

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

FORM 20-F

☐ REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR (g) OF THE SECURITIES EXCHANGE ACT OF 1934

OR

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the fiscal year ended December 31, 2008

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from _____ to _____

OR

☐ SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
Date of event requiring this shell company report _____

Commission file number 0-30324

RADWARE LTD.

(Exact name of registrant as specified in its charter)

Israel

(Jurisdiction of incorporation or organization)

22 Raoul Wallenberg Street, Tel Aviv 69710, Israel

(Address of principal executive offices)

Efrat Baruh-Noy
Tel. +972-3-7668666, Fax: +972-3-7668982
22 Raoul Wallenberg St., Tel Aviv 69710, Israel

(Name, Telephone, E-mail and/or Facsimile number and Address of Company Contact Person)

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

| Title of each class | Name of each exchange on which registered |
|---|---|
| Ordinary Shares, NIS 0.1 par value per share | NASDAQ Global Select Market |

Securities registered or to be registered pursuant to Section 12(g) of the Act:

None

(Title of Class)

Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act:

None

(Title of Class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report:

18,918,438 Ordinary Shares, NIS 0.1 par value per share

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

☐ Yes ☒ No

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934.

☐ Yes ☒ No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of “accelerated filer and large accelerated filer” in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer ☐ Accelerated Filer ☒ Non-Accelerated Filer ☐

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

- ☒ U.S. GAAP
- ☐ International Financial Reporting Standards as issued by the International Accounting Standards Board
- ☐ Other

If “Other” has been checked in response to the previous question indicate by check mark which financial statement item the registrant has elected to follow:

☐ Item 17 ☐ Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

☐ Yes ☒ No

INTRODUCTION

As used in this annual report, the terms “we,” “us,” “our,” the “Company,” and “Radware” mean Radware Ltd. and its subsidiaries, unless otherwise indicated. The references to “Companies Law” or the “Israeli Companies Law” are to the Israeli Companies Law, 5759-1999 (as amended).

We have registered trademarks for “Radware®”, “APSolute®”, “Web Server Director®”, “Cache Server Director®”, “FireProof®”, “LinkProof®”, “Triangulation®”, “Smart Nat®”, “Get Certain®”, “CertainT®”, “Peer Director®”, “Synapps Architecture®”, “DefensePro®”, “StringMatch Engine®”, “CID – Content Inspection Director®”, “SIPDirector®”, “AppDirector®”, “AppXcel®”, “AppXML®” and “SecureFlow®” and we have trademark applications pending for “OnDemand Switch™”, “Uplink™”, “Virtual Director™”, “APSolute Vision™”, “Apsolute Insite™” and “AppWall™”. All other trademarks and trade names appearing in this annual report are owned by their respective holders.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

Except for the historical information contained herein, the statements contained in this annual report are forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995 with respect to our business, financial condition and results of operations. Actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including all the risks discussed in “Risk Factors” and elsewhere in this annual report.

We urge you to consider that statements which use the terms “believe,” “do not believe,” “expect,” “plan,” “intend,” “estimate,” “anticipate,” and similar expressions are intended to identify forward-looking statements. These statements reflect our current views with respect to future events and are based on assumptions and are subject to risks and uncertainties. Except as required by applicable law, including the securities laws of the United States, we do not intend to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise.

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PART I

ITEM 1. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISORS

Not applicable.

ITEM 2. OFFER STATISTICS AND EXPECTED TIMETABLE

Not applicable.

ITEM 3. KEY INFORMATION

A. Selected Financial Data

The following tables present our consolidated statement of operations and balance sheet data for the periods and as of the dates indicated. We derived the statement of operations for the years ended December 31, 2006, 2007 and 2008 and the balance sheet data as at December 31, 2007 and 2008 from our audited consolidated financial statements included elsewhere in this annual report, which have been prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP"). The selected consolidated statement of operations financial data for the years ended December 31, 2004 and 2005 and the balance sheet data for the years ended December 31, 2004, 2005 and 2006 are derived from our audited consolidated financial statements not included in this annual report, which have been prepared in accordance with U.S. GAAP. *You should read the following selected financial data together with the section of this annual report entitled "Operating and Financial Review and Prospects" and our consolidated financial statements together with the notes thereto included elsewhere in this annual report.* Please see notes 2w and 11 of the notes to our consolidated financial statements for an explanation regarding the computation of basic and diluted net earnings (loss) per ordinary share.

| | Year ended December 31, 2004 | Year ended December 31, 2005 | Year ended December 31, 2006* | Year ended December 31, 2007* | Year ended December 31, 2008* |
|---|------------------------------------|------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| (US \$ in thousands except per share data) | | | | | |
| Statement of Operations Data: | | | | | |
| Revenues: | | | | | |
| Products | \$ 52,206 | \$ 55,902 | \$ 57,335 | \$ 59,422 | \$ 59,678 |
| Services | 16,233 | 21,682 | 24,075 | 29,209 | 34,903 |
| | <u>68,439</u> | <u>77,584</u> | <u>81,410</u> | <u>88,631</u> | <u>94,581</u> |
| Cost of revenues: | | | | | |
| Products | 8,080 | 9,325 | 10,267 | 13,133 | 15,143 |
| Services | 4,104 | 5,571 | 5,524 | 5,895 | 6,431 |
| | <u>12,184</u> | <u>14,896</u> | <u>15,791</u> | <u>19,028</u> | <u>21,574</u> |
| Gross profit | <u>56,255</u> | <u>62,688</u> | <u>65,619</u> | <u>69,603</u> | <u>73,007</u> |
| Operating expenses: | | | | | |
| Research and development, net | 10,342 | 13,017 | 17,659 | 23,515 | 28,357 |
| Sales and marketing | 31,898 | 40,002 | 50,128 | 57,977 | 63,591 |
| General and administrative | 4,493 | 5,244 | 6,178 | 7,114 | 12,066 |
| Total operating expenses | <u>46,733</u> | <u>58,263</u> | <u>73,965</u> | <u>88,606</u> | <u>104,014</u> |
| Operating profit (loss) | <u>9,522</u> | <u>4,425</u> | <u>(8,346)</u> | <u>(19,003)</u> | <u>(31,077)</u> |
| Financial income, net | <u>4,565</u> | <u>5,159</u> | <u>7,422</u> | <u>7,420</u> | <u>3,612</u> |
| Income (loss) before income taxes | 14,087 | 9,584 | (924) | (11,583) | (27,395) |
| Income taxes | (341) | (240) | (356) | (428) | (3,627) |
| Minority interest in losses of a subsidiary | 34 | – | – | – | – |
| Net income (loss) | <u>\$ 13,780</u> | <u>\$ 9,344</u> | <u>\$ (1,280)</u> | <u>\$ (12,011)</u> | <u>\$ (31,022)</u> |
| Basic net earnings (loss) per share | <u>\$ 0.77</u> | <u>\$ 0.50</u> | <u>\$ (0.07)</u> | <u>\$ (0.62)</u> | <u>\$ (1.60)</u> |
| Diluted net earnings (loss) per share | <u>\$ 0.70</u> | <u>\$ 0.47</u> | <u>\$ (0.07)</u> | <u>\$ (0.62)</u> | <u>\$ (1.60)</u> |

* The Company adopted Statement of Financial Accounting Standards Board No. 123(revised 2004) "Share-Based Payment" effective January 1, 2006.

| | Year ended December 31, 2004 | Year ended December 31, 2005 | Year ended December 31, 2006 | Year ended December 31, 2007 | Year ended December 31, 2008 |
|--|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| | (In thousands) | | | | |
| Weighted average number of ordinary shares used in computing basic net earnings (loss) per share | 17,995 | 18,800 | 19,325 | 19,477 | 19,440 |
| Weighted average number of ordinary shares used in computing diluted net earnings (loss) per share | 19,805 | 20,072 | 19,325 | 19,477 | 19,440 |
| | 2004 | 2005 | December 31, 2006 | 2007 | 2008 |
| | (US \$ in thousands) | | | | |

Balance Sheet Data:

| | | | | | | | | | | |
|---|----|---------|----|---------|----|---------|----|---------|----|---------|
| Cash and cash equivalents, short-term bank deposits and marketable securities and current maturities of long-term bank deposits | \$ | 109,020 | \$ | 126,901 | \$ | 140,375 | \$ | 152,110 | \$ | 88,796 |
| Long-term bank deposits, structured deposit and marketable securities | | 48,021 | | 37,592 | | 23,756 | | 2,735 | | 45,112 |
| Working capital | | 107,687 | | 124,005 | | 137,406 | | 149,954 | | 82,292 |
| Total assets | | 183,241 | | 204,347 | | 215,668 | | 216,067 | | 185,464 |
| Shareholders' equity | | 160,917 | | 177,426 | | 182,414 | | 176,713 | | 148,062 |

B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

You should carefully consider the following risks before deciding to purchase, hold or sell our ordinary shares. Our business, operating results and financial condition could be seriously harmed due to any of the following risks. The following risks are not the only risk factors facing our Company. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our business. The trading price of our ordinary shares could decline due to any of these risks. You should also refer to the other information contained or incorporated by reference in this annual report, before making any investment decision regarding our Company.

Risks Related to Our Business and Our Industry

We have incurred losses, and may continue to incur losses in the future.

We incurred losses in 2006 through 2008. We had a net loss of approximately \$31.0 million in 2008 and a net loss of approximately \$12.0 million in 2007. We will need to generate increased revenues as well as reduce our costs to return to and maintain profitability.

Our revenues may not grow or continue at their current level. For example, the growth rate in 2007 compared to 2006 was approximately 9% and the growth rate in 2008 compared to 2007 was approximately 7%. Our gross margin is currently approximately 77% and, as a result, any decrease in sales may have a significant effect on our profitability.

In addition, our operating expenses may increase. Our decision to increase operating expenses and the scope of such increase will depend upon several factors, including the market situation and the results that our past expenditures produce. We may continue to make additional expenditures in anticipation of generating higher revenues, which we may not realize, if at all, until some time in the future. For example, during 2008 we continued to invest in the expansion of our new line of hardware platforms, the OnDemand Switch™. We also invested in new product development, including solutions for the carrier sector along with the introduction of the Virtual Director™ and AppWall™ appliances for the enterprise sector, and we continued to enhance our DefensePro® (network security) and Insite (management) offerings. Our efforts as well as our expenditures in these products and any related go-to-market strategies may not result in increased revenues. If our revenues continue not to increase as anticipated, or if our expenses are not reduced, we will continue to incur losses.

Our results for 2008 were benefited by financial income in an amount of approximately \$3.6 million. We cannot assure you that we will be able to generate financial income in the future or that such financial income will remain at the same level.

The global economic recession and volatility of the market for our products, including slow-down in expenditures and other trends in our industry, could have a material adverse effect on our results of operations.

Our business is dependent on current and anticipated market demand for our products. In 2008, the growth rate in the overall market's IT spending slowed down due to real estate and financial issues globally which led to recession fears. This trend has continued into the first quarter of 2009 and is expected to worsen in the near future. More specifically, the growth rate of overall IT expenditures in the United States has steadily declined since the last quarter of 2008, with estimates by IDC at 0.1% growth for 2009; in the Layer 4-7 (application delivery) sector, worldwide growth is estimated by IDC to be 3.2% for 2009; and, in the Intrusion Prevention sector of the network security market, the growth rate according to Gartner already slowed in 2008 down to 12.3% from a rate of 32.4% in 2007. The economic outlook for 2009 has worsened significantly, including in our largest markets, Europe and Asia Pacific, and the global economic recession appears set to continue for some time although we are currently unable to predict how long the recession will last or its full extent. Therefore, if global conditions further deteriorate, and companies in our target markets reduce capital expenditures, we may experience a reduction in sales, as well as downward pressure on the price of our products. In addition, if the market is flat and customers experience low visibility we may not be able to increase our sales. Each of the above scenarios would have a material adverse effect on our business, operating results and financial condition.

We face the risk of a decrease in our cash balances and losses in our investment portfolio

Investment income is an important component of our net income. The ability to achieve our investment objectives is affected by many factors, some of which are beyond our control. Our cash throughout the world is invested in fixed-income securities and is affected by changes in interest rates. Interest rates are highly sensitive to many factors, including governmental monetary policies and domestic and international economic and political conditions.

The outlook for our investment income is dependent on the future direction of interest rates, the amount of any share repurchases or acquisitions that we effect and the amount of cash flows from operations that are available for investment. Any significant decline in our investment income or the value of our investments as a result of continued falling interest rates, deterioration in the credit worthiness of the securities in which we have invested, or general market conditions, could have an adverse effect on our results of operations and financial condition. For example, in 2008 our financial income totaled to \$3.6 million, less than 50% of our financial income in 2007. This decrease is attributed mainly to the decrease in prevailing market interest rates.

The current global credit crisis may significantly decrease the value of our investment assets

The performance of the capital markets affects the values of funds that are held in marketable securities. These assets are subject to market fluctuations and will yield uncertain returns, which may fall below our projected return rates. Due to recent market developments, including a series of rating agency downgrades, the fair value of these investments may decline. We expect that market conditions will continue to fluctuate and that the fair value of our investments may be impacted accordingly.

Our cash, cash equivalents, short-term deposit and marketable securities totaled \$133.9 million as of December 31, 2008. Our investment portfolio policy is buy and hold, while minimizing credit risk by setting maximum concentration limit per issuer and credit rating. Our investments consist primarily of government and corporate debentures. Although we believe that we generally adhere to conservative investment guidelines, the continuing turmoil in the financial markets may result in impairments of the carrying value of our investment assets. We classify our investments as available-for-sale. Changes in the fair value of investments classified as available-for-sale are not recognized to income during the period, but rather are recognized as a separate component of equity until realized. Realized losses in our investments portfolio may adversely affect our financial position and results. Had we reported all the changes in the fair values of our investments into income, our reported net loss for the year ended December 31, 2008, would have increased by \$0.9 million.

One of our primary market risk exposures is changes in interest rates, which relates primarily to our investments in marketable securities. A decline in market interest rates, such as the significant global decline in recent months, has had an adverse effect on our investment income. In a declining interest rate environment, borrowers may seek to refinance their borrowings at lower rates and, accordingly, prepay or redeem securities we hold more quickly than we initially expected. This action may cause us to reinvest the redeemed proceeds in lower yielding investments. Currently we do not hold any securities which can be early redeemed. An increase in market interest rates could also have an adverse effect on the value of our investment portfolio, for example, by decreasing the fair values of the fixed income securities that comprise a substantial majority of our investment portfolio.

We may experience significant fluctuations in our quarterly financial performance because of the factors discussed below and seasonal fluctuations in our sales.

Our quarterly operating results have varied significantly in the past and may vary significantly in the future as a result of various factors, many of which are outside of our control. These factors include:

- Our limited order backlog;
- Our need to develop and introduce new and enhanced products and features; and
- The long sales cycles of our products.

As a result of the foregoing our results in any quarter may also fall below projected results.

In addition, our quarterly operating results have been, and are likely to continue to be, influenced by seasonal fluctuations in our sales. Because our sales have grown year-over-year since inception, these fluctuations may not be apparent from our historical financial statements. However, we believe that our sales and sales growth have been, and will continue to be, affected by the seasonal purchasing patterns of some of our customers. For example, we believe that our sales may be reduced from the levels which we might otherwise have been able to attain during the first quarter of 2009, since some of our customers are still planning their annual purchasing budget in the beginning of the year, and in the third quarter of 2009 because of the slowdown in business activities during the summer months in Europe. We further believe that our sales during the fourth quarter of 2009 may be increased because some of our customers tend to make greater capital expenditures towards the end of their own fiscal years. Because of these anticipated fluctuations, our sales and operating results in any quarter may not be indicative of future performance and it may be difficult for investors to properly evaluate our prospects.

If the market for Application Delivery and Network Security solutions does not continue to develop, we will not be able to sell enough of our products to achieve and maintain profitability.

The Application Delivery and Network Security markets in which we operate are rapidly evolving and we cannot assure you that they will continue to develop and grow or that our products and technology will keep pace with these changes. Market acceptance of Application Delivery and Network Security solutions may be inhibited by, among other factors, a lack of anticipated congestion and strain on existing network infrastructures and the availability of alternative solutions. If demand for Application Delivery and Network Security solutions does not continue to grow, we may not be able to sell enough of our products to achieve, maintain and increase profitability.

Competition in the market for Application Delivery and Network Security solutions is intense. As a result, we may lose market share and we may be unable to achieve and maintain profitability.

The Application Delivery and Network Security markets are highly competitive and we expect competition to intensify in the future. We may lose market share if we are unable to compete effectively with our competitors. Our principal competitors in the Application Delivery solutions market include: F5 Networks, Inc., Cisco Systems, Inc., Citrix Systems, Inc. and Brocade Communications Systems, Inc. (Foundry Networks, Inc.). In addition, we face competitors in the Network Security space, with respect to our Intrusion Prevention Systems (IPS). Such principal competitors include Juniper Networks, Inc., 3Com Systems, Inc. (TippingPoint Technologies, Inc.), McAfee, Inc., Sourcefire, Inc., and IBM Corporation (Internet Security Systems). We expect to continue to face additional competition as new participants enter the market or extend their portfolios into related technologies. Larger companies with substantial resources, brand recognition and sales channels may form alliances with or acquire competing Application Delivery or Network Security solutions and emerge as significant competitors. Competition may result in lower prices or reduced demand for our products and a corresponding reduction in our ability to recover our costs, which may impair our ability to achieve, maintain and increase profitability. Furthermore, the dynamic market environment, which is demonstrated by the above acquisitions, poses a challenge in predicting market trends and expected growth.

Most of our competitors have greater resources than us, which may limit our ability to effectively compete with them.

Most of our competitors have greater financial, personnel and other resources than us, which may limit our ability to effectively compete with them. These competitors may be able to:

- respond more quickly to new or emerging technologies or changes in customer requirements;
- benefit from greater economies of scale;
- offer more aggressive pricing;
- devote greater resources to the promotion of their products; and/or
- bundle their products or incorporate an Application Delivery or Intrusion Prevention component into existing products in a manner that renders our products partially or fully obsolete.

We must develop new products as well as enhancements and new features to existing products to remain competitive. If we fail to develop new products and product enhancements on a timely basis, we may lose market share.

The markets for Application Delivery and Network Security solutions are characterized by rapid technological change, frequent new product introductions, changes in customer requirements and evolving industry standards. Accordingly, our future success will depend to a substantial extent on our ability to:

- invest significantly in research and development;
- develop, introduce and support new products and enhancements on a timely basis; and
- gain and consecutively increase market acceptance of our products.

We are currently developing new products and enhancements to our existing products. We may not be able to successfully complete the development and market introduction of new products or product enhancements. If we fail to develop and deploy new products and product enhancements on a timely basis, or if we fail to gain market acceptance of our new products, our revenues will decline and we may lose market share to our competitors. During 2008, we invested in, and plan to continue to invest in 2009 in developing or when appropriate, acquiring, capabilities to advance our APSolute product family and market vision for business-smart networking. As part of such investments, we acquired Covelight Systems, Inc., or Covelight in April 2007 for their web channel intelligence technology that allows business events to be captured in real-time on the network. To date we have not realized substantial revenue from the Inflight product acquired through the acquisition of Covelight, however based on this technology we have launched a new product (Virtual Director™) for the virtualized data center environments.

These investments are part of our positioning initiative branded as “business-smart networking”. There is no assurance that we will be successful in marketing and selling our next generation Application Delivery and Network Security solutions, or that we will be able to grow revenues to justify our investments.

We may make acquisitions or pursue mergers that could disrupt our business and harm our financial condition.

As part of our business strategy, we may invest in or acquire other businesses, technologies or assets, or we may enter into joint ventures or other strategic relationships with third parties. For example, in the last three years we acquired the businesses of V-Secure Technologies Inc., or V-secure and Covelight. In addition, we have entered into an asset purchase agreement with Nortel Networks Ltd., Nortel Networks Inc. and other Nortel entities (“Nortel”) to purchase certain assets of Nortel in relation to the “Alteon” product line (the “Alteon Acquisition”). This transaction was subject to higher and better bids and is now pending court approvals. In connection with future acquisitions, including the Alteon Acquisition, we may assume liabilities or write-offs, incur amortization expenses related to intangible assets or realize large write-offs based on management decision that such assets will no longer be used or will be phased out. In addition, the future valuation of these acquisitions may decrease from the market price paid by us, which may result in the writing-off, or impairment, of the relevant assets. For example, during 2008 we had an impairment charge of \$2.0 million in connection with intangible assets acquired as a result of the Covelight acquisition. Moreover, our operation of any acquired or merged businesses, technologies or assets could involve numerous risks, including:

- Post-merger integration problems resulting from the combination of any acquired operations with our own operations or from the combination of two or more operations into a new merged entity;
- Diversion of management’s attention from our core business;
- Substantial expenditures, which could divert funds from other corporate uses;
- Entering markets in which we have little or no experience; and
- Loss of key employees of the acquired operations.

We cannot be certain that our recent acquisitions or any future acquisition or merger will be successful. If the operation of the business of any recent or future acquisitions or mergers disrupts our operations, our business may suffer. Furthermore, even if we successfully integrate the acquired business with our own, we may not receive the intended benefits of the acquisition. In addition, our pursuit of potential acquisitions, including the Alteon Acquisition, may divert our management's attention from our core business and require considerable cash outlays at the expense of our existing operations, whether or not such transactions are consummated.

We have a very limited order backlog. If revenue levels for any quarter fall below our expectations, our earnings will decrease.

We have a very limited order backlog, which makes revenues in any quarter dependent on orders received and delivered in that quarter. A delay in the recognition of revenue may have a significant negative impact on our results of operations for a given period. We base our decisions regarding our operating expenses on anticipated revenue trends, and our expense levels are relatively fixed, or require some time for adjustment. Because only a small portion of our expenses varies with our revenues, if revenue levels fall below our expectations, our earnings will decrease.

We depend upon independent distributors to sell our products to customers. If our distributors do not succeed in selling our products, our revenues will suffer.

We sell our products primarily to independent distributors, including value added resellers, original equipment manufacturers and systems integrators. These distributors resell our products to the ultimate customers. We currently have several dozen active independent distributors and resellers that sell our products. We are highly dependent upon our distributors' active marketing and sales efforts. Our distribution agreements generally are non-exclusive, one-year agreements with no obligation on the part of our distributors to renew the agreements. Typically, our distribution agreements do not prevent our distributors from selling products of other companies, including products that may compete with our products, and do not contain minimum sales or marketing performance requirements. As a result, our distributors may give higher priority to products of other companies or to their own products, thus reducing or discontinuing their efforts to sell our products. We may not be able to maintain our existing distribution relationships. If our distributors terminate their relationships with us, we may not be successful in replacing them. In addition, we may need to develop new distribution channels for new products and we may not succeed in doing so. Any changes in our distribution channels, or our inability to establish distribution channels for new products, will impair our ability to sell our products and result in the loss of revenues.

Our products generally have long sales cycles, which increase our costs in obtaining orders and reduce the predictability of our earnings.

Our products are technologically complex and are typically intended for use in applications that may be critical to the business of our customers. As a result, our pre-sales process is often subject to delays associated with lengthy approval processes that typically accompany the design and testing of new equipment. The sales cycles of our products to new customers can last as long as twelve months from initial presentation to sale. This delays the time in which we recognize revenue, and results in our having to invest significant resources in marketing and sales.

Long sales cycles also subject us to risks not usually encountered in a short sales cycle, including our customers' budgetary constraints and internal acceptance reviews and processes prior to purchase. In addition, orders expected in one quarter could shift to another because of the timing of our customers' procurement decisions. Furthermore, customers may defer orders in anticipation of new products or product enhancements introduced by us or by our competitors. These factors complicate our planning processes and reduce the predictability of our earnings.

We must manage our anticipated growth effectively in order to achieve profitability.

We have actively expanded our operations in the past and may continue to expand them in the future in order to gain market share in the evolving market for Application Delivery and Network Security solutions. This expansion has required, and may continue to require, managerial, operational and financial resources.

We cannot assure you that we will continue to expand, or that we will be able to offer and expand our operations successfully. If we are unable to manage our expanding operations effectively, our revenues may not increase, our cost of operations may rise and we may not be profitable.

As we grow we may need new or enhanced systems, procedures or controls. For example, at the beginning of 2007, we started implementing a company-wide Oracle ERP system, with a substantial investment of resources, in order to increase our efficiencies of our operations in the fields of finance, operations, customer support and order management. The transition to new systems, procedures or controls, as well as any delay in transitioning to new or enhanced systems, procedures or controls, may seriously harm our ability to accurately forecast sales demand, manage our product inventory and record and report financial and management information on a timely and accurate basis.

Our international sales may expose us to additional risks

We currently offer our products in over 40 countries in addition to the United States. In fiscal years 2007 and 2008 our sales outside the Americas represented approximately 72% and 75%, respectively, of our total sales. Our international business activity involves varying degrees of risk and uncertainty inherent in doing business in so many different jurisdictions. Such risks, among others, may include: the possibility of unfavorable circumstances arising from host country laws or regulations, including unexpected changes of interpretations thereof; partial or total expropriation; export duties and quotas; local tax exposure; insurrection or war; and differences in business practices. For example, we are required to comply with European Union Directives with respect to product quality assurance standards and environmental standards. In 2006, we were required to modify certain of our products in order to comply with Directive 2002/95/EC on Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (known as the "RoHs Directive"), which requires products sold in Europe to meet certain design specifications. We incurred costs and expenses and were required to spend management time and resources in the redesign of our products to meet the RoHs Directive. We are currently in compliance with the RoHs Directive.

Currency exchange rates and fluctuations of exchange rates could have a material adverse effect on our results of operations.

We are impacted by exchange rates and fluctuations thereof in a number of ways, including:

- A significant portion of our expenses, principally salaries and related personnel expenses, are paid in New Israel Shekels ("NIS"), whereas most of our revenues are generated in dollars and partially in Euros. We have witnessed a significant strengthening of the NIS against the dollar during 2007 and most of 2008, which has considerably increased the dollar value of our expenses in Israel. Should the NIS maintain, or increase, its strength in comparison to the dollar, the dollar value of these expenses will continue to be high, and our results of operations will be adversely affected.
- A portion of our international sales are denominated in currencies other than dollars, such as the Euro, thereby exposing us to gains and losses on non-U.S. currency transactions.
- We incur expenses in several other currencies in connection with our operations in Europe and Asia-Pacific. The devaluation of the dollar relative to such local currencies causes our operational expenses to increase.
- The majority of our international sales are denominated in dollars. Accordingly, devaluation in the local currencies of our customers relative to the dollar could cause customers to decrease orders or default on payment, which could harm our results of operations.

Our success depends on our ability to attract, train and retain highly qualified sales, technical and customer support personnel.

As we grow, we may need to increase our research and development, sales and marketing, and support staff. Our products require a sophisticated marketing and sales effort targeted at several levels within a prospective customer's organization. Accordingly, we need highly-trained sales, marketing and customer support personnel. Competition for qualified sales personnel, as well as technical and customer support personnel is intense, and we may not be able to hire sufficient personnel to support our research and development and sales and marketing efforts. Our success depends upon our ability to attract, train and retain highly qualified personnel.

We are dependent on Roy Zisapel, our President and Chief Executive Officer, the loss of whom would negatively affect our business.

Our future success depends in large part on the continued services of our senior management and key personnel. In particular, we are highly dependent on the services of Roy Zisapel, our President and Chief Executive Officer. Although we have employment contracts with our senior management and key personnel, we do not carry life insurance on our senior management or key personnel. Any loss of the services of Roy Zisapel, other members of senior management or other key personnel could negatively affect our business.

Undetected defects and errors may increase our costs and impair the market acceptance of our products.

Our products have occasionally contained, and may in the future contain, undetected defects or errors, especially when first introduced or when new versions are released, due to defects or errors we fail to detect, including in components supplied by third parties. These defects or errors may be found after the commencement of commercial shipments. In addition, our customers integrate our products into their networks with products from other vendors. As a result, when problems occur in a network, it may be difficult to identify the product that has caused the problem. Regardless of the source of these defects or errors, we will then need to divert the attention of our engineering personnel from our product development efforts to address the detection and correction of these errors and defects. In the past, we have not incurred significant warranty or repair costs, nor have we been subject to liability claims for damages related to product errors or defects nor experienced any material lags or delays as a result thereof. However, we cannot assure you that we will not incur these costs or liabilities or experience these lags or delays in the future. Any insurance policies that we may have may not provide sufficient protection should a claim be asserted. Moreover, the occurrence of errors and defects, whether caused by our products or the components supplied by another vendor, may result in significant customer relations problems and injure our reputation, thus impairing the market acceptance of our products.

We rely on third-party manufacturing vendors to provide key components of our products. If such vendors are not able to provide us with adequate supplies of the principal component used in our products, we may not be able to deliver sufficient quantities of our products to satisfy demand, or may have a delay in fulfilling orders.

We rely on USR Technologies and Electronics (2003) Ltd. ("USR") to supply us with circuit boards. These circuit boards are a principal component, which we use in the manufacture of our products. If we are unable to acquire circuit boards from USR on acceptable terms, or should USR cease to supply us with circuit boards for any reason, we may not be able to identify and integrate an alternative source of supply in a timely fashion or at the same costs. Any transition to one or more alternate suppliers would likely result in delays, operational problems and increased costs, and may limit our ability to deliver our products to our customers on time for such transition period. In addition, we rely on Nexcom International Co. Ltd. ("Nexcom"), to provide us with circuit boards for our new OnDemand Switch platform. In 2008 we used both USR and Nexcom to manufacture our products, purchasing approximately half of our products from each of those manufacturers. We expect that in 2009 our relative portion of purchases from Nexcom will further increase. If we must rely on alternate suppliers, there is no assurance that we will be able to obtain the quantities we require at lead times and pricing competitive to USR or Nexcom, respectively.

A shortage of components or manufacturing capacity could cause a delay in our ability to fulfill orders or increase our manufacturing costs

Our growth and ability to meet customer demands depend in part on our ability to obtain timely deliveries of parts from our suppliers and contract manufacturers. We may experience a shortage of certain component parts as a result of our own manufacturing issues, manufacturing issues at our suppliers or contract manufacturers, capacity problems experienced by our suppliers or contract manufacturers, or strong demand in the industry for those parts, especially if the economy grows. If there is growth in the economy, such growth is likely to create greater pressures on us and our suppliers to accurately project overall component demand and component demands within specific product categories and to establish optimal component levels. If shortages or delays persist, the price of these components may increase, or the components may not be available at all, and we may also encounter shortages if we do not accurately anticipate our needs. We may not be able to secure enough components at reasonable prices or of acceptable quality to build new products in a timely manner in the quantities or configurations needed. Accordingly, our revenues and gross margins could suffer until other sources can be developed. Our operating results would also be adversely affected if, anticipating greater demand than actually develops, we commit to the purchase of more components than we need. There can be no assurance that we will not encounter these problems in the future. Although in many cases we use standard parts and components for our products, certain components are presently available only from a single source or limited sources. We may not be able to diversify sources in a timely manner, which could harm our ability to deliver products to customers and seriously impact present and future sales.

Our profitability could suffer if third parties infringe upon our proprietary technology.

Our profitability could suffer if third parties infringe upon our intellectual property rights or misappropriate our technologies and trademarks for their own businesses. Our success depends upon the protection of our proprietary software installed in our products, our trade secrets and our trademarks. To protect our rights to our intellectual property, we rely on a combination of trademark and patent law, trade secret protection, confidentiality agreements and other contractual arrangements with our employees, affiliates, distributors and others. In the United States, we have registered trademarks for “Radware®”, “APSolute®”, “Web Server Director®”, “Cache Server Director®”, “FireProof®”, “LinkProof®”, “Triangulation®”, “Smart Nat®”, “Get Certain®”, “CertainT®”, “Peer Director®”, “Synapps Architecture®”, “DefensePro®”, “StringMatch Engine®”, “CID – Content Inspection Director®”, “SIPDirector®”, “AppDirector®”, “AppXcel®”, “AppXML®” and “SecureFlow®” and we have trademark applications pending for “OnDemand Switch™”, “Uplink™”, “Virtual Director™”, “APSolute Vision™”, “Apsolute Insite™” and “AppWall™”. In addition, we have registered patents in the United States for our triangle redirection method used for the global load balancing, for our mechanism for efficient management and optimization of multiple links used in our LinkProof product, for our method for load balancing by global proximity used in our WSD product, for our method for controlling traffic on links between autonomous BGP systems and for our method of monitoring anomalies in users communication with server applications in our Inflight product. We also have pending patent applications and provisional patents in connection with several features used in our products. The protective steps we have taken may be inadequate to deter misappropriation of our proprietary information. We may be unable to detect the unauthorized use of our proprietary technology or take appropriate steps to enforce our intellectual property rights. Effective trademark, patent and trade secret protection may not be available in every country in which we offer, or intend to offer, our products. Failure to adequately protect our intellectual property could devalue our proprietary content and impair our ability to compete effectively. Furthermore, defending our intellectual property rights could result in the expenditure of significant financial and managerial resources.

Our products may infringe on the intellectual property rights of others.

Third parties may assert against us infringement claims or claims that we have violated a patent or infringed a copyright, trademark or other proprietary right belonging to them. As a result we may incur costs defending ourselves or settling lawsuits even if we believe we do not infringe on the rights of such third parties. For example, in 2003 F-5 filed a patent infringement case against us, which was thereafter settled.

Our non-competition agreements with our employees may not be enforceable in certain jurisdictions. If any of these employees leaves our Company and joins a competitor, our competitor could benefit from the expertise our former employee gained while working for us.

We currently have non-competition agreements with all of our employees. These agreements prohibit our employees, in the event they cease to work for us, from directly competing with us or working for our competitors for a limited period after termination of employment. The laws of the U.S., Israel and other countries in which we have employees, may limit or prohibit our ability to enforce these non-competition agreements, or may allow us to enforce them only to a limited extent. In the event that we are unable to enforce any of these agreements, competitors that employ our former employees could benefit from the expertise our former employees gained while working for us.

Some of our deposits and other investments may be in excess of insured limits and are not insured in other jurisdictions.

The majority of our cash and cash equivalents, and short-term bank deposits are invested in banks in the United States and in Israel. Some of these deposits may be in excess of insured limits and are not otherwise insured. If one or more of these financial institutions were to become insolvent, the loss of these investments would have a material adverse effect on our financial condition.

Risks Related to the Market for Our Ordinary Shares

Two shareholders may exert significant influence in the election of our directors and over the outcome of matters requiring shareholder approval.

As of March 20, 2009, Yehuda Zisapel, a member of our Board of Directors, beneficially owned 17.37% of our ordinary shares outstanding and Yehuda Zisapel's son, Roy Zisapel, our Chief Executive Officer, President and director, beneficially owned approximately 3.43% of our ordinary shares outstanding (See "Item 6 – Share Ownership"). Additionally, Yehuda Zisapel's brother, Zohar Zisapel, beneficially owns 5.62% of our outstanding ordinary shares (See "Item 7 – Major Shareholders"). As a result, these shareholders, who do not have a voting agreement, may exert significant influence in the outcome of various actions that require shareholder approval, such as the election of our directors, and the approval or rejection of a merger and similar corporate transactions.

If we are characterized as a passive foreign investment company, our U.S. shareholders may suffer adverse tax consequences.

Generally, if for any taxable year (i) 75% or more of our gross income is passive income, or (ii) at least 50% of the fair market value of our assets, averaged quarterly over our taxable year, are held for the production of, or produce, passive income, we would be characterized as a passive foreign investment company ("PFIC"), for U.S. federal income tax purposes. The market capitalization approach has generally been used to determine the fair market value of the assets of a publicly traded corporation. If we are classified as a PFIC, our U.S. shareholders could suffer adverse U.S. tax consequences, including having gain realized on the sale of our ordinary shares treated as ordinary income, as opposed to capital gain income, and having potentially punitive interest charges apply to such sales proceeds, and to certain "excess distributions" with respect to our ordinary shares.

Based on applying the market capitalization approach using our closing stock price as of the end of each quarter in 2008, it is likely that we would be a PFIC for 2008. However, by applying alternative valuation methodologies, including valuation methodologies that make certain adjustments to our market capitalization, we believe that we will not be classified as a PFIC for 2008. There are no assurances that the IRS will not challenge this treatment and it is possible that the IRS will attempt to treat us as a PFIC for 2008 and possibly prior taxable years. However, the IRS has accepted other valuation methods besides the market capitalization approach in certain valuation contexts. The tests for determining PFIC status are applied annually and it is difficult to make accurate predictions of our future income and assets, and the future price of our ordinary shares which are all relevant to this determination of whether we are classified as a PFIC. Accordingly, there can be no assurance that we will not become a PFIC in 2009 or in subsequent taxable years. U.S. shareholders should consult with their own U.S. tax advisors with respect to the U.S. tax consequences of investing in our ordinary shares. For a more detailed discussion of the rules relating to PFICs and related tax consequences, please see the section of this annual report entitled "Item 10 – Additional Information – Taxation – United States Federal Income Tax Considerations."

We do not intend to pay cash dividends.

Our policy is to retain earnings for use in our business and, for this reason, we do not intend to pay cash dividends on our ordinary shares in the foreseeable future.

Our share price has decreased significantly and could continue to fluctuate and further decrease significantly.

The market price for our ordinary shares, as well as the prices of shares of other technology companies, has been volatile. Our share price has decreased significantly since the end of 2007. The highest closing price of our share, as reported by the NASDAQ Global Select Market, during the last quarter of 2007 was \$16.92, compared to the lowest closing price of \$5.15 during the first quarter of 2009. Numerous factors, many of which are beyond our control, may cause the market price of our ordinary shares to fluctuate significantly and further decrease, such as:

- Fluctuations in our quarterly revenues and earnings and those of our publicly held competitors;
- Shortfalls in our operating results from levels forecast by securities analysts;
- Announcements concerning us or our competitors;
- The introduction of new products and new industry standards;
- Changes in pricing policies by us or our competitors;
- General market conditions and changes in market conditions in our industry;
- The general state of the securities market (particularly the technology sector); and
- Political, economic and other developments in the State of Israel, the United States and worldwide.

Risks Related to Operations in Israel

Conditions in Israel affect our operations and may limit our ability to produce and sell our products.

We are incorporated under Israeli law and our principal offices and manufacturing and research and development facilities are located in Israel. Accordingly, our operations and financial results could be adversely affected if political, economic and military events curtailed or interrupted trade between Israel and its present trading partners or if major hostilities involving Israel should occur in the Middle East.

Since the establishment of the State of Israel in 1948, a number of armed conflicts have taken place between Israel and its Arab neighbors. A state of hostility, varying in degree and intensity, has led to security and economic problems for Israel. Since October 2000, there has been a high level of violence between the Palestinians and Israel, which has strained Israel's relationship with its Arab citizens, Arab countries and, to some extent, with other countries around the world. The election in 2006 of representatives of the Hamas movement to a majority of the seats in the Palestinian Legislative Council and its subsequent seizure of control of the Gaza strip have created additional unrest and uncertainty in the region. Further, in the summer of 2006, Israel engaged in a war with Hezbollah, a Lebanese Islamist Shiite militia group, which involved thousands of missile strikes and disrupted most day-to-day civilian activity in northern Israel. Since June 2007, thousands of missiles have been fired from Gaza at population centers in southern Israel, leading to an armed conflict between Israel and the Hamas in January 2009. In addition, Iran has threatened to attack Israel and is widely believed to be developing nuclear weapons.

We do not believe that the political and security situation has had a material impact on our business to date, however, there is no assurance that this will always be the case in the future. We could be adversely affected by any major hostilities, including acts of terrorism or any other hostilities involving or threatening Israel, the interruption or curtailment of trade between Israel and its trading partners or a significant downturn in the economic or financial condition of Israel. Furthermore, several countries restrict business with Israel and Israeli companies, and additional countries or companies may restrict doing business with Israel and Israeli companies as the result of the aforementioned hostilities. No predictions can be made as to whether or when a final resolution of the area's problems will be achieved or the nature thereof and to what extent the situation will impact Israel's economic development or our operations.

Some of our directors and officers as well as many of our Israeli employees are obligated to perform annual military reserve duty in Israel. We cannot assess the potential impact of these obligations on our business.

Some of our directors, officers and employees are, unless exempt, obligated to perform annual military reserve duty, depending upon their age and prior position in the army. They may also be further subject to being called to active duty at any time under emergency circumstances. Directors, officers, and key employees falling within these requirements include Roy Zisapel, our Chief Executive Officer and President, Amir Peles, our Chief Technical Officer, and Yuval Pemper, our Vice President, Research and Development. Our operations could be disrupted by the absence, for a significant period, of one of more of these officers or other key employees due to military service, and any disruption in our operations would harm our business. The full impact on our workforce or business if some of our officers and employees will be called upon to perform military service, especially in times of national emergency, is difficult to predict.

The change in the exchange rate between the New Israeli Shekel against the U.S. dollar and/or the U.S. dollar against the Euro and other currencies is volatile, and may negatively impact our costs.

The majority of our revenues are denominated in U.S. dollars or are dollar-linked, but we incur a portion of our expenses, principally salaries and related personnel expenses, in other currencies mainly in Israel, in NIS, in Europe, in Euros and in Asia-Pacific in several local currencies. In 2008, we sold in Euros in most European countries. In this respect, the NIS may increase in value relative to the dollar. In such event, the dollar cost of our operations in Israel will increase and our dollar-measured results of operations will be adversely affected. In addition, if the Euro increases in value relative to the dollar and sales in Euros do not exceed expenses incurred in Euros, the dollar cost of our operations in Europe will increase and our operating profit will be adversely affected. If the Euro decreases in value relative to the dollar and sales in Euros exceed expenses incurred in Euros, our operating profit will be negatively affected as a result of a decrease in the dollar value of our sales. If the dollar decreases in value relative to Chinese, Indian, Australian and/or Japanese currencies, the dollar cost of our operations in Asia-Pacific will increase and our operating profit will be negatively affected. For example, during 2008, the average value of the dollar decreased in relation to the NIS and Euro. As a result, during 2008, we had an increase in expenses which was partially offset by the increase we had in our sales due to the fact that our sales to the EU countries are also denominated in Euro. We cannot provide assurances that we will not be materially adversely affected by the rate of inflation in Israel or exchange rate fluctuations in the future.

Because we received grants from the Israeli Office of the Chief Scientist, we are subject to ongoing restrictions.

We received, and may in the future apply for, royalty-bearing or non-royalty-bearing grants from the Office of the Chief Scientist of the Israeli Ministry of Industry, Trade and Labor, or the Chief Scientist, for research and development programs that meet specified criteria. The terms of the Chief Scientist grants limit our ability to manufacture products or transfer technologies outside of Israel if such products or technologies were developed using know-how developed with or based upon Chief Scientist grants. In addition, any non-Israeli who becomes a holder of 5% or more of our share capital is generally required to notify the Chief Scientist and to undertake to observe the law governing the grant programs of the Chief Scientist, the principal restrictions and penalties of which are the transferability limits described above.

The tax benefits we may receive in connection with our approved enterprise program or benefited enterprise program require us to satisfy prescribed conditions and may be terminated or reduced in the future. This would increase taxes and decrease our net profit.

We have in the past received, and may in the future apply to receive, certain Israeli government grants and may in the future utilize certain tax benefits in Israel by virtue of these programs. To remain eligible for these grants and tax benefits, we must continue to meet certain conditions, including making some specified investments in fixed assets and maintaining a certain level of foreign investors' holdings in our ordinary shares. If we fail to comply with these conditions in the future, the benefits we receive could be canceled and we may have to refund payments previously received under these programs (with interest and linkage differentials) or pay certain taxes. We cannot guarantee that these programs and tax benefits will be continued in the future, at their current levels or at all. If these programs and tax benefits are ended, our business, financial condition and results of operations could be negatively affected.

Provisions of Israeli law and of our Articles of Association could delay, prevent, or make difficult, a change of control, thereby depressing the price of our ordinary shares.

Provisions of Israeli corporate and tax law and of our Articles of Association may have the effect of delaying, preventing or making an acquisition of our Company more difficult. For example, under the Companies Law, upon the request of a creditor of either party to a proposed merger, the court may delay or prevent the merger if it concludes that there is a reasonable concern that, as a result of the merger, the surviving company will be unable to satisfy the obligations of any of the parties to the merger. In addition, our Articles of Association provide that our directors, other than external directors, are elected in three staggered classes by the vote of a majority of the shareholders present, in person or by proxy, at a shareholders' meeting. These provisions could cause our ordinary shares to trade at prices below the price for which third parties might be willing to pay to gain control over us. Third parties who are otherwise willing to pay a premium over prevailing market prices to gain control of us may be unwilling to do so because of these provisions of Israeli law and the classified structure of our board of directors. For additional information on this topic, see "Item 10B – Additional Information – Memorandum and Articles of Association – Mergers and Acquisitions under Israeli law."

It may be difficult to enforce a U.S. judgment against us and/or our officers and directors, or to assert U.S. securities laws claims in Israel.

We are incorporated under the laws of the State of Israel. Service of process upon us, our Israeli subsidiaries and affiliates, and our directors and officers named herein substantially all of whom reside outside the United States, may be difficult to obtain within the United States. Furthermore, because the majority of our assets and investments, and substantially all of our directors and officers are located outside the United States, any judgment obtained in the United States against us or any of them may not be collectible within the United States.

It may be difficult to assert U.S. securities law claims in original actions instituted in Israel. Israeli courts may refuse to hear a claim based on a violation of U.S. securities laws because Israel is not the most appropriate forum to bring such a claim. In addition, even if an Israeli court agrees to hear a claim, it may determine that Israeli law and not U.S. law is applicable to the claim. If U.S. law is found to be applicable, the content of applicable U.S. law must be proved as a fact, which can be a time-consuming and costly process. Certain matters of procedure will also be governed by Israeli law. There is little binding case law in Israel addressing these matters.

Subject to specified time limitations and legal procedures, under the rules of private international law currently prevailing in Israel, Israeli courts may enforce a U.S. final judgment in a civil matter, including a judgment based upon the civil liability provisions of the U.S. securities laws and including a monetary or compensatory judgment in a non-civil matter, provided that:

- the judgment is enforceable in the state in which it was given;
- adequate service of process has been effected and the defendant has had a reasonable opportunity to present his arguments and evidence;
- the judgment and its enforcement are not contrary to the law, public policy, security or sovereignty of the State of Israel;
- the judgment was not obtained by fraud and does not conflict with any other valid judgment in the same matter between the same parties; and
- an action between the same parties in the same matter is not pending in any Israeli court at the time the lawsuit is instituted in the U.S. court.

ITEM 4. INFORMATION ON THE COMPANY

A. History and Development of the Company

Radware Ltd. was organized in May 1996 as a corporation under the laws of the State of Israel. Our principal executive offices are located at 22 Raoul Wallenberg Street, Tel-Aviv 69710, Israel and our telephone number is 972-3-766-8666. Our website address is www.radware.com. *Information contained on our website does not constitute a part of this annual report.*

As of January 1, 1999, we established a wholly-owned subsidiary in the United States, Radware Inc., which conducts the sales and marketing of our products in the Americas and is our authorized representative and agent in the United States. The principal offices of Radware Inc. are located at 575 Corporate Dr., Lobby 2, Mahwah, NJ 07430 and its telephone number is 201-512-9771. We also have several wholly owned subsidiaries world-wide handling local support and promotion activities.

We commenced operations in April 1997. In September 1999, we conducted the initial public offering of our ordinary shares and our ordinary shares commenced trading on the NASDAQ. In January 2000, we completed a secondary public offering.

In December 2005, we acquired the business of V-Secure which included the acquisition of intellectual property, technology, customers' relationship and goodwill, and added enhanced capabilities to our portfolio.

In April 2007, we acquired Covelight, a U.S.-based company providing web channel intelligence technology, which added enhanced capabilities to our portfolio.

In February 2009, we entered into an asset purchase agreement with Nortel, to acquire Nortel's Layer 4-7 application delivery business. This agreement was subject to higher and better bids and is now subject to bankruptcy court approvals. See "Item 10C-Additional Information – Material Contracts."

For a discussion of our capital expenditures and divestitures, see "Item 5-Operating and Financial Review and Prospects – Liquidity and Capital Resources."

B. Business Overview

General

Our target market is comprised of two main market sectors: Application Delivery and Network Security.

The Application Delivery market sector consists of simple load balancing application switches (Layer 4-7) targeted at the small- and medium-size business sector; advanced application delivery platforms targeted at the medium- to large-size enterprise sector; and wide area network (WAN) optimization controllers. This market is also referred to by select industry analysts as the Application Acceleration market. Our Application Delivery product portfolio consists of advanced application delivery platforms, which offer in addition to Layer 4-7 switching more sophisticated features (Web application firewall, extensible Markup Language (XML) validation, Session Initiation Protocol (SIP) Load Balancing, Application Program Interfaces (APIs), content transformation, etc.) that are designed to meet complex networking infrastructure and data center demands.

The Network Security market sector is more diffuse and consists of firewall/Virtual Private Networks (VPN), Unified Threat Management (UTM), intrusion detection systems, intrusion prevention systems, network behavioral analysis (NBA) systems and Secure Sockets Layer/ Internet Protocol Security (SSL/IPSec) VPN appliances. Our proprietary offering to this market focuses on network intrusion prevention systems, which are in-line devices that monitor network and/or system activities for malicious or unwanted behavior and can react, in real-time, to block or prevent those activities.

We develop, manufacture and market networking solutions that allow our enterprise and carrier customers to deliver their mission critical applications successfully between data centers and remote locations, over all critical points in the network.

Our Application Delivery and Network Security solutions enable customers to manage their network infrastructure, bypass systems failures, scale their application performance, and secure their Internet protocol ("IP") traffic. In addition our solutions enable our customers to monitor and extract business events from their network traffic - and in real-time - allow business decisions to take place on these events as they unfold. Our solutions help customers increase business agility, save capital expenditures and operating expenditures, improve productivity and extract the greatest value from investments in network infrastructures.

Over the years, our products have won a number of awards for performance, including

- *Network Computing* (Editor's Choice),
- *SC Magazine* (Recommended Buy Award),
- *Network Computing* (Well-Connected),
- *Internet World* (Best of Show),
- *PC Magazine* (Editor's Choice) and
- *Network Magazine* (Product of the Year).

Most recently, we have received the following recognition and/or awards:

- *Internet Telephony Magazine* (2008 Product of the Year),
- *Internet Telephony Magazine* (2008 Internet Telephony Excellence Award),
- *Network Products Guide* (2008 Readers Trust Award for Best in Global Load Balancing),
- *Internet Telephony Magazine* (2008 TMC Labs Innovation Award),
- *Network Products Guide* (2008 Product Innovation Award – Behavioral Security),
- *SC Magazine* (Finalist – 2008 SC Award Europe – Best Network Security) and
- *Info Security Products Guide* (2008 Global Product Excellence Award; Winner – Application Security; Finalist – Intrusion Prevention).

All of our products are Underwriters Laboratories (UL) compliant and our products have also achieved significant industry certification such as:

- the Common Criteria Evaluation & Validation Scheme (CCEVS) EAL 3 through the National Security Agency (NSA) program;
- FIPS 140-2 through the National Institute of Standards (NIST); and
- ISO 9001:2000 Quality of Management.

In addition, we have been recognized as among the top industry players in our respective markets by independent, third-party IT analysts such as Forrester Research, Frost & Sullivan, Gartner, IDC and Yankee Group.

Products, Operating System (OS), Management Tool, Platforms, and Subscription Services

Radware sells application delivery and network security products (“devices”) that run different configurations of software to deliver features specific to the intended operation of the appliance. These products utilize the proprietary APSolute OS (operating system), which embeds common operating logic into each product. Multiple Radware devices can be managed through the APSolute OS common management tool and dashboard (Insite) and are delivered via hardware switching platforms (Application Switch series and OnDemand Switch series) with various levels of processing power, throughput, port density, and speed depending on selected model. In addition, Radware offers a security update subscription service. Its products, operating system, management tools, switching platforms, and subscription services are all marketed under the APSolute brand.

If the Alteon Acquisition is consummated, the Alteon product line is planned to enhance the Company’s application delivery portfolio.

Products (APSolute Product Suite)

The APSolute® product suite consists of the following product families:

- *AppDirector® Intelligent Application Delivery Controller* ensures a reliable, fast and secure delivery of mission critical data center applications, eliminating the costs of application downtime and service degradation while enhancing productivity. AppDirector provides for data center optimization with advanced Layer 4-7 policies and granular packet classification in order to eliminate traffic surges, server bottlenecks, connectivity disconnects and downtime for ensured business continuity. AppDirector also provides for web compression and Hypertext Transfer Protocol (HTTP or Web) multiplexing, and accelerates web applications for high performance content serving and Secure Sockets Layer (“SSL”) encryption and decryption, providing secure and effective SSL processing.
- *AppXcel® Application Accelerator* accelerates response time to end users and free server resources, improving profitability and cost saving through web compression and Web multiplexing, and accelerates web applications for high performance content serving and SSL encryption and decryption, providing secure and effective SSL processing.
- *Application Performance Monitoring (APM)™* provides real-time detailed visibility into application performance and accurately pinpointing the source of performance degradation using existing application delivery infrastructure.
- *AppXML®* provides secure, high-performance XML and web services communications for Service Oriented Architecture (SOA) based mission-critical applications between an enterprise and its business partners
- *DefensePro®* Intrusion Prevention and Denial of Service products protect against worms, bots, viruses, malicious intrusions and Denial of Service attacks at up to 12-Gigabit speeds, preventing attacks in real-time for intrusion prevention and multi-layer application defense.
- *CID - Content Inspection Director®* is a service delivery platform for carriers that enables centralized and optimized IP value added service deployment. It also provides high-performance security, media services and customizing delivery, to guarantee Service Level Agreements and generate new sources of revenues.
- *Inflight™* is a hardware device that provides online, network-based pervasive monitoring solution that delivers actionable, real-time business-level events to any back-end analytic system to optimize business processes and ensure compliance.
- *Insite ManagePro™* is an appliance-based management and monitoring system for IT staff to centrally manage distributed devices and check the health, real-time status, performance and security of enterprise-wide application delivery infrastructures.
- *LinkProof®* manages multiple WAN and Internet traffic for networks, commonly referred to as multi-homed networks, which access the Internet through multiple connections via several Internet Service Providers, to provide fault tolerant, optimized performance and cost effective WAN connectivity.

- *LinkProof® Branch* manages the operation of multiple links across all remote office links, allowing large, multi-branched enterprises to control and reduce the costs of their connectivity and Virtual Private Networks (VPN) between headquarters and branch offices.
- *SecureFlow™* simplifies the management and optimizes performance of best of breed enterprise security tools to enable transparent, selective integration of content inspection, anti-virus, VPN, Intrusion Detection Systems (IDS) and firewalls into a unified switched architecture to eliminate the security/performance tradeoff.
- *SIP Director®* is a comprehensive SIP-aware application delivery controller (ADC) for application vendors, telecom equipment manufacturers (TEMs) and system integrators (SIs). SIP director ensures the delivery of a reliable, fast and secure SIP service in a cost effective manner.
- *Virtual Director™* an application delivery optimization solution for the virtualized data center providing real-time, dynamic allocation of data center resources based to ensure positive user experience and improved response time. The solution aligns virtual data center operations with business policies while optimizing the use of virtual as well as physical resources to further generate CAPEX and OPEX savings.

Application Switch Platforms

Our previous generation of products is powered by our Application Switch platforms. Our purpose-built Application Switching hardware offers scalable and flexible throughput performance to meet the broad range of enterprise and carrier end-to-end application delivery requirements.

Our Application Switch 1 combines ASIC-based switching, CPU processing power and APSolute OS Services to deliver the performance and service breadth to address all IP application requirements across network layers 4-7. Designed to guarantee application availability, security and performance, Application Switch 1 bridges the gap between IT infrastructure and IP Applications for comprehensive control of all critical operations across the enterprise.

Application Switch 2 is powered by a multi-layered switching architecture designed to address the widest set of protocols and service requirements across network layers 4-7 while boosting IP application performance to Gigabit Speeds. Delivering accelerated processing speeds with the ability to optimize routing decisions based on specific applications, web requests and content, Application Switch 2 provides reliability, performance and security across IP applications, for complete control over enterprise operations.

Application Switch 3 is a 3-tier processing architecture designed to meet the high capacity processing requirements for the most intensive layer 4-7 switching operations. Dual network processors in the second tier of the Application Switch 3 architecture, accelerate traffic redirection, load-balancing, quality of service control, real-time intrusion prevention and DoS mitigation for application security to multi-Gigabit speeds. The third-tier in the Application Switch 3 architecture is the powerful RISC processor that is responsible for managing and prioritizing all active application sessions.

Application Switch 4 is a three-tier processing architecture designed to meet the high capacity processing requirements for the most intensive intelligent application switching operations. Application Switch 4 features 44Gb connectivity, multi-Gigabit network processors and a strong 1.3-GHZ CPU. Driving application switching performance to up to 3-Gigabit speeds, AS4 affords complete control over mission critical applications and explosive transactions across the most demanding networking environments.

Application Switch 5 is a high-end platform for large enterprises and carriers which doubles the throughput capacity of Application Switch 4 released in 2005. Application Switch 5 features an 88Gb switching backbone, multi-Gigabit network processors, strong 1.7-GHZ CPU and a dual power supplies to provide the industry's fastest Layer 7 performance and highest port density. We are also offering a new switch for our entry-level DefensePro® IPS/DoS x02 model series, the Security Platform 1.

In the beginning of 2008, we introduced our new generation of hardware platforms, the OnDemand Switch™ 1 & 2 series, designed for medium and large-sized enterprises and carriers. OnDemand Switch provides expandable throughput from 0-4 Gbps via software license upgrade to meet the ever-changing needs of growing businesses, simplifying the upgrade process and providing investment protection, with on-demand throughput and services scalability, supporting all layer 4-7 network requirements. The OnDemand Switch 1 Series features nominal throughput from 0 to 4Gbps with 4 traffic ports of gigabit Ethernet; the OnDemand Switch 2 Series features nominal throughput from 1-4 Gbps and 16 traffic ports of gigabit Ethernet. In the fourth quarter of 2008, we introduced the OnDemand Switch™ 3 series, which delivers the same acclaimed on demand, “pay-as-you-grow” software license upgrade capability. The OnDemand Switch 3 Series features scalability and investment protection up to 16Gbps of throughput capacity, high port density including 10GE traffic ports, and dual redundant AC/DC power supply.

We intend to offer the entire APSolute® product family on the OnDemand Switch™ series. The AppDirector® product line is the first to be followed by the DefensePro® and LinkProof® product lines.

Our products are compatible with any system that uses the Internet protocol and can operate with various network structures, configurations and operating systems. Our products support a wide variety of IP-based applications, including web services, e-mail, voice, P2P, Enterprise Resource Planning (ERP), Customer Relationship Management tools, database and file transfers.

Operating System (APSolute OS)

APSolute OS is a modular operating system for our products. Users can define classes of traffic and policies for how network resources should handle that traffic based on any combination of network, application, content and user information. APSolute OS service modules (each as described below), which are available on our hardware products, include: Advanced Health Monitoring, Traffic Redirection, Bandwidth Management, Application Acceleration, Intrusion Prevention and DoS Protection. With APSolute OS, enterprises and carriers can address existing and emergent application service requirements across server farms, security and connectivity layers.

- *APSolute OS Application-Smart Classification and Flow Management*

Our innovative APSolute OS features a unique classification and flow management engine that is used to classify traffic based on the industry’s most extensive and granular set of application intelligence. Users can define classes of traffic and policies for how network resources should handle that traffic based on any combination of network, application, content and user information. APSolute OS tracks the flow of traffic end-to-end and implements multi-step decisions at every critical point across the transaction path to ensure optimized application delivery.

- *APSolute OS Health Monitoring and Failure Bypassing*

APSolute OS Health Monitoring continuously checks all network resources detecting failures in real-time and automatically redirecting traffic to the highest performing resources to bypass failures and guarantee high application availability and continuous operations.

- *APSolute OS Traffic Redirection*

APSolute OS Traffic Redirection intelligently distributes traffic across network devices and application servers to optimize the utilization of local and global resources, and ensure service availability, security and redundancy. APSolute OS Traffic Redirection enables maximum utilization of IT infrastructure capacities across farms, local and global sites using an extensive array of traffic redirection algorithms to dispatch traffic including response time, custom algorithm, cyclic distribution, least users, least packets and least bytes.

- *APSolute OS Bandwidth Management*

APSolute OS Bandwidth Management extends granular classification and control over bandwidth resource allocation, prioritizing all network traffic and guaranteeing service levels for mission critical applications across the entire network (with TOS and Diffserv marking).

- *APSSolute OS Application Acceleration*

The APSSolute OS advanced Layer 4-7 application acceleration technologies include: SSL offloading, Transmission Control Protocol (TCP) optimization, caching and reverse proxy, Web compression and advanced image and content compression.

- *APSSolute OS Intrusion Prevention*

Automatically secures application network resources by continuously monitoring and inspecting all network traffic, APSSolute OS Intrusion Prevention immediately terminates suspicious sessions by implementing user/application/ content policies to completely safeguard applications. On-the-fly SSL inspection and IP reassembly provide an additional layer of protection against hacker evasion techniques.

- *APSSolute OS DoS Protection*

Identifies and stops debilitating Denial of Service (DoS), Distributed Denial of Service (DDoS), and Structured Query Language (SQL) injections and protocol/traffic anomalies, protecting the network from service failures and downtime. Using advanced technologies including behavior-based analysis, APSSolute OS DoS Protection automatically detects abnormal requests and thwarts network attacks before they undermine server operations, all the while ensuring secure traffic operations for uninterrupted service continuity.

Management Tool (APSSolute Insite)

The common application management tool which runs across all Radware products is APSSolute Insite. APSSolute Insite is a unified management tool with an intuitive Graphical User Interface (GUI) that provides end-to-end network visibility, control and policy management of all application switching devices.

Based on an easy-to-use site map interface, APSSolute Insite lets users draw their network, configure Radware Application-smart switching devices and set-up the APSSolute OS Services (as described above) to address end-to-end IP application service requirements. APSSolute Insite's statistics module provides real-time and historical views of actual application performance levels for monitoring site-wide operations and simple pinpointing of vulnerabilities and failures, affording complete visibility and control over the performance of Web and Application Servers, security tools, cache servers, anti-virus tools and Internet links. Based on this information, network administrators can decide to add resource capacities, tune bandwidth policies or relocate devices to better manage actual traffic loads and IP application performance requirements. Insite is also offered as a standalone network device under the Insite ManagePro label.

Security Update Service

The Security Update Service, available as an optional subscription service, consists of Periodic Updates, Emergency Updates, and Custom Filters, which are supported by a Security Operations Center (Vulnerability & Exploit Detection; Security Risk Assessment, and Threat Mitigation). The service provides immediate and ongoing security updates to protect customers against the latest threats.

Customers and End-Users

With the exception of our limited direct sales efforts to select customers, we sell our products through distributors or resellers who then sell our products to end users.

We have a globally diversified end-user base, consisting of corporate enterprises including banks, insurance companies, manufacturing and retail, government agencies, media companies and service providers, such as telecommunication carriers, Internet service providers and application service providers. Customers in these different vertical markets deploy Radware products for availability, performance and security of their applications from headquarters to branch offices.

In 2008, approximately 25% of our sales were in the Americas (principally in the United States), 32% were in EMEA (Europe, Middle East and Africa) and 43% in Asia-Pacific, compared to 28%, 33% and 39%, respectively, in 2007, and 34%, 34% and 32%, respectively, in 2006. Other than the United States and China, no single country accounted for more than 10% of our sales for 2008. *For additional details regarding the breakdown of our revenues by geographical distribution and by activity, see Item 5A.*

In 2008, approximately 63% of our sales derived from product sales and 37% derived from service sales, compared to approximately 67% and 33%, respectively, in 2007 and approximately 70% and 30%, respectively, in 2006. For the years ended December 31, 2008 and 2007, no single customer accounted for more than 10% of our sales. For the year ended December 31, 2006, one single customer (a distributor) accounted for 12% of our sales. As of December 31, 2008 and 2007, no single customer represented more than 10% of the trade receivables balance.

Seasonality

Our quarterly operating results have been, and are likely to continue to be, influenced by seasonal fluctuations in our sales and by seasonal purchasing patterns of some of our customers. Some of our customers plan their annual purchasing budget at the beginning of each year which causes the first quarter of the year to be slow compared to other quarters. In addition the third quarter may be weak compared to other quarters because of the slowdown in business activities during the summer months in Europe. Furthermore, certain of our customers tend to make greater capital expenditures towards the end of their own fiscal years thus increasing our sales for such period.

Sales and Marketing

Sales. We market and sell our products primarily through an indirect sales channel that consists of distributors and resellers located in North America, Europe and Asia. In addition, we generate direct sales to select customers mainly in the United States. Our sales channels are supported by our sales managers who are also responsible for recruiting potential distributors and resellers and for initiating and managing marketing projects in their assigned regions. The sales managers are supported by our internal sales support staff that help generate and qualify leads for the sales managers. As of December 31, 2008, we employed a total of 31 sales managers and sales staff in the Americas with locations in various states. We also employed 88 sales managers and sales staff based in the rest of the world, who are responsible for developing and maintaining distribution channels outside the Americas. We have subsidiaries and representative offices and branches in several countries, which promote and market our products and provide customer support in their respective regions.

Marketing Strategy. Our marketing strategy is to enhance brand recognition and maintain our reputation as a provider of technologically advanced, quality Application Delivery and Network Security solutions to help drive demand for our products. We seek to build upon our marketing and branding efforts globally to achieve greater worldwide sales. Our sales force and marketing efforts are principally directed at developing brand awareness, generating demand and providing support to our distributors/resellers to promote sales. We participate in major trade shows, regionally-based events/seminars and offer support to our distributors who participate in these events. We also invest in online and search engine advertising campaigns, global public relations and regionalized field marketing campaigns. In addition to our independent marketing efforts, we invest in joint marketing efforts with our distributors, value added resellers and other companies that have formed strategic alliances with us.

We have entered into co-marketing arrangements with companies in other complementary sectors, in order to broaden our customer base by selling joint solutions comprised of such complementary products. As an example, an applications vendor could sell our AppDirector™ to its customers in conjunction with its application in order to load-balance and optimize the application performance. Such co-marketing arrangements include: ArcSight Inc; Comverse; Hewlett Packard Company; IBM, Inc.; InfoSys Technologies Ltd; Microsoft Corporation; Oracle Corporation; Riverbed Technology Inc.; SAP AG.; Juniper Networks, Inc.; Intellitactics, Inc. and VMWare, Inc. However, there is no assurance that the above co-marketing and strategic alliance agreements would result in a substantial increase in our revenues.

Strategic Alliances and Original Equipment Manufacturer Agreements. We have entered into strategic alliances and original equipment manufacturer agreements with other software and hardware vendors, as well as mutual channel information sharing arrangements. We believe that these companies have significant customer relationships and offer products which complement our products. The products are branded with the names of these companies or co-branded with our name. These agreements are standard distributor agreements, purchase agreements, OEM (original equipment manufacturer) agreements or other specific agreements. We plan to further invest in the development of strategic alliances in order to provide greater access to our target markets and enhance our brand name. We have also entered into original equipment manufacturer agreements with several software vendors, in which we incorporate such vendors' software into our products to create additional value to our customers.

Technical Management

Our technical team, which consists of 130 employees worldwide as of December 31, 2008, supports our sales force during the sales process, assists our customers and distributors with the initial installation, set-up and ongoing support of our products, trains distributors and customers to use our products and provides software updates and product upgrades for our products. In addition, our technical team trains and certifies our distributors to provide limited technical support in each of the geographical areas in which our products are sold, and is directly responsible for remote support. Our Certainty Support Program provides offerings which allow customers to automatically get new software versions of their products and obtain optimized performance by purchasing any of the following five optional offerings: extended warranty, software updates, 24x7 help-desk (directly to our customers and through our distributors), on-site support and unit replacement.

Research and Development

In order to maintain our share of the Application Delivery and Network Security markets, we place considerable emphasis on research and development to expand the capabilities of our existing products, develop new products and improve our existing technologies and capabilities. We believe that our future success will depend upon our ability to maintain our technological expertise, enhance our existing products and introduce, on a timely basis, new commercially viable products that will continue to address the needs of our customers. Accordingly, we intend to continue devoting a significant portion of our personnel and financial resources to research and development. In order to identify market needs and to define appropriate product specifications, as part of the product development process we seek to maintain close relationships with current and potential distributors, customers and vendors in related industry sectors.

As of December 31, 2008, our research and development staff consisted of 191 employees. Research and development activities take place mainly at our facilities in Israel. We employ established procedures for the requirement management, development and quality assurance of our new product developments. Our research and development organization is divided into Security, Application Delivery and Management groups. Within those groups the organization is divided according to our existing products. Each product group is headed by a group leader and includes team leaders and engineers. Each group has a dedicated quality assurance team. In addition, we have an infrastructure department responsible for the development of our platforms which are the basis for all products, serving all product groups, which consists of a senior group leader, group leaders, team leaders, and engineers. The heads of all research and development divisions report to the Chief Operating Officer.

We occasionally use third-party subcontractors for the development of portions of research and development projects.

Manufacturing and Suppliers

The assembly and integration of our products, quality assurance testing, packaging and shipping operations are primarily performed at our facility in Jerusalem, Israel.

We rely on third-party manufacturing vendors to provide key components of our products.

USR manufactures most of the circuit boards which are the principal hardware component used in our products. It supplies us with finished circuit boards for final assembly. The other components and subassemblies included in our products are supplied to USR from a limited group of suppliers and subcontractors. USR monitors each stage of the circuit board production process, including the selection of components and subassembly suppliers. USR is ISO 9002 certified, indicating that its manufacturing processes adhere to established quality standards. In addition, we rely on Nexcom to provide us with circuit boards for our new OnDemand Switch platform.

Circuit boards are the principal component which we use in the manufacturing process of our products. If we are unable to acquire circuit boards from USR on acceptable terms, or should USR cease to supply us with circuit boards for any reason, we may not be able to identify and integrate an alternative source of supply in a timely fashion or at the same costs. Any transition to one or more alternate suppliers would likely result in delays, operational problems and increased costs, and may limit our ability to deliver our products to our customers on time for such transition period. In 2007 we entered into agreement with Nexcom, an additional supplier, and in 2008 shifted approximately 50% of our purchases to such second supplier. The manufacturing process with this supplier, who is ISO 9001 certified, is similar to the process with USR. We expect that in 2009 we would shift an additional share of our purchases to Nexcom, which is the sole manufacturer of the circuit board for our new OnDemand Switch platform, converting Nexcom to our main supplier. Therefore, our dependency of Nexcom may increase.

Proprietary Rights

We rely on patent, trademark and trade secret laws, as well as confidentiality agreements and other contractual arrangements with our employees, distributors and others to protect our technology. We have a policy that requires our employees to execute employment agreements, including confidentiality and non-compete provisions.

We have registered trademarks for “Radware®”, “APSolute®”, “Web Server Director®”, “Cache Server Director®”, “FireProof®”, “LinkProof®”, “Triangulation®”, “Smart Nat®”, “Get Certain®”, “CertainT®”, “Peer Director®”, “Synapps Architecture®”, “DefensePro®”, “StringMatch Engine®”, “CID – Content Inspection Director®”, “SIP Director®”, “AppDirector®”, “AppXcel®”, “SecureFlow®” and “AppXML®” and we have trademark applications pending for “OnDemand Switch™”, “Uplink™”, “Virtual Director™”, “AppWall™”, “Apsolute Insite™” and “APSolute Vision™”. We do not currently own any registered copyrights. We have registered patents in the United States for our triangle redirection method used for the global load balancing, for our mechanism for efficient management and optimization of multiple links used in our LinkProof product, for our method for load balancing by global proximity used in our WSD product, for our method for controlling traffic on links between autonomous BGP systems and for our passive monitoring and event detection mechanisms, used for business event monitoring in our Inflight product. We have pending patent applications and provisional patents in connection with several methods and features used in our products. These applications may not result in any patent being issued, and, if issued, the patents may not provide adequate protection against competitive technology and may not be held valid and enforceable if challenged. In addition, other parties may assert rights as inventors of the underlying technologies, which could limit our ability to fully exploit the rights conferred by any patent that we receive. Our competitors may be able to design around any patent we receive and other parties may obtain patents that we would need to license or circumvent in order to exploit our patents.

The protective steps we have taken may be inadequate to deter misappropriation of our technology and information. We may be unable to detect the unauthorized use of, or take appropriate steps to enforce, our intellectual property rights. Some of the countries in which we sell our products do not protect intellectual property to the same extent as the United States and Israel. In addition, our competitors may independently develop technologies that are substantially equivalent or superior to our technology. Any licenses for intellectual property that might be required for our services or products may not be available on reasonable terms.

