# NETGEAR, INC

# FORM 10-K
(Annual Report)

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| | |
|---|---|
| Address | 350 EAST PLUMERIA DRIVE |
| | SAN JOSE, CA 95134 |
| Telephone | 4089078000 |
| CIK | 0001122904 |
| Symbol | NTGR |
| SIC Code | 3661 - Telephone and Telegraph Apparatus |
| Industry | Communications Services |
| Sector | Services |
| Fiscal Year | 12/31 |

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

# Form 10-K

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

**For the fiscal year ended December 31, 2012**

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

**For the transition period from to**

**Commission file number 000-50350**

# NETGEAR, Inc.

*(Exact name of registrant as specified in its charter)*

| **Delaware** | **77-0419172** |
|---|---|
| *(State or other jurisdiction of incorporation or organization)* | *(I.R.S. Employer Identification No.)* |
| **350 East Plumeria Drive,**<br>**San Jose, California** | **95134** |
| *(Address of principal executive offices)* | *(Zip Code)* |

**Registrant's telephone number, including area code**
**(408) 907-8000**
**Securities registered pursuant to Section 12(b) of the Act:**

| Title of each class | Name of each exchange on which registered |
|---|---|
| Common Stock, par value $0.001 | The NASDAQ Stock Market LLC<br>(NASDAQ Global Select Market) |

**Securities registered pursuant to 12(g) of the Act: None**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☑ No ☐

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. 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 has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☑

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

| | | | |
|---|---|---|---|
| Large Accelerated filer | ☑ | Accelerated filer | ☐ |
| Non-Accelerated filer | ☐ | Smaller reporting company | ☐ |

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

The aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant as of July 1, 2012 was approximately $725.6 million. Such aggregate market value was computed by reference to the closing price of the common stock as reported on the Nasdaq Global Select Market on June 29, 2012 (the last business day of the Registrant's most recently completed fiscal second quarter). Shares of common stock held by each executive officer and director and each entity that owns 5% or more of the outstanding common stock have been excluded in that such persons may be deemed to be affiliates. The determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of outstanding shares of the registrant's Common Stock, $0.001 par value, was 38,441,068 shares as of February 19, 2013.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the Proxy Statement for the Registrant's 2013 Annual Meeting of Stockholders are incorporated by reference in Part III of this Form 10-K.

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## PART I

This Annual Report on Form 10-K (“Form 10-K”), including Management’s Discussion and Analysis of Financial Condition and Results of Operations in Part II, Item 7 below, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements other than statements of historical facts contained in this Form 10-K, including statements regarding our future financial position, business strategy and plans and objectives of management for future operations, are forward-looking statements. The words “believe,” “may,” “will,” “estimate,” “continue,” “anticipate,” “intend,” “should,” “plan,” “expect” and similar expressions, as they relate to us, are intended to identify forward-looking statements. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. These forward-looking statements are subject to a number of risks, uncertainties and assumptions described in “Risk Factors” in Part I, Item 1A below, and elsewhere in this Form 10-K, including, among other things: the future growth of the commercial business, retail, and broadband service provider markets; speed of adoption of wireless networking worldwide; our business strategies and development plans; our successful introduction of new products and technologies; future operating expenses and financing requirements; and competition and competitive factors in the commercial business, retail, and broadband service provider markets. In light of these risks, uncertainties and assumptions, the forward-looking events and circumstances discussed in this Form 10-K may not occur and actual results could differ materially from those anticipated or implied in the forward-looking statements. All forward-looking statements in this Form 10-K are based on information available to us as of the date hereof and we assume no obligation to update any such forward-looking statements. The following discussion should be read in conjunction with our consolidated financial statements and the accompanying notes contained in this Form 10-K.

### Item 1. *Business*

### General

We are a global networking company that delivers innovative products to consumers, businesses and service providers. In the second fiscal quarter of 2011, we made organizational changes that we believe enable us to better focus our efforts on core customer segments and allow us to be more nimble and opportunistic as a company overall. Our business is now managed in three specific business units: retail, commercial, and service provider. The retail business unit consists of high performance, dependable and easy-to-use home networking, storage and digital media products to connect users with the Internet and their content and devices. The commercial business unit consists of business networking, storage and security solutions without the cost and complexity of Big IT. The service provider business unit consists of made-to-order and retail proven, whole home networking solutions sold to service providers for sale to their customers. Additionally, in the first fiscal quarter of 2011, we combined our North American, Central American and South American sales forces to form the Americas territory. Previously, North America was its own geographic region and the Central American and South American territories were categorized within the Asia Pacific ("APAC") geographic region. Following this change, we are now organized into the following three geographic territories: Americas, Europe, Middle-East and Africa ("EMEA") and APAC. For further detail, refer to Note 12, *Segment Information, Operations by Geographic Area and Customer Concentration* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K.

We were incorporated in Delaware on January 8, 1996. Our principal executive offices are located at 350 East Plumeria Drive, San Jose, California 95134, and our telephone number at that location is (408) 907-8000. Our website address is www.netgear.com.

In the years ended December 31, 2012 , 2011 , and 2010 , we generated net revenue of $1.27 billion , $1.18 billion , and $902.1 million , respectively.

### Markets

Our mission is to be the innovative leader in connecting the world to the internet. This includes our goal of being the leading provider of innovative networking products to the consumer, business, and service provider markets. A number of factors are driving today's demand for networking products within these markets. As the number of computing devices, such as PCs, smart phones and tablets, has increased in recent years, networks - especially WiFi networks - are being deployed more broadly in order to share information and resources among users and devices. This information and resource sharing occurs internally, through a local area network, or externally, via the Internet. To take advantage of complex applications, advanced communication capabilities and rich multimedia content, users are upgrading their Internet connections by deploying high-speed broadband access technologies. Users also seek the convenience and flexibility of operating their PCs, laptops, smart phones, tablets and related computing devices while accessing their content in a more mobile, or wireless, manner. In addition, market demand for television connectivity products

has increased significantly as well, where users seek to connect their televisions to the Internet and for entertainment content. Finally, as the usage of networks, including the Internet, has increased, users have become much more focused on the security of their connections and the protection of the data within their networks.

Consumers, businesses and service providers demand a complete set of wired and wireless networking and broadband products that are tailored to their specific needs and budgets and also incorporate the latest networking technologies. These users require the continual introduction of new and refined products and often lack extensive IT resources and technical knowledge. Therefore, they demand 'plug-and-play' or easy-to-install and use products that require little or no maintenance, and customer service and support. We believe that these users also prefer the convenience of obtaining a networking solution from a single company with whom they are familiar; as these users expand their networks, they tend to be loyal purchasers of that brand. In addition, purchasing decisions of users in these markets are also driven by the affordability of networking products. To provide reliable, easy-to-use products at an attractive price, we believe a successful supplier must have a company-wide focus on the unique requirements of these markets, operational discipline and cost-efficient infrastructure and processes that allow for efficient product development, manufacturing and distribution.

**Sales Channels**

We sell our products through multiple sales channels worldwide, including traditional retailers, online retailers, wholesale distributors, direct market resellers ("DMRs"), value-added resellers ("VARs"), and broadband service providers.

*Wholesale Distribution.* Our distribution channel supplies our products to retailers, e-commerce resellers, Direct Market Resellers and Value Added Resellers. We sell directly to our distributors, the largest of which are Ingram Micro, Inc., D&H Distributing Company and Tech Data Corporation.

*Retailers.* Our retail channel primarily supplies products that are sold into the consumer market. We sell directly to, or enter into consignment arrangements with, a number of our traditional retailers. The remaining traditional retailers, as well as our online retailers, are fulfilled through wholesale distributors. We work directly with our retail channels on market development activities, such as co-advertising, in-store promotions and demonstrations, instant rebate programs, event sponsorship and sales associate training, as well as establishing “store within a store” websites and banner advertising.

*DMRs and VARs.* We primarily sell into the commercial business marketplace through an extensive network of DMRs and VARs. Our DMRs include companies such as CDW and Insight. VARs include our network of registered Powershift Partners, and resellers that are not registered in our Powershift partner program. DMRs and VARs may receive sales incentives, marketing support and other program benefits from us. Our DMRs and VARs generally purchase our products through our wholesale distributors.

*Broadband Service Providers.* We also supply our products directly to broadband service providers in the United States and internationally. Service providers supply our products to their business and home subscribers.

The largest portion of our net revenues was derived from Americas sales in the year ended December 31, 2012 . The Americas sales as a percentage of net revenue increased from 49.7% in the year ended December 31, 2011 to 53.4% in the year ended December 31, 2012. We have continuously committed resources to expanding our international operations and sales channels. Accordingly, we are subject to a number of risks related to international operations such as macroeconomic and microeconomic conditions, geopolitical instability, preference for locally branded products, exchange rate fluctuations, increased difficulty in managing inventory, challenges of staffing and managing foreign operations, the effect of international sales on our tax structure, and changes in local tax laws. See Note 12, *Segment Information, Operations by Geographic Area and Customer Concentration* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K, for further discussion of net revenues by geographic region.

None of our customers accounted for 10% or greater of our net revenue in the year ended December 31, 2012. Retail company Best Buy, Inc. and distributor Ingram Micro, Inc. each accounted for 10% or greater of our net revenues in the years ended December 31, 2011 , and 2010 . See Note 12, *Segment Information, Operations by Geographic Area and Customer Concentration* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K, for further details on customer concentrations.

**Product Offerings**

Our product line consists of wired and wireless devices, including devices that enable commercial business networking, broadband access and network connectivity. These products are available in multiple configurations to address the needs of our customers in each geographic region in which our products are sold.

*Commercial business networking.* These products are sold primarily in our commercial business unit and include:

- Ethernet switches, which are multiple port devices used to network PCs and peripherals via Ethernet wiring;
- Wireless controllers, which are devices used to manage and control multiple WiFi base stations which in turn provide WiFi connections to PCs and peripherals;
- Internet Security Appliances, which provide Internet access through capabilities such as anti-virus and anti-spam; and
- Unified storage, which delivers file and block based data into a single shared storage system, meeting the demands of small enterprises and consumers through an easy-to-use interface for managing multiple storage protocols.

*Broadband access.* Broadband is a transmission medium capable of moving more digital content over public high speed networks than traditional low speed telephone lines. Products that enable broadband access are sold in our service provider and retail business units and include:

- Routers, which connect the home or office networks to the Internet via broadband modems;
- Gateways, which are routers with integrated modems, for Internet access;
- IP telephony products, used for transmitting voice communications over a network; and
- Media servers, which store files and multimedia content for access by PCs, laptops, smart phones and other Internet enabled devices.

*Network connectivity.* Products that enable network connectivity and resource sharing are sold in our service provider and retail business units and include:

- Wireless access points and range extenders, which provide a wireless link between a wired network and wireless devices;
- Wireless network interface cards and adapters, which enable devices to be connected to the network wirelessly;
- Ethernet network interface cards and adapters, which enable devices to be connected to the network over Ethernet wiring;
- Media adapters, which connect non PC entertainment devices such as TVs, audio players, and game consoles to a network;
- Powerline adapters and bridges, which enable devices to be connected to the network over existing electrical wiring;
- Multimedia over Coax Alliance standard (“MoCA”) adapters and bridges, which enable devices to be connected to the network over existing coaxial wiring; and
- Remote video monitoring systems, which provide wire-free monitoring accessible by PC, MAC, or smartphone.

We design our products to meet the specific needs of the consumer, business and service provider markets, tailoring various elements of the product design, including component specification, physical characteristics such as casing, design and coloration, and specific user interface features to meet the needs of these markets. We also leverage many of our technological developments, high volume manufacturing, technical support and engineering infrastructure across our markets to maximize business efficiencies.

Our products that target the business market are generally designed with an industrial appearance, including metal cases and, for some product categories, the ability to mount the product within standard data networking racks. These products typically include higher port counts, higher data transfer rates and other performance characteristics designed to meet the needs of a commercial business user. For example, we offer data transfer rates up to ten Gigabits per second for our business products to meet the higher capacity requirements of business users. Some of these products are also designed to support transmission modes

such as fiber optic cabling, which is common in more sophisticated business environments. Security requirements within our products for commercial business broadband access include firewall, virtual private network and content threat management capabilities that allow for secure interactions between remote offices and business headquarter locations over the Internet. Our connectivity product offerings for the commercial business market include enhanced security and remote configurability often required in a business setting. Our ReadyNAS ® family of network attached storage products implements redundant array of independent disks data protection, enabling businesses to store and protect critical data easily, efficiently and intelligently.

Our vision for the home network has always been about having all devices connected to the Internet at all times, thus forming the Smart Homes. Our focus has been to continue to introduce new products into what we believe are new growth areas which form the basis of Smart Homes: First, multimedia capable in home WiFi coverage via latest technology (802.11ac) WiFi routers and repeaters; Internet and in home video content streaming players such Push2TV and NeoTV; home network storage products with easy to use user interfaces, higher capacity and resilience; high speed DOCSIS 3.0, xDSL and fiber gateways with more integrated functions; and the 4G/Long Term Evolution (“LTE”) gateways; and home monitoring and automation devices such as our VueZone home monitoring camera system. We continue to announce and introduce new products in these significant growth markets.

Our vision for the commercial network is the ultimate move into the effectiveness and efficiency of the hybrid cloud access network. We believe small and medium enterprises will continue to move into cloud based applications such as Salesforce.com, Ring Central, LifeSize video conferencing, SuccessFactor, Workday etc. plus moving into utility like on demand computing power supplied by third party data centers. Also more and more enterprises are enabling the BYOD (bring your own device) environment allowing smart phones, tablets, netbooks to be the business computing devices of choice. As such we are introducing next generation SMB products in rapid pace: Power over Ethernet (PoE) switches, 10 Gigabit Ethernet switches, high capacity local and remote unified storage, small to medium capacity campus Wireless LAN, and security appliances.

**Competition**

The consumer, business and service provider markets are intensely competitive and subject to rapid technological change. We expect competition to continue to intensify. Our principal competitors include:

- within the consumer markets, companies such as Apple, Belkin, D-Link, Dropcam, Foscam, the Linksys division of Cisco Systems (which was offered to be purchased by Belkin in January 2013), Logitech, Roku, TP Link and Western Digital; and

- within the business markets, companies such as Allied Telesys, Barracuda, Buffalo, Data Robotics, Dell, D-Link, Fortinet, Hewlett-Packard, Huawei, Cisco Systems, QNAP Systems, Seagate Technology, SonicWALL, Synology, WatchGuard and Western Digital; and

- within the service provider markets, companies such as Actiontec, Arcadyan, ARRIS, AVM, Comtrend, D-Link, Hitron, Huawei, Motorola, Pace, Sagem, Scientific Atlanta-a Cisco company, Sercomm, SMC Networks, TechniColor, Ubee, Compal Broadband, ZTE and ZyXEL.

Other current and potential competitors include numerous local vendors such as Devolo, LEA and AVM in Europe, Corega and Melco in Japan. Our potential competitors also include other consumer electronics vendors, including LG Electronics, Microsoft, Panasonic, Samsung, Sony, Toshiba and Vizio, who could integrate networking and streaming capabilities into their line of products, such as televisions, set top boxes and gaming consoles, and our channel customers who may decide to offer self-branded networking products. We also face competition from service providers who may bundle a free networking device with their broadband service offering, which would reduce our sales if we are not the supplier of choice to those service providers. In the service provider space, we are also facing significant and increased competition from original design manufacturers, or ODM's, and contract manufacturers who are selling and attempting to sell their products directly to service providers around the world.

Many of our existing and potential competitors have longer operating histories, greater name recognition and substantially greater financial, technical, sales, marketing and other resources. As a result, they may have more advanced technology, larger distribution channels, stronger brand names, better customer service and access to more customers than we do. For example, Hewlett-Packard has significant brand name recognition and has an advertising presence substantially greater than ours. Similarly, Cisco Systems is well recognized as a leader in providing networking products to businesses and has substantially greater financial resources than we do. Several of our competitors, such as D-Link, which offers a range of products that directly compete with most of our product offerings. Several of our other competitors primarily compete in a more limited manner. For example, Hewlett-Packard sells networking products primarily targeted at larger businesses or enterprises. However, the competitive environment in which we operate changes rapidly. For example, as of the date of this Annual Report, Belkin has entered into an agreement to

acquire the Linksys division of Cisco Systems, creating a consolidated and formidable competitor. Other companies with significant resources could also become direct competitors, either through acquiring a competitor or through internal efforts.

We believe that the principal competitive factors in the consumer, business and service provider markets for networking products include product breadth, size and scope of the sales channel, brand name, timeliness of new product introductions, product availability, performance, features, functionality and reliability, price, ease-of-installation, maintenance and use, and customer service and support. We believe our products are competitive in these markets based on these factors.

To remain competitive, we must invest significant resources in developing new products and enhancing our current products while continuing to expand our sales channels and maintaining customer satisfaction worldwide.

**Research and Development**

As of December 31, 2012 , we had 251 employees engaged in research and development. Our success depends on our ability to develop products that meet changing user needs and to anticipate and proactively respond to evolving technology in a timely and cost-effective manner. Accordingly, we have made investments in our research and development department in order to effectively evaluate new third-party technologies, develop new in-house technologies, and develop and test new products. Our research and development employees work closely with our technology and manufacturing partners to bring our products to market in a timely, high quality and cost-efficient manner.

We identify, qualify or self-develop new technologies, and we work closely with our various technology suppliers and manufacturing partners to develop products using one or more of the development methodologies described below.

*ODM.* Under the original design manufacturer ("ODM"), methodology, we define the product concept and specification and recommend the technology selection. We then coordinate with our technology suppliers while they develop the product meeting our specification. On certain new products, one or more subsystems of the design can be done in-house and then integrated in with the remaining design pieces from the ODM. Once prototypes are completed, we work with our partners to complete the debugging and systems integration and testing. After completion of the final tests, agency approvals and product documentation, the product is released for production.

*In-House Development.* Under the in-house development model, one or more subsystems of the product are designed and developed utilizing the NETGEAR engineering team. Under this model, some of the primary technology is developed in-house. We then work closely with either an ODM or a contract manufacturer ("CM") to complete the development of the entire design, perform the necessary testing, and obtain regulatory approvals before the product is released for production.

*OEM.* Under the original equipment manufacturer ("OEM"), methodology, which we use for a limited number of products, we define the product specification and then purchase the product from OEM suppliers that have existing products fitting our design requirements. In some cases, once a technology supplier's product is selected, we work with the OEM supplier to complete the cosmetic changes to fit into our mechanical and packaging design, as well as our documentation and graphical user interface ("GUI"), standard. The OEM supplier completes regulatory approvals on our behalf. When all design verification and regulatory testing is completed, the product is released for production.

Our internal research and development efforts focus on developing and improving the usability, reliability, functionality, cost and performance of our products. Our total research and development expenses were $61.1 million in 2012 , $48.7 million in 2011 and $40.0 million in 2010 .

**Manufacturing**

Our primary manufacturers are Cameo Communications Inc., Delta Networks Incorporated, Hon Hai Precision Industry Co., Ltd. (more commonly known as Foxconn Corporation), Sercomm Corporation, and Pegatron Corporation (which was spun out of ASUSTek Computer, Inc. in January 2008), all of which are headquartered in Taiwan. The actual manufacturing of our products occurs primarily in mainland China and Vietnam, with pilot and low-volume manufacturing in Taiwan on a select basis. We distribute our manufacturing among these key suppliers to avoid excessive concentration with a single supplier. Because substantially all of our manufacturing occurs in mainland China and Vietnam, any disruptions from natural disasters, health epidemics and political, social and economic instability would affect the ability of our manufacturers to manufacture our products. In addition, our manufacturers in China have continued to increase our costs of production, particularly in the recent year. These increased costs have affected our margins and ability to lower prices for our products to stay competitive. If our manufacturers or warehousing facilities are disrupted or destroyed, we would have no other readily available alternatives for manufacturing our products and our business would be significantly impacted. In addition to their responsibility for the manufacturing of our products,

our manufacturers purchase all necessary parts and materials to produce complete, finished goods. To maintain quality standards for our suppliers, we have established our own product quality organization based in Hong Kong and mainland China. They are responsible for auditing and inspecting process and product quality on the premises of our ODMs, CMs and OEMs.

We obtain several key components from limited or sole sources. For example, many of the semiconductors and meta materials used in our products are designed for use in our products and are obtained from sole source suppliers on a purchase order basis. In addition, some components that are used in all our products are obtained from limited sources. These components include connector jacks, plastic casings and physical layer transceivers. We also obtain switching fabric semiconductors, which are used in our Ethernet switches and Internet gateway products, and wireless local area network chipsets, which are used in all of our wireless products, from a limited number of suppliers. Our third party manufacturers generally purchase these components on our behalf on a purchase order basis. If these sources fail to satisfy our supply requirements, our ability to meet scheduled product deliveries would be harmed and we may lose sales and experience increased component costs.

We currently outsource warehousing and distribution logistics to five main third-party providers who are responsible for warehousing, distribution logistics and order fulfillment. In addition, these parties are also responsible for some configuration and re-packaging of our products including bundling components to form kits, inserting appropriate documentation, disk drive configuration, and adding power adapters. APL Logistics Americas, Ltd. in City of Industry, California serves the Americas region, Kerry Logistics Ltd. in Hong Kong serves the Asia Pacific region, DSV Solutions B.V. and ModusLink B.V. in the Netherlands serve the EMEA, region and Agility Logistics Pty Ltd. in Matraville, NSW, Australia which serves Australia and New Zealand.

**Sales and Marketing**

As of December 31, 2012 , we had 352 employees engaged in sales and marketing. We work directly with our customers on market development activities, such as co-advertising, in-store promotions and demonstrations, instant rebate programs, event sponsorship and sales associate training. We also participate in major industry trade shows and marketing events. Our marketing department is comprised of our product marketing and corporate marketing groups.

Our product marketing group focuses on product strategy, product development roadmaps, the new product introduction process, product lifecycle management, demand assessment and competitive analysis. The group works closely with our sales and research and development groups to align our product development roadmap to meet customer technology demands from a strategic perspective. The group also ensures that product development activities, product launches, channel marketing program activities, and ongoing demand and supply planning occur in a well-managed, timely basis in coordination with our development, manufacturing, and sales groups, as well as our ODM, OEM and sales channel partners.

Our corporate marketing group is responsible for defining and building our corporate brand. The group focuses on defining our mission, brand promise and marketing messages on a worldwide basis. This group also defines the marketing approaches in the areas of advertising, public relations, events, channel programs and our web delivery mechanisms. These marketing messages and approaches are customized for the commercial business, home user, and broadband service provider markets through a variety of delivery mechanisms designed to effectively reach end-users in a cost-efficient manner.

We conduct most of our international sales and marketing operations through wholly-owned subsidiaries which operate via sales and marketing subsidiaries and branch offices worldwide.

**Customer Support**

We design our products with “plug-and-play” ease of use. We respond globally to customer questions through a variety of venues including phone, chat and email. Customers can also get self-help service through the comprehensive knowledgebase and the user forum on our website. Customer support is provided through a combination of a limited number of permanent employees and use of subcontracted, out-sourced resources. Our permanent employees design our technical support database and are responsible for training and managing our outsourced sub-contractors. They also handle escalations from the outsourced resources. We utilize the information gained from customers by our customer support organization to enhance our product offerings, including further simplifying the installation process.

**Intellectual Property**

We believe that our continued success will depend primarily on the technical expertise, speed of technology implementation, creative skills and management abilities of our officers and key employees, plus ownership of a limited but important set of copyrights, trademarks, trade secrets and patents. We primarily rely on a combination of copyright, trademark and trade secret and patent laws, nondisclosure agreements with employees, consultants and suppliers and other contractual provisions to establish,

maintain and protect our proprietary rights. We hold 73 issued United States patents that expire between years 2013 and 2028 and 20 foreign patents that expire between 2012 and 2026. In addition, we currently have a number of pending United States and foreign patent applications related to technology and products offered by us. We also rely on third-party licensors for patented hardware and software license rights in technology that are incorporated into and are necessary for the operation and functionality of our products. Our success will depend in part on our continued ability to have access to these technologies.

We have trade secret rights for our products, consisting mainly of product design, technical product documentation and software. We also own, or have applied for registration of trademarks, in connection with our products in the United States and internationally, including NETGEAR, the NETGEAR logo, NETGEAR Green, the NETGEAR Green logo, NETGEAR Digital Entertainer, the NETGEAR Digital Entertainer logo, Genie, the Genie logo, ReadyShare, Neo TV, the Neo TV logo, NETGEAR Stora, the NETGEAR Stora logo, Connect with Innovation, ProSafe, RangeMax, ReadyNAS, ReadyDrop, ReadyData, ReadyCloud, Smart Wizard, ProSecure, the ProSecure logo, Push2TV, Ultraline, Proline, Liteline, Envoy Service Management System, Versalink, Wirespeed, Leaf Networks, NeoMedia, Centria, On Networks, Folio, Wifi Works, My Media, and X-RAID. We have registered a number of Internet domain names that we use for electronic interaction with our customers including dissemination of product information, marketing programs, product registration, sales activities, and other commercial uses.

**Seasonal Business**

We have historically experienced increased net sales in our third and fourth fiscal quarters as compared to other quarters in our fiscal year due to seasonal demand of consumer markets related to the beginning of the school year and the holiday season. However, because of irregular and significant purchases from customers in other markets, such as the service provider market, this pattern has not been consistent. As such, any pattern should not be considered a reliable indicator of our future net sales or financial performance.

**Backlog**

We believe the actual amount of product backlog at any particular time is not a meaningful indication of our future business. Our backlog consists of products for which customer purchase orders have been received and that are scheduled or in the process of being scheduled for shipment. While we expect to fulfill the order backlog within the current year, most orders are subject to rescheduling or cancellation with little or no penalties. Because of the possibility of customer changes in product scheduling or order cancellation, our backlog as of any particular date may not be an indicator of net sales for any subsequent period. Accordingly, backlog should not be considered a reliable indicator of our ability to achieve any particular level of revenue or financial performance.

**Environmental Laws**

Our products and manufacturing process are subject to numerous governmental regulations, which cover both the use of various materials as well as environmental concerns. Environmental issues such as pollution and climate change have had significant legislative and regulatory efforts on a global basis, and there are expected to be additional changes to the regulations in these areas. These changes could directly increase the cost of energy which may have an impact on the way we manufacture products or utilize energy to produce our products. In addition, any new regulations or laws in the environmental area might increase the cost of raw materials we use in our products and the cost of compliance. Other regulations in the environmental area may require us to continue to monitor and ensure proper disposal or recycling of our products. To the best of our knowledge, we maintain compliance with all current government regulations concerning our production processes, for all locations in which we operate. Since we operate on a global basis, this is also a complex process which requires continual monitoring of regulations and an ongoing compliance process to ensure that we and our suppliers are in compliance with all existing regulations.

**Employees**

As of December 31, 2012 , we had 850 full-time employees, with 352 in sales, marketing and technical support, 251 in research and development, 119 in operations, and 128 in finance, information systems and administration. We also utilize a number of temporary staff to supplement our workforce. We have never had a work stoppage among our employees and no personnel are represented under collective bargaining agreements.

**Long-lived assets**

Long-lived assets, comprising fixed assets, are reported based on the location of the asset. Long-lived assets by geographic location are as follows (in thousands):

| | December 31, 2012 | December 31, 2011 | December 31, 2010 |
|---|---|---|---|
| United States | $ 9,898 | $ 9,901 | $ 11,808 |
| Americas (excluding U.S.) | 36 | 44 | 22 |
| EMEA | 1,173 | 331 | 205 |
| China | 6,763 | 4,909 | 4,848 |
| APAC (excluding China) | 1,155 | 699 | 620 |
| | $ 19,025 | $ 15,884 | $ 17,503 |

**Available Information**

We file reports, proxy statements and other information with the Securities and Exchange Commission, or SEC, in accordance with the Exchange Act. You may read and copy our reports, proxy statements and other information filed by us at the SEC's Public Reference Room located at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information about the Public Reference Room. Our filings are also available to the public over the Internet at the SEC's website at *http://www.sec.gov.*

Our website provides a link to our SEC filings, which are available on the same day such filings are made. The specific location on the website where these reports can be found is http://investor.netgear.com/sec.cfm. Our website also provides a link to Section 16 filings which are available on the same day as such filings are made. Information contained on these websites is not a part of this Annual Report on Form 10-K.

**Executive Officers of the Registrant**

The following table sets forth the names, ages and positions of our executive officers as of February 7, 2013.

| Name | Age | Position |
|---|---|---|
| Patrick C.S. Lo | 56 | Chairman and Chief Executive Officer |
| Christine M. Gorjanc | 56 | Chief Financial Officer |
| Mark G. Merrill | 58 | Chief Technical Officer |
| Michael P. Clegg | 52 | Senior Vice President and General Manager of Service Provider Business Unit |
| David S.G. Soares | 46 | Senior Vice President and General Manager of Retail Business Unit |
| Michael F. Falcon | 56 | Senior Vice President of Worldwide Operations and Support |
| Charles T. Olson | 57 | Senior Vice President of Engineering |
| Andrew W. Kim | 42 | Vice President, Legal and Corporate Development, Corporate Secretary |

*Patrick C.S. Lo* is our co-founder and has served as our Chairman and Chief Executive Officer since March 2002. He has also served as temporary General Manager of our Commercial Business Unit, since May 2012. Patrick founded NETGEAR with Mark G. Merrill with the singular vision of providing the appliances to enable everyone in the world to connect to the high speed Internet for information, communication, business transactions, education, and entertainment. From 1983 until 1995, Mr. Lo worked at Hewlett-Packard Company, where he served in various management positions in sales, technical support, product management, and marketing in the U.S. and Asia. Mr. Lo was named the Ernst & Young National Technology Entrepreneur of the Year in 2006. Mr. Lo received a B.S. degree in electrical engineering from Brown University.

*Christine M. Gorjanc* has served as our Chief Financial Officer since January 2008, Chief Accounting Officer from December 2006 to January 2008 and Vice President, Finance from November 2005 to December 2006. From September 1996 through November 2005, Ms. Gorjanc served as Vice President, Controller, Treasurer and Assistant Secretary for Aspect Communications Corporation, a provider of workforce and customer management solutions. From October 1988 through September 1996, Ms. Gorjanc served as the Manager of Tax for Tandem Computers, Inc., a provider of fault-tolerant computer systems. Prior to that, Ms. Gorjanc served in management positions at Xidex Corporation, a manufacturer of storage devices, and spent eight years in

public accounting with a number of accounting firms. Ms. Gorjanc holds a B.A. in Accounting (with honors) from the University of Texas at El Paso and a M.S. in Taxation from Golden Gate University.

*Mark G. Merrill* is our co-founder and has served as our Chief Technology Officer since January 2003. From September 1999 to January 2003, he served as Vice President of Engineering and served as Director of Engineering from September 1995 to September 1999. From 1987 to 1995, Mr. Merrill worked at SynOptics Communications, a local area networking company, which later merged with Wellfleet to become Bay Networks, where his responsibilities included system design and analog implementations for SynOptics' first 10BASE-T products. Mr. Merrill received both a B.S. degree and an M.S. degree in Electrical Engineering from Stanford University.

*Michael P. Clegg* has served as our Senior Vice President and General Manager of Service Provider Business Unit since August 2005. Prior to joining NETGEAR, Mr. Clegg served as VP Engineering, at Entrisphere (acquired by Ericsson) from February 2003 to January 2005, and COO and CTO at Virtual Access from September 1999 to April 2002. From March 1999 to September 1999, Mr. Clegg served as Vice President DSL Solutions at Fujitsu Telecommunications Europe which acquired the Westell Europe subsidiary, which Mr. Clegg led as Managing Director from May 1995 to September 1999. Prior to May 1995, Mr. Clegg served as Senior Consultant at Scientific Generics (now Sagentia) from December 1989 to April 1994. Mr. Clegg received both a B.S. degree in Electrical Engineering and an M.S. degree in Digital Systems Design from the University of the Witwatersrand, South Africa.

*David S.G. Soares* has served as our Senior Vice President and General Manager of Retail Business Unit since April 2011, and Senior Vice President of Worldwide Sales from August 2004 to March 2011. Mr. Soares joined us in January 1998, and served as Vice President of EMEA sales from December 2003 to July 2004, EMEA Managing Director from April 2000 to November 2003, United Kingdom and Nordic Regional Manager from February 1999 to March 2000 and United Kingdom Country Manager from January 1998 to January 1999. Prior to joining us, Mr. Soares was at Hayes Microcomputer Products, a manufacturer of dial-up modems, where he was head of their retail, e-commerce and DMR channels in the UK. Mr. Soares attended Ridley College, Ontario Canada.

*Michael F. Falcon* has served as our Senior Vice President of Worldwide Operations and Support since January 2009, Senior Vice President of Operations from March 2006 to January 2009, and Vice President of Operations from November 2002 to March 2006. Prior to joining us, Mr. Falcon was at Quantum Corporation, where he served as Vice President of Operations and Supply Chain Management from September 1999 to November 2002, Meridian Data (acquired by Quantum Corporation), where he served as Vice President of Operations from April 1999 to September 1999, and Silicon Valley Group, where he served as Director of Operations, Strategic Planning and Supply Chain Management from February 1989 to April 1999. Prior to February 1989, Mr. Falcon served in management positions at SCI Systems, an electronics manufacturer, Xerox Imaging Systems, a provider of scanning and text recognition solutions, and Plantronics, Inc., a provider of lightweight communication headsets. Mr. Falcon received a B.A. degree in Economics with honors from the University of California, Santa Cruz and has completed coursework in the M.B.A. program at Santa Clara University.

*Charles T. Olson* has served as our Senior Vice President of Engineering since March 2006 and our Vice President of Engineering from January 2003 to March 2006. Prior to joining NETGEAR, Mr. Olson was at Hewlett-Packard Company, from July 1978 to January 2003, where he served as Director of Research and Development for ProCurve networking from 1998 to 2003, as Research and Development Manager for the Enterprise Netserver division from 1997 to 1998, and, in various other engineering management roles in Hewlett-Packard's Unix server and personal computer product divisions prior to 1998. Mr. Olson received a B.S. degree in Electrical Engineering from the University of California, Davis and an M.B.A. from Santa Clara University.

*Andrew W. Kim* has served as our Vice President, Legal and Corporate Development and Corporate Secretary since October 2008 and as our Associate General Counsel from March 2008 to October 2008. Prior to joining NETGEAR, Mr. Kim served as Special Counsel in the Corporate and Securities Department of Wilson Sonsini Goodrich & Rosati, a private law firm, where he represented public and private technology companies in a wide range of matters, including mergers and acquisitions, debt and equity financing arrangements, securities law compliance and corporate governance from 2000 to 2003 and 2006 to 2008. In between his two terms at Wilson Sonsini Goodrich & Rosati, Mr. Kim served as Partner in the Business and Finance Department of the law firm Schwartz Cooper Chartered in Chicago, Illinois, and was an Adjunct Professor of Entrepreneurship at the Illinois Institute of Technology. Mr. Kim holds a J.D. from Cornell Law School, and received a B.A. degree in history from Yale University.

## Item 1A. Risk Factors

*Investing in our common stock involves a high degree of risk. The risks described below are not exhaustive of the risks that might affect our business. Other risks, including those we currently deem immaterial, may also impact our business. Any of the following risks could materially adversely affect our business operations, results of operations and financial condition and could result in a significant decline in our stock price. Before deciding to purchase, hold or sell our common stock, you should carefully consider the risks described in this section. This section should be read in conjunction with the consolidated financial statements and accompanying notes thereto, and Management's Discussion and Analysis of Financial Condition and Results of Operations included in this Annual Report on Form 10-K.*

**We expect our operating results to fluctuate on a quarterly and annual basis, which could cause our stock price to fluctuate or decline.**

Our operating results are difficult to predict and may fluctuate substantially from quarter-to-quarter or year-to-year for a variety of reasons, many of which are beyond our control. If our actual results were to fall below our estimates or the expectations of public market analysts or investors, our quarterly and annual results would be negatively impacted and the price of our stock could decline. Other factors that could affect our quarterly and annual operating results include those listed in the risk factors section of this report and others such as:

- changes in the pricing policies of or the introduction of new products by us or our competitors;
- unanticipated shift or decline in profit by geographical region that would adversely impact our tax rate;
- slow or negative growth in the networking product, personal computer, Internet infrastructure, home electronics and related technology markets, as well as decreased demand for Internet access;
- operational disruptions, such as transportation delays or failure of our order processing system, particularly if they occur at the end of a fiscal quarter;
- geopolitical disruption leading to delay or even stoppage of our operations in manufacturing, transportation, technical support and research and development;
- delay or failure of our service provider customers to purchase at the volumes that they forecast;
- foreign currency exchange rate fluctuations in the jurisdictions where we transact sales and expenditures in local currency;
- changes in or consolidation of our sales channels and wholesale distributor relationships or failure to manage our sales channel inventory and warehousing requirements;
- delay or failure to fulfill orders for our products on a timely basis;
- allowance for bad debts exposure with our existing customers and new customers, particularly as we expand into new international markets;
- disruptions or delays related to our financial and enterprise resource planning systems;
- our inability to accurately forecast product demand;
- component supply constraints from our vendors;
- unfavorable level of inventory and turns;
- shift in overall product mix sales from higher to lower margin products, or from one business unit to another, that would adversely impact our margins;
- terms of our contracts with customers or suppliers that cause us to incur additional expenses or assume additional liabilities;

- the inability to maintain stable operations by our suppliers and other parties with which we have commercial relationships;
- delays in the introduction of new products by us or market acceptance of these products;
- an increase in price protection claims, redemptions of marketing rebates, product warranty and stock rotation returns or allowance for doubtful accounts;
- litigation involving alleged patent infringement;
- epidemic or widespread product failure, or unanticipated safety issues, in one or more of our products;
- challenges associated with integrating acquisitions that we make, or with realizing value from our strategic investments in other companies;
- failure to effectively manage our third party customer support partners which may result in customer complaints and/or harm to the NETGEAR brand;
- our inability to monitor and ensure compliance with our anti-corruption compliance program and domestic and international anti-corruption laws and regulations, whether in relation to our employees or with our suppliers or customers;
- labor unrest at facilities managed by our third-party manufacturers;
- unanticipated increase in costs, including air freight, associated with shipping and delivery of our products;
- our failure to implement and maintain the appropriate internal controls over financial reporting which may result in restatements of our financial statements; and
- any changes in accounting rules.

As a result, period-to-period comparisons of our operating results may not be meaningful, and you should not rely on them as an indication of our future performance.

**Our stock price may be volatile and your investment in our common stock could suffer a decline in value.**

With the continuing uncertainty about economic conditions in Europe, Australia, the United States and elsewhere internationally, there has been significant volatility in the market price and trading volume of securities of technology and other companies, which may be unrelated to the financial performance of these companies. These broad market fluctuations may negatively affect the market price of our common stock.

Some specific factors that may have a significant effect on our common stock market price include:

- actual or anticipated fluctuations in our operating results or our competitors' operating results;
- actual or anticipated changes in the growth rate of the general networking sector, our growth rates or our competitors' growth rates;
- conditions in the financial markets in general or changes in general economic conditions, including government efforts to stabilize currencies;
- interest rate or currency exchange rate fluctuations;
- our ability or inability to raise additional capital;
- our ability to report accurate financial results in our periodic reports filed with the SEC; and

- changes in stock market analyst recommendations regarding our common stock, other comparable companies or our industry generally.

**Economic conditions are likely to materially adversely affect our revenue and results of operations.**

Our business has been and may continue to be affected by a number of factors that are beyond our control such as general geopolitical, economic and business conditions, conditions in the financial markets, and changes in the overall demand for networking products. A severe and/or prolonged economic downturn could adversely affect our customers' financial condition and the levels of business activity of our customers. Continued weakness in, and uncertainty about, global economic conditions continue to cause businesses to postpone spending in response to tighter credit, negative financial news and/or declines in income or asset values, which could have a material negative effect on the demand for networking products.

The recent indications of continued economic recession throughout various regions worldwide, especially in Europe, have presented significant challenges to our business. If conditions in the global economy, including Europe, Australia and the United States, or other key vertical or geographic markets continue to remain weak and uncertain or weaken even further, such conditions could have a material adverse impact on our business, operating results and financial condition. In addition, if we are unable to successfully anticipate changing economic and political conditions, we may be unable to effectively plan for and respond to those changes, which could materially adversely affect our business and results of operations.

In addition, the recent economic problems affecting the financial markets and the recent uncertainty in global economic conditions have resulted in a number of adverse effects including a low level of liquidity in many financial markets, extreme volatility in credit, equity, currency and fixed income markets, instability in the stock market and high unemployment. For example, the recent challenges faced by the European Union to stabilize some of its member economies, such as Greece, Portugal, Spain, Hungary and even Italy, has had international implications affecting the stability of global financial markets and hindering economies worldwide. Many member nations in the European Union have been addressing the issues with controversial austerity measures. Should the European Union monetary policy measures be insufficient to restore confidence and stability to the financial markets, the recovery of the global economy, including the U.S. and European Union economies where we have a significant presence, could be hindered or reversed, which could have a material adverse effect on us. For example, the aggregate number of resellers of our products decreased during the third quarter of 2012; we believe this was caused by the difficult worldwide economic environment, and especially the difficulties experienced in Europe. There could also be a number of other follow-on effects from these economic developments and negative economic trends on our business, including the inability of customers to obtain credit to finance purchases of our products; customer insolvencies; decreased customer confidence to make purchasing decisions; decreased customer demand; and decreased customer ability to pay their trade obligations.

**Some of our competitors have substantially greater resources than we do, and to be competitive we may be required to lower our prices or increase our sales and marketing expenses, which could result in reduced margins and loss of market share.**

We compete in a rapidly evolving and fiercely competitive market, and we expect competition to continue to be intense, including price competition. Our principal competitors in the commercial business market include Allied Telesys, Barracuda, Buffalo, Data Robotics, Dell, D-Link, Fortinet, Hewlett-Packard, Huawei, Cisco Systems, the Linksys division of Cisco Systems, QNAP Systems, Seagate Technology, SonicWALL, Synology, TRENDnet, WatchGuard and Western Digital. Our principal competitors in the home market for networking devices and television connectivity products include Apple, AsusTEK, Belkin, D-Link, the Linksys division of Cisco Systems, Roku, TP-Link and Western Digital. Our principal competitors in the broadband service provider market include Actiontec, ARRIS, Compal Broadband, Comtrend, D-Link, Hitron, Huawei, Motorola, NetComm Wireless, Pace, Sagem, Scientific Atlanta-a Cisco company, SMC Networks, TechniColor, Ubee, ZTE and ZyXEL. Other competitors include numerous local vendors such as Devolo, LEA, AVM and the Hercules brand of Guillemot Corporation in Europe, Corega and Melco in Japan and TP-Link in China. In addition, these local vendors may target markets outside of their local regions and may increasingly compete with us in other regions worldwide. Our potential competitors also include other consumer electronics vendors, including LG Electronics, Microsoft, Panasonic, Samsung, Sony, Toshiba and Vizio, who could integrate networking and streaming capabilities into their line of products, such as televisions, set top boxes and gaming consoles, and our channel customers who may decide to offer self-branded networking products. We also face competition from service providers who may bundle a free networking device with their broadband service offering, which would reduce our sales if we are not the supplier of choice to those service providers. In the service provider space, we are also facing significant and increased competition from original design manufacturers, or ODM's, and contract manufacturers who are selling and attempting to sell their products directly to service providers around the world. In addition, as we expand our product portfolio to include home monitoring cameras and services, we also face competition from incumbents and specialty providers in this space, including Axis Communications, Linksys, D-Link, Logitech, Dropcam, and Sercomm.

Many of our existing and potential competitors have longer operating histories, greater name recognition and substantially greater financial, technical, sales, marketing and other resources. These competitors may, among other things, undertake more extensive marketing campaigns, adopt more aggressive pricing policies, obtain more favorable pricing from suppliers and manufacturers, and exert more influence on sales channels than we can. We anticipate that current and potential competitors will also intensify their efforts to penetrate our target markets. For example, price competition is intense in our industry in certain geographical regions and product categories. Many of our competitors in the service provider and retail spaces price their products significantly below our product costs in order to gain market share. Average sales prices have declined in the past and may again decline in the future. These competitors may have more advanced technology, more extensive distribution channels, stronger brand names, greater access to shelf space in retail locations, bigger promotional budgets and larger customer bases than we do. In addition, many of these competitors leverage a broader product portfolio and offer lower pricing as part of a more comprehensive end-to-end solution which we may not have. These companies could devote more capital resources to develop, manufacture and market competing products than we could. Our competitors may also acquire other companies in the market and leverage combined resources to gain market share. For example, in January 2013, Belkin entered into an agreement to acquire the Linksys division from Cisco. Belkin and Linksys are two of our significant competitors. The combined company may have synergies which increase opportunities for Belkin to gain market share, especially in North America. If any of these companies are successful in competing against us, our sales could decline, our margins could be negatively impacted and we could lose market share, any of which could seriously harm our business and results of operations.

**Our business is subject to the risks of international operations.**

We derive a significant portion of our revenue from international operations. As a result, our financial condition and operating results could be significantly affected by risks associated with international activities, including economic and labor conditions, political instability, tax laws, changes in the value of the U.S. dollar versus local currencies, and natural disasters. Margins on sales of our products in foreign countries, and on sales of products that include components obtained from foreign suppliers, could be materially adversely affected by foreign currency exchange rate fluctuations and by international trade regulations. Additionally, certain foreign countries have complex regulatory requirements as conditions of doing business. For example, the United Kingdom Anti-Bribery Act of 2010 is broad legislation that prohibits bribery and applies to our operations worldwide. This foreign legislation follows in the spirit of the U.S. Foreign Corrupt Practices Act and focuses additional governmental efforts on anticorruption efforts worldwide. Meeting these requirements may increase our operating expenses as we continue to expand internationally.

**If we fail to continue to introduce or acquire new products that achieve broad market acceptance on a timely basis, we will not be able to compete effectively and we will be unable to increase or maintain net revenue and gross margins.**

We operate in a highly competitive, quickly changing environment, and our future success depends on our ability to develop or acquire, and introduce new products that achieve broad market acceptance. Our future success will depend in large part upon our ability to identify demand trends in the commercial business, retail, and service provider markets and quickly develop or acquire, and manufacture and sell products that satisfy these demands in a cost effective manner. In order to differentiate our products from our competitors' products, we must continue to increase our focus and capital investment in research and development, including software development. Successfully predicting demand trends is difficult, and it is very difficult to predict the effect introducing a new product will have on existing product sales. We will also need to respond effectively to new product announcements by our competitors by quickly introducing competitive products.

We recently developed and launched new products worldwide under a new brand as an effort to increase sales in a particular market segment. The new brand products may adversely affect sales of our existing products. Marketing of the new brand may also lead to confusion with our existing customers. We have little to no experience in selling a new brand simultaneously with our existing product portfolio. If we are unable to effectively manage the pricing, marketing, sale and distribution of products under our new brand together with our existing products, our business will be harmed.

In addition, we have acquired companies and technologies in the past and as a result, have introduced new product lines in new markets. We may not be able to successfully manage integration of the new product lines with our existing products. Selling new product lines in new markets will require our management to learn different strategies in order to be successful. We may be unsuccessful in launching a newly acquired product line in new markets which requires management of new suppliers, potential new customers and new business models. Our management may not have the experience of selling in these new markets and we may not be able to grow our business as planned. For example, our recent acquisition of the VueZone product line continues to require significant management effort to successfully scale and launch the products worldwide. If we are unable to effectively and successfully integrate these new product lines, we may not be able to increase or maintain our sales and our gross margins may be adversely affected.

We have experienced delays and quality issues in releasing new products in the past, which resulted in lower quarterly net revenue than expected. In addition, we have experienced, and may in the future experience, product introductions that fall short of our projected rates of market adoption. Online Internet reviews of our products are increasingly becoming a significant factor in the success of our new product launches, especially in the retail business unit. If we are unable to quickly respond to negative reviews, including end user reviews posted on various prominent online retailers, our ability to sell these products will be harmed. Any future delays in product development and introduction, or product introductions that do not meet broad market acceptance, or unsuccessful launches of newly acquired product lines could result in:

- loss of or delay in revenue and loss of market share;
- negative publicity and damage to our reputation and brand;
- a decline in the average selling price of our products;
- adverse reactions in our sales channels, such as reduced shelf space, reduced online product visibility, or loss of sales channel; and
- increased levels of product returns.

Throughout the past couple of years, we have significantly increased the rate of our new product introductions. If we cannot sustain the rapid pace of innovation or acquire new product lines, we may not be able to maintain or increase the market share of our products. In addition, if we are unable to successfully introduce or acquire new products with higher gross margins, our net revenue and overall gross margin would likely decline.

**We obtain several key components from limited or sole sources, and if these sources fail to satisfy our supply requirements or we are unable to properly manage our supply requirements with our third party manufacturers, we may lose sales and experience increased component costs.**

Any shortage or delay in the supply of key product components would harm our ability to meet scheduled product deliveries. Many of the semiconductors used in our products are specifically designed for use in our products and are obtained from sole source suppliers on a purchase order basis. In addition, some components that are used in all our products are obtained from limited sources. These components include connector jacks, plastic casings and physical layer transceivers. We also obtain switching fabric semiconductors, which are used in our Ethernet switches and Internet gateway products, and wireless local area network chipsets, which are used in all of our wireless products, from a limited number of suppliers. Semiconductor suppliers have experienced and continue to experience component shortages themselves, such as with substrates used in manufacturing chipsets, which in turn adversely impact our ability to procure semiconductors from them. Our third-party manufacturers generally purchase these components on our behalf on a purchase order basis, and we do not have any contractual commitments or guaranteed supply arrangements with our suppliers. If demand for a specific component increases, we may not be able to obtain an adequate number of that component in a timely manner. In addition, if worldwide demand for the components increases significantly, the availability of these components could be limited. Further, our suppliers may experience financial or other difficulties as a result of uncertain and weak worldwide economic conditions. Other factors which may affect our suppliers' ability to supply components to us include internal management or reorganizational issues, such as roll-out of new equipment which may delay or disrupt supply of previously forecasted components. It could be difficult, costly and time consuming to obtain alternative sources for these components, or to change product designs to make use of alternative components. In addition, difficulties in transitioning from an existing supplier to a new supplier could create delays in component availability that would have a significant impact on our ability to fulfill orders for our products.

We provide our third-party manufacturers with a rolling forecast of demand, which they use to determine our material and component requirements. Lead times for ordering materials and components vary significantly and depend on various factors, such as the specific supplier, contract terms and demand and supply for a component at a given time. Some of our components have long lead times, such as wireless local area network chipsets, switching fabric chips, physical layer transceivers, connector jacks and metal and plastic enclosures. If our forecasts are not timely provided or are less than our actual requirements, our third-party manufacturers may be unable to manufacture products in a timely manner. If our forecasts are too high, our third-party manufacturers will be unable to use the components they have purchased on our behalf. The cost of the components used in our products tends to drop rapidly as volumes increase and the technologies mature. Therefore, if our third-party manufacturers are unable to promptly use components purchased on our behalf, our cost of producing products may be higher than our competitors due to an oversupply of higher-priced components. Moreover, if they are unable to use components ordered at our direction, we will need to reimburse them for any losses they incur.

If we are unable to obtain a sufficient supply of components, or if we experience any interruption in the supply of components, our product shipments could be reduced or delayed or our cost of obtaining these components may increase. Component shortages and delays affect our ability to meet scheduled product deliveries, damage our brand and reputation in the market, and cause us to lose sales and market share. For example, component shortages and disruptions in supply in the past have limited our ability to supply all the worldwide demand for our products and our revenue was affected.

Another example relates to the record flooding in Thailand in the third quarter of 2011. Many major manufacturers of hard disk drives and their component suppliers maintain significant operations in Thailand in areas affected by the flooding. These include most, if not all, of our direct and indirect suppliers of hard disk drives for our ReadyNAS product line. All of our major direct and indirect suppliers of hard disk drives informed us that our supply chain would be constrained for an indefinite amount of time, in some cases up to six months. Some therefore declared a force majeure event and have stated that, in addition to and because of the supply constraints, pricing for hard disk drives would increase significantly until they were able to stabilize the situation. As a result, we experienced increased prices in the cost of hard disk drives and ceased accepting any additional orders containing ReadyNAS products with hard disk drives at then current prices and all shipments of ReadyNAS products with hard disk drives were placed on hold. In addition, all sales and marketing promotions involving ReadyNAS products were terminated temporarily. Further, we declared the existence of a force majeure event under our contracts with certain customers. Accordingly, our business was harmed. Certain events or natural disasters that occur in the future may harm our business as well.

**If we do not effectively manage our sales channel inventory and product mix, we may incur costs associated with excess inventory, or lose sales from having too few products.**

If we are unable to properly monitor, control and manage our sales channel inventory and maintain an appropriate level and mix of products with our wholesale distributors and within our sales channels, we may incur increased and unexpected costs associated with this inventory. We generally allow wholesale distributors and traditional retailers to return a limited amount of our products in exchange for other products. Under our price protection policy, if we reduce the list price of a product, we are often required to issue a credit in an amount equal to the reduction for each of the products held in inventory by our wholesale distributors and retailers. If our wholesale distributors and retailers are unable to sell their inventory in a timely manner, we might lower the price of the products, or these parties may exchange the products for newer products. Also, during the transition from an existing product to a new replacement product, we must accurately predict the demand for the existing and the new product.

We determine production levels based on our forecasts of demand for our products. Actual demand for our products depends on many factors, which makes it difficult to forecast. We have experienced differences between our actual and our forecasted demand in the past and expect differences to arise in the future. If we improperly forecast demand for our products we could end up with too many products and be unable to sell the excess inventory in a timely manner, if at all, or, alternatively we could end up with too few products and not be able to satisfy demand. This problem is exacerbated because we attempt to closely match inventory levels with product demand leaving limited margin for error. If these events occur, we could incur increased expenses associated with writing off excessive or obsolete inventory, lose sales, incur penalties for late delivery or have to ship products by air freight to meet immediate demand incurring incremental freight costs above the sea freight costs, a preferred method, and suffering a corresponding decline in gross margins.

**If we lose the services of our Chairman and Chief Executive Officer, Patrick C.S. Lo, or our other key personnel, we may not be able to execute our business strategy effectively.**

Our future success depends in large part upon the continued services of our key technical, sales, marketing, finance and senior management personnel. In particular, the services of Patrick C.S. Lo, our Chairman and Chief Executive Officer, who has led our company since its inception, are very important to our business. We do not maintain any key person life insurance policies. Our business model requires extremely skilled and experienced senior management who are able to withstand the rigorous requirements and expectations of our business. Our success depends on senior management being able to execute at a very high level. The loss of any of our senior management or other key research, development, sales or marketing personnel, particularly if lost to competitors, could harm our ability to implement our business strategy and respond to the rapidly changing needs of our business. While we have adopted an emergency succession plan for the short term, we have not formally adopted a long term succession plan. As a result, if we suffer the loss of services of any key executive, our long term business results may be harmed. While we believe that we have mitigated some of the business execution and business continuity risk with our recent reorganization into three business units, the loss of any key personnel would still be disruptive and harm our business, especially given that our business is leanly staffed and relies on the expertise and high performance of our key personnel. In addition, because we do not have a formal long term succession plan, we may not be able to have the proper personnel in place to effectively execute our long term business strategy if Patrick Lo or other key personnel retire, resign or are otherwise terminated.

**The average selling prices of our products typically decrease rapidly over the sales cycle of the product, which may negatively affect our net revenue and gross margins.**

Our products typically experience price erosion, a fairly rapid reduction in the average unit selling prices over their respective sales cycles. In order to sell products that have a falling average unit selling price and maintain margins at the same time, we need to continually reduce product and manufacturing costs. To manage manufacturing costs, we must collaborate with our third-party manufacturers to engineer the most cost-effective design for our products. In addition, we must carefully manage the price paid for components used in our products. We must also successfully manage our freight and inventory costs to reduce overall product costs. We also need to continually introduce new products with higher sales prices and gross margins in order to maintain our overall gross margins. If we are unable to manage the cost of older products or successfully introduce new products with higher gross margins, our net revenue and overall gross margin would likely decline.

**We have been and will be investing increased additional in-house resources on software research and development, which could disrupt our ongoing business and present risks not originally contemplated.**

We plan to continue to evolve our historically hardware-centric business model towards a model that includes more sophisticated software offerings. As such, we will further evolve the focus of our organization towards the delivery of more integrated hardware and software solutions for our customers. While we have invested in software development in the past, we will be expending additional resources in this area in the future. Such endeavors may involve significant risks and uncertainties, including distraction of management from current operations, insufficient revenue to offset liabilities assumed and expenses associated with the strategy, inadequate return on capital, and unidentified issues not discovered in our due diligence. Software development is inherently risky for a company such as ours with a historically hardware-centric business model, and accordingly, our efforts in software development may not be successful. Any increased investment in software research and development may materially adversely affect our financial condition and operating results.

