$114.2 million.

In October 2001, we entered into a lease agreement with Yahoo! Inc. to lease a building in Sunnyvale, California consisting of approximately 213,000 square feet. The lease commenced on January 1, 2002 and continues through March 16, 2006. Total rent payments over the term of the lease will be approximately \$19.4 million. In February 2002, we consolidated our three existing facilities in California into this new building. The leases on two of our former facilities expired in February 2002 and June 2005, respectively, but we have an ongoing, non-cancelable lease for the remaining facility. During fiscal 2003, we recorded a \$19.6 million charge associated with costs of consolidation of our facilities. This charge included \$12.6 million in lease abandonment charges relating to the consolidation of our three facilities in California into one location. This charge included the remaining lease commitments of these facilities reduced by the estimated sublease income for the duration of the lease term. During the second quarter of fiscal 2004, we obtained subleases for the abandoned facilities. Actual sublease income approximated the estimated sublease income, but is less than our actual lease commitment, resulting in future negative cash flow over the remaining term of the sublease of approximately \$4.0 million as of July 31, 2005. At July 31, 2005, cash payments of \$9.5 million, net of sublease income had been made in connection with this charge. Approximately \$4.0 million is accrued for this facilities consolidation charge as of July 31, 2005 of which \$0.6 million is the current portion while the long-term portion totaling \$3.4 million is payable through 2010.

On June 27, 2003, we completed the acquisition of RADLAN. Upon the closing, we issued a total of 2,635,284 shares of common stock (valued at \$24.0 million) and assumed 313,926 vested options (valued at \$2.9 million). In addition, we issued warrants to purchase 1,086,366 shares of our common stock at an exercise price of \$9.21 per share (valued at \$7.5 million). On October 6, 2003, we issued an additional 2,325,582 shares valued at \$47.4 million to former RADLAN shareholders. On December 8, 2003, certain milestones were achieved and 1,023,256 shares of common stock valued at \$19.6 million were earned and issued to former RADLAN shareholders. Additionally, 1,023,256 shares of our common stock were reserved for future issuance over a one-year period to former RADLAN shareholders, which was dependent upon our revenues from certain products for the year ended January 31, 2005 compared to the year ended January 31, 2004. As of July 31, 2005, all 1,023,256 shares reserved for future issuance to former RADLAN shareholders were issued. Certificates for 614,624 shares earned through August 1, 2004 were issued on December 28, 2004. The remaining 408,632 shares earned subsequent to August 1, 2004 were issued on July 1, 2005.

On November 17, 2003, we completed the purchase of six buildings on 33.8 acres of land in Santa Clara, California for a total cost of \$63.9 million in cash. It is currently intended that the site will be the future location of our U.S. subsidiary. As a result of the purchase of the buildings, we expect to make

significant commitments and incur costs to improve the buildings over the next twelve to eighteen months. Based upon our current forecasts, we currently expect to spend approximately \$50.0 million to \$60.0 million for building improvements over the next twelve months, of which \$36.7 million has been committed in the form of non-cancelable purchase orders. The amount that we plan to spend and commit for building improvements is an estimate and may change as the scope of the work is refined and plans are finalized. In addition, we expect an increase in future operating expenses due to the new buildings, thereby increasing the amount of occupancy costs that will be allocated to cost of goods sold, research and development, sales and marketing and general and administrative expenses.

We currently intend to fund our short and long-term capital requirements, as well as our liquidity needs, with existing cash, cash equivalents and short-term investment balances as well as cash generated by operations. We believe that our existing cash, cash equivalents and short-term investment balances will be sufficient to meet our working capital needs, capital requirements, investment requirements and commitments for at least the next twelve months. However, our capital requirements will depend on many factors, including our rate of sales growth, market acceptance of our products, costs of securing access to adequate manufacturing capacity, the timing and extent of research and development projects, costs of making improvements to facilities and increases in operating expenses, which are all subject to uncertainty. To the extent that our existing cash, cash equivalents and investment balances and cash generated by operations are insufficient to fund our future activities, we may need to raise additional funds through public or private debt or equity financing. On August 29, 2005, we announced that we signed a definitive agreement to acquire the hard disk and tape drive controller semiconductor business of QLogic Corporation. Under terms of the agreement, we will issue a combination of \$180.0 million in cash and shares of the Company's common stock valued at \$45.0 million for total consideration of \$225.0 million. We may enter into additional acquisitions or other strategic arrangements in the future, which could also require us to seek additional debt or

equity financing, which in turn may be dilutive to our current shareholders. Additional funds may not be available on terms favorable to us or at all.

The following table summarizes our contractual obligations as of July 31, 2005 and the effect such obligations are expected to have on our liquidity and cash flow in future periods (in thousands):

	Payments Due by Period						There- after	Total
	2006 (remaining six months)	2007	2008	2009	2010			
Contractual obligations:								
Operating leases	\$ 6,701	\$ 6,264	\$ 5,540	\$ 5,926	\$ 5,304	\$ 37,254	\$ 66,989	
Capital lease obligations	10,117	13,744	11,860	4,268	—	—	39,989	
Purchase commitments to foundries	122,614	—	—	—	—	—	122,614	
Capacity reservation commitment	46,000	68,180	—	—	—	—	114,180	
Mask purchase commitment	15,000	—	—	—	—	—	15,000	
Capital purchase obligations	42,757	—	—	—	—	—	42,757	
Total contractual cash obligations	\$ 243,189	\$ 88,188	\$ 17,400	\$ 10,194	\$ 5,304	\$ 37,254	\$ 401,529	

## Recent Accounting Pronouncements

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123 (revised 2004), "Share-Based Payment" (FAS 123R) that addresses the accounting for share-based payment transactions in which an enterprise receives employee services in exchange for either equity instruments of the enterprise or liabilities that are based on the fair value of the enterprise's equity instruments or that may be settled by the issuance of such equity instruments. The statement eliminates the ability to account for share-based compensation transactions using the intrinsic value method as prescribed by Accounting Principles Board, or APB, Opinion No. 25, "Accounting for Stock Issued to Employees," and generally requires that such transactions be accounted for using a fair-value-based method and recognized as expenses in our consolidated statement of income. The statement requires companies to assess the most appropriate model to calculate the value of the options. We currently use the Black-Scholes option pricing model to value options and are currently assessing which model we may use in the future under the statement and may deem an alternative model to be the most appropriate. The use of a different model to value options may result in a different fair value than the use of the Black-Scholes option pricing model. In addition, there are a number of other requirements under the new standard that will result in differing accounting treatment than currently required. These differences include, but are not limited to, the accounting for the tax benefit on employee stock options and for stock issued under our employee stock purchase plan. In addition to the appropriate fair value model to be used for valuing share-based payments, we will also be required to determine the transition method to be used at date of adoption. The allowed transition methods include prospective and retroactive adoption options. Under the retroactive options, prior periods may be restated either as of the beginning of the year of adoption or for all periods presented. The prospective method requires that compensation expense be recorded for all unvested stock options and restricted stock at the beginning of the first quarter of adoption of FAS 123R, while the retroactive methods would record compensation expense for all unvested stock options and restricted stock beginning with the first period restated. The effective date of the new standard for our consolidated financial statements is the quarter ended April 30, 2006.

Upon adoption, this statement will have a significant impact on our consolidated financial statements because we will be required to expense the fair value of our stock option grants and stock purchases under our employee stock option and stock purchase plans rather than disclose the impact on our consolidated net income within our footnotes as is our current practice (see Note 1 of the Notes to Unaudited Condensed Consolidated Financial Statements contained herein). The amounts disclosed within our footnotes are not necessarily indicative of the amounts that will be expensed upon the adoption of FAS 123R. Compensation expense calculated under FAS 123R may differ from amounts currently disclosed within our footnotes based on changes in the fair value of our common stock, changes in the number of options granted or the terms of such options, the treatment of tax benefits and changes in interest rates or other factors. In addition, upon adoption of FAS 123R we may choose to use a different valuation model to value the compensation expense associated with employee stock options.

In March 2005, the SEC issued Staff Accounting Bulletin No. 107 ("SAB 107"). SAB 107 includes interpretive guidance for the initial implementation of FAS 123R. We will apply the principles of SAB 107 in conjunction with our adoption of FAS 123R.

In May 2005, the FASB issued Statement of Financial Accounting Standards No. 154 ("SFAS 154"), Accounting Changes and Error Corrections, a replacement of APB Opinion No. 20 and Statement No. 3. The statement applies to all voluntary changes in

accounting principle and changes the requirements for the accounting for and reporting of a change in accounting principle. SFAS 154 requires retrospective application to prior periods' financial statements of a voluntary change in accounting principle unless it is impracticable. SFAS 154 is effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. We do not expect the adoption of SFAS 154 will have a material impact on our financial position and results of operations.

### **Related Party Transactions**

During the six months ended July 31, 2005 and 2004, we incurred approximately \$0.4 million and \$0.4 million, respectively, of expenses from an unrelated third-party entity, ACM Aviation, Inc. ("ACM"), for charter aircraft services provided to MSI. The aircraft provided by ACM to us for such services is owned by Estopia Air LLC ("Estopia Air"). Our Chairman, President and Chief Executive Officer, Dr. Sehat Sutardja, Ph.D., and our Director, Secretary and Executive Vice President, Weili Dai, through their control and ownership of Estopia Air, own the aircraft provided by ACM. The expenses incurred were the result of our use of the aircraft for business travel purposes. The cost of such usage to us was determined based on market prices.

On February 19, 2005, through our subsidiaries MSI and Marvell Asia Pte. Ltd. ("MAPL"), we entered into a development agreement with MagnetoX ("MagnetoX"). The development agreement is on substantially similar terms as other development agreements with other third parties. We recognized approximately \$0.8 million of revenue from the development agreement and product revenue during the first six months of fiscal 2006. Total revenue expected to be recognized from the development agreement is \$1.0 million. Herbert Chang, one of our directors, is Chairman of the Board, President and Chief Executive Officer of MagnetoX. Estopia LLC ("Estopia") is also a shareholder of MagnetoX. Dr. Sehat Sutardja, Ph.D., and Weili Dai, through their ownership and control of Estopia, are indirect shareholders of MagnetoX.

On August 19, 2005, through our subsidiaries MSI and Marvell International Ltd., we entered into a License and Manufacturing Services Agreement (the "License Agreement") with C2 Microsystems, Inc. ("C2Micro"). The License Agreement is on substantially similar terms as other license and manufacturing services agreements with other third parties. Dr. Sehat Sutardja, Ph.D., and Weili Dai, through their ownership and control of Estopia are indirect shareholders of C2Micro. Herbert Chang, through his ownership and control of C-Squared venture entities, is also an indirect shareholder of C2Micro. Dr. Pantas Sutardja, Ph.D., our Chief Technology Officer, is also a shareholder in C2Micro.

### **Additional Factors That May Affect Future Results**

In addition to the factors discussed in the "Overview" and "Liquidity and Capital Resources" sections of this "Management's Discussion and Analysis of Financial Condition and Results of Operations," the following additional factors may affect our future results. Many of these factors are beyond our control, including business cycles and seasonal trends of the computing, semiconductor and related industries.

***A significant portion of our business is dependent upon the hard disk drive industry, which is highly cyclical and experiences rapid technological change.***

The hard disk drive industry is intensely competitive, and the technology changes rapidly. As a result, this industry is highly cyclical, with periods of increased demand and rapid growth followed by periods of oversupply and subsequent contraction. These cycles may affect us because our customers are suppliers to this industry. Hard disk drive manufacturers tend to order more components than they may need during growth periods, and sharply reduce orders for components during periods of contraction. In addition, advances in existing technologies and the introduction of new technologies may result in lower demand for disk drive storage devices, thereby reducing demand for our products. Rapid technological changes in the hard disk drive industry often result in significant and rapid shifts in market share among the industry's participants. If the hard disk drive manufacturers using our products do not retain or increase their market share, our sales may decrease.

***Our Marvell Semiconductor Israel Ltd., Marvell T.I. Ltd. and RADLAN Computer Communications Ltd. subsidiaries are incorporated under the laws of, and their principal offices are located in, the State of Israel and therefore their business operations may be harmed by adverse political, economic and military conditions affecting Israel.***

Each of Marvell Semiconductor Israel Ltd., or MSIL, Marvell T.I. Ltd, or MTIL and RADLAN Computer Communications Ltd., or RADLAN, are incorporated under the laws of and has its principal offices in the State of Israel. In addition, MSIL and RADLAN maintain their research and development operations in Israel. Thus, MSIL, MTIL and RADLAN are directly influenced by the political, economic and military conditions affecting Israel. Major hostilities involving or within Israel could disrupt MSIL, MTIL and

RADLAN's operations. For example, continued hostilities between Israel and the Palestinian authority in recent months have caused substantial political unrest, which could lead to a potential economic downturn in Israel. Additionally, the ongoing situation in Iraq could lead to more economic instability and uncertainty in the State of Israel and the Middle East. Also, the interruption or curtailment of trade between Israel and its present trading partners or a significant downturn in the economic or financial condition of Israel could negatively impact the business operations and financial results of each of MSIL, MTIL and RADLAN.

***We depend on a small number of large customers for a significant portion of our sales. The loss of, or a significant reduction or cancellation in sales to, any key customer would significantly reduce our revenues.***

In the first six months of fiscal 2006, approximately 45% of our net revenue was derived from sales to three customers, each of whom individually accounted for 10% or more of our net revenue during this period. Of these customers, Western Digital accounted for approximately 18%, Samsung accounted for approximately 14% and Toshiba accounted for approximately 13%. Additionally, Wintech, a distributor, accounted for approximately 11% of our net revenue during the first six months of fiscal 2006. Sales to our largest customers have fluctuated significantly from period to period primarily due to the timing and number of design wins with each customer, as well as the continued diversification of our customer base as we expand into new markets, and will likely continue to fluctuate dramatically in the future. The loss of any of our largest customers, a significant reduction in sales we make to them, or any problems we encounter collecting amounts due from them would likely seriously harm our financial condition and results of operations. Our operating results in the foreseeable future will continue to depend on sales to a relatively small number of customers, as well as the ability of these customers to sell products

that incorporate our products. In the future, these customers may decide not to purchase our products at all, purchase fewer products than they did in the past, or alter their purchasing patterns in some other way, particularly because:

- substantially all of our sales are made on a purchase order basis, which permits our customers to cancel, change or delay product purchase commitments with little or no notice to us and without penalty;
- our customers may develop their own solutions;
- our customers may purchase integrated circuits from our competitors; or
- our customers may discontinue sales or lose market share in the markets for which they purchase our products.

***Changes in the accounting treatment of stock options could adversely affect our results of operations.***

In December 2004, the FASB issued SFAS No. 123R, “Share-Based Payment.” SFAS No. 123R requires employee stock options and rights to purchase shares under stock participation plans to be accounted for under the fair value method, and eliminates the ability to account for these instruments under the intrinsic value method prescribed by APB Opinion No. 25, and allowed under the original provisions of SFAS No. 123. SFAS No. 123R requires the use of an option pricing model for estimating fair value, which is amortized to expense over the service periods. The requirements of SFAS No. 123R are effective for fiscal years beginning after June 15, 2005. Such stock option expensing would require us to value our employee stock option grants pursuant to an option valuation formula and then amortize that value against our earnings over the vesting period in effect for those options. We currently account for stock-based awards to employees in accordance with Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, and have adopted the disclosure-only alternative to SFAS 123. When we are required to expense employee stock options in the quarter ended April 30, 2006, this change in accounting treatment will materially and adversely affect our reported results of operations because the stock-based compensation expense would be charged directly against our reported earnings. For an illustration of the effect of such a change in our recent results of operations, see Note 1 in Notes to Unaudited Condensed Consolidated Financial Statements.

***If we are unable to develop new and enhanced products that achieve market acceptance in a timely manner, our operating results and competitive position will be harmed.***

Our future success will depend on our ability, in a timely and cost-effective manner, to develop new products and enhancements to our existing products. We must also achieve market acceptance for these products and enhancements. If we do not successfully develop and achieve market acceptance for new and enhanced products, our ability to maintain or increase revenues will suffer. The development of our products is highly complex. We occasionally have experienced delays in completing the development and introduction of new products and product enhancements, and we could experience delays in the future. Even if the new and enhanced products are introduced to the market, we may not be able to achieve market acceptance of these products in a timely manner.

Successful product development and market acceptance of our products depends on a number of factors, including:

- timely and cost-effective completion and introduction of new product designs;
- adoption of our products by customers that are among the first to adopt new technologies and by customers perceived to be market leaders;
- timely qualification and certification of our products for use in our customers’ products;
- the level of acceptance of our products by existing and potential customers;
- cost and availability of foundry, assembly and testing capacity;
- availability, price, performance, power, use and size of our products and competing products and technologies;
- our customer service and support capabilities and responsiveness;
- successful development of our relationships with existing and potential customers and strategic partners; and
- our ability to predict and respond to changes in technology, industry standards or end-user preferences.

In addition, our longstanding relationships with some of our larger customers may also deter other potential customers who compete with these customers from buying our products. To attract new customers or retain existing customers, we may offer certain customers favorable prices on our products. If these prices are lower than the prices paid by our existing customers, we would have to offer the same lower prices to certain of our customers who have contractual “most favored nation” pricing arrangements. In that event, our average selling prices and gross margins would decline. The loss of a key customer, a reduction in sales to any key customer or our inability to attract new significant customers could materially and adversely affect our business, financial condition and results of operations.

***We rely on independent foundries and subcontractors for the manufacture, assembly and testing of our integrated circuit products, and the failure of any of these third-party vendors to deliver products or otherwise perform as requested could damage our relationships with our customers, decrease our sales and limit our growth.***

We do not have our own manufacturing or assembly facilities and have very limited in-house testing facilities. Therefore, we must rely on third-party vendors to manufacture, assemble and test the products we design. We currently rely on five third-party foundries to produce substantially all of our integrated circuit products. We also currently rely on several third-party assembly and test subcontractors to assemble, package and test our products. The resurgence of severe acute respiratory syndrome, or SARS and any similar future outbreaks in Asia could affect the production capabilities of our

manufacturers by resulting in quarantines or closures. In the event of such a quarantine or closure, if we were unable to quickly identify alternate manufacturing facilities, our revenues, cost of revenues and results of operations would be negatively impacted. If these vendors do not provide us with high-quality products and services in a timely manner, or if one or more of these vendors terminates its relationship with us, we may be unable to obtain satisfactory replacements to fulfill customer orders on a timely basis, our relationships with our customers could suffer, our sales could decrease and our growth could be limited. Other significant risks associated with relying on these third-party vendors include:

- our customers or their customers may fail to approve or delay approving our selected vendor;
- we have reduced control over product cost, delivery schedules and product quality;
- the warranties on wafers or products supplied to us are limited; and
- we face increased exposure to potential misappropriation of our intellectual property.

We currently have a long-term supply contract with one of our third-party vendors; however, we do not have long-term supply contracts with any of our other third-party vendors. Therefore, with the exception of one significant third-party vendor, our other vendors are not obligated to perform services or supply products to us for any specific period, in any specific quantities, or at any specific price, except as may be provided in a particular purchase order. Other than one third-party foundry vendor with which we have a long-term supply contract that will guarantee us a certain level of production capacity at specified prices over a specific period, none of our third-party foundry or assembly and test subcontractors have provided contractual assurances to us that adequate capacity will be available to us to meet future demand for our products. These foundries may allocate capacity to the production of other companies' products while reducing deliveries to us on short notice. In particular, foundry customers that are larger and better financed than us or that have long-term agreements with these foundries may cause these foundries to reallocate capacity to those customers, decreasing the capacity available to us. If we need another integrated circuit foundry or assembly and test subcontractor because of increased demand, or we are unable to obtain timely and adequate deliveries from our providers at the required time, we might not be able to develop relationships with other vendors who are able to satisfy our requirements. Even if other integrated circuit foundries or assembly and test subcontractors are available at that time to satisfy our requirements, it would likely take several months to qualify a new provider. Such a change may also require the approval of our customers, which would take time to effect and could cause our customers to cancel orders or fail to place new orders.

***We rely on third-party distributors and manufacturers' representatives and the failure of these distributors and manufacturers' representatives to perform as expected could reduce our future sales.***

We sell many of our products to customers through distributors and manufacturers' representatives. Our relationships with some of our distributors and manufacturers' representatives have been established within the last two years, and we are unable to predict the extent to which our distributors and manufacturers' representatives will be successful in marketing and selling our products. Moreover, many of our manufacturers' representatives and distributors also market and sell competing products. Our representatives and distributors may terminate their relationships with us at any time. Our future performance will also depend, in part, on our ability to attract additional distributors or manufacturers' representatives that will be able to market and support our products effectively, especially in markets in which we have not previously distributed our products. If we cannot retain our current distributors or manufacturers' representatives or recruit additional or replacement distributors or manufacturers' representatives, our sales and operating results will be harmed. The loss of one or more of our distributors or manufacturers' representatives could harm our sales and results of operations. We generally realize a higher gross margin on direct sales and from sales through manufacturers' representatives than on sales through distributors. Accordingly, if our distributors were to account for an increased portion of our net sales, our gross margins may decline.

***The uncertain and volatile worldwide economy, acts of war, terrorism, international conflicts and related uncertainties may adversely impact our revenues and profitability.***

In recent years, worldwide economic conditions have been volatile with concerns about inflation, increased reliance on consumer confidence, rising oil prices and the situation in Iraq. The events of September 11, 2001, the continuing international conflicts and terrorist acts, continued increases in the price of oil, and the possibility of an extended United States presence in Iraq can be expected to place further pressure on economic conditions in the United States and worldwide. These conditions make it extremely difficult for our customers, our vendors and for us to accurately forecast and plan future business activities.

***We are a relatively small company with limited resources compared to some of our current and potential competitors, and we may not be able to compete effectively and increase or maintain revenue and market share.***

We may not be able to compete successfully against current or potential competitors. If we do not compete successfully, our market share and revenues may not increase or may decline. In addition, most of our current and potential competitors have longer operating histories, significantly greater resources and name recognition, and a larger base of customers than we do. As a result, these competitors may have greater credibility with our existing and potential customers. Moreover, our competitors may foresee the course of market developments more accurately than we do. They also may be able to adopt more aggressive pricing policies and devote greater resources to the development, promotion and sale of their products than us, which would allow them to respond more quickly than us to new or emerging technologies or changes in customer requirements. In addition, new competitors or alliances among existing competitors could emerge. We expect to face competition in the future from our current competitors, other manufacturers and designers of integrated circuits, and innovative start-up integrated circuit design companies. Many of our customers are also large, established integrated circuit suppliers. Our sales to and support of such customers may enable them to become a source of competition to us, despite our efforts to protect our intellectual property rights.

In the power management markets, we face competition from a number of additional competitors who have a longer history of serving these markets. Many of these competitors have more established reputations in these markets and longer standing relationships with the customers to whom we sell our products, which could prevent us from competing successfully. Competition could increase pressure on us to lower our prices and lower our margins, which, in turn, would harm our operating results.

***It is difficult to accurately predict our future sales and to appropriately budget for our expenses, and we expect to not be able to maintain our existing growth rate.***

The rapidly changing nature of the markets in which we sell our products limits our ability to accurately forecast quarterly and annual sales. Additionally, because many of our expenses are fixed in the short term or are incurred in advance of anticipated sales, we may not be able to decrease our expenses in a timely manner to offset any shortfall of sales. We are currently expanding our staffing and increasing our expense levels in anticipation of future sales growth. If our sales do not increase as anticipated, significant losses could result due to our higher expense levels.

For the past four years, we have been able to report significant sequential quarterly growth in revenues; however, our revenues have grown at a slower sequential rate in the past four sequential quarters ending with the second quarter of fiscal 2006 compared to the double digit sequential growth rate of the previous eleven quarters. This slower growth rate is due, among other things, to the larger base of revenue and market share we now enjoy, which makes continuation of double digit revenue growth on a sequential quarterly basis unlikely in the current market. Accordingly, investors should not rely on the results of any prior quarterly or annual periods as an indication of our future performance.

***Because we do not have long-term commitments from our customers, we must estimate customer demand, and errors in our estimates can have negative effects on our inventory levels, sales and operating results.***

Our sales are made on the basis of individual purchase orders rather than long-term purchase commitments. In addition, our customers may cancel or defer purchase orders. We have historically placed firm orders for products with our suppliers up to sixteen weeks prior to the anticipated delivery date and typically prior to receiving an order for the product. Therefore, our order volumes are based on our forecasts of demand from our customers. This process requires us to make multiple demand forecast assumptions, each of which may introduce error into our estimates. If we overestimate customer demand, we may allocate resources to manufacturing products that we may not be able to sell when we expect or at all. As a result, we would have excess inventory, which would harm our financial results. Conversely, if we underestimate customer demand or if insufficient manufacturing capacity is available, we would forego revenue opportunities, lose market share and damage our customer relationships. On occasion, we have been unable to adequately respond to unexpected increases in customer purchase orders, and therefore were unable to benefit from this increased demand.

***Our future success depends in significant part on strategic relationships with customers. If we cannot maintain these relationships or if these customers develop their own solutions or adopt a competitor's solutions instead of buying our products, our operating results would be adversely affected.***

In the past, we have relied in significant part on our strategic relationships with customers that are technology leaders in our target markets. We intend to pursue and continue to form these strategic relationships in the future but we cannot assure you that we will be able to do so. These relationships often require us to develop new products that may involve significant technological challenges. Our partners frequently place considerable pressure on us to meet their tight development schedules. Accordingly, we may have to devote a substantial amount of our limited resources to our strategic relationships, which could detract from or delay our completion of other important development projects. Delays in development could impair our relationships with our strategic partners and negatively impact sales of the products under development. Moreover, it is possible that our customers may develop their own solutions or adopt a competitor's solution for products that they currently buy from us. If that happens, our business, financial condition and results of operations could be materially harmed.

***If our foundries do not achieve satisfactory yields or quality, our relationships with our customers and our reputation will be harmed.***

The fabrication of integrated circuits is a complex and technically demanding process. Our foundries have from time to time experienced manufacturing defects and reduced manufacturing yields. Changes in manufacturing processes or the inadvertent use of defective or contaminated materials by our foundries could result in lower than anticipated manufacturing yields or unacceptable

performance. Many of these problems are difficult to detect at an early stage of the manufacturing process and may be time consuming and expensive to correct. Poor yields from our foundries, or defects, integration issues or other performance problems in our products could cause us significant customer relations and business reputation problems, harm our financial results and result in financial or other damages to our customers. Our customers could also seek damages from us for their losses. A product liability claim brought against us, even if unsuccessful, would likely be time consuming and costly to defend. In addition, defects in our existing or new products could result in significant warranty, support and repair costs, and divert the attention of our engineering personnel from our product development efforts.

***When demand for foundry capacity is high, we may take various actions to try to secure sufficient capacity, which may be costly and harm our operating results.***

Availability of foundry capacity has in the recent past been reduced due to strong demand. The ability of each foundry to provide us with semiconductor devices is limited by its available capacity and existing obligations. Although we have entered into contractual commitments to supply specified levels of products to some of our customers, we may not have sufficient levels of production capacity with all of our foundries, despite signing a long-term guaranteed production capacity agreement with one of our foundries. Despite this agreement, foundry capacity may not be available when we need it or at reasonable prices. We place our orders on the basis of our customers' purchase orders or our forecast of customer demand, and the foundries can allocate capacity to the production of other companies' products and reduce deliveries to us on short notice. It is possible that foundry customers that are larger and better financed than we are or that have long-term agreements with our main foundries may induce our foundries to reallocate capacity to those customers. This reallocation could impair our ability to secure the supply of components that we need. Although we use five independent foundries to manufacture substantially all of our semiconductor products, most of our components are not manufactured at more than one foundry at any given time, and our products typically are designed to be manufactured in a specific process at only one of these foundries. Accordingly, if one of our foundries is unable to provide us with components as needed, we could experience significant delays in securing sufficient supplies of those components. We cannot assure you that any of our existing or new foundries will be able to produce integrated circuits with acceptable manufacturing yields, or that our foundries will be able to deliver enough semiconductor devices to us on a timely basis, or at reasonable prices. These and other related factors could impair our ability to meet our customers' needs and have a material and adverse effect on our operating results.

In order to secure sufficient foundry capacity when demand is high and mitigate the risks described in the foregoing paragraph, we may enter into various arrangements with suppliers that could be costly and harm our operating results, including:

- option payments or other additional prepayments to a foundry;
- nonrefundable deposits with or loans to foundries in exchange for capacity commitments;
- contracts that commit us to purchase specified quantities of integrated circuits over extended periods;
- issuance of our equity securities to a foundry;
- investment in a foundry; and
- other contractual relationships with foundries.