Competition

The Application Delivery and Network Security markets are highly competitive and we expect competition to intensify in the future. We may lose market share if we are unable to compete effectively with our competitors. Our principal competitors in the Application Delivery solutions market include: F5 Networks, Inc., Cisco Systems, Inc., Citrix Systems, Inc. and Brocade Communications Systems, Inc. (Foundry Networks, Inc.). In addition, we face competitors in the Network Security space, with respect to our Intrusion Prevention Systems (IPS). Such principal competitors include Juniper Networks, Inc., 3Com Systems, Inc. (TippingPoint Technologies Inc.), McAfee, Inc., Sourcefire, Inc., and IBM Corporation (Internet Security Systems), we expect to continue to face additional competition as new participants enter the market or extend their portfolios into related technologies. Larger companies with substantial resources, brand recognition and sales channels may also form alliances with or acquire competing Application Delivery or Network Security solutions and emerge as significant competitors. For example, Brocade became a competitor in the Application Delivery market by acquiring Foundry. Competition may result in lower prices or reduced demand for our products and a corresponding reduction in our ability to recover our costs, which may impair our ability to maintain and increase profitability. Furthermore, the dynamic market environment, which is demonstrated by the above acquisitions, poses a challenge in predicting market trends and expected growth.

We believe that our success will depend primarily on our ability to provide more technologically advanced and cost-effective Application Delivery and Network Security solutions, and more responsive customer service and support, than our competitors. However, we cannot assure you that the products we offer will compete successfully with those of our competitors. Furthermore, should competition intensify, we may have to reduce the prices of our products which will negatively impact our business and financial condition.

Government Regulations

Environmental Regulations

Our activities in Europe require that we comply with European Union Directives with respect to product quality assurance standards and environmental standards. The “RoHs” Directive requires products sold in Europe to meet certain design specifications, which exclude the use of hazardous substances. Directive 2002/96/EC on Waste Electrical and Electronic Equipment (known as the “WEEE” Directive) requires producers of electrical and electronic equipment to register in different European countries and to provide collection and recycling facilities for used products. We are currently in compliance with the RoHs and WEEE regulations.

Israeli Office of Chief Scientist

From time to time, eligible participants may receive grants under programs of the Office of the Chief Scientist of the Israeli Ministry of Industry, Trade and Labor, or the Chief Scientist. Grants received are generally repaid through a mandatory royalty based on revenues from the sale of products (and ancillary services) incorporating know-how developed, in whole or in part, with the grants. This governmental support is conditioned upon the participant’s ability to comply with certain applicable requirements and conditions specified in the Chief Scientist’s program and with the provisions of the Law for the Encouragement of Research and Development in the Industry, 1984, and the regulations promulgated thereunder, or the Research and Development Law.

Under the Research and Development Law, research and development programs that meet specified criteria and are approved by the Research Committee of the Chief Scientist are eligible for grants usually of up to 50% of certain approved expenditures of such programs, as determined by said committee. In exchange, the recipient of such grants is required to pay the Chief Scientist royalties from the revenues derived from products incorporating know-how developed within the framework of each such program or derived therefrom (including ancillary services in connection therewith), up to an aggregate of 100% of the dollar-linked value of the total grants received in respect of such program, plus interest.

The Research and Development Law generally requires that the product developed under a program be manufactured in Israel. However, upon notification to the Chief Scientist, up to 10% of the manufacturing volume may be performed outside of Israel. Furthermore, upon the approval of the Chief Scientist, a greater portion of the manufacturing volume may be performed outside of Israel, provided that the grant recipient pays royalties at an increased rate, which may be substantial, and the aggregate repayment amount is increased up to 300% of the grant, depending on the portion of the total manufacturing volume that is performed outside of Israel. The Research and Development Law further permits the Chief Scientist, among other things, to approve the transfer of manufacturing rights outside Israel in exchange for an import of different manufacturing into Israel as a substitute, in lieu of the increased royalties. The Research and Development Law also allows for the approval of grants in cases in which the applicant declares that part of the manufacturing will be performed outside of Israel or by non-Israeli residents and the Research Committee is convinced that doing so is essential for the execution of the program. This declaration will be a significant factor in the determination of the Chief Scientist whether to approve a program and the amount and other terms of benefits to be granted. The increased royalty rate and repayment amount will be required in such cases.

By December 31, 2001, we repaid by way of royalties the full amount we owed to the Chief Scientist. In 2004, we applied, together with another company, to obtain a grant from the Chief Scientist under the “consortium R&D project” track. The Chief Scientist approved the maximum grant to the project of approximately \$0.2 million. In 2005, we applied to obtain an additional grant from the Chief Scientist, under the same project. The Chief Scientist approved an additional grant to the project in an additional maximum amount of approximately \$0.2 million. During 2005 and 2006 we have received an aggregate amount of \$0.4 million for this project from the Chief Scientist. No future grants are expected in relation to this project.

The Research and Development Law also provides that know-how developed under an approved research and development program may not be transferred to third parties in Israel without the approval of the Research Committee. Such approval is not required for the export of any products resulting from such research or development. The Research and Development Law further provides that the know-how developed under an approved research and development program may not be transferred to third parties outside Israel, except in certain special circumstances and subject to the Chief Scientist’s prior approval. The Chief Scientist may approve the transfer of Chief Scientist-funded know-how outside Israel, generally in the following cases: (a) the grant recipient pays to the Chief Scientist a portion of the sale price paid in consideration for such Chief Scientist-funded know-how (according to certain formulas), or (b) the grant recipient receives know-how from a third party in exchange for its Chief Scientist-funded know-how, or (c) such transfer of Chief Scientist-funded know-how arises in connection with certain types of cooperation in research and development activities.

The Research and Development Law imposes reporting requirements with respect to certain changes in the ownership of a grant recipient. The law requires the grant recipient and its controlling shareholders and foreign interested parties to notify the Chief Scientist of any change in control of the recipient or a change in the holdings of the means of control of the recipient that results in a non-Israeli becoming an interested party directly in the recipient and requires the new interested party to undertake to the Chief Scientist to comply with the Research and Development Law. In addition, the rules of the Chief Scientist may require additional information or representations in respect of certain of such events. For this purpose, “control” is defined as the ability to direct the activities of a company other than any ability arising solely from serving as an officer or director of the company. A person is presumed to have control if such person holds 50% or more of the means of control of a company. “Means of control” refers to voting rights or the right to appoint directors or the chief executive officer. An “interested party” of a company includes a holder of 5% or more of its outstanding share capital or voting rights, its chief executive officer and directors, someone who has the right to appoint its chief executive officer or at least one director, and a company with respect to which any of the foregoing interested parties owns 25% or more of the outstanding share capital or voting rights or has the right to appoint 25% or more of the directors. Accordingly, any non-Israeli who acquires 5% or more of our ordinary shares will be required to notify the Chief Scientist that it has become an interested party and to sign an undertaking to comply with the Research and Development Law.

The Israeli authorities have indicated in the past that the government may further reduce or abolish the Chief Scientist grants in the future. Even if these grants are maintained, we cannot presently predict what would be the amounts of future grants, if any, that we might receive.

C. Organizational Structure

We have a wholly-owned subsidiary in the United States, Radware Inc., which conducts the sales and marketing of our products in America. We also have subsidiaries in Australia, France, Germany, the United Kingdom, Italy, Japan, Singapore, Korea, Canada, Switzerland and India. An additional subsidiary of ours is Covelight Systems, Inc., acquired in April 2007 and located in the United States. We have also established representative offices in China, Taiwan and Russia. All of our subsidiaries are wholly-owned. Our subsidiaries include:

| <u>Name of Subsidiary</u> | <u>Country of Incorporation</u> |
|-----------------------------|--------------------------------------|
| Radware Inc. | New Jersey, United States of America |
| Radware UK Limited | United Kingdom |
| Radware France | France |
| Radware Srl | Italy |
| Radware GmbH | Germany |
| Nihon Radware KK | Japan |
| Radware Australia Pty. Ltd. | Australia |
| Radware Singapore Pte. Ltd. | Singapore |
| Radware Korea Ltd. | Korea |
| Radware Canada Inc. | Canada |
| Radware GmbH | Switzerland |
| Radware India Pvt. Ltd. | India |
| Covelight Systems, Inc. | Delaware, United States of America |

Yehuda Zisapel, one of our co-founders and shareholders, is a member of our Board of Directors and the father of our Chief Executive Officer and President, Roy Zisapel. Individually or together with his brother, Zohar Zisapel, who is also one of our shareholders, Yehuda Zisapel is also a founder, director and/or principal shareholder of several other companies which, together with our Company and our subsidiaries listed above, are known as the RAD-Bynet Group. These companies include, among others:

| | | |
|---------------------------------|---|------------------------|
| AB-NET Communications Ltd. | Ceragon Networks Ltd. | WISAIR Inc. |
| BYNET Data Communications Ltd. | Commex Technologies Ltd. | Sanrad Inc. |
| BYNET Electronics Ltd. | Internet Binat Ltd. | RADLive Ltd. |
| BYNET SEMECH (outsourcing) Ltd. | Packetlight Networks Ltd. | RADView Software Ltd. |
| Bynet Software Systems Ltd. | RAD-Bynet Properties and Services (1981) Ltd. | RADVision Ltd. |
| Bynet System Applications Ltd. | RADCOM Ltd. | RADWIN Ltd. |
| Chanellot Ltd. | RAD Data Communications Ltd. | Silicom Ltd. |
| Radirect, Inc. | | Radbit Computers, Inc. |

The RAD-Bynet Group also includes several other holdings, real estate companies, biotech and pharmaceutical companies. The above list does not constitute a complete list of the investments of Messrs. Yehuda and Zohar Zisapel.

In addition to engaging in other businesses, members of the RAD-Bynet Group are actively engaged in designing, manufacturing, marketing and supporting data communications products, none of which currently compete with our products. Some of the products of members of the RAD-Bynet Group are complementary to, and may be used in connection with, our products. See also “Item 7 – Major Shareholders and Related Party Transactions - Related Party Transactions”.



D. Property, Plants and Equipment

Israel. Our headquarters and principal administrative, finance, research and development and marketing operations are located in approximately 66,000 square feet of leased office space in Tel Aviv, Israel, in two buildings: one, consisting of approximately 36,000 square feet, with a lease expiring in November 2012, and the other consisting of 30,000 square feet, with a lease expiring in May 2011. Both facilities are leased from companies owned by Messrs. Yehuda and Zohar Zisapel. For more information see – “Item 7 - Major Shareholders and Related Parties Transactions.” We also lease office space of approximately 5,920 square feet in a nearby location in Israel from an unaffiliated party. The lease for such office space expires in March 2009.

For further details regarding the lease agreements of our headquarters please refer to the summary of the lease agreements filed by us as Exhibit 4.7 in Item 19.

In addition, we lease approximately 6,291 square feet of space in Jerusalem for development facilities from an affiliated company owned by Messrs. Yehuda and Zohar Zisapel. The lease expires in February 2011. We also sublease approximately 2,150 square feet in Jerusalem for our manufacturing facility. The sublease expires in April 2009. For more information see – “Item 7 - Major Shareholders and Related Parties Transactions.”

The aggregate annual rent for the premises in Israel for 2008 was approximately \$1,439,000.

Other locations. In the United States, we lease approximately 14,838 square feet of property in Mahwah, New Jersey from a company owned by Yehuda and Zohar Zisapel. The lease for such property is set to expire in April 2010. For more information see – “Item 7 - Major Shareholders and Related Parties Transactions.” We lease approximately 6,881 square feet of property for our research and development facilities in North Carolina, the lease for which will expire in September 2012. In addition, we lease facilities for the operation of our subsidiaries and representative offices in several locations in Europe and Asia-Pacific, all from unrelated third parties.

The aggregate annual rent for our premises located outside Israel was approximately \$2,132,000 in 2008.

ITEM 4A. UNRESOLVED STAFF COMMENTS

None.

ITEM 5. OPERATING AND FINANCIAL REVIEW AND PROSPECTS

A. General

Our discussion and analysis of our financial condition and results of operation are based upon our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States. Our operating and financial review and prospects should be read in conjunction with our financial statements, accompanying notes thereto and other financial information appearing elsewhere in this annual report.

We are a provider of integrated application delivery and network security solutions, assuring availability, performance and security of business critical networked applications. We began selling our products in 1997, and currently have local offices, subsidiaries or branches in 15 countries in Asia-Pacific, Europe and the Americas.

We sell to a large extent through sales channels such as resellers and distributors. Most of our direct sales are to strategic customers in the United States.

Most of our revenues are generated in U.S. dollars or are dollar-linked and the majority of our expenses are incurred in dollars and, as such, we use the dollar as our functional currency. Our consolidated financial statements are prepared in dollars and in accordance with U.S. GAAP.

Revenues. Our revenues are derived primarily from sales of our products and, to a lesser extent, from sales of post-contract customer support through our Certainty Support program and sales of a security subscription service the “Security Update Service” (“SUS”). We generally recognize product revenue when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable, no further obligation exists and collectability is probable. Post-contract customer support and the SUS service, which represents mainly software update subscriptions, help-desk support and unit repairs or replacements, is recognized ratably over the contract period.

Cost of Sales. Cost of sales refers to both products and service revenues and consists primarily of the cost of circuit boards and other components required for the assembly of our products, salaries and related personnel expenses for those engaged in the final assembly and maintenance service of our products and other overhead costs. Most of our cost of sales expenses are not fixed costs and are directly related to our revenues.

Research and Development Expenses, net. Research and development (“R&D”) expenses consist primarily of salaries and related personnel expenses, costs of subcontractors and prototype expenses related to the design, development, quality assurance and enhancement of our products, and depreciation of equipment purchased for the development and testing processes. All research and development costs are expensed as incurred. We believe that continued investment in research and development is critical to attaining our strategic product objectives.

Marketing and Selling Expenses. Marketing and selling expenses consist primarily of salaries, commissions and related personnel expenses for those engaged in the sales and marketing of our products as well as the cost of operating the offices which are located outside Israel and are engaged in the promotion, marketing and support of our products, in addition to the related trade shows, advertising, promotions, web site maintenance and public relations expenses.

General and Administrative Expenses. General and administrative expenses consist primarily of salaries and related personnel expenses for executive, accounting and administrative personnel, professional fees (which include legal, audit, expenses related to the implementation of Section 404 of the Sarbanes-Oxley Act of 2002, and additional consulting fees), bad debt expenses and other general corporate expenses.

Stock-based compensation. Our expenses also included amortization of stock-based compensation, which is allocated among cost of sales, research and development expenses, marketing and selling expenses and general and administrative expenses, based on the division in which the recipient of the option grant is employed. The stock-based compensation is amortized to operating expenses over the vesting period of the individual options.

On January 1, 2006, we adopted Statement of Financial Accounting Standards (“SFAS”) No. 123 (revised 2004), “Share-Based Payment” (“SFAS 123(R)”) which requires the measurement and recognition of compensation expense based on estimated fair values for all share-based payment awards made to employees and directors. SFAS 123(R) supersedes Accounting Principles Board Opinion No. 25, “Accounting for Stock Issued to Employees” (“APB 25”), for periods beginning in fiscal 2006. In March 2005, the Securities and Exchange Commission (the “SEC”) issued Staff Accounting Bulletin No. 107 (“SAB 107”) relating to SFAS 123(R). We have applied the provisions of SAB 107 in our adoption of SFAS 123(R).

Our adoption of SFAS No. 123(R) resulted in additional operating expenses of \$4.5 million and \$8.1 million in 2007 and 2008, respectively, and contributed 23 cents and 42 cents loss per diluted share in each of these years, respectively. The impact of SFAS 123(R) on our results of operations in future periods may be affected by our stock price as well as assumptions regarding a number of complex and subjective variables and the related tax impact. These variables include, but are not limited to, the volatility of our stock price, expected forfeiture rate and employee stock option exercise patterns.

On December 31, 2007, we granted 500,000 stock options to Roy Zisapel, our Chief Executive Officer, with an exercise price of \$15.22 per share. The exercise of these options is contingent upon the increase in the market price of our ordinary shares above certain share closing prices as detailed in the grant terms. The options expire seven years from the grant date. For details on the calculation of the fair market value of the options see note 10 to our Consolidated Financial Statements included in this annual report.

Financial Income (Expenses), Net. Financial income, net consists primarily of interest earned on short-term and long-term bank deposits, and of amortization of premiums, accretion of discounts and interest earned on investment in marketable securities of proceeds from the issuance of our ordinary shares to the public, from the exercise of options to purchase our ordinary shares, from cash generated from our operations and from income and expenses from the translation of monetary balance sheet items denominated in non-dollar currencies.

Taxes. Israeli companies are generally subject to corporate tax on their taxable income at the rate of 27% for the 2008 tax year and 26% for the 2009 tax year. Following an amendment to the Israeli Income Tax Ordinance [New Version], 1961 (the “Tax Ordinance”), which came into effect on January 1, 2006, the corporate tax rate is scheduled to decrease to 25% for the 2010 tax year and thereafter. Israeli companies are generally subject to capital gains tax at a rate of 25% for capital gains (other than gains deriving from the sale of listed securities) derived after January 1, 2003. However, we have established an approved enterprise program, which is eligible for the tax benefits for operational profit, described below under the heading “Corporate Tax Rate”. These benefits result in part of our income being tax exempt or taxed at a lower rate for some time after we begin to report taxable income. The tax rate depends upon the percentage of our income derived at that time from the approved enterprise program. The tax benefits depend on our meeting the requirements of the approved enterprise program and there is no assurance we will be able to obtain such benefits. We have carry-forward capital losses for tax purposes and we anticipate utilizing these capital losses in subsequent years. In addition, we and our U.S. subsidiary have carry-forward tax losses to offset against future taxable profit. During 2008 we provided a full valuation allowance with respect to these carry-forward tax losses due to uncertainty in its future utilization. Other two subsidiaries of ours also have carry-forward tax losses to offset against future taxable profit. We have recorded a deferred tax asset in relation to these carry-forward tax losses of these two subsidiaries and we anticipate that we will utilize part of these tax losses in 2009 and subsequent years. Other subsidiaries of ours are taxed according to the laws in their countries of incorporation and tax expenses are recorded accordingly. We may incur tax expenses in 2009 which we anticipate to be at a rate of up to 10% of our operating income, assuming we are profitable in 2009.

Market Trends. According to IT analyst estimations, the IT market in 2008 continued to grow slightly but at a lesser rate than 2007. Thus far in 2009, growth has been slow due to real-estate and financial issues leading to recession fears. More specifically, the growth rate of overall IT expenditure in the US has steadily declined since the last quarter of 2008, with estimates by IDC at 0.1% growth for 2009. IDC further advises that hardware spending has suffered a sharper cutback than software expenditures as companies try to extend asset lifecycles. Furthermore, in the Layer 4-7 (application delivery) sector, worldwide growth is estimated by IDC to be 3.2% for 2009; and, in the Intrusion Prevention sector of the network security market, the growth rate according to Gartner already slowed in 2008 down to 12.3% from a rate of 32.4% in 2007. In light of the foregoing, it is difficult to predict the conditions of our market going forward. In addition, we believe that market conditions cause our customers and potential customers to be more conservative in planning their spending. If the global conditions deteriorate, and companies in our target markets decide to reduce capital expenditures or if our customers continue to experience low visibility of future market trends, we may experience a reduction in sales, as well as downward pressure on the price of our products. The above mentioned scenarios would have a material adverse effect on our business, operating results and financial condition.

We expect to continue to face additional competition as new participants enter the market or extend their portfolios into related technologies. For example, F5 acquired Attune Systems adding further virtualization capabilities post its acquisition of Acopia Networks, Citrix acquired XenSource to add virtualization to its respective portfolios and Brocade entered the space by way of its acquisition of Foundry Networks. The dynamic market environment, which is demonstrated by the above acquisitions, poses a challenge in predicting market trends and expected growth.

We intend to continue our investment in the marketing and branding of our APSolute product family, in order to broaden market acceptance of such products. Such investment includes: participation in high-touch regional seminars; investment in online marketing and advertising programs; co-marketing with distributors, resellers and alliances; testing of our products by leading firms in the industry; and similar related activities. There is no assurance that we will be successful in such marketing and selling activities and that the increase in revenues, if any, will justify the investment.

Business Combinations. In December 2005, we acquired the business of V-Secure which included the acquisition of intellectual property, technology, customer relationships and goodwill. The initial consideration for the acquisition was \$9,168,000, out of which an amount of \$9,011,000 was paid in cash; and \$148,000 was paid by issuance of fully vested warrants to V-Secure to purchase 45,454 ordinary shares of the Company. The remaining balance was related to acquisition costs payable. The agreement by the parties provided for additional cash consideration of \$6,000,000 subject to meeting certain requirements. Pursuant to an addendum signed by the parties in 2006, additional cash consideration of \$3,000,000 was paid as part of the purchase agreement during 2006 and V-Secure waived any claim or demand for additional payments. Accordingly, the total consideration for the acquisition amounted to \$12,168,000.

The purchase price for the above acquisition was allocated to the identifiable intangible assets acquired (which have been valued by a third-party valuation specialist) based upon their estimated fair values. The acquisition was accounted for under the purchase method of accounting. During 2008, no impairment loss was recorded in connection with the acquired intangible assets. See also Note 1e to our Consolidated Financial Statements included in this annual report.

In April 2007, we acquired the business of Covelight which included the acquisition of its working capital, property and equipment, technology, customer relationships and goodwill. The total consideration for the acquisition was \$7,660,000 which was paid in cash, of which \$160,000 was related to acquisition costs. Additional cash consideration of \$8,500,000 was to be payable contingent upon reaching sales performance targets by April 2008. Since the sales targets were not achieved we were not required to pay the additional earn-out amount. Accordingly the total consideration for the acquisition amounted to \$7,660,000.

The acquisition of Covelight was accounted for under the purchase method of accounting. The purchase price was allocated to the identifiable intangible assets acquired (which have been valued by management using a third-party valuation specialist) based upon their estimated fair values. During 2008, we assessed whether there has been an impairment of the intangible assets acquired in the acquisition of Covelight. In order to make such assessment, our management has developed the required assumptions and the related forecasts underlying the valuation and used a third party valuator in applying the customary valuation techniques and required economic models. Following this valuation, an impairment charge of approximately \$2.0 million was recorded in connection with the acquired intangible assets. See also note 1f to our Consolidated Financial Statements included in this annual report.

In February 2009, we entered into an asset purchase agreement with Nortel, to acquire Nortel's Layer 4-7 application delivery business. This transaction was subject to higher and better bids and is now pending bankruptcy court approvals. See "Item 10C-Additional Information – Material Contracts."

Critical Accounting Policies

Our consolidated financial statements are prepared in accordance with U.S. GAAP. These accounting principles require management to make certain estimates, judgments and assumptions based upon information available at the time that they are made, historical experience and various other factors that are believed to be reasonable under the circumstances. These estimates, judgments and assumptions can affect the reported amounts of assets and liabilities as of the date of the financial statements, as well as the reported amounts of revenues and expenses during the periods presented.

In many cases, the accounting treatment of a particular transaction is specifically dictated in U.S. GAAP and does not require management's judgment in its application. There are also areas in which management's judgment in selecting among available alternatives would produce a materially different result. The Company's management has reviewed these critical accounting policies and related disclosures with the Company's Audit Committee. See note 2 to our Consolidated Financial Statements included in this annual report, which contains additional information regarding our accounting policies and other disclosures required by U.S. GAAP.

Our management believes the significant accounting policies which affect its more significant judgments and estimates used in the preparation of its consolidated financial statements and which are the most critical to aid in fully understanding and evaluating our reported financial results include the following:

- Revenue recognition;
- Accounting for doubtful accounts;
- Marketable securities;
- Inventory valuation;
- Goodwill and intangible assets valuation, and impairment analysis;
- Stock-based compensation;
- Income taxes; and
- Legal contingencies.

Revenue Recognition. The Company and its subsidiaries generate revenues from selling their products and post-contract customer support to a large extent through distributors and resellers, all of which are considered end-users. In North America (and rarely in the rest of the world), the Company also generates revenues from direct sales to select end-users.

Revenues from product sales are recognized when delivery has occurred, persuasive evidence of an agreement exists, the fee is fixed or determinable, no further obligation exists and collectability is probable.

Revenues in arrangements with multiple deliverables are recognized under the "residual method" when Vendor specific objective evidence ("VSOE") of fair value exists for all undelivered elements, no VSOE exists for the delivered elements, and all other revenue recognition criteria are satisfied. VSOE for post-contract customer support is determined based on the price when it is sold separately in similar arrangements. The price may vary in the territories and vertical markets in which the Company conducts business. Price is determined by using a consistent percentage of the product price.

Revenue derived from post-contract customer support, which represents mainly software subscription, SUS and unit replacement and repair services, which is not considered essential to the functionality of the product, is recognized ratably over the contract period, which is typically one year.

Revenues from training and installation, which are considered as not essential to the functionality of the product, included in multiple elements arrangements are recognized at the time they are rendered. We do not have material revenues from training and installations.

The Company and its subsidiaries provide a provision for product returns and stock rotation based on their experience with historical sales returns, analysis of credit memo data and other known factors, in accordance with SFAS No. 48 "Revenue Recognition When Right of Return Exists".

Deferred revenue includes unearned amounts received under post-contract customer support and SUS.

Accounting for Doubtful Accounts. Our accounts receivable are derived from our sales to our customers located all over the world. We perform periodic credit evaluations of our customers' financial condition. We maintain an allowance for doubtful accounts for estimated losses, which may result from the inability of our customers to make required payments. Management exercises judgment as to its ability to collect outstanding receivables. Allowances for doubtful accounts are made based upon a specific review of all significant outstanding invoices. For those invoices not specifically reviewed, allowances for doubtful accounts are made based upon the age of the receivable. In determining the allowance, we analyze our historical collection experience and current economic trends.

Marketable Securities. We account for investments in marketable debt securities in accordance with SFAS No. 115, "Accounting for Certain Investments in Debt and Equity Securities" ("SFAS 115"). Management determines the appropriate classification of its investments in debt securities at the time of purchase and reevaluates such determinations at each balance sheet date.

As of December 31, 2008, all of our debt securities are classified as available-for-sale securities. Available-for-sale securities are stated at fair value, with unrealized gains and losses reported in accumulated other comprehensive income (loss), a separate component of shareholders' equity. Realized gains and losses on sales of investments, as determined on a specific identification basis, are included in financial income, net. As of December 31, 2007 and December 31, 2008, no impairment losses have been identified.

Valuation of financial instruments

Effective January 1, 2008, we adopted SFAS 157, Fair Value Measurements, and effective October 10, 2008, we adopted FSP No. SFAS 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active", except as it applies to the non-financial assets and non-financial liabilities subject to FSP 157-2. SFAS 157 clarifies that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering such assumptions, SFAS 157 establishes a three-tier value hierarchy, as set forth below, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

- Level 1 - Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2 - Include other inputs that are directly or indirectly observable in the marketplace.
- Level 3 - Unobservable inputs which are supported by little or no market activity.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

The actual value at which such securities could actually be sold or settled with a willing buyer or seller may differ from such estimated fair values depending on a number of factors, including, but not limited to, current and future economic conditions, the quantity sold or settled, the presence of an active market and the availability of a willing buyer or seller.

Inventory Valuation. At each balance sheet date, we evaluate our inventory balance for excess quantities and obsolescence. This evaluation includes an analysis of sales levels by product and projections of future demand. In addition, we write off inventories that are considered obsolete. Remaining inventory balances are adjusted to the lower of cost or market value. If future demand for our old or new products, or market conditions are less favorable than our projections, inventory write-downs may be required and would be reflected in cost of sales for such period. During 2007 we performed inventory write-offs in a total amount of \$2.1 million, mainly in connection with the release of our new generation platforms. During 2008 we performed inventory write-offs in a total amount of \$0.6 million, mainly in connection with slow-moving items and discontinued products.

Goodwill and Intangible assets. Goodwill represents excess of the costs over the fair value of net assets of businesses acquired. Under SFAS No. 142 ("SFAS 142"), goodwill is not amortized. SFAS 142 requires goodwill to be tested for impairment at least annually thereafter or between annual tests in certain circumstances, and written down when impaired. Goodwill is tested for impairment by comparing the fair value with its carrying value. Fair value is determined using discounted cash flows and market multiples. During the years ended December 31, 2007 and December 31, 2008 no such impairment losses were recorded.

Intangible assets, other than goodwill, are amortized over their useful life using a method of amortization that reflects the pattern in which the economic benefits of the intangible assets are consumed or otherwise used up, in accordance with SFAS 142. Acquired technology and customer relationships are amortized over an estimated period between one to ten years during which benefits are expected to be received. During 2008, an amount of \$906,000 was recorded as amortization expenses, included in cost of revenues and sales and marketing expenses. As of December 31, 2007, no impairment losses have been identified. As of December 31, 2008 an impairment loss of approximately \$2.0 million was recorded in connection with the acquired technology of Covelight, included in costs of revenues.

Stock-based compensation. For a discussion of the accounting of stock-based compensation - see "Item 5 – Operating and Financial Review and Prospects - General - Stock-based compensation", and note 2p to our Consolidated Financial Statements included in this annual report.

Income Taxes. We and our subsidiaries account for income taxes in accordance with SFAS No. 109, "Accounting for Income Taxes" ("SFAS 109"). This statement prescribes the use of the liability method whereby deferred tax assets and liability account balances are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. We and our subsidiaries provide a valuation allowance, if necessary, to reduce deferred tax assets to their estimated realizable value if it is more likely than not that a portion or all of the deferred tax assets will not be realized.

In July 2006, the Financial Accounting Standards Board (the "FASB") issued FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109" ("FIN 48"). FIN 48 clarifies the accounting for income taxes by prescribing the minimum recognition threshold a tax position is required to meet before being recognized in the financial statements. FIN 48 utilizes a two-step approach for evaluating tax positions. Recognition (step one) occurs when an enterprise concludes that a tax position, based solely on its technical merits, is more-likely-than-not to be sustained upon examination. Measurement (step two) is only addressed if step one has been satisfied (i.e., the position is more-likely-than-not to be sustained) otherwise a full liability in respect of a tax position not meeting the more-than-likely-than-not criteria is recognized. Under step two, the tax benefit is measured as the largest amount of benefit, determined on a cumulative probability basis, which is more-likely-than-not to be realized upon ultimate settlement.

FIN 48 applies to all tax positions related to income taxes subject to FAS 109. This includes tax positions considered to be "routine" as well as those with a high degree of uncertainty. FIN 48 has expanded disclosure requirements, which include a tabular roll forward of the beginning and ending aggregate unrecognized tax benefits as well as specific detail related to tax uncertainties for which it is reasonably possible the amount of unrecognized tax benefit will significantly increase or decrease within twelve months (See also note 12a to the consolidated financial statements). FIN 48 is effective for fiscal years beginning after December 15, 2006. The cumulative effect of applying FIN 48 is reported as an adjustment to the opening balance of retained earnings. The adoption of FIN 48 as of January 1, 2007, did not have any effect on our retained earnings and financial position.

Legal Contingencies. We are a party to a number of litigation proceedings as described in “Item 8 – Financial Information - Legal Proceedings”.

Impact of recently issued Accounting Standards

In February 2008, the FASB issued FASB Staff Position (“FSP”) FAS No. 157-2, “Effective Date of FASB Statement No. 157” (“FSP 157-2”), to delay the effective date of FASB Statement 157 for one year for certain non-financial assets and non-financial liabilities, excluding those that are recognized or disclosed in financial statements at fair value on a recurring basis (that is, at least annually). For purposes of applying the FSP 157-2, non-financial assets and non-financial liabilities include all assets and liabilities other than those meeting the definition of a financial asset or a financial liability in FASB Statement 159. FSP 157-2 defers the effective date of Statement 157 to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years for items within the scope of this FSP 157-2. We do not expect the adoption of FAS 157 with respect to certain non-financial assets and non-financial liabilities, excluding those that are recognized or disclosed in the consolidated financial statements at fair value on a recurring basis (at least annually), to have a material impact on our financial position, results of operations or cash flow.

In March 2008, the FASB issued Statement 161 “Disclosures about Derivative Instruments and Hedging Activities” (“SFAS 161”) an amendment to FASB No. 133. This statement changes the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about (a) how and why and entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity’s financial position, financial performance, and cash flows. This statement is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. Early application is encouraged. We do not expect the adoption of SFAS 161 to have a material impact on our financial position, results of operations or cash flow.

In April 2008, the FASB issued FSP 142-3, “Determination of the Useful Life of Intangible Assets” (FSP 142-3). FSP 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, “Goodwill and Other Intangible Assets”. FSP 142-3 is effective for fiscal years beginning after December 15, 2008. We do not expect the adoption of FAS 142-3 to have a material impact on our consolidated financial statements, results of operations or cash flow.

In June 2008, the FASB issued FSP EITF No. 03-6-1, “Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities”. Under the FSP, unvested share-based payment awards that contain rights to receive non-forfeitable dividends (whether paid or unpaid) are participating securities, and should be included in the two-class method of computing EPS. The FSP is effective for fiscal years beginning after December 15, 2008, and interim periods within those years, and is not expected to have a significant impact on our consolidated financial statements, results of operations or cash flow.

In November 2008, the FASB ratified Emerging Issues Task Force Issue No. 08-7, “Accounting for Defensive Intangible Assets”. EITF 08-7 clarifies the accounting for certain separately identifiable intangible assets which an acquirer does not intend to actively use but intends to hold to prevent its competitors from obtaining access to them. EITF 08-7 requires an acquirer in a business combination to account for a defensive intangible asset as a separate unit of accounting which should be amortized to expense over the period the asset diminishes in value. EITF 08-7 is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. We are currently evaluating the potential impact, if any, of the adoption of EITF 08-7 on our consolidated financial statements.

In December 2007, the FASB issued SFAS No. 141(R) “Business Combinations” (“SFAS 141(R)”) and SFAS No. 160 “Accounting and Reporting of Non-controlling Interests in Consolidated Financial Statements – an amendment of ARB No. 51” (“SFAS 160”). These standards will significantly change the accounting and reporting for business combination transactions and non-controlling interests in consolidated financial statements. SFAS 141(R) requires companies to recognize all the assets acquired and liabilities assumed in a business combination and establishes the acquisition date fair value as the measurement objective, including capitalizing at the acquisition date the fair value of acquired in-process research and development, and re-measuring and writing down these assets, if necessary, in subsequent periods during their development. SFAS 141(R) will also impact the determination of acquisition-date fair value of consideration paid in a business combination (including contingent consideration), exclude transaction costs from acquisition accounting, and change accounting practices for acquired contingencies, acquisition-related restructuring costs, indemnification assets, and tax benefits. SFAS 141(R) and SFAS 160 will be applied prospectively for business combinations that occur on or after January 1, 2009, except that presentation and disclosure requirements of SFAS 160 regarding non-controlling interests shall be applied retrospectively. We will adopt SFAS 141(R) and SFAS 160 as of January 1, 2009, as required. If the Alteon acquisition is consummated, the accounting and business combination transaction will be recorded in accordance with both pronouncements.

EITF issue No. 08-6, “Equity-Method Investment Accounting”(“EITF 08-6”) concludes that the cost basis of a new equity-method investment would be determined using a cost-accumulation model, which would continue the practice of including transaction costs in the cost of investment and would exclude the value of contingent consideration. Equity-method investment should be subject to other-than-temporary impairment analysis. It also requires that a gain or loss to be recognized on the portion of the investor’s ownership sold. EITF 08-6 will be effective for the reporting period beginning after December 15, 2008. We do not expect the adoption of EITF 08-6 to have a material impact on our financial position, results of operations or cash flows.

B. Operating Results

The following table sets forth, for the periods indicated, certain financial data expressed as a percentage of sales:

| | Year ended December 31, 2004 | Year ended December 31, 2005 | Year ended December 31, 2006 | Year ended December 31, 2007 | Year ended December 31, 2008 |
|---|------------------------------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
| Revenues: | 76.3% | 72.1% | 70.4% | 67.0% | 63.1% |
| Products | 23.7 | 27.9 | 29.6 | 33.0 | 36.9 |
| Services | 100.0 | 100.0 | 100.0 | 100.0 | 100.0 |
| Cost of Revenues: | | | | | |
| Products | 11.8 | 12.0 | 12.6 | 14.8 | 16.0 |
| Services | 6.0 | 7.2 | 6.8 | 6.7 | 6.8 |
| | 17.8 | 19.2 | 19.4 | 21.5 | 22.8 |
| Gross profit | 82.2 | 80.8 | 80.6 | 78.5 | 77.2 |
| Operating expenses: | | | | | |
| Research and development, net | 15.1 | 16.8 | 21.7 | 26.5 | 30.0 |
| Sales and marketing | 46.6 | 51.5 | 61.6 | 65.4 | 67.2 |
| General and administrative | 6.6 | 6.8 | 7.6 | 8.0 | 12.8 |
| Total operating expenses | 68.3 | 75.1 | 90.9 | 100.0 | 110.0 |
| Operating profit (loss) | 13.9 | 5.7 | (10.3) | (21.5) | (32.8) |
| Financial income, net | 6.7 | 6.6 | 9.1 | 8.4 | 3.8 |
| Income (loss) before income Taxes | 20.6 | 12.3 | (1.2) | (13.1) | (29.0) |
| Income taxes | (0.5) | (0.3) | (0.4) | (0.5) | (3.8) |
| Minority interest in earnings Of a subsidiary | — | — | — | — | — |
| Net income (loss) | 20.1% | 12.0% | (1.6%) | (13.6%) | (32.8%) |

Geographical Distribution of Revenues

The Company operates in one reportable segment. Its total revenues are attributed to geographic areas based on the location of the end-users.

Following is the breakdown of the Company's total revenues by geographical distribution both in U.S. dollars and as a percentage of total revenues for the years ended December 31, 2006, 2007 and 2008:

| | Year Ended December 31, 2006 | | Year Ended December 31, 2007 | | Year Ended December 31, 2008 | |
|---|------------------------------------|--------------------|------------------------------------|--------------------|------------------------------------|--------------------|
| | (in thousands of U.S. \$) | (by percentage) | (in thousands of U.S. \$) | (by percentage) | (in thousands of U.S. \$) | (by percentage) |
| North, Central and South America (principally the United States) | 27,646 | 34.0% | 24,368 | 27.5% | 23,715 | 25.1% |
| EMEA (Europe, the Middle East and Africa) | 27,529 | 33.8% | 29,412 | 33.2% | 29,836 | 31.6% |
| Asia-Pacific | 26,235 | 32.2% | 34,851 | 39.3% | 41,030 | 43.4% |
| Total | 81,410 | 100% | 88,631 | 100% | 94,581 | 100% |

Breakdown of Total Revenues by Products and Services

The following table provides the breakdown of the Company's total revenues by products and services both in U.S. dollars and as a percentage of total revenues for the years ended December 31, 2006, 2007 and 2008:

| | Year Ended December 31, 2006 | | Year Ended December 31, 2007 | | Year Ended December 31, 2008 | |
|-----------------|------------------------------------|--------------------|------------------------------------|--------------------|------------------------------------|--------------------|
| | (in thousands of U.S. \$) | (by percentage) | (in thousands of U.S. \$) | (by percentage) | (in thousands of U.S. \$) | (by percentage) |
| Products | 57,335 | 70.4% | 59,422 | 67.0% | 59,678 | 63.1% |
| Services | 24,075 | 29.6% | 29,209 | 33.0% | 34,903 | 36.9% |
| Total | 81,410 | 100% | 88,631 | 100% | 94,581 | 100% |

Executive Summary – Year Ended December 31, 2008

Sales in 2008 were approximately \$94.6 million, an increase of 7% compared with sales of \$88.6 million in 2007. In 2008 we continued the trend of sequential increase in sales, year over year, since our inception. The cost of sales as percentage of revenues increased slightly compared to 2007, mainly due to an impairment of intangible asset in 2008. In order to continue to strengthen and broaden our product lines we have increased our investments in research and development during 2008, mainly increasing the manpower and subcontractors engaged in the development of our products. In order to increase market acceptance of our new products and to strengthen our branding and market penetration in certain regions, we increased our sales and marketing expenses throughout the year. Our general and administrative expenses increased during 2008, mainly in connection with the implementation of our ERP system, aimed to provide an adequate infrastructure to support our above mentioned research and development and sales and marketing activities, and in connection with the employment of our Executive Chairman of the Board. Our sales increased at a lower rate than the increase of our operating expenses. As a result of the aforementioned, our operating results in 2008 reflected a loss of \$31.0 million, compared to an operating loss of \$19.0 million in 2007. In order to return to profitability and due to the future uncertainty in connection with the global economic crisis, we started reducing our operating expenses in the second half of 2008, mainly by decreasing the number of our employees worldwide. These reductions caused our operating expenses to decrease significantly toward the end of 2008. Our operating expenses in the fourth quarter of 2008 totaled to \$22.7 million, down by 16% compared to operating expenses of \$27.0 million in the first quarter of 2008. An additional decrease in expenses is expected to take place in the beginning of 2009 due to the above mentioned reduction in costs, which partially affected our results in the last quarter of 2008 and will have a full effect on our results in the first quarter of 2009. The financial income in 2008 decreased to \$3.6 million during 2008, compared with \$7.4 million in 2007, mainly due to lower interest rates.

In 2009 we intend to align our investments in the development of new products as well as in the improvement of existing products, with our sales levels in order to return to operating profitability. In February 2009 we entered into an asset purchase agreement with Nortel for the purchase of Nortel's Layer 4-7 application delivery business, which was subject to higher and better bids and is still pending bankruptcy court approvals. This purchase, if completed, is strategic to the Company, aimed at broadening our products lines, customers and installed base. We believe such transaction, if consummated, will increase our revenues and operating profitability. There is no assurance, however, that we will complete the transaction, or if we do complete it, that we will succeed in returning to operating profitability due to the inherent risks of such acquisition and the uncertainty of the effects of the global economic crisis on our results of operations.

Year Ended December 31, 2008 Compared with Year Ended December 31, 2007

Revenues. Sales in 2008 were approximately \$94.6 million, including sales of products of \$59.7 million and services revenue of \$34.9 million, an increase of approximately 7% compared with sales of approximately \$88.6 million in 2007 which included sales of products of \$59.4 million and services revenue of \$29.2 million. The increase in services revenues derives mainly from the growth of our installed base which enables us to generate increased revenues from service contracts renewals. From a geographical perspective, our revenues from the North America region continued to decline percentage-wise, and represented 25% in 2008 compared to 28% in 2007, though remained the same in absolute figures as in 2007. On the other hand, our revenues from the Asia-Pacific region in 2008 increased and represent 43% compared to 39% in 2007. Our revenues from the EMEA region declined percentage-wise and represented 32% of our revenues in 2008 compared to 33% in 2007, though remain the same in their absolute figure as in 2007. Though we are focused on increasing our sales in 2009, it is hard to estimate the outcome of such efforts, mainly due to the current global economic crisis.

Cost of Sales. Cost of sales was approximately \$21.6 million in 2008, comprised of \$15.2 million as cost of products sales and \$6.4 million as cost of services revenue, compared with cost of sales of approximately \$19.0 million in 2007 which was comprised of \$13.1 million of cost of products sales and \$5.9 million as cost of services revenue. Cost of products sales as a percentage of products sales was 25.4% in 2008, compared to approximately 22.1% in 2007. Disregarding the loss from the impairment of Covelight's acquired technology in 2008 in an amount of \$2.0 million and inventory write-offs in an amount of \$1.2 million and \$0.6 million in 2007 and 2008, respectively, our cost of sales as percentage of product sales represented approximately 21% of product sales in 2008, a small increase compared to 20% in 2007. In addition, as some of the products we offer have stronger performance, the manufacturing costs for these products are higher, but these higher costs are only partially offset by higher sales prices charged to our customers. Cost of sales related to services revenues in 2008 was 18.4% compared to 20.2% in 2007. As a major portion of these costs were fixed costs (mainly salaries of technical personnel), the increase in sales did not translate into the same rate of costs increase. In addition, renewal service agreements require fewer resources and as the portion of the renewal support sales increases, the related costs decrease as a percentage of sales. Stock-based compensation expenses totaled \$0.1 million in 2008, the same as in 2007. During 2008, we assessed whether there has been an impairment of the intangible assets acquired in the acquisition of Covelight. Following this assessment, an impairment charge of approximately \$2.0 million was recorded to the cost of sales, in connection with the acquired intangible assets.

Research and Development Expenses. Research and development expenses were approximately \$28.4 million in 2008, an increase of 21.0% compared with research and development expenses of approximately \$23.5 million in 2007. The increase was primarily attributed to increased expenses due to the devaluation of the U.S. dollar against the NIS during 2008 compared with 2007 (mainly impacting salaries of R&D personnel), the increase in payments to subcontractors and consultants, which assist and promote certain R&D projects and the higher average number of R&D employees during 2008 compared to 2007. Stock-based compensation expenses totaled \$1.5 million in 2008, compared to \$1.2 million in 2007. This increase is attributed mainly to the increase in the average number of employees throughout 2008 compared to 2007. Excluding the exchange rates effect, we expect our research and development expenses in 2009 to be lower than 2008, mainly due to the reduction in the number of our employees during the second half of 2008, which will affect 2009 as well. If the trend of appreciation of the U.S. Dollar against the NIS, as occurred in the first quarter of 2009, continues we expect an additional decline in our R&D expenses in 2009.

Sales and Marketing Expenses. Sales and marketing expenses were approximately \$63.6 million in 2008, an increase of 10.0% compared with sales and marketing expenses of approximately \$58.0 million in 2007. As a percentage of total revenues, the share of sales and marketing expenses increased from 65.4% in 2007 to 67.2% in 2008. The increase of our sales and marketing expenses in 2008 was related mainly to our continued investment in strengthening the sales team in Asia-Pacific, the devaluation of the dollar against the Euro, the NIS and the Asian currencies, especially the Chinese Yuan and Japanese Yen and to increased investments in promoting our brand awareness and market acceptance of our products. Stock-based compensation expenses totaled \$2.3 million in 2008, compared to \$1.9 million in 2007. This increase is attributed mainly to the increase in the average number of employees throughout 2008 compared to 2007. Excluding the exchange rates effect we expect our sales and marketing expenses in 2009 to be lower than 2008, mainly due to the reduction in the number of our employees worldwide in the second half of 2008, which will affect 2009 as well.

General and Administrative Expenses. General and administrative expenses were approximately \$12.1 million in 2008, compared with general and administrative expenses of approximately \$7.1 million in 2007. Disregarding stock-based compensation expenses in an amount of \$4.2 million in 2008 and \$1.3 million in 2007, and expenses related to the former Chairman of the Board in connection with his office termination in an amount of \$0.8 million, our general and administrative expenses in 2008 totaled to \$7.1 million, compared to \$5.8 million in 2007. The increase is attributed mainly to the increase of salaries expenses, due to the devaluation of the U.S. dollar against the NIS (as most of the general and administrative salaries are paid in NIS) and due to amortization expenses related to our ERP system. Stock-based compensation expenses totaled to \$4.2 million in 2008 compared to \$1.3 million in 2007. The increase is mainly due to expenses related to the options granted to our Chief Executive Officer in December 31, 2007 and to accelerated vesting of options in connection with the termination of office of our Chairman of Board.

Financial Income, Net. Financial income, net was approximately \$3.6 million in 2008, compared with \$7.4 million in 2007. The decrease was primarily a result of lower market prevailing interest rates, which resulted in an average yield on our investments portfolio of 2.8% in 2008 compared to 4.6% in 2007. The decline in our total cash position, including cash, bank deposits and marketable securities negatively affected our financial income as well. In addition, in 2008 we incurred loss from foreign currency translation differences in an amount of \$0.4 million compared to gain in an amount of \$0.1 million in 2007.

Income Taxes. Income taxes were approximately \$3.6 million in 2008 (in and outside Israel), compared with \$0.4 million in 2007. This amount derives mainly from the valuation allowance provided with respect to deferred tax assets in the amount of \$2.7 million during 2008, in connection with the uncertainty regarding the future utilization of carry-forward tax losses.

Year Ended December 31, 2007 Compared with Year Ended December 31, 2006

Revenues. Sales in 2007 were approximately \$88.6 million, including sales of products of \$59.4 million and services revenue of \$29.2 million, an increase of approximately 9.0% compared with sales of approximately \$81.4 million in 2006 which included sales of products of \$57.3 million and services revenue of \$24.1 million. The increase in services revenue is attributed mainly to renewal of service contracts. During 2007 we moderately increased our sales compared to 2006. We performed restructuring of our American sales team, beginning in the fourth quarter of 2006 and continued through the first half of 2007. This restructuring negatively affected our sales in North America in 2007, due to the need to train new employees, and the time required to build customer relationships and sales pipelines, and caused the portion of our sales in North America to decrease to 28% of our sales, compared to 34% in 2006. On the other hand, the increase in sales in the Asia-Pacific region in 2007, which represented 39% of our total sales in 2007, compared to 32% in 2006, enabled us to present moderate growth in sales in 2007 compared to 2006 despite the weakness in the North American region as described above.

Cost of Sales. Cost of sales was approximately \$19.0 million in 2007, comprised of \$13.1 million as cost of products sales and \$5.9 million as cost of services revenue, compared with cost of sales of approximately \$15.8 million in 2006 which was comprised of \$10.3 million of cost of products sales and \$5.5 million as cost of services revenue. Cost of products sales as a percentage of products sales was 22.1% in 2007, compared to approximately 17.9% in 2006. The main reason for this increase is inventory write-offs we performed during 2007. In addition, as some of the products we offer have stronger performance, the manufacturing costs for these products are higher, but these higher costs are only partially offset by higher sales prices charged to our customers. Cost of sales related to services revenues in 2007 was 20.2% compared to 22.9% in 2006. As a major portion of these costs were fixed costs (mainly salaries of technical personnel), the increase in sales did not translate into the same rate of costs increase. In addition, renewal service agreements require fewer resources and as the portion of the renewal support sales increases, the related costs decrease as a percentage of sales.

Research and Development Expenses. Research and development expenses were approximately \$23.5 million in 2007, an increase of 33.0% compared with research and development expenses of approximately \$17.7 million in 2006. The increase was primarily due to hiring of new R&D personnel, the increase in salary level needed to obtain high level personnel, increase in payments to subcontractors and the devaluation of the U.S. dollar against the NIS (as most of the R&D salaries are paid in NIS), due to the depreciation of R&D equipment purchased during 2007 and due to the increased use of subcontractors and consultants to assist with and promote certain R&D projects. Additional R&D employees were hired during 2007 in order to support the development of new platforms and products, including enhancement of our quality assurance department.

Sales and Marketing Expenses. Sales and marketing expenses were approximately \$58.0 million in 2007, an increase of 16.0% compared with sales and marketing expenses of approximately \$50.1 million in 2006. As a percentage of total revenues, the share of sales and marketing expenses increased from 61.6% in 2006 to 65.4% in 2007. The increase of our sales and marketing expenses in 2007 was related mainly to our continued investment in strengthening the sales teams in some of our offices in the U.S., Asia-Pacific and EMEA.

General and Administrative Expenses. General and administrative expenses were approximately \$7.1 million in 2007, compared with general and administrative expenses of approximately \$6.2 million in 2006. This increase is primarily due to the increase of salaries expenses which resulted from hiring of new personnel, salary increases, the devaluation of the U.S. dollar against the NIS (as most of the general and administrative salaries are paid in NIS) and due to amortization expenses related to our ERP system.

Financial Income, Net. Financial income, net was approximately \$7.4 million in 2007, the same as in 2006. The average yield on our investments in 2007 was higher than in 2006, which resulted in an increase in our financial income from our investments. This increase was offset by a decrease in our gains resulting from foreign currency translation differences.

Income Taxes. Income taxes were approximately \$0.4 million in 2007 (in and outside Israel), the same as in 2006. This amount derives mainly from current taxes and changes in deferred taxes.

C. Liquidity and Capital Resources

In our opinion, the Company's working capital is sufficient for the Company's present requirements. Since our inception, we have financed our operations through a combination of issuing debt and/or equity securities, including two public offerings, research and development and/or marketing grants from the Government of Israel and cash generated by operations. We raised approximately \$12.9 million in two private placements, in November 1997 and June 1999. In October 1999, we raised net proceeds of approximately \$56.8 million in the initial public offering of our ordinary shares. In January 2000, we raised net proceeds to the Company of approximately \$59.8 million in a public offering of our ordinary shares.

Capital expenditures for the years ended December 31, 2006, 2007 and 2008 were approximately \$5.8 million, \$6.7 million and \$4.6 million, respectively. These expenditures were mainly comprised of machinery and equipment, computers, lab equipment and testing tools, CRM and ERP systems. During 2008 we continued our investment in purchasing and implementing our ERP system which became partially operational during 2007. Additional investments, mainly related to the implementation of the CRM module, took place during 2008. We may have additional capital spending consistent with possible growth in our operations, infrastructure and personnel.

Net cash used in operating activities for the year ended December 31, 2008 was approximately \$9.7 million compared to net cash used in operating activities of approximately \$1.1 million for 2007 and net cash provided by operating activities of approximately \$7.3 million for 2006. Net cash used in operating activities for the years 2008, 2007 and 2006 changed primarily due to the changes in our operating profit and loss in these years, mainly as a result of the increase in operating expenses - which exceeded the pace of increase in sales in these years. Net cash used in operating activities for 2008 consisted primarily of net loss, adjusted for non-cash activity, plus an increase in inventories and decrease in trade payables offset by an increase in deferred revenue and other payables and accrued expenses, decrease in trades receivables and decrease in prepayments and other receivables. Net cash used in operating activities for 2007 consisted primarily of net loss, adjusted for non-cash activity, partially offset by a decrease in inventories and increase in deferred revenues and other payables and accrued expenses, plus an increase in other receivables and prepaid expenses. Net cash provided by operating activities for 2006 consisted primarily of net loss, adjusted for non-cash activity, plus increase in trade payables and deferred revenues, offset by an increase in trade receivables and in inventories.

Net cash used in investing activities was approximately \$18.9 million for 2008, compared to net cash provided by investing activities of approximately \$35.8 million for 2007, and to net cash used in investing activities of approximately \$39.8 million for 2006. Cash was used in 2008 mainly for the purchase of marketable securities and purchase of property and equipment, partially offset by proceeds from redemption of long term bank deposit. Cash was provided in 2007 mainly from redemption of marketable securities, partially offset by purchase of marketable securities, purchase of property and equipment and payment for the acquisition of Covelight. Cash was used in 2006 mainly for the purchase of marketable securities and also for purchase of property and equipment, and for the completion of the acquisition of V-Secure, partially offset by the sales and redemption of marketable securities and bank deposits.

Net cash used in financing activities in 2008 was \$4.6 million, compared to net cash provided by financing activities of \$1.4 and \$1.6 million for the years 2007 and 2006, respectively. The cash used in financing activities in 2008 was for the repurchase of our ordinary shares, which was partially offset by amounts generated from options exercises by our employees under the Key Employee Share Option Plans and Employee Stock Purchase Plans (see "Item 6 – Directors Senior Management and Employees – Key Employee Share Incentive Plan and Employee Stock Purchase Plan"). Net cash provided by financing activities for the years 2007 and 2006, was generated from options exercised by our employees under the Key Employee Share Option Plans and Employee Stock Purchase Plans. In 2006 the amount generated from options exercises was nearly fully offset by the repurchase of our ordinary shares (see "Item 16E – Purchase of Equity Securities by the Issuer and Affiliated Purchasers").

As of December 31, 2008, we had cash and cash equivalents, including short-term and long-term bank deposits and marketable securities of approximately \$133.9 million, as compared to approximately \$154.8 million as of December 31, 2007. Our capital requirements depend on numerous factors, including market acceptance of our products and the resources we allocate to our operating expenses. Since our inception, we have experienced substantial increases in our expenditures consistent with growth in our operations and personnel, and we may increase our expenditures in the foreseeable future in order to execute our strategy. As indicated above, in February 2009 we entered into an asset purchase agreement with Nortel for the purchase of Nortel's Layer 4-7 application delivery business, which was subject to higher and better bids and is still pending bankruptcy court approvals. As of the date of this report, the total consideration for the transaction is expected to be \$ 17.65 million. In addition, we expect additional transaction related costs in a total amount of approximately \$3.5 million. We estimate that we will have to invest up to additional \$8.0 million in working capital in order to operate the acquired business in the first few months following the acquisition. We anticipate that operating activities as well as capital expenditures will demand the use of our cash resources. We believe that cash balances will provide sufficient cash resources to finance our operations and the projected marketing and sales activities and research and development efforts for a period of no less than the next twelve months.

Related Parties

We have entered into a number of agreements with certain companies, of which Yehuda and Zohar Zisapel are co-founders, directors and/or principal shareholders, collectively known as the RAD-Bynet Group. Of these agreements, the lease for our headquarters in Tel-Aviv is material to our operations. We believe that the terms of the transactions in which we have entered with members of the RAD-Bynet Group are not different in any material respect from terms we could obtain from unaffiliated third parties. The pricing of the transactions was arrived at based on negotiations between the parties. Members of our management reviewed the pricing of the lease agreements and confirmed that they were not different than that which could have been obtained from unaffiliated third parties.

In addition, we purchase different services from third parties at special rates offered to the RAD-Bynet Group, such as car leases, maintenance, insurance and communication services. In the event that we cease to be a member of the RAD-Bynet Group, we may not be able to obtain the current rates for such services.

Impact of Currency Fluctuations

A devaluation of the U.S. dollar against the NIS and or appreciation or depreciation of the Euro to the dollar has direct influence on the U.S. dollar cost of our operations. Most of our sales are denominated in dollars or are dollar-linked and we incur a portion of our expenses, principally salaries and related personnel expenses, in Israel – in NIS, in Europe – in Euros and in Asia-Pacific in several local currencies. An appreciation of the NIS relatively to the U.S. Dollar, will have a negative effect on our profitability. Conversely, devaluations of the NIS relative to the U.S. could have a positive effect on our profitability. In 2004 we began selling to the European Union countries in Euros instead of dollars in order to reduce the exposure to fluctuations in the Euro exchange rate. We are still exposed to the risk of an appreciation of the Euro in the event our expenses in Euros exceed our sales in Euros. In addition, if the Euro devaluates relative to the U.S. dollar and sales in Euros exceed expenses incurred in Euros, our operating profit may be negatively affected as a result of a decrease in the U.S. dollar value of our sales. If the dollar decreases in value relative to Chinese, Indian, Australian and/or Japanese currencies, the dollar cost of our operations in Asia-Pacific will increase and our operating profit will be negatively affected.

The following table presents information about the changes in the exchange rates of the U.S. dollar relative to the NIS and the U.S. dollar relative to the Euro:

| Year ended December 31, | U.S. dollar against NIS | U.S. dollar against Euro |
|-------------------------|----------------------------|-----------------------------|
| 2004 | (1.6) % | (7.4)% |
| 2005 | 6.8% | 15.3% |
| 2006 | (8.2)% | (10.2)% |
| 2007 | (9.0)% | (10.5)% |
| 2008 | (1.1)% | 5.6% |
| 2009(1) | 9.5% | 10.0% |

(1) January 1, 2009 through February 28, 2009

We cannot assure you that we will not be materially and adversely affected in the future if there will be a revaluation of the NIS or a revaluation or devaluation of the Euro against the U.S. dollar. Because exchange rates between the NIS and the dollar and between the Euro, other currencies and the dollar fluctuate continuously, exchange rate fluctuations and especially larger periodic devaluations or revaluations will have an impact on our profitability and period-to-period comparisons of our results. The effects of foreign currency re-measurements are reported in our consolidated financial statements in the statement of operations.

Market Risk

We do not invest in, or otherwise hold, for trading or other purposes, any financial instruments subject to market risk, with the exception of the following:

The majority of our cash throughout the world is invested in fixed-income securities and is affected by changes in interest rates. Interest rates are highly sensitive to many factors, including governmental monetary policies and domestic and international economic and political conditions.

A decline in market interest rates, such as the significant global decline in recent months, has had an adverse effect on our investment income. In a declining interest rate environment, borrowers may seek to refinance their borrowings at lower rates and, accordingly, prepay or redeem securities held earlier than initially expected. This action may cause us to reinvest the redeemed proceeds in lower yielding investments. Currently we do not hold any securities which can be early redeemed. An increase in market interest rates could also have an adverse effect on the value of our investment portfolio, for example, by decreasing the fair values of the fixed income securities that comprise a substantial majority of our investment portfolio.

Our investments consist primarily of government and corporate debentures. As of December 31, 2008, approximately 16% of our portfolio was invested in U.S. Government debentures, 42% in foreign banks and government debentures, 22% in other corporate debentures and the rest of the funds were invested in bank deposits and money market funds. Although we believe that we generally adhere to conservative investment guidelines, the continuing turmoil in the financial markets may result in impairments of the carrying value of our investment assets. Realized losses in our investments portfolio may adversely affect our financial position and results.

Any significant decline in our investment income or the value of our investments as a result of falling interest rates, deterioration in the credit of the securities in which we have invested, or general market conditions, could have an adverse effect on our results of operations and financial condition.

We currently have no debt.

D. Research and Development, Patents and License

In order to accommodate the rapidly changing needs of our markets, we place considerable emphasis on research and development projects designed to improve our existing product lines, develop new product lines and customize our products to meet our customers' needs. As of December 31, 2008, we had 190 employees engaged primarily in research and development activities, compared to 216 employees at the end of 2007.

For a discussion regarding the benefits provided under programs of the Office of the Chief Scientist of the Israeli Ministry of Industry, Trade and Labor – see “Item 4 – Information on the Company – Business Overview – Israeli Office of Chief Scientist”.

E. Trend Information

For a discussion of recent market trends - see “Item 5 – Operating and Financial Review and Prospects – General – Market Trends.”

F. Off-Balance Sheet Arrangements

None.

G. Tabular Disclosure of Contractual Obligations

The following table summarizes our contractual obligations as of December 31, 2008 and the effect those commitments are expected to have on our liquidity and cash flow.

| Contractual obligations | Payments Due By Period (US \$ in thousands) | | | | |
|------------------------------------|---|---------------------|--------------|--------------|-------------------------|
| | Total | Less than 1 year | 1-3 years | 3-5 years | More than 5 years |
| Operating leases(1) | 6,958 | 2,975 | 3,207 | 776 | — |
| Uncertain tax positions(2) | 1,559 | | | | |
| Total contractual cash obligations | 8,517 | 2,975 | 3,207 | 776 | — |

(1) Consist of outstanding operating leases for the Company's facilities. The lease agreements expire in the years 2009 to 2013 (some with renewal options). The data in this row details our future minimum payments under non-cancelable operating lease agreements at December 31, 2008.

(2) Uncertain income tax positions under FIN 48 are due upon settlement and we are unable to reasonably estimate the timing of settlement. See also Notes 2q and 12a of our Consolidated Financial Statements.

We operate from leased premises mainly in Tel Aviv and Jerusalem in Israel and New Jersey and North Carolina in the United States. We also lease premises in several locations in the United States, Europe and Asia-Pacific for the activities of our subsidiaries, representative offices and branches. Our aggregate annual rent expenses under these leases were approximately \$3.6 million for 2008.

ITEM 6. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES**A. Directors and Senior Management**

The following table lists our current directors and executive officers:

| Name | Age | Position |
|-------------------------------|-----|---|
| Roy Zisapel(1) | 38 | Chief Executive Officer, President and Director |
| Meir Moshe | 55 | Chief Financial Officer |
| Efrat Baruh-Noy | 32 | General Counsel and Secretary |
| Ilan Kinreich | 51 | Chief Operating Officer |
| Amir Peles | 37 | Chief Technology Officer |
| Sharon Trachtman | 42 | VP Global Marketing |
| Yehuda Zisapel (2) | 67 | Director |
| Zohar Gilon (2)(3)(4)(5) | 61 | Director |
| Orna Berry (2)(3)(4)(5)(6)(8) | 60 | Director |
| Hagen Hultzsich (4)(5)(6)(7) | 68 | Director |

(1) Term as director expires at the annual meeting of shareholders to be held in 2010.

(2) Term as director expires at the annual meeting of shareholders to be held in 2009.

(3) External Director, as defined in the Israeli Companies Law.

(4) Qualified as an independent director, as determined under the NASDAQ rules.

(5) Serves on the Audit Committee of the Board of Directors.

(6) Serves on the Compensation Committee of the Board of Directors.

(7) Term as director expires at the annual meeting of shareholders to be held in 2011.

(8) Interim Chairperson.

Roy Zisapel, co-founder of our Company, has served as our President and Chief Executive Officer and a director since our inception in May 1996. Mr. Zisapel also serves as a director of Radware Inc. and other subsidiaries. From February 1996 to March 1997, Mr. Zisapel was a team leader of research and development projects for RND Networks Ltd. From July 1994 to February 1996, Mr. Zisapel was employed as a software engineer for unaffiliated companies in Israel. Mr. Zisapel has a B.Sc. degree in mathematics and computer science from Tel Aviv University. Roy Zisapel is the son of Yehuda Zisapel, who is a director of the Company.

Meir Moshe has served as our Chief Financial Officer since June 1999. From June 1997 to June 1999, Mr. Moshe was Chief Financial Officer, Secretary and Treasurer of ForSoft Ltd. Mr. Moshe holds a B.Sc. in economics and accounting from Tel Aviv University and is a certified public accountant.

Efrat Baruh-Noy has served as our General Counsel since November 2008. From February 2005 to November 2008, Mrs. Baruh-Noy was legal counsel at Gilat Satellite Networks Ltd. Prior to that, from July 2001 to January 2005, Mrs. Baruh-Noy was an associate at the law firm of Amit, Pollak Matalon & Co. Mrs. Baruh-Noy has LL.B and B.A. in Economics and M.B.A degrees from Tel Aviv University.

Sharon Trachtman has served as our Global Marketing Vice President as of September 2008. Prior to that she has presided in various senior positions such as Product management Vice President and Marketing Vice President. From November 1994 to September 1997, Ms. Trachtman was a product line marketing manager for Scitex Corporation. Ms. Trachtman has a B.A. degree in computer science and philosophy from Bar Ilan University.

Amir Peles has served as our Vice President, Chief Technology Officer since April 2000. From July 1997 through March 2000, Mr. Peles served as our Vice President of Research and Development since July 1997. From July 1996 to July 1997, Mr. Peles was a senior team leader at Amdocs Corporation. Mr. Peles has a B.Sc. degree in computer science, statistics and operations research from Tel Aviv University.

Ilan Kinreich has served as our Chief Operating Officer since December 2007. From 1993 until 2005 Mr. Kinreich was the founder and CEO of Radview Software Ltd., a company that developed performance testing and management solutions. From 1989 until 1991 Mr. Kinreich was a co-founder and VP R&D of Mercury Interactive. From 1984 until 1989 Mr. Kinreich was R&D manager at Daisy Systems. Mr. Kinreich began his career in 1977 at the technology units of the Israel Defense Forces where he oversaw the deployment of command and control systems and reached the rank of a Captain. Mr. Kinreich holds a B.S.C. degree in Mathematics and Computer Sciences from Bar-Ilan University, Israel.

Yehuda Zisapel, co-founder of our Company, has served as a member of our Board of Directors since our inception in May 1996 and served as Chairman of our Board of Directors until August 2006. In addition, Mr. Zisapel serves as a director of Radware Inc. Mr. Zisapel is also a founder and a director of RAD Data Communications Ltd., a worldwide data communications company headquartered in Israel, and BYNET Data Communications Ltd., a distributor of data communications products in Israel and a director of other companies in the RAD-Bynet Group, including SILICOM Ltd., and several private companies. Mr. Zisapel has a B.Sc. and a M.Sc. degree in electrical engineering as well as an Award of Honorary Doctorate (DHC-Doctor Honoris Causa) from the Technion, Israel Institute of Technology and an M.B.A. degree from Tel Aviv University. Yehuda Zisapel is the father of Roy Zisapel director, President and Chief Executive Officer of the Company.

Dr. Hagen Hultzs has served as a director since January, 2005. Dr. Hultzs served on the Board of Management of Deutsche Telekom AG from 1993 until 2001. Since 2001, Dr. Hultzs has served on the Boards or Advisory Boards of several companies and academic institutions. Dr. Hultzs serves, among others, as a Board Member of the following companies: TranSwitch Inc., SCM-Microsystems Inc., T-Systems Solutions for Research and RIT Ltd. and he is a member of the advisory boards of several private and public technology companies. Dr. Hultzs holds a PhD. from Mainz University.

Zohar Gilon has served as a director since October 2006. Mr. Gilon serves as a General Partner and Managing Director of Tamar Technologies Ventures, a venture capital fund investing in Israel and the United States. From 1993 until 1995, Mr. Gilon served as President of W.S.P. Capital Holdings Ltd., which provides investment banking and underwriting services in Israel and invests in real estate and high-technology investments in Israel and abroad. Currently, Mr. Gilon serves as a director of the following companies: RADCom Ltd., Orsense Ltd., Wisair Ltd., Oberon Media Inc., Tvinci Ltd., HCL CleanTech Ltd., PayoneerInc. and RADVentures, an investment fund for RAD Data Communications employees. Mr. Gilon holds a B.Sc. degree in electrical engineering from the Technion, Israel Institute of Technology, and an M.B.A. degree from Tel Aviv University.

Dr. Orna Berry has served as a director since October 2006. Dr. Berry has been a Venture Partner in Gemini Israel funds since August 2000. Since January 2006 she has served as the Chairperson of the IVA (Israel Venture Association). Since December 2005, she has served as the Chairperson of Prime Sense Ltd., and since January 2005, as the Chairperson of Adamind Ltd., a UK public company. From 1997 to 2000 Dr. Berry served as Chief Scientist and Director of the Industrial R&D Administration of the Ministry of Industry, Trade and Labor of the Government of Israel. In 1993 she co-founded ORNET Data Communication Technologies Ltd. and served as co-president of ORNET until 1997. Dr. Berry holds a Ph.D. in computer science from the University of Southern California, and M.A. and B.A. degrees in statistics and mathematics from Tel Aviv University and Haifa University, respectively. Currently, she serves as a director of the following companies: Aladdin Knowledge Systems Ltd., Poalim Capital Markets, Mer Telemanagement Solutions Ltd. and Prime Sense Ltd.

Additional Information

At our 2008 annual meeting, the three-year term of service of Mr. Chris McCleary, who served as our Chairman of the Board since August 2006 and as a director since February 2000, expired and he was not nominated for re-election. In addition, Mr. Herbert Anderson, who served on our Board since January 2007, stepped down from office for personal reasons.

Under NASDAQ requirements, commencing July 31, 2005, a majority of the members of our Board of Directors are required to be “independent,” as defined thereunder. We currently satisfy this requirement as Mr. Zohar Gilon, Dr. Orna Berry and Dr. Hagen Hultzs, i.e., three out of our five directors, qualify as independent directors under such NASDAQ rules.

Yehuda Zisapel, a director and co-founder of the Company, is the father of Roy Zisapel, a director and the Company's President and Chief Executive Officer. There are no other family relationships between any of the directors or members of senior management named above.

B. Compensation

Under our Articles of Association, no director may be paid any remuneration by the company for his services as director except as may be approved pursuant to the provisions of the Companies Law, which generally require the approval of the Audit Committee, the Board of Directors and then the approval of the shareholders of the company, in that order. An external director is entitled to consideration and reimbursement of expenses only as provided in regulations promulgated under the Israeli Companies Law and is otherwise prohibited from receiving any other compensation, directly or indirectly, in connection with his service as an external director.

The following table sets forth all compensation we paid with respect to all of our directors and officers as a group for the year ended December 31, 2008. The table does not include any amounts we paid to reimburse any of our affiliates for costs incurred in providing us with services during such period.

| | Salaries, fees, commissions and bonuses | Pension, retirement and other similar benefits |
|--|---|--|
| All directors and officers as a group, consisting of 13 persons* | \$1,832,000 | \$226,000 |

* Includes fees and benefits incurred in relation to our former Executive Chairman of the Board (Christopher McCleary), our former director (Herbert Anderson) and our former General Counsel and Secretary (Vered Raviv-Schwarz), each of whom left the Company during 2008.

As of March 20, 2009 our directors and officers as a group, consisting of 13 persons, of which 3 left the Company during 2008, held options to purchase an aggregate of 1,412,500 ordinary shares. Beginning January 2006, our non-employee directors are entitled to the following compensation: (a) an annual fee of \$20,000; and (b) a grant of options under our stock option plans to purchase 10,000 ordinary shares for each year in which such non-employee director holds office. The options will be granted for three (3) years in advance, and therefore every director will receive an initial grant of options to purchase 30,000 ordinary shares, which shall vest over a period of three years, with a third (10,000) to vest upon each anniversary of service, provided that the director still serves on the Company's Board of Directors on such date. The grant will be made on the date of the director's election, and thereafter, every three years, if reelected, an additional grant of options to purchase an additional 30,000 ordinary shares will be made on the date of each annual meeting in which such director is reelected. The exercise price of all options shall be equal to the fair market value of the ordinary shares on the date of the grant (i.e., an exercise price equal to the market price of our ordinary shares on the date of the annual meeting approving the election or reelection of a director); (c) a special attendance fee of \$3,000 for the director's attendance (in person) at a meeting of the Board of Directors held outside his/her country of residence; and (d) an annual fee of \$5,000 for each director who presides as a chairman of any committee of the Board of Directors.