We may spend a proportionately greater amount on software research and development in the future. If we cannot proportionately decrease our cost structure in response to competitive price pressures, our gross margin and, therefore, our profitability could be adversely affected. In addition, if our software solutions, pricing and other factors are not sufficiently competitive, or if there is an adverse reaction to our product decisions, we may lose market share in certain areas, which could adversely affect our revenue and prospects.

Software research and development is complex. We must make long-term investments, develop or obtain appropriate intellectual property and commit significant resources before knowing whether our predictions will accurately reflect customer demand for our products and services. We must accurately forecast mixes of software solutions and configurations that meet customer requirements, and we may not succeed at doing so within a given product's life cycle or at all. Any delay in the development, production or marketing of a new software solution could result in us not being among the first to market, which could further harm our competitive position. In addition, our regular testing and quality control efforts may not be effective in controlling or detecting all quality issues and defects. We may be unable to determine the cause, find an appropriate solution or offer a temporary fix to address defects. Finding solutions to quality issues or defects can be expensive and may result in additional warranty, replacement and other costs, adversely affecting our profits. If new or existing customers have difficulty with our software solutions or are dissatisfied with our services, our operating margins could be adversely affected, and we could face possible claims if we fail to meet our customers' expectations. In addition, quality issues can impair our relationships with new or existing customers and adversely affect our brand and reputation, which could adversely affect our operating results.

**As part of growing our business, we have made and expect to continue to make acquisitions. If we fail to successfully select, execute or integrate our acquisitions, then our business and operating results could be harmed and our stock price could decline.**

From time to time, we will undertake acquisitions to add new product lines and technologies, gain new sales channels or enter into new sales territories. For example, we recently closed two acquisitions. First, in June 2012 we acquired select assets of a small engineering operation in India to enhance our wireless product offerings in our commercial business unit. Additionally in July 2012, we closed the acquisition of privately held AVAAK, Inc., creators of the VueZone® home video monitoring system. In addition, in January 2013, we announced the acquisition of the AirCard business of Sierra Wireless, Inc. Upon closing, the AirCard acquisition would represent our largest acquisition, both in terms of consideration and headcount. Acquisitions involve numerous risks and challenges, including but not limited to the following:

- integrating the companies, assets, systems, products, sales channels and personnel that we acquire;
- growing or maintaining revenues to justify the purchase price and the increased expenses associated with acquisitions;

- entering into territories or markets that we have limited or no prior experience with;
- establishing or maintaining business relationships with customers, vendors and suppliers who may be new to us;
- overcoming the employee, customer, vendor and supplier turnover that may occur as a result of the acquisition;
- diverting management's attention from running the day to day operations of our business; and
- potential post-closing disputes.

As part of undertaking an acquisition, we may also significantly revise our capital structure or operational budget, such as issuing common stock that would dilute the ownership percentage of our stockholders, assuming liabilities or debt, utilizing a substantial portion of our cash resources to pay for the acquisition or significantly increasing operating expenses. Our acquisitions have resulted and may in the future result in charges being taken in an individual quarter as well as future periods, which results in variability in our quarterly earnings. In addition, our effective tax rate in any particular quarter may also be impacted by acquisitions. Following the closing of an acquisition, we may also have disputes with the seller regarding contractual requirements and covenants. Any such disputes may be time consuming and distract management from other aspects of our business. In addition, if we continue to increase the pace of acquisitions, as we did in June and July 2012, we will have to expend significant management time and effort into the transactions and the integrations and we may not have the proper human resources bandwidth to ensure successful integrations and accordingly, our business could be harmed.

As part of the terms of acquisition, we may commit to pay additional contingent consideration if certain revenue or other performance milestones are met. We are required to evaluate the fair value of such commitments at each reporting date and adjust the amount recorded if there are changes to the fair value.

We cannot ensure that we will be successful in selecting, executing and integrating acquisitions. Particularly with the contemplated closing of the AirCard business of Sierra Wireless, our management will be singularly focused on executing a successful integration given the size and significance of that acquisition. Failure to manage and successfully integrate acquisitions, especially the AirCard business of Sierra Wireless, could materially harm our business and operating results. In addition, if stock market analysts or our stockholders do not support or believe in the value of the acquisitions that we choose to undertake, our stock price may decline.

**Changes in tax rates, adverse changes in tax laws or exposure to additional income tax liabilities could affect our future profitability.**

Factors that could materially affect our future effective tax rates include but are not limited to:

- changes in the regulatory environment;
- changes in accounting and tax standards or practices
- changes in the composition of operating income by tax jurisdiction; and
- our operating results before taxes.

We are subject to income taxes in the United States and numerous foreign jurisdictions. Our effective tax rate has fluctuated in the past and may fluctuate in the future. Future effective tax rates could be affected by changes in the composition of earnings in countries with differing tax rates, changes in deferred tax assets and liabilities, or changes in tax laws.

We are also subject to examination by the Internal Revenue Service (“IRS”) and other tax authorities, including state revenue agencies and foreign governments. In 2011, the IRS commenced an examination of our 2008 and 2009 tax years. The audit was completed in October 2012, and all issues under examination by the IRS were effectively settled. While we regularly assess the likelihood of favorable or unfavorable outcomes resulting from examinations by the IRS and other tax authorities to determine the adequacy of our provision for income taxes, there can be no assurance that the actual outcome resulting from these examinations will not materially adversely affect our financial condition and operating results. Additionally, the IRS and other tax authorities have increasingly focused attention on intercompany transfer pricing with respect to sales of products and services and the use of intangible assets. Tax authorities could disagree with our intercompany charges, cross-jurisdictional transfer pricing or other matters and assess additional taxes. If we do not prevail in any such disagreements, our profitability may be affected.

**We are subject to, and must remain in compliance with, numerous laws and governmental regulations concerning the manufacturing, use, distribution and sale of our products, as well as any such future laws and regulations. Some of our customers also require that we comply with their own unique requirements relating to these matters. Any failure to comply with such laws, regulations and requirements, and any associated unanticipated costs, may adversely affect our business, financial condition and results of operations.**

We manufacture and sell products which contain electronic components, and such components may contain materials that are subject to government regulation in both the locations that we manufacture and assemble our products, as well as the locations where we sell our products. For example, certain regulations limit the use of lead in electronic components. To our knowledge, we maintain compliance with all applicable current government regulations concerning the materials utilized in our products, for all the locations in which we operate. Since we operate on a global basis, this is a complex process which requires continual monitoring of regulations and an ongoing compliance process to ensure that we and our suppliers are in compliance with all existing regulations. There are areas where new regulations have been enacted which could increase our cost of the components that we utilize or require us to expend additional resources to ensure compliance. For example, the SEC passed final rules in August 2012 regarding investigation and disclosure of the use of certain “conflict minerals” in our products. These rules apply to our business and we are expending significant resources to ensure compliance. If there is an unanticipated new regulation which significantly impacts our use of various components or requires more expensive components, that regulation would have a material adverse impact on our business, financial condition and results of operations.

One area which has a large number of regulations is the environmental compliance. Management of environmental pollution and climate change has produced significant legislative and regulatory efforts on a global basis, and we believe this will continue both in scope and the number of countries participating. These changes could directly increase the cost of energy which may have an impact on the way we manufacture products or utilize energy to produce our products. In addition, any new regulations or laws in the environmental area might increase the cost of raw materials we use in our products. Environmental regulations require us to reduce product energy usage, monitor and exclude an expanding list of restricted substances and to participate in required recover and recycling of our products. While future changes in regulations are certain, we are currently unable to predict how any such changes will impact us and if such impacts will be material to our business. If there is a new law or regulation that significantly increases our costs of manufacturing or causes us to significantly alter the way that we manufacture our products, this would have a material adverse effect on our business, financial condition and results of operations.

Our selling and distribution practices are also regulated in large part by U.S. federal and state as well as foreign antitrust and competition laws and regulations. In general, the objective of these laws is to promote and maintain free competition by prohibiting certain forms of conduct that tend to restrict production, raise prices, or otherwise control the market for goods or services to the detriment of consumers of those goods and services. Potentially prohibited activities under these laws may include unilateral conduct, or conduct undertaken as the result of an agreement with one or more of our suppliers, competitors, or customers. The potential for liability under these laws can be difficult to predict as it often depends on a finding that the challenged conduct resulted in harm to competition, such as higher prices, restricted supply, or a reduction in the quality or variety of products available to consumers. We utilize a number of different distribution channels to deliver our products to the end consumer, and regularly enter agreements with resellers of our products at various levels in the distribution chain that could be subject to scrutiny under these laws in the event of private litigation or an investigation by a governmental competition authority. In addition, many of our products are sold to consumers via the Internet. Many of the competition-related laws that govern these Internet sales were adopted prior to the advent of the Internet, and, as a result, do not contemplate or address the unique issues raised by online sales. New interpretations of existing laws and regulations, whether by courts or by the state, federal, or foreign governmental authorities charged with the enforcement of those laws and regulations, may also impact our business in ways we are currently unable to predict. Any failure on our part or on the part of our employees, agents, distributors or other business partners to comply with the laws and regulations governing competition can result in negative publicity and diversion of management time and effort and may subject us to significant litigation liabilities and other penalties.

In addition to government regulations, many of our customers require us to comply with their own requirements regarding manufacturing, health and safety matters, corporate social responsibility, employee treatment, anti-corruption, use of materials and environmental concerns. Some customers may require us to periodically report on compliance with their unique requirements, and some customers reserve the right to audit our business for compliance. We are increasingly subject to requests for compliance with these customer requirements. For example, there has been significant focus from our customers as well as the press regarding corporate social responsibility policies. We regularly audit our manufacturers; however, any deficiencies in compliance by our manufacturers may harm our business and our brand. In addition, we may not have the resources to maintain compliance with these customer requirements and failure to comply may result in decreased sales to these customers, which may have a material adverse effect on our business, financial condition and results of operations.

**If we fail to successfully overcome the challenges associated with managing and profitably growing our broadband service provider sales channel, our net revenue and gross profit will be negatively impacted.**

We sell a substantial portion of our products through broadband service providers worldwide. Our service provider business unit accounted for a significant portion of our growth in 2011 and throughout 2012. Our service provider business is increasingly becoming a larger proportion of our business, especially upon the contemplated closing of the acquisition of the Sierra Wireless AirCard business. The service provider business is challenging and exceptionally competitive. We face a number of challenges associated with penetrating, marketing and selling to the broadband service provider channel that differ from what we have traditionally faced with the other channels. Difficulties and challenges in selling to service providers include a longer sales cycle, more stringent product testing and validation requirements, a higher level of customization demands, requirements that suppliers take on a larger share of the risk with respect to contractual business terms, competition from established suppliers, pricing pressure resulting in lower gross margins, and irregular and unpredictable ordering habits. For example, even if we have a product which a service provider customer may wish to purchase, we may choose not to supply products to the potential service provider customer if the contract requirements, such as service level requirements, penalties, and liability provisions, are too onerous. Accordingly, our business may be harmed and our revenues may be reduced. Further, successful engagements with service provider customers requires a constant analysis of technology trends. If we are unable to anticipate technology trends and service provider customer product needs, and to allocate research and resources to the right projects, we may not be successful in continuing to sell products to service provider customers. In addition, because our service providers command significant resources, including for software support, and demand extremely competitive pricing, our ODM's are starting to refuse to engage on service provider terms. Accordingly, as our ODM's increasingly decline to take orders for manufacturing our service provider products, our service provider business will be harmed.

Further, as the deployment of DOCSIS 3.0 technology by broadband service providers continues to mature, we anticipate competing in an extremely price sensitive market and our margins may be affected. Orders from service providers generally tend to be large but sporadic, which causes our revenues from them to fluctuate and challenges our ability to accurately forecast demand from them. In particular, managing inventory and production of our products for our service provider customers is a challenge. Many of our service provider customers have irregular purchasing requirements. These customers may decide to cancel orders for customized products specific to that customer, and we may not be able to reconfigure and sell those products in other channels. In addition, these customers may issue unforecasted orders for products which we may not be able to produce in a timely manner and as such, we may not be able to accept and deliver on such unforecasted orders. In certain cases, we may commit to fixed-price, long term purchase orders, with such orders priced in foreign currencies which could lose value over time in the event of adverse changes in foreign exchange rates. Even if we are selected as a supplier, typically a service provider will also designate a second source supplier, which over time will reduce the aggregate orders that we receive from that service provider. For example, we have been at the forefront of developing and selling DOCSIS 3.0 products to our service provider customers in the past couple of years. As our competitors develop DOCSIS 3.0 products, our service provider customers may use these competitor products as an alternate source for this technology. Our service provider customers may then require us to lower our prices or they may choose to purchase more DOCSIS 3.0 products from our competitors. Accordingly, our business may be harmed and our revenues may be reduced.

If we were to lose a service provider customer for any reason, we may experience a material and immediate reduction in forecasted revenue that may cause us to be below our net revenue and operating margin expectations for a particular period of time and therefore adversely affect our stock price. For example, many of our competitors in the service provider space aggressively price their products in order to gain market share. We may not be able to match the lower prices offered by our competitors. Many of the service provider customers will seek to purchase from the lowest cost provider, notwithstanding that our products may be higher quality or our products were previously validated for use on their proprietary network. Accordingly, we may lose customers who have lower, more aggressive pricing and our revenues may be reduced. In addition, service providers may choose to prioritize the implementation of other technologies or the roll out of other services than home networking. Weakness in orders from this industry could have a material adverse effect on our business, operating results, and financial condition. We have seen slowdowns in capital expenditures by certain of our service provider customers in the past, and believe there may be potential for similar slowdowns in the future. For example, service provider purchases decreased in the third quarter of 2012 following a run-up in service provider purchases in the first half of 2012, including purchases in anticipation of coverage relating to the 2012 Olympic games. Any slowdown in the general economy, over supply, consolidation among service providers, regulatory developments and constraint on capital expenditures could result in reduced demand from service providers and therefore adversely affect our sales to them. If we do not successfully overcome these challenges, we will not be able to profitably grow our service provider sales channel and our growth will be slowed.

**We rely on a limited number of retailers, wholesale distributors and service provider customers for a substantial portion of our sales, and our net revenue could decline if they refuse to pay our requested prices or reduce their level of purchases or if there is significant consolidation in our customer base which results in less customers to sell our products.**

We sell a substantial portion of our products through retailers, including Best Buy Co., Inc. and its affiliates, and wholesale distributors, including Ingram Micro, Inc. and Tech Data Corporation. We expect that a significant portion of our net revenue will continue to come from sales to a small number of retailers and wholesale distributors for the foreseeable future. In addition, because our accounts receivable are often concentrated with a small group of purchasers, the failure of any of them to pay on a timely basis, or at all, would reduce our cash flow. We are also exposed to increased credit risk if any one of these limited numbers of retailers and wholesale distributors fails or becomes insolvent. We generally have no minimum purchase commitments or long-term contracts with any of these retailers or distributors. These purchasers could decide at any time to discontinue, decrease or delay their purchases of our products. If our retailers or wholesale distributors increase the size of their product orders without sufficient lead-time for us to process the order, our ability to fulfill product demands would be compromised. These customers have a variety of suppliers to choose from and therefore can make substantial demands on us, including demands on product pricing and on contractual terms, which often results in the allocation of risk to us as the supplier. Accordingly, the prices that they pay for our products are subject to negotiation and could change at any time. Our ability to maintain strong relationships with our principal customers is essential to our future performance. If any of our major retailers or wholesale distributors reduce their level of purchases or refuse to pay the prices that we set for our products, our net revenue and operating results could be harmed. Our traditional retail customers have faced increased and significant competition from online retailers, and some of these traditional retail customers have increasingly become a smaller portion of our business. If key retail customers continue to reduce their level of purchases, our business could be harmed.

Additionally, if there is consolidation among our customer base, certain customers may be able to command increased leverage in negotiating prices and other terms of sale, which could adversely affect our profitability. In addition, if, as a result of increased leverage, customer pressures require us to reduce our pricing such that our gross margins are diminished, we could decide not to sell our products to a particular customer, which could result in a decrease in our revenue. Consolidation among our customer base may also lead to reduced demand for our products, replacement of our products with those of our competitors and cancellations of orders, each of which would harm our operating results. Consolidation among our service providers customers worldwide may also make it more difficult to grow our service provider business, given the fierce competition for the already limited number of service providers worldwide and the long sales cycles to close deals. For example, Liberty Global, a service provider with operations worldwide, announced in February 2013 that it is entering into an agreement to acquire Virgin Media Limited, one of our significant customers. Because we have not conducted business with Liberty Global in the past, Virgin Media may be directed by Liberty Global to develop relationships and business with other Liberty Global vendors, many of which are our competitors. If consolidation among our customer base becomes more prevalent, our operating results may be harmed.

**We depend on large, recurring purchases from certain significant customers, and a loss, cancellation or delay in purchases by these customers could negatively affect our revenue.**

The loss of recurring orders from any of our more significant customers could cause our revenue and profitability to suffer. Our ability to attract new customers will depend on a variety of factors, including the cost-effectiveness, reliability, scalability, breadth and depth of our products. In addition, a change in the mix of our customers, or a change in the mix of direct and indirect sales, could adversely affect our revenue and gross margins.

Although our financial performance may depend on large, recurring orders from certain customers and resellers, we do not generally have binding commitments from them. For example:

- our reseller agreements generally do not require substantial minimum purchases;
- our customers can stop purchasing and our resellers can stop marketing our products at any time; and
- our reseller agreements generally are not exclusive.

Further, our revenue may be impacted by significant one-time purchases which are not contemplated to be repeatable. While such purchases are reflected in our financial statements, we do not rely on and do not forecast for continued significant one-time purchases. As a result, lack of repeatable one-time purchases will adversely affect our revenue.

Because our expenses are based on our revenue forecasts, a substantial reduction or delay in sales of our products to, or unexpected returns from, customers and resellers, or the loss of any significant customer or reseller, could harm or otherwise

disrupt our business. Although our largest customers may vary from period to period, we anticipate that our operating results for any given period will continue to depend on large orders from a small number of customers.

**We depend substantially on our sales channels, and our failure to maintain and expand our sales channels would result in lower sales and reduced net revenue.**

To maintain and grow our market share, net revenue and brand, we must maintain and expand our sales channels. Our sales channels consist of traditional retailers, online retailers, DMRs, VARs, and broadband service providers. Some of these entities purchase our products through our wholesale distributor customers. We generally have no minimum purchase commitments or long-term contracts with any of these third parties.

Traditional retailers have limited shelf space and promotional budgets, and competition is intense for these resources. If the networking sector does not experience sufficient growth, retailers may choose to allocate more shelf space to other consumer product sectors. A competitor with more extensive product lines and stronger brand identity, such as Cisco Systems, may have greater bargaining power with these retailers. Any reduction in available shelf space or increased competition for such shelf space would require us to increase our marketing expenditures simply to maintain current levels of retail shelf space, which would harm our operating margin. Our traditional retail customers have faced increased and significant competition from online retailers. If we cannot effectively manage our business amongst our online customers and traditional retail customers, our business would be harmed. The recent trend in the consolidation of online retailers and DMR channels has resulted in intensified competition for preferred product placement, such as product placement on an online retailer's Internet home page. Expanding our presence in the VAR channel may be difficult and expensive. We compete with established companies that have longer operating histories and longstanding relationships with VARs that we would find highly desirable as sales channel partners. We also sell products to broadband service providers. Competition for selling to broadband service providers is fierce and intense. Penetrating service provider accounts typically involves a long sales cycle and the challenge of displacing incumbent suppliers with established relationships and field-deployed products. During the third quarter of 2012, the aggregate number of resellers of our products decreased from approximately 42,000 to approximately 40,000; we believe this was caused by the difficult worldwide economic environment, and especially the difficulties experienced in Europe. If we are unable to maintain and expand our sales channels, our growth would be limited and our business would be harmed.

We must also continuously monitor and evaluate emerging sales channels. If we fail to establish a presence in an important developing sales channel, our business could be harmed.

**We depend on a limited number of third-party manufacturers for substantially all of our manufacturing needs. If these third-party manufacturers experience any delay, disruption or quality control problems in their operations, we could lose market share and our brand may suffer.**

All of our products are manufactured, assembled, tested and generally packaged by a limited number of third party manufacturers, including original design manufacturers (“ODMs”) and original equipment manufacturers (“OEMs”), as well as contract manufacturers. In most cases, we rely on these manufacturers to procure components and, in some cases, subcontract engineering work. Some of our products are manufactured by a single manufacturer. We do not have any long-term contracts with any of our third-party manufacturers. Some of these third-party manufacturers produce products for our competitors. Due to weak economic conditions, the viability of some of these third-party manufacturers may be at risk. Our ODM's are increasingly refusing to work with us on certain projects, such as projects for manufacturing products for our service provider customers. Because our service provider customers command significant resources, including for software support, and demand extremely competitive pricing, our ODMs are starting to refuse to engage on service provider terms. The loss of the services of any of our primary third-party manufacturers could cause a significant disruption in operations and delays in product shipments. Qualifying a new manufacturer and commencing volume production is expensive and time consuming. For example, as a result of our July 2012 acquisition of AVAAK, Inc., we have commenced doing business with a new contract manufacturer. Ensuring that the contract manufacturer is qualified to manufacture our products to our standards is time consuming. In addition, there is no assurance that the contract manufacturer can scale its production of our products at the volumes and in the quality that we require. If the contract manufacturer is unable to do these things, we may have to move production for the products to a new or existing third party manufacturer which would take significant effort and our business may be harmed. In addition, as we contemplate moving manufacturing into different jurisdictions, we will be subject to additional significant challenges in ensuring that quality, processes and costs, among other issues, are consistent with our expectations. For example, while we expect our manufacturers to be responsible for penalties assessed on us because of excessive failures of the products, there is no assurance that we will be able to collect such reimbursements from these manufacturers, which causes us to take on additional risk for potential failures of our products.

Our reliance on third-party manufacturers also exposes us to the following risks over which we have limited control:

- unexpected increases in manufacturing and repair costs;
- inability to control the quality and reliability of finished products;
- inability to control delivery schedules;
- potential lack of adequate capacity to manufacture all or a part of the products we require; and
- potential labor unrest affecting the ability of the third-party manufacturers to produce our products.

All of our products must satisfy safety and regulatory standards and some of our products must also receive government certifications. Our third party manufacturers are primarily responsible for obtaining most regulatory approvals for our products. If our third party manufacturers fail to obtain timely domestic or foreign regulatory approvals or certificates, we would be unable to sell our products and our sales and profitability could be reduced, our relationships with our sales channel could be harmed, and our reputation and brand would suffer.

Specifically, substantially all of our manufacturing occurs in the Asia Pacific region and any disruptions from natural disasters, health epidemics and political, social and economic instability would affect the ability of our ODMs to manufacture our products. In addition, our ODMs in China have continued to increase our costs of production, particularly in the past couple of years. These increased costs have affected our margins and ability to lower prices for our products to stay competitive. Recent labor unrest in China may also affect our ODMs as workers may strike and cause production delays. If our third party manufacturers fail to maintain good relations with their employees or contractors, and production and manufacturing of our products is affected, then we may be subject to shortages of products and quality of products delivered may be affected. Further, if our manufacturers or warehousing facilities are disrupted or destroyed, we would have no other readily available alternatives for manufacturing our products and our business would be significantly harmed.

As we continue to work with more third party manufacturers on a contract manufacturing basis, we are also exposed to additional risks not inherent in a typical ODM arrangement. Such risks may include our inability to properly source and qualify components for the products, lack of software expertise resulting in increased software defects, and lack of resources to properly monitor the manufacturing process. In our typical ODM arrangement, our ODMs are generally responsible for sourcing the components of the products and warranting that the products will work against a product's specification, including any software specifications. In a contract manufacturing arrangement, we would take on much more, if not all, of the responsibility around these areas. If we are unable to properly manage these risks, our products may be more susceptible to defects and our business would be harmed.

**We are currently involved in numerous litigation matters and may in the future become involved in additional litigation, including litigation regarding intellectual property rights, which could be costly and subject us to significant liability.**

The networking industry is characterized by the existence of a large number of patents and frequent claims and related litigation regarding infringement of patents, trade secrets and other intellectual property rights. In particular, leading companies in the data communications markets, some of which are our competitors, have extensive patent portfolios with respect to networking technology. From time to time, third parties, including these leading companies, have asserted and may continue to assert exclusive patent, copyright, trademark and other intellectual property rights against us demanding license or royalty payments or seeking payment for damages, injunctive relief and other available legal remedies through litigation. These also include third-party non-practicing entities who claim to own patents or other intellectual property that cover industry standards that our products comply with. If we are unable to resolve these matters or obtain licenses on acceptable or commercially reasonable terms, we could be sued or we may be forced to initiate litigation to protect our rights. The cost of any necessary licenses could significantly harm our business, operating results and financial condition. We may also choose to join defensive patent aggregation services in order to prevent or settle litigation against such non-practicing entities and avoid the associated significant costs and uncertainties of litigation. These patent aggregation services may obtain, or have previously obtained, licenses for the alleged patent infringement claims against us and other patent assets that could be used offensively against us. The costs of such defensive patent aggregation services, while potentially lower than the costs of litigation, may be significant as well. At any time, any of these non-practicing entities, or any other third-party could initiate litigation against us, or we may be forced to initiate litigation against them, which could divert management attention, be costly to defend or prosecute, prevent us from using or selling the challenged technology, require us to design around the challenged technology and cause the price of our stock to decline. In addition, third parties, some of whom are potential competitors, have initiated and may continue to initiate litigation against our manufacturers, suppliers, members of our sales channels or our service provider customers or even end user customers, alleging infringement of their proprietary rights with respect to existing or future products. In the event successful claims of infringement are brought by third

parties, and we are unable to obtain licenses or independently develop alternative technology on a timely basis, we may be subject to indemnification obligations, be unable to offer competitive products, or be subject to increased expenses. Finally, consumer class-action lawsuits related to the marketing and performance of our home networking products have been asserted and may in the future be asserted against us. For additional information regarding certain of the lawsuits in which we are involved, see the information set forth under Note 9, *Commitments and Contingencies*, in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K. If we do not resolve these claims on a favorable basis, our business, operating results and financial condition could be significantly harmed.

**We are required to evaluate our internal controls under Section 404 of the Sarbanes-Oxley Act of 2002 and any adverse results from such evaluation, including restatements of our issued financial statements, could impact investor confidence in the reliability of our internal controls over financial reporting.**

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, we are required to furnish a report by our management on our internal control over financial reporting. Such report must contain among other matters, an assessment of the effectiveness of our internal control over financial reporting as of the end of our fiscal year, including a statement as to whether or not our internal control over financial reporting is effective. This assessment must include disclosure of any material weaknesses in our internal control over financial reporting identified by management. During the second quarter of fiscal 2009, in connection with the restatement of our previously issued financial statements for the period ended March 29, 2009, and our assessment of our disclosure controls and procedures, management concluded that as of March 29, 2009, our disclosure controls and procedures were not effective and that we had a material weakness in internal control over financial reporting. The material weakness related to the accounting for income taxes. We subsequently remediated the material weakness and continue to closely monitor our controls and procedures. From time to time, we conduct internal investigations as a result of whistleblower complaints. In some instances, the whistleblower complaint may implicate potential areas of weakness in our internal controls. Although all known material weaknesses have been remediated, we cannot be certain that the measures we have taken ensure that restatements will not occur in the future. Execution of restatements create a significant strain on our internal resources and could cause delays in our filing of quarterly or annual financial results, increase our costs and cause management distraction. Restatements may also significantly affect our stock price in an adverse manner.

Continued performance of the system and process documentation and evaluation needed to comply with Section 404 is both costly and challenging. During this process, if our management identifies one or more material weaknesses in our internal control over financial reporting, we will be unable to assert such internal control is effective. If we are unable to assert that our internal control over financial reporting is effective as of the end of a fiscal year or if our independent registered public accounting firm is unable to express an opinion on the effectiveness of our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, which may have an adverse effect on our stock price.

**System security risks, data protection breaches and cyber-attacks could disrupt our internal operations or information technology or networking services provided to customers, and any such disruption could reduce our expected revenue, increase our expenses, damage our reputation and adversely affect our stock price.**

Maintaining the security of our computer information systems and communication systems is a critical issue for us and our customers. Hackers may develop and deploy viruses, worms and other malicious software programs that are designed to attack our products and systems, including our internal network, or those of our vendors or customers. Additionally, outside parties may attempt to fraudulently induce our employees or users of our products to disclose sensitive information in order to gain access to our data or our customers' data. We have established a crisis management plan and business continuity program. While we regularly test the plan and the program, there can be no assurance that the plan and program can withstand an actual or serious disruption in our business, including a data protection breach or cyber-attack. While we have established infrastructure and geographic redundancy for our critical systems, our ability to utilize these redundant systems requires further testing and we cannot be assured that such systems are fully functional. For example, much of our order fulfillment process is automated and the order information is stored on our servers. A significant business interruption could result in losses or damages and harm our business. If our computer systems and servers go down at the end of a fiscal quarter, our ability to recognize revenue may be delayed until we are able to utilize back-up systems and continue to process and ship our orders. This could cause our stock price to decline significantly. Moreover, potential breaches of our security measures and the accidental loss, inadvertent disclosure or unapproved dissemination of proprietary information or sensitive or confidential data about us or our customers, including the potential loss or disclosure of such information or data as a result of hacking, fraud, trickery or other forms of deception, could expose us, our customers or the individuals affected to a risk of loss or misuse of this information, result in litigation and potential liability for us, damage our brand and reputation or otherwise harm our business.

In connection with our acquisition of AVAAK, Inc. in July 2012, we expanded our business into offering a comprehensive online service offering with the new VueZone cloud monitoring service. If this cloud service is compromised by hackers, or if

customer confidential information is accessed without authorization, our business will be harmed. Furthermore, operating an online cloud service is a new business for us and we may not have the expertise to properly manage risks related to data security and systems security. If we are unable to successfully prevent breaches of security relating to our VueZone service or customer private information, including customer videos and customer personal identification information, management would need to spend increasing amounts of time and effort in this area, and our business would be harmed.

**If our products contain defects or errors, we could incur significant unexpected expenses, experience product returns and lost sales, experience product recalls, suffer damage to our brand and reputation, and be subject to product liability or other claims.**

Our products are complex and may contain defects, errors or failures, particularly when first introduced or when new versions are released. The industry standards upon which many of our products are based are also complex, experience change over time and may be interpreted in different manners. Some errors and defects may be discovered only after a product has been installed and used by the end-user. For example, in January 2008, we announced a voluntary recall of a Powerline Ethernet Adapter made for Europe and other countries.

In addition, epidemic failure clauses are found in certain of our customer contracts, especially contracts with service providers. If invoked, these clauses may entitle the customer to return for replacement or obtain credits for products and inventory, as well as assess liquidated damage penalties and terminate an existing contract and cancel future or then current purchase orders. In such instances, we may also be obligated to cover significant costs incurred by the customer associated with the consequences of such epidemic failure, including freight and transportation required for product replacement and out-of-pocket costs for truck rolls to end user sites to collect the defective products. Costs or payments we make in connection with an epidemic failure may materially adversely affect our results of operations and financial condition. If our products contain defects or errors, or are found to be noncompliant with industry standards, we could experience decreased sales and increased product returns, loss of customers and market share, and increased service, warranty and insurance costs. In addition, our reputation and brand could be damaged, and we could face legal claims regarding our products. A product liability or other claim could result in negative publicity and harm to our reputation, resulting in unexpected expenses and adversely impacting our operating results. For instance, if a third party were able to successfully overcome the security measures in our products, such a person or entity could misappropriate customer data, third party data stored by our customers and other information, including intellectual property. In addition, the operations of our end-user customers may be interrupted. If that happens, affected end-users or others may file actions against us alleging product liability, tort, or breach of warranty claims.

**If disruptions in our transportation network occur or our shipping costs substantially increase, we may be unable to sell or timely deliver our products and our operating expenses could increase.**

We are highly dependent upon the transportation systems we use to ship our products, including surface and air freight. Our attempts to closely match our inventory levels to our product demand intensify the need for our transportation systems to function effectively and without delay. On a quarterly basis, our shipping volume also tends to steadily increase as the quarter progresses, which means that any disruption in our transportation network in the latter half of a quarter will likely have a more material effect on our business than at the beginning of a quarter.

The transportation network is subject to disruption or congestion from a variety of causes, including labor disputes or port strikes, acts of war or terrorism, natural disasters and congestion resulting from higher shipping volumes. Labor disputes among freight carriers and at ports of entry are common, particularly in Europe, and we expect labor unrest and its effects on shipping our products to be a continuing challenge for us. Our international freight is regularly subjected to inspection by governmental entities. If our delivery times increase unexpectedly for these or any other reasons, our ability to deliver products on time would be materially adversely affected and result in delayed or lost revenue as well as customer imposed penalties. In addition, if increases in fuel prices occur, our transportation costs would likely increase. Moreover, the cost of shipping our products by air freight is greater than other methods. From time to time in the past, we have shipped products using extensive air freight to meet unexpected spikes in demand, shifts in demand between product categories, to bring new product introductions to market quickly and to timely ship products previously ordered. If we rely more heavily upon air freight to deliver our products, our overall shipping costs will increase. A prolonged transportation disruption or a significant increase in the cost of freight could severely disrupt our business and harm our operating results.

**If our goodwill or amortizable intangible assets become impaired we may be required to record a significant charge to earnings.**

Under generally accepted accounting principles, we review our amortizable intangible assets for impairment when events or changes in circumstances indicate the carrying value may not be recoverable. Goodwill is required to be tested for impairment at least annually. Factors that may be considered when determining if the carrying value of our goodwill or amortizable intangible assets may not be recoverable include a significant decline in our expected future cash flows or a sustained, significant decline in our stock price and market capitalization.

As a result of our acquisitions, we have significant goodwill and amortizable intangible assets recorded on our balance sheet. In addition, significant negative industry or economic trends, such as those that have occurred as a result of the recent economic downturn, including reduced estimates of future cash flows or disruptions to our business could indicate that goodwill or amortizable intangible assets might be impaired. If, in any period our stock price decreases to the point where our market capitalization is less than our book value, this too could indicate a potential impairment and we may be required to record an impairment charge in that period. Our valuation methodology for assessing impairment requires management to make judgments and assumptions based on projections of future operating performance. We operate in highly competitive environments and projections of future operating results and cash flows may vary significantly from actual results. As a result, we may incur substantial impairment charges to earnings in our financial statements should an impairment of our goodwill or amortizable intangible assets be determined resulting in an adverse impact on our results of operations.

In the second fiscal quarter of 2011, in connection with our reorganization into three specific business units (retail, commercial, and service provider), we allocated goodwill to each business unit and evaluated those allocations for potential impairment. No impairment existed as of the end of the second fiscal quarter of 2011. In the fourth fiscal quarter of 2012, we completed our annual impairment test of goodwill and determined no impairment existed as of December 31, 2012. We will continue to test goodwill for impairment at least annually at the business unit level. The allocation of goodwill may have greater impact for certain of the business segments, as compared to the other segments. Accordingly, the performance of a business unit may be adversely affected by the allocation of goodwill.

**We are exposed to the credit risk of some of our customers and to credit exposures in weakened markets, which could result in material losses.**

A substantial portion of our sales are on an open credit basis, with typical payment terms of 30 to 60 days in the United States and, because of local customs or conditions, longer in some markets outside the United States. We monitor individual customer financial viability in granting such open credit arrangements, seek to limit such open credit to amounts we believe the customers can pay, and maintain reserves we believe are adequate to cover exposure for doubtful accounts.

In the past, there have been bankruptcies amongst our customer base. Although any resulting loss has not been material to date, future losses, if incurred, could harm our business and have a material adverse effect on our operating results and financial condition. To the degree that the recent turmoil in the credit markets makes it more difficult for some customers to obtain financing, our customers' ability to pay could be adversely impacted, which in turn could have a material adverse impact on our business, operating results, and financial condition.

**We invest in companies for both strategic and financial reasons, but may not realize a return on our investments in every instance.**

We have made, and continue to seek to make, investments in companies around the world to further our strategic objectives and support our key business initiatives. These investments may include equity or debt instruments of public or private companies, and may be non-marketable at the time of our initial investment. We do not restrict the types of companies in which we seek to invest. These companies may range from early-stage companies that are often still defining their strategic direction to more mature companies with established revenue streams and business models. If any company in which we invest fails, we could lose all or part of our investment in that company. If we determine that an other-than-temporary decline in the fair value exists for an equity or debt investment in a public or private company in which we have invested, we will have to write down the investment to its fair value and recognize the related write-down as an investment loss. The performance of any of these investments could result in significant impairment charges and gains (losses) on other equity investments. We must also analyze accounting and legal issues when making these investments. If we do not structure these investments properly, we may be subject to certain adverse accounting issues, such as potential consolidation of financial results.

Furthermore, if the strategic objectives of an investment have been achieved, or if the investment or business diverges from our strategic objectives, we may seek to dispose of the investment. Our non-marketable equity investments in private companies are not liquid, and we may not be able to dispose of these investments on favorable terms or at all. The occurrence of any of these events could harm our results. Gains or losses from equity securities could vary from expectations depending on gains or losses realized on the sale or exchange of securities and impairment charges related to debt instruments as well as equity and other investments.

**We are exposed to adverse currency exchange rate fluctuations in jurisdictions where we transact in local currency, which could harm our financial results and cash flows.**

Because a significant portion of our business is conducted outside the United States, we face exposure to adverse movements in foreign currency exchange rates. These exposures may change over time as business practices evolve, and they could have a material adverse impact on our results of operations, financial position and cash flows. Although a portion of our international sales are currently invoiced in United States dollars, we have implemented and continue to implement for certain countries and customers both invoicing and payment in foreign currencies. Our primary exposure to movements in foreign currency exchange rates relates to non-U.S. dollar denominated sales in Europe, Japan and Australia as well as our global operations, and non-U.S. dollar denominated operating expenses and certain assets and liabilities. In addition, weaknesses in foreign currencies for U.S. dollar denominated sales could adversely affect demand for our products. Conversely, a strengthening in foreign currencies against the U.S. dollar could increase foreign currency denominated costs. As a result we may attempt to renegotiate pricing of existing contracts or request payment to be made in U.S. dollars. We cannot be sure that our customers would agree to renegotiate along these lines. This could result in customers eventually terminating contracts with us or in our decision to terminate certain contracts, which would adversely affect our sales.

We implemented a hedging program in November 2008 to hedge exposures to fluctuations in foreign currency exchange rates as a response to the risks of changes in the value of foreign currency denominated assets and liabilities. We may enter into foreign currency forward contracts or other instruments, the majority of which mature within approximately five months. Our foreign currency forward contracts reduce, but do not eliminate, the impact of currency exchange rate movements. For example, we do not execute forward contracts in all currencies in which we conduct business. In addition, in the second fiscal quarter of 2009, we commenced implementation of a hedging program to reduce the impact of volatile exchange rates on net revenues, gross profit and operating profit for limited periods of time. However, the use of such hedging activities may only offset a portion of the adverse financial effect resulting from unfavorable movements in foreign exchange rates.

**We rely upon third parties for technology that is critical to our products, and if we are unable to continue to use this technology and future technology, our ability to develop, sell, maintain and support technologically innovative products would be limited.**

We rely on third parties to obtain non-exclusive patented hardware and software license rights in technologies that are incorporated into and necessary for the operation and functionality of most of our products. In these cases, because the intellectual property we license is available from third parties, barriers to entry into certain markets may be lower for potential or existing competitors than if we owned exclusive rights to the technology that we license and use. Moreover, if a competitor or potential competitor enters into an exclusive arrangement with any of our key third-party technology providers, or if any of these providers unilaterally decide not to do business with us for any reason, our ability to develop and sell products containing that technology would be severely limited. If we are shipping products that contain third-party technology that we subsequently lose the right to license, then we will not be able to continue to offer or support those products. In addition, these licenses often require royalty payments or other consideration to the third party licensor. Our success will depend, in part, on our continued ability to access these technologies, and we do not know whether these third-party technologies will continue to be licensed to us on commercially acceptable terms, if at all. If we are unable to license the necessary technology, we may be forced to acquire or develop alternative technology of lower quality or performance standards, which would limit and delay our ability to offer new or competitive products and increase our costs of production. As a result, our margins, market share, and operating results could be significantly harmed.

We also utilize third-party software development companies to develop, customize, maintain and support software that is incorporated into our products. If these companies fail to timely deliver or continuously maintain and support the software, as we require of them, we may experience delays in releasing new products or difficulties with supporting existing products and customers. In addition, if these third-party licensors fail or experience instability, then we may be unable to continue to sell products that incorporate the licensed technologies in addition to being unable to continue to maintain and support these products. We do require escrow arrangements with respect to certain third-party software which entitle us to certain limited rights to the source code, in the event of certain failures by the third party, in order to maintain and support such software. However, there is no guarantee that we would be able to understand and use the source code, as we may not have the expertise to do so. We are increasingly exposed

to these risks as we continue to develop and market more products containing third-party software, such as our TV connectivity, security and network attached storage products.

**If the redemption rate for our end-user promotional programs is higher than we estimate, then our net revenue and gross margin will be negatively affected.**

From time to time we offer promotional incentives, including cash rebates, to encourage end-users to purchase certain of our products. Purchasers must follow specific and stringent guidelines to redeem these incentives or rebates. Often qualified purchasers choose not to apply for the incentives or fail to follow the required redemption guidelines, resulting in an incentive redemption rate of less than 100%. Based on historical data, we estimate an incentive redemption rate for our promotional programs. If the actual redemption rate is higher than our estimated rate, then our net revenue and gross margin will be negatively affected.

**If we are unable to secure and protect our intellectual property rights, our ability to compete could be harmed.**

We rely upon third parties for a substantial portion of the intellectual property that we use in our products. At the same time, we rely on a combination of copyright, trademark, patent and trade secret laws, nondisclosure agreements with employees, consultants and suppliers and other contractual provisions to establish, maintain and protect our intellectual property rights. Despite efforts to protect our intellectual property, unauthorized third parties may attempt to design around, copy aspects of our product design or obtain and use technology or other intellectual property associated with our products. For example, one of our primary intellectual property assets is the NETGEAR name, trademark and logo. We may be unable to stop third parties from adopting similar names, trademarks and logos, particularly in those international markets where our intellectual property rights may be less protected. Furthermore, our competitors may independently develop similar technology or design around our intellectual property. Our inability to secure and protect our intellectual property rights could significantly harm our brand and business, operating results and financial condition.

**Our sales and operations in international markets expose us to operational, financial and regulatory risks.**

International sales comprise a significant amount of our overall net revenue. International sales were 48% of overall net revenue in fiscal 2012 and 52% of overall net revenue in fiscal 2011. We continue to be committed to growing our international sales and while we have committed resources to expanding our international operations and sales channels, these efforts may not be successful. International operations are subject to a number of other risks, including:

- political and economic instability, international terrorism and anti-American sentiment, particularly in emerging markets;
- potential for violations of anti-corruption laws and regulations, such as those related to bribery and fraud;
- preference for locally branded products, and laws and business practices favoring local competition;
- exchange rate fluctuations;
- increased difficulty in managing inventory;
- delayed revenue recognition;
- less effective protection of intellectual property;
- stringent consumer protection and product compliance regulations, including but not limited to the Restriction of Hazardous Substances directive, the Waste Electrical and Electronic Equipment directive and the recently enacted Ecodesign directive (EuP) in Europe that are costly to comply with and may vary from country to country;
- difficulties and costs of staffing and managing foreign operations;
- business difficulties, including potential bankruptcy or liquidation, of any of our worldwide third party logistics providers; and
- changes in local tax laws.

While we believe we generally have good relations with our employees, employees in certain jurisdictions have rights which give them certain collective rights. If management must expend significant resources and effort to address and comply with these rights, our business may be harmed. We are also required to comply with local environmental legislation and our customers rely on this compliance in order to sell our products. If our customers do not agree with our interpretations and requirements of new legislation, such as the European Ecodesign directive (EuP), they may cease to order our products and our revenue would be harmed.

**We are expanding our operations and infrastructure, which may strain our operations and increase our operating expenses.**

We are expanding our operations and pursuing market opportunities both domestically and internationally in order to grow our sales. We expect that this expansion will require enhancements to our existing management information systems, and operational and financial controls. In addition, if we continue to grow, our expenditures will likely be significantly higher than our historical costs. We may not be able to install adequate controls in an efficient and timely manner as our business grows, and our current systems may not be adequate to support our future operations. The difficulties associated with installing and implementing new systems, procedures and controls may place a significant burden on our management, operational and financial resources. In addition, if we grow internationally, we will have to expand and enhance our communications infrastructure. In the second fiscal quarter of 2011, we reorganized our business into three business units: retail, commercial, and service provider. Our reorganization into three business units may cause significant distraction to our management and employees. For example, channel and pricing conflicts may arise in certain territories as each of our business units may engage in selling activities which may benefit that business unit at the expense of another business unit. In addition, disclosures of previously non-public information in connection with our reorganization may also provide our competitors with strategic data which may put us at a competitive disadvantage and harm our business. These new disclosures about our performance may also cause our stock price to decline. As part of this expansion and reorganization, we have also commenced utilizing an alternative customer support model for certain of our end user technical support services. This alternative model permits a customer support agent to attempt to sell additional services and/or products to an end user who calls for technical support. If we are unable to successfully manage this alternative model, our end user customers may become frustrated with the customer experience and cease purchasing our products, and our business would be harmed. If we fail to continue to improve our management information systems, procedures and financial controls or encounter unexpected difficulties during expansion and reorganization, our business could be harmed.

For example, we have invested, and will continue to invest, significant capital and human resources in the design and enhancement of our financial and enterprise resource planning systems, which may be disruptive to our underlying business. We depend on these systems in order to timely and accurately process and report key components of our results of operations, financial position and cash flows. If the systems fail to operate appropriately or we experience any disruptions or delays in enhancing their functionality to meet current business requirements, our ability to fulfill customer orders, bill and track our customers, fulfill contractual obligations, accurately report our financials and otherwise run our business could be adversely affected. Even if we do not encounter these adverse effects, the enhancement of systems may be much more costly than we anticipated. If we are unable to continue to enhance our information technology systems as planned, our financial position, results of operations and cash flows could be negatively impacted.

**Governmental regulations of imports or exports affecting Internet security could affect our net revenue.**

Any additional governmental regulation of imports or exports or failure to obtain required export approval of our encryption technologies could adversely affect our international and domestic sales. The United States and various foreign governments have imposed controls, export license requirements, and restrictions on the import or export of some technologies, particularly encryption technology. In addition, from time to time, governmental agencies have proposed additional regulation of encryption technology, such as requiring the escrow and governmental recovery of private encryption keys. In response to terrorist activity, governments could enact additional regulation or restriction on the use, import, or export of encryption technology. This additional regulation of encryption technology could delay or prevent the acceptance and use of encryption products and public networks for secure communications, resulting in decreased demand for our products and services. In addition, some foreign competitors are subject to less stringent controls on exporting their encryption technologies. As a result, they may be able to compete more effectively than we can in the United States and the international Internet security market.

**We are exposed to credit risk and fluctuations in the market values of our investment portfolio.**

Although we have not recognized any material losses on our cash equivalents and short-term investments, future declines in their market values could have a material adverse effect on our financial condition and operating results. Given the global nature of our business, we have investments with both domestic and international financial institutions. Accordingly, we face exposure to fluctuations in interest rates, which may limit our investment income. If these financial institutions default on their obligations or their credit ratings are negatively impacted by liquidity issues, credit deterioration or losses, financial results, or other factors,

the value of our cash equivalents and short-term investments could decline and result in a material impairment, which could have a material adverse effect on our financial condition and operating results.

**Economic conditions, political events, war, terrorism, public health issues, natural disasters and other circumstances could materially adversely affect us.**

Our corporate headquarters are located in Northern California and one of our warehouses is located in Southern California, both of which are regions known for seismic activity. Significantly all of our critical enterprise-wide information technology systems, including our main servers, are currently housed in colocation facilities in Mesa, Arizona. While our critical information technology systems are located at colocation facilities in a different geographic region in the United States, our headquarters and warehouses remain susceptible to seismic activity so long as they are located in California. In addition, substantially all of our manufacturing occurs in two geographically concentrated areas in mainland China, where disruptions from natural disasters, health epidemics and political, social and economic instability may affect the region. If our manufacturers or warehousing facilities are disrupted or destroyed, we would be unable to distribute our products on a timely basis, which could harm our business.

We depend significantly on worldwide economic conditions and their impact on consumer spending levels, which have recently deteriorated significantly in many countries and regions, including without limitation the United States, and may remain depressed for the foreseeable future. Factors that could influence the levels of consumer spending include increases in fuel and other energy costs, conditions in the residential real estate and mortgage markets, labor and healthcare costs, access to credit, consumer confidence and other macroeconomic factors affecting consumer spending behavior.

In addition, war, terrorism, geopolitical uncertainties, public health issues, and other business interruptions have caused and could cause damage or disruption to international commerce and the global economy, and thus could have a strong negative effect on us, our suppliers, logistics providers, manufacturing vendors and customers. Our business operations are subject to interruption by natural disasters, fire, power shortages, terrorist attacks, and other hostile acts, labor disputes, public health issues, and other events beyond our control. For example, labor disputes at manufacturing facilities in China occurred in 2010 and have led to workers going on strike. The recent trend of labor unrest could materially affect our third-party manufacturers' abilities to manufacture our products. In addition, all of our major direct and indirect suppliers of hard disk drives have been affected by record flooding in Thailand in the third fiscal quarter of 2011, and they informed us that our supply chain would be constrained for an indefinite amount of time, up to six months in some cases. Some therefore declared a force majeure event and have stated that, in addition to and because of the supply constraints, pricing for hard disk drives would increase significantly until they were able to stabilize the situation. As a result, we experienced increased prices in the cost of hard disk drives and ceased accepting any orders containing ReadyNAS products with hard disk drives. In addition, all sales and marketing promotions involving ReadyNAS products were terminated temporarily. Further, we declared the existence of a force majeure event under our contracts with certain customers. Accordingly, our business was harmed. Furthermore, earthquakes and resultant nuclear threats and tsunamis in Japan in March 2011 caused some disruption to our supply of raw materials and components for our products and impacted our operating results in Japan.

Such events could decrease demand for our products, make it difficult or impossible for us to make and deliver products to our customers or to receive components from our suppliers, and create delays and inefficiencies in our supply chain. Should major public health issues, including pandemics, arise, we could be negatively affected by more stringent employee travel restrictions, additional limitations in freight services, governmental actions limiting the movement of products between regions, delays in production ramps of new products, and disruptions in the operations of our manufacturing vendors and component suppliers.

## Item 1B. *Unresolved Staff Comments*

None.

## Item 2. *Properties*

Our principal administrative, sales, marketing and research and development facilities currently occupy approximately 142,700 square feet in an office complex in San Jose, California, under a lease that expires in March 2018.

Our international headquarters occupy approximately 10,000 square feet in an office complex in Cork, Ireland, under a lease entered into in February 2006 and expiring in December 2026. Our international sales personnel are based out of local sales offices or home offices in Austria, Australia, Brazil, Canada, China, Czech Republic, Denmark, France, Germany, Hong Kong, India, Italy, Japan, Korea, Mexico, New Zealand, Poland, Russia, Singapore, Spain, Sweden, Switzerland, the Netherlands, the United Arab Emirates, and the United Kingdom. We also have operations personnel using a leased facility in Hong Kong. We also maintain

research and development facilities in Atlanta, Chicago, San Diego, Beijing and Nanjing China, and in Taipei, Taiwan. From time to time we consider various alternatives related to our long-term facilities needs. While we believe our existing facilities provide suitable space for our operations and are adequate to meet our immediate needs, it may be necessary to lease additional space to accommodate future growth. We have invested in internal capacity and strategic relationships with outside manufacturing vendors as needed to meet anticipated demand for our products.

We use third parties to provide warehousing services to us, consisting of facilities in Southern California, Australia, Hong Kong and the Netherlands.

**Item 3.** ***Legal Proceedings***

The information set forth under the heading "Litigation and Other Legal Matters" in Note 9, *Commitments and Contingencies* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K, is incorporated herein by reference. For additional discussion of certain risks associated with legal proceedings, see Item 1A, *Risk Factors* .

**Item 4.** ***Mine Safety Disclosures***

Not applicable.

## PART II

**Item 5.** ***Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities***

### Market Information

Our common stock has been quoted under the symbol "NTGR" on the Nasdaq National Market from July 31, 2003 to July 1, 2006, and on the Nasdaq Global Select Market since then. Prior to that time, there was no public market for our common stock. The following table sets forth for the indicated periods the high and low intraday sales prices for our common stock on the Nasdaq markets. Such information reflects interdealer prices, without retail markup, markdown or commission, and may not represent actual transactions.

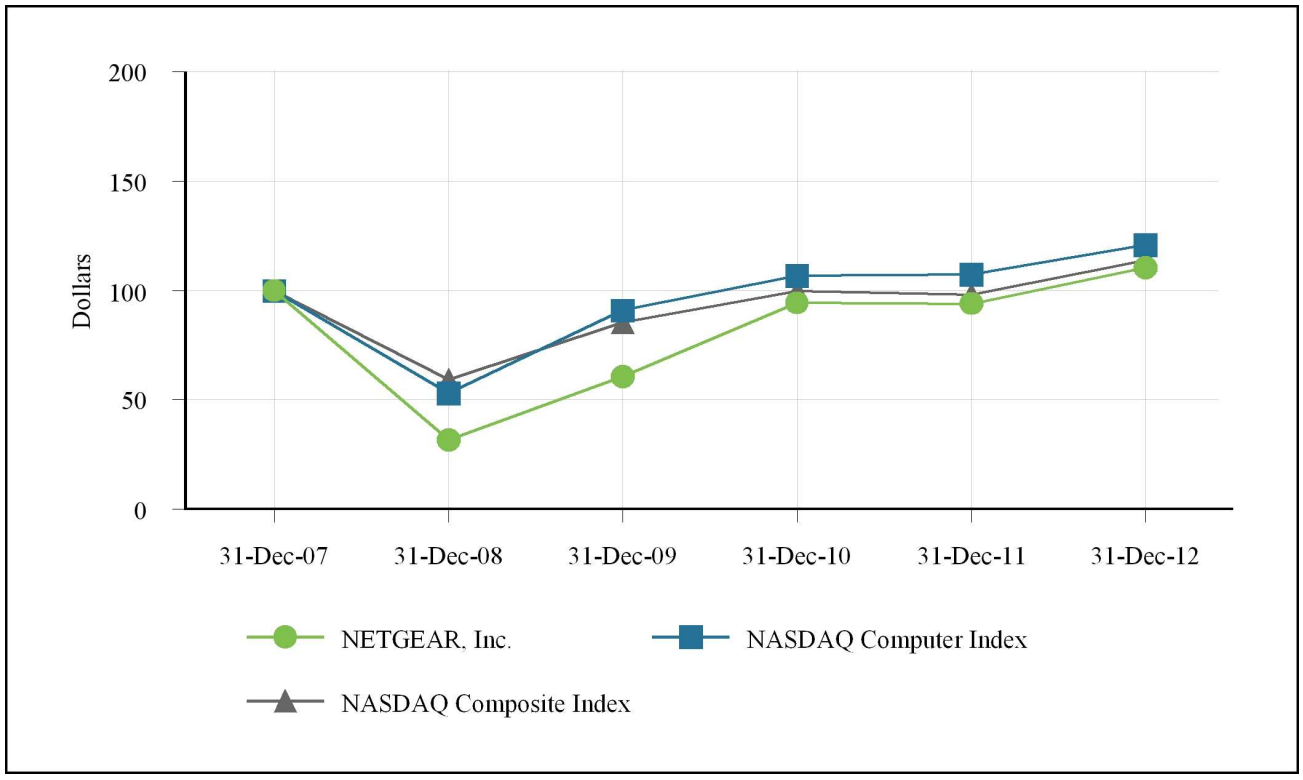
| Fiscal Year Ended December 31, 2011 | High | Low |
|---|---|---|
| First Quarter | $ 38.00 | $ 29.97 |
| Second Quarter | 44.60 | 30.31 |
| Third Quarter | 45.31 | 24.87 |
| Fourth Quarter | 38.47 | 23.45 |

| Fiscal Year Ended December 31, 2012 | High | Low |
|---|---|---|
| First Quarter | $ 43.44 | $ 34.08 |
| Second Quarter | 40.08 | 28.98 |
| Third Quarter | 40.42 | 28.68 |
| Fourth Quarter | 39.48 | 32.48 |

**Company Performance**

*Notwithstanding any statement to the contrary in any of our previous or future filings with the SEC, the following information relating to the price performance of our common stock shall not be deemed "filed" with the SEC or "soliciting material" under the Exchange Act and shall not be incorporated by reference into any such filings.*

The following graph shows a comparison from December 31, 2007 through December 31, 2012 of cumulative total return for our common stock, the Nasdaq Composite Index and the Nasdaq Computer Index. Such returns are based on historical results and are not intended to suggest future performance. Data for the Nasdaq Composite Index and the Nasdaq Computer Index assume reinvestment of dividends. We have never paid dividends on our common stock and have no present plans to do so.




| | December 31, 2007 | December 31, 2008 | December 31, 2009 | December 31, 2010 | December 31, 2011 | December 31, 2012 |
|---|---|---|---|---|---|---|
| NETGEAR, Inc. | $ 100.00 | $ 31.99 | $ 60.81 | $ 94.42 | $ 94.11 | $ 110.54 |
| NASDAQ Computer Index | $ 100.00 | $ 53.31 | $ 91.06 | $ 106.95 | $ 107.47 | $ 120.88 |
| NASDAQ Composite Index | $ 100.00 | $ 59.46 | $ 85.55 | $ 100.02 | $ 98.22 | $ 113.85 |

**Holders of Common Stock**

On February 21, 2013, there were 26 stockholders of record.