We may not be able to make any such arrangement in a timely fashion or at all, and any arrangements may be costly, reduce our financial flexibility, and not be on terms favorable to us. For example, amounts payable under our foundry capacity are non refundable regardless of whether we are able to utilize all or any of the guaranteed wafer capacity under the terms of the agreement. Moreover, if we are able to secure foundry capacity, we may be obligated to use all of that capacity or incur penalties. These penalties may be expensive and could harm our financial results.

***The complexity of our products could result in unforeseen delays or expenses or undetected defects or bugs, which could adversely affect the market acceptance of new products, damage our reputation with current or prospective customers, and materially and adversely affect our operating costs.***

Highly complex products such as the products that we offer frequently contain defects and bugs when they are first introduced or as new versions are released. We have in the past experienced, and may in the future experience, these defects and bugs. Historically, we have been able to design workarounds to fix these defects and bugs with minimal to no disruption to our business or our customers' business. Going forward, if any of our products contain defects or bugs, or have reliability, quality, or compatibility problems, we may not be able to successfully design workarounds. Consequently, our reputation may be damaged and customers may be reluctant to buy our products, which could materially and adversely affect our ability to retain existing customers or attract new customers, and our financial results. In addition, these defects or bugs could interrupt or delay sales to our customers. To alleviate these problems, we may have to invest significant capital and other resources. Although our products are tested by our suppliers, our customers and ourselves, it is possible that our new products will contain defects or bugs. If any of these problems are not found until after we have commenced commercial production of a new product, we may be required to incur additional development costs and product recall, repair or replacement costs. These problems may also result in claims against us by our customers or others. In addition, these problems may divert our technical and other resources from other development efforts. Moreover, we would likely lose, or experience a delay in, market acceptance of the affected product or products, and we could lose credibility with our current and prospective customers. As a result, our financial results could be materially harmed.

***We may experience difficulties in transitioning to smaller geometry process technologies or in achieving higher levels of design integration, which may result in reduced manufacturing yields, delays in product deliveries and increased expenses.***

In order to remain competitive, we expect to continue to transition our semiconductor products to increasingly smaller line width geometries. This transition requires us to modify the manufacturing processes for our products and to redesign some products. We periodically evaluate the benefits, on a product-by-product basis, of migrating to smaller geometry process technologies to reduce our costs. In the past, we have experienced some difficulties in shifting to smaller geometry process technologies or new manufacturing processes, which resulted in reduced manufacturing yields, delays in product deliveries and increased expenses. We may face similar difficulties, delays and expenses as we continue to transition our products to smaller geometry processes. We are dependent on our relationships with our foundries to transition to smaller geometry processes successfully and cannot assure you that our foundries will be able to effectively manage the transition. If our foundries or we experience significant delays in this transition or fail to efficiently implement this transition, our business, financial condition and results of operations could be materially and adversely affected. As smaller geometry processes become more prevalent, we expect to continue to integrate greater levels of functionality, as well as customer and third party intellectual property, into our products. However, we may not be able to achieve higher levels of design integration or deliver new integrated products on a timely basis, or at all.

***If our internal control over financial reporting does not comply with the requirements of the Sarbanes-Oxley Act, our business, reputation and stock price could be adversely affected.***

Section 404 of the Sarbanes-Oxley Act of 2002 requires us to evaluate the effectiveness of our internal control over financial reporting as of the end of each year and to include a management report assessing the effectiveness of our internal control over financial reporting in all annual reports. Section 404 also requires our independent registered public accounting firm to attest to, and report on, management's assessment of our internal control over financial reporting.

Although our management has determined, and our independent registered public accounting firm has attested, that our internal control over financial reporting was effective as of January 31, 2005, we cannot assure you that we or our independent registered public accounting firm will not identify a material weakness in our internal controls in the future. A material weakness in our internal controls over financial reporting would require management and our independent registered public accounting firm to evaluate our internal control over financial reporting as ineffective. If our internal control over financial reporting are not considered adequate, we may experience a loss of public confidence, which could have an adverse effect on our business and our stock price.

***Past acquisitions and any future acquisitions or transactions may not be successful.***

We expect to continue to make acquisitions of, and investments in, businesses that offer complementary products, services and technologies, augment our market segment coverage, or enhance our technological capabilities. We may also enter into strategic alliances or joint ventures to achieve these goals. We cannot assure you that we will be able to identify suitable acquisition,



investment, alliance, or joint venture opportunities or that we will be able to consummate any such transactions or relationships on terms and conditions acceptable to us, or that such transactions or relationships will be successful.

Any transactions or relationships will be accompanied by the risks commonly encountered with those matters. Risks that could have a material adverse effect on our business, results of operations or financial condition include, among other things:

- the difficulty of assimilating the operations and personnel of acquired businesses;
- the potential disruption of our ongoing business;
- the distraction of management from our business;
- the potential inability of management to maximize our financial and strategic position as a result of an acquisition;
- the potential difficulty maintaining uniform standards, controls, procedures and policies;
- the impairment of relationships with employees and customers as a result of any integration of new management personnel;
- the risk of entering market segments in which we have no or limited direct prior experience and where competitors in such market segments have stronger market segment positions;
- the risk that there could be deficiencies in the internal control of any acquired company or investments that could result in a material weakness in our overall internal controls taken as a whole; and
- the potential loss of key employees of an acquired company.

***Our recent acquisitions and any future acquisitions could harm our operating results and share price.***

On August 29, 2005, we signed a definitive agreement to acquire the hard disk and tape drive controller semiconductor business of QLogic Corporation. Under terms of the agreement, we will issue a combination of \$180.0 million in cash and shares of our common stock valued at \$45.0 million for total consideration of \$225.0 million.

Any acquisitions could materially harm our operating results as a result of possible concurrent issuances of dilutive equity securities. In addition, the purchase price of any acquired businesses may exceed the current fair values of the net tangible assets of the acquired businesses. As a result, we would be required to record material amounts of goodwill and other intangible assets, which could result in significant impairment charges and amortization expense in future periods. These charges, in addition to the results of operations of such acquired businesses, could have a material adverse effect on our business, financial condition and results of operations. We cannot forecast the number, timing or size of future acquisitions, or the effect that any such acquisitions might have on our operating or financial results.

Under generally accepted accounting principles, we are required to review our intangible assets for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable. In addition, we are required to review our goodwill and indefinite-lived intangible assets on an annual basis. Over the past few years, there has been a slowdown in worldwide economies, including the United States, which has affected our business. End customers for our products have slowed their purchases of next-generation technology and have delayed or rescheduled existing orders for products that incorporate our technology. Although recently we have seen some signs of recovery in the worldwide economy, we cannot predict the timing, strength and duration of any economic recovery, worldwide or in our served markets. If the economy does not continue to recover, or if other presently unforeseen events or changes in circumstances arise which indicate that the carrying value of our goodwill or other intangible assets may not be recoverable, we will be required to perform impairment reviews of these assets, which have carrying values of approximately \$1.5 billion as of July 31, 2005. An impairment review could result in a write-down of all or a portion of these assets to their fair values. We will perform an annual impairment review during the fourth quarter of each fiscal year or more frequently if we believe indicators of impairment exist. In light of the large carrying value associated with our goodwill and intangible assets, any write-down of these assets may result in a significant charge to our statement of operations in the period any impairment is determined and could cause our stock price to decline.

***We are subject to the risks of owning real property.***

On November 17, 2003, we completed the purchase of six buildings on 33.8 acres of land in Santa Clara, California for a total cost of \$63.9 million. It is currently intended that the site will be the future location of our U.S. subsidiary. The real property includes land and buildings, primarily related to our operations. We have little experience in managing real property. Ownership of this property subjects us to risks, including:

- the possibility of environmental contamination and the costs associated with fixing any environmental problems;
- adverse changes in the value of these properties, due to interest rate changes, changes in the neighborhood in which the property is located, or other factors;
- the possible need for structural improvements in order to comply with zoning, seismic and other legal or regulatory requirements;
- the potential disruption of our business and operations arising from or connected with a relocation due to moving to the facility;
- increased cash commitments for improvements to the buildings or the property or both;

- increased operating expenses for the buildings or the property or both;
- possible disputes with tenants or other third parties related to the buildings or the property or both; and
- the risk of financial loss in excess of amounts covered by insurance, or uninsured risks, such as the loss caused by damage to the buildings as a result of an earthquake.

***We depend on key personnel with whom we do not have employment agreements to manage our business, and if we are unable to retain our current personnel and hire additional personnel, our ability to develop and successfully market our products could be harmed.***

We believe our future success will depend in large part upon our ability to attract and retain highly skilled managerial, engineering and sales and marketing personnel. The loss of any key employees or the inability to attract or retain qualified personnel, including engineers and sales and marketing personnel, could delay the development and introduction of and harm our ability to sell our products. We believe that our future success is highly dependent on the contributions of Sehat Sutardja Ph.D., our co-founder, President and Chief Executive Officer; Weili Dai, our co-founder and Executive Vice President; and Pantas Sutardja Ph.D., our co-founder and Chief Technology Officer. We do not have employment contracts with these or any other key personnel, and their knowledge of our business and industry would be extremely difficult to replace.

There is currently a shortage of qualified technical personnel with significant experience in the design, development, manufacturing, marketing and sales of integrated circuits. In particular, there is a shortage of engineers who are familiar with the intricacies of the design and manufacture of products based on analog technology, and competition for these engineers is intense. Our key technical personnel represent a significant asset and serve as the source of our technological and product innovations. We may not be successful in attracting and retaining sufficient numbers of technical personnel to support our anticipated growth.

Stock options generally comprise a significant portion of our compensation packages for all employees. The FASB requirement to expense the fair value of stock options awarded to employees beginning in the quarter ending April 30, 2006 will increase our operating expenses and may cause us to reevaluate our compensation structure for our employees. We cannot be certain that the changes in our compensation policies, if any, will improve our ability to attract, retain and motivate employees. Our inability to attract and retain additional key employees and the increase in stock-based compensation expense each could have an adverse effect on our business, financial condition and results of operations.

***Our officers and directors own a large percentage of our voting stock, and three existing directors, who are also significant shareholders, are related by blood or marriage. These factors may allow the officers and directors as a group or the three related directors to greatly influence the election of directors and the approval or disapproval of significant corporate actions.***

As of August 31, 2005, our executive officers and directors beneficially owned or controlled, directly or indirectly, approximately 22% of the outstanding shares of our common stock. Additionally, Sehat Sutardja Ph.D. and Weili Dai are husband and wife and Sehat Sutardja Ph.D. and Pantas Sutardja Ph.D. are brothers. All three are directors and together they held approximately 21% of our outstanding common stock as of August 31, 2005. As a result, if the directors and officers as a group or any of Sehat Sutardja Ph.D., Weili Dai and Pantas Sutardja Ph.D. act together, they will significantly influence the election of our directors and the approval or disapproval of our significant corporate actions. This influence over our affairs might be adverse to the interests of other shareholders. In addition, the voting power of these officers or directors could have the effect of delaying or preventing an acquisition of our company on terms that other shareholders may desire. Furthermore, we have a classified board, which could also further delay or prevent an acquisition, under certain circumstances.

Under Bermuda law all of our officers, in exercising their powers and discharging their duties, must act honestly and in good faith with a view to our best interests and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Majority shareholders do not owe fiduciary duties to minority shareholders. As a result, the minority shareholders will not have a direct claim against the majority shareholders in the event the majority shareholders take actions that damage the interests of minority shareholders. Class actions and derivative actions are generally not available to shareholders under the laws of Bermuda, except that Bermuda courts would be expected to follow English case law precedent, which would permit a shareholder to bring an action in our name if the directors or officers are alleged to be acting beyond our corporate power, committing illegal acts or violating our Memorandum of Association or Bye-laws. In addition, minority shareholders would be able to challenge a corporate action that allegedly constituted a fraud against them or required the approval of a greater percentage of our shareholders than actually approved it. The winning party in such an action generally would be able to recover a portion of attorneys' fees incurred in connection with the action.

***Our rapid growth has strained our resources and our inability to manage any future growth could harm our profitability.***

Our rapid growth has placed, and any future growth of our operations will continue to place, significant strain on our management personnel, systems and resources. We anticipate that we will need to implement a variety of new and upgraded operational and financial systems, procedures and controls, including the continuous improvement of our accounting and other internal management systems. We also expect that we will need to continue to expand, train, manage and motivate our workforce. All of these endeavors will require substantial management effort. If we are unable to effectively manage our expanding operations, our operating results could be harmed.

We are currently implementing, and also plan to implement, new modules of our ERP system in the future. Implementation of new modules of an ERP system is a very complex, costly and time-consuming process. Any unforeseen delays or difficulties after we begin transacting on the modified system or in performing financial closes on, or upgrades to the systems, may divert the attention of management and other employees and disrupt our ongoing business and could have a material adverse impact on our financial condition and results of operations.

***We face foreign business, political and economic risks, which may harm our results of operations, because a majority of our products and our customers' products are manufactured and sold outside of the United States.***

A substantial portion of our business is conducted outside of the United States and, as a result, we are subject to foreign business, political and economic risks. All of our products are manufactured outside of the United States. Our current qualified integrated circuit foundries are located in the same region within Taiwan, and our primary assembly and test subcontractors are located in the Pacific Rim region. In addition, many of our customers are located outside

of the United States, primarily in Asia, which further exposes us to foreign risks. Sales to customers located in Asia represented approximately 94% of our net revenue in the first six months of fiscal 2006, and represented 93% and 90% of our net revenue in fiscal 2005 and 2004, respectively.

We anticipate that our manufacturing, assembly, testing and sales outside of the United States will continue to account for a substantial portion of our operations and revenue in future periods. Accordingly, we are subject to risks associated with international operations, including:

- difficulties in obtaining domestic and foreign export, import and other governmental approvals, permits and licenses;

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- compliance with foreign laws;
- difficulties in staffing and managing foreign operations;
- trade restrictions or higher tariffs;
- transportation delays;
- difficulties of managing distributors, especially because we expect to continue to increase our sales through international distributors;
- political and economic instability, including wars, terrorism, other hostilities and political unrest, boycotts, curtailment of trade and other business restrictions; and
- inadequate local infrastructure.

Additionally, our operations may be impacted by a resurgence of SARS, including disruptions of our third party manufacturers that are primarily located in Asia, reduced sales in our international retail channels and increased supply chain costs. If future outbreaks of SARS or similar diseases arise or spread to other areas, our international sales and operations could be harmed.

Because substantially all of our sales to date have been denominated in United States dollars, increases in the value of the United States dollar will increase the price of our products so that they become relatively more expensive to customers in the local currency of a particular country, potentially leading to a reduction in sales and profitability for us in that country. A portion of our international revenue may be denominated in foreign currencies in the future, which will subject us to risks associated with fluctuations in exchange rates for those foreign currencies.

***Our third-party foundries and subcontractors are concentrated in Taiwan and elsewhere in the Pan-Pacific region, an area subject to significant earthquake risks. Any disruption to the operations of these foundries and subcontractors resulting from earthquakes or other natural disasters could cause significant delays in the production or shipment of our products.***

Substantially all of our products are manufactured by third-party foundries located in Taiwan. Currently our only alternative manufacturing sources are located in Taiwan, China and Singapore. In addition, substantially all of our assembly and testing facilities are located in Singapore, Taiwan, Malaysia and the Philippines. The risk of an earthquake in Taiwan and elsewhere in the Pacific Rim region is significant due to the proximity of major earthquake fault lines to the facilities of our foundries and assembly and test subcontractors. In September 1999, a major earthquake in Taiwan affected the facilities of several of these third-party contractors. As a consequence of this earthquake, these contractors suffered power outages and disruptions that impaired their production capacity. In March 2002 and June 2003, major earthquakes occurred in Taiwan. Although our foundries and subcontractors did not suffer any significant damage as a result of these most recent earthquakes, the occurrence of additional earthquakes or other natural disasters could result in the disruption of our foundry or assembly and test capacity. Any disruption resulting from such events could cause significant delays in the production or shipment of our products until we are able to shift our manufacturing, assembling or testing from the affected contractor to another third-party vendor. We may not be able to obtain alternate capacity on favorable terms, if at all.

In May 2005, a fire occurred at one of our third-party subcontractor's production facilities that produce packaging substrates that we use in our products. In the recent past others in our industry experienced a shortage in the supply of packaging substrates that we use for our products. We do not purchase substrates from the factory where the fire occurred, however, the fire could affect the overall supply of substrates and indirectly impact us through increased lead times and less supply of substrates that we use in our products. If our third-party subcontractors are unable to obtain sufficient packaging materials for our products in a timely manner, we may experience a significant product shortage or delay in product shipments, which could seriously harm our customer relationships and materially and adversely affect our net revenue, business, results of operations, financial condition and cash flows.

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***The average selling prices of products in our markets have historically decreased rapidly and will likely do so in the future, which could harm our revenues and gross profits.***

The products we develop and sell are used for high volume applications. As a result, the prices of those products have historically decreased rapidly. Our gross profits and financial results will suffer if we are unable to offset any reductions in our average selling prices by increasing our sales volumes, reducing our costs, or developing new or enhanced products on a timely basis with higher selling prices or gross profits. We expect that our gross profits on our products are likely to decrease over the next fiscal year below levels we have historically experienced due to (i) pricing pressures from our customers, (ii) an increase in sales of storage SOC's, which typically have lower margins than standalone read channel devices, and (iii) an increase in sales of wireless and other products into consumer application markets, which are highly competitive and cost sensitive.

Additionally, because we do not operate our own manufacturing, assembly or testing facilities, we may not be able to reduce our costs as rapidly as companies that operate their own facilities, and our costs may even increase, which could also reduce our margins. In the past, we have reduced the average

selling prices of our products in anticipation of future competitive pricing pressures, new product introductions by us or our competitors and other factors. We expect that we will have to do so again in the future.

***We have a lengthy and expensive product sales cycle that does not assure product sales, and that if unsuccessful, may harm our operating results.***

The sales cycle for many of our products is long and requires us to invest significant resources with each potential customer without any assurance of sales to that customer. Our sales cycle typically begins with a three to six month evaluation and test period, also known as qualification, during which our products undergo rigorous reliability testing by our customers.

Qualification is typically followed by an extended development period by our customers and an additional three to six month period before a customer commences volume production of equipment incorporating our products. This lengthy sales cycle creates the risk that our customers will decide to cancel or change product plans for products incorporating our integrated circuits. During our sales cycle, our engineers assist customers in implementing our products into the customers' products. We incur significant research and development and selling, general and administrative expenses as part of this process, and this process may never generate related revenues. We derive revenue from this process only if our design is selected. Once a customer selects a particular integrated circuit for use in its storage product, the customer generally uses solely that integrated circuit for a full generation of its product. Therefore, if we do not achieve a design win for a product, we will be unable to sell our integrated circuit to a customer until that customer develops a new product or a new generation of its product. Even if we achieve a design win with a customer, the customer may not ultimately ship products incorporating our products or may cancel orders after we have achieved a sale. In addition, we will have to begin the qualification process again when a customer develops a new generation of a product for which we were the successful supplier.

Also, during the final production of a mature product, our customers typically exhaust their existing inventory of our integrated circuits. Consequently, orders for our products may decline in those circumstances, even if our products are incorporated into both our customers' mature and replacement products. A delay in a customer's transition to commercial production of a replacement product may cause the customer to lose sales, which would delay our ability to recover the lost sales from the discontinued mature product. In addition, customers may defer orders in anticipation of new products or product enhancements from our competitors or us.

***We are subject to the cyclical nature of the integrated circuit industry. Any future downturns will likely reduce our revenue and result in excess inventory.***

The integrated circuit industry is highly cyclical and is characterized by constant and rapid technological change, rapid product obsolescence and price erosion, evolving standards, short product life cycles and wide fluctuations in product supply and demand. The industry has in the past experienced significant downturns. These downturns are often connected with, or in anticipation of, maturing product cycles of both integrated circuit companies' and their customers' products and declines in general economic conditions. These downturns have been characterized by diminished product demand, production overcapacity, high inventory levels and accelerated erosion of average selling prices. Any future downturns may reduce our revenue or our percentage of revenue growth on a quarter-to-quarter basis and result in us having excess inventory. Furthermore, any upturn in the integrated circuit industry could result in increased competition for access to third-party foundry, assembly and test capacity.

***We must keep pace with rapid technological change and evolving industry standards in the semiconductor industry to remain competitive.***

Our future success will depend on our ability to anticipate and adapt to changes in technology and industry standards and our customers' changing demands. We sell products in markets that are characterized by rapid technological change, evolving industry standards, frequent new product introductions, short product life cycles and increasing demand for higher levels of integration and smaller process geometries. Our past sales and profitability have resulted, to a large extent, from our ability to anticipate changes in technology and industry standards and to develop and introduce new and enhanced products incorporating the new standards and technologies. Our ability to adapt to these changes and to anticipate future standards, and the rate of adoption and acceptance of those standards, will be a significant factor in maintaining or improving our competitive position and prospects for growth. If new industry standards emerge, our products or our customers' products could become unmarketable or obsolete, and we could lose market share. We may also have to incur substantial unanticipated costs to comply with these new standards. In addition, our target markets continue to undergo rapid growth and consolidation. A significant slowdown in any of these markets could materially and adversely affect our business, financial condition and results of operations. Our success will also depend on the ability of our customers to develop new products and enhance existing products for the markets we serve and to introduce and promote those products successfully.

***We may be unable to protect our intellectual property, which would negatively affect our ability to compete.***

We believe one of our key competitive advantages results from our collection of proprietary technologies that we have developed since our inception. If we fail to protect these intellectual property rights, competitors could sell products based on technology that we have developed which could harm our competitive position and decrease our revenues. We believe that the protection of our intellectual property rights is and will continue to be important to the success of our business. We rely on a combination of patent, copyright, trademark and trade secret laws, as well as nondisclosure agreements and other methods, to protect our proprietary technologies. We also enter into confidentiality or license agreements with our employees, consultants and business partners, and control access to and distribution of our documentation and other proprietary information. We have been issued several United States patents and have a number of pending United States patent applications. However, a patent may not be issued as a result of any applications or, if issued, claims allowed may not be sufficiently broad to protect our technology. In addition, it is possible that existing or future patents may be challenged, invalidated or circumvented. Despite our efforts, unauthorized parties may attempt to copy or otherwise obtain and use our products or proprietary technology. Monitoring unauthorized use of our technology is difficult, and the steps that we have taken may not prevent unauthorized use of our technology, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States.

***We may become involved with costly and lengthy litigation, which could subject us to liability, require us to stop selling our products or force us to redesign our products.***

Litigation involving patents and other intellectual property is widespread in the high-technology industry and is particularly prevalent in the integrated circuit industry, where a number of companies aggressively bring numerous infringement claims to protect their patent portfolios. From time to time we receive, and may continue to receive in the future, notices that claim we have infringed upon, misappropriated or misused the proprietary rights of other parties. These claims could result in litigation, which, in turn, could subject us to significant liability for damages. Any potential intellectual property litigation also could force us to do one or more of the following:

- stop selling products or using technology that contain the allegedly infringing intellectual property;
- pay substantial damages to the party claiming infringement that could adversely impact our liquidity or operating results;
- attempt to obtain a license to the relevant intellectual property, which license may not be available on reasonable terms or at all; and
- attempt to redesign those products that contain the allegedly infringing intellectual property.

We are also party to other claims and litigation proceedings arising in the normal course of business. The impact on us as a result of such claims and litigation cannot currently be ascertained. There can be no assurance that these matters will be resolved without costly litigation, in a manner that is not adverse to our financial position, results of operations or cash flows or without requiring

royalty payments in the future that may adversely impact gross margins. Any litigation, regardless of the outcome, is time-consuming and expensive to resolve, may require us to pay significant monetary damages and can divert management time and attention.

***We are incorporated in Bermuda, and, as a result, it may not be possible for our shareholders to enforce civil liability provisions of the securities laws of the United States.***

We are organized under the laws of Bermuda. As a result, it may not be possible for our shareholders to effect service of process within the United States upon us, or to enforce against us in United States courts judgments based on the civil liability provisions of the securities laws of the United States. Most of our executive officers and directors are residents of the United States. However, there is significant doubt as to whether the courts of Bermuda would recognize or enforce judgments of United States courts obtained against us or our directors or officers based on the civil liability provisions of the securities laws of the United States or any state or hear actions brought in Bermuda against us or those persons based on those laws. The United States and Bermuda do not currently have a treaty providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters. Therefore, a final judgment for the payment of money rendered by any federal or state court in the United States based on civil liability, whether or not based solely on United States federal or state securities laws, would not be automatically enforceable in Bermuda.

***Our Bye-laws contain a waiver of claims or rights of action by our shareholders against our officers and directors, which will severely limit our shareholders' right to assert a claim against our officers and directors under Bermuda law.***

Our Bye-laws contain a broad waiver by our shareholders of any claim or right of action, both individually and on our behalf, against any of our officers and directors. The waiver applies to any action taken by an officer or director, or the failure of an officer or director to take any action, in the performance of his or her duties with or for us, other than with respect to any matter involving any fraud or dishonesty on the part of the officer or director. This waiver will limit the rights of our shareholders to assert claims against our officers and directors unless the act complained of involves actual fraud or dishonesty. Thus, so long as acts of business judgment do not involve actual fraud or dishonesty, they will not be subject to shareholder claims under Bermuda law. For example, shareholders will not have claims against officers and directors for a breach of trust, unless the breach rises to the level of actual fraud or dishonesty.

***Tax benefits we receive may be terminated or reduced in the future, which would increase our costs.***

Under current Bermuda law, we are not subject to tax on our income or capital gains. We have obtained from the Minister of Finance of Bermuda under the Exempt Undertakings Tax Protection Act 1966, as amended, an undertaking that, in the event that Bermuda enacts any legislation imposing tax computed on income or capital gains, those taxes should not apply to us until March 28, 2016. However, this exemption may not be extended beyond that date.

The Economic Development Board of Singapore granted Pioneer Status to our wholly-owned subsidiary in Singapore in July 2000. Initially, this tax exemption was to expire after eight years, but the Economic Development Board on September 27, 2004 agreed to extend the term to 10 years. As a result we anticipate that a significant portion of the income we earn in Singapore during this period will be exempt from the Singapore income tax. We are required to meet several requirements as to investment, headcount and activities in Singapore to retain this status. If our Pioneer Status is terminated early, our financial results could be harmed. In addition, on October 1, 2004, the Economic Development Board of Singapore agreed to grant our Singapore subsidiary a Development and Expansion Incentive for a term of 5 years, commencing July 1, 2004, under which a portion of the income of the subsidiary which does not qualify for Pioneer Status will be taxed at a reduced rate of 10 percent. We agreed to maintain Singapore as our Asia Pacific headquarters and to meet several requirements relating to headcount, production activities and spending.

The Israeli government has granted Approved Enterprise Status to two of our wholly-owned subsidiaries in Israel, which provides a tax holiday on undistributed income derived from operations within certain "development regions" in Israel. In order to maintain our qualification, we must continue to meet specified conditions, including the making of investments in fixed assets in Israel. As our tax holidays expire, we expect that we will start paying income tax on our operations within these development regions.

***Class action litigation due to stock price volatility or other factors could cause us to incur substantial costs and divert our management's attention and resources.***

On September 5, 2001, a putative class action was filed in the Southern District of New York relating to our initial public offering, or IPO. In this action, the plaintiffs named several defendants including Marvell and two of our officers, one of whom is also a director. This complaint relating to our IPO has been consolidated with hundreds of other lawsuits by plaintiffs against approximately 55 underwriters and approximately 300 issuers across the United States. Plaintiffs allege that defendants violated various provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. In these actions, plaintiffs seek, among other items, unspecified damages, pre-judgment interest and reimbursement of attorneys' and experts' fees. A Consolidated Amended Class Action Complaint against Marvell and two of our officers was filed on April 19, 2002. Subsequently, defendants in the consolidated proceedings moved to dismiss the actions. In February 2003, the trial court issued its ruling on the motions, granting the motions in part, and denying them in part. Thus, the cases

may proceed against the underwriters and us as to alleged violations of section 11 of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934. Claims against the individual officers have been voluntarily dismissed with prejudice by agreement with plaintiffs. On June 26, 2003, the plaintiffs announced that a settlement among plaintiffs, the issuer defendants and their directors and officers, and their insurers had been structured, a part of which the insurers for all issuer defendants would guarantee up to \$1 billion to investors who are class members, depending upon plaintiffs' success against non-settling parties. Our board of directors has approved the proposed settlement, which will result in the plaintiffs' dismissing the case against us and granting releases that extend to all of our officers and directors. Definitive settlement documentation was completed in early June 2004 and first presented to the court on June 14, 2004. On February 15, 2005, the court issued an opinion preliminarily approving the proposed settlement, contingent upon certain modifications being made to one aspect of the proposed settlement — the proposed "bar order". The court ruled that it had no authority to deviate from the wording of the Plaintiff's Securities Law Reform Act of 1995 and that any bar order that may issue should the proposed settlement be finally approved must be limited to the express wording of 15 U.S.C. section 78u-4(f)(7)(A). On May 2, 2005 the issuer defendants and plaintiffs jointly submitted an amendment to the settlement agreement conforming the language of the settlement agreement with the court's February 15, 2005 ruling regarding the bar order. The court on August 31, 2005 issued an order preliminarily approving the settlement and setting a public hearing on its fairness for April 24, 2006 due to difficulties in mailing the required notice to class members. These claims and any resulting litigation could result in substantial costs and could divert the attention and resources of our management.