The above compensation policy was approved by our Compensation Committee, Board of Directors, Audit Committee and shareholders.

During 2008, we granted to our directors and officers options to purchase 125,000 ordinary shares, in the aggregate, at a weighted average exercise price of \$10.3. The options expire sixty-two months after grant.

Chief Executive Officer Compensation

On October 4, 2006 our shareholders approved the increase of our Chief Executive Officer's compensation, entitling him to a base salary in NIS equivalent to \$200,000 per annum and, effective as of the year 2007, an annual bonus of up to \$100,000, subject to achievement of certain milestones to be determined by the Compensation Committee and approved by the Audit Committee and the Board of Directors before the beginning of each year. The Compensation Committee determined the following milestones for the year 2007: 75% of the bonus would be based on achievement of the target revenue and 25% of the bonus would be based on the earnings per share (with \$750 being paid for each 1 cent of earnings per share), but will be paid only if the annual revenue target is met. Based on the above milestones, the Chief Executive Officer was not granted a bonus for the year 2007. On December 31, 2007 our shareholders approved an increase of our Chief Executive Officer's base salary to an amount in NIS equivalent to \$250,000. The annual bonus remains unchanged. The Compensation Committee determined the following bonus milestones for 2008: 75% of the bonus based on achievement of target revenue, and 25% of the bonus based on improving profitability by at least 10% compared to the 2008 annual budget. Based on the above milestones, the Chief Executive Officer was not granted a bonus for the year 2008.

On December 31, 2007, following the approval of our shareholders, we granted our Chief Executive Officer 500,000 stock options, with an exercise price of \$15.22 per share. The exercise of these options is contingent upon the increase in the market price of our ordinary shares. The options expire seven years from the grant date.

C. Board Practices

Introduction

According to the Israeli Companies Law and our Articles of Association, the oversight of the management of our business is vested in our Board of Directors. The Board of Directors may exercise all powers and may take all actions that are not specifically granted to our shareholders. As part of its powers, our Board of Directors may cause us to borrow or secure payment of any sum or sums of money for our purposes, at times and upon terms and conditions as it determines, including the grant of security interests in all or any part of our property.

Our Articles of Association provide for a Board of Directors of not less than five and not more than nine directors. Currently, our Board of Directors consists of five directors, including the external directors (as described below). In accordance with current NASDAQ requirements, nominees for election as directors are approved and recommended to the Board of Directors by a decision of a majority of our independent directors. Under the Companies Law, our Board of Directors is required to determine the minimum number of directors having accounting and financial expertise, as defined in regulations promulgated under the Companies Law, that our Board of Directors should have. In determining the number of directors required to have such expertise, the Board of Directors must consider, among other things, the type and size of the company and the scope and complexity of its operations. Our Board of Directors has determined that we require at least one director with the requisite financial and accounting expertise and that Zohar Gilon has such expertise.

Since our ordinary shares are listed for quotation on the NASDAQ Global Select Market, we are subject to the rules of the NASDAQ applicable to listed companies. In addition, since we are incorporated as an Israeli company, we are subject to the provisions of the Israeli Companies Law and the regulations adopted thereunder.

Staggered Board

In accordance with the terms of our Articles of Association, our Board of Directors (other than our external directors) is divided into three classes with each class of directors serving until the third annual meeting following their election as follows:

| Class* | Term expiring at the annual meeting for the year | Directors |
|-----------|--|----------------|
| Class I | 2009 | Yehuda Zisapel |
| Class II | 2010 | Roy Zisapel |
| Class III | 2011 | Hagen Hultsch |

At each annual meeting of shareholders after the initial classification, the successors to directors whose terms will then expire will be elected to serve from the time of election and qualification until the third annual meeting following such election. Directors, other than external directors, are elected by a simple majority of the votes cast, whereas their removal from office requires the vote of a majority of at least seventy-five percent of the voting power represented at the general meeting. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, to the nearest extent possible, each class will consist of one-third of the directors. This classification of our Board of Directors may have the effect of delaying or preventing changes in control or management of our company.

The above classification does not apply to Mr. Zohar Gilon and Dr. Orna Berry, who were appointed as external directors and whose term of appointment ends in 2009.

External Directors

Qualifications of External Directors

Under the Companies Law, companies incorporated under the laws of Israel whose shares are listed for trading on a stock exchange or have been offered to the public in or outside of Israel are required to appoint at least two external directors. External directors are required to possess professional qualifications as set out in regulations promulgated under the Companies Law. The Companies Law provides that a person may not be appointed as an external director if the person or such person's relative, partner, employer or any entity under the person's control has, as of the person's appointment to serve as an external director, or had during the two years preceding that date, any affiliation with:

- the Company;
- any entity controlling the Company; or
- any entity controlled by the Company or by this controlling entity.

The term affiliation includes:

- an employment relationship;
- a business or professional relationship maintained on a regular basis;
- control; and
- service as an office holder, excluding service as a director that was appointed to serve as an external director of a company that is about to make its initial public offering.

The Companies Law defines the term "office holder" of a company to include a director, the chief executive officer, the chief financial officer, a vice president and any officer of the company that reports directly to the chief executive officer.

No person can serve as an external director if the person's position or other business creates, or may create, a conflict of interest with the person's responsibilities as an external director or may otherwise interfere with the person's ability to serve as an external director. Until the lapse of two years from termination of office as an external director, a company may not engage an external director to serve as an office holder and cannot employ or receive services from that person, either directly or indirectly, including through a corporation controlled by that person.

Election of External Directors

External directors are to be elected by a majority vote at a shareholders' meeting, provided that either:

- At least one third of the shares of non-controlling shareholders voted at the meeting in favor of the election; or
- The total number of shares voted against the election of the external director does not exceed one percent of the aggregate voting rights in the Company.

The initial term of an external director is three years and may be extended for one additional three year term. Thereafter, he or she may be reelected by our shareholders for additional periods of up to three years each only if the Audit Committee and Board of Directors confirm that, in light of the external director's expertise and special contribution to the work of the Board of Directors and its committees, the reelection for such additional period is beneficial to the Company. External directors may be removed from office only by the vote of the same percentage of shareholders as is required for their election, or by a court only if they cease to meet the statutory qualifications for appointment or if they violate their duty of loyalty to the company. Each committee of a company's board of directors is required to include at least one external director, except for the Audit Committee which is required to include all the external directors.

Currently, Mr. Zohar Gilon and Dr. Orna Berry qualify as external directors under the Companies Law and were elected by the general shareholders meeting held in October 2006, to serve as our external directors for a three-year term ending October 2009.

Pursuant to an amendment to the Companies Law, effective as of January 19, 2006, (1) an external director must have either "accounting and financial expertise" or "professional qualifications" (as such terms are defined in regulations promulgated under the Companies Law) and (2) at least one of the external directors must have "accounting and financial expertise." We believe we satisfy this requirement.

Board Meetings

Our Board of Directors met 10 times during 2008 and all directors attended at least 75% of all Board meetings.

Our Committees

The Board of Directors appoints committees to help carry out its duties. Each committee reports the results of its meetings to the full Board of Directors. The Board of Directors established its Audit and Share Incentive Committees in 1999, and its Compensation Committee (which replaced the Share Incentive Committee) in 2004. Only non-employee directors serve on our Audit Committee and Compensation Committee.

Audit Committee

NASDAQ Requirements

Our ordinary shares are listed for quotation on the NASDAQ Global Select Market and we are subject to the rules of the NASDAQ applicable to listed companies. Under the NASDAQ rules, we are required to have an audit committee consisting of at least three independent directors, all of whom are financially literate and one of which has accounting or related financial management expertise. The members of the Audit Committee, Mr. Zohar Gilon, Dr. Orna Berry and Mr. Hagen Hultzsich qualify as independent directors under the current NASDAQ listing requirements. The Board of Directors has determined that each Audit Committee member is "financially literate" as such term is defined by the NASDAQ rules and that Mr. Zohar Gilon and Dr. Orna Berry are considered "audit committee financial expert" within the meaning of the current rules of the SEC. In accordance with NASDAQ listing requirements, the Audit Committee has adopted a charter, which sets forth the Committee's responsibilities.

The Audit Committee assists the Board of Directors in fulfilling its responsibility for oversight of the quality and integrity of our accounting, auditing and financial reporting practices and financial statements and the independence qualifications and performance of our independent auditors. The Audit Committee also has the sole authority and responsibility to select, evaluate and, where appropriate, recommend to replace the independent auditors (or to nominate the independent auditors subject to shareholder approval) and to pre-approve audit engagement fees and all permitted non-audit services and fees.

The Audit Committee met 5 times during fiscal year 2008 and all members attended at least 75% of all Audit Committee meetings.

Israeli Companies Law Requirements

Under the Companies Law, our Board of Directors is required to appoint an audit committee, comprised of at least three directors including all of the external directors, but excluding:

- the chairman of the Board of Directors;

- a controlling shareholder or a relative of a controlling shareholder; and
- any director employed by the Company or who provides services to the Company on a regular basis.

In accordance with the Companies Law, the duty of our Audit Committee is, in addition to the requirements imposed by NASDAQ rules (1) to identify irregularities in the business management of the Company, including in consultation with the internal auditor and/or the Company's independent accountants, and to recommend remedial measures to the Board of Directors; and (2) to review, and, where appropriate, approve certain interested party transactions specified under the Companies Law, as more fully described below.

Approval of Interested Party Transactions

The approval of the audit committee is required under the Companies Law to effect specified actions and transactions with office holders, controlling shareholders and entities in which they have a personal interest. An audit committee may not approve an action or a transaction with interested parties or with an office holder unless at the time of approval the two external directors are serving as members of the audit committee and at least one of whom was present at the meeting in which the approval was granted. The Companies Law defines the term "interested party" to include a person who holds 5% or more of the company's outstanding share capital or voting rights, a person who has the right to appoint one or more directors or the general manager, or any person who serves as a director or as the general manager.

Compensation Committee

Our compensation committee consists of two our independent directors, Dr. Orna Berry, who is also one of our External Directors, and Dr. Hagen Hultzsich. This committee was created in 1999 as the Share Incentive Committee and was renamed the Compensation Committee in 2004. The Compensation Committee met 4 times during fiscal year 2008 and all members attended 100% of the meetings. On March 8, 2005, our compensation committee adopted a charter, which sets forth the committee's responsibilities. Pursuant to the charter, the compensation committee is authorized to make decisions regarding executive compensation and terms and conditions of employment, to follow market trends and provide recommendations to the Board of Directors in connection with the Company's general compensation philosophy and policies, as well as to recommend that the Board of Directors issue options under our stock option plans. The Compensation Committee specifically approves and reviews, on behalf of the Board of Directors, the amounts and types of compensation to be paid to the Company's executive officers and non-employee directors.

Nomination of Directors

Our independent directors consider and vote upon nominations to our Board of Directors.

Internal Auditor

Under the Companies Law, the board of directors of a public company must appoint an internal auditor proposed by the audit committee. The role of the internal auditor is to examine, among other things, whether the company's conduct complies with applicable law and orderly business procedure. The internal auditor may participate in all audit committee meetings and has the right to demand that the chairman of the audit committee convene a meeting. Under the Companies Law, the internal auditor may be an employee of the company but may not be an interested party, an office holder or a relative of any of the foregoing, nor may the internal auditor be the company's independent accountant or its representative. Mrs. Sharon Vitkovski-Tabib, CPA, of BDO Ziv Haft, CPAs, is our internal auditor.

Approval of Specified Related Party Transactions Under Israeli Law

Fiduciary Duties of Office Holders

The Companies Law imposes a duty of care and a duty of loyalty on all office holders of a company.

The duty of care requires an office holder to act with the level of care with which a reasonable office holder in the same position would have acted under the same circumstances. The duty of care includes a duty to use reasonable means to obtain:

- Information regarding the advisability of a given action submitted for his approval or performed by him or her by virtue of his or her position; and
- All other important information pertaining to these actions.

The duty of loyalty of an office holder includes a duty to:

- Refrain from any conflict of interest between the performance of his/her duties in the company and the performance of his other duties or his personal affairs;
- Refrain from any activity that is competitive with the company;
- Refrain from exploiting any business opportunity of the company to receive a personal gain for himself or others; and
- Disclose to the company any information or documents relating to the company's affairs which the office holder has received due to his/her position as an office holder.

Disclosure of Personal Interest of an Office Holder

The Companies Law requires that an office holder of a company disclose to the company any personal interest that he may have and all related material information known to him, in connection with any existing or proposed transaction by the company. The disclosure is required to be made promptly and in any event no later than the board of directors meeting in which the transaction is first discussed. If the transaction is an extraordinary transaction, the office holder's duty to disclose also applies to a personal interest of a relative of the office holder.

Under the Companies Law, an extraordinary transaction is a transaction:

- Other than in the ordinary course of business;
- Not on market terms; or
- That is likely to have a material impact on the company's profitability, assets or liabilities.

Once an office holder complies with the above disclosure requirement, the board of directors may approve a transaction between the company and an office holder, or a third party in which an office holder has a personal interest unless the articles of association provide otherwise. Nevertheless, a transaction that is adverse to the company's interest may not be approved.

If the transaction is an extraordinary transaction, approval is required of both the audit committee and the board of directors, in that order. Under specific circumstances, shareholder approval may also be required. A director who has a personal interest in a matter which is considered at a meeting of the board of directors or the audit committee may not be present at this meeting or vote on this matter, unless a majority of the members of the board of directors or the audit committee, as the case may be, has a personal interest in the matter. If a majority of members of the board of directors have a personal interest therein, shareholder approval is also required.

Under the Companies Law, all arrangements as to compensation of directors in public companies such as ours generally require the approvals of the audit committee, the board of directors and the shareholders, in that order.

Disclosure of Personal Interests of a Controlling Shareholder

Under the Companies Law, the disclosure requirements which apply to an office holder also apply to a controlling shareholder of a public company. A controlling shareholder is a shareholder who has the ability to direct the activities of a company, including a shareholder that owns 25% or more of the voting power in the company, if no other shareholder owns more than 50% of the voting power in the company, but excluding a shareholder whose power derives solely from his or her position on the board of directors or any other position with the company. Extraordinary transactions of a public company with a controlling shareholder or in which a controlling shareholder or with a third party has a personal interest, and the terms of engagement of a controlling shareholder as an office holder or employee, require the approval of the audit committee, the board of directors and the shareholders of the company in that order. The shareholder approval must be by a majority of the shares voted on the matter, provided that either:

- At least one-third of the shares of shareholders who have no personal interest in the transaction, and who are present and voting (in person, by proxy or by written ballot) vote in favor thereof; or
- The shareholders who have no personal interest in the transaction who vote against the transaction do not represent more than one percent of the voting power in the company.

Shareholders generally have the right to examine any document in a company's possession pertaining to any matter that requires shareholder approval.

General Duties of Shareholders

Under the Companies Law, each shareholder has a duty to act in good faith in exercising his rights and fulfilling his obligations toward the company and other shareholders and to refrain from abusing his power in the company, such as shareholder votes. Furthermore, specified shareholders have a duty of fairness toward the company. These shareholders include any controlling shareholder, any shareholder who knows that he/it possesses the power to determine the outcome of a shareholder vote, and any shareholder who, pursuant to the provisions of the articles of association, has the power to appoint or to prevent the appointment of an office holder or any other power toward the company. However, the Companies Law does not define the substance of this duty of fairness.

D. Employees

At the time of commencement of employment, our employees in North America generally sign offer letters specifying basic terms and conditions of employment, and our employees in Israel, including our executive officers, generally sign standard written employment agreements, which include confidentiality and non-compete provisions. The employees in our subsidiaries sign employment agreements which differ according to the country in which they are located.

As of December 31, 2008, we had 534 employees worldwide, of whom 262 were based in Israel, 89 were based in the United States and 183 were based in our other subsidiaries and offices. Of these 534 employees, 191 were employed in research and development, 270 were employed in sales, technical support, business development and marketing, and 73 were employed in management, operations and administration. As of December 31, 2007, we had 593 employees worldwide, of whom 276 were based in Israel, 138 were based in the United States and 179 were based in our other subsidiaries and offices, and as of December 31, 2006, we had 475 employees worldwide, of whom 229 were based in Israel, 96 were based in the United States and 150 were based in our other subsidiaries and offices.

We are subject to Israeli labor laws and regulations with respect to our Israeli employees. These laws principally concern matters such as paid annual vacation, paid sick days, length of the workday and work week, minimum wages, pay for overtime, insurance for work-related accidents, severance pay and other conditions of employment.

Furthermore, our Israeli employees and we are subject to provisions of the collective bargaining agreements between the Histadrut, the General Federation of Labor in Israel, and the Coordination Bureau of Economic Organizations, including the Industrialists Association, by order of the Israeli Ministry of Labor and Welfare. These provisions principally concern social benefits, cost of living increases, recreation pay and other conditions of employment. We provide our employees with benefits and working conditions above the required minimums. Our employees are not represented by a labor union. The employees of our subsidiaries are subject to local labor laws, regulations and/or collective bargaining agreements that vary from country to country.

We consider our relations with our employees to be good and we have never experienced a strike or work stoppage.

E. Share Ownership

The following table sets forth certain information regarding the beneficial ownership of our ordinary shares by our directors and officers as of March 20, 2009. The percentage of outstanding ordinary shares is based on 18,875,093 ordinary shares outstanding as of March 20, 2009.

| Name | Number of ordinary shares | Percentage of outstanding ordinary shares |
|--|---------------------------|---|
| Yehuda Zisapel(1) | 3,289,336 | 17.37% |
| Roy Zisapel(2) | 648,941 | 3.43% |
| Christopher McCleary(3) | 500,000 | 2.58% |
| Meir Moshe(4) | 209,165 | 1.10% |
| All directors and executive officers as a group (12 persons) (5)(6) | 4,768,356 | 24.33% |

(1) Of the ordinary shares beneficially owned by Mr. Yehuda Zisapel, (i) 2,505,243 are held directly, (ii) 295,000 ordinary shares are held of record by Carm-AD Ltd., an Israeli company wholly owned by Yehuda Zisapel, (iii) 239,491 ordinary shares are held of record by Radbit Computers, Inc., a New York corporation which is wholly owned by Yehuda Zisapel, (iv) 189,602 ordinary shares are held of record by Neurim Pharmaceuticals (1991) Ltd., an Israeli company wholly owned by Yehuda Zisapel and his wife, Nava Zisapel, and (v) 60,000 ordinary shares underlying options which were vested or exercisable within 60 days from March 16, 2009. This information is based on information provided in the Statement on Schedule 13D filed by Mr. Yehuda Zisapel on March 16, 2009.

(2) In addition to the position stated in the table, Mr. Roy Zisapel is the beneficiary of a trust that, as of May 2006, the date on which the trust was established by him, held 229,142 ordinary shares. The trust is irrevocable and is scheduled to expire in May 2010. Mr. Zisapel does not control the trust and has limited access to information concerning activities and holdings of the trust. He disclaims beneficial ownership of the shares held in the trust.

(3) Mr. McCleary's three-year term as a member of our Board of Directors expired at our 2008 annual meeting and he was not nominated for re-election. Of the ordinary shares beneficially owned by Mr. McCleary, 40,000 ordinary shares are held directly and 460,000 are options fully vested upon termination of his office.

(4) Consists of 124,165 shares and 85,000 options which are fully vested or which will be fully vested within the next 60 days.

(5) Consists of 4,044,606 shares and 723,750 options which are fully vested or which will be fully vested within the next 60 days.

(6) Each of the directors and executive officers not separately identified in the above table beneficially own less than 1% of our outstanding ordinary shares (including options held by each such party, and which are vested or shall become vested within 60 days of the date of this annual report) and have therefore not been separately disclosed. Includes shares and options held by our former Executive Chairman of the Board (Christopher McCleary) and our former General Counsel and Secretary (Vered Raviv-Schwarz), each of whom left the Company during 2008.

NASDAQ Listing Standards

Our ordinary shares are currently listed on the NASDAQ Global Select Market and are thereby subject to the rules and regulations established by the NASDAQ and applicable to listed companies. Rule 4350 of the NASDAQ Marketplace Rules imposes various corporate governance requirements on listed securities. Section (a)(1) of Rule 4350 provides that foreign private issuers are required to comply with certain specific requirements of Rule 4350, but, as to the balance of Rule 4350, foreign private issuers may comply with the laws of their home jurisdiction in lieu of the requirements of such sections of Rule 4350. See “Item 16G – Corporate Governance” below.

Key Employee Share Incentive Plan

In June 1997, we adopted our Key Employee Share Incentive Plan. Options granted pursuant to our share option plan are for a term of sixty-two months from the date of the grant of the option. As of December 31, 2008, 9,937,236 ordinary shares have been reserved for option grants under the plan, of which we have granted options to purchase 8,806,725 ordinary shares, at a weighted average exercise price of \$10.86 per ordinary share. The amount of reserved shares includes an increase of the number of shares reserved under the plan in an amount of 3% of our issued and outstanding stock approved by the Board of Directors meeting held on January 27, 2008. We intend to grant further options under our share option plan to our executive officers and employees. In light of the new accounting standard SFAS No. 123(R), however, we may amend our option plan, reduce the number of options granted to the employees or suggest alternative compensation schemes.

Our share option plan is administered by the Compensation Committee of our Board of Directors, subject to the provisions of the Companies Law. Pursuant to the plan, the committee has the authority to determine (subject to applicable law), or advise the Board of Directors, in its discretion:

- The persons to whom options are granted;
- The number of shares underlying each options award;
- The time or times at which the award shall be made;
- The exercise price, vesting schedule and conditions pursuant to which the options are exercisable; and
- Any other matter necessary or desirable for the administration of the plan.

Pursuant to our share option plan, all options, or shares issued upon exercise of options, are held in trust and registered in the name of a trustee which was selected by the share incentive committee. The trustee will not release the options or ordinary shares to the option holder before the options are vested (unless pre-approved by us) or before the lapse of a longer period if so required under local tax laws and regulations. Our Board of Directors may terminate or amend our share option plan, provided that any action by our Board of Directors which will alter or impair the rights of an option holder requires the prior consent of that option holder.

In order to comply with the provisions of Section 102 of the Israeli Income Tax Ordinance [New Version], 1961 (the “Tax Ordinance”), which was amended in January 2003, on March 5, 2003, our Board of Directors adopted an addendum to our share option plan with respect to options granted on or after January 1, 2003 to grantees who are residents of Israel. This addendum does not modify our share option plan with respect to grantees that are not residents of Israel.

Directors and Consultants Option Plan

On February 18, 2000 we adopted a Directors and Consultants Option Plan. Options granted pursuant to our share option plan are for a term of sixty-two months from the date of the grant of the option. The terms of the Directors and Consultants Option Plan are similar to the terms of the Key Employee Share Incentive Plan. The shares reserved for the Key Employee Share Incentive Plan provide for the Directors and Consultants Option Plan as well, and the same Compensation Committee administers the two plans. The Compensation Committee may not grant options to members of the Committee or to a shareholder of over 10% of our issued and outstanding shares. The shares reserved for the 1997 Key Employee Share Incentive Plan, are also used for option grants under the Directors and Consultants Option Plan.

ITEM 7.

MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

A. Major Shareholders

The following table sets forth certain information regarding the beneficial ownership of our ordinary shares as of March 20, 2009, by each person or entity known to own beneficially more than 5% of our outstanding ordinary shares based on information provided to us by the holders or disclosed in public filings with the Securities and Exchange Commission, or SEC. The voting rights of all major shareholders are the same as for all other shareholders.

| Name | Number of ordinary shares | Percentage of outstanding ordinary shares |
|----------------------------------|---------------------------|---|
| Yehuda Zisapel (1) | 3,289,336 | 17.37% |
| FMR LLC (2) | 1,199,742 | 6.35% |
| P.A.W. Capital Corp. (3) | 1,412,000 | 7.48% |
| Rima Management, LLC (4) | 1,295,405 | 6.86% |
| Federated Investors, Inc. (5) | 1,815,300 | 9.61% |
| Renaissance Technologies LLC (6) | 1,018,700 | 5.39% |
| Zohar Zisapel(7) | 1,061,392 | 5.62% |

(1) Includes (i) 2,505,243 ordinary shares held directly, (ii) 295,000 ordinary shares held of record by Carm-AD Ltd., an Israeli company wholly owned by Yehuda Zisapel, (iii) 239,491 ordinary shares held of record by Radbit Computers, Inc., a New York corporation which is wholly owned by Yehuda Zisapel, (iv) 189,602 ordinary shares held of record by Neurim Pharmaceuticals (1991) Ltd., an Israeli company wholly owned by Yehuda Zisapel and his wife, Nava Zisapel, and (v) 60,000 ordinary shares underlying options which were vested or exercisable within 60 days from March 16, 2009. This information is based on information provided in the Statement on Schedule 13D filed by Mr. Yehuda Zisapel on March 16, 2009.

(2) Shares are beneficially owned by FMR LLC ("FMR") and Edward C. Johnson as a result of FMR's and Mr. Johnson's control over (i) Fidelity Management & Research Company ("FM&RC"), a wholly owned subsidiary of FMR which acts as an investment advisor registered under Section 203 of the Investment Company Act of 1940 and holds 89,700 ordinary shares and (ii) Fidelity Canadian Opportunities Fund ("Fidelity Canadian") and Pyramis Global Advisors, LLC ("Pyramis"), an indirect wholly owned subsidiary of FMR and an investment advisor registered under Section 203 of the Investment Company Act of 1940, which hold 1,110,042 ordinary shares. Mr. Johnson and FMR LLC, through their control of FM&RC, Fidelity Canadian and Pyramis, have sole power to vote the shares held by Pyramis and Fidelity Canadian and the sole power to dispose of the shares held by FM&RC, Pyramis and Canadian. This information is based on information provided in the Amendment No. 3 to Statement on Schedule 13G filed with the SEC by FMR LLC, Mr. Johnson, FM&RC and Pyramis on February 12, 2009.

(3) Shares are beneficially owned by P.A.W. Capital Corp., a Delaware corporation ("PAW"), and Peter A. Wright, President of PAW. Mr. Wright and PAW have shared voting and dispositive power over the shares. This information is based on information provided in the Amendment No. 5 to Statement on Schedule 13G filed with the SEC by Mr. Wright and PAW on January 14, 2009.

(4) Shares are beneficially owned by Rima Managmnet, LLC, a Delaware corporation ("Rima"), and Richard Mashaal, a Canadian citizen. This information is based on information provided in the Amendment No. 2 to Statement on Schedule 13G filed with the SEC by Mr. Mashall and Rima on February 17, 2009.

(5) Share are beneficially owned by Federated Investors, Inc. (the "Parent"), the parent holding company of Federated Equity Management Company of Pennsylvania and Federated Global Investment Management Corp. (the "Investment Advisers"), which act as investment advisers to registered investment companies and separate accounts that own Ordinary Shares. The Investment Advisers are wholly owned subsidiaries of FII Holdings, Inc., which is wholly owned subsidiary of the Parent. All of the Parent's outstanding voting stock is held in the Voting Shares Irrevocable Trust (the "Trust") for which John F. Donahue, Rhodora J. Donahue and J. Christopher Donahue act as trustees (collectively, the "Trustees"). The Trustees have shared voting and dispositive power over the outstanding voting stock of the Parent, which has sole voting and dispositive power over the shares. This information is based on information provided in the Amendment to Statement on Schedule 13G filed with the SEC by Parent, the Trust and the Trustees on February 10, 2009.

(6) Shares are beneficially owned by Renaissance Technologies LLC, a Delaware corporation ("Renaissance"), and James H. Simons, a United States citizen. This information is based on information provided in the Amendment to Statement on Schedule 13G filed with the SEC by Renaissance and Mr. Simons on February 12, 2009.

(7) As of March 3, 2009, Mr. Zohar Zisapel, who is the brother of Mr. Yehuda Zisapel, beneficially owned 1,061,392 Ordinary Shares, out of which (i) 402,168 Ordinary Shares are held directly and (ii) 659,224 Ordinary Shares are held of record by Lomsha Ltd., an Israeli company controlled by Mr. Zohar Zisapel. This information is based on information provided in the Statement on Schedule 13G filed with the SEC by Mr. Zohar Zisapel on March 5, 2009.

Major Shareholders Voting Rights

Our major shareholders do not have different voting rights from those of other shareholders.

Record Holders

Based on a review of the information provided to us by our transfer agent, as of March 23, 2009, there were 44 holders of record of our ordinary shares, of which 24 record holders, holding approximately 15.1% of our ordinary shares, had registered addresses in Israel, and of which 18 record holders, holding approximately 84.9% of our ordinary shares, had registered addresses in the United States. These numbers are not representative of the number of beneficial holders of our ordinary shares nor is it representative of where such beneficial holders reside, since many of these ordinary shares were held of record by brokers or other nominees (including one U.S. nominee company, CEDE & Co., which held approximately 84.8% of our outstanding ordinary shares as of said date).

B. Related Party Transactions

We have entered into a number of agreements with certain companies, of which Yehuda and Zohar Zisapel are co-founders, directors and/or principal stockholders, collectively known as the RAD-Bynet Group. Of these agreements, the lease for our headquarters in Tel Aviv is material to our operations. We believe that the terms of the transactions to which we have entered with members of the RAD-Bynet Group are not different in any material respect from terms we could obtain from unaffiliated third parties. The pricing of the transactions was based on negotiations between the parties. Members of our management reviewed the pricing of the lease agreement, as well as used a third-party consulting firm, and confirmed that it was not different than that which could have been obtained from unaffiliated third parties. In addition, the Company purchases different services from third parties at special rates offered to the RAD-Bynet Group, such as car leases, maintenance, insurance and communication services. In the event that we cease to be a member of the RAD-Bynet Group, we may not be able to obtain the current rates for such services. We believe, however, that due to the affiliation between us and the RAD-Bynet Group, we have greater flexibility in obtaining certain terms and conditions that may not be available from unaffiliated third parties on similar products and services.

All transactions and arrangements with affiliated parties, including other members of the RAD-Bynet Group, require the approval of our Audit Committee and our Board of Directors and may, in certain circumstances, require approval by our shareholders.

Services and Equipment Furnished by members of the RAD-Bynet Group

Some companies, which are also members of the RAD-Bynet Group provide us with marketing, administrative and network management services, and we reimburse each for its costs in providing such services. The aggregate amount of the reimbursements to such companies amounted to approximately \$1,178,000 in 2008. During 2008 we purchased from members of the RAD-Bynet Group computer and testing equipment in the amount of \$859,000.

Lease of Property

We lease the office space for our headquarters and principal R&D, administrative, finance and marketing and sales operations from private companies owned by Messrs. Zohar Zisapel and Yehuda Zisapel. The facilities are located in 2 locations: One is a five-story building in Tel Aviv, Israel, consisting of approximately 36,000 square feet, plus storage and parking space. The monthly rent amounts to approximately \$45,000. The lease expires in November 2012. The second location consists of two floors in the Or Tower in Tel Aviv, Israel with approximately 30,000 square feet, plus parking spaces. The lease expires in May 2011. The monthly rent for such 2 floors amounts to approximately \$50,000. We also lease office space of approximately 5,920 square feet in a nearby location in Israel from an unaffiliated party. The lease expires in March 2009. In addition we lease approximately 6,291 square feet of space in Jerusalem, Israel, for development facilities from an affiliated company owned by Messrs. Yehuda and Zohar Zisapel. The lease expires in February 2011. The monthly rent amounts to \$9,000. In addition we sublease 2,150 square feet in Jerusalem for our manufacturing facility from an affiliated company owned by Messrs. Yehuda and Zohar Zisapel. The sublease expires in April 2009. The monthly rent amounts to \$2,200. We entered into an agreement with RAD Data Communications, Inc., a company controlled by Yehuda and Zohar Zisapel, pursuant to which we lease approximately 14,838 square feet in Mahwah, New Jersey, consisting of 10,577 square feet of office space and 4,261 square feet of warehouse space, in consideration for monthly rent of approximately \$18,500 (including taxes, electricity and management fees). The lease expires on April 20, 2010.

Distribution Agreement

Bynet Data Communications Ltd., a member of the RAD-Bynet Group, distributes our products in Israel on a non-exclusive basis. We have a written distributor agreement with Bynet Data Communications Ltd., according to which we provide them with discounts similar to the discounts provided to third-party distributors in the region in the ordinary course of business. The total sales to Bynet Data Communications (and its subsidiaries and/or affiliates) amounted to approximately \$3.8 million during 2008.

Compensation of Chief Executive Officer

See discussion in Item 6 “Directors, Senior Management and Employees – Directors and Senior Management”.

C. Interests of Experts and Counsel

Not applicable.

ITEM 8. FINANCIAL INFORMATION

A. Consolidated Statements and other Financial Information

See “Item 18 - Financial Statements”.

B. Legal Proceedings

In December 2001, we, our Chairman Yehuda Zisapel, our President, Chief Executive Officer and Director Roy Zisapel and our Chief Financial Officer Meir Moshe (the “Individual Defendants”) and several underwriters in the syndicates for our September 30, 1999 initial public offering and January 24, 2000 secondary offering, were named as defendants in a class action complaint alleging violations of the federal securities laws in the United States District Court for the Southern District of New York (the “district court”). The complaint sought unspecified damages as a result of alleged violations of Section 11 of the Securities Act of 1933, as amended (the “Securities Act”) against all the defendants and Section 15 of the Securities Act against the Individual Defendants arising from activities purportedly engaged in by the underwriters in connection with our initial public offering and secondary offering. Plaintiffs allege that the underwriter defendants agreed to allocate stock in our initial public offering and secondary offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at pre-determined prices. An amended complaint filed on April 19, 2002, which is now the operative complaint, added a claim under Section 10(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) against us and a claim under Section 20(a) of the Exchange Act against the Individual Defendants. Plaintiffs allege that the prospectuses for our initial public offering and secondary offering were false and misleading because they did not disclose these arrangements. The action is being coordinated with approximately three hundred other nearly identical actions filed against other companies before one judge in the district court. On October 9, 2002, the Court dismissed the Individual Defendants from the case without prejudice. This dismissal disposed of the Section 15 and 20(a) control person claims without prejudice, since these claims were asserted only against the Individual Defendants.

On December 5, 2006, the United States Court of Appeals for the Second Circuit (the “Second Circuit”) vacated a decision by the district court granting class certification in six “focus” cases, which are intended to serve as test cases. Plaintiffs selected these six cases, which do not include us. On April 6, 2007, the Second Circuit denied a petition for rehearing filed by the plaintiffs, but noted that the plaintiffs could ask the district court to certify more narrow classes than those that were rejected.

Prior to the Second Circuit's decision, the majority of issuers, including the Company, had submitted a settlement agreement to the district court for approval. In light of the Second Circuit opinion, the parties agreed that the settlement could not be approved. On June 25, 2007, the district court approved a stipulation filed by the plaintiffs and the issuers that terminated the proposed settlement. On August 14, 2007, the plaintiffs filed amended complaints in the six focus cases. The six focus case issuers and the underwriters named as defendants in the focus cases filed motions to dismiss the amended complaints against them on November 14, 2007. On September 27, 2007, the plaintiffs filed a motion for class certification in the six focus cases. On March 26, 2008, the district court dismissed the Section 11 claims of those members of the putative classes in the focus cases who sold their securities for a price in excess of the initial offering price and those who purchased outside the previously certified class period. With respect to all the other claims, the motions to dismiss were denied. On October 10, 2008, at the request of Plaintiffs, Plaintiffs' motion for class certification was withdrawn, without prejudice.

The parties in the approximately 300 coordinated class actions, including Radware, the underwriter defendants in the Radware class action, and the plaintiffs in the Radware class action, have reached an agreement in principle under which the insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Radware. The settlement is subject to approval by the parties, termination by the parties under certain circumstances, and Court approval. There is no assurance that the settlement will be concluded or that the Court will approve the settlement.

Due to the inherent uncertainties of litigation, we cannot accurately predict the ultimate outcome of the matter. Should the settlement not be concluded or approved and the Company is found liable, we are, at this time, unable to estimate or predict the potential damages that might be awarded, whether such damages would be greater than our insurance coverage, and whether such damages would have a material impact on our results of operations, cash flows or financial condition in any future period.

The Company's French subsidiary, Radware France, is a party to two separate litigation proceedings before the Boulogne-Billancourt Employment Tribunal, brought against the subsidiary by two of its former employees claiming damages in connection with their dismissal, in a total amount of approximately 387,000 Euros. The hearings with respect to two of these matters are scheduled for March 26, 2009 and April 30, 2009. At this stage we cannot assess the outcome or the risks associated with these two matters but in any event we do not expect them to have a material affect on our financial results and operations.

The Company's Canadian subsidiary, Radware Canada Inc., is a party to a litigation proceeding before the Ontario Superior Court of Justice, brought against the subsidiary by its former employee claiming damages in connection with its dismissal for approximately 150,000 Canadian Dollars. At this stage we cannot assess the outcome or the risks associated with this matter but in any event we do not expect it to have a material affect on our financial results and operations.

We have conducted some other legal proceeding or arbitration which we do not believe to have significant effects on our financial condition or profitability.

Dividend Distribution Policy

We have never paid and do not intend to pay cash dividends on our ordinary shares in the foreseeable future. Our earnings and other cash resources will be used to continue the development and expansion of our business. Any future dividend policy will be determined by our Board of Directors and will be based upon conditions then existing, including our results of operations, financial condition, current and anticipated cash needs, contractual restrictions and other conditions.

C. Significant Changes

Except as otherwise disclosed in this annual report, we are not aware of any significant changes that have occurred since the date of the audited consolidated financial statements included in this annual report.

ITEM 9. THE LISTING

A. Listing Details

Our ordinary shares have been listed for quotation on the NASDAQ Global Select Market as of September 30, 1999, and, since May 12, 2004 on the Tel Aviv Stock Exchange, or TASE, both under the symbol “RDWR”. Due primarily to low volumes of trade, we have voluntarily delisted our ordinary shares from trade on the TASE, effective March 8, 2009.

The following table sets forth the high and low closing price for our ordinary shares as reported by the NASDAQ Global Select Market and TASE for the periods indicated:

| Annual High and Low | NASDAQ Global Select Market | | Tel Aviv Stock Exchange | |
|-------------------------------|-----------------------------|----------|-------------------------|-----------|
| | High | Low | High | Low |
| 2004 | \$ 32.42 | \$ 14.94 | NIS 118.00 | NIS 69.60 |
| 2005 | \$ 26.56 | \$ 15.19 | NIS 115.00 | NIS 67.93 |
| 2006 | \$ 21.49 | \$ 11.44 | NIS 101.10 | NIS 50.43 |
| 2007 | | | | |
| First Quarter | \$ 15.62 | \$ 12.84 | NIS 67.97 | NIS 55.24 |
| Second Quarter | \$ 14.60 | \$ 12.31 | NIS 61.97 | NIS 49.73 |
| Third Quarter | \$ 16.05 | \$ 12.94 | NIS 64.62 | NIS 53.68 |
| Fourth Quarter | \$ 16.92 | \$ 12.72 | NIS 67.33 | NIS 49.64 |
| ANNUAL | \$ 16.92 | \$ 12.31 | NIS 67.97 | NIS 49.64 |
| 2008 | | | | |
| First Quarter | \$ 14.84 | \$ 10.19 | NIS 59.40 | NIS 34.51 |
| Second Quarter | \$ 10.93 | \$ 8.81 | NIS 39.72 | NIS 29.50 |
| Third Quarter | \$ 9.80 | \$ 7.50 | NIS 35.64 | NIS 26.09 |
| Fourth Quarter | \$ 8.06 | \$ 4.99 | NIS 28.38 | NIS 18.11 |
| ANNUAL | \$ 14.84 | \$ 4.99 | NIS 59.40 | NIS 18.11 |
| Most recent six months | | | | |
| 2009 | | | | |
| March* | \$ 5.80 | \$ 5.15 | ** | ** |
| February | \$ 6.48 | \$ 5.31 | NIS 27.30 | NIS 21.17 |
| January | \$ 6.21 | \$ 5.51 | NIS 25.24 | NIS 21.09 |
| 2008 | | | | |
| December | \$ 6.75 | \$ 4.99 | NIS 27.39 | NIS 18.11 |
| November | \$ 6.99 | \$ 5.73 | NIS 27.71 | NIS 21.50 |
| October | \$ 8.06 | \$ 5.76 | NIS 28.38 | NIS 21.98 |
| September | \$ 9.80 | \$ 7.92 | NIS 35.64 | NIS 27.01 |

* Through March 23, 2009

** Effective March 8, 2009, the Company was voluntarily de-listed from the TASE.

B. Plan of Distribution

Not applicable.

C. Markets

Our ordinary shares are listed for quotation on the NASDAQ Global Select Market under the symbol “RDWR”.

D. Selling Shareholders

Not applicable.

E. Dilution

Not applicable.

F. Expenses of the Issue

Not applicable.

ITEM 10. ADDITIONAL INFORMATION

A. Share Capital

Not applicable.

B. Memorandum and Articles of Association

Set out below is a description of certain provisions of our Memorandum of Association and Articles of Association, and of the Companies Law related to such provisions. This description is only a summary and does not purport to be complete and is qualified by reference to the full text of the Memorandum and Articles which are incorporated by reference to exhibits to this annual report and by Israeli law.

We were first registered under Israeli law on May 16, 1996 as a private company, and on November 18, 1999 became a public company. Our registration number with the Israeli registrar of companies is 52-004437-1.

Objects and Purposes

Pursuant to our Articles of Association, our objective is to engage, directly or indirectly, in any lawful undertaking or business whatsoever, including, without limitation, as stipulated in our Memorandum of Association, which was filed with the Israeli Registrar of Companies.

Shares; Transfer of Shares

Our registered capital is divided into 30,000,000 ordinary shares of nominal (par) value NIS 0.10 each. There are no other classes of shares. All of our outstanding shares are fully paid and non-assessable. The shares do not entitle their holders to preemptive rights and fully paid ordinary shares may be freely transferred pursuant to our Articles of Association unless such transfer is restricted or prohibited by another instrument.

Dividend and Liquidation Rights

Dividends on our ordinary shares may be paid only out of profits and other surplus, as defined in the Companies Law, as of the end of the most recent financial statements or as accrued over a period of two years, whichever is higher. Our Board of Directors is authorized to declare dividends, provided that there is no reasonable concern that payment of the dividend will prevent us from satisfying our existing and foreseeable obligations as they become due, and provided further that our shareholders approved the final dividend declared by the Board of Directors, in an amount not to exceed the Board of Directors' recommendation. In the event of our liquidation, after satisfaction of liabilities to creditors, our assets will be distributed to the holders of ordinary shares in proportion to their respective holdings. This liquidation right may be affected by the grant of preferential dividends or distribution rights to the holders of a class of shares with preferential rights that may be authorized in the future.

Voting, Shareholders' Meetings and Resolutions

We have two types of general shareholder meetings: the annual general meeting and the extraordinary general meeting. An annual general meeting must be held once in every calendar year, but not more than 15 months after the last annual general meeting. The Board of Directors may convene an extraordinary general meeting whenever it deems fit, and is obliged to do so upon the request of any of: two directors or one fourth of then serving directors; one or more shareholders who hold at least 5% of the issued share capital and at least 1% of the voting rights; or one or more shareholders who hold at least 5% of the voting rights.

Under the Companies Law, shareholder meetings generally require prior notice of not less than 21 days. The Companies Law also provides that the record date for the participation of shareholders of a company whose shares are traded or registered outside of Israel such as us may generally be no more than 40 but no less than 28 days prior to the meeting, provided that notice for said meeting is given prior to the record date. A shareholder may vote in person or by proxy, or, if the shareholder is a corporate body, by its representative.

Holders of ordinary shares have one vote for each ordinary share held on all matters submitted to a vote of shareholders. A shareholder may only vote the shares for which all calls have been paid, except in separate general meetings of a particular class.

These voting rights may be affected by the grant of any special voting rights to the holders of a class of shares with preferential rights that may be authorized in the future. The quorum required for an ordinary meeting of shareholders consists of at least two shareholders present in person or by proxy who hold or represent between them at least 35% of the outstanding voting shares unless otherwise required by applicable rules. A meeting adjourned for lack of a quorum generally is adjourned to the same day in the following week at the same time and place or any time and place as the chairman may designate with the consent of a majority of the voting power represented at the meeting and voting on the matter adjourned. At such reconvened meeting the required quorum consists of any two members present in person or by proxy.

Under the Companies Law, unless otherwise provided in the Articles of Association or applicable law, all resolutions of the shareholders require a simple majority of the shares present, in person or by proxy, and voting on the matter. However, our articles of association require approval of at least 75% of the shares present and voting to increase our share capital or to change its structure, grant any special rights to the holders of a class of shares with preferential rights or change such rights previously granted or remove directors from office.

Subject to the Companies Law, a resolution in writing signed by the holders of all of our ordinary shares entitled to vote at a meeting of shareholders or to which all such shareholders have given their written consent will be sufficient to adopt the resolution in lieu of a meeting.

General Duties of Shareholders

Under the Companies Law, each and every shareholder has a duty to act in good faith in exercising his rights and fulfilling his obligations towards the company and other shareholders and refrain from abusing his power in the company, such as in voting in the general meeting of shareholders on the following matters:

- Any amendment to the articles of association;
- An increase of the company’s authorized share capital;
- A merger; or
- Approval of certain related party transactions and actions which require shareholder approval pursuant to the Companies Law.

In addition, each and every shareholder has the general duty to refrain from depriving rights of other shareholders.

Furthermore, any controlling shareholder, any shareholder who knows that it possesses the power to determine the outcome of a shareholder vote and any shareholder that, pursuant to the provisions of the articles of association, has the power to appoint or to prevent the appointment of an office holder in the company or any other power toward the company is under a duty to act in fairness towards the company. The Companies Law does not describe the substance of this duty of fairness. These various shareholder duties may restrict the ability of a shareholder to act in what the shareholder perceives to be its own best interests.

Restrictions on Non-Israeli Residents

The ownership or voting of our ordinary shares by non-residents of Israel, except with respect to citizens of countries which are in a state of war with Israel, is not restricted in any way by our Memorandum of Association or Articles of Association or by the laws of the State of Israel.

Mergers and Acquisitions under Israeli Law

There are no specific provisions of our Memorandum or Articles of Association that would have an effect of delaying, deferring or preventing a change in control of us or that would operate only with respect to a merger, acquisition or corporate restructuring involving us (or any of our subsidiaries), except those relating to the staggered board as described in Item 6 above and certain provisions of the Companies Law which may have such effect.

The Israeli Companies Law includes provisions that allow a merger transaction and requires that each company that is party to a merger approve the transaction by its board of directors and a vote of the majority of its shares, voting on the proposed merger at a shareholders meeting. For purposes of the shareholder vote, unless a court rules otherwise, the merger will not be deemed approved if shares, representing a majority of the voting power present at the shareholders meeting and which are not held by the other party to the merger (or by any person who holds 25% or more of the voting power of the right to appoint 25% or more of the directors of the other party), vote against the merger. Upon the request of a creditor of either party of the proposed merger, the court may delay or prevent the merger if it concludes that there exists a reasonable concern that as a result of the merger, the surviving company will be unable to satisfy the obligations of any of the parties to the merger. In addition, a merger may not be completed unless at least (i) 50 days have passed from the time that a proposal of the merger has been filed with the Israeli Registrar of Companies by each merging company and (ii) 30 days have passed since the merger was approved by the shareholders of each merging company.

In addition, provisions of the Companies Law that deal with “arrangements” between a company and its shareholders may be used to effect squeeze-out transactions in which the target company becomes a wholly-owned subsidiary of the acquirer. These provisions generally require that the merger be approved by a majority of the participating shareholders holding at least 75% of the shares voted on the matter. In addition to shareholder approval, court approval of the transaction is required, which entails further delay. The Companies Law also provides for a merger between Israeli companies, after completion of the above procedure for an “arrangement” transaction and court approval of the merger.

The Companies Law also provides that an acquisition of shares of a public company must be made by means of tender offer if as a result of the acquisition the purchaser would become a 25% or greater shareholder of the company and there is no 25% or greater shareholder in the company. Similarly, the Companies Law provides that an acquisition of shares in a public company must be made by means of a tender offer if as a result of the acquisition the purchaser would become a 45% or greater shareholder of the company, unless there is already a 45% or greater shareholder of the company. These requirements do not apply if, in general, the acquisition (1) was made in a private placement that received shareholder approval, (2) was from a 25% or greater shareholder of the company which resulted in the acquirer becoming a 25% or greater shareholder of the company, or (3) was from a 45% or greater shareholder of the company which resulted in the acquirer becoming a 45% or greater shareholder of the company. The tender offer must be extended to all shareholders, but the offeror is not required to purchase more than 5% of the company's outstanding shares, regardless of how many shares are tendered by shareholders. The tender offer may be consummated only if (i) at least 5% of the company's outstanding shares will be acquired by the offeror and (ii) the number of shares tendered in the offer exceeds the number of shares whose holders objected to the offer.

If, as a result of an acquisition of shares, the acquirer will hold more than 90% of a company's outstanding shares, the acquisition must be made by means of a tender offer for all of the outstanding shares. If less than 5% of the outstanding shares are not tendered in the tender offer, all the shares that the acquirer offered to purchase will be transferred to it. The Companies Law provides for appraisal rights if any shareholder files a request in court within three months following the consummation of a full tender offer. If more than 5% of the outstanding shares are not tendered in the tender offer, then the acquirer may not acquire shares in the tender offer that will cause his shareholding to exceed 90% of the outstanding shares.

Finally, Israeli tax law treats stock-for-stock acquisitions between an Israeli company and a foreign company less favorably than does U.S. tax law. For example, Israeli tax law subjects a shareholder who exchanges his ordinary shares for shares in another corporation to taxation on half the shareholder's shares two years following the exchange and on the balance four years thereafter even if the shareholder has not yet sold the new shares.

Modification of Class Rights

Our Articles of Association provide that the rights attached to any class (unless otherwise provided by the terms of such class), such as voting, rights to dividends and the like, may be varied by written consent of holders of seventy-five percent of the issued shares of that class, or by adoption by the holders of seventy-five percent of the shares of that class at a separate class meeting. Subject thereto, the conditions imposed by our Articles of Association governing changes in the rights of any class of shares, are no more stringent than is required by Israeli law.

Board of Directors

According to the Companies Law and our Articles of Association, the management of our business is vested in our Board of Directors. Our Articles of Association provide that the Board of Directors shall consist of not less than five and not more than nine directors as shall be determined by our shareholders (in October 2006 our shareholders fixed the maximum size of our Board of Directors at nine members). In accordance with our Articles of Association, our Board of Directors (other than our external directors) is divided into three classes with each class serving until the third annual meeting following their election, as more fully described in “Item 6– Directors, Senior Management and Employees – Board Practices – Staggered Board.” There is no requirement under our Articles of Association or under Israeli law for directors to retire on attaining a specific age. Our Articles of Association do not require directors to hold our ordinary shares to qualify for election.

The Board of Directors may exercise all such powers and may take all such actions that are not specifically granted to our shareholders. As part of its powers, our Board of Directors may cause the Company to borrow or secure payment of any sum or sums of money for the purposes of the Company, at such times and upon such terms and conditions as it thinks fit, including the grants of security interests on all or any part of the property of the Company. In addition, the Companies Law requires that transactions between a company and its office holders (which term includes directors) or that benefit its office holders, including arrangements as to the compensation of office holders, be approved as provided for in the Companies Law and the company’s Articles of Association, as more fully described in Item 6C under “Approval of Specified Related Party Transactions Under Israeli Law”.

A resolution proposed at any meeting of the Board of Directors shall be deemed adopted if approved by a majority of the directors present and voting on the matter.

Exculpation, Insurance and Indemnification

Exculpation of Office Holders

Under the Companies Law, an Israeli company may not exempt an office holder from liability for a breach of his or her duty of loyalty, but may exempt in advance an office holder from his or her liability to the company, in whole or in part, for a breach of his duty of care (except in connection with distributions), provided that the articles of association of the company allow it to do so. Our Articles of Association allow us to exempt our office holders to the maximum extent permitted by law.

Insurance of Office Holders

Our Articles of Association provide that, subject to the provisions of the Companies Law, we may enter into a contract for the insurance of the liability of any of our office holders, with respect to an act performed in the capacity of an office holder for:

- A breach of his or her duty of care to us or to another person;
- A breach of his or her duty of loyalty to us, provided that the office holder acted in good faith and had reasonable cause to assume that his or her act would not prejudice our interests; or
- A financial liability imposed upon him or her in favor of another person.

Exculpation and Indemnification of Office Holders

Under the Companies Law, we may indemnify any of our office holders against the following obligations and expenses imposed on the office holder with respect to an act performed in the capacity of an office holder:

- A financial liability incurred by, or imposed on him or her in favor of another person by a court judgment, including a settlement or an arbitration award approved by the court. Such indemnification may be approved (i) after the liability has been incurred or (ii) in advance, provided that our undertaking to indemnify is limited to events that our Board of Directors believes are foreseeable in light of our actual operations at the time of providing the undertaking and to a sum or criterion that our Board of Directors determines to be reasonable under the circumstances;
- Reasonable litigation expenses, including attorney's fees, expended by the office holder as a result of an investigation or proceeding instituted against him or her by a competent authority, provided that such investigation or proceeding concluded without the filing of an indictment against him or her or the imposition of any financial liability in lieu of criminal proceedings other than with respect to a criminal offense that does not require proof of criminal intent; and
- Reasonable litigation expenses, including attorneys' fees, expended by the office holder or charged to him or her by a court in connection with proceedings we institute against him or her or instituted on our behalf or by another person, a criminal indictment from which he or she was acquitted, or a criminal indictment in which he or she was convicted for a criminal offense that does not require proof of criminal intent.

Limitations on Insurance and Indemnification

The Companies Law provides that a company may not indemnify an office holder, or enter into an insurance contract which would provide coverage for any monetary liability incurred as a result of any of the following:

- A breach by the office holder of his or her duty of loyalty unless, with respect to indemnification or insurance coverage, the office holder acted in good faith and had a reasonable basis to believe that the act would not prejudice the company;
- A breach by the office holder of his or her duty of care if the breach was done intentionally or recklessly unless the breach was done negligently;
- Any act or omission done with the intent to derive an illegal personal benefit; or
- Any fine levied against the office holder.

In addition, under the Companies Law, indemnification of, and procurement of insurance coverage for, our office holders must be approved by our Audit Committee and our Board of Directors and, if the beneficiary is a director, by our shareholders.

We currently hold directors and officers liability insurance for the benefit of our office holders. In addition, we provide our directors and officers indemnification pursuant to the terms of a Letter of Indemnification substantially in the form approved by our shareholders (See Exhibit 4.4 of our amended annual report on Form 20-F/A for the year ending December 31, 2005 filed with the SEC on July 6, 2006, for the form of such letter).

C. Material Contracts

On April 25, 2007 we entered into an agreement and plan of merger with Covelight, pursuant to which we purchased Covelight for consideration of up to \$16 million, consisting of \$7.5 million paid at closing and up to \$8.5 million (earn-out) to be paid in 12 months following closing based on achieving certain sales revenues from the sales of Covelight products, with the maximum amount of \$8.5 million being paid if the sales of Covelight's products during the 12 months ending on March 31, 2008 are equal to or exceed \$8 million. Since the sales targets were not achieved we were not required to pay the additional earn-out amount and the total consideration for the acquisition was \$7,660,000, including \$160,000 of costs related to the acquisition. The agreement included representations, warranties and indemnification obligations of Covelight's shareholders with respect to Covelight's financial statements, employees, material agreements, intellectual property and additional business parameters.

The foregoing description of the agreement and plan of merger with Covelight is only a summary and does not purport to be complete and is qualified by reference to the full text of the agreement filed by us as Exhibit 4.5 in Item 19.

On February 19, 2009 we entered into an asset purchase agreement (“APA”) with Nortel Networks Ltd., Nortel Networks Inc. and other Nortel entities, whereby we agreed to purchase certain assets, including intellectual property, inventory and service contracts, related to Nortel’s Layer 4-7 Application Delivery Business for \$17.65 million in cash. The Application Delivery Business was acquired by Nortel in 2000 by way of its corporate acquisition of Alteon WebSystems, Inc. Nortel has filed the APA with the United States Bankruptcy Court for the District of Delaware along with a motion seeking the establishment of bidding procedures for an auction that allows other qualified bidders to submit higher or otherwise better offers, as required under Section 363 of the U.S. Bankruptcy Code. A similar motion for the approval of the bidding procedures was filed with the Ontario Superior Court of Justice. Consummation of the transaction was subject to higher or otherwise better offers, none of which were received by the bidding deadline, and approval by the United States Bankruptcy Court for the District of Delaware, and the Ontario Superior Court of Justice and the satisfaction of other conditions. The APA contains very limited ongoing representations and undertakings by Nortel with respect to the purchased assets and assumed liabilities. If the deal is consummated, we plan to offer the Nortel’s application delivery products under a merged brand, Radware Alteon, and to hire certain Nortel employees who will be dedicated to the Radware Alteon brand.

The foregoing description of the APA is only a summary and does not purport to be complete and is qualified by reference to the full text of the agreement filed by us as Exhibit 4.6 in Item 19.

For a summary of additional material contracts, see “Item 5 – Operating and Financial Review and Prospects – General – Business Combinations” and “Item 7 – Major Shareholders and Related Party Transactions – Related Party Transactions – Lease of Property”.

D. Exchange Controls

There are currently no Israeli currency control restrictions on payments of dividends or other distributions with respect to our ordinary shares or the proceeds from the sale of the shares, except for the obligation of Israeli residents to file reports with the Bank of Israel regarding certain transactions. However, legislation remains in effect pursuant to which currency controls can be imposed by administrative action at any time.

E. Taxation

Holders of our ordinary shares should consult their own tax advisors as to the United States, Israeli or other tax consequences of the purchase, ownership and disposition of ordinary shares, including, in particular, the effect of any foreign, state or local taxes.

Israeli Tax Considerations

The following is a summary of the current tax structure applicable to companies incorporated in Israel, with special reference to its effect on us. The following also contains a discussion of the material Israeli tax consequences to purchasers of our ordinary shares and Israeli government programs benefiting us. To the extent that the discussion is based on new tax legislation which has not been subject to judicial or administrative interpretation, we cannot assure you that the views expressed in the discussion will be accepted by the Israel tax authorities or courts. The discussion is not intended, and should not be construed, as legal or professional tax advice and is not exhaustive of all possible tax considerations.

Generally, Israeli companies are subject to "Corporate Tax" on their taxable income at the rate of 27% for the 2008 tax year and 26% for the 2009 year tax. Following an amendment to the Tax Ordinance, which came into effect on January 1, 2006, the Corporate Tax rate is scheduled to decrease to 25% for the 2010 tax year and thereafter. Israeli companies are generally subject to Capital Gains Tax at a rate of 25% for capital gains (other than gains deriving from the sale of listed securities) derived after January 1, 2003. However, the effective tax rate payable by a company which derives income from an approved enterprise (as further discussed below) may be considerably less.

Following an additional amendment to the Tax Ordinance, which came into effect on January 1, 2009, an Israeli corporation may elect a 5% rate of corporate tax (instead of 25%) for income from dividend distributions received from a foreign subsidiary which is used in Israel in 2009, or within one year after actual receipt of the dividend, whichever is later. The 5% tax rate is subject to various conditions, which include conditions with regard to the identity of the corporation that distributes the dividends, the source of the dividend, the nature of the use of the dividend income, and the period during which the dividend income will be used in Israel.

Tax Benefits Under the Law for the Encouragement of Capital Investments, 1959

The law before the amendment of 2005

The Law for the Encouragement of Capital Investments, 1959, as in effect prior to April 1, 2005 (the "Investments Law"), provided that a proposed capital investment in eligible facilities may, upon application to the Investment Center of the Ministry of Industry and Commerce of the State of Israel, be designated as an approved enterprise. The Investment Center based its decision as to whether or not to approve an application, among other things, on the criteria set forth in the Investments Law and regulations, the then prevailing policy of the Investment Center, and the specific objectives and financial criteria of the applicant. Each certificate of approval for an approved enterprise relates to a specific investment program delineated both by its financial scope, including its capital sources, and by its physical characteristics, e.g., the equipment to be purchased and utilized pursuant to the program.

The Investments Law provides that an approved enterprise is eligible for tax benefits on taxable income derived from its approved enterprise programs. The tax benefits under the Investments Law also apply to income generated by a company from the grant of a usage right with respect to know-how developed by the approved enterprise, income generated from royalties, and income derived from a service which is auxiliary to such usage right or royalties, provided that such income is generated within the approved enterprise's ordinary course of business. If a company has more than one approval or only a portion of its capital investments are approved, its effective tax rate is the result of a weighted average of the applicable rates. The tax benefits under the Investments Law are not, generally, available with respect to income derived from products manufactured outside of Israel. In addition, the tax benefits available to an approved enterprise are contingent upon the fulfillment of conditions stipulated in the Investments Law and regulations and the criteria set forth in the specific certificate of approval, as described above. In the event that a company does not meet these conditions, it would be required to refund the amount of tax benefits, plus a consumer price index linkage adjustment and interest.

The Investments Law also provides that an approved enterprise is entitled to accelerated depreciation on its property and equipment that are included in an approved enterprise program.

Taxable income of a company derived from an approved enterprise is subject to corporate tax at the maximum rate of 25%, rather than the regular corporate tax rate, for the benefit period. This period is ordinarily seven years commencing with the year in which the approved enterprise first generates taxable income (after the commencement of production), and is limited to twelve years from commencement of production or 14 years from the date of approval, whichever is earlier (the "Years Limitation").

A company may elect to receive an alternative package of benefits. Under the alternative package of benefits, a company's undistributed income derived from the approved enterprise will be exempt from corporate tax for a period of between two and ten years from the first year the company derives taxable income under the program, depending on the geographic location of the approved enterprise within Israel, and such company will be eligible for a reduced tax rate for the remainder of the benefits period. The Years Limitation does not apply to the exemption period. A company that has elected the alternative package of benefits, such as us, that subsequently pays a dividend out of income derived from the approved enterprise during the tax exemption period will be subject to corporate tax in respect of the gross amount distributed, including any taxes thereon, at the rate which would have been applicable had it not elected the alternative package of benefits, generally 10%-25%, depending on the percentage of the company's ordinary shares held by foreign shareholders. The dividend recipient is subject to withholding tax at the rate of 15% applicable to dividends from approved enterprises, if the dividend is distributed during the tax exemption period or within twelve years thereafter. The company must withhold this tax at source.

A company that has an approved enterprise program is eligible for further tax benefits if it qualifies as a foreign investors' company. A foreign investors' company is a company which more than 25% of its share capital and combined share and loan capital is owned by non-Israeli residents. A company that qualifies as a foreign investors' company and has an approved enterprise program is eligible for tax benefits for a ten-year benefit period. As specified above, depending on the geographic location of the approved enterprise within Israel, income derived from the approved enterprise program may be exempt from tax on its undistributed income for a period of between two to ten years, and will be subject to a reduced tax rate for the remainder of the benefits period. The tax rate for the remainder of the benefits period will be 25%, unless the level of foreign investment exceeds 49%, in which case the tax rate will be 20% if the foreign investment is more than 49% and less than 74%; 15% if more than 74% and less than 90%; and 10% if 90% or more.

Subject to applicable provisions concerning income under the alternative package of benefits, dividends paid by a company are considered to be attributable to income received from the entire company and the company's effective tax rate is the result of a weighted average of the various applicable tax rates, excluding any tax-exempt income. Under the Investments Law, a company that has elected the alternative package of benefits is not obliged to distribute retained profits, and may generally decide from which year's profits to declare dividends. We currently intend to reinvest any income derived from our approved enterprise program and not to distribute such income as a dividend.

The Investment Center has granted us an approval to establish an approved enterprise program under the Investments Law, at our facilities in Tel Aviv and Jerusalem.

The current benefits for an approved enterprise program in Jerusalem provide that income derived from the approved enterprise program allocated to the approved enterprise in Jerusalem is tax exempt for ten years commencing with the year in which the approved enterprise first generates taxable income and will be taxed at a reduced company tax rate of up to 25% (rather than the regular corporate tax rate) in the following years.

The current benefits for an approved enterprise program in Tel Aviv provide that income derived from the approved enterprise program and allocated to our Tel Aviv facility will be tax exempt for a period of two years and will be subject to a reduced tax rate, depending on the level of foreign investment, for an additional period of five to eight years.

As mentioned above, the Investment Center's approval is for establishing an approved enterprise program in both Tel Aviv and Jerusalem. The approval provides for the allocation of tax benefits between our facilities in Tel Aviv and Jerusalem such that the income derived from the approved enterprise program shall be allocated pro-rata between the aforementioned facilities based on the expenses borne by each facility. However, since all our manufacturing and part of our research and development facilities are located in Jerusalem, the Investment Center determined the method of allocation of tax benefits between our facilities in Jerusalem and Tel Aviv as follows: The method of allocation of the tax benefits between our facilities in Tel Aviv and Jerusalem will be based on the number of research and development and manufacturing employees in each of the facilities, provided, however that the average salary for such employees in our Jerusalem facility will not be less than 85% of the average salary of such employees in our Tel Aviv facility. In the years that such condition is not fulfilled, the method of allocation will be as follows: (i) 50% of our income will be allocated between our Jerusalem facility and our Tel Aviv facility, pro-rata according to the number of employees engaged in research and development or manufacturing activities in each facility; and (ii) 50% of our income will be allocated between our Jerusalem facility and our Tel Aviv facility, pro-rata according to the salaries paid to the employees engaged in research and development or manufacturing activities in each facility. The Israeli government may reduce or eliminate tax benefits available to approved enterprise programs in the future. We cannot assure you that our approved program and the benefits thereunder shall continue in the future at its current level or at any level. See "Item 3 – Key Information – Risks Related to Operations In Israel."

In 2004, the Company began to utilize the above mentioned tax benefits, and they are scheduled to gradually expire according to the law. As of December 31, 2008, retained earnings included approximately \$25.0 million in tax-exempt income earned by the Company's "Approved Enterprise". The Company has decided not to declare dividends out of such tax-exempt income. Accordingly, no deferred income taxes have been provided on income attributable to the Company's "Approved Enterprise".

If the retained tax-exempt income is distributed, it would be taxed at the corporate tax rate applicable to such profits with respect to the gross amount as if the Company had not elected the alternative tax benefits (currently between 10% - 25%, based on percentage of foreign ownership at the date of declaration).

Income from sources other than the "Approved Enterprise" will be subject to the tax at the regular rate.

During 2004, the Company's production facilities in Israel (Tel Aviv and Jerusalem) were granted an expansion program to its Approved Enterprise status by the Investment Center. The Company applied for an amendment to this expansion program, according to which it requested an enlargement to this expansion program, neutralization of certain assets and an approval that the benefits period from such expansion program will commence in 2006. The Investment Center granted temporary approval for the year 2006.

The 2005 Amendment to the Investments Law

An amendment to the Investments Law, which was published on April 1, 2005 (the "Amendment"), has changed certain provisions of the Law. As a result of the Amendment, a company is no longer obliged to acquire Approved Enterprise status in order to receive the tax benefits previously available under the Alternative Benefits provisions, and therefore generally there is no need to apply to the Investment Center for this purpose (Approved Enterprise status remains mandatory for companies seeking grants). Rather, the Company may claim the tax benefits offered by the Investments Law directly in its tax returns by notifying the ITA within 12 months of the end of that year, provided that its facilities meet the criteria for tax benefits set out by the Amendment. A company is also granted a right to approach the Israeli Tax Authority for a pre-ruling regarding their eligibility for benefits under the Amendment.

Tax benefits are available under the Amendment to production facilities (or other eligible facilities), which are generally required to derive more than 25% of their business income from export (referred to as a "Benefited Enterprise"). In order to receive the tax benefits, the Amendment states that the company must make an investment in the Benefited Enterprise exceeding a certain percentage or a minimum amount specified in the Investments Law. Such investment may be made over a period of no more than three years ending at the end of the year in which the company requested to have the tax benefits apply to the Benefited Enterprise (the "Year of Election"). Where the company requests to have the tax benefits apply to an expansion of existing facilities, then only the expansion will be considered a Benefited Enterprise and the company's effective tax rate will be the result of a weighted combination of the applicable rates. In this case, the minimum investment required in order to qualify as a Benefited Enterprise is required to exceed a certain percentage or a minimum amount of the company's production assets before the expansion.

The duration of tax benefits is subject to a limitation of the earlier of 7 to 10 years from the commencement year, or 12 years from the first day of the Year of Election. The tax benefits granted to a Benefited Enterprise are determined, as applicable to its geographic location within Israel, according to one of the following new tax routes, which may be applicable to us:

- Similar to the currently available alternative route, exemption from corporate tax on undistributed income for a period of two to ten years, depending on the geographic location of the Benefited Enterprise within Israel, and a reduced corporate tax rate of 10% to 25% for the remainder of the benefits period, depending on the level of foreign investment in each year. Benefits may be granted for a term of seven to ten years, depending on the level of foreign investment in the company. If the company distributes a dividend out of income derived from the Benefited Enterprise during the tax exemption period, such income will be subject to corporate tax at the applicable rate of the gross amount (10%-25%). The company is required to withhold tax at the source at a rate of 15% from any dividends distributed from income derived from the Benefited Enterprise; and

- A special tax route, which enables companies owning facilities in certain geographical locations in Israel to pay corporate tax at the rate of 11.5% on income of the Benefited Enterprise. The benefits period is ten years. Upon payment of dividends, the company is required to withhold tax at source at a rate of 15% for Israeli residents and at a rate of 4% for foreign residents.

Generally, a company that is Abundant in Foreign Investment (as defined in the Investments Law) is entitled to an extension of the benefits period by an additional five years, depending on the rate of its income that is derived in foreign currency.

The Amendment changes the definition of “foreign investment” in the Investments Law so that the definition now requires a minimal investment of NIS 5 million by foreign investors. Furthermore, such definition now also includes the purchase of shares of a company from another shareholder, provided that the company’s outstanding and paid-up share capital exceeds NIS 5 million. Such changes to the aforementioned definition are retroactive from 2003.

The Amendment will apply to approved enterprise programs in which the year of election under the Investments Law is 2004 or later, unless such programs received “Approved Enterprise” approval from the Investment Center on or prior to December 31, 2004, in which case the Amendment provides that terms and benefits included in any certificate of approval already granted will remain subject to the provisions of the Investments Law as they were on the date of such approval.

Should we elect to utilize tax benefits under the Amendment to the law, any such tax exempt profits might be subject to future taxation on the corporate level upon distribution to shareholders by a way of dividend or liquidation. Accordingly, we may be required to recognize deferred tax liability with respect to such tax exempt profits.

A substantial portion of our taxable operating income is derived from our approved enterprise program and we expect that a substantial portion of any taxable operating income that we may realize in the future will be also derived from such program. There is no assurance that our Jerusalem facility and Tel Aviv facility will continue to enjoy such status in the future.

Tax Benefits for Research and Development

Israeli tax law allows, under specified conditions, a tax deduction for expenditures, including capital expenditures, in the year incurred relating to scientific research and development projects, if the expenditures are approved by the relevant Israeli Government ministry, determined by the field of research, and the research and development is for the promotion of the company and is carried out by or on behalf of the company seeking such deduction. However, the amount of such deductible expenses shall be reduced by the sum of any funds received through government grants for the finance of such scientific research and development projects. Expenditures not so approved are deductible over a three-year period.

Tax Benefits Under the Law for the Encouragement of Industry (Taxes), 1969

Under the Law for the Encouragement of Industry (Taxes), 1969 (the “Industry Encouragement Law”), Industrial Companies are entitled to the following preferred corporate tax benefits, among others:

- Deduction of purchases of know-how and patents over an eight-year period for tax purposes;
- Right to elect, under specified conditions, to file a consolidated tax return with additional related Israeli Industrial Companies;
- Accelerated depreciation rates on equipment and buildings; and
- Deductions over a three-year period of expenses involved with the issuance and listing of shares on a stock market.

Eligibility for benefits under the Industry Encouragement Law is not subject to receipt of prior approval from any governmental authority. Under the Industry Encouragement Law, an "Industrial Company" is defined as a company resident in Israel, at least 90% of the income of which, in any tax year, determined in Israeli currency, exclusive of income from government loans, capital gains, interest and dividends, is derived from an "Industrial Enterprise" owned by it. An "Industrial Enterprise" is defined as an enterprise owned by an Industrial Company, whose major activity in a given tax year is industrial production activity.