The number of record holders is based upon the actual number of holders registered on our books at such date and does not include holders of shares in "street names" or persons, partnerships, associations, corporations or other entities identified in security position listings maintained by depository trust companies.

**Dividend Policy**

We have never declared or paid cash dividends on our capital stock. We currently intend to retain future earnings, if any, to finance the operation and expansion of our business, and we do not anticipate paying cash dividends in the foreseeable future.

**Repurchase of Equity Securities by the Company**

| Period | Total Number of Shares Purchased (2) | Average Price Paid per Share | Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs (1) | Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs |
|---|---|---|---|---|
| October 1, 2012 - October 28, 2012 | 917 | $37.32 | — | 4,831,220 |
| October 29, 2012 - November 25, 2012 | — | — | — | 4,831,220 |
| November 26, 2012 - December 31, 2012 | — | — | — | 4,831,220 |
| Total | 917 | $37.32 | — | |

(1) On October 21, 2008, the Board of Directors authorized the repurchase of up to 6,000,000 shares of our outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and are contingent on a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions and the price of our common stock. During the years ended December 31, 2012 , 2011 and 2010 , the Company did not repurchase any shares under this authorization.

(2) We repurchased 917 shares, or approximately $34,000 of common stock to help administratively facilitate the withholding and subsequent remittance of personal income and payroll taxes for individuals receiving RSUs during the three months ended December 31, 2012 . Similarly, during the three months ended December 31, 2011, we repurchased 917 shares, or approximately $27,000 of common stock, respectively, to help facilitate tax withholding for RSUs.

**Item 6.** ***Selected Financial Data***

The following selected consolidated financial data are qualified in their entirety, and should be read in conjunction with, the consolidated financial statements and related notes thereto, and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included elsewhere in this Form 10-K.

We derived the selected consolidated statement of operations data for the years ended December 31, 2012 , 2011 and 2010 and the selected consolidated balance sheet data as of December 31, 2012 and 2011 from our audited consolidated financial statements appearing elsewhere in this Form 10-K. We derived the selected consolidated statement of operations data for the years ended December 31, 2009 and 2008 and the selected consolidated balance sheet data as of December 31, 2010 , 2009 and 2008 from our audited consolidated financial statements, which are not included in this Form 10-K. Historical results are not necessarily indicative of results to be expected for future periods.

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | 2011 | 2010 | 2009 | 2008 |
| | (In thousands, except per share data) | | | | |
| **Consolidated Statement of Operations Data:** | | | | | |
| Net revenue | $ 1,271,921 | $ 1,181,018 | $ 902,052 | $ 686,595 | $ 743,344 |
| Cost of revenue (2) | 888,368 | 811,572 | 602,805 | 480,195 | 502,320 |
| Gross profit | 383,553 | 369,446 | 299,247 | 206,400 | 241,024 |
| Operating expenses: | | | | | |
| Research and development (2) | 61,066 | 48,699 | 39,972 | 30,056 | 33,773 |
| Sales and marketing (2) | 149,766 | 154,562 | 131,570 | 106,162 | 121,687 |
| General and administrative (2) | 45,027 | 39,423 | 36,220 | 32,727 | 31,733 |
| Restructuring and other charges (2) | 1,190 | 2,094 | (88) | 809 | 1,929 |
| In-process research and development | — | — | — | — | 1,800 |
| Technology license arrangements | — | — | — | 2,500 | — |
| Litigation reserves, net | 390 | (201) | 211 | 2,080 | 711 |
| Total operating expenses | 257,439 | 244,577 | 207,885 | 174,334 | 191,633 |
| Income from operations | 126,114 | 124,869 | 91,362 | 32,066 | 49,391 |
| Interest income | 498 | 477 | 426 | 629 | 4,336 |
| Other income (expense), net | 2,670 | (1,136) | (564) | (128) | (8,384) |
| Income before income taxes | 129,282 | 124,210 | 91,224 | 32,567 | 45,343 |
| Provision for income taxes | 42,743 | 32,842 | 40,315 | 23,234 | 27,293 |
| Net income | $ 86,539 | $ 91,368 | $ 50,909 | $ 9,333 | $ 18,050 |
| Net income per share: | | | | | |
| Basic (1) | $ 2.27 | $ 2.46 | $ 1.44 | $ 0.27 | $ 0.51 |
| Diluted (1) | $ 2.23 | $ 2.41 | $ 1.41 | $ 0.27 | $ 0.51 |

(1) Information regarding calculation of per share data is described in Note 6, *Net Income Per Share* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K.

**(2) Stock-based compensation expense was allocated as follows:**

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | 2011 | 2010 | 2009 | 2008 |
| | (In thousands) | | | | |
| Cost of revenue | $ 1,347 | $ 999 | $ 913 | $ 959 | $ 864 |
| Research and development | 2,787 | 2,476 | 2,271 | 1,973 | 3,218 |
| Sales and marketing | 4,751 | 5,136 | 4,710 | 4,147 | 3,406 |
| General and administrative | 5,487 | 5,151 | 4,307 | 3,945 | 3,835 |

| | As of December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | 2011 | 2010 | 2009 | 2008 |
| | (In thousands) | | | | |
| **Consolidated Balance Sheet Data:** | | | | | |
| Cash, cash equivalents and short-term investments | $ 376,877 | $ 353,695 | $ 270,737 | $ 247,100 | $ 203,009 |
| Working capital | $ 603,279 | $ 525,268 | $ 413,321 | $ 339,116 | $ 312,843 |
| Total assets | $ 1,034,569 | $ 971,370 | $ 780,321 | $ 633,121 | $ 586,209 |
| Total current liabilities | $ 260,930 | $ 308,961 | $ 254,723 | $ 195,609 | $ 176,505 |
| Total non-current liabilities | $ 19,028 | $ 23,652 | $ 25,162 | $ 23,359 | $ 18,746 |
| Total stockholders' equity | $ 754,611 | $ 638,757 | $ 500,436 | $ 414,153 | $ 390,958 |

**Item 7.** ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

*You should read the following discussion of our financial condition and results of operations together with the audited consolidated financial statements and notes to the financial statements included elsewhere in this Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. The forward-looking statements are not historical facts, but rather are based on current expectations, estimates, assumptions and projections about our industry, business and future financial results. Our actual results could differ materially from the results contemplated by these forward-looking statements due to a number of factors, including those discussed under "Risk Factors" in Part I, Item 1A above.*

**Business and Executive Overview**

We are a global networking company that delivers innovative products to consumers, businesses and service providers. Our products are built on a variety of proven technologies such as wireless, Ethernet and powerline, with a focus on reliability and ease-of-use. Our product line consists of wired and wireless devices that enable networking, broadband access and network connectivity. These products are available in multiple configurations to address the needs of our end-users in each geographic region in which our products are sold.

We operate in three specific business segments: retail, commercial, and service provider. The retail business unit consists of high performance, dependable and easy-to-use home networking, home monitoring, storage and digital media products to connect consumers with the Internet and their content and devices. The commercial business unit consists of business networking, storage and security solutions without the cost and complexity of Big IT. The service provider business unit consists of made-to-order and retail proven, whole home networking solutions sold to service providers for sale to their customers. We conduct business across three geographic regions: Americas, Europe, Middle-East and Africa ("EMEA") and Asia Pacific ("APAC").

We sell our networking products through multiple sales channels worldwide, including traditional retailers, online retailers, wholesale distributors, direct market resellers ("DMRs"), value-added resellers ("VARs"), and broadband service providers. Our retail channel includes traditional retail locations domestically and internationally, such as Apple Stores, Best Buy, Costco, Fry's Electronics, K-mart, MicroSoft Stores, Radio Shack, Sears, Staples, Target, Wal-Mart, Argos (U.K.), Dixons (U.K.), PC World (U.K.), MediaMarkt (Germany, Austria), Dick Smith (Australia), JB HiFi (Australia) and Elkjop (Norway). Online retailers include Amazon.com, Dell, Newegg.com and Buy.com. Our DMRs include CDW Corporation, Insight Corporation and PC Connection in domestic markets and Misco throughout Europe. In addition, we also sell our products through broadband service providers, such as multiple system operators ("MSOs"), DSL, and other broadband technology operators domestically and internationally. Some of these retailers and broadband service providers purchase directly from us, while others are fulfilled through wholesale distributors around the world. A substantial portion of our net revenue to date has been derived from a limited number of wholesale distributors and retailers, including Ingram Micro and Best Buy. We expect that these wholesale distributors and retailers will continue to contribute a significant percentage of our net revenue for the foreseeable future.

We experienced revenue growth of 7.7% during fiscal 2012. On a geographic basis, the increase was led by net revenue growth in the Americas and APAC regions; however, the EMEA region continued to see macroeconomic weakness in the European market, with net revenues decreasing by 4.2% year-over-year. On a segment basis, our service provider business unit continued to drive revenue growth, largely driven by demand for our Docsis 3.0 products. Net revenues also increased in our retail business unit, driven by increased sales of home wireless products. However, we experienced a decrease in net revenues from our commercial business unit, as the business unit was affected by the European macroeconomic environment.

In 2012, we continued to grow the business, completing the acquisition of AVAAK Inc. ("AVAAK"), a privately-held company that developed wire-free video networking products, and acquiring certain intellectual property of Firetide, Inc. ("Firetide"). We believe the acquisition of AVAAK will bolster our retail business unit product offerings and expand our presence into the smart home market, and the acquisition of Firetide will bolster our wireless product offerings in our commercial business unit and strengthen our market position in the small to medium size campus wireless LAN market. Furthermore, we increased our investment in research and development, particularly software development, increasing research and development expense to 4.8% of net revenues for the year ended December 31, 2012, as compared to 4.1% for the year ended December 31, 2011. We believe this investment in software development will enable us to provide powerful differentiation against our competition and also provide us with possible entries into new product categories in the future.

Our service provider business has grown substantially and it is difficult to ascertain a seasonal pattern given that the business is less predictable than our other core businesses. The commercial business, consumer, and broadband service provider markets are intensely competitive and subject to rapid technological change. We believe that the principal competitive factors in the retail, commercial, and service provider markets for networking products include product breadth, size and scope of the sales channel,

brand name, timeliness of new product introductions, product availability, performance, features, functionality and reliability, ease-of-installation, maintenance and use, and customer service and support. To remain competitive, we believe we must continue to aggressively invest resources in developing new products and enhancing our current products while continuing to expand our channels and maintaining customer satisfaction worldwide.

Looking forward, we expect the service provider business unit to grow at a slower pace, before consideration of our pending acquisition of the Sierra Wireless, Inc. ("Sierra Wireless") AirCard business. For further detail, refer to Note 14, *Subsequent Event* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K. We expect to see continued success in our retail business unit, driven by 11ac wireless technology and our expansion into new technology areas , including Over the Top content streaming with our NeoTV line of products, and home monitoring with our VueZone cameras, WiFi repeaters and other Smart Home solutions and we believe that the rapid growth of this market will drive revenue growth. We also expect to see growth in our commercial business unit, driven by our newer products in 10Gig Ethernet switches, Unified Storage, and campus wireless LAN targeting the move into the Hybrid Cloud and Access Network environment among small and medium enterprises. In addition, we will continue to closely manage our expenses, inventory, and cash.

**Critical Accounting Policies and Estimates**

Our consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and pursuant to the rules and regulations of the SEC. The preparation of these financial statements requires management to make assumptions, judgments and estimates that can have a significant impact on the reported amounts of assets, liabilities, revenues and expenses. We base our estimates on historical experience and on various other assumptions believed to be applicable and reasonable under the circumstances. Actual results could differ significantly from these estimates. These estimates may change as new events occur, as additional information is obtained and as our operating environment changes. On a regular basis we evaluate our assumptions, judgments and estimates and make changes accordingly. We also discuss our critical accounting estimates with the Audit Committee of the Board of Directors. Note 1, *The Company and Summary of Significant Accounting Policies* , of the Notes to Consolidated Financial Statements of this Annual Report on Form 10-K describes the significant accounting policies used in the preparation of the consolidated financial statements. We have listed below our critical accounting policies that we believe to have the greatest potential impact on our consolidated financial statements. Historically, our assumptions, judgments and estimates relative to our critical accounting policies have not differed materially from actual results.

***Revenue Recognition***

Refer to Note 1, *The Company and Summary of Significant Accounting Policies* , of the Notes to Consolidated Financial Statements of this Annual Report on Form 10-K for a discussion of our revenue recognition policies. Revenue from product sales is generally recognized at the time the product is shipped, provided that persuasive evidence of an arrangement exists, title and risk of loss has transferred to the customer, the selling price is fixed or determinable and collection of the related receivable is reasonably assured. Currently, for some of our customers, title passes to the customer upon delivery to the port or country of destination, upon their receipt of the product, or upon the customer's resale of the product. At the end of each fiscal quarter, we estimate and defer revenue related to product where title has not transferred. The revenue continues to be deferred until such time that title passes to the customer. We have not made any material changes in the accounting methodology we use to estimate deferred revenue related to product where title has not transferred. We do not believe there will be a material change in the future estimates or assumptions used in our estimate of deferred revenue. We assess collectability based on a number of factors, including general economic and market conditions, past transaction history with the customer, and the creditworthiness of the customer. If we determine that collection of the corresponding receivable is not reasonably assured, we defer the revenue until receipt of payment.

***Allowances for Product Warranties, Returns due to Stock Rotation, Sales Incentives and Doubtful Accounts***

Our standard warranty obligation to our direct customers generally provides for a right of return of any product for a full refund in the event that such product is not merchantable or is found to be damaged or defective. At the time revenue is recognized, an estimate of future warranty returns is recorded to reduce revenue in the amount of the expected credit or refund to be provided to our direct customers. At the time we record the reduction to revenue related to warranty returns, we include within cost of revenue a write-down to reduce the carrying value of such products to net realizable value. Our standard warranty obligation to end-users provides for replacement of a defective product for one or more years. Factors that affect the warranty obligation include product failure rates, material usage, and service delivery costs incurred in correcting product failures. The estimated cost associated with fulfilling the warranty obligation to end-users is recorded in cost of revenue. Because our products are manufactured by third-party manufacturers, in certain cases we have recourse to the third-party manufacturer for replacement or credit for the defective products. We give consideration to amounts recoverable from our third-party manufacturers in determining our warranty liability. Our estimated allowances for product warranties can vary from actual results and we may have to record additional revenue reductions or charges to cost of revenue, which could materially impact our financial position and results of operations.

In addition to warranty-related returns, certain distributors and retailers generally have the right to return product for stock rotation purposes. Upon shipment of the product, we reduce revenue for an estimate of potential future stock rotation returns related to the current period product revenue. We analyze historical returns, channel inventory levels, current economic trends and changes in customer demand for our products when evaluating the adequacy of the allowance for sales returns, namely stock rotation returns. Our estimated allowances for returns due to stock rotation can vary from actual results and we may have to record additional revenue reductions, which could materially impact our financial position and results of operations.

We accrue for sales incentives as a marketing expense if we receive an identifiable benefit in exchange and can reasonably estimate the fair value of the identifiable benefit received; otherwise, it is recorded as a reduction of revenues. Our estimated provisions for sales incentives can vary from actual results and we may have to record additional expenses or additional revenue reductions dependent on the classification of the sales incentive.

We maintain an allowance for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. We regularly perform credit evaluations of our customers' financial condition and consider factors such as historical experience, credit quality, age of the accounts receivable balances, and geographic or country-specific risks and economic conditions that may affect a customer's ability to pay. The allowance for doubtful accounts is reviewed quarterly and adjusted if necessary based on our assessments of our customers' ability to pay. If the financial condition of our customers should deteriorate or if actual defaults are higher than our historical experience, additional allowances may be required, which could have an adverse impact on operating expenses.

***Valuation of Inventory***

We value our inventory at the lower of cost or market, cost being determined using the first-in, first-out method. We continually assess the value of our inventory and will periodically write down its value for estimated excess and obsolete inventory based upon assumptions about future demand and market conditions. On a quarterly basis, we review inventory quantities on hand and on order under non-cancelable purchase commitments, including consignment inventory, in comparison to our estimated forecast of product demand for the next nine months to determine what inventory, if any, are not saleable. Our analysis is based on the demand forecast but takes into account market conditions, product development plans, product life expectancy and other factors. Based on this analysis, we write down the affected inventory value for estimated excess and obsolescence charges. At the point of loss recognition, a new, lower cost basis for that inventory is established, and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis. As demonstrated during prior years, demand for our products can fluctuate significantly. If actual demand is lower than our forecasted demand and we fail to reduce our manufacturing accordingly, we could be required to write down additional inventory, which would have a negative effect on our gross profit.

***Goodwill***

Goodwill represents the purchase price over estimated fair value of net assets of businesses acquired in a business combination. Goodwill acquired in a business combination is not amortized, but instead tested for impairment at least annually during the fourth quarter. Should certain events or indicators of impairment occur between annual impairment tests, we will perform the impairment test as those events or indicators occur. Examples of such events or circumstances include the following: a significant decline in the our expected future cash flows; a sustained, significant decline in our stock price and market capitalization; a significant adverse change in the business climate; and slower growth rates.

Goodwill is tested for impairment at the reporting unit level by first performing a qualitative assessment to determine whether it is more likely than not (that is, a likelihood of more than 50%) that the fair value of the reporting unit is less than its carrying value. The qualitative assessment considers the following factors: macroeconomic conditions, industry and market considerations, cost factors, overall company financial performance, events affecting the reporting units, and changes in our share price. If the reporting unit does not pass the qualitative assessment, then we estimate our fair value and compare the fair value with the carrying value of our net assets. If the fair value is greater than the carrying value of our net assets, then no impairment results. If the fair value is less than our carrying value, then we would determine the fair value of the goodwill by comparing the implied fair value to the carrying value of the goodwill in the same manner as if we were being acquired in a business combination. Specifically, we would allocate the fair value to all of our assets and liabilities, including any unrecognized intangible assets, in a hypothetical analysis that would calculate the implied fair value of goodwill. If the implied fair value of goodwill is less than the recorded goodwill, an impairment charge would be recorded to earnings in the Consolidated Statements of Operations.

In the fourth fiscal quarter of 2012, we completed the annual impairment test of goodwill. We assessed whether it was more likely than not (that is, a likelihood of more than 50%) that each reporting unit's fair value was less than its carrying amount

including goodwill by considering the following factors: macroeconomic conditions, industry and market considerations, cost factors, overall company financial performance, events affecting the reporting units, and changes in our share price. Based on these factors, we determined that it is not more likely than not that each reporting unit's fair value was less than its carrying amount, and therefore performing the first step of the two-step impairment test for each reporting unit was unnecessary. No goodwill impairment was recognized in the years ended December 31, 2012, 2011 or 2010.

We do not believe it is likely that there will be a material change in the estimates or assumptions we use to test for impairment losses on goodwill. However, if the actual results are not consistent with our estimates or assumptions, we may be exposed to an impairment charge that could be material.

***Long-lived assets***

Purchased intangible assets with finite lives are amortized using the straight-line method over the estimated economic lives of the assets, which range from four to ten years. Finite-lived intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability is based on an estimate of undiscounted future cash flows resulting from the use of the asset and its eventual disposition.

Purchased intangible assets determined to have indefinite useful lives are not amortized. Indefinite-lived intangible assets are reviewed for impairment at least annually during the fourth quarter and whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Measurement of an impairment loss for indefinite-lived assets that management expects to hold and use is based on the fair value of the asset. Indefinite-lived assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell. The carrying value of the asset is reviewed on a regular basis for the existence of facts, both internal and external, that may suggest impairment.

In July 2012, the FASB issued ASU 2012-02, "Intangibles - Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment". The guidance in ASU 2012-02 provides the option to first assess qualitative factors to determine whether it is necessary to perform a quantitative impairment test. Calculation of the fair value of an indefinite-lived intangible asset would not be required unless it is determined, based on the qualitative assessment, that it is not more likely than not, the indefinite-lived intangible asset is impaired. ASU 2012-02 is effective for annual and interim period intangible asset impairment tests performed for fiscal years beginning on or after September 15, 2012; however early adoption is permitted. We elected to adopt the updated standard for the purpose of our intangible asset impairment testing in the fourth fiscal quarter of 2012.

In the fourth fiscal quarter of 2012, we completed the annual impairment test of long-lived assets. We assessed whether it was more likely than not (that is, a likelihood of more than 50%) the carrying amount of our indefinite-lived intangible assets may not be recoverable from their undiscounted cash flows by considering the following factors: macroeconomic conditions, industry and market considerations, cost factors, overall company financial performance, events affecting the reporting units, and changes in our share price. Based on these factors , we determined that it is not more likely than not that there were events or changes in circumstances that indicated that the carrying amount of our indefinite-lived intangible assets may not be recoverable from their undiscounted cash flows, and therefore performing the first step of the two-step impairment test for each reporting unit was unnecessary. No impairments to our indefinite-lived assets were recognized in the years ended December 31, 2012, 2011 and 2010.

We will continue to evaluate the carrying value of our indefinite-lived assets and if we determine in the future that there is a potential further impairment, we may be required to record additional charges to earnings which could affect our financial results.

***Income Taxes***

We account for income taxes under an asset and liability approach. Under this method, income tax expense is recognized for the amount of taxes payable or refundable for the current year. In addition, deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences resulting from different treatments for tax versus accounting of certain items, such as accruals and allowances not currently deductible for tax purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheet. We must then assess the likelihood that our deferred tax assets will be recovered from future taxable income and to the extent we believe that recovery is not more likely than not, we must establish a valuation allowance. As of December 31, 2012 , we believe that all of our deferred tax assets are recoverable; however, if there were a change in our ability to recover our deferred tax assets, we would be required to take a charge in the period in which we determined that recovery was not more likely than not.

Uncertain tax provisions are recognized under guidance that provides that a company should use a more-likely-than-not recognition threshold based on the technical merits of the income tax position taken. Income tax positions that meet the more-

likely-than-not recognition threshold should be measured in order to determine the tax benefit to be recognized in the financial statements. We include interest expense and penalties related to uncertain tax positions as additional tax expense.

**Results of Operations**

The following table sets forth the Consolidated Statements of Operations and the percentage change from the preceding year for the periods indicated:

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | (In thousands, except percentage data) | | | | |
| Net revenue | $ 1,271,921 | 7.7 % | $ 1,181,018 | 30.9 % | $ 902,052 |
| Cost of revenue | 888,368 | 9.5 % | 811,572 | 34.6 % | 602,805 |
| Gross profit | 383,553 | 3.8 % | 369,446 | 23.5 % | 299,247 |
| Operating expenses: | | | | | |
| Research and development | 61,066 | 25.4 % | 48,699 | 21.8 % | 39,972 |
| Sales and marketing | 149,766 | (3.1)% | 154,562 | 17.5 % | 131,570 |
| General and administrative | 45,027 | 14.2 % | 39,423 | 8.8 % | 36,220 |
| Restructuring and other charges | 1,190 | (43.2)% | 2,094 | ** | (88) |
| Litigation reserves, net | 390 | ** | (201) | ** | 211 |
| Total operating expenses | 257,439 | 5.3 % | 244,577 | 17.7 % | 207,885 |
| Income from operations | 126,114 | 1.0 % | 124,869 | 36.7 % | 91,362 |
| Interest income | 498 | 4.4 % | 477 | 12.0 % | 426 |
| Other income (expense), net | 2,670 | ** | (1,136) | 101.4 % | (564) |
| Income before income taxes | 129,282 | 4.1 % | 124,210 | 36.2 % | 91,224 |
| Provision for income taxes | 42,743 | 30.1 % | 32,842 | (18.5)% | 40,315 |
| Net income | $ 86,539 | (5.3)% | $ 91,368 | 79.5 % | $ 50,909 |

** Percentage change not meaningful.

The following table sets forth the Consolidated Statements of Operations, expressed as a percentage of net revenue, for the periods presented:

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Net revenue | 100% | 100 % | 100 % |
| Cost of revenue | 69.8 | 68.7 | 66.8 |
| Gross margin | 30.2 | 31.3 | 33.2 |
| Operating expenses: | | | |
| Research and development | 4.8 | 4.1 | 4.5 |
| Sales and marketing | 11.9 | 13.1 | 14.6 |
| General and administrative | 3.5 | 3.3 | 4.0 |
| Restructuring and other charges | 0.1 | 0.2 | 0.0 |
| Litigation reserves, net | 0.0 | 0.0 | 0.0 |
| Total operating expenses | 20.3 | 20.7 | 23.1 |
| Income from operations | 9.9 | 10.6 | 10.1 |
| Interest income | 0.1 | 0.0 | 0.1 |
| Other income (expense), net | 0.2 | (0.1) | (0.1) |
| Income before income taxes | 10.2 | 10.5 | 10.1 |
| Provision for income taxes | 3.4 | 2.8 | 4.5 |
| Net income | 6.8% | 7.7 % | 5.6 % |

**Net Revenue**

Our net revenue consists of gross product shipments, less allowances for estimated returns for stock rotation and warranty, price protection, end-user customer rebates and other sales incentives deemed to be a reduction of net revenue and net changes in deferred revenue.

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | (In thousands, except percentage data) | | | | |
| Total net revenue | $ 1,271,921 | 7.7% | $ 1,181,018 | 30.9% | $ 902,052 |

***2012 vs 2011***

Net revenue increased $90.9 million , or 7.7% , to $1.27 billion for the year ended December 31, 2012 , from $1.18 billion for the year ended December 31, 2011 . The increase in net revenue was primarily driven by sales to our service provider customers, and to a lesser extent, our retail products. This increase was partially offset by a decrease in net revenue from our commercial business unit.

***2011 vs 2010***

Net revenue increased $279.0 million , or 30.9% , to $1.18 billion for the year ended December 31, 2011 , from $902.1 million for the year ended December 31, 2010 . The increase in net revenue was due to strong growth in our retail and commercial product lines, and exceptional growth in service provider revenue. Refer to the discussion of segment information for additional discussion of net revenue by business unit.

Refer to "Net Revenue by Geographic Region" and "Segment Information" for further discussion of net revenue by geographic region and segment respectively.

**Net Revenue by Geographic Region**

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | (In thousands, except percentage data) | | | | |
| Americas | $ 679,419 | 15.7 % | $ 587,056 | 25.8% | $ 466,542 |
| *Percentage of net revenue* | *53.4 %* | | *49.7 %* | | *51.7 %* |
| EMEA | $ 457,724 | (4.2)% | $ 477,713 | 40.4% | $ 340,249 |
| *Percentage of net revenue* | *36.0 %* | | *40.4 %* | | *37.7 %* |
| APAC | $ 134,778 | 15.9 % | $ 116,249 | 22.0% | $ 95,261 |
| *Percentage of net revenue* | *10.6 %* | | *9.8 %* | | *10.6 %* |

***2012 vs 2011***

The increase in Americas net revenue was primarily driven by our retail products and sales to our service provider customers. The decrease in EMEA net revenue was primarily attributable to a decrease in sales of our commercial products and, to a lesser extent, a decrease in sales of our retail products. The increase in APAC net revenue was primarily attributable to increased sales to our service provider customers.

Americas continues to represent the largest percentage of our net revenues, and APAC increased as a percentage of revenue, primarily due to growth in the region. EMEA decreased as a percentage of revenues as we continued to see macroeconomic weakness in the European market.

***2011 vs 2010***

The increase in Americas net revenue was primarily attributable to sales to our service provider customers. The increase in EMEA net revenue was primarily attributable to increased sales to our service provider customers and increased sales of our retail

products. The increase in APAC net revenue was attributable to increased sales to service provider customers, as well as, increased sales of our retail and commercial products.

**Cost of Revenue and Gross Margin**

Cost of revenue consists primarily of the following: the cost of finished products from our third party manufacturers; overhead costs, including purchasing, product planning, inventory control, warehousing and distribution logistics; third-party software licensing fees; inbound freight; warranty costs associated with returned goods; write-downs for excess and obsolete inventory and amortization expense of certain acquired intangibles. We outsource our manufacturing, warehousing and distribution logistics. We believe this outsourcing strategy allows us to better manage our product costs and gross margin. Our gross margin can be affected by a number of factors, including fluctuation in foreign exchange rates, sales returns, changes in average selling prices, end-user customer rebates and other sales incentives, and changes in our cost of goods sold due to fluctuations in prices paid for components, net of vendor rebates, warranty and overhead costs, inbound freight, conversion costs and charges for excess or obsolete inventory. The following table presents costs of revenue and gross margin, for the periods indicated:

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | (In thousands, except percentage data) | | | | |
| Cost of revenue | $ 888,368 | 9.5% | $ 811,572 | 34.6% | $ 602,805 |
| *Gross margin percentage* | *30.2 %* | | *31.3 %* | | *33.2 %* |

***2012 vs 2011***

Cost of revenue increased $76.8 million , or 9.5% , to $888.4 million for the year ended December 31, 2012 , from $811.6 million for the year ended December 31, 2011 . Our gross margin decreased to 30.2% for the year ended December 31, 2012 , from 31.3% for the year ended December 31, 2011 .

The decrease in gross margin was primarily attributable to relatively faster growth in our revenue from service providers, which generally carries lower gross margins than our other products. Sales to service providers increased as a percentage of net revenue to 36% in the year ended December 31, 2012 , compared to 31% in the year ended December 31, 2011 .

***2011 vs 2010***

Cost of revenue increased $208.8 million, or 34.6%, to $811.6 million for the year ended December 31, 2011, from $602.8 million for the year ended December 31, 2010. Our gross margin decreased to 31.3% for the year ended December 31, 2011, from 33.2% for the year ended December 31, 2010.

The decrease in gross margin was primarily attributable to a higher percentage of our total revenue derived from sales to service providers, which generally carry lower gross margins. For the years ended December 31, 2011 and 2010, the sales from service providers represented 31% and 20% of net revenue, respectively.

**Operating Expenses**

**Research and Development Expense**

Research and development expenses consist primarily of personnel expenses, payments to suppliers for design services, safety and regulatory testing, product certification expenditures to qualify our products for sale into specific markets, prototypes and other consulting fees. Research and development expenses are recognized as they are incurred. We have invested in building our research and development organization to enhance our ability to introduce innovative and easy-to-use products. In the future, we expect research and development expenses will increase in absolute dollars and as a percentage of revenue as we broaden our core competencies and expand into new software and networking product technologies. The following table presents research and development expense, for the periods indicated:

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | (In thousands, except percentage data) | | | | |
| Research and development expense | $ 61,066 | 25.4% | $ 48,699 | 21.8% | $ 39,972 |
| *Percentage of net revenue* | *4.8 %* | | *4.1 %* | | *4.5 %* |

***2012 vs 2011***

Research and development expenses increased $12.4 million , or 25.4% , to $61.1 million for the year ended December 31, 2012 , from $48.7 million for the year ended December 31, 2011 . The increase was primarily attributable to higher personnel-related expenses of $7.1 million attributable to headcount growth and increased expenses of $6.0 million primarily related to our increased investment in research and development projects for software development, and acquisition-related research and development. These expenses were offset by a benefit of $3.0 million due to a decrease in variable compensation. Research and development headcount increased by 27 employees to 251 employees at December 31, 2012 compared to 224 employees at December 31, 2011 . Furthermore, the increase was attributable to higher facilities expenses of $2.1 million, primarily related to our acquisition-related expansions.

***2011 vs 2010***

Research and development expenses increased $8.7 million, or 21.8%, to $48.7 million for the year ended December 31, 2011, from $40.0 million for the year ended December 31, 2010. The increase was primarily attributable to increased costs of $5.5 million related to an increase in payroll and other employee expenses driven by additional headcount. Research and development headcount increased by 46 employees to 224 employees at December 31, 2011 compared to 178 employees at December 31, 2010. Furthermore, the increase was attributable to higher outside service costs of $2.5 million, primarily related to our increased research and development projects.

**Sales and Marketing Expense**

Sales and marketing expenses consist primarily of advertising, trade shows, corporate communications and other marketing expenses, product marketing expenses, outbound freight costs, personnel expenses for sales and marketing staff and technical support expenses. The following table presents sales and marketing expense, for the periods indicated:

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | (In thousands, except percentage data) | | | | |
| Sales and marketing expense | $ 149,766 | (3.1)% | $ 154,562 | 17.5% | $ 131,570 |
| *Percentage of net revenue* | *11.9 %* | | *13.1 %* | | *14.6 %* |

***2012 vs 2011***

Sales and marketing expenses decreased $4.8 million , or 3.1% , to $149.8 million for the year ended December 31, 2012 , from $154.6 million for the year ended December 31, 2011 . The decrease was primarily due to a decrease in marketing costs of $3.1 million, as we shifted our marketing efforts towards activities that were deemed to be a reduction in net revenue and away from

operating expense related marketing, and freight expenses of $1.8 million. Payroll-related expenses, excluding stock-based compensation, were relatively flat year-over-year, as an increase of $3.8 million in personnel-related costs due to increased annual headcount were offset by a decrease of $3.8 million in variable compensation. Sales and marketing headcount decreased by 5 employees to 352 employees at December 31, 2012 compared to 357 employees at December 31, 2011 .

***2011 vs 2010***

Sales and marketing expenses increased $23.0 million, or 17.5%, to $154.6 million for the year ended December 31, 2011, from $131.6 million for the year ended December 31, 2010. Of this increase, $13.8 million was related to an increase in payroll and other employee expenses primarily attributable to increased overall sales and marketing headcount. Sales and marketing headcount increased by 54 employees to 357 employees at December 31, 2011 compared to 303 employees at December 31, 2010. Further, $7.2 million of the increase was due to marketing costs resulting from increased marketing campaigns, and call center and freight costs, resulting from greater sales volume.

**General and Administrative**

General and administrative expenses consist of salaries and related expenses for executives, finance and accounting, human resources, information technology, professional fees, allowance for doubtful accounts and other general corporate expenses. The following table presents general and administrative expense, for the periods indicated:

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | (In thousands, except percentage data) | | | | |
| General and administrative expense | $ 45,027 | 14.2% | $ 39,423 | 8.8% | $ 36,220 |
| *Percentage of net revenue* | *3.5 %* | | *3.3 %* | | *4.0 %* |

***2012 vs 2011***

General and administrative expenses increased $5.6 million , or 14.2% , to $45.0 million for the year ended December 31, 2012 , from $39.4 million for the year ended December 31, 2011 . The increase was primarily due to an increase in outside professional services of $6.2 million largely attributable to acquisition and litigation related activities and an increase of $1.9 million in facility-related expenses. These increases were partially offset by a decrease in personnel-related expenses of $3.3 million, primarily related to the decrease in variable compensation. General and administrative headcount increased by 14 employees to 128 employees at December 31, 2012 compared to 114 employees at December 31, 2011 .

***2011 vs 2010***

General and administrative expenses increased $3.2 million, or 8.8%, to $39.4 million for the year ended December 31, 2011, from $36.2 million for the year ended December 31, 2010. The increase was primarily due to an increase in payroll and other employee expenses primarily attributable to increased headcount. General and administrative headcount increased by 16 employees to 114 employees at December 31, 2011 compared to 98 employees at December 31, 2010.

**Restructuring and Other Charges**

***2012 vs 2011***

Restructuring and other charges decreased $0.9 million , or 43.2% to an expense of $1.2 million during the year ended December 31, 2012 , from $2.1 million for year ended December 31, 2011 . The expense of $1.2 million was primarily due to employee severance attributable to the consolidation of product groups and the consolidation of the EMEA sales team within our commercial business unit.

***2011 vs 2010***

Restructuring and other charges increased $2.2 million, to an expense of $2.1 million during the year ended December 31, 2011, from a benefit of $88,000 for year ended December 31, 2010. Of the $2.2 million increase, we incurred $1.6 million in restructuring costs for employee severance related to the reorganization into three specific business units during the year ended

December 31, 2011. In addition, we incurred $464,000 in transition services in connection with the acquisition of the Customer Networking Solutions division of Westell Technologies, Inc. during the year ended December 31, 2011.

For a further discussion of restructuring and other charges, refer to Note 4, *Restructuring and Other Charges* , in the Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K.

**Litigation Reserves and Payments**

During the year ended December 31, 2012 , we recorded a litigation reserve of $0.4 million for estimated costs related to the settlement of potential lawsuits or lawsuits already filed against us. For a detailed discussion of our litigation matters, refer to Note 9, *Commitments and Contingencies* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K.

During the year ended December 31, 2011, we recorded a litigation reserve benefit of $201,000 for estimated costs related to the settlement of potential lawsuits or lawsuits already filed against us. During the year ended December 31, 2010, we recorded a litigation reserve expense of $211,000 for estimated costs related to the settlement of potential lawsuits or lawsuits already filed against us.

**Interest Income and Other Income (Expense)**

Interest income represents amounts earned on our cash, cash equivalents and short-term investments. Other income (expense), net, primarily represents gains and losses on transactions denominated in foreign currencies and other miscellaneous income and expenses. For details of our hedging program and related foreign currency contracts, refer to Note 5, *Derivative Financial Instruments* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K.

***2012 vs 2011***

Interest income increased $21,000 , or 4.4% , to $498,000 for the year ended December 31, 2012 , from $477,000 for the year ended December 31, 2011 . The increase in interest income was primarily attributable to an increase in our average balance of cash, cash equivalents, and short-term investments during the year ended December 31, 2012 , as compared to the year ended December 31, 2011 , which was partially offset by falling interest rates.

Other income and expense, net, increased $3.8 million to income of $2.7 million for the year ended December 31, 2012 , from expense of $1.1 million for year ended December 31, 2011 . The increase was primarily attributable to the $3.1 million gain on the sale of a cost method investment. In addition, our foreign currency hedging program reduced volatility associated with hedged currency exchange rate movements during the year ended December 31, 2012 .

***2011 vs 2010***

Interest income increased $51,000, or 12.0%, to $477,000 for the year ended December 31, 2011, from $426,000 for the year ended December 31, 2010. The increase in interest income was primarily attributable to an increase in our average balance of cash, cash equivalents, and short-term investments during the year ended December 31, 2011, as compared to the year ended December 31, 2010, which was partially offset by falling interest rates.

Other expense, net, increased $572,000 to expense of $1.1 million for year ended December 31, 2011, from expense of $564,000 for year ended December 31, 2010. Our foreign currency hedging program reduced volatility associated with hedged currency exchange rate movements during the year ended December 31, 2011. The expense of $1.1 million mainly related to forward points for hedged currency.

**Provision for Income Taxes**

***2012 vs 2011***

Provision for income taxes increased $9.9 million , resulting in a provision of $42.7 million for the year ended December 31, 2012 , compared to a provision of $32.8 million for the year ended December 31, 2011 . The effective tax rate increased to 33.1% for the year ended December 31, 2012 from 26.4% for the year ended December 31, 2011 . The effective tax rate for both periods differed from the statutory rate of 35% due to earnings from foreign jurisdictions, state taxes and other non-deductible expenses. Non-deductible expenses in the year ended December 31, 2012 included certain stock based compensation. For the year ended December 31, 2012, tax on earnings from foreign operations reduced the effective tax rate by 4.8 percentage points compared to

9.5 percentage points for 2011. The increase in the effective tax rate from earnings of foreign operations in 2012 compared to 2011 resulted from a decrease in the profitability of international operations located in tax jurisdictions with rates below 35%. Additionally, the effective tax rate was higher due to the expiration of tax laws providing for the US federal research credit for the year ended December 31, 2012. Tax rate increases were partially offset by a reduction in accruals for uncertain tax positions as a result of the completion of a tax audit by the US Internal Revenue Service.

***2011 vs 2010***

Provision for income taxes decreased $7.5 million, resulting in a provision of $32.8 million for the year ended December 31, 2011, compared to a provision of $40.3 million for the year ended December 31, 2010. The effective tax rate decreased to 26.4% for the year ended December 31, 2011 from 44.2% for the year ended December 31, 2010. The effective tax rate for both periods differed from the statutory rate of 35% due to earnings from foreign operations, state taxes, other non-deductible expenses, and tax credits. Non-deductible expenses in the year ended December 31, 2010 included certain stock based compensation. For the year ended December 31, 2011, tax on earnings from foreign operations reduced the effective tax rate by 9.5 percentage points compared to an increase of 5.1 percentage points for 2010. The tax rate benefit of earnings from foreign operations in 2011 resulted from improvements in profitability of international operations located in tax jurisdictions with rates below 35%. In 2011, state income taxes increased the effective tax rate by 1.5 percentage points compared to an increase of 4.2 percentage points for 2010. The lower impact of state taxes in 2011 compared to 2010 was primarily due to a legislation that was effective as of January 1, 2011 that provided for a more favorable methodology for computing the amount of income subject to tax in California.

**Net Income**

***2012 vs 2011***

Net income decreased $4.9 million to $86.5 million for the year ended December 31, 2012 , from $91.4 million for the year ended December 31, 2011 . This decrease was primarily attributable to an increase in the provision for income tax of $9.9 million , partially offset by an increase of $3.8 million in other income and expense, net, and operating income of $1.2 million.

***2011 vs 2010***

Net income increased $40.5 million to $91.4 million for the year ended December 31, 2011, from $50.9 million for the year ended December 31, 2010. This increase was primarily attributable to an increase in gross profit of $70.2 million and a decrease in provision for income taxes of $7.5 million. This increase was partially offset by an increase in operating expenses of $36.7 million.

**Segment Information**

A description of our products and services, as well as segment financial data, for each segment can be found in Note 12, *Segment Information, Operations by Geographic Area and Customer Concentration* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K. Future changes to our organizational structure or business may result in changes to the reportable segments disclosed.

Segment contribution income includes all product line segment net revenues less the related cost of sales, research and development, and sales and marketing costs. Contribution income is used, in part, to evaluate the performance of, and allocate resources to, each of the segments. Certain operating expenses are not allocated to segments because they are separately managed at the corporate level. These unallocated indirect costs include corporate costs, such as corporate research and development, general and administrative costs, stock-based compensation expenses, amortization of intangibles, acquisition-related integration costs, restructuring costs, litigation reserves, and interest and other income (expense), net.

A reconciliation of segment contribution income to income before income taxes can be found in Note 12, *Segment Information, Operations by Geographic Area and Customer Concentration* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K.

**Retail**

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | ( in thousands, except percentage data) | | | | |
| Net revenue | $ 504,797 | 4.8% | $ 481,795 | 10.6% | $ 435,484 |
| *Percentage of net revenue* | 39.7% | | 40.8% | | 48.3% |
| Contribution income | 86,808 | 6.4% | 81,589 | 13.5% | 71,862 |
| *Contribution margin* | *17.2 %* | | *16.9 %* | | *16.5 %* |

***2012 vs 2011***

The retail business unit experienced a slight increase in revenue from 2011 to 2012. The increase was primarily driven by an increase in revenue from sales of our home wireless products, partially offset by a decrease in sales of our powerline, home storage and broadband gateways products. The retail business unit experienced strong revenue growth in the Americas region and moderate growth in the APAC region; however these increases were partially offset by a decrease in net revenues from sales in the EMEA region, as the region continued to experience macroeconomic weakness in the European market. The increase in contribution income was primarily due to revenue growth, which was partially offset by an increase in operating expenses, primarily driven by investments in research and development, as well as product management and marketing costs.

***2011 vs 2010***

We experienced strong net revenue growth in the retail business unit from 2010 to 2011. The increase was mainly driven by a 34.5% increase in the revenue from our home wireless-N product line due to consumers transitioning from wireless-G to wireless-N technology. We also experienced strong growth in contribution income. The increase in contribution income was primarily due to revenue growth and an increase in gross margin, which was mainly driven by a decrease in freight costs due to a favorable shift from air to sea freight. Net revenue increased by 10.6% and retail-related gross profit increased by 15.0% over the same period. The impact of the increase in gross profit was partially offset by an increase in retail-related operating expenses, which increased by 16.7% over the same period.

**Commercial**

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | ( in thousands, except percentage data) | | | | |
| Net revenue | $ 307,945 | (7.1)% | $ 331,439 | 16.5% | $ 284,539 |
| *Percentage of net revenue* | 24.2% | | 28.1% | | 31.5% |
| Contribution income | 67,826 | (9.3)% | 74,746 | 18.6% | 63,021 |
| *Contribution margin* | *22.0 %* | | *22.6 %* | | *22.1 %* |

***2012 vs 2011***

We experienced a decrease in net revenues in the commercial business unit from 2011 to 2012. The decrease in net revenues was primarily experienced in the EMEA region, as the region continued to experience macroeconomic weakness in the European market. Net revenues from sales in the Americas and APAC regions remained relatively flat. On a product-level, the decrease was primarily attributable to a decrease in sales from our network storage product line. Contribution income also decreased, primarily due to the decline in revenue out-pacing the savings from decreases in our costs of revenue and operating expenses. Net revenue decreased by 7.1% , while costs of revenue and operating expenses decreased by 6.5% and 6.3% respectively. The decrease in costs of revenue was primarily attributable to the decrease in net revenues and a more favorable air/sea freight mix. The decrease in our commercial business unit's operating expenses was primarily due to a decrease in sales and marketing cost, partially offset by an increase in research and development costs.

***2011 vs 2010***

We experienced strong net revenue growth in the commercial business unit from 2010 to 2011. The increase was driven by an increase in demand across our product lines. In particular, revenue from our network storage product line and switch products increased by 15.1% and 18.6%, respectively. We also experienced strong growth in contribution income. The increase in contribution income was primarily due to revenue growth, while the increase in operating expenses was moderate. Net revenue increased by 16.5%, while commercial-related operating expenses increased by only 13.0% over the same period.

**Service Provider**

| | Year Ended December 31, | | | | |
|---|---|---|---|---|---|
| | 2012 | % Change | 2011 | % Change | 2010 |
| | ( in thousands, except percentage data) | | | | |
| Net revenue | $ 459,179 | 24.9% | $ 367,784 | 102.0% | $ 182,029 |
| *Percentage of net revenue* | 36.1% | | 31.1% | | 20.2% |
| Contribution income | 40,794 | 24.4% | 32,797 | 133.8% | 14,026 |
| *Contribution margin* | *8.9 %* | | *8.9 %* | | *7.7 %* |

***2012 vs 2011***

We experienced strong net revenue growth in the service provider unit from 2011 to 2012. The increase was primarily attributable to sales growth of our broadband gateway products, primarily driven by service provider demand for our Docsis 3.0 products, and to a lesser extent, the acquisition of the Customer Networking Solutions division of Westell Technologies, Inc. Contribution income remained in line with revenue growth, with net revenue increasing by 24.9% , while costs of revenue and operating expenses increased by 25.2% and 22.3% respectively. The increase in costs of revenue was primarily due to revenue growth and the increase in operating expenses was primarily attributable to increased investments in research and development.

***2011 vs 2010***

We experienced exceptional net revenue growth in the service provider unit from 2010 to 2011. The increase was primarily driven by the adoption of Docsis 3.0 products. We also experienced exceptional growth in contribution income. The increase in contribution income was primarily due to revenue growth, while the increase in operating expenses was moderate. Net revenue increased by 102.0%, while service-provider-related operating expenses increased by only 48.1%, due to an increase in research and development and sales and marketing, over the same period.

**Liquidity and Capital Resources**

As of December 31, 2012 , we had cash, cash equivalents and short-term investments totaling $376.9 million .

Our cash and cash equivalents balance decreased from $208.9 million as of December 31, 2011 to $149.0 million as of December 31, 2012 . Our short-term investments, which represent the investment of funds available for current operations, increased from $144.8 million as of December 31, 2011 to $227.8 million as of December 31, 2012 , as we shifted assets from money market funds to Treasuries with higher returns. Operating activities during the year ended December 31, 2012 , generated cash of $55.0 million . Investing activities during the year ended December 31, 2012 used $130.3 million , which includes the net purchases of short-term investments of $85.5 million , payments made in connection with business acquisitions of $28.6 million , primarily related to the AVAAK acquisition, and purchases of property and equipment of $14.8 million . During the year ended December 31, 2012 , financing activities provided $15.4 million , primarily due to the issuance of our common stock upon exercise of stock options and our employee stock purchase program, as well as the excess tax benefit from exercises and cancellations of stock options.

Our days sales outstanding as of December 31, 2012 was 76 days, which was consistent with 2011 .

Our accounts payable decreased from $117.3 million at December 31, 2011 to $87.3 million at December 31, 2012 primarily as a result of timing of payments.

Inventory increased from $163.7 million at December 31, 2011 to $174.9 million at December 31, 2012 . Ending inventory turns decreased from 5.2 turns in the three months ended December 31, 2011 , to 5.0 turns in the three months ended December 31,

2012 . This decrease is primarily attributable to our increased inventory levels to support current and expected demand levels for our products.

We enter into foreign currency forward-exchange contracts, which typically mature in three to five months, to hedge a portion of our exposure to foreign currency fluctuations of foreign currency-denominated revenue, costs of revenue, certain operating expenses, receivables, payables, and cash balances. We record on the consolidated balance sheet at each reporting period the fair value of our forward-exchange contracts and record any fair value adjustments in our Consolidated Statements of Operations and in our Consolidated Balance Sheets. Gains and losses associated with currency rate changes on hedge contracts that are non-designated under the authoritative guidance for derivatives and hedging are recorded within other income (expense), net, offsetting foreign exchange gains and losses on our monetary assets and liabilities. Gains and losses associated with currency rate changes on hedge contracts that are designated cash flow hedges under the authoritative guidance for derivatives and hedging are recorded within cumulative other comprehensive income until the related revenue, costs of revenue, or expenses are recognized.

In October 21, 2008, the Board of Directors authorized management to repurchase up to 6,000,000 shares of our outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and are contingent on a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions and the price of our common stock. We did not repurchase any shares under this authorization during the years ended December 31, 2012 , 2011 or 2010 .

We also repurchase shares to help administratively facilitate the withholding and subsequent remittance of personal income and payroll taxes for individuals receiving RSUs throughout the year. We repurchased approximately 22,000 shares, or $850,000 of common stock to facilitate tax withholdings for RSUs during the year ended December 31, 2012 . Similarly, during the years ended December 31, 2011 and December 31, 2010 , we repurchased approximately 25,000 shares and 32,000 shares, respectively, or $926,000 and $736,000 of our common stock, respectively, to help facilitate tax withholding for RSUs. These shares were retired upon repurchase.

Based on our current plans and market conditions, we believe that our existing cash, cash equivalents and short-term investments will be sufficient to satisfy our anticipated cash requirements for the foreseeable future. However, we cannot be certain that our planned levels of revenue, costs and expenses will be achieved. If our operating results fail to meet our expectations or if we fail to manage our inventory, accounts receivable or other assets, we could be required to seek additional funding through public or private financings or other arrangements. In addition, as we continue to expand our product offerings, channels and geographic presence, we may require additional working capital. In such event, adequate funds may not be available when needed or may not be available on favorable or commercially acceptable terms, which could have a negative effect on our business and results of operations.

**Backlog**

As of December 31, 2012 , we had a backlog of approximately $104.6 million, compared to approximately $128.5 million as of December 31, 2011 , primarily due to product demand required in the future. Our backlog consists of products for which customer purchase orders have been received and that are scheduled or in the process of being scheduled for shipment. While we expect to fulfill the order backlog within the current year, most orders are subject to rescheduling or cancellation with little or no penalties. Because of the possibility of customer changes in product scheduling or order cancellation, our backlog as of any particular date may not be an indicator of net sales for any succeeding period.

**Contractual Obligations and Off-Balance Sheet Arrangements**

***Contractual Obligations***

The following table describes our commitments to settle non-cancelable lease and purchase commitments as of December 31, 2012 .

| | Less Than 1 Year | 1-3 Years | 3-5 Years | More Than 5 Years | Total |
|---|---|---|---|---|---|
| Operating leases | $ 8,192 | $ 11,907 | $ 8,201 | $ 3,517 | $ 31,817 |
| Purchase obligations | 149,603 | — | — | — | 149,603 |
| | $ 157,795 | $ 11,907 | $ 8,201 | $ 3,517 | $ 181,420 |

We lease office space, cars and equipment under non-cancelable operating leases with various expiration dates through December 2026. Rent expense in the years ended December 31, 2012 , 2011 , and 2010 was $7.6 million , $7.0 million and $6.4 million , respectively. The terms of some of the office leases provide for rental payments on a graduated scale. We recognize rent expense on a straight-line basis over the lease period, and have accrued for rent expense incurred but not paid. The amounts presented are consistent with contractual terms and are not expected to differ significantly, unless a substantial change in our headcount needs requires us to exit an office facility early or expand our occupied space.

We enter into various inventory-related purchase agreements with suppliers. Generally, under these agreements, 50% of the orders are cancelable by giving notice 46 to 60 days prior to the expected shipment date and 25% of orders are cancelable by giving notice 31 to 45 days prior to the expected shipment date. Orders are not cancelable within 30 days prior to the expected shipment date. At December 31, 2012 , we had $149.6 million in non-cancelable purchase commitments with suppliers. We expect to sell all products for which we have committed purchases from suppliers.

As of December 31, 2012 and December 31, 2011 , we had $13.8 million and $18.7 million, respectively, of total gross unrecognized tax benefits and related interest. The timing of any payments that could result from these unrecognized tax benefits will depend upon a number of factors. The unrecognized tax benefits have been excluded from the contractual obligations table because reasonable estimates cannot be made of whether, or when, any cash payments for such items might occur. The possible reduction in liabilities for uncertain tax positions in multiple jurisdictions that may impact the statement of operations in the next 12 months is approximately $2.2 million, excluding the interest, penalties and the effect of any related deferred tax assets or liabilities.

***Off-Balance Sheet Arrangements***

As of December 31, 2012 , we did not have any off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

**Recent Accounting Pronouncements**

See Note 1, *The Company and Summary of Significant Accounting Policies* , in Notes to Consolidated Financial Statements in Item 8 of Part II of this Annual Report on Form 10-K, for a full description of recent accounting pronouncements, including the expected dates of adoption and estimated effects on financial condition and results of operations, which are hereby incorporated by reference.

## Item 7A. *Quantitative and Qualitative Disclosures About Market Risk*

**Interest Rate Risk**

We do not use derivative financial instruments in our investment portfolio. We have an investment portfolio of fixed income securities that are classified as “available-for-sale” securities. These securities, like all fixed income instruments, are subject to interest rate risk and will fall in value if market interest rates increase. We attempt to limit this exposure by investing primarily in highly rated short-term securities. Our investment policy requires investments to be rated triple-A with the objective of minimizing the potential risk of principal loss. Due to the short duration and conservative nature of our investment portfolio, a movement of 10% by market interest rates would not have a material impact on our operating results and the total value of the portfolio over the next fiscal year. We monitor our interest rate and credit risks, including our credit exposure to specific rating categories and to individual issuers. There were no impairment charges on our investments during fiscal 2012 .

**Foreign Currency Transaction Risk**

We invoice some of our international customers in foreign currencies including, but not limited to, the Australian dollar, British pound, euro, and Japanese yen. As the customers that are currently invoiced in local currency become a larger percentage of our business, or to the extent we begin to bill additional customers in foreign currencies, the impact of fluctuations in foreign exchange rates could have a more significant impact on our results of operations. For those customers in our international markets that we continue to sell to in U.S. dollars, an increase in the value of the U.S. dollar relative to foreign currencies could make our products more expensive and therefore reduce the demand for our products. Such a decline in the demand for our products could reduce sales and negatively impact our operating results. Certain operating expenses of our foreign operations require payment in the local currencies.

We are exposed to risks associated with foreign exchange rate fluctuations due to our international sales and operating activities. These exposures may change over time as business practices evolve and could negatively impact our operating results and financial condition. We began using foreign currency forward contract derivatives in the fourth quarter of 2008 to partially offset our business exposure to foreign exchange risk on our foreign currency denominated assets and liabilities. Additionally, in the second quarter of 2009 we began entering into certain foreign currency forward contracts that have been designated as cash flow hedges under the authoritative guidance for derivatives and hedging to partially offset our business exposure to foreign exchange risk on portions of our anticipated foreign currency revenue, costs of revenue, and certain operating expenses. The objective of these foreign currency forward contracts is to reduce the impact of currency exchange rate movements on our operating results by offsetting gains and losses on the forward contracts with increases or decreases in foreign currency transactions. The contracts are marked-to-market on a monthly basis with gains and losses included in other income (expense), net in the Consolidated Statements of Operations, and in cumulative other comprehensive income on the Consolidated Balance Sheets. We do not use foreign currency contracts for speculative or trading purposes. Hedging of our balance sheet and anticipated cash flow exposures may not always be effective to protect us against currency exchange rate fluctuations. In addition, we do not fully hedge our balance sheet and anticipated cash flow exposures, leaving us at risk to foreign exchange gains and losses on the un-hedged exposures. If there were an adverse movement in exchange rates, we might suffer significant losses. See Note 5, *Derivative Financial Instruments*, of the Notes to Consolidated Financial Statements for additional disclosure on our foreign currency contracts, which are hereby incorporated by reference into this Part II, Item 7A.