In the past, securities class action litigation often has been brought against a company following periods of volatility in the market price of its securities. Companies in the integrated circuit industry and other technology industries are particularly vulnerable to this kind of litigation due to the high volatility of their stock prices. Accordingly, we may in the future be the target of securities litigation. Any securities litigation could result in substantial costs and could divert the attention and resources of our management.

***Our Bye-laws contain provisions that could delay or prevent a change in corporate control, even if the change in corporate control would benefit our shareholders.***

Our Bye-laws contain change in corporate control provisions, which include:

- authorizing the issuance of preferred stock without shareholder approval;
- providing for a classified board of directors with staggered, three-year terms; and
- requiring a vote of two-thirds of the outstanding shares to approve any change of corporate control.

These changes in corporate control provisions could make it more difficult for a third-party to acquire us, even if doing so would be a benefit to our shareholders.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

**Interest Rate Risk.** The primary objective of our investment activities is to preserve principal while at the same time maximize the income we receive from our investments without significantly increasing risk. Some of the securities that we have invested in may be subject to market risk. This means that a change in prevailing interest rates may cause the principal amount of the investment to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing interest rate later rises, the principal amount of our investment will probably decline. Also, variable rate securities may produce less income than expected if interest rates fall. To minimize this risk, we maintain our portfolio of cash equivalents and short-term investments in a variety of fixed and variable rate securities including money market funds, corporate debt securities, Federal, State, county and municipal debt securities and auction rate securities. In general, money market funds are not subject to market risk because the interest paid on such funds fluctuates with the prevailing interest rate. The following table presents the amounts of our cash equivalents and short-term investments that are subject to market risk by range of expected maturity and weighted-average interest rates as of July 31, 2005 (in thousands). This table does not include money market funds because those funds are not subject to market risk. Although auction rate securities generally have legally stated maturities in excess of one year, auction rate securities are presented below with an expected fiscal year maturity date in 2006 because such securities are structured with short-term interest reset dates of generally less than 90 days at which time we can sell or continue to hold the securities at par.

	Expected Fiscal Year Maturity Date					Total	Fair Value
	2006	2007	2008	2009	2010		
Variable Rate	\$ 392,202	\$ —	\$ —	\$ —	\$ —	\$ 392,202	\$ 392,202
Average Interest Rate	3.39%	—	—	—	—	3.39%	
Fixed Rate	\$ 21,495	\$ 125,792	\$ 38,253	\$ 20,268	\$ —	\$ 205,808	\$ 202,875
Average Interest Rate	1.82%	2.69%	3.05%	3.57%	—	2.75%	

At any time, fluctuations in interest rates could affect interest earnings on our cash, cash equivalents, and short-term investments, or the fair value of our investment portfolio. A 10% move in interest rates as of July 31, 2005 would have an immaterial effect on our financial position, results of operations and cash flows.

**Investment Risk.** We invest in equity instruments of privately-held companies for business and strategic purposes. These investments, which totaled \$11.3 million at July 31, 2005, are included in other non-current assets in the accompanying balance sheets and are accounted for under the cost method because our ownership is less than 20% and we do not have the ability to exercise significant influence over the operations on these companies. We monitor these investments for impairment and make appropriate reductions in carrying value when an impairment is deemed to be other than temporary.

**Foreign Currency Exchange Risk.** Substantially all of our sales and the majority of our expenses to date have been denominated in United States dollars, and, as a result, we have relatively little exposure to foreign currency exchange risk. Occasionally, we will enter into short-term forward exchange contracts to hedge exposures for purchases denominated in foreign currencies such as the Singapore Dollar and the New Israeli Shekel. We do not enter into any other derivative financial instruments for trading or speculative purposes.

**Item 4. Controls and Procedures**

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. Management, including our Chief Executive Officer and our Chief Financial Officer, does not expect that our disclosure controls or procedures will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

We carried out an evaluation, under the supervision and with the participation of management, including our Chief Executive Officer and our Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of July 31, 2005, the end of the quarterly period covered by this report. Based on the foregoing, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level.

There has been no change in our internal controls over financial reporting during the most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal controls over financial reporting.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

On July 31, 2001, a putative class action suit was filed against two investment banks that participated in the underwriting of our initial public offering, or IPO, on June 29, 2000. That lawsuit, which did not name Marvell or any of our officers or directors as defendants, was filed in the United States District Court for the Southern District of New York. Plaintiffs allege that the underwriters received "excessive" and undisclosed commissions and entered into unlawful "tie-in" agreements with certain of their clients in violation of Section 10(b) of the Securities Exchange Act of 1934. Thereafter, on September 5, 2001, a second putative class action was filed in the Southern District of New York relating to our IPO. In this second action, plaintiffs named three underwriters as defendants and also named as defendants Marvell and two of our officers, one of whom is also a director. Relying on many of the same allegations contained in the initial complaint in which Marvell was not named as a defendant, plaintiffs allege that the defendants violated various provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. In both actions, plaintiffs seek, among other items, unspecified damages, pre-judgment interest and reimbursement of attorneys' and experts' fees. These two actions relating to our IPO have been consolidated with hundreds of other lawsuits filed by plaintiffs against approximately 40 underwriters and approximately 300 issuers across the United States. Defendants in the consolidated proceedings moved to dismiss the actions. In February 2003, the trial court issued its ruling on the motions, granting the motions in part, and denying them in part. Thus, the cases may proceed against the underwriters and us as to alleged violations of section 11 of the Securities Act of 1933 and section 10(b) of the Securities Exchange Act of 1934. Claims against the individual officers have been voluntarily dismissed with prejudice by agreement with plaintiffs. On June 26, 2003, the plaintiffs announced that a settlement among plaintiffs, the issuer defendants and their directors and officers, and their insurers has been structured, a part of which provides that the insurers for all issuer defendants would guarantee up to \$1 billion to investors who are class members, depending upon plaintiffs' success against non-settling parties. Our board of directors has approved the proposed settlement, which will result in the plaintiffs' dismissing the case against us and granting releases that extend to all of our officers and directors. Definitive settlement documentation was completed in early June 2004 and first presented to the court on June 14, 2004. On February 15, 2005, the court issued an opinion preliminarily approving the proposed settlement, contingent upon certain modifications being made to one aspect of the proposed settlement — the proposed "bar order". The court ruled that it had no authority to deviate from the wording of the Plaintiff's Securities Law Reform Act of 1995 and that any bar order that may issue should the proposed settlement be finally approved must be limited to the express wording of 15 U.S.C. section 78u-4(f)(7)(A). On May 2, 2005 the issuer defendants and plaintiffs jointly submitted an amendment to the settlement agreement conforming the language of the settlement agreement with the court's February 15, 2005 ruling regarding the bar order. The court on August 31, 2005 issued an order preliminarily approving the settlement and setting a public hearing on its fairness for April 24, 2006 due to difficulties in mailing the required notice to class members. Based on currently available information, we do not believe that the ultimate disposition of the lawsuit will have a material adverse impact on our business, results of operations or financial condition. However, litigation is subject to inherent uncertainties and unfavorable rulings could occur. An unfavorable ruling, if the settlement proposal is not concluded, could include monetary damages. If an unfavorable ruling were to occur, there exists the possibility of a material adverse impact on our business, results of operations, financial condition or cash flows for the period in which the ruling occurs, or future periods. These claims and any resulting litigation could result in substantial costs and could divert the attention and resources of our management.

On September 12, 2001, Jasmine Networks, Inc. ("Jasmine") filed a lawsuit in the Santa Clara County Superior Court asserting claims against our personnel and us for improperly obtaining and using information and technologies during the course of the negotiations with our personnel regarding the potential acquisition of certain Jasmine assets by Marvell. The lawsuit claims that our officers improperly obtained and used such information and technologies after we signed a non-disclosure agreement with Jasmine. We believe the claims asserted against our officers and us are without merit and we intend to defend all claims vigorously.

On June 21, 2005, we filed a cross complaint in the above disclosed action in the Santa Clara County Superior Court asserting claims against Jasmine and unnamed Jasmine officers and employees. Among other actions, the cross complaint alleges that Jasmine

and its personnel engaged in fraud in connection with their effort to sell to Marvell technology that Jasmine and its personnel wrongfully obtained from a third party in violation of such third party's rights. The cross complaint seeks declaratory judgment that our technology does not incorporate any of Jasmine's alleged technology. The cross complaint seeks further declaratory judgment that Jasmine and its personnel misappropriated certain aspects of Jasmine's alleged technology. We intend to prosecute the cross complaint against Jasmine and its personnel vigorously. We cannot predict the outcome of this



litigation. Any litigation could be costly, divert our management’s attention and could have a material adverse effect on our business, results of operations, financial condition or cash flows.

On March 11, 2004, Trinity Technologies, Inc. (“Trinity”) filed a lawsuit against our subsidiary, Marvell Semiconductor, Inc., (“MSI”) in the Superior Court of California, alleging violations of the California Independent Wholesale Sales Representatives Contractual Relations Act of 1990, as well as breach of contract, breach of the implied covenant of good faith and fair dealing and fraud in connection with the termination by MSI of certain agreements it had entered into with Trinity. The complaint seeks declaratory relief, \$25.0 million in monetary damages, special and punitive damages and trebling of damages as well as costs and attorneys’ fees. By order entered January 25, 2005, the court granted our motion for summary adjudication and dismissed one claim for violation of a statute, in which plaintiff sought damages exceeding \$12 million. On August 29, 2005, the case was settled and a dismissal of the entire action with prejudice is to be entered. The terms of the settlement are confidential, but it will have no material adverse effect on our business, results of operations, financial condition or cash flows.

On October 7, 2004, Realtek Semiconductor Corporation (“Realtek”) filed a lawsuit against Marvell Technology Group Ltd. (“MTGL”) and MSI in the U.S. District Court for the Northern District of California (“the Court”), alleging that certain Marvell products infringe one of Realtek’s patents. The parties stipulated to the dismissal of MTGL, leaving the lawsuit between Realtek and MSI. Certain of the accused Marvell products were made and sold before Realtek’s patent was filed. On July 15, 2005, MSI filed a motion requesting summary judgment that Realtek’s patent was invalid. In response to that motion, on July 28, 2005 Realtek provided MSI with a Covenant Not To Sue for patent infringement of the Realtek patent in-suit as against any Marvell product now made or ever made. In response to Realtek’s Covenant Not to Sue and a request by Realtek, on August 12, 2005, the Court entered an order dismissing the underlying patent infringement action, but allowing MSI to file a motion seeking fees, costs, and other sanctions. On August 26, 2005 MSI filed a motion against Realtek seeking fees, costs, and other sanctions. The hearing for this motion has not yet occurred.

On October 11, 2004 Realtek filed a lawsuit similar to the Northern District lawsuit in Taiwan. On December 17, 2004, Marvell International Ltd. initiated a patent infringement action in the United States International Trade Commission (“ITC”), alleging that Realtek infringes two Marvell patents. Effective August 17, 2005, the parties entered a Confidential Settlement Agreement. On August 29, 2005, Realtek publicly announced that it will drop the case it initiated in Taiwan. On August 31, 2005, Marvell filed a motion initiating the dismissal of the case it brought in the ITC. On September 2, 2005 Realtek filed the necessary papers in the courts in Taiwan to dismiss its Taiwan lawsuit against Marvell. The terms of the settlement are confidential, but it will have no material adverse effect on our business, results of operations, financial condition or cash flows.

We are also party to other claims and litigation proceedings arising in the normal course of business. Although the legal responsibility and financial impact with respect to such claims and litigation cannot currently be ascertained, we do not believe that these matters will result in our payment of monetary damages, net of any applicable insurance proceeds that, in the aggregate would be material in relation to our consolidated financial position or results of operations. There can be no assurance that these matters will be resolved without costly litigation, in a manner that is not adverse to our financial position, results of operations or cash flows or without requiring royalty payments in the future, which may adversely impact gross margins.

## Item 2. *Unregistered Sales of Equity Securities and Use of Proceeds*

Not applicable.

## Item 3. *Defaults Upon Senior Securities*

Not applicable.

## Item 4. *Submission of Matters to a Vote of Security Holders*

At our 2005 Annual General Meeting of Shareholders held on June 10, 2005, the following proposals were adopted by the margins indicated.

- To elect one director constituting Class 2 of our Board of Directors, to hold office for a three-year term and until their successor is duly elected and qualified.

	Votes For	Votes Abstained
Kuo Wei (Herbert) Chang	183,909,982	60,745,792

Other directors whose term of office as a director continued after the Annual General Meeting were Dr. John M. Cioffi, Weili Dai, Dr. Paul R. Gray, Douglas King, Dr. Pantas Sutardja and Dr. Sehat Sutardja.

- To re-appoint PricewaterhouseCoopers LLP as our independent registered public accounting firm for our 2006 fiscal year ending January 28, 2006.

Votes for:	244,446,096
Votes against:	189,939
Votes abstained:	19,739

## Item 5. *Other Information*

Not applicable.

## Item 6. *Exhibits*

- The following exhibits are filed as part of this report:

- Asset Purchase Agreement dated as of August 29, 2005, by and among QLogic Corporation, Marvell Technology Group Ltd. and Marvell International Ltd.

10.24	Amended and Restated 1995 Stock Option Plan
31.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 of Sehat Sutardja Ph.D., Chief Executive Officer
31.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 of George A. Hervey, Chief Financial Officer
32.1*	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 of Sehat Sutardja, Chief Executive Officer
32.2*	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 of George A. Hervey, Chief Financial Officer

\* In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release No. 33-8238 and 34-47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10-Q and will not be deemed "filed" for purposes of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filings under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

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## SIGNATURES

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.

MARVELL TECHNOLOGY GROUP LTD.

September 8, 2005  
Date

By: /s/ GEORGE A. HERVEY  
George A. Hervey  
Vice President and Chief Financial Officer

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## EXHIBIT INDEX

Exhibit Number	Description
2.1	Asset Purchase Agreement dated as of August 29, 2005, by and among QLogic Corporation, Marvell Technology Group Ltd. and Marvell International Ltd.
10.24	Amended and Restated 1995 Stock Option Plan
31.1	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 of Sehat Sutardja Ph.D., Chief Executive Officer
31.2	Certification Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 of George A. Hervey, Chief Financial Officer
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## ASSET PURCHASE AGREEMENT

by and between

MARVELL TECHNOLOGY GROUP LTD.,

MARVELL INTERNATIONAL LTD.,

and

QLOGIC CORPORATION

DATED AS OF AUGUST 29, 2005

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of August 29, 2005, by and between QLOGIC CORPORATION, a Delaware corporation (“**Seller**”), and MARVELL TECHNOLOGY GROUP LTD., a corporation organized under the laws of Bermuda (“**Marvell Technology**”) and MARVELL INTERNATIONAL LTD., a corporation organized under the laws of Bermuda (“**Marvell International**” and, collectively with Marvell Technology, “**Buyer**”). Capitalized terms used in this Agreement without definition are defined in [Article XI](#).

## RECITALS

A. Seller conducts, among other businesses, a business consisting of the design, manufacturing, marketing and sale of hard disk and tape drive controllers and related products (the “**Business**”).

B. On and subject to the terms and conditions of this Agreement, Buyer desires to purchase the Assets from Seller and is willing to assume certain associated obligations and liabilities, and Seller desires to sell the Assets to Buyer, subject to the assumption of such associated obligations and liabilities.

C. The respective Boards of Directors of Buyer and Seller have approved and declared advisable this Agreement and the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE I PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

**1.1 Transfer of Assets.** Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Seller shall sell, assign, convey, transfer and deliver to Buyer free and clear of any Liens other than Permitted Liens, and Buyer shall purchase and acquire from Seller, all of Seller’s right, title and interest in and to all of the following property and assets, real, personal or mixed, tangible and intangible, wherever located (the “**Assets**”):

(a) Real Property Leasehold Interest. The real property leasehold interest in the facility at which the Business is principally conducted, located at Suites 100 and 250, 26880 Aliso Viejo Parkway, Aliso Viejo, CA 92656, including the leasehold improvements therein, and all rights appurtenant thereto (the “**Leased Property**”);

(b) Personal Property. The fixed assets, equipment, and other tangible personal property that is described in Schedule 1.1(b);

(c) Inventory. All supplies, materials, and other inventories of raw materials, work-in-progress and finished goods of Seller (wherever located) to which Seller holds

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title that are used or held for use in the conduct of the Business (collectively, “**Inventory**”);

(d) Transferred Intellectual Property. (i) Other than the Patents, Seller name and logo trademarks, and the non-Patent Intellectual Property listed on Schedule 1.1(d)(i) to be licensed by Seller to Buyer after the Closing pursuant to the IP and Technology License Agreement, the Intellectual Property owned by Seller and used in the conduct of the Business; and (ii) the Patents listed on Schedule 1.1(d)(ii), and any reexaminations, extensions, reissues, continuation applications, divisional applications and any foreign patent applications relating to the Patents listed on Schedule 1.1(d)(ii), subject to the rights of Seller to receive a license back from Buyer of such Patents after the Closing pursuant to the Transferred Patent License Agreement (collectively, the “**Transferred Intellectual Property**”);

(e) Technology. All Technology owned by Seller and used in the conduct of the Business (the “**Transferred Technology**”) provided that such Transferred Technology and the Transferred Intellectual Property shall, as mutually agreed and to the extent reasonably possible, be made available to Buyer for downloading through a secure FTP site or otherwise electronically;

(f) Assigned Contracts (other than Purchase Orders). The rights arising after the Closing of Seller under the contracts listed on Schedule 1.1(f) and all contracts (other than purchase orders) entered into in the ordinary course of the Business, consistent with past practice, after the date hereof through the Closing Date (the “**Assigned Contracts**”);

(g) Purchase Orders. All rights under the purchase orders of the Business that are outstanding as of the Closing Date (the “**Purchase Orders**”);

(h) Books and Records. All sales and business records, service records, books of account, ledgers, general, financial and accounting records, personnel records, files, invoices, inventory records, engineering, maintenance, operating and production records, cost and pricing information, business plans, catalogs, quality control records, blueprints, research and development files, records, patent disclosures, patent life histories, litigation files, subscribers’ and suppliers’ lists, other distribution lists, billing records, sales and promotional literature, manuals, subscriber and supplier correspondence (in all cases, in any form or medium), of Seller primarily relating to the Assets, the Assumed Liabilities or otherwise to the Business, subject to Seller retaining copies or originals of the same, if and as disclosed to Buyer and consented to by Buyer (which consent shall not be unreasonably withheld);

(i) Goodwill. All of Seller’s customer relationships, supplier relationships and goodwill generated by or associated with the Business or the operation or conduct of the Business or in connection with any Asset, including the exclusive right to represent oneself as the successor of the Business;

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(j) Permits. All assignable or transferable Permits associated with the Leased Property or otherwise exclusively related to the Business, and all pending applications or renewals thereof of Seller; and

(k) Non-Disclosure Obligations. To the extent assignable, all non-disclosure, confidentiality and similar obligations owed to Seller to the extent related to the Business.

The Assets shall include all assets of the type described in Sections 1.1(b)-(c), (e)-(f) and (h)-(k) that are acquired by Seller with respect to the Business between the date hereof and the Closing Date and shall exclude any such assets that are disposed of, sold or consumed after the date hereof in the ordinary course of business.

**1.2 Assets Not Transferred.** Other than the Assets, all assets, rights and properties of Seller are specifically excluded from the Assets and shall be retained by Seller (the “**Excluded Assets**”), including, without limitation:

- (a) **Cash.** All cash, cash equivalents and securities owned or otherwise held by Seller, including, bank deposits, investments in so-called “money market” funds, commercial paper funds, certificates of deposit, Treasury bills and accrued interest thereon;
- (b) **Bank Accounts.** All bank and other depository accounts of Seller;
- (c) **Accounts Receivable.** Any trade accounts receivable and other rights to payment owed Seller relating to the Business and any other account or note receivable of Seller, together with, in each case, the full benefit of any security interest of Seller therein (collectively, the “**Accounts Receivable**”), and any claim, remedy or other right related to the foregoing;
- (d) **Employee Records.** All personnel, employee compensation, medical and benefits and labor relations records relating to employees or past employees of Seller; provided, however, copies of all such materials relating to the Transferred Employees shall be delivered to Buyer; and
- (e) **Tax Items.** All losses, loss carryforwards and rights to receive refunds, credits and loss carryforwards with respect to any and all Taxes of Seller that constitute Excluded Liabilities.

**1.3 Assumption of Certain Liabilities.** On the Closing Date, Buyer shall execute and deliver to Seller the Assignment and Assumption Agreement, pursuant to which Seller shall convey, assign, and transfer to Buyer, and Buyer shall assume and agree to pay, perform and discharge when due, only the following Liabilities (collectively, the “**Assumed Liabilities**”):

- (a) all Liabilities with respect to the Purchase Orders or the Assigned Contracts to be performed by the Business on or after the Closing Date;
- (b) the Liabilities arising after the Closing under the terms of the Assigned Contracts, but only to the extent that such Liabilities relate to the period from and after

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the Closing, provided that the Assumed Liabilities shall not include any Liability for breaches by Seller of such Assigned Contracts occurring prior to the Closing;

- (c) the Liabilities with respect to the Transferred Employees assumed by Buyer pursuant to Section 6.6 hereof;
- (d) the Liabilities assumed by Buyer pursuant to (i) the final sentence of Section 6.3(a) and (ii) Section 6.13 hereof;
- (e) all Liabilities for warranty claims arising in respect of products of the Business shipped or sold after the Closing; and
- (f) any Liabilities arising in connection with the ownership of the Assets and/or the conduct of the Business after the Closing.

**1.4 Non-Assumption of Other Liabilities.** Other than the Assumed Liabilities, Buyer is not assuming, and shall not be deemed to have assumed, any liabilities or obligations of any kind or nature (whether absolute, contingent, accrued or otherwise) of Seller or any of its Affiliates. All such liabilities or obligations described in this Section 1.4 (other than the Assumed Liabilities) are collectively referred to herein as the “**Excluded Liabilities**.” All Liabilities of Seller or any of its Affiliates of or relating to the Business or otherwise (other than the Assumed Liabilities) shall be retained by and shall be the responsibility of Seller (or the applicable Affiliate(s) of Seller). The Excluded Liabilities shall include, but are not limited to, the following:

- (a) any Liability, except as expressly set forth in Section 1.3, arising out of the ownership of the Assets and/or the conduct of the Business prior to the Closing;
- (b) any Liability to the extent arising out of the operation or conduct by Seller or any Affiliate of Seller of any business other than the Business;
- (c) any Liability (A) arising out of any actual or alleged breach of, or nonperformance under, any contract of Seller prior to the Closing, or (B) arising on any contract of Seller either required to be listed under any Section of the Seller Disclosure Letter hereto and not so listed or entered into in violation or breach of this Agreement;
- (d) any Liability of Seller or any Affiliate of Seller arising out of (A) any third-party charge, complaint, suit, action (including regulatory action), hearing, investigation, claim, demand, proceeding (including under any alternative dispute resolution procedure) or other litigation (“**Proceeding**”) pending as of the Closing, (B) any Proceeding filed or otherwise asserted after the Closing to the extent based upon or arising out of the ownership of the Assets and/or the conduct of the Business prior to the Closing, or (C) any actual or alleged violation by Seller or any Affiliate of Seller of any Legal Requirement prior to or on account of the Closing;
- (e) any account payable of Seller or any Affiliate of Seller (collectively, the “**Accounts Payable**”);

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(f) all Liabilities and obligations for warranty claims arising in respect of products of the Business shipped or sold prior to the Closing (provided that Buyer shall have the obligations set forth in Section 6.16), including those listed on Schedule 1.4(f);

(g) any Liability to the extent that it relates to, or arises out of, any Excluded Asset, or that arises out of the distribution to, or ownership or operation by, Seller or any Affiliate of Seller or any other Person of any Excluded Asset, or that arises out of the realization by Seller or any Affiliate of Seller of the benefits of any Excluded Asset;

(h) except as otherwise provided in Section 6.13 hereof, any Liability for Taxes whether or not accrued, assessed or currently due and payable, (A) of Seller or any Affiliate of Seller or any Affiliated Group in which Seller or any Affiliate of Seller or any predecessor of any of them is or has been a member (the "**Seller Affiliated Group**") (whether or not related to the Business or the Assets) and including without limitation any Liability for the unpaid Taxes of any other Person under Treas. Reg. § 1.1502-6 (or any similar provision of state, local, or foreign Law), as a transferee or successor, by contract or otherwise, (B) relating to the operation or ownership of the Business or the Assets for any Tax period (or portion thereof) ending at or prior to the Closing or (C) all taxes on the income of Seller as a result of the sale of the Assets pursuant to this Agreement;

(i) any indebtedness of Seller or Liabilities relating to guarantees of such indebtedness of Seller;

(j) any Liability to any third party to the extent relating to or arising out of infringement or misappropriation prior to the Closing of Intellectual Property or Technology in connection with the operation or conduct of the Business by Seller or any Affiliate of Seller prior to the Closing;

(k) any Liability in respect of claims to the extent arising out of (i) any injury, disease, disability or any similar condition that exists or occurs on or prior to the Closing Date or (ii) exposure or alleged exposure on or prior to the Closing Date to any materials or chemicals, including Hazardous Substances, in each case in the work place of Seller or the Business, by any Person (including any Transferred Employee or any other employee heretofore employed in the Business);

(l) any Liability to the extent that it relates to or arises out of the employment or the termination of the employment prior to Closing of any employee or former employee of Seller or any Affiliate of Seller or the Business, including as a result of transactions contemplated by this Agreement, provided that Buyer shall have the obligations set forth in Section 6.6;

(m) except as otherwise provided in Section 6.6, any Liabilities of Seller or any Affiliate of Seller to or with respect to any employees of Seller or the Business and obligations and Liabilities under or with respect to the Employee Plans or any other employee benefit or severance plans, programs, policies, arrangements or contracts of Seller;

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(n) any Pre-Closing Environmental Liability;

(o) the Liabilities of Seller pursuant to (i) the final sentence of Section 6.3(a) and (ii) Section 6.13 hereof;

(p) any Liabilities of Seller or any Affiliate of Seller under or with respect to any contract of Seller other than a Purchase Order or Assigned Contract;

(q) any Liability for any Accrued Compensation, 401(k) Match, or PTO Amount; and

(r) all other Liabilities of Seller or any Affiliate of Seller other than the Assumed Liabilities.

**1.5 Prorations.** The parties agree that all of the items listed below relating to the Business and the Assets shall be prorated as of the Closing, with Seller liable to the extent such items relate to any time period up to the Closing and Buyer liable to the extent such items relate to periods subsequent to the Closing:

(a) the amount of any fees and charges which in any case are payable periodically by Seller with respect to any of the Assigned Contracts (including the lease with respect to the Leased Property);

(b) the amount of any fees or charges which in any case are payable periodically by Seller with respect to any of the Transferable Permits; and

(c) the amount of any other fees or charges which in any case are payable periodically by Seller with respect to the premises of the Business, such as utilities, office services, and similar items.

Seller agrees to furnish Buyer with such documents and other records as Buyer reasonably requests in order to confirm all adjustment and proration calculations made pursuant to this Section 1.5. Final payments with respect to prorations contemplated by this Section 1.5 that are not ascertainable on or before the Closing shall be settled between the parties as soon as practicable after such prorations are ascertainable.

**1.6 Risk of Loss.** The parties agree that until Closing, Seller shall bear the risk of loss or damage to the Assets from fire, casualty or any other occurrence.