We believe that we currently qualify as an Industrial Company within the definition of the Industry Encouragement Law. No assurance can be given that we will continue to qualify as an Industrial Company or that the benefits described above will be available in the future.

Special Provisions Relating to Taxation Under Inflationary Conditions

Under the Income Tax (Inflationary Adjustments) Law of 1985, or the Adjustments Law, results for tax purposes are measured in real terms, in accordance with the changes in the Israeli Consumer Price Index ("Israeli CPI"). Accordingly, until 2002, results for tax purposes were measured in terms of earnings in NIS after certain adjustments for increases in the Israeli CPI. Commencing in taxable year 2003, the Company has elected to measure its taxable income and file its tax return under the Israeli Income Tax Regulations (Principles Regarding the Management of Books of Account of Foreign Invested Companies and Certain Partnerships and the Determination of Their Taxable Income), 1986. Such an election obligates the Company for three years. Accordingly, commencing taxable year 2003, results for tax purposes are measured in terms of earnings in dollar. We have submitted a request to the Israeli tax authorities to extend the effect of the above regulations on our company for 2009.

On March 6, 2008, an amendment to the Inflationary Adjustments Law came into force. Pursuant to this amendment, as of the 2008 tax year, most of the provisions of the Inflationary Adjustments Law will no longer be in force, except for certain transitional orders.

Israeli Transfer Pricing Regulations

On November 29, 2006, Income Tax Regulations (Determination of Market Terms), 2006, promulgated under Section 85A of the Tax Ordinance, came into effect (the "TP Regs"). Section 85A of the Tax Ordinance and the TP Regs generally requires that all cross-border transactions carried out between related parties be conducted on an arm's length principle basis and will be taxed accordingly. The TP Regs are not expected to have a material affect on the Company.

Capital Gains Tax on Sales of Our Ordinary Shares

Israeli law generally imposes a capital gains tax on the sale of any capital assets by residents of Israel, as defined for Israeli tax purposes, and on the sale of assets located in Israel, including shares in Israeli companies, by non-residents of Israel, unless a specific exemption is available or unless a tax treaty between Israel and the shareholder's country of residence provides otherwise. The law distinguishes between real gain and inflationary surplus. The inflationary surplus is a portion of the total capital gain which is equivalent to the increase of the relevant asset's purchase price which is attributable to the increase in the Israeli consumer price index or, in certain circumstances, a foreign currency exchange rate, between the date of purchase and the date of sale. The real gain is the excess of the total capital gain over the inflationary surplus.

Generally, the tax rate applicable to capital gains derived from the sale of shares, whether listed on a stock market or not, is 20% for Israeli individuals, unless such shareholder claims a deduction for financing expenses in connection with such shares, in which case the gain will generally be taxed at a rate of 25%. Additionally, if such shareholder is considered a "significant shareholder" at any time during the 12-month period preceding such sale, i.e., such shareholder holds directly or indirectly, including with others, at least 10% of any means of control in the company, the tax rate shall be 25%. Israeli companies are subject to the Corporate Tax rate on capital gains derived from the sale of listed shares, unless such companies were not subject to the Adjustments Law (or certain regulations) as of August 10, 2005, in which case the applicable tax rate is 25%. However, the foregoing tax rates do not apply to: (i) dealers in securities; and (ii) shareholders who acquired their shares prior to an initial public offering (that may be subject to a different tax arrangement).

The tax basis of our ordinary shares acquired prior to January 1, 2003 will generally be determined in accordance with the average closing share price in the three trading days preceding January 1, 2003. However, a request may be made to the tax authorities to consider the actual adjusted cost of the shares as the tax basis if it is higher than such average price.

Non-Israeli residents are exempt from Israeli capital gains tax on any gains derived from the sale of shares of Israeli companies publicly traded on a recognized stock exchange or regulated market outside of Israel, provided however that such capital gains are not derived from a permanent establishment in Israel, such shareholders are not subject to the Adjustments Law, and such shareholders did not acquire their shares prior to an initial public offering. However, non-Israeli corporations will not be entitled to such exemption if Israeli residents (i) have a controlling interest of 25% or more in such non-Israeli corporation, or (ii) are the beneficiaries or are entitled to 25% or more of the revenues or profits of such non-Israeli corporation, whether directly or indirectly.

In some instances where our shareholders may be liable to Israeli tax on the sale of their ordinary shares, the payment of the consideration may be subject to the withholding of Israeli tax at the source.

Pursuant to the Convention Between the government of the United States of America and the government of Israel with Respect to Taxes on Income, as amended (the "U.S.-Israel Tax Treaty"), the sale, exchange or disposition of ordinary shares by a person who (i) holds the ordinary shares as a capital asset, (ii) qualifies as a resident of the United States within the meaning of the U.S.-Israel Tax Treaty and (iii) is entitled to claim the benefits afforded to such person by the U.S.-Israel Tax Treaty, generally, will not be subject to the Israeli capital gains tax. Such exemption will not apply if (i) such Treaty U.S. Resident holds, directly or indirectly, shares representing 10% or more of our voting power during any part of the 12-month period preceding such sale, exchange or disposition, subject to certain conditions, or (ii) the capital gains from such sale, exchange or disposition can be allocated to a permanent establishment in Israel. In such case, the sale, exchange or disposition of ordinary shares would be subject to Israeli tax, to the extent applicable; however, under the U.S.-Israel Tax Treaty, such Treaty U.S. Resident would be permitted to claim a credit for such taxes against the U.S. federal income tax imposed with respect to such sale, exchange or disposition, subject to the limitations in U.S. laws applicable to foreign tax credits. The U.S.-Israel Tax Treaty does not relate to U.S. state or local taxes.

Taxation of Dividends paid to Non-Resident Holders of Shares

Non-residents of Israel are subject to income tax on income accrued or derived from sources in Israel. Such sources of income include passive income such as dividends. On distributions of dividends other than bonus shares, or stock dividends, income tax is applicable at the rate of 20%, or 25% for a shareholder that is considered a "significant shareholder" at any time during the 12-month period preceding such distribution, unless a different rate is provided in a treaty between Israel and the shareholder's country of residence. However, under the Investments Law, dividends generated by an Approved Enterprise (or Benefited Enterprise) are taxed at the rate of 15%.

Under the U.S.-Israel Tax Treaty, the maximum tax on dividends paid to a holder of ordinary shares who is a Treaty U.S. Resident is 25%. However, if the income out of which the dividend is paid is not generated by an Approved Enterprise (or Benefited Enterprise), and not more than 25% of our gross income consists of interest or dividends, dividends paid to a U.S. corporation holding at least 10% of our issued voting power during the part of the tax year which precedes the date of payment of the dividend and during the whole of its prior tax year, are generally taxed at a rate of 12.5%. Dividends generated by an Approved Enterprise (or Benefited Enterprise) are taxed at the rate of 15% under the U.S.-Israel Tax Treaty.

For information with respect to the applicability of Israeli capital gains taxes on the sale of ordinary shares by United States residents, see above "The 2005 Amendment to the Investments Law – Capital Gains Tax on Sales of Our Ordinary Shares."

United States Federal Income Tax Considerations

Subject to the limitations described herein, the following discussion summarizes certain United States federal income tax consequences to a U.S. Holder of our ordinary shares. A “U.S. Holder” means a holder of our ordinary shares who is:

- An individual citizen or resident of the United States for U.S. federal income tax purposes;
- A corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized in the United States or under the laws of the United States or any political subdivision thereof or the District of Columbia;
- An estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- A trust (i) if, in general a court within the United States is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all of its substantial decisions, or (ii) that has in effect a valid election under applicable U.S. Treasury Regulations to be treated as a U.S. person.

This discussion considers only U.S. Holders that will own their ordinary shares as capital assets (generally, for investment) and does not purport to be a comprehensive description of all of the tax considerations that may be relevant to each person’s decision to purchase our ordinary shares. Certain aspects of U.S. federal income taxation relevant to a holder of our ordinary shares that is not a U.S. Holder (a “Non-U.S. Holder”) are also discussed below.

This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “Code”), current and proposed Treasury Regulations promulgated thereunder, and administrative and judicial decisions as of the date hereof, all of which are subject to change, possibly on a retroactive basis. This discussion does not address all aspects of U.S. federal income taxation that may be relevant to any particular U.S. Holder in light of such holder’s individual circumstances. In particular, this discussion does not address the potential application of the alternative minimum tax or U.S. federal income tax consequences to U.S. Holders that are subject to special treatment, including U.S. Holders that:

- Are broker-dealers or insurance companies;
- Have elected mark-to-market accounting;
- Are tax-exempt organizations or retirement plans;
- Are grantor trusts;
- Are financial institutions or “financial services entities;”
- Hold their shares as part of a straddle, “hedge” or “conversion transaction” with other investments;
- Certain former citizens or long-term residents of the United States;
- Acquired their shares upon the exercise of employee stock options or otherwise as compensation;
- Are real estate investment trusts or regulated investment companies;
- Own directly, indirectly or by attribution at least 10% of our voting power; or
- Have a functional currency that is not the U.S. dollar.

If a partnership (or any other entity treated as a partnership for U.S. federal income tax purposes) holds our ordinary shares, the tax treatment of the partnership and a partner in such partnership will generally depend on the status of the partner and the activities of the partnership. Such a partner or partnership should consult its own tax advisor as to its tax consequences.

In addition, this discussion does not address any aspect of state, local or non-United States laws or the possible application of United States federal gift or estate taxes.

Each holder of our ordinary shares is advised to consult such holder's own tax advisor with respect to the specific tax consequences to such holder of purchasing, holding or disposing of our ordinary shares, including the applicability and effect of federal, state, local and foreign income tax and other tax laws in such holder's particular circumstances.

Taxation of Ordinary Shares

Taxation of Dividends Paid On Ordinary Shares. Subject to the discussion below under "Passive Foreign Investment Company Status", a U.S. Holder will be required to include in gross income as dividend income the amount of any distribution paid on our ordinary shares, including any non-U.S. taxes withheld from the amount paid, to the extent the distribution is paid out of our current or accumulated earnings and profits as determined for U.S. federal income tax purposes. Distributions in excess of such earnings and profits will be applied against and will reduce the U.S. Holder's basis in our ordinary shares and, to the extent in excess of such basis, will be treated as gain from the sale or exchange of our ordinary shares. The dividend portion of such distributions generally will not qualify for the dividends received deduction available to corporations.

Dividends that are received by non-corporate U.S. Holders will be taxed at the rate applicable to long-term capital gains (currently a maximum rate of 15%), provided that such dividends meet the requirements of "qualified dividend income." Dividends that fail to meet such requirements, and dividends received by corporate U.S. Holders, are taxed at ordinary income rates. No dividend received by a U.S. Holder will be a qualified dividend (1) if the U.S. Holder held the ordinary share with respect to which the dividend was paid for less than 61 days during the 121-day period beginning on the date that is 60 days before the ex-dividend date with respect to such dividend, excluding for this purpose, under the rules of Code Section 246(c), any period during which the U.S. Holder has an option to sell, is under a contractual obligation to sell, has made and not closed a short sale of, is the grantor of a deep-in-the-money or otherwise nonqualified option to buy, or has otherwise diminished its risk of loss by holding other positions with respect to, such ordinary share (or substantially identical securities); or (2) to the extent that the U.S. Holder is under an obligation (pursuant to a short sale or otherwise) to make related payments with respect to positions in property substantially similar or related to the ordinary share with respect to which the dividend is paid. If we were to be a "passive foreign investment company" (as such term is defined in the Code) for any year, dividends paid on our ordinary shares in such year or in the following year would not be qualified dividends. The reduced tax rate for qualified dividends is scheduled to expire on December 31, 2010, unless further extended by the United States Congress. In addition, a non-corporate U.S. Holder will be able to take a qualified dividend into account in determining its deductible investment interest (which is generally limited to its net investment income) only if it elects to do so; in such case the dividend will be taxed at ordinary income rates.

Distributions of current or accumulated earnings and profits paid in foreign currency to a U.S. Holder (including any non-U.S. taxes withheld therefrom) will be includible in the income of a U.S. Holder in a U.S. dollar amount calculated by reference to the exchange rate on the day the distribution is received regardless of whether the foreign currency is converted into U.S. dollars. A U.S. Holder that receives a foreign currency distribution and converts the foreign currency into U.S. dollars after the date of receipt may have foreign exchange gain or loss based on any appreciation or depreciation in the value of the foreign currency against the U.S. dollar, which will generally be U.S. source ordinary income or loss.

U.S. Holders will have the option of claiming the amount of any non-U.S. income taxes withheld on a dividend distribution either as a deduction from gross income or as a dollar-for-dollar credit against their U.S. federal income tax liability. Individuals who do not claim itemized deductions, but instead utilize the standard deduction, may not claim a deduction for the amount of the non-U.S. income taxes withheld, but such amount may be claimed as a credit against the individual's U.S. federal income tax liability. The amount of foreign income taxes which may be claimed as a credit in any year is subject to complex limitations and restrictions, which must be determined on an individual basis by each U.S. Holder. These limitations include, among others, rules which limit foreign tax credits allowable with respect to specific classes of income to the U.S. federal income taxes otherwise payable with respect to each such class of income. A U.S. Holder will be denied a foreign tax credit with respect to non-U.S. income tax withheld from a dividend received on the ordinary shares if such U.S. Holder has not held the ordinary shares for at least 16 days of the 30-day period beginning on the date which is 15 days before the ex-dividend date with respect to such dividend, or to the extent such U.S. Holder is under an obligation to make related payments with respect to substantially similar or related property. Any days during which a U.S. Holder has substantially diminished its risk of loss on the ordinary shares are not counted toward meeting the required 16 day holding period. Distributions of current or accumulated earnings and profits generally will be foreign source passive income for U.S. foreign tax credit purposes.

Taxation of the Disposition of Ordinary Shares. Subject to the discussion below under “Passive Foreign Investment Company Status,” upon the sale, exchange or other disposition of our ordinary shares, a U.S. Holder will recognize capital gain or loss in an amount equal to the difference between such U.S. Holder’s basis in such ordinary shares, which is usually the cost of such shares, and the amount realized on the disposition. A U.S. Holder that uses the cash method of accounting calculates the U.S. dollar value of the proceeds received on the sale as of the date that the sale settles, while a U.S. Holder that uses the accrual method of accounting is required to calculate the value of the proceeds of the sale as of the “trade date,” unless such U.S. Holder has elected to use the settlement date to determine its proceeds of sale. Capital gain from the sale, exchange or other disposition of our ordinary shares held more than one year is long-term capital gain, and is eligible for a reduced rate of taxation for individuals. Gains recognized by a U.S. Holder on a sale, exchange or other disposition of our ordinary shares generally will be treated as U.S. source income for U.S. foreign tax credit purposes. A loss recognized by a U.S. Holder on the sale, exchange or other disposition of our ordinary shares is allocated to U.S. source income. The deductibility of a capital loss recognized on the sale, exchange or other disposition of our ordinary shares is subject to limitations. A U.S. Holder that receives foreign currency upon disposition of our ordinary shares and subsequently converts the foreign currency into U.S. dollars or disposes of such foreign currency, may have foreign exchange gain or loss based on any appreciation or depreciation in the value of the foreign currency against the U.S. dollar, which will generally be U.S. source ordinary income or loss.

Passive Foreign Investment Company Status. We will be a passive foreign investment company (a “PFIC”) if (taking into account certain “look-through” rules with respect to the income and assets of our corporate subsidiaries) either (i) 75 percent or more of our gross income in a taxable year is passive income or (ii) the average percentage (by value, determined on a quarterly basis) of our total assets that are passive assets during the taxable year is at least 50 percent. If we were a PFIC, each U.S. Holder would (unless it made one of the elections discussed below on a timely basis) be taxable on gain recognized from the disposition of our ordinary shares (including gain deemed recognized if the ordinary shares are used as security for a loan) and upon receipt of certain distributions with respect to our ordinary shares as if such income had been recognized ratably over the U.S. Holder’s holding period for the ordinary shares. The U.S. Holder’s income for the current taxable year would include (as ordinary income) amounts allocated to the current year and to any period prior to the first day of the first taxable year for which we were a PFIC. Tax would also be computed at the highest ordinary income tax rate in effect for each other period to which income is allocated, and an interest charge on the tax as so computed would also apply. Additionally, if we were a PFIC, U.S. Holders who acquire our ordinary shares from decedents (other than certain nonresident aliens) would be denied the normally-available step-up in basis for such shares to fair market value on the date of death and, instead, would generally have a tax basis in such shares equal to the lower of the decedent’s basis or the fair market value of such shares on the date of the decedent’s death.

As an alternative to the tax treatment described above, a U.S. Holder could elect to treat us as a “qualified electing fund” (“QEF”), in which case the U.S. Holder would be required to include in income, for each taxable year that we are a PFIC, its pro rata share of our ordinary earnings as ordinary income and its pro rata share of our net capital gain as long-term capital gain, subject to a separate election to defer payment of taxes, which deferral is subject to an interest charge. Any income inclusion will be required whether or not such U.S. Holder owns our ordinary shares for an entire taxable year or at the end of our taxable year. The amount so includable will be determined without regard to our prior year losses or the amount of cash distributions, if any, received from us. Special rules apply if a U.S. Holder makes a QEF election after the first year in its holding period in which we are a PFIC. We will supply U.S. Holders with the information needed to report income and gain under a QEF election if we are a PFIC. A U.S. Holder’s basis in its ordinary shares will increase by any amount included in income and decrease by any amounts not included in income when distributed because such amounts were previously taxed under the QEF rules. So long as a U.S. Holder’s QEF election is in effect beginning with the first taxable year in which we were a PFIC during the U.S. Holder’s holding period for its ordinary shares, any gain or loss realized by such holder on the disposition of its ordinary shares held as a capital asset ordinarily would be a capital gain or loss. Such capital gain or loss ordinarily would be long-term if such U.S. Holder had held such ordinary shares for more than one year at the time of the disposition. The QEF election is made on a shareholder-by-shareholder basis, applies to all ordinary shares held or subsequently acquired by an electing U.S. Holder and can be revoked only with the consent of the United States Internal Revenue Service (“IRS”).

As an alternative to making a QEF election, a U.S. Holder of PFIC stock which is “marketable stock” (e.g., “regularly traded” on the NASDAQ Global Select Market) may in certain circumstances avoid certain of the tax consequences generally applicable to holders of stock in a PFIC by electing to mark the stock to market as of the beginning of such U.S. Holder’s holding period for the ordinary shares. As a result of such election, in any taxable year that we are a PFIC, a U.S. Holder would generally be required to report gain or loss to the extent of the difference between the fair market value of the ordinary shares at the end of the taxable year and such U.S. Holder’s tax basis in its ordinary shares at that time. Any gain under this computation, and any gain on an actual disposition of the ordinary shares in a taxable year in which we are a PFIC, would be treated as ordinary income. Any loss under this computation, and any loss on an actual disposition of the ordinary shares in a taxable year in which we are a PFIC, generally would be treated as ordinary loss to the extent of the cumulative net-mark-to-market gain previously included. Any remaining loss from marking ordinary shares to market will not be allowed, and any remaining loss from an actual disposition of ordinary shares generally would be capital loss. A U.S. Holder’s tax basis in its ordinary shares is adjusted annually for any gain or loss recognized under the mark-to-market election. There can be no assurances that there will be sufficient trading volume with respect to the ordinary shares for the ordinary shares to be considered “regularly traded” or that our ordinary shares will continue to trade on the NASDAQ Global Select Market. Accordingly, there are no assurances that the ordinary shares will be marketable stock for these purposes. As with a QEF election, a mark-to-market election is made on a shareholder-by-shareholder basis, applies to all ordinary shares held or subsequently acquired by an electing U.S. Holder and can only be revoked with consent of the IRS (except to the extent the ordinary shares no longer constitute “marketable stock”).

As indicated above, we will be a PFIC for any taxable year if the average percentage (by fair market value determined on a quarterly basis) of our assets held for the production of, or that produce, passive income is at least 50 percent. The Code does not specify how a corporation must determine the fair market value of its assets for this purpose and the issue has not been definitively determined by the IRS or the courts. The market capitalization approach has generally been used to determine the fair market value of the assets of a publicly traded corporation. Based on applying a pure market capitalization approach using our closing stock price as of the end of each quarter in 2008, it is likely that we would be a PFIC for 2008. However, by applying alternative valuation methodologies, including valuation methodologies that make certain adjustments to our market capitalization, we believe that we will not be classified as a PFIC for 2008. There are no assurances that the IRS will not challenge this treatment and it is possible that the IRS will attempt to treat us as a PFIC for 2008 and possibly prior taxable years. However, the IRS has accepted other valuation methods besides the market capitalization approach in certain other valuation contexts. The tests for determining PFIC status are applied annually and it is difficult to make accurate predictions of future income and assets, and the future price of our ordinary shares, which are all relevant to the determination of whether we are classified as a PFIC. Accordingly, there can be no assurance that we will not become a PFIC in 2009 or in subsequent taxable years.

Although a U.S. Holder normally is not permitted to make a retroactive QEF election for a foreign corporation, a retroactive election may be made for a taxable year of the U.S. Holder (the “retroactive election year”) if the U.S. Holder (i) reasonably believed that, as of the date the QEF election was due, the foreign corporation was not a PFIC for its taxable year that ended during the retroactive election year and (ii) filed a protective statement with respect to the foreign corporation, applicable to the retroactive election year, in which the U.S. Holder described the basis for its reasonable belief and extended the period of limitation on the assessment of taxes determined under Sections 1291 through 1298 of the Code with respect to the foreign corporation (PFIC related taxes) for all taxable years of the shareholder to which the protective statement applies.

U.S. Holders are urged to consult their tax advisors about the PFIC rules, including eligibility for and the manner and advisability of making, the QEF election (or a “protective” QEF election) or the mark-to market election.

Tax Consequences for Non-U.S. Holders of Ordinary Shares

Except as described in “Information Reporting and Back-up Withholding” below, a Non-U.S. Holder of ordinary shares will not be subject to U.S. federal income or withholding tax on the payment of dividends on, and the proceeds from the disposition of, ordinary shares, unless, in the case of U.S. federal income taxes:

- Such item is effectively connected with the conduct by the Non-U.S. Holder of a trade or business in the United States and, in the case of a resident of a country which has a treaty with the United States, such item is attributable to a permanent establishment or, in the case of an individual, a fixed place of business, in the United States; or
- The Non-U.S. Holder is an individual who holds the ordinary shares as a capital asset and is present in the United States for 183 days or more in the taxable year of the disposition and certain other requirements are met;

Information Reporting and Backup Withholding

U.S. Holders (other than exempt recipients such as corporations) generally are subject to information reporting requirements with respect to dividends paid in the United States on ordinary shares and proceeds paid from the sale, exchange, redemption or other disposition of ordinary shares. Under the Code, a U.S. Holder may be subject, under certain circumstances, to backup withholding currently at a rate of up to 28% with respect to dividends paid on our ordinary shares and proceeds paid from the sale, exchange, redemption or other disposition of ordinary shares unless the holder provides proof of an applicable exemption or correct taxpayer identification number and otherwise complies with applicable requirements of the backup withholding rules.

A U.S. Holder of ordinary shares who does not provide a correct taxpayer identification number may be subject to penalties imposed by the IRS. Amounts withheld under the backup withholding rules are not an additional tax and may be refunded or credited against the holder’s U.S. federal income tax liability, provided the required information is furnished to the IRS.

Non-U.S. Holders generally are not subject to information reporting or backup withholding with respect to dividends paid on, or the proceeds from the disposition of, ordinary shares, provided that such Non-U.S. Holder provides a taxpayer identification number, certifies to its foreign status, or otherwise establishes an exemption.

F. Dividends and Paying Agents

Not applicable.

G. Statement by Experts

Not applicable.

H. Documents on Display

We are subject to the informational requirements of the Exchange Act, applicable to foreign private issuers and fulfill the obligations with respect to such requirements by filing reports with the SEC. You may read and copy any document we file with the SEC without charge at the SEC’s public reference room at 100 F Street, N.E., Washington, D.C. 20549. Copies of such material may be obtained by mail from the Public Reference Branch of the SEC at such address, at prescribed rates. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Such materials are also available free of charge at the website of the SEC at www.sec.gov.

As a foreign private issuer, we are exempt from the rules under the Exchange Act prescribing the furnishing and content of proxy statements, and our officers, directors and principal shareholders are exempt from the reporting and “short-swing” profit recovery provisions contained in Section 16 of the Exchange Act. In addition, we are not required under the Exchange Act to file periodic reports and financial statements with the SEC as frequently or as promptly as U.S. companies whose securities are registered under the Exchange Act.

We post our Annual Report on Form 20-F on our web site (www.radware.com) as soon as practicable following the filing of the Annual Report on Form 20-F with the SEC.

I. Subsidiary Information

Not applicable.

ITEM 11. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk, including movements in interest rates and foreign currency exchange rates. Our primary market risk exposure occurs because we generate most of our revenues in U.S. dollars and incur a portion of our expenses in NIS and in Euro. In 2004 we began selling to some European countries in Euro.

We do not presently engage in any hedging or other transactions intended to manage risks relating to foreign currency exchange rate or interest rate fluctuations. Our investments consist primarily of government and corporate debentures. As of December 31, 2008, approximately 16% of our portfolio was invested in U.S. Government debentures, 42% in foreign banks and government debentures, 22% in other corporate debentures and the rest of the funds were invested in bank deposits and money market funds. Although we believe that we generally adhere to conservative investment guidelines, the continuing turmoil in the financial markets may result in impairments of the carrying value of our investment assets. Realized losses in our investments portfolio may adversely affect our financial position and results.

ITEM 12. DESCRIPTION OF SECURITIES OTHER THAN EQUITY SECURITIES

Not applicable.

PART II

ITEM 13. DEFAULTS, DIVIDEND AVERAGES AND DELINQUENCIES

Not applicable.

ITEM 14. MATERIAL MODIFICATIONS TO THE RIGHTS OF SECURITY HOLDERS AND USE OF PROCEEDS

The effective date of the registration statement (Commission File Number 333-10752) for our initial public offering of our ordinary shares, NIS 0.1 par value, was September 29, 1999. The offering commenced on October 5, 1999, and terminated after the sale of all the securities registered. The managing underwriter of the offering was Salomon Smith Barney. We registered 4,025,000 ordinary shares in the offering, including shares issued pursuant to the exercise of the underwriters' over-allotment option. Of such shares, we sold 3,500,000 ordinary shares at an aggregate offering price of \$63.0 million (\$18.00 per share) and certain selling shareholders sold an aggregate of 525,000 ordinary shares at an aggregate offering price of \$9.45 million (\$18.00 per share). Under the terms of the offering, we incurred underwriting discounts of \$4.41 million. We also incurred estimated expenses of \$1.82 million in connection with the offering. None of the expenses consisted of amounts paid directly or indirectly to any of our directors, officers, general partners or their associates, any persons owning ten percent or more of any class of our equity securities, or any of our affiliates. The net proceeds that we received as a result of the offering were approximately \$56.8 million. None of the use of proceeds consisted of amounts paid directly or indirectly to any of our directors, officers, general partners or their associates, any persons owning ten percent or more of any class of our equity securities, or any of our affiliates.

In January 2000, we raised net proceeds of approximately \$60.0 million in a public offering of our ordinary shares.

The net proceeds of the two offerings are kept in short-term and long-term bank deposits and in marketable securities.

ITEM 15. CONTROLS AND PROCEDURES

a. Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act), as of December 31, 2008. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2008, our disclosure controls and procedures were: (1) designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's management, including our Chief Executive Officer and Chief Financial Officer, by others within those entities, as appropriate to allow timely decisions regarding required disclosure, particularly during the period in which this report was being prepared; and (2) effective, in that they provide reasonable assurance that information required to be disclosed by the Company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

b. Management’s Annual Report on Internal Control Over Financial Reporting and Attestation Report of Registered Public Accounting Firm

Our management is responsible for establishing and maintaining adequate internal control over financial reporting for us. Our internal control over financial reporting is a process to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles. Our internal control over financial reporting includes those policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of our assets,
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors, and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projection of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management assessed the effectiveness of our internal control over financial reporting as of December 31, 2008. In conducting its assessment of internal control over financial reporting, our management based its evaluation on the framework in “Internal Control – Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Our management has concluded based on its assessment, that our internal control over financial reporting was effective as of December 31, 2008 based on these criteria.

The effectiveness of our internal control over financial reporting as of December 31, 2008, has been audited by Kost, Forer, Gabbay & Kasierer (A Member of Ernst & Young Global), an independent registered public accounting firm who audited and reported on the consolidated financial statements of the company for the year ended December 31, 2008.

c. Attestation Report of the Registered Public Accounting Firm

This annual report includes an attestation report of our registered public accounting firm regarding internal control over financial reporting on page F-3 of our audited consolidated financial statements set forth in “Item 18 – Financial Statements”, and are incorporated herein by reference.

d. Changes In Internal Control Over Financial Reporting

During the period covered by this annual report, no changes in our internal control over financial reporting have occurred that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 16 [Reserved]

ITEM 16A. AUDIT COMMITTEE FINANCIAL EXPERT

Our Board of Directors has determined that Mr. Zohar Gilon and Dr. Orna Berry, members of our Audit Committee, are financial experts as defined in the applicable regulations, and has determined that such members are “independent” as such term is defined in the NASDAQ listing standards. The education and experience of both Audit Committee financial experts is presented in “Item 6 – Directors, Senior Management and Employees – Directors and Senior Management” and is incorporated herein by reference.

ITEM 16B. CODE OF ETHICS

On February 2, 2004 our Board of Directors adopted our Code of Ethics, a code that applies to all directors, officers and employees of the Company, including our Chief Executive Officer and President, Chief Financial Officer, Director of Finance and Corporate Controller. On January 30, 2005, our Board of Directors modified the Code of Conduct and Ethics. Our Code of Conduct and Ethics (as amended) has been posted on our Internet website, <http://www.radware.com/content/company/investorrelations>.

ITEM 16C. PRINCIPAL ACCOUNTANT FEES AND SERVICES

In the annual meeting held on November 30, 2008 our shareholders re-appointed Kost, Forer, Gabbay & Kasierer, a member of Ernst & Young Global (“Ernst & Young”), to serve as our independent auditors until the next annual meeting.

Ernst & Young billed the following fees to us for professional services in each of the last two fiscal years:

| | Year Ended December 31, | | | |
|--------------------|-------------------------|------|------|------|
| | 2007 | | 2008 | |
| | (US\$ in thousands) | | | |
| Audit Fees | 144 | 47% | 150 | 59% |
| Audit-Related Fees | 33 | 11% | 33 | 13% |
| Tax Fees | 129 | 42% | 71 | 28% |
| All Other Fees | — | — | — | — |
| Total | 306 | 100% | 254 | 100% |

“Audit Fees” are the aggregate fees billed for the audit of our annual financial statements, statutory audits and services that are normally provided in connection with statutory and regulatory filings or engagements.

“Audit-Related Fees” are the aggregate fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements and are not reported under Audit Fees.

“Tax Fees” are the aggregate fees billed for professional services rendered for tax compliance, tax advice on actual or contemplated transactions and tax planning such as assistance with tax audits and tax advice.

“All Other Fees” are the aggregate fees billed for products and services provided by Ernst & Young other than as described above.

Audit Committee’s pre-approval policies and procedures

Our Audit Committee oversees our independent auditors. See also the description in “Item 6- Directors, Senior Management and Employee - Board Practices.” In 2003 our Audit Committee also adopted a policy requiring management to obtain the Committee’s approval before engaging our independent auditors to provide any other audit or permitted non-audit services to us or our subsidiaries. Pursuant to this policy, which is designed to assure that such engagements do not impair the independence of our auditors, and which is discussed and approved at the end of each calendar year, the Audit Committee pre-approves annually a catalog of specific audit and non-audit services in the categories Audit Service, Audit-Related Service and Tax Consulting Services that may be performed by our auditors. In addition, the Audit Committee limited the aggregate amount in fees our auditors may receive during the 2008 fiscal year for non-audit services in certain categories, unless pre-approved. Our Director of Finance reviews all individual management requests to engage our independent auditors as a service provider in accordance with this catalog and, if the requested services are permitted pursuant to the catalog, approve the request accordingly. We inform the Audit Committee about these approvals on a quarterly basis. Services that are not included in the catalog require pre-approval by the Audit Committee on a case-by-case basis. Our Audit Committee is not permitted to approve any engagement of our auditors if the services to be performed either fall into a category of services that are not permitted by applicable law or the services would be inconsistent with maintaining the auditors’ independence.

ITEM 16D. EXEMPTIONS FROM THE LISTING STANDARDS FOR AUDIT COMMITTEES

None.

ITEM 16E. PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS

During 2008 we repurchased our ordinary shares under a share repurchase plan, in an aggregate amount of \$6.6 million, as follows:

| Period | (a) Total Number of Shares (or Units) Purchased | (b) Average Price Paid per Share (or Units) (in US\$) | (c) Total Number of Shares (or Units) Purchased as Part of Publicly Announced Plans or Programs (1) | (d) Maximum Number (or Approximate Dollar Value) of Shares (or Units) that May Yet Be Purchased Under the Plans or Programs (1) |
|------------------------|---|---|---|---|
| January 1 through 31 | 0 | N/A | 0 | \$ 13,931,269 |
| February 1 through 29 | 0 | N/A | 0 | \$ 13,931,269 |
| March 1 through 31 | 0 | N/A | 0 | \$ 13,931,269 |
| April 1 through 30 | 0 | N/A | 0 | \$ 13,931,269 |
| May 1 through 31 | 0 | N/A | 0 | \$ 13,931,269 |
| June 1 through 30 | 0 | N/A | 0 | \$ 13,931,269 |
| July 1 through 31 | 95,000 | 8.00 | 95,000 | \$ 13,171,269 |
| August 1 through 31 | 333,097 | 8.74 | 333,097 | \$ 10,261,238 |
| September 1 through 30 | 30,000 | 9.00 | 30,000 | \$ 9,991,310 |
| October 1 through 31 | 0 | N/A | 0 | \$ 9,991,310 |
| November 1 through 30 | 393,699 | 6.19 | 393,699 | \$ 7,553,871 |
| December 1 through 31 | 28,519 | 6.56 | 28,519 | \$ 7,366,835 |

(1) In July 2008, our board of directors authorized the reactivation of our share repurchase program under which the total amount to be paid for the repurchase of shares would not exceed \$25 million in the aggregate as of the original board approval in 2006. Such share repurchase program was approved by the Tel Aviv District Court in Israel in October 2006, pursuant to the requirement of Israeli law. The timing and the amounts purchased will be at the Company's discretion, and the purchases may occur in the open market or in private transactions or block transactions, all subject to regulatory requirements. The Company's current intention is to implement the repurchase program in accordance with the safe harbour rules of Rule 10b-18 under the US Securities Exchange Act of 1934.

ITEM 16F. CHANGE IN REGISTRANT'S CERTIFYING ACCOUNTANT

Not applicable.

ITEM 16G. CORPORATE GOVERNANCE

We are a foreign private issuer whose ordinary shares are listed on the NASDAQ Global Select Market. As such, we are required to comply with U.S. federal securities laws, including the Sarbanes-Oxley Act, and the NASDAQ rules, including the NASDAQ corporate governance requirements. The NASDAQ rules provide that foreign private issuers may follow home country practice in lieu of certain qualitative listing requirements subject to certain exceptions and except to the extent that such exemptions would be contrary to U.S. federal securities laws, so long as the foreign issuer discloses that it does not follow such listing requirement and describes the home country practice followed in its reports filed with the SEC. Below is a concise summary of the significant ways in which our corporate governance practices differ from the corporate governance requirements of NASDAQ applicable to domestic U.S. listed companies:

The NASDAQ rules require that an issuer have a quorum requirement for shareholders meetings of at least one-third of the outstanding shares of the issuer’s common voting stock. We have chosen to follow home country practice with respect to the quorum requirements of an adjourned shareholders meeting. Our articles of association, as permitted under the Israeli Companies Law and Israeli practice, provide that the quorum requirements for an adjourned meeting are the presence of a minimum of two shareholders present in person.

The NASDAQ rules require shareholder approval of stock option plans available to officers, directors or employees. We have decided to follow home country practice in lieu of obtaining shareholder approval for our stock option plans. However, subject to exceptions permitted under the Companies Law, we are required to seek shareholder approval of any grants of options to directors and controlling shareholders or plans that require shareholder approval for other reasons. Additionally, we have chosen to follow our home country practice in lieu of the requirements of NASDAQ Rule 4350(b)(1)(A), relating to an issuer’s furnishing of its annual report to shareholders.

PART III

ITEM 17. FINANCIAL STATEMENTS

We have responded to Item 18 in lieu of this item.

ITEM 18. FINANCIAL STATEMENTS

The Financial Statements required by this item are found at the end of this annual report, beginning on page F-1.

ITEM 19. EXHIBITS

The exhibits filed with or incorporated into this annual report are listed on the index of exhibits below.

| Exhibit No. | Exhibit |
|-------------|---|
| 1.1 | Memorandum of Association (A) |
| 1.2 | Articles of Association (B) |
| 1.3 | Amendment to the Articles of Association (D) |
| 4.1 | Lease Agreement for the Company's Mahwah office (C) |
| 4.2 | Distributor Agreement with Bynet Data Communications Ltd. (C) |
| 4.3 | Form of Directors and Officers Indemnity Deed (D) |
| 4.4 | Asset Purchase Agreement with V-Secure Technologies (U.S.) Inc. (D) |
| 4.5 | Agreement and Plan of Merger by and Between the Company, its subsidiary, Covelight and its stockholders and note-holders (E) |
| 4.6 | Asset Purchase Agreement by and between NORTEL NETWORKS INC., NORTEL NETWORKS LIMITED and some EMEA Nortel entities, as sellers, A. R. BLOOM, S. HARRIS, A. M. HUDSON AND C. HILL and A.R. BLOOM AND D. HUGHES, as Joint Administrators and the Company |
| 4.7 | Summary of Material Terms of the Lease Agreements for the Company's Headquarters |
| 8.1 | List of Subsidiaries |
| 10.1 | Consent of Independent Registered Public Accounting Firm |
| 12.1 | Certification of the Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 12.2 | Certification of the Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 |
| 13.1 | Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 13.2 | Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |

(A) Incorporated by reference to the Company's Registration Statement on Form F-1 (File No. 333-10752), filed with the SEC on September 1, 1999.

(B) Incorporated by reference to the Company's Annual Report on Form 20-F for the year ended December 31, 2000, filed with the SEC on May 18, 2001.

(C) Incorporated by reference to the Annual Report on Form 20-F for the year ended December 31, 2001, filed with the SEC on April 5, 2002.

(D) Incorporated by reference to the Annual Report on Form 20-F/A for the year ended December 31, 2005, filed with the SEC on July 6, 2006.

(E) Incorporated by reference to the Annual Report on Form 20-F for the year ended December 31, 2006, filed with the SEC on June 5, 2007.

SIGNATURE

The registrant hereby certifies that it meets all of the requirements for filing on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

RADWARE LTD.

By: /s/ Roy Zisapel

Roy Zisapel
Chief Executive Officer

Date: March 25, 2009

RADWARE LTD. AND ITS SUBSIDIARIES
CONSOLIDATED FINANCIAL STATEMENTS
AS OF DECEMBER 31, 2008
U.S. DOLLARS IN THOUSANDS
INDEX

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

**To the Board of Directors and Shareholders of
RADWARE LTD.**

We have audited Radware Ltd.'s (the "Company") internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO criteria"). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained in all material respects, effective internal control over financial reporting as of December 31, 2008, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of the Company and its subsidiaries as of December 31, 2007 and 2008, and the related consolidated statements of operations, changes in shareholders' equity and cash flows for each of the three years in the period ended December 31, 2008 and our report dated March 24, 2009 expressed an unqualified opinion thereon.

Tel-Aviv, Israel
March 24, 2009

KOST FORER GABBAY & KASIERER
A Member of Ernst & Young Global



REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of

RADWARE LTD.

We have audited the accompanying consolidated balance sheets of Radware Ltd. ("the Company") and its subsidiaries as of December 31, 2007 and 2008, and the related consolidated statements of operations, statements of changes in shareholders' equity and the consolidated statements of cash flows for each of the three years in the period ended December 31, 2008. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the consolidated financial position of the Company and its subsidiaries at December 31, 2007 and 2008, and the consolidated results of their operations and their cash flows for each of the three years in the period ended December 31, 2008, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 2q to the consolidated financial statements, in 2007 the Company adopted Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109".

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2008, based on criteria established in Internal Control- Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 24, 2009 expressed an unqualified opinion thereon.

Tel-Aviv, Israel
March 24, 2009

KOST FORER GABBAY & KASIERER
A Member of Ernst & Young Global

CONSOLIDATED BALANCE SHEETS

U.S. dollars in thousands

| | December 31, | |
|---|-------------------|-------------------|
| | 2007 | 2008 |
| ASSETS | | |
| CURRENT ASSETS: | | |
| Cash and cash equivalents | \$ 61,376 | \$ 28,065 |
| Available-for-sale marketable securities | 80,498 | 60,731 |
| Structured deposit | 10,236 | — |
| Trade receivables (net of allowance for doubtful accounts of \$1,200 and \$500 in 2007 and 2008, respectively) *) | 17,192 | 13,348 |
| Other receivables and prepaid expenses | 3,195 | 2,046 |
| Inventories | 5,428 | 6,712 |
| Total current assets | 177,925 | 110,902 |
| LONG-TERM INVESTMENTS: | | |
| Available-for-sale marketable securities | 2,735 | 45,112 |
| Severance pay fund | 3,940 | 1,995 |
| Total long-term investments | 6,675 | 47,107 |
| PROPERTY AND EQUIPMENT, NET | 12,217 | 11,693 |
| LONG-TERM DEFERRED TAXES AND OTHER LONG-TERM ASSETS | 978 | 432 |
| INTANGIBLE ASSETS, NET | 4,798 | 1,856 |
| GOODWILL | 13,474 | 13,474 |
| Total assets | \$ 216,067 | \$ 185,464 |

*) Include balances in the amount of \$1,320 and \$1,358 with related parties as of December 31, 2007 and 2008, respectively (see also Note 15a).

The accompanying notes are an integral part of the consolidated financial statements.

CONSOLIDATED BALANCE SHEETS

U.S. dollars in thousands, except share and per share data

| | December 31, | |
|--|-------------------|-------------------|
| | 2007 | 2008 |
| LIABILITIES AND SHAREHOLDERS' EQUITY | | |
| CURRENT LIABILITIES: | | |
| Trade payables *) | \$ 7,537 | \$ 4,646 |
| Deferred revenues | 12,391 | 14,096 |
| Other payables and accrued expenses | 8,043 | 9,868 |
| Total current liabilities | 27,971 | 28,610 |
| LONG TERM LIABILITIES: | | |
| Deferred revenues | 6,004 | 4,946 |
| Accrued severance pay | 5,379 | 3,846 |
| Total long term liabilities | 11,383 | 8,792 |
| COMMITMENTS AND CONTINGENT LIABILITIES | | |
| SHAREHOLDERS' EQUITY: | | |
| Share capital - | | |
| Ordinary shares of NIS 0.1 par value - | | |
| Authorized: 30,000,000 as of December 31, 2007 and 2008; Issued: 20,406,758 and 20,645,608 shares as of December 31, 2007 and 2008, respectively; Outstanding 19,559,903 shares and 18,918,438 shares as of December 31, 2007 and 2008, respectively | 482 | 465 |
| Additional paid-in capital | 176,004 | 185,985 |
| Treasury stock, at cost | (11,049) | (17,619) |
| Accumulated other comprehensive income (loss) | 150 | (873) |
| Retained earnings (accumulated deficit) | 11,126 | (19,896) |
| Total shareholders' equity | 176,713 | 148,062 |
| Total liabilities and shareholders' equity | \$ 216,067 | \$ 185,464 |

*) Include balances in the amount of \$175 and \$305 with related parties as of December 31, 2007 and 2008, respectively (see also Note 15a).

The accompanying notes are an integral part of the consolidated financial statements.

CONSOLIDATED STATEMENTS OF OPERATIONS

U.S. dollars in thousands, except share and per share data

| | Year ended December 31, | | |
|--------------------------------------|-------------------------|---------------|----------------|
| | 2006 | 2007 | 2008 |
| Revenues: *) | | | |
| Products | \$ 57,335 | \$ 59,422 | \$ 59,678 |
| Services | 24,075 | 29,209 | 34,903 |
| <u>Total revenues</u> | <u>81,410</u> | <u>88,631</u> | <u>94,581</u> |
| Cost of revenues: *) | | | |
| Products **) | 10,267 | 13,133 | 15,143 |
| Services | 5,524 | 5,895 | 6,431 |
| <u>Total cost of revenues</u> | <u>15,791</u> | <u>19,028</u> | <u>21,574</u> |
| Gross profit | 65,619 | 69,603 | 73,007 |
| Operating expenses: *) | | | |
| Research and development, net | 17,659 | 23,515 | 28,357 |
| Sales and marketing | 50,128 | 57,977 | 63,591 |
| General and administrative | 6,178 | 7,114 | 12,066 |
| <u>Total operating expenses</u> | <u>73,965</u> | <u>88,606</u> | <u>104,014</u> |
| Operating loss | (8,346) | (19,003) | (31,007) |
| Financial income, net | 7,422 | 7,420 | 3,612 |
| Loss before taxes on income | (924) | (11,583) | (27,395) |
| Taxes on income | 356 | 428 | 3,627 |
| Net loss | \$ (1,280) | \$ (12,011) | \$ (31,022) |
| Basic and diluted net loss per share | \$ (0.07) | \$ (0.62) | \$ (1.60) |

*) For transactions with related parties See Note 15b.

**) Include an impairment loss of approximately \$2,036 with respect to acquired technology derived from the acquisition of Covelight. See also Note 1, Note 2(i) and Note 7(b).

The accompanying notes are an integral part of the consolidated financial statements.

STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

U.S. dollars in thousands, except share data

| | Number of outstanding Ordinary shares | Share capital | Additional paid-in capital | Deferred stock based compensation | Treasury stock, at cost | Accumulated other comprehensive income (loss) | Retained earnings (accumulated deficit) | Total comprehensive income (loss) | Total |
|---|--|------------------|----------------------------------|---|----------------------------|--|--|---|------------|
| Balance as of January 1, 2006 | 19,061,760 | \$ 470 | \$ 153,010 | \$ (67) | \$ – | \$ (404) | \$ 24,417 | | \$ 177,426 |
| Repurchase of shares (846,855) | | (20) | – | – | (11,049) | – | – | | (11,069) |
| Issuance of shares upon exercise of stock options | 1,196,998 | 28 | 12,607 | – | – | – | – | | 12,635 |
| Stock based compensation | – | – | 4,540 | – | – | – | – | | 4,540 |
| Reclassification of deferred stock compensation into additional paid-in capital upon adoption of SFAS 123(R) | – | – | (67) | 67 | – | – | – | | – |
| Comprehensive income: | | | | | | | | | |
| Unrealized gain from available-for-sale securities, net | – | – | – | – | – | 162 | – | \$ 162 | 162 |
| Net loss | – | – | – | – | – | – | (1,280) | (1,280) | (1,280) |
| Total comprehensive loss | | | | | | | | \$ (1,118) | |
| Balance as of December 31, 2006 | 19,411,903 | 478 | 170,090 | – | (11,049) | (242) | 23,137 | | 182,414 |
| Issuance of shares upon exercise of stock options | 148,000 | 4 | 1,377 | – | – | – | – | | 1,381 |
| Stock based compensation | – | – | 4,537 | – | – | – | – | | 4,537 |
| Comprehensive income: | | | | | | | | | |
| Unrealized gain from available-for-sale securities, net | – | – | – | – | – | 392 | – | \$ 392 | 392 |
| Net loss | – | – | – | – | – | – | (12,011) | (12,011) | (12,011) |
| Total comprehensive loss | | | | | | | | \$ (11,619) | |
| Balance as of December 31, 2007 | 19,559,903 | 482 | 176,004 | – | (11,049) | 150 | 11,126 | | 176,713 |
| Repurchase of shares (880,315) | | (24) | – | – | (6,570) | – | – | | (6,594) |
| Issuance of shares upon exercise of stock options | 238,850 | 7 | 1,906 | – | – | – | – | | 1,913 |
| Stock based compensation | – | – | 8,075 | – | – | – | – | | 8,075 |
| Comprehensive income: | | | | | | | | | |
| Unrealized loss on available- for-sale securities, net | – | – | – | – | – | (1,023) | – | \$ (1,023) | (1,023) |
| Net loss | – | – | – | – | – | – | (31,022) | (31,022) | (31,022) |
| Total comprehensive loss | | | | | | | | \$ (32,045) | |
| Balance as of December 31, 2008 | 18,918,438 | \$ 465 | \$ 185,985 | \$ – | \$ (17,619) | \$ (873) | \$ (19,896) | | \$ 148,062 |

The accompanying notes are an integral part of the consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS

U.S. dollars in thousands

| | Year ended December 31, | | |
|--|-------------------------|-------------|-------------|
| | 2006 | 2007 | 2008 |
| Cash flows from operating activities: | | | |
| Net loss | \$ (1,280) | \$ (12,011) | \$ (31,022) |
| Adjustments to reconcile net loss to net cash provided by (used in) operating activities: | | | |
| Depreciation and amortization | 2,976 | 5,056 | 6,073 |
| Impairment of acquired technology | — | — | 2,036 |
| Stock based compensation | 4,540 | 4,537 | 8,075 |
| Amortization of premiums, accretion of discounts and accrued interest on available-for-sale and held-to-maturity marketable debt securities, net | 458 | (3,485) | 588 |
| Accrued interest on bank deposits and structured deposit | 51 | (634) | 236 |
| Accrued severance pay, net | 556 | 402 | 412 |
| Decrease (increase) in long-term deferred tax assets | (241) | (60) | 594 |
| Decrease (increase) in trade receivables, net | (2,792) | 323 | 3,844 |
| Decrease (increase) in other receivables and prepaid expenses | (545) | (1,192) | 1,149 |
| Decrease (increase) in inventories | (1,520) | 1,493 | (1,284) |
| Increase (decrease) in trade payables | 1,627 | 581 | (2,891) |
| Increase in deferred revenues | 3,288 | 2,683 | 647 |
| Increase in other payables and accrued expenses | 133 | 1,182 | 1,825 |
| Other | — | — | (8) |
| Net cash provided by (used in) operating activities | 7,251 | (1,125) | (9,726) |
| Cash flows from investing activities: | | | |
| Purchase of property and equipment | (5,843) | (6,747) | (4,645) |
| Proceeds from sale of property and equipment | — | — | 10 |
| Investment in other long-term assets, net | 11 | (15) | (48) |
| Purchase of available-for-sale marketable debt securities | (109,336) | (67,121) | (161,706) |
| Purchase of held-to-maturity marketable debt securities | (6,000) | — | — |
| Proceeds from sale, redemption and maturity of available-for-sale marketable debt securities | 29,327 | 94,237 | 137,485 |
| Proceeds from redemption of held-to-maturity marketable debt securities | 45,085 | 22,735 | — |
| Proceeds from structured deposit | 10,000 | — | 10,000 |
| Additional payment for the acquisition of V-Secure (1) | (3,000) | — | — |
| Payment for the acquisition of Covelight (2) | — | (7,293) | — |
| Net cash provided by (used in) investing activities | (39,756) | 35,796 | (18,904) |
| Cash flows from financing activities: | | | |
| Proceeds from exercise of stock options | 12,635 | 1,381 | 1,913 |
| Repurchase of shares | (11,069) | — | (6,594) |
| Net cash provided by (used in) financing activities | 1,566 | 1,381 | (4,681) |
| Increase (decrease) in cash and cash equivalents | (30,939) | 36,052 | (33,311) |
| Cash and cash equivalents at the beginning of the year | 56,263 | 25,324 | 61,376 |
| Cash and cash equivalents at the end of the year | \$ 25,324 | \$ 61,376 | \$ 28,065 |
| (1) Additional payment for the acquisition of V-Secure: | | | |
| Estimated fair value of assets acquired at the date of acquisition: | | | |
| Goodwill | 3,000 | — | — |
| | \$ 3,000 | \$ — | \$ — |
| (2) Payment for the acquisition of Covelight: | | | |
| Estimated fair value of assets acquired at the date of acquisition: | | | |
| Working capital deficiency, excluding cash and cash equivalents | \$ — | \$ (121) | \$ — |
| Property and equipment | — | 28 | — |
| Acquired technology | — | 3,191 | — |
| Customer relationships | — | 175 | — |
| Goodwill | — | 4,020 | — |
| | \$ — | \$ 7,293 | \$ — |
| Cash paid during the year for: | | | |
| Taxes | \$ 438 | \$ 731 | \$ 743 |

The accompanying notes are an integral part of the consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 1:- GENERAL

- a. Radware Ltd. ("the Company"), an Israeli corporation commenced operations in April 1997. The Company and its subsidiaries ("the Group"), are engaged in the development, manufacture and sale of Application Delivery and Network Security ("business smart networking") solutions that provide end-to-end availability, performance and security of mission critical network applications. The Company's products are marketed worldwide.
- b. The Company established wholly-owned subsidiaries in the United States, France, Germany, Singapore, the United Kingdom, Japan, Korea, Canada, Switzerland, India, Australia and Italy. In addition, the Company established branches and representative offices in China, Russia and Taiwan. The Company's subsidiaries are engaged primarily in sales, marketing and support activities.
- c. The Company depends on two major suppliers to supply certain components for the production of its products. If one of these suppliers fails to deliver or delays the delivery of the necessary components, the Company will be required to seek alternative sources of supply. A change in suppliers could result in manufacturing delays, which could cause a possible loss of sales and, consequently, could adversely affect the Company's results of operations and financial position.
- d. The Company relies upon independent distributors (which are considered to be end-users) to market and sell its products to customers. A loss of a major distributor, or any event negatively affecting such distributor's financial condition, could cause a material adverse effect on the Company's results of operations and financial position (see also Note 13b). For the years ended as of December 31, 2006, 2007 and 2008, one single customer (a distributor) represented 12%, 5% and 6%, respectively, of the Company's total revenues.
- e. Business combination - acquisition of V-Secure Technologies (US) Inc. ("V-Secure"):

In December 2005, the Company acquired the business of V-Secure which included the acquisition of its technology, customer relationships and goodwill. The Company's management believed that the complementary solution of V-Secure would provide the Company with advantage over the competitors in this market and the purpose of the acquisition was to integrate V-Secure solution into the Company's product offering. The total initial consideration for the acquisition was \$9,168, out of which an amount of \$9,011 was paid in cash; amount valued as \$148 was paid by issuance of fully vested warrants to V-Secure to purchase 45,454 Ordinary shares of the Company, at an exercise price of \$22 per share. The remaining balance was related to acquisition costs.

According to the agreement between the parties, additional cash consideration of \$6,000 ("earn-out") was payable contingent upon meeting a certain technological milestone in regards to the integrated product of the Company and V-Secure. During 2006, a partial amount of \$3,000 out of total potential consideration of \$6,000 was paid according to amendment agreement between the Company and V-Secure's shareholders. According to the agreement V-Secure's shareholders waived any claim or demand for any additional payment. The amount paid resulted in the Company recording additional goodwill on account of an additional consideration paid for the acquisition.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 1:- GENERAL (Cont.)

The purchase price was allocated to the identifiable intangible assets acquired (which have been valued by management and assisted by a third party valuator specialist) based upon their estimated fair values as follows:

| | | |
|---|----|--------|
| Acquired technology | \$ | 1,772 |
| Customers relationships | | 542 |
| Goodwill (including additional \$3,000 paid and recorded during 2006) | | 9,454 |
| | | |
| Total intangible assets | | 11,768 |
| Deferred compensation cost | | 400 |
| | | |
| Total consideration | \$ | 12,168 |
| | | |

The deferred compensation cost represents incentive to former employees of V-Secure that will remain with the Company for periods of no less than 12 to 24 months from the acquisition date. Such deferred compensation cost was amortized over the employment period, and was recorded as compensation costs. Any amount not used for bonuses would have been returned to V-Secure, and would have increased the goodwill. During 2006 and 2007, amounts of \$84 and \$316, respectively, were recorded as compensation costs, and included in research and development expenses. As of December 31, 2007, all deferred compensation costs were amortized and paid.

The acquisition of V-Secure was accounted for under the purchase method of accounting.

In accordance with Statement of Financial Accounting Standards No. 142, "Goodwill and Other Intangible Assets" ("SFAS No. 142"), goodwill arising from the acquisition is not amortized. In lieu of amortization, the Company is required to perform an annual impairment review. If the Company determines, through the impairment review process, that goodwill has been impaired, it will record the impairment charge in its statement of income. During the years ended December 31, 2006, 2007 and 2008, no such impairment losses were recorded.

f. Business combination - acquisition of Covelight Inc. ("Covelight"):

In April 2007, the Company acquired the business of Covelight which included the acquisition of its working capital, property and equipment, technology, customer relationships and goodwill. The Company's management believed that the complementary solution of Covelight would provide the Company with advantage over the competitors in this market and the purpose of the acquisition was to integrate Covelight solution into the Company's product offering. The total consideration of the acquisition was \$7,660 which was paid in cash of which \$160 was related to acquisition costs.

An additional cash consideration of \$8,500 ("earn-out") was to be payable contingent upon reaching sales performance targets by April 2008. Resolution of the contingency with payment of the consideration would have resulted in recording additional goodwill. Since the sales targets were not achieved, the Company was not required to pay the additional earn-out amount. Accordingly, the total final consideration of the acquisition amounted to \$7,660.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 1:- GENERAL (Cont.)

The purchase price was allocated to the identifiable intangible assets acquired (which have been valued by management and assisted by a third party valuator specialist) based upon their estimated fair values as follows:

| | | |
|--------------------------------|----|--------------|
| Working capital | \$ | 246 |
| Property and equipment | | 28 |
| | | <hr/> |
| <u>Total tangible assets</u> | | <u>274</u> |
| | | <hr/> |
| Acquired technology | | 3,191 |
| Customer relationships | | 175 |
| Goodwill | | 4,020 |
| | | <hr/> |
| <u>Total intangible assets</u> | | <u>7,386</u> |
| | | <hr/> |
| <u>Total consideration</u> | \$ | <u>7,660</u> |

The acquisition of Covelight was accounted for under the purchase method of accounting.

In accordance with SFAS No. 142, goodwill arising from the acquisition will not be amortized. In lieu of amortization, the Company is required to perform an annual impairment review. If the Company determines, through the impairment review process, that goodwill has been impaired, it will record the impairment charge in its statement of operations. The Company will also assess the impairment of goodwill whenever events or changes in circumstances indicate that the carrying value may not be recoverable. During the years ended December 31, 2006, 2007 and 2008, no such impairment losses was recorded.

Technology in the amount of \$3,191 is amortized on a straight-line basis over an estimated useful life. In 2008, the Company recorded an impairment loss of \$2,036 with respect to acquired technology on the acquisition of Covelight. As of December 31, 2008 the amortized acquired technology on the acquisition of Covelight amounted to \$400. See also Note 2(i) and Note 7(b).

Customer relationships in the amount of \$175 were amortized over an estimated useful life of one year.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 1:- GENERAL (Cont.)

Unaudited pro-forma results:

The following represents the unaudited pro-forma results of operations of Covelight and the Company's consolidated statements of operations for the years ended December 31, 2006 and 2007, assuming that Covelight acquisition occurred on January 1, of each year:

| | Year ended December 31, | |
|--------------------------------------|-------------------------|-------------|
| | 2006 | 2007 |
| | Unaudited | |
| | Total consolidated | |
| Revenues | \$ 82,124 | \$ 88,710 |
| Loss before income taxes | \$ (4,670) | \$ (12,880) |
| Net loss | \$ (5,301) | \$ (13,032) |
| Basic and diluted net loss per share | \$ (0.27) | \$ (0.67) |

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES

The consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States ("U.S. GAAP").

a. Use of estimates:

The preparation of the consolidated financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates, judgments and assumptions. The Company's management believes that the estimates, judgments and assumptions used are reasonable based upon information available at the time they are made. These estimates, judgments and assumptions can affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the dates of the financial statements, and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

b. Financial statements in United States dollars:

A majority of the revenues of the Company and its subsidiaries are generated in U.S. dollars ("dollar" or "dollars"). In addition, a substantial portion of the Company's and certain of its subsidiaries' costs is incurred in dollars. The Company's management believes that the dollar is the primary currency of the economic environment in which the Company and its subsidiaries operate. Thus, the functional and reporting currency of the Company and its subsidiaries is the dollar. Accordingly, monetary accounts maintained in currencies other than the dollar are remeasured into U.S. dollars in accordance with Statement of the Financial Accounting Standard Board No. 52, "Foreign Currency Translation" ("SFAS No. 52"). Changes in currency exchange rates between the Company's functional currency and the currency in which a transaction is denominated are included in the Company's results of operations as financial income (expense) in the period in which the currency exchange rates change.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

c. Principles of consolidation:

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries. Intercompany balances and transactions including profits from intercompany sales not yet realized outside the Group, have been eliminated upon consolidation.

d. Cash equivalents:

Cash equivalents are short-term highly liquid investments that are readily convertible to cash with original maturities of three months or less, at acquisition.

e. Investment in marketable securities:

The Company accounts for investments in marketable debt securities in accordance with Statement of Financial Accounting Standard No. 115, "Accounting for Certain Investments in Debt and Equity Securities" ("SFAS No. 115"). Management determines the appropriate classification of its investments in debt securities at the time of purchase and reevaluates such determinations at each balance sheet date.

As of December 31, 2008 the Company classified all of its debt securities as available-for-sale securities. Available-for-sale securities are carried at fair value, with the unrealized gains and losses reported in "accumulated other comprehensive income (loss)" in shareholders' equity. Realized gains and losses on sales of investments are included in financial income and are derived using the specific identification method for determining the cost of securities.

The amortized cost of debt securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization together with interest and dividends on securities are included in financial income, net.

Prior to December 31, 2007 the Company also held debt securities that were classified as held-to-maturity. Debt securities are classified as held-to-maturity when the Company has the positive intent and ability to hold the securities to maturity and are stated at amortized cost. The amortized cost of held-to-maturity securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization and decline in value judged to be other than temporary and interest are included in financial income, net. No impairment has been identified as of December 31, 2006. As of December 31, 2007 and 2008, the Company has no debt securities as held to maturity.

In accordance with the Company's policy and FASB Staff Position (FSP) Nos. SFAS 115-1 (FSP 115-1) and SFAS 124-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments", the Company recognizes an impairment charge when a decline in the fair value of its investments below the cost basis is judged to be other-than-temporary. The Company considers various factors in determining whether to recognize an impairment charge, including the Company's intent and ability to hold the investment for a period of time sufficient to allow for any anticipated recovery in market value, the length of time and extent to which the fair value has been less than the cost basis, the credit ratings of the securities and the financial condition and near-term prospects of the issuers. During the years 2006, 2007 and 2008, the Company did not record any other-than-temporary impairment loss with respect to its holdings of marketable debt securities.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

f. Inventories:

Inventories are stated at the lower of cost or market value. Inventory write off is provided to cover risks arising from slow-moving items, technological obsolescence, excess inventories and discontinued products. Inventory write off totaled \$0, \$2,091 and \$585 in 2006, 2007 and 2008, respectively, and has been included in cost of revenues. Inventory write off of 2007 included a one-time write off in the amount of \$1,400 following anticipated release of new generation platform.

Cost is determined as follows:

Raw materials and components - using the "first-in, first-out" method.

Work-in-progress and finished products: Subcontracting costs - calculated on the basis of direct subcontractors costs and with direct overhead costs.

g. Structured deposit:

Structured deposit as of December 31, 2007, consisted of a callable structured deposit ("Structured Deposit") with a maturity of six years. The Structured deposit bared interest that varies inversely with changes of the three-month U.S. dollar LIBOR-rate.

As of December 31, 2007, the Structured deposit amounted to \$10,236 including accrued interest. Interest income resulting from investment in the Structured Deposit is accounted for based on the guidelines provided in the Emerging Issues Task Force ("EITF") No. 96-12, "Recognition of Interest Income and Balance Sheet Classification of Structured deposit". Under EITF No. 96-12, the retrospective interest method is used for recognizing interest income.

During April 2008, the Structured Deposit was called by the issuer and redeemed in the amount of \$10,069.

h. Property and equipment:

Property and equipment are stated at cost, net of accumulated depreciation. Depreciation is calculated by the straight-line method over the estimated useful lives of the assets at the following annual rates:

| | % |
|---|--|
| Computer, peripheral equipment and software | 15-33 (Mainly 33) |
| Office furniture and equipment | 7-15 (Mainly 15) |
| Motor vehicles | 15 |
| Leasehold improvements | Over the shorter of the term of the lease or the life of the asset |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

- i. Impairment or disposal of long lived assets and intangible asset:

Property and equipment are reviewed for impairment in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the future undiscounted cash flows expected to be generated by the assets. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. As of December 31, 2006, 2007 and 2008, no impairment losses have been identified.

Intangible assets acquired in a business combination are recorded at fair value at the date of acquisition. Following initial recognition, intangible assets are carried at cost less any accumulated amortization and any accumulated impairment losses. The useful lives of intangible assets are assessed to be either finite or indefinite. Intangible assets with finite lives are amortized over their useful economic life using a method of amortization that reflects the pattern in which the economic benefits of the intangible assets are consumed or otherwise used up and are assessed for impairment whenever there is an indication that the intangible asset may be impaired. The amortization period and the amortization method for an intangible asset with a finite useful life are reviewed at least at each financial year-end. The amortization expense on intangible assets with finite lives is recognized in the statement of operations.

The Company's intangible assets consist of technology and customer relationships. Both assets are amortized over an estimated useful life in which benefits are expected to be received.

In accordance with SFAS 144, the Company's management has assessed whether there has been an impairment of the Company's intangible assets during 2008. This was undertaken due to certain indicators of impairment such as declines in the Company's market capitalization below its shareholders equity, the current credit crisis, the global recession and since actual revenues derived from Covelight technology were significantly lower comparing to the management forecasts estimations as of the date of acquisition. Impairment is considered to exist if total estimated future cash flows on an undiscounted basis are less than the carrying value of the asset or asset group tested for impairment.

In performing that test, the Company's management first estimated the sum of the undiscounted future cash-flows, expected to be derived from its asset groups with the existing intangible assets of acquired technology and customer relationship acquired from V-secure and Covelight, in order to test their recoverability. The Company's management used significant assumptions and estimates, including but not limited to projected future revenues and cash flows, growth rates and market share, future gross margins and operating results, future working capital and future capital expenditures. The assumptions developed by the Company's management were based upon historical trends, estimates of future economic conditions and expected competition and the Company's strategic plans.

The analysis showed that the sum of the undiscounted cash-flow derived from the asset group of technology acquired from Covelight is lower than its carrying amount and accordingly the Company's management was required to perform an analysis of discounted cash flows of the asset group, in order to determine its fair value. Based on such analysis the Company recorded an impairment loss in the amount of \$2,036 with respect to acquired technology derived from the acquisition of Covelight. The impairment loss was recoded as part of cost of revenues.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

In performing the above analysis and tests, the Company's management developed the required assumptions and the related forecasts underlying the valuation, and was assisted by a third party valuator in applying the customary valuation techniques and required economic models.

j. Goodwill:

Goodwill reflects the excess of the purchase price of business acquired over the fair value of net assets acquired. Goodwill is not amortized but instead is tested for impairment at least annually or more frequently if events or changes in circumstances indicate that the carrying value may be impaired. Annual impairment test is performed by the Company each year.

In accordance with SFAS No. 142 which requires the Company to perform an annual impairment test and due to certain indicators for impairment of the Company's goodwill which occurred in late 2008, such as decline in the Company's market capitalization below its shareholders equity, the current credit crisis and the global recession, the Company performed an assessment of goodwill impairment as of December 31, 2008. Goodwill is tested for impairment by comparing the estimated fair value of the Company as an entity with the carrying amounts of its total net assets. Fair value was determined using market comparables and multiples, and by applying a control premium based on market comparables. The analysis also used discounted cash flow model as corroboration. During the years ended December 31, 2006, 2007 and 2008, no such impairment losses were recorded.

In performing the above analysis and tests, the Company's management developed the required assumptions and the related forecasts underlying the valuation, and was assisted by a third party valuator in applying the customary valuation techniques and required economic models.

k. Revenue recognition:

The Company and its subsidiaries generate revenues mainly from selling their products and from post-contract customer support, which are sold primarily through distributors and resellers, all of which are considered end-users.

Revenues from product sales are recognized in accordance with SEC Staff Accounting Bulletin ("SAB") No. 104, "Revenue Recognition" ("SAB No. 104") when delivery has occurred, persuasive evidence of an agreement exists, the vendor's fee is fixed or determinable, no further obligation exists and collectability is probable.

Revenues in arrangements with multiple deliverables are recognized under the "residual method" when Vendor Specific Objective Evidence ("VSOE") of fair value exists for all undelivered elements, no VSOE exists for the delivered elements, and all other revenue recognition criteria are satisfied. VSOE for post-contract customer support is determined based on the price when such element is sold separately for similar products. The price may vary in the territories and vertical markets in which the Company conducts business. Price is determined by using a consistent percentage of the Company's product price lists.

Revenue derived from post-contract customer support, which represents mainly unit replacement and security update service which is not considered essential to the functionality of the product, is recognized ratably over the contract period, which is typically one year.

Revenues from training and installation, which are not considered essential to the functionality of the product, included in multiple elements arrangements are recognized at the time they are rendered.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

The Company and its subsidiaries provide a provision for product returns and stock rotation based on their experience with historical sales returns, stock rotations and other known factors, in accordance with Statement of Financial Accounting Standard No. 48, "Revenue Recognition When Right of Return Exists" ("SFAS No. 48").

Deferred revenue includes unearned amounts received under post-contract customer support.

l. Warranty costs:

The Company generally provides a one year warranty for all of its products. A provision is recorded for estimated warranty costs at the time revenues are recognized based on the Company's experience. Warranty expenses for the years ended December 31, 2006, 2007 and 2008 were immaterial.

m. Research and development expenses:

Research and development expenses, net of grants received are charged to the statement of operations, as incurred.

n. Non-royalty-bearing grants:

Non-royalty-bearing grants for funding of approved research and development projects are recognized at the time the Company is entitled to such grants, on the basis of the costs incurred. These grants are presented as a reduction of research and development expenses. During the years 2006, 2007 and 2008, the Company received grants in the amount of \$200, \$0 and \$0, respectively.

o. Advertising expenses:

Advertising expenses are charged to the statements of operations as incurred. Advertising expenses for the years ended December 31, 2006, 2007 and 2008, amounted to approximately \$373 \$828 and \$267, respectively.

p. Accounting for stock-based compensation:

The Company accounts for stock-based compensation in accordance with SFAS No. 123 (revised 2004), "Share-Based Payment" ("SFAS No. 123(R)"). SFAS No. 123(R) requires companies to estimate the fair value of equity-based payment awards on the date of grant using an option-pricing model. The value of the portion of the award that is ultimately expected to vest is recognized as an expense over the requisite service periods in the Company's consolidated statement of operations.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

The Company recognizes compensation expenses for the value of its awards based on the accelerated attribution method over the requisite service period of each of the awards, net of estimated forfeitures. SFAS No. 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Estimated forfeitures are based on actual historical pre-vesting forfeitures.

The Company selected the Black-Scholes-Merton option pricing model to account for the fair value of its stock-options, awards with only service conditions based on the market value of the underlying shares at the date of grant. The option-pricing model requires a number of assumptions, of which the most significant are the expected stock price volatility and the expected option term. Expected volatility was calculated based upon actual historical stock price movements over an historical period equivalent to the option's expected term. The expected option term represents the period of time that options granted are expected to be outstanding. Prior to December 31, 2007 expected term of options was determined based on simplified method permitted by SAB No. 107 as the average of the vesting period and the contractual term. Starting January 1, 2008 expected term of options granted is based upon historical experience complying with SAB 110. The risk-free interest rate is based on the yield from U.S. treasury bonds with an equivalent term. The Company has historically not paid dividends and has no foreseeable plans to pay dividends. The Company uses other models, such as the lattice model, only in case of grants having complex vesting terms such as market condition.

q. Income taxes:

The Company and its subsidiaries account for income taxes in accordance with Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" ("SFAS No. 109"). This statement prescribes the use of the liability method whereby deferred tax assets and liability account balances are determined based on differences between financial reporting and tax bases of assets and liabilities and are measured using the enacted tax rates and laws that will be in effect when the differences are expected to reverse. The Company and its subsidiaries provide a valuation allowance, if necessary, to reduce deferred tax assets to their estimated realizable value if it is more likely than not that a portion or all of the deferred tax assets will not be realized.