As of December 31, 2012 , we had net assets in various local currencies. A hypothetical 10% movement in foreign exchange rates would result in an after-tax positive or negative impact of $1.2 million to net income, net of our hedged position, at December 31, 2012 . Actual future gains and losses associated with our foreign currency exposures and positions may differ materially from the sensitivity analyses performed as of December 31, 2012 due to the inherent limitations associated with predicting the foreign currency exchange rates, and our actual exposures and positions. For the year ended December 31, 2012 , 7% of total net revenue was denominated in a currency other than the U.S. dollar.

**Item 8.** ***Financial Statements and Supplementary Data***

## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of NETGEAR, Inc.:

In our opinion, the consolidated financial statements listed in the index appearing under Item 15(a) (1) present fairly, in all material respects, the financial position of NETGEAR, Inc. and its subsidiaries at December 31, 2012 and December 31, 2011, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2012 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 15(a)(2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Report on Internal Control over Financial Reporting under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedule, and on the Company's internal control over financial reporting based on our integrated 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 audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

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 (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) 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 (iii) 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.

/s/ PricewaterhouseCoopers LLP
San Jose, CA
February 26, 2013

**NETGEAR, INC.**
**CONSOLIDATED BALANCE SHEETS**
**(In thousands, except share and per share data)**

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 149,032 | $ 208,898 |
| Short-term investments | 227,845 | 144,797 |
| Accounts receivable, net | 256,014 | 261,307 |
| Inventories | 174,903 | 163,724 |
| Deferred income taxes | 22,691 | 23,088 |
| Prepaid expenses and other current assets | 33,724 | 32,415 |
| Total current assets | 864,209 | 834,229 |
| Property and equipment, net | 19,025 | 15,884 |
| Intangibles, net | 27,621 | 20,956 |
| Goodwill | 100,880 | 85,944 |
| Other non-current assets | 22,834 | 14,357 |
| Total assets | $ 1,034,569 | $ 971,370 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Accounts payable | $ 87,310 | $ 117,285 |
| Accrued employee compensation | 18,338 | 26,896 |
| Other accrued liabilities | 126,255 | 120,480 |
| Deferred revenue | 27,645 | 40,093 |
| Income taxes payable | 1,382 | 4,207 |
| Total current liabilities | 260,930 | 308,961 |
| Non-current income taxes payable | 13,735 | 18,657 |
| Other non-current liabilities | 5,293 | 4,995 |
| Total liabilities | 279,958 | 332,613 |
| Commitments and contingencies (Note 9) | | |
| Stockholders' equity: | | |
| Preferred stock: $0.001 par value; 5,000,000 shares authorized; none issued or outstanding | — | — |
| Common stock: $0.001 par value; 200,000,000 shares authorized; shared issued and outstanding: 38,341,644 and 37,646,872 at December 31, 2012 and 2011, respectively | 38 | 38 |
| Additional paid-in capital | 394,427 | 364,243 |
| Cumulative other comprehensive income | 4 | 23 |
| Retained earnings | 360,142 | 274,453 |
| Total stockholders' equity | 754,611 | 638,757 |
| Total liabilities and stockholders' equity | $ 1,034,569 | $ 971,370 |

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

**NETGEAR, INC.**

**CONSOLIDATED STATEMENTS OF OPERATIONS**
**(In thousands, except per share data)**

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Net revenue | $ 1,271,921 | $ 1,181,018 | $ 902,052 |
| Cost of revenue | 888,368 | 811,572 | 602,805 |
| Gross profit | 383,553 | 369,446 | 299,247 |
| Operating expenses: | | | |
| Research and development | 61,066 | 48,699 | 39,972 |
| Sales and marketing | 149,766 | 154,562 | 131,570 |
| General and administrative | 45,027 | 39,423 | 36,220 |
| Restructuring and other charges | 1,190 | 2,094 | (88) |
| Litigation reserves, net | 390 | (201) | 211 |
| Total operating expenses | 257,439 | 244,577 | 207,885 |
| Income from operations | 126,114 | 124,869 | 91,362 |
| Interest income | 498 | 477 | 426 |
| Other income (expense), net | 2,670 | (1,136) | (564) |
| Income before income taxes | 129,282 | 124,210 | 91,224 |
| Provision for income taxes | 42,743 | 32,842 | 40,315 |
| Net income | $ 86,539 | $ 91,368 | $ 50,909 |
| Net income per share: | | | |
| Basic | $ 2.27 | $ 2.46 | $ 1.44 |
| Diluted | $ 2.23 | $ 2.41 | $ 1.41 |
| Weighted average shares outstanding used to compute net income per share: | | | |
| Basic | 38,057 | 37,121 | 35,385 |
| Diluted | 38,747 | 37,932 | 36,124 |

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

**NETGEAR, INC.**

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**
**(In thousands)**

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Net income | $ 86,539 | $ 91,368 | $ 50,909 |
| Other comprehensive (loss) income, before tax: | | | |
| Unrealized (loss) gain on derivative instruments | (30) | (267) | 253 |
| Unrealized gain on available-for-sale securities | 16 | 17 | 7 |
| Other comprehensive (loss) income, before tax | (14) | (250) | 260 |
| Tax expense related to items of other comprehensive income | (5) | (8) | (3) |
| Other comprehensive (loss) income, net of tax | (19) | (258) | 257 |
| Comprehensive income | $ 86,520 | $ 91,110 | $ 51,166 |

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

**NETGEAR, INC.**

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**
**(In thousands)**

| | Common Stock | | | | | |
|---|---|---|---|---|---|---|
| | Shares | Amount | Additional Paid-In Capital | Cumulative Other Comprehensive Income (Loss) | Retained Earnings | Total |
| **Balance at December 31, 2009** | 34,733 | $ 35 | $ 280,256 | $ 24 | $ 133,838 | $ 414,153 |
| Change in unrealized gains and losses on available-for-sale securities, net of tax | — | — | — | 4 | — | 4 |
| Change in unrealized gains and losses on derivatives, net of tax | — | — | — | 253 | — | 253 |
| Net income | — | — | — | — | 50,909 | 50,909 |
| Stock-based compensation expense | — | — | 12,177 | — | — | 12,177 |
| Purchase and retirement of common stock | (32) | — | — | — | (736) | (736) |
| Issuance of common stock under stock-based compensation plans | 1,472 | 1 | 20,116 | — | — | 20,117 |
| Tax benefit from exercises and cancellations of stock options | — | — | 3,559 | — | — | 3,559 |
| **Balance at December 31, 2010** | 36,173 | 36 | 316,108 | 281 | 184,011 | 500,436 |
| Change in unrealized gains and losses on available-for-sale securities, net of tax | — | — | — | 9 | — | 9 |
| Change in unrealized gains and losses on derivatives, net of tax | — | — | — | (267) | — | (267) |
| Net income | — | — | — | — | 91,368 | 91,368 |
| Stock-based compensation expense | — | — | 13,727 | — | — | 13,727 |
| Purchase and retirement of common stock | (25) | — | — | — | (926) | (926) |
| Issuance of common stock under stock-based compensation plans | 1,499 | 2 | 30,889 | — | — | 30,891 |
| Tax benefit from exercises and cancellations of stock options | — | — | 3,519 | — | — | 3,519 |
| **Balance at December 31, 2011** | 37,647 | 38 | 364,243 | 23 | 274,453 | 638,757 |
| Change in unrealized gains and losses on available-for-sale securities, net of tax | — | — | — | 11 | — | 11 |
| Change in unrealized gains and losses on derivatives, net of tax | — | — | — | (30) | — | (30) |
| Net income | — | — | — | — | 86,539 | 86,539 |
| Stock-based compensation expense | — | — | 14,366 | — | — | 14,366 |
| Purchase and retirement of common stock | (22) | — | — | — | (850) | (850) |
| Issuance of common stock under stock-based compensation plans | 717 | — | 14,697 | — | — | 14,697 |
| Tax benefit from exercises and cancellations of stock options | — | — | 1,121 | — | — | 1,121 |
| **Balance at December 31, 2012** | 38,342 | $ 38 | $ 394,427 | $ 4 | $ 360,142 | $ 754,611 |

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

**NETGEAR, INC.**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(In thousands)**

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| **Cash flows from operating activities:** | | | |
| Net income | $ 86,539 | $ 91,368 | $ 50,909 |
| Adjustments to reconcile net income to net cash provided by operating activities: | | | |
| Depreciation and amortization | 16,775 | 14,735 | 13,439 |
| Purchase premium amortization on investments | 2,490 | 986 | 468 |
| Non-cash stock-based compensation | 14,372 | 13,762 | 12,201 |
| Income tax benefit associated with stock option exercises | 1,121 | 3,519 | 3,559 |
| Gain on sale of cost method investment | (3,126) | — | — |
| Excess tax benefit from stock-based compensation | (1,552) | (3,672) | (3,470) |
| Deferred income taxes | (2,545) | (4,621) | (8,435) |
| Changes in assets and liabilities, net of effect of acquisitions: | | | |
| Accounts receivable | 5,317 | (34,576) | (63,878) |
| Inventories | (10,590) | (30,039) | (36,804) |
| Prepaid expenses and other assets | 2,619 | (7,935) | (3,220) |
| Accounts payable | (30,615) | 28,131 | 20,074 |
| Accrued employee compensation | (8,782) | 2,765 | 13,090 |
| Other accrued liabilities | 3,444 | 9,374 | 21,794 |
| Deferred revenue | (12,680) | 12,555 | 5,432 |
| Income taxes payable | (7,744) | (342) | 1,192 |
| Net cash provided by operating activities | 55,043 | 96,010 | 26,351 |
| **Cash flows from investing activities:** | | | |
| Purchases of short-term investments | (369,939) | (228,871) | (185,128) |
| Proceeds from maturities of short-term investments | 284,418 | 227,669 | 115,000 |
| Purchase of property and equipment | (14,762) | (8,211) | (8,720) |
| Loan issued, net of loan repaid | — | — | (102) |
| Payments for patents | (1,400) | — | (1,270) |
| Cost method investments | — | — | (3,009) |
| Payments made in connection with business acquisitions, net of cash acquired | (28,625) | (37,509) | (12,000) |
| Net cash used in investing activities | (130,308) | (46,922) | (95,229) |
| **Cash flows from financing activities:** | | | |
| Purchase and retirement of common stock | (850) | (926) | (738) |
| Proceeds from exercise of stock options | 12,700 | 29,139 | 18,915 |
| Proceeds from issuance of common stock under employee stock purchase plan | 1,997 | 1,752 | 1,202 |
| Excess tax benefit from stock-based compensation | 1,552 | 3,672 | 3,470 |
| Net cash provided by financing activities | 15,399 | 33,637 | 22,849 |
| Net (decrease) increase in cash and cash equivalents | (59,866) | 82,725 | (46,029) |
| Cash and cash equivalents, at beginning of period | 208,898 | 126,173 | 172,202 |
| Cash and cash equivalents, at end of period | $ 149,032 | $ 208,898 | $ 126,173 |
| **Supplemental Cash Flow Information:** | | | |
| Cash paid for income taxes | $ 52,403 | $ 34,365 | $ 44,083 |

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

**NETGEAR, INC.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

## Note 1. The Company and Summary of Significant Accounting Policies

### *The Company*

NETGEAR, Inc. (“NETGEAR” or the “Company”) was incorporated in Delaware in January 1996. The Company is a global networking company that delivers innovative products to consumers, businesses and service providers. For consumers, the Company makes high performance, dependable and easy-to-use home networking, storage and digital media products to connect people with the Internet and their content and devices. For businesses, the Company provides networking, storage and security solutions without the cost and complexity of Big IT. The Company also supplies leading service providers with made-to-order and retail proven, whole home networking solutions for sale to their customers. The Company’s products are built on a variety of proven technologies such as wireless, Ethernet and powerline, with a focus on reliability and ease-of-use. The Company sells products primarily through a global sales channel network, which includes traditional retailers, online retailers, wholesale distributors, direct market resellers ("DMRs"), value added resellers ("VARs"), and broadband service providers.

### *Basis of presentation*

The accompanying consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries. All inter-company accounts and transactions have been eliminated in the consolidation of these subsidiaries.

### *Fiscal periods*

The Company's fiscal year begins on January 1 of the year stated and ends on December 31 of the same year. The Company reports its results on a fiscal quarter basis rather than on a calendar quarter basis. Under the fiscal quarter basis, each of the first three fiscal quarters ends on the Sunday closest to the calendar quarter end, with the fourth quarter ending on December 31.

### *Use of estimates*

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ from those estimates.

### *Reclassifications*

In the first quarter of 2011, in order to achieve operational efficiencies, the Company combined its North American, Central American and South American sales forces to form the Americas territory. Previously North America was its own geographic region and the Central American and South American territories were categorized within the Asia Pacific ("APAC") geographic region. Following this change, the Company is organized into the following three geographic territories: Americas, Europe, Middle-East and Africa ("EMEA") and APAC. The Company has reclassified its disclosure of net revenue by geography for prior periods to conform to the current period's presentation. The change did not result in material differences from what was previously reported.

### *Cash and cash equivalents*

The Company considers all highly liquid investments with an original maturity at the time of purchase of three months or less to be cash equivalents. The Company deposits cash and cash equivalents with high credit quality financial institutions.

### *Short-term investments*

Short-term investments are comprised of marketable securities that consist of government securities with an original maturity or a remaining maturity at the time of purchase, of greater than three months and no more than 12 months. All marketable securities are held in the Company's name with one high quality financial institution, which acts as the Company's custodian and investment manager. All of the Company's marketable securities are classified as available-for-sale securities in accordance with the provisions of the authoritative guidance for investments and are carried at fair value with unrealized gains and losses reported as a separate component of stockholders' equity.

***Certain risks and uncertainties***

The Company's products are concentrated in the networking industry, which is characterized by rapid technological advances, changes in customer requirements and evolving regulatory requirements and industry standards. The success of the Company depends on management's ability to anticipate and/or to respond quickly and adequately to technological developments in its industry, changes in customer requirements, or changes in regulatory requirements or industry standards. Any significant delays in the development or introduction of products could have a material adverse effect on the Company's business and operating results.

The Company relies on a limited number of third parties to manufacture all of its products. If any of the Company's third-party manufacturers cannot or will not manufacture its products in required volumes, on a cost-effective basis, in a timely manner, or at all, the Company will have to secure additional manufacturing capacity. Any interruption or delay in manufacturing could have a material adverse effect on the Company's business and operating results.

***Derivative financial instruments***

The Company uses foreign currency forward contracts to manage the exposures to foreign exchange risk related to expected future cash flows on certain forecasted revenue, costs of revenue, operating expenses, and on certain existing assets and liabilities. Foreign currency forward contracts generally mature within five months of inception. Under its foreign currency risk management strategy, the Company utilizes derivative instruments to reduce the impact of currency exchange rate movements on the Company's operating results by offsetting gains and losses on the forward contracts with increases or decreases in foreign currency transactions. The company does not use derivative financial instruments for speculative purposes.

The Company accounts for its derivative instruments as either assets or liabilities and records them at fair value. Derivatives that are not defined as hedges in the authoritative guidance for derivatives and hedging must be adjusted to fair value through earnings. For derivative instruments that hedge the exposure to variability in expected future cash flows that are designated as cash flow hedges, the effective portion of the gain or loss on the derivative instrument is reported as a component of cumulative other comprehensive income in stockholders' equity and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The ineffective portion of the gain or loss on the derivative instrument is recognized in current earnings. To receive hedge accounting treatment, cash flow hedges must be highly effective in offsetting changes to expected future cash flows on hedged transactions. For derivatives designated as cash flow hedges, changes in the time value are excluded from the assessment of hedge effectiveness and are recognized in earnings.

***Concentration of credit risk***

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents, short-term investments and accounts receivable. The Company believes that there is minimal credit risk associated with the investment of its cash and cash equivalents and short-term investments, due to the restrictions placed on the type of investment that can be entered into under the Company's investment policy. The Company's short-term investments consist of investment-grade securities, and the Company's cash and investments are held and managed by recognized financial institutions.

The Company's customers are primarily distributors as well as retailers and broadband service providers who sell or distribute the products to a large group of end-users. The Company maintains an allowance for doubtful accounts for estimated losses resulting from the inability of the Company's customers to make required payments. The Company regularly performs credit evaluations of the Company's customers' financial condition and considers factors such as historical experience, credit quality, age of the accounts receivable balances, geographic or country-specific risks and current economic conditions that may affect customers' ability to pay, and, generally, requires no collateral from its customers. The Company secures credit insurance for certain customers in international and domestic markets.

As of December 31, 2012 and 2011, Best Buy, Inc. represented greater than 10% of the Company's total accounts receivable.

The Company is exposed to credit loss in the event of nonperformance by counterparties to the foreign currency forward contracts used to mitigate the effect of foreign currency exchange rate changes. The Company believes the counterparties for its outstanding contracts are large, financially sound institutions and thus, the Company does not anticipate nonperformance by these counterparties. However, given the recent, unprecedented turbulence in the financial markets, the failure of additional counterparties is possible.

***Fair value measurements***

The carrying amounts of the Company's financial instruments, including cash equivalents, short-term investments, accounts receivable, and accounts payable approximate their fair values due to their short maturities. Foreign currency forward contracts are recorded at fair value based on observable market data. See Note 13, *Fair Value Measurements*, of the Notes to Consolidated Financial Statements for disclosures regarding fair value measurements in accordance with the authoritative guidance for fair value measurements and disclosures.

***Cost method investments***

As of December 31, 2012 and December 31, 2011 , the carrying value of the Company's cost method investments was $1.3 million and $3.0 million respectively. These investments are included in other non-current assets in the consolidated balance sheets and are carried at cost, adjusted for any impairment, because the Company does not have a controlling interest and does not have the ability to exercise significant influence over these companies. The Company monitors these investments for impairment on a quarterly basis, and adjusts carrying value for any impairment charges recognized. There were no impairments recognized in the years ended December 31, 2012 and December 31, 2011 . Realized gains and losses on these investments are reported in other income (expense), net in the consolidated statements of operations. In the third fiscal quarter of 2012 the Company recognized a gain of $3.1 million on the partial sale of one of its cost method investments.

***Allowance for doubtful accounts***

The Company maintains an allowance for doubtful accounts for estimated losses resulting from the inability of its customers to make required payments. The Company regularly performs credit evaluations of its customers' financial condition and considers factors such as historical experience, credit quality, age of the accounts receivable balances, and geographic or country-specific risks and economic conditions that may affect a customer's ability to pay. The allowance for doubtful accounts is reviewed quarterly and adjusted if necessary based on the Company's assessments of its customers' ability to pay. If the financial condition of the Company's customers should deteriorate or if actual defaults are higher than the Company's historical experience, additional allowances may be required, which could have an adverse impact on operating expenses.

***Inventories***

Inventories consist primarily of finished goods which are valued at the lower of cost or market, with cost being determined using the first-in, first-out method. The Company writes down its inventories based on estimated excess and obsolete inventories determined primarily by future demand forecasts. At the point of loss recognition, a new, lower cost basis for that inventory is established, and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

***Property and equipment, net***

Property and equipment are stated at historical cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets as follows:

| | |
|---|---|
| Computer equipment | 2 years |
| Furniture and fixtures | 5 years |
| Software | 2-5 years |
| Machinery and equipment | 2-3 years |
| Leasehold improvements | Shorter of the lease term or 5 years |

Recoverability of assets to be held and used is measured by comparing the carrying amount of an asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of the asset exceeds its estimated undiscounted future net cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset exceeds the fair value of the asset. The carrying value of the asset is reviewed on a regular basis for the existence of facts, both internal and external, that may suggest impairment. Charges related to the impairment of property and equipment were not material in the years ended December 31, 2012 , 2011 and 2010 .

***Goodwill***

Goodwill represents the purchase price over estimated fair value of net assets of businesses acquired in a business combination. Goodwill acquired in a business combination is not amortized, but instead tested for impairment at least annually during the fourth quarter. Should certain events or indicators of impairment occur between annual impairment tests, the Company will perform the impairment test as those events or indicators occur. Examples of such events or circumstances include the following: a significant decline in the Company's expected future cash flows; a sustained, significant decline in the Company's stock price and market capitalization; a significant adverse change in the business climate; and slower growth rates.

Goodwill is tested for impairment at the reporting unit level by first performing a qualitative assessment to determine whether it is more likely than not (that is, a likelihood of more than 50%) that the fair value of the reporting unit is less than its carrying value. The qualitative assessment considers the following factors: macroeconomic conditions, industry and market considerations, cost factors, overall company financial performance, events affecting the reporting units, and changes in the Company's share price. If the reporting unit does not pass the qualitative assessment, then the Company estimates its fair value and compare the fair value with the carrying value of its net assets. If the fair value is greater than the carrying value of its net assets, then no impairment results. If the fair value is less than its carrying value, then it would determine the fair value of the goodwill by comparing the implied fair value to the carrying value of the goodwill in the same manner as if the Company were being acquired in a business combination. Specifically, the Company would allocate the fair value to all of our assets and liabilities, including any unrecognized intangible assets, in a hypothetical analysis that would calculate the implied fair value of goodwill. If the implied fair value of goodwill is less than the recorded goodwill, an impairment charge would be recorded to earnings in the Consolidated Statements of Operations.

In the fourth fiscal quarter of 2012, the Company completed its annual impairment test of goodwill. The Company assessed whether it was more likely than not (that is, a likelihood of more than 50%) that each reporting unit's fair value was less than its carrying amount including goodwill by considering the following factors: macroeconomic conditions, industry and market considerations, cost factors, overall company financial performance, events affecting the reporting units, and changes in the Company's share price. Based on the Company's assessment of the considerations, the Company determined that it is not more likely than not that each reporting unit's fair value was less than its carrying amount, and therefore performing the first step of the two-step impairment test for each reporting unit was unnecessary.

No goodwill impairment was recognized in the years ended December 31, 2012 , 2011 or 2010 .

***Long-lived assets***

Purchased intangible assets with finite lives are amortized using the straight-line method over the estimated economic lives of the assets, which range from four to ten years. Finite-lived intangible assets are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Determination of recoverability is based on an estimate of undiscounted future cash flows resulting from the use of the asset and its eventual disposition.

Purchased intangible assets determined to have indefinite useful lives are not amortized. Indefinite-lived intangible assets are reviewed for impairment at least annually during the fourth quarter and whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Measurement of an impairment loss for indefinite-lived assets that management expects to hold and use is based on the fair value of the asset. Indefinite-lived assets to be disposed of are reported at the lower of carrying amount or fair value less costs to sell. The carrying value of the asset is reviewed on a regular basis for the existence of facts, both internal and external, that may suggest impairment.

In July 2012, the FASB issued ASU 2012-02, "Intangibles - Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment". The guidance in ASU 2012-02 provides the option to first assess qualitative factors to determine whether it is necessary to perform a quantitative impairment test. Calculation of the fair value of an indefinite-lived intangible asset would not be required unless it is determined, based on the qualitative assessment, that it is not more likely than not, the indefinite-lived intangible asset is impaired. ASU 2012-02 is effective for annual and interim period intangible asset impairment tests performed for fiscal years beginning on or after September 15, 2012; however early adoption is permitted. The Company elected to adopt the updated standard for the purpose of its intangible asset impairment testing in the fourth fiscal quarter of 2012.

In the fourth fiscal quarter of 2012, the Company completed its annual impairment test of indefinite-lived long-lived assets. The Company assessed whether it was more likely than not (that is, a likelihood of more than 50%) the carrying amount of its indefinite-lived intangible assets may not be recoverable from their undiscounted cash flows by considering the following factors:

macroeconomic conditions, industry and market considerations, cost factors, overall company financial performance, events affecting the reporting units, and changes in our share price. Based on these factors , the Company determined that it is not more likely than not that there were events or changes in circumstances that indicated that the carrying amount of our indefinite-lived intangible assets may not be recoverable from their undiscounted cash flows, and therefore performing the first step of the two-step impairment test for each reporting unit was unnecessary. No impairments to long-lived assets were recognized in the years ended December 31, 2012 , 2011 and 2010 .

***Product warranties***

The Company provides for estimated future warranty obligations at the time revenue is recognized. The Company's standard warranty obligation to its direct customers generally provides for a right of return of any product for a full refund in the event that such product is not merchantable or is found to be damaged or defective. At the time revenue is recognized, an estimate of future warranty returns is recorded to reduce revenue in the amount of the expected credit or refund to be provided to its direct customers. At the time the Company records the reduction to revenue related to warranty returns, the Company includes within cost of revenue a write-down to reduce the carrying value of such products to net realizable value. The Company's standard warranty obligation to its end-users provides for replacement of a defective product for one or more years. Factors that affect the warranty obligation include product failure rates, material usage, and service delivery costs incurred in correcting product failures. The estimated cost associated with fulfilling the Company's warranty obligation to end-users is recorded in cost of revenue. Because the Company's products are manufactured by third-party manufacturers, in certain cases the Company has recourse to the third-party manufacturer for replacement or credit for the defective products. The Company gives consideration to amounts recoverable from its third-party manufacturers in determining its warranty liability. Changes in the Company's warranty liability, which is included as a component of “Other accrued liabilities” in the consolidated balance sheets, are as follows (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2012 | 2011 |
| Balance as of beginning of the period | $ 44,846 | $ 40,513 |
| Provision for warranty liability made during the period | 61,985 | 60,285 |
| Settlements made during the period | (60,172) | (55,952) |
| Balance at end of period | $ 46,659 | $ 44,846 |

***Revenue recognition***

Revenue from product sales is generally recognized at the time the product is shipped provided that persuasive evidence of an arrangement exists, title and risk of loss has transferred to the customer, the selling price is fixed or determinable and collection of the related receivable is reasonably assured. Currently, for some of the Company's customers, title passes to the customer upon delivery to the port or country of destination, upon their receipt of the product, or upon the customer's resale of the product. At the end of each fiscal quarter, the Company estimates and defers revenue related to product where title has not transferred. The revenue continues to be deferred until such time that title passes to the customer. The Company assesses collectability based on a number of factors, including general economic and market conditions, past transaction history with the customer, and the creditworthiness of the customer. If the Company determines that collection of the fee is not reasonably assured, then the Company defers the fee and recognizes revenue upon receipt of payment.

The Company has an insignificant amount of product offerings with multiple elements. The Company's multiple-element product offerings include networking hardware with embedded software, various software subscription services, and support, which are considered separate units of accounting. In general, the networking hardware with embedded software is delivered up front, while the subscription services and support are delivered over the subscription and support period. The Company allocates revenue to the software deliverables and the non-software deliverables (including software deliverables which function together with hardware deliverables to provide the product's essential functionality) based upon their relative selling price. Revenue allocated to each unit of accounting is then recognized when persuasive evidence of an arrangement exists, title and risk of loss has transferred to the customer, the selling price is fixed or determinable and collection of the related receivable is reasonably assured.

When applying the relative selling price method, the Company determines the selling price for each deliverable using VSOE of fair value of the deliverable, or when VSOE of fair value is unavailable, its best estimate of selling price (“ESP”), as the Company has determined it is unable to establish TPE of selling price for the deliverables. In determining VSOE, the Company requires that a substantial majority of the selling prices for a deliverable sold on a stand-alone basis fall within a reasonably narrow pricing

range, generally evidenced by approximately 80% of such historical stand-alone transactions falling within +/-15% of the median price . The Company determines ESP for a deliverable by considering multiple factors including, but not limited to, market conditions, competitive landscape, internal costs, gross margin objectives and pricing practices. The objective of ESP is to determine the price at which the Company would transact a sale if the deliverable were sold on a stand-alone basis. The determination of ESP is made through consultation with and formal approval by the Company's management, taking into consideration the go-to-market strategy.

Certain distributors and retailers generally have the right to return product for stock rotation purposes. Upon shipment of the product, the Company reduces revenue for an estimate of potential future product warranty and stock rotation returns related to the current period product revenue. Management analyzes historical returns, channel inventory levels, current economic trends and changes in customer demand for the Company's products when evaluating the adequacy of the allowance for sales returns, namely warranty and stock rotation returns. Revenue on shipments is also reduced for estimated price protection and sales incentives deemed to be contra-revenue under the authoritative guidance for revenue recognition.

***Sales incentives***

The Company accrues for sales incentives as a marketing expense if it receives an identifiable benefit in exchange and can reasonably estimate the fair value of the identifiable benefit received; otherwise, it is recorded as a reduction to revenues. As a consequence, the Company records a substantial portion of its channel marketing costs as a reduction of revenue.

The Company records estimated reductions to revenues for sales incentives at the later of when the related revenue is recognized or when the program is offered to the customer or end consumer.

***Shipping and handling fees and costs***

The Company includes shipping and handling fees billed to customers in net revenue. Shipping and handling costs associated with inbound freight are included in cost of revenue. In cases where the Company gives a freight allowance to the customer for their own inbound freight costs, such costs are appropriately recorded as a reduction in net revenue. Shipping and handling costs associated with outbound freight are included in sales and marketing expenses and totaled $12.1 million , $13.9 million and $11.4 million in the years ended December 31, 2012 , 2011 and 2010 respectively.

***Research and development***

Costs incurred in the research and development of new products are charged to expense as incurred.

***Advertising costs***

Advertising costs are expensed as incurred. Total advertising and promotional expenses were $19.0 million , $21.7 million , and $19.3 million in the years ended December 31, 2012 , 2011 and 2010 respectively.

***Income taxes***

The Company accounts for income taxes under an asset and liability approach. Under this method, income tax expense is recognized for the amount of taxes payable or refundable for the current year. In addition, deferred tax assets and liabilities are recognized for the expected future tax consequences of temporary differences resulting from different treatment for tax versus accounting for certain items, such as accruals and allowances not currently deductible for tax purposes. These differences result in deferred tax assets and liabilities, which are included within the consolidated balance sheet. The Company must then assess the likelihood that the Company's deferred tax assets will be recovered from future taxable income and to the extent the Company believes that recovery is not more likely than not, the Company must establish a valuation allowance.

In the ordinary course of business there is inherent uncertainty in assessing the Company's income tax positions. The Company assesses its tax positions and records benefits for all years subject to examination based on management's evaluation of the facts, circumstances and information available at the reporting date. For those tax positions where it is more likely than not that a tax benefit will be sustained, the Company records the largest amount of tax benefit with a greater than 50 percent likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit has been recorded in the financial statements. Where applicable, associated interest and penalties have also been recognized as a component of income tax expense.

***Computation of net income per share***

Basic net income per share is computed by dividing net income by the weighted average number of common shares outstanding for the period. Diluted net income per share reflects the additional dilution from potential issuances of common stock, such as stock issuable pursuant to the exercise of stock options and awards. Potentially dilutive shares are excluded from the computation of diluted net income per share when their effect is anti-dilutive.

***Stock-based compensation***

Effective January 1, 2006, the Company adopted the fair value recognition provisions of the updated authoritative guidance for stock compensation, using the modified prospective transition method. Stock-based compensation expense for all stock-based compensation awards granted on or after January 1, 2006 is based on the grant-date fair value estimated in accordance with the provisions of the updated authoritative guidance for stock compensation. The valuation provisions also apply to grants that are modified after January 1, 2006. The Company recognizes these compensation costs on a straight-line basis over the requisite service period of the award, which is generally the option vesting term of four years. The Company will recognize an excess benefit from stock-based compensation in equity based on the difference between tax expense computed with consideration of the windfall deduction and without consideration of the windfall deduction. In addition, the Company accounts for the indirect effects of stock-based compensation on the research tax credit and the foreign tax credit in the income statement. See Note 11, *Employee Benefit Plans* , of the Notes to Consolidated Financial Statements for a further discussion on stock-based compensation.

***Comprehensive income***

Comprehensive income consists of net income and other gains and losses affecting stockholder's equity that the Company excluded from net income, including gains and losses related to fair value of short-term investments and the effective portion of cash flow hedges that were outstanding as of the end of the year.

***Foreign currency translation***

The Company's functional currency is the U.S. dollar for all of its international subsidiaries. Foreign currency transactions of international subsidiaries are re-measured into U.S. dollars at the end-of-period exchange rates for monetary assets and liabilities, and historical exchange rates for non-monetary assets. Expenses are re-measured at average exchange rates in effect during each period, except for expenses related to non-monetary assets, which are re-measured at historical exchange rates. Revenue is re-measured at average exchange rates in effect during each period. Gains and losses arising from foreign currency transactions are included in total comprehensive income and were a net gain of $204,000 for the year ended December 31, 2012 , a net gain of $131,000 for the year ended December 31, 2011 and a net loss of $130,000 for the year ended December 31, 2010 .

***Recent accounting pronouncements***

In July 2012, the FASB issued ASU 2012-02, "Intangibles - Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment". The guidance in ASU 2012-02 provides the option to first assess qualitative factors to determine whether it is necessary to perform a quantitative impairment test. Calculation of the fair value of an indefinite-lived intangible asset would not be required unless it is determined, based on the qualitative assessment, that it is not more likely than not, the indefinite-lived intangible asset is impaired. ASU 2012-02 is effective for fiscal years, and interim periods within those fiscal years, beginning on or after September 15, 2012. Early adoption of ASU 2012-02 is permitted. The Company early adopted ASU 2012-02 in the fourth quarter of 2012, with no impact on its financial position, results of operations or cash flows.

**Note 2. Business Acquisitions**

***AVAAK, Inc.***

On July 2, 2012 , the Company acquired 100% of the voting equity interests of AVAAK, Inc. (“AVAAK”), a privately-held company that developed wire-free video networking products for a total purchase consideration of $24.0 million in cash. The Company believes the acquisition will bolster its retail business unit product offerings and expand its presence into the smart home market. The Company paid $21.6 million of the aggregate purchase price in the third quarter of 2012, and expects to pay the remaining $2.4 million , less amounts used to satisfy certain potential claims, twelve months after the closing of the acquisition.

The acquisition qualified as a business combination and was accounted for using the acquisition method of accounting. The results of AVAAK have been included in the consolidated financial statements since the date of acquisition. Pro forma results of operations for the acquisition are not presented as the financial impact to the Company's consolidated results of operations is not material.

The allocation of the purchase price was as follows (in thousands):

| | | |
|---|---|---|
| Net tangible assets acquired | $ | 172 |
| Deferred tax assets, net | | 5,937 |
| Intangible assets, net | | 6,000 |
| Goodwill | | 11,895 |
| Total consideration | $ | 24,004 |

The estimation of fair values for tangible assets and intangible assets acquired and liabilities assumed was subject to estimates, assumptions and other uncertainties, and it is possible that the allocation of the purchase consideration reflected in the foregoing table may change.

None of the goodwill recognized related to AVAAK is deductible for income tax purposes. The goodwill recognized, which was assigned to the Company's retail business unit, is primarily attributable to expected synergies resulting from the acquisition.

In connection with the acquisition, the Company recorded $5.9 million of deferred tax assets net of deferred tax liabilities. The deferred tax assets arise from the tax benefit of the estimated net operating losses as of the date of the acquisition after consideration of limitations on the use under U.S. Internal Revenue Code section 382. The deferred tax assets are reduced by deferred tax liabilities recorded for the book basis in intangible assets and in-process research and development ("IPR&D") for which the Company has no tax basis.

The Company designated $2.3 million of the acquired intangible assets as technology. The value was calculated based on the present value of the future estimated cash flows derived from estimated savings attributable to the existing technology and discounted at 14.0% . The acquired existing technology is being amortized over its estimated useful life of 5 years .

The Company designated $0.3 million of the acquired intangible assets as customer relationships. The value was calculated based on the present value of the future estimated cash flows derived from projections of future operations attributable to existing customer relationships and discounted at 14.0% . The acquired customer relationships are being amortized over an estimated useful life of 5 years .

The Company designated $1.4 million of the acquired intangible assets as trade name and trademarks. The value was calculated based on the present value of the future estimated cash flows derived from projections of future operations attributable to existing trade name and trademarks and discounted at 16.0% . The acquired trade name and trademarks are being amortized over an estimated useful life of 5 years .

In addition, $2.0 million of the consideration paid represents the fair value of acquired IPR&D projects. The IPR&D acquired is considered indefinite lived intangible assets until research and development efforts associated with the projects are completed or abandoned. The most significant of the acquired IPR&D projects relate to camera technology and applications. As of December 31, 2012, $1.0 million of the acquired IPR&D had reached technical feasibility and as a result, was reclassified from IPR&D to technology. Refer to the "Intangibles, net" section of Note 3, *Balance Sheet Components* , for further discussion of our acquired IPR&D.

***Firetide, Inc.***

On June 4, 2012 , the Company acquired certain intellectual property of Firetide, Inc. (“Firetide”) for an aggregate purchase price of $7.2 million in cash. The acquisition included intangible assets that existed at the closing date, including IP contracts, technology assets, business technology, and goodwill. The Company believes the acquisition will bolster its wireless product offerings in its commercial business unit and strengthen its market position in the small to medium size campus wireless LAN market.

The acquisition qualified as a business combination and was accounted for using the acquisition method of accounting. The results of Firetide have been included in the consolidated financial statements since the date of acquisition. Pro forma results of

operations for the acquisition are not presented as the financial impact to the Company's consolidated results of operations is not material.

The Company paid $6.6 million of the aggregate purchase price in the second quarter of 2012, and expects to pay the remaining $0.6 million , less amounts used to satisfy certain claims, twelve months after the closing of the acquisition. The ongoing costs of developing these assets subsequent to the date of acquisition have been included in the consolidated financial statements since the date of acquisition. The historical results of operations related to the acquired assets prior to the acquisition were not material to the Company’s results of operations.

The allocation of the purchase price was as follows (in thousands):

| | | |
|---|---|---|
| Intangible assets, net | $ | 4,159 |
| Goodwill | | 3,041 |
| Total consideration | $ | 7,200 |

The estimation of fair values for intangible assets acquired was subject to estimates, assumptions and other uncertainties, and it is possible that the allocation of the purchase consideration reflected in the foregoing table may change.

Of the $3.0 million of goodwill recorded on the acquisition of Firetide, approximately $1.7 million and $3.0 million is deductible for U.S. federal and state income tax purposes, respectively. The goodwill recognized, which was assigned to the Company's commercial business unit, is primarily attributable to expected synergies and the assembled workforce of Firetide.

The Company designated the $4.2 million in acquired intangible assets as technology. The value was calculated based on the present value of the future estimated cash flows derived from estimated savings attributable to the existing technology and discounted at 22.0% . The acquired existing technology is being amortized over its estimated useful life of 5 years .

***Customer Networking Solutions Division of Westell Technologies, Inc.***

On April 15, 2011 , the Company completed the acquisition of certain intellectual property and other assets of the Customer Networking Solutions division ("CNS") of Westell Technologies, Inc. (“Westell”) at a purchase price of $37.0 million in cash. The acquisition included inventories, property and equipment, intangible assets, and liabilities that existed at the closing date, including employee bonuses and product warranties. The acquisition qualifies as a business combination and was accounted for using the acquisition method of accounting. The Company believes the acquisition will bolster its service provider revenue growth and strengthen its market position among U.S. telecommunications operators.

The results of CNS’s operations have been included in the consolidated financial statements since the date of acquisition. The historical results of operations of CNS prior to the acquisition were not material to the Company’s results of operations.

The allocation of the purchase price was as follows (in thousands):

| | | |
|---|---|---|
| Net tangible assets acquired (liabilities assumed) | $ | 5,763 |
| Intangible assets, net | | 19,500 |
| Goodwill | | 11,746 |
| Total consideration | $ | 37,009 |

Of the $11.7 million of goodwill recorded on the acquisition of CNS, approximately $10.6 million and $11.7 million was deductible for U.S. federal and state income tax purposes, respectively. The goodwill recognized, which was assigned to the Company's service provider business unit, is primarily attributable to expected synergies and the assembled workforce of CNS.

A total of $15.7 million of the $19.5 million in acquired intangible assets was designated as customer contracts and related relationships. The value was calculated based on the present value of the future estimated cash flows derived from projections of future operations attributable to existing customer contracts and related relationships and discounted at 19.0% . This $15.7 million is being amortized over its estimated useful life of 8 years .

A total of $3.7 million of the $19.5 million in acquired intangible assets was designated as technology. The value was calculated based on the present value of the future estimated cash flows derived from estimated savings attributable to the core technology and discounted at 16.0% . This $3.7 million is being amortized over its estimated useful life of 4 years.

A total of $0.1 million of the $19.5 million in acquired intangible assets was designated as order backlog. The value was calculated based on an estimate of order backlog using the expected cash flow for the orders and discounted at 3.3% . This $0.1 million was fully amortized in the third quarter of 2011.

***Leaf Networks, LLC***

On January 15, 2010 , the Company completed the acquisition of certain intellectual property and other assets of Leaf Networks, LLC ("Leaf"), a developer of virtual networking software. The acquisition qualified as a business acquisition and was accounted for using the purchase method of accounting. The Company believes the acquisition will accelerate the Company's continuing networking technology research and development initiatives. The aggregate purchase price was $2.1 million , of which $2.0 million was paid in cash in the first quarter of 2010 and $0.1 million was paid in the first quarter of 2011.

Additionally, the acquisition agreement specified that Leaf shareholders may receive a total additional payout of up to $0.9 million in cash over the three years following the closing of the acquisition if developed products pass certain acceptance criteria. During the first quarter of 2010, the Company initially determined that the present value of the $0.9 million potential additional payout was approximately $0.8 million . For each subsequent reporting period, the Company remeasured fair value of the potential payout and recorded a liability. The Company paid $0.4 million for the first portion of this additional payout in the first quarter of 2011 and the remaining $0.5 million in the first quarter of 2012.

The results of Leaf's operations have been included in the consolidated financial statements since the date of acquisition. The historical results of operations of Leaf prior to the acquisition were not material to the Company's results of operations.

In accordance with the acquisition method of accounting for business combinations, the Company allocated the total purchase price to identifiable intangible assets based on each element's estimated fair value. Acquisition costs were expensed as incurred, and were immaterial for this transaction. Purchased intangibles, representing the existing technology acquired from Leaf, will be amortized on a straight-line basis over their respective estimated useful lives. Goodwill was recorded based on the residual purchase price after allocating the purchase price to the fair market value of intangible assets acquired. Goodwill arose as a result of the $0.8 million present valuation of the $0.9 million potential additional payout, plus $0.1 million in additional payment consideration.

The allocation of the purchase price was as follows (in thousands):

| | | |
|---|---|---|
| Intangible assets, net | $ | 2,000 |
| Goodwill | | 900 |
| Total purchase price allocation | $ | 2,900 |

Of the $0.9 million of goodwill recorded on the acquisition of Leaf, approximately $0.5 million and $0.9 million was deductible for federal and state income tax purposes, respectively. The goodwill recognized, is primarily attributable to expected synergies and the assembled workforce of Leaf.

The $2.0 million in acquired intangible assets was designated as technology. The value was calculated based on the present value of the future estimated cash flows derived from projections of future revenue attributable to existing technology. This $2.0 million is being amortized over its estimated useful life of 7 years.

**Note 3. Balance Sheet Components (in thousands)**

***Short-Term Investments***

| | As of | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | December 31, 2012 | | | | December 31, 2011 | | | |
| | Cost | Unrealized Gain | Unrealized Loss | Estimated Fair Value | Cost | Unrealized Gain | Unrealized Loss | Estimated Fair Value |
| U.S. Treasuries | $ 225,016 | $ 48 | $ (2) | $ 225,062 | $ 144,673 | $ 34 | $ (4) | $ 144,703 |
| Certificates of Deposits | 2,783 | — | — | 2,783 | 94 | — | — | 94 |
| Total | $ 227,799 | $ 48 | $ (2) | $ 227,845 | $ 144,767 | $ 34 | $ (4) | $ 144,797 |

All of the Company's marketable securities are classified as available-for-sale and consist of government securities with an original maturity or remaining maturity at the time of purchase of greater than three months and no more than 12 months . Accordingly, none of the short-term investments have unrealized losses greater than 12 months.

***Cost Method Investments***

As of December 31, 2012 and December 31, 2011 , the carrying value of the Company's cost method investments was $1.3 million and $3.0 million respectively. These investments are included in other non-current assets in the consolidated balance sheets and are carried at cost, adjusted for any impairment, because the Company does not have a controlling interest and does not have the ability to exercise significant influence over these companies. The Company monitors these investments for impairment on a quarterly basis, and adjusts carrying value for any impairment charges recognized. There were no impairments recognized in the years ended December 31, 2012 and December 31, 2011 . Realized gains and losses on these investments are reported in other income (expense), net in the consolidated statements of operations. In the third fiscal quarter of 2012 the Company recognized a gain of $3.1 million on the partial sale of one of its cost method investments.

***Accounts receivable, net***

| | As of | |
|---|---|---|
| | December 31, 2012 | December 31, 2011 |
| Gross accounts receivable | $ 276,084 | $ 279,932 |
| Allowance for doubtful accounts | (1,256) | (1,335) |
| Allowance for sales returns | (17,031) | (13,360) |
| Allowance for price protection | (1,783) | (3,930) |
| Total allowances | (20,070) | (18,625) |
| Total accounts receivable, net | $ 256,014 | $ 261,307 |

***Inventories***

| | As of | |
|---|---|---|
| | December 31, 2012 | December 31, 2011 |
| Raw materials | $ 4,447 | $ 4,676 |
| Finished goods | 170,456 | 159,048 |
| Total inventories | $ 174,903 | $ 163,724 |

The Company records provisions for excess and obsolete inventory based on forecasts of future demand. While management believes the estimates and assumptions underlying its current forecasts are reasonable, there is risk that additional charges may be necessary if current forecasts are greater than actual demand.

***Property and equipment, net***

| | As of | |
|---|---|---|
| | December 31, 2012 | December 31, 2011 |
| Computer equipment | $ 7,290 | $ 7,109 |
| Furniture, fixtures and leasehold improvements | 12,761 | 9,757 |
| Software | 21,521 | 19,974 |
| Machinery and equipment | 31,694 | 21,797 |
| Construction in progress | 385 | 662 |
| Total property and equipment, gross | 73,651 | 59,299 |
| Accumulated depreciation and amortization | (54,626) | (43,415) |
| Total property and equipment, net | $ 19,025 | $ 15,884 |

Depreciation and amortization expense pertaining to property and equipment was $11.9 million , $9.9 million and $8.1 million for the years ended December 31, 2012 , 2011 and 2010 , respectively.

***Intangibles, net***

The following tables present details of the Company’s purchased intangible assets:

| | Gross | Accumulated Amortization | Net |
|---|---|---|---|
| **December 31, 2012** | | | |
| Technology | $ 32,259 | $ (22,065) | $ 10,194 |
| Customer contracts and relationships | 16,000 | (3,301) | 12,699 |
| Other | 6,870 | (3,142) | 3,728 |
| Finite-lived intangibles, net | 55,129 | (28,508) | 26,621 |
| Indefinite-lived intangible assets | 1,000 | — | 1,000 |
| Total purchased intangible assets, net | 56,129 | (28,508) | 27,621 |

| | Gross | Accumulated Amortization | Net |
|---|---|---|---|
| **December 31, 2011** | | | |
| Technology | $ 24,800 | $ (19,905) | $ 4,895 |
| Customer contracts and relationships | 15,700 | (1,308) | 14,392 |
| Other | 4,070 | (2,401) | 1,669 |
| Total purchased intangible assets, net | $ 44,570 | $ (23,614) | $ 20,956 |

In the third quarter of 2012, the Company purchased finite-lived intangible assets of $4.0 million and indefinite-lived assets of $2.0 million , as a result of its acquisition of AVAAK. For further discussion regarding the AVAAK acquisition, see Note 2, *Business Acquisitions* .

As of December 31, 2012 , the Company had $1.0 million in unamortized intangible assets related to IPR&D. All of the IPR&D assets were acquired in connection with the Company's acquisition of AVAAK. IPR&D assets represent IPR&D projects that have not reached technical feasibility and are required to be classified as indefinite-lived assets until the successful completion or abandonment of the associated research and development efforts. Accordingly, during the development period after the date of acquisition, these assets will not be amortized. When the asset reaches technical feasibility, the Company will determine the useful life of the asset, reclassify the asset out of IPR&D, and begin amortization. Development costs incurred after acquisition on acquired IPR&D projects are expensed as incurred. The Company expects the remaining IPR&D projects to be completed by the end of

the first fiscal quarter in 2013 and the estimated future cost to complete these IPR&D projects is $0.1 million . As of December 31, 2012 , $1.0 million of the IPR&D had reached technical feasibility and as a result, was reclassified from IPR&D to technology.

Amortization of purchased intangible assets in the years ended December 31, 2012 , 2011 and 2010 was $4.9 million , $4.8 million and $5.3 million , respectively. No impairment charges were recorded in the years ended December 31, 2012 , 2011 and 2010 .

Estimated amortization expense related to finite-lived intangibles for each of the next five years and thereafter is as follows:

| Year Ending December 31, | Amount |
|---|---|
| 2013 | $ 5,663 |
| 2014 | 5,339 |
| 2015 | 4,722 |
| 2016 | 4,360 |
| 2017 | 3,017 |
| Thereafter | 3,520 |
| Total expected amortization expense | $ 26,621 |

***Goodwill***

The changes in the carrying amount of goodwill during the year ended December 31, 2012 and 2011 are as follows:

| | | New Segments | | | |
|---|---|---|---|---|---|
| | Old Segment | Retail | Commercial | Service Provider | Total |
| Goodwill at December 31, 2010 | $ 74,198 | $ — | $ — | $ — | $ 74,198 |
| Relative fair value approach | (74,198) | 33,546 | 32,043 | 8,609 | — |
| Net additions related to acquisitions | — | — | — | 11,746 | 11,746 |
| Goodwill at December 31, 2011 | — | 33,546 | 32,043 | 20,355 | 85,944 |
| Goodwill acquired during the period | — | 11,895 | 3,041 | — | 14,936 |
| Goodwill at December 31, 2012 | $ — | $ 45,441 | $ 35,084 | $ 20,355 | $ 100,880 |

During 2012 , the Company recorded goodwill of $11.9 million and $3.0 million , related to its acquisition of AVAAK, and certain intellectual property of Firetide, respectively. During 2011 , the Company made organization changes to its business segments and allocated goodwill to the new segments based on each of the segment's relative fair values. In addition, the Company recorded $11.7 million of goodwill associated with the acquisition of the Customer Networking Solutions division of Westell Technologies, Inc. (“Westell”). Refer to Note 2, *Business Acquisitions* , for additional information regarding the Company's acquisitions.

There were no impairments to goodwill in the years ended December 31, 2012 , 2011 and 2010 . Refer to Note 1, *The Company and Summary of Significant Accounting Policies* , for additional information regarding the Company's goodwill impairment assessment.

***Other non-current assets***

| | As of | |
|---|---|---|
| | December 31, 2012 | December 31, 2011 |
| Non-current deferred income taxes | $ 16,856 | $ 7,977 |
| Cost method investment | 1,322 | 3,009 |
| Other | 4,656 | 3,371 |
| Total other non-current assets | $ 22,834 | $ 14,357 |

***Other accrued liabilities***

| | As of | |
|---|---|---|
| | December 31, 2012 | December 31, 2011 |
| Sales and marketing programs | $ 43,652 | $ 44,394 |
| Warranty obligation | 46,659 | 44,846 |
| Freight | 4,457 | 7,940 |
| Other | 31,487 | 23,300 |
| Total other accrued liabilities | $ 126,255 | $ 120,480 |

**Note 4. Restructuring and Other Charges**

The Company accounts for its restructuring plans under the authoritative guidance for exit or disposal activities. The Company presents expenses related to restructuring and other charges as a separate line item in its Consolidated Statements of Operations.

During the year ended December 31, 2012 , the Company incurred $1.2 million in restructuring costs for employee severance related to the consolidation of product groups within our commercial business unit. The Company expects to payout the remaining severance by the end of fiscal 2013. During the year ended December 31, 2011 , the Company incurred $1.6 million in restructuring costs for employee severance related to the reorganization into three specific business units: retail, commercial, and service provider. Refer to Note 12, *Segment Information, Operations by Geographic Area and Customer Concentration* for additional information regarding the reorganization into business units. In addition, the Company incurred $0.5 million in transition services in connection with the acquisition of the CNS division of Westell Technologies, Inc. Refer to Note 2, *Business Acquisitions* for additional information regarding the CNS acquisition.

The following tables provide a summary of accrued restructuring and other charges activity:

| | Accrued Restructuring and Other Charges at December 31, 2011 | Additions | Cash Payments | Accrued Restructuring and Other Charges at December 31, 2012 |
|---|---|---|---|---|
| | | (In thousands) | | |
| Accrued restructuring | $ — | $ 1,190 | $ (191) | $ 999 |

| | Accrued Restructuring and Other Charges at December 31, 2010 | Additions | Cash Payments | Accrued Restructuring and Other Charges at December 31, 2011 |
|---|---|---|---|---|
| | | (In thousands) | | |
| Accrued restructuring and other charges | $ — | $ 2,094 | $ (2,094) | $ — |

**Note 5. Derivative Financial Instruments**

The Company's subsidiaries have had, and will continue to have material future cash flows, including revenue and expenses, which are denominated in currencies other than the Company's functional currency. The Company and all its subsidiaries designate the U.S. dollar as the functional currency. Changes in exchange rates between the Company's functional currency and other currencies in which the Company transacts business will cause fluctuations in cash flow expectations and cash flow realized or settled. Accordingly, the Company uses derivatives to mitigate its business exposure to foreign exchange risk. The Company enters into foreign currency forward contracts in Australian dollars, British pounds, Euros, and Japanese yen to manage the exposures to foreign exchange risk related to expected future cash flows on certain forecasted revenue, costs of revenue, operating expenses and existing assets and liabilities. The Company does not enter into derivatives transactions for trading or speculative purposes.

The Company's foreign currency forward contracts do not contain any credit-risk-related contingent features. The Company is exposed to credit losses in the event of nonperformance by the counter-parties of its forward contracts. The Company enters into derivative contracts with high-quality financial institutions and limits the amount of credit exposure to any one counter-party. In addition, the derivative contracts typically mature in less than six months and the Company continuously evaluates the credit standing of its counter-party financial institutions. The counter-parties to these arrangements are large highly rated financial institutions and the Company does not consider non-performance a material risk.

The Company may choose not to hedge certain foreign exchange exposures for a variety of reasons, including, but not limited to, immateriality, accounting considerations and the prohibitive economic cost of hedging particular exposures. There can be no assurance the hedges will offset more than a portion of the financial impact resulting from movements in foreign exchange rates. The Company's accounting policies for these instruments are based on whether the instruments are designated as hedge or non-hedge instruments in accordance with the authoritative guidance for derivatives and hedging. The Company records all derivatives on the balance sheet at fair value. The effective portions of cash flow hedges are recorded in other comprehensive income until the hedged item is recognized in earnings. Derivatives that are not designated as hedging instruments and the ineffective portions of its designated hedges are adjusted to fair value through earnings in other income (expense), net in the consolidated statement of operations.

The fair values of the Company's derivative instruments and the line items on the consolidated balance sheet to which they were recorded as of December 31, 2012 , and December 31, 2011 , are summarized as follows (in thousands):

| Derivative Assets | Balance Sheet Location | Fair value at December 31, 2012 | Balance Sheet Location | Fair value at December 31, 2011 |
|---|---|---|---|---|
| Derivative assets not designated as hedging instruments | Prepaid expenses and other current assets | $ 1,142 | Prepaid expenses and other current assets | $ 1,196 |
| Derivative assets designated as hedging instruments | Prepaid expenses and other current assets | 2 | Prepaid expenses and other current assets | 41 |
| Total | | $ 1,144 | | $ 1,237 |

| Derivative Liabilities | Balance Sheet Location | Fair value at December 31, 2012 | Balance Sheet Location | Fair value at December 31, 2011 |
|---|---|---|---|---|
| Derivative liabilities not designated as hedging instruments | Other accrued liabilities | $ (1,616) | Other accrued liabilities | $ (654) |
| Derivative liabilities designated as hedging instruments | Other accrued liabilities | (3) | Other accrued liabilities | (69) |
| Total | | $ (1,619) | | $ (723) |

For details of the Company's fair value measurements, see Note 13, *Fair Value Measurements.*

**Cash flow hedges**

To help manage the exposure of operating margins to fluctuations in foreign currency exchange rates, the Company hedges a portion of its anticipated foreign currency revenue, costs of revenue and certain operating expenses. These hedges are designated at the inception of the hedge relationship as cash flow hedges under the authoritative guidance for derivatives and hedging. Effectiveness is tested at least quarterly both prospectively and retrospectively using regression analysis to ensure that the hedge relationship has been effective and is likely to remain effective in the future. The Company typically hedges portions of its anticipated foreign currency exposure for three to five months. The Company enters into about five forward contracts per quarter with an average size of about $7 million USD equivalent related to its cash flow hedging program.