**1.7 Certain Provisions Regarding Assignments.** Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign the Assigned Contract referenced in Schedule 1.7 if an attempted assignment thereof, without the consent of a third party, would constitute a breach or other contravention of the rights of such third party, would be ineffective with respect to any party to an agreement concerning such Assigned Contract, or would in any way adversely affect the rights of Seller or, upon transfer, Buyer under such Assigned Contract. If any transfer or assignment by Seller to, or any assumption by Buyer of, any interest in, or Liability under, the Assigned Contract referenced in Schedule 1.7 requires the consent of a third party, then such assignment or assumption shall be



made subject to such consent being obtained. If such consent is not obtained prior to the Closing, Seller and Buyer shall use commercially reasonable efforts to cooperate (at their own expense) to ensure that Buyer shall, following the Closing, obtain the economic and other (i) benefits and (ii) obligations under the Assigned Contract referenced on Schedule 1.7 with respect to which the consent has not been obtained. The parties acknowledge that this Section 1.7 does not in any way modify the provisions of Sections 6.5, 6.14, and 7.2(f).

## ARTICLE II CLOSING AND PURCHASE PRICE

**2.1 Time and Place of Closing.** The Closing (as defined below) shall take place at 7:00 a.m., California time, on a date to be specified by the parties, which shall be no later than the second business day after satisfaction or valid waiver of the conditions set forth in Article VII, at the offices of O'Melveny & Myers LLP, 610 Newport Center Drive, Suite 1700, Newport Beach, California 92660. The consummation of the transactions contemplated hereby is herein referred to as the "**Closing**," and the date on which such Closing occurs is hereinafter referred to as the "**Closing Date**."

**2.2 Payment on Closing Date.** Subject to the terms and conditions of this Agreement, Buyer agrees to acquire the Assets from Seller, to assume the Assumed Liabilities and, at the Closing, (i) to pay to Seller an amount in cash equal to \$180,000,000 (representing 80% of the Purchase Price); and (ii) to deliver to Seller a number of shares of Buyer Common Stock having an aggregate fair market value of \$45,000,000 (representing 20% of the Purchase Price), with each share of Buyer Common Stock being valued at the Issuance Price, \$12,000,000 of which value (the "**Escrow Fund**") shall be deposited into an escrow account with the Escrow Agent pursuant to the Escrow Agreement; provided further, that none of the amounts referenced in clauses (i) or (ii) shall be reduced by any withholding.

### **2.3 Closing Deliveries.**

(a) **Buyer's Closing Deliveries.** At the Closing, Buyer shall deliver or cause to be delivered to Seller (or the Escrow Agent, as applicable) the following, against the delivery by Seller of the documents specified in Section 2.3(b) below:

- (i) by wire transfer of immediately available funds to the account or accounts of Seller designated in writing by Seller prior to the Closing Date, the cash portion of the Purchase Price;
- (ii) the portion of the Purchase Price comprised of shares of Buyer Common Stock pursuant to Section 2.2 (other than the Escrow Fund), and to the Escrow Agent for deposit in the escrow account as designated in writing by the Escrow Agent prior to the Closing Date, the Escrow Fund;
- (iii) the Transition Services Agreement substantially in the form of Schedule 2.3(a)(iii) hereto (the "**Transition Services Agreement**"), duly executed by Buyer;

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- (iv) the Bill of Sale substantially in the form of Schedule 2.3(a)(iv) hereto (the "**Bill of Sale**"), duly executed by Buyer;
- (v) the Assignment and Assumption Agreement substantially in the form of Schedule 2.3(a)(v) hereto (the "**Assignment and Assumption Agreement**"), duly executed by Buyer;
- (vi) the Registration Rights Agreement in favor of Seller substantially in the form of Schedule 2.3(a)(vi) hereto (the "**Registration Rights Agreement**"), duly executed by Buyer;
- (vii) the License Agreement substantially in the form of Schedule 2.3(a)(vii) hereto, duly executed by Buyer (the "**IP and Technology License Agreement**");
- (viii) the License Agreement substantially in the form of Schedule 2.3(a)(viii) hereto, duly executed by Buyer (the "**Retained Patent License Agreement**");
- (ix) the License Agreement substantially in the form of Schedule 2.3(a)(ix) hereto, duly executed by Buyer (the "**Transferred Patent License Agreement**");
- (x) California Resale Certificate (relating to Inventory) in the form required by the State of California Board of Equalization, duly executed by Buyer; and
- (xi) the letter agreement substantially in the form of Schedule 2.3(a)(xi) hereto, duly executed by Buyer (the "**Nonassertion Letter Agreement**").

(b) **Seller's Closing Deliveries.** At the Closing, Seller shall deliver or cause to be delivered to Buyer the following documents, against the deliveries by Buyer pursuant to Section 2.3(a) above:

- (i) the Transition Services Agreement, duly executed by Seller;
- (ii) the Bill of Sale, duly executed by Seller;
- (iii) the Assignment and Assumption Agreement, duly executed by Seller;
- (iv) the Registration Rights Agreement, duly executed by Seller;

(v) the IP and Technology License Agreement, duly executed by Seller;

(vi) the Retained Patent License Agreement, duly executed by Seller;

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(vii) the Transferred Patent License Agreement, duly executed by Seller

(viii) any records, tangible assets, licenses, policies, contracts, plans, leases or other instruments owned by or pertaining to the Business that are in the possession of Seller;

(ix) a certification of non-foreign status dated the Closing Date in form and substance satisfactory to Buyer and conforming to the requirements of Income Tax Regulations section 1.1445-2(b)(2)(i); and

(x) the Nonassertion Letter Agreement, duly executed by Seller.

**2.4 Tax Allocation.** Prior to the Closing, Buyer and Seller and their respective Affiliates shall negotiate in good faith with each other to agree upon the allocation of the Purchase Price (such Purchase Price Allocation to be attached hereto as Schedule 2.4, and which Schedule shall reflect the different entities buying the Assets on behalf of Buyer) to the Assets, and shall file a Form 8594 with their applicable Tax Returns with respect to the transactions contemplated hereby similar to that set forth in Schedule 2.4, except to the extent that modifications are necessary to reflect changes in the Assets between the date hereof and the Closing Date. Each party shall file all necessary Tax Returns and other forms (including Form 8594) to report the transactions contemplated herein for U.S. federal, state, provincial, territorial, local and non-United States income Tax purposes in accordance with such allocation, and shall not take any position inconsistent with such Purchase Price Allocation. For United States federal income tax purposes, any adjustment to the Purchase Price for the Assets shall be allocated as provided in Treasury Regulation Section 1.1060-1, and, in the event of such adjustment, Buyer and Seller agree to timely revise and amend Form 8594 in accordance with applicable regulations and instructions.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer, except as otherwise set forth in writing in appropriately corresponding sections of the disclosure letter supplied by Seller to Buyer dated as of the date hereof (the “**Seller Disclosure Letter**”), as follows:

**3.1 Organization; Standing and Power.** Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller has the requisite corporate power and authority to own, lease and operate the Assets that it owns and to carry on that portion of the Business it conducts as now being conducted, except where the failure of Seller to be so organized, existing and in good standing would not have a Material Adverse Effect on the Business. Seller is duly qualified and in good standing to do business in each jurisdiction in which the nature of the Business or the ownership or leasing of its properties makes such qualification necessary other than in such jurisdictions where the failure to so qualify or to be in good standing would not have a Material Adverse Effect on the Business.

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### **3.2 Authority; Non-Contravention; Necessary Consents.**

(a) **Authority.** Seller has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Seller and no other corporate proceedings on the part of Seller are necessary to authorize the execution and delivery of this Agreement or to consummate the other transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and, assuming due execution and delivery by Buyer, constitutes the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except to the extent such enforcement may be limited by bankruptcy, insolvency, moratorium and other similar laws relating to or affecting creditors’ rights generally or general equitable principles.

(b) **Non-Contravention.** The execution and delivery of this Agreement by Seller does not, and performance of this Agreement by Seller shall not: (i) conflict with or violate the certificate of incorporation or bylaws of Seller, (ii) (A) conflict with or violate any Legal Requirement or any judgment, order, or decree (“**Judgment**”) applicable to Seller or by which Seller or any of its properties is bound or affected, or (B) except as set forth on Section 3.2(b) of the Seller Disclosure Letter, result in any material breach of or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under, or materially impair Seller’s rights or materially alter the rights or obligations of any third party under, or give to others any rights of termination, material amendment, material acceleration or cancellation of, any Contract to which Seller is a party or by which any of its properties or assets is bound and which relates to the Business or the Assets, or (iii) result in the creation of a Lien on any of the Assets.

(c) **Necessary Consents.** No consent, approval, order or authorization of, or registration, declaration or filing with any supranational, national, state, municipal, local or foreign government, any instrumentality, subdivision, court, arbitral entity, administrative agency or commission or other governmental authority or instrumentality, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority (a “**Governmental Entity**”) is required to be obtained or made by Seller in connection with the execution, performance and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for such consents, approvals, orders, authorizations, registrations, declarations and filings, if any, as may be required under applicable federal, foreign and state securities (or related) laws and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “**HSR Act**”), or any foreign laws regulating competition, antitrust, investment or exchange controls (collectively, the “**Necessary Consents**”).

**3.3 Title to and Sufficiency of Assets.** Seller has good and valid title to, and is the lawful owner of, all of the Assets, free and clear of any Lien other than Permitted Liens. Subject to obtaining all applicable Consents, (a) Seller has the full right to sell, convey, transfer, assign and deliver the

software used in the conduct of the Business pursuant to licenses, which licenses are referenced on Section 3.3 of the Seller Disclosure Letter, and (iii) for the assets to which Buyer shall have access as provided in the Transition Services Agreement or a license pursuant to the Retained Patent License Agreement or the IP and Technology License Agreement, the Assets (x) are sufficient for the operation or conduct of the Business by Buyer immediately following the Closing substantially in the same manner as operated and conducted on the date of the statement of net assets to be sold included in the Financial Statements and as conducted on the date hereof by Seller and (y) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate the Business in substantially the same manner as conducted on the date hereof by Seller.

### 3.4 Financial Statements.

(a) Attached as Section 3.4(a) of the Seller Disclosure Letter is an audited statement of net assets to be sold and a statement of direct revenues and direct operating expenses for the year ended April 3, 2005 (collectively, the “**Financial Statements**”). The Financial Statements were prepared in accordance with Seller’s books and records and United States generally accepted accounting principles (“**GAAP**”) applied on a consistent basis throughout the period involved and fairly present in all material respects, the net assets to be sold and the direct revenues and direct operating expenses of the Business for the applicable period covered thereby.

(b) Since the date of the statement of net assets to be sold included in the Financial Statements, there has not been any Material Adverse Effect on the Business. Except as set forth in Section 3.4(b) of the Seller Disclosure Letter, since the date of the statement of net assets to be sold included in the Financial Statements, Seller has caused the Business to be conducted in the ordinary course and in substantially the same manner as previously conducted (including with respect to work-force reductions, sales practices (including promotions, discounts and concessions), maintenance and repair expenditures, capital expenditures, environmental expenditures and inventory levels) and has made commercially reasonable efforts consistent with past practices to preserve the relationships of the Business with material suppliers and customers.

(c) Inventory. Each item of Inventory constituting Assets, whether reflected on the statement of net assets to be sold included in the Financial Statements or subsequently procured or produced, (a) is in good, usable and, as to finished products, marketable condition (as of the Closing Date) in the ordinary course of business and (b) is properly stated on the books and records of the Business at the lesser of cost and fair market value, with adequate obsolescence reserves, all as determined in accordance with GAAP. The quantities, type and quality of the Inventory constituting Assets is sufficient for the conduct of the Business by Buyer following the Closing in substantially the same manner as conducted on the date of the statement of net assets to be sold included in the Financial Statements and as currently conducted by Seller. Except as set forth in Section 3.4(c) of the Seller Disclosure Letter, since the date of the statement of net assets to be sold included in the Financial Statements, there have not been any write-downs of the value of, or establishment of any reserves against, any Inventory of the Business.

### 3.5 Taxes.

(a) For the purposes of this Agreement, the term “**Tax**” or, collectively, “**Taxes**,” shall mean any and all federal, state, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts and the term “**Tax Return**” shall mean all material federal, state, local and foreign returns, estimates, information statements and reports relating to Taxes, including any amendment thereof.

(b) All Tax Returns required to be filed on or prior to the Closing Date by Seller with respect to any Tax that, if not paid, might result in a Lien upon any of the Assets, have been or will be filed prior to the Closing Date, are complete and accurate in all material respects, and all Taxes due or claimed to be due pursuant thereto have been or will be paid prior to the Closing Date.

(c) There are no Liens or other security interests upon any property or assets of Seller for Taxes affecting the Business or the Assets, except for Liens for Taxes not yet due and payable.

(d) None of the Assets: (1) is property that is required to be treated as being owned by any other person pursuant to the provisions of former Section 168(f)(8) of the Code; or (2) is “tax-exempt use property” within the meaning of Section 168(h) of the Code.

(e) Seller is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and Income Tax Regulations).

### 3.6 Intellectual Property.

(a) Generally.

(i) Section 3.6(a)(i) of the Seller Disclosure Letter sets forth a complete and accurate list, together with registration or application numbers, jurisdictions and filing or issuance dates, as applicable, of all Patents owned by Seller and used by Seller in the conduct or operation of the Business.

(ii) The Copyrights used in or related to the Business are listed on Schedule 3.6(a)(ii).

(iii) None of the Transferred Intellectual Property is subject to any license agreement other than the Transferred Patent License Agreement.

(b) Trademarks.

(i) Except as set forth in Section 3.6(b) of the Seller Disclosure Letter, all Trademarks that are part of the Transferred Intellectual Property (“**Seller Trademarks**”) for which an application for trademark registration has been filed are currently in compliance with all legal requirements, other than any requirement that, if not satisfied, would not result in a cancellation or abandonment of any such registration. No registered Seller Trademark has been or is now involved in any opposition, abandonment or cancellation Proceeding in the United States Patent and Trademark Office or any foreign trademark office. To Seller’s Knowledge, there has been no prior use of any Seller Trademark by any third party that confers upon said third party superior rights in any such Trademark.

(ii) Except as set forth in Section 3.6(b) of the Seller Disclosure Letter, Seller is the owner of all right, title and interest in and to all of Seller Trademarks, in each case free and clear of any and all Liens or other adverse claims or interests (other than Permitted Liens) of any kind or nature, and Seller has not received any written claim or written notice challenging Seller’s complete and exclusive ownership of Seller Trademarks and all associated goodwill or suggesting that any other Person has any claim of legal or beneficial ownership with respect thereto, nor is Seller aware of any basis for any of the foregoing. There is no agreement, decree, arbitral award, or other provision or contingency which obligates Buyer to grant licenses in future Seller Trademarks.

(c) Patents.

(i) All Patents that are part of the Transferred Intellectual Property (“**Seller Patents**”) are currently in compliance with legal requirements for payment of filing, examination, annuity and maintenance fees and proofs of working or use other than any requirement that, if not satisfied, would not result in a revocation or lapse of the Seller Patent in question. Seller has not failed to disclose material prior art or information in connection with the prosecution of any Seller Patent that was known to Seller at the time of such prosecution and that would result in the abandonment, cancellation, or invalidity of any of the Seller Patents. No Seller Patent has a non-extendable deadline less than one week after the Closing Date.

(ii) No Seller Patent has been or is now involved in any interference, reissue, reexamination or opposition Proceeding in the United States Patent and Trademark Office or any foreign patent office and, to Seller’s Knowledge, no such action has been threatened.

(iii) Seller is the owner of all right, title and interest in and to all of the Seller Patents, in each case free and clear of any and all Liens, covenants, conditions and restrictions or other adverse claims or interests of any kind or nature (other than Permitted Liens). Except as set forth in Section 3.6(c)(iii) of the Seller Disclosure Letter, Seller has not received any written claim or written notice challenging Seller’s ownership of Seller Patents or suggesting that any

other Person has any claim of legal or beneficial ownership with respect thereto, nor is Seller aware of any basis for any of the foregoing. There is no agreement, decree, arbitral award or other provision or contingency which obligates Seller to grant licenses in future Seller Patents.

(d) Trade Secrets.

(i) Seller has taken commercially reasonable steps to protect its rights in all Trade Secrets.

(ii) Without limiting the generality of Section 3.6(d)(i), each former or current member of management or personnel of the Business, including all former and current employees, agents, consultants and independent contractors who have contributed to or participated in the creation, conception, reduction to practice, or development of the Transferred Intellectual Property or Transferred Technology (collectively, “**Personnel**”) has executed and delivered to Seller a proprietary information agreement restricting such Person’s right to disclose proprietary information of Seller.

(e) Ownership; Sufficiency of Transferred Intellectual Property. Seller owns or possesses adequate licenses or other rights to use, free and clear of Liens (other than Permitted Liens), orders, arbitration awards and contingent licenses arising from termination provisions (or other causes) in agreements between Seller and any other Person, all of the Transferred Technology and Transferred Intellectual Property. Except (i) as provided on Section 3.6(e) of the Seller Disclosure Letter, (ii) for generally available desktop software used in the conduct of the Business pursuant to licenses (as referenced on Section 3.3 of the Seller Disclosure Letter), and (iii) for the assets to which Buyer shall have access as provided in the Transition Services Agreement or a license pursuant to the Retained Patent License Agreement or the IP and Technology License Agreement, the Transferred Intellectual Property and Transferred Technology constitutes all the Intellectual Property and Technology used in the operation of the Business as currently conducted and is all such Intellectual Property necessary to operate the Business after the Closing in substantially the same manner as the Business has been operated by Seller during the six (6) months prior to the Closing.

(f) No Infringement by Seller. Except as set forth on Section 3.6(f) of the Seller Disclosure Letter, the Transferred Intellectual Property and the Transferred Technology, and all related products and services used, marketed, sold or licensed by Seller in the conduct of the Business, do not infringe upon, violate or constitute the unauthorized use of any rights owned or controlled by any third party, including any Intellectual Property of any third party. Except as set forth in Section 3.6(f) of the Seller Disclosure Letter, no litigation is now, or since January 1, 2003 has been, pending and no notice or other claim has been received by Seller, with respect to the Transferred Technology or the Business, (A) alleging that any of Seller has engaged in any activity or conduct that infringes upon, violates or constitutes the unauthorized use of the Intellectual Property of any third party, including any contamination or misappropriation

of trade secrets claims, or (B) challenging the ownership, use, validity or enforceability of any Intellectual Property owned or exclusively licensed by or to Seller.

(g) No Infringement by Third Parties. To Seller's Knowledge, no third party is misappropriating, infringing, diluting or violating any of the Transferred Intellectual Property and no claims for any of the foregoing have been brought against any third party by Seller. Seller has taken commercially reasonable steps to protect the Transferred Intellectual Property.

(h) Assignment. The execution, delivery and performance by Seller of this Agreement and the related agreements to which Seller is a party, and the consummation of the transactions contemplated hereby and thereby, will not result in the loss or impairment of, or give rise to any right of any third party to terminate, any of Seller's rights to own any of the Transferred Intellectual Property, nor require the consent of any Governmental Entity or third party in respect of any such Transferred Intellectual Property.

(i) Technology. The Transferred Technology was: (i) developed by employees of Seller within the scope of their employment; (ii) developed by independent contractors who have assigned their rights to Seller pursuant to written agreements; or (iii) otherwise acquired by Seller from a third party who assigned the Technology to Seller. To Seller's Knowledge, none of the current officers and employees of Seller has any patents issued or applications pending for any method, device, process, design or invention of any kind now used or needed by Seller in the furtherance of the Business, which patents or applications have not been assigned to Seller, with such assignment duly recorded in the United States Patent and Trademark Office and foreign patent office, as applicable.

(j) Royalties and Licenses. Seller has no obligation to compensate or account to any Person for the use of any of the Transferred Intellectual Property.

(k) Export Control. Seller has obtained all approvals necessary for exporting from any country in which Seller's products of the Business are developed and exported, including the Transferred Technology, in accordance with all applicable export control regulations and importing the products and Transferred Technology into any country in which the products and Transferred Technology are now sold or licensed for use, and all such export and import approvals throughout the world are valid, current, outstanding and in full force and effect.

### 3.7 Compliance; Permits.

(a) Compliance. Except as set forth on Section 3.7(a) of the Seller Disclosure Letter, Seller has not received any written notice that it is in violation of any Legal Requirement applicable to it or by which it or any of its properties is bound and relating to the Business or the Assets. No material investigation or review by any Governmental Entity is pending or, to the Knowledge of Seller, has been threatened in a writing

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delivered to Seller, against Seller related to the Business. There is no judgment, injunction, order or decree binding upon Seller related to the Business.

(b) Permits. Seller holds, to the extent legally required, all material Permits that are required for the operation of the Business, as currently conducted (collectively, "**Business Permits**"). As of the date hereof, no suspension or cancellation of any of the Business Permits is pending or, to the Knowledge of Seller, threatened. Seller has received no written notice that it is not in compliance in all material respects with the terms of the applicable Business Permits.

**3.8 Litigation.** Except as set forth in Section 3.8 of the Seller Disclosure Letter, there is no Proceeding pending, or, to Seller's Knowledge, threatened against Seller with respect to the Business or against or affecting any of the Assets before any court or any other Governmental Entity that (a) involves potential liability to Seller of more than \$75,000, (b) presents in large degree the same legal and factual issues as other actions or claims against Seller and, together with such actions and claims, relates to or involves potential liability of more than \$75,000 against Seller, (c) seeks any injunctive relief or (d) relates to or otherwise may give rise to any legal restraint on or prohibition against the transactions contemplated by this Agreement. To Seller's Knowledge, Seller is not a party or subject to or in default under any Judgment applicable to the conduct of the Business or any Asset or Assumed Liability. There is no Proceeding by Seller pending, or which Seller intends to initiate, against any other Person arising out of the conduct of the Business which involves an amount greater than \$75,000. Seller has not entered into any agreement to settle or compromise any Proceeding pending or threatened against it in relation to its operation of the Business which has involved any obligation other than the payment of money and for which it has any continuing obligation. There are no Proceedings pending, or, to Seller's Knowledge, threatened, by or against Seller with respect to this Agreement or the agreements contemplated hereby, or in connection with the transactions contemplated hereby or thereby.

### 3.9 Environmental Matters.

(a) Hazardous Material. No underground storage tanks and no substance that has been designated by any Governmental Entity or by applicable Legal Requirement to be radioactive, toxic, hazardous or otherwise a danger to health or the environment, including PCBs, asbestos, petroleum, urea-formaldehyde and all substances listed as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or defined as a hazardous waste pursuant to the United States Resource Conservation and Recovery Act of 1976, as amended, and the regulations promulgated pursuant to said laws, but excluding office and janitorial supplies (a "**Hazardous Material**"), are present in violation of applicable Legal Requirements in, on or under the Leased Property as a result of the actions of Seller, or, to the Knowledge of Seller, as a result of any actions of any third party.

(b) Hazardous Materials Activities. Seller has not, in connection with the Business, transported, stored, used, manufactured, disposed of, released or exposed its employees or others to Hazardous Materials in violation of or in a manner which would

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reasonably be expected to result in liability pursuant to, any Legal Requirement in effect on or before the Closing Date. Seller, in connection with the Business, has not disposed of, transported, sold, used, released, exposed its employees or others to or manufactured any product containing a Hazardous Material (collectively, “**Hazardous Materials Activities**”) in violation of or in a manner which would reasonably be expected to result in liability pursuant to any Legal Requirement.

(c) Generally. Seller, with respect to the Business, has at all times during the last three (3) years been and currently is in compliance in all material respects with all Environmental Laws. Seller currently holds all material Environmental Permits required for the operation of the Business and the use and occupancy of the Leased Property and is in compliance in all material respects with all terms and conditions of all material Environmental Permits. Seller is not subject to nor has received written notice of any pending or, to Seller’s Knowledge, threatened Environmental Claim from any Governmental Entity or third party. To Seller’s Knowledge, there are no facts or circumstance that could involve Seller (or after Closing, Buyer) in any Environmental Claim related to the Business.

### 3.10 Contracts.

(a) Material Contracts. For purposes of this Agreement, “**Seller Material Contract**” shall mean, other than purchase orders entered into in the ordinary course of business:

- (i) any contracts to which Seller is a party with respect to the Business that would be “material contracts” (as such term is defined in Item 601(b)(10) of Regulation S-K of the SEC) of the Business if the Business were a separate SEC reporting company;
- (ii) any contract containing any covenant expressly restricting the right of Seller to engage in any line of business or compete with any Person in any line of business which would be binding on Buyer as the successor in interest to Seller in the Business;
- (iii) any contract, or group of contracts with a Person (or group of affiliated Persons), the termination or breach of which would have a Material Adverse Effect on the Business;
- (iv) indentures, credit agreements, security agreements, mortgages, guarantees, promissory notes and contracts relating to or evidencing indebtedness for borrowed money of Seller (excluding any leases involving aggregate annual payments of less than \$100,000 per lease) which would be binding on Buyer as successor in interest to Seller in the Business or result in a Lien on any of the Assets;
- (v) any legal entity in the nature of a partnership or joint venture, or a material strategic alliance, in each case relating to the Assets or the Business;

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- (vi) any contract which would reasonably be expected to prohibit or materially delay the consummation of the transactions contemplated by this Agreement;
- (vii) any contract that involves the purchase or lease of personal property with any supplier or for the furnishing of services to Seller in connection with the Business with payments greater than \$100,000 per year, other than purchase orders in the ordinary course of business and other than contracts or agreements that are terminable by Seller within 90 days or less;
- (viii) any employment agreement or employment contract with an employee of the Business that cannot be terminated upon reasonable notice, or pay in lieu of reasonable notice, as required by applicable Legal Requirements;
- (ix) any collective bargaining agreement, letter of intent, letter of understanding or other contract with any labor organization, union or other employee association relating to the Business;
- (x) (A) any continuing contract (including a purchase order of Seller) for the future purchase of materials, supplies or equipment or (B) any management, service, consulting or other similar contract, in any such case relating to the Business or the Assets and that has an aggregate future Liability to Seller or the Business in excess of \$100,000;
- (xi) any license, sublicense, option or other contract relating, in whole or in part, to any Transferred Intellectual Property or any Transferred Technology (including any license or other contract under which Seller granted the right to use any Transferred Intellectual Property or any Transferred Technology);
- (xii) any contract (A) for the sale of any Asset (other than licenses and sales of Seller’s products in the ordinary course of business), (B) for the grant of any preferential rights to purchase any Asset, (C) for the grant of any exclusive right to use any Asset, or (D) requiring the consent of any party to the transfer of any Asset;
- (xiii) any contract with any Governmental Entity relating to the Assets or the Business; and
- (xiv) any contract (other than a purchase order or a sales order) relating to the Assets or the Business that has an aggregate future Liability to Seller in excess of \$100,000 and extends for a term more than ninety (90) days from the date of this Agreement.

(b) Schedule. Section 3.10(b) of the Seller Disclosure Letter sets forth a list of all Seller Material Contracts to which Seller is a party or by which it is bound by as of the date hereof.

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(c) No Breach. All Seller Material Contracts that are Assigned Contracts are valid and in full force and effect and are enforceable in all material respects against Seller and, to Seller’s Knowledge, the other party thereto, in accordance with their terms, except to the extent such

enforcement may be limited by bankruptcy, insolvency, moratorium and other similar laws relating to or affecting creditors' rights generally or general equitable principles. Except as set forth in Section 3.10(c) of the Seller Disclosure Letter, Seller has performed in all material respects all material obligations required to be performed by it to date under all Seller Material Contracts that are Assigned Contracts, there are no material Liabilities accrued under any Seller Material Contract that is an Assigned Contract with respect to any period prior to the Closing (other than those that will be discharged, paid or performed prior to the Closing), and Seller is not (with or without the lapse of time or the giving of notice, or both) in material breach or material default in any respect thereunder and, to Seller's Knowledge, no other party to any Seller Material Contract that is an Assigned Contract is (with or without the lapse of time or the giving of notice, or both) in material breach or material default in any respect thereunder. Seller has not received any written notice of the intention of any party to terminate any Seller Material Contract that is an Assigned Contract. Except as set forth on Section 3.10(c) of the Seller Disclosure Letter, complete and correct copies of all Seller Material Contracts that are Assigned Contracts have been delivered to Buyer by Seller.