Deferred tax liabilities and assets are classified as current or non current based on the classification of the related asset or liability for financial reporting, or according to the expected reversal dates of the specific temporary differences if not related to an asset or liability for financial reporting.

On January 1, 2007, the Company adopted FASB Interpretation No. 48, "Accounting for Uncertainty in Income Taxes, an Interpretation of FASB Statement No. 109" (FIN 48). FIN 48 contains a two-step approach to recognizing and measuring uncertain tax positions accounted for in accordance with SFAS No. 109. The first step is to evaluate the tax position taken or expected to be taken in a tax return by determining if the weight of available evidence indicates that it is more likely than not that, on an evaluation of the technical merits, the tax position will be sustained on audit, including resolution of any related appeals or litigation processes. The second step is to measure the tax benefit as the largest amount that is more than 50% likely to be realized upon ultimate settlement. The adoption of FIN 48 as of January 1, 2007, did not have any material effects on the Company's retained earnings and financial position. The Company accrues interest related to unrecognized tax benefits as part of financial income, net.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

r. Concentrations of credit risks:

Financial instruments that potentially subject the Company and its subsidiaries to concentrations of credit risk consist principally of cash and cash equivalents, available-for-sale marketable securities and trade receivables.

The majority of the Company's and its subsidiaries' cash and cash equivalents are invested in major banks in the United States in U.S. dollars. Such cash and cash equivalents in the United States may be in excess of insured limits and are not insured in other jurisdictions. Generally, these cash equivalents may be redeemed upon demand and, therefore management believes that it bear lower risk.

The Company's marketable securities include investments in U.S. government debentures, foreign banks and government debentures and corporate debentures. The Company's investment policy limits the amount the Company may invest in each type of investment, thereby reducing credit risk concentration (see also Note 3).

During the recent turmoil in capital markets, the Company has tightened its control and monitoring over its marketable securities portfolio. The Company has taken several measures in order to minimize potential risks stemming from current capital markets environment.

The trade receivables of the Company and its subsidiaries are mainly derived from sales to customers located primarily in the United States, Europe, the Middle East, Africa and Asia Pacific. The Company performs ongoing credit evaluations of its customers. An allowance for doubtful accounts is determined with respect to those amounts that the Company has determined to be doubtful of collection. In certain circumstances, the Company may require from its customers letters of credit, other collateral or additional guarantees. The doubtful accounts expenses for the years ended December 31, 2006, 2007 and 2008 were \$94, \$94 and \$0, respectively.

s. Severance pay:

The Company's liability for severance pay with respect to their Israeli employees, for periods of employment prior to March 31, 2007 is calculated pursuant to Israeli severance pay law based on the most recent salary of the employees multiplied by the number of years of employment, as of the balance sheet date. Employees whose employment is terminated by the Company or who are otherwise entitled to severance pay in accordance with Israeli law or labor agreements are entitled to one month's salary for each year of employment or a portion thereof. For periods of employment until March 31, 2007, the Company's liability for all of its Israeli employees is partly provided by monthly deposits for insurance policies and the remainder by an accrual. The carrying value of these policies is recorded as an asset in the Company's consolidated balance sheet.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

Effective April 1, 2007, the Company's agreements with employees in Israel, in accordance with section 14 of the Severance Pay Law - 1963, provide that the Company's contributions to severance pay fund shall cover its entire severance liability with respect to period of employment subsequent to April 1, 2007. Upon termination, the release of the contributed amounts from the fund to the employee shall relieve the Company from any further severance liability and no additional payments shall be made by the Company to the employee. As a result, the related obligation and amounts deposited on behalf of such obligation are not stated on the balance sheet, as the Company is legally released from severance obligation to employees once the amounts have been deposited, and the Company has no further legal ownership on the amounts deposited. Consequently, effective from April 1, 2007, the Company increased its contribution to the deposited funds to cover the full amount of the employees' salaries.

The carrying value of the deposited funds for the Company's employees' severance pay for employment periods prior to April 1, 2007 include profits and losses accumulated up to the balance sheet date. The deposited funds may be withdrawn only upon the fulfillment of the obligation pursuant to Israeli severance pay law or labor agreements.

Severance pay expenses for the years ended December 31, 2006, 2007 and 2008, amounted to approximately \$1,015 \$965 and \$1,824, respectively.

t. Fair value of financial instruments:

The carrying amounts of our financial instruments, including cash and cash equivalents, trade receivables, trade payables and accrued liabilities, generally approximate fair value due to their short maturities. Marketable securities are presented at their fair value as discussed below.

Effective January 1, 2008, the Company adopted SFAS 157, "Fair Value Measurements" and, effective October 10, 2008, adopted FSP No. SFAS 157-3, "Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active", except as it applies to the nonfinancial assets and nonfinancial liabilities subject to FSP 157-2. SFAS 157 clarifies that fair value is an exit price, representing the amount that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or a liability. As a basis for considering such assumptions, SFAS 157 establishes a three-tier value hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

- Level 1 - Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.
- Level 2 - Include other inputs that are directly or indirectly observable in the marketplace.
- Level 3 - Unobservable inputs which are supported by little or no market activity.

The fair value hierarchy also requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value (see also Note 4).

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

u. Comprehensive income:

The Company accounts for comprehensive income in accordance with SFAS No. 130, "Reporting Comprehensive Income". This statement establishes standards for the reporting and display of comprehensive income and its components in a full set of general purpose financial statements. Comprehensive income generally represents all changes in shareholders' equity during the period except those resulting from investments by, or distributions to shareholders. The Company's items of other comprehensive income relates to unrealized gains and losses, net on available for sale marketable debt securities.

v. Treasury stock:

From time to time the Company repurchases its Ordinary shares on the open market or in other transactions and holds such shares as treasury stock. The Company presents the cost to repurchase treasury stock as a reduction of shareholders' equity.

w. Basic and diluted net loss per share:

Basic net loss per share is computed based on the weighted average number of Ordinary shares outstanding during each period. Diluted net loss per share is computed based on the weighted average number of Ordinary shares outstanding during each period, plus dilutive potential Ordinary shares considered outstanding during the period, in accordance with Statement of Financial Standard No. 128, "Earnings per Share".

The weighted average number of shares related to outstanding anti dilutive options excluded from the calculation of diluted loss per share as they would have been anti dilutive was 3,284,999, 4,704,129 and 4,313,072 for the years ended December 31, 2006, 2007 and 2008, respectively.

x. Impact of recently issued accounting pronouncements:

In February 2008, the FASB issued FASB Staff Position ("FSP") FAS No. 157-2, "Effective Date of FASB Statement No. 157" ("FSP 157-2"), to delay the effective date of FASB Statement 157 for one year for certain nonfinancial assets and nonfinancial liabilities, excluding those that are recognized or disclosed in financial statements at fair value on a recurring basis (that is, at least annually). For purposes of applying the FSP 157-2, nonfinancial assets and nonfinancial liabilities include all assets and liabilities other than those meeting the definition of a financial asset or a financial liability in FASB Statement 159. FSP 157-2 defers the effective date of Statement 157 to fiscal years beginning after November 15, 2008, and interim periods within those fiscal years for items within the scope of this FSP 157-2. The Company does not expect the adoption of FAS 157 with respect to certain nonfinancial assets and nonfinancial liabilities, excluding those that are recognized or disclosed in the financial statements at fair value on a recurring basis (at least annually), to have a material impact on its financial position, results of operations or cash flows.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

In March 2008, the FASB issued Statement 161 "Disclosures about Derivative Instruments and Hedging Activities" ("SFAS 161") an amendment to FASB No. 133. This statement changes the disclosure requirements for derivative instruments and hedging activities. Entities are required to provide enhanced disclosures about (a) how and why an entity uses derivative instruments, (b) how derivative instruments and related hedged items are accounted for under Statement 133 and its related interpretations, and (c) how derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. This statement is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. Early application is encouraged. The Company does not expect the adoption of SFAS 161 to have a material impact on its financial position, results of operations or cash flows.

In April 2008, the FASB issued FSP 142-3, "Determination of the Useful Life of Intangible Assets" (FSP 142-3). FSP 142-3 amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset under SFAS No. 142, "Goodwill and Other Intangible Assets". FSP 142-3 is effective for fiscal years beginning after December 15, 2008. The Company does not expect the adoption of FAS 142-3 to have a material impact on its consolidated financial position, results of operations or cash flows.

In June 2008, the FASB issued FSP EITF No. 03-6-1, "Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities". Under the FSP, unvested share-based payment awards that contain rights to receive non-forfeitable dividends (whether paid or unpaid) are participating securities, and should be included in the two-class method of computing EPS. The FSP is effective for fiscal years beginning after December 15, 2008, and interim periods within those years, and is not expected to have a significant impact on the Company's consolidated financial statements position, results of operations or cash flows.

In November 2008, the FASB ratified Emerging Issues Task Force Issue No. 08-7, "Accounting for Defensive Intangible Assets". EITF 08-7 clarifies the accounting for certain separately identifiable intangible assets which an acquirer does not intend to actively use but intends to hold to prevent its competitors from obtaining access to them. EITF 08-7 requires an acquirer in a business combination to account for a defensive intangible asset as a separate unit of accounting which should be amortized to expense over the period the asset diminishes in value. EITF 08-7 is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. The Company is currently evaluating the potential impact, if any, of the adoption of EITF 08-7 on its consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 2:- SIGNIFICANT ACCOUNTING POLICIES (Cont.)

In December 2007, the FASB issued SFAS No. 141(R) "Business Combinations" ("SFAS 141(R)") and SFAS No. 160 "Accounting and Reporting of Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51" ("SFAS 160"). These standards will significantly change the accounting and reporting for business combination transactions and noncontrolling interests in consolidated financial statements. SFAS 141(R) requires companies to recognize all the assets acquired and liabilities assumed in a business combination and establishes the acquisition date fair value as the measurement objective, including capitalizing at the acquisition date the fair value of acquired in-process research and development, and re-measuring and writing down these assets, if necessary, in subsequent periods during their development. SFAS 141(R) will also impact the determination of acquisition-date fair value of consideration paid in a business combination (including contingent consideration), exclude transaction costs from acquisition accounting, and change accounting practices for acquired contingencies, acquisition-related restructuring costs, indemnification assets, and tax benefits. SFAS 141(R) and SFAS 160 will be applied prospectively for business combinations that occur on or after January 1, 2009, except that presentation and disclosure requirements of SFAS 160 regarding noncontrolling interests shall be applied retrospectively. The Company will adopt SFAS 141(R) and SFAS 160 as of January 1, 2009, as required. At the effective time of Nortel acquisition (see also Note 17), the accounting and business combination transaction will be recorded in accordance with both pronouncements.

EITF Issue No. 08-6, "Equity-Method Investment Accounting" ("EITF 08-6") concludes that the cost basis of a new equity-method investment would be determined using a cost-accumulation model, which would continue the practice of including transaction costs in the cost of investment and would exclude the value of contingent consideration. Equity-method investment should be subject to other-than-temporary impairment analysis. It also requires that a gain or loss to be recognized on the portion of the investor's ownership sold. EITF 08-6 will be effective for the reporting period beginning after December 15, 2008. The Company does not expect the adoption of EITF 08-6 to have a material impact on its financial position, results of operations or cash flows.

- y. Reclassification: Certain 2007 figures have been reclassified to conform to the 2008 presentation. The reclassification had no effect on previously reported net loss shareholders' equity or cash flows.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 3:- MARKETABLE SECURITIES

Marketable debt securities with contractual maturities of less than one year are as follows:

| | December 31, | | | | | | | |
|---|----------------|-------------------------|------------------------|--------------|----------------|-------------------------|------------------------|--------------|
| | 2007 | | | | 2008 | | | |
| | Amortized cost | Gross unrealized losses | Gross unrealized gains | Market value | Amortized cost | Gross unrealized losses | Gross unrealized gains | Market value |
| <u>Available-for-sale:</u> | | | | | | | | |
| U.S. Government debentures | \$ 57,616 | \$ (4) | \$ 160 | \$ 57,772 | \$ 20,384 | \$ – | \$ – | \$ 20,384 |
| Foreign banks and government debentures | 6,276 | (3) | 1 | 6,274 | 22,173 | (175) | 50 | 22,048 |
| Corporate debentures | 7,285 | (4) | – | 7,281 | 18,284 | (73) | 88 | 18,299 |
| Auction rate securities *) | 9,171 | – | – | 9,171 | – | – | – | – |
| <u>Total</u> available-for-sale marketable securities | \$ 80,348 | \$ (11) | \$ 161 | \$ 80,498 | \$ 60,841 | \$ (248) | \$ 138 | \$ 60,731 |

Marketable securities with contractual maturities of from one to three years are as follows:

| | December 31, | | | | | | | |
|---|----------------|-------------------------|------------------------|--------------|----------------|-------------------------|------------------------|--------------|
| | 2007 | | | | 2008 | | | |
| | Amortized cost | Gross unrealized losses | Gross unrealized gains | Market value | Amortized cost | Gross unrealized losses | Gross unrealized gains | Market value |
| <u>Available-for-sale:</u> | | | | | | | | |
| U.S. Government debentures | \$ – | \$ – | \$ – | \$ – | \$ 1,020 | \$ – | \$ 35 | \$ 1,055 |
| Foreign banks and government debentures | 2,735 | (4) | 4 | 2,735 | 34,353 | (925) | 138 | 33,566 |
| Corporate debentures | – | – | – | – | 10,502 | (75) | 64 | 10,491 |
| <u>Total</u> available-for-sale marketable securities | \$ 2,735 | \$ (4) | \$ 4 | \$ 2,735 | \$ 45,875 | \$ (1,000) | \$ 237 | \$ 45,112 |

The unrealized gains (losses), net on available-for-sale debt securities included in other comprehensive income, as a separate component of shareholders' equity, totaled to \$150 and \$(873) net as of December 31, 2007 and 2008, respectively.

Investments with continuous unrealized losses for less than 12 months and 12 months or greater and their related fair values were as follows:

| | December 31, 2008 | | | | | |
|---|---|-------------------|--|-------------------|---|-------------------|
| | Investments with continuous unrealized losses for less than 12 months | | Investments with continuous unrealized losses for 12 months or greater | | Total investments with continuous unrealized losses | |
| | Fair value | Unrealized losses | Fair value | unrealized losses | Fair value | unrealized losses |
| <u>Available-for-sale:</u> | | | | | | |
| Foreign banks and government debentures | \$ 40,337 | \$ (1,060) | \$ 2,197 | \$ (40) | \$ 42,534 | \$ (1,100) |
| Corporate debentures | 12,504 | (148) | – | – | 12,504 | (148) |
| <u>Total</u> available-for-sale marketable securities | \$ 52,841 | \$ (1,208) | \$ 2,197 | \$ (40) | \$ 55,038 | \$ (1,248) |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 3:- MARKETABLE SECURITIES (Cont.)

| | December 31, 2007 | | | | | |
|---|---|----------------------|--|----------------------|--|----------------------|
| | Investments with continuous unrealized losses for less than 12 months | | Investments with continuous unrealized losses for 12 months or greater | | Total investments with continuous unrealized losses | |
| | Fair value | Unrealized losses | Fair value | unrealized losses | Fair value | unrealized losses |
| <u>Available-for-sale:</u> | | | | | | |
| U.S. Government debentures | \$ 5,224 | \$ (3) | \$ – | \$ – | \$ 5,224 | \$ (3) |
| Foreign banks and government debentures | 4,602 | (2) | 1,420 | (5) | 6,022 | (7) |
| Corporate debentures | 4,964 | (1) | 2,317 | (4) | 7,281 | (5) |
| <u>Total available-for-sale marketable securities</u> | <u>\$ 14,790</u> | <u>\$ (6)</u> | <u>\$ 3,737</u> | <u>\$ (9)</u> | <u>\$ 18,527</u> | <u>\$ (15)</u> |

The Company reviews various factors in determining whether it should recognize an impairment charge for its marketable securities, including its intent and ability to hold the investment for a period of time sufficient for any anticipated recovery in market value or until maturity, the length of time and extent to which the fair value has been less than its cost basis, the credit ratings of the securities, the nature of underlying collateral, as applicable and the financial condition and near-term prospects of the issuer. Based on the Company's consideration of these factors, during the years ended December 31, 2006, 2007 and 2008, the Company did not recognize any other-than-temporary impairment losses.

As of December 31, 2007 and 2008, accrued interest receivable amounted to \$164 and \$1,383, respectively, and is included within available for sale marketable securities in the balance sheets.

NOTE 4:- FAIR VALUE MEASUREMENTS

In accordance with SFAS 157, the Company measures its cash equivalents and available for sale marketable securities at fair value on recurring basis. Cash equivalents and marketable securities are classified within Level 1 or Level 2. This is because these assets are valued using quoted market prices or alternative pricing sources and models utilizing market observable inputs.

The Company's financial assets measured at fair value on a recurring basis, including accrued interest components; consisted of the following types of instruments as of December 31, 2008:

| | Fair value measurements using input type | | | |
|---|--|------------------|-------------|-------------------|
| | Level 1 | Level 2 | Level 3 | Total |
| <u>Cash equivalents:</u> | | | | |
| Money market funds | \$ 3,857 | \$ – | \$ – | \$ 3,857 |
| <u>Available-for-sale:</u> | | | | |
| U.S. Government debentures | 21,439 | – | – | 21,439 |
| Foreign banks and government debentures | 2,692 | 52,922 | – | 55,614 |
| Corporate debentures | – | 28,790 | – | 28,790 |
| <u>Total financial assets</u> | <u>\$ 27,988</u> | <u>\$ 81,712</u> | <u>\$ –</u> | <u>\$ 109,700</u> |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 5:- INVENTORIES

Inventories are comprised of the following:

| | December 31, | |
|------------------------------|-----------------|-----------------|
| | 2007 | 2008 |
| Raw materials and components | \$ 561 | \$ 564 |
| Work-in-progress | 1,262 | 1,550 |
| Finished products | 3,605 | 4,598 |
| | <u>\$ 5,428</u> | <u>\$ 6,712</u> |

NOTE 6:- PROPERTY AND EQUIPMENT, NET

| | December 31, | |
|---|------------------|------------------|
| | 2007 | 2008 |
| Cost: | | |
| Computer, peripheral equipment and software | \$ 21,650 | \$ 25,794 |
| Office furniture and equipment | 2,896 | 3,161 |
| Motor vehicles | 48 | 12 |
| Leasehold improvements | 1,038 | 1,274 |
| | <u>25,632</u> | <u>30,241</u> |
| Accumulated depreciation: | | |
| Computer, peripheral equipment and software | 11,367 | 16,102 |
| Office furniture and equipment | 1,475 | 1,774 |
| Motor vehicles | 36 | 9 |
| Leasehold improvements | 537 | 663 |
| | <u>13,415</u> | <u>18,548</u> |
| Depreciated cost | <u>\$ 12,217</u> | <u>\$ 11,693</u> |

Depreciation expenses for the years ended December 31, 2006, 2007 and 2008 were \$2,440, \$3,811 and \$5,167, respectively.

NOTE 7 :- GOODWILL AND INTANGIBLE ASSETS, NET

a. Goodwill :

Changes in goodwill for the years ended December 31, 2007 and 2008 are as follows:

| | December 31, | |
|-------------------------------|------------------|------------------|
| | 2007 | 2008 |
| Goodwill at beginning of year | \$ 9,454 | \$ 13,474 |
| Acquisition of Covelight | 4,020 | — |
| Goodwill, at end of year | <u>\$ 13,474</u> | <u>\$ 13,474</u> |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 7 :- INTANGIBLE ASSETS, NET (Cont.)

b. Intangible assets :

| | Weighted average Amortization period (years) | December 31, | |
|----------------------------------|--|--------------|--------------|
| | | 2007 | 2008 |
| Cost: | | | |
| Acquired technology | 6 – 7 | \$ 4,963 | \$ 4,963 |
| Customers relationships | Mainly 6 | 1,364 | 1,364 |
| | | <u>6,327</u> | <u>6,327</u> |
| Accumulated amortization: | | | |
| Acquired technology | | 897 | 1,648 |
| Customers relationships | | 632 | 787 |
| | | <u>1,529</u> | <u>2,435</u> |
| Impairment *) | | – | 2,036 |
| | | <u>1,529</u> | <u>4,471</u> |
| Amortized cost | | \$ 4,798 | \$ 1,856 |

Amortization expenses for the years ended December 31, 2006, 2007 and 2008, were \$450, \$931 and \$906, respectively.

*) The Company recorded in 2008 an impairment loss of \$2,036 with respect to acquired technology derived from the acquisition of Covelight – see also Note 2(i)

c. Future estimated amortization expenses for the years ending:

| December 31, | |
|---------------------|-----------------|
| 2009 | \$ 524 |
| 2010 | 524 |
| 2011 | 524 |
| 2012 | 139 |
| 2013 and thereafter | 145 |
| | <u>1,856</u> |
| Total | \$ 1,856 |

NOTE 8:- OTHER PAYABLES AND ACCRUED EXPENSES

| | December 31, | |
|--------------------------------|--------------|--------------|
| | 2007 | 2008 |
| Employees and payroll accruals | \$ 4,263 | \$ 4,974 |
| Accrued expenses | 2,124 | 2,216 |
| Governmental authorities | 1,288 | 2,489 |
| Warranty provision | 200 | 181 |
| Other | 168 | 8 |
| | <u>8,043</u> | <u>9,868</u> |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 9:- COMMITMENTS AND CONTINGENT LIABILITIES

a. Lease commitments:

The facilities of the Company and its subsidiaries are leased under various operating lease agreements, which expire on various dates, the latest of which is on September 30, 2015. Aggregate minimum rental payments under non-cancelable operating leases as of December 31, 2008, are as follows:

| | |
|---------------------|----------|
| December 31, | |
| 2009 | \$ 2,975 |
| 2010 | 2,203 |
| 2011 | 1,004 |
| 2012 | 728 |
| 2013 | 48 |
| | <hr/> |
| | \$ 6,958 |
| | <hr/> |

Total rent expenses for the years ended December 31, 2006, 2007 and 2008, were approximately \$1,948, \$2,838 and \$3,571, respectively (see also Note 15b).

b. Litigation:

1. In December 2001, the Company, its Chairman, its President and Chief Executive Officer and its Chief Financial Officer (the "Individual Defendants") and several underwriters in the syndicates for the Company's September 30, 1999 Initial Public Offering ("IPO") and January 24, 2000 secondary offering, were named as defendants in a class action complaint alleging violations of the federal securities laws, in the United States District Court, Southern District of New York.

The complaint seeks unspecified damages as a result of alleged violations of Section 11 of the Securities Act of 1933 against all the defendants and Section 15 of the Securities Act of 1933 against the Individual Defendants arising from activities purportedly engaged in by the underwriters in connection with the Company's IPO and secondary offering. Plaintiffs allege that the underwriter defendants agreed to allocate stock in the Company's IPO and secondary offering to certain investors in exchange for excessive and undisclosed commissions and agreements by those investors to make additional purchases of stock in the aftermarket at pre-determined prices.

An amended complaint filed on April 19, 2002, which is now the operative complaint, added a claim under Section 10(b) of the Securities Exchange Act of 1934 against the Company and a claim under Section 20(a) of the Securities Exchange Act of 1934 against the Individual Defendants. Plaintiffs allege that the Prospectuses for the Company's IPO and secondary offering were false and misleading because they did not disclose these arrangements. The action is being coordinated with approximately three hundred other nearly identical actions filed against other companies before one judge in the U.S. District Court for the Southern District of New York.

On October 9, 2002, the Court dismissed the Individual Defendants from the case without prejudice. This dismissal disposed of the Section 15 and 20(a) control person claims without prejudice, since these claims were asserted only against the Individual Defendants.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 9:- COMMITMENTS AND CONTINGENT LIABILITIES (Cont.)

On December 5, 2006, the Second Circuit vacated a decision by the district court granting class certification in six “focus” cases, which are intended to serve as test cases. Plaintiffs selected these six cases, which do not include the Company. On April 6, 2007, the Second Circuit denied a petition for rehearing filed by the plaintiffs, but noted that the plaintiffs could ask the district court to certify more narrow classes than those that were rejected.

Prior to the Second Circuit’s decision, the majority of issuers, including the Company, had submitted a settlement to the district court for approval. In light of the Second Circuit opinion, the parties agreed that the settlement could not be approved. On June 25, 2007 the district court approved a stipulation filed by the plaintiffs and the issuers that terminated the proposed settlement

On August 14, 2007, the plaintiffs filed amended complaints in the six focus cases. The amended complaints include a number of changes, such as changes to the definition of the purported class of investors, and the elimination of the individual defendants as defendants. The six focus case issuers and the underwriters named as defendants in the focus cases filed motions to dismiss the amended complaints against them on November 14, 2007. On September 27, 2007, the plaintiffs filed a motion for class certification in the six focus cases.

On March 26, 2008, the district court dismissed the Section 11 claims of those members of the putative classes in the focus cases who sold their securities for a price in excess of the initial offering price and those who purchased outside the previously certified class period. With respect to all the other claims, the motions to dismiss were denied. On October 10, 2008, at the request of Plaintiffs, Plaintiffs’ motion for class certification was withdrawn, without prejudice.

The parties in the approximately 300 coordinated class actions, including the Company, the underwriter defendants in the Company class action, and the plaintiffs in the Company class action, have reached an agreement in principle under which the insurers for the issuer defendants in the coordinated cases will make the settlement payment on behalf of the issuers, including Radware. The settlement is subject to approval by the parties, termination by the parties under certain circumstances, and Court approval. There is no assurance that the settlement will be concluded or that the Court will approve the settlement.

Due to the inherent uncertainties of litigation, the Company’s management and its legal counsel cannot predict the ultimate outcome of the matter. Should the settlement not be concluded or approved and the Company is found liable, it is unable, at this time to estimate or predict the potential damages that might be awarded, whether such damages would be greater than the Company’s insurance coverage, and whether such damages would have a material impact on its results of operations, cash flows or financial condition in any future period.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands, except share and per share data

NOTE 9:- COMMITMENTS AND CONTINGENT LIABILITIES (Cont.)

2. The Company's French subsidiary, Radware France, is a party to two separate litigation proceedings before the Boulogne-Billancourt Employment Tribunal, brought against the subsidiary by two of its former employees claiming damages in connection with their dismissal in a total amount of approximately 387 thousand Euros. The hearings with respect to two of these matters are scheduled for March 26, 2009 and April 30, 2009, respectively. At this stage, the Company's management cannot assess the outcome or the risks associated with these three matters but in any event the Company's management does not expect them to have a material affect on its financial results and operations.
- The Company's Canadian subsidiary, Radware Canada Inc., is a party to a litigation proceeding before the Ontario Superior Court of Justice, brought against the subsidiary by its former employee claiming damages in connection with its dismissal for approximately 150 thousand Canadian Dollars. At this stage the Company management cannot asses the outcome or the risks associated with this matter but in any event the Company's management does not expect it to have a material affect on the financial results and operations.
- The Company has conducted some other legal proceeding or arbitration which it does not believe to have significant effects on its financial condition or profitability.

NOTE 10:- SHAREHOLDERS' EQUITY

The Company's shares are listed for trade on the NASDAQ National Market under the symbol "RDWR".

- a. Rights of shares:

Ordinary shares:

The Ordinary shares confer upon the holders the right to receive notice to participate and vote in shareholders meetings of the Company and to receive dividend, if declared.
- b. Treasury stock:

In July 2006, the Company's Board of Directors authorized the repurchase of up to \$25,000 in the open market, subject to normal trading restrictions. During 2006, the Company purchased 846,855 of its Ordinary shares for total consideration of \$11,069. During 2008, the Company purchased 880,315 of its Ordinary shares for total consideration of \$6,594. Total consideration for the purchase of these Ordinary shares was recorded as Treasury shares, at cost, as part of shareholders' equity.
- c. Dividends:

Dividends, if any, will be paid in NIS. Dividends paid to shareholders outside Israel may be converted to U.S. dollars on the basis of the exchange rate prevailing at the date of the conversion. The Company does not intend to pay cash dividends in the foreseeable future.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands, except share and per share data

NOTE 10:- SHAREHOLDERS' EQUITY (Cont.)

d. Stock Option Plans:

The Company has two stock option plans, the Company's Key Employee Share Incentive Plan (1997) and the Directors and Consultants Option Plan ("the Stock Option Plans"). Under the Stock Option Plans, options may be granted to officers, directors, employees and consultants of the Company or its subsidiaries. The exercise price per share under the Stock Option Plans was generally, not less than the market price of an Ordinary share at the date of grant. The options expire between 5.2 years to 7 years from the grant date. The options vest primarily over four years. Each option is exercisable for one Ordinary share. Any options, which are forfeited or not exercised before expiration, become available for future grants.

Pursuant to the Stock Option Plans, the Company reserved for issuance 9,937,236 Ordinary shares. This amount includes an increase of 3% of issued and outstanding Ordinary shares reserved for option grants under the Stock Option Plans, as approved by the Company in January 2008. As of December 31, 2008, an aggregate of 1,130,511 Ordinary shares of the Company were still available for future grants.

The Company estimates the fair value of stock options granted using the Black-Scholes-Merton option-pricing model. The option-pricing model requires a number of assumptions, of which the most significant are expected stock price volatility and the expected option term. Expected volatility was calculated based upon actual historical stock price movements.

The expected option term represents the period of time that options granted are expected to be outstanding. Prior to December 31, 2007 expected term of options was determined based on simplified method permitted by SAB No. 107 as the average of the vesting period and the contractual term. Starting January 1, 2008 expected term of options granted is based upon historical experience complying with SAB 110. Option granted to management, the expected term is 4.3 years and for options granted to employees, the exercise period is 3.6 years. The risk-free interest rate is based on the yield from U.S. Treasury zero-coupon bonds with an equivalent term. The Company has historically not paid dividends and has no foreseeable plans to pay dividends. The Company uses other models, such as lattice model, only in case of grants having complex vesting terms such as market condition.

The fair value of the Company's stock options granted to employees and directors for the years ended December 31, 2006, 2007 and 2008 was estimated using the following weighted average assumptions:

| | Year ended December 31, | | |
|---|-------------------------|-------|-------|
| | 2006 | 2007 | 2008 |
| Risk free interest rate | 4.88% | 4.46% | 2.69% |
| Dividend yields | 0% | 0% | 0% |
| Expected volatility | 50% | 47% | 43% |
| Weighted average expected term from vesting date (in years) | 3.89 | 4.10 | 3.83 |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands, except share and per share data

NOTE 10:- SHAREHOLDERS' EQUITY (Cont.)

A summary of employee option activity under the Company's Stock Option Plans as of December 31, 2008 is as follows:

| | Number of options | Weighted-average exercise price | Weighted- average remaining contractual term (in years) | Aggregate intrinsic value |
|---|----------------------|--|---|--|
| Outstanding at January 1, 2008 | 4,704,129 | \$ 14.94 | | |
| Granted | 1,099,300 | \$ 10.33 | | |
| Exercised | (238,850) | \$ 8.01 | | |
| Expired | (555,821) | \$ 14.58 | | |
| Forfeited | (695,686) | \$ 14.39 | | |
| Outstanding at December 31, 2008 | 4,313,072 | \$ 14.28 | 3.20 | — |
| Exercisable at December 31, 2008 | 1,734,845 | \$ 16.22 | 1.49 | — |
| Vested and expected to vest at December 31, 2008 | 3,978,778 | \$ 14.50 | 3.15 | — |
| | | December 31, 2006 | December 31, 2007 | |
| | Number of options | Weighted average exercise price | Number of options | Weighted average exercise price |
| Options outstanding at the beginning of the year | 4,054,380 | \$ 14.31 | 3,284,999 | \$ 15.13 |
| Changes during the year: | | | | |
| Granted | 1,122,400 | \$ 14.69 | 2,414,900 | \$ 14.30 |
| Exercised | (1,196,998) | \$ 10.55 | (148,000) | \$ 9.24 |
| Expired | — | \$ — | (771) | \$ 8.05 |
| Forfeited | (694,783) | \$ 17.48 | (846,999) | \$ 16.35 |
| Options outstanding at the end of the year | 3,284,999 | \$ 15.13 | 4,704,129 | \$ 14.94 |
| Options exercisable at the end of the year | 1,034,230 | \$ 13.18 | 1,509,396 | \$ 14.94 |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands, except share and per share data

NOTE 10:- SHAREHOLDERS' EQUITY (Cont.)

The weighted-average grant-date fair value of options granted during the years ended December 31, 2006, 2007 and 2008 was \$5.04, \$4.96 and \$3.29, respectively. As of December 31, 2008, there was approximately \$5,769 of total unrecognized compensation costs related to non-vested share-based compensation arrangements granted under the Company's stock option plans. That cost is expected to be recognized over a weighted-average period of 0.87 years. Total grant-date fair value of vested options for the year ended December 31, 2008 was approximately \$11,353

The options outstanding under the Company's Stock Option Plans as of December 31, 2008, have been separated into ranges of exercise price as follows:

| Ranges of exercise price | Options outstanding as of December 31, 2008 | Weighted average remaining contractual life (years) | Weighted average exercise price | Options exercisable as of December 31, 2008 | Weighted average exercise price of exercisable options |
|--------------------------|---|---|---------------------------------|---|--|
| \$ 6.31-11.00 | 755,200 | 4.54 | \$ 8.95 | 30,500 | \$ 8.20 |
| \$ 12.50-15.00 | 2,025,225 | 2.66 | \$ 13.97 | 969,300 | \$ 14.33 |
| \$ 15.22-17.00 | 1,109,567 | 3.98 | \$ 15.94 | 378,801 | \$ 16.95 |
| \$ 18.00-20.08 | 220,367 | 1.87 | \$ 18.40 | 165,568 | \$ 18.37 |
| \$ 23.13-25.30 | 202,713 | 0.88 | \$ 23.81 | 190,676 | \$ 23.83 |
| | 4,313,072 | | | 1,734,845 | |

On December 31, 2007, the Company granted 500,000 stock options to its Chief Executive Officer ("CEO") with an exercise price of \$15.22 per share. The exercise of these options is contingent upon the increase in the market price of the Company's Ordinary shares. The options granted are divided into four equal tranches (125,000 options each). Each tranche shall be vested one year after the Company's closing share price reaches its performance target or more for 22 consecutive trading days. The closing share price shall be \$19, \$21, \$23 and \$25 for the first, second, third and the forth tranches respectively. The options expire seven years from the grant date. The fair value of these options was estimated using the lattice method with the following assumptions: risk-free interest rate of 3.7%, volatility factor of the expected market price of the Company's Ordinary shares of 50.64%. Termination rate was based on the Company's expectation that there will be no termination during the vesting period, and was determined to be 0%. Early exercise multiple (suboptimal factor) was estimated to be 3.09. The Company has historically not paid dividends and has no foreseeable plans to pay dividends and as such, a dividend yield of 0% was applied.

Total compensation expenses amount to \$3,176 which is recognized over the estimated requisite service period. During the year ended December 31, 2008, the Company recorded an amount of \$1,508 as compensation expenses included in general and administrative expenses with respect to the grant to the CEO.

In October, 2007, the Company granted 100,000 stock options to employees with an exercise price of \$15.61 per share. The options will vest based on the Company's attaining certain performance conditions such as sales target. The options expire seven years from the grant date. The fair value of these options was estimated using the Black-Scholes-Merton option-pricing model with the following assumptions: expected volatility of 45%, risk free interest rate of 4.11%, dividend yield of 0% and expected life of 3.79 years. Total compensation expenses amount to \$595 which is recognized over the vesting period of 4 years. During the year ended December 31, 2007 and 2008, the Company recorded an amount of \$43 and \$226 as compensation expenses, respectively;

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands, except share and per share data

NOTE 11:- LOSS PER SHARE

The following table sets forth the computation of basic and diluted net earnings (loss) per share:

| | Year ended December 31, | | |
|--|-------------------------|-------------|-------------|
| | 2006 | 2007 | 2008 |
| <u>Numerator for basic and diluted loss:</u> | | | |
| Per share - net loss available to shareholders | \$ (1,280) | \$ (12,011) | \$ (31,022) |
| <u>Weighted average shares outstanding, net of treasury stock:</u> | | | |
| Denominator for basic loss per share | 19,325,055 | 19,477,222 | 19,439,776 |
| <u>Effect of dilutive securities:</u> | | | |
| Employee stock options | *) - | *) - | *) - |
| Denominator for diluted net loss per share | 19,325,055 | 19,477,222 | 19,439,776 |
| Basic net loss per share | \$ (0.07) | \$ (0.62) | \$ (1.60) |

*) Antidilutive.

NOTE 12:- TAXES ON INCOME

a. General:

The Company adopted the provisions of FIN 48 on January 1, 2007. The adoption of FIN 48 did not result in a change to the Company retained earning (accumulated deficit). A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

| | |
|---|----------|
| Balance at January 1, 2008 | \$ 1,205 |
| Additions based on tax positions during the year | 287 |
| Additions of interest related to unrecognized tax liabilities from previous years | 67 |
| Balance at December 31, 2008 | \$ 1,559 |

Domestically, the Israeli Tax Authorities ("ITA") are currently auditing income tax returns of the Company for years 2003 and 2006.

In addition, the Company's Israeli tax returns have been examined for all years prior to fiscal 2002, and the Company is no longer subject to audit for these periods.

The Company's subsidiaries files income tax return in the U.S. federal and other jurisdictions. The Company's main subsidiaries tax return are subject to examination by the U.S. federal and other local tax authorities from inception through 2008.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 12:- TAXES ON INCOME (Cont.)

b. Israeli Taxation:

1. Foreign Exchange Regulations:

Commencing in taxable year 2003, the Company has elected to measure its taxable income and file its tax return under the Israeli Income Tax Regulations (Principles Regarding the Management of Books of Account of Foreign Invested Companies and Certain Partnerships and the Determination of Their Taxable Income), 198,

2. Tax rates:

Taxable income of Israeli companies is subject to tax at the rate of 31% in 2006, 29% in 2007, 27% in 2008, 26% in 2009 and 25% in 2010 and thereafter.

3. Net operating losses carryforward:

The Company has estimated total available carryforward operating and capital tax losses of approximately \$26,000, which can be carried forward and offset against future taxable income in the future for an indefinite period. Due to the recent operating results and recurring losses, as of December 31, 2008 the Company provided a full valuation allowance in respect of all the deferred tax assets resulting from the carryforward operating tax losses for which future offset is doubtful. Management currently believes that it is more likely than not that those deferred tax deductions will not be realized in the foreseeable future.

4. Tax benefits under the Law for the Encouragement of Capital Investments, 1959:

The Company's production facilities in Israel (Tel-Aviv and Jerusalem) have been granted an "Approved Enterprise" status under the above state law. According to the provisions of such Israeli law, the Company has been granted the "Alternative Benefit Track", under which the main benefits are a tax exemption and reduced tax rate. Therefore, the Company's income derived from the Approved Enterprise and allocated to the Tel Aviv facility will be entitled to a tax exemption for a period of two years and to an additional period of five to eight years with reduced tax rates of 10%-25% (based on percentage of foreign ownership). Income allocated to the Jerusalem facility will be exempt from tax for a period of up to 10 years, provided that the Company meets certain criteria. The income derived from the "Approved Enterprise" program shall be allocated between the facilities in Tel-Aviv and Jerusalem based on a mechanism as determined by the Investment Center.

The duration of tax benefits is subject to a limitation of the earlier of 12 years from commencement of production, or 14 years from the approval date. The Company began to utilize such tax benefits in 2004. The time limitation does not apply to the exemption period.

The entitlement to the above benefits is conditional upon the Company's fulfilling the conditions stipulated by the above law, regulations published hereunder and the letters of approval for the specific investments in "Approved Enterprises". In the event of failure to comply with these conditions, the benefits may be partially or fully canceled and the Company may be required to refund the amount of the benefits, in whole or in part, including interest.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 12:- TAXES ON INCOME (Cont.)

As of December 31, 2008, accumulated deficit included approximately \$25,000 in tax-exempt income earned by the Company's "Approved Enterprise". The Company has decided not to declare dividends out of such tax-exempt income. Accordingly, no taxable deferred income has been provided on income attributable to the Company's "Approved Enterprise".

If the retained tax-exempt income is distributed, it would be taxed at the corporate tax rate applicable to such profits with respect to the gross amount as if the Company had not elected the alternative tax benefits (currently between 10% - 25%, based on percentage of foreign ownership at the date of declaration).

Income from sources other than the "Approved Enterprise" will be subject to the tax at the regular rate.

During 2004, the Company's production facilities in Israel (Tel-Aviv and Jerusalem) have been granted an expansion program for its Approved Enterprise status by the Investment Center. The Company applied for an amendment to this expansion program, according to which it requested an enlargement to this expansion program, neutralization of certain assets and an approval that the benefits period from such expansion program will commence in 2006.

On April 2005, an amendment to the law ("the Amendment") has changed certain provisions of the law. As a result of the Amendment, a company is no longer obliged to implement an Approved Enterprise status in order to receive the tax benefits previously available under the Alternative Benefits provisions, and therefore there is no need to apply to the Investment Center for this purpose (Approved Enterprise status remains mandatory for companies seeking grants). Rather, a company may claim the tax benefits offered by the Investment Law directly in its tax returns, provided that its facilities meet the criteria for tax benefits set out by the Amendment. A company is also granted a right to approach the Israeli Tax Authorities for a pre-ruling regarding their eligibility for benefits under the Amendment.

Tax benefits are available under the Amendment to production facilities (or other eligible facilities), which are generally required to derive more than 25% of the Company's business income from export. In order to be eligible for the tax benefits, the Amendment states that a company must make an investment in the Beneficiary Enterprise exceeding a minimum amount specified in the law. Such investment may be made over a period of no more than three years ending at the end of the year in which the company requested to have the tax benefits apply to the Beneficiary Enterprise ("the Year of Election"). Where a company requests to have the tax benefits apply to an expansion of existing facilities, then only the expansion will be considered a Beneficiary Enterprise and the company's effective tax rate will be the result of a weighted combination of the applicable rates. In this case, the minimum investment required in order to qualify as a Beneficiary Enterprise is required to exceed a certain percentage of the company's production assets before the expansion. The duration of tax benefits is subject to a limitation of the earlier of 7 years from the commencement year, or 12 years from the first day of the Year of Election. As of December 31, 2008, the Company did not generate income under the provisions of the new law.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 12:- TAXES ON INCOME (Cont.)

- c. Taxes on income are comprised as follows:

| | Year ended December 31, | | |
|---------------|-------------------------|---------------|-----------------|
| | 2006 | 2007 | 2008 |
| Current taxes | \$ 1,313 | \$ 580 | \$ 1,042 |
| Deferred | (957) | (152) | 2,585 |
| | <u>\$ 356</u> | <u>\$ 428</u> | <u>\$ 3,627</u> |
| Domestic | \$ (170) | \$ (40) | \$ 2,074 |
| Foreign | 526 | 468 | 1,553 |
| | <u>\$ 356</u> | <u>\$ 428</u> | <u>\$ 3,627</u> |

- d. Deferred income taxes:

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's and its subsidiaries' deferred tax liabilities and assets are as follows:

| | December 31, | |
|--|--------------|--------------|
| | 2007 | 2008 |
| Deferred tax assets: | | |
| Carryforward tax losses | \$ 4,483 | \$ 7,444 |
| Tax benefit related to employee stock option exercises | 935 | 935 |
| | <u>5,418</u> | <u>8,379</u> |
| Gross deferred tax assets | 5,418 | 8,379 |
| Valuation allowance | (2,621) | (7,939) |
| | <u>2,797</u> | <u>440</u> |
| Net deferred tax asset | 2,797 | 440 |
| Gross deferred tax liabilities | | |
| Temporary differences relating to intangible assets | (193) | (354) |
| | <u>(193)</u> | <u>(354)</u> |
| Net deferred tax assets | \$ 2,604 | \$ 86 |

- e. Foreign:

The Company's U.S. subsidiary has estimated total available carryforward tax losses of approximately \$1,600 which can be carried forward and offset against future taxable income until 2023. As of December 31, 2008, the Company provided a full valuation allowance in respect of all the deferred tax assets resulting from the carryforward operating tax losses for which future offset is doubtful. Management currently believes that it is more likely than not that those deferred tax deductions will not be realized in the foreseeable future.

Utilization of U.S. net operating losses may be subject to substantial annual limitation due to the "change in ownership" provisions of the Internal Revenue Code of 1986 and similar state provisions. The annual limitation may result in the expiration of net operating losses before utilization.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 12:- TAXES ON INCOME (Cont.)

The Company has provided valuation allowances in respect of deferred tax assets resulting from tax benefits related to employee stock option exercises which will be credited to additional paid-in capital when realized and from losses for which future offset is doubtful. Management currently believes that it is more likely than not that those deferred tax deductions will not be realized in the foreseeable future.

Two other subsidiaries have estimated total available carryforward tax losses of approximately \$900 to offset against future taxable profit. As of December 31, 2008, the Company recorded a deferred tax asset of \$86 relating to these available net carryforward losses.

- f. A reconciliation between the theoretical tax expense, assuming all income is taxed at the statutory tax rate applicable to income (loss) of the Company and the actual tax expense as reported in the statement of operations is as follows:

| | Year ended December 31, | | |
|---|-------------------------|-------------|-------------|
| | 2006 | 2007 | 2008 |
| Loss before taxes, as reported in the consolidated statements of income | \$ (924) | \$ (11,583) | \$ (27,395) |
| Statutory tax rate | 31% | 29% | 27% |
| Theoretical tax benefit on the above amount at the Israeli statutory tax rate | \$ 286 | \$ 3,359 | \$ 7,397 |
| Tax adjustment in respect of different tax rate | (55) | (263) | (563) |
| Non-deductible expenses | 1,318 | (1,213) | (2,575) |
| Deferred taxes on losses for which valuation allowance was provided, net | (920) | (995) | (5,318) |
| Stock compensation relating to stock options per SFAS 123(R) | (1,400) | (1,316) | (2,180) |
| Income taxes in respect of prior years | 473 | — | — |
| Other | (58) | — | (388) |
| Actual tax expense | \$ (356) | \$ (428) | \$ (3,627) |

- g. Income (loss) before income taxes is comprised as follows:

| | Year ended December 31, | | |
|--------------------------|-------------------------|-------------|-------------|
| | 2006 | 2007 | 2008 |
| Domestic | \$ (2,129) | \$ (13,015) | \$ (26,395) |
| Foreign | 1,205 | 1,432 | (1,000) |
| loss before income taxes | \$ (924) | \$ (11,583) | \$ (27,395) |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 13:- GEOGRAPHIC INFORMATION AND SELECTED STATEMENTS OF INCOME DATA

- a. Summary information about geographic areas:

The Company operates in one reportable segment (see Note 1 for a brief description of the Company's business). The total revenues are attributed to geographic areas based on the location of the end-users.

The following table presents total revenues for the years ended December 31, 2006, 2007 and 2008 and long-lived assets as of December 31, 2007 and 2008:

| | Year ended December 31, | | |
|--|-------------------------|------------------|------------------|
| | 2006 | 2007 | 2008 |
| Revenues from sales to customers located at: | | | |
| America (principally the United States) | \$ 27,646 | \$ 24,368 | \$ 23,715 |
| EMEA *) | 27,529 | 29,412 | 29,836 |
| Asia Pacific | 26,235 | 34,851 | 41,030 |
| | <u>\$ 81,410</u> | <u>\$ 88,631</u> | <u>\$ 94,581</u> |

- *) Europe, the Middle East and Africa.

| | December 31, | |
|--|------------------|------------------|
| | 2007 | 2008 |
| Long-lived assets, by geographic region: | | |
| America | \$ 1,751 | \$ 1,290 |
| EMEA | 9,011 | 9,012 |
| Asia Pacific | 1,454 | 1,391 |
| | <u>\$ 12,216</u> | <u>\$ 11,693</u> |

- b. Major customer data as a percentage of total revenues:

| | Year ended December 31, | | |
|------------|-------------------------|------|------|
| | 2006 | 2007 | 2008 |
| Customer A | 12% | 5% | 6% |

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 14:- SELECTED STATEMENTS OF INCOME DATA

Financial income, net:

| | Year ended December 31, | | |
|--|-------------------------|----------|----------|
| | 2006 | 2007 | 2008 |
| Financial income: | | | |
| Interest on bank deposits | \$ 1,048 | \$ 2,917 | \$ 1,186 |
| Foreign currency translation differences, net | 892 | 70 | — |
| Amortization of premiums, accretion of discounts and interest on marketable debt securities, net | 5,620 | 4,569 | 3,073 |
| | 7,560 | 7,556 | 4,259 |
| Financial expenses: | | | |
| Interest and other bank charges | (138) | (136) | (222) |
| Foreign currency translation differences, net | — | — | (425) |
| | \$ 7,422 | \$ 7,420 | \$ 3,612 |

NOTE 15:- BALANCES AND TRANSACTIONS WITH RELATED PARTIES

Represents transactions and balances with other entities in which certain of the Company's Board of Directors, management and shareholders have interest:

- a. The following related party balances are included in the balance sheets:

| | December 31, | |
|-------------------|--------------|----------|
| | 2007 | 2008 |
| Trade receivables | \$ 1,320 | \$ 1,358 |
| Trade payables | \$ 175 | \$ 305 |

- b. The following related party transactions are included in the statements of operations:

| | Year ended December 31, | | |
|---|-------------------------|----------|----------|
| | 2006 | 2007 | 2008 |
| Revenues (1) | \$ 3,656 | \$ 4,184 | \$ 3,821 |
| Operating expenses, net - primarily lease, sub-contractors and communications (2) | \$ 917 | \$ 1,374 | \$ 1,944 |
| Purchase of property and equipment | \$ 939 | \$ 948 | \$ 859 |

- (1) Distribute the Company's products on a non-exclusive basis.

- (2) The Company leases office space and purchases other miscellaneous services from certain companies, which are considered to be related parties. In addition, the Company subleases part of the office space to related parties and provides certain services to related parties.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

U.S. dollars in thousands

NOTE 16:- SUBSEQUENT EVENTS (UNAUDITED)

On February 19, 2009, the Company entered into an asset purchase agreement (“APA”) with Nortel Networks Ltd., Nortel Networks Inc. and other Nortel entities (“Nortel”), to purchase for \$17,650 in cash certain assets related to Nortel’s Layer 4-7 Application Delivery Business acquired by Nortel in 2000, by way of its corporate acquisition of Alteon WebSystems, Inc. Nortel has filed the APA with the United States Bankruptcy Court for the District of Delaware, along with a motion seeking the establishment of bidding procedures for an auction that allow other qualified bidders to submit higher or otherwise better offers, as required under Section 363 of the U.S. Bankruptcy Code. A similar motion for the approval of the bidding procedures was filed with the Ontario Superior court of Justice. Consummation of the transaction was subject to higher or otherwise better offers, none of which were received by the bidding deadline, and approval by the United States Bankruptcy Court for the District of Delaware, the Ontario Superior court of Justice and the satisfaction of other conditions. The APA contains very limited ongoing representations and undertakings by Nortel with respect to the purchased assets and assumed liabilities. If the deal is consummated, The Company plans to offer the Nortel’s application delivery products under a merged brand, Radware Alteon, and to hire certain Nortel employees who will be dedicated to the Radware Alteon brand.

Filename: exhibit_4-6.htm

Type: EX-4.6

Comment/Description:

(this header is not part of the document)

Exhibit 4.6

ASSET PURCHASE AGREEMENT

by and among

NORTEL NETWORKS INC.,

NORTEL NETWORKS LIMITED,

and

the EMEA SELLERS (as set out in Exhibit A)

as Sellers

**A. R. BLOOM, S. HARRIS, A. M. HUDSON AND C. HILL,
AND A.R. BLOOM AND D. HUGHES, as Joint Administrators**

and

RADWARE LTD.,

as Buyer

Dated as of February 19, 2009

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of February 19, 2009, by and among NORTEL NETWORKS INC., a Delaware corporation (“NNI”), NORTEL NETWORKS LIMITED, a Canadian corporation (“NNL” and together with NNI, the “Main Sellers”), the entities listed on Exhibit A hereto under the heading “EMEA Sellers” (the “EMEA Sellers” and together with NNI and NNL, the “Sellers”) and in the case of the EMEA Sellers, the joint administrators of the EMEA Sellers, A. R. Bloom, S. Harris, A. M. Hudson and C. Hill of Ernst & Young LLP (other than Nortel Networks (Ireland) Limited, for which David Hughes and Alan Bloom serve as joint administrators) (the “Joint Administrators”), and RADWARE LTD., a company registered in accordance with the laws of Israel (“Buyer”).

RECITALS

A. Sellers and certain of their Affiliates listed on Exhibit A hereto are engaged in the development, production, sales, service and support of the hardware and software products listed on Exhibit B hereto (for the sake of clarity, which products include a load balancing functionality) (the “Products”), which activities are known as the enterprise “Layer 4-7”, “Alteon load balancer” or “Alteon Application Accelerator” business of Sellers and such Affiliates (collectively, the “Business”).

B. On January 14, 2009 (the “Petition Date”), NNL and the other entities listed under the heading “Canadian Debtors” on Exhibit A hereto filed with the Canadian Court (as defined below) an application for protection under the Companies’ Creditors Arrangement Act (the “CCAA”) (the cases commenced by such application, the “CCAA Cases”) and were granted such protection pursuant to an order issued by the Canadian Court on the same date.

C. On the Petition Date, NNI and the other entities listed under the heading “U.S. Debtors” on Exhibit A hereto filed voluntary petitions and certain orders for relief (the “Chapter 11 Cases”) pursuant to Title 11 of the United States Code (the “U.S. Bankruptcy Code”) in the U.S. Bankruptcy Court for the District of Delaware (the “U.S. Bankruptcy Court”).

D. On the Petition Date, the EMEA Sellers filed applications with the English High Court of Justice (the “English Court” and, together with the U.S. Bankruptcy Court and the Canadian Court, the “Bankruptcy Courts”) pursuant to the Insolvency Act of 1986, as amended (the “Insolvency Act”) and the European Union’s Council Regulation (EC) No 1346/2000 on Insolvency Proceedings (the proceedings commenced by such applications, the “EMEA Cases”), and the English Court appointed Alan Bloom, Stephen Harris, Chris Hill and Alan Hudson of Ernst & Young LLP as joint administrators of the EMEA Sellers (other than Nortel Networks (Ireland) Limited, for which David Hughes and Alan Bloom serve as joint administrators of Nortel Networks (Ireland) Limited) (the “Joint Administrators”) under the Insolvency Act.

E. Each Seller has agreed to, and to cause its Affiliates to, transfer to Buyer, and Buyer has agreed to purchase and assume, including, to the extent applicable, pursuant to Sections 363 and 365 of the U.S. Bankruptcy Code and subject to the entry of the Approval and Vesting Order, the Acquired Assets and the Assumed Liabilities (each as defined below) (in the case of EMEA Sellers, the EMEA Acquired Assets (as defined in Exhibit P) and the EMEA Assumed Liabilities (as defined in Exhibit P)) from such Seller or such Affiliates, upon the terms and conditions hereinafter set forth, in return for (x) a cash payment by Buyer to the Escrow Agent on behalf of Sellers and their Affiliates and (y) Buyer’s agreement to assume and perform certain warranty-related obligations of Sellers and their Affiliates with respect to certain products sold by Sellers and their Affiliates prior to the Closing, pursuant to a Master Purchase and Sale Agreement (the “Master Purchase Agreement”), substantially in the form attached hereto as Exhibit C.

F. The parties acknowledge and agree that the purchase by Buyer and the other Buyer Entities of the Acquired Assets and the EMEA Acquired Assets (and the license of the Licensed IP) and the assumption by Buyer and the other Buyer Entities of the Assumed Liabilities and the EMEA Assumed Liabilities are being made at arms length and in good faith and without intent to hinder, delay or defraud creditors of Sellers and their Affiliates, and each Seller acknowledges that the consideration to be paid is fair value and reasonably equivalent value for the acquisitions by Buyer and the other Buyer Entities of the Acquired Assets and the EMEA Acquired Assets (and the license of the Licensed IP) and the assumption by Buyer and the other Buyer Entities of the Assumed Liabilities and the EMEA Assumed Liabilities, as set forth hereunder. This Agreement and the other Transaction Documents by and among the Seller Entities and the Buyer Entities are integral and non-severable parts of the same transaction.

G. In addition, at the Closing, Buyer and certain Sellers will enter into (i) an IP Licensing Agreement (the “IP License Agreement”), substantially in the form attached hereto as Exhibit D, (ii) a Trademark License Agreement (the “Trademark License Agreement”), substantially in the form attached hereto as Exhibit E, (iii) a Transition Services Agreement (the “Transition Services Agreement”), substantially in the form attached hereto as Exhibit F, (iv) a Contract Manufacturer Inventory Agreement (the “Contract Manufacturer Inventory Agreement”), substantially in the form attached hereto as Exhibit G, (v) a Patent Assignment Agreement (the “Patent Assignment Agreement”), substantially in the form attached hereto as Exhibit H, (vi) a Trademark Assignment Agreement (the “Trademark Assignment Agreement”), substantially in the form of Exhibit I and (vii) an Interim Product Purchase Agreement (the “Interim Product Purchase Agreement”), substantially in the form attached hereto as Exhibit J.

H. The parties agree that the only obligations and liabilities of the EMEA Sellers and the Joint Administrators shall be with respect to the matters set out in Exhibit P, but that the EMEA Sellers and the Joint Administrators shall enjoy the benefit of the rights granted to the Sellers in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I.
DEFINITIONS**

1.1 Certain Definitions. As used in this Agreement, the following terms have the following meanings unless the context otherwise requires (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Accounts Receivable” means (a) all trade accounts receivable and other rights to payment from customers of any Seller or its Affiliates, whether or not arising out of the Business, (b) all other accounts or notes receivable of any Seller or its Affiliates, whether or not arising out of the Business and (c) any claim, remedy or other right related to any of the foregoing.

“Action or Proceeding” means any action, suit, claim (provided that, for purposes of this definition and as this definition is used in this Agreement, “claim” shall be limited to matters involving (x) infringement of Intellectual Property Rights or Intellectual Property Assets and (y) Business Employees), proceeding or arbitration by any Person, or any investigation or audit by any Governmental or Regulatory Body.

“Affiliate” means with respect to any Person, any other Person controlling, controlled by or under common control with such first Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. In the case of any Seller, “Affiliates” of such Seller shall not include any joint venture to which NNL or any Affiliate thereof is party and that is structured as a legal entity unless NNL or its Affiliates owns 75% or more of the voting equity of such joint venture.

“Alternative Transaction” means the sale, transfer or other disposition, by means of asset sale, merger, stock sale or otherwise, directly or indirectly, of all or substantially all of (i) the Business or (ii) collectively the Acquired Assets and the EMEA Acquired Assets, in a transaction or a series of transactions with one or more Persons other than Buyer and/or its Affiliates; provided, that an Alternative Transaction does not include: (a) the retention of the Business by any or all Seller Entities (or their successor entities emerging from the Bankruptcy Proceedings) under a stand-alone plan of reorganization approved by the U.S. Bankruptcy Court or any plan or arrangement approved by the Canadian Court, or (b) the sale, transfer or other disposition, directly or indirectly, of any portion of the Business, the Acquired Assets or the EMEA Acquired Assets (other than as a going concern) in connection with the closure, liquidation or winding up of the Business or any Seller Entity.

“Assignment and Assumption Agreement” means an assignment and assumption agreement in substantially the form attached hereto as Exhibit K-1 (in the case of all Seller Entities other than the EMEA Sellers) and Exhibit K-2 (in the case of the EMEA Sellers).

“Assumed and Assigned Contract” means a Business Contract that can be assumed and assigned pursuant to Section 365 of the U.S. Bankruptcy Code. For the sake of clarity, no New Exclusive Service Contract shall be deemed to be an Assumed and Assigned Contract.

“Bankruptcy Proceedings” means the Chapter 11 Cases, the CCAA Cases and the EMEA Cases and, in each case, any proceedings thereunder.

“Bill of Sale” means a bill of sale in substantially the form attached hereto as Exhibit L-1 (in the case of all Seller Entities other than the EMEA Sellers) and Exhibit L-2 (in the case of the EMEA Sellers).

“Business” has the meaning set forth in the Recitals; provided, that the Business for all purposes excludes all financial, accounting, IT, operations (including supply and support), administrative, corporate and all other back office and/or similar shared operations and functions of any Seller and its Affiliates that support or are utilized by the “Layer 4-7”, “Alteon load balancer” or “Alteon Application Accelerator” business; provided, further, that except as expressly provided herein, with respect to Tangible Property, references to the Business shall only refer to the Business Tangible Property. References to the Business as operated by Buyer and its Affiliates after the Closing shall mean the business and operations of Buyer and its Affiliates with respect to, utilizing or based upon the Acquired Assets, the Assumed Liabilities, the EMEA Acquired Assets, the EMEA Assumed Liabilities, the Radware Products (as defined in the IP License Agreement) and/or the Licensed Intellectual Property (as defined in the IP License Agreement) after the Closing.

“Business Confidential Information” means all Confidential Information that relates exclusively to the Business, the Products, the Acquired Assets, the Assumed Liabilities, the EMEA Acquired Assets or the EMEA Assumed Liabilities, whether (a) disclosed prior to or after the Closing Date to Buyer or (b) disclosed after the Closing Date to any Seller and/or its Affiliates pursuant to any post-Closing covenants provided under this Agreement.

“Business Day” means a day other than a Saturday or a Sunday or other day on which commercial banks in New York are authorized or required by Law to close.

“Business Employee” means an individual listed on Schedule 5.12(a) who is an employee of a Seller or an Affiliate of a Seller and who provides services to a Seller or such Affiliate in connection with the Business.

“Business Material Adverse Effect” means any circumstance, change or effect (any such item, an “Effect”) that is materially adverse to the business, operations, assets, liabilities, results of operations or financial condition of the Business, taken as a whole, or that prevents or could reasonably be expected to prevent the timely consummation of the Transactions by Sellers and their Affiliates, but excluding (i) Effects resulting from changes in the United States or general economic conditions, except to the extent such Effects disproportionately affect the Business taken as a whole, (ii) Effects arising out of the execution or delivery of this Agreement or the Transactions or the public announcement thereof, (iii) Effects that result from any action required to be taken pursuant to this Agreement or any action taken pursuant to the written request or with the prior written consent of Buyer, (iv) Effects arising out of the pendency of any Bankruptcy Proceeding and any action approved by, or motion made before, any Bankruptcy Court, (v) Effects arising out of the attrition of customers or other deterioration of the Business prior to the Closing Date or (vi) Effects arising out of the matters set forth in Schedule 1.1(a).

“Business Tangible Property Value” means the book value, net of reserves, of the Business Tangible Property and the EMEA Business Tangible Property calculated consistent with GAAP.

“Buyer Employee Plan” means any currently active/open pension plan, supplemental pension plan, profit sharing plan, savings plan, retirement savings plan, bonus plan, incentive compensation plan, deferred compensation plan, stock purchase plan, stock option plan, employee benefit plan, vacation plan, leave of absence plan, employee assistance plan, automobile leasing/subsidy/allowance plan, relocation plan, family support plan, retirement plan, medical, hospitalization or life insurance plan, disability plan, sick leave plan, redundancy or severance plan, retention agreement, death benefit plan, compensation arrangement, including any base salary arrangement, overtime policy, on-call policy or call-in policy, or any other plan, program, arrangement, policy or practice that is maintained or otherwise contributed to, or required to be contributed to, by or on behalf of Buyer or its Affiliates with respect to employees of Buyer or its Affiliates in the United States, Japan and/or India.

“Buyer Entity” means Buyer and all Affiliates of Buyer that will take title to any Acquired Asset or EMEA Acquired Asset, assume any Assumed Liability or EMEA Assumed Liability, employ any Transferring Employee as a result of the Transactions, or enter into any Transaction Document.

“Buyer Material Adverse Effect” means any circumstance, change or effect that is materially adverse to the ability of Buyer to perform its obligations under this Agreement and the Transaction Documents or on the ability of Buyer to consummate the Transactions.

“Canadian Business Tangible Property” means Business Tangible Property located in Canada.

“Canadian Business Inventory” means Business Inventory located in Canada.

“Canadian Court” means the Ontario Superior Court of Justice.

“Canadian Debtors” means the Seller Entities listed under the heading “Canadian Debtors” in Exhibit A.

“Claim” has the meaning set forth in Section 101(5) of the U.S. Bankruptcy Code.

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

“Confidential Information” means non-public, proprietary or confidential information that is labeled as such or should reasonably be understood by the recipient to be confidential, and includes trade secrets, research and development, methods of operations, analytical processes, software, source codes, inventions, databases, other technology, designs and other Intellectual Property Assets, consulting techniques, processes, formulae, methods and methodologies for analyzing data, information concerning finances, investments, projections, profits, strategies, pricing, costs, products, services, service providers, vendors, customers’ identities and needs, employees, partners, investors, personnel, compensation, recruiting, training, advertising, sales, marketing, promotions, government and regulatory activities and approvals, in whatever form or media, of the disclosing party and/or any third party that has disclosed or provided any of same to the disclosing party on a confidential basis; provided, that Confidential Information shall not include any information that is (i) lawfully in the public domain prior to its disclosure, or lawfully becomes publicly available other than through a breach of this Agreement or any other confidentiality obligation on behalf of any third party, (ii) disclosed to the recipient by a third party provided such third party, or any other party from whom such third party receives such information, is not in breach of any confidentiality obligation in respect of such information, (iii) developed by such recipient without use of Confidential Information, as evidenced by its business records or (iv) without obligation of confidentiality was rightfully known by the recipient prior to disclosure, as evidenced by its business records.

“Confidentiality Agreement” means that certain Nondisclosure and Confidentiality Agreement dated December 2, 2008, by and between NNI and Buyer.

“Contracts” means all executory contracts, agreements, subcontracts, indentures, notes, bonds, loans, instruments, leases, mortgages, franchises, licenses, purchase orders, sale orders, proposals, bids, understandings or commitments, whether written or oral, that are legally binding.

“CSWL” means California Software Laboratories.

“Cure Cost” means with respect to any Assumed and Assigned Contract, any amounts required by Section 365(b)(1) of the U.S. Bankruptcy Code to cure any defaults by the relevant U.S. Debtor under such Assumed and Assigned Contract and to pay any actual or pecuniary losses that have resulted from such defaults under such Assumed and Assigned Contract.

“EMEA” means the Europe, Middle East and Africa region.

“Employment Transfer Date” means the first Business Day following the Closing Date or, in cases where the terms of this Agreement provides for a later employment date, the date on which a Transferring Employee becomes employed with Buyer or an Affiliate of Buyer pursuant to this Agreement.

“Escrow Agent” means the Person designated as the escrow agent by Sellers pursuant to Section 3.1(a).

“Exclusive Service Contract” means a Contract between a Seller or any Affiliate of a Seller and a customer of the Business that provides exclusively for the servicing of Products.

“**Final Order**” means an order of any Bankruptcy Court or other court of competent jurisdiction (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal or rehearing thereon; (b) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired; and (c) as to which no stay is in effect; provided, however, that, with respect to an order issued by the U.S. Bankruptcy Court, the filing or pendency of a motion under Federal Rule of Bankruptcy Procedure 9024 (“**Rule 9024**”) or Federal Rule of Civil Procedure 60 (“**Rule 60**”) shall not cause an order not to be deemed a “Final Order” unless, in the case of a Rule 9024 motion, such motion shall be filed within ten (10) days of the entry of the order at issue or, in the case of a Rule 60 motion, such motion shall be filed within thirty (30) days of the entering of the order at issue.

“**GAAP**” means United States generally accepted accounting principles, as in effect on the date of this Agreement, consistent with the accounting policies, methodologies and principles of NNI set forth on Schedule 1.1(b).

“**Governmental Authorization**” means any consent, license, registration, authorization, approval, franchise or permit issued, granted, given or otherwise made available by or under the authority of any Governmental or Regulatory Body or pursuant to any Law.

“**Governmental or Regulatory Body**” means any court, tribunal, arbitrator or government, whether federal, state, county, local or foreign, or any subdivision, agency, authority, department, commission, board, bureau, official or instrumentality thereof.

“**Historical Velocity Business**” means the enterprise “Layer 4-7”, “Alteon load balancer” or “Alteon Application Accelerator” business of Sellers and their Affiliates as conducted in 2007 and 2008. The Historical Velocity Business does not include numerous assets and liabilities of Sellers and their Affiliates that may be utilized in connection with and/or relate to their Layer 4-7, Alteon load balancer or Alteon Application Accelerator business but are also utilized in connection with and/or relate to other businesses of Sellers and their Affiliates. Sellers and their Affiliates have not historically separately defined, or reported the financial or other results of, the Historical Velocity Business, and Sellers have made good faith estimations as to the scope of the Historical Velocity Business. For the sake of clarity, the Business and the Historical Velocity Business consist of the same product lines (including the VSS Products).

“**Income Taxes**” means all foreign or U.S. federal, state, local or municipal net income, alternative or add-on minimum, gross income, adjusted gross income, profits or excess profits, gross receipts or similar taxes (including withholding taxes), and any interest, penalties and additions attributable to such taxes.

“**India Business Tangible Property**” means Business Tangible Property located in India.

“**India Business Inventory**” means Business Inventory located in India.

“**India Employee**” means a Business Employee who has a work location in India.

“**India Employee Gratuity Accrual**” means the amount accrued on the books of Nortel India in respect of an India Transferring Employee’s gratuity payment as of such Employee’s Employment Transfer Date, which amounts shall be accrued in accordance with the books and records of Nortel India.

“India Transferring Employee” means an India Employee who accepts an India Employment Offer and becomes employed by Buyer or an Affiliate of Buyer.

“Intellectual Property Assets” means (i) copyrightable works, all registered copyrights, and all applications, registrations and renewals thereof, (ii) Marks and all applications, registrations and renewals thereof, (iii) patents and patent applications, (iv) proprietary documents describing formulations, know-how, confidential business information, trade secrets, and other technical information and technology, (vi) computer software (including data and related documentation) and (vii) tangible embodiments of any of the foregoing in whatever form or medium, but excludes sales literature, promotional literature and any other sales, advertising, marketing or promotional materials of any Seller and/or its Affiliates.

“Intellectual Property Rights” means all past, present, and future rights of the following types, which may exist or be created under the Laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask work rights; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights of every kind and nature; and (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this sentence.

“Inventory” means all finished goods and service inventory.

“Inventory Value” means the book value of Inventory that is required to be reflected on a balance sheet prepared consistent with GAAP, net of reserves, as of the Closing Date, determined in a manner consistent with GAAP.

“Japan Employee” means a Business Employee who has a work location in Japan.

“Japan Transferring Employee” means a Japan Employee who accepts a Japan Employment Offer and becomes employed by Buyer or an Affiliate of Buyer.

“Knowledge of Sellers” means and shall be limited to the actual knowledge of any of Mohan Dattatreya, Philippe Michelet, Yuet Lee, Liam Kiely, Aziz Khadbai, Mark Hearn, Bill LaSalle, Larry Barrows, Ken Pecot, Gayle Zajac, Shane Donahoe, Liz Ward, Hyacinth DeAlmeida and/or Kirk Otis.

“Law” means any law, statute, rule, regulation, ordinance or other pronouncement having the effect of law of the United States of America, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental or Regulatory Body.

“Liabilities” means any direct or indirect liability, indebtedness, claim, loss, damage, demand, deficiency, assessment, penalty, obligation or responsibility of any kind or nature, whether fixed or unfixed, choate or inchoate, primary or secondary, liquidated or unliquidated, secured or unsecured, asserted or unasserted, due or to become due, accrued, absolute, known or unknown, contingent or otherwise.

“Licensed IP” means the Intellectual Property Rights of any Seller and/or its Affiliates licensed to Buyer and/or its Affiliates pursuant to the IP License Agreement and/or Trademark License Agreement.

“Lien” means any title defect, mortgage, lien, pledge, charge, security interest, claim, contractual restriction, easement, right-of-way, option, conditional sale or installment contract or other encumbrance of any nature whatsoever. For the sake of clarity, Assumed Liabilities shall not be “Liens.”

“Loss” or “Losses” means any Liability, judgment, settlement, penalty, fine, cost or expense (including reasonable attorneys’ fees and disbursements and the costs of litigation, including reasonable amounts paid in investigation, defense or settlement of an Action or Proceeding) of any nature, whether or not arising out of any claims by or on behalf of a third party.

“Marks” means trade names, fictional business names, trade dress rights, registered and unregistered trademarks and service marks and logos, including any Internet domain names and websites, and applications therefor, together with all translations, adaptations, derivations and combinations and like intellectual property rights.

“Monitor” means Ernst & Young Inc., in its capacity as the Canadian Court-appointed Monitor in connection with the CCAA Cases.

“Multi-Year Exclusive Service Contract” means an Exclusive Service Contract with a term of more than one (1) year with respect to which the annual renewal thereof falls between the date hereof and the Closing.