The Company expects to reclassify to earnings all of the amounts recorded in other comprehensive income ("OCI") associated with its cash flow hedges over the next 12 months. OCI associated with cash flow hedges of foreign currency revenue is recognized as a component of net revenue in the same period as the related revenue is recognized. OCI associated with cash flow hedges of foreign currency costs of revenue and operating expenses are recognized as a component of cost of revenue and operating expense in the same period as the related costs of revenue and operating expenses are recognized.

Derivative instruments designated as cash flow hedges must be de-designated as hedges when it is probable the forecasted hedged transaction will not occur within the designated hedge period or if not recognized within 60 days following the end of the hedge period. Deferred gains and losses in other comprehensive income associated with such derivative instruments are reclassified immediately into earnings through other income and expense. Any subsequent changes in fair value of such derivative instruments also are reflected in current earnings unless they are re-designated as hedges of other transactions. The Company did not recognize any material net gains or losses related to the loss of hedge designation on discontinued cash flow hedges during the years ended December 31, 2012 , 2011 and 2010 .

The effects of the Company’s derivative instruments on OCI and the consolidated statement of operations for the years ended December 31, 2012 , 2011 and 2010 are summarized as follows (in thousands):

| | Year Ended December 31, 2012 | | | | |
|---|---|---|---|---|---|
| Derivatives Designated as Hedging Instruments | Gain or (Loss) Recognized in OCI - Effective Portion (a) | Location of Gain or (Loss) Reclassified from OCI into Income - Effective Portion | Gain or (Loss) Reclassified from OCI into Income - Effective Portion (a) | Location of Gain or (Loss) Recognized in Income and Excluded from Effectiveness Testing | Amount of Gain or (Loss) Recognized in Income and Excluded from Effectiveness Testing |
| Cash flow hedges: | | | | | |
| Foreign currency forward contracts | $ 164 | Net revenue | $ 262 | Other income (expense), net | $ (158) |
| Foreign currency forward contracts | — | Cost of revenue | (1) | Other income (expense), net | — |
| Foreign currency forward contracts | — | Operating expenses | (67) | Other income (expense), net | — |
| Total | $ 164 | | $ 194 | | $ (158) |

| | Year Ended December 31, 2011 | | | | |
|---|---|---|---|---|---|
| Derivatives Designated as Hedging Instruments | Gain or (Loss) Recognized in OCI - Effective Portion (a) | Location of Gain or (Loss) Reclassified from OCI into Income - Effective Portion | Gain or (Loss) Reclassified from OCI into Income - Effective Portion (a) | Location of Gain or (Loss) Recognized in Income and Excluded from Effectiveness Testing | Amount of Gain or (Loss) Recognized in Income and Excluded from Effectiveness Testing |
| Cash flow hedges: | | | | | |
| Foreign currency forward contracts | $ 542 | Net revenue | $ 967 | Other income (expense), net | $ (310) |
| Foreign currency forward contracts | — | Cost of revenue | (4) | Other income (expense), net | — |
| Foreign currency forward contracts | — | Operating expenses | (154) | Other income (expense), net | — |
| Total | $ 542 | | $ 809 | | $ (310) |

| | Year Ended December 31, 2010 | | | | |
|---|---|---|---|---|---|
| Derivatives Designated as Hedging Instruments | Gain or (Loss) Recognized in OCI - Effective Portion (a) | Location of Gain or (Loss) Reclassified from OCI into Income - Effective Portion | Gain or (Loss) Reclassified from OCI into Income - Effective Portion (a) | Location of Gain or (Loss) Recognized in Income and Excluded from Effectiveness Testing | Amount of Gain or (Loss) Recognized in Income and Excluded from Effectiveness Testing |
| Cash flow hedges: | | | | | |
| Foreign currency forward contracts | $ 2,257 | Net revenue | $ 2,755 | Other income (expense), net | $ (261) |
| Foreign currency forward contracts | — | Cost of revenue | (27) | Other income (expense), net | — |
| Foreign currency forward contracts | — | Operating expenses | (724) | Other income (expense), net | — |
| Total | $ 2,257 | | $ 2,004 | | $ (261) |

(a) Refer to Note 10, *Stockholders' Equity* , which summarizes the cumulative other comprehensive income activity related to derivatives.

The Company did not recognize any net gain or loss related to the ineffective portion of cash flow hedges during the years ended December 31, 2012 , 2011 and 2010 .

**Non-designated hedges**

The Company enters into non-designated hedges under the authoritative guidance for derivatives and hedging to manage the exposure of non-functional currency monetary assets and liabilities held on its financial statements to fluctuations in foreign currency exchange rates, as well as to reduce volatility in other income and expense. The non-designated hedges are generally expected to offset the changes in value of its net non-functional currency asset and liability position resulting from foreign exchange rate fluctuations. Foreign currency denominated accounts receivable and payable are hedged with non-designated hedges when the related anticipated foreign revenue and expenses are recognized in the Company's financial statements. The Company also hedges certain non-functional currency monetary assets and liabilities that may not be incorporated into the cash flow hedge program. The Company adjusts its non-designated hedges monthly and enters into about 12 non-designated derivatives per quarter. The average size of its non-designated hedges is about $2 million USD equivalent and these hedges normally range from one to five months in duration.

The effects of the Company's derivatives not designated as hedging instruments in other income (expense), net in the consolidated statements of operations for the years ended December 31, 2012 and 2011 , are as follows (in thousands):

| Derivatives Not Designated as Hedging Instruments | Location of Gains or (Losses) Recognized in Income on Derivative | Amount of Gains or (Losses) Recognized in Income on Derivative | |
|---|---|---|---|
| | | Year Ended December 31, 2012 | Year Ended December 31, 2011 |
| Foreign currency forward contracts | Other income (expense), net | (502) | $ (957) |

**Note 6. Net Income Per Share**

Basic net income per share is computed by dividing the net income for the period by the weighted average number of common shares outstanding during the period. Diluted net income per share is computed by dividing the net income for the period by the weighted average number of shares of common stock and potentially dilutive common stock outstanding during the period. Potentially dilutive common shares include outstanding stock options and unvested restricted stock awards, which are reflected in diluted net income per share by application of the treasury stock method. Under the treasury stock method, the amount that the employee must pay for exercising stock options, the amount of stock-based compensation cost for future services that the Company has not yet recognized, and the estimated tax benefit that would be recorded in additional paid-in capital upon exercise are assumed to be used to repurchase shares.

Net income per share for the years ended December 31, 2012 , 2011 and 2010 are as follows (in thousands, except per share data):

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2012 | December 31, 2011 | December 31, 2010 |
| Net income | $ 86,539 | $ 91,368 | $ 50,909 |
| Weighted average shares outstanding: | | | |
| Basic | 38,057 | 37,121 | 35,385 |
| Dilutive potential common shares | 690 | 811 | 739 |
| Total diluted | 38,747 | 37,932 | 36,124 |
| Basic net income per share | $ 2.27 | $ 2.46 | $ 1.44 |
| Diluted net income per share | $ 2.23 | $ 2.41 | $ 1.41 |

Common stock equivalents excluded from net income per diluted share because their effect would have been anti-dilutive totaled 2.6 million , 2.0 million and 3.3 million shares for the years ended December 31, 2012 , 2011 and 2010 , respectively.

**Note 7. Other Income (Expense), Net**

Other income (expense), net consisted of the following (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Foreign currency transaction gain (loss), net | $ 204 | $ 131 | $ (130) |
| Foreign currency contract loss, net | (660) | (1,267) | (434) |
| Gain on sale of cost method investment | 3,126 | — | — |
| Total | $ 2,670 | $ (1,136) | $ (564) |

NETGEAR, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

**Note 8. Income Taxes**

Income before income taxes consists of the following (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| United States | $ 102,159 | $ 79,318 | $ 95,291 |
| International | 27,123 | 44,892 | (4,067) |
| Total | $ 129,282 | $ 124,210 | $ 91,224 |

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| **Current:** | | | |
| U.S. Federal | $ 34,666 | $ 27,415 | $ 37,954 |
| State | 4,555 | 3,319 | 5,654 |
| Foreign | 6,097 | 6,760 | 4,947 |
| | 45,318 | 37,494 | 48,555 |
| **Deferred:** | | | |
| U.S. Federal | (2,069) | (3,151) | (8,928) |
| State | (588) | (713) | 643 |
| Foreign | 82 | (788) | 45 |
| | (2,575) | (4,652) | (8,240) |
| Total | $ 42,743 | $ 32,842 | $ 40,315 |

Net deferred tax assets consist of the following (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2012 | 2011 |
| **Deferred Tax Assets:** | | |
| Accruals and allowances | $ 20,738 | $ 22,329 |
| Net operating loss carryforwards | 7,837 | 326 |
| Stock-based compensation | 8,133 | 6,304 |
| Deferred rent | 2,258 | 2,138 |
| Deferred revenue | 1,552 | 411 |
| Tax credit carryforwards | 1,410 | 1,433 |
| Acquired intangible assets | — | 566 |
| Other | 261 | 256 |
| | 42,189 | 33,763 |
| | | |
| **Deferred Tax Liabilities:** | | |
| Acquired intangible assets | (1,107) | — |
| Depreciation and amortization | (1,535) | (2,698) |
| | (2,642) | (2,698) |
| Net deferred tax assets | 39,547 | 31,065 |
| | | |
| Current portion | 22,691 | 23,088 |
| Non-current portion | 16,856 | 7,977 |
| Net deferred tax assets | $ 39,547 | $ 31,065 |

Management's judgment is required in determining the Company's provision for income taxes, its deferred tax assets and any valuation allowance recorded against its deferred tax assets. In management's judgment it is more likely than not that such assets will be realized in the future as of December 31, 2012 , and as such no valuation allowance has been recorded against the Company's deferred tax assets.

The effective tax rate differs from the applicable U.S. statutory federal income tax rate as follows:

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Tax at federal statutory rate | 35.0 % | 35.0 % | 35.0 % |
| State, net of federal benefit | 2.1 % | 1.5 % | 4.2 % |
| Impact of international operations | (4.8)% | (9.5)% | 5.1 % |
| Stock-based compensation | 0.6 % | — % | 0.7 % |
| Tax credits | 0.1 % | (0.7)% | (0.7)% |
| Others | 0.1 % | 0.1 % | (0.1)% |
| Provision for income taxes | 33.1 % | 26.4 % | 44.2 % |

Income tax benefits in the amount of $1.1 million , 3.5 million and 3.6 million related to stock options were credited to additional paid-in capital during the years ended December 31, 2012 , 2011 , and 2010 , respectively. As a result of changes in fair value of available for sale securities, income tax expense of $5,000 , $8,000 and $3,000 was recorded in comprehensive income related to the years ended December 31, 2012 , 2011 , and 2010 , respectively.

As of December 31, 2012 , the Company has approximately $22.3 million and $0.2 million of acquired federal and state net operating loss carry forwards as well as $0.4 million of California tax credits carryforwards. All of these losses and $0.1 million of these credits are subject to annual usage limitations under Internal Revenue Code Section 382. The federal losses expire in different years beginning in fiscal 2021 . The state loss begins to expire in fiscal 2015 . The state tax credit carryforward has no expiration.

The Company files income tax returns in the U.S. federal jurisdiction, various state and local, and foreign jurisdictions. With few exceptions, the Company is no longer subject to U.S. federal, state and local, or foreign income tax examinations for years before 2008. In 2011, the US federal Internal Revenue Service (IRS) commenced an audit of the Company's 2008 and 2009 tax years. The audit was completed in October 2012, and all issues under examination by the IRS were effectively settled. The Company has limited audit activity in various states and foreign jurisdictions. Due to the uncertain nature of ongoing tax audits, the Company has recorded its liability for uncertain tax positions as part of its long-term liability as payments cannot be anticipated over the next 12 months. The existing tax positions of the Company continue to generate an increase in the liability for uncertain tax positions. The liability for uncertain tax positions may be reduced for liabilities that are settled with taxing authorities or on which the statute of limitations could expire without assessment from tax authorities. The possible reduction in liabilities for uncertain tax positions resulting from the expiration of statutes of limitation in multiple jurisdictions in the next 12 months is approximately $2.2 million , excluding the interest, penalties and the effect of any related deferred tax assets or liabilities.

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits (“UTB”) is as follows (in thousands):

| | Federal, State, and Foreign Tax |
|---|---|
| **Gross UTB Balance at December 31, 2009** | $ 16,501 |
| Additions based on tax positions related to the current year | 3,371 |
| Additions for tax positions of prior years | 409 |
| Settlements | (47) |
| Reductions for tax positions of prior years | (1,805) |
| Reductions due to lapse of applicable statutes | 3 |
| **Gross UTB Balance at December 31, 2010** | 18,432 |
| Additions based on tax positions related to the current year | 1,795 |
| Additions for tax positions of prior years | 1,015 |
| Settlements | (179) |
| Reductions for tax positions of prior years | (2) |
| Reductions due to lapse of applicable statutes | (3,699) |
| Adjustments due to foreign exchange rate movement | (27) |
| **Gross UTB Balance at December 31, 2011** | 17,335 |
| Additions based on tax positions related to the current year | 711 |
| Additions for tax positions of prior years | 956 |
| Settlements | (2,620) |
| Reductions for tax positions of prior years | (3,590) |
| Reductions due to lapse of applicable statutes | (449) |
| Adjustments due to foreign exchange rate movement | (4) |
| **Gross UTB Balance at December 31, 2012** | $ 12,339 |

The total amount of net UTB that, if recognized would affect the effective tax rate as of December 31, 2012 is $10.6 million . The ending net UTB results from adjusting the gross balance at December 31, 2012 for items such as U.S. federal and state deferred tax, foreign tax credits, interest, and deductible taxes. The net UTB is included as a component of non-current income taxes payable within the consolidated balance sheet.

The Company recognizes interest and penalties accrued related to unrecognized tax benefits in income tax expense. During the years ended December 31, 2012 , 2011 , and 2010 , total interest and penalties expensed were $74,000 , $30,000 and $262,000 ,

respectively. As of December 31, 2012 and December 31, 2011 , accrued interest and penalties on a gross basis was $1.8 million and $1.9 million , respectively. Included in accrued interest are amounts related to tax positions for which the ultimate deductibility is highly certain but for which there is uncertainty about the timing of such deductibility. Because of the impact of deferred tax accounting, other than interest, the impact of any uncertain tax benefits related to temporary differences would not affect the annual effective tax rate but would accelerate the payment of cash to the taxing authority to an earlier period.

With the exception of those foreign sales subsidiaries for which deferred tax has been provided, the Company intends to indefinitely reinvest foreign earnings. These earnings were approximately $63.4 million and $40.2 million as of December 31, 2012 and December 31, 2011 , respectively. Because of the availability of U.S. foreign tax credits, it is not practicable to determine the income tax liability that would be payable if such earnings were not indefinitely reinvested.

**Note 9. Commitments and Contingencies**

***Leases***

The Company leases office space, cars and equipment under non-cancelable operating leases with various expiration dates through December 2026 . Rent expense in the years ended, December 31, 2012 , 2011 , and 2010 was $7.6 million , $7.0 million and $6.4 million , respectively. The terms of some of the Company's office leases provide for rental payments on a graduated scale. The Company recognizes rent expense on a straight-line basis over the lease period, and has accrued for rent expense incurred but not paid.

Future minimum lease payments under non-cancelable operating leases are as follows (in thousands):

| **Year Ending December 31,** | | |
|---|---|---|
| 2013 | $ | 8,192 |
| 2014 | | 6,547 |
| 2015 | | 5,359 |
| 2016 | | 4,242 |
| 2017 | | 3,959 |
| Thereafter | | 3,518 |
| Total minimum lease payments | $ | 31,817 |

***Employment Agreements***

The Company has signed various employment agreements with key executives pursuant to which, if their employment is terminated without cause, such employees are entitled to receive their base salary (and commission or bonus, as applicable) for 52 weeks (for the Chief Executive Officer), 39 weeks (for the Senior Vice President of Worldwide Operations and Support) and up to 26 weeks (for other key executives). Such employees will also continue to have stock options vest for up to a one -year period following such termination without cause. If a termination without cause or resignation for good reason occurs within one year of a change in control, such employees are entitled to full acceleration (for the Chief Executive Officer) and up to two years acceleration (for other key executives) of any unvested portion of his or her stock options.

***Purchase Obligations***

The Company has entered into various inventory-related purchase agreements with suppliers. Generally, under these agreements, 50% of orders are cancelable by giving notice 46 to 60 days prior to the expected shipment date and 25% of orders are cancelable by giving notice 31 to 45 days prior to the expected shipment date. Orders are non-cancelable within 30 days prior to the expected shipment date. At December 31, 2012 , the Company had $149.6 million in non-cancelable purchase commitments with suppliers. The Company establishes a loss liability for all products it does not expect to sell for which it has committed purchases from suppliers. Such losses have not been material to date.

***Guarantees and Indemnifications***

The Company, as permitted under Delaware law and in accordance with its Bylaws, indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The maximum amount of potential future indemnification is unlimited; however, the Company has a Director and Officer Insurance Policy that limits its exposure and enables it to recover a portion of any future amounts paid. As a result of its insurance policy coverage, the Company believes the fair value of these indemnification agreements is minimal. Accordingly, the Company has no liabilities recorded for these agreements as of December 31, 2012 .

In its sales agreements, the Company typically agrees to indemnify its direct customers, distributors and resellers for any expenses or liability resulting from claimed infringements of patents, trademarks or copyrights of third parties. The terms of these indemnification agreements are generally perpetual any time after execution of the agreement. The maximum amount of potential future indemnification is unlimited. The Company believes the estimated fair value of these agreements is minimal. Accordingly, the Company has no liabilities recorded for these agreements as of December 31, 2012 .

***Litigation and Other Legal Matters***

The Company is involved in disputes, litigation, and other legal actions, including, but not limited to, the matters described below. In relation to such matters, the Company currently believes that there are no existing claims or proceedings that are likely to have a material adverse effect on its financial position within the next 12 months, or the outcome of these matters is currently not determinable. There are many uncertainties associated with any litigation, and these actions or other third-party claims against the Company may cause the Company to incur costly litigation and/or substantial settlement charges. In addition, the resolution of any intellectual property litigation may require the Company to make royalty payments, which could have an adverse effect in future periods. If any of those events were to occur, the Company's business, financial condition, results of operations, and cash flows could be adversely affected. The actual liability in any such matters may be materially different from the Company's estimates, which could result in the need to adjust the liability and record additional expenses.

*OptimumPath, L.L.C. v. NETGEAR*

In January 2008, a lawsuit was filed against the Company by OptimumPath, L.L.C ("OptimumPath"), a patent-holding company existing under the laws of the State of South Carolina, in the U.S. District Court, District of South Carolina. OptimumPath claimed that certain of the Company's wireless networking products infringe on OptimumPath's U.S. Patent No. 7,035,281 ("the '281 Patent"). OptimumPath also sued six other technology companies alleging similar claims of patent infringement. The Company filed its answer to the lawsuit in the second quarter of 2008. Several defendants, including the Company, jointly filed a request for inter partes reexamination of the OptimumPath patent with the United States Patent and Trademark Office (the "USPTO") on October 13, 2008. On January 12, 2009, a reexamination was ordered with respect to claims 1-3 and 8-10 of the patent, but denied with respect to claims 4-7 and 11-32 of the patent. On February 4, 2009, the defendants jointly filed a petition to challenge the denial of reexamination of claims 4-7 and 11-32. On March 26, 2009, the USPTO confirmed the patentability of claims 1-3 and 8-10 without amendment. Shortly thereafter, in March 2009, the District Court granted defendants' motion to transfer the case to the U.S. District Court, Northern District of California. In July 2009, the defendants' petition to challenge the denial of reexamination of claims 4-7 and 11-32 was denied by the USPTO. Since the petition and prosecution were closed, the USPTO issued a Right of Appeal Notice on July 31, 2009, and the defendants chose to appeal the confirmation of claims 1-3 and 8-10 by filing a notice of appeal on August 31, 2009. The Company and OptimumPath attended a Court-ordered mediation on September 22, 2009 but were unable to settle the litigation. The Company and other defendants filed a combined claim construction/summary judgment brief on December 23, 2010. OptimumPath responded on January 20, 2011, and the defendants replied on February 3, 2011. The oral arguments on claim construction and the summary judgment motion were made on February 17, 2011. An oral hearing was held on March 9, 2011 in the USPTO and a decision by the USPTO was issued on March 30, 2011 confirming the patentability of claims 1-3 and 8-10. On April 12, 2011, the District Court granted defendants' motion for summary judgment on OptimumPath's claim for literal infringement and defendants' motion to preclude OptimumPath's infringement claims based on the doctrine of equivalents. The Court also found that the accused devices did not infringe under the doctrine of equivalents. The Court also granted defendants' motion for summary judgment that asserted claims 1, 2, 6, and 9 through 13 of the '281 Patent were invalidated by various prior art. The pretrial conference and trial dates were vacated. OptimumPath filed its notice of appeal to the Federal Circuit of the District Court's rulings on May 18, 2011. On May 23, 2011, the District Court entered the defendants' joint request for costs in the amount of $103,000 , which have not yet been collected or recognized. On June 29, 2011, the Federal Circuit docketed the appeal. In addition, the defendants appealed the USPTO's ruling confirming the patentability of claims 1-3 and 8-10 to the Federal Circuit by filing a Reexamination Notice of Appeal to the Federal Circuit on October 18, 2011. The parties argued

OptimumPath's appeal of the District Court's summary judgment rulings before the Federal Circuit on March 5, 2012. On March 7, 2012, the Federal Circuit affirmed the District Court's summary judgment rulings in favor of the defendants. OptimumPath did not appeal the Federal Circuit's ruling upholding the District Court's summary judgment rulings, and on June 20, 2012 the Federal Circuit issued its mandate, meaning that the litigation proceedings are terminated. On June 5, 2012, the parties argued the defendants' appeal of the USPTO rulings before the Federal Circuit, and on October 2, 2012 the Federal Circuit affirmed the USPTO's rulings, but this outcome had no bearing on the favorable outcome for the defendants obtained in the litigation proceedings, and this litigation matter is now concluded. There was no material financial impact to the Company because of this litigation matter.

*Ruckus Wireless v. NETGEAR*

On May 5, 2008, a lawsuit was filed against the Company by Ruckus Wireless (“Ruckus”), a developer of Wi-Fi technology, in the U.S. District Court, Northern District of California (case number C08-2310-PJH (“NETGEAR I”)). Ruckus alleges that the Company infringes U.S. Patent Nos. 7,358,912 ("the '912 Patent") and 7,193,562 ("the '562 Patent") in the course of deploying Wi-Fi antenna array technology in its WPN824 RangeMax wireless router. Ruckus also sued Rayspan Corporation alleging similar claims of patent infringement. The Company filed its answer to the lawsuit in the third quarter of 2008. The Company and Rayspan Corporation jointly filed a request for *inter partes* reexamination of the Ruckus patents with the USPTO on September 4, 2008. The Court issued a stay of the litigation while the reexaminations proceeded in the USPTO. On November 28, 2008, a reexamination was ordered with respect to claims 11-17 of the '562 Patent, but denied with respect to claims 1-10 and 18-36. On December 17, 2008, the defendants jointly filed a petition to challenge the denial of reexamination of claims 1-10 and 18-36 of the '562 Patent. In July 2009, the petition was denied, and the remaining claims 11-17 were confirmed by the USPTO. On December 2, 2008, reexamination was granted with regard to the '912 Patent. In early October 2009, the Company received an Action Closing Prosecution in the reexamination of the '912 Patent. All the claims of the '912 Patent, with the exception of the unchallenged claims 7 and 8, were finally rejected by the USPTO. On October 30, 2009, Ruckus submitted an “after-final” amendment in the '912 Patent reexamination proceeding. The Company's comments to Ruckus' “after-final” amendment were submitted on November 30, 2009. On December 1, 2009, the Court found that bifurcating the '562 Patent from the '912 Patent and commencing litigation on the '562 Patent while the USPTO reexamination process and appeals are still pending would be an inefficient use of the Court's resources. Accordingly, the Court ruled that the litigation stay should remain in effect. On September 12, 2010, the Company filed the rebuttal brief in its appeals of the USPTO's rulings during the reexamination of the '562 Patent, and the Company requested an oral hearing with the Board of Appeals at the USPTO to discuss this brief. On September 13, 2010, Ruckus filed a notice of appeal of the '912 Patent to appeal the adverse rulings it received from the USPTO in the reexamination of this patent. The Company filed a respondent's brief in the '912 Patent case on January 24, 2011. An oral hearing in the '562 case was set for February 1, 2011, but the Company decided to cancel it and let the USPTO decide the '562 case based solely on the previously submitted papers. On May 13, 2011, the USPTO indicated that the Company was successful in its appeal of the examiner's previous decision to allow claims 11-17 in the '562 reexamination, and the USPTO Board of Appeals reversed the examiner's decision and declared those claims invalid. On June 13, 2011, Ruckus submitted a request for rehearing by the Board of Appeals of its decision to reject claims 11-17 of the '562 Patent. On September 28, 2011, the Board of Patent Appeals and Interferences denied Ruckus's request for a rehearing in the '562 Patent reexamination case. Ruckus did not timely file a notice of appeal to the Court of Appeals for the Federal Circuit appealing the USPTO's cancellation of claims 11-17 of the '562 patent. Therefore, a reexamination certificate will issue with claims 11-17 cancelled and claims 1-10 and 18-36 confirmed.

On November 4, 2009, Ruckus filed a complaint in the U.S. District Court, Northern District of California (case number C09-5271-PJH (“NETGEAR II”)), alleging the Company and Rayspan Corporation infringe a patent that is related to the patents previously asserted against the Company and Rayspan Corporation by Ruckus, as discussed above. This asserted patent in this second case is U.S. Patent No. 7,525,486 entitled “Increased wireless coverage patterns.” As with the previous Ruckus action, the WPN824 RangeMax wireless router is the alleged infringing device. The Company challenged the sufficiency of Ruckus's complaint in this new action and moved to dismiss the complaint. Ruckus opposed this motion. The Court partially agreed with the Company's motion and ordered Ruckus to submit a new complaint, which Ruckus did. The initial case management conference occurred on February 11, 2010. On March 25, 2010, the Court ordered a stay until the completion of the reexamination proceedings instigated on the patents in NETGEAR I.

Ruckus and the Company in December of 2012 requested that the stay of the California actions be lifted. This request to lift the stay was predicated on Ruckus's Withdrawal of Appeal and Cancellation of Claims ("Withdrawal") of the '912 Patent that was on appeal in re-examination at the USPTO and that was asserted by Ruckus in NETGEAR I. Through the filing of the Withdrawal, Ruckus announced its intent to withdraw and its actual withdrawal of its appeal of claims 1, 4-9-14, 18, 19, and 22-29 in re-examination (the "Appealed Claims"), and Ruckus further announced its intent to cancel and its actual cancellation of claims 30-31 in re-examination (the "Cancelled Claims"). Claims 2, 3, 15-17, 20, and 21 had previously been cancelled during re-examination (the "Previously Cancelled Claims"). Because the Appealed Claims and the Cancelled Claims represented the entirety of the claims

remaining for consideration in re-examination, and the Previously Cancelled Claims are no longer of record in the offensive case by Ruckus against the Company, there are no remaining claims for re-examination in the '912 Patent and the '912 Patent cannot be asserted against the Company. Thus, the Company and Ruckus requested that the Court lift the stay of this litigation and calendar a case management conference. The case management conference occurred on January 3, 2013. At that time, the Court scheduled a claim construction hearing for August of 2013. The parties to the lawsuit - the Company, Rayspan, and Ruckus - also agreed that Ruckus's two offensive cases against the Company and Rayspan should be consolidated because the cases involve similar complaints and common questions of law and fact and doing so will advance the interests of judicial economy.

Ruckus will file a Second Amended Complaint, which will reflect the consolidation of NETGEAR I and NETGEAR II. The Second Amended Complaint will remove the '912 Patent that was invalidated during the reexamination from the Consolidated Action. The Court indicated at the January 3, 2013 Case Management Conference that other than the dropping of the '912 Patent there should not be a substantial change in the Second Amended Complaint.

Ruckus served its infringement contentions on the Company on January 17, 2013, and the Company's invalidity contentions are due on March 4, 2013. Discovery has also commenced in the case after approximately four years of inactivity.

On November 19, 2010, the Company filed suit against Ruckus in the U.S. District Court, District of Delaware for infringement of four of the Company's patents. The Company alleges that Ruckus's manufacture, use, sale or offers for sale within the United States or importation into the United States of products, including wireless communication products, infringe United States Patent Nos. 5,812,531, 6,621,454, 7,263,143, and 5,507,035, all owned by the Company. The Company granted Ruckus an extension to file its answer to the Company's suit, and on January 11, 2011, Ruckus filed a motion to dismiss the Company's suit based on insufficient pleadings. The Company filed its response to Ruckus's motion on January 31, 2011. In addition, on May 6, 2011, Ruckus filed a motion to transfer venue to the Northern District of California. The Court denied Ruckus' motion to transfer the case to the Northern District of California and granted the Company leave to file an amended complaint rather than address the Ruckus motion to dismiss based on insufficient pleadings. The Company filed the proposed amended complaint. Nevertheless, Ruckus filed a second motion to dismiss based on insufficient pleadings by the Company. On March 28, 2012, the Delaware District Court in a memorandum opinion and order denied Ruckus's second motion to dismiss. A scheduling conference occurred April 18, 2012, and the Company submitted its initial disclosures in the case on May 15, 2012. On May 31, 2012, Ruckus filed its third motion to dismiss, asserting that the Company cannot sustain its indirect infringement and willfulness allegations without pleading pre-suit knowledge of the patents. The Company responded to Ruckus's motion to dismiss on June 18, 2012. The Court released the schedule for the case on June 8, 2012 with Claim Construction and Summary Judgment Hearings scheduled for August 9, 2013 and a ten day jury trial scheduled for October 21, 2013. On July 13, 2012, the Company added to its complaint against Ruckus an allegation of infringement of patent number 6,512,480 (“System and method for narrow beam antenna diversity in an RF data transmission system”) by Ruckus's ZoneFlex and MediaFlex products. The Company and Ruckus participated in a court-ordered mediation on September 13, 2012 in Delaware, and the parties did not come to an agreement to settle the litigation pending between the parties. Fact discovery closed on December 14, 2012, and the parties are currently working on their expert reports with expert depositions to occur in February and March of 2013. It is too early to reasonably estimate the financial impact to the Company as a result of the Ruckus litigation matters.

*Northpeak Wireless, LLC v. NETGEAR*

In October 2008, a lawsuit was filed against the Company and 30 other companies by Northpeak Wireless, LLC (“Northpeak”) in the U.S. District Court, Northern District of Alabama. Northpeak alleges that the Company's 802.11b compatible products infringe certain claims of U.S. Patent Nos. 4,977,577 ("the '577 Patent") and 5,987,058 ("the '058 Patent"). The Company filed its answer to the lawsuit in the fourth quarter of 2008. On January 21, 2009, the District Court granted a motion to transfer the case to the U.S. District Court, Northern District of California. In August 2009, the parties stipulated to a litigation stay pending a reexamination request to the USPTO on the asserted patents. The reexaminations of the patents are proceeding. In March 2011, the USPTO confirmed the validity of the asserted claims of the '577 Patent over certain prior art references. In April 2011, the USPTO issued a final office action rejecting both asserted claims of the '058 Patent as being obvious in light of the prior art. The case remains stayed by stipulation, and no trial date has been set. The Company does not expect there to be a material financial impact to the Company because of this litigation matter.

*Ericsson v. NETGEAR*

On September 14, 2010, Ericsson Inc. and Telefonaktiebolaget LM Ericsson (collectively “Ericsson”) filed a patent infringement lawsuit against the Company and defendants D-Link Corporation, D-Link Systems, Inc., Acer, Inc., Acer America Corporation, and Gateway, Inc. in the U.S. District Court, Eastern District of Texas alleging that the defendants infringe certain

Ericsson patents. The Company has been accused of infringing eight U.S. patents: 5,790,516; 6,330,435; 6,424,625; 6,519,223; 6,772,215; 5,987,019; 6,466,568; and 5,771,468 ("the '468 Patent"). Ericsson generally alleges that the Company and the other defendants have infringed and continue to infringe the Ericsson patents through the defendants' IEEE 802.11-compliant products. In addition, Ericsson alleged that the Company infringed the claimed methods and apparatuses of the '468 Patent through the Company's PCMCIA routers. The Company filed its answer to the Ericsson complaint on December 17, 2010 where it asserted the affirmative defenses of noninfringement and invalidity of the asserted patents. On March 1, 2011, the defendants filed a motion to transfer venue to the District Court for the Northern District of California and their memorandum of law in support thereof. On March 21, 2011, Ericsson filed its opposition to the motion, and on April 1, 2011, defendants filed their reply to Ericsson's opposition to the motion to transfer. On June 8, 2011, Ericsson filed an amended complaint that added Dell, Toshiba and Belkin as defendants. At the status conference held on Jun 9, 2011, the Court set a Markman hearing for June 28, 2012 and trial for June 3, 2013. On June 14, 2011, Ericsson submitted its infringement contentions against the Company. On September 29, 2011, the Court denied the defendants motion to transfer venue to the Northern District of California. In advance of the Markman hearing, the parties on March 9, 2012 exchanged proposed constructions of claim terms and on April 9, 2012 filed the Joint Claim Construction Statement with the District Court. On May 8, 2012, Ericsson submitted its opening Markman brief and on June 1, 2012 the defendants submitted their responsive Markman brief. Ericsson's Reply Markman brief was submitted June 15, 2012, and on June 28, 2012 the Markman hearing was held in the Eastern District of Texas. On June 21, 2012, Ericsson dismissed the '468 Patent (“Multi-purpose base station”) with prejudice and gave the Company a covenant not to sue as to products in the marketplace now or in the past. On June 22, 2012, Intel filed its Complaint in Intervention, meaning that Intel is now an official defendant in the Ericsson case. The parties recently completed fact discovery and are exchanging expert reports. During the exchange of the expert reports, Ericsson dropped the '516 patent (the OFDM “pulse shaping” patent). In addition, Ericsson dropped the '223 Patent (packet discard patent) against all the defendants' products, except for those products that use Intel chips. Thus, Ericsson has now dropped the '468 Patent (wireless base station), the '516 Patent (OFDM pulse shaping), and the '223 Patent (packet discard patent) for all non-Intel products. The 5 remaining patents are all only asserted against 802.11-compliant products.

At a Court ordered mediation in Dallas on January 15, 2013, the parties did not come to an agreement to settle the litigation. The Court has not yet released its Markman Order construing the claims of Ericsson's asserted patents. It is too early to reasonably estimate any financial impact to the Company because of this litigation matter.

*Fujitsu v. NETGEAR*

On September 3, 2010, Fujitsu filed a complaint against the Company, Belkin International, Inc., Belkin, Inc., D−Link Corporation, D−Link Systems, Inc., ZyXEL Communications Corporation, and ZyXEL Communications, Inc in the U.S. District Court, Northern District of California alleging that certain of the Company's products infringe upon Fujitsu's U.S. patent Re. 36,769 patent ("the '769 Patent") through various cards and interface devices within the Company's products. The Company answered the complaint denying the allegations of infringement and claiming that the asserted patent is invalid. In addition, the Company filed a motion to disqualify counsel for Fujitsu. The Company's disqualification motion was argued before the Court on December 16, 2010, and on December 22, 2010, the Court granted the Company's motion and disqualified counsel for Fujitsu. In response, Fujitsu requested a stipulation from all parties to reset the case management conference and scheduled hearing dates for the motions to dismiss. The initial case management conference was held on March 18, 2011. A claim construction hearing was held on October 14, 2011. On February 3, 2012, the Court issued its claim construction order based on the claim construction hearing. On March 3, 2012, the Fujitsu patent emerged from the latest ex-parte reexamination in the USPTO that was initiated by Belkin, Inc. The USPTO examiner rejected five of the “wired” claims in the patent, but found that the majority of claims of the patent were valid. Expert discovery opened May 4, 2012 with the exchange of initial expert reports. Rebuttal expert reports were exchanged on May 25, 2012, and expert discovery closed on June 8, 2012. A further case management conference was held on May 9, 2012 where the Court ordered that by June 12, 2012 Fujitsu must file a status report narrowing its asserted claims to no more than 10 claims, and narrowing the accused products accordingly, and Fujitsu filed the status report on the due date. By July 3, 2012, the Court ordered the Defendants to file a status report reducing its number of prior art references and obviousness combinations, and Defendants filed the status report on the due date. The Court also limited Fujitsu to one motion for summary judgment and allowed Defendants to jointly file two summary judgment motions. The Court further implemented the following dates: last day to file disposition motions of July 26, 2012; hearing on dispositive motions on September 6, 2012; final pretrial conference on November 1, 2012; and jury trial beginning November 26, 2012. The Court ordered the length of the trial to be 10 days . The Court also set a further case management conference for September 6, 2012, immediately following the hearing on any dispositive motions filed. The parties submitted their summary judgment motions on July 26, 2012. Fujitsu submitted a summary judgment motion arguing that the defendants infringe the '769 Patent. The defendants submitted two summary judgment motions. The first argued that any infringement by the defendants was not willful, and the second argued that the '769 Patent is invalid.

On September 28, 2012, the Court issued its summary judgment ruling. The Court did not invalidate the '769 Patent and ruled that some of the Company's cards infringed the '769 Patent.

In addition, the Court rejected Fujitsu's narrowing arguments for the terms “card” and “slot” that are contained in the claims of the patent in suit, expressly holding that “card” should be given its plain and ordinary meaning and agreeing with Defendants that “slot” was a broad term meaning “an opening.”

After a 10-day trial in November and December of 2012, the eight-member jury sided with the remaining defendants - NETGEAR, Belkin, and D-Link - and found Fujitsu's claims under the '769 patent for a "card type input/output interface device" to be invalid. The jury found the defendants proved by clear and convincing evidence that each claim raised by Fujitsu was anticipated by prior art and would have been obvious to a person of ordinary skill in the art as of April 1991 - in other words the asserted claims of the '769 Patent were both anticipated and obvious. The jury also found the defendants had not caused infringement by selling routers and access points that were compatible with wireless interface cards. Fujitsu could theoretically bring another infringement suit on other claims of the '769 Patent that were not invalidated at the trial, but the Company does not expect there to be a material financial impact to the Company because of this litigation matter.

*Powerline Innovations, LLC v. NETGEAR*

On August 6, 2011 the Company, along with 16 other companies, was sued in the U.S. District Court, Eastern District of Texas, Tyler Division (“Powerline I”) for patent infringement by a non-practicing entity called Powerline Innovations, LLC (“Powerline Innovations”). This was a single patent case, involving U.S. Patent No. 5,471,190, entitled “Method and Apparatus for Resource Allocation in a Communication Network System.” On the same day that it filed suit against the Company and 16 other companies, Powerline Innovations sued 14 additional companies in a separate suit in U.S. District Court, Eastern District of Texas for infringement of the same patent. The complaint against the Company alleged that it infringes the 5,471,190 patent based on the Company's use of methods for establishing control relationships between plural devices and names the Company's Powerline AV Ethernet Adapter, Model XAV101, as an accused infringing product. The Company answered the plaintiff's complaint on December 12, 2011, and asserted that it has not infringed the patent in suit and that the patent in suit is invalid. In addition, the Company asserted various affirmative defenses. An initial status conference took place on August 6, 2012. On October 1, 2012, the defendants remaining in the case filed a motion to transfer venue from the U.S. District Court, Eastern District of Texas to the U.S. District Court, Northern District of California.

On October 10, 2012, the Company was sued for a second time in the U.S. District Court, Eastern District of Texas, Tyler Division (“Powerline II”) for patent infringement by Powerline Innovations. The patent involved in this case is United States Patent No. 8,157,581, titled “Thermal Management Method and Device for Powerline Communications”. The accused Company products include Powerline Models XAVB1501, XAVB1601, XAV2001, XAVN2001, XAVB2001, XAVNB2001, XAV2101, XAVB2101, XAUB2511, XWN5001, XAVB5001, XAVB5101, XWNB5201, XAVB5601, XAVB5602 products. The Company answered the complaint on December 21, 2012.

Through the Company's membership in RPX Corporation, a company whose market-based solution to patent litigation involves preemptive purchases of patents in the open market, a settlement of the Powerline I and Powerline II litigations was recently reached between Powerline Innovations and the Company. In return for a payment by RPX to Powerline Innovations, the Company and other RPX members received a license to the '190 Patent and '581 Patent. After such payment and without admitting any wrongdoing or violation of law and to avoid the distraction and expense of continued litigation and the uncertainty of a jury verdict on the merits, the Company and Powerline Innovations signed a binding release agreement, which included mutual general releases from all claims, known or unknown, under the '190 Patent and '581 Patent with respect to the manufacture, use, sale, etc. of products by the Company. The Court has since dismissed Powerline Innovations' claims for relief against the Company and the Company's counterclaims for relief against Powerline Innovations in Powerline I and Powerline II, with prejudice and with all attorneys' fees, costs and expenses levied against the party incurring the same. The Company does not expect there to be a material financial impact to the Company because of this litigation matter.

*NETGEAR v. Innovatio IP Ventures LLC.*

On November 16, 2011, the Company filed a declaratory judgment action in the District of Delaware for non-infringement and invalidity of 17 WiFi-related patents brought in the approximately 15 actions throughout the United States by Innovatio IP Ventures LLC (“Innovatio”) against end user customers of the Company and other companies. Shortly after filing the declaratory judgment action, the Company filed a response supporting Cisco Systems, Inc.'s ("Cisco") and Motorola Solutions, Inc.'s ("Motorola") Motion to Transfer for Coordinated Pretrial Proceedings Pursuant to 28 U.S.C. § 1407 that was before the United

States Judicial Panel on Multidistrict Litigation ("JPML"). The pending motion to transfer would serve to consolidate all of the Innovatio lawsuits - including the Company's pending declaratory judgment action in Delaware-and transfer them to a single court for coordinated pretrial proceedings. On December 28, 2011, the JPML issued an order transferring the Innovatio actions throughout the United States, including the Company's declaratory judgment action, to the United States District Court for the Northern District of Illinois. Thus, the Company's declaratory judgment action and approximately 15 other similar cases will now proceed in the Northern District of Illinois in a consolidated fashion. The status conference originally scheduled for March 27, 2012 was postponed by the District Court until April 10, 2012. At the conference, the District Court discussed two primary issues (1) case phasing (i.e., which subset of defendants should proceed after Markman Hearing through the remaining proceedings) and (2) the defendants' proposal on damages contentions. The District Court stated that it tentatively felt that the case should proceed with one or more WiFi hardware suppliers after the Markman Hearing, but was going to reserve a final ruling on the issue. The District Court also ordered that the parties prepare a joint pretrial order reflecting the court's decisions and the schedule for the case. On July 10, 2012, Innovatio answered the Declaratory Judgment Complaint filed by the Company with various counterclaims, cross claims, and affirmative defenses. In its answer, Innovatio accused the Company of infringing six WiFi-related patents in addition to the 17 WiFi-related patents on which the Company brought its declaratory judgment action of non-infringement and invalidity. The Company filed its answer to Innovatio's various counterclaims, cross claims, and affirmative defenses on August 3, 2012. In addition, on October 1, 2012, Cisco, Motorola and the Company filed an amended complaint alleging racketeering, fraud, interference with contract, unfair business practices, and conspiracy, among other things, against Innovatio. Discovery in the case in ongoing with the following schedule in effect: 02/08/13 - Final Infringement, Unenforceability and Invalidity Contentions Due; 02/28/13 - Innovatio's Damages Contentions Due; 02/28/13- Final Noninfringement, Enforceability and Validity Contentions Due; 03/07/13 - Exchange of Proposed Claim Terms to be Construed along with Proposed Constructions; 03/14/13 - Initial Close of Fact Discovery; 03/21/13 - Defendants' Responsive Damages Contentions Due; 03/21/13 - Opening Claim Construction Brief by party opposing infringement and Joint Appendix and filing of Joint Appendix Due; 04/04/13 - Responsive Claim Construction Brief by party claiming infringement Due; 04/18/13 - Reply Claim Construction Brief by party opposing infringement Due; 04/25/13 - Joint Claim Construction Chart and Status Report Due; and 05/16/13 - Claim Construction Hearing. On February 4, 2013, the Court dismissed the offensive claims of Cisco, Motorola, and the Company that alleged Innovatio was engaging in racketeering, fraud, and unfair business practices by demanding licensing fees from hotels, cafes and other businesses but left intact claims against Innovatio that allege breach of contract with respect to Innovatio's RAND obligations. The trial date has not been set. It is too early to reasonably estimate any financial impact to the Company because of this litigation matter.

*Harris Corporation v. NETGEAR.*

On November 26, 2011, Harris Corporation ("Harris") sued the Company in the U.S. District Court, Middle District of Florida alleging that the Company willfully infringes six of Harris's patents -- U.S. Patent Nos. 6,504,515, 7,916,684, 5,787,177, 5,974,149, 6,189,104, and 6,397,336. Harris filed an amended complaint on February 17, 2012 that removed its initial allegations of willful infringement by the Company and also removed the allegations of direct infringement against the Company for U.S. Patent No. 7,916,684, leaving only indirect infringement allegations for the '684 Patent. The Company's answer to the amended complaint was submitted on March 2, 2012.

On April 3, 2012, the Company filed suit against Harris in the District Court of the Northern District of California asserting that Harris infringes four of the Company's patents. In the complaint, the Company alleges that Harris infringes: a) U.S. Patent No. 6,718,030, entitled "Virtual Private Network System and Method Using Voice of Internet Protocol" through Harris's VIDA Network and products, the VIDA Telephone Interconnect (VTI), the MASTR III Base Station, and the EDACS MASTR III repeater; b) U.S. Patent No. 7,200,400, entitled "Mobile to 802.11 Voice Multi-Network Roaming Utilizing SIP Signaling With SIP Proxy or Redirect Server" through Harris's VIDA Network and products, the Inter-RF Subsystem Interface (ISSI) Gateway, the Interoperability Gateway, and the UNITY XG-100P Portable Radio; c) U.S. Patent No. 7,218,722, entitled "System and Method For Proving Call Management Services in a Virtual Private Network Using Voice or Video Over Internet Protocol" through Harris's VIDA Network and products, the VIDA Telephone Interconnect (VTI), the P7200 Portable Radio, the OpenSky Network and Products, the MASTR III Base Station, and EDACS MASTR III repeater; and d) U.S. Patent No. 7,936,714, entitled "Spectrum Allocation System and Method For Multi-Band Wireless RF Data Communications" through Harris's UNITY XG-100P Portable Radio. Harris responded to the complaint on the due date for its answer.

Without admitting any wrongdoing or violation of law and to avoid the distraction and expense of continued litigation and the uncertainty of a jury verdict on the merits, on October 19, 2012, Harris and the Company signed a final settlement agreement settling the two patent cases that the parties brought against each other. The settlement agreement included the following principal points: 1) dismissal with prejudice of the lawsuits pending between the Company and Harris; 2) a one-time lump-sum payment by the Company to Harris; 3) assignment of certain patents, and related patents from Harris to the Company; 4) a covenant not to sue each other for ten years by both parties that applies to lawsuits based upon any of the parties' patents; and 5) a covenant not

to sue by both parties for the life of the patents in suit between the parties that applies to the patents in suit and all related patents, including without limitation the foreign counterparts. Each party agreed to bear its own costs and attorneys' fees. This arrangement does not have a material impact on the Company's consolidated financial position, results of operations, or cash flows. The Company allocated a portion of the one-time lump-sum payment to the quarterly period ended September 30, 2012, and the majority of the one-time lump-sum payment was recorded in prepaids and other current assets in the fourth quarter of 2012.

*U.S. Ethernet Innovation, LLC v. NETGEAR*

On June 22, 2012, U.S. Ethernet Innovations, LLC (“USEI”) sued the Company in the District Court for the Eastern District of Texas, alleging infringement of certain of its Ethernet-related patents: U.S. Patent Numbers 5,732,094 (“Method for automatic initiation of data transmission”); 5,434,872 (“Apparatus for automatic initiation of data transmission”); 5,299,313 (“Network interface with host independent buffer management”) and 5,530,874 (“Network adapter with an indication signal mask and an interrupt signal mask”). USEI is a patent holding entity with a nominal office in the Eastern District of Texas. The accused products include products such as the “Netgear RT311 Internet Gateway Router.” The Company received an extension until August 17, 2012 to answer the complaint. USEI has sued, in addition to the Company, the following companies on the same and other of its Ethernet-related patents: Ricoh Americas Corporation, TRENDnet, Inc., Xerox Corporation, Konica Minolta Business Solutions U.S.A., Inc., Freescale Semiconductor, Inc., Sharp Electronics Corporation, Digi International Inc., NetSilicon, Inc., Epson America, Inc., Cirrus Logic, Inc., Yamaha Corporation of America, Control4 Corporation, Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC, Samsung Austin Semiconductor, LLC, Oki Data Americas, Inc., STMicroelectronics N.V., and STMicroelectronics, Inc. (collectively, “Defendants”).

The Company received a further extension to answer the complaint and answered on September 4, 2012 via a 12(b)(6) motion to dismiss the complaint for various reasons, including a lack of pleading specificity. USEI responded to the Company's motion to dismiss under Rule 12(b)(6) on September 21, 2012. The Company submitted its Reply in Support of its Motion to Dismiss on October 1, 2012.

USEI served its infringement contentions on the Company on October 10, 2010. The Company filed its transfer motion for a transfer to the Northern District of California and supporting declarations on November 16, 2012. On December 3, 2012, Defendants filed their joint invalidity contentions.

Because the Eastern District of Texas's preferred time for deciding motions to transfer is after the Markman Hearing, the defendants filed a motion to stay the litigation pending the result of the Eastern District of Texas's decisions on the motion to transfer on January 29, 2013. A mediation in this case is scheduled for May 15, 2013.

The Court has consolidated for discovery purposes USEI's cases against the aforementioned defendants and scheduled a consolidated Markman hearing for April 4, 2013 for the asserted patents. The Court also indicated that the court would consider any of Defendants' transfer motions as soon as possible. The trial date has been set for April 14, 2014.

It is too early to reasonably estimate any financial impact to the Company because of this litigation matter.

*ReefEdge Networks, LLC v. NETGEAR, Inc.*

On September 17, 2012, the Company was sued by ReefEdge Networks, LLC, a non-practicing entity. The Company received an extension from the plaintiff until November 8, 2012 to answer the complaint and answered the complaint on that date.

The complaint alleges that NETGEAR infringes three related patents: 6,633,761 B1; 6,975,864 B2; 7,197,308 B2. In general terms, these asserted patents involve seamlessly handing-off portable wireless devices from one access point to another so as to provide roaming within a wireless network.

The complaint specifically accuses the Company's ProSafe wireless controller of infringing these three patents. On August 15, 2012, ReefEdge filed complaints in Delaware against Aruba Networks Inc., Cisco Systems Inc., Meru Networks Inc., and Ruckus Wireless Inc. alleging infringement of the same three patents. In the second tranche of lawsuits, ReefEdge sued--in addition to the Company-Brocade Communications Systems, Inc., Extreme Networks Inc., ADTRAN, Inc., Alcatel-Lucent Inc., D-Link Systems, Inc., Enterasys Networks, Inc., Motorola Solutions Inc., CDW Corporation, Avaya Inc., and ZyXEL Communications Corporation. It is too early to reasonably estimate any financial impact to the Company because of this litigation matter.

*Pragmatus Telecom, LLC v. NETGEAR, Inc.*

On December 6, 2012, Pragmatus Telecom, LLC (“Pragmatus”), filed a lawsuit against the Company asserting that the Company's use of a system “to provide live chat service over the Internet” infringes U.S. Patent Nos. 6,311,231, 6,668,286, and 7,159,043 ("'231 patent", "'286 patent", and "'043 patent", respectively).

The '231 patent is entitled "Method and System for Coordinating Data and Voice Communications via Customer Contact,” the '286 patent is entitled "Method and System for Coordinating Data and Voice Communications via Customer Contact Channel Changing System Over IP," and the '043 patent is entitled "Method and System for Coordinating Data and Voice Communications via Contact Channel Changing System," The patents very generally allegedly relate to “live chat" services of companies, which can give customers the ability to exchange text messages with a virtual or real customer support person. It appears that most companies named in the various lawsuits by Pragmatus license the “live chat” technology and software from a third-party supplier. A few of these third-party suppliers have been named in some of the over 100 lawsuits filed by Pragmatus in California, Delaware, and the Eastern District of Texas, and two third-party suppliers of text-chat (LivePerson and LogMeIn) have filed declaratory judgment actions on the patents in suit in Delaware. There is a pending reexamination on one of the three asserted patents.

Pragmatus and the Company agreed to extend the deadline for the Company to answer or otherwise respond to Pragmatus's complaint until February 11, 2013. The Company answered the complaint on that day by denying Pragmatus's infringement allegations and requesting a declaratory judgment by the Court that the patents in suit are not infringed and invalid. It is too early to reasonably estimate any financial impact to the Company because of this litigation matter.

*Voice Integration Technologies, LLC v. NETGEAR, Inc.*

On December 28, 2012, Voice Integration Technologies, LLC (“VIT”) sued the Company alleging direct, indirect, and willful infringement of U.S. Patent No. 7,127,048 (the "'048 Patent"), entitled "Systems and Methods for Integrating Analog Voice Service and Derived POTS Voice Service in a Digital Subscriber Line Environment." The '048 Accused Products include integrated access device ("IAD") products that allow users to place and receive both telephone and VoIP calls over the same telephone line, and VIT specifically named the Company's DG 834GV Integrated ADSL2+ Modem and Wireless Router with Voice in the complaint. The Company believes that a broad reading of the complaint would mean that the Company's ADSL modems having VOIP functionality are accused, which suggests relatively low exposure because these products have not been in the United States. It is too early, however, to reasonably estimate any financial impact to the Company because of this litigation matter.

*IP Indemnification Claims*

In its sales agreements, the Company typically agrees to indemnify its direct customers, distributors and resellers (the “Indemnified Parties”) for any expenses or liability resulting from claimed infringements by the Company's products of patents, trademarks or copyrights of third parties that are asserted against the Indemnified Parties, subject to customary carve outs. The terms of these indemnification agreements are generally perpetual after execution of the agreement. The maximum amount of potential future indemnification is generally unlimited. From time to time, the Company receives requests for indemnity and may choose to assume the defense of such litigation asserted against the Indemnified Parties.

***Environmental Regulation***

The European Union (“EU”) enacted the Waste Electrical and Electronic Equipment Directive, which makes producers of electrical goods, including home and commercial business networking products, financially responsible for specified collection, recycling, treatment and disposal of past and future covered products. The deadline for the individual member states of the EU to transpose the directive into law in their respective countries was August 13, 2004 (such legislation, together with the directive, the “WEEE Legislation”). Producers participating in the market were financially responsible for implementing these responsibilities under the WEEE Legislation beginning in August 13, 2005. The Company adopted the authoritative guidance for asset retirement and environmental obligations in the third quarter of fiscal 2005 and has determined that its effect did not have a material impact on the Company's consolidated results of operations and financial position for the three and nine months ended September 30, 2012 and October 2, 2011. The WEEE Directive was recast on July 24, 2012, published on August 13, 2012, and will be implemented by all member states on February 14, 2014. The Company expects no material impact on its consolidated results of operations and financial positions due to this recasting. Similar WEEE Legislation has been or may be enacted in other jurisdictions, including in the United States, Canada, Mexico, China, India, Australia and Japan. The Company continues to monitor WEEE Legislation and similar legislation in other jurisdictions as individual countries issue their implementation guidance. The Company believes

it has met the applicable requirements of current WEEE Legislation and similar legislation in other jurisdictions, to the extent implementation requirements have been published.

Additionally, the EU enacted the Restriction of Hazardous Substances Directive (“RoHS Legislation”), the REACH Regulation, Packaging Directive and the Battery Directive. EU RoHS Legislation, along with similar legislation in China, requires manufacturers to ensure certain substances, including polybrominated biphenyls (“PBD”), polybrominated diphenyl ethers (“PBDE”), mercury, cadmium, hexavalent chromium and lead (except for allowed exempted materials and applications), are below specified maximum concentration values in certain products put on the market after July 1, 2006. The RoHS Directive was recast on July 21, 2011 and went into force on January 3, 2013. The Company expects no material impact on its consolidated results of operations and financial positions due to this recasting. The REACH Regulation requires manufacturers to ensure the published list of substances of very high concern in certain products are below specified maximum concentration values. The Battery Directive controls use of certain types of battery technology in certain products and requires mandatory marking. The Company believes it has met the requirements of the RoHS Directive Legislation, the REACH Regulation and the Battery Directive Legislation.