**3.11 Brokers' and Finders' Fees.** Except for fees payable to Morgan Stanley, Seller has not incurred, nor shall it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

**3.12 Condition of Assets; Limited Warranties.**

(a) Except as set forth on Section 3.12 of the Seller Disclosure Letter and for personal property currently undergoing repair or maintenance in the ordinary course of the Business, each material item of tangible personal property included in the Assets is in all material respects in good working order (normal wear and tear and depreciation excepted) and has been maintained in all material respects in accordance with generally accepted industry practice.

(b) Except as otherwise expressly provided in this Agreement, Seller makes no other representations or warranties whatsoever to Buyer, express, implied or statutory, concerning the Assets, the Assumed Liabilities or the Business, including any representation or warranty as to value, quality, quantity, condition, merchantability, design, suitability, usability, salability, obsolescence, working order, compliance with law, validity or enforceability. BUYER SPECIFICALLY ACKNOWLEDGES THAT NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE MADE OR SHOULD BE IMPLIED IN THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

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**3.13 Customers; Suppliers.**

(a) Except for the customers named in Section 3.13(a) of the Seller Disclosure Letter, the Business does not have any customer from whom it received more than 5% of its revenue during its most recent full fiscal year. Except as set forth in Section 3.13(a) of the Seller Disclosure Letter, since the date of the statement of net assets to be sold included in the Financial Statements, there has not been, to Seller's Knowledge, any material adverse change in Seller's relationship with any customer named in Section 3.13(a) of the Seller Disclosure Letter. Except as set forth on Section 3.13(a) of the Seller Disclosure Letter, during the two years prior to the date hereof, Seller has not received any written or oral customer complaint concerning the Business, other than complaints that, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect on the Business.

(b) Except for the suppliers named in Section 3.13(b) of the Seller Disclosure Letter, the Business has not purchased, from any single supplier, goods or services for which the aggregate purchase price exceeds 20% of the total value of goods and services purchased by the Business during its most recent full fiscal year. Except as set forth in Section 3.13(b) of the Seller Disclosure Letter, since the date of the statement of net assets to be sold included in the Financial Statements there has not been, to Seller's Knowledge, any material adverse change in Seller's relationship with any supplier named in Section 3.13(b) of the Seller Disclosure Letter.

(c) Except as set forth in Section 3.13(c) of the Seller Disclosure Letter, Seller has not entered into any written agreements that would adversely effect or limit or restrict Buyer's ability to distribute or sell the products of the Business in any jurisdiction.

**3.14 Employee Benefit Plans and Employment Agreements.**

(a) Seller does not have any employment contract with any officer or employee or any other consultant or person that may be a Transferred Employee. Except as set forth in Section 3.14(a) of the Seller Disclosure Letter, Seller and its Affiliates do not have any deferred compensation, pension, retirement, health, profit sharing, incentive bonus, stock purchase, stock option, hospitalization, insurance, severance, workers' compensation, supplemental unemployment benefits, vacation benefits, disability benefits, or any other employee pension benefit (as defined in ERISA or otherwise) or welfare benefit obligation, or any other employee benefit of any kind whatsoever whether under a plan or agreement, covering any of their current or former employees or consultants of the Business ("**Employee Plans**").

(b) Each Employee Plan has been maintained, funded, operated and administered in compliance in all material respects with all applicable laws and regulations, including but not limited to, ERISA, the Code, and the Health Insurance Portability and Accountability Act of 1996. Each Employee Plan that is intended to be qualified under Section 401(a) of the Code and each trust forming a part thereof that is intended to be exempt from taxation under Section 501(a) of the Code has received a favorable determination letter from the IRS as to its qualification and tax-exempt status and nothing has occurred since the date of such determination letter that would reasonably be expected to adversely affect the qualification of such Employee Plan or the

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tax-exempt status of such related trust. No Employee Plan is a plan subject to Section 302 or Title IV of ERISA, nor a "multiemployer plan" as defined in Section 3(37) of ERISA and 414(f) of the Code, nor a "multiple employer plan" as described in Section 4063(a) of ERISA and 413 of the Code, and neither Seller nor any Person which, together with Seller, would be (or would have ever been) treated as a single employer under Section 4001 of ERISA or Section 414 of the Code has ever contributed or had an obligation to contribute to any such plans.



(c) Except as set forth in Section 3.14(c) of the Seller Disclosure Letter, no current or former director, officer, consultant or other employee of the Business will become entitled to any retirement, severance or similar benefit or enhanced or accelerated benefit (including any acceleration of vesting or lapse of repurchase rights or obligations with respect to any employee stock option or other benefit under any stock option plan or compensation plan or arrangement of Seller) as a result of the transactions contemplated hereby or any termination of employment or service in connection therewith (except as required under COBRA or as may be required under Section 411(d)(3) of the Code).

(d) No Employee Plan provides post-retirement health and medical, life or other welfare benefits for retired employees of the Business (other than benefit coverage mandated by applicable statute, including benefits provided pursuant to COBRA).

### **3.15 Employment and Labor Matters.**

(a) (i) There is no, and during the past two (2) years there has not been any, labor strike, lockout, slowdown, or other labor dispute pending, or, to Seller's Knowledge, threatened with respect to the employees of the Business, (ii) there are no union claims or demands to represent, or organizational campaigns in progress with respect to, the employees of the Business; (iii) there is no collective bargaining or similar agreement or any arrangement with any labor organization, or work rules or practices agreed to with any labor organization or employee association, applicable to employees of the Business; (iv) none of the employees of the Business are represented by any labor organization; (v) Seller is not nor has at any time since January 1, 2003 has Seller been engaged in any unfair labor practice in connection with the conduct of the Business; (vi) Seller is and has at all times since January 1, 2003 with respect to the Business been in compliance in all material respects with all applicable Laws respecting labor, employment standards, human rights, fair employment practices, work place safety and health, terms and conditions of employment, classification of employees and wages and hours; (vii) Seller is not delinquent in any material respect in any material payments to any of the employees of the Business for any wages, salaries, commissions, bonuses, fees or other direct compensation due with respect to any services performed for it to the date hereof or amounts required to be reimbursed to such employees; (viii) Seller has, in all material respects, withheld all amounts required by Legal Requirements or by agreement to be withheld from the wages, salaries, commissions, bonuses, fees and any other payments to employees of the Business, (ix) there are no Proceedings, formal or informal grievances, complaints or charges with respect to employment or labor matters relating to the Business (including, without limitation, charges of employment discrimination, retaliation or unfair labor practices) pending or, to Seller's Knowledge, threatened in any

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judicial, regulatory or administrative forum, or under any dispute resolution procedure; (x) none of Seller's employment policies or practices with respect to the Business is currently being or has since January 1, 2003 been audited or investigated; (xi) Seller is not subject to any consent decree, order of any court, tribunal, arbitration or Government Authority or settlement thereof in respect of any labor or employment matters with respect to the Business; (xii) there are no written employment contracts applicable to employees of the Business other than those set forth in or attached to Section 3.15(a) of the Seller Disclosure Letter, true and correct copies of which have been previously delivered to Buyer; and (xiii) to Seller's Knowledge, no employees of the Business are in material violation of any material term of any employment contract, non-disclosure agreement, noncompetition agreement or any restrictive covenant to a former employer relating to the right of any such person to be employed by or provide service to Seller or to the use by Seller of trade secrets or proprietary information of others.

(b) Section 3.15(b) of the Seller Disclosure Letter sets forth the name of each employee of the Business as of the date hereof that Seller intends as of the date hereof to transfer to Buyer in connection with the transactions contemplated hereby (the "**Business Employees**"), their respective titles or positions, dates of hire, regular work location, current annual compensation (salary, bonus and otherwise), current rate of accrual of paid time off, and a description of their status (i.e., whether active or on leave of absence) as of the date of this Agreement. To the extent any employee listed on Section 3.15(b) of the Seller Disclosure Letter is on leave of absence, Section 3.15(b) of the Seller Disclosure Letter further describes the type of leave, the date it commenced and the expected duration of leave. Except as set forth on Section 3.15(b) of the Seller Disclosure Letter, there are no Business Employees on layoff, and there are no individuals not currently listed as Business Employees on Section 3.15(b) of the Seller Disclosure Letter with recall or preferential rehire rights and no Business Employees listed on Section 3.15(b) of the Seller Disclosure Letter have any such rights.

(c) There is no policy, plan or program of paying severance pay or any form of severance compensation in connection with the termination of any employee of the Business. To Seller's Knowledge, the transfer of the Assets in connection with the transactions contemplated by this Agreement will not adversely affect the authority of any employee of the Business to work in the United States or any other country. Except as set forth on Section 3.15(c) of the Seller Disclosure Letter, no employee of the Business is, to Seller's Knowledge, a party to or bound by any contract or subject to any judgment that may materially interfere with the use of such Person's best efforts to promote the interests of the Business.

(d) There are no Contingent Workers employed or used with respect to the Business.

### **3.16 Investor Representations.**

(a) Seller has received (via EDGAR) and reviewed a copy of Buyer's Annual Report on Form 10-K for the year ended January 29, 2005, Buyer's Quarterly Reports on

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Form 10-Q for the three months ended April 30, 2005, Buyer's 2005 Annual Report to Stockholders and Buyer's Proxy Statement for the 2005 annual stockholder meeting.

(b) Seller is an "accredited investor" (as defined in Rule 501 of Regulation D promulgated under the Securities Act) and has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of an investment in the Buyer Common Stock.

(c) Seller is obtaining the Buyer Common Stock for its own account, for investment purposes, and not for distribution, assignment or resale to others; provided, however, that nothing contained herein shall prevent Seller from transferring such securities pursuant to the exercise of rights under the Registration Rights Agreement. No other Person (other than Buyer) has any direct or indirect beneficial interest in the Buyer Common Stock being transferred to Seller hereunder.

(d) Seller understands that the sale of the Buyer Common Stock by Buyer (except as contemplated by the Registration Rights Agreement) has not been and will not be registered under the Securities Act, or any state securities laws, will be conducted in reliance on the exemption for nonpublic offerings provided by Section 4(2) of the Act and Regulation D promulgated thereunder and analogous state securities law provisions, and will be subject to the restrictions contained in Rules 144 and 145 under the Securities Act. Seller further understands that the Buyer Common Stock must be held indefinitely by Seller unless such Buyer Common Stock is subsequently registered under the Securities Act and applicable state securities laws or an exemption from such registration is available. Seller further understands that except as expressly provided in the Registration Rights Agreement, Buyer is under no obligation to register such securities on Seller's behalf or to assist it in complying with any exemption from registration and that such securities may not be sold pursuant to Rule 144 or Rule 145 promulgated by the SEC pursuant to the Securities Act unless all of the conditions of such rules are met. Seller understands that the shares of Buyer Common Stock delivered hereunder are restricted by the provisions of, and shall bear the legend specified in, Section 6.10, except as otherwise provided therein.

**3.17 Disclosure.** No representation or warranty of Seller contained in this Agreement or in any related agreement contemplated hereby and entered into by Seller, and no statement of Seller contained in any certificate furnished by or on behalf of Seller to Buyer pursuant to Section 7.2 of this Agreement or any Schedule hereto or the Seller Disclosure Letter, contains any untrue statement of a material fact, or omits to state any material fact necessary, in light of the circumstances under which it was made, in order to make the statements herein or therein, taken as a whole, not misleading.

#### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller, except as otherwise set forth in writing in appropriately corresponding sections of the disclosure letter supplied by Buyer dated as of the date hereof (the "**Buyer Disclosure Letter**"), as follows:

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**4.1 Organization; Standing and Power.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of Bermuda. Buyer has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing would not have a Material Adverse Effect on Buyer.

**4.2 Authority; Non-Contravention; Necessary Consents.**

(a) Authority. Buyer has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby has been duly authorized by all necessary corporate action on the part of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize the execution and delivery of this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and, assuming due execution and delivery by Seller, constitutes the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except to the extent such enforcement may be limited by bankruptcy, insolvency, moratorium and other similar laws relating to or affecting creditors' rights generally or general equitable principles.

(b) Non-Contravention. The execution and delivery of this Agreement by Buyer does not, and performance of this Agreement by Buyer will not: (i) conflict with or violate Buyer's Certificate of Incorporation or Bylaws, (ii) conflict with or violate any material Legal Requirement applicable to Buyer or by which Buyer or any of its properties is bound or affected, or (iii) result in any material breach of or constitute a material default (or an event that with notice or lapse of time or both would become a material default) under, or impair Buyer's rights or alter the rights or obligations of any third party under, or give to others any rights of termination, amendment, acceleration or cancellation of, or result in the creation of a material Lien on any of the material properties or assets of Buyer pursuant to, any material contract to which Buyer is a party or by which Buyer or any of its properties are bound or affected, in each case, except as would not have a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby.

(c) Necessary Consents. No consent, approval, order or authorization of, or registration, declaration or filing with any Governmental Entity is required to be obtained or made by Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) the Necessary Consents and (ii) such other consents, authorizations, filings, approvals and registrations which if not obtained or made would not be material to Buyer or Seller or materially adversely affect the ability of the parties hereto to consummate the transactions contemplated hereby within the time frame in which such transactions would otherwise be consummated in the absence of the need for such consent, approval, order, authorization, registration, declaration or filings.

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**4.3 Brokers' and Finders' Fees.** Except for fees payable to Credit Suisse First Boston, Buyer has not incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby.

**4.4 Available Funds.** Buyer has all funds necessary to satisfy all of Buyer's obligations under this Agreement.

**4.5 Buyer Common Stock.** The Buyer Common Stock to be delivered to Seller pursuant to Sections 2.2 and 2.3(a) by Buyer will be duly authorized and will, when issued in accordance with the terms of this Agreement, be validly issued and outstanding, fully paid and nonassessable and the issuance of such shares will not be subject to any preemptive or similar rights.

**4.6 SEC Documents; Financial Statements.** Since January 1, 2003, Buyer has filed with the SEC all forms, reports, statements, schedules and other documents (including all exhibits and other information incorporated therein), required to be filed by Buyer with the SEC under the Securities Act, the Exchange Act, and the rules promulgated by the SEC thereunder (the “**Buyer SEC Documents**”). As of their respective filing dates, the Buyer SEC Documents complied in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Buyer SEC Documents and none of the Buyer SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements of Buyer included in the Buyer SEC Documents comply as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP (except, in the case of unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of Buyer and its consolidated subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods then ended.

## ARTICLE V CONDUCT PRIOR TO THE EFFECTIVE TIME

### 5.1 **Conduct of the Business by Seller.**

(a) **Ordinary Course.** During the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Closing Date (except (i) as contemplated by this Agreement, (ii) as disclosed in Section 5.1 of the Seller Disclosure Letter, or (iii) to the extent that Buyer shall otherwise consent in writing (which consent shall not be unreasonably withheld, delayed or conditioned)), Seller shall carry on the Business in all material respects, in the ordinary course, consistent with past practice, and shall use its commercially reasonable efforts to preserve intact the Business, its current business organization and its relationships with third parties and to keep

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available the services of its officers and employees, including payment of all Taxes that become due as they become due.

(b) **Maintenance of Assets.** Seller shall maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of Seller’s business in the ordinary course, consistent with past practice.

(c) **Limitations.** In addition, without limiting the generality of Section 5.1(a), except as permitted by the terms of this Agreement, without the prior written consent of Buyer (which consent shall not be unreasonably delayed, withheld or conditioned), during the period from the date hereof and continuing until the earlier of the termination of this Agreement pursuant to its terms or the Closing Date, Seller shall not do any of the following:

- (i) Transfer any of the Assets except for any transfer in the ordinary course of business, consistent with past practice;
- (ii) Permit or allow any Asset to become subject to any license or other Lien (other than Permitted Liens);
- (iii) Fail to maintain the Assets, in the aggregate, in a condition comparable to their current condition, reasonable wear, tear and depreciation excepted, and except for Assets disposed of, sold or consumed in the ordinary course of business, consistent with past practice;
- (iv) Terminate or materially amend any Assigned Contract except in the ordinary course of business, consistent with past practice;
- (v) Reduce or discount any prices of products of the Business;
- (vi) Enter into any license, option or other contract relating or pertaining to Transferred Intellectual Property or Transferred Technology that would constitute Assets;
- (vii) Enter into any joint ventures, strategic partnerships or alliances that pertain or relate to the Business; or
- (viii) Agree to or make any commitment to take any actions prohibited by this Section 5.1.

(d) **Advise of Changes.** Seller shall promptly advise Buyer in writing of the occurrence of any matter or event that is material to the assets, condition (financial or otherwise), Liabilities or results of operations of the Business.

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## ARTICLE VI PRE-CLOSING AND POST-CLOSING COVENANTS

### 6.1 **Confidentiality; Access to Information.**

(a) **Confidentiality.** The parties acknowledge that Seller and Buyer have previously executed a non-disclosure agreement dated June 15, 2005 (the “**Confidentiality Agreement**”), which Confidentiality Agreement will continue in full force and effect in accordance with its terms and Buyer will hold, and will cause its directors, officers, employees, agents and advisors (including attorneys, accountants, consultants, bankers and financial advisors) to hold, any Information (as defined in the Confidentiality Agreement) confidential in accordance with the terms of the Confidentiality Agreement.

(b) **Access to Information.** Seller shall afford Buyer and Buyer's accountants, counsel and other Representatives reasonable access during normal business hours to the properties, books, records and personnel of Seller relating to the Business during the period prior to the Closing to obtain all information concerning the Business, including the status of product development efforts, properties, results of operations and personnel, as Buyer or its Representatives may reasonably request; provided, however, that Seller may restrict the foregoing access to the extent that any law, treaty, rule or regulation of any Governmental Entity applicable to Seller requires Seller to restrict or prohibit access to any such properties or information.

**6.2 Public Disclosure.** Neither Buyer nor Seller nor any of their respective Affiliates shall issue or cause the publication of any press release or other public announcement with respect to this Agreement or the other transactions contemplated hereby without the prior written consent of the other party, except as may be required by law or by any listing agreement with, or the policies of, a national securities exchange in which circumstance reasonable efforts to consult with the other party will still be required to the extent practicable.

**6.3 Regulatory Filings; Reasonable Best Efforts.**

(a) **Regulatory Filings.** Buyer and Seller shall coordinate and cooperate with one another and shall each use reasonable best efforts to comply with, and shall each refrain from taking any action that would impede compliance with, all Legal Requirements, and as promptly as practicable after the date hereof, Buyer and Seller shall make all filings, notices, petitions, statements, registrations, submissions of information, application or submission of other documents required by any Governmental Entity in connection with the transactions contemplated hereby, including, if applicable: (i) Notification and Report Forms with the FTC and DOJ as required by the HSR Act, (ii) any other filing necessary to obtain any Necessary Consent, and (iii) filings under any other comparable pre-merger notification forms required by the merger notification or control laws of any applicable jurisdiction, as agreed by the parties hereto. Buyer and Seller shall comply as promptly as practicable with any request for additional information, documents or other materials received by such party hereto or any of its subsidiaries or Affiliates from any Governmental Entity. Buyer and Seller will cause all

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documents that they are responsible for filing with any Governmental Entity under this Section 6.3(a) to comply in all material respects with all applicable Legal Requirements. All filing fees under the HSR Act and any other Antitrust Laws shall be split evenly between Buyer and Seller.

(b) **Exchange of Information.** Buyer and Seller each shall promptly supply the other with any information which may be required in order to effectuate any filings or application pursuant to this Section 6.3. Except where prohibited by applicable Legal Requirements, and subject to the Confidentiality Agreement, Buyer and Seller shall consult with outside counsel to the other prior to taking a position with respect to any such filing, shall permit outside counsel to the other to review and discuss in advance, and consider in good faith the views of the other in connection with any analyses, appearances, presentations, memoranda, briefs, white papers, arguments, opinions and proposals before making or submitting any of the foregoing to any Governmental Entity by or on behalf of any party hereto in connection with any investigations or other Proceedings in connection with this Agreement or the transactions contemplated hereby (including under any Antitrust Laws or other fair trade Legal Requirement), coordinate with outside counsel to the other in preparing and exchanging such information and promptly provide outside counsel to the other with copies of all filings, presentations or submissions (and a summary of any oral presentations) made by such party to any Governmental Entity in connection with this Agreement or the transactions contemplated hereby, provided that with respect to any such filing, presentation or submission, Buyer and Seller need not supply outside counsel to the other with copies (or in case of oral presentations, a summary) to the extent that any law, treaty, rule or regulation of any Governmental Entity applicable to such party requires such party or its subsidiaries to restrict or prohibit access to any such properties or information.

(c) **Notification.** Buyer and Seller will notify the other promptly upon the receipt of any comments from any officials of any Governmental Entity regarding this Agreement or the transactions contemplated hereby, including any filings made pursuant hereto and information provided to comply with any Legal Requirements. Whenever any event occurs that is required to be set forth in an amendment or supplement to any filing made pursuant to Section 6.3(a), Buyer and Seller, as the case may be, will promptly inform the other of such occurrence and cooperate in filing with the applicable Governmental Entity such amendment or supplement.

(d) **Reasonable Best Efforts.** Upon the terms and subject to the conditions set forth herein, each of the parties agrees to use reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated by this Agreement.

**6.4 Notification of Certain Matters.** Seller shall give prompt notice to Buyer and Buyer shall give prompt notice to Seller, of any representation or warranty made by it contained in this Agreement becoming untrue or inaccurate or any failure of Buyer or Seller, as the case may be, to comply with or satisfy in any material respect any covenant, condition or agreement

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to be complied with or satisfied by it under this Agreement, such that, (A) in the case of Seller, the conditions set forth in Section 7.2(a) or Section 7.2(b) would not be satisfied or (B) in the case of Buyer, the conditions set forth in Section 7.3(a) or Section 7.3(b) would not be satisfied.

**6.5 Third-Party Consents.** As soon as practicable following the date hereof, Seller will use its commercially reasonable efforts (at its own expense) to obtain (and Buyer will cooperate at its expense with Seller to obtain) all consents, waivers and approvals under any Seller Material Contract as may be required to be obtained in connection with the transactions contemplated hereby.

**6.6 Employee Matters.**

(a) Effective as of the end of business on the Closing Date (the "**Employment Termination Date**"), Seller shall terminate, and effective as of the beginning of business on the business day following the Closing Date (the "**Employment Commencement Date**"), Buyer will offer to employ the employees of Seller listed on Section 3.15(b) of the Seller Disclosure Letter and who are employed by Seller as of the Closing

Date. Such offer of employment shall include compensation (including bonuses, commissions, stock options, restricted stock, other forms of equity compensation and benefits) that is comparable to the compensation (including bonuses, commissions, stock options, restricted stock, other forms of equity compensation and benefits) provided to such employees by Seller immediately prior to the execution of this Agreement. Those employees described in the preceding sentence who accept employment with (and become employed by) Buyer are the “**Transferred Employees.**” On and after the Closing, Buyer shall provide to the Transferred Employees participation in any pension, 401(k), medical, dental, vision, life, disability and other benefit plans (the “**Buyer Plans**”) offered to similarly situated employees of Buyer. To the extent permitted under the Buyer Plans, Buyer shall take all necessary actions to provide that Transferred Employees will receive full credit for years of service with Seller under the Buyer Plans to the extent taken into account for such purposes under the benefit plans of Seller in which such Persons were participating as of the date of this Agreement (the “**Seller Plans**”) prior to the Closing (other than with respect to benefit accrual under employee 401(k) or other pension or retiree welfare benefit plans and not for equity compensation vesting or vacation). To the extent permitted under the Buyer Plans, Buyer shall give credit under those of its Buyer Plans that are welfare benefit plans for all amounts credited toward deductibles and out-of-pocket maximums, and time accrued against applicable waiting periods, by Transferred Employees (including their eligible dependents), in respect of the calendar year in which the Closing occurs. For any Transferred Employee or dependent of a Transferred Employee who has satisfied Seller’s pre-existing condition exclusion and/or who has creditable coverage from another group plan or individual plan, such Transferred Employee or such dependent would not be subject to Buyer’s pre-existing condition exclusion. If a Transferred Employee or dependent of a Transferred Employee has partially satisfied Seller’s pre-existing condition exclusion, the amount of time credited to the completion of that pre-existing condition exclusion will be honored by Buyer.

(b) Buyer shall be responsible for making continuation coverage under Code Section 4980B and Sections 601-608 of ERISA (“**COBRA**”) available to any Transferred Employee and any eligible spouse or dependent who experiences a “qualifying event,” as defined in Code Section 4980B(f)(3), after the Employment Termination Date.

(c) Notwithstanding any possible inferences to the contrary, Buyer and Seller do not intend for this Section 6.6 to create any rights or obligations except as among Buyer and Seller and no past, present or future employees of Seller or Buyer (or dependents thereof) shall be treated as third party beneficiaries of this Section 6.6.

**6.7 Insurance Matters.** Seller shall use its commercially reasonable efforts to keep all insurance policies presently maintained relating to the Business in full force and effect through the close of business on the Closing Date. Coverage of the Assets shall terminate as of the Closing Date under all such policies.

**6.8 Noncompetition Agreement.** As an inducement for Buyer to enter into this Agreement, for a period of three (3) years from the Closing Date, Seller will not, directly or indirectly, engage in, acquire, own or hold a business anywhere in the world that competes with the Business as conducted immediately prior to the Closing Date (the “**Seller Restricted Business**”), including as a proprietor, principal, agent, partner, stockholder, member of any association, consultant or otherwise. The restrictions set forth in this Section 6.8 shall not prohibit or otherwise restrict Seller from (i) purchasing and/or owning (directly or indirectly) up to two percent of the issued and outstanding capital stock of a publicly held entity carrying on a Seller Restricted Business, so long as Seller does not participate in the control or take an active part in the management or direction thereof and does not in any way render services thereto, (ii) acquiring (directly or indirectly) any Person or business engaged in a Seller Restricted Business as of the date of such acquisition (or as of any other date) (such Person or business, an “**Acquired Business**”), if less than thirty percent (30%) of the consolidated gross revenues of such Acquired Business during the last completed fiscal year of such Acquired Business prior to such acquisition were derived from any Seller Restricted Business, and Seller may in such case continue to conduct such Seller Restricted Business through such Acquired Business without any limitation or restriction hereunder; or (iii) acquiring (directly or indirectly) any Acquired Business even if thirty percent (30%) or more of the consolidated gross revenues of such Acquired Business during the last completed fiscal year of such Acquired Business prior to such acquisition were derived from any Seller Restricted Business, provided that, in such event, Seller shall, no later than six (6) months following the completion of such acquisition, dispose of the portion of such Acquired Business that is then engaged in such Seller Restricted Business.

**6.9 Additional Services.** Between the date of this Agreement and the Closing Date, Seller and Buyer agree to negotiate in good faith a customary business arrangement (including pricing) under which Seller would purchase from Buyer the application specific integrated circuits (ASICs) for the products identified in Exhibit B of the Transition Services Agreement and Buyer would provide the required support services for each of those products. The parties shall attempt to reach an agreement on pricing and other terms and conditions on a product by product basis. To the extent that the parties are able to reach an agreement with respect to the ASIC for a specific product, Buyer shall not be required to provide Seller Transition Services (as

defined in the Transition Services Agreement) under the Transition Services Agreement with respect to that product.

**6.10 Restrictions on Resale of Buyer Common Stock.** The Buyer Common Stock delivered by Buyer hereunder will be transferable by Seller only pursuant to (a) public offerings registered under the Securities Act and any applicable state securities law or (b) an available exemption under the Securities Act and any applicable state securities law. The transfer agent for the Buyer Common Stock has been instructed to block any transfers of Buyer Common Stock that are not in compliance with these provisions. The certificate representing the shares of Buyer Common Stock delivered hereunder shall be imprinted with a legend in substantially the following form:

“THE SHARES OF COMMON STOCK REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES ACT, AND MAY NOT BE SOLD OR TRANSFERRED EXCEPT PURSUANT TO THE REGISTRATION PROVISIONS OF SUCH ACTS OR AN EXEMPTION THEREFROM.”

It is understood and agreed that the legend set forth above shall be removed by delivery of substitute certificates without such legend if Seller shall have delivered to Buyer an opinion of counsel reasonably satisfactory to Buyer to the effect that such legend is not required for purposes of the Securities Act.

**6.11 Net Inventory Adjustment.**

(a) On the day preceding the Closing Date, Seller shall conduct a physical count of the Inventory on hand after the close of business on such day. The parties will mutually agree in advance on a plan for the physical count of the Inventory (including a determination of the scope thereof), and Buyer or representatives of Buyer shall be entitled to observe the physical count of the Inventory pursuant to such plan.