“Non-Debtor Nortel Networks Entities” means the Seller Entities listed under the heading “Non-Debtor Nortel Networks Entities” in Exhibit A.

“Non-Exclusive Confidential Information” means all Confidential Information of any Seller and/or its Affiliates that does not pertain exclusively, but otherwise relates, to the Business, the Products, the Acquired Assets, the EMEA Acquired Assets, the Assumed Liabilities or the EMEA Assumed Liabilities, whether disclosed prior to or after the Closing Date.

“Nortel Employee Plans” mean any currently active/open pension plan, supplemental pension plan, profit sharing plan, savings plan, retirement savings plan, bonus plan, incentive compensation plan, deferred compensation plan, stock purchase plan, stock option plan, employee benefit plan, vacation plan, leave of absence plan, employee assistance plan, automobile leasing/subsidy/allowance plan, relocation plan, family support plan, retirement plan, medical, hospitalization or life insurance plan, disability plan, sick leave plan, redundancy or severance plan, retention agreement, death benefit plan, compensation arrangement, including any base salary arrangement, overtime policy, on-call policy or call-in policy, or any other plan, program, arrangement, policy or practice that is maintained or otherwise contributed to, or required to be contributed to, by or on behalf of any Seller or its Affiliates with respect to Business Employees in the United States, Japan and/or India.

“Nortel India” means Nortel Technology Excellence Centre PVT Limited, a private company limited by shares organized under the laws of India.

“Notice Recipients” means (a) any person listed in the definition of “Knowledge of Sellers,” (b) any elected officer of NNL, and/or (c) any attorney employed in any legal department of any Seller or its Affiliates.

“NNUK” means Nortel Networks UK Limited.

“Order” means any writ, judgment, decree, injunction, award, stipulation or similar order or judicial or administrative decree of any Governmental or Regulatory Body, in each case whether preliminary or final.

“Organizational Documents” means (a) the articles or certificate of incorporation, the bylaws and any shareholders agreement of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the operating or limited liability company agreement and certificate of formation or organization of any limited liability company, (e) any charter or similar document adopted or filed in connection with the creation, formation or organization of a Person and (f) any amendment to any of the foregoing.

“Permitted Lien” means (a) any Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings or that may thereafter be paid without penalty, (b) any statutory Lien arising in the ordinary course of business by operation of Law for amounts which are not material and not yet due and payable, (c) any minor imperfection of title or similar Lien that could not reasonably be expected to impact in any material respect the use of the affected assets and (d) any Liens imposed by any Bankruptcy Court in connection with the Bankruptcy Proceedings which Liens are to be discharged at or by the Closing.

“Person” means any individual, corporation, partnership, limited partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental or Regulatory Body or other entity.

“Predecessor Products” means the products set forth on Schedule 1.1(c).

“Prior Existing IP” means Intellectual Property Assets, other than Business Intellectual Property, that are used in the Predecessor Products, to the extent that such Intellectual Property Assets as of the Closing Date (i) are owned by any Seller and/or its Affiliates and (ii) are not patents, patent applications, domain names and websites, inventions and/or invention disclosures.

“SEC” means the U.S. Securities and Exchange Commission.

“Seller Confidential Information” means all Confidential Information of any Seller and/or its Affiliates other than (x) Business Confidential Information and/or (y) Non-Exclusive Confidential Information, in each case, whether disclosed prior to or after the Closing Date.

“Seller Entity” means each Seller and each Affiliate of a Seller that is a Transferring Party.

“Specified Inventory” means Inventory owned by any Seller or its Affiliates and exclusively relating to the Business that is required to be reflected on a balance sheet prepared consistent with GAAP.

“Tangible Property” means all furniture, fixtures, equipment, computers, office equipment and apparatuses, tools, machinery and supplies.

“Target Business Tangible Property Value” means two hundred fifty thousand dollars (\$250,000).

“Target Inventory Value” means two million one hundred thousand dollars (\$2,100,000).

“Tax” or “Taxes” (and, with correlative meanings “Taxable” or “Taxing”) mean, without limitation and with respect to any Person, (i) all Income Taxes, (ii) all sales, use, ad valorem, transfer, stamp, license, recording, employment (including federal and state income tax withholding, backup withholding, FICA, FUTA, national insurance, social security or other payroll taxes), environmental, excise, severance, stamp, occupation, premium, prohibited transaction, property, VAT, value added, net worth, franchise, or any other taxes, customs, tariffs, imposts, levies, duties, rates, government fees or other like assessments or charges or impositions or withholdings of any kind imposed under any Law, (iii) any interest, penalties, fines and additions attributable to any items listed in clauses (i) and (ii), and (iv) any Liability in respect of any items described in clauses (i), (ii) and/or (iii) payable by reason of contract, assumption, transferee liability, operation of Law, Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof) or any similar provision under Law or otherwise regardless of whether any amount in respect of them is recoverable from any other Person.

“Tax Return” means any U.S. federal, state, local, provincial and foreign return, declaration, claim for refund, form, statement, report, schedule, information return or similar statement or document, and any amendment thereof (including any related or supporting information or schedule attached thereto) required to be filed with any Taxing Authority in connection with the determination, assessment or collection of any Tax or Taxes.

“Taxing Authority” means any government or subdivision, agency, commission or authority thereof, or any quasi-governmental or private body having jurisdiction over the assessment, determination, collection or other imposition of Taxes.

“Transaction Documents” means (i) this Agreement, (ii) the IP License Agreement, (iii) the Trademark License Agreement, (iv) the Master Purchase Agreement, (v) the Transition Services Agreement, (vi) the Contract Manufacturer Inventory Agreement, (vii) the Patent Assignment Agreement, (viii) the Assignment and Assumption Agreement(s), (ix) the Bill(s) of Sale, (x) Trademark Assignment Agreement, (xi) the Interim Product Purchase Agreement, (xii) the Korea Purchase Agreement, (xiii) the Tripartite Agreement and (xiv) all other agreements, certificates and instruments to be executed by Buyer and/or any Seller Entity at or prior to the Closing pursuant to this Agreement or any of the agreements described in clauses (i) through (xiii) of this definition.

“Transactions” means the transactions contemplated by the Transaction Documents.

“Transferring Employee” means, individually or in the aggregate, as the case may be, an India Transferring Employee, a Japan Transferring Employee, or a U.S. Transferring Employee.

“Transferring Party” means (i) in the case of an Acquired Asset or an EMEA Acquired Asset, the Seller or the Affiliate of a Seller that is the owner of such Acquired Asset or EMEA Acquired Asset (or in the case of a Business Contract or an EMEA Business Contract, a contracting party to such Contract), (ii) in the case of an Assumed Liability or an EMEA Assumed Liability, the Seller and/or the Affiliate(s) of a Seller that have obligations or other Liabilities in respect of such Assumed Liability or EMEA Assumed Liability, (iii) in the case of a Business Employee, the Seller or the Affiliate of a Seller that is the employer of such Business Employee and (iv) in the case of a Transaction Document, the Seller or the Affiliate of a Seller that is party to such Transaction Document.

“Tripartite Agreement” means that certain Tripartite Agreement by and among California Software Company Ltd., CSWL Inc., Buyer, Radware Inc. and NNL to be executed concurrent herewith or following the execution of this Agreement.

“U.S. Bankruptcy Rules” means the U.S. Federal Rules of Bankruptcy Procedure.

“U.S. Business Tangible Property” means Business Tangible Property located in the United States.

“U.S. Business Inventory” means Business Inventory located in the United States.

“U.S. Creditor Committee” means the official committee of unsecured creditors of the U.S. Debtors appointed by the U.S. Bankruptcy Court in the Chapter 11 Cases.

“U.S. Debtors” means the Seller Entities listed under the heading “U.S. Debtors” in Exhibit A.

“U.S. Employee” means a Business Employee who has a work location in the United States.

“U.S. GAAP” means United States generally accepted accounting principles, consistently applied.

“U.S. Transferring Employee” means a U.S. Employee who accepts a U.S. Employment Offer and becomes employed by Buyer or an Affiliate of Buyer.

“VAT” means value added tax imposed in any member state of the European Union pursuant to EC Council Directive 2006/112 on the common system of value added tax (Directive 2006/112) and national legislation implementing or supplemental to that Directive and any other sales or turnover tax of a similar nature imposed in any country that is a member of the European Union, together with all penalties or interest thereon or any tax of a similar nature which may be substituted for or levied in addition to it.

“VSS Products” means the products set forth under the heading “VSS Products” on Exhibit B attached hereto.

“Warranty Reserve” means a reserve, determined in a manner consistent with GAAP, with respect to the warranty obligations that Buyer and its Affiliates have undertaken to perform at no additional cost to any Seller and/or its Affiliates pursuant to the Master Purchase Agreement.

“Warranty Target Amount” means three million one hundred thousand dollars (\$3,100,000).

1.2 Certain Additional Definitions. As used in this Agreement, the following terms shall have the respective meanings ascribed thereto in the respective Sections of this Agreement set forth opposite each such term below:

| <u>Term</u> | <u>Section</u> |
|-----------------------------------|----------------|
| Acquired Assets | 2.1 |
| After Identified IP | 4.5(b) |
| Agreement | Preamble |
| Approval and Vesting Order | 7.20 |
| Approval and Vesting Order Motion | 7.20 |
| Asset Allocation Schedule | 3.2(a) |
| Assumed Liabilities | 2.3 |
| Audited Financial Statements | 9.15 |
| Audit Notice | 9.15 |
| Bankruptcy Courts | Recital D |
| Base Purchase Price | 3.1(a) |
| Break-Up Fee | 10.2(a) |
| Bulk Sales Laws | 7.5 |
| Business | Recital A |
| Business Contracts | 2.1(c) |
| Business Intellectual Property | 2.1(d) |
| Business Inventory | 2.1(b) |
| Business Tangible Property | 2.1(a) |
| Buyer | Preamble |
| Buyer Closing Certificate | 8.2(e) |
| CCAA | Recital B |
| CCAA Cases | Recital B |
| Chapter 11 Cases | Recital C |
| Claimants | 7.16(b)(i) |

| <u>Term</u> | <u>Section</u> |
|---|----------------|
| Closing | 4.1 |
| Closing Date | 4.1 |
| Contract Manufacturer Inventory Agreement | Recital G |
| Effective Time | 4.1 |
| EMEA Cases | Recital D |
| EMEA Sellers | Preamble |
| Enforceability Exceptions | 5.2 |
| English Court | Recital D |
| Excluded Assets | 2.2 |
| Excluded Liabilities | 2.4 |
| Expense Reimbursement | 10.2(b) |
| Insolvency Act | Recital D |
| Interim Product Purchase Agreement | Recital G |
| IP License Agreement | Recital G |
| Israeli Tax Withholding Exemption Application | 7.11 |
| ITA | 7.11 |
| Joint Administrators | Preamble |
| Korea Purchase Agreement | 4.6 |
| Main Sellers | Preamble |
| Master Purchase Agreement | Recital E |
| New Exclusive Service Contracts | 2.1(c) |
| New York Courts | 11.3 |
| NNI | Preamble |
| NNL | Preamble |
| Patent Assignment Agreement | Recital G |
| Petition Date | Recital B |
| Press Release | 7.6 |
| Prior IP | 2.1(e) |
| Products | Recital A |
| Pro Forma Financial Statements | 5.5(b) |
| Purchase Price | 3.1(a) |
| Restricted Software | 2.1(a) |
| Retained Subcontractors | 7.12 |
| Sale Process Order | 7.19 |
| Sale Process Order Motion | 7.19 |
| Sellers | Preamble |
| Sellers Closing Certificate | 8.1(e) |
| Straddle Period | 3.3 |
| Trademark Assignment Agreement | Recital G |
| Trademark License Agreement | Recital G |
| Transfer Taxes | 9.1(a)(i) |
| Transfer Tax Refund | 9.1(a)(i) |
| Transition Services Agreement | Recital G |
| U.S. Bankruptcy Code | Recital C |
| U.S. Bankruptcy Court | Recital C |
| U.S. Bidding Procedures Motion | 7.15 |
| U.S. Bidding Procedures Order | 7.15 |
| U.S. Sale Motion | 7.16(a) |
| U.S. Sale Order | 7.16(a) |

1.3 Accounting Terms. All accounting terms shall have the meaning specified by GAAP unless otherwise specified.

1.4 Monetary Terms. All references to "Dollars" or "\$" shall mean U.S. Dollars unless otherwise specified

ARTICLE II

PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

2.1 Sale and Transfer of Assets. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, each Seller shall, or in the case of any of the following that is owned by an Affiliate of a Seller, shall cause the applicable Transferring Party to, sell, transfer, assign, convey and deliver to Buyer (or Affiliates of Buyer), and Buyer (or Affiliates of Buyer) shall purchase, acquire and accept from the applicable Transferring Party, all of the Transferring Party's right, title and interest in and to the following properties, rights and assets (but in all cases excluding the Excluded Assets) of such Seller or such Affiliate, as and to the extent existing on the Closing Date (such properties, rights and assets are hereinafter collectively referred to as the "Acquired Assets"), and (x) in the case of Acquired Assets that are transferred or assigned by U.S. Debtors, free and clear of all Liens (other than Permitted Liens) and Claims pursuant to Section 363 of the U.S. Bankruptcy Code, (y) in the case of Acquired Assets that are transferred or assigned by Canadian Debtors, free and clear of all Liens (other than Permitted Liens) pursuant to the terms of the Approval and Vesting Order, when granted, and (z) in the case of Acquired Assets that are transferred or assigned by a Non-Debtor Nortel Networks Entity, free and clear of all Liens other than Permitted Liens:

(a) the Tangible Property set forth on Schedule 2.1(a)(i) (collectively, the "Business Tangible Property"); provided, that with respect to Business Tangible Property containing the software set forth on Schedule 2.1(a)(ii) that is licensed from third parties and cannot be assigned to Buyer absent consent of the licensor thereof (the "Restricted Software"), the physical transfer of such Business Tangible Property from the applicable Transferring Party to Buyer shall occur at the Closing, but legal title to such Business Tangible Property shall not transfer to Buyer until the earlier of the time specified in the Transition Services Agreement or the date of expiration or termination of the Transition Services Agreement;

(b) all Specified Inventory (whether located at a business facility, in the possession of any contract manufacturer, or at any other location in the supply chain, of any Seller or any of its Affiliates) owned by any Seller or an Affiliate of any Seller (the "Business Inventory");

- (c) (i) the Contracts set forth on Schedule 2.1(c), (ii) any Exclusive Service Contracts (including any renewals of existing Exclusive Service Contracts) that any Seller or an Affiliate of any Seller enters into with a third party during the period between the date hereof and the Closing (the “New Exclusive Service Contracts”), (iii) any confidentiality or non-disclosure agreements entered into by any Seller or any of its Affiliates in connection with the sale of the Business (other than the Confidentiality Agreement) and (iv) any other Contract, the entry into of which Buyer consents to in accordance with Section 7.7(a) (which additional Contracts shall be set forth on updated Schedule 2.1(c) delivered at Closing) (together with the Contracts listed under clauses (i) and (ii) above, collectively, the “Business Contracts”);
- (d) (i) the Intellectual Property Assets owned by any Seller or an Affiliate of any Seller set forth on Schedule 2.1(d) and (ii) to the extent not covered by Section 2.1(d)(i), the Intellectual Property Assets owned by such Seller and/or its Affiliates that are (x) used in Products as of the Closing Date and (y) have never been used in any other commercial products of any Seller and/or its Affiliates (including, for the sake of clarity, the EMEA Sellers), in each case including all Intellectual Property Rights therein and the goodwill associated therewith and all rights to sue for past, present or future infringement and to collect and retain all damages and profits relating to the foregoing (the assets and rights included in clauses (i) and (ii), the “Business Intellectual Property”; for the sake of clarity, no Prior Existing IP shall be deemed to be Business Intellectual Property); provided, that in the case of Intellectual Property Assets and Intellectual Property Rights that constitute patents, patent applications, domain names and websites, inventions and/or invention disclosures, only those patents, patent applications, domain names and websites, inventions and invention disclosures specifically listed on Schedule 2.1(d) shall constitute Business Intellectual Property and be assigned;
- (e) the Prior Existing IP, together with all Intellectual Property Rights therein and the goodwill associated therewith and all rights to sue for past, present or future infringement and to collect and retain all damages and profits relating to the foregoing (“Prior IP”); provided, that, subject to Section 4.5, none of this Section 2.1(e), the assignment of the Prior IP to Buyer or anything else in this Agreement shall obligate any Seller or any of its Affiliates or representatives to (x) create, recreate, improve, prepare, develop or acquire any Intellectual Property Assets or Intellectual Property Rights that would otherwise be, or (y) document, create any physical or electronic embodiment not then existing of, or otherwise put into tangible form, any Prior IP, other than making copies of existing documents or files for delivery to Buyer.
- (f) without prejudice to (x) Section 2.1(d) or 2.1(e) (with respect to the right to sue for past, present or future infringement, and to collect and retain all damages and profits relating to the Business Intellectual Property or the Prior IP in respect of such infringement) and (y) Section 2.1(i), all claims, demands, deposits, causes of action, choses in action, rights of recovery, rights of set-off and rights of recoupment, in each case relating exclusively to the operation of the Business after the Closing by Buyer (other than those related to Excluded Assets);
- (g) all refunds and rebates relating exclusively to the operation of the Business after the Closing by Buyer (other than those excluded pursuant to Section 2.2(e));

- (h) all sales literature, promotional literature and any other sales, advertising, marketing or promotional materials of any Seller or an Affiliate of any Seller that relate exclusively to the Products;
- (i) all rights under Business Contracts to the extent that such rights relate to non-competition, confidentiality or non-solicitation obligations, whether relating to periods prior to or following the Closing;
- (j) all rights of any Seller or an Affiliate of any Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating directly to (i) Business Inventory, (ii) Product returns purchased by Buyer after Closing pursuant to Section 9.10, (iii) the Business Tangible Property or (iv) products in respect of which Buyer or its Affiliates are obligated to fulfill warranty obligations pursuant to the Master Purchase Agreement; and
- (k) the information set out in Schedule 5.12(a) and copies of all general and financial records, ledgers, sales invoices, files, books and documents, correspondence and other files and records, including customer lists and sales records, of any Seller or an Affiliate of any Seller pertaining exclusively to the Products or the assets and rights transferred to Buyer pursuant to the above paragraphs (a) through (j) of this Section 2.1 (other than those excluded pursuant to Sections 2.2(i), 2.2(l) and/or 2.2(n)).

Notwithstanding the foregoing, Sellers and their Affiliates may retain and use in appropriate circumstances originals or copies of any Contracts, documents, books and records: (i) that relate, in whole or in part, to assets other than the Acquired Assets and/or activities of Sellers or any of their Affiliates other than the Business, (ii) that are required to be retained pursuant to any legal requirement or are reasonably necessary, for financial reporting purposes or for Tax purposes or (iii) that otherwise are used in connection with the Excluded Liabilities.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, all properties, rights and assets of any Seller and/or its Affiliates not expressly described in Section 2.1 (collectively, the “Excluded Assets”) are not part of the sale and purchase contemplated hereunder, are excluded from the Acquired Assets and shall remain the property of the applicable Seller and/or its Affiliates, as the case may be, after the Closing. Without limiting the foregoing, the Excluded Assets include the following:

- (a) all cash and cash equivalents or similar investments, including checking accounts, bank accounts, lock box numbers, marketable securities, commercial paper, certificates of deposit and other bank deposits, and treasury bills;
- (b) all insurance policies and all rights of every nature (including proceeds) under or arising out of such policies;
- (c) all Contracts to which any Seller or any of its Affiliates is a party other than the Business Contracts;

- (d) without prejudice to Buyer's rights pursuant to Section 7.10, all Accounts Receivable;
- (e) subject to (x) Sections 2.1(d), 2.1(e), 2.1(f) and 2.1(g) (with respect to the right to sue for past, present or future infringement, and to collect and retain all damages and profits relating to the Business Intellectual Property and the Prior IP in respect of such infringement) and (y) Section 2.1(i), all claims, demands, deposits, refunds, rebates, causes of action, choses in action, rights of recovery, rights of set-off and rights of recoupment, and all claims for refunds or rebates of Taxes, in any case related to periods (or portions thereof) ending on or prior to the Effective Time, and other governmental charges and the benefit of net operating loss carryforwards, carrybacks or other credits of any Seller and/or any of its Affiliates;
- (f) all prepaid charges, expenses, sums and fees;
- (g) all Intellectual Property Assets owned, acquired, developed or licensed by any Seller or any of its Affiliates other than the Business Intellectual Property and the Prior IP;
- (h) without prejudice to Section 9.13(b), all proprietary or confidential business or technical information, records and policies that relate generally to any Seller and/or its Affiliates and/or are not used exclusively in their operation of the Business, including organization manuals, strategic plans and Tax records and related information;
- (i) all personnel records relating to the Business Employees other than the information set forth in Section 2.1(k) and other records that any Seller or its Affiliates is required by Law to retain in its possession or is not permitted under Law to provide to Buyer;
- (j) all rights in connection with, and assets of, any Nortel Employee Plan;
- (k) all rights of any Seller and/or its Affiliates under this Agreement or any other Transaction Document or in respect of the Transactions;
- (l) all records prepared in connection with the sale of the Business;
- (m) without prejudice to Section 9.13(b), all books, records, accounts, ledgers, files, documents, correspondence, studies, reports and other printed or written materials related to any Excluded Assets or Excluded Liabilities;
- (n) all of the rights and claims of the U.S. Debtors available to the U.S. Debtors under the U.S. Bankruptcy Code, of whatever kind or nature, as set forth in Chapter 5 of the U.S. Bankruptcy Code and any other applicable provisions of the U.S. Bankruptcy Code, and any related claims and actions arising under Chapter 5 or such provisions by operation of law or otherwise, including any and all proceeds of the foregoing;
- (o) all of the rights and claims of Canadian Debtors of whatever kind of nature not expressly included in the Acquired Assets, including any and all proceeds of the foregoing; and

(p) all other properties, rights and assets of any Seller and/or its Affiliates that are not used by them exclusively in the operation of the Business.

2.3 Assumed Liabilities. Subject to the terms and conditions set forth in this Agreement, including Section 2.4, at the Closing, Buyer shall assume and thereafter pay, perform and discharge when due, only the following Liabilities (the “Assumed Liabilities”):

(a) all Liabilities under or arising from the Business Contracts, other than (i) any Liability for Cure Costs (in the case of Assumed and Assigned Contracts) or (ii) any Liability arising under any Business Contract (other than an Assumed and Assigned Contract) as a result of a breach, default or wrongful failure on the part of any Seller or its Affiliates to perform any covenant or obligation under such Business Contract required to be performed by it prior to the Closing;

(b) all Liabilities to or in respect of (i) any Transferring Employee, including their employment (or termination of employment) by Buyer, any Buyer Entity or any Affiliate of Buyer, with respect to periods from and after such Transferring Employee’s Employment Transfer Date and (ii) any Buyer Employee Plan or future employee benefit plan of Buyer or its Affiliates, including for severance or other obligations to Transferring Employees arising following such Transferring Employees’ Employment Transfer Date;

(c) all Liabilities for or in respect of Taxes (other than Income Taxes) (i) that are the responsibility of Buyer pursuant to Section 9.1 or (ii) in connection with the operation of the Business or in respect of the Acquired Assets with respect to periods (or portions thereof) beginning on or after the Effective Time;

(d) all Liabilities with respect to defective Product claims and product liability claims and causes of action arising with respect to (i) products shipped or sold by or on behalf of Buyer or its Affiliates from or after the Closing and (ii) Product returns purchased by Buyer pursuant to Section 9.10 (but only to the extent of Buyer’s obligation to purchase such Product returns pursuant to Section 9.10); and

(e) all Liabilities relating to Buyer’s and/or its Affiliates’ ownership or use of the Acquired Assets, or the conduct or operation of the Business, or the activities of Buyer and/or its Affiliates in connection with the Acquired Assets or the Business after the Closing.

2.4 Liabilities Not Assumed. Notwithstanding anything contained in this Agreement to the contrary, Buyer does not assume or agree or undertake to pay, satisfy, discharge or perform in respect of, and will not be deemed by virtue of the execution and delivery of this Agreement or any Transaction Documents or other document delivered at the Closing pursuant to this Agreement, or as a result of the consummation of the Transactions, to have assumed, or to have agreed to pay, satisfy, discharge or perform in respect of, any Liabilities of any Seller or its Affiliates or of any other Person or in any way relating to the Business other than the Assumed Liabilities, including the following (such Liabilities retained by any Seller and its Affiliates, collectively, the “Excluded Liabilities”):

- (a) all Liabilities to or in respect of (i) any Transferring Employee, including their employment by any Seller Entity or any Affiliate of any Seller, in each case with respect to periods prior to such Transferring Employee's Employment Transfer Date, and (ii) any Nortel Employee Plan or prior employee benefit plan of any Seller or its Affiliates, including for severance or other obligations to Transferring Employees arising prior to such Transferring Employees' Employment Transfer Date or as a result of the consummation of the Transactions;
- (b) except as set forth in Section 2.3(c), all Liabilities of any Seller or its Affiliates for Taxes, including (i) Taxes that are the responsibility of any Seller pursuant to Section 9.1 and (ii) all Taxes arising out of the operations of the Business (including ownership of the Acquired Assets) with respect to transactions occurring prior to or periods (or portions thereof) ending prior to the Effective Time;
- (c) all Liabilities of any Seller or its Affiliates under this Agreement or any other Transaction Document;
- (d) all Liabilities for legal, accounting and audit fees (except as provided in Section 9.15) and any other expenses incurred by any Seller or any of its Affiliates in connection with this Agreement, any other Transaction Document or consummation of the Transactions, including any fees, expenses or other payments incurred or owed by any Seller or any of its Affiliates to any agent, broker, investment banker or other firm or Person retained or employed by any Seller or any of its Affiliates in connection with the Transactions;
- (e) all Liabilities of any Seller or any of its Affiliates, to the extent relating to the Excluded Assets;
- (f) except as provided in Section 2.3(d) and/or as specified in the Master Purchase Agreement, all Liabilities with respect to defective product claims and product liability claims and causes of action arising with respect to Products shipped prior to Closing;
- (g) all Liabilities under or arising from the VSS Products with respect to periods prior to Closing Date, including claims relating to warranty obligations or other Liabilities under or arising from Contracts that have been entered into prior to the Closing Date with respect to VSS Products; provided, that Buyer and the other Buyer Entities shall be responsible for all Liabilities with respect to any implementation of the features or functionality of the VSS Products in whatsoever manner implemented by Buyer or its Affiliates, in accordance with Section 2.3(e), from and after the Closing;
- (h) all Liabilities relating to any Seller's and/or its Affiliates' ownership or use of the Acquired Assets, or the conduct or operation of the Business, or the activities of any Seller and/or its Affiliates in connection with the Acquired Assets or the Business prior to the Closing, to the extent not an Assumed Liability;
- (i) all Liabilities in respect of any applicable Bulk Sales Laws as a result of the actions contemplated by Section 7.5; and

- (j) all Liabilities relating to any other assets, operations, products, businesses or activities of any Seller and/or its Affiliates that are not part of the Business.

2.5 Further Assurances. From time to time after the Closing, without additional consideration, Sellers shall, and shall cause the other Transferring Parties to, execute and deliver such other instruments of transfer and documents related thereto and take such other action as may be necessary or reasonably requested by Buyer in order to more effectively transfer to Buyer, and to place Buyer in possession and control of, the Acquired Assets, or to enable Buyer to exercise and enjoy all rights and benefits of the applicable Transferring Party with respect thereto. Buyer shall take such actions as may be necessary or reasonably requested by any Seller in order to assure Buyer's assumption of the Assumed Liabilities. Without limiting the foregoing, upon reasonable request of Buyer, Sellers shall, and shall cause the other Transferring Parties to, execute, acknowledge and deliver all such further assurances, deeds, assignments, consequences, powers of attorney and other instruments and paper as may be required to sell, transfer, convey, assign and deliver to Buyer all right, title and interest in, to and under the Acquired Assets.

2.6 Buyer Entities. Buyer agrees that the U.S. Business Tangible Property and U.S. Business Inventory will be purchased by a U.S. organized corporation; the India Business Tangible Property and India Business Inventory will be purchased by an Indian organized entity treated for U.S. tax purposes as a corporation; and all other Acquired Assets will be purchased by Buyer itself.

2.7 Cure Costs; Adequate Assurance; No Rejection.

(a) To the extent that any Assumed and Assigned Contract is subject to a Cure Cost, the applicable Seller shall, or shall cause the applicable Seller Entity to, (x) notify Buyer of the amount of such Cure Cost and (y) within ten Business Days of the determination of such Cure Cost by the U.S. Bankruptcy Court, directly pay or otherwise provide for payment of such Cure Cost as required by the U.S. Bankruptcy Code or other applicable Law.

(b) Prior to the entry of the U.S. Sale Order, Buyer shall provide adequate assurance of its future performance under each Assumed and Assigned Contract to the parties thereto (other than the U.S. Debtors) as reasonably necessary to satisfy Section 365(f)(2)(B) of the U.S. Bankruptcy Code.

(c) Except as may be required by the U.S. Bankruptcy Court, NNI shall not, and shall cause the other U.S. Debtors not to, reject any Assumed and Assigned Contract.

2.8 Canadian Acknowledgement. Buyer acknowledges that the Canadian Sellers are selling their rights, title and interest in the Acquired Assets pursuant to the Approval and Vesting Order.

2.9 Seller Entities; UK and EMEA Assets.

- (a) When references are made in this Agreement to Sellers causing their Affiliate(s) or other Seller Entities to undertake (or to not undertake) certain actions, or agreements are being made on behalf of certain Affiliates or other Seller Entities, "Sellers" for purposes of such clause shall be deemed to mean NNI (in the case of a U.S. Debtor) and NNL (in the case of a Canadian Debtor and Non-Debtor Nortel Networks Entities (as listed on Exhibit A hereto)).
- (b) Notwithstanding anything to the contrary in this Agreement, this Article II shall not apply or govern the sale, assignment, transfer, retention or assumption of assets, rights, properties or Liabilities of or by any EMEA Seller in any manner whatsoever. The only assets, rights, properties and Liabilities of the EMEA Sellers that are being sold, assigned, transferred and assumed by, the Buyer Entities, and the terms and conditions thereof, and representations with respect thereto, are solely as expressly set forth in Exhibit P.
- (c) Where references are made in this Agreement to Sellers assuming an obligation or liability, making a representation or warranty or being referred to in Article V (except as set forth in Section 5.8(1)), giving an undertaking (to do or not do certain actions) or making an acknowledgement, "Sellers" for the purposes of such reference shall be construed and understood not to include the EMEA Sellers or (for the avoidance of doubt) the Joint Administrators. The parties agree that the only obligations of the EMEA Sellers under this Agreement shall be as set forth in Exhibit P. Where references are made in this Agreement to the Sellers taking the benefit of any rights, undertakings, representations or warranties, "Sellers" for the purpose of such reference shall be deemed to include the EMEA Sellers and the Joint Administrators.
- (d) For the sake of clarity, the provisions in Exhibit P have been drafted separately from the provisions in the body of this Agreement to reflect differing market practices in the countries of jurisdiction of the EMEA Sellers. The provisions contained in the body of this Agreement and the provisions of Exhibit P shall be interpreted independently.

2.10 Acknowledgement of Termination of Exploitation Rights. Each of NNI (on behalf of itself and the other U.S. Debtors) and NNL (on behalf of itself, the other Canadian Debtors and the Non-Debtor Nortel Networks Entities) hereby acknowledges and irrevocably agrees (a) that any and all of their rights to the Business Intellectual Property, EMEA Business Intellectual Property (as defined in Exhibit P), Prior Existing IP and EMEA Prior Existing IP (as defined in Exhibit P) (including pursuant to any agreement among Sellers and their Affiliates) shall terminate effective as of the Closing Date, except to the extent set forth in the IP License Agreement and (b) to the entry into and the license of the Licensed IP to Buyer pursuant to the IP License Agreement.

2.11 Cessation of Status as a Seller Entity. In the event that any Person listed on Exhibit A hereto does not, as of the Closing, own any assets, properties or rights that constitute Acquired Assets or Assumed Liabilities, such Person shall not be a Seller Entity for any purpose hereunder and there shall be no Closing deliveries (under Section 4.2) or the Closing conditions (as set forth in Section 8.1) with respect to such Person. At least three (3) Business Days prior to the Closing Date, the Main Sellers shall certify Buyer in writing if there are any Persons to which this Section 2.11 will pertain.

**ARTICLE III.
PURCHASE PRICE**

3.1 Purchase Price.

(a) The aggregate consideration for the Acquired Assets and the EMEA Acquired Assets (the “Purchase Price”) shall be an amount equal to the sum of (i) seventeen million six hundred fifty thousand dollars (\$17,650,000) (the “Base Purchase Price”), plus or minus (ii) the amount by which the Inventory Value of the Specified Inventory is greater or less than the Target Inventory Value (on a dollar-for-dollar basis) (provided, that in no event shall Buyer be required to purchase Specified Inventory with an Inventory Value greater than three million dollars (\$3,000,000) in the aggregate or otherwise pay more than three million dollars (\$3,000,000) in the aggregate in respect of the Specified Inventory), plus or minus (iii) the amount by which the Warranty Reserve is greater or less than the Warranty Target Amount (on a dollar-for-dollar basis) plus or minus (iv) the amount by which the Business Tangible Property Value is greater or less than the Target Business Tangible Property Value (on a dollar-for-dollar basis). At least three (3) Business Days prior to the Closing, the Main Sellers and NNUK shall notify Buyer in writing of the identity of the Escrow Agent. At the Closing, Buyer shall pay the full amount of the Purchase Price to the Escrow Agent to hold such amounts on behalf of the Seller Entities pending an agreed allocation of the Purchase Price among Sellers in cash by wire transfer of immediately available funds to the bank account that the Escrow Agent has designated in writing at least three (3) Business Days prior to the Closing, and such Escrow Agent shall collect such funds on behalf of the Seller Entities. For the avoidance of doubt, the Escrow Agent shall hold such funds on behalf of the Seller Entities only, and Buyer shall have no recourse to such funds held by the Escrow Agent in respect of any claim against any Seller or Affiliate thereof. Notwithstanding anything in this Agreement to the contrary, Sellers shall have the right to provide Buyer, at least three (3) Business Days prior to the Closing, with a written notice executed by all Sellers instructing that Buyer pay the Purchase Price directly to Sellers and to the bank accounts to which such payments should be made (in the proportions specified in such written notice), and in such case (i) Buyer shall pay the Purchase Price directly to Sellers as specified in such notice and (ii) all references to Escrow Agent hereunder shall be disregarded.

(b) Three (3) Business Days prior to the Closing Date, NNI and NNL shall deliver to Buyer a written certificate of a duly authorized officer of NNI and NNL, setting forth as of such date (i) an updated Schedule 5.6(b) (as set forth in the last sentence of Section 5.6(b)), and (ii) their good faith determination of the Inventory Value of the Specified Inventory, the Business Tangible Property Value, the Warranty Reserve and the amount payable to Buyer pursuant to Section 7.10, together with reasonable supporting detail therefor. Buyer shall be entitled to review such certificate, and in connection therewith, Sellers shall, and shall cause their Affiliates to, at no cost to Buyer, provide Buyer with access at all reasonable times upon the prior written request of Buyer to any records reasonably related to the New Exclusive Service Contracts, the Multi-Year Exclusive Service Contracts, the Warranty Reserve, the Business Tangible Property Value and the Inventory Value of the Specified Inventory. Unless the parties agree to make any change to the foregoing prior to the Closing, the amounts set forth on such certificate shall be the amounts therefore used for purposes of the amount payable by Buyer pursuant to Section 3.1(a).

(c) For all purposes of this Section 3.1, (i) the Inventory Value of the Specified Inventory shall be calculated taking into account, and the certificate delivered by NNI and NNL pursuant to Section 3.1(b) shall include, both Business Inventory and EMEA Inventory, (ii) the Warranty Reserve shall be calculated taking into account, and the certificate delivered by NNI and NNL pursuant to Section 3.1(b) shall include, the Warranty Reserve applicable to all Sellers (including the EMEA Sellers) and (iii) the Business Tangible Property Value shall be calculated taking into account, and the certificate delivered by NNI and NNL pursuant to Section 3.1(b) shall include, the Business Tangible Property and the EMEA Tangible Property. For the sake of clarity, any EMEA Inventory or EMEA Tangible Property excluded from the sale and purchase hereunder pursuant to the provisions of Section 2(b) of Exhibit P shall result in a reduction in the Inventory Value of the Specified Inventory or in the Business Tangible Property Value equal to the book value, net of reserves, of the excluded EMEA Inventory or EMEA Tangible Property.

3.2 Allocations; Taxes.

(a) The Purchase Price paid by Buyer hereunder shall be allocated in accordance with Schedule 3.2 (the “Asset Allocation Schedule”), which applies the residual allocation method under Code Section 1060 and the regulations thereunder. For the avoidance of doubt, the amounts allocated to the Business Tangible Property, EMEA Tangible Property, Business Inventory and EMEA Inventory (both on the initial Schedule 3.2 and any modification thereto) shall be the relevant Seller Entity’s net book value for such assets, as determined by such Seller Entity consistent with GAAP. In the event of (i) a change or correction to the Acquired Assets or EMEA Acquired Assets, (ii) a final determination of the Purchase Price pursuant to Section 3.1 or (iii) any adjustment to the allocation of the Purchase Price among Sellers required by any Bankruptcy Court or other Governmental or Regulatory Body of competent jurisdiction, Schedule 3.2 shall be modified in a manner consistent with such change or correction and the principles set forth above and on Schedule 3.2; provided, that any change to Schedule 3.2 in the circumstances described in clause (i) or (ii) of this Section 3.2(a) shall be agreed between the Main Sellers and Buyer, but no consent of Buyer shall be necessary for a modification of Schedule 3.2 in the circumstances set forth in clause (iii) of this Section 3.2(a). In the event any EMEA Inventory or EMEA Tangible Property is excluded from the sale and purchase hereunder pursuant to the provisions of Section 2(b) of Exhibit P, the amounts allocated on Schedule 3.2 to the applicable EMEA Seller(s) in respect of inventory and/or fixed assets shall be reduced by an amount equal to the book value, net of reserves, of the excluded EMEA Inventory or EMEA Tangible Property, as the case may be.

(b) Each of the parties hereto shall not, and shall not permit any of its Affiliates to, take a position (except as required pursuant to any Order) on any Tax Return, or before any Taxing Authority or in any judicial proceeding to the extent Tax issues are raised, that is in any way inconsistent with the allocation of the consideration among the Acquired Assets and/or EMEA Acquired Assets determined in accordance with Section 3.2(a).

(c) Each of the parties hereto and any Affiliate of any such party may determine in its discretion how it should treat the Assumed Liabilities for Tax purposes in any relevant jurisdiction and shall not be bound by the position taken by any other party or Affiliate thereof with respect thereto in such jurisdiction or any other jurisdiction.

3.3 **Allocation of Taxes.** In order to apportion appropriately any Taxes (other than Income Taxes and Taxes subject to [Section 9.1](#)) relating to a period beginning on or before and ending after the Effective Time ("[Straddle Period](#)"), the portion of any such Taxes that are allocable to the period beginning after the Effective Time shall be: (A) in the case of ad valorem Taxes and other Taxes that are imposed on a periodic basis (and not based on invoices, receipts, sales or payments), deemed to be the amount of such Taxes for the entire period multiplied by a fraction the numerator of which is the number of calendar days in the Straddle Period after the Closing Date and the denominator of which is the number of calendar days in the entire relevant Straddle Period, and (B) in the case of Taxes imposed in connection with any sale or other transfer or assignment of property (personal, tangible or intangible), deemed equal to the amount that would be payable if the taxable year or period ended and the books closed immediately prior to the Effective Time.

ARTICLE IV. CLOSING

4.1 **Closing.** The closing hereunder (the "[Closing](#)") shall take place at 10:00 a.m., local time, at the offices of Crowell & Moring LLP, 1001 Pennsylvania Avenue, N.W., Washington, D.C. 20004, on the third Business Day after satisfaction or waiver of all of the conditions set forth in [Article VIII](#) (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), or at such other date or at such other place or time as the parties may mutually agree upon (such date of the Closing is hereinafter referred to as the "[Closing Date](#)"). The Closing will be deemed effective at 11:59 p.m. in Washington, D.C. on the Closing Date (the "[Effective Time](#)").

4.2 **Seller Closing Deliveries.** At the Closing, the Main Sellers (for themselves and all other Seller Entities) shall deliver to Buyer each of the following:

- (a) Bill(s) of Sale, each executed by the applicable Seller Entity (in the applicable form);
- (b) Counterpart signature pages, executed by the applicable Seller Entities, to the IP License Agreement, the Master Purchase Agreement, the Transition Services Agreement, the Trademark License Agreement, the Patent Assignment Agreement, the Contract Manufacturer Inventory Agreement, the Assignment and Assumption Agreement(s) (in the applicable form), the Trademark Assignment Agreement and the Interim Product Purchase Agreement;
- (c) The Sellers Closing Certificate, executed by the Main Sellers;
- (d) An updated [Schedule 2.1\(c\)](#), [Schedule 5.5\(a\)](#) (if applicable) and [Schedule 5.12\(a\)](#) (if applicable); and
- (e) Any amounts payable to Buyer pursuant to [Section 7.10](#).

4.3 Buyer Closing Deliveries. At the Closing, Buyer (for itself and all other Buyer Entities) shall deliver each of the following:

- (a) The Purchase Price to the Escrow Agent to hold such amounts on behalf of the Seller Entities pending an agreed allocation of the Purchase Price among them;
- (b) To the Main Sellers, counterpart signature pages executed by Buyer (or its Affiliates) to the IP License Agreement, the Master Purchase Agreement, the Transition Services Agreement, the Trademark License Agreement, the Patent Assignment Agreement, the Contract Manufacturer Inventory Agreement, the Assignment and Assumption Agreement(s), the Trademark Assignment Agreement and the Interim Product Purchase Agreement; and
- (c) To the Main Sellers, the executed Buyer Closing Certificate.

4.4 Delivery of the Acquired Assets.

- (a) Tangible Assets. Within fourteen (14) days after the Closing Date, Sellers shall, or shall cause the other applicable Seller Entities to, at its or their cost and expense, de-install, disassemble, pack and crate the tangible Acquired Assets for shipping by Buyer, and notify Buyer no less than three (3) Business Days in advance that such tangible Acquired Assets will be ready for shipment by Buyer. Buyer shall, within two (2) Business Days of the date in which such Acquired Assets are ready for shipping by Buyer, transport or cause to be promptly transported, at its cost and expense, such Acquired Assets to such facility or location of Buyer or its Affiliates as Buyer shall elect. All risk of loss and damage with respect to the Acquired Assets shall pass from the applicable Seller or Seller Entity to Buyer on the earlier of (x) Buyer or its Affiliates or their representatives taking delivery of such Acquired Assets and (y) two (2) Business Days after such Acquired Assets are ready for shipping to Buyer.
- (b) Intellectual Property and Documentation. The delivery of the tangible or electronic copies of the Business Intellectual Property and the other documentation set forth in Section 2.1(k) shall be accomplished at or following the Closing in the manner set forth in the Transition Services Agreement and/or delivered at Closing pursuant to Section 8.1(g); provided, that neither any Seller nor any of its Affiliates or representatives shall have any obligation to (x) create, recreate, improve, prepare, develop or acquire any of the foregoing or (y) document, create any physical or electronic embodiment of, or otherwise put into tangible form, any of the foregoing, other than making copies of existing documents or files for delivery to Buyer.
- (c) Other Assets. If after the deliveries provided for in Section 4.4(a) or 4.4(b) have taken place, and other than in the case of any Intellectual Property Assets or Intellectual Property Rights identified by Buyer after the Closing (which are covered by Section 4.5), if any Seller Entity or Buyer Entity, as the case may be, shall have in its possession any asset or right which Buyer and NNI agree should have been delivered to Buyer or retained by such Seller Entity, as applicable, except in the case of patents, patent applications, inventions or invention disclosures (unless expressly set forth on Schedule 2.1(d)), Sellers or Buyer shall, or shall cause their respective Affiliates, as the case may be, to promptly deliver such asset or right to the other party.

4.5 Location of Prior IP; Post-Closing Identified Intellectual Property and Prior IP.

(a) Following the Closing, each Seller shall, and shall cause its Affiliates who are not Sellers to, use commercially reasonable efforts to locate existing tangible written and/or electronic embodiments of Prior IP.

(b) In the event that Buyer believes that any Seller has not transferred to Buyer or its Affiliates any Intellectual Property Assets or Intellectual Property Rights (other than patents, patent applications, inventions or invention disclosures, unless expressly set forth on Schedule 2.1(d)) that constitute Business Intellectual Property or Prior IP ("After Identified IP"), Buyer shall be entitled to give NNI written notice thereof, describing in reasonable detail the After Identified IP. If the After Identified IP constitutes Business Intellectual Property or Prior IP and such After Identified IP is as of such time owned by a Seller or its Affiliates, Sellers shall cause all right and title to such After Identified IP to be promptly transferred and assigned to Buyer or its Affiliates without further consideration and deliver to Buyer or its Affiliates tangible or electronic embodiments of such After Identified IP; provided, that neither any Seller nor any of its Affiliates or representatives shall have any obligation to (x) create, recreate, improve, prepare, develop or acquire any After Identified IP or (y) document, create any physical or electronic embodiment of, or otherwise put into tangible form, any After Identified IP, other than making copies of existing documents or files for delivery to Buyer.

4.6 Korea Purchase Agreement. The parties shall use their commercially reasonable efforts to enable Buyer, as promptly as is reasonably practicable following the date hereof, to enter into an agreement with LG Nortel Co. Ltd. (the "Korea Purchase Agreement") pursuant to which LG Nortel Co. Ltd. will distribute Products following the Closing.

ARTICLE V.
REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers represent and warrant to Buyer that the statements contained in this Article V are true and correct as of the date hereof, except as set forth in the Schedules referenced in this Article V. The disclosures in any such Schedule shall qualify other sections and subsections in this Article V to the extent it is readily apparent on its face that such disclosure is applicable to such other sections and subsections. The inclusion of any information in a Schedule (or any update thereto) shall not be deemed to be an admission or acknowledgment, in and of itself, that such information is required by the terms hereof to be disclosed, is material to the Business, has resulted in or would result in a Business Material Adverse Effect, or is outside the ordinary course of business.

5.1 Organization, Power, Standing. Except as set forth on Schedule 5.1: (i) Each Seller Entity is duly organized, validly existing and in good standing under the Laws of the state or foreign jurisdiction in which it is organized. (ii) The Seller Entities have all requisite corporate power and authority to own, operate or lease the Acquired Assets and the Licensed IP and to conduct the Business as it has been and is currently being conducted. (iii) The Seller Entities have all requisite corporate power and authority to execute and deliver this Agreement and to enter into the Transaction Documents to which each is or will be a party, as the case may be, and to consummate the Transactions. (iv) The Seller Entities are duly authorized to conduct business and are in good standing in each jurisdiction where such authorization is required to conduct the Business as currently conducted.

5.2 Due Authorization. Except as set forth on Schedule 5.4: (i) The execution and delivery by each Seller Entity of the Transaction Documents to which such Seller Entity is or will be a party and the performance of such Seller Entity's respective obligations thereunder have been duly and validly authorized by all necessary corporate action, and no other corporate or other action on the part of any of the Seller Entities is necessary to authorize the execution and delivery of this Agreement and the other Transaction Documents to which such Seller Entity is or is proposed to be a party or the consummation of the Transactions. (ii) This Agreement has been, and each of the other Transaction Documents, when executed, will be, duly executed and delivered by the applicable Seller Entity, and this Agreement constitutes, and each of the other Transaction Documents when so executed shall constitute, the legal, valid and binding obligations of the Seller Entity or Seller Entities party thereto, as applicable, enforceable against each such Seller Entity in accordance with their respective terms, except as such enforcement may be limited by (A) bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting the rights and remedies of creditors, and (B) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law) (the "Enforceability Exceptions"). (iii) Each Seller has all necessary right and power to agree, on behalf of the other Seller Entities, to the transfer of the Acquired Assets owned by such Seller Entity and to the transfer of the Assumed Liabilities to which such Seller Entity is subject. No Seller Entity is a joint venture in which NNL or its Affiliates own less than 75% of the voting equity of such joint venture.

5.3 No Conflicts. Except as set forth on Schedule 5.4, the execution and delivery of this Agreement do not, and of the other Transaction Documents do not or will not, and the consummation of the Transactions will not, (a) violate or conflict with the provisions of the Organizational Documents of the Seller Entities, (b) result in the imposition of any Lien upon any of the Acquired Assets or cause the acceleration or material modification of any obligation under, create in any party the right to terminate, constitute a default or breach of, or violate or conflict with the terms, conditions or provisions of any Business Contract (other than an Exclusive Services Contract and those Contracts not assigned to Buyer which are the subject of the Master Purchase Agreement, in each case as to which no representation or warranty is made) or any credit or loan agreements, indentures, finance related agreements or any other material Contract to which any of the Acquired Assets or Assumed Liabilities are subject, or (c) result in a breach or violation by the Seller Entities of any of the terms, conditions or provisions of any Law, Order or Governmental Authorization.

5.4 Consents and Approvals. Except as set forth on Schedule 5.4 or as may be required under or in respect of any Business Contract and those Contracts not assigned to Buyer which are the subject of the Master Purchase Agreement (in each case as to which no such representation or warranty is made), no consent, waiver, approval, authorization, order or permit of, or declaration, filing or registration with, or notification to, any Governmental or Regulatory Body or other Person is required to be made or obtained by any Seller Entity in connection with the execution and delivery of this Agreement or any other Transaction Document to which such Seller Entity is or will be a party, the performance by such Seller Entity of its obligations hereunder or thereunder, the consummation by such Seller Entity of the Transactions, the transfer by such Seller Entity of its respective Acquired Assets and Assumed Liabilities, or the licensing by such Seller Entity of the Licensed IP.

5.5 Financial Information.

(a) Schedule 5.5(a) sets forth, consistent with GAAP, as of the date set forth on Schedule 5.5(a), of (i) the net book value of the Business Tangible Property, (ii) the net book value of the Specified Inventory set forth in Schedule 5.6(b) and (iii) a reserve with respect to the warranty obligations of the type that Buyer and its Affiliates will undertake to perform following the Closing pursuant to the Master Purchase Agreement (as if the Closing had occurred on the date set forth on Schedule 5.5(a)). In the event of any change to such Business Tangible Property, Specified Inventory (as and to the extent provided in Section 5.6(b)) or warranty reserves between the date of this Agreement and the Closing Date, Sellers shall provide Buyer with an updated version of Schedule 5.5(a) prior to the Closing.

(b) Schedule 5.5(b) contains a true and complete copy of the unaudited, pro forma balance sheets of the Historical Velocity Business, as of December 31, 2007 and as of December 31, 2008 and related unaudited, pro forma statements of income of the Historical Velocity Business for the fiscal years ended December 31, 2007 and December 31, 2008 (the “Pro Forma Financial Statements”). Subject to the limitations, qualifications and exceptions set forth in Section 5.5(c), Schedule 5.5(b) and/or Section 9.15 (as the case may be), the Pro Forma Financial Statements (x) have been prepared specifically by Sellers for this Agreement from the books and records of Sellers and their Affiliates, which are maintained in accordance with GAAP (except that carve-out accounting guidelines as outlined by the SEC have not been utilized, and except for the absence of footnotes and other disclosures required by U.S. GAAP), and (y) fairly present in all material respects the financial condition and results of operations of the Historical Velocity Business as of the respective dates thereof and for the periods covered thereby.

(c) The Business, the Acquired Assets and the Assumed Liabilities constitute only a limited subset of the Historical Velocity Business and of the assets and liabilities presented in the Pro Forma Financial Statements. Likewise, the Historical Velocity Business and the Pro Forma Financial Statements include assets and liabilities not included within the Acquired Assets or the Assumed Liabilities. Accordingly, the Pro Forma Financial Statements cannot be viewed as fairly presenting the Business, the Acquired Assets or the Assumed Liabilities to the extent that the Pro Forma Financial Statements include assets and liabilities not included within the Acquired Assets or Assumed Liabilities. Neither the Historical Velocity Business nor the Business has operated as a separate “stand-alone” entity, nor have Sellers or their Affiliates previously maintained separate financial statements for the Historical Velocity Business or the Business. As a consequence, (i) in order to prepare the Pro Forma Financial Statements, it has been necessary for Sellers to make numerous subjective judgments regarding financial allocations, and Sellers have summarized those judgments that Sellers believe are material in the Pro Forma Financial Statements in Schedule 5.5(c); and (ii) the Pro Forma Financial Statements do not present financial conditions or results of operations that would have occurred if either the Historical Velocity Business or the Business had been operated by Sellers and their Affiliates as a “stand-alone” entity. In addition, in order to present the Pro Forma Financial Statements, it has also been necessary for Sellers to make various assumptions regarding the basis of their presentation, and Schedule 5.5(c) summarizes such assumptions that Sellers believe are material.

5.6 Tangible Personal Property; Inventory.

(a) Except as set forth in Schedule 5.6(a): (i) The applicable Seller or another Seller Entity has exclusive legal and valid title to all of the Business Tangible Property and the Business Inventory, free and clear of all Liens other than Permitted Liens. (ii) Upon consummation of the Transactions, Buyer will have acquired good and marketable title in and to, the Business Tangible Property and the Business Inventory, (x) in the case of Acquired Assets that are transferred or assigned by U.S. Debtors, free and clear of all Liens (other than Permitted Liens) and Claims pursuant to Section 363 of the U.S. Bankruptcy Code, (y) in the case of Acquired Assets that are transferred or assigned by Canadian Debtors, free and clear of all Liens (other than Permitted Liens) pursuant to the terms of the Approval and Vesting Order, when granted, and (z) in the case of Acquired Assets that are transferred or assigned by a Non-Debtor Nortel Networks Entity, free and clear of all Liens other than Permitted Liens. (iii) All Business Tangible Property is in good condition, ordinary wear and tear excepted, and is in adequate operating condition for the purposes for which it is used by the Seller Entities in the Business. (iv) All Business Inventory has been created or acquired in the ordinary course of business consistent with past practice.

(b) Schedule 5.6(b) sets forth a true and complete list of all Specified Inventory (whether located at a business facility, in the possession of any contract manufacturer, or at any other location in the supply chain of any Seller or any of its Affiliates, but other than EMEA Business Inventory), setting forth the location, aging, net book value and serial number of each item of Inventory (aging and serial number, in the case of finished goods Inventory other than service Inventory (for service Inventory, the aging and serial number thereof will be provided as soon as practicable following the Closing)) as of the date set forth on such Schedule. Pursuant to Section 3.1(b), three (3) Business Days prior to the Closing Date, Sellers shall deliver to Buyer an update of Schedule 5.6(b) as of the most recent date practicable.

5.7 Contracts. Except as set forth on Schedule 5.7:

(a) As of the date hereof, Sellers have made available to Buyer true, correct and complete copies of all of the Business Contracts in effect as of the date of this Agreement. As of the date hereof, each Business Contract in effect as of the date of this Agreement is legal, valid, binding and enforceable against the Seller Entity party thereto, and to the Knowledge of Sellers, against each other party thereto, and is in full force and effect (in each case, subject to the Enforceability Exceptions and the Bankruptcy Proceedings).

(b) As of the Closing, Sellers will have made available to Buyer true, correct and complete copies of all of the Business Contracts in effect as of the date of the Closing. As of the date of the Closing, each Business Contract in effect will be as of such date legal, valid, binding and enforceable against the Seller Entity party thereto, and to the Knowledge of Sellers, against each other party thereto, will be in full force and effect (in each case, subject to the Enforceability Exceptions and the Bankruptcy Proceedings) and will continue to be legal, valid, binding, enforceable and in full force and effect following assignment of such Business Contract at Closing (excluding any failure of any such Business Contract (other than an Assumed and Assigned Contract) to be legal, valid, binding, enforceable or in full force and effect as a result of the failure to obtain the consent of the counterparty to such Business Contract to such assignment).

(c) No Seller (or any Affiliate of any Seller) has been notified in writing that it is in breach or default under any Business Contract, and to the Knowledge of Sellers, no other party to any Business Contract is in breach or default thereof, nor has any Seller or Affiliate thereof been notified in writing of such other party's intention to terminate any Business Contract.

(d) The Business Contracts do not contain (i) any non-competition, non-solicitation or similar agreements or arrangements or (ii) any "earn-out" or similar agreements or arrangements.

(e) No Affiliate of a Seller (other than a Seller Entity) is a party to the Business Contracts.

(f) Neither the Business Contracts nor those Contracts not being assigned to Buyer which are the subject of the Master Purchase Agreement are classified contracts requiring contractor employees to have access to classified information during contract performance. All services relating to the Business currently being provided by Sellers or their Affiliates to United States governmental agencies under the foregoing Contracts are being provided indirectly by Sellers or their Affiliates through a prime contractor or upper tier contractor and not directly by Sellers or their Affiliates.

5.8 Intellectual Property.

(a) Except as set forth on Schedule 5.8(a), (x) between January 1, 2007 and the Closing Date, and (y) to the Knowledge of Sellers, between January 1, 2003 and January 1, 2007, neither Sellers nor their Affiliates have received written notice that any Person, other than a Seller, claims any ownership interest in any of the Business Intellectual Property.

(b) Except as set forth on Schedule 5.8(b): To the Knowledge of Sellers, the Products, the processes performed by the Products and/or the use of the Products (including, for the sake of clarity, the Business Intellectual Property and the Licensed IP as used in the Products as of the Closing Date) do not infringe upon the Intellectual Property Rights of any other Person. (x) Between January 1, 2007 and the Closing Date, neither Sellers nor their Affiliates have received, and (y) between January 1, 2003 and January 1, 2007 no Notice Recipient has directly been sent, or indirectly actually received, any written notice specifically alleging that the Products, the processes performed by the Products and/or the use of the Products (including, for the sake of clarity, the Business Intellectual Property and the Licensed IP as used in the Products as of the Closing Date) infringe upon the Intellectual Property Rights of any other Person. (x) Between January 1, 2007 and the Closing Date, neither Sellers nor their Affiliates have received, and (y) between January 1, 2003 and January 1, 2007 no Notice Recipient has directly been sent, or indirectly actually received, from a third party a written offer to grant Sellers or their Affiliates a license on the basis that the Products (including, for the sake of clarity, the Business Intellectual Property and the Licensed IP as used in the Products as of the Closing Date) infringe any Intellectual Property Rights of such third party.

(c) Except as set forth on Schedule 5.8(c), to the Knowledge of Sellers, no Person is infringing upon any Business Intellectual Property. Sellers have not brought any Action or Proceeding (x) between January 1, 2007 and the Closing Date, and (y) to the Knowledge of Sellers, between January 1, 2003 and January 1, 2007, alleging that any Person is infringing upon any Business Intellectual Property.

(d) There are no Orders to which Sellers or their Affiliates are party that: (i) restrict the rights of the Seller Entities to use any of the Business Intellectual Property or the Licensed IP (as used in the Products as of the Closing Date) or (ii) permit third parties to use the Business Intellectual Property.

(e) Except as set forth on Schedule 5.8(e), Sellers and their Affiliates have taken commercially reasonable and customary steps to maintain their proprietary rights in the Business Intellectual Property, and to preserve the secrecy and confidentiality of all Business Intellectual Property that constitute confidential or proprietary information, and/or trade secrets. Without limiting the foregoing, (i) Sellers and their Affiliates have a policy requiring all employees of Sellers and Affiliates of Sellers with access to confidential or proprietary information, and/or trade secrets included in the Business Intellectual Property to execute a proprietary information, confidentiality and assignment agreement with the applicable Seller or Affiliate of a Seller. No representations or warranties with respect to non-infringement or non-infringing uses of the Business Intellectual Property are made in this Section 5.8(e); the only representations and warranties of Sellers made with respect to non-infringement and non-infringing uses are set forth in Sections 5.8(b) and (c), respectively.

(f) Except as set forth on Schedule 5.8(f): (i) As of the Closing Date, good and valid title to the Business Intellectual Property is held solely and exclusively by the Seller Entities, free and clear of any Liens (other than Permitted Liens and licenses granted prior to the date hereof with respect to the Business Intellectual Property). (ii) The Seller Entities are the sole owners of the Licensed IP or otherwise have the rights necessary to grant the licenses granted in the IP License Agreement and the Trademark License Agreement. No representations or warranties with respect to non-infringement of the Business Intellectual Property are made in this Section 5.8(f); the only representations and warranties of Sellers made with respect to non-infringement are set forth in Section 5.8(b).

(g) No software included in the Business Intellectual Property contains: (i) to the Knowledge of Sellers, any virus, trojan horse, worm, or other software routines or hardware components designed to permit unauthorized access or to disable, erase, or otherwise harm any computer, system or software; (ii) to the Knowledge of Sellers, except as set forth on Schedule 5.8(g)(ii), any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than an authorized licensee or owner of a copy of the program or the right and title in and to the software; or (iii) except as set forth on Schedule 5.8(g)(iii), any "open source" code, shareware, or other software that is made generally available to the public without requiring payment of fees or royalties or that does or may require disclosure or licensing of any software owned or used by Buyer.

(h) Except as set forth on Schedule 5.8(h), Sellers and their Affiliates have taken all reasonable actions before, and paid all necessary fees in, the United States Patent and Trademark Office to maintain all patents, trademarks, and applications therefor in the Business Intellectual Property.

(i) Schedule 5.8(i) sets forth a true and complete list of all (i) third party software, including Restricted Software, (ii) third party software development tools, and (iii) licenses of Intellectual Property Rights from third parties, other than pursuant to cross-licenses, in each case that are currently licensed to Sellers or their Affiliates pursuant to a written contract and that are currently used in the Products or in connection with the Business.

(j) As of the Closing Date, between (x) the Business Intellectual Property being assigned to Buyer hereunder and (y) the licenses granted to Buyer pursuant to the IP License Agreement and the other Transaction Documents, except for items (if any) specified hereunder or in the IP License Agreement as not being licensed to Buyer, Sellers and their Affiliates have either assigned hereunder or licensed thereunder to Buyer all of the Intellectual Property Assets and Intellectual Property Rights owned by Sellers and their Affiliates that are used in the Products or in the conduct of the Business as of the Closing Date.

(k) To the Knowledge of Sellers, neither Sellers nor any Affiliate of Sellers have assigned any Prior IP to any third party.

(l) The EMEA Sellers hold no right, title or interest in any Business Intellectual Property or Prior IP other than the right to exploit such Business Intellectual Property and/or Prior IP pursuant to an intercompany agreement among the Seller Entities and their Affiliates, assuming, for purposes of this Section 5.8(l), that the term "Sellers" contained in Sections 2.1(d) and 2.1(e) were deemed not to exclude the EMEA Sellers from such term.

5.9 Litigation. Except as set forth on Schedule 5.9: (a) no material Action or Proceeding is or has been pending or, to the Knowledge of Sellers, threatened in writing, during the five (5) years immediately preceding the date of this Agreement that directly affects any of the Acquired Assets, the Assumed Liabilities, the Business or the Products; (b) there is no material Order or settlement to which Sellers or their Affiliates are subject that directly affects or restricts the ownership or use of the Acquired Assets, the Assumed Liabilities, the Business or the Products; and (c) no Action or Proceeding is pending against the Seller Entities, or to the Knowledge of Sellers, threatened against the Seller Entities in writing, that questions the validity of this Agreement or the other Transaction Documents or any action taken or to be taken by the Seller Entities in connection with this Agreement or any other Transaction Documents.

5.10 Compliance with Laws; Governmental Authorizations. Except as set forth on Schedule 5.10, Sellers and their Affiliates are in compliance in all material respects with all Laws, Orders and settlements applicable to the conduct of the Business and the operation thereof, including compliance in all material respects with the Foreign Corrupt Practices Act of 1977, as amended. Sellers and their Affiliates possess all Governmental Authorizations necessary for the lawful conduct of the Business as presently conducted. To the Knowledge of Sellers, Schedule 5.10 sets forth a complete and accurate list of all Governmental Authorizations that are currently held by Sellers or their Affiliates and that directly relate to the Products themselves and not to any other aspect of the Business, and all such Governmental Authorizations are valid and in full force and effect. Sellers and their Affiliates are in compliance in all material respects with such Governmental Authorizations.

5.11 Nortel Employee Plans. Schedule 5.11 contains a complete and accurate list of all Nortel Employee Plans. Sellers have provided Buyer with a copy of each Nortel Employee Plan and an accurate, written, side-by-side summary of each Nortel Employee Plan. Subject to the Bankruptcy Proceedings, the Nortel Employee Plans are administered in all material respects in accordance with their terms and applicable Laws and Orders and Sellers and their Affiliates are in compliance with their obligations in all material respects with respect to each Nortel Employee Plan. Sellers and their Affiliates maintain and perform under the Nortel Employee Plans in material compliance with all applicable Laws and Orders. No Nortel Employee Plan is a multiemployer plan within the meaning of Section 3(37) of the Employee Retirement Income Security Act of 1974, as amended, and neither Sellers nor any of their Affiliates have incurred any unpaid withdrawal liability and no facts exist that would likely give rise to the assessment of any withdrawal liability.

5.12 Employee Matters.

(a) Concurrent with the execution of this Agreement, Sellers are delivering to Buyer a chart (hereinafter referred to as Schedule 5.12(a), but which is not included in the Disclosure Schedules), which sets forth the following data elements, as of the date of this Agreement, with respect to each Business Employee: (i) name, (ii) home address including municipality, state/province and country, (iii) work location, (iv) continuous service date, (v) job title, (vi) JCI (Job Complexity Indicator), (vii) annual base salary (in local currency), (viii) target incentive compensation, (ix) any other compensation or allowances, including pay premium, ex-patriate provisions, reimbursement and relocation, (x) current vacation entitlement in days, (xi) teleworker status, (xii) whether such Business Employee is on a leave of absence approved by Seller or its Affiliates under a Nortel Employee Plan or as required by Law, along with the type of leave and expected date of return to work, if known, (xiii) India Employee Gratuity Accrual, in the case of India Employees, (xiv) such Business Employee's accrued and unused vacation days, and (xv) whether a background investigation has been performed with respect to such Business Employee. Sellers shall deliver an updated copy of Schedule 5.12(a) to Buyer immediately prior to the Closing, which updated table shall be accurate and complete as of the Closing Date.

(b) Except as set forth in Schedule 5.12(b), Sellers and their Affiliates are in compliance in all material respects with all applicable Laws and Orders (including any legal obligation to engage in affirmative action) relating to employment practices, terms and conditions of employment, and the employment, of the Business Employees, including all such Laws and Orders relating to wages, hours, withholding, collective bargaining, employment discrimination, immigration, disability, civil rights, fair labor standards, occupational safety and health, workers' compensation, pay equity and wrongful discharge. Sellers and their Affiliates have timely prepared and filed all appropriate reports and other filings required by any relevant Governmental or Regulatory Authority with respect to the Business Employees. None of Sellers or their Affiliates is engaged in any unfair labor practice with respect to any Business Employees.

(c) Except as set forth in Schedule 5.12(c), (i) neither Sellers nor any of their Affiliates are party to or bound by any work rules and/or collective bargaining agreement that applies to the terms and conditions of employment of any Business Employee or has any obligation to negotiate any such collective bargaining agreement; (ii) there are no trade unions or labor organizations asserting employment rights that would affect any Business Employee and there is no representation claim or petition regarding Business Employees pending before the United States National Labor Relations Board or any similar foreign, state or local labor agency of which Sellers or their Affiliates have been notified in writing and, to the Knowledge of Sellers, no question concerning representation has been raised or threatened in writing respecting Business Employees; (iii) there is no indication that the Business Employees desire to be covered by a collective bargaining agreement; and (iv) to the Knowledge of Sellers, no trade union or labor organization is planning or attempting to organize any of the Business Employees. No strike, slowdown or work stoppage has occurred or, to the Knowledge of Sellers, been threatened with respect to Business Employees, nor has any such strike, slowdown or work stoppage occurred or been threatened within three (3) years prior to the date hereof.

(d) Except as set forth in Schedule 5.12(d), no notice has been received by Sellers or their Affiliates of any complaint claiming that any of Sellers or their Affiliates has violated any applicable employment standards, human rights or other labor legislation or any complaints or proceedings of any kind involving Business Employees or, to the Knowledge of Sellers, threatened to be filed against the Acquired Assets, the Assumed Liabilities or the Business before any federal, state, local or foreign Governmental or Regulatory Body or labor relations board, including the National Labor Relations Board and the Equal Employment Opportunity Commission. No notice has been received by Sellers or their Affiliates of the intent of any federal, state, local or foreign Governmental or Regulatory Body responsible for the enforcement of labor or employment Laws to conduct an investigation of Sellers or their Affiliates, and, to the Knowledge of Sellers, no such investigation is in progress, in each case, with respect to the Business Employees.

(e) Except as set forth in Schedule 5.12(e), (i) there are no outstanding assessments, penalties, fines, levies, charges, surcharges or other amounts due or owing by Sellers or their Affiliates pursuant to any applicable worker's compensation Laws or Orders in respect of the Business Employees; and (ii) to the Knowledge of Sellers, there is no audit currently being performed by a Governmental or Regulatory Body pursuant to any applicable workers' compensation Law with respect to the Business Employees.

5.13 Absence of Certain Changes. Except as set forth in Schedule 5.13, since November 31, 2008, (a) the Seller Entities have operated the Business in the ordinary course of business consistent with past practice, (b) neither Sellers nor their Affiliates have taken, or agreed to take, any of the actions set forth in Section 7.3, and (c) there has been no material damage to or loss or theft of any of the Acquired Assets (whether or not covered by insurance).

5.14 Customers and Suppliers. Schedule 5.14 sets forth a complete and accurate list of (a) all Persons that are direct customers of Sellers or their Affiliates that represent five percent (5%) or more of the aggregate revenues of the Seller Entities taken as a whole for sales of Products for the fiscal years ended December 31, 2007 and December 31, 2008 and (b) all Persons that are suppliers of Sellers or their Affiliates that represent five percent (5%) or more of the aggregate revenues of the Seller Entities taken as a whole for sales of Products for the fiscal years ended December 31, 2007 and December 31, 2008. Except as set forth in Schedule 5.14, no Seller Entity or any of their Affiliates has received any written notice within the past twelve (12) months that any of the customers or suppliers set forth on Schedule 5.14 intends to materially reduce the level of Products it purchases from the Business subsequent to Closing or materially reduce the level of supplies it provides to the Business subsequent to Closing, as applicable.

5.15 Valid Transfers. The transfer of Acquired Assets and the license of the Licensed IP by the Seller Entities to the Buyer Entities pursuant to the Transaction Documents has been and will be made at arms length and in good faith and without intent to hinder, delay or defraud creditors of Sellers or their Affiliates, and Sellers acknowledge that they and the other Seller Entities have received fair consideration and reasonably equivalent value for the purchases by the Buyer Entities of the Acquired Assets, the licenses of the Licensed IP to the Buyer Entities and the assumption by the Buyer Entities of the Assumed Liabilities hereunder and under the other Transaction Documents.

5.16 Real Property. No real property, whether owned or leased by Sellers or their Affiliates, is included in the Acquired Assets or the Assumed Liabilities.

5.17 Brokers. Neither Sellers nor any of their Affiliates has agreed or become obligated to pay, or has taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee or similar commission or fee in connection with any of the Transactions.

5.18 No Other Representations or Warranties. It is the explicit intent of the parties, and the parties hereby agree, that none of Sellers or any of their Affiliates or representatives has made or is making any representation or warranty whatsoever, express or implied, written or oral, including any representation as to the physical condition or value of any of the Acquired Assets or the future profitability or future earnings of the Business, except those representations and warranties expressly contained in this Agreement and the other Transaction Documents. Except as set forth in Section 5.8(k), none of Sellers or any of their Affiliates or representatives has made or is making any representation or warranty whatsoever with respect to the Prior IP, and all such Prior IP is being assigned and transferred to Buyer on an "AS IS, WHERE IS" basis.

ARTICLE VI.
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers that the statements contained in this Article VI are true and correct as of the date hereof.

6.1 **Organization, Power.** Each Buyer Entity is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each Buyer Entity has all requisite corporate power and authority to conduct its business as it has been and is currently being conducted. Each Buyer Entity has all requisite corporate power and authority to execute and deliver this Agreement and to enter into the Transaction Documents to which it is or will be a party and to consummate the Transactions.