Additionally, the EU enacted the Energy Using Product (“EuP”) Directive, which came into force in August of 2007. The EuP Directive required manufacturers of certain products to meet minimum energy efficiency performance requirements. These requirements were documented in EuP implementing measures issued for specific product categories. The implementing measures affecting the Company's products are minimum power supply efficiencies and may include required equipment standby modes, which also reduce energy consumption. The EuP Directive was repealed in November of 2009 and replaced by the Energy Related Products ("ErP") Directive, which includes the same implementing measures of the former EuP Directive and new implementing measures applicable to the Company's products. The Company is in compliance with applicable implementing measures of the ErP Directives since it came into force.

**Note 10. Stockholders’ Equity**

***Common Stock Repurchase Programs***

In October 21, 2008, the Company’s Board of Directors authorized management to repurchase up to 6,000,000 shares of the Company’s outstanding common stock. Under this authorization, the timing and actual number of shares subject to repurchase are at the discretion of management and are contingent on a number of factors, such as levels of cash generation from operations, cash requirements for acquisitions and the price of the Company’s common stock. The Company did not repurchase any shares under this authorization during the years ended December 31, 2012 , 2011 and 2010 .

The Company repurchased approximately 22,000 shares, or $850,000 of common stock under a repurchase program to help administratively facilitate the withholding and subsequent remittance of personal income and payroll taxes for individuals receiving RSUs during the year ended December 31, 2012 . Similarly, during the years ended December 31, 2011 and December 31, 2010 , the Company repurchased approximately 25,000 shares and 32,000 shares, respectively, or $926,000 and $736,000 of common stock, respectively, under the same program to help facilitate tax withholding for RSUs.

These shares were retired upon repurchase. The Company’s policy related to repurchases of its common stock is to charge the excess of cost over par value to retained earnings. All repurchases were made in compliance with Rule 10b-18 under the Securities Exchange Act of 1934, as amended.

***Cumulative Other Comprehensive Income, Net***

The following table sets forth the components of cumulative other comprehensive income, net of related taxes, as of December 31, 2012 and December 31, 2011 (in thousands):

| | As of | |
|---|---|---|
| | December 31, 2012 | December 31, 2011 |
| Net unrealized (loss) gain on derivative instruments | $ (24) | $ 6 |
| Net unrealized gain on available-for-sale securities | 28 | 17 |
| Total cumulative other comprehensive income, net of taxes | $ 4 | $ 23 |

**Note 11. Employee Benefit Plans**

***2000 Stock Option Plan***

In April 2000, the Company adopted the 2000 Stock Option Plan (the "2000 Plan"). The 2000 Plan provides for the granting of stock options to employees and consultants of the Company. Options granted under the 2000 Plan may be either incentive stock options ("ISOs") or nonqualified stock options ("NSOs"). ISOs may be granted only to Company employees (including officers and directors who are also employees). NSOs may be granted to Company employees, directors and consultants. A total of 7,350,000 shares of Common Stock have been reserved for issuance under the 2000 Plan.

Options under the 2000 Plan may be granted for periods of up to ten years , provided, however, that (i) the exercise price of an ISO and NSO shall not be less than the estimated fair value of the underlying stock on the date of grant and (ii) the exercise price of an ISO and NSO granted to a 10% shareholder shall not be less than 110% of the estimated fair value of the underlying stock on the date of grant. To date, options granted generally vest over four years .

As discussed below, in April 2003, all remaining shares reserved but not issued under the 2000 Plan were transferred to the 2003 Stock Plan.

***2003 Stock Plan***

In April 2003, the Company adopted the 2003 Stock Plan (the "2003 Plan"). The 2003 Plan provides for the granting of stock options to employees and consultants of the Company. Options granted under the 2003 Plan may be either ISOs or NSOs. ISOs may be granted only to Company employees (including officers and directors who are also employees). NSOs may be granted to Company employees, directors and consultants. The Company has reserved 750,000 shares of Common Stock plus any shares which were reserved but not issued under the 2000 Plan as of the date of the approval of the 2003 Plan. The number of shares which were reserved but not issued under the 2000 Plan that were transferred to the Company's 2003 Plan were 615,290 , which when combined with the shares reserved for the Company's 2003 Plan total 1,365,290 shares reserved under the Company's 2003 Plan as of the date of transfer. Any options cancelled under either the 2000 Plan or the 2003 Plan are returned to the pool available for grant. As of December 31, 2012 , 55,513 shares were reserved for future grants under the Company's 2003 Plan.

Options under the 2003 Plan may be granted for periods of up to ten years , provided, however, that (i) the exercise price of an ISO and NSO shall not be less than the estimated fair value of the underlying stock on the date of grant and (ii) the exercise price of an ISO and NSO granted to a 10% shareholder shall not be less than 110% of the estimated fair value of the underlying stock on the date of grant. To date, options granted generally vest over four years , with the first tranche vesting at the end of 12 months and the remaining shares underlying the option vesting monthly over the remaining three years . In fiscal 2005, certain options granted under the 2003 Plan immediately vested and were exercisable on the date of grant, and the shares underlying such options were subject to a resale restriction which expires at a rate of 25% per year.

***2006 Long Term Incentive Plan***

In April 2006, the Company adopted the 2006 Long Term Incentive Plan (the "2006 Plan"), which was approved by the Company's stockholders at the 2006 Annual Meeting of Stockholders on May 23, 2006. The 2006 Plan provides for the granting of stock options, stock appreciation rights, restricted stock, performance awards and other stock awards, to eligible directors, employees and consultants of the Company. Upon the adoption of the 2006 Plan, the Company reserved 2,500,000 shares of common stock for issuance under the 2006 Plan. In June 2008, the Company adopted amendments to the 2006 Plan which increased the number of shares of the Company's common stock that may be issued under the 2006 plan by an additional 2,500,000 shares. In July 2010, the Company adopted amendments to the 2006 Plan which increased the number of shares of the Company's common stock that may be issued under the 2006 plan by an additional 1,500,000 shares. In June 2012, the Company adopted amendments to the 2006 Plan which increased the number of shares of the Company's common stock that may be issued under the 2006 plan by an additional 3,000,000 shares. In addition, RSUs granted under the 2006 Plan on or after June 6, 2012 are counted against shares authorized under the plan as 1.58 shares of common stock for each share subject to such award. As of December 31, 2012 , 2,695,054 shares were reserved for future grants under the 2006 Plan.

Options granted under the 2006 Plan may be either ISOs or NSOs. ISOs may be granted only to Company employees (including officers and directors who are also employees). NSOs may be granted to Company employees, directors and consultants. Options may be granted for periods of up to ten years, provided, however, that (i) the exercise price of an ISO and NSO shall not be less than the estimated fair value of the underlying stock on the date of grant and (ii) the exercise price of an ISO and NSO

granted to a 10% shareholder shall not be less than 110% of the estimated fair value of the underlying stock on the date of grant. Options granted under the 2006 Plan generally vest over four years , with the first tranche vesting at the end of 12 months and the remaining shares underlying the option vesting monthly over the remaining three years .

Stock appreciation rights may be granted under the 2006 Plan subject to the terms specified by the plan administrator, provided that the term of any such right may not exceed ten (10) years from the date of grant. The exercise price generally cannot be less than the fair market value of the Company's common stock on the date the stock appreciation right is granted.

Restricted stock awards may be granted under the 2006 Plan subject to the terms specified by the plan administrator. The period over which any restricted award may fully vest is generally no less than three (3) years. Restricted stock awards are non-vested stock awards that may include grants of restricted stock or grants of restricted stock units ("RSUs"). Restricted stock awards are independent of option grants and are generally subject to forfeiture if employment terminates prior to the release of the restrictions. During that period, ownership of the shares cannot be transferred. Restricted stock has the same voting rights as other common stock and is considered to be currently issued and outstanding. RSUs do not have the voting rights of common stock, and the shares underlying the RSUs are not considered issued and outstanding. The Company expenses the cost of the restricted stock awards, which is determined to be the fair market value of the shares at the date of grant, ratably over the period during which the restrictions lapse.

Performance awards may be in the form of performance shares or performance units. A performance share means an award denominated in shares of Company common stock and a performance unit means an award denominated in units having a dollar value or other currency, as determined by the plan administrator. The plan administrator will determine the number of performance awards that will be granted and will establish the performance goals and other conditions for payment of such performance awards. The period of measuring the achievement of performance goals will be a minimum of twelve (12) months.

Other stock-based awards may be granted under the 2006 Plan subject to the terms specified by the plan administrator. Other stock-based awards may include dividend equivalents, restricted stock awards, or amounts which are equivalent to all or a portion of any federal, state, local, domestic or foreign taxes relating to an award, and may be payable in shares, cash, other securities or any other form of property as the plan administrator may determine.

In the event of a change in control of the Company, all awards under the 2006 Plan vest in full and all outstanding performance shares and performance units will be paid out upon transfer.

Any shares of common stock subject to an award that is forfeited, settled in cash, expires or is otherwise settled without the issuance of shares shall again be available for awards under the 2006 Plan. Additionally, any shares that are tendered by a participant of the 2006 Plan or retained by the Company as full or partial payment to the Company for the purchase of an award or to satisfy tax withholding obligations in connection with an award shall no longer again be made available for issuance under the 2006 Plan.

***Employee Stock Purchase Plan***

The Company sponsors an Employee Stock Purchase Plan (the "ESPP"), pursuant to which eligible employees may contribute up to 10% of compensation, subject to certain income limits, to purchase shares of the Company's common stock. Employees may purchase stock semi-annually at a price equal to 85% of the fair market value on the purchase date. Since the price of the shares is determined at the purchase date, the Company recognizes expense based on the 15% discount at purchase. For the years ended December 31, 2012 , 2011 , and 2010 , ESPP compensation expense was $371,000 , $354,000 and $236,000 , respectively. As of December 31, 2012 , 387,058 shares were reserved for future grants under the ESPP.

***Option Activity***

Stock options activity under the stock option plans during the year ended December 31, 2012 was as follows:

| | Outstanding Options | | | |
|---|---|---|---|---|
| | Number of Shares | Weighted Average Exercise Price Per Share | Weighted Average Remaining Contractual Term | Aggregate Intrinsic Value |
| | (In thousands) | (In dollars) | (In years) | (In thousands) |
| December 31, 2011 | 3,950 | $ 27.03 | | |
| Granted | 1,332 | 34.01 | | |
| Exercised | (548) | 23.16 | | |
| Cancelled and expired | (410) | 30.98 | | |
| December 31, 2012 | 4,324 | $ 29.29 | 7.4 | $ 43,887 |
| | | | | |
| As of December 31, 2012: | | | | |
| Vested and expected to vest | 4,030 | $ 29.06 | 7.3 | $ 41,837 |
| Exercisable Options | 2,100 | $ 25.94 | 6.0 | $ 28,342 |

The aggregate intrinsic values in the table above represent the total pre-tax intrinsic values (the difference between the Company's closing stock price on the last trading day of 2012 and the exercise price, multiplied by the number of shares underlying the in-the-money options) that would have been received by the option holders had all option holders exercised their options on December 31, 2012 . This amount changes based on the fair market value of the Company's stock. Total intrinsic value of options exercised for the year ended December 31, 2012 , 2011 , and 2010 was $8.1 million , $21.8 million and $16.9 million , respectively.

The total fair value of options vested during the years ended December 31, 2012 , 2011 , and 2010 was $11.1 million , $9.8 million and $9.1 million , respectively.

The following table summarizes significant ranges of outstanding and exercisable stock options as of December 31, 2012 :

| | Options Outstanding | | | Options Exercisable | |
|---|---|---|---|---|---|
| Range of Exercise Prices | Shares Outstanding | Weighted-Average Remaining Contractual Life | Weighted-Average Exercise Price Per Share | Shares Exercisable | Weighted-Average Exercise Price Per Share |
| | (In thousands) | (In years) | (In dollars) | (In thousands) | (In dollars) |
| $0.00 - 10.00 | 1 | 1.56 | $ 9.26 | 1 | $ 9.26 |
| 10.01 - 20.00 | 489 | 5.22 | 13.45 | 466 | 13.42 |
| 20.01 - 30.00 | 1,262 | 6.04 | 24.82 | 935 | 25.31 |
| 30.01 - 40.00 | 2,463 | 8.46 | 34.26 | 680 | 35.01 |
| 40.01 - 50.00 | 109 | 9.09 | 40.01 | 18 | 40.01 |
| Total | 4,324 | 7.40 | $ 29.29 | 2,100 | $ 25.94 |

***RSU Activity***

RSU activity under during the year ended December 31, 2012 was as follows:

| | Outstanding RSUs | | | |
|---|---|---|---|---|
| | Number of Shares | Weighted Average Exercise Price Per Share | Weighted Average Remaining Contractual Term | Aggregate Intrinsic Value |
| | (In thousands) | (In dollars) | (In years) | (In thousands) |
| December 31, 2011 | 177 | 27.86 | | |
| RSUs granted | 51 | 31.79 | | |
| RSUs vested | (105) | 28.77 | | |
| RSUs cancelled | (11) | 32.42 | | |
| December 31, 2012 | 112 | $ 28.36 | 1.08 | $ 4,419 |

Total intrinsic value of RSUs vested during the years ended December 31, 2012 , 2011 and 2010 was $3.7 million , $4.4 million and $3.1 million , respectively. The total fair value of RSUs vested during the years ended December 31, 2012 , 2011 and 2010 was $3.0 million , $2.6 million and $2.6 million , respectively.

***Valuation and Expense Information***

The fair value of each option award is estimated on the date of grant using a Black-Scholes-Merton option valuation model that uses the assumptions noted in the following table. The estimated expected term of options granted is derived from historical data on employee exercise and post-vesting employment termination behavior. The risk free interest rate is based on the implied yield currently available on U.S. Treasury securities with a remaining term commensurate with the estimated expected term. Expected volatility is based on historical volatility over the most recent period commensurate with the estimated expected term.

The following table sets forth the weighted-average assumptions used to fair value option grants during the years ended December 31, 2012 , 2011 and 2010 based on its historical experience:

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Expected life (in years) | 4.4 | 4.4 | 4.4 |
| Risk-free interest rate | 0.64% | 1.63% | 1.74% |
| Expected volatility | 52.09% | 50.31% | 49.87% |
| Dividend yield | — | — | — |

The weighted average estimated fair value of options granted during the years ended December 31, 2012 , 2011 and 2010 including shares granted under the ESPP and not including restricted stock units, were $13.99 , $14.29 and $10.80 , respectively.

The following table sets forth the total stock-based compensation expense resulting from stock options, restricted stock awards, and the Employee Stock Purchase Plan included in the Company's Consolidated Statements of Operations (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Cost of revenue | $ 1,347 | $ 999 | $ 913 |
| Research and development | 2,787 | 2,476 | 2,271 |
| Sales and marketing | 4,751 | 5,136 | 4,710 |
| General and administrative | 5,487 | 5,151 | 4,307 |
| Total | $ 14,372 | $ 13,762 | $ 12,201 |

The Company recognizes these compensation costs net of the estimated forfeitures on a straight-line basis over the requisite service period of the award, which is generally the option vesting term of four years .

Total stock-based compensation cost capitalized in inventory was less than $250,000 in each of the years ended December 31, 2012 , 2011 and 2010 .

As of December 31, 2012 , $24.1 million of total unrecognized compensation cost related to stock options is expected to be recognized over a weighted-average period of 1.4 years . As of December 31, 2012 , $1.7 million of total unrecognized compensation cost related to non-vested RSUs is expected to be recognized over a weighted-average period of 0.8 years .

***401(k) Plan***

In April 2000, the Company adopted the NETGEAR 401(k) Plan to which employees may contribute up to 100% of salary subject to the legal maximum. In the first quarter of 2012, the Company began matching 50% of contributions for employees that remain active with the company through the end of the fiscal year, up to a maximum of $6,000 in employee contributions. During the year ended December 31, 2012 , the Company recognized $689,000 in expenses related to the 401(k) match. No match was offered in 2010 and 2011 and thus no expenses were recorded related to matching employee contributions during those years.

**Note 12. Segment Information, Operations by Geographic Area and Customer Concentration**

Operating segments are components of an enterprise about which separate financial information is available and is regularly evaluated by management, namely the Chief Operating Decision Maker ("CODM") of an organization, in order to determine operating and resource allocation decisions. By this definition, the Company operates in three specific business units: retail, commercial, and service provider. The retail business unit consists of high performance, dependable and easy-to-use home networking, storage and digital media products to connect people with the Internet and their content and devices. The commercial business unit consists of business networking, storage and security solutions without the cost and complexity of Big IT. The service provider business unit consists of made-to-order and retail proven, whole home networking solutions sold to service providers for sale to their customers. Each business unit is managed by a Senior Vice President/General Manager. The Company believes this structure enables it to better focus its efforts on the Company's core customer segments and allows it to be more nimble and opportunistic as a company overall.

In the second quarter of 2012, the CEO began temporarily serving as interim General Manager of the commercial business unit due to the previous general manager's departure from the Company. The CEO will continue to serve as interim general manager until a replacement is established.

The results of the reportable segments are derived directly from the Company's management reporting system. The results are based on the Company's method of internal reporting and are not necessarily in conformity with accounting principles generally accepted in the United States. Management measures the performance of each segment based on several metrics, including contribution income. Segment contribution income includes all product line segment revenues less the related cost of sales, research and development and sales and marketing costs. Contribution income is used, in part, to evaluate the performance of, and allocate resources to, each of the segments. Certain operating expenses are not allocated to segments because they are separately managed at the corporate level. These unallocated indirect costs include corporate costs, such as corporate research and development, general

and administrative costs, stock-based compensation expenses, amortization of intangibles, acquisition-related integration costs, restructuring costs, litigation reserves and interest and other income (expense), net. The Company does not evaluate operating segments using discrete asset information.

Financial information for each reportable segment and a reconciliation of segment contribution income to income before income taxes is as follows (in thousands, except percentage data):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Net revenues: | | | |
| Retail | $ 504,797 | $ 481,795 | $ 435,484 |
| Commercial | 307,945 | 331,439 | 284,539 |
| Service provider | 459,179 | 367,784 | 182,029 |
| Total net revenues | $ 1,271,921 | $ 1,181,018 | $ 902,052 |
| Contribution income: | | | |
| Retail | $ 86,808 | $ 81,589 | $ 71,862 |
| *Retail contribution margin* | *17.2 %* | *16.9 %* | *16.5 %* |
| Commercial | 67,826 | 74,746 | 63,021 |
| *Commercial contribution margin* | *22.0 %* | *22.6 %* | *22.1 %* |
| Service Provider | 40,794 | 32,797 | 14,026 |
| *Service Provider contribution margin* | *8.9 %* | *8.9 %* | *7.7 %* |
| Total segment contribution income | 195,428 | 189,132 | 148,909 |
| Corporate and unallocated costs | (47,766) | (43,301) | (39,244) |
| Amortization of intangible assets (1) | (4,763) | (4,658) | (5,293) |
| Stock-based compensation expense | (14,372) | (13,762) | (12,201) |
| Restructuring and other charges | (1,190) | (2,094) | 88 |
| Acquisition related compensation and expense | (833) | (40) | (686) |
| Impact to cost of sales from acquisition accounting adjustments to inventory | — | (609) | — |
| Litigation reserves, net | (390) | 201 | (211) |
| Interest income | 498 | 477 | 426 |
| Other income (expense), net | 2,670 | (1,136) | (564) |
| Income before income taxes | $ 129,282 | $ 124,210 | $ 91,224 |

(1) Amount excludes amortization expense related to patents within purchased intangible assets in costs of revenues.

**NETGEAR, INC.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

The Company conducts business across three geographic regions: Americas, Europe, Middle-East and Africa (“EMEA”) and Asia Pacific ("APAC'). Net revenue by geography comprises gross revenue less such items as end-user customer rebates and other sales incentives deemed to be a reduction of net revenue per the authoritative guidance for revenue recognition, sales returns and price protection. For reporting purposes revenue is attributed to each geographic region based on the location of the customer. The following table shows net revenue by geography for the periods indicated (in thousands):

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| United States | $ 660,998 | $ 570,143 | $ 454,179 |
| Americas (excluding U.S.) | 18,421 | 16,913 | 12,363 |
| United Kingdom | 184,404 | 165,522 | 100,357 |
| EMEA (excluding U.K.) | 273,320 | 312,191 | 239,892 |
| APAC | 134,778 | 116,249 | 95,261 |
| Total net revenue | $ 1,271,921 | $ 1,181,018 | $ 902,052 |

Long-lived assets, comprising fixed assets, are reported based on the location of the asset. Long-lived assets by geographic location are as follows (in thousands):

| | December 31, 2012 | December 31, 2011 |
|---|---|---|
| United States | $ 9,898 | $ 9,901 |
| Americas (excluding U.S.) | 36 | 44 |
| EMEA | 1,173 | 331 |
| China | 6,763 | 4,909 |
| APAC (excluding China) | 1,155 | 699 |
| | $ 19,025 | $ 15,884 |

Significant customers as a percentage of net revenues are as follows:

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2012 | 2011 | 2010 |
| Best Buy Co., Inc. and Affiliates (Retailer) | 9% | 11% | 15% |
| Ingram Micro, Inc. and Affiliates (Distributor) | 9% | 10% | 11% |
| All others | 82% | 79% | 74% |
| | 100% | 100% | 100% |

**Note 13. Fair Value Measurements**

The Company determines the fair values of its financial instruments based on a fair value hierarchy, which requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. The classification of a financial asset or liability within the hierarchy is based upon the lowest level input that is significant to the fair value measurement. The fair value hierarchy prioritizes the inputs into three levels that may be used to measure fair value:

Level 1: Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;

Level 2: Quoted prices in markets that are not active, or inputs which are observable, either directly or indirectly, for substantially the full term of the asset or liability;

Level 3: Prices or valuation techniques that require inputs that are both significant to the fair value measurement and unobservable (i.e., supported by little or no market activity).

The following tables summarize assets and liabilities measured at fair value on a recurring basis as of December 31, 2012 and 2011 (in thousands):

| | As of December 31, 2012 | | | |
|---|---|---|---|---|
| | Total | Quoted market prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
| Cash equivalents-money-market funds | 3,061 | 3,061 | — | — |
| Available-for-sale securities-Treasuries (1) | 225,062 | 225,062 | — | — |
| Available-for-sale securities-Certificates of Deposit (1) | 2,783 | 2,783 | — | — |
| Foreign currency forward contracts (2) | 1,144 | — | 1,144 | — |
| Total assets measured at fair value | 232,050 | 230,906 | 1,144 | — |

(1) Included in short-term investments on the Company's consolidated balance sheet.
(2) Included in prepaid expenses and other current assets on the Company's consolidated balance sheet.

| | As of December 31, 2012 | | | |
|---|---|---|---|---|
| | Total | Quoted market prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
| Foreign currency forward contracts (3) | (1,619) | — | (1,619) | — |
| Total liabilities measured at fair value | (1,619) | — | (1,619) | — |

(3) Included in other accrued liabilities on the Company's consolidated balance sheet.

| | As of December 31, 2011 | | | |
|---|---|---|---|---|
| | Total | Quoted market prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
| Cash equivalents-money-market funds | $ 24,844 | $ 24,844 | $ — | $ — |
| Available-for-sale securities-Treasuries (1) | 144,703 | 144,703 | — | — |
| Available-for-sale securities-Certificates of Deposit (1) | 94 | 94 | — | — |
| Foreign currency forward contracts (2) | 1,237 | — | 1,237 | — |
| Total assets measured at fair value | $ 170,878 | $ 169,641 | $ 1,237 | $ — |

(1) Included in short-term investments on the Company's consolidated balance sheet.
(2) Included in prepaid expenses and other current assets on the Company's consolidated balance sheet.

| | As of December 31, 2011 | | | |
|---|---|---|---|---|
| | Total | Quoted market prices in active markets (Level 1) | Significant other observable inputs (Level 2) | Significant unobservable inputs (Level 3) |
| Foreign currency forward contracts (3) | $ (723) | $ — | $ (723) | $ — |
| Total liabilities measured at fair value | $ (723) | $ — | $ (723) | $ — |

(3) Included in other accrued liabilities on the Company's consolidated balance sheet.

**NETGEAR, INC.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**

The Company's investments in cash equivalents and available-for-sale securities are classified within Level 1 of the fair value hierarchy because they are valued based on quoted market prices in active markets. The Company enters into foreign currency forward contracts with only those counterparties that have long-term credit ratings of A+/A2 or higher. The Company's foreign currency forward contracts are classified within Level 2 of the fair value hierarchy as they are valued using pricing models that take into account the contract terms as well as currency rates and counterparty credit rates. The Company verifies the reasonableness of these pricing models using observable market data for related inputs into such models. Additionally, the Company includes an adjustment for non-performance risk in the recognized measure of fair value of derivative instruments. At December 31, 2012 and December 31, 2011 , the adjustment for non-performance risk did not have a material impact on the fair value of the Company's foreign currency forward contracts. The carrying value of non-financial assets and liabilities measured at fair value in the financial statements on a recurring basis, including accounts receivable and accounts payable, approximate fair value due to their short maturities.

**Note 14. Subsequent Event**

***Acquisition of AirCard Division of Sierra Wireless, Inc.***

On January 28, 2013, the Company entered into an agreement to acquire select assets and operations of the Sierra Wireless, Inc. (“Sierra Wireless”) AirCard business, including customer relationships, certain intellectual property, inventory and fixed assets for a total purchase consideration of $138 million in cash. The Company believes this acquisition will accelerate the mobile initiative of the service provider business unit to become a global leader in providing the latest in LTE data networking access devices. The transaction is subject to customary closing conditions, including the receipt of necessary regulatory clearances. Accordingly, the final purchase price is subject to adjustments to be made after closing.

**QUARTERLY FINANCIAL DATA**

**(In thousands, except per share amounts)**

**(Unaudited)**

The following table presents unaudited quarterly financial information for each of the Company’s last eight quarters. This information has been derived from t he Company’s unaudited financial statements and has been prepared on the same basis as the audited Consolidated Financial Statements appearing elsewhere in this Annual Report on Form 10-K. In the opinion of management, all necessary adjustments, consisting only of normal recurring adjustments, have been included to state fairly the quarterly results.

| | December 31, 2012 | September 30, 2012 | July 1, 2012 | April 1, 2012 |
|---|---|---|---|---|
| Net revenue | $ 310,436 | $ 315,210 | $ 320,655 | $ 325,620 |
| Gross profit | $ 91,378 | $ 97,688 | $ 94,638 | $ 99,849 |
| Provision for income taxes | $ 12,325 | $ 9,920 | $ 9,933 | $ 10,565 |
| Net income | $ 16,079 | $ 23,791 | $ 21,522 | $ 25,147 |
| Net income per share—basic | $ 0.42 | $ 0.62 | $ 0.57 | $ 0.67 |
| Net income per share—diluted | $ 0.41 | $ 0.61 | $ 0.56 | $ 0.65 |

| | December 31, 2011 | October 2, 2011 | July 3, 2011 | April 3, 2011 |
|---|---|---|---|---|
| Net revenue | $ 309,155 | $ 301,800 | $ 291,240 | $ 278,823 |
| Gross profit | $ 94,973 | $ 96,310 | $ 90,377 | $ 87,786 |
| Provision for income taxes | $ 10,780 | $ 6,178 | $ 6,742 | $ 9,142 |
| Net income | $ 22,835 | $ 26,747 | $ 20,597 | $ 21,189 |
| Net income per share—basic | $ 0.61 | $ 0.71 | $ 0.56 | $ 0.58 |
| Net income per share—diluted | $ 0.60 | $ 0.70 | $ 0.54 | $ 0.57 |

**Item 9.** ***Changes in and Disagreements With Accountants on Accounting and Financial Disclosure***

None.

**Item 9A.** ***Controls and Procedures***

***Management's Report on Internal Control Over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act). 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.

Our management, including our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2012 . In making this assessment, our management used the criteria established in Internal Control—Integrated Framework, issued by The Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on management's assessment using those criteria, our management concluded that our internal control over financial reporting was effective as of December 31, 2012 . The effectiveness of our internal control over financial reporting as of December 31, 2012 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which is included in this Annual Report on Form 10-K.

***Changes in Internal Control Over Financial Reporting***

There was no change in our internal control over financial reporting that occurred during the fourth quarter of fiscal year 2012 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

***Evaluation of Disclosure Controls and Procedures***

Based on an evaluation under the supervision and with the participation of our management (including our Chief Executive Officer and Chief Financial Officer), our Chief Executive Officer and Chief Financial Officer have concluded that our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act were effective as of the end of the period covered by this Annual Report on Form 10-K to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is (i) recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and (ii) accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

**Item 9B.** ***Other Information***

None.

**PART III**

Certain information required by Part III is incorporated herein by reference from our proxy statement related to our 2013 Annual Meeting of Stockholders, which we intend to file no later than 120 days after the end of the fiscal year covered by this Form 10-K.

**Item 10.** ***Directors, Executive Officers and Corporate Governance***

The information required by this Item concerning our directors, executive officers, standing committees and procedures by which stockholders may recommend nominees to our Board of Directors, is incorporated by reference to the sections of our Proxy Statement under the headings "Information Concerning the Nominees and Incumbent Nominees," "Board and Committee Meetings," "Audit Committee" and "Section 16(a) Beneficial Ownership Reporting Compliance," and to the information contained in the section captioned "Executive Officers of the Registrant" included under Part I of this Annual Report on Form 10-K.

We have adopted a Code of Ethics that applies to our Chief Executive Officer and senior financial officers, as required by the SEC. The current version of our Code of Ethics can be found on our Internet site at http://www.netgear.com. Additional

information required by this Item regarding our Code of Ethics is incorporated by reference to the information contained in the section captioned "Corporate Governance Policies and Practices" in our Proxy Statement.

We intend to satisfy the disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of our Code of Ethics by posting such information on our website at http://www.netgear.com within four business days following the date of such amendment or waiver.

**Item 11.** ***Executive Compensation***

The information required by this Item is incorporated by reference to the sections of our Proxy Statement under the headings "Compensation Discussion and Analysis," "Executive Compensation," "Director Compensation," "Fiscal Year 2012 Director Compensation," "Compensation Committee Interlocks and Insider Participation," and "Report of the Compensation Committee of the Board of Directors."

**Item 12.** ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

The additional information required by this Item is incorporated by reference to the information contained in the section captioned " Equity Compensation Plan Information " in our Proxy Statement.

The additional information required by this Item is incorporated by reference to the information contained in the section captioned "Security Ownership of Certain Beneficial Owners and Management" in our Proxy Statement.

**Item 13.** ***Certain Relationships and Related Transactions, and Director Independence***

The information required by this Item is incorporated by reference to the information contained in the section captioned "Election of Directors" and "Related Party Transactions" in our Proxy Statement.

**Item 14.** ***Principal Accounting Fees and Services***

The information required by this Item related to audit fees and services is incorporated by reference to the information contained in the section captioned "Ratification of Appointment of Independent Registered Public Accounting Firm" appearing in our Proxy Statement.

## PART IV

**Item 15.** ***Exhibits, Financial Statement Schedule***

(a) The following documents are filed as part of this report:

*(1) Financial Statements.*



*(2) Financial Statement Schedule.*

The following financial statement schedule of NETGEAR, Inc. for the fiscal years ended December 31, 2012 , 2011 and 2010 is filed as part of this Form 10-K and should be read in conjunction with the Consolidated Financial Statements of NETGEAR, Inc.

**Schedule II—Valuation and Qualifying Accounts**
**(In thousands)**

| | Balance at Beginning of Year | Additions | Deductions | Balance at End of Year |
|---|---|---|---|---|
| Allowance for doubtful accounts: | | | | |
| Year ended December 31, 2012 | $ 1,335 | $ 43 | $ (122) | $ 1,256 |
| Year ended December 31, 2011 | 1,481 | (21) | (125) | 1,335 |
| Year ended December 31, 2010 | 2,038 | (202) | (355) | 1,481 |
| | | | | |
| Allowance for sales returns and product warranty: | | | | |
| Year ended December 31, 2012 | 58,206 | 100,806 | (95,322) | 63,690 |
| Year ended December 31, 2011 | 50,786 | 86,310 | (78,890) | 58,206 |
| Year ended December 31, 2010 | 42,603 | 78,280 | (70,097) | 50,786 |
| | | | | |
| Allowance for price protection: | | | | |
| Year ended December 31, 2012 | 3,930 | 9,925 | (12,072) | 1,783 |
| Year ended December 31, 2011 | 3,147 | 15,688 | (14,905) | 3,930 |
| Year ended December 31, 2010 | 1,545 | 13,011 | (11,409) | 3,147 |

*(3) Exhibits.*

The exhibits listed in the accompanying Index to Exhibits are filed or incorporated by reference as part of this report.

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## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Annual Report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Jose, State of California, on the 26th day of February 2013.

NETGEAR, INC.
Registrant

/s/ PATRICK C.S. LO

**Patrick C.S. Lo**
**Chairman of the Board and Chief Executive Officer**
**(Principal Executive Officer)**

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Patrick C.S. Lo and Christine M. Gorjanc, and each of them, his attorneys-in-fact, each with the power of substitution, for him in any and all capacities, to sign any and all amendments to this Report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof.

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

| Signature | Title | Date |
|---|---|---|
| /S/ PATRICK C.S. LO<br>**Patrick C.S. Lo** | Chairman of the Board and Chief Executive Officer<br>*(Principal Executive Officer)* | February 26, 2013 |
| /S/ CHRISTINE M. GORJANC<br>**Christine M. Gorjanc** | Chief Financial Officer<br>*(Principal Financial and Accounting Officer)* | February 26, 2013 |
| <br>**Jocelyn Carter-Miller** | Director | |
| /S/ RALPH E. FAISON<br>**Ralph E. Faison** | Director | February 26, 2013 |
| /S/ A. TIMOTHY GODWIN<br>**A. Timothy Godwin** | Director | February 26, 2013 |
| /S/ JEF GRAHAM<br>**Jef Graham** | Director | February 26, 2013 |
| /S/ LINWOOD A. LACY, JR.<br>**Linwood A. Lacy, Jr.** | Director | February 26, 2013 |
| /S/ GREGORY J. ROSSMANN<br>**Gregory J. Rossmann** | Director | February 26, 2013 |
| /S/ BARBARA V. SCHERER<br>**Barbara V. Scherer** | Director | February 26, 2013 |
| /S/ JULIE A. SHIMER<br>**Julie A. Shimer** | Director | February 26, 2013 |

## INDEX TO EXHIBITS

| Exhibit Number | Description |
|---|---|
| 2.1** | Asset Purchase Agreement, dated as of September 22, 2008, by and among CP Secure International Holding Limited, the stockholders thereof and the registrant(1) |
| 3.3 | Amended and Restated Certificate of Incorporation of the registrant(2) |
| 3.5 | Amended and Restated Bylaws of the registrant(2) |
| 4.1 | Form of registrant's common stock certificate(2) |
| 10.1 | Form of Indemnification Agreement for directors and officers(2) |
| 10.2# | 2000 Stock Option Plan and forms of agreements thereunder(2) |
| 10.3# | 2003 Stock Plan and forms of agreements thereunder, as amended |
| 10.4# | 2003 Employee Stock Purchase Plan, as amended |
| 10.5# | Offer Letter, dated December 3, 1999, between the registrant and Patrick C.S. Lo(2) |
| 10.8# | Offer Letter, dated December 9, 1999, between the registrant and Mark G. Merrill(2) |
| 10.9# | Employment Agreement, dated November 4, 2002, between the registrant and Michael F. Falcon(2) |
| 10.10# | Employment Agreement, dated January 6, 2003, between the registrant and Charles T. Olson(2) |
| 10.12# | Employment Agreement, dated November 16, 2005, between the registrant and Christine M. Gorjanc(3) |
| 10.14* | Distributor Agreement, dated March 1, 1997, between the registrant and Tech Data Product Management, Inc.(2) |
| 10.15* | Distributor Agreement, dated March 1, 1996, between the registrant and Ingram Micro Inc., as amended by Amendment dated October 1, 1996 and Amendment No. 2 dated July 15, 1998(2) |
| 10.24* | Warehousing Agreement, dated July 5, 2001, between the registrant and APL, Logistics Americas, Ltd.(2) |
| 10.25* | Distribution Operation Agreement, dated April 27, 2001, between the registrant and DSV Solutions B.V. (formerly Furness Logistics BV)(2) |
| 10.26* | Distribution Operation Agreement, dated December 1, 2001, between the registrant and Kerry Logistics (Hong Kong) Limited(2) |
| 10.33# | 2006 Long Term Incentive Plan and forms of agreements thereunder(4) |
| 10.34 | Agreement and Plan of Merger, dated as of July 26, 2006, by and among the registrant, SKJM Holdings Corporation, SkipJam Corp., Michael Spilo, Jonathan Daub, Francis Refol, Dennis Aldover and Zhicheng Qiu(5) |
| 10.35 | Asset Purchase Agreement, dated as of January 28, 2013, by and among the registrant, NETGEAR Holdings Limited, NETGEAR International Limited, NETGEAR Canada Limited, NETGEAR Australia PTY, LTD, Sierra Wireless, Inc., Sierra Wireless, Inc., Sierra Wireless America, Inc. and Sierra Wireless (Australia) PTY LTD |
| 10.41** | Agreement and Plan of Merger, dated as of May 2, 2007, by and among the registrant, NAS Holdings Corporation, Infrant Technologies, Inc., certain Infrant shareholders thereof, and Paul Tien as the Holders Representative (6) |
| 10.44 | Office Lease, dated as of September 25, 2007, by and between the registrant and BRE/Plumeria, LLC (7) |
| 10.45 | First Amendment to Office Lease, dated as of April 23, 2008, by and between the registrant and BRE/Plumeria, LLC (8) |
| 10.46# | Amended and Restated 2006 Long-Term Incentive Plan (9) |
| 10.47# | NETGEAR, Inc. Executive Bonus Plan (9) |
| 10.49# | Amendment to Employment Agreement, dated December 29, 2008, between the registrant and Michael F. Falcon (10) |
| 10.50# | Amendment to Employment Agreement, dated December 31, 2008, between the registrant and Christine Gorjanc (10) |
| 10.51# | Amendment to Offer Letter, dated December 23, 2008, between the registrant and Patrick Lo (10) |
| 10.52# | Amendment to Offer Letter, dated December 28, 2008, between the registrant and Mark Merrill (10) |
| 10.53# | Amendment to Employment Agreement, dated December 24, 2008, between the registrant and Chuck Olson (10) |
| 10.54# | Amendment to Employment Agreement, dated December 30, 2008, between the registrant and Michael Werdann (10) |
| 10.55# | Amendment #2 to Employment Agreement, dated September 21, 2009, between the registrant and Christine Gorjanc (11) |
| 10.56# | Change of Control and Severance Agreement dated March 31, 2011 by and between NETGEAR, Inc. and David Soares (12) |
| 21.1 | List of subsidiaries and affiliates (13) |
| 23.1 | Consent of PricewaterhouseCoopers LLP, Independent Registered Public Accounting Firm (13) |
| 24.1 | Power of Attorney (included on signature page) (13) |
| 31.1 | Certification of Chief Executive Officer pursuant to Securities Exchange Act Rules 13a-14(a) / 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (13) |

| | |
|---|---|
| 31.2 | Certification of Chief Financial Officer pursuant to Securities Exchange Act Rules 13a-14(a) / 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (13) |
| 32.1 | Certification of 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) |
| 32.2 | Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (13) |
| 101.INS*** | XBRL Instance Document |
| 101.SCH*** | XBRL Taxonomy Extension Schema Document |
| 101.CAL*** | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.DEF*** | XBRL Taxonomy Extension Definition Linkbase Document |
| 101.LAB*** | XBRL Taxonomy Extension Label Linkbase Document |
| 101.PRE*** | XBRL Taxonomy Extension Presentation Linkbase Document |

| | |
|---|---|
| # | Indicates management contract or compensatory plan or arrangement. |
| * | Confidential treatment has been granted as to certain portions of this Exhibit. |
| ** | Registrant hereby agrees to furnish a copy of the omitted schedules and exhibits to the Securities and Exchange Commission upon its request. |
| *** | XBRL (Extensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purpose of Section 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections. |
| (1) | Incorporated by reference to the exhibit bearing the same number filed with the Registrant's Current Report on Form 8-K filed on September 23, 2008 with the Securities and Exchange Commission. |
| (2) | Incorporated by reference to an exhibit filed with the Registrant's Registration Statement on Form S-1 (Registration Statement 333-104419), which the Securities and Exchange Commission declared effective on July 30, 2003. |
| (3) | Incorporated by reference to Exhibit 10.32 of the Registrant's Current Report on Form 8-K filed on November 22, 2005 with the Securities and Exchange Commission. |
| (4) | Incorporated by reference to the copy included in the Registrant's Proxy Statement for the 2006 Annual Meeting of Stockholders filed on April 21, 2006 with the Securities and Exchange Commission. |
| (5) | Incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K filed on July 27, 2006 with the Securities and Exchange Commission. |
| (6) | Incorporated by reference to Exhibit 2.1 of the Registrant's Current Report on Form 8-K filed on May 3, 2007 with the Securities and Exchange Commission. |
| (7) | Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed on September 27, 2007 with the Securities and Exchange Commission. |
| (8) | Incorporated by reference to Exhibit 10.1 of the Registrant's Quarterly Report on Form 10-Q filed on May 9, 2008 with the Securities and Exchange Commission. |
| (9) | Incorporated by reference to the copy included in the Registrant's Proxy Statement for the 2008 Annual Meeting of Stockholders filed on April 28, 2008 with the Securities and Exchange Commission. |
| (10) | Incorporated by reference to the copy included in the Registrant's Annual Report on Form 10-K filed on March 4, 2009 with the Securities and Exchange Commission. |
| (11) | Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed on September 21, 2009 with the Securities and Exchange Commission. |
| (12) | Incorporated by reference to Exhibit 10.1 of the Registrant's Current Report on Form 8-K filed on April 4, 2011 with the Securities and Exchange Commission. |
| (13) | Previously filed as an exhibit to the Registrant's Annual Report on Form 10-K for the fiscal year ended December 31, 2011. |

**NETGEAR, INC.**

**2003 STOCK PLAN**

**(as amended effective upon the 2006 annual meeting of stockholders)**

1. Purposes of the Plan . The purposes of this 2003 Stock Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees, Directors and Consultants, and
- to promote the success of the Company's business.

Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant. Stock Purchase Rights and Stock Appreciation Rights may also be granted under the Plan.

2. Definitions . As used herein, the following definitions shall apply:

(a) " Administrator " means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.

(b) " Applicable Laws " means the requirements relating to the administration of stock option plans under U.S. state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where Options or Stock Purchase Rights are, or will be, granted under the Plan.

(c) " Board " means the Board of Directors of the Company.

(d) " Change in Control " means the occurrence of any of the following events:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities;

(ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets;

(iii) A change in the composition of the Board occurring within a two-year period, as a result of which fewer than a majority of the directors are Incumbent Directors. "Incumbent Directors" means directors who either (A) are Directors as of the effective date of the Plan, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but will not include an individual whose

election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Company); or

(iv) The consummation of a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity or its parent outstanding immediately after such merger or consolidation.

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

(f) " Committee " means a committee of Directors appointed by the Board in accordance with Section 4 of the Plan.

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

(h) " Company " means NETGEAR, Inc., a Delaware corporation.

(i) " Consultant " means any natural person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services to such entity.

(j) " Director " means a member of the Board.

(k) " Disability " means total and permanent disability as defined in Section 22(e)(3) of the Code.

(l) " Employee " means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. A Service Provider shall not cease to be an Employee in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, then three (3) months following the 91 st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

(m) " Exchange Act " means the Securities Exchange Act of 1934, as amended.

(n) " Fair Market Value " means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the day of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Administrator.

(o) " Incentive Stock Option " means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(p) " Inside Director " means a Director who is an Employee.

(q) " Nonstatutory Stock Option " means an Option not intended to qualify as an Incentive Stock Option.

(r) " Notice of Grant " means a written or electronic notice evidencing certain terms and conditions of an individual Option or Stock Purchase Right grant. The Notice of Grant is part of the Option Agreement.

(s) " Officer " means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(t) " Option " means a stock option granted pursuant to the Plan.

(u) " Option Agreement " means an agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(v) " Optioned Stock " means the Common Stock subject to an Option, Stock Purchase Right, or Stock Appreciation Right.

(w) " Optionee " means the holder of an outstanding Option, Stock Purchase Right or Stock Appreciation Right granted under the Plan.

(x) " Outside Director " means a Director who is not an Employee.

(y) " Parent " means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(z) " Plan " means this 2003 Stock Plan.

(aa) " Qualifying Board Retirement " means an Outside Director's termination from the Board, including pursuant to the Outside Director's death or Disability, if such termination follows (i) five full years of Board service and attainment of age 62 or greater, or (ii) ten full years of Board service.

(bb) " Restricted Stock " means shares of Common Stock acquired pursuant to a grant of Stock Purchase Rights under Section 11 of the Plan.

(cc) " Restricted Stock Purchase Agreement " means a written agreement between the Company and the Optionee evidencing the terms and restrictions applying to stock purchased under a

Stock Purchase Right. The Restricted Stock Purchase Agreement is subject to the terms and conditions of the Plan and the Notice of Grant.

(dd) " Rule 16b-3 " means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(ee) " SAR Agreement " means an agreement between the Company and an Optionee evidencing the terms and conditions of an individual SAR grant. The SAR Agreement is subject to the terms and conditions of the Plan and the Notice of Grant.

(ff) " Stock Appreciation Right " or " SAR " means an award that pursuant to Section 12 is designated as a SAR.

(gg) " Section 16(b) " means Section 16(b) of the Exchange Act.

(hh) " Service Provider " means an Employee, Director or Consultant.

(ii) " Share " means a share of the Common Stock, as adjusted in accordance with Section 15 of the Plan.

(jj) " Stock Purchase Right " means the right to purchase Common Stock pursuant to Section 11 of the Plan, as evidenced by a Notice of Grant.

(kk) " Subsidiary " means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan . Subject to the provisions of Section 15 of the Plan, the maximum aggregate number of Shares that may be optioned and sold under the Plan is 750,000 Shares plus (a) any Shares which have been reserved but not issued under the Company's 2000 Stock Option Plan (the "2000 Plan") as of the date of stockholder approval of this Plan and (b) any Shares returned to the 2000 Plan as a result of termination of options or repurchase of Shares issued under the 2000 Plan. The shares may be authorized, but unissued, or reacquired shares of our common stock.

If an Option, Stock Purchase Right or Stock Appreciation Right expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated); provided , however, that Shares that have actually been issued under the Plan, whether upon exercise of an Option or right, shall not be returned to the Plan and shall not become available for future distribution under the Plan, except that if Shares of Restricted Stock are repurchased by the Company at their original purchase price, such Shares shall become available for future grant under the Plan.

4. Administration of the Plan .

(a) Procedure .

(i) Multiple Administrative Bodies . Different Committees with respect to different groups of Service Providers may administer the Plan.

(ii) Section 162(m) . To the extent that the Administrator determines it to be desirable to qualify Options granted hereunder as "performance-based compensation" within the meaning of

Section 162(m) of the Code, the Plan shall be administered by a Committee of two or more "outside directors" within the meaning of Section 162(m) of the Code.

(iii) Rule 16b-3 . To the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder shall be structured to satisfy the requirements for exemption under Rule 16b-3.

(iv) Other Administration . Other than as provided above, the Plan shall be administered by (A) the Board or (B) a Committee, which committee shall be constituted to satisfy Applicable Laws.

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

(i) to determine the Fair Market Value;

(ii) to select the Service Providers to whom Options, Stock Purchase Rights and Stock Appreciation Rights may be granted hereunder;

(iii) to determine the number of shares of Common Stock to be covered by each Option, Stock Purchase Right and Stock Appreciation Right granted hereunder;

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

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Option, Stock Purchase Right or Stock Appreciation Right granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options, Stock Purchase Rights and Stock Appreciation Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option, Stock Purchase Right or Stock Appreciation Right or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of satisfying applicable foreign laws;

(viii) to modify or amend each Option, Stock Purchase Right or Stock Appreciation Right (subject to Section 17(c) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;

(ix) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option, Stock Purchase Right or Stock Appreciation Right that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by an Optionee to

have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(x) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option, Stock Purchase Right or Stock Appreciation Right previously granted by the Administrator;

(xi) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision . The Administrator's decisions, determinations and interpretations shall be final and binding on all Optionees and any other holders of Options, Stock Purchase Rights or Stock Appreciation Rights.

5. Eligibility . Nonstatutory Stock Options, Stock Purchase Rights and Stock Appreciation Rights may be granted to Service Providers. Incentive Stock Options may be granted only to Employees.

6. Limitations .

(a) Each Option shall be designated in the Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds $100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(b) Neither the Plan nor any Option, Stock Purchase Right or Stock Appreciation Right shall confer upon an Optionee any right with respect to continuing the Optionee's relationship as a Service Provider with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such relationship at any time, with or without cause.

(c) The following limitations shall apply to grants of Options:

(i) No Service Provider shall be granted, in any fiscal year of the Company, Options to purchase more than 750,000 Shares.

(ii) In connection with his or her initial service, a Service Provider may be granted Options to purchase up to an additional 750,000 Shares, which shall not count against the limit set forth in subsection (i) above.

(iii) The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 15.

(iv) If an Option is cancelled in the same fiscal year of the Company in which it was granted (other than in connection with a transaction described in Section 15), the cancelled Option will be counted against the limits set forth in subsections (i) and (ii) above. For this purpose, if the exercise price of an Option is reduced, the transaction will be treated as a cancellation of the Option and the grant of a new Option.

7. Term of Plan . Subject to Section 21 of the Plan, the Plan shall become effective upon its adoption by the Board. It shall continue in effect for a term of ten (10) years unless terminated earlier under Section 17 of the Plan.

8. Term of Option . The term of each Option shall be stated in the Option Agreement. In the case of an Incentive Stock Option, the term shall be ten (10) years from the date of grant or such shorter term as may be provided in the Option Agreement. Moreover, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

9. Option Exercise Price and Consideration .

(a) Exercise Price . The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, subject to the following:

(i) In the case of an Incentive Stock Option

(1) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(2) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be determined by the Administrator and shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(iii) Notwithstanding the foregoing, Options may be granted with a per Share exercise price of less than 100% of the Fair Market Value per Share on the date of grant pursuant to a merger or other corporate transaction.

(b) Waiting Period and Exercise Dates . At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions that must be satisfied before the Option may be exercised.

(c) Form of Consideration . The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration may consist, subject to Applicable Laws, entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which, in the case of Shares acquired directly or indirectly from the Company, (A) have been owned by the Optionee for more than six (6) months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

(v) consideration received by the Company under a cashless exercise program implemented by the Company in connection with the Plan;

(vi) a reduction in the amount of any Company liability to the Optionee, including any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

10. Exercise of Option .

(a) Procedure for Exercise; Rights as a Stockholder . Any Option granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement. Unless the Administrator provides otherwise, vesting of Options granted hereunder shall be suspended during any unpaid leave of absence. An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 15 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Relationship as a Service Provider . If an Optionee ceases to be a Service Provider, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for three (3) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his

or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee . If an Optionee ceases to be a Service Provider as a result of the Optionee's Disability, the Optionee may exercise his or her Option within such period of time as is specified in the Option Agreement to the extent the Option is vested on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Option Agreement). In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following the Optionee's termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee . If an Optionee dies while a Service Provider, the Option may be exercised following the Optionee's death within such period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of death (but in no event may the option be exercised later than the expiration of the term of such Option as set forth in the Option Agreement), by the Optionee's designated beneficiary, provided such beneficiary has been designated prior to Optionee's death in a form acceptable to the Administrator. If no such beneficiary has been designated by the Optionee, then such Option may be exercised by the personal representative of the Optionee's estate or by the person(s) to whom the Option is transferred pursuant to the Optionee's will or in accordance with the laws of descent and distribution. In the absence of a specified time in the Option Agreement, the Option shall remain exercisable for twelve (12) months following Optionee's death. If, at the time of death, Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan. Notwithstanding anything in the Plan to the contrary, an Optionee's service shall be deemed to have terminated as a result of Optionee's death if Optionee dies at any time prior to the expiration of the time period specified in the Option Agreement or, if no time period is specified in the Option Agreement, at any time prior to the expiration of three (3) months following the date on which Optionee ceased to be a Service Provider.

11. Stock Purchase Rights .

(a) Rights to Purchase . Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. All Stock Purchase Rights must have a purchase price of not less than the Fair Market Value of the Shares. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing or electronically, by means of a Notice of Grant, of the terms, conditions and restrictions related to the offer, including the number of Shares that the offeree shall be entitled to purchase, the price to be paid, and the time within which the offeree must accept such offer. The offer shall be accepted by execution of a Restricted Stock Purchase Agreement in the form determined by the Administrator.

(b) Repurchase Option . Unless the Administrator determines otherwise, the Restricted Stock Purchase Agreement shall grant the Company a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's service with the Company for any reason (including death or Disability). The purchase price for Shares repurchased pursuant to the Restricted Stock Purchase Agreement shall be the original price paid by the purchaser and may be paid by cancellation of any

indebtedness of the purchaser to the Company. The repurchase option shall lapse at a rate determined by the Administrator.

(c) Other Provisions . The Restricted Stock Purchase Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion.

(d) Rights as a Stockholder . Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Company. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 15 of the Plan.

12. Stock Appreciation Rights . Each SAR grant shall be evidenced by a SAR Agreement that shall specify the terms of the SAR, the conditions of exercise, the expiration date, and such other terms and conditions as the Administrator, in its sole discretion, shall determine. Notwithstanding the foregoing, the rules of Sections 9(c) and 10 of the Plan also shall apply to SARs. Upon exercise of a SAR, an Optionee shall be entitled to receive a payment from the Company (at the discretion of the Administrator, in cash, in Shares of equivalent value, or in some combination thereof) in an amount determined by multiplying (i) the difference between the Fair Market Value of a Share on the date of exercise over the exercise price, by (ii) the number of Shares with respect to which the SAR is exercised.

13. Transferability of Options, Stock Purchase Rights and Stock Appreciation Rights . Unless determined otherwise by the Administrator, an Option, Stock Purchase Right or Stock Appreciation Right may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee. If the Administrator makes an Option, Stock Purchase Right or Stock Appreciation Right transferable, such Option, Stock Purchase Right or Stock Appreciation Right shall contain such additional terms and conditions as the Administrator deems appropriate.

14. [REDACTED]

15. Adjustments Upon Changes in Capitalization, Dissolution or Liquidation or Change in Control .

(a) Changes in Capitalization . Subject to any required action by the stockholders of the Company, the number of shares of Common Stock that have been authorized for issuance under the Plan but as to which no Options, Stock Purchase Rights or Stock Appreciation Rights have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, Stock Purchase Right or Stock Appreciation Right, the number of Shares that may be added annually to the Plan pursuant to Section 3(i) and the number of shares of Common Stock as well as the price per share of Common Stock covered by each such outstanding Option, Stock Purchase Right or Stock Appreciation Right, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein,

no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option, Stock Purchase Right or Stock Appreciation Right.

(b) Dissolution or Liquidation . In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Optionee as soon as practicable prior to the effective date of such proposed transaction. The Administrator in its discretion may provide for an Optionee to have the right to exercise his or her Option or Stock Appreciation Right until ten (10) days prior to such transaction as to all of the Optioned Stock covered thereby, including Shares as to which the Option or Stock Appreciation Right would not otherwise be exercisable. In addition, the Administrator may provide that any Company repurchase option applicable to any Shares purchased upon exercise of an Option or Stock Purchase Right shall lapse as to all such Shares, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised, an Option, Stock Purchase Right or Stock Appreciation Right will terminate immediately prior to the consummation of such proposed action.

(c) Change in Control . In the event of a Change in Control, each outstanding Option, Stock Purchase Right (or restricted stock issued pursuant to a Stock Purchase Right) and Stock Appreciation Right shall be assumed or an equivalent option or right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. With respect to Options or SARs granted to an Outside Director under the Plan, such Options or SARs shall vest in full upon a Change in Control.

In the event that the successor corporation refuses to assume or substitute for the Option, Stock Purchase Right (or restricted stock issued pursuant to a Stock Purchase Right) or Stock Appreciation Right, the Optionee shall fully vest in and have the right to exercise the Option, Stock Purchase Right (or restricted stock issued pursuant to a Stock Purchase Right) or Stock Appreciation Right as to all of the Optioned Stock, including Shares as to which it would not otherwise be vested or exercisable. If an Option, Stock Purchase Right (or restricted stock issued pursuant to a Stock Purchase Right) or Stock Appreciation Right becomes fully vested and exercisable in lieu of assumption or substitution in the event of a Change in Control, the Administrator shall notify the Optionee in writing or electronically that the Option, Stock Purchase Right or Stock Appreciation Right shall be fully vested and exercisable for a period of fifteen (15) days from the date of such notice, and the Option, Stock Purchase Right or Stock Appreciation Right shall terminate upon the expiration of such period, or with respect to restricted stock issued pursuant to a Stock Purchase Right, that such restricted stock shall become 100% vested immediately prior to the Change in Control.