(b) Within ten (10) days after the Closing Date, Seller shall prepare and deliver to Buyer a statement (the “**Statement**”) setting forth the value of the net Inventory as of the Closing (but determined immediately prior to giving effect to the transactions contemplated hereby) (the “**Closing Net Inventory Value**”). If the Statement as prepared by Seller reflects a Closing Net Inventory Value of less than \$5,300,000, Seller shall include with the Statement a check payable to Buyer in the amount of the difference between \$5,300,000 and the Closing Net Inventory Value. For purposes of determining the Closing Net Inventory Value, the Inventory shall be valued in accordance with the methodology used by Seller in the preparation of the Financial Statements, including netting any reserve for excess or obsolete inventory against the gross inventory balance.

(c) During the fifteen (15) day period following Buyer’s receipt of the Statement, Buyer shall be permitted to review Seller’s working papers relating to the Statement. Unless Buyer gives written notice of its disagreement with the Statement (a “**Notice of Disagreement**”) to Seller prior to the twentieth (20th) day following delivery

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of the Statement, then (A) the Statement shall become final and binding upon such 20th day, and (B) if the Closing Net Inventory Value is more than \$5,300,000, Buyer within five (5) business days thereafter will deliver to Seller a check payable to Seller in the amount by which the Closing Net Inventory Value exceeds \$5,300,000.

(d) Any Notice of Disagreement shall specify in reasonable detail the nature of any disagreement so asserted. If a Notice of Disagreement is received by Seller in a timely manner, then the Statement (as revised in accordance with this Section 6.11) shall become final and binding upon Seller and Buyer on the earlier of (i) the date on which Seller and Buyer resolve in writing any differences they have with respect to the matters specified in the Notice of Disagreement or (ii) the date any disputed matters are finally resolved in writing by the Accounting Firm (as defined below).

(e) During the 30-day period following the delivery of a Notice of Disagreement, Seller and Buyer shall seek to resolve in writing any differences which they may have with respect to the matters specified in the Notice of Disagreement. At the end of such 30-day period, Seller and Buyer shall submit to an independent accounting firm (the “**Accounting Firm**”) for arbitration of any matters which remain in dispute and which were properly included in the Notice of Disagreement. The Accounting Firm shall be the Orange County office of Ernst & Young, LLP or, if such firm is unable or unwilling to act, such other nationally recognized independent public accounting firm as shall be agreed upon by Seller and Buyer in writing. Seller and Buyer hereby agree to use their commercially reasonable efforts to cause the Accounting Firm to render a decision resolving the matters submitted to the Accounting Firm within thirty (30) days following submission. Seller and Buyer agree that judgment may be entered upon the arbitral award of the Accounting Firm in any court having jurisdiction pursuant to Section 10.9. The cost of any arbitration (including the fees and expenses of the Accounting Firm and reasonable attorney fees and expenses of the parties) pursuant to this Section 6.11 shall be borne by Buyer and Seller in inverse proportion as they may prevail on matters resolved by the Accounting Firm, which proportionate allocations shall also be determined by the Accounting Firm, as arbitrators, at the time the determination of the Accounting Firm is rendered on the merits of the matters submitted. The costs and expenses incurred by the accountants, auditors and other Representatives of any party hereto in connection with such party’s review of the Statement or otherwise in connection with the matters that are the subject of this Section 6.11 shall be borne by the party incurring such expenses.

(f) If the sum of the Closing Net Inventory Value as finally determined pursuant to subsections (d)-(e) (the “**Final Closing Net Inventory Value**”) and the amount of any check provided to Buyer with the Statement (if any) is less than \$5,300,000, Seller shall, within ten (10) business days after the determination of the Final Closing Net Inventory Value, deliver to Buyer a check payable to Buyer in the amount of the excess of (i) \$5,300,000 over (ii) the sum of the Final Closing Net Inventory Value and the amount of any check provided to Buyer with the Statement (if any). Conversely, if the sum of the Final Closing Net Inventory Value and the amount of any check provided to Buyer with the Statement (if any) is more than \$5,300,000, Buyer shall, within ten (10) business days after the determination of the Final Closing Net Inventory

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Value, deliver to Seller a check payable to Seller in the amount by which the sum of the Final Closing Net Inventory Value and the amount of any check provided to Buyer with the Statement (if any) exceeds \$5,300,000.

**6.12 Supplement to Disclosure Letter.** Each of Buyer and Seller may, at any time after the date hereof and prior to the Closing, supplement any Section of its respective Disclosure Letter to account for a condition or event that renders untrue or inaccurate any representation, warranty, covenant, agreement or other provision of this Agreement or with respect to any matter that was or would have been required to be set forth or described in the respective Disclosure Letter; provided, however, that no supplement or amendment to any Disclosure Letter shall have any effect for the purpose of determining the satisfaction of the conditions set forth in Article VII or for purposes of determining whether any Person is in breach of this Agreement or whether any Person is entitled to indemnification pursuant to Article IX or any other remedy at law or in equity (to the extent available under the other terms of this Agreement).

### **6.13 Tax Covenants.**

(a) **Cooperation and Exchange of Information.** Seller and Buyer will provide each other with such cooperation and information as any of them reasonably may request of the other in filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes, participating in or conducting any audit or other Proceeding in respect of Taxes. Any information obtained under this Section 6.13(a) shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting an audit or other Proceeding.

(b) **Transfer Taxes.**

(i) Notwithstanding anything to the contrary in Section 6.13(b)(ii), Buyer and Seller shall split equally the financial responsibility for all real property transfer or gains, sales, use, transfer, value added, stock transfer, and stamp taxes, any transfer, recording, registration, and other fees, and any similar Taxes which become payable in connection with the transactions contemplated by this Agreement.

(ii) The sales, use and transfer Tax Returns required by reason of the transferring and recording of title to the Assets, if so required by Law, shall be timely prepared by the party legally obligated to make such filing. The party legally obligated to file any Tax Return relating to Transfer Taxes shall provide a copy of such Returns to Seller and Buyer at least fifteen (15) days prior to the date such Tax Returns are due, along with a calculation of the amount of Transfer Taxes payable by Buyer. The parties agree to cooperate with each other in connection with the preparation and filing of such Tax Returns, in obtaining all available exemptions from such Transfer Taxes and in timely providing each other with resale certificates and any other documents necessary to satisfy any such exemptions. Each party hereto shall execute and deliver all instruments and

certificates necessary to enable the other party or parties to comply with the foregoing.

(c) **Property Taxes.** All real estate, personal property, and ad valorem Taxes relating to the Assets which shall have become due and payable prior to the Closing Date shall be paid by Seller. All such Taxes with respect to taxable periods that include, but do not begin or end on, the Closing Date shall be prorated to the Closing Date (such proration is to be based on the number of days in the taxable period up to and including the Closing Date, relative to the number of days in the entire taxable period). In connection with such proration, in the event the actual Tax amounts are not available at the Closing Date, proration of Taxes shall be based on 105% of the actual Taxes for the preceding year for which actual Tax amounts are available. The amount due one party as a result of such proration shall be paid to the other party at the Closing, provided, however, that in the event actual Tax amounts are not available at the Closing Date, an appropriate additional adjustment payment shall be made by one party to the other party within ten days after such actual Tax amounts are assessed.

#### **6.14 Post-Closing Cooperation; Access and Assistance.**

(a) Buyer and Seller shall cooperate with each other, and shall cause their respective Representatives to cooperate with each other, after the Closing to ensure the orderly transition of the Business from Seller to Buyer and to minimize any disruption to the Business and to either party that might result from the transactions contemplated hereby. After the Closing, upon reasonable notice, Buyer and Seller shall furnish or cause to be furnished to each other and their respective Representatives reasonable access, during normal business hours, to such information and assistance relating to the Business (to the extent within the control of such party) as is reasonably necessary for (i) financial reporting and accounting matters and (ii) defense or prosecution of litigation and disputes.

(b) After the Closing, upon reasonable written notice, Buyer and Seller shall furnish or cause to be furnished to each other and their respective Representatives, as promptly as practicable, such information and assistance (to the extent within the control of such party) relating to the Assets (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, and making of any election related to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or other Proceeding related to any Tax Return. Seller and Buyer shall cooperate with each other in the conduct of any audit or other Proceeding relating to Taxes involving the Business.

(c) In the event and for so long as any party hereto is contesting or defending against any third-party Proceeding in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or prior to the Closing Date involving the Business, the other party hereto shall (x) fully cooperate with it and its counsel in, and assist it and its counsel with, the contest or defense, (y) make available its personnel (including for purposes of fact finding,

consultation, interviews, depositions and, if required, as witnesses), and (z) provide such information, testimony and access to its books and records, in each case as shall be reasonably requested in connection with the contest or defense, all at the sole cost and expense (not including employee compensation and benefits costs) of the contesting or defending party as described in Section 6.14(d) (unless the contesting or defending party is entitled to indemnification therefor under Article IX). For the avoidance of doubt, this Section 6.14(c) shall not apply with respect to disputes between the parties hereto.

(d) Each party shall reimburse the other for reasonable out-of-pocket costs and expenses incurred by the other in assisting such party pursuant to this Section 6.14. No party shall be required by this Section 6.14 to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations (including, in the case of Buyer, of the Business).

**6.15 Release of Liens.** On or prior to the Closing, Seller shall cause any and all Liens other than Permitted Liens recorded against or otherwise respecting the Assets to be satisfied and released in full and shall cause the holders of such Liens to file all documents and make all filings in all relevant jurisdictions necessary to release such Liens. All such releases, filings and documentation shall be in form and substance reasonably acceptable to Buyer.

**6.16 Cooperation with Warranty Claims.** Buyer agrees to process and handle all warranty claims arising in respect of products of the Business shipped or sold prior to the Closing, and to promptly inform Seller of any material costs incurred by Buyer in processing and handling such warranty claims. Buyer agrees to report to Seller any warranty claims being processed under this Section 6.16 within two business days of the warranty claim being reported to Buyer. Seller agrees to indemnify Buyer for all out-of-pocket costs and expenses actually incurred by Buyer in performing its obligations pursuant to this Section 6.16.

**6.17 SEC Approval of Financial Statements.** Buyer will use its reasonable best efforts to apply to the SEC as soon as practicable following the date of this Agreement for permission to use the Financial Statements in Buyer's required SEC filings following the Closing, provided that (i) in no event



shall such filing be made by Buyer more than five (5) business days from the date hereof and (ii) Seller (and, as applicable, its outside auditors) will reasonably cooperate with Buyer in connection therewith.

**6.18 Additional Financial Statements.** If Seller is required to provide (and does provide) additional financial statements to Buyer pursuant to clause (ii) of Section 7.2(g), such financial statements provided to Buyer shall be prepared in accordance with GAAP applied on a consistent basis throughout the period involved and shall fairly present in all material respects the financial condition, results of operations, and cash flows (in each case if required to be presented in such financial statements) of the Business at the date or for the applicable period covered thereby.

## ARTICLE VII CONDITIONS OF PURCHASE

**7.1 Conditions to the Obligations of Each Party to Effect the Purchase.** The respective obligations of each party to this Agreement to effect the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing Date of the following conditions:

- (a) No Order. No Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Legal Requirement (whether temporary, preliminary or permanent) which (i) is in effect and (ii) has the effect of making the transactions contemplated hereby illegal or otherwise prohibiting consummation of the transactions contemplated hereby; provided, however, that prior to invoking this condition, the party so invoking this condition shall have complied with its obligations under Section 6.3.
- (b) HSR Act. If filing under the HSR Act is required in connection with the transactions contemplated hereby, all waiting periods (and any extension thereof) thereunder have expired or terminated early.
- (c) Necessary Consents. All Necessary Consents required to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby shall have been obtained or made.

**7.2 Additional Conditions to the Obligations of Buyer.** The obligations of Buyer to consummate and effect the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any of which may be waived, in writing, exclusively by Buyer:

- (a) Representations and Warranties. The representations and warranties of Seller contained in Article III of this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date with the same force and effect as if made as of such date, except (i) for those representations and warranties which address matters only as of a particular date, which representations shall have been true and correct as of such particular date and (ii) to the extent the representation or warranty is already qualified by materiality, it shall be true and correct. Buyer shall have received a certificate with respect to the foregoing signed on behalf of Seller, with respect to the representations and warranties of Seller, by an authorized senior executive officer of Seller.
- (b) Agreements and Covenants. Seller shall have performed or complied in all material respects with the covenants, obligations and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing Date.
- (c) Litigation Matters. No litigation brought by a Governmental Entity shall be pending, and no litigation shall be threatened by any Governmental Entity, which seeks to enjoin or prohibit the consummation of the transactions contemplated hereby, and no temporary restraining order, preliminary or permanent injunction or other order

issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the transactions contemplated hereby shall be in effect.

- (d) Material Adverse Effect. There shall not have occurred any Material Adverse Effect on the Business during the period from the date hereof to the Closing Date.
- (e) Closing Deliveries. Buyer shall have received all documents, instruments and other closing deliveries as contemplated by Section 2.3(b).
- (f) Consents. Seller shall have delivered to Buyer written consents from all third parties listed on Schedule 7.2(f).
- (g) SEC Matters. Buyer shall have received either (i) the waiver from the SEC requested by Buyer pursuant to Section 6.17; or (ii) from Seller, audited financial statements with respect to the Business satisfying the requirements of the SEC with respect to the financial statements of Buyer to be included in Buyer's SEC filings following the Closing.

**7.3 Additional Conditions to the Obligations of Seller.** The obligation of Seller to consummate and effect the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing Date of each of the following conditions, any of which may be waived, in writing, exclusively by Seller:

- (a) Representations and Warranties. The representations and warranties of Buyer contained in Article IV of this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date with the same force and effect as if made as of such date, except (i) for those representations and warranties which address matters only as of a particular date, which representations shall have been true and correct as of such particular date and (ii) to the extent the representation or warranty is already qualified by materiality, it shall be true and correct. Seller shall have received a certificate with respect to the foregoing signed on behalf of Buyer, with respect to the representations and warranties of Buyer, by an authorized senior executive officer of Buyer.

(b) Agreements and Covenants. Buyer shall have performed or complied in all material respects with the covenants, obligations and agreements required by this Agreement to be performed or complied with by it at or prior to the Closing Date. Seller shall have received a certificate with respect to the foregoing signed on behalf of Buyer, with respect to the covenants of Buyer, by an authorized senior executive officer of Buyer.

(c) Closing Deliveries. Seller shall have received all documents, instruments and other closing deliveries as contemplated by Section 2.3(a).

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## ARTICLE VIII TERMINATION, AMENDMENT AND WAIVER

**8.1 Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of Buyer and Seller;

(b) by either Buyer or Seller if (i) any court of competent jurisdiction or other Governmental Entity shall have issued an order, decree, or ruling enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree or ruling shall have become final and non-appealable (unless such order, decree, or ruling has been withdrawn, reversed, or otherwise made inapplicable); or (ii) any litigation or other Proceeding is pending before any court of competent jurisdiction or has been threatened to be instituted by any Person or governmental body, which in the good faith judgment of the Board of Directors of Buyer or Seller, as the case may be, is reasonably likely to result in an order, decree, or ruling enjoining, prohibiting, seeking substantial damages in respect of, or impairing the benefits of the transactions contemplated by, this Agreement;

(c) by Seller by written notice to Buyer, upon a breach of any representation, warranty, covenant or agreement on the part of Buyer set forth in this Agreement, or if any representation or warranty of Buyer shall have become untrue or inaccurate, which untruths, inaccuracies or breach would give rise to the failure of a condition set forth in Sections 7.3(a) or 7.3(b); provided that if such untruth or inaccuracy in Buyer's representations and warranties or breach by Buyer is curable by Buyer, through the exercise of reasonable efforts, within 30 days after Buyer's receipt of written notice from Seller of a breach by Buyer hereunder, then Seller may not terminate this Agreement under this Section 8.1(c) prior to the end of such 30-day period, provided that Buyer continues to exercise reasonable efforts to cure such untruthfulness, inaccuracy or breach through such 30-day period (it being understood that Seller may not terminate this Agreement pursuant to this Section 8.1(c) if Seller shall have materially breached this Agreement or if such untruthfulness, inaccuracy or breach by Buyer is cured prior to the end of such 30-day period);

(d) by Buyer by written notice to Seller, upon a breach of any representation, warranty, covenant or agreement on the part of Seller set forth in this Agreement, or if any representation or warranty of Seller shall have become untrue or inaccurate, which untruths, inaccuracies or breach would give rise to the failure of a condition set forth in Sections 7.2(a) or 7.2(b) provided that if such untruth or inaccuracy in Seller's representations and warranties or breach by Seller is curable by Seller, through the exercise of reasonable efforts, within 30 days after Seller's receipt of written notice from Buyer of a breach by Seller hereunder, then Buyer may not terminate this Agreement under this Section 8.1(d) prior to the end of such 30-day period, provided that Seller continue to exercise reasonable efforts to cure such untruthfulness, inaccuracy or breach through such 30-day period (it being understood that Buyer may not terminate this Agreement pursuant to this Section 8.1(d) if Buyer shall have materially breached this

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Agreement or if such untruthfulness, inaccuracy or breach by Seller is cured prior to the end of such 30-day period); or

(e) by Seller or Buyer, if the Closing shall not have taken place on or before December 29, 2005 (the "Termination Date"); provided, that the right to terminate this Agreement under this Section 8.1(e) shall not be available to (i) Seller if the failure of Seller to fulfill any of its obligations under this Agreement substantially caused the failure of the Closing to occur on or before such date or (ii) Buyer if the failure of Buyer to fulfill any of its obligations under this Agreement substantially caused the failure of the Closing to occur on or before such date.

**8.2 Notice of Termination; Effect of Termination.** Any termination of this Agreement under Section 8.1 above shall be effective immediately upon the delivery of a valid written notice of the terminating party to the other party hereto. In the event of the termination of this Agreement as provided in Section 8.1, this Agreement shall be of no further force or effect, except (i) as set forth in Section 6.1(a), Section 6.2, this Section 8.2, and Article X, each of which shall survive the termination of this Agreement and (ii) nothing herein shall relieve any party from liability for any willful breach of this Agreement. No termination of this Agreement shall affect the obligations of the parties contained in the Confidentiality Agreement, all of which obligations shall survive termination of this Agreement in accordance with their terms.

## ARTICLE IX INDEMNIFICATION; ESCROW

**9.1 Indemnification by Seller.** Subject to the terms of this Article IX, Seller agrees to indemnify and hold Buyer and its Affiliates and each of their respective officers and directors (each such Person, a "**Buyer Indemnified Party**") harmless against and in respect of any and all losses, costs, expenses, claims, damages, obligations and liabilities, including reasonable attorneys fees and disbursements ("**Damages**"), which such Buyer Indemnified Party has actually suffered, incurred or become subject to arising out of, based upon or otherwise in respect of:

(a) any breach of or inaccuracy in any representation or warranty made by Seller in this Agreement or any related agreement or document contemplated hereby and executed and delivered by Seller at the Closing;

(b) any breach by Seller of, or failure of Seller to perform, any covenant or agreement of Seller contained in this Agreement or any related agreement or document contemplated hereby and executed and delivered by Seller at the Closing;

(c) the Excluded Assets or Excluded Liabilities; or

(d) as provided in Section 6.16.

**9.2 Indemnification by Buyer.** Buyer shall indemnify and hold Seller and its Subsidiaries and their respective Affiliates, officers and directors (each such Person, a “**Seller Indemnified Party**”) harmless against and in respect of any and all Damages which such Seller

Indemnified Party has actually suffered, incurred or become subject to arising out of, based upon or otherwise in respect of:

(a) any breach of or inaccuracy in any representation or warranty made by Buyer in this Agreement;

(b) any breach by Buyer of, or failure of Buyer to perform, any covenant or agreement of Buyer contained in this Agreement;

(c) any liability for the income Taxes of Buyer or any member of an affiliated group with which Buyer files or have filed a Tax Return on a consolidated or combined basis;

(d) the WARN Act or any similar statute, if and when applicable in connection with the transactions contemplated hereby and/or the operation of the Business after the Closing due to Buyer’s termination following the Closing of such number of Transferred Employees as would trigger application of any such statute; and

(e) the Assumed Liabilities.

**9.3 Inter-Party Claims.** In order for a Buyer Indemnified Party or a Seller Indemnified Party (each, an “**Indemnified Party**”) to be entitled to any indemnification pursuant to this Article IX, the Indemnified Party shall notify the other party or parties from whom such indemnification is sought (the “**Indemnifying Party**”) in writing within ten (10) business days of the event giving rise to such Indemnified Party’s claim for indemnification, specifying in reasonable detail the basis of such claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure. The Indemnified Party shall thereupon give the Indemnifying Party reasonable access to the books, records and assets of the Indemnified Party which evidence or support such claim or the act, omission or occurrence giving rise to such claim and the right, upon prior notice during normal business hours, to interview any Representative of the Indemnified Party related thereto. If the Indemnifying Party disputes its liability with respect to any such claim, the Indemnifying Party and the Indemnified Party shall proceed to negotiate a resolution of such dispute. If (i) such dispute involves only monetary Damages (as opposed to any form of injunctive or other equitable relief), and (ii) the parties are not able to negotiate a resolution of such dispute within fourteen (14) days of the service of notice as referenced above the following procedures shall be followed:

(a) Within thirty (30) days following the service of such notice, each of the parties shall prepare and circulate to the other party (pursuant to Section 10.4 hereof) a memorandum or other form of statement setting out its position on the matter in dispute and its reasons for adopting such position. Each memorandum or statement shall be considered by the designated senior officers of each of Buyer and Seller who shall endeavor to resolve the dispute. If the designated senior officers of each of Buyer and Seller agree upon a resolution or disposition of the matter, they shall each sign a statement which sets out the terms of their agreement.

(b) If the designated senior officers of each of Buyer and Seller are unable to resolve such dispute within thirty (30) days of its referral to them under Section 9.3(a), Buyer and Seller shall mutually agree on one mediator not affiliated with either party to conduct non-binding mediation of the rights of the respective parties with respect to such dispute. The parties shall cooperate with one another in selecting a mediator and in scheduling mediation proceedings, shall act in good faith in such mediation, shall bear their own respective expenses in connection with such mediation (except that the parties shall share equally in the out-of-pocket cost of the mediation itself), and shall use good faith efforts to cause such mediation to be completed within thirty (30) days after the date on which the dispute was submitted to mediation, provided that such mediation may be terminated by either party in its sole discretion at any time more than forty five (45) days after the date on which the dispute was submitted to mediation.

(c) In the event that (A) the dispute is not a dispute described in clause (i) above or (B) resolution of the dispute is not agreed upon after completion of such mediation, either party may submit the dispute to a court of competent jurisdiction.

**9.4 Third Party Claims.**

(a) In order for an Indemnified Party to be entitled to any indemnification provided for under this Agreement in respect of, arising out of or involving a claim made by any Person (other than an Indemnifying Party, which claims are addressed in Section 9.3) against the Indemnified Party (a “**Third Party Claim**”), such Indemnified Party must notify the Indemnifying Party in writing of the Third Party Claim (which notice shall specify in reasonable detail the events giving rise to such Third Party Claim) within ten (10) business days after receipt by such Indemnified Party of notice of the Third Party Claim; provided, however, that failure to give such notification shall not affect the indemnification provided hereunder except to the extent the Indemnifying Party shall have been actually prejudiced as a result of such failure. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly following the Indemnified Party’s receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim.

(b) If a Third Party Claim is made, the Indemnifying Party shall be entitled to participate in the defense thereof. The Indemnifying Party may also assume the defense of any Third Party Claim with counsel selected by the Indemnifying Party. Should the Indemnifying Party so elect to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. If the Indemnifying Party assumes such defense,

the Indemnified Party shall have the right to participate in the defense thereof and to employ counsel, at its own expense, separate from the counsel employed by the Indemnifying Party, it being understood and agreed that the Indemnifying Party shall control such defense. The Indemnifying Party shall be liable for the fees and expenses of one (1) outside counsel (and not any fees and expenses allocated to any internal counsel) employed by the Indemnified Party for any period during which the Indemnifying Party has not assumed the defense thereof (other than during any period in which the Indemnified Party shall

have failed to give notice of the Third Party Claim as provided above). If the Indemnifying Party chooses to defend or prosecute a Third Party Claim, all the Indemnified Parties shall cooperate in the defense or prosecution thereof. Such cooperation shall include the retention and (upon the Indemnifying Party's request) the provision to the Indemnifying Party of records and information that are reasonably relevant to such Third Party Claim, and making employees and Representatives reasonably available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Whether or not the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle, compromise or discharge, such Third Party Claim without the Indemnifying Party's prior written consent. If the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnified Party shall agree to any settlement, compromise or discharge of a Third Party Claim that the Indemnifying Party may recommend and that by its terms obligates the Indemnifying Party to pay the full amount of Damages in connection with such Third Party Claim and does not impose any material obligations or material restrictions on the Indemnified Party in any manner, which settlement, compromise, or discharge shall then release the Indemnifying Party completely in connection with such Third Party Claim.

#### **9.5 Limitations and Requirements.**

(a) Seller shall have no obligation to indemnify the Buyer Indemnified Parties against Damages pursuant to Section 9.1(a) of this Agreement unless and until the aggregate of all such Damages suffered or incurred by Buyer and such Persons exceeds \$750,000 (the "**Basket Amount**") (in which event the Buyer Indemnified Parties shall be entitled to indemnification for the full amount of such Damages, including the first \$750,000 thereof).

(b) Notwithstanding anything herein to the contrary, Seller shall not be obligated to indemnify the Buyer Indemnified Parties against Damages pursuant to Section 9.1(a) to the extent that payments thereof to the Buyer Indemnified Parties pursuant to the terms of this Agreement exceeds the Escrow Fund; provided, however, that the indemnification liability of Seller pursuant to Section 9.1(b) through Section 9.1(d) shall be unlimited.

(c) Notwithstanding anything herein to the contrary, Buyer shall have no obligation to indemnify the Seller Indemnified Parties against Damages pursuant to Section 9.2(a) of this Agreement unless and until the aggregate of all such Damages suffered or incurred by Seller and such Persons exceeds \$250,000 (in which event the Seller Indemnified Parties shall be entitled to indemnification for the full amount of such Damages, including the first \$250,000 thereof).

(d) Notwithstanding anything herein to the contrary, Buyer shall not be obligated to indemnify the Seller Indemnified Parties against Damages pursuant to Section 9.2(a) to the extent that payments thereof to the Seller Indemnified Parties pursuant to the terms of this Agreement exceeds \$2,400,000; *provided, however*, that the

indemnification liability of Buyer pursuant to Section 9.2(b) through Section 9.2(e) shall be unlimited.

(e) Except as otherwise expressly provided in this Agreement, no claim for indemnification pursuant to this Article IX may or shall be made unless written notice pursuant to Section 9.3 or Section 9.4, as applicable, is delivered to the Indemnifying Party.

(f) Buyer acknowledges, on behalf of itself and on behalf of the other Buyer Indemnified Parties, that their sole and exclusive remedy with respect to the subject matter of this Agreement and the related agreements and documents contemplated hereby and executed and delivered by Seller at the Closing shall be pursuant to the indemnification provisions set forth in this Article IX (other than claims and causes of action based on criminal fraud). In furtherance of the foregoing, Buyer hereby waives, on behalf of itself and each of the other Buyer Indemnified Parties, to the fullest extent permitted under applicable Law, any and all rights, claims and causes of action (other than claims and causes of action based on criminal fraud) it may have against Seller arising under or based upon any applicable Law or otherwise (except pursuant to the indemnification provisions set forth in this Article IX).

(g) Upon payment in full of any Inter-Party Claim pursuant to Section 9.3 or the payment of any Judgment with respect to a Third Party Claim pursuant to Section 9.4, the Indemnifying Party shall be subrogated to the extent of such payment to the rights of the Indemnified Party against any Person (other than the Buyer Indemnified Parties) with respect to the subject matter of such Inter-Party Claim or Third Party Claim. The Indemnified Parties shall assign or otherwise reasonably cooperate with the Indemnifying Parties, at the cost and expense of the Indemnified Parties, to pursue any claims against, or otherwise recover amounts from, any Person liable or responsible for any Damages for which indemnification has been received pursuant to this Agreement.

(h) The waiver by either Buyer or Seller of any condition set forth in Section 7.2 or 7.3, respectively, based upon the accuracy of any representation or warranty or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

(i) Notwithstanding anything herein to the contrary, no party hereto shall be entitled to be indemnified against any Damages based upon or arising from any claim to the extent such claim is taken into account in determining the amounts (if any) due to and paid to Buyer or Seller, as the case may be, pursuant to Section 6.11.