6.2 **Due Authorization.** The execution and delivery by the Buyer Entities of the Transaction Documents and the performance by the Buyer Entities of their obligations thereunder have been duly and validly authorized by all necessary corporate action, and no other corporate or other action on the part of any Buyer Entity is necessary to authorize the execution and delivery of this Agreement and the other Transaction Documents to which any Buyer Entity is or is proposed to be a party or the consummation of the Transactions. This Agreement has been, and each of the other Transaction Documents, when executed, will be, duly executed and delivered by the applicable Buyer Entity, and this Agreement constitutes, and each of the other Transaction Documents when so executed shall constitute, the legal, valid and binding obligations of each of the Buyer Entities, enforceable against each of the Buyer Entities in accordance with their respective terms, except as such enforcement may be limited by Enforceability Exceptions. Buyer has all necessary right and power to agree, on behalf of the other Buyer Entities, to the purchase of the Acquired Assets to be purchased by such Buyer Entities and to the assumption of the Assumed Liabilities to which such Buyer Entities will assume.

6.3 **No Conflict; Third-Party Consents.** The execution and delivery of this Agreement do not, and of the other Transaction Documents do not or will not, and the consummation of the Transactions will not, (i) violate or conflict with the provisions of the Organizational Documents of any of the Buyer Entities, (ii) result in the imposition of any Lien upon any of the properties or assets of any of the Buyer Entities, cause the acceleration or material modification of any obligation under, create in any party the right to terminate, constitute a default or breach of, or violate or conflict with the terms, conditions or provisions of any Contract to which any Buyer Entity is a party or by which its assets are bound or (iii) result in a breach or violation by any Buyer Entity of any of the terms, conditions or provisions of any Law, Order or Governmental Authorization.

6.4 **Consents and Approvals.** No consent, waiver, approval, authorization, order or permit of, or declaration, filing or registration with, or notification to, any Governmental or Regulatory Body or other Person is required to be made or obtained by any Buyer Entity in connection with its execution and delivery of this Agreement or any other Transaction Document to which it is or will be a party, the performance by any Buyer Entity of its obligations hereunder or thereunder, or the consummation by any Buyer Entity of the Transactions.

6.5 Litigation. No Action or Proceeding is or has been pending or, to the knowledge of Buyer, threatened in writing, against Buyer that, if adversely determined, would reasonably be expected to adversely affect or restrict the ability of Buyer to consummate the Transactions. There is no Order to which Buyer is subject that would reasonably be expected to adversely affect or restrict the ability of Buyer to consummate the Transactions.

6.6 Sufficient Funds. Buyer possesses sufficient funds to consummate the Transactions and affirms that it is not a condition to Buyer's obligations to complete the Transactions that Buyer obtain financing for or related to any of the Transactions.

6.7 Brokers. Except for Oppenheimer & Co., Inc., whose fees and expenses are the sole responsibility of Buyer, Buyer has not agreed or become obligated to pay, or has taken any action that might result in any Person claiming to be entitled to receive, any brokerage commission, finder's fee or similar commission or fee in connection with any of the Transactions.

6.8 Buyer Employee Plans. Schedule 6.8 contains a complete and accurate list of all Buyer Employee Plans in effect as of the date hereof in which Transferring Employees will participate. The Buyer Employee Plans are administered in all material respects in accordance with their terms and Buyer and Buyer's Affiliates are in compliance with their obligations in all material respects with respect to the Buyer Employee Plans. Buyer and Buyer's Affiliates maintain and perform under the Buyer Employee Plans in material compliance with all applicable Laws.

6.9 Labor Matters. Neither Buyer nor any Buyer Affiliate is a party to or bound by any collective bargaining agreement that will apply to the terms and conditions of employment of any Transferring Employee, and there are no trade unions or labor organizations asserting representational rights that would affect any Transferring Employee.

6.10 Adequate Assurance of Future Performance. Buyer will be able to provide, at or prior to Closing, adequate assurance of its future performance under each Assumed and Assigned Contract to the parties thereto (other than the U.S. Debtors), as reasonably necessary to satisfy the requirements of Section 365(f)(2)(B) of the U.S. Bankruptcy Code. Buyer acknowledges and agrees that, if it becomes necessary to provide a Contract counterparty with additional assurances to satisfy Buyer's obligations under the applicable Contract, Buyer shall perform all actions and bear all such costs and expenses as may be reasonably necessary or advisable in connection with their obligations under such Contract without recourse to any Seller.

6.11 Acknowledgement of Section 5.5(c). Buyer acknowledges and agrees that Sellers representations and warranties in Section 5.5 are subject to the limitations and qualifications set forth in Section 5.5(c) and Schedule 5.5(c).

ARTICLE VII.
PRE-CLOSING COVENANTS

7.1 **Commercially Reasonable Efforts.** Subject to the terms and conditions herein provided, each party agrees to use its, and Sellers agree to cause the other Transferring Parties to use their, respective commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws, to consummate and make effective the Transactions as promptly as practicable. From the date hereof through the Closing Date, Sellers will keep Buyer reasonably informed of the amount of Specified Inventory. Without limitation of Sellers' obligations pursuant to Section 7.17 or Section 7.21, this Section 7.1 does not cover any of the matters set forth in Sections 7.14, 7.15 or 7.16.

7.2 **Regulatory and Other Approvals; Notification.** Without limitation of Section 7.1, each party hereby agrees to, and Sellers agree to cause the other Transferring Parties to, use their commercially reasonable efforts to (x) obtain as promptly as practicable all Governmental Authorizations, make all filings with and to give all notices to Governmental or Regulatory Bodies and obtain all consents from third parties required of such parties or their Affiliates to consummate the Transactions (other than counterparties to any Business Contracts and those Contracts not assigned to Buyer which are the subject of the Master Purchase Agreement), (y) provide such other information and communications to such Governmental or Regulatory Bodies and third parties as such Governmental or Regulatory Bodies and third parties may reasonably request in connection therewith, and (z) cooperate with each other as promptly as practicable in connection with the foregoing. Each party will, and Sellers will cause the other Transferring Parties to, provide prompt notification to the other parties when any such consent, approval, action, filing or notice referred to in clause (x) above is obtained, taken, made or given, as applicable, and will advise the other parties of any communications from any Governmental or Regulatory Body regarding any of the Transactions. If any party or Affiliate thereof receives a request for additional information or documentary material from any such Governmental or Regulatory Body with respect to the Transactions, then such party will use commercially reasonable efforts to make, or cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request. Between the date hereof and the Closing Date, NNI shall promptly notify Buyer, and Buyer shall promptly notify NNI, of any litigation, arbitration or administrative proceeding pending or, to their knowledge, threatened in writing against Sellers or their Affiliates or Buyer or its Affiliates, as the case may be, which challenges the consummation of Transactions or the performance by the parties of their obligations under the Transaction Documents; provided, that no Seller shall be obligated under Section 7.2 to provide Buyer with notice of any publicly available filing in any Bankruptcy Proceeding or any document described in the first sentence of Section 7.16. Without limitation of Sellers' obligations pursuant to Section 7.17 or Section 7.21, this Section 7.1 does not cover any of the matters set forth in Sections 7.14, 7.15 or 7.16.

7.3 **Conduct of Business.** From the date hereof through the Closing Date, except as may be required in connection with or as a result of the Bankruptcy Proceedings, Sellers will, and will cause their Affiliates to, operate the Business only in the ordinary course of business consistent with past practice. Sellers will, and will cause their Affiliates to, use commercially reasonable efforts, except as may be required in connection with or as a result of the Bankruptcy Proceedings, to: (i) preserve and protect the Acquired Assets and the business organization of the Business; (ii) keep available the services of Business Employees; (iii) cause all transactions between Sellers and third parties relating to the Business to take place on arm's length terms; (iv) comply, in all material respects, with all Laws and Orders applicable to the Business; and (v) preserve their current relationships with the customers, suppliers, licensors, licensees, contractors, vendors, distributors and others having business dealings with respect to the Business. Without limiting the generality of the foregoing, from the date hereof through the Closing Date, except as may be required in connection with or as a result of the Bankruptcy Proceedings, Sellers shall not, and shall not permit their Affiliates to, without the prior written consent of Buyer (other than with respect to Section 7.3(g), for which Buyer shall have no right of prior written consent):

- (a) sell, lease, encumber, transfer or dispose of any assets or rights which would be included in the Acquired Assets or the Licensed IP, unless in the ordinary course of business consistent with past practice;
- (b) purchase additional Inventory exclusively relating to the Business unless contractually obligated to do so or to replenish a specific type of Inventory exclusively relating to the Business for which it is necessary to fill orders;
- (c) enter into, adopt, amend, modify or terminate any employee benefit plan, program or arrangement with respect to Business Employees in a manner materially more favorable to the Business Employees, increase in any manner the compensation or benefits of any Business Employee or pay any benefit not required by any existing employee benefit plan, or enter into any Contract to do any of the foregoing, except for normal or periodic increases in compensation, or changes in employee benefit plans that are in the ordinary course of the Business consistent with past practice;
- (d) amend, modify or terminate any Business Contract, except in the ordinary course of business consistent with past practice;
- (e) (i) sell, assign, transfer, abandon or fail to maintain, (ii) except in the ordinary course of business consistent with past practice, license or sublicense, or (iii) except in the ordinary course of business consistent with past practice, enter into, amend or terminate any Contract with respect to, any Business Intellectual Property;
- (f) waive any material rights relating to any of the Acquired Assets or Assumed Liabilities;
- (g) modify any pricing or discount terms with respect to the Products or services of the Business other than in the ordinary course of business consistent with past practice; or
- (h) take any action that would prevent or delay Sellers or their Affiliates from licensing the Licensed IP to Buyer or its Affiliates at the Closing.

7.4 **Examinations and Investigations.** At any time prior to the Closing Date, Buyer shall be entitled, through its employees and representatives, to enter upon and make such reasonable investigation of the assets, properties, business and operations of the Transferring Parties to the extent they relate exclusively to the Business, and such examination of the books and records, financial condition and operations of the Business as Buyer may reasonably request. Any such investigation and examination shall be coordinated through a point of contact designated by NNI and conducted at reasonable times during normal business hours upon reasonable prior notice to NNI and under reasonable circumstances; provided, that such investigation shall not unreasonably interfere with the business operations of any Seller Entity or the sale of the Business pursuant to the U.S. Bidding Procedures Order (including with respect to any Seller Entity's provision of access to other potential bidders in connection with the sale of the Business).

7.5 **Bulk Sales.** The parties hereto hereby waive compliance with the provisions of any applicable bulk sales laws, including Article 6 of the Uniform Commercial Code as it may be in effect in any applicable jurisdiction ("**Bulk Sales Laws**").

7.6 **Publicity.** Each party shall be entitled to issue or make a press release regarding the Transactions in the form previously agreed to by the parties (the "**Press Release**") or any other press release or announcement required by any Law, Order or the rules of a stock exchange; provided, that the party required to make the release or announcement (other than the Press Release) shall, to the extent reasonably practicable, allow the other parties (in the case of a press release or announcement to be made by Buyer, Buyer shall allow NNI) reasonable time to comment on such release or announcement in advance of such issuance; provided, further, that each party shall be permitted to comply with applicable SEC filing requirements and any other securities law requirements applicable to such party with respect to this Agreement and the other Transaction Documents without consultation with any other party. The Main Sellers and Buyer shall cooperate with each other to issue a joint press release regarding the Transactions following the Closing.

7.7 **New Contracts; Disclosure Schedules.**

(a) Between the date hereof and the Closing Date, any Seller or its Affiliates shall, in the ordinary course of business, be entitled to enter into New Exclusive Service Contracts, without the need to obtain the consent thereto from Buyer. Other than with respect to New Exclusive Service Contracts and Contracts described in Section 2.1(c)(iii), Sellers shall not, and shall not permit their Affiliates to, without the prior written consent of Buyer, enter into any new Contract between the date hereof and Closing that will be assigned to Buyer at the Closing. In the event Buyer consents to the entry of any such new Contract, Sellers shall prior to the Closing provide an executed copy of such Contract to Buyer.

(b) Sellers shall be entitled to submit to Buyer, from time to time between the date hereof and the Closing Date, written updates to the Schedules referenced in Article V (including on the Sellers Closing Certificate) disclosing any events or developments that occurred or any information learned between the date of this Agreement and the Closing Date; provided, that neither such updated Schedules nor any such disclosures on the Sellers Closing Certificate shall operate to in any way modify or cure any breach of the representations and warranties made by Sellers in Article V, including for purposes of meeting the Closing condition set forth in Section 8.1(a).

7.8 Confidentiality. The parties acknowledge and agree that the Confidentiality Agreement remains in full force and effect and that information provided by any Seller or its Affiliates to Buyer or its Affiliates in connection with the Transactions (as well as any information regarding the existence, status or termination of the Transactions) is subject to the terms of and shall be treated in accordance with the Confidentiality Agreement. If this Agreement is terminated prior to the Closing, the Confidentiality Agreement shall remain in full force and effect in accordance with its terms. If the Closing occurs (a) the Confidentiality Agreement shall terminate effective as of the Closing and (b) the confidentiality provisions set forth in Section 9.14 shall apply with respect to Sellers' and Buyer's additional confidentiality obligations following the Closing. For the sake of clarity, neither this Section 7.8 nor the Confidentiality Agreement shall be construed to limit or prohibit the issuance of the Press Release or third party communications in connection with the assignment of the Business Contracts.

7.9 Notifications of the Transactions. As soon as reasonably practicable following the execution of this Agreement, Sellers shall send a notification to each counterparty to a Business Contract, pursuant to forms previously agreed with Buyer, notifying such counterparties of the pendency of the Transactions and, with respect to any Assumed and Assigned Contract, requesting the counterparty thereto to notify Sellers of any outstanding Cure Costs.

7.10 New Exclusive Service Contracts; Multi-Year Exclusive Service Contracts.

(a) With respect to New Exclusive Service Contracts, Sellers shall, and shall cause each other Seller Entity to, remit to Buyer at the Closing (by wire transfer of immediately available funds to an account designated by Buyer at least three (3) days in advance of the Closing) all amounts paid to any Seller or Seller Entity by the counterparties with respect to any such New Exclusive Service Contract less (in the case of a New Exclusive Service Contract that has been in effect for at least one week prior to the Closing Date) a proportional amount of the moneys paid to any Seller or Seller Entity by the counterparty to such New Exclusive Service Contract prior to the Closing Date (based on the proportion of the period of the New Exclusive Service Contract that occurs between the commencement date thereof and the Closing Date to the entire period of such New Exclusive Service Contract). In the case of a New Exclusive Service Contract that has been in effect for at least one week prior to the Closing Date for which Buyer or any Affiliate of Buyer receives payment therefor following the Closing, Buyer shall promptly pay to the applicable Seller or the applicable Seller Entity (by wire transfer of immediately available funds to an account designated by such Seller or Seller Entity) a proportional amount of the moneys paid to Buyer or its Affiliates by the counterparty to such New Exclusive Service Contract after the Closing Date (based on the proportion of the period of the New Exclusive Service Contract that occurs between the commencement date thereof and the Closing Date to the entire period of such New Exclusive Service Contract).

(b) With respect to Multi-Year Exclusive Service Contracts, Sellers shall, and shall cause each other Seller Entity to, remit to Buyer at the Closing (by wire transfer of immediately available funds to an account designated by Buyer at least three (3) days in advance of the Closing) all amounts paid to any Seller or Seller Entity by the counterparties with respect to any such Multi-Year Exclusive Service Contract less a proportional amount of the moneys paid to any Seller or Seller Entity by the counterparty to such Multi-Year Exclusive Service Contract between the date hereof and the Closing Date with respect to Post Signing Periods (based on the proportion of the Post Signing Period that falls between the date hereof and the Closing Date to the overall Post Signing Period). In the case of a Multi-Year Exclusive Service Contract for which payment was due for Post Signing Periods for which Buyer or any Affiliate of Buyer receives payment therefor following the Closing, Buyer shall promptly pay to the applicable Seller or the applicable Seller Entity (by wire transfer of immediately available funds to an account designated by such Seller or Seller Entity) a proportional amount of such moneys with respect to Post Signing Periods (based on the proportion of the Post Signing Period that falls between the date hereof and the Closing Date to the overall Post Signing Period).

(c) Three (3) Business Days prior to the Closing Date, NNI and NNL shall deliver to Buyer a certificate listing (x) all New Exclusive Service Contracts and all Multi-Year Exclusive Service Contracts entered into prior to such date, (y) the amounts received by Sellers and the Seller Entities (if any) from third parties in connection with such New Exclusive Service Contracts and Multi-Year Exclusive Service Contracts entered into prior to such date, and (z) the amounts (if any) which have been retained by Sellers and the Seller Entities in connection with such New Exclusive Service Contracts and Multi-Year Exclusive Service Contracts pursuant to Sections 7.10(a) and (b). In the event of any changes with respect to the matters set forth in such certificate between the date thereof and Closing, NNI and NNL shall deliver an update to such certificate as promptly as practicable following Closing, and promptly pay (but in no event prior to the Closing) to Buyer any additional amounts received by Sellers or the Seller Entities between the date of the original certificate and the Closing Date or amounts otherwise excluded from the original certificate but received by a Seller Entity between the date hereof and the Closing Date that are payable to Buyer pursuant to Sections 7.10(a) and/or 7.10(b), subject to Sections 7.10(a) and 7.10(b).

(d) In the event that following the Closing any Seller or any other Seller Entity receives any payment in respect of a New Exclusive Service Contract or a Multi-Year Exclusive Service Contract, Sellers shall, and shall cause each other Seller Entity to, promptly pay to Buyer (by wire transfer of immediately available funds to an account designated by Buyer) a proportional amount of the moneys paid to Sellers or any other Seller Entity by the counterparty to such New Exclusive Service Contract or Multi-Year Exclusive Service Contract after the Closing Date (based on the proportion of the period of the New Exclusive Service Contract or Multi-Year Exclusive Service Contract that occurs between the commencement date thereof and the Closing Date to the entire period of such New Exclusive Service Contract or a Multi-Year Exclusive Service Contract).

(e) With respect to the New Exclusive Service Contracts and/or Multi-Year Exclusive Service Contracts that are assigned to Buyer or another Buyer Entity hereunder, in the event that the customer under such New Exclusive Service Contracts and/or Multi-Year Exclusive Service Contracts fails to make the required payments due thereunder within the time period for payment thereunder plus a period of thirty (30) days, nothing in this Agreement shall prevent Buyer from terminating such Contracts.

7.11 Israeli Withholding Tax Exemption Application and Approval. Prior to the date hereof, Buyer has filed an application with the Israel Tax Authority (the “ITA”) requesting a complete exemption of the Transactions from all applicable Israeli withholding Tax Laws (the “Israeli Withholding Tax Exemption Application”), which Israeli Withholding Tax Exemption Application shall correctly describe the Transactions in all material respects. Buyer shall use its commercially reasonable efforts to obtain approval of the Israeli Withholding Tax Exemption Application as promptly as practicable. Buyer shall promptly notify NNI of all requests for additional information or documentary material or otherwise from the ITA that Buyer receives with respect to the Israeli Withholding Tax Exemption Application, and consult with NNI with respect to any response thereto. Buyer shall promptly notify NNI upon obtaining the approval of the Israeli Withholding Tax Exemption Application. All Buyer’s expenses (including legal or tax advisory fees) with respect to the filing and receipt of approval of the Israeli Withholding Tax Exemption Application shall be borne solely by Buyer. NNI shall notify Buyer of any adjustment to the allocation of the Purchase Price among the Seller Entities required by any Bankruptcy Court, or other Governmental or Regulatory Body of competent jurisdiction, and Buyer shall promptly update the Israeli Withholding Tax Exemption Application so that such application correctly describes the Transactions, as so modified, in all material respects.

7.12 Subcontractors. Between the date hereof and the Closing Date, NNI shall, or shall cause Nortel India to, retain at its sole cost and expense, twenty (20) CSWL subcontractors (the “Retained Subcontractors”) through NNI’s or Nortel India’s agreement with CSWL. On the Closing Date, NNI or Nortel India, as applicable, shall terminate the engagement of the Retained Subcontractors and permit Buyer or its Affiliates to engage the services of the Retained Subcontractors directly with CSWL following the Closing. The individuals who are Retained Subcontractors shall be separately agreed between the parties.

7.13 Nonassignable Contracts. In the event any Business Contract cannot be assigned (whether pursuant to Section 365 of the U.S. Bankruptcy Code or, if inapplicable, then pursuant to other applicable Laws or the terms of such Contract), then as of the Closing, this Agreement, to the extent permitted by Law and the terms of such Business Contract, shall constitute a full and equitable assignment by the applicable Transferring Party to Buyer of all of the applicable Transferring Party’s right, title and interest in and to, and all of the applicable Transferring Party’s Liabilities under, such Business Contract, and Buyer shall be deemed the applicable Transferring Party’s agent for purpose of completing, fulfilling and discharging all of the applicable Transferring Party’s Liabilities thereunder. The parties shall take all necessary steps and actions to provide Buyer with the benefits of such Business Contract, and to relieve the applicable Transferring Party of the performance and other obligations thereunder (to the extent that such would have constituted “Assumed Liabilities” had such Business Contract been assigned to Buyer hereunder), including entry into subcontracts for the performance thereof. For the purposes of this Agreement (including the previous sentence and all representations and warranties of Sellers contained herein), the relevant Seller Entity shall be deemed to have obtained all required consents in respect of the assignment of any Business Contract if, and to the extent that, pursuant to the U.S. Sale Order, such Seller Entity is authorized to assume and assign to Buyer such Business Contract pursuant to Section 365 of the U.S. Bankruptcy Code and any applicable Cure Cost has been satisfied as provided in Section 2.7.

7.14 U.S. Bankruptcy Actions. On the timetables set forth below, Sellers shall cause the U.S. Debtors to (a) file with the U.S. Bankruptcy Court one or more motions and proposed orders covering the U.S. Debtors, each in form and substance reasonably satisfactory to Buyer, as set forth below, (b) cause the U.S. Debtors to notify, as required by the U.S. Bankruptcy Code and the U.S. Bankruptcy Rules, all parties entitled to notice of such motions and orders (including all relevant Taxing Authorities), as modified by orders in respect of notice which may be issued at any time and from time to time by the U.S. Bankruptcy Court, and such additional parties as Buyer may request, and (c) subject to the provisions of this Agreement, use commercially reasonable efforts to obtain U.S. Bankruptcy Court approval of such orders without any stay, modification, reversal or amendment adverse or unacceptable to Buyer.

7.15 U.S. Bidding Procedures Order. As promptly as possible, but in no event later than February 20, 2009, Sellers shall cause the U.S. Debtors to file with the U.S. Bankruptcy Court a motion (the "U.S. Bidding Procedures Motion") and a proposed order (the "U.S. Bidding Procedures Order") with related U.S. bidding procedures in the form of Annex 1 seeking approval of a process for the sale of the Business, as set forth below. Sellers shall cause the U.S. Debtors to use commercially reasonable efforts to cause the U.S. Bankruptcy Court to (a) schedule a hearing to consider the U.S. Bidding Procedures Motion as soon as possible and (b) enter the U.S. Bidding Procedures Order by February 27, 2009.

7.16 U.S. Sale Order.

(a) As promptly as possible, but in no event later than February 20, 2009, Sellers shall cause the U.S. Debtors to file with the U.S. Bankruptcy Court one or more motions (collectively, the "U.S. Sale Motion") and proposed orders (collectively, the "U.S. Sale Order") seeking the approval of the U.S. Bankruptcy Court pursuant to Sections 105, 363, 365 and (to the extent applicable) 1146 of the U.S. Bankruptcy Code of the transfers of the Acquired Assets to Buyer and the assumption by the U.S. Debtors and assignment to Buyer of the Assumed and Assigned Contracts, as specified below.

(b) The U.S. Sale Order shall contain the following provisions (it being understood that certain of such provisions must constitute findings of fact or conclusions of Law to be made by the U.S. Bankruptcy Court as part of the U.S. Sale Order):

(i) the transfers of the Acquired Assets and the assignment of the Assumed and Assigned Contracts by the U.S. Debtors to Buyer in accordance with this Agreement (A) are or will be legal, valid and effective transfers of such Acquired Assets and assignment of such Assumed and Assigned Contracts, as the case may be, (B) vest or will vest Buyer with all right, title and interest of the U.S. Debtors in and to the Acquired Assets pursuant to section 363(f) of the U.S. Bankruptcy Code free and clear of any and all Liens (other than Permitted Liens and Liens created by Buyer) and Claims whatsoever, whether known or unknown, fixed, liquidated, contingent or otherwise, including any Claims held by any of the U.S. Debtors' or their Affiliates' creditors, vendors, suppliers, employees or lessors, and any other Person (collectively, the "Claimants"), and that none of Buyer or its Affiliates shall be liable in any way (as assignee, successor entity or otherwise) for any Claims that any of the Claimants or any other third party may have against the U.S. Debtors, their Affiliates or the Business, or under any such Assumed and Assigned Contract, other than Claims on the account of Assumed Liabilities, and (C) constitute transfers for reasonably equivalent value and fair consideration under the U.S. Bankruptcy Code, the Laws of the States of New York and Delaware and all other applicable State Laws, including those relating to fraudulent conveyance and fraudulent transfers;

(ii) all amounts to be paid by the U.S. Debtors to Buyer or to be borne by any U.S. Debtors pursuant to this Agreement and each of the other Transaction Documents shall constitute administrative expenses under Sections 503(b) and 507(a)(1) of the U.S. Bankruptcy Code, and shall be immediately payable if and when any U.S. Debtors' obligation to pay or bear such amount may arise under this Agreement without any further order of the U.S. Bankruptcy Court;

(iii) the U.S. Bankruptcy Court retains exclusive jurisdiction to interpret, construe and enforce the provisions of, and to resolve any and all disputes that may arise under or in connection with the assumption and/or assignment of any Business Contracts under this Agreement and the U.S. Sale Order, in all respects, and further to hear and determine any and all disputes among Sellers, Sellers' Affiliates, Buyer or its Affiliates, as the case may be, and any non-Sellers party thereto that may arise under or in connection with (A) the assumption and/or assignment of any Assumed and Assigned Contract or (B) the Assumed Liabilities or Excluded Liabilities;

(iv) the provisions of the U.S. Sale Order are nonseverable and mutually dependent;

(v) the Transactions and the U.S. Sale Order are undertaken by Sellers and Buyer at arm's length, without collusion and in good faith within the meaning of Section 363(m) of the U.S. Bankruptcy Code, and such parties are entitled to the protections of Section 363(m) of the U.S. Bankruptcy Code;

(vi) a determination that approval of this Agreement and the U.S. Sale Order, and consummation of the Transactions, are in the best interests of the U.S. Debtors, their creditors and estates;

(vii) a determination that the terms and conditions of this Agreement and the Transactions, including the transfer of the relevant Acquired Assets free and clear of any and all Liens (other than Permitted Liens) and Claims, are fair and reasonable;

(viii) the U.S. Debtors may assign and transfer to Buyer all of the U.S. Debtors' right, title and interest (including common law rights) to all of their intangible property included in the Acquired Assets they each own, including the Assumed and Assigned Contracts to which they are a party, subject to their obtaining deemed consents to the extent required by applicable Law;

(ix) provides that any stay of orders authorizing the use, sale or lease of property, or the assignment of an executory Contract or unexpired lease as provided for in Bankruptcy Rules 6004(g) or 6006(d) shall not apply to the U.S. Sale Order and that the U.S. Sale Order is immediately effective and enforceable;

(x) provides that neither Buyer nor its Affiliates shall assume Liabilities of any U.S. Debtors or their Affiliates other than the Assumed Liabilities; and

(xi) approves the U.S. Debtors' assumption and assignment to Buyer of the Assumed and Assigned Contracts pursuant to Sections 363 and 365 of the U.S. Bankruptcy Code.

7.17 Consultation; Notification. Buyer and the U.S. Debtors shall cooperate with filing and prosecuting the U.S. Bidding Procedures Motion and the U.S. Sale Motion, and obtaining entry of the U.S. Bidding Procedures Order and the U.S. Sale Order, and the U.S. Debtors shall deliver to Buyer prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for Buyer and its counsel to review and comment, copies of all proposed pleadings, motions, objections, responses to objections, notices, statements schedules, applications, reports and other material papers to be filed by the U.S. Debtors in connection with such motions, relief requested therein and any challenges thereto. If the U.S. Sale Order or any other order of the U.S. Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing, reargument or stay shall be filed with respect thereto), the U.S. Debtors agree to take all commercially reasonable steps, and use commercially reasonable efforts, to defend against such appeal, petition or motion, and Buyer agrees to reasonably cooperate in such efforts. Each of the parties hereby agrees to use commercially reasonable efforts to obtain an expedited resolution of such appeal; provided, however, that nothing herein shall preclude the parties from consummating the transactions contemplated hereby if the U.S. Sale Order shall have been entered and have not been stayed and Buyer, in its reasonable judgment, has waived in writing the requirement that such U.S. Sale Order be a Final Order, in which event Buyer shall be able to assert the benefits of Section 363(m) of the U.S. Bankruptcy Code and, as a consequence of which, such appeal shall become moot.

7.18 Canadian Bankruptcy Actions. On the timetables set forth below, Sellers shall cause the Canadian Debtors to (a) file with the Canadian Court one or more motions and proposed orders covering the Canadian Debtors, as set forth below, (b) cause the Canadian Debtors to notify, as required by the CCAA and any orders of the Canadian Court made in the Bankruptcy Proceedings, all parties entitled to notice of such motions and orders, as modified by orders in respect of notice which may be issued at any time and from time to time by the Canadian Court, and (c) subject to the provisions of this Agreement, use commercially reasonable efforts to obtain Canadian Court approval of such orders without any stay, modification, reversal or amendment.

7.19 Sale Process Order. As promptly as possible, but in no event later than the date on which the U.S. Bidding Procedures Order is granted, Sellers shall cause the Canadian Debtors to file with the Canadian Court a motion (the "Sale Process Order Motion") and a proposed order (the "Sale Process Order") seeking approval of a process for the sale of the Business.

7.20 Approval and Vesting Order. As promptly as possible, but in no event later than the date on which the U.S. Sale Motion is granted, Sellers shall cause the Canadian Debtors to file with the Canadian Court one or more motions (the "Approval and Vesting Order Motion") seeking an order (the "Approval and Vesting Order") of the Canadian Court approving this Agreement and the transactions contemplated herein, such order to include the following:

- (a) the Transactions are approved, and that this Agreement is commercially reasonable and in the best interests of the Canadian Debtors and their stakeholders (it being recognized that such a determination is a finding of fact or conclusions of Law to be made by the Canadian Court as part of the Approval and Vesting Order);
- (b) the execution of the Agreement by NNL on behalf of all the Canadian Debtors is authorized and approved, and the Canadian Debtors are authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the transactions contemplated in this Agreement and for the conveyance of the Canadian Debtors' right, title and interest in the Acquired Assets to the Buyer;
- (c) all of the Canadian Debtors' right, title and interest in and to the Acquired Assets shall vest absolutely in the Buyer, free and clear of and from any and all Liens (other than Permitted Liens); and
- (d) the sale of the Acquired Assets is exempt from the application of the Bulk Sales Act (Ontario).

7.21 Consultation; Notification. Buyer and the Canadian Debtors shall cooperate with filing and prosecuting the Sale Process Order Motion and the Approval and Vesting Order Motion, and obtaining entry of the Sale Process Order and the Approval and Vesting Order Motion, and the Canadian Debtors shall deliver to Buyer prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for Buyer and its counsel to review and comment, copies of all proposed pleadings, motions, objections, responses to objections, notices, statements schedules, applications, reports and other material papers to be filed by the Canadian Debtors in connection with such motions, relief requested therein and any challenges thereto. If the Approval and Vesting Order or any other order of the Canadian Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing, reargument or stay shall be filed with respect thereto), the Canadian Debtors agree to take all commercially reasonable steps, and use commercially reasonable efforts, to defend against such appeal, petition or motion, and Buyer agrees to reasonably cooperate in such efforts. Each of the parties hereby agrees to use commercially reasonable efforts to obtain an expedited resolution of such appeal; provided, however, that nothing herein shall preclude the parties from consummating the transactions contemplated hereby if the Approval and Vesting Order shall have been entered and have not been stayed.

7.22 Conflict Between this Agreement and the Bidding Procedures Order. Notwithstanding anything to the contrary in this Agreement, (a) in the event of any inconsistency with or conflict between this Agreement and the U.S. Bidding Procedures Order, the U.S. Bidding Procedures Order shall control and (b) in no event shall any Seller's (or its Affiliate's) compliance with the U.S. Bidding Procedures Order constitute a breach of this Agreement.

7.23 Notice of Cure Costs. The Main Sellers shall promptly notify Buyer in writing if the Main Sellers reasonably believe that the aggregate Cure Costs are likely to exceed \$1,000,000 and offer the Buyer the opportunity to pay all such Cure Costs in excess of \$1,000,000. Buyer shall have a period of five (5) Business Days to inform Seller whether it is willing to pay such Cure Costs in excess of \$1,000,000 in the aggregate, and provide reasonable assurance thereof.

ARTICLE VIII.
CONDITIONS PRECEDENT TO CLOSING

8.1 Conditions Precedent to the Obligations of Buyer. The obligations of Buyer to effect the Transactions, purchase and pay for the Acquired Assets and EMEA Acquired Assets, and assume the Assumed Liabilities and EMEA Assumed Liabilities are subject to the fulfillment on or prior to the Closing of the following conditions, any one or more of which may be waived by Buyer:

(a) Representations. The representations and warranties of Sellers set forth in Article V shall be true and correct as of the date of this Agreement and as of the Closing Date as if made as of the Closing Date, except (i) for those representations and warranties that address matters only as of a date prior to the execution of this Agreement (which shall be true and correct as of such date, subject to clause (ii) below), and (ii) where the failure of the representations and warranties to be true and correct would not reasonably be expected to result, in the aggregate, in a Business Material Adverse Effect (it being agreed that any materiality or Business Material Adverse Effect qualification in a representation and warranty shall be disregarded in determining whether any such failure would reasonably be expected to result in a Business Material Adverse Effect for purposes of this clause (ii)).

(b) Covenants. Sellers shall have performed or complied in all material respects with all obligations and covenants required by this Agreement and the other Transaction Documents to be performed or complied with by Sellers at or prior to the Closing, except in each case to the extent that any such non-compliance arises out of a request made by Buyer in writing which expressly waives compliance with a particular covenant.

(c) Law. No Law, temporary restraining order, preliminary or permanent injunction, cease and desist order or other Order issued by any Governmental or Regulatory Body prohibiting or preventing the purchase and sale contemplated by this Agreement or the consummation of the Transactions to be effected at the Closing shall be in effect.

(d) Consents and Approvals. All notices, consents and approvals of Governmental or Regulatory Bodies set forth on Schedule 8.1(d) shall have been made or obtained, as applicable.

(e) Closing Certificate. The Main Sellers shall have delivered to Buyer a certificate, dated the Closing Date, and signed by an authorized officer of each Main Seller, in substantially the form attached hereto as Exhibit M (the “Sellers Closing Certificate”), with respect to the satisfaction of the conditions specified in Section 8.1(a) and Section 8.1(b) and containing and certifying as to the information set forth in Section 3.1(b) and 7.10(c).

(f) Seller Closing Deliveries. Buyer shall have received:

(i) Bills of Sale (in the applicable form) executed by the applicable Seller Entities covering (i) Business Tangible Property, EMEA Tangible Property, Business Inventory and EMEA Inventory with an aggregate value equal to or exceeding ninety-five percent (95%) of the aggregate value, in U.S. Dollars, of the Tangible Business Property, EMEA Tangible Property, Business Inventory and EMEA Inventory set forth on the certificate delivered by the Main Sellers pursuant to Section 3.1(b) (excluding from such calculation, for the sake of clarity, all EMEA Inventory and EMEA Tangible Property excluded from the sale and purchase hereunder pursuant to the provisions of Section 2(b) of Exhibit P) and (ii) all Business Intellectual Property, Prior IP, EMEA Business Intellectual Property and EMEA Prior IP;

(ii) Assignment and Assumption Agreements (in the applicable form) executed by the applicable Seller Entities with respect to the United States, Canada and the United Kingdom; and

(iii) counterpart signature pages executed by the applicable Seller Entities to the IP License Agreement, the Master Purchase Agreement, the Transition Services Agreement, the Trademark License Agreement, the Patent Assignment Agreement, the Contract Manufacturer Inventory Agreement, the Trademark Assignment Agreement and the Interim Product Purchase Agreement.

(g) Delivery of Certain Items. NNI shall have delivered to Buyer, in form reasonably acceptable to Buyer, the databases set forth on Schedule 8.1(g).

(h) Bankruptcy Orders. Each of the U.S. Bidding Procedures Order, the U.S. Sale Order, the Sale Process Order and the Approval and Vesting Order shall (i) have been entered and (ii) have become Final Orders.

(i) Export Licenses. To the extent that any Governmental Authorizations are necessary to assign the Business Intellectual Property to Buyer and/or its Affiliates, Sellers shall have received all such necessary Governmental Authorizations.

8.2 Conditions Precedent to the Obligations of Sellers. The obligations of Sellers to effect the Transactions and sell and deliver the Acquired Assets to Buyer are subject to the fulfillment on or prior to the Closing of the following conditions, any one or more of which may be waived by the Main Sellers:

(a) Representations. The representations and warranties of Buyer set forth in Article VI shall be true and correct as of the date of this Agreement and as of the Closing Date as if made as of the Closing Date, except (i) for those representations and warranties that address matters only as of a date prior to the execution of this Agreement (which shall be true and correct as of such date, subject to clause (ii) below), and (ii) where the failure of the representations and warranties to be true and correct would not reasonably be expected to result, in the aggregate, in a Buyer Material Adverse Effect (it being agreed that any materiality or Buyer Material Adverse Effect qualification in a representation and warranty shall be disregarded in determining whether any such failure would reasonably be expected to result in a Buyer Material Adverse Effect for purposes of this clause (ii)).

- (b) Covenants. Buyer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement and the other Transaction Documents to be performed or complied with by Buyer at or prior to the Closing, except in each case to the extent that any such non-compliance arises out of a request made by a Seller in writing which expressly waives compliance with a particular covenant.
- (c) Law. No Law, temporary restraining order, preliminary or permanent injunction, cease and desist order or other Order issued by any Governmental or Regulatory Body prohibiting or preventing the purchase and sale contemplated by this Agreement or the consummation of the Transactions to be effected at the Closing shall be in effect.
- (d) Consents and Approvals. All notices, consents and approvals of Governmental or Regulatory Bodies set forth on Schedule 8.2(d) shall have been made or obtained, as applicable.
- (e) Closing Certificate. Buyer shall have delivered to the Main Sellers a certificate, dated the Closing Date, and signed by an authorized officer of Buyer, in substantially the form attached hereto as Exhibit N (the "Buyer Closing Certificate"), with respect to the satisfaction of the conditions specified in the conditions specified in Section 8.2(a) and Section 8.2(b).
- (f) Buyer Closing Deliveries. Buyer shall have delivered to the Main Sellers or the Escrow Agent, as the case may be, (i) the Purchase Price as specified in Section 4.3(a) and (ii) executed counterpart signature pages of Buyer (or its Affiliates) to the IP License Agreement, the Master Purchase Agreement, the Transition Services Agreement, the Trademark License Agreement, the Patent Assignment Agreement, the Contract Manufacturer Inventory Agreement, Assignment and Assumption Agreements (solely with respect to the United States, Canada and the United Kingdom), the Trademark Assignment Agreement and the Interim Product Purchase Agreement).
- (g) Israeli Tax Withholding Exemption. Buyer shall have obtained and provided the Main Sellers with a copy of the ITA's approval of the Israeli Withholding Tax Exemption Application, which approval shall be final and binding on the ITA.
- (h) Export Licenses. To the extent that any Governmental Authorizations are necessary to assign the Business Intellectual Property to Buyer and/or its Affiliates, Sellers shall have received all such necessary Governmental Authorizations.
- (i) Bankruptcy Orders. Each of the U.S. Bidding Procedures Order, the U.S. Sale Order, the Sale Process Order and the Approval and Vesting Order shall (i) have been entered and (ii) have become Final Orders.

ARTICLE IX.
ONGOING COVENANTS

9.1 **Tax Matters.**

(a) (i) All sums payable under this Agreement shall be exclusive of Transfer Taxes (as defined below). Subject to Section 9.1(a)(iii) and Section 9.1(a)(iv), Buyer, on the one hand, and Sellers, on the other, shall each be responsible for 50% of all goods and services, sales, use, transfer, documentary, VAT, value added, stamp, recording and similar Taxes incurred in connection with the purchase and sale of the Acquired Assets and EMEA Acquired Assets (for the avoidance of doubt, including interest and penalties but excluding any Income Taxes) ("Transfer Taxes"); provided, that Buyer shall be responsible for 100% of the portion of such Transfer Taxes as to which Buyer and NNI in good faith determine it is reasonably expected that Buyer will receive a refund, rebate, credit or similar amount (a "Transfer Tax Refund") (where the Transfer Tax in question is VAT or any similarly computed value added tax, on the assumption that Buyer is registered for VAT in the jurisdiction in which the relevant supply of the EMEA Acquired Assets takes place and that Buyer has paid to the EMEA Seller the VAT charged to it by such EMEA Seller in respect of the acquisition of the EMEA Acquired Assets without regard to this Section 9.1(a)(i)). Buyer (or Sellers or their Affiliates, in the case of Transfer Taxes required to be collected, remitted or paid by Sellers or their Affiliates) shall timely pay or cause to be paid any Transfer Taxes to the applicable Taxing Authority. Buyer or Sellers or their Affiliates, as applicable, shall reimburse such paying party its share of such Transfer Taxes, if any, as determined pursuant to the foregoing, within seven (7) Business Days of receipt of a reimbursement request from the paying party; provided, that such reimbursement need not be paid prior to three (3) Business Days before such Transfer Tax is required to be paid to the Taxing Authority. Buyer or Sellers, as applicable, shall promptly provide to the other party sufficient documentation evidencing payment of any Transfer Taxes. Disputes with respect to the amount of Transfer Taxes due will be referred to an accounting firm jointly selected and engaged by Buyer and NNI for resolution. The fees of such accounting firm shall be borne by the party who in the opinion of such accounting firm had the position which was more erroneous.

(ii) Notwithstanding clause (a)(i) above, Buyer shall be responsible for 100% of any Transfer Taxes incurred in connection with the purchase and sale of the Acquired Assets and EMEA Acquired Assets (A) as a result of Buyer's failure to obtain any necessary state sales and use tax permits, timely deliver any necessary resale certificates, or otherwise take any action that would result in an exemption relating to, or a reduced rate of, such Transfer Taxes and (B) for any Transfer Taxes that are interest or penalties, to the extent that the interest or penalties arise in respect of an amount of Transfer Tax that the Buyer is required pursuant to sections 9.1 (a) (i) or (iv) to pay to a Taxing Authority or any Seller or Affiliate of the Seller where the Buyer has failed to pay such Transfer Taxes within the time limits envisaged in Section 9.1(a) (i) or (iv). Buyer or its Affiliate shall be solely responsible for ensuring that any exemption relating to, or a reduced rate of, Transfer Taxes in connection with the transactions contemplated herein applies and, in that regard, shall, prior to the Closing Date, provide Sellers and/or any of their Affiliates, as the case may be, with its permit number and/or any appropriate certificate of exemption and/or other document or evidence to support the claimed entitlement to such exemption by such party or an Affiliate thereof. NNI will make commercially reasonable efforts to provide Buyer with information requested by Buyer that is necessary for Buyer to obtain permits or certificates exempting any or all of the Transactions in whole or part from Transfer Taxes.

(iii) Sellers' obligations pursuant to this Section 9.1(a) shall be based on the Asset Allocation Schedule as of the Closing Date. Notwithstanding anything to the contrary in this Section 9.1(a), in the event that the Asset Allocation Schedule is changed or modified after the Closing Date in accordance with Section 3.2, Buyer (or its Affiliate, as applicable) shall promptly pay directly to the appropriate Taxing Authority or the applicable Seller or Seller's Affiliate (if requested by such Seller or Seller's Affiliate) any Transfer Taxes that may be due as a result of such change or modification.

(iv) Where a sum is paid pursuant to this Agreement in consideration for any supply (or deemed supply) of goods or services the payor shall, in addition to the consideration payable for such supply, pay an amount equal to the VAT (if any) arising in respect of such supply against the production of a valid VAT invoice. Where and to the extent that the Transfer Taxes described in Section 9.1(a) are VAT, Section 9.1(a) shall apply save that the Buyer shall pay or shall procure that the relevant Affiliate shall pay an amount equal to 100% of such VAT to the Seller or relevant Affiliate against the production of a valid VAT invoice. The Sellers or their Affiliates shall then reimburse the Buyer or its Affiliates, as required, in accordance with Section 9.1(a)(i).

(b) If Buyer or any Affiliate of Buyer is required by Law to make any deduction or withholding for any Tax with respect to any consideration payable hereunder, the consideration payable hereunder shall be increased to an amount that, after such deduction or withholding, will result in payment to Sellers or any of their Affiliates of the full amount Sellers or such Affiliates would have received from Buyer had such deduction or withholding not been made. Buyer shall promptly furnish Sellers with such evidence as may be required by the applicable taxing authorities to establish that any such Tax has been paid.

(c) Sellers and Buyer will each provide the other with such assistance as may reasonably be requested in connection with the preparation of any Tax Return relating to the Business.

9.2 Record Retention. In the event that Buyer or any Seller desires to destroy or otherwise dispose of any of the books and records relating to the Acquired Assets or the Assumed Liabilities in its possession with respect to periods prior to the Closing within one (1) year of the Closing Date, such party shall give Buyer (in the event that it is a Seller that wishes to destroy or dispose of any such books or records) or the Main Sellers (in the event that it is Buyer that wishes to destroy or dispose of any such books or records) twenty (20) Business Days' prior written notice of such intended disposition and by offering to deliver to the other party, at the other party's expense, custody of such books and records as such first party may intend to destroy or dispose of.

9.3 Use of Names.

(a) Except as set forth on Schedule 2.1(d), no interest in any Marks of any Seller or any of its Affiliates is being transferred or assigned (or, except as set forth in the Trademark License Agreement, licensed) to Buyer or any subsidiary of Buyer pursuant to the Transactions. Except as may be expressly permitted pursuant to the Trademark License Agreement (including, for the sake of clarity, in the case of Products purchased pursuant to Section 9.10), Buyer will, within thirty (30) days following the Closing Date, remove or obliterate all such Marks from the signs, purchase orders, invoices, sales orders, labels, letterheads, shipping documents, business cards and other materials included in the Acquired Assets, and Buyer shall not, and shall not permit its subsidiaries to, put into use after the Closing Date any such materials not in existence on the Closing Date that bear any Mark; provided, that if such materials are used by Buyer or any of its subsidiaries during such thirty (30) day period, Buyer shall, and shall cause its subsidiaries to, conspicuously note thereon that ownership of the Business has transferred to Buyer. Except to the extent expressly set forth elsewhere in this Agreement or in another Transaction Document, nothing in this Agreement shall give Buyer permission, without the prior written consent of NNI in each instance, to use in advertising, publicity or otherwise the name of any Seller or any of its Affiliates or any Mark owned or used by any Seller or any of its Affiliates.

(b) Each Seller hereby covenants and agrees (i) that (x) if such Seller has a corporate name containing the Mark "alteaon", it will, and (y) such Seller will cause any Affiliate of such Seller (other than another Seller) that has a corporate name containing the Mark "alteaon" to, in either case remove "alteaon" from such corporate name(s), within thirty (30) days of the Closing Date (in the case of U.S.-organized Sellers and Affiliates) and as soon as reasonably practicable following the Closing (in the case of non-U.S. organized Sellers and Affiliates) through the use of commercially reasonable efforts; and (ii) notwithstanding the period set forth in Section 9.3(b)(i), from and after the Closing, Sellers shall not conduct, and each Seller shall prevent any such Affiliate from conducting, any commercial activity under or in connection with a corporate name containing "alteaon." Buyer hereby grants to each Seller and Affiliate thereof described in the preceding sentence a fully paid up, worldwide, personal, non-transferable and non-assignable, indivisible and non-exclusive right to use the Mark "alteaon" as part of its corporate name during the period set forth in the preceding sentence.

9.4 Further Information.

(a) Following the Closing, Buyer will afford to Sellers, their counsel and their accountants, during normal business hours, reasonable access to the books and records relating to the Business, Acquired Assets or the Assumed Liabilities in its possession with respect to periods after the Closing and the right to make copies and extracts therefrom, to the extent that such access may be reasonably required by the requesting party (i) to facilitate the investigation, litigation and final disposition of any claims that may have been or may be made against any Seller or its Affiliates or (ii) for any other reasonable business purpose.

(b) Without limiting the generality of Section 9.4(b), following the Closing, Buyer shall (i) provide each Seller with such assistance and cooperation as may be reasonably requested by such Seller and (ii) make available to each Seller and its legal counsel, during normal business hours, any of the Transferring Employees who were involved in, or are otherwise knowledgeable about, pre-Closing matters, including making such Transferring Employees available on a mutually convenient basis to provide information, testimony at depositions, hearings or trials, and such other similar assistance as may be reasonably requested by such Seller.

(c) The applicable Seller shall reimburse Buyer for reasonable out-of-pocket costs and expenses incurred in assisting such Seller pursuant to this Section 9.4. Buyer shall not be required by this Section 9.4 to take any action that would unreasonably interfere with the conduct of its business, unreasonably disrupt its normal operations or materially impair a Transferring Employee's ability to perform his or her duties.

9.5 Mistaken Payments. Following the Closing Date:

(a) if any Seller or any of its Affiliates receives any payment, refund or other amount that is an Acquired Asset, such Seller shall or shall cause such Affiliate to, within thirty (30) days of becoming or being made aware of such payment, remit, or shall cause to be remitted, such amount to Buyer; and

(b) if Buyer receives any payment, refund or other amount that is an Excluded Asset, Buyer shall, within thirty (30) days of becoming or being made aware of such payment, remit, or shall cause to be remitted, such amount to the applicable Seller or Affiliate thereof.

9.6 Sellers Vendor Contracts. Buyer acknowledges and agrees that the supply contracts, software contracts, tooling contracts and other Contracts of any Seller and/or its Affiliates that are not exclusive to the Business are not being assigned to Buyer hereunder. Accordingly, Buyer agrees that it is responsible for directly entering into a Contract with the applicable vendors (including original equipment manufacturers) to obtain parts for, or products included in, or used in connection with producing or selling, the Products that any Seller or its Affiliates currently obtain from third parties pursuant to the supply contracts, software contracts, tooling contracts and other Contracts of any Seller and/or its Affiliates that are not exclusive to the Business.

9.7 Manufacturer Warranties. If due to lack of contractual privity or similar legal theory, Buyer after the Closing is not able to enforce a warranty claim against the third party supplier, manufacturer or contractor of Business Inventory, Products purchased by Buyer pursuant to Section 9.10, Business Tangible Property and/or products in respect of which Buyer is obligated to fulfill warranty obligations pursuant to the Master Purchase Agreement, Sellers shall, or shall cause their Affiliates to, use commercially reasonable efforts to (x) cause Buyer to be the direct beneficiary of such warranties or (y) if unable to cause Buyer to be the direct beneficiary of such warranties, assist Buyer in obtaining the benefits of such warranties. If Sellers' or their Affiliates' warranty rights with respect to such Business Inventory, Product purchased by Buyer pursuant to Section 9.10, Business Tangible Property and/or products pursuant to the Contract between Sellers or the applicable Affiliate of Sellers are assignable, Sellers shall take commercially reasonable steps to assign such benefits to Buyer with respect to such Business Inventory, Product purchased by Buyer pursuant to Section 9.10, Business Tangible Property and products, and in the event Sellers are unable to make such assignment, Sellers shall cause Buyer to receive the benefit of such warranties by assisting Buyer in obtaining the benefits of such warranties. Sellers' obligations under this Section 9.7 shall terminate at the end of twelve (12) months following the Closing Date; Sellers shall have no obligations under this Section 9.7 in respect of Business Inventory, Products purchased by Buyer pursuant to Section 9.10, Business Tangible Property and/or products in respect of which Buyer is obligated to fulfill warranty obligations pursuant to the Master Purchase Agreement for which the relevant suppliers, manufacturers' or contractors' warranties have terminated or expired or where Sellers or their Affiliates have not purchased such warranties.

9.8 **Business Contracts.** Except as expressly provided in Section 7.9, but notwithstanding else anything herein to the contrary, the parties agree that no Seller or Affiliate of any Seller shall have any responsibility to seek or obtain, and there shall be no condition to Closing under Section 8.1 with respect to, any consent or approval from any Person with respect to or under any Business Contracts or EMEA Business Contracts, in connection with the assignment of such Contracts to Buyer or with respect to Buyer's performance under certain Contracts not assigned to Buyer which are the subject of the Master Purchase Agreement. Immediately following the Closing, Buyer and the applicable Seller Entity shall send a joint acknowledgement letter to each counterparty to a Business Contract or EMEA Business Contract notifying such counterparty of the consummation of the Transactions and that all requests relating to the Business Contracts thereafter should be directed to Buyer.

9.9 **Destruction of Materials not Related to the Business.** Buyer agrees that, within thirty (30) days of the Closing, it will ensure that all information and materials of any Seller and/or its Affiliates that are in the possession of the Transferring Employees but that are not included within the scope of the Acquired Assets or EMEA Acquired Assets are (as directed by Sellers) either destroyed or returned to the applicable Seller or Affiliate thereof, and that no Transferring Employee retains a copy thereof or extract or summary therefrom.

9.10 **Return of Products.** In the event that, during the six (6) month period following the Closing, any distributor, reseller or other channel partner of any Seller or its Affiliates returns or seeks to return Products delivered to such distributor, reseller or other channel partner prior to the Closing Date (either to any Seller or its Affiliates or to Buyer) pursuant to the terms of the sales agreement pertaining to such Product or such other Contract as may govern such return, Buyer shall purchase, accept and receive such Products, from such Seller, its Affiliate or the applicable distributor, reseller or other channel partner, as the case may be; provided, that Buyer shall not be obligated to purchase returned Products pursuant to this sentence after such time as Buyer shall have purchased returned Products with a value (as determined in accordance with the next sentence) of seven hundred thousand dollars (\$700,000) in the aggregate; provided, further, that Buyer shall only be obligated to purchase returned Products that have originally been shipped by a Seller or its Affiliates to the relevant channel partner within six (6) months of the date on which such Product is returned. Buyer's purchase price for such returned Products (and the value used for determining the amount of Products Buyer is required to purchase pursuant to the preceding sentence) shall be equal to the price that Buyer then pays its relevant contract manufacturer or to the applicable Seller or Affiliate pursuant to the relevant contract manufacturing agreement, as the case may be, for the corresponding Product. Such payment shall be made in cash to the applicable Seller, its Affiliate or the applicable distributor, reseller or other channel partner, as the case may be, within thirty (30) days of the date on which such Products are received by Buyer or such longer period as may be permitted by the applicable contract.

9.11 **Redirection of Customers.** Following the Closing, in the event a customer of the Business contacts a Seller or its Affiliates (by telephone, electronic mail, written correspondence or otherwise) regarding the provision of services under a Business Contract, such Seller shall, and shall cause its Affiliates to, use commercially reasonable efforts to promptly redirect or otherwise forward such customer and communication to Buyer's technical support services.

9.12 **Business Tangible Property Containing Third Party Software.** In the event of a termination or expiration of the Transition Services Agreement, or the occurrence of the date specified in the Transition Services Agreement for the transfer of legal title to such Business Tangible Property to Buyer, with respect to Business Tangible Property containing Restricted Software, Buyer hereby agrees (i) to obtain any necessary licenses to any such software and (ii) until Buyer has obtained such licenses, not to use any such Business Tangible Property in any manner that could cause any Seller or its Affiliates to be in breach of any obligation to the licensor of such Restricted Software.

9.13 **Cooperation Regarding Financial Statements; Provision of Additional Information.**

(a) For a period of three (3) months following the Closing Date, in the event separate financial statements with respect to the Business for periods from and after January 1, 2007 but prior to the Closing Date are deemed to be necessary by Buyer's accountants or required under applicable securities Laws or other reporting requirements, the Main Sellers agree that they shall, upon the reasonable request of Buyer, (i) assist and cooperate with Buyer in the production of such separate financial statements and (ii) permit Buyer and Buyer's accountants, agents and representatives to have reasonable access, in accordance with Section 9.4(a) (*mutatis mutandis*), to the books and records pertaining to the Business during periods from and after January 1, 2007 but prior to the Closing which have been retained by Sellers and their Affiliates. Buyer's rights under this Section 9.13(a) are in addition to its rights pursuant to Section 9.15.

(b) For a period of three (3) months following the Closing Date, Sellers shall, and shall cause their Affiliates to, at all reasonable times upon the prior written request of Buyer, provide Buyer with access to the information, records, files, books and documents reasonably related to the Business, the Products, the Acquired Assets or the Assumed Liabilities which are retained by Sellers or their Affiliates at Closing and not transferred to Buyer pursuant to Section 2.1, to the extent necessary for Buyer to operate the Business following the Closing (without duplication of Section 9.13(a)); provided, that the applicable Seller or Affiliate shall be entitled to redact those portions of such materials that in no way relate to the Business, the Products, the Acquired Assets or the Assumed Liabilities; and provided, further, that no Seller or Affiliate thereof shall be required to provide Buyer with any of the foregoing or access thereto to the extent not permitted pursuant to the terms of applicable Law or applicable contractual obligations of any Seller or its Affiliates. Any information, records, files, documents and/or Contracts that any Seller or Affiliate thereof provides to Buyer (or provides Buyer access to) pursuant to this Section 9.13(b) shall constitute Seller Confidential Information and be subject to the provisions of Section 9.14.

(c) Buyer shall reimburse each Seller and its Affiliates for all reasonable out-of-pocket costs and expenses incurred by such Seller and its Affiliates in assisting Buyer pursuant to this Section 9.13. Neither any Seller nor its Affiliates shall be required by this Section 9.13 to take any action or provide Buyer or its accountants, agents or representatives with access to records, if such would unreasonably interfere with the conduct of its business or unreasonably disrupt the normal operations of such Seller or its Affiliates.

9.14 Confidentiality.

(a) Each Seller shall, and shall cause its Affiliates to, keep confidential in accordance with such Seller's standards for protecting its own confidential information, and shall not use or disclose to any other Person (other than its Affiliates and its and their officers, directors, employees, agents and representatives), any Business Confidential Information, except as permitted by this Agreement. Each Seller shall only disclose Business Confidential Information to its or its Affiliates' officers, directors, employees, agents, auditors, lenders, consultants and other representatives who are legally bound by a confidentiality obligation to a Seller or its Affiliates no less protective of the Business Confidential Information than that contained in this Section 9.14 and who have a bona fide need to access the Business Confidential Information consistent with Sellers' rights under this Agreement.

(b) Each Seller shall, and shall cause its Affiliates to, keep confidential in accordance with such Seller's standards for protecting its own confidential information, any Non-Exclusive Confidential Information; provided, that nothing in this Agreement shall prevent or limit in any way whatsoever the right of a Seller or its Affiliates to utilize or disclose the Non-Exclusive Confidential Information, without need to obtain consent therefor from Buyer, or otherwise impose obligations on such Seller or its Affiliates in respect of Non-Exclusive Confidential Information other than what such Seller or its Affiliates would otherwise undertake for Seller Confidential Information.

(c) Buyer shall, and shall cause its Affiliates to, keep confidential in accordance with Buyer's standards for protecting its own confidential information, and shall not use or disclose to any other Person (other than its Affiliates and its and their officers, directors, employees, agents and representatives), any Seller Confidential Information, except as permitted by this Agreement. Buyer shall only disclose Seller Confidential Information to its or its Affiliates' officers, directors, employees, agents, auditors, lenders, consultants and other representatives who are legally bound by a confidentiality obligation to Buyer or its Affiliates no less protective of the Seller Confidential Information than that contained in this Section 9.14 and who have a bona fide need to access the Seller Confidential Information consistent with Buyer's rights under this Agreement.

(d) Notwithstanding anything to the contrary in this Section, any party may disclose Confidential Information:

- (i) if and to the extent such Confidential Information is required by subpoena or Order to be disclosed;
- (ii) to a Governmental or Regulatory Body;
- (iii) pursuant to any Bankruptcy Proceeding;
- (iv) to the extent such disclosure is otherwise required by applicable Law or requirement of any stock exchange on which the shares or stock of the Person in question are listed;
- (v) in connection with a party's exercise and enforcement of any rights or remedies provided under this Agreement; or
- (vi) to the extent such disclosure is required for financial or tax reporting purposes of the applicable party or its Affiliates.

(e) If any Person is requested or required (by subpoena, court order or similar process) to disclose any Confidential Information as provided in Section 9.14(d)(i), or intends to disclose any Confidential Information as provided in Section 9.14(d)(iii), the Person from which the disclosure is sought or who intends to make such disclosure shall (i) provide the other parties with prompt written notice of such request or requirement and (ii) make reasonable efforts to cooperate with the applicable party so that such party may seek a protective order or other appropriate remedy or protection. If such protective order or other remedy or protection is not obtained, or the applicable party waives compliance with the provisions of this Agreement, the Person from which the disclosure is sought shall use reasonable efforts to disclose only that portion of the Confidential Information that is legally requested or required to be disclosed.

(f) Nothing in this Section 9.14 shall prevent Sellers or their Affiliates from disclosing either Business Confidential Information or Non-Exclusive Confidential Information to other prospective purchasers of the Business that have executed a confidentiality agreement with a Seller or an Affiliate thereof.

9.15 **Delivery of Audited Financial Statements.** Within six (6) months of the Closing Date, Buyer may, in its sole discretion, deliver written notice to the Main Sellers (the "Audit Notice") requiring Sellers to use their commercially reasonable efforts to cause to be prepared and delivered to Buyer audited statements of the balance sheet of the Historical Velocity Business, as of December 31, 2008 and December 31, 2007, and related audited statements of income and cash flows of the Historical Velocity Business for the fiscal years ended December 31, 2008 and December 31, 2007, together with notes thereon and the reports thereon of KPMG LLP, Sellers' independent certified public accountants (collectively, the "Audited Financial Statements"). The Audited Financial Statements shall be prepared utilizing the same financial allocations, judgments and assumptions as are noted in the Pro Forma Financial Statements and accompanying notes and/or Schedules 5.5(b) or 5.5(c). Further, it is understood and agreed that (i) the Audited Financial Statements will be prepared in accordance with carve-out accounting guidelines as promulgated by the SEC and that are consistent with U.S. GAAP, (ii) such carve-out accounting guidelines have not been applied to the Pro Forma Financial Statements, and (iii) any differences between the Pro Forma Financial Statements and the Audited Financial Statements arising out of or related to the application of such carve-out accounting guidelines to the Audited Financial Statements and/or any modifications that would have been made to the Pro Forma Financial Statements had such carve-out accounting principles been utilized therefor (including as a result of corporate and other allocations, such as goodwill and other intangibles) shall not be the basis for any claim against any Seller by Buyer or any of its Affiliates. Buyer shall provide Sellers with all necessary and appropriate cooperation with respect to Sellers' preparation of the Audited Financial Statements. Following Buyer's request for preparation and audit of the Audited Financial Statements, Sellers shall (i) promptly engage independent experts to prepare and audit the Audited Financial Statements, (ii) promptly respond to requests for information from such independent experts and (iii) keep Buyer reasonably informed regarding the status of the preparation and audit the Audited Financial Statements. Buyer shall promptly reimburse Sellers for all documented third-party costs and expenses incurred by Sellers in the preparation and audit of the Audited Financial Statements. No Seller shall be required by this Section 9.15 to take any action that would unreasonably interfere with the conduct of its business or unreasonably disrupt its normal operations.

9.16 Employee Related Agreements. Exhibit Q sets forth certain agreements of the parties with respect to employment matters.

9.17 Co-operation with Respect to Transferring Employees. Buyer and the applicable Seller Entity shall cooperate from and after the approval of the U.S. Sale Order and the Approval and Vesting Order with each other (and shall cause their respective Affiliates to cooperate with the others and their Affiliates): (a) with respect to Employment Offers and in implementing the transition of coverage of Transferring Employees from the Nortel Employee Plans to Buyer Employee Plans and (b) to provide for an orderly transition of the Transferring Employees to Buyer or its Affiliates, as applicable, and to minimize the disruption to the respective businesses of any Seller and its Affiliates and Buyer and its Affiliates resulting from the Transactions; provided, that in no event shall Buyer or its Affiliates or its or their representatives contact in any way any Business Employee with respect to any employment offer or otherwise prior to the later of (x) the approval of the Approval and Vesting Order and (y) the approval of the U.S. Sale Order, except as expressly authorized in writing by the Main Sellers prior to such contact. All such contacts by Buyer or its Affiliates shall be in accordance with applicable Law.

9.18 Protection of Personal Data. With respect to the data relating to Business Employees set forth in the Schedules, including any revisions thereto, Buyer undertakes that such personal data shall be held in confidence and that:

- (a) Buyer shall restrict the disclosure of such personal data to such of their employees, agents and advisors as is reasonably necessary to give effect to the Transactions;
- (b) except as permitted pursuant to Section 9.18(a), personal data shall not be disclosed to any Person (including, for the avoidance of doubt, any other employee of Buyer) without the consent of NNI, such consent not unreasonably to be withheld; and
- (c) personal data shall be returned to the applicable Seller or destroyed if this Agreement is terminated. Disclosure shall only be made in accordance with applicable Law.

9.19 **Non-Solicitation of Employees by Buyer.** Prior to the end of the twelve (12) months following the execution of this Agreement, Buyer shall not, and shall cause its Affiliates to not, except with NNI's prior written consent, solicit for employment or hire: (i) any Business Employee who does not accept an offer of employment with Buyer or an Affiliate of Buyer or (ii) any other employee of any Seller or its Affiliates with whom Buyer or its Affiliates have had direct contact in connection with the preparation, negotiation and execution of this Agreement and/or the other Transaction Documents; provided, that Buyer and/or its Affiliates shall not be prohibited from soliciting or hiring any person described in this Section 9.19 (x) pursuant to a general mass solicitation of employment not specifically directed toward employees of any Seller and/or its Affiliates or (y) who has been terminated by any Seller or its Affiliates.

9.20 **Non-Solicitation of Transferring Employees by Sellers.** Prior to the end of the twelve (12) months following the execution of this Agreement, Sellers shall not, and shall cause their Affiliates not to, except with Buyer's prior written consent, solicit for employment or hire (i) any Transferring Employees or (ii) any employee of Buyer or its Affiliates with whom any Seller or its Affiliates has come into direct contact in connection with the preparation, negotiation and execution of this Agreement and/or the other Transaction Documents; provided, that Sellers and/or their Affiliates shall not be prohibited from soliciting or hiring any person described in this Section 9.20 (x) pursuant to a general mass solicitation of employment not specifically directed toward employees of Buyer and/or its Affiliates or (y) who has been terminated by Buyer or its Affiliates.

ARTICLE X.

TERMINATION OF AGREEMENT

10.1 **Termination.** This Agreement may be terminated prior to the Closing as follows:

- (a) By the mutual written consent of the Main Sellers and Buyer;
- (b) By Buyer by giving written notice to the Main Sellers in the event Sellers are in material breach of this Agreement or any other Transaction Document and such breach, (i) individually or in combination with any other such breach, would cause the conditions set forth in Section 8.1 not to be satisfied and (ii) is not cured within thirty (30) days following delivery by Buyer to Sellers of written notice of such breach;
- (c) By the Main Sellers by giving written notice to Buyer in the event Buyer is in material breach of this Agreement or any other Transaction Document and such breach, (i) individually or in combination with any other such breach, would cause the conditions set forth in Section 8.2 not to be satisfied and (ii) is not cured within thirty (30) days following delivery by the Main Sellers to Buyer of written notice of such breach;
- (d) By Buyer, on or after March 12, 2009, if either the U.S. Bidding Procedures Order or the Sale Process Order has not been entered on or prior to such date or has been entered but stayed as of such date;

(e) By Buyer by giving written notice to the Main Sellers if the Closing shall not have occurred on or prior to the earlier of (i) April 15, 2009 or (ii) the thirtieth (30th) day following the U.S. Sale Order becoming a Final Order by reason of the failure of any condition precedent under Section 8.1; provided, that the right to terminate this Agreement under this subsection (e) shall not be available to Buyer if such failure results exclusively or primarily from a breach by Buyer of one or more representations, warranties, covenants or agreements of Buyer contained in this Agreement or any other Transaction Document; and provided, further, that if all of the conditions to Closing set forth in Section 8.1 have been satisfied, other than (x) those conditions that are to be satisfied at the Closing and (y) the condition set forth in Section 8.1(h) as a result of the failure of any of the U.S. Bidding Procedures Order, the U.S. Sale Order, the Sale Process Order and/or the Approval and Vesting Order to become a Final Order on or before April 15, 2009, then the reference to "April 15, 2009" in clause (i) of this Section 10.1(e) shall be replaced by a reference to "May 1, 2009"

(f) By the Main Sellers by giving written notice to Buyer if the Closing shall not have occurred on or prior to the earlier of (i) May 15, 2009 or (ii) thirtieth (30th) day following the U.S. Sale Order becoming a Final Order by reason of the failure of any condition precedent under Section 8.2; provided, that the right to terminate this Agreement under this subsection (f) shall not be available to Sellers if such failure results exclusively or primarily from a breach by Sellers of one or more representations, warranties, covenants or agreements of Sellers contained in this Agreement or any other Transaction Document;

(g) By the Main Sellers or Buyer if Sellers enter into a binding definitive agreement with respect to an Alternative Transaction; or

(h) By the Main Sellers by giving written notice to Buyer if the Cure Costs payable by Sellers (excluding any Cure Costs that Buyer has agreed to pay pursuant to Section 7.23) exceed the higher of (x) \$1,000,000 in the aggregate and (y) if an Auction (as defined in the U.S. Bidding Procedures Order) occurs and Buyer makes a subsequent bid with a base cash component (excluding any adjustment such as are set forth in clauses (ii) through (iv) of Section 3.1(a)) greater than the Base Purchase Price, five percent (5%) of such base cash component; provided, that the Main Sellers shall not be permitted to exercise their termination right under this Section 10.1(h) until they have complied with Section 7.23 and given Buyer the five (5) Business Day response period referred to in Section 7.23.

10.2 Break-Up Fee and Expense Reimbursement.

(a) In the event that this Agreement is terminated pursuant to Section 10.1(b), 10.1(g) or 10.1(h), Sellers shall pay to Buyer by wire transfer of immediately available funds, within five (5) Business Days after such termination, a break-up fee (the "Break-Up Fee") equal to \$650,000; provided, that no Break-Up Fee shall be payable in respect of a termination of this Agreement pursuant to Section 10.1(b) unless (i) the breach in question is of a material provision of this Agreement and (ii) such breach is still existing on the later of (x) April 15, 2009 and (y) the thirtieth (30th) day following delivery by Buyer to Sellers of written notice of such breach.

(b) In the event that this Agreement is terminated pursuant to Section 10.1(b), 10.1(g) or 10.1(h), Sellers shall pay to Buyer by wire transfer of immediately available funds, within five (5) Business Days after such termination, a cash amount equal to Buyer's reasonable and documented out-of-pocket fees and expenses incurred in connection with the Transactions, up to a maximum of \$400,000 (the "Expense Reimbursement").

(c) The Break-Up Fee and/or the Expense Reimbursement, if payable in accordance with this Section 10.2, will be the sole and exclusive remedy of Buyer, whether at Law or in equity, in the event that Closing has not occurred or does not occur for any reason whatsoever, without regard to whether Buyer elects to terminate this Agreement pursuant to this Article X; provided, that if the Closing occurs, the Break-Up Fee and/or the Expense Reimbursement will not be payable and will not be the sole and exclusive remedy of Buyer hereunder. For the avoidance of doubt, both the Break-Up Fee and the Expense Reimbursement will be payable to Buyer in the event that this Agreement is terminated pursuant to Section 10.1(b) (if payable thereunder), 10.1(g) or 10.1(h).

(d) Sellers' obligation to pay the Break-Up Fee and the Expense Reimbursement pursuant to this Section 10.2 shall survive termination of this Agreement and shall constitute an administrative expense of Sellers under Section 364(c)(1) of the U.S. Bankruptcy Code with priority over any and all administrative expenses of the kind specified in Sections 503(b) or 507(b) of the U.S. Bankruptcy Code.

(e) Notwithstanding anything to the contrary herein, Sellers' obligation to pay the Break-Up Fee and the Expense Reimbursement pursuant to this Section 10.2 is expressly subject to entry of the U.S. Bidding Procedures Order.