For the purposes of this subsection (c), the Option, Stock Purchase Right (or restricted stock issued pursuant to a Stock Purchase Right) or Stock Appreciation Right shall be considered assumed if, following the Change in Control, the option or right confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option, Stock Purchase Right (or restricted stock issued pursuant to a Stock Purchase Right) or Stock Appreciation Right immediately prior to the Change in Control, the consideration (whether stock, cash, or other securities or property) or, in the case of a Stock Appreciation Right upon the exercise of which the Administrator determines to pay cash, the fair market value of the consideration, received in the Change in Control by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the Change in Control is not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option, Stock Purchase

Right (or restricted stock issued pursuant to a Stock Purchase Right) or Stock Appreciation Right, for each Share of Optioned Stock subject to the Option, Stock Purchase Right (or restricted stock issued pursuant to a Stock Purchase Right) or Stock Appreciation Right, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the Change in Control.

16. Date of Grant . The date of grant of an Option, Stock Purchase Right or Stock Appreciation Right shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, Stock Purchase Right or Stock Appreciation Right, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

17. Amendment and Termination of the Plan .

(a) Amendment and Termination . The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval . The Company shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Applicable Laws. The Company shall not effect an option or SAR repricing or underwater option or SAR exchange with respect to Options or SARs granted under the Plan without first obtaining stockholder approval thereof.

(c) Effect of Amendment or Termination . No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options, Stock Purchase Rights and Stock Appreciation Rights granted under the Plan prior to the date of such termination.

18. Conditions Upon Issuance of Shares .

(a) Legal Compliance . Shares shall not be issued pursuant to the exercise of an Option, Stock Purchase Right or Stock Appreciation Right unless the exercise of such Option, Stock Purchase Right or Stock Appreciation Right and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Company with respect to such compliance.

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

19. Inability to Obtain Authority . The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

20. Reservation of Shares . The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

21. Stockholder Approval . The Plan shall be subject to approval by the stockholders of the Company within twelve (12) months after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under Applicable Laws.

**NETGEAR, INC.**
**2003 STOCK PLAN**
**STOCK OPTION AGREEMENT**

Unless otherwise defined herein, the terms defined in the 2003 Stock Plan shall have the same defined meanings in this Stock Option Agreement.

## I. NOTICE OF STOCK OPTION GRANT

Optionee Name and address

You have been granted an option to purchase Common Stock of the Company, subject to the terms and conditions of the Plan and this Option Agreement, as follows:

Date of Grant

Vesting Commencement Date

Exercise Price per Share

Total Number of Shares Granted

Total Exercise Price

Type of Option: ____ Incentive Stock Option

____ Nonstatutory Stock Option

Term/Expiration Date:

Vesting Schedule :

This Option shall be exercisable, in whole or in part, in accordance with the following schedule:

25% of the Shares subject to the Option shall vest twelve months after the Vesting Commencement Date, and 1/48 of the Shares subject to the Option shall vest each month thereafter on the same day of the month as the Vesting Commencement Date (and if there is no corresponding day, on the last day of the month), subject to the Optionee continuing to be a Service Provider on such dates.

Accelerated Vesting :

Notwithstanding the vesting schedule above, 100% of the Shares subject to the Option shall vest (i) upon a Change in Control; or (ii) Optionee's termination of employment as a result of Retirement (as defined below), death or Disability.

For purposes of this Option Agreement, "Retirement" shall mean termination of Optionee's employment with the Company or any Parent or Subsidiary for retirement purposes if such termination occurs (1) on or after his or her sixty-fifth birthday; or (2) on or after his or her fifty-fifth birthday with the written consent of the Chief Executive Officer of the Company or, in the case of the Chief Executive Officer's retirement, with the consent of the Administrator. In no event shall termination of a Consultant's services with the Company or any Parent or Subsidiary be treated as a Retirement under this Option Agreement.

Termination Period :

Except as described below, this Option may be exercised for three months after Optionee ceases to be a Service Provider. Upon Optionee's termination of employment as a result of Retirement or Disability, this Option may be exercised for three years after Optionee ceases to be an Employee. Upon the death of a Option while employed by the Company or any Parent or Subsidiary or after terminating by reason of Retirement or Disability, the Option shall be exercisable by not later than the earliest of one year after the date of death or three years after the date of termination due to Retirement or Disability. In no event shall this Option be exercised later than the Term/Expiration Date as provided above and may be subject to earlier termination as provided in Section 15(c) of the Plan.

By your acceptance and/or exercise of this Option, you and the Company agree that this Option is granted under and governed by the terms and conditions of the Plan and this Option Agreement. Optionee has reviewed the Plan and this Option Agreement in their entirety, has had an opportunity to obtain the advice of counsel prior to executing this Option Agreement and fully understands all provisions of the Plan and Option Agreement. Optionee hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Administrator upon any questions relating to the Plan and Option Agreement. Optionee further agrees to notify the Company upon any change in his or her residence address.

## II. **AGREEMENT**

### A. Grant of Option .

The Plan Administrator of the Company hereby grants to the Optionee named in the Notice of Grant attached as Part I of this Agreement (the "Optionee") an option (the "Option") to purchase the number of Shares, as set forth in the Notice of Grant, at the exercise price per share set forth in the Notice of Grant (the "Exercise Price"), subject to the terms and conditions of the Plan, which is incorporated herein by reference. Subject to Section 16(c) of the Plan, in the event of a conflict between the terms and conditions of the Plan and the terms and conditions of this Option Agreement, the terms and conditions of the Plan shall prevail.

If designated in the Notice of Grant as an Incentive Stock Option ("ISO"), this Option is intended to qualify as an Incentive Stock Option under Section 422 of the Code. However, if this

Option is intended to be an Incentive Stock Option, to the extent that it exceeds the $100,000 rule of Code Section 422(d) it shall be treated as a Nonstatutory Stock Option ("NSO").

B. Exercise of Option .

(a) Right to Exercise . This Option is exercisable during its term in accordance with the Vesting Schedule set out in the Notice of Grant and the applicable provisions of the Plan and this Option Agreement.

(b) Method of Exercise . This Option is exercisable by delivery of an exercise notice, in the form attached as Exhibit A (the "Exercise Notice"), which shall state the election to exercise the Option, the number of Shares in respect of which the Option is being exercised (the "Exercised Shares"), and such other representations and agreements as may be required by the Company pursuant to the provisions of the Plan. The Exercise Notice shall be completed by the Optionee and delivered to the Stock Administrator of the Company. The Exercise Notice shall be accompanied by payment of the aggregate Exercise Price as to all Exercised Shares. This Option shall be deemed to be exercised upon receipt by the Company of such fully executed Exercise Notice accompanied by such aggregate Exercise Price.

No Shares shall be issued pursuant to the exercise of this Option unless such issuance and exercise complies with Applicable Laws. Assuming such compliance, for income tax purposes the Exercised Shares shall be considered transferred to the Optionee on the date the Option is exercised with respect to such Exercised Shares.

C. Method of Payment .

Payment of the aggregate Exercise Price shall be by any of the following, or a combination thereof, at the election of the Optionee:

1. cash;
2. check;
3. consideration received by the Company under a formal cashless exercise program implemented by the Company in connection with the Plan; or
4. surrender of other Shares which have a Fair Market Value on the date of surrender equal to the aggregate Exercise Price of the Exercised Shares, provided that accepting such Shares, in the sole discretion of the Administrator, will not result in any adverse accounting consequences to the Company.

D. Non-Transferability of Option .

This Option may not be transferred in any manner otherwise than by will or by the laws of descent or distribution and may be exercised during the lifetime of Optionee only by the Optionee. The terms of the Plan and this Option Agreement shall be binding upon the executors, administrators, heirs, successors and assigns of the Optionee.

E. Term of Option .

This Option may be exercised only within the term set out in the Notice of Grant, and may be exercised during such term only in accordance with the Plan and the terms of this Option Agreement.

F. Tax Obligations .

(a) Withholding Taxes . Optionee agrees to make appropriate arrangements with the Company (or the Parent or Subsidiary employing or retaining Optionee) for the satisfaction of all Federal, state, local and foreign income and employment tax withholding requirements applicable to the Option exercise. Optionee acknowledges and agrees that the Company may refuse to honor the exercise and refuse to deliver Shares if such withholding amounts are not delivered at the time of exercise.

(b) Notice of Disqualifying Disposition of ISO Shares . If the Option granted to Optionee herein is an ISO, and if Optionee sells or otherwise disposes of any of the Shares acquired pursuant to the ISO on or before the later of (1) the date two years after the Date of Grant, or (2) the date one year after the date of exercise, the Optionee shall immediately notify the Company in writing of such disposition. Optionee agrees that Optionee may be subject to income tax withholding by the Company on the compensation income recognized by the Optionee.

(c) Code Section 409A . Under Code Section 409A, an option that vests after December 31, 2004 (or that vested on or prior to such date but which was materially modified after October 3, 2004) that was granted with a per Share exercise price that is determined by the Internal Revenue Service (the "IRS") to be less than the Fair Market Value of a Share on the date of grant (a "Discount Option") may be considered "deferred compensation." A Discount Option may result in (i) income recognition by Optionee prior to the exercise of the option, (ii) an additional twenty percent (20%) federal income tax, and (iii) potential penalty and interest charges. The Discount Option may also result in additional state income, penalty and interest charges to the Optionee. Optionee acknowledges that the Company cannot and has not guaranteed that the IRS will agree that the per Share exercise price of this Option equals or exceeds the Fair Market Value of a Share on the Date of Grant in a later examination. Optionee agrees that if the IRS determines that the Option was granted with a per Share exercise price that was less than the Fair Market Value of a Share on the date of grant, Optionee will be solely responsible for Optionee's costs related to such a determination.

G. Entire Agreement; Governing Law .

The Plan is incorporated herein by reference. The Plan and this Option Agreement con-sti-tute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Optionee with respect to the subject matter hereof, and may not be modified adversely to the Optionee's interest except by means of a writing signed by the Company and Optionee. This agreement is governed by the internal substantive laws, but not the choice of law rules, of California.

H. NO GUARANTEE OF CONTINUED SERVICE.

OPTIONEE ACKNOWLEDGES AND AGREES THAT THE VESTING OF SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY BY CONTINUING AS A SERVICE PROVIDER AT THE WILL OF THE COMPANY (AND NOT THROUGH THE ACT OF BEING HIRED, BEING GRANTED AN OPTION OR PURCHASING SHARES HEREUNDER). OPTIONEE FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE

TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED ENGAGEMENT AS A SERVICE PROVIDER FOR THE VESTING PERIOD, FOR ANY PERIOD, OR AT ALL, AND SHALL NOT INTERFERE WITH OPTIONEE'S RIGHT OR THE COMPANY'S RIGHT TO TERMINATE OPTIONEE'S RELATIONSHIP AS A SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

**EXHIBIT A**

**NETGEAR, INC.**

**2003 STOCK PLAN**
**EXERCISE NOTICE**

NETGEAR, Inc.
350 East Plumeria Drive
Santa Clara, CA 95134

Attention: Stock Administrator

1. Exercise of Option . Effective as of today, _____, _____, the undersigned ("Purchaser") hereby elects to purchase _____ shares (the "Shares") of the Common Stock of NETGEAR, Inc. (the "Company") under and pursuant to the 2003 Stock Plan (the "Plan") and the Stock Option Agreement dated, _____ (the "Option Agreement"). Subject to adjustment in accordance with Section 15 of the Plan, the purchase price for the Shares shall be $____ _, as required by the Option Agreement.

2. Delivery of Payment . Purchaser herewith delivers to the Company the full purchase price for the Shares.

3. Representations of Purchaser . Purchaser acknowledges that Purchaser has received, read and understood the Plan and the Option Agreement and agrees to abide by and be bound by their terms and conditions.

4. Rights as Shareholder . Until the issuance (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company) of the Shares, no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exer-cise of the Option. The Shares so acquired shall be issued to the Optionee as soon as practicable after exercise of the Option. No adjustment will be made for a divi-dend or other right for which the record date is prior to the date of issuance, except as pro-vided in Sec-tion 14 of the Plan.

5. Tax Consultation . Purchaser understands that Purchaser may suffer adverse tax consequences as a result of Purchaser's purchase or disposition of the Shares. Purchaser represents that Purchaser has consulted with any tax consultants Purchaser deems advisable in connection with the purchase or dis-position of the Shares and that Purchaser is not relying on the Company for any tax advice.

6. Entire Agreement; Governing Law . The Plan and Option Agreement are incorporated herein by reference. This Agreement, the Plan and the Option Agreement con-sti-tute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Purchaser with respect to the subject matter hereof, and may not be modified adversely to the Purchaser's interest except by means of a writing signed by the Company and Purchaser. This agreement is governed by the internal substantive laws, but not the choice of law rules, of California.

Submitted by: Accepted by:

PURCHASER: NETGEAR, INC.

Signature By

Print Name Its

Address : Address :

350 East Plumeria Drive

Santa Clara, CA 95134

Date Received

**NETGEAR, INC.**

**2003 EMPLOYEE STOCK PURCHASE PLAN**

(amended March 23, 2012)

The following constitute the provisions of the Employee Stock Purchase Plan of NETGEAR, Inc.

1. Purpose . The purpose of the Plan is to provide employees of the Company and its Designated Subsidiaries with an opportunity to purchase Common Stock of the Company through accumulated payroll deductions. It is the intention of the Company to have the Plan qualify as an "Employee Stock Purchase Plan" under Section 423 of the Code, although the Company makes no undertaking or representation to maintain such qualification. In addition, this Plan document authorizes the grant of options under a non-423(b) Plan ("Non-423(b) Component") which do not qualify under Section 423(b) of the Code. The provisions of the Plan, accordingly, shall be construed so as to extend and limit participation in a uniform and nondiscriminatory basis consistent with the requirements of Section 423 unless the offering is made under the Non-423(b) Component of the Plan.

2. Definitions .

(a) " Administrator " shall mean the Board or any Committee designated by the Board to administer the Plan pursuant to Section 14.

(b) " Board " shall mean the Board of Directors of the Company.

(c) " Change of Control " shall mean the occurrence of any of the following events:

(i) Any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities;

(ii) The consummation of the sale or disposition by the Company of all or substantially all of the Company's assets;

(iii) The consummation of a merger or consolidation of the Company, with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent) at least fifty percent (50%) of the total voting power represented by the voting

securities of the Company, or such surviving entity or its parent outstanding immediately after such merger or consolidation; or

(iv) A change in the composition of the Board, as a result of which fewer than a majority of the Directors are Incumbent Directors. "Incumbent Directors" shall mean Directors who either (A) are Directors of the Company, as applicable, as of the date hereof, or (B) are elected, or nominated for election, to the Board with the affirmative votes of at least a majority of those Directors whose election or nomination was not in connection with any transaction described in subsections (i), (ii) or (iii) or in connection with an actual or threatened proxy contest relating to the election of Directors of the Company.

(d) " Code " shall mean the Internal Revenue Code of 1986, as amended.

(e) " Code Section 423(b) Plan " shall mean an employee stock purchase plan which is designed to meet the requirements set forth in Section 423(b) of the Code, as amended. The provisions of the Code Section 423(b) Plan should be construed, administered and enforced in accordance with Section 423(b).

(f) " Committee " means a committee appointed by the Board.

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

(h) " Company " shall mean NETGEAR, Inc., a Delaware corporation.

(i) " Compensation " shall mean all base straight time gross earnings, commissions, bonuses, overtime and shift premiums, but exclusive of payments for any other compensation. The Administrator may establish, in its discretion and on a uniform and nondiscriminatory basis, a different definition of Compensation prior to an applicable Offering Date, which definition may vary among Participants who are participating in separate Offering Periods or the Non-423(b) Component of the Plan.

(j) " Designated Subsidiary " shall mean any Subsidiary selected by the Administrator as eligible to participate in the Plan.

(k) " Director " shall mean a member of the Board.

(l) " Eligible Employee " shall mean any individual who is a common law employee of the Company or any Designated Subsidiary and whose customary employment with the Company or Designated Subsidiary is at least twenty (20) hours per week and more than five (5) months in any calendar year except for certain employees of certain Designated Subsidiaries that are participating in the Non-423(b) Component of the Plan that the Administrator may, from time to time, designate as ineligible to participate in the Plan. For purposes of the Plan, the employment

relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company. Where the period of leave exceeds three (3) months and the individual's right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated three (3) months and one (1) day following the commencement of such leave.

(m) " Exchange Act " shall mean the Securities Exchange Act of 1934, as amended.

(n) " Exercise Date " for Offering Periods commencing on and after August 1, 2012, shall mean February 15 and August 15 of each year, or the immediately preceding Trading Day if February 15 or August 15 is not a Trading Day.

(o) " Fair Market Value " shall mean, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the Nasdaq Global Select Market, the Nasdaq Global Market or the Nasdaq Capital Market of the Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, its Fair Market Value shall be the mean of the closing bid and asked prices for the Common Stock on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Board.

(p) " Offering Date " shall mean the first Trading Day of each Offering Period.

(q) " Offering Periods " shall mean the periods of approximately six (6) months during which an option granted pursuant to the Plan may be exercised, and commencing on the first Trading Day on or after February 16 and August 16 of each year and terminating on the following August 15 and February 15, or the immediately preceding Trading Day if August 15 or February 15 is not a Trading Day; provided, however, that an Offering will commence on August 1, 2012 and terminate on February 15, 2013 with the next Offering Period to commence on February 19, 2013. The duration and timing of Offering Periods may be changed pursuant to Section 4 of this Plan.

(r) " Parent " shall mean a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(s) " Plan " shall mean this Employee Stock Purchase Plan, which includes a Code Section 423(b) Plan and a Non-423(b) Component.

(t) " Purchase Price " shall mean 85% of the Fair Market Value of a share of Common Stock on the Exercise Date; provided however, that the Purchase Price may be adjusted by the Administrator pursuant to Section 20.

(u) " Subsidiary " shall mean a "subsidiary corporation," whether now or hereafter existing, as defined in Section 424(f) of the Code.

(v) " Trading Day " shall mean a day on which national stock exchanges and the Nasdaq System are open for trading.

3. Eligibility .

(a) Offering Periods . Any Eligible Employee on a given Offering Date shall be eligible to participate in the Plan.

(b) Limitations . Any provisions of the Plan to the contrary notwithstanding, no Eligible Employee shall be granted an option under the Plan (i) to the extent that, immediately after the grant, such Eligible Employee (or any other person whose stock would be attributed to such Eligible Employee pursuant to Section 424(d) of the Code) would own capital stock of the Company or any Parent or Subsidiary of the Company and/or hold outstanding options to purchase such stock possessing five percent (5%) or more of the total combined voting power or value of all classes of the capital stock of the Company or of any Parent or Subsidiary of the Company, or (ii) to the extent that his or her rights to purchase stock under all employee stock purchase plans (as defined in Section 423 of the Code) of the Company or any Parent or Subsidiary of the Company accrues at a rate which exceeds Twenty-Five Thousand Dollars ($25,000) worth of stock (determined at the Fair Market Value of the shares at the time such option is granted) for each calendar year in which such option is outstanding at any time, as determined in accordance with Section 423 of the Code and the regulations thereunder.

4. Offering Periods . The Plan shall be implemented by consecutive Offering Periods with a new Offering Period commencing on the first Trading Day on or after February 16 and August 16 of each year, or on such other date as the Board shall determine, and continuing thereafter until terminated in accordance with Section 20 hereof, except that an Offering will commence on August 1, 2012 and terminate on February 15, 2013 with the next Offering Period to commence on February 19, 2013. The Administrator shall have the power to change the duration of Offering Periods (including the commencement dates thereof)

with respect to future offerings without shareholder approval if such change is announced prior to the scheduled beginning of the first Offering Period to be affected thereafter.

5. Participation . An Eligible Employee may become a participant in the Plan by completing a subscription agreement authorizing payroll deductions in the form of Exhibit A to this Plan and filing it with the Company's payroll office prior to the applicable Offering Date.

6. Payroll Deductions .

(a) At the time a participant files his or her subscription agreement, he or she shall elect to have payroll deductions made on each pay day during the Offering Period in an amount not exceeding 10% of the Compensation which he or she receives on each pay day during the Offering Period; provided, however, that should a pay day occur on an Exercise Date, a participant shall have the payroll deductions made on such day applied to his or her account under the new Offering Period. A participant's subscription agreement shall remain in effect for successive Offering Periods unless terminated as provided in Section 10 hereof.

(b) Payroll deductions for a participant shall commence on the first payday following the Offering Date and shall end on the last payday in the Offering Period to which such authorization is applicable, unless sooner terminated by the participant as provided in Section 10 hereof.

(c) All payroll deductions made for a participant shall be credited to his or her account under the Plan and shall be withheld in whole percentages only. A participant may not make any additional payments into such account.

(d) A participant may discontinue his or her participation in the Plan as provided in Section 10 hereof, or may increase or decrease the rate of his or her payroll deductions during the Offering Period by completing or filing with the Company a new subscription agreement authorizing a change in payroll deduction rate. The Administrator may, in its discretion, limit the nature and/or number of participation rate changes during any Offering Period. The change in rate shall be effective with the first full payroll period following five (5) business days after the Company's receipt of the new subscription agreement unless the Company elects to process a given change in participation more quickly.

(e) Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 3(b) hereof, a participant's payroll deductions may be decreased to zero percent (0%) at any time during an Offering Period. Payroll deductions shall recommence at the rate originally elected by the participant effective as of the beginning of the first Offering Period which is scheduled to end in the following calendar year, unless terminated by the participant as provided in Section 10 hereof.

(f) At the time the option is exercised, in whole or in part, or at the time some or all of the Company's Common Stock issued under the Plan is disposed of, the participant must make adequate provision for the Company's federal, state, or other tax liability payable to any authority, national insurance, social security or other tax withholding obligations, if any, which arise upon the exercise of the option or the disposition of the Common Stock. At any time, the Company or the employing Designated Subsidiary, as applicable, may, but shall not be obligated to, withhold from the participant's compensation the amount necessary for the Company to meet applicable withholding obligations, including any withholding required to make available to the Company or the employing Designated Subsidiary, as applicable, any tax deductions or benefits attributable to sale or early disposition of Common Stock by the Eligible Employee.

7. Grant of Option . On the Offering Date of each Offering Period, each Eligible Employee participating in such Offering Period shall be granted an option to purchase on each Exercise Date during such Offering Period (at the applicable Purchase Price) up to a number of shares of the Company's Common Stock determined by dividing such Eligible Employee's payroll deductions accumulated prior to such Exercise Date and retained in the participant's account as of the Exercise Date by the applicable Purchase Price; provided that in no event shall an Eligible Employee be permitted to purchase during each Offering Period more than 10,000 shares of the Company's Common Stock (subject to any adjustment pursuant to Section 19), and provided further that such purchase shall be subject to the limitations set forth in Sections 3(b) and 13 hereof. The Eligible Employee may accept the grant of such option by turning in a completed Subscription Agreement (attached hereto as Exhibit A ) to the Company on or prior to an Offering Date. The Administrator may, for future Offering Periods, increase or decrease, in its absolute discretion, the maximum number of shares of the Company's Common Stock an Eligible Employee may purchase during each Offering Period. Exercise of the option shall occur as provided in Section 8 hereof, unless the participant has withdrawn pursuant to Section 10 hereof. The option shall expire on the last day of the Offering Period.

8. Exercise of Option .

(a) Unless a participant withdraws from the Plan as provided in Section 10 hereof, his or her option for the purchase of shares shall be exercised automatically on the Exercise Date, and the maximum number of full shares subject to the option shall be purchased for such participant at the applicable Purchase Price with the accumulated payroll deductions in his or her account. No fractional shares shall be purchased; any payroll deductions accumulated in a participant's account which are not sufficient to purchase a full share shall be retained in the participant's account for the subsequent Offering Period, subject to earlier withdrawal by the participant as provided in Section 10 hereof. Any other funds left over in a participant's account after the Exercise Date shall be returned to the participant. During a participant's lifetime, a participant's option to purchase shares hereunder is exercisable only by him or her.

(b) If the Administrator determines that, on a given Exercise Date, the number of shares with respect to which options are to be exercised may exceed (i) the number of shares of

Common Stock that were available for sale under the Plan on the Offering Date of the applicable Offering Period, or (ii) the number of shares available for sale under the Plan on such Exercise Date, the Administrator may in its sole discretion (x) provide that the Company shall make a pro rata allocation of the shares of Common Stock available for purchase on such Offering Date or Exercise Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Exercise Date, and continue all Offering Periods then in effect, or (y) provide that the Company shall make a pro rata allocation of the shares available for purchase on such Offering Date or Exercise Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all participants exercising options to purchase Common Stock on such Exercise Date, and terminate any or all Offering Periods then in effect pursuant to Section 20 hereof. The Company may make a pro rata allocation of the shares available on the Offering Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional shares for issuance under the Plan by the Company's shareholders subsequent to such Offering Date.

9. Delivery . As soon as reasonably practicable after each Exercise Date on which a purchase of shares occurs, the Company shall arrange the delivery to each participant the shares purchased upon exercise of his or her option in a form determined by the Administrator, including by means of electronic notice.

10. Withdrawal .

(a) A participant may withdraw all but not less than all the payroll deductions credited to his or her account and not yet used to exercise his or her option under the Plan at any time prior to the Exercise Date for an Offering Period by giving written notice to the Company in the form of Exhibit B to this Plan. All of the participant's payroll deductions credited to his or her account shall be paid to such participant promptly after receipt of notice of withdrawal and such participant's option for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of shares shall be made for such Offering Period. If a participant withdraws from an Offering Period, payroll deductions shall not resume at the beginning of the succeeding Offering Period unless the participant delivers to the Company a new subscription agreement.

(b) A participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan which may hereafter be adopted by the Company or in succeeding Offering Periods which commence after the termination of the Offering Period from which the participant withdraws.

11. Termination of Employment . Upon a participant ceasing to be an Eligible Employee, for any reason, he or she shall be deemed to have elected to withdraw from the Plan and the payroll deductions credited to such participant's account during the Offering Period but not yet used to purchase shares of

Common Stock under the Plan shall be returned to such participant or, in the case of his or her death, to the person or persons entitled thereto under Section 15 hereof, and such participant's option shall be automatically terminated.

12. Interest . No interest shall accrue on the payroll deductions of a participant in the Plan.

13. Stock .

(a) Subject to adjustment upon changes in capitalization of the Company as provided in Section 19 hereof, the maximum number of shares of the Company's Common Stock which shall be made available for sale under the Plan shall be 1,000,000 shares of Common Stock.

(b) Until the shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), a participant shall only have the rights of an unsecured creditor with respect to such shares, and no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to such shares.

(c) Shares of Common Stock to be delivered to a participant under the Plan shall be registered in the name of the participant or in the name of the participant and his or her spouse.

14. Administration . The Administrator shall administer the Plan and shall have full and exclusive discretionary authority to construe, interpret and apply the terms of the Plan, to determine eligibility and to adjudicate all disputed claims filed under the Plan. Every finding, decision and determination made by the Administrator shall, to the full extent permitted by law, be final and binding upon all parties.

15. Designation of Beneficiary .

(a) A participant may file a written designation of a beneficiary who is to receive any shares and cash, if any, from the participant's account under the Plan in the event of such participant's death subsequent to an Exercise Date on which the option is exercised but prior to delivery to such participant of such shares and cash. In addition, a participant may file a written designation of a beneficiary who is to receive any cash from the participant's account under the Plan in the event of such participant's death prior to exercise of the option. If a participant is married and the designated beneficiary is not the spouse, spousal consent shall be required for such designation to be effective.

(b) Such designation of beneficiary may be changed by the participant at any time by written notice. In the event of the death of a participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more

dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

(c) All beneficiary designations shall be in such form and manner as the Administrator may designate from time to time.

16. Transferability . Neither payroll deductions credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares under the Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided in Section 15 hereof) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be without effect, except that the Company may treat such act as an election to withdraw funds from an Offering Period in accordance with Section 10 hereof.

17. Use of Funds . All payroll deductions received or held by the Company under the Plan may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions. Until shares are issued, participants shall only have the rights of an unsecured creditor.

18. Reports . Individual accounts shall be maintained for each participant in the Plan. Statements of account shall be given to participating Eligible Employees at least annually, which statements shall set forth the amounts of payroll deductions, the Purchase Price, the number of shares purchased and the remaining cash balance, if any.

19. Adjustments Upon Changes in Capitalization, Dissolution, Liquidation or Change of Control .

(a) Changes in Capitalization . Subject to any required action by the shareholders of the Company, the maximum number of shares of the Company's Common Stock which shall be made available for sale under the Plan, the maximum number of shares each participant may purchase each Offering Period (pursuant to Section 7), as well as the price per share and the number of shares of Common Stock covered by each option under the Plan which has not yet been exercised shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other change in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Administrator, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an option.

(b) Dissolution or Liquidation . In the event of the proposed dissolution or liquidation of the Company, the Offering Period then in progress shall be shortened by setting a new Exercise Date (the "New Exercise Date"), and shall terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Administrator. The New Exercise Date shall be before the date of the Company's proposed dissolution or liquidation. The Administrator shall notify each participant in writing, at least ten (10) business days prior to the New Exercise Date, that the Exercise Date for the participant's option has been changed to the New Exercise Date and that the participant's option shall be exercised automatically on the New Exercise Date, unless prior to such date the participant has withdrawn from the Offering Period as provided in Section 10 hereof.

(c) Change of Control . In the event of a Change of Control, each outstanding option shall be assumed or an equivalent option substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation refuses to assume or substitute for the option, any Offering Periods then in progress shall be shortened by setting a New Exercise Date and any Offering Periods then in progress shall end on the New Exercise Date. The New Exercise Date shall occur before the date of the Company's proposed Change of Control. The Administrator shall notify each participant in writing, at least ten (10) business days prior to the New Exercise Date, that the Exercise Date for the participant's option has been changed to the New Exercise Date and that the participant's option shall be exercised automatically on the New Exercise Date, unless prior to such date the participant has withdrawn from the Offering Period as provided in Section 10 hereof.

20. Amendment or Termination .

(a) The Administrator may at any time and for any reason terminate, amend or suspend the Plan. Except as otherwise provided in the Plan, no such termination can affect options previously granted, provided that an Offering Period may be terminated by the Administrator on any Exercise Date if the Administrator determines that the termination of the Offering Period or the Plan is in the best interests of the Company and its shareholders. Except as provided in Section 19 and this Section 20 hereof, no amendment may make any change in any option theretofore granted which adversely affects the rights of any participant. To the extent necessary to comply with Section 423 of the Code (or any successor rule or provision or any other applicable law, regulation or stock exchange rule), the Company shall obtain shareholder approval in such a manner and to such a degree as required.

(b) Without shareholder consent and without regard to whether any participant rights may be considered to have been "adversely affected," the Administrator shall be entitled to change the Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other

than U.S. dollars, permit payroll withholding in excess of the amount designated by a participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each participant properly correspond with amounts withheld from the participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable which are consistent with the Plan.

(c) In the event the Administrator determines that the ongoing operation of the Plan may result in unfavorable financial accounting consequences, the Board may, in its discretion and, to the extent necessary or desirable, modify, amend or terminate the Plan to reduce or eliminate such accounting consequence including, but not limited to:

(i) increasing the Purchase Price for any Offering Period including an Offering Period underway at the time of the change in Purchase Price;

(ii) shortening any Offering Period so that the Offering Period ends on a new Exercise Date, including an Offering Period underway at the time of the Board action; and

(iii) allocating shares.

Such modifications or amendments shall not require stockholder approval or the consent of any Plan participants.

21. Notices . All notices or other communications by a participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form and manner specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

22. Conditions Upon Issuance of Shares . Shares of Common Stock shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, and the requirements of any stock exchange upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

As a condition to the exercise of an option, the Company may require the person exercising such option to represent and warrant at the time of any such exercise that the shares are being purchased only for investment and without any present intention to sell or distribute such shares if, in the opinion of counsel for the Company, such a representation is required by any of the aforementioned applicable provisions of law.

23. Term of Plan . The Plan shall become effective upon the earlier to occur of its adoption by the Board of Directors or its approval by the shareholders of the Company. It shall continue in effect until terminated under Section 20 hereof.

**EXHIBIT A**

**NETGEAR, INC.**

**EMPLOYEE STOCK PURCHASE PLAN**

**SUBSCRIPTION AGREEMENT**

_____ Original Application  Offering Date:_____

_____ Change in Payroll Deduction Rate

_____ Change of Beneficiary(ies)

1. _____ hereby elects to participate in the NetGear, Inc. Employee Stock Purchase Plan (the "Employee Stock Purchase Plan") and subscribes to purchase shares of the Company's Common Stock in accordance with this Subscription Agreement and the Employee Stock Purchase Plan.

2. I hereby authorize payroll deductions from each paycheck in the amount of ____% of my Compensation on each payday (from 0 to 10%) during the Offering Period in accordance with the Employee Stock Purchase Plan. (Please note that no fractional percentages are permitted.)

3. I understand that said payroll deductions shall be accumulated for the purchase of shares of Common Stock at the applicable Purchase Price determined in accordance with the Employee Stock Purchase Plan. I understand that if I do not withdraw from an Offering Period, any accumulated payroll deductions will be used to automatically exercise my option and purchase Common Stock under the Employee Stock Purchase Plan.

4. I have received a copy of the complete Employee Stock Purchase Plan. I understand that my participation in the Employee Stock Purchase Plan is in all respects subject to the terms of the Plan. I understand that my ability to exercise the option under this Subscription Agreement is subject to shareholder approval of the Employee Stock Purchase Plan.

5. Shares of Common Stock purchased for me under the Employee Stock Purchase Plan should be issued in the name(s) of _____ (Eligible Employee or Eligible Employee and Spouse only).

6. I understand that if I dispose of any shares received by me pursuant to the Plan within 2 years after the Offering Date (the first day of the Offering Period during which I purchased such shares) or 1 year after the Exercise Date, whichever is later, I will be treated for federal income tax purposes as having received ordinary income at the time of such disposition in an amount equal to the excess of the Fair Market Value of the shares at the time such shares were purchased by me over the price which I paid for the shares. I hereby agree to notify the Company in writing within 30 days after the date of any disposition of my shares and I will make adequate provision for Federal, state or other tax withholding obligations, if any, which arise upon the disposition of the Common Stock . The Company may, but will not be obligated to, withhold from my

compensation the amount necessary to meet any applicable withholding obligation including any withholding necessary to make available to the Company any tax deductions or benefits attributable to sale or early disposition of Common Stock by me. If I dispose of such shares at any time after the expiration of the 2-year and 1-year holding periods, I understand that I will be treated for federal income tax purposes as having received income only at the time of such disposition, and that such income will be taxed as ordinary income only to the extent of an amount equal to the lesser of (a) the excess of the Fair Market Value of the shares at the time of such disposition over the purchase price which I paid for the shares, or (b) 15% of the Fair Market Value of the shares on the first day of the Offering Period. The remainder of the gain, if any, recognized on such disposition will be taxed as capital gain.

7. I hereby agree to be bound by the terms of the Employee Stock Purchase Plan. The effectiveness of this Subscription Agreement is dependent upon my eligibility to participate in the Employee Stock Purchase Plan.

8. In the event of my death, I hereby designate the following as my beneficiary(ies) to receive all payments and shares due me under the Employee Stock Purchase Plan:

NAME: (please print)_____

(First) (Middle) (Last)

_____ _

Relationship

_____ _____

Percentage of Benefit (Address)

NAME: (please print)_____

(First) (Middle) (Last)

_____ _____

Relationship

_____ _____

Percentage of Benefit (Address)

Employee's Social

Security Number: _____

Employee's Address: _____

_____

_____

I UNDERSTAND THAT THIS SUBSCRIPTION AGREEMENT SHALL REMAIN IN EFFECT THROUGHOUT SUCCESSIVE OFFERING PERIODS UNLESS TERMINATED BY ME.

Dated:_____ _

Signature of Employee

_

Spouse's Signature (If beneficiary other than spouse)

**EXHIBIT B**

**NETGEAR, INC.**

**EMPLOYEE STOCK PURCHASE PLAN**

**NOTICE OF WITHDRAWAL**

The undersigned participant in the Offering Period of the NETGEAR, Inc. Employee Stock Purchase Plan which began on _____, _____ (the "Offering Date") hereby notifies the Company that he or she hereby withdraws from the Offering Period and that such notice is being given prior to the Exercise Date for the Offering Period. He or she hereby directs the Company to pay to the undersigned as promptly as practicable all the payroll deductions credited to his or her account with respect to such Offering Period. The undersigned understands and agrees that his or her option for such Offering Period will be automatically terminated. The undersigned understands further that no further payroll deductions will be made for the purchase of shares in the current Offering Period and the undersigned shall be eligible to participate in succeeding Offering Periods only by delivering to the Company a new Subscription Agreement.

Name and Address of Participant:

_____

_____

_____

Signature:

_____

Date:_____

**EXECUTION COPY**

# ASSET PURCHASE AGREEMENT

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**by and among**

**NETGEAR, INC.,**

**NETGEAR HOLDINGS LIMITED,**

**NETGEAR INTERNATIONAL LIMITED,**

**NETGEAR CANADA LIMITED,**

**NETGEAR AUSTRALIA PTY LTD,**

**SIERRA WIRELESS, INC.,**

**SIERRA WIRELESS AMERICA, INC.,**

**and**

**SIERRA WIRELESS (AUSTRALIA) PTY LTD**

**January 28, 2013**

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**SCHEDULES**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this " Agreement ") is made and entered into as of January 28, 2013 by and among NETGEAR, INC., a Delaware corporation (" US Buyer "), NETGEAR HOLDINGS LIMITED, a limited company organized under the laws of Ireland and a subsidiary of US Buyer (" IP Buyer "), NETGEAR INTERNATIONAL LIMITED, a limited company organized under the laws of Ireland and a subsidiary of US Buyer (" International Buyer "), NETGEAR CANADA LIMITED, a corporation organized under the laws of the province of New Brunswick, Canada and a subsidiary of US Buyer (" Canadian Buyer "), NETGEAR AUSTRALIA PTY LTD, a proprietary company organized under the laws of Australia and a subsidiary of US Buyer (" Australian Buyer " and collectively with US Buyer, IP Buyer, International Buyer and Canadian Buyer, " Buyers "), and SIERRA WIRELESS, INC., a federal Canadian corporation (" Canadian Seller "), SIERRA WIRELESS AMERICA, INC., a Delaware corporation and a wholly owned subsidiary of Canadian Seller (" US Seller ") and SIERRA WIRELESS (AUSTRALIA) PTY LTD, a company organized under the laws of Australia and an indirect wholly owned subsidiary of Canadian Seller (" Australian Seller " and collectively with US Seller and Canadian Seller, " Sellers "). Each of US Buyer, IP Buyer, International Buyer, Canadian Buyer, Australian Buyer, Canadian Seller, US Seller and Australian Seller is referred to herein sometimes as a " Party " and together as the " Parties ."

**W I T N E S S E T H:**

WHEREAS, Canadian Seller is the parent corporation of a group of companies that are engaged in the development of wireless technologies and solutions for the machine-to-machine (" M2M ") and mobile computing markets; and

WHEREAS, the aforesaid mobile computing business includes, among other things, the AirCard Business, the assets of which are owned by or licensed or leased to Canadian Seller and certain of its Subsidiaries; and

WHEREAS, Buyers desire to purchase the AirCard Business from Sellers, and Sellers desire to sell the AirCard Business to Buyers, pursuant to a purchase and sale of the Acquired Assets and an assumption of the Assumed Liabilities (such transactions being referred to herein collectively as the " Transactions "); and

WHEREAS, Buyers and Sellers will enter into the Transition Services Agreement, effective upon the consummation of the Transactions at the Closing, which agreement will describe the services to be provided by the Sellers to the Buyers, and vice versa, for the orderly and effective transition of the AirCard Business to Buyers; and

WHEREAS, Buyers and Sellers desire to make certain representations, warranties, covenants and agreements, as more fully set forth in this Agreement, in connection with the Transactions.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements herein set forth, and intending to be legally bound hereby, the Parties hereby agree as follows:

## Article 1
## DEFINITIONS AND INTERPRETATIONS

1.1 Certain Definitions . For all purposes of and under this Agreement, the capitalized terms in this Section 1.1 shall have the meanings set forth below.

(a) " Accounting Firm " shall mean Deloitte LLP, and if such firm refuses or is unable to perform the requested services, Buyers and Sellers shall negotiate in good faith to agree upon a different, mutually acceptable accounting firm.

(b) " Accounts Payable " shall mean (i) all trade accounts payable and obligations to make payments to suppliers and other service providers of Sellers or any of their Subsidiaries, including all trade accounts payable representing amounts payable in respect of goods shipped or products sold or services rendered to Sellers or any of their Subsidiaries, (ii) all other accounts or notes payable by Sellers or any of their Subsidiaries, and (iii) any claim, remedy or other right related to any of the foregoing.

(c) " Accounts Receivable " means (i) all trade accounts receivable and other rights to payment from customers of Sellers or any of their Subsidiaries, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of Sellers or any of their Subsidiaries, (ii) all other accounts or notes receivable of Sellers or any of their Subsidiaries, and (iii) any claim, remedy or other right related to any of the foregoing.

(d) " Action " shall mean any action, arbitration, complaint, hearing, audit, investigation, lawsuit, litigation or other legal proceeding (whether at law or in equity, whether civil, criminal, administrative, judicial or investigative) filed or brought by or before, or otherwise involving, any Governmental Authority.

(e) " Affiliate " shall mean, with respect to any Person, any other Person directly or indirectly controlling, directly or indirectly controlled by, or under direct or indirect common control with, such Person, or if such Person is a partnership, any general partner of such Person or a Person controlling any such general partner. For purposes of this definition, "control" (including "controlled by" and "under common control with") shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise.

(f) " AirCard Business " shall mean Sellers' and their Subsidiaries' worldwide business and operations of designing, developing, manufacturing, testing, marketing, supporting, distributing and selling AirCard Products, including (i) the design, development, manufacture and testing of AirCard Products, including both internal operations for the foregoing and management of third party vendor and suppliers with respect to the foregoing; (ii) the design, development, creation and testing of Business Software for AirCard Products, including firmware, drivers and Business Software distributed for use with or embedded into AirCard Products; (iii) the sales, distribution and marketing of AirCard Products; (iv) the support of AirCard Products including fulfillment of warranty obligations and customer support; (v) provision of services related to AirCard Products, including custom design support, and (vi) all goodwill associated with and related to the foregoing. For the avoidance of doubt, AirCard Business does not include Sellers' AirVantage branded M2M cloud-based hosted software platform and services and related embedded agent, software development kits (SDKs) and development tools.

(g) " AirCard Business Financial Statements " shall mean the unaudited financial statements for the AirCard Business attached hereto as Section 5.6 of the Sellers Disclosure Schedule.

(h) " AirCard Products " shall mean mobile broadband devices (including USB Modems, mobile hotspots and PC cards) (and all components thereof), consisting of (i) the products and services listed in Section 5.24(a)(i) of the Sellers Disclosure Schedule and prior versions thereof; in each case together with the Ancillary Product Materials, and (ii) the mobile broadband devices currently under development as listed or described on Section 5.24(a)(ii) of the Sellers Disclosure Schedule.

(i) " Ancillary Product Materials " shall mean any and all documentation owned by, and currently distributed by, Sellers or any of their Subsidiaries with any of the AirCard Products, including customer support materials such as support and training materials, support bulletins, and marketing materials relating to any AirCard Product, including sale and marketing collateral, white papers, performance benchmark reports, customer training materials, sales training materials and sales presentation materials.

(j) " Antitrust Law " shall mean the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, the Competition Act (Canada), as amended, and all other federal, state and international statutes, rules, regulations, orders, decrees, administrative and judicial doctrines, and other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

(k) " Automatic Transfer Employee " shall mean those Employees who become employed by Buyers or one of their Subsidiaries as of the Closing as a result of local employment Laws, including the Transfer Regulations, and not as a result of accepting an offer of employment made by Buyers, that provide for an automatic transfer by operation of Law of the employment of any such Employee upon the transfer of the AirCard Business as a going concern pursuant to the Transactions.

(l) " Business Day " shall mean each day that is not a Saturday, Sunday or other day on which banking institutions located in San Francisco, California or Vancouver, British Columbia are authorized or obligated by Law to close.

(m) " Business Material Adverse Effect " shall mean any change, event, circumstance or effect that, individually or in the aggregate with all other changes, events, circumstances and effects, is or would reasonably be expected to be material and adverse to (i) Sellers' ability to consummate the Transactions and fulfill and perform their covenants and obligations under this Agreement and the other Transaction Agreements, or (ii) the business, operations, condition (financial or otherwise), assets or results of operations of the AirCard Business, taken as a whole; *provided, however,* that in the case of clause (ii) only, in determining whether a Business Material Adverse Effect has occurred or would reasonably be expected to occur, any change, event, circumstance or effect on Sellers or any of their Subsidiaries to the extent resulting from, or arising out of, or in any way related to any of the following (either alone or in combination) shall be excluded and disregarded:

(i) changes in, or conditions affecting, the economy or financial or currency markets in the United States or any other country or region in the world, *provided* such changes or conditions do not have a materially disproportionate effect on the AirCard Business relative to other businesses in the industry in which the AirCard Business operates;

(ii) changes in, or conditions affecting, the industries in which the AirCard Business operates, *provided* such changes or conditions do not have a materially disproportionate effect on the AirCard Business relative to other businesses in the industry in which the AirCard Business operates;

(iii) changes in, or announcements of changes in, applicable Law or accounting rules or principles, including changes in GAAP, *provided* such changes or announcements do not have a materially disproportionate effect on the AirCard Business relative to other businesses in the industry in which the AirCard Business operates;

(iv) acts of God, acts of war, terrorism or natural disasters, *provided* such events do not have a materially disproportionate effect on the AirCard Business relative to other businesses in the industry in which the AirCard Business operates;

(v) the announcement or pendency of the Transactions contemplated herein;

(vi) the failure to take any action that is expressly prohibited by Section 7.2 ;

(vii) changes in the price and/or trading volume of Canadian Seller's common shares, *provided* that such exclusion shall apply only to such change in and of itself, and not to any underlying cause of such change; and

(viii) the failure of Canadian Seller to meet published estimates, expectations or projections, *provided* that such exclusion shall apply to such failure in and of itself, and not to any underlying cause of such failure.

(n) " Business Software " shall mean any and all versions of any Software that is (i) developed for the use, programming, verification, testing, support or operation of AirCard Products, or (ii) distributed together with an AirCard Product, either preloaded on such AirCard Product or distributed together with such AirCard Product on any type of storage media, or otherwise made available for download by Sellers or their Subsidiaries for use on or with AirCard Products.

(o) " Buyer " shall mean US Buyer, IP Buyer, International Buyer, Canadian Buyer and/or Australian Buyer, as the context may require.

(p) " Buyers' Material Adverse Effect " shall mean any change, event, circumstance or effect that, individually or in the aggregate with all other changes, events, circumstances and effects, is or would reasonably be expected to be material and adverse to Buyers' ability to consummate the Transactions and to fulfill and perform their covenants and obligations under this Agreement and the other Transaction Agreements.

(q) " Carve-Out Financial Statements " shall mean the (i) audited financial statements of the AirCard Business (accompanied by an unqualified opinion of an internationally recognized independent accounting firm) and, if applicable, (ii) unaudited interim period financial statements of the AirCard Business (which financial statements shall have been reviewed by an internationally recognized independent accounting firm), in each case as of the dates and for the periods specified in Rule 3-05(b) of Regulation S-X, that US Buyer is required to file with the U.S. Securities and Exchange Commission (the " SEC ") pursuant to Item 2.01 and Item 9.01 of Form 8-K (or, in lieu thereof, in an Annual Report on Form 10-K or Quarterly Report on Form 10-Q if such annual report or quarterly report is required to be filed prior to the date the Form 8-K reporting the Transactions is required to be filed) in connection with the completion of the Transactions contemplated by this Agreement.

(r) " COBRA " shall mean the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and of any similar Law.

(s) " Code " shall mean the Internal Revenue Code of 1986, as amended.

(t) " Commissioner " means the Commissioner of Competition appointed under subsection 7(1) of the Competition Act or any person duly authorized to exercise the powers and perform the duties of the Commissioner of Competition.

(u) " Competition Act " means the *Competition Act* (Canada), and the rules and regulations promulgated thereunder, as amended.

(v) " Competition Act Clearance " means that, with regard to the Transactions, either that (i) the Commissioner shall have issued an advance ruling certificate pursuant to section 102 of the Competition Act, or (ii) (a) the statutory waiting period under section 123 of the Competition Act shall have expired or have been terminated by the Commissioner, or the Commissioner shall have waived the obligation to submit a notification pursuant to paragraph 113(c) of the Competition Act, and (b) the Commissioner shall have issued a No-Action Letter.

(w) " Contract " shall mean any contract, agreement, instrument or other legally binding commitment of any kind or nature, including leases, licenses, mortgages, indentures, promissory notes, guarantees and purchase orders.

(x) " Cross-License Agreement " shall mean the license agreement in substantially the same form and substance as mutually agreed by the Parties as of the date hereof.

(y) " Documentation Deliverables " shall mean all documentation in the possession of the Sellers as of the Closing that is related to the Prime Transferred Technology and all Shared Technology (including the Non-Prime Transferred Technology and Licensed Technology).

(z) " Employee " shall mean any full-time or part-time employee or independent contractor of Sellers or any of their Subsidiaries.

(aa) " Employee Benefit Plan " shall mean any employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (" ERISA "), whether or not subject to ERISA, any compensation, bonus, profit sharing, savings, pension, retirement scheme, fund, deferral compensation, post-retirement health or welfare benefit, stock option, stock purchase, restricted stock, equity compensation, stock appreciation right, performance share, performance share unit, restricted share unit, fringe benefit, tuition refund, service award, company car or car allowance, scholarship, housing or living allowances, relocation, medical, dental, vision, life or accidental dismemberment, disability, accident, sick pay, sick leave, accrued leave, vacation, paid time off, holiday, termination, unemployment, individual employment, consulting, incentive, commission, payroll practice, severance, retention, change in control or other employee plan, agreement, policy or arrangement (whether written or unwritten, insured or self-insured), and any plan subject to Sections 125, 127, 129, 137 or 423 of the Code, currently maintained, sponsored or contributed to by Sellers, or any Affiliate of Sellers, or any other Person under common control with Sellers or any of their Affiliates within the meaning of 414(b), (c), (m) or (o) of the Code and the regulations promulgated thereunder (an " ERISA Affiliate ") applicable to any Employee.

(bb) " Employee Non-Competition Agreement " shall mean Sellers' noncompetition agreements, if any, applicable to any Offered Employee.

(cc) " Employment Offer Letters " shall mean those offer letters entered into by US Buyer or Canadian Buyer, or a Subsidiary of either of the foregoing, as applicable, and the Key Employees

in connection with the Transactions contemplated hereunder and effective upon the consummation of the Transactions at the Closing contemplated hereunder.

(dd) " Environmental Laws " shall mean all Laws and all common law relating to pollution or protection of the environment, public health and safety, or worker health and safety.

(ee) " Escrow Agent " shall mean U.S. Bank National Association, and if such financial institutions refuse or are unable to perform the requested services, Buyers and Sellers shall negotiate in good faith to select different, mutually acceptable financial institutions.

(ff) " Escrow Agreement " shall mean the escrow agreement between the Escrow Agent, each Buyer and each Seller in substantially the same form and substance as mutually agreed by the Parties as of the date hereof.

(gg) " Escrow Amount " shall mean Thirteen Million Eight Hundred Thousand U.S. Dollars (US $13,800,000).

(hh) " Excluded Books and Record s" shall mean the books and records set forth on Schedule 1.1(hh) .

(ii) " GAAP " shall mean U.S. generally accepted accounting principles.

(jj) " Governmental Authority " shall mean any government or quasi-governmental entity, or political subdivision thereof, whether federal, state, county, municipal, city, national, provincial or municipal, or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or Tax authority or power, or any court, arbitrator or tribunal (or any department, bureau or division thereof).

(kk) " Hazardous Materials " shall mean (i) any petroleum, crude oil, natural gas, or any fraction, product or derivative thereof, radioactive materials, asbestos in any form, (ii) any chemicals, materials, substances or wastes that are defined as or included in the definition of hazardous substances, hazardous wastes, hazardous materials, extremely hazardous substances, toxic substances, pollutants, contaminants or words of similar import under any Environmental Law, and (iii) any other chemical, material, substance, waste or exposure that is limited or regulated by any Governmental Authority.

(ll) " HSR Act " shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(mm) " Indebtedness " shall mean all Liabilities and obligations, whether contingent or otherwise (including penalties, fees, interest and premiums) of a Person,

(i) for borrowed money or in respect of loans or advances;

(ii) evidenced by notes, bonds, debentures, letters of credit or similar instruments;

(iii) for capital leases;

(iv) for the face amount of all letters of credit and bankers' acceptances issued for the account of such Person;

(v) arising from cash/book overdrafts;

(vi) determined on the basis of actual, not notional, obligations with respect to interest rate protection agreements, interest rate swap agreements, foreign currency exchange agreements, or other interest or exchange rate hedging agreements or arrangements;

(vii) secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien (other than Permitted Liens) on property owned or acquired by such Person; or

(viii) in the nature of guarantees of the obligations described in the immediately preceding clauses (i) – (vii), inclusive, of any other Person.

(nn) " Indemnified Party " shall mean any Person entitled to, or seeking, indemnification, compensation or reimbursement under the terms of this Agreement.

(oo) " Indemnifying Party " shall mean any Party obligated to provide indemnification, compensation or reimbursement, or against whom indemnification, compensation or reimbursement is sought, under the terms of this Agreement.

(pp) " Industry Standard " means any industry standard technical specification and/or implementations for any component, products, product subsystems, or multi-product system, or services as documented and published by a recognized standards body or Governmental Authority. Examples of standards bodies include the Third Generation Partnership Project (3GPP), the Third Generation Partnership Project 2 (3GPP2), the American National Standards Institute (ANSI), Japan Association of Radio Industries and Businesses (ARIB), the Bluetooth Special Interest Group, the Broadband Forum, the China Communications Standards Association (CCSA), the European Telecommunications Standards Institute (ETSI), the GSM Association (GSMA), the Institute of Electrical and Electronics Engineers (IEEE), International Standards Organization (ISO), the International Telecommunications Union (ITU), the Internet Engineering Task Force (IETF), JEDEC, the Telecommunications Industry Association (TIA), and the Korea Telecommunications Technology Association (TTA).

(qq) " Intellectual Property Rights " shall mean all of the following in any jurisdiction throughout the world and all rights therein:

(i) patents and applications therefor and all other rights corresponding thereto (" Patents ");

(ii) trade-secret rights and all other rights in confidential business or technical information;

(iii) copyrights, copyrights registrations and applications therefor, moral rights, and all other rights corresponding thereto (including mask works and integrated circuit topographies) (" Copyrights ");

(iv) domain names, uniform resource locators, other names and locators associated with the Internet, and applications or registrations therefor (" Domain Names ");

(v) trade names, logos, common law trademarks and service marks and trademark and service mark registrations, and related goodwill and applications therefor (" Trademarks ");

(vi) all rights in databases and data collections; and

(vii) any similar or equivalent rights to any of the foregoing, including but not limited to moral rights (as applicable),

(clauses (ii) - (vii), inclusive, referred to as " Non-Patent IP ").

(rr) " Inventory " shall mean all raw materials, components, assembly items, work in process, semi-finished goods, finished goods, accessories and merchandise, spare parts, packaging and other supplies related thereto.

(ss) " IP Representations " shall mean the representations and warranties of Sellers set forth in Section 5.12 (Intellectual Property), other than Section 5.12(d) which is expressly excluded from this definition, as such representations and warranties shall also be made as of the Closing in accordance with Section 4.3(b)(i)(B) and Section 4.3(b)(i)(C) and certified in accordance with Section 4.3(b)(iv) .

(tt) " Joint Development Agreement " shall mean the joint development agreement in substantially the same form and substance as mutually agreed by the Parties as of the date hereof.

(uu) " Joint IP " shall mean all Other IP in and to the Shared Technology, other than (i) the Licensed Technology, and (ii) the Shared Technology listed or described on Schedule 1.1(xxxx)(ii) that is included in the Transferred Technology as Non-Prime Transferred Technology.

(vv) " Key Employee Non-Competition Agreements " shall mean those Non-Competition and Non-Solicitation Agreements entered into by US Buyer or Canadian Buyer, or a Subsidiary of either of the foregoing, as applicable, and the Key Employees in connection with the Transactions contemplated hereunder and effective upon the consummation of the Transactions at the Closing contemplated hereunder.