#### **9.6 Calculation and Mitigation of Damages.**

(a) The amount of any Damages for which indemnification is provided under this Article IX shall be net of any amounts recovered or recoverable by such Indemnified Party under insurance policies or other collateral sources with respect to such Damages. In the event any amounts recovered or recoverable under insurance policies or other

collateral sources are not received before any claim for indemnification is actually paid pursuant to this Article IX, then the Buyer Indemnified Parties shall pursue such insurance policies or collateral sources, and in the event a Buyer Indemnified Party receives any recovery, the amount of such recovery shall be applied first, to refund any payments made by the Indemnifying Parties which would not have been so paid had such recovery been obtained prior to such payment, and second, any excess to the Buyer Indemnified Parties. If a Buyer Indemnified Party fails to pursue recoveries under any “incurrence” based insurance policies or other collateral sources, then Seller shall have the right of subrogation to pursue such insurance policies or other collateral sources and may take any reasonable actions necessary to pursue such rights of subrogation in its name or the name of the party from whom subrogation is obtained. Buyer shall use commercially reasonable efforts to cooperate, and cause its Affiliates and Representatives to use commercially reasonable efforts to cooperate, with Seller to pursue any such subrogation claim.

(b) Notwithstanding any provision of this Agreement to the contrary, “Damages” shall not include any consequential, incidental or indirect damages, special or punitive damages, including loss of revenue, profits or income, diminution in value or loss of business reputation or opportunity.

(c) Buyer and Seller agree to treat any indemnification payments received pursuant to this Agreement for all Tax purposes as an adjustment to the Purchase Price.

**9.7 Termination of Indemnification.** The obligations to indemnify and hold harmless any Indemnified Party under this Article IX shall terminate with respect to claims made pursuant to Section 9.1(a) or Section 9.2(a) when the applicable representation or warranty terminates pursuant to Section 10.1; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which the Indemnified Party shall have, before the expiration of the applicable period, previously made a claim by delivering a notice of such claim (stating in reasonable detail the basis of such claim) pursuant to Section 9.3 or Section 9.4 to the Indemnifying Party. The obligations to indemnify and hold harmless any Indemnified Party under this Article IX shall terminate with respect to claims made pursuant to Section 9.1(b)-(d) or Section 9.2(b)-(e), (X) with respect to claims pursuant to Section 6.8, ninety (90) days following the third anniversary of the Closing Date, or (Y) with respect to claims pursuant to any other covenant or obligation, upon the expiration of the statute of limitations that would apply under applicable law to such claim if brought in a court of competent jurisdiction; provided, however, that such obligations to indemnify and hold harmless shall not terminate with respect to any item as to which the Indemnified Party shall have, before the expiration of the applicable period, previously made a claim by delivering a notice of such claim (stating in reasonable detail the basis of such claim) pursuant to Section 9.3 or Section 9.4 to the Indemnifying Party.

#### **9.8 Escrow Fund.**

(a) Notwithstanding anything to the contrary contained herein, from and after the Closing, any payments made to any Buyer Indemnified Party in respect of any claim

for indemnification made pursuant to Section 9.1(a) shall be satisfied solely from the Escrow Fund pursuant to the terms hereof and of the Escrow Agreement.

(b) No later than twelve (12) months following the Closing Date, the Escrow Agent shall release to Seller the Escrow Fund (the “**Escrow Payment**”); provided, however, that if at any time prior to the date on which the Escrow Payment is due to be released, Buyer (or another Buyer Indemnified Party) has reasonably and in good faith asserted a claim or claims for indemnification pursuant to Section 9.3 or 9.4 that, individually or when aggregated with the other such claims made by the Buyer Indemnified Parties, is for Damages in excess of the Basket Amount (an “**Excess Claim**”), and such Excess Claim is pending or unresolved, Buyer and Seller agree to promptly thereafter jointly instruct the Escrow Agent in writing to withhold from the Escrow Payment a number of shares and/or amount of cash, if any, having an aggregate value equal to the amount of such Excess Claims (in the aggregate) until such matters are resolved. For all purposes of the Escrow Fund, shares of Buyer Common Stock included in the Escrow Fund shall be valued at the Issuance Price. If it is finally determined, by the agreement of Buyer and Seller or otherwise pursuant to this Agreement or by a court of competent jurisdiction, that any part or all of such Excess Claims are covered by Section 9.1, (i) the covered amount of such Excess Claims may be offset against the retained portion of the Escrow Fund, and, if such offset amount is greater than the Basket Amount, Buyer and Seller shall promptly thereafter jointly instruct the Escrow Agent in writing to release shares and/or cash, if any, having an aggregate value equal to such offset amount (including the Basket Amount) to Buyer; and (ii) Buyer and Seller shall promptly thereafter jointly instruct the Escrow Agent in writing (assuming that at such time the 12-month anniversary of the Closing Date has passed) to release the remainder of the Escrow Payment to Seller. If it is finally determined that any such Excess Claim is not covered by Section 9.1 (again assuming that at such time the 12-month anniversary of the Closing Date has passed) Buyer and Seller shall promptly thereafter jointly instruct the Escrow Agent in writing to release all amounts withheld with respect to such Excess Claim to Seller. At any time prior to distribution of the entire Escrow Fund pursuant to this Section 9.8, Seller may exchange any or all of the shares of Buyer Common Stock in the Escrow Fund held by the Escrow Agent for cash by wire transfer of immediately available funds to the Escrow Agent in an amount equal to the Issuance Price multiplied by the number of shares of Buyer Common Stock so exchanged. Upon receipt of such wire transfer, the Escrow Agent shall immediately deliver to Seller certificates in the name of Seller representing the number of shares of Buyer Common Stock so exchanged and such shares shall be considered released from the Escrow Fund and, upon receipt by Seller, no longer subject to the terms of this Agreement. Dividends, distributions and other income earned on the Escrow Fund (including on the investment or reinvestment thereof) shall be payable to Seller as part of the Escrow Payment. Buyer shall, however, be entitled to dividends, distributions and other income earned on that portion (if any) of the Escrow Fund (including on the investment or reinvestment thereof) to which Buyer is entitled as a result of a claim (or claims) by Buyer which is ultimately resolved as provided above in favor of Buyer (and Seller shall, if it receives any such dividends, distributions and other income from the Escrow Agent, promptly forward such amounts to Buyer).

**ARTICLE X**  
**GENERAL PROVISIONS**

**10.1 Survival of Representations and Warranties.** The representations and warranties made by the parties hereto in this Agreement (including the Disclosure Letters) and in the other agreements, Schedules, and certificates delivered pursuant hereto shall survive the consummation of the transactions contemplated hereby and thereby, but will terminate at, and will have no further force and effect after, the twelve-month anniversary of the Closing Date. The covenants and obligations of the parties contained in Section 6.8 of this Agreement shall terminate upon, and will have no further force and effect after, the third anniversary of the Closing Date; all other covenants and obligations of the parties hereto contained shall terminate upon, and will have no further force and effect after, the expiration of the statute of limitations that would apply under applicable law to a claim with respect to such covenant or obligation if brought in a court of competent jurisdiction;

**10.2 Amendment.** This Agreement may not be amended except by execution of an instrument in writing signed on behalf of Buyer and Seller.

**10.3 Extension; Waiver.** At any time prior to the Closing Date either party hereto, by action taken or authorized by their respective Board of Directors, may, to the extent legally allowed: (i) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any document delivered pursuant hereto, and (iii) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. Delay in exercising any right under this Agreement shall not constitute a waiver of such right.

**10.4 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed duly given (i) on the date of delivery if delivered personally, (ii) on the date of confirmation of receipt (or, the first business day following such receipt if the date is not a business day) of transmission by telecopy or telefacsimile, or (iii) on the date of confirmation of receipt (or, the first business day following such receipt if the date is not a business day) if delivered by a nationally recognized courier service. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

(a) if to Buyer, to:

MARVELL TECHNOLOGY GROUP LTD.  
c/o Marvell Semiconductor, Inc.  
710 First Avenue  
Sunnyvale, California 94089  
Attention: Vice President and General Counsel  
Facsimile No.: (408) 752-9028

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MARVELL INTERNATIONAL LTD.  
c/o Marvell Semiconductor, Inc.  
710 First Avenue  
Sunnyvale, California 94089  
Attention: Vice President and General Counsel  
Facsimile No.: (408) 752-9028

with a copy to:

Pillsbury Winthrop Shaw Pittman LLP  
2475 Hanover Street  
Palo Alto, California 94304  
Attention: Bradley D. Kohn, Esq.  
Facsimile No.: (650) 233-4545

(b) if to Seller, to:

QLOGIC CORPORATION  
26650 Aliso Viejo Parkway  
Aliso Viejo, California 92656  
Attention: Vice President and General Counsel  
Facsimile No.: (949) 386-6488

with a copy to:

O'Melveny & Myers LLP  
610 Newport Center Drive, 17th Floor  
Newport Beach, California 92660  
Attention: Gary J. Singer, Esq.  
Facsimile No.: (949) 823-6994

**10.5 Counterparts.** This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all

parties need not sign the same counterpart.

**10.6 Entire Agreement; Third-Party Beneficiaries.** This Agreement and the documents and instruments and other agreements among the parties hereto as contemplated by or referred to herein, including the Seller Disclosure Letter and the Buyer Disclosure Letter, (i) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, it being understood that the Confidentiality Agreement shall continue in full force and effect until the Closing and shall survive any termination of this Agreement and (ii) are not intended to confer upon any other Person any rights or remedies hereunder, except as specifically provided, following the Closing, in Sections 9.1 and 9.2.

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**10.7 Severability.** In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and the application of such provision to other Persons or circumstances shall be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the greatest extent possible, the economic, business and other purposes of such void or unenforceable provision.

**10.8 Other Remedies; Specific Performance.**

(a) Other Remedies. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party shall be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy shall not preclude the exercise of any other remedy. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached.

(b) Specific Performance. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

**10.9 Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, regardless of the laws that might otherwise govern under applicable principles of conflicts of law thereof. Each party hereby (a) irrevocably and unconditionally submits to the exclusive jurisdiction of the U.S. federal courts located in the State of California, with respect to all Proceedings arising out of or relating to this Agreement and the transactions contemplated hereby, (b) agrees that all claims with respect to any such Proceeding shall be heard and determined in such courts and agrees not to commence a Proceeding relating to this Agreement or the transactions contemplated hereby except in such courts, (c) irrevocably and unconditionally waives any objection to the laying of venue of any Proceeding arising out of this Agreement or the transactions contemplated hereby and irrevocably and unconditionally waives the defense of an inconvenient forum, (d) consents to service of process upon him, her or it by mailing or delivering such service to the address set forth in Section 10.4 hereof, and (e) agrees that a final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**10.10 Rules of Construction.** The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document.

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**10.11 Assignment.** Neither this Agreement nor any rights or obligations under it are assignable by either party without the prior written consent of the other party, except that Buyer may assign its rights hereunder to any Affiliate and may collaterally assign its rights hereunder to any financial institution providing financing in connection with the transactions contemplated by this Agreement. Any purported assignment in violation of this Section 10.11 shall be void. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**10.12 Fees and Expenses.** Except as otherwise expressly provided in this Agreement, all fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses whether or not the Closing occurs.

**ARTICLE XI**  
**DEFINITIONS**

**11.1 Rules of Construction.** For all purposes of this Agreement, except as otherwise expressly provided: (a) the terms defined in this Agreement include the plural as well as the singular; (b) all references in this Agreement to designated "Articles," "Sections," "Exhibits," and other subdivisions are to the designated Articles, Sections, Exhibits, and other subdivisions of the body of this Agreement; (c) pronouns of either gender or neuter include, as appropriate, the other pronoun forms; (d) the words "herein," "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision; (e) "or" is not exclusive; (f) "including" and "includes" will be deemed to be followed by "but not limited to" and "but is not limited to," respectively; (g) any definition of or reference to any law, act, agreement, instrument or other document herein shall be construed as referring to such law, act, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified; (h) any definition of or reference to any law, statute or treaty shall be construed as referring also to any successor law, statute or treaty and to any rules and regulations promulgated thereunder; and (i) all accounting terms shall have the meanings assigned to them under GAAP.

**11.2 Defined Terms.** As used in this Agreement and the Exhibits delivered pursuant to this Agreement, the following definitions will apply.

"401(k) Match" means the matching amount under Seller's 401(k) plan relating to Accrued Compensation for the Transferred Employees.

"Accounting Firm" has the meaning set forth in Section 6.11(e).



“Accounts Payable” has the meaning set forth in Section 1.4(e).

“Accounts Receivable” has the meaning set forth in Section 1.2(c).

“Accrued Compensation” means the aggregate amount of accrued (but unpaid) compensation due to the Transferred Employees as of the Closing Date (including related obligations to pay payroll taxes).

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“Acquired Business” has the meaning set forth in Section 6.8.

“Affiliate” shall mean a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, a specified Person.

“Agreement” has the meaning set forth in the first paragraph on page 1.

“Antitrust Laws” shall mean the Sherman Act, the Clayton Act, the HSR Act, the Federal Trade Commission Act, in each case as amended, and all other federal, state and foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

“Assets” shall have the meaning set forth in Section 1.1.

“Assigned Contracts” shall have the meaning set forth in Section 1.1(f).

“Assignment and Assumption Agreement” shall have the meaning set forth in Section 2.3(a)(v).

“Assumed Liabilities” shall have the meaning set forth in Section 1.3.

“Basket Amount” shall have the meaning set forth in Section 9.5(a).

“Bill of Sale” shall have the meaning set forth in Section 2.3(a)(iv).

“Business” shall have the meaning set forth in Recital A.

“Business Employee” has the meaning set forth in Section 3.15.

“Business Permits” shall have the meaning set forth in Section 3.7(b).

“Buyer” shall have the meaning set forth in the first paragraph on page 1.

“Buyer Common Stock” shall mean the common stock of Marvell Technology, par value \$0.002 per share.

“Buyer Disclosure Letter” shall have the meaning set forth in Article IV.

“Buyer Indemnified Party” shall have the meaning set forth in Section 9.1.

“Buyer Plans” shall have the meaning set forth in Section 6.6(a).

“Buyer SEC Documents” shall have the meaning set forth in Section 4.6.

“Buyer Stock Event” means any event by which the outstanding shares of Buyer Common Stock have been changed into a different number of shares, including a stock split, stock dividend, reclassification, recapitalization, stock combination, exchange of shares, readjustment, or otherwise, provided that in no event shall any of the following be considered a

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Buyer Stock Event: (a) an acquisition by Buyer using Buyer Common Stock as consideration; (b) a sale by Buyer of Buyer Common Stock for cash; or (c) an issuance of Buyer Common Stock pursuant to a stock option plan of Buyer.

“Closing” shall have the meaning set forth in Section 2.1.

“Closing Date” shall have the meaning set forth in Section 2.1.

“Closing Net Inventory Value” shall have the meaning set forth in Section 6.11(b).

“COBRA” shall have the meaning set forth in Section 6.6(b).

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

“Confidentiality Agreement” shall have the meaning set forth in Section 6.1(a).

“Consent” shall mean a consent, authorization or approval of a Person, or filing or registration with a Person.

“Contingent Workers” shall mean any independent contractors, temporary employees, leased employees or any other servants or agents similar to the above employed or used with respect to the Business.

“Control” (including, with correlative meanings, the terms “controlled by” and “under common control with”) shall mean the possession of the power to direct the management and policies of the referenced Person, whether through ownership interests, by contract or otherwise.

“Copyrights” shall have the meaning set forth in the definition of “Intellectual Property” in this Section 11.2.

“Damages” shall have the meaning set forth in Section 9.1.

“DOJ” shall mean the Antitrust Division of the Department of Justice.

“Employee Plans” shall have the meaning set forth in Section 3.14(a).

“Employment Commencement Date” shall have the meaning set forth in Section 6.6(a).

“Employment Termination Date” shall have the meaning set forth in Section 6.6(a).

“Environmental Claim” shall mean any claim, demand, action, judicial or administrative Proceeding, notice of noncompliance, notice of violation, consent order, or consent agreement under any Environmental Law.

“Environmental Law” shall mean any Legal Requirement, or judicial or administrative interpretation thereof, relating to pollution or protection of the environment and natural resources and public and occupational health and safety relating to Hazardous Materials and the environment, including, without limitation, any law that imposes liability or standards of conduct concerning discharges, emissions, Releases or threatened Releases of any Hazardous Material

into the environment, including into ambient air, surface water, groundwater or land, or otherwise relating to the generation, treatment, storage, disposal, cleanup, transport or handling of any Hazardous Material.

“Escrow Agreement” shall mean the Escrow Agreement, dated the date hereof, by and among Buyer, Seller, and the Escrow Agent, substantially in the form of Schedule 11.2 hereof.

“Escrow Agent” shall mean the Escrow Agent as defined in the Escrow Agreement, which shall be a financial institution mutually agreed to by Buyer and Seller following the date hereof and prior to the Closing Date.

“Escrow Fund” shall have the meaning set forth in Section 2.2.

“Escrow Payment” shall have the meaning set forth in Section 9.8(b)

“Excess Claim” shall have the meaning set forth in Section 9.8(b).

“Exchange Act” shall mean the Securities Exchange Act of 1934, as amended from time to time.

“Excluded Assets” shall have the meaning set forth in Section 1.2.

“Excluded Liabilities” shall have the meaning set forth in Section 1.4.

“Final Closing Net Inventory Value” shall have the meaning set forth in Section 6.11(f).

“Financial Statements” shall have the meaning set forth in Section 3.4(a).

“FTC” shall mean the United States Federal Trade Commission.

“GAAP” shall have the meaning set forth in Section 3.4(a).

“Governmental Entity” shall have the meaning set forth in Section 3.2(c).

“Hazardous Material” shall have the meaning set forth in Section 3.9(a).

“Hazardous Materials Activities” shall have the meaning set forth in Section 3.9(b).

“HSR Act” shall have the meaning set forth in Section 3.2(c).

“Indemnified Party” shall have the meaning set forth in Section 9.3.

“Indemnifying Party” shall have the meaning set forth in Section 9.3.

“Intellectual Property” shall mean any or all of the following: (i) trademarks and service marks (whether registered or unregistered), trade names, trade dress, business names, brand names, logos and designs, including all registrations and applications for any of the foregoing (collectively, “Trademarks”); (ii) patents, utility models, and registrations and patent applications relating to the foregoing (including any and all provisionals, continuations,

continuations-in-part, divisionals, counterparts, reissues, reexaminations, extensions, renewals and applications for any of the foregoing and all related disclosures), unfiled patent applications and inventions disclosures (collectively, “**Patents**”); (iii) registered copyrights under applicable state or federal statutes (collectively “**Copyrights**”); (iv) mask works whether registered or unregistered (collectively, “**Mask Works**”) and (v) confidential and proprietary information, including ideas, formulas, algorithms, designs, patterns, unpublished patent applications, compilations, programs, specifications, data, devices, methods, techniques, processes or other know-how as well as any other financial, marketing, customer, pricing and cost information related to the Business, that derives independent economic value, actual or potential, from not being generally known to the public or to other Persons who can obtain economic value from its disclosure or use (collectively, and expressly including the items referenced on Schedule 1.1(d)(i), “**Trade Secrets**”).

“Inventory” shall have the meaning set forth in Section 1.1(c).

“IP and Technology License Agreement” shall have the meaning set forth in Section 2.3(a)(vii).

“Issuance Price” shall mean the average of the (per share) closing prices of Buyer Common Stock on the Nasdaq Stock Market for the ten (10) consecutive trading day period ending one (1) trading day prior to the Closing Date, provided that if a Buyer Stock Event occurs during such determination period, the Issuance Price will be correspondingly adjusted.

“Judgment” shall have the meaning set forth in Section 3.2(b).

“Knowledge” shall mean, with respect to Seller, with respect to any matter in question, or any similar expression with regard to the Knowledge or awareness of or receipt of notice by Seller, shall mean the actual, direct, and personal knowledge of any of the individuals listed on Section 11.2 of the Seller Disclosure Letter.

“Leased Property” shall have the meaning set forth in Section 1.1(a).

“Legal Requirements” shall mean any federal, state, local, municipal, foreign or other law (including any Antitrust Law), statute, constitution, principle of common law, resolution, ordinance, code, order, edict, decree, rule, regulation, ruling, judgment or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

“Liability” shall mean with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise and whether or not the same is required to be accrued in accordance with GAAP on the financial statements of such Person.

“Lien” shall mean any pledge, claim, lien, charge, preemptive right, mortgage, encumbrance, option or security interest.

“Marvell International” shall have the meaning set forth in the first paragraph on page 1.

“Marvell Technology” shall have the meaning set forth in the first paragraph on page 1.

“Mask Works” shall have the meaning set forth in the definition of “Intellectual Property” in this Section 11.2.

“Material Adverse Effect,” when used in connection with an entity, means any material adverse change in or material adverse effect on the business, results of operations or financial condition of such entity taken as a whole with its subsidiaries; except for changes or effects that, alone or in combination, arise out of or result from (i) changes in economic conditions or financial or securities markets in general or the industries and markets in which Seller conducts its business, (ii) any change in such entity’s stock price or trading volume, (iii) any failure by such entity to meet revenue or earnings projections, (iv) any changes in laws or GAAP after the date hereof, (v) the execution and performance of or compliance with this Agreement, (vi) the announcement of this Agreement and the transactions contemplated hereby (including, without limitation, any (x) actions by clients or competitors, (y) loss of personnel or clients, or (z) the delay or cancellation of orders for services and products), (vii) any outbreak or escalation of hostilities involving the United States, the declaration by the United States of a national emergency or war, or the occurrence of any acts of terrorism, or (viii), in the case of Seller, any acts taken with the express written consent of Buyer, delivered to Seller in accordance with Section 10.4 hereof.

“Necessary Consents” shall have the meaning set forth in Section 3.2(c).

“Nonassertion Letter Agreement” shall have the meaning set forth in Section 2.3(a)(xi).

“Notice of Disagreement” shall have the meaning set forth in Section 6.11(c).

“Patents” shall have the meaning set forth in the definition of “Intellectual Property” in this Section 11.2.

“Permits” shall mean permits, licenses, authorizations, franchises, variances, exemptions, orders and approvals from Governmental Entities.

“Permitted Liens” shall mean Liens for Taxes and other governmental charges and assessments that are not yet due and payable, and Liens for current Taxes and other charges and assessments of any Governmental Entity that may thereafter be paid without penalty.

“Person” means any individual, corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization, entity or Governmental Entity.

“Personnel” shall have the meaning set forth in Section 3.6(d)(ii).

“Pre-Closing Environmental Liability” shall mean any loss, claim, demand, requirement, lawsuit, responsibility or other Liability arising under Environmental Laws as a result of or in

connection with (1) the ownership or operation of the Business (including by any former owner or operator thereof) or the Assets or any Excluded Asset (or any assets previously owned or operated in connection with the Business) prior to the Closing, (2)(A) personal injury, property damage or exposure to a Hazardous Material or (B) investigation, remediation, natural resources damages or other response actions (including claims related to any Releases), in either case (a) arising out of the ownership or operation of the Business (including by any former owner or operator thereof) or the Assets or any Excluded Asset (or any assets previously owned or operated in connection with the Business) and (b) occurring prior to the Closing or (3) the transportation, Release or recycling of a Hazardous Material or the arrangement for such activities by Seller or in connection with the Assets or the Business, from, at or to any off-site location prior to the Closing.

“Proceeding” shall have the meaning set forth in Section 1.4(d).

“PTO Amount” is the aggregate dollar value of paid time off payable to the Transferred Employees at Closing by Seller.

“Purchase Order” shall have the meaning set forth in Section 1.1(g).

“Purchase Price” shall mean \$225,000,000.

“Registration Rights Agreement” shall have the meaning set forth in Section 2.3(a)(vi).

“Release” shall mean any releasing, disposing, discharging, injecting, spilling, leaking, leaching, pumping, dumping, emitting, escaping, emptying, seeping, dispersal, migration, transporting, placing and the like, including without limitation, the moving of any materials through, into or upon, any land, soil, surface water, groundwater or air, or otherwise entering into the environment.

“Representative” or “Representatives” means, with respect to a particular Person, any director, member, limited or general partner, officer, employee, agent, consultant, advisor or other representative of such Person, including outside legal counsel, accountants and financial advisors.

“Retained Patent License Agreement” shall have the meaning set forth in Section 2.3(a)(viii).

“SEC” shall mean the Securities and Exchange Commission.

“Securities Act” shall mean the Securities Act of 1933, as amended from time to time.

“Seller” shall have the meaning set forth in the first paragraph on page 1.

“Seller Affiliated Group” has the meaning given in Section 1.4(h).

“Seller Disclosure Letter” shall have the meaning set forth in Article III.

“Seller Group” shall mean Seller and its Affiliates, both collectively and in their individual capacities, other than Affiliates that have no relationship with the Business.

“Seller Indemnified Party” shall have the meaning set forth in Section 9.2.

“Seller Material Contract” shall have the meaning set forth in Section 3.10(a).

“Seller Patents” shall have the meaning set forth in Section 3.6(c)(i).

“Seller Plans” shall have the meaning set forth in Section 6.6(a).

“Seller Restricted Business” has the meaning set forth in Section 6.8.

“Seller Trademarks” shall have the meaning set forth in Section 3.6(b)(i).

“Statement” shall have the meaning set forth in Section 6.11(b).

“Tax” shall have the meaning set forth in Section 3.5(a).

“Taxes” shall have the meaning set forth in Section 3.5(a).

“Tax Return” shall have the meaning set forth in Section 3.5(a).

“Technology” shall mean integrated circuits, product designs and/or specifications, technical information, evaluation boards, reference designs, inventions (whether or not patentable), industrial models, development tools, diagrams, models, flow charts, software, programs, source codes, algorithms,

databases and data collections, database tapes, documentation, technical manuals, compilers, interpreters, firmware, research records, records of inventions, works of authorship (whether or not copyrightable), test information, test programs, test suites, prototypes, market surveys and marketing know-how, and any and all other inventions, discoveries, know-how, formulae, practices, processes, procedures, ideas, specifications, engineering data, reports, information and materials of a technical nature or concerning research and development and/or engineering or programming activities, including works in progress and technology under development, all tangible embodiments of Intellectual Property, and all media carrying any of the aforesaid, except for such of the foregoing as constitute Intellectual Property (which, solely for avoidance of doubt, the parties acknowledge includes without limitation the items referenced on Schedule 1.1(d)(i)).

“Termination Date” shall have the meaning set forth in Section 8.1(e).

“Third Party Claim” shall have the meaning set forth in Section 9.4(a).

“Trademarks” shall have the meaning set forth in the definition of “Intellectual Property” in this Section 11.2.

“Trade Secrets” shall have the meaning set forth in the definition of “Intellectual Property” in this Section 11.2.

“Transferred Employees” shall have the meaning set forth in Section 6.6(a).

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“Transferred Intellectual Property” shall have the meaning set forth in Section 1.1(d).

“Transferred Patent License Agreement” shall have the meaning set forth in Section 2.3(a)(ix).

“Transferred Technology” shall have the meaning set forth in Section 1.1(e).

“Transition Services Agreement” shall have the meaning set forth in Section 2.3(a)(iii).

“WARN Act” means the Worker Adjustment and Retraining Act of 1988, as amended.

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

**MARVELL TECHNOLOGY GROUP LTD.,**  
a Bermuda corporation

By: /s/ Sehat Sutardja  
Dr. Sehat Sutardja  
President and Chief Executive Officer

**MARVELL INTERNATIONAL LTD.,**  
a Bermuda corporation

By: /s/ Carol Feathers  
Carol Feathers  
General Manager

**QLOGIC CORPORATION,**  
a Delaware corporation

By: /s/ H.K. Desai  
Name: H.K. Desai  
Title: Chairman, CEO and President

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## MARVELL TECHNOLOGY GROUP LTD.

## AMENDED AND RESTATED

1995 STOCK OPTION PLAN  
(As amended through May 7, 2003)

1. Purpose. This Plan is intended to attract and retain the best available individuals as Employees, Consultants and Outside Directors of the Company and its Subsidiaries, to provide additional incentives to those Employees, Consultants and Outside Directors, and to promote the success of the Company's business.

2. Defined Terms. The meanings of defined terms (generally, capitalized terms) in this Plan are provided in Section 21 ("Glossary").