10.3 Effect of Termination. In the event of termination of this Agreement as permitted by Section 10.1, this Agreement shall become void and of no further force and effect, except for the following provisions, which shall remain in full force and effect: (a) Section 7.8 relating to confidentiality, (b) Sections 9.19, 9.20(ii) and 10.2, (c) this Section 10.3 and (d) Article XI. Nothing in this Section 10.3 shall be deemed to release any party from any Liability for any breach by such party of the terms and provisions of this Agreement or to impair the right of any party to compel specific performance by any other party of its obligations under this Agreement; provided, (i) except in the case of a breach of Section 9.14, no injunctive relief, specific performance or other type of relief specified in Section 11.13 may be obtained under this Agreement against any Seller Entity and (ii) this sentence shall not apply to Sellers or their Affiliates.

ARTICLE XI. **MISCELLANEOUS**

11.1 Expenses. Whether or not the Transactions are consummated, and except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees, costs and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement or the Transactions (including legal, accounting and other professional fees).

11.2 Governing Law. The interpretation of this Agreement, and any questions, claims, disputes, remedies, Action or Proceeding arising from or related to this Agreement, and any relief or remedies sought by any party hereunder, shall be governed exclusively by the Laws of the State of New York, without regard to the rules of conflict of laws of the State of New York or any other jurisdiction.

11.3 Jurisdiction; Service of Process. To the fullest extent permitted by applicable Law, each party hereto (a) agrees that any claim, Action or Proceeding by such party seeking any relief whatsoever arising out of, or in connection with, this Agreement, the other Transaction Documents or the Transactions shall be brought only in (i) the U.S. Bankruptcy Court, if brought prior to the entry of a final decree closing the Chapter 11 Cases, and (ii) in the federal courts in the Southern District of New York and the state courts of the State of New York, County of Manhattan (collectively, the “New York Courts”), if brought after entry of such final decree closing the Chapter 11 Cases, and shall not be brought, in each case, in any other State or Federal court in the United States of America or any court in any other country, (b) agrees to submit to the exclusive jurisdiction of the U.S. Bankruptcy Court or the New York Courts, as applicable pursuant to the preceding clauses (a)(i) and (ii), for purposes of all Actions or Proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby, (c) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of any such Action or Proceeding brought in such a court or any claim that any such Action or Proceeding brought in such a court has been brought in an inconvenient forum, (d) agrees that mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 11.7 shall be valid and sufficient service thereof, and (e) agrees that a final judgment in any such Action or Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Law.

11.4 Waiver of Jury Trial. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT BETWEEN OR AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN OR AMONG THEM RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

11.5 Attorneys’ Fees. If any action, suit, arbitration or other proceeding for the enforcement of this Agreement is brought with respect to or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions hereof, the successful or prevailing party shall be entitled to recover reasonable attorneys’ fees and other costs incurred in that proceeding, in addition to any other relief to which it may be entitled.

11.6 Waiver. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the other Transaction Documents will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Law, (a) no claim or right arising out of this Agreement or any of the other Transaction Documents can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other parties; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or any of the other Transaction Documents.

11.7 Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be deemed given to a party when (a) delivered by hand, (b) three (3) Business Days after delivery by a nationally recognized overnight courier service (costs prepaid), or (c) sent by facsimile (confirmed in writing by mail promptly thereafter dispatched), in each case to the following:

if to Buyer, to:

Radware Ltd.
22 Raoul Wallenberg Street
Tel Aviv 69710
Israel
Attention: Roy Zisapel
Tel: +972-3-7668610
Fax: +972-3-7668982

with a copy to:

Kramer Levin Naftalis & Frankel LLP
1177 Avenue of the Americas
New York, New York 10036
Attention: Ernest S. Wechsler
Tel: (212) 715-9100
Fax: (212) 715-8000

if to any Seller or Seller Entity, to:

Nortel Networks Inc.
c/o Nortel Networks Limited
195 The West Mall
Toronto, Ontario M9C 5K1
Attention: Douglas M. Parker, Esq., Associate General Counsel - Corporate
Tel: (905) 863-2564
Fax: (905) 863-7739

with a copy to:

Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2595
Attention: James R. Stuart, III, Esq.
Tel : (202) 624-2865
Fax : (202) 628-5116

Notices to any Seller Entity may be delivered to NNI on behalf of such Seller Entity. Any party hereto may change its contact information for notices and other communications hereunder by notice to the other party hereto.

11.8 Assignment. This Agreement and the rights and obligations hereunder shall not be assignable or transferable by any party (including, by operation of Law or in connection with a merger or sale of substantially all the assets, stock or membership interests of such party) without the prior written consent of the other parties (which, in the case of an assignment following the Closing, shall not be unreasonably withheld) except for (a) assignment by a U.S. Debtor to a succeeding entity following such U.S. Debtor's emergence from Chapter 11 or (b) assignment by any of the Canadian Debtors pursuant to any plan of arrangement approved by a Bankruptcy Court, which will not require the consent of the Buyer. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the permitted assigns of the parties. Buyer hereby consents to the assignment by any Canadian Debtor or any U.S. Debtor of rights and obligations under any of the Transaction Documents in the circumstances set forth in (a) or (b) of the immediately preceding sentence.

11.9 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such assigns, any legal or equitable rights, remedy or claim hereunder.

11.10 Amendments. No amendment to this Agreement shall be effective unless it shall be in writing and signed by all of the parties hereto.

11.11 Interpretation; Exhibits and Schedules. The headings contained in this Agreement, in any exhibit, annex or Schedule and in the table of contents to this Agreement, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Except when the context otherwise requires, references to Sections, Articles, Exhibits, Annexes or Schedules refer to Sections, Articles, Exhibits, Annexes or Schedules of this Agreement. All Exhibits, Annexes and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized term used in any Schedule, Annex or Exhibit, but not otherwise defined therein, shall have the meaning ascribed to such term in this Agreement. Whenever used in this Agreement, a singular number shall include the plural and a plural the singular. Pronouns of one gender shall include all genders. The words "hereof," "herein," and terms of similar import shall refer to this entire Agreement. Unless the context clearly requires otherwise, the use of the terms "including," "included," "such as," or terms of similar meaning, shall not be construed to imply the exclusion of any other particular elements and shall be deemed to be followed by the words "without limitation." Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

11.12 Entire Agreement; Construction. This Agreement and the Transaction Documents contain the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written agreements and understandings relating to such subject matter, including that certain Term Sheet, dated December 13, 2008, between Buyer and NNI. In the event of any inconsistency or conflict between the terms of this Agreement and any other Transaction Document, the terms of this Agreement shall prevail over the terms of the other Transaction Document.

11.13 Specific Performance. Each party acknowledges and agrees that the other party would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each party agrees that the other parties may be entitled to an injunction or injunctions (without the posting of any bond) to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the parties and the matter. Except in the case of a breach of Section 9.14, but otherwise notwithstanding anything to the contrary in this Agreement, no injunctive relief, specific performance or other type of relief specified in this Section 11.13 may be obtained under this Agreement against any Seller Entity.

11.14 Severability. If any provision of this Agreement or the application of any such provision to any Person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

11.15 Mutual Drafting. The parties hereto are sophisticated and have been represented by lawyers who have carefully negotiated the provisions hereof. As a consequence, the parties do not intend that the presumptions of any Laws relating to the interpretation of contracts against the drafter of any particular clause should be applied to this Agreement and therefore waive the effects of such Laws.

11.16 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to the other party.

11.17 Survival. The representations, warranties, undertakings, agreements and covenants in this Agreement and/or in any instrument delivered pursuant to this Agreement shall terminate on the Closing Date; provided, that undertakings, agreements and covenants contained in this Agreement and/or the other Transaction Documents that continue in effect or are applicable to or relate to periods, matters or events following the Closing shall survive the Closing and shall continue in full force and effect until performed or satisfied or for so long as such are applicable in accordance with their terms.

11.18 Limitation on Losses.

(a) Except in the case of a Liability arising from a cash payment obligation due to a party in respect of which the party seeking set-off has received a final judgment in an Action or Proceeding in accordance with Section 11.3 and 11.4, no party shall be entitled to set-off any Liabilities or Losses hereunder against any amounts due to such party under any other agreement with the other parties or any affiliate thereof.

(b) In no event shall any party be responsible or liable for any Losses that are consequential, in the nature of lost profits, diminution in the value of property, special or punitive or otherwise not actual damages.

(c) No Seller Entity shall have any Liability with respect to any Business Tangible Property, EMEA Tangible Property, Business Inventory or EMEA Business Inventory for any amount in excess of the value thereof as set forth on Schedule 2.1(a)(i), Schedule P(1)(a) or Schedule 5.6(b) (as updated in accordance with Section 3.1) (including in the case of any asset with a net book value of zero dollars (\$0)), as set forth on the applicable schedule.

[Signature Page Follows on Next Page]

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have duly executed this Agreement on the date first above written.

NORTEL NETWORKS INC.

By: /s/ Hyacinth DeAlmeida
Name: Hyacinth DeAlmeida
Title: Leader, Corporate Business Development

NORTEL NETWORKS LIMITED

By: /s/ Gordon A. Davies
Name: Gordon A. Davies
Title: Chief Legal Officer and Corporate Secretary

By: /s/ Tracy S.J. Connelly McGilley
Name: Tracy S.J. Connelly McGilley
Title: Assistant Secretary

NORTEL NETWORKS UK LIMITED (in administration) by C. Hill as Joint Administrator (acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS N.V. (in administration) by C. Hill as Joint Administrator (acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS S.A. (in administration) by Kerry Trigg acting as authorised representative for C. Hill as Joint Administrator (acting as agent and without personal liability) under an authorisation dated 15 January 2009

By: /s/ Kerry Trigg

Name: Kerry Trigg

Title: authorised representative for C. Hill as Joint Administrator

By: /s/ Steve Sanderson

Name: Steve Sanderson

Title: senior executive as witness

NORTEL NETWORKS FRANCE S.A.S. (in administration) by Kerry Trigg acting as authorised representative for C. Hill as Joint Administrator (acting as agent and without personal liability) under an authorisation dated 15 January 2009

By: /s/ Kerry Trigg

Name: Kerry Trigg

Title: authorised representative for C. Hill as Joint Administrator

By: /s/ Steve Sanderson

Name: Steve Sanderson

Title: senior executive as witness

NORTEL NETWORKS (AUSTRIA) GMBH (in administration) by C. Hill as Joint Administrator (acting as agent and without personal liability)

By: /s/ C. Hill

Name: C. Hill

Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS, S.R.O. (in administration) by C. Hill as Joint Administrator (acting as agent and without personal liability)

By: /s/ C. Hill

Name: C. Hill

Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS AB - DENMARK BRANCH (in administration) by C. Hill as Joint Administrator (acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS B.V. (in administration) by C. Hill as Joint Administrator (acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

NORTEL GERMANY GMBH & CO KG (in administration) by C. Hill as Joint Administrator (acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS (IRELAND) LIMITED (in administration) by D. Hughes as Joint Administrator (acting as agent and without personal liability)

By: /s/ David Hughes
Name: David Hughes
Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS S.P.A. (in administration) by C. Hill as Joint Administrator
(acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS POLSKA SP. Z O.O. (in administration) by C. Hill as Joint
Administrator (acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS PORTUGAL S.A. (in administration) by C. Hill as Joint
Administrator (acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

NORTEL NETWORKS ROMANIA SRL (in administration) by C. Hill as Joint
Administrator (acting as agent and without personal liability)

By: /s/ C. Hill
Name: C. Hill
Title: Joint Administrator

Witness: /s/

C. HILL, in his own capacity and on behalf of the Joint Administrators without personal liability and solely for the benefit of the provisions of this Agreement expressed to be conferred on or given to the Joint Administrators:

By: /s/ C. Hill

Name: C. Hill

Title: Joint Administrator

Witness: /s/

RADWARE LTD.

By: /s/ Roy Zisapel

Name: Roy Zisapel

Title: Chief Executive Officer and President

EXHIBIT O

ADDITIONAL EMPLOYEE RELATED PROVISIONS

I. Employment Provisions for United States.

(a) U.S. Employment Offers.

(1) Within one (1) Business Day after the later of (x) the approval of the U.S. Sale Order and (y) the approval of the Approval and Vesting Order, Buyer shall, or shall cause its designated Affiliate in the United States ("Buyer U.S.") to offer employment, commencing on the first Business Day following the Closing Date, to each U.S. Employee other than a U.S. Leave Employee. The offer of employment shall be conveyed by means of a letter (the "U.S. Employment Offer") in the form agreed upon by Buyer and NNI prior to the date hereof.

(2) Buyer shall, or shall cause Buyer U.S. to, ensure that each U.S. Employment Offer to each U.S. Employee includes (A) an annual base salary that is no less than the annual base salary listed with respect to such U.S. Employee in Schedule 5.12(a), (B) benefits no less favorable than those made available to similarly situated employees of Buyer or its Affiliates employed in the United States and with the additional terms described below in Section I(a)(5), (C) employment at a work location within twenty-five (25) miles of the work location listed with respect to such U.S. Employee in Schedule 5.12(a), (D) employment in the same position listed with respect to such U.S. Employee in Schedule 5.12(a) or another position for which such employee is qualified and that is substantially similar to the position listed in Schedule 5.12(a), and (E) eligibility for target incentive compensation that is at least equal to the target incentive compensation listed with respect to U.S. employee in Schedule 5.12(a). Sales quotas and metrics will be in accordance with Buyer or Buyer U.S.' requirements in the United States. The U.S. Employment Offer also shall include a policy statement of Buyer and Buyer U.S. regarding non-competition.

(3) Except as provided below with respect to U.S. Leave Employees, and subject to the occurrence of the Closing and Section I(a)(7), Buyer shall, or shall cause its Affiliates to, employ U.S. Employees accepting such U.S. Employment Offers on the first Business Day following the Closing Date on the terms and conditions in this Section I.

(4) Notwithstanding Section I(a)(2)(C), Buyer shall, and shall cause Buyer U.S. to, offer to employ any U.S. Employee who is a telecommuter, in Buyer U.S.'s sole discretion, either (i) in the same location as set out in Schedule 5.12(a) or (ii) in a work location that is within twenty-five (25) miles of such individual's home.

(5) Each U.S. Transferring Employee (and their eligible dependents, as applicable) shall, as of his or her Employment Transfer Date, cease to accrue benefits under the Nortel Employee Plans applicable to U.S. Employees ("Nortel U.S. Employee Plans"). Buyer shall ensure that each U.S. Transferring Employee (and their eligible dependents, as applicable) shall be immediately eligible to participate fully in and accrue benefits under Buyer Employee Plans applicable to similarly situated employees of Buyer or its Affiliates in the United States ("Buyer U.S. Employee Plans") as of his or her Employment Transfer Date, and, for the twelve (12) month period following the Closing, at a cost to such U.S. Transferring Employee which is substantially similar in the aggregate to the cost to such U.S. Transferring Employee under similar Nortel U.S. Employee Plans immediately prior to his or her Employment Transfer Date, which cost amounts have been provided by NNI to Buyer. With respect to each U.S. Transferring Employee (and their eligible dependents, as applicable), Buyer shall cause all Buyer U.S. Employee Plans to waive any eligibility or waiting periods, evidence of insurability or pre-existing condition limitations with the exception of certain optional supplementary plans where special requirements may apply to all other similarly situated employees (e.g., group life insurance plans).

(6) U.S. Employment Offers shall remain open for acceptance by U.S. Employees for a period of seven (7) days.

(7) To the extent that NNI or its Affiliates have previously performed a background investigation on a U.S. Employee, as set forth on Schedule 5.12(a)(xv), Buyer shall not, and shall not permit Buyer U.S. to, condition such U.S. Employee's U.S. Employment Offer upon a background investigation. The U.S. Employee Offer may state that Buyer and Buyer U.S. have a drug testing program and that all employees are subject to such drug testing at the discretion of Buyer and/or Buyer U.S. once employed by Buyer U.S. U.S. Employees will not be required to serve a probationary period.

(8) NNI and Buyer and their respective Affiliates shall work together in good faith to determine and coordinate the process of extending U.S. Employment Offers and communicating with U.S. Employees. Without limiting the generality of the foregoing, Buyer shall submit to NNI for review, prior to delivery of any U.S. Employment Offer, all data elements to be included in such offers and any other pertinent information relating to the offers.

(b) U.S. Leave Employees. If a U.S. Employee is on an NNI-approved leave of absence which is required by applicable Law when Employment Offers are distributed to U.S. Employees pursuant to Section I(a) (each, a "U.S. Leave Employee"), Buyer shall deliver an Employment Offer to such U.S. Leave Employee and employ such U.S. Leave Employee within ten (10) Business Days after receiving written notice from NNI or its Affiliates of such person's release to return to work, provided that such release to return to work occurs prior to the end of the twelve (12) month period following the Closing Date or such longer period as required by applicable Law, including the Uniformed Services Employment and Reemployment Rights Act. NNI and Buyer and their respective Affiliates shall reasonably cooperate regarding returns to work from leave in respect of such U.S. Leave Employees.

(c) Accrued Vacation. NNI shall, or cause its appropriate Affiliate to, pay the amount of compensation due with respect to the accrued and unused vacation days due and owing to the U.S. Transferring Employees as of their respective Employment Transfer Dates no later than the date required under applicable Law. In any case, neither Buyer nor its Affiliates shall bear liability for accrued and unused vacation days due and owing to the U.S. Transferring Employees in respect of any time period during which a U.S. Transferring Employee was employed by NNI or its Affiliates.

(d) Workers' Compensation.

(1) NNI or its applicable Affiliate shall be responsible for any and all Liabilities for claims of U.S. Transferring Employees under applicable workers' compensation legislation for which NNI or its applicable Affiliate is legally responsible and which were existing as at, or accrued prior to the applicable Employment Transfer Date, including claims filed after the applicable Employment Transfer Date, but which are (A) based on accidents or injuries incurred during employment with NNI or its Affiliates or (B) determined by applicable worker's compensation Law to relate to the period prior to the applicable Employment Transfer Date, but excluding any liabilities with respect to any reemployment obligations pursuant to such legislation in connection with U.S. Transferring Employees; and

(2) NNI or its applicable Affiliate, subject to and in a manner consistent with applicable workers' compensation Law, shall be responsible for any and all workers' compensation assessments, penalties, fines, levies, charges, surcharges or other amounts for which it is legally responsible and which may be assessed with respect to U.S. Transferring Employees which are attributable to the period prior to the applicable Employment Transfer Date.

(e) Delivery of Confirmation of Employment with Buyer. Not later than three (3) Business Days after each U.S. Transferring Employee commences employment with Buyer or its Affiliates, Buyer shall deliver or cause to be delivered to Sellers written confirmation that such employee has commenced employment with Buyer or its Affiliates.

(f) Period Following Employment Transfer for U.S. Transferring Employees.

(1) For a period of not less than twelve (12) months following the Closing, Buyer shall, and shall cause its Affiliates to (A) not change its Buyer U.S. Employee Plans in which U.S. Transferring Employees participate in a manner that would adversely affect the benefits to which such U.S. Transferring Employees are entitled to thereunder except for such change as is applied to employees of Buyer U.S. generally; and (B) maintain the annual base salary of each U.S. Transferring Employee unless Buyer or its Affiliates decides to reduce the base salary of its U.S. employees generally; provided, that no such reduction will exceed twenty (20) percent of such U.S. Transferring Employee's annual base salary.

(2) For a period of not less than twelve (12) months following the Closing, Buyer shall provide notice of termination and severance pay to any U.S. Transferring Employee that is substantially similar to that which such employee would have received under NNI's severance plan, as in effect on the Closing Date, following the crediting of such U.S. Transferring Employee with service as provided in Section I(f)(3).

(3) Buyer shall recognize the service date of each U.S. Transferring Employee, as set out in Schedule 5.12(a), for purposes of determining eligibility to participate in and to the extent applicable, vesting in and accruing benefits under the Buyer U.S. Employee Plans, and all other purposes, including with respect to the calculation of any compensation, benefit and/or long service award, and any severance, termination or retrenchment payment and membership, benefit accrual and entitlement to benefits under all of the Buyer U.S. Employee Plans which apply to the employees of Buyer or Buyer's Affiliates employed in the United States.

(4) Under the vacation policy of Buyer, each U.S. Transferring Employee's vacation accrual rate for a period of twelve (12) months after their Employment Transfer Date shall be the same as such U.S. Transferring Employee's vacation accrual rate (i) as reflected in Schedule 5.12(a) under the vacation policy of Buyer following the crediting of such U.S. Transferring Employee with service as provided in Section I(f)(3). U.S. Transferring Employees whose annual vacation entitlement as set in Schedule 5.12(a) exceeds Buyer's annual vacation entitlement after crediting service as provided in Section I(f)(3) will have their NNI vacation entitlement grandfathered for a period of twelve (12) months after their Employment Transfer Date, after which time Buyer's vacation policy will apply in all respects.

II. Employment Provisions for India Employees.

(a) India Employment Offers.

(1) Within one (1) Business Day after the later of (x) the approval of the U.S. Sale Order and (y) the approval of the Approval and Vesting Order, Buyer shall cause its designated Affiliate in India ("Buyer India") to offer employment, commencing at the Closing Date, to each India Employee other than an India Leave Employee by means of a letter (each, an "India Employment Offer"). Except as expressly agreed otherwise by the parties, Buyer shall cause Buyer India to make each India Employment Offer to each India Employee on terms and conditions, with respect to basic salary, total annual salary, allowances (including HRA, LTA, phone, professional development, medical, conveyance, mileage, special allowance), provident fund, gratuity, medical insurance, leave days, carry forward of leave days and sick days, annual incentive plan, public holidays, working hours, notice period, parental leave, group life insurance and personal accident insurance, not in any way less favourable than the terms and conditions on which such India Employee is employed by Nortel India immediately prior to the Closing Date and on such terms and conditions as shall fulfill the requirements of section 25FF of the Indian Industrial Disputes Act 1947 so as to prevent Sellers, Nortel India and all of Sellers' other Affiliates from incurring any Liability for any additional notice and compensation (in accordance with Section 25F of the Indian Industrial Disputes Act 1947) to any India Employee who accepts an India Employment Offer; and

(2) To the extent that any Seller or an Affiliate of any Seller has previously performed a background investigation on an India Employee, as set forth on Schedule 5.12(a)(xv), Buyer shall not, and shall not permit Buyer India to, condition such India Employee's India Employment Offer upon a background investigation. The India Employee Offer may state that Buyer and Buyer India have a drug testing program and that all employees are subject to such drug testing at the discretion of Buyer and/or Buyer India once employed by Buyer India. India Employees will not be required to serve a probationary period.

(3) Prior to the delivery of any India Employment Offer to any India Employee, Buyer shall cause Buyer India to submit to NNI for its review the individual India Employee data elements to be included in such India Employment Offer, as well as any additional information that Nortel reasonably requires to confirm that each such India Employment Offer complies with the terms of this Section II(a). Buyer shall cause Buyer India to deliver to India Employees such India Employment Offers accompanied by all necessary information that may be reasonably required or requested by an India Employee to allow such employee to understand such India Employment Offer. Buyer shall ensure that the India Employment Offers remain open without modification for at least seven (7) calendar days following such delivery date. Subject to the occurrence of the Closing and Section II(a)(2), Buyer shall cause Buyer India to employ India Employees accepting such India Employment Offers as of the Closing Date on the terms and conditions contemplated in this Section II. Sellers or Nortel India and Buyer and Buyer India shall work together in good faith to determine and coordinate the process of extending India Employment Offers and communicating with India Employees.

(b) India Transferring Employees. India Employees who accept an India Employment Offer and commence employment with Buyer India pursuant to this Agreement are collectively be referred to hereinafter as “India Transferring Employees”. Not later than three (3) Business Days after each India Transferring Employee commences employment with Buyer India, Buyer shall deliver or cause to be delivered to Sellers written confirmation that such employee has commenced employment with Buyer India.

(c) Period Following Employment Transfer Date. For a period of not less than twelve (12) months following the Closing Date, Buyer shall cause Buyer India to maintain compensation levels (including annual base salary together with additional amounts received for overtime eligibility and incentive compensation customarily received by such India Employee prior to his or her Employment Transfer Date), employee benefit plans and arrangements and other employment terms and conditions, with respect to basic salary, total annual salary, allowances (including HRA, LTA, phone, professional development, medical, conveyance, mileage, special allowance), provident fund, gratuity, medical insurance, leave days, carry forward of leave days and sick days, annual incentive plan, public holidays, working hours, notice period, parental leave, group life insurance and personal accident insurance, with respect to each India Transferring Employee that are substantially similar, in the aggregate, to the compensation levels, employee benefit plans and arrangements and other employment terms and conditions which such India Transferring Employee enjoys in the employ of Nortel India immediately prior to the Employment Transfer Date and as required under the India Employment Offer as specified in Section II(a)(1). For the avoidance of doubt, nothing in the foregoing sentence will prevent Buyer or Buyer India from changing such employee benefit plans, in its sole discretion from time to time in the ordinary course of business, during such twelve (12) month period, provided that Buyer shall cause Buyer India to continue to provide India Transferring Employees with employee benefit plans and arrangements and other terms and conditions of employment that are substantially similar in the aggregate to the compensation levels, employee benefit plans and arrangements and other terms and conditions of employment required under the India Employment Offer as specified in Section II(a)(1).

(d) Vacation and Holidays.

(1) NNL shall cause Nortel India to pay to each India Transferring Employee the amount of compensation due to such employee with respect to accrued and unused vacation days due and owing to such India Transferring Employee as of his or her Employment Transfer Date by the date required under applicable Law. In any case, neither Buyer nor Buyer India shall bear any liability for accrued and unused vacation days due and owing to the India Transferring Employees as of their Employment Transfer Date. Buyer shall cause Buyer India to honor any vacation time off with respect to an India Transferring Employee approved by a manager of Nortel India prior to the Employment Transfer Date; provided, that such India Transferring Employee provides evidence of such approval.

(2) Buyer shall cause Buyer India to provide India Transferring Employees with an annual number of paid holidays that is equal to the annual number of paid holidays that Nortel India provided to the India Transferring Employees.

(e) Recognition of Service. Buyer shall cause Buyer India to recognize the service date of each India Transferring Employee on the basis that their service has been continuous with Buyer India and has not been interrupted by such transfer for all purposes, including the calculation of any compensation, benefit, gratuity award and any severance, termination or retrenchment payment and membership, benefit accrual and entitlement to benefits under all of the Buyer Employee Plans which apply to the employees of Buyer or Buyer's Affiliates employed in India (collectively, "Buyer's India Employee Plans").

(f) Buyer's India Employee Plans. Each India Transferring Employee (and their eligible dependents, as applicable) shall, as of his or her Employment Transfer Date, cease to accrue benefits under the Nortel Employee Plans applicable to India Employees ("Nortel's India Employee Plans"). Buyer shall use its commercially reasonable efforts to cause each India Transferring Employee (and their eligible dependents, as applicable) to be immediately eligible to participate fully in and accrue benefits under Buyer's India Employee Plans as of his or her Employment Transfer Date, and at a cost to such India Transferring Employee which is substantially similar in the aggregate to the cost to such India Transferring Employee under similar Nortel's India Employee Plans immediately prior to his or her Employment Transfer Date, which cost amounts have been provided by NNI to Buyer. With respect to each India Transferring Employee (and their eligible dependents, as applicable), Buyer shall use its commercially reasonable efforts to cause such Buyer's India Employee Plans to (i) waive any eligibility or waiting periods, evidence of insurability or pre-existing condition limitations with the exception of certain optional supplementary plans where special requirements may apply to all other similarly situated employees (*e.g.*, group life insurance plans); and (ii) honor any deductible, co-payments, co-insurance or out-of-pocket expenses paid or incurred by such employees, including with respect to their eligible dependents, under comparable Nortel Employee Plans during the Buyer's India Employee Plans plan year in which the Closing Date occurs, subject to such employee providing such information, explanation of benefits or documentation of expenses paid or incurred as Buyer may reasonably require.

(g) Location. Buyer shall ensure that Buyer India does not assign such India Transferring Employee to a work location more than twenty-five (25) miles from such India Transferring Employee's pre-Closing Date work location as set forth on Schedule 5.12(a) during the twelve (12) month period after the Closing Date without such employee's voluntary consent.

- (h) **Gratuity Payments.** Buyer shall be liable for and shall cause Buyer India to pay to the India Transferring Employees any gratuity payment (a “**Gratuity Payment**”) to which they are entitled in accordance with applicable Law with respect to terminations of employment subsequent to the Closing Date, which at a minimum shall be the India Employee Gratuity Accrual for such India Transferring Employee, as of his or her Employment Transfer Date, and pursuant to Section II(e) shall recognise the service of such employee with Nortel or Nortel India in the calculation of such Gratuity Payment.
- (i) **India Employment Offer.** Without prejudice to the foregoing, Buyer shall ensure that the India Employment Offers shall contain such terms as is reasonably necessary to enable the India Employees to understand that the obligations set out in the Industrial Disputes Act 1947, including without limitation the obligations set forth in Section 25FF are satisfied in accordance with Section II(a)(1).
- (j) **Additional Terms of the India Employment Offers.** Subject to and without limiting the generality of its obligations in this Section II, each India Employment Offer shall be based on the following terms:
- (1) The job position shall be the same or substantially similar position as that in which such India Employee is employed by Seller or Nortel India immediately prior to his or her Employment Transfer Date as set out in as set out in Schedule 5.12(a);
 - (2) The base salary, flexible components of salary and the cost of contributions in respect of gratuity and to the Provident Fund in respect of each India Employee shall in the aggregate be no less favorable than the sums set out in Schedule 5.12(a);
 - (3) Eligibility for total target cash compensation including salary, allowances, Gratuity, Provident Fund and bonuses in respect of each India Employee shall be no less favorable in the aggregate to that which is set out with respect to such India Employee in Schedule 5.12(a); and
 - (4) Buyer or Buyer India shall provide such other terms and conditions of employment (*e.g.*, gap payments) as are required for Buyer or Buyer India to satisfy its covenant to offer to each India Employee employment on terms and conditions that are no less favorable compared to the terms and conditions on which such India Employee is employed by Nortel India immediately prior to the applicable Employment Transfer Date.
- (k) **India Leave Employees.** If an India Employee is on a Nortel India-approved leave of absence which is required by applicable Law when India Employment Offers are distributed to India Employees pursuant to Section II(a) (each, a “**India Leave Employee**”), Buyer shall cause Buyer India to deliver an Employment Offer to such India Leave Employee and employ such India Leave Employee within ten (10) Business Days after receiving written notice from Seller or its Affiliates of such person’s release to return to work, provided that such release to return to work occurs prior to the end of the twelve (12) month period following the Closing Date or such longer period as required by applicable Law. The parties and their respective Affiliates shall reasonably cooperate regarding returns to work from leave in respect of such India Leave Employees.

III. Employment Provisions for Japan.

(a) Japan Employment Offers.

(1) Within one (1) Business Day after the later of (x) the approval of the U.S. Sale Order and (y) the approval of the Approval and Vesting Order, Buyer shall cause its designated Affiliate in Japan ("Buyer Japan") to offer employment, commencing on the first Business Day following the Closing Date, to each Japan Employee other than a Japan Leave Employee, by means of a letter (each, a "Japan Employment Offer"). Buyer shall ensure that each Japan Employment Offer is on terms and conditions which in the aggregate are no less favorable to the applicable Japan Employee than those under which such Japan Employee is employed by Sellers' applicable Affiliate in Japan ("Nortel Japan") immediately prior to the Closing Date. The Japan Employment Offer also shall include a policy statement of Buyer and Buyer Japan regarding non-competition.

(2) To the extent that any Seller or any Affiliate of any Seller has previously performed a background investigation on a Japan Employee, as set forth on Schedule 5.12(a) (xv), Buyer shall not, and shall not permit Buyer Japan to, condition such Japan Employee's Japan Employment Offer upon a background investigation. The Japan Employee Offer may state that Buyer and Buyer Japan have a drug testing program and that all employees are subject to such drug testing at the discretion of Buyer and/or Buyer Japan once employed by Buyer Japan. Japan Employees will not be required to serve a probationary period.

(3) Prior to the delivery of any Japan Employment Offer to any Japan Employee, Buyer shall cause Buyer Japan to submit to Sellers for their review the individual Japan Employee data elements to be included in such Japan Employment Offer, as well as any additional information that Sellers reasonably require to confirm that each such Japan Employment Offer complies with the terms of this Section III. Buyer shall cause Buyer Japan to deliver to the Japan Employees such Japan Employment Offers accompanied by all necessary information that may be reasonably required or requested by a Japan Employee to allow such employee to understand such Japan Employment Offer. Buyer shall ensure that the Japan Employment Offers shall remain open without modification for at least seven (7) calendar days following such delivery date. Subject to the occurrence of the Closing and Section III(a)(2), Buyer shall cause Buyer Japan to employ Japan Employees accepting such Japan Employment Offers as of the Closing Date on the terms and conditions contemplated in this Section III. Sellers or Nortel Japan and Buyer and Buyer Japan shall work together in good faith to determine and coordinate the process of extending Japan Employment Offers and communicating with Japan Employees.

(b) Japan Transferring Employees. Japan Employees who accept a Japan Employment Offer and commence employment with Buyer Japan pursuant to this Agreement shall collectively be referred to hereinafter as "Japan Transferring Employees". Not later than three (3) Business Days after each Japan Transferring Employee commences employment with Buyer Japan, Buyer shall deliver or cause to be delivered to Sellers written confirmation that such employee has commenced employment with Buyer Japan.

(c) Period Following Employment Transfer. For a period of not less than twelve (12) months following the Closing Date, Buyer shall cause Buyer Japan to maintain compensation levels (including annual base salary together with additional amounts received for overtime eligibility and incentive compensation customarily received by such Japan Transferring Employee prior to his or her Employment Transfer Date), employee benefit plans and arrangements and other employment terms and conditions with respect to each Japan Transferring Employee that are substantially similar, in the aggregate, to the compensation levels, employee benefit plans and arrangements and other employment terms and conditions which such Japan Transferring Employee enjoys in the employ of Nortel Japan immediately prior to his or her Employment Transfer Date and as required under the Japan Employment Offer as specified in Section III(a)(1). For the avoidance of doubt, nothing in the foregoing sentence will prevent Buyer or Buyer Japan from changing such employee benefit plans, in its sole discretion from time to time in the ordinary course of business, during such twelve (12) month period provided that Buyer shall, and shall cause Buyer Japan to, continue to provide the Japan Transferring Employees employee benefit plans and arrangements and other terms and conditions of employment that are substantially similar in the aggregate to the compensation levels, employee benefit plans and arrangements and other terms and conditions of employment required under the Japan Employment Offer, as specified in Section III(a)(1).

(d) Vacation, Leave and Holidays.

(1) NNL shall cause Nortel Japan to pay to each Japan Transferring Employee the amount of compensation due to such employee with respect to the accrued and unused vacation days due and owing to such Japan Transferring Employee as of his or her Employment Transfer Date by the date required under applicable Law. In any case, neither Buyer nor Buyer Japan shall bear any liability for accrued and unused vacation days due and owing to the Japan Transferring Employees as of their Employment Transfer Date. Buyer shall cause Buyer Japan to honor any vacation time off with respect to a Japan Transferring Employee approved by a manager of Nortel Japan prior to the Employment Transfer Date; provided that such Japan Transferring Employee provides evidence of such approval.

(2) Buyer shall cause Buyer Japan to provide Japan Transferring Employees with an annual number of paid holidays that is equal to the annual number of paid holidays that Nortel Japan provides to the Japan Transferring Employees.

(e) Buyer's Japan Employee Plans. Buyer shall use commercially reasonable efforts to cause each Japan Transferring Employee (and their eligible dependents, as applicable) to be immediately eligible to participate fully in and accrue benefits under Buyer Employee Plans applicable to the employees of Buyer Japan ("Buyer's Japan Employee Plans") as of the applicable Employment Transfer Date.

(f) Location. Buyer shall ensure that Buyer Japan does not assign any Japan Transferring Employee to a work location more than twenty-five (25) miles from such Japan Transferring Employee's pre-Closing Date work location as set forth in Schedule 5.12(a) during the twelve (12) month period after the Closing Date without such employee's voluntary consent.

(g) Additional Terms of the Japan Employment Offers. Subject to and without limiting the generality of its obligations in this Section III, each Japan Employment Offer shall be based on the following terms and conditions:

(1) The job position shall be the same or substantially similar position as that in which such Japan Employee is employed by Nortel Japan immediately prior to his or her Employment Transfer Date, as set out in Schedule 5.12(a);

(2) The base salary, cashable allowances including commuter allowances, pension and termination entitlements, total and permanent disability insurance, annual leave benefits and sick leave benefits, notice in respect of each Japan Employee shall in the aggregate be no less favorable than the sums set out in Schedule 5.12(a);

(3) Eligibility for bonuses including sales incentive plans in respect of each Japan Employee shall be no less favorable in the aggregate to that which is set out with respect to such Japan Employee in Schedule 5.12(a);

(4) Buyer or Buyer Japan shall provide such other terms and conditions of employment (*e.g.*, gap payments) as are required for Buyer or Buyer Japan to satisfy its covenant to offer to each Japan Employee employment on terms and conditions that are no less favorable compared to the terms and conditions on which such Japan Employee is employed by Nortel Japan immediately prior to the applicable Employment Transfer Date; and

(5) NNL shall cause Nortel Japan to pay the amount of resignation/ termination benefits, including retirement allowances, due and owing to the Japan Transferring Employees upon their resignation from Nortel Japan which will occur as of his or her Employment Transfer Date. In any case, neither Buyer nor Buyer Japan shall bear any liability for accrued retirement allowances or resignation amounts due and owing to the Japan Transferring Employees as of their Employment Transfer Date.

(h) Japan Leave Employees. If a Japan Employee is on a Nortel Japan-approved leave of absence which is required by applicable Law when Employment Offers are distributed to Japan Employees pursuant to Section III(a) (each, a "Japan Leave Employee"), Buyer shall deliver a Japan Employment Offer to such Japan Leave Employee and employ such Japan Leave Employee within ten (10) Business Days after receiving written notice from Seller or its Affiliates of such person's release to return to work, provided that such release to return to work occurs prior to the end of the twelve (12) month period following the Closing Date or such longer period as required by applicable Law. Sellers and Buyer and their respective Affiliates shall reasonably cooperate regarding returns to work from leave in respect of such Japan Leave Employees.

IV. Additional Employees.

(a) If Buyer and Sellers agree that any employee of Sellers or their Affiliates not listed on Schedule 5.12(a) whose work location is in India, Japan or the United States is to be offered employment by Buyer or an Affiliate of Buyer, such employee shall constitute an India Transferring Employee, Japan Transferring Employee or U.S. Transferring Employee, as applicable, and the provisions set forth in Section I, II or III of this Exhibit O, as applicable, shall apply to such employee.

(b) If Buyer and Sellers agree that any employee of Sellers or their Affiliates listed on Schedule 5.12(a) with a work location other than in India, Japan or the United States is to be offered employment by Buyer or an Affiliate of Buyer, such employee shall receive an offer of employment on terms and conditions as agreed to by Buyer and Sellers and as shall fulfill the requirements of all applicable Laws and customary employment practices in such jurisdiction.

V. No Additional Rights.

(a) No Third Party Beneficiaries. Nothing in this Exhibit O, expressed or implied, shall confer upon any current or former director, officer, employee, independent contractor, agent, or other service provider to any Seller or its Affiliates (including the Transferring Employees and other personnel of the Business) any rights or remedies (including any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of this Exhibit O. It is expressly agreed that the provisions of this Exhibit O are not intended to be for the benefit of or otherwise be enforceable by, any third party, including any Transferring Employees or other personnel of the Business.

(b) No Guarantee of Employment. Nothing in this Exhibit O, expressed or implied, shall confer upon any current or former director, officer, employee, independent contractor, agent, or other service provider to any Seller or its Affiliates (including the Transferring Employees and other personnel of the Business) any rights to continued employment with Buyer or Buyer U.S. or any Affiliate of Buyer or Buyer U.S., or in any way restrict the right of Buyer, Buyer U.S. or any Affiliate of Buyer or Buyer U.S. to terminate the employment of any such individual. For the sake of clarity, nothing in this Exhibit O shall constitute a waiver of any rights that a Business Employee may have pursuant to applicable Law.

EXHIBIT P

NNUK AND EMEA SELLER PROVISIONS

Capitalized terms used but not defined in this Exhibit P shall have the meanings ascribed thereto in the Agreement.

1. Sale and Transfer of Assets. Upon the terms and subject to the conditions set forth in this Exhibit P, at the Closing, each EMEA Seller shall sell, transfer, assign, convey and deliver to Buyer (or Affiliates of Buyer), and Buyer (or Affiliates of Buyer) shall purchase, acquire and accept from the applicable EMEA Seller on an “as-is” basis, whatever right, title and interest that such EMEA Seller may have (if any) to the following properties, rights and assets (but in all cases excluding the Excluded Assets), as and to the extent existing on the Closing Date (the “EMEA Acquired Assets”):

- (a) the Tangible Property set forth on Schedule P(1)(a) that is owned by such EMEA Seller (collectively, “EMEA Tangible Property”);
 - (b) all Specified Inventory (whether located at a business facility, in the possession of any contract manufacturer, or at any other location in the supply chain of such EMEA Seller or its Affiliates) owned by the EMEA Seller and exclusively relating to the Business (collectively, “EMEA Inventory”);
 - (c) subject to Section 5, (i) the Contracts set forth on Schedule P(1)(c) to which such EMEA Seller is a party (which relate exclusively to the Business), (ii) any New Exclusive Service Contracts (including any renewals of existing Exclusive Service Contracts) to which such EMEA Seller is a party and (iii) any other Contract to which such EMEA Seller is a party, the entry into of which Buyer consents to in accordance with Section 7.7 of the Agreement (which additional Contracts shall be set forth on the updated Schedule P(1)(c) delivered at Closing) (collectively, “EMEA Business Contracts”);
 - (d) to the extent capable of transfer lawfully without consent or to the extent all required consents to transfer lawfully have been obtained, (i) the Intellectual Property Assets, to the extent owned by such EMEA Seller, set forth on Schedule 2.1(d) to the Agreement and (ii) to the extent not covered by Section 1(d)(i), the Intellectual Property Assets (if any) owned by such EMEA Seller that are (x) used in Products as of the Closing Date and (y) have never been used in any other commercial products of any EMEA Seller, any other Seller and/or its Affiliates, in each case including all Intellectual Property Rights therein and the goodwill associated therewith and all rights to sue for past, present or future infringement and to collect and retain all damages and profits relating to the foregoing (collectively, the “EMEA Business Intellectual Property”; for the sake of clarity, no Prior Existing IP shall be deemed to be EMEA Business Intellectual Property); provided, that in the case of Intellectual Property Assets and Intellectual Property Rights that constitute patents, patent applications, domain names and websites, inventions and/or invention disclosures, only those patents, patent applications, domain names and websites, inventions and invention disclosures specifically listed on Schedule 2.1(d) shall constitute EMEA Business Intellectual Property and (to the extent the EMEA Sellers have title, if any) be assigned;
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(e) to the extent capable of transfer lawfully without consent or to the extent all required consents to transfer lawfully have been obtained, the Prior Existing IP (if any), to the extent owned by such EMEA Seller, together with all Intellectual Property Rights therein and the goodwill associated therewith and all rights to sue for past, present or future infringement and to collect and retain all damages and profits relating to the foregoing (collectively, "EMEA Prior IP"); provided, that none of this Section 1(e), the assignment of the EMEA Prior IP to Buyer or anything else in the Agreement, including this Exhibit P, shall obligate any EMEA Seller or its representatives to (x) create, recreate, improve, prepare, develop or acquire any Intellectual Property Assets or Intellectual Property Rights that would otherwise be, or (y) document, create any physical or electronic embodiment not then existing of, or otherwise put into tangible form, any EMEA Prior IP, other than making copies of existing documents or files for delivery to Buyer.

(f) without prejudice to (x) Sections 1(d) or 1(e) (with respect to the right to sue for past, present or future infringement, and to collect and retain all damages and profits relating to the EMEA Business Intellectual Property or the EMEA Prior IP in respect of such infringement) and (y) Section 1(i), all claims, demands, deposits, causes of action, choses in action, rights of recovery, rights of set-off and rights of recoupment, in each case owned by such EMEA Seller and in each case relating exclusively to the operation of the Business after the Closing by Buyer (other than those related to Excluded Assets);

(g) to the extent capable of transfer lawfully without consent or to the extent all required consents to transfer lawfully have been obtained, all refunds and rebates, the rights to which are currently held by such EMEA Seller, relating exclusively to the operation of the Business after the Closing by Buyer;

(h) all sales literature, promotional literature and any other sales, advertising, marketing or promotional materials of such EMEA Seller that relate exclusively to the Products (to the extent such Products are transferred);

(i) subject to Section 5, all rights under EMEA Business Contracts to the extent that such rights relate to non-competition, confidentiality or non-solicitation obligations, whether relating to periods prior to or following the Closing;

(j) to the extent capable of transfer lawfully without consent or to the extent all required consents to transfer lawfully have been obtained, all rights of such EMEA Seller under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating directly to (i) EMEA Business Inventory, (ii) Product returns purchased by Buyer after Closing pursuant to Section 9.10 of the Agreement, (iii) the EMEA Business Tangible Property or (iv) products sold by such EMEA Seller in respect of which Buyer is obligated to fulfill warranty obligations pursuant to the Master Purchase Agreement; and

(k) subject to Section 6, copies of all general and financial records, ledgers, sales invoices, files, books and documents, correspondence and other files and records, including customer lists and sales records, of such EMEA Seller pertaining exclusively to the Products or the assets and rights transferred to Buyer (to the extent those Products or assets and rights are transferred) pursuant to the above paragraphs (a) through (k) of this Section 1 (the “EMEA Business Records”).

Notwithstanding the foregoing, the EMEA Sellers may retain and use in appropriate circumstances originals or copies of any Contracts, documents, books and records: (i) that relate, in whole or in part, to assets other than the Acquired Assets or the EMEA Acquired Assets and/or activities of the EMEA Sellers or any of their Affiliates other than the Business, (ii) that are required to be retained pursuant to any legal requirement or are reasonably necessary, for financial reporting purposes or for Tax purposes or (iii) that otherwise are used in connection with the EMEA Excluded Liabilities.

2. Excluded Assets.

(a) Notwithstanding anything to the contrary contained in Section 1 or elsewhere in this Exhibit P or the Agreement, all properties, rights and assets of each EMEA Seller not expressly described in Section 1 (collectively, the “EMEA Excluded Assets”) are not part of the sale and purchase contemplated hereunder, are excluded from the EMEA Acquired Assets and shall remain the property of each EMEA Seller after the Closing. Without limiting the foregoing, the EMEA Excluded Assets include the assets, properties, contracts and rights described in Section 2.2 of the Agreement, *mutatis mutandis*.

(b) The Joint Administrators shall have the option at any time (but in no event within five (5) Business Days of the Closing Date (and the Main Sellers shall give the Joint Administrators at least 10 days’ prior notice in writing of their expected Closing Date)) between signing of the Agreement and Closing to remove all or any portion of the EMEA Tangible Property and/or EMEA Inventory from the category of EMEA Acquired Assets (so that such assets shall be treated as EMEA Excluded Assets) by written notice to the Buyer identifying which EMEA Tangible Property and/or EMEA Inventory is to be excluded, and the effect of such notice shall be that the Joint Administrators:

(i) shall not have any obligation to sell the EMEA Tangible Property and/or EMEA Inventory set out in such notice; and

(ii) Sections 1(a), 1(b), 1(g), 1(h) and 1(j) of this Exhibit P shall be deemed not to apply in respect of the EMEA Tangible Property and/or EMEA Inventory notified to the Buyer as having been excluded.

3. Assumed Liabilities. Subject to the terms and conditions set forth in this Agreement, at the Closing, Buyer shall assume (for the benefit of the relevant EMEA Seller and, for the benefit of the Joint Administrators) and thereafter pay, perform and discharge when due, the following Liabilities (the “EMEA Assumed Liabilities”):

(a) all Liabilities under or arising from any EMEA Business Contract, other than any Liability arising under any EMEA Business Contract as a result of a breach, default or wrongful failure on the part of any EMEA Seller or its Affiliates to perform any covenant or obligation under such EMEA Business Contract required to be performed by it prior to the Closing;

(b) all Liabilities for or in respect of Taxes (other than Income Taxes) (i) that are the responsibility of Buyer pursuant to Section 9.1 of the Agreement or (ii) in connection with the operation of the Business or in respect of the EMEA Acquired Assets with respect to periods (or portions thereof) beginning on or after the Effective Time;

(c) all Liabilities with respect to defective Product claims and product liability claims and causes of action arising with respect to (i) products shipped or sold by or on behalf of Buyer or its Affiliates from or after the Closing and (ii) Product returns purchased by Buyer pursuant to Section 9.10 of the Agreement (but only to the extent of Buyer's obligation to purchase such Product returns pursuant to Section 9.10 of the Agreement); and

(d) all Liabilities relating to Buyer's and its Affiliates' ownership or use of the EMEA Acquired Assets, or the conduct or operation of the Business, or the activities of Buyer and its Affiliates in connection with the EMEA Acquired Assets or the Business after the Closing.

4. Liabilities Not Assumed. Notwithstanding anything contained in this Exhibit P or elsewhere in the Agreement to the contrary, Buyer does not assume or agree or undertake to pay, satisfy, discharge or perform in respect of, and will not be deemed by virtue of the execution and delivery of the Agreement or any Transaction Documents or other document delivered at the Closing pursuant to the Agreement, or as a result of the consummation of the Transactions, to have assumed, or to have agreed to pay, satisfy, discharge or perform in respect of, any Liabilities of any EMEA Seller in any way relating to the Business other than those Assumed Liabilities described in Section 3, including the following (collectively, the "EMEA Excluded Liabilities"):

(a) except as set forth in Section 3(b), all Liabilities of any EMEA Seller or its Affiliates for Taxes but including (i) Taxes that are the responsibility of the relevant EMEA Seller pursuant to Section 9.1 of the Agreement and (ii) all Taxes arising out of the operations of the Business (including ownership of the EMEA Acquired Assets) with respect to transactions occurring prior to or periods (or portions thereof) ending prior to the Effective Time;

(b) all Liabilities of any EMEA Seller under this Agreement or any other Transaction Document to which it is party;

(c) all Liabilities for legal, accounting and audit fees and any other expenses incurred by any EMEA Seller in connection with this Agreement, any other Transaction Document or consummation of the Transactions, including any fees, expenses or other payments incurred or owed by any EMEA Seller to any agent, broker, investment banker or other firm or Person retained or employed by any EMEA Seller in connection with the Transactions;

(d) all Liabilities of any EMEA Seller, to the extent relating to the EMEA Excluded Assets;

(e) except as provided in Section 3(c) and/or as specified in the Master Purchase Agreement, all Liabilities with respect to defective product claims and product liability claims and causes of action arising with respect to Products shipped by any EMEA Seller prior to Closing;

(f) all Liabilities of any EMEA Seller under or arising from the VSS Products prior to the Closing Date, including claims relating to warranty obligations or other Liabilities under or arising from Contracts to which any EMEA Seller is a party that have been entered into prior to the Closing Date with respect to VSS Products; provided, that Buyer and the other Buyer Entities shall be responsible for all Liabilities with respect to any implementation of the features or functionality of the VSS Products in whatsoever manner implemented by Buyer or its Affiliates, in accordance with Section 3(d), from and after the Closing;

(g) all Liabilities relating to any EMEA Seller's ownership or use of any EMEA Acquired Assets, or the conduct or operation of the Business, or the activities of any EMEA Seller in connection with the EMEA Acquired Assets or the Business prior to the Closing, to the extent not an Assumed Liability; and

(h) all Liabilities relating to any other assets, operations, products, businesses or activities of any EMEA Seller that are not part of the Business.

5. EMEA Business Contracts.

(a) Nonassignable Contracts. In the event any EMEA Business Contract cannot be assigned (whether pursuant to any applicable Law or the terms of such EMEA Business Contract), then as of the Closing, this Agreement, to the extent permitted by Law and the terms of such EMEA Business Contract, shall constitute a full and equitable assignment by the applicable EMEA Seller to Buyer of all of the applicable EMEA Seller's right, title and interest in and to, and all of the applicable EMEA Seller's Liabilities under, such EMEA Business Contract, and Buyer shall be deemed the applicable EMEA Seller's agent for purpose of completing, fulfilling and discharging all of the applicable EMEA Seller's Liabilities thereunder. The parties shall, in the case of Buyer take all necessary steps and actions and in the case of the EMEA Sellers, take all such steps as are reasonable to provide Buyer with the benefits of such EMEA Business Contract, and to relieve the applicable EMEA Seller of the performance and other obligations thereunder, including entry into subcontracts for the performance thereof provided that:

(i) nothing in this Agreement shall operate to assign any EMEA Business Contract to the extent that to do so would result in a breach of the terms of that contract;

(ii) all (but not some only) of the Liabilities arising under the relevant EMEA Business Contract are assigned;

(iii) the performance of any actions pursuant to this Section 5 itself will not force the Joint Administrators to stay in office longer than they would have otherwise;

(iv) any cost of actions carried out pursuant to this Section 5 are at the EMEA Seller's expense if the EMEA Seller in its sole discretion considers such expense reasonable but not otherwise, in which case such costs shall be at the expense of the Buyer; and

(v) any documents that the EMEA Sellers and/or the Joint Administrators are required to enter into in order to give effect to this Section 5 contain such exclusions of liability of the Joint Administrators necessary as to be consistent with this Exhibit P;

6. EMEA Business Records. Sections 9.2 and 9.4 (a) and (b) of the Agreement apply equally for the benefit of the Joint Administrators and it is agreed that (x) such rights extend for the benefit of any subsequently appointed liquidator of the EMEA Sellers and (y) in addition to the matters listed in Section 9.4(a)(i) and 9.4(a)(ii) of the Agreement, Section 9.4(a) of the Agreement shall apply where the EMEA Sellers, the Joint Administrators or any liquidator require access for purpose of facilitating the administration, winding up or liquidation of any of the EMEA Sellers.

7. Acknowledgement Regarding Exploitation Rights. Each EMEA Seller hereby acknowledges and irrevocably agrees (a) that any and all of their rights to the Business Intellectual Property, EMEA Business Intellectual Property, Prior Existing IP and EMEA Prior IP (including pursuant to any agreement among Sellers and their Affiliates) shall terminate effective as of the Closing Date, except to the extent set forth in the IP License Agreement and (b) to the entry into and the licensure of the Licensed IP to Buyer pursuant to the IP License Agreement.

8. No Separate Consideration; Allocations. There shall be no separate consideration for the EMEA Acquired Assets other than the payment of the Purchase Price set forth in Section 3.1 of the Agreement. Sections 3.2 and 3.3 of the Agreement shall apply to the sale of the EMEA Acquired Assets, the EMEA Sellers and Buyer, *mutatis mutandis*, together with the other Sellers and the other Transferring Parties.

9. Further Assurances: Section 2.5 of the Agreement shall apply to the EMEA Sellers and Buyer, *mutatis mutandis*, except that:

(a) the EMEA Sellers shall only be required to take such action as are reasonable and shall not be required to cause any other entity (including any Transferring Party) to take any actions;

(b) the performance of any actions pursuant to Section 2.5 of the Agreement itself will not force the Joint Administrators to stay in office longer than they would have otherwise;

(c) any cost of actions carried out pursuant to Section 2.5 of the Agreement is at the EMEA Seller's expense if the EMEA Seller in its sole discretion considers such expense reasonable but not otherwise in which case such costs shall be at the expense of the Buyer,

(d) any documents to be entered into by the EMEA Sellers and/or the Joint Administrators pursuant to this Section 9 must contain such exclusions of liability of the Joint Administrators necessary as to be consistent with this Exhibit P.

10. Delivery of the EMEA Acquired Assets; Passing of Title and Risk. Section 4.4 (a) and (c) of the Agreement shall apply to the EMEA Acquired Assets, the EMEA Seller and the Buyer, *mutatis mutandis*.

11. No Encumbrances. Each EMEA Seller represents and warrants that since the Petition Date the Joint Administrators have not themselves created any encumbrance in relation to or over any of the EMEA Acquired Assets and that so far as the Joint Administrators themselves are aware, the Joint Administrators have not received any notice that there exists any encumbrance in relation to or over any of the EMEA Acquired Assets.

12. No Other Representations. Save as set forth in Section 11, all representations, warranties and conditions express or implied and whether statutory or otherwise are expressly excluded (including, without limitation, representations and warranties relating to rights to dispose of any of the EMEA Acquired Assets, freedom from encumbrances, quiet possession, merchantable or satisfactory quality, fitness for purpose, description and whether the EMEA Acquired Assets or any of them whether on their own or together with the Acquired Assets are sufficient to conduct the Business) in relation to the sale of the EMEA Acquired Assets. The Buyer acknowledges that it has received its own professional advice and has formed its own opinion as to (x) the quality, state and condition of the EMEA Acquired Assets and (y) the possibility that the Buyer may not acquire title (legal and/or beneficial) to all or any of the EMEA Acquired Assets and agrees that the terms and conditions of this Exhibit P and the exclusions which it contains are fair and reasonable in the context of a sale by companies in administration.

13. Pre-Closing Covenants.

(a) Sections 7.4, 7.6, 7.7, 7.8 and 7.10 of the Agreement shall apply to the EMEA Acquired Assets, the EMEA Sellers and Buyer, *mutatis mutandis* except that, in the case of Section 7.4 of the Agreement, the references to Monitor shall be a reference to the Joint Administrators;

(b) From the date hereof through the Closing Date, except as may be required in connection with or as a result of the Bankruptcy Proceedings and except to the extent inconsistent with the duties of the Joint Administrators and the objectives of the administration of the EMEA Sellers, the EMEA Sellers will use commercially reasonable efforts to:

- (i) operate the Business only in the ordinary course of business consistent with past practice.
- (ii) not dispose of the EMEA Acquired Assets and the business organization of the Business;
- (iii) cause all transactions between Sellers and third parties relating to the Business to take place on arm's length terms; and
- (iv) comply, in all material respects, with all Laws and Orders applicable to the Business.

(c) Without limiting the generality of the foregoing and subject to the same provisos as stated in Section 13(b), from the date hereof through the Closing Date the EMEA Sellers shall not without the prior written consent of Buyer (other than with respect to Section 13(b)(v), for which Buyer shall have no right of prior written consent):

(i) sell, lease or transfer any assets or rights which would be included in the Acquired Assets or the Licensed IP, unless in the ordinary course of business consistent with past practice;

(ii) purchase additional Inventory exclusively relating to the Business unless contractually obligated to do so or to replenish a specific type of Inventory exclusively relating to the Business for which it is necessary to fill orders or otherwise in the ordinary course of business consistent with past practice;

(iii) amend, modify or terminate any EMEA Business Contract, except in the ordinary course of business consistent with past practice;

(iv) sell, assign, transfer, abandon or fail to maintain, (A) except in the ordinary course of business consistent with past practice, license or sublicense, or (B) except in the ordinary course of business consistent with past practice, enter into, amend or terminate any Contract with respect to, any EMEA Business Intellectual Property; or

(v) modify any pricing or discount terms with respect to the Products or services of the Business other than in the ordinary course of business consistent with past practice.

14. No Separate Closing or Closing Conditions; Termination. The closing of the sale of the EMEA Acquired Assets shall occur simultaneous with the Closing. There shall be no conditions applicable to the closing of the sale of the EMEA Acquired Assets in addition those conditions to the Closing set forth in Article VIII of the Agreement. This Exhibit P shall automatically terminate in the event that the Agreement terminates, without further action or documentation needed on the part of any party.

15. Post-Closing Covenants. Sections 9.1, 9.2, 9.5, 9.8, 9.10, 9.11, 9.13, and 9.20 of the Agreement shall apply to the EMEA Acquired Assets, the EMEA Sellers and Buyer, *mutatis mutandis*, except that:

(a) in relation to Section 9.1 of the Agreement, the liability of each EMEA Seller (if any) shall be limited to the appropriate proportion of Transfer Taxes (as calculated under Section 9.1 of the Agreement) incurred in connection with the purchase and sale of the EMEA Acquired Assets sold by that EMEA Seller;

(b) in relation to Section 9.11 of the Agreement, the EMEA Sellers only obligations shall be (x) to redirect or forward relevant communications that are received by the Joint Administrators and (y) to instruct their employees to redirect or forward any relevant communications that are received by them;

(c) in relation to Section 9.13 of the Agreement, the EMEA Sellers shall only be required to provide such co-operation and assistance to the extent that (x) they actually hold sufficient relevant information to allow them to do so and (y) it is reasonable for the Buyer to consider that their co-operation and assistance is required; and

(d) in relation to Sections 9.1(a)(i) and 9.1(a)(ii) of the Agreement, references to “NNI” shall be taken instead to be references to the relevant EMEA Seller.

16. Break-Up Fee and Expense Reimbursement. The EMEA Sellers shall be responsible for their portion of any Break-Up Fee or Expense Reimbursement payable in accordance with Section 10.2 of the Agreement.

17. Confidentiality.

(a) Each EMEA Seller shall keep confidential in accordance with such EMEA Seller’s standards for protecting its own confidential information, and shall not use or disclose to any other Person (other than its Affiliates and its and their officers, directors, employees, agents and representatives), any Business Confidential Information, except as permitted by this Agreement. Each EMEA Seller shall only disclose Business Confidential Information to (x) its or its Affiliates’ officers, directors, employees, agents, auditors, lenders, consultants and other representatives who are legally bound by a confidentiality obligation to a Seller or its Affiliates no less protective of the Business Confidential Information than that contained in this Section 17(a) and who have a bona fide need to access the Business Confidential Information consistent with Sellers’ rights under this Agreement; and (y) the Joint Administrators who shall keep such Business Confidential Information confidential.

(b) Each EMEA Seller shall keep confidential in accordance with such EMEA Seller’s standards for protecting its own confidential information, any Non-Exclusive Confidential Information; provided, that nothing in this Agreement shall prevent or limit in any way whatsoever the right of an EMEA Seller or its Affiliates to utilize or disclose the Non-Exclusive Confidential Information, without need to obtain consent therefor from Buyer, or otherwise impose obligations on such EMEA Seller or its Affiliates in respect of Non-Exclusive Confidential Information other than what such EMEA Seller or its Affiliates would otherwise undertake for Seller Confidential Information.

(c) Buyer shall, and shall cause its Affiliates to, keep confidential in accordance with Buyer’s standards for protecting its own confidential information, and shall not use or disclose to any other Person (other than its Affiliates and its and their officers, directors, employees, agents and representatives), any Seller Confidential Information, except as permitted by this Agreement. Buyer shall only disclose Seller Confidential Information to its or its Affiliates’ officers, directors, employees, agents, auditors, lenders, consultants and other representatives who are legally bound by a confidentiality obligation to Buyer or its Affiliates no less protective of the Seller Confidential Information than that contained in this Section 17 and who have a bona fide need to access the Seller Confidential Information consistent with Buyer’s rights under this Agreement.

- (d) Notwithstanding anything to the contrary in this Section, any party may disclose Confidential Information:
- (i) if and to the extent such Confidential Information is required by subpoena or Order to be disclosed;
 - (ii) to a Governmental or Regulatory Body;
 - (iii) pursuant to any Bankruptcy Proceeding;
 - (iv) to the extent such disclosure is otherwise required by applicable Law or requirement of any stock exchange on which the shares or stock of the Person in question are listed;
 - (v) in connection with a party's exercise and enforcement of any rights or remedies provided under this Agreement; or
 - (vi) to the extent such disclosure is required for financial or tax reporting purposes of the applicable party or its Affiliates.
- (e) If any Person is requested or required (by subpoena, court order or similar process) to disclose any Confidential Information as provided in Section 17(d)(i), the Person from which the disclosure is sought shall (i) provide the applicable party with prompt written notice of such request or requirement and (ii) make reasonable efforts to cooperate with the applicable party so that such party may seek a protective order or other appropriate remedy or protection. If such protective order or other remedy or protection is not obtained, or the applicable party waives compliance with the provisions of this Agreement, the Person from which the disclosure is sought shall use reasonable efforts to disclose only that portion of the Confidential Information that is legally requested or required to be disclosed.
- (f) The Joint Administrators shall be at liberty to disclose the terms of this Agreement to any court or to any liquidator and to any of their officers and representatives and show appropriate figures in their administration records, accounts and returns.
- (g) Nothing in this Section 17 shall prevent the EMEA Sellers or their Affiliates from disclosing either Business Confidential Information or Non-Exclusive Confidential Information to other prospective purchasers of the Business that have executed a confidentiality agreement with an EMEA Seller or an Affiliate thereof.

18. Joint Administrators.

- (a) Notwithstanding that this Agreement shall have been signed by the Joint Administrators both in their capacities as joint administrators of the EMEA Sellers for and on behalf of the EMEA Sellers and in their personal capacities, it is hereby expressly agreed and declared that no personal liability under or in connection with this Agreement shall fall on the Administrators or their firm, partners, employees, agents, advisers or representatives whether such liability would arise under paragraph 99(4) of Schedule B1 to the Insolvency Act 1986 or otherwise howsoever.

(b) The Joint Administrators are party to this Agreement in their personal capacities only for the purpose of receiving the benefit of this Exhibit P and the rights, exclusions, limitations, undertakings and covenants in their favour contained in this Exhibit P. The Buyer acknowledges and agrees that in the negotiation and the completion of this Agreement the Joint Administrators are acting only as agents for and on behalf of the EMEA Sellers and without any personal liability whatsoever.

(c) The Buyer further acknowledges the following:

(i) it has entered into this Agreement without reliance on any warranties or representations made by the EMEA Sellers or by any of its employees, agents or representatives, or by the Joint Administrators or any of their firm, partners, employees, agents, advisors or representatives and (save in respect of fraudulent misrepresentation) it shall not have any remedy in respect of any misrepresentation or untrue statement made by or on behalf of any other party to this Agreement; and

(ii) neither the EMEA Sellers nor the Joint Administrators shall incur any liability to it by reason of any fault or defect in all or any of the EMEA Acquired Assets.

19. Miscellaneous.

(a) The provisions of Article XI of the Agreement shall apply to the terms of this Exhibit P, *mutatis mutandis*; provided, that Buyer, the EMEA Sellers and the Joint Administrators may amend this Exhibit P without the consent of the other Sellers.

(b) Without prejudice to Section 18(a), to the extent that the benefit of any provision in this Exhibit or the Agreement is expressed to be conferred upon:

(i) the Joint Administrators, where necessary to give effect to any such provision the EMEA Sellers shall hold such benefit as trustees for each Joint Administrator; and

(ii) the firm, partners, employees, agents, advisers and/or representatives of the Joint Administrators, where necessary to give effect to any such provision the Joint Administrators (or failing that the EMEA Sellers) shall hold such benefit as trustees for each such person.

(c) The provisions of the Agreement shall survive for the benefit of the Joint Administrators, their firm, partners, employees, agents, advisers and representatives notwithstanding the discharge of the Joint Administrators as joint administrators of the EMEA Sellers and shall be in addition to and not in substitution for any other right or indemnity or relief otherwise available to each of them.

(d) To the extent that there is any inconsistency between the terms of this Exhibit P and the Agreement, this Exhibit P shall prevail.

Exhibit 4.7

Summary of Material Terms of the Lease Agreements for the Company's Headquarters

Five-story building in Tel Aviv

- The premises: 5 floors and additional areas in 12 Ha'Nechoshet , Tel-Aviv, Israel (approximately 36,000 square feet), plus storage and parking space.
- Signing date: July 9, 2008.
- Parties: Radware Ltd., Israel ("Radware"), Yehuda Zisapel assets Ltd. and Zohar Zisapel assets Ltd. (together referred to as "Lessor").
- Lease period: The lease period started on November 1st, 2007 and will terminate on November 1st, 2012.
- Lease payments: An amount in NIS equal to the aggregated sum and according to the following breakdown: US\$14 per month per square meter for 3,174 square meters of office space (approximately 34,000 square feet) (in the first year of the lease – US\$13 per month), US\$8 per month for square meter for 165 square meters of storage (approximately 1,800 square feet), average price of US\$96 per month per parking space for 54 parking spaces (the "Lease Payments"). In addition, Radware pays management fees.
- All Lease Payments are calculated according to the known exchange rate on the date of each payment, plus VAT, and are made in advance on a quarterly basis on the first day of each quarter.
- Guarantees: Radware is required to submit to the Lessor a bank guarantee against its obligations pursuant to the lease agreement in the amount of six (6) months Lease Payments plus VAT and management fees ("Bank Guarantee"). Such Bank Guarantee will be issued only should Yehuda Zisapel's, Roy Zisapel's and Zohar Zisapel's stock holdings in Radware shall drop under 10% of Radware's issued share capital.

Two stories in Or building in Tel Aviv

- The premises: Certain office areas in two floors in 4 Ha'Nechoshet , Tel-Aviv, Israel (approximately 30,000 square feet), 60 parking spaces.
- Signing date: November 22, 2007
- Parties: Radware Ltd., Israel ("Radware"), Radwill Ltd. and Run-Rad Unlimited Networking Ltd. (together referred to as "Lessor")
- Lease period: The lease commencement date is on or about May 2008 and will expire on or about May 2011. The lease may be extended at Radware's option for an additional period, to be terminated on June 1st 2015, the latest ("Extended Period").
- Lease payments: An amount in NIS equal to the aggregated sum and according to the following breakdown: US\$16 per month per square meter for 2,740 for square meter (approximately 30,000 square feet) and an additional US\$100 per parking space (the "Lease Payments"). During the Extended Period the Lease Payments will be US\$17.25 per month per square meter. Payment for parking spaces shall remain the same. In addition, Radware pays management fees.
- All Lease Payments are calculated according to the known exchange rate on the date of each payment, plus VAT, and are made in advance on a quarterly basis and on the first day of each such quarter.
- Guarantees: Radware is required to submit to the Lessor a bank guarantee against its obligations pursuant to the lease agreement in the amount of six (6) months Lease Payments plus VAT and management fees ("Bank Guarantee"). Such Bank Guarantee will be issued only should Yehuda Zisapel's, Roy Zisapel's and Zohar Zisapel's stock holdings in Radware shall drop under 10% of Radware's issued share capital.

LIST OF SUBSIDIARIES

| Name of Subsidiary | Country of Incorporation |
|-----------------------------|--------------------------------------|
| Radware Inc. | New Jersey, United States of America |
| Radware UK Limited | United Kingdom |
| Radware France | France |
| Radware Srl | Italy |
| Radware GmbH | Germany |
| Nihon Radware KK | Japan |
| Radware Australia Pty. Ltd. | Australia |
| Radware Singapore Pte. Ltd. | Singapore |
| Radware Korea Ltd. | Korea |
| Radware Canada Inc. | Canada |
| Radware GmbH | Switzerland |
| Radware India Pvt. Ltd. | India |
| Covelight Systems, Inc. | Delaware, United States of America |

| | |
|----------------------|---|
| Filename: | exhibit_10-1.htm |
| Type: | EX-10.1 |
| Comment/Description: | (this header is not part of the document) |

Exhibit 10.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-8 (Commission File Number 333-13818, Commission File Number 333-114668 and Commission File Number 333-135218) pertaining to the Radware Ltd. 1997 Key Employee Share Incentive Plan, of our report dated March 24, 2009, with respect to the Consolidated Financial Statements of Radware Ltd. and its subsidiaries and the effectiveness of internal control over financial reporting of Radware Ltd. and its subsidiaries, included in its Annual Report (Form 20-F) for the year ended December 31, 2008.

Tel - Aviv, Israel
March 24, 2009

/s/ Kost Forer Gabbay & Kasierer
KOST FORER GABBAY & KASIERER
A Member of Ernst & Young Global

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Roy Zisapel, certify that:

1. I have reviewed this annual report on Form 20-F of Radware Ltd. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 period covered by the 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: March 25, 2009

/s/ Roy Zisapel

Roy Zisapel
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Meir Moshe, certify that:

1. I have reviewed this annual report on Form 20-F of Radware Ltd. (the "Registrant");
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;
4. The Registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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 period covered by the 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(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: March 25, 2009

/s/ Meir Moshe

Meir Moshe
Chief Financial Officer
(Principal Financial Officer)

Filename: exhibit_13-1.htm

Type: ex-13.1

Comment/Description:

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Exhibit 13.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Radware Ltd. (the "Company") on Form 20-F for the year ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Roy Zisapel, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: March 25, 2009

/s/ Roy Zisapel

Roy Zisapel
Chief Executive Officer
(Principal Executive Officer)

Filename: exhibit_13-2.htm

Type: ex-13.2

Comment/Description:

(this header is not part of the document)

Exhibit 13.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Radware Ltd. (the "Company") on Form 20-F for the year ended December 31, 2008 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Meir Moshe, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to §906 of the Sarbanes-Oxley Act of 2002, that:

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

Date: March 25, 2009

/s/ Meir Moshe

Meir Moshe
Chief Financial Officer
(Principal Financial Officer)