3. Shares Reserved. Subject to Section 14, Shares that may be issued with respect to Awards granted under the Plan shall not exceed an aggregate of 60,260,394 Shares of Common Stock; provided however, that on the first business day of each fiscal year starting January 31, 2004 or after, and continuing until the earlier of January 31, 2013 or termination of the Plan, there shall be added to this Plan the lesser of an additional (i) 10,000,000 shares of Common Stock, or (ii) 5.0% of the outstanding shares of capital stock on such date. The Shares may be authorized, but unissued, or reacquired Common Stock. If an Award under the Plan expires or becomes unexercisable for any reason, the Shares subject to such Award which have not been issued shall be available for future issuance under this Plan. Shares retained to satisfy tax withholding obligations do not reduce the number authorized for issuance.

4. Administration.

(a) In General. This Plan shall be administered by the Board or a Committee appointed by the Board. Once appointed, a Committee shall serve until otherwise directed by the Board. From time to time, the Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and appoint new members in their stead, fill vacancies however caused, and terminate the Committee and thereafter directly administer this Plan.

(b) Committee Composition. The Board may provide for administration of this Plan with respect to Officers and directors of the Company by a Committee constituted so as to satisfy:

(i) such requirements as the Securities and Exchange Commission may establish for administrators acting under plans intended to qualify for exemption under Rule 16b-3 (or its successor) under the Exchange Act; and

(ii) such requirements as the Internal Revenue Service may establish for Outside Directors acting under plans intended to qualify for exemption under Section 162(m)(4)(C) of the Code.

A Committee appointed under this Section 4(b) may be separate from any Committee appointed to administer this Plan with respect to Employees who are neither Officers nor directors. Within the limitations of this Section 4(b), any reference in the Plan to the Committee shall include such committee or committees appointed pursuant to this Section 4.

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(c) Powers of the Administrator. Subject to the provisions of this Plan and in the case of a Committee, subject to the specific duties delegated by the Board, the Administrator shall have the authority, in its sole and absolute discretion:

(i) to determine the Fair Market Value of the Common Stock;

(ii) to grant Awards to such Consultants, Outside Directors and Employees as it selects; provided, however, that notwithstanding any other provision of the Plan, grants of Awards to Outside Directors shall be limited to grants of Options upon initial appointment to the Board, and such Awards shall be subject to ratification by the Board;

(iii) to determine the terms and conditions of each Award granted, including without limitation the number of Shares subject to each Award, the exercise price per Share of Optioned Stock, and whether an Option is to be granted as an ISO or a NSO;

(iv) to approve forms of agreement for use under this Plan;

(v) to determine whether and under what circumstances to offer to buy out an Option for cash or Shares under Section 12;

(vi) to modify grants of Awards to participants who are foreign nationals or employed outside of the United States in order to recognize differences in local law, tax policies, or customs; and

(vii) to construe and interpret the terms of this Plan and of each Award granted pursuant to this Plan.

(d) Administrator's Decisions Binding. All decisions, determinations, and interpretations of the Administrator shall be final and binding on all Grantees and any other holders of any Awards, and no member of the Administrator shall be liable for any such determination, decision, or interpretation made in good faith.

5. Eligibility.

(a) General. Nonstatutory Stock Options may be granted to Employees, Consultants and Outside Directors. Incentive Stock Options may be granted only to Employees. Other Awards may be granted to Employees and Consultants. An Employee or Consultant who has been granted an Award may, if otherwise eligible, be granted additional Awards.

(b) Limitations.

(i) While the Company or a successor has outstanding any class of equity securities required to be registered under Section 12 of the Exchange Act, the following limitations shall apply to grants of Awards to Employees:

(ii) No Employee shall be granted, in any fiscal year of the Company, Awards with respect to more than 1,000,000 Shares, in the aggregate, adjusted proportionately in connection with any change in the Company's capitalization as described in Section 14. If an Award is granted but canceled in the same fiscal year, it shall nonetheless count against the foregoing limit. Reduction of an Option's exercise price is treated as a cancellation of the Option and the grant of a new Option.

6. Term of Options. The term of each Option shall be determined by the Administrator at the time of grant but shall not exceed ten years. In the case of an ISO granted to an Optionee who, at the time of grant,

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owns stock representing more than ten percent of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the Option term shall not exceed five years.

7. Date of Option Grant. Unless otherwise determined by the Administrator, the date of grant of an Option shall be the date on which the Administrator completes the actions necessary to grant the Option. Notice of the grant shall be given to the Optionee within a reasonable time after the date of the grant.

8. Option Exercise Price and Form of Consideration.

(a) Price. The per-Share exercise price of an Option shall be determined by the Administrator at the time of grant, but:

(i) In the case of an ISO:

(A) granted to an Employee who, at the time of grant, owns stock representing more than ten percent of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per-Share exercise price shall be at least 110% of the Fair Market Value on the date of grant; or

(B) granted to any other Employee, the per-Share exercise price shall be at least the Fair Market Value on the date of grant.

(ii) In the case of a NSO, the per-Share exercise price shall be at least the Fair Market Value on the date of grant.

(b) Form of Payment. Payment for Shares upon exercise of an Option shall be made in any lawful consideration approved by the Administrator and may, without limitation, consist of (1) cash, (2) check, (3) other Shares that have a Fair Market Value on the date of payment equal to the aggregate exercise price of the Shares as to which Option is exercised; provided, however, that the Optionee shall not surrender, or attest to the ownership of, Shares in payment of the Exercise Price if such action would cause the Company to recognize compensation expense (or additional compensation expense) with respect to the Option for financial reporting purposes, (4) delivery by a broker or brokerage firm approved by the Administrator of a properly executed exercise notice together with payment of the exercise price and such other documentation as the Administrator shall require, or (5) any combination of the foregoing. Notwithstanding the foregoing, a form of payment shall not be available if the Administrator determines, in its sole and absolute discretion, that such form of payment could violate any law or regulation.

9. Option Exercise.

(a) Exercisability. Each Option shall be exercisable at such times and under such conditions as determined by the Administrator at the time of grant.

(b) Vesting. Each Option and the corresponding Optioned Stock shall vest at such times and under such conditions as determined by the Administrator at the time of grant, and as are otherwise permissible under the terms of this Plan, including without limitation, performance criteria with respect to the Company and/or the Optionee.

(c) Fractional Shares. An Option may not be exercised for a fraction of a Share.

(d) Manner of Exercise; Rights as a Shareholder. Unless otherwise allowed by the Administrator, an Option shall be exercised by delivery to the Company of all of the following: (i) written notice of exercise by the Optionee, in a form approved by the Administrator and in accordance with the terms of the Option, (ii) full payment for the Shares with respect to which the Option is exercised, and (iii) payment (or

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provision for payment) of withholding taxes pursuant to Subsection (g), below. Delivery of any of the foregoing may be by electronic means approved by the Administrator. The Optionee shall be treated as a shareholder of the Company with respect to the purchased Shares upon completion of exercise of the Option.

(e) Optionee Representations. If Shares purchasable pursuant to the exercise of an Option have not been registered under the Securities Act of 1933, as amended, at the time the Option is exercised, the Optionee shall, if required by the Administrator, as a condition to exercise of all or any portion of the Option, deliver to the Company an investment representation statement in a form approved by the Administrator.

(f) Termination of Employment or Consulting Relationship. If an Optionee's Continuous Service terminates, the Optionee (or the Optionee's estate or heirs, if termination is due to death or the Optionee dies during the post-termination exercise period of the Option) may exercise the Option, (i) only within such period of time as is determined by the Administrator (but no later than the expiration date for the Option determined by the Administrator at the time of grant) and the Option shall terminate at the end of that period, and (ii) unless otherwise determined by the Administrator, only to the extent that the Optionee was entitled to exercise it at the date of termination.

(g) Tax Withholding. The Company's obligation to deliver Shares upon exercise of an Option is subject to payment (or provision for payment satisfactory to the Administrator) by the Optionee of all federal, state, and local income and employment taxes that the Administrator determines in its discretion to be due as a result of the exercise of the Option or sale of the Shares.

10. Rule 16b-3. Except to the extent determined by the Administrator, Awards granted to persons subject to Section 16(b) of the Exchange Act shall comply with Rule 16b-3 and shall contain such terms as may be required or desirable to qualify Plan transactions for the maximum exemption from Section 16 of the Exchange Act.

11. Non-Transferability of Options. Options may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

12. Buyout of Options. The Administrator may at any time offer to buy out an Option for a payment in cash or Shares, based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time of the offer.

13. Other Awards. The Administrator may from time to time grant other stock-based awards to eligible Employees and Consultants in such amounts, on such terms and conditions, and for such consideration, including no consideration or such minimum consideration as may be required by law, as it shall determine and set forth in the applicable Grant Agreement, including without limitation the following:

(a) Stock Appreciation Rights. The Administrator may from time to time grant Awards of stock appreciation rights ("SAR"). An SAR entitles the Grantee to receive, subject to the provisions of the Plan and the Grant Agreement, a payment having an aggregate value equal to the product of (i) the excess of (A) the Fair Market Value on the exercise date of one share of Common Stock over (B) the base price per share specified in the Grant Agreement, times (ii) the number of shares specified by the SAR, or portion thereof, which is exercised. Payment by the Company of the amount receivable upon any exercise of an SAR may be made by the delivery of Common Stock or cash, or any combination of Common Stock and cash, as determined in the sole discretion of the Administrator. If upon settlement of the exercise of an SAR a Grantee is to receive a portion of such payment in shares of Common Stock, the number of shares shall be determined by dividing such portion by the Fair Market Value of a share of Common Stock on the exercise date. No fractional shares shall be used for such payment and the Administrator shall determine whether cash shall be given in lieu of such fractional shares or whether such fractional shares shall be eliminated.

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(b) Stock Awards. The Administrator may from time to time grant restricted or unrestricted Awards of Common Stock in such amounts, on such terms and conditions, and for such consideration, including no consideration or such minimum consideration as may be required by law, as it shall determine.

(c) Stock Units. The Administrator may from time to time grant Awards denominated in stock-equivalent units ("stock units") in such amounts and on such terms and conditions as it shall determine. Stock units shall be credited to a bookkeeping reserve account solely for accounting purposes and shall not require a segregation of any of the Company's assets. An Award of stock units may be settled in Common Stock, in cash, or in a combination of Common Stock and cash, as determined in the sole discretion of the Administrator. Except as otherwise provided in the applicable Grant Agreement, the Grantee shall not have the rights of a stockholder with respect to any shares of Common Stock represented by a stock unit solely as a result of the grant of a stock unit to the Grantee.

(d) Performance Awards. The Administrator may, in its discretion, grant performance awards which become payable on account of attainment of one or more performance goals established by the Administrator. Performance awards may be paid by the delivery of Common Stock or cash, or any combination of Common Stock and cash, as determined in the sole discretion of the Administrator. Performance goals established by the Administrator may be based on one or more business criteria selected by the Administrator that apply to an individual or group of individuals, a business unit, or the Company as a whole, over such performance period as the Administrator may designate.

(e) Other Stock-Based Awards. The Administrator may grant other stock-based awards may be denominated in cash, in Common Stock or other securities, in stock-equivalent units, in stock appreciation units, in securities or debentures convertible into Common Stock, or in any combination of the foregoing and may be paid in Common Stock or other securities, in cash, or in a combination of Common Stock or other securities and cash, all as determined in the sole discretion of the Administrator.

(f) Deferral of Awards.

The Administrator (in its sole discretion) may provide that Shares or cash that otherwise would be delivered to a Grantee as a result of the exercise of an Option or other settlement of an Award may be converted into amounts credited to a deferred compensation account established for such Grantee by the Administrator as an entry on the Company's books. A deferred compensation account established under this Section 13(f) may be credited with interest or other forms of investment return, as determined by the Administrator. A Grantee for whom such an account is established shall have no rights other than those of a general creditor of the Company. Such an account shall represent an unfunded and unsecured obligation of the Company and shall be subject to the terms and conditions of the applicable Grant Agreement between such Participant and the Company. The Administrator (in its sole discretion) shall establish Grant rules, procedures and forms pertaining to any deferral of Awards pursuant to this Section 13(f).

14. Changes in Capitalization or Control.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of Shares of Optioned Stock or of other Shares subject to an outstanding Award, and the number of Shares that have been authorized for issuance under this Plan but as to which no Options or other Awards have then been granted (including the number of shares automatically added to the Plan on an annual basis as provided for in Section 3(i) and (ii)), or that have been returned to this Plan upon cancellation or expiration of an Option or an Award, as well as the price per Share of Optioned Stock or of other Shares subject to an outstanding Award, shall be proportionately adjusted for any change in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other change in the number of issued Shares effected without receipt of consideration by the Company (not counting Shares issued upon conversion of convertible securities of the Company as "effected without receipt of consideration"). Such adjustment shall be made by the Board and shall be final, binding, and conclusive. Except as expressly provided herein, no issuance by the Company

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of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no consequent adjustment shall be made with respect to, the number or price of Shares subject to this Plan.

(b) Change in Control. The Administrator may, in its discretion, determine at any time from and after the grant of an Award the effect that a Change in Control shall have upon the Award; provided, however, that a Change in Control shall not have the effect of impairing the rights of any Grantee under any then-outstanding Award without his or her prior written consent. Without limiting the foregoing sentence, the Administrator may determine that upon a Change in Control, an Option:

- (i) shall become fully vested and exercisable either for a limited period following the Change in Control or for the remainder of the Option's term;
- (ii) shall terminate upon or after a specified period following the Change in Control;
- (iii) shall be cancelled in exchange for cash in the amount of the excess of the fair market value of the Optioned Shares over the exercise price upon termination; or
- (iv) shall be treated as provided under a combination of clauses (i) through (iii), or shall be so treated only if not adequately assumed (or substituted for) by a surviving or successor person or entity in the transactions or events that give rise to the Change in Control.

For purposes of this Section 14(b), (A) the occurrence of any of the foregoing clauses (i), (ii), (iii) or (iv) shall not constitute an impairment of the rights of any Optionee and (B) the "Administrator" shall be the Administrator as constituted before the Change in Control occurs.

15. Amendments; Termination. The Board may at any time amend, alter, suspend, discontinue or terminate this Plan, but no such action shall impair the rights of any Grantee under any then-outstanding Award without his or her prior written consent.

#### 16. Securities Regulation Requirements.

(a) Compliance with Rule. In general, Shares shall not be issued pursuant to the exercise of an Option or pursuant to any other Award unless the exercise of the Option or other Award and issuance of the Shares comply with all relevant provisions of law, including, without limitation, any applicable state securities laws, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, the requirements of any stock exchange or national market system upon which the Shares may then be listed, and the requirements of any regulatory body having jurisdiction.

(b) Optionee Investment Representation. As a condition to the exercise of an Option, the Company may require the person exercising the Option to represent and warrant that the Shares are being purchased only for investment and without any present intention to sell or distribute the Shares if, in the opinion of counsel for the Company, such a representation is required by law.

17. Written Agreements. Awards shall be evidenced by written agreements in a form the Administrator approves from time to time. The written agreement shall designate an Option as either an Incentive Stock Option or a Nonstatutory Stock Option. Delay in executing a written agreement shall not affect the date of grant of an Option; however, an Option may not be exercised until a written agreement has been executed by the Company and the Optionee.

18. Shareholder Approval. This Plan is subject to approval by the shareholders of the Company within 12 months after the Board initially adopts this Plan. Shareholder approval shall be obtained in the

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degree and manner required under applicable state and federal law and the rules of any stock exchange or national market system upon which the Common Stock is listed.

19. No Employment Rights. This Plan does not confer upon any Grantee any right with respect to continuation of employment or consulting relationship with the Company, nor shall it interfere in any way with the Company's right to terminate his or her employment or consulting relationship at any time, with or without cause.

20. Term of Plan. This Plan shall become effective upon the earlier to occur of the initial adoption by the Board or initial approval by the shareholders of the Company, as described in Section 18. It shall continue in effect until terminated by the Board pursuant to Section 15, except that no ISOs shall be granted on or after the 10th anniversary of the later of (a) the date when the Board adopted the Plan or (b) the date when the Board adopted the most recent increase in the number of Shares available under Section 3 that was approved by the shareholders of the Company.

#### 21. Glossary. The following definitions apply for purposes of this Plan:

- (a) "Administrator" means the Board or a committee appointed by the Board under Section 4.
- (b) "Award" means any stock option, stock appreciation right, stock award, stock units award, performance award, or other stock-based award granted under the Plan.
- (c) "Board" means the Board of Directors of the Company.
- (d) "Change in Control" means a change in ownership or control of the Company by any of:
  - (i) a merger or consolidation in which the holders of stock possessing a majority of the voting power in the surviving entity (or a parent of the surviving entity) did not own a majority of the Common Stock immediately before the transaction;
  - (ii) the sale of all or substantially all of the Company's assets to any other person or entity (other than a Subsidiary);
  - (iii) the liquidation or dissolution of the Company;

(iv) the direct or indirect acquisition by any person or related group of persons of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than 50% of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's shareholders that the Board does not recommend that the shareholders accept, or

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

(e) "Code" means the Internal Revenue Code of 1986, as amended.

(f) "Committee" means the committee designated by the Board of Directors, which is authorized to administer the Plan, as described in Section 4 hereof.

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(g) "Common Stock" means the common stock of the Company.

(h) "Company" means Marvell Technology Group Ltd., a Bermuda corporation.

(i) "Consultant" means any person, other than an Employee, who is engaged by the Company or any Parent or Subsidiary to perform consulting or advisory services.

(j) "Continuous Service" means that an Optionee's employment and/or consulting relationship with the Company or a Parent or Subsidiary or service as an Outside Director is not interrupted or terminated. Continuous Service is not interrupted by (i) any leave of absence approved by the Company, (ii) transfers between locations of the Company or between the Company, a Parent, a Subsidiary, or any successor, or (iii) changes in status from Employee to Consultant or Outside Director or from Consultant or Outside Director to Employee

(k) "Outside Director" means a member of the Board who is not a common law employee of the Company or a Parent or Subsidiary.

(l) "Employee" means any person employed by the Company or any Parent or Subsidiary of the Company.

(m) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(n) "Fair Market Value" means, as of any date, the value of common Stock determined as follows:

(i) If the Common Stock is quoted on an established stock exchange or national market system, including without limitation the National Association of Securities Dealers, Inc. Automated Quotation ("NASDAQ") National Market System, Fair Market Value shall be the closing sales price (or the closing bid, if no sales are reported) as quoted on that exchange or system for the day of the determination, as reported in *The Wall Street Journal* or an equivalent source, or if the determination date is not a trading day, then on the most recent preceding trading day;

(ii) If the Common Stock is quoted on NASDAQ (but not on the National Market System) or regularly quoted by a recognized securities dealer but selling prices are not reported, Fair Market Value shall be the mean between the high bid and low asked prices for the Common Stock on the day of the determination, or on the most recent preceding trading day if the determination date is not a trading day; or

(iii) In the absence of an established market for the Common Stock, Fair Market Value shall be determined by the Administrator.

(o) "Grant Agreement" means a written document memorializing the terms and conditions of an Award granted pursuant to the Plan and shall incorporate the terms of the Plan.

(p) "Grantee" means the Employee, Consultant or Outside Director who receives an Award.

(q) "Incentive Stock Option" or "ISO" means an Option intended to qualify as an "incentive stock option" within the meaning of, and to the extent otherwise permitted by, Section 422 of the Code.

(r) "Nonstatutory Stock Option" or "NSO" means an Option not intended to qualify as an ISO.

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(s) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(t) "Option" means a stock option granted pursuant to this Plan.

(u) "Optioned Stock" means the Common Stock subject to an Option.

(v) "Optionee" means the Employee, Consultant or Outside Director who receives an Option and includes any person who owns all or any part of an Option, or who is entitled to exercise an Option, after the death or disability of an Optionee.

(w) "Parent" means a "parent corporation," present or future, as defined in Section 424(e) of the Code.

(x) "Plan" means this Amended and Restated 1995 Marvell Technology Group Ltd. Stock Option Plan.

(y) "Share" means a share of the Common Stock, as adjusted in accordance with Section 14(a).

(z) “Subsidiary” means a “subsidiary corporation,” present or future, as defined in Section 424(f) of the Code.

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## 2003 APPENDIX TO THE AMENDED AND RESTATED 1995 STOCK OPTION PLAN OF MARVELL TECHNOLOGY GROUP LTD. IN RESPECT OF ISRAELI EMPLOYEES

### 1. Purpose

The purpose of this Appendix is to modify, to the extent set forth herein, the Amended and Restated 1995 Marvell Technology Group Ltd. Stock Option Plan (the “Plan”) in respect of the Israeli employees of Marvell Technology Group Ltd. and its affiliates and subsidiaries who are eligible to participate in the Plan in accordance with its terms, in order to reflect the specific requirements of the Israeli law. This Appendix, together with the Plan, is meant to constitute a “Share Allotment Plan” under the 102 Provisions, as defined below, and applies to stock options granted to the Israeli Employees on or after January 1, 2003.

### 2. Defined Terms

(a) Capitalized terms used but not defined herein shall have the meanings provided in Section 22 of the Plan.

(b) In addition, in this Appendix, the following terms shall have the meanings set forth beside them:

“102 Provisions”	The provisions of section 102 of the Ordinance and of the relevant income tax regulations, as they shall apply from time to time on shares and options issued hereunder, including the Special Conditions;
“Effective Date”	The latest of the date the Options were issued or the date of the Income Tax Commissioner approval that the Plan satisfies the Special Conditions;
“Employer”	The Company, any of its Subsidiaries or its Parent employing Israeli Employees;
“Israeli Employees”	Employees, officers and directors subject to taxation in Israel;
“Trustee”	A trustee appointed by the Employer for purposes of the Plan and approved by the Israeli tax authorities;
“Ordinance”	The Income Tax Ordinance (New Version), 5721-1961;
“Special Conditions”	Special conditions set by the Israeli Income Tax Commissioner in connection with the issuance of the Options hereunder, by the power vested in him/her under section 102 of the Ordinance, if and to the extent the Commissioner shall so set;
“Tax Lockup Period”	The applicable period of time, in accordance with the selection made by the Employer under section 102 of the Ordinance and in effect at the time of a grant hereunder.

(c) The Israeli Employees shall be entitled to exercise their options in accordance with the terms of the Plan, subject to the terms of this Appendix. In the event of any contradiction between any term of this Appendix and any term of the Plan, the provisions of this Appendix shall override with respect to the

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Israeli Employees, in respect of whom this Appendix shall constitute an integral part of the Plan and references to the Plan in respect of the Israeli Employees shall be interpreted accordingly.

### 3. Special Conditions

- (a) The Employer shall make an Election, as defined in section 102 of the Ordinance, and shall apply to the Income Tax Commissioner to approve the Trustee and the Plan under the 102 Provisions. Subject to the approval of this Plan by the Israeli Income Tax Commissioner, the Special Conditions shall apply to the plan and to this Appendix.
- (b) The Administrator shall exercise its discretion under the Plan in accordance with the terms of this Appendix.

### 4. Eligibility

Options shall not be granted to any Israeli Employee who is, or on giving effect to such grant, will become, the holder of a controlling interest (‘baal shlita’) in the Company, as defined in section 32(9) of the Ordinance.

### 5. Trust

- (a) The Options and the Shares shall be issued directly in the name of the Trustee and shall be held in escrow by the Trustee for the Israeli Employees’ benefit, for no less than the Tax Lockup Period, all according to the terms of this Appendix.
- (b) In the event that bonus shares shall be issued on account of the Shares, such bonus shares shall be issued by the Company to the Trustee. The 102 Provisions shall apply to such bonus shares for all purposes.

- (c) The Trustee shall be entitled to set additional exercise procedures to those described in the Plan, as the Trustee shall see fit, provided that the Trustee has given the Company prior written notice of any such procedures.

## **6. Taxes**

- (a) The Israeli Employees shall be taxed in respect of the Options in accordance with the provisions of the Ordinance, including the 102 Provisions.
- (b) Without derogating from section 9(g) of the Plan, any tax imposed in respect of the Options and/or the Shares and/or the sale and/or the transfer of the Options and/or the Shares, including any Social Security and National Health charges, as applicable, shall be borne solely by the Israeli Employee, and in the event of the death of the Israeli Employee, by the Israeli Employee's heirs or successors. The Employer shall not bear the aforementioned taxes, directly or indirectly, nor shall the Employer be required to gross such tax up in the Israeli Employee's salaries or remuneration. The imposed tax shall be paid by the Israeli Employee or deducted, on the date such tax is payable, from the sale consideration paid to the Trustee by the Israeli Employee, as applicable.
- (c) At the end of the Tax Lockup Period, the Israeli Employee (or the Israeli Employee's heirs or successors) shall be entitled at any time to instruct the Trustee to transfer the Options or the Shares to which such Israeli Employee is entitled to the Israeli Employee or its nominees, or, if appropriate, to sell the Shares and pay the consideration received to the Israeli Employee. Subject to the 102

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Provisions, the Trustee shall not transfer the Options and/or the Shares to the Israeli Employee's name, and shall not transfer the consideration received from the sale of the Shares to the Israeli Employee, unless the conditions set forth in the 102 Provisions are fulfilled.

- (d) The effects of any future amendment to the tax arrangements, which apply to the issuance of securities to the Israeli Employees, shall apply to the Israeli Employees in accordance with such provisions of law, and the Israeli Employees shall bear the full cost thereof, unless the modified arrangement expressly provides otherwise.
- (e) Each Israeli Employee shall indemnify the Employer and/or the Trustee, immediately upon receipt of notice from the Employer and/or the Trustee, for any amount (including interest and/or fines of any type and/or linkage differentials in respect of tax and/or withheld tax) payable by such Israeli Employee under law (including under the 102 Provisions), and which has been paid by the Employer or the Trustee or which the Employer or the Trustee are required to pay by the tax authorities.

## **7. Miscellaneous**

- (a) The Israeli Employees shall sign any document required by the Trustee or the Income Tax Commission to give effect to the provisions of this Appendix.
  - (b) Without derogating section 20 of the Plan, it is hereby acknowledged that the Options and/or the Exercise Shares are extraordinary, one-off benefits granted to the Offerees, and are not and shall not be deemed a salary component for any purpose whatsoever, including in connection with calculating severance compensation under the Severance Pay Law, 5723-1963 and the regulations promulgated thereunder.
  - (c) In the event of a change in control of the Company is proposed during the Tax Lock Up Period, the consummation which will cause the breach of the terms of the 102 Provisions, the Company will use its best efforts to apply to the Israeli Tax Authorities to obtain a pre-ruling to regulate the tax treatment applicable to the Options in the context of the proposed transaction.
  - (d) Except as expressly provided in this Appendix, the provisions of this Appendix do not supercede any provisions of the Plan, and the provisions of the Plan shall govern all Options granted to Israeli Employees.
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**CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Dr. Sehat Sutardja, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Marvell Technology Group Ltd.;
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 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) 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
  - d) 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 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 controls 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: September 8, 2005

By: /s/ DR. SEHAT SUTARDJA  
 Dr. Sehat Sutardja  
 Chairman of the Board,  
 President and Chief Executive Officer

**CERTIFICATION PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, George A. Hervey, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Marvell Technology Group Ltd.;
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 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) 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) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) 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
  - d) 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 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 controls 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: September 8, 2005

By: /s/ GEORGE A. HERVEY  
 George A. Hervey  
 Vice President and Chief Financial Officer

## STATEMENT OF CHIEF EXECUTIVE OFFICER UNDER 18 U.S.C. § 1350

I, Dr. Sehat Sutardja, the Chief Executive Officer of Marvell Technology Group Ltd. (the “Company”), certify for the purposes of section 1350 of chapter 63 of title 18 of the United States Code that, to the best of my knowledge,

- (i) the Quarterly Report of the Company on Form 10-Q for the fiscal quarter ended July 30, 2005 (the “Report”), fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934, and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ DR. SEHAT SUTARDJA

Dr. Sehat Sutardja  
Chairman of the Board,  
President and Chief Executive Officer

Date: September 8, 2005

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## STATEMENT OF CHIEF FINANCIAL OFFICER UNDER 18 U.S.C. § 1350

I, George A. Hervey, the Chief Financial Officer of Marvell Technology Group Ltd. (the “Company”), certify for the purposes of section 1350 of chapter 63 of title 18 of the United States Code that, to the best of my knowledge,

- (i) the Quarterly Report of the Company on Form 10-Q for the fiscal quarter ended July 30, 2005 (the “Report”), fully complies with the requirements of section 13(a) of the Securities Exchange Act of 1934, and
- (ii) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ GEORGE A. HERVEY

George A. Hervey

Vice President and Chief Financial Officer

Date: September 8, 2005

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