(ww) " Key Employees " shall mean the individuals marked with a triple asterisk in Section 5.15(a)(i) of the Sellers Disclosure Schedule.

(xx) " Knowledge " shall mean with respect to Sellers, the actual knowledge of each individual named on Schedule 1.1(xx) and the knowledge that each such individual would be reasonably expected to have based on his position and responsibilities with Sellers.

(yy) " Law " shall mean any law, statute, standard ordinance, code, treaty, resolution, promulgation, rule or regulation of a Governmental Authority or any order, judgment, writ, injunction, decree or other determination of an arbitrator or court or other Governmental Authority.

(zz) " Liability " shall mean any liability or other obligation or commitment, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, choate or inchoate, asserted or unasserted, known or unknown, including those arising under any Law or Contract.

(aaa) " Licensed IP " shall mean the Licensed Technology and Intellectual Property Rights licensed by Sellers to Buyers under the Cross-License Agreement.

(bbb) " Licensed Technology " shall mean all Shared Technology listed or described on Section 5.12(a)(i) of the Sellers Disclosure Schedule, together with the 9x15 Modules Technology that is not otherwise within the Transferred Technology. For the avoidance of doubt, Licensed Technology does not include any Intellectual Property Rights.

(ccc) " Lien " shall mean any mortgage, pledge, hypothecation, charge, assessment, preference, security interest, attachment, claim, restriction, including transfer restrictions and real property restrictive covenants, put, call, right of first refusal, easement, servitude, right-of-way, option, warrant, conditional sale or installment contract or encumbrance of any kind and any financing lease involving substantially the same effect.

(ddd) " Loss " or " Losses " shall mean any direct or indirect Liability, Indebtedness, claim, loss, damage, Tax, deficiency, Lien, settlement cost, fine, cost, interest, award, judgment, penalty, charge, expense, including reasonable attorneys' fees and consultants' fees and expenses, and including any out-of-pocket expenses incurred in connection with investigating, defending against or settling any of the foregoing; *provided , however ,* that "Losses" (i) shall not be calculated using a multiple of earnings, book value, or other measure which may have been used to determine or which may be reflective of the Purchase Price and (ii) shall not include loss of profits, diminution in value or other consequential, special, incidental or punitive damages, unless such damages are awarded in a Third Party Claim.

(eee) " No-Action Letter " means a letter from the Commissioner stating that the Commissioner does not, at such time, intend to bring an application under Section 92 of the Competition Act with respect to the Transactions.

(fff) " Non-Competition and Non-Solicitation Agreement " shall mean the non-competition and non-solicitation agreement in substantially the same form and substance as mutually agreed by the Parties as of the date hereof.

(ggg) " Non-U.S. Employees " shall mean each Offered Employee employed or providing services in a location other than the United States by Sellers or any of their Affiliates, other than any employees considered by Sellers to be U.S. expatriates.

(hhh) " Object Code " shall mean one or more computer instructions in machine readable form (whether or not packaged in directly executable form), including any such instructions that are readable in a virtual machine, whether or not derived from Source Code, together with any partially compiled or intermediate code that may result from the compilation, assembly or interpretation of any Source Code. Object Code includes firmware, compiled or interpreted programmable logic, libraries, objects, routines, modules, bytecode, machine code, and middleware.

(iii) " Offered Employee " shall mean each employee and independent contractor of the AirCard Business whose name is set forth on Section 5.15(a)(i) of the Sellers Disclosure Schedule.

(jjj) " Open Source Software " shall mean any Software that is subject to any: "open source," "copyleft," or other similar types of license terms (including any GNU General Public License, Library General Public License, Lesser General Public License, Mozilla license, Berkeley Software Distribution license, Open Source Initiative license, MIT, Apache, and Public Domain licenses, and the like), including any license approved by the Open Source Initiative and listed at http://www.opensource.org/licenses.

(kkk) " Order " shall mean any order, judgment, award, decision, decree, injunction, ruling, writ or assessment of any Governmental Authority (whether temporary, preliminary or permanent) that is binding on any Person or its property under applicable Law.

(lll) " Other IP " shall mean Intellectual Property Rights other than Patents and Trademarks.

(mmm) " Patent Files " shall mean the entirety of the prosecution files for the Transferred Patents in the possession or control of Sellers or their Subsidiaries, and their attorneys and patent agents, including all such correspondence and filings with patent authorities with respect to such Patents and any related materials or documents.

(nnn) " Permits " shall mean all permits, registrations, certifications, clearances, consents, concessions, grants, franchises, licenses and other evidence of authority issued or granted to, conferred upon or otherwise created for Sellers or any of their Subsidiaries by any Governmental Authority or customer of the AirCard Products.

(ooo) " Permitted Liens " shall mean:

(i) statutory or common law Liens for Taxes which are not yet delinquent;

(ii) statutory or common law Liens to secure landlords, lessors or renters under the Transferred Leases;

(iii) statutory or common law Liens in favor of carriers, warehousemen, mechanics and materialmen to secure claims for labor, materials or supplies or other similar items for amounts not yet due or payable; and

(iv) Liens, encumbrances, zoning restrictions, covenants, conditions and restrictions imposed on the underlying fee interest in Real Property that are inconsequential to the use of the subject Real Property.

(ppp) " Person " shall mean any natural person, company, corporation, limited liability company, general or limited partnership, trust, proprietorship, joint venture, or other business entity, unincorporated association, organization or enterprise, or any Governmental Authority.

(qqq) " Real Property " shall mean real property together with all easements, licenses, interests and all of the rights arising out of the ownership thereof or appurtenant thereto and together with all buildings, structures, facilities, fixtures and other improvements thereon.

(rrr) " Reference Date " shall mean September 30, 2012.

(sss) " Registered IP " shall mean all the Intellectual Property Rights that are the subject of an application, certificate, filing, registration or other document issued, filed with, or recorded by any Governmental Authority.

(ttt) " Release " shall mean any release, spill, omission, leaking, pumping, injection, deposit, disposal, dumping, discharge, dispersal, leaching, escaping, emanation or migration of any Hazardous Material in, into or onto the environment.

(uuu) " Retained Business " shall mean the businesses of Canadian Seller and all of its Subsidiaries, including US Seller and Australian Seller, other than the AirCard Business, including: (i) the design, development, manufacturing, testing, marketing, supporting, distributing and selling of the products, Business Software and services available for sale, as of the date hereof (and all components and prior versions thereof), and the products and Business Software currently under development, all as listed or described on Section 1.1(uuu) of the Sellers Disclosure Schedule; (ii) the provision of any services related thereto; (iii) all goodwill associated therewith; and (iv) all general, management, corporate, administrative, accounting, procurement, personnel and regulatory compliance functions of the Sellers and their Subsidiaries.

(vvv) " Sagemcom and Wavecom Patents " shall have the meaning as set forth in the Cross-License Agreement.

(www) " Seller " shall mean Canadian Seller, US Seller and/or Australian Seller as the context may require.

(xxx) " Seller Fundamental Representations " shall mean the representations and warranties of Sellers set forth in Section 5.1 (Sellers Organization and Good Standing; Authority and Enforceability), Section 5.4 (Title) and Section 5.19 (Brokerage Fees), as such representations and warranties shall also be made as of the Closing in accordance with Section 4.3(b)(i)(A) and certified in accordance with Section 4.3(b)(iv) .

(yyy) " Shared Technology " shall mean all Technology that Sellers or any of their Subsidiaries have the right to transfer as of the Closing that is used in, held for use in or necessary to the operation of both the AirCard Business and the Retained Business, each as conducted as of the Closing Date, other than the Technology of Sellers and their Subsidiaries that constitutes Sellers' AirVantage branded M2M cloud-based hosted software platform and services and related embedded agent, software development kits (SDKs) and development tools. For the avoidance of doubt, (i) Shared Technology does not include any Intellectual Property Rights, and (ii) Shared Technology does not include any Prime Transferred Technology.

(zzz) " Shrink-Wrap Code " shall mean generally commercially available, off-the-shelf Software where available for a cost of not more than $10,000 for a perpetual license for a single user or work station (or $10,000 for an annual license for a single user or work station).

(aaaa) " Software " shall mean computer software and programs in any form, including Source Code, Object Code, operating systems, database management code, firmware and utilities, and all related documentation, developer notes, comments and annotations.

(bbbb) " Source Code " shall mean one or more instructions in human readable form, including comments, definitions and annotations, which are generally formed and organized to the syntax of a computer or programmable logic programming language.

(cccc) " Specified Agreement " shall have the meaning set forth in Section 8.12(a) of the Sellers Disclosure Schedule.

(dddd) " Subsidiary " shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other organization is directly or indirectly owned or controlled by such party, corporation or organization or by any one or more of its Subsidiaries, or (ii) such party, corporation or organization or any other Subsidiary of such party, corporation

or organization is a general partner (excluding any such partnership where such party, corporation or organization or any Subsidiary of such party does not have a majority of the voting interest in such partnership).

(eeee) " Sufficiency Representation " shall mean the representations and warranties of Sellers set forth in Section 5.5 (Sufficiency of Assets), as such representations and warranties shall also be made as of the Closing in accordance with Section 4.3(b)(i)(B) and Section 4.3(b)(i)(C) and certified in accordance with Section 4.3(b)(iv) .

(ffff) " Tangible Property " shall mean all furniture, fixtures, equipment (including motor vehicles, development tools, testing equipment, factory test equipment, IT equipment), computer hardware, office equipment and apparatuses, tools, machinery and supplies and other tangible property (other than Inventory) of every kind (wherever located and whether or not carried on the books and records), together with any express or implied warranty by the manufacturers, sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

(gggg) " Tax " shall mean (i) any federal, state, provincial and local tax, impost, levy or other assessment, including any income, gross receipt, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, social insurance, unemployment, Canadian Employment Insurance and Canada Pension Plan premiums, British Columbia Workers' Compensation premiums, excise, severance, stamp, occupation, property and estimated and any other tax of any kind whatsoever, and any customs duty, fee, and other charge in the nature of a tax, together with any interest, penalty, fine, addition to tax or additional amount imposed by any Taxing Authority, including such amounts deducted from employee remuneration to be remitted to a Governmental Authority, (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of being a member of an affiliated, consolidated, combined, unitary or similar group for any period (including any arrangement for group or consortium relief or similar arrangement), and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) as a result of any express or implied obligation to indemnify any other person or as a result of any obligations under any agreements or arrangements with any other person with respect to such amounts and including any liability for taxes of a predecessor or transferor or otherwise by operation of Law.

(hhhh) " Taxing Authority " shall mean any applicable Governmental Authority responsible for the administration of any Tax.

(iiii) " Tax Return " shall mean any return, report or statement filed or required to be filed with respect to any Tax, including any information return, declaration of estimated tax, claim for refund, election, or voluntary disclosure agreement, and any schedule, addendum or attachment thereto, and any amendment thereof.

(jjjj) " Technology " shall mean (i) Software (including software development kits, APIs, computer programs, codecs, interfaces, software implementations of algorithms and models and methodologies), whether in Source Code, Object Code, or other form, (ii) databases, compilations, collections of data and data, (iii) inventions (whether or not patentable), (iv) methods and processes, (v) designs and schematics, (vi) know-how and (vii) works of authorship, including documentation (e.g. user manuals and training materials). Technology does not include Intellectual Property Rights, including any Intellectual Property Rights in any of the foregoing.

(kkkk) " Third Party Components " shall mean any Technology that is not exclusively owned by Sellers or any of their Subsidiaries and that is embedded in, incorporated into or distributed by Sellers or any of their Subsidiaries with any Business Software or any AirCard Product that is, as of the date hereof, sold or distributed, or offered for sale or distribution.

(llll) " Time of Closing " shall mean the time of Closing on the Closing Date.

(mmmm) " Transaction Agreements " shall mean this Agreement, the Cross-License Agreement, the Joint Development Agreement, the Transition Services Agreement, the Non-Competition and Non-Solicitation Agreement, the Bills of Sale, the Assignment and Assumption Agreements, the IP Assignment Agreements, the Assignments of Lease and the Escrow Agreement.

(nnnn) " Transfer Regulations " shall mean the Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (and its amendments) (collectively referred to as " Acquired Rights Directive ") and the Laws of any EU Member State implementing such Acquired Rights Directive.

(oooo) " Transferred Books and Records " shall mean the business records, personnel records, sales order files, purchase order files, engineering order files, warranty and repair files, supplier lists, customer lists, dealer, representative and distributor lists, market studies, market research, customer surveys, AirCard Product roadmaps, forms, designs, diagrams, drawings, specifications, technical data, production and quality control records and formulations, of Sellers or any of their Subsidiaries to the extent specifically related to the AirCard Business, including all Patent Files for the Transferred Patents.

(pppp) " Transferred Contracts " shall mean the Contracts set forth under the heading "Transferred Contracts" on Section 5.13(a) of the Sellers Disclosure Schedule.

(qqqq) " Transferred Inventory " shall mean all Inventory allocated or assigned to the AirCard Products as of the Closing Date in accordance with the methodology set forth in Section 3.2(a)(ii) of the Sellers Disclosure Schedule.

(rrrr) " Transferred IP " shall mean (i) all Transferred Patents, (ii) all Transferred Other IP, (iii) all Transferred Trademarks and (iv) all Transferred Technology.

(ssss) " Transferred Leases " shall mean the leases and subleases of Real Property set forth on Schedule 1.1

(tttt) " Transferred Other IP " shall mean (i) all Other IP owned by Sellers or any of their Subsidiaries as of the Closing that are used exclusively in, held for use exclusively in or exclusively related to the operation of the AirCard Business as currently conducted or as currently contemplated to be conducted, and (ii) all Other IP owned by Sellers or any of their Subsidiaries as of the Closing that are embodied in any Transferred Technology.

(uuuu) " Transferred Patents " shall mean the Patents listed on Schedule 1.1(uuuu) , together with (i) any Patent that claims priority from any of the Patents listed on Schedule 1.1(uuuu) , (ii) any Patent that is a continuation, continuation in part (but only to the extent of any claims therein that are entitled to claim priority from any such scheduled Patent), divisional or reissue, of any such scheduled Patent or linked to any other such scheduled Patent by a terminal disclaimer, and (iii) any foreign counterpart of any such scheduled Patent.

(vvvv) " Transferred Permits " shall mean the Permits (and such pending applications therefor or renewals thereof) set forth on Schedule 1.1(vvvv) .

(wwww) " Transferred Tangible Propert y" shall mean (i) all Tangible Property located in the Carlsbad, California premises and used in, held for use in or necessary for the operation of the AirCard Business, other than the Tangible Property listed or described on Schedule 1.1(wwww)(i) (the " Excluded Carlsbad Tangible Property "); and (ii) all other Tangible Property listed or described on Schedule 1.1(wwww)(ii) .

(xxxx) " Transferred Technology " shall mean any and all versions of (i) all Technology that Sellers or any of their Subsidiaries have the right to transfer as of the Closing that is used exclusively in, held for use exclusively in, or exclusively related to the operation of the AirCard Business as currently conducted or currently contemplated to be conducted including the Technology listed or described on Section 5.12(a)(ii) of the Sellers Disclosure Schedule as Prime Transferred Technology (collectively, the " Prime Transferred Technology "), and (ii) all Shared Technology listed or described on Section 5.12(a)(iii) of the Sellers Disclosure Schedule as Non-Prime Transferred Technology (collectively, the " Non-Prime Transferred Technology "). For the avoidance of doubt, Transferred Technology does not include any Intellectual Property Rights.

(yyyy) " Transferred Trademarks " shall mean all Trademarks that Sellers or their Subsidiaries have the right to transfer on the Closing Date that are exclusively used in or held for use exclusively in the operation of the AirCard Business as currently conducted, including (i) all Trademarks set forth on Schedule 1.1(yyyy) , in each case whether pending, issued, expired, abandoned or closed, (ii) all foreign counterparts of any such Trademark, and (iii) the goodwill of the AirCard Business related thereto.

(zzzz) " Transition Services Agreement " shall mean the transition services agreement in substantially the same form and substance as mutually agreed by the Parties as of the date hereof.

(aaaaa) " U.S. Securities Laws " shall mean the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or the rules and regulations promulgated thereunder.

(bbbbb) " WARN Act " shall mean the Worker Adjustment Retraining Notification Act of 1988, 29 U.S.C. § 2101 et seq., as amended, and any similar Law.

(ccccc) " 9x15 Modules Technology " shall have the meaning as set forth in the Cross-License Agreement.

1.2 Additional Definitions . The following terms have the meanings defined for such terms in the Sections set forth below.

| Term | Section |
|---|---|
| $ | 1.3(c) |
| Acquired Assets | 2.1 |
| Acquired Rights Directive | 1.1(nnnn) |
| Adjusted Cash Purchase Price | 3.2(a)(i) |
| Agreement | Preamble |
| Allocation Schedule | 3.3 |
| Assignment and Assumption Agreement | 4.2(a)(vii) |
| Assignment of Lease | 4.2(a)(ix) |

| Term | Section |
|---|---|
| Assumed Liabilities | 2.3 |
| Australian Buyer | Preamble |
| Australian Seller | Preamble |
| Bills of Sale | 4.2(a)(vi) |
| Business Confidential Information | 8.5(b) |
| Buyer Indemnified Parties | 12.2(a) |
| Buyers | Preamble |
| Buyers Relocation Deadline | 2.7(a) |
| Canadian Buyer | Preamble |
| Canadian Seller | Preamble |
| Claim Certificate | 12.4(a) |
| Closing | 4.1 |
| Closing Date | 4.1 |
| Closing Inventory | 3.2(a)(ii) |
| Closing MDF Liabilities | 3.2(a)(iii) |
| Confidentiality Agreement | 8.5(a) |
| Copyrights | 1.1(qq)(iii) |
| Demand | 13.11(f) |
| Dispute | 13.11(a) |
| Dispute Statement | 3.2(d) |
| Dollars | 1.3(c) |
| Domain Names | 1.1(qq)(iv) |
| Electronic Delivery | 13.14 |
| ERISA | 1.1(aa) |
| ERISA Affiliate | 1.1(aa) |
| Escrow Fund | 4.2(c) |
| Estimated Adjusted Cash Purchase Price | 3.2(b) |
| Excluded Assets | 2.2 |
| Excluded Carlsbad Tangible Property | 1.1(wwww) |
| Excluded Liabilities | 2.4 |
| Excluded Sellers Facility | 2.7(a) |
| Export Approvals | 5.23(a) |
| Final Adjusted Cash Purchase Price | 3.2(f) |
| Governmental Approvals | 5.2 |
| GST | 5.8(f) |
| HST | 5.8(f) |
| In-Licenses | 5.13(a)(v) |
| Indemnification Claim | 12.4(a) |
| International Buyer | Preamble |
| IP Assignment Agreement | 4.2(a)(viii) |
| IP Buyer | Preamble |
| Loss Threshold | 12.3(a) |
| M2M | Recitals |
| Material Contracts | 5.13(a) |
| Non-Assignable Assets | 2.6(a) |
| Non-Patent IP | 1.1(qq)(vii) |
| Non-Paying Party | 10.1 |
| Non-Prime Transferred Technology | 1.1(xxxx) |

| Term | Section |
|---|---|
| Non-Competition and Non-Solicitation Agreement | 1.1(fff) |
| Out-Licenses | 5.13(a)(iv) |
| Party | Preamble |
| Parties | Preamble |
| Patents | 1.1(qq)(i) |
| Paying Party | 10.1 |
| Post-Closing Buyers Facility | 2.7(a) |
| Post-Closing Statement | 3.2(c) |
| Pre-Closing Statement | 3.2(b) |
| Prime Transferred Technology | 1.1(xxxx) |
| Purchase Price | 3.1(a) |
| Related Party | 5.20 |
| Resolution Period | 3.2(e) |
| Response | 13.11(f) |
| Retained Business Confidential Information | 8.5(c) |
| Retained Patents | 2.2(b) |
| Review Period | 3.2(d) |
| SEC | 1.1(q) |
| Sellers | Preamble |
| Sellers Disclosure Schedule | Article 5 |
| Seller Indemnified Parties | 12.2(b) |
| Sellers Relocation Deadline | 2.7(a) |
| Specified Matters | 2.4(p) |
| Straddle Period | 10.1 |
| Straddle Period Taxes | 10.1 |
| Survival Period | 12.1(b) |
| Target Inventory | 3.2(a)(iv) |
| Target MDF Liabilities | 3.2(a)(v) |
| Third Party Claim | 12.5 |
| Trademarks | 1.1(qq)(v) |
| Transaction Confidential Information | 8.5(d) |
| Transactions | Recitals |
| Transfer Taxes | 10.2 |
| Transferred Contracts | 1.1(pppp) |
| Transferred Employees | 9.1(a) |
| Transferred Leasehold Property | 5.10(b) |
| Transferred Leases | 1.1(ssss) |
| Transferred Permits | 1.1(vvvv) |
| Unadjusted Cash Purchase Price | 3.1(a) |
| US Buyer | Preamble |
| US Seller | Preamble |
| Wages | 5.15(n) |

1.3 Certain Interpretations

(a) When a reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated. When a reference is made in this Agreement to a Schedule, such reference shall be to a Schedule to this Agreement (as applicable) unless otherwise indicated.

(b) When used herein, (i) the words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and (ii) the words "include," "includes" and "including" shall be deemed in each case to be followed by the words "without limitation." Unless the context otherwise requires, "neither," "nor," "any," "either," and "or" shall not be exclusive.

(c) When used herein, references to "$" or " Dollars " shall be deemed to be references to U.S. dollars.

(d) The meaning assigned to each capitalized term defined and used herein shall be equally applicable to both the singular and the plural forms of such term, and words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(e) When reference is made to any Party to this Agreement or any other agreement or document, such reference shall include such Party's successors and permitted assigns. When reference is made to "Buyers" or "Sellers" or any of their respective "Subsidiaries" or "Affiliates," such reference shall be interpreted broadly to include any or all "Buyers" or "Sellers" or their respective "Subsidiaries" or "Affiliates," respectively.

(f) Unless the context otherwise requires, all references in this Agreement to the Subsidiaries of a legal entity shall be deemed to include all direct and indirect Subsidiaries of such entity.

(g) A reference to any specific legislation or to any provision of any legislation shall include any amendment to, and any modification, re-enactment or successor thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued thereunder or pursuant thereto.

(h) The headings set forth in this Agreement are for convenience of reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(i) The Parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the Party drafting such agreement or document.

## ARTICLE 2
## THE TRANSACTIONS

2.1 Sale and Transfer of Assets . Upon the terms and subject to the conditions set forth in this Agreement, at the Closing Sellers shall (and, where applicable, shall cause their Subsidiaries to), in accordance with the Bills of Sale, sell, transfer, assign, convey and deliver to Buyers or one or more of their Subsidiaries,

and Buyers shall (and, where applicable, shall cause their Subsidiaries to), in accordance with the Bills of Sale, purchase, acquire and accept from Sellers, all right, title and interest in, to and under the following assets, properties and rights of Sellers or any of their Subsidiaries, (collectively, the " Acquired Assets "), free and clear of all Liens other than (x) the Permitted Liens, and (y) the Assumed Liabilities that constitute Liens:

(a) the Transferred Tangible Property;

(b) the Transferred Inventory;

(c) the Transferred Patents;

(d) the Transferred Trademarks;

(e) the Transferred Other IP;

(f) an undivided joint ownership interest in all Joint IP, including all books and records embodying such Joint IP (for the purposes of this Article 2 , "undivided joint ownership interest" means that, subject to the terms of this Agreement, each Party or owner thereof is free to exploit or enforce such rights and authorize others to do so, with no obligation to obtain the consent of the other Party or owner or to account to the other Party or owner, for profits or otherwise, and each Party hereby waives any right it may have under the laws of any country to require such consent or accounting, subject to any other Intellectual Property Rights of the other Party);

(g) the Transferred Technology and copies of the Licensed Technology and 9x15 Modules Technology, subject to Section 2.7 ;

(h) the Transferred Leases;

(i) the Transferred Contracts;

(j) the Transferred Permits;

(k) the Transferred Books and Records;

(l) subject to Section 2.1(m) , all claims, demands, causes of action, choses in action and rights of recoupment against third parties relating to the Assumed Liabilities, arising from facts, events, actions or inactions occurring whether before or after the Closing;

(m) with respect to the Transferred IP, the right to register, prosecute, maintain or record any of such Intellectual Property Rights with any Governmental Authority, including rights to damages and payments for past, present and future infringements or misappropriations thereof, as well as all goodwill associated with such Intellectual Property Rights or the AirCard Business; and

(n) all prepaid amounts, prepaid deposits, charges, expenses, and fees relating to the AirCard Business.

2.2 Excluded Assets . Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets, properties and rights of Sellers or any of their Subsidiaries (collectively, the " Excluded Assets ") are not part of the sale and purchase contemplated hereunder, are

excluded from the AirCard Business and the Acquired Assets and shall remain the property of Sellers and their Subsidiaries after the Closing:

(a) all Tangible Property that is not Transferred Tangible Property;

(b) all Patents that are not Transferred Patents (" Retained Patents "");

(c) all Trademarks that are not Transferred Trademarks;

(d) all Other IP that is not Transferred Other IP;

(e) all Technology that is not Transferred Technology;

(f) an undivided joint ownership interest in all Joint IP, including all books and records embodying such Joint IP (which, for clarity, is separate from Buyers' undivided joint ownership interest under Section 2.1(f) ;

(g) all interests in Real Property other than the Transferred Leases;

(h) all Contracts that are not Transferred Contracts;

(i) all Permits that are not Transferred Permits;

(j) the Excluded Books and Records;

(k) all cash and cash equivalents of Sellers and their Subsidiaries;

(l) all Accounts Receivable of Sellers and their Subsidiaries;

(m) all insurance policies and any rights, claims or chose in action under such insurance policies;

(n) all refunds of any Tax payments made by Sellers with respect to a taxable period (or portion thereof) ending on or prior to the Closing Date;

(o) all Employee Benefit Plans;

(p) all assets and other rights sold or otherwise transferred or disposed of in the ordinary course of business consistent with past practice between the date of this Agreement and the Closing not in violation of the terms of this Agreement;

(q) all rights of Sellers and their Subsidiaries under this Agreement and the other Transaction Agreements;

(r) except as otherwise provided in this Agreement, all books and records and other information prepared by or on behalf of Sellers and their Subsidiaries in connection with the Transactions and the other transactions contemplated hereby; and

(s) all rights arising from Excluded Liabilities.

2.3 Assumed Liabilities . Subject to the terms and conditions set forth in this Agreement (including the terms of Section 2.4 and the rights of the Buyer Indemnified Parties to indemnification, compensation or reimbursement under this Agreement), at the Closing, Buyers shall assume (or, where applicable, cause their Subsidiaries to assume) only the following Liabilities of Sellers or any of their Subsidiaries, except to the extent any such Liabilities are Excluded Liabilities (collectively, the " Assumed Liabilities "):

(a) all Liabilities arising after the Closing under the Transferred Contracts, the Transferred Leases and the Transferred Permits, but only to the extent such obligations (i) do not arise from or relate to any violation, breach or default by Sellers or any of their Subsidiaries of any provision of such Transferred Contract, Transferred Lease, or Transferred Permit, as applicable, and (ii) do not arise from or relate to any event, circumstance or condition occurring or existing on or prior to the Closing Date that, with notice or lapse of time, would constitute or result in a violation, breach or default of any such Transferred Contract, Transferred Lease or Transferred Permit;

(b) all Liabilities relating to repairs, exchanges, returns and warranty, merchantability and similar claims (but not, for the avoidance of doubt, any environmental claims), arising in connection with AirCard Products sold or licensed by the Sellers and their Subsidiaries prior to the Closing, but only to the extent such Liabilities do not exceed $2,060,912;

(c) all Liabilities in respect of marketing development funds under the Transferred Contracts in existence at the Time of Closing;

(d) all Liabilities to the extent (but only to the extent) arising from the operation or conduct of the AirCard Business after the Closing;

(e) all Liabilities resulting from, arising out of, or based on the litigation and indemnification matters set forth on Section 2.3(e) of the Sellers Disclosure Schedule;

(f) subject to Section 3.2 , all outstanding purchase orders and commitments related to AirCard Products that have been issued to and accepted by Flextronics prior to the Closing in the ordinary course of the AirCard Business;

(g) subject to Section 3.2 , all outstanding purchase orders and commitments related to AirCard Products that have been issued to and accepted by component suppliers (including memory manufacturers and Qualcomm) prior to the Closing in the ordinary course of the AirCard Business;

(h) subject to Section 3.2 , all outstanding purchase orders to the extent related to the AirCard Business that have been issued by Sellers or any of their Subsidiaries prior to the Closing in the ordinary course of the AirCard Business for goods and services that are required to be delivered or performed following the Closing;

(i) all obligations and liabilities relating to Transferred Employees to the extent set forth in Article 9 ; and

(j) all Liabilities of Buyers for Transfer Taxes allocable to Buyers under Section 10.2.

2.4 Liabilities Not Assumed . Notwithstanding anything to the contrary in this Agreement, none of the Buyers nor any of their Affiliates shall assume or otherwise be responsible for any Liabilities of Sellers or any of their respective Affiliates (including any predecessor of Sellers or their respective Affiliates or any prior owner of all or part of their respective businesses and assets) of whatever nature, whether presently in existence or arising hereafter, which are not Assumed Liabilities (collectively, the " Excluded Liabilities "). Sellers shall be responsible for the Excluded Liabilities. Without limiting the foregoing, Excluded Liabilities shall include the following Liabilities, notwithstanding any disclosure on the Sellers Disclosure Schedule:

(a) all Liabilities to the extent arising out of or relating to the operation or conduct by Sellers or any of their Subsidiaries of any business other than the AirCard Business;

(b) all Liabilities to the extent arising out of or relating to any Excluded Assets;

(c) (i) all Liabilities related to any current, former or prospective employees, directors or independent contractors of Sellers and their Affiliates who are not Transferred Employees whether or not such Liabilities arise prior to, on or after the Closing Date and (ii) all Liabilities to or in respect of any Transferred Employees arising on or prior to the Closing;

(d) all Liabilities arising from any misclassification by Sellers or any of their Affiliates prior to the Closing of (i) any Person or Employee as an independent contractor rather than as an employee, including liability for statutory employee deductions and statutory employer liabilities and for any claims to compensation in lieu of notice of termination of services in excess of amounts prescribed in such independent contractors written terms of engagement; (ii) any Employee leased from another employer; or (iii) any Person or Employee currently or formerly classified as exempt from overtime wages;

(e) all Liabilities, including any Liability to gross-up any Transferred Employee, solely relating to or arising out of the payment by Sellers to any Offered Employees of any "excess parachute payments" within the meaning of Section 280G of the Code as a result of the Transactions;

(f) all Liabilities for Wages of Transferred Employees earned prior to the Closing;

(g) all Liabilities under or relating to the Employee Benefit Plans and/or Employee Non-Competition Agreements, including any pension or retirement plan, severance plan, retention plan, workers compensation, medical, life insurance, disability or other welfare plan, expenses and benefits incurred or claimed in respect of any current or former employee, director or independent contractor of Sellers or any of their Affiliates, and any claims by such current or former employees, directors or independent contractors (and their covered dependents) of Sellers or any of their Affiliates for benefits or claims, whether or not such Liabilities arise prior to, on or after the Closing Date;

(h) all Liabilities arising from or associated with or in connection with any Employee who is an Automatic Transfer Employee and not a Transferred Employee;

(i) all Indebtedness of Sellers or any of their Affiliates;

(j) all Liabilities to any broker, finder or agent for any investment banking or brokerage fees, finder's fees or commission and any other fees and expenses payable by Sellers pursuant to Section 13.5 ;

(k) (i) all Liabilities of Sellers or any of their Affiliates for Taxes, including any Taxes related to the AirCard Business or the Acquired Assets attributable to any taxable period (or portion

thereof) ending on or prior to the Closing Date in accordance with Section 10.1 , (ii) all Liabilities of Sellers or any of their Affiliates for unpaid Taxes of any person under Treas. Reg. Section 1.1502-6 (or any similar provision of state, local, or non-U.S. law), as a transferee or successor, by contract or otherwise and (iii) all Liabilities of Sellers or any of their Affiliates for Taxes arising in connection with the consummation of the Transactions (including any Transfer Taxes allocable to Sellers under Section 10.2 );

(l) (i) all Accounts Payable arising out of, relating to or incurred in connection with the AirCard Business or the Acquired Assets prior to the Closing Date, and (ii) all other Liabilities to the extent arising out of, relating to or incurred in connection with the AirCard Business or the Acquired Assets, arising on or prior to the Closing (including any condition arising or in existence prior to the Closing with respect to the Acquired Assets), except to the extent that such other Liabilities referred to in this clause (ii) are included in the Assumed Liabilities pursuant to paragraphs (b), (c), (e), (f), (g) and (h) of Section 2.3 ;

(m) all Liabilities of Sellers arising from or relating to infringement, misappropriation, or other violation or unauthorized use of any Intellectual Property Rights owned by any Person that result from, arise out of, or are based on (i) the operation of the AirCard Business prior to the Closing, or (ii) the use, sale, import, export and manufacture of AirCard Products, the Prime Transferred Technology or the Shared Technology (including the Non-Prime Transferred Technology and the Licensed Technology), prior to the Closing;

(n) all Liabilities relating to (i) repairs, exchanges, returns and warranty, merchantability and similar claims in respect of the AirCard Products sold or licensed by the AirCard Business prior to the Closing, to the extent such Liabilities exceed $2,060,912, (ii) AirCard Products that are stock rotated pursuant to the terms of the applicable Transferred Contract after the Closing that were sold or licensed by the AirCard Business prior to the Closing, (iii) AirCard Products that are price protected pursuant to the terms of the applicable Transferred Contract after the Closing that were sold or licensed by the AirCard Business prior to the Closing, (iv) rebates, discounts or tiered pricing pursuant to any programs commenced by Sellers and their Subsidiaries prior to the Closing, which are granted to customers in respect of AirCard Products sold or licensed by the AirCard Business prior to the Closing;

(o) all Liabilities resulting from, arising out of, or based on the litigation and indemnification matters set forth on Section 2.4(o) of the Sellers Disclosure Schedule; and

(p) all Liabilities resulting from, arising out of, or based on the Actions or claims described in Section 2.4(p) of the Sellers Disclosure Schedule (the " Specified Matters ").

2.5 Transfer of Acquired Assets and Assumed Liabilities

(a) The Acquired Assets shall be sold, conveyed, transferred, assigned and delivered, to Buyers, and the Assumed Liabilities shall be assumed by Buyers, pursuant to transfer and assumption agreements and such other instruments in such form as may be necessary or appropriate to effect a conveyance of the Acquired Assets and an assumption of the Assumed Liabilities in the jurisdictions in which such transfers are to be made. Such transfer and assumption agreements shall be jointly prepared by Buyers and Sellers and shall include the Bills of Sale, the Assignment and Assumption Agreement, the IP Assignment Agreement and the Assignments of Lease, which shall be executed no later than at or as of the Closing by Sellers and/or one or more of their Subsidiaries, as appropriate, and Buyers and/or one or more of their Subsidiaries, as appropriate.

(b) From time to time following the Closing, Sellers and Buyers shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices,

assumptions, releases and acquittances and such other instruments, and shall take such further actions, as may be necessary or appropriate to fully and effectively sell, transfer, assign, and convey and deliver to Buyers and their Subsidiaries all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be expressly conveyed to Buyers and their Subsidiaries under this Agreement and to fully and effectively sell, transfer, assign, and convey and deliver to Buyers and their Subsidiaries the Assumed Liabilities intended to be expressly assumed by Buyers and their Subsidiaries under this Agreement, and to otherwise make effective the transactions contemplated hereby and to confirm the right, title or interest of Buyers and their Subsidiaries in the Acquired Assets, including (i) promptly transferring and/or delivering back to Sellers and their Subsidiaries any asset or Liability not contemplated by this Agreement to be an Acquired Asset or an Assumed Liability, respectively, which asset or Liability was transferred and/or delivered to Buyers and their Subsidiaries at Closing and (ii) promptly transferring and/or delivering to Buyers and their Subsidiaries any asset or Liability contemplated by this Agreement to be an Acquired Asset or an Assumed Liability, respectively, which was not transferred and/or delivered to Buyers and their Subsidiaries at Closing, in each case of clauses (i) and (ii), without further consideration paid by either Party and the relevant Schedules to this Agreement shall be amended accordingly.

(c) Buyers shall take such actions as Sellers may reasonably request in order to assure Buyers and their Subsidiaries' assumption of the Assumed Liabilities. Sellers shall take such actions as Buyers may reasonably request in order to assure Sellers and their Subsidiaries' retention of the Excluded Liabilities.

2.6 Non-Assignable Assets

(a) Nothing in this Agreement nor the consummation of the Transactions contemplated hereby shall be construed as an attempt or agreement to sell, transfer, assign convey or deliver any Acquired Asset to Buyers or any of their Subsidiaries (provided that this Section 2.6(a) shall not affect whether any asset, property or right shall be deemed to be an Acquired Asset for any other purpose under this Agreement), or for Buyers or any of their Subsidiaries to assume any Assumed Liability, in each case which is not transferable or nonassignable, as applicable, without the consent or waiver of a third party (including any Governmental Authority) or is cancelable by a third party in the event of such a transfer or assignment without the consent or waiver of such third party (including any Governmental Authority), in each case unless and until such consent or waiver shall have been obtained (collectively, " Non-Assignable Assets ").

(b) Sellers shall, and shall cause their Subsidiaries to, use their reasonable best efforts to obtain, or to cause to be obtained, all consents, approvals and waivers set forth on Section 5.3 of Sellers Disclosure Schedule on terms that will ensure that Buyers and their Subsidiaries maintain and preserve the rights and benefits under the Non-Assignable Assets following the consummation of the Transactions that were enjoyed by Sellers and their Subsidiaries as of the date hereof. To the extent permitted by applicable Law, in the event such consent, approval or waiver cannot be obtained prior to Closing, (i) the Non-Assignable Assets subject thereto and affected thereby shall be held, as of and from the Closing, by Sellers in trust for the benefit of Buyers, and all benefits and obligations existing thereunder shall be for Buyers' account(s), (ii) Buyers shall pay, perform or otherwise discharge (in accordance with the respective terms and subject to the respective conditions thereof, and in the name of Sellers) all of the covenants and obligations of Sellers incurred after the Closing with respect to such Non-Assignable Asset, (iii) Sellers shall take or cause to be taken at their own expense such actions in its name or otherwise as Buyers may reasonably request so as to provide Buyers with the benefits of such Non-Assignable Assets and to effect the collection of money or other consideration that becomes due and payable under such Non-Assignable Assets, and promptly pay over to Buyers all money or other consideration received by it in respect of such Non-Assignable Assets,

and (iv) Buyers and Sellers shall mutually cooperate to provide any other alternative arrangements as may be reasonably required to implement the purposes of this Agreement and the other Transaction Agreements. If and when such consent, approval or waiver is obtained, Sellers shall, and shall cause their Subsidiaries to, sell, transfer, assign, convey and deliver such Non-Assignable Asset to Buyers or their applicable Subsidiaries for no additional consideration. Notwithstanding anything herein to the contrary, Seller shall not be obligated to commence or pursue any Action against any third party with respect to any Non-Assignable Asset.

2.7 Transfer of Acquired Assets; Risk of Loss

(a) Buyers will, at Buyers' cost and expense, prepare for the removal and relocation of any Transferred Tangible Personal Property located at the facilities set forth on Schedule 2.7(a)(i) , which facilities are not to be purchased, assigned, subleased, transferred to or otherwise occupied by Buyers or any of their Subsidiaries pursuant to this Agreement or any other agreement entered into in connection with the Transactions, or, if a third party facility, the Contract for which is not a Transferred Contract (each such facility, an " Excluded Sellers Facility ") and remove and relocate such Acquired Assets from the relevant Excluded Sellers Facility as provided under and in accordance with the Transition Services Agreement (the " Buyers Relocation Deadline "). Sellers will, at Sellers' cost and expense, prepare for the removal and relocation of any tangible Excluded Assets located at the facilities set forth on Schedule 2.7(a)(ii) , which facilities are to be purchased, assigned or transferred to Buyers and their Subsidiaries and not subleased or otherwise occupied by Sellers or any of their Subsidiaries following the applicable Closing pursuant to this Agreement or any other agreement entered into in connection with the Transactions (each such facility, a " Post-Closing Buyers Facility ") and remove and relocate such Excluded Assets from the relevant Post-Closing Buyers Facility as provided under and in accordance with the Transition Services Agreement (the " Sellers Relocation Deadline "). Subject to the provisions hereof, each of Sellers, on the one hand, and Buyers, on the other hand, agree to cooperate, and agree to cause their respective Subsidiaries, as applicable, to cooperate with each other, and provide each other all assistance reasonably requested by the other Party in connection with the planning and implementation of the removal and relocation of any such Acquired Assets or Excluded Assets or any thereof to such location as Buyers or Sellers, as applicable, will designate.

(i) The Acquired Assets will be transported by or on behalf of Buyers and, until all of such Acquired Assets are removed from an Excluded Sellers Facility, Sellers will permit, and will cause their Subsidiaries to permit, Buyers and their authorized agents or representatives, upon reasonable prior notice, to have reasonable access to such Excluded Sellers Facility during normal business hours to the extent necessary to comply with the terms of this Section 2.7 , including to disconnect, detach, remove, package and crate such Acquired Assets for transport. Buyers will be responsible for (A) disconnecting and detaching all fixtures and equipment comprising such Acquired Assets from the roofs, floor, ceiling and walls of an Excluded Sellers Facility prior to removing the same from such Excluded Sellers Facility, (B) packaging and loading such Acquired Assets for transporting to and any reinstallation of such Acquired Assets at such location(s) as Buyers may determine, and (C) repairing any damage that is caused by such removal, the Parties agreeing that Buyers shall leave the applicable premises in broom clean condition and in no better condition than the remainder of the premises generally.

(ii) The Excluded Assets will be transported by or on behalf of Sellers, and until all of such Excluded Assets are removed from a Post-Closing Buyers Facility, Buyers will permit, and will cause their Subsidiaries to permit, Sellers and their authorized agents or representatives, upon reasonable prior notice, to have reasonable access to such Post-Closing Buyers Facility during normal business hours to the extent necessary to comply with the terms of this Section

2.7 including to disconnect, detach, remove, package and crate such Excluded Assets for transport. Sellers will be responsible for (A) disconnecting and detaching all fixtures and equipment comprising such Excluded Assets from the roofs, floor, ceiling and walls of a Post-Closing Buyers Facility prior to removing the same from such Post-Closing Buyers Facility, (B) packaging and loading such Excluded Assets for transporting to and any reinstallation of such Excluded Assets at such location(s) as Sellers may determine, and (C) repairing any damage that is caused by such removal, the Parties agreeing that Sellers shall leave the applicable premises in broom clean condition and in no better condition than the remainder of the premises generally.

(b) Transfer and delivery of the Transferred Technology, Licensed Technology and 9x15 Modules Technology shall include physical or electronic delivery of (i) all current (including under development) versions of the Transferred Technology, Licensed Technology and 9x15 Modules Technology, (ii) all prior versions of the Transferred Technology and Licensed Technology that are currently supported or otherwise used in the operation of the AirCard Business as currently conducted, (iii) if Sellers possess and can locate using commercially reasonable efforts, all other prior versions of the Transferred Technology and Licensed Technology, (iv) the Documentation Deliverables and other appropriate documentation thereof as reasonably requested by Buyers to facilitate the transfer and operation of the AirCard Business as currently conducted, and (v) if Sellers possess and can locate using commercially reasonable efforts, all copies of the foregoing that constitute Prime Transferred Technology. The Parties shall cooperate in good faith to define and transfer such Transferred Technology and Licensed Technology. To the maximum extent practicable, all Software to be delivered hereunder shall be delivered by electronic means in a manner specified by Buyers. Sellers shall not retain in their possession or control any Transferred Tangible Property or Transferred Technology or any copy thereof, except Sellers may retain copies of Transferred Technology for archival purposes (including to defend against any claim which is asserted against Sellers and their Subsidiaries) to perform their obligations under and during the term of the Transition Services Agreement, and to exercise their rights under the Cross License Agreement.

(c) All risk of loss as to the Acquired Assets will be borne by, and will pass to, Buyers as of the Closing.

(d) Buyers and Sellers shall, as soon as practicable after the Closing, (i) cause such Transferred Employee located in Sellers' facilities in Richmond, British Columbia, to be located or relocated to the Transferred Leasehold Property at that location and (ii) shall remove from any Transferred Leasehold Property any employees or personnel that are not Transferred Employees. Any costs and expenses incurred by Buyers and Sellers related to the foregoing shall be addressed in the Transition Services Agreement.

## ARTICLE 3
## PURCHASE PRICE

3.1 Purchase Price

(a) Subject to the terms and conditions of this Agreement, the purchase price to be paid by Buyers for the Acquired Assets (the " Purchase Price ") shall be the aggregate of (i) the amount of the Assumed Liabilities, plus (ii) a cash payment of One Hundred Thirty Eight Million U.S. Dollars (US $138,000,000) (the " Unadjusted Cash Purchase Price "), as adjusted pursuant to the terms of Section 3.2 , payable in accordance with the terms of this Agreement.

(b) The Purchase Price shall be paid and satisfied as follows:

(i) at the Closing, an amount in U.S. dollars equal to the Estimated Adjusted Cash Purchase Price, *minus* an amount equal to the Escrow Amount shall be paid by Buyers to the Sellers or their designee(s);

(ii) at the Closing, an amount equal to the Escrow Amount in U.S. dollars shall be paid by Buyers to the Escrow Agent;

(iii) the Assumed Liabilities shall be assumed by Buyers at the Closing by the execution and delivery of the Assignment and Assumption Agreement; and

(iv) the adjustment amount shall be paid on the date specified in Section 3.2(f) in the manner set forth in Section 3.2(f) .

3.2 Purchase Price Adjustment

(a) For all purposes of and under this Agreement, the following capitalized terms shall have the respective meanings ascribed thereto below:

(i) " Adjusted Cash Purchase Price " shall mean the Unadjusted Cash Purchase Price:

(A) *plus* (x) the amount, if any, by which Closing Inventory is greater than Target Inventory, or *minus* (y) the amount, if any, by which Target Inventory is greater than Closing Inventory (it being understood and hereby agreed that if Closing Inventory is equal to Target Inventory, then the Unadjusted Cash Purchase Price will not be adjusted pursuant to this clause (A)); and

(B) *minus* the amount, if any, by which Closing MDF Liabilities are greater than Target MDF Liabilities (it being understood and hereby agreed that if Closing MDF Liabilities are equal to or less than Target MDF Liabilities, then the Unadjusted Cash Purchase Price will not be adjusted pursuant to this clause (B)).

(ii) " Closing Inventory " shall mean the "Net Transferred Inventory" number, in U.S. dollars, as defined in Section 3.2(a)(ii) of the Sellers Disclosure Schedule.

(iii) " Closing MDF Liabilities " shall mean the U.S. dollar amount of all Liabilities in respect of marketing development funds under the Transferred Contracts in existence at the Time of Closing.

(iv) " Target Inventory " shall mean Twelve Million Three Hundred Thousand U.S. Dollars (US $12,300,000).

(v) " Target MDF Liabilities " shall mean Eight Million U.S. Dollars (US $8,000,000).

(b) No later than three (3) Business Days prior to the Closing Date, Sellers shall deliver to Buyers a statement (the " Pre-Closing Statement ") setting forth Sellers' good faith estimate of (i) the amount of Closing MDF Liabilities and (ii) a calculation of the Adjusted Cash Purchase Price based on such amount of Closing MDF Liabilities and assuming that the amount of Closing Inventory is equal to Target Inventory (the amount so calculated being referred to herein as the " Estimated Adjusted Cash Purchase

Price "), together with reasonably detailed supporting documentation for such calculations and any additional documentation and information reasonably requested by Buyers (which shall be promptly provided by Sellers).

(c) As promptly as practicable, but in no event later than forty-five (45) days after the Closing Date, Buyers shall deliver to Sellers a statement (the " Post-Closing Statement ") setting forth the Buyers' good faith calculation of (i) the amount of Closing Inventory, (ii) the amount of Closing MDF Liabilities and (iii) a calculation of the Adjusted Cash Purchase Price based on such amounts, together with reasonably detailed supporting documentation for such calculations and any additional documentation and information reasonably requested by Sellers (which shall be promptly provided by Buyers).

(d) Buyers shall provide Sellers and their representatives with reasonable access (with the right to make copies), during normal business hours and upon reasonable advance notice, to the work papers of Buyers related to the preparation of the Post-Closing Statement, as well as to any of the property and facilities and such books and records and other relevant documentation and information of Buyers related to the AirCard Business, and Buyers shall make available their employees knowledgeable about the information used in, and the preparation of, the Post-Closing Statement. Sellers shall have fifteen (15) Business Days following their receipt of the Post-Closing Statement (the " Review Period ") to review the same together with all documentation and information requested in accordance with this Section 3.2(d) (which shall be promptly provided by Buyers). On or before the expiration of the Review Period, Sellers may deliver to Buyers a written statement disputing the Post-Closing Statement. In the event that Sellers shall dispute the Post-Closing Statement, such statement shall include a detailed itemization of Sellers' objections and the reasons therefor (such statement, a " Dispute Statement "). Any component of the Post-Closing Statement that is not disputed in a Dispute Statement shall be final and binding on the Parties and not subject to appeal. If Sellers do not deliver a Dispute Statement to Buyers within the Review Period, the Post-Closing Statement shall be final and binding on the Parties and not subject to appeal and the amount of the Adjusted Cash Purchase Price as set forth in the Post-Closing Statement shall be deemed to be the Final Adjusted Cash Purchase Price.

(e) If Sellers deliver a Dispute Statement during the Review Period, Buyers and Sellers shall promptly meet and attempt in good faith to resolve their differences with respect to the disputed items set forth in the Dispute Statement during the fifteen (15) Business Days immediately following Buyers' receipt of the Dispute Statement, or such longer period as Sellers and Buyers may mutually agree (the " Resolution Period "). Any such disputed items that are resolved by Sellers and Buyers during the Resolution Period shall be final and binding on the Parties and not subject to appeal. If Sellers and Buyers do not resolve all such disputed items by the end of the Resolution Period, Sellers and Buyers shall submit all items then remaining in dispute with respect to the Dispute Statement to the Accounting Firm for review and resolution (with each Party preparing a submission to the Accounting Firm that reflects all revisions made to such Party's proposal as a result of the negotiations during the Resolution Period and outlining the items that remain in dispute at the time of the submission only). The Accounting Firm shall act as an expert and not an arbitrator. The Accounting Firm (i) shall determine only those items remaining in dispute between Sellers and Buyers, (ii) shall apply the valuation principles set out in Section 3.2(a)(ii) of the Sellers Disclosure Schedule to the extent that the dispute relates to the determination of Closing Inventory, and (iii) shall only be permitted or authorized to determine an amount with respect to any such disputed item that is either the amount of such disputed item as proposed by Buyers in the Post-Closing Statement or the amount of such disputed item as proposed by Sellers in the Dispute Statement. Each of Sellers, on the one hand, and Buyers, on the other hand, shall (A) enter into a customary engagement letter with the Accounting Firm at the time such dispute is submitted to the Accounting Firm and otherwise cooperate with the Accounting Firm, (B) have the opportunity to submit a written statement in support of their respective positions with respect to

such disputed items, to provide supporting material to the Accounting Firm in defense of their respective positions with respect to such disputed items and to submit a written statement responding to the other Party's position with respect to such disputed items and (C) subject to customary confidentiality and indemnity agreements, provide the Accounting Firm with access to their respective books, records, personnel and representatives and such other information as the Accounting Firm may require in order to render its determination. The Accounting Firm shall be instructed to deliver to Sellers and Buyers a written determination (such determination to include a worksheet setting forth all material calculations used in arriving at such determination and to be based solely on information provided to the Accounting Firm by Sellers and Buyers) of the disputed items within thirty (30) calendar days of receipt of the disputed items, which determination shall be final and binding on the Parties hereto and not subject to appeal. All fees and expenses relating to the work, if any, to be performed by the Accounting Firm will be allocated between Sellers, on the one hand, and Buyers, on the other hand, in the same proportion that the aggregate amount of the disputed items so submitted to the Accounting Firm that is unsuccessfully disputed by each such party (as finally determined by the Accounting Firm) bears to the total disputed amount of such items so submitted. Neither Party shall engage in ex parte communications with the Accounting Firm with respect to the Transactions until the Accounting Firm issues its final determination.

(f) The Adjusted Cash Purchase Price, as determined in accordance with the final, binding and nonappealable resolution of the calculation of the amount of Closing Inventory and the amount of Closing MDF Liabilities pursuant to the terms of Sections 3.2(c) , 3.2(d) and 3.2(e) shall be referred to herein as the " Final Adjusted Cash Purchase Price ." As soon as practicable (and in any event within three (3) Business Days) following the determination of the Final Adjusted Cash Purchase Price, Buyers or Sellers shall make the following payment, as applicable:

(i) If the Final Adjusted Cash Purchase Price is greater than the Estimated Adjusted Cash Purchase Price, then within five (5) Business Days after such final determination, Buyers shall deliver to Sellers or their designee(s), an amount in U.S. dollars equal to such excess in immediately available funds by wire transfer to an account or accounts designated in writing by Sellers or their designee(s).

(ii) If the Estimated Adjusted Cash Purchase Price is greater than the Final Adjusted Cash Purchase Price, then within five (5) Business Days after such final determination, Sellers, jointly and severally, shall deliver to Buyers an amount in U.S. dollars equal to such excess in immediately available funds by wire transfer to an account or accounts designated in writing by Buyers.

3.3 Allocation . The Purchase Price and any Assumed Liabilities shall be allocated among the Acquired Assets to be acquired by each Buyer, as the case may be, in accordance with applicable Tax Law and the methodology attached as Section 3.3 of the Sellers Disclosure Schedule (the " Allocation Schedule "). Following the determination of the Final Adjusted Cash Purchase Price, the Allocation Schedule shall be updated to reflect such adjustment or adjustments, if any. Buyers and Sellers agree to report and to cause each of their respective Subsidiaries to report, as applicable, the transactions contemplated in this Agreement in a manner consistent with the Allocation Schedule for all Tax purposes, and that none of them will take any position or cause their respective Subsidiaries to take any position inconsistent therewith in any Tax Return, in any refund claim, in any litigation, or otherwise, unless otherwise required by applicable Law. Buyers and Sellers shall cooperate with each other in preparing all Tax documentation so it is consistent with the Allocation Schedule. Buyers and Sellers shall promptly notify the other Party in writing upon receipt of notice of any pending or threatened Tax audit or assessment challenging the allocation of the Purchase Price.

3.4 Withholding . Buyers and the Escrow Agent shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement such amounts as may be required to be deducted or withheld therefrom under any other provision of federal, state, local, or foreign Tax Law or under any applicable Law. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. Prior to the Closing, Canadian Seller shall deliver to Buyers a properly completed Form W-8BEN, certifying that Canadian Seller is eligible for benefits under the U.S.-Canada income tax treaty.

## ARTICLE 4
## CLOSING

4.1 Closing . Unless this Agreement is validly terminated pursuant to Section 11.1 , the Parties shall consummate the Transactions at a closing (the " Closing ") to occur on a Business Day as soon as practicable (but in no event more than three (3) Business Days) following the satisfaction or waiver (if permitted hereunder) of all of the conditions set forth in Section 4.3 other than those conditions that by their nature are to be satisfied at the Closing (but subject to the fulfillment or waiver of such conditions at the Closing) at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304. The date upon which the Closing occurs hereunder is referred to herein as the " Closing Date ."

4.2 Closing Deliveries

(a) Sellers' Closing Deliveries . At the Closing and subject thereto, Sellers shall deliver (or cause to be delivered) to Buyers the following:

(i) receipts against payment of the Estimated Adjusted Cash Purchase Price *minus* an amount equal to the Escrow Amount;

(ii) the Cross-License Agreement, executed by each applicable Seller;

(iii) the Joint Development Agreement, executed by each applicable Seller;

(iv) the Transition Services Agreement, executed by Canadian Seller;

(v) the Non-Competition and Non-Solicitation Agreement, executed by each applicable Seller;

(vi) the Bills of Sale, executed by each Seller, in substantially the same form and substance as mutually agreed by the Parties as of the date hereof (collectively, the " Bills of Sale ");

(vii) the Assignment and Assumption Agreements, in substantially the same form and substance as mutually agreed by the Parties as of the date hereof (collectively, the " Assignment and Assumption Agreement "), executed by each applicable Seller;

(viii) the Intellectual Property Assignment Agreement, in substantially the same form and substance as mutually agreed by the Parties as of the date hereof (the " IP Assignment Agreement "), executed by each applicable Seller;

(ix) an Assignment and Assumption of Lease with respect to each Transferred Lease, in substantially the same form and substance as mutually agreed by the Parties as of the date hereof (the " Assignment of Lease "), executed by each applicable Seller, together with the written consent of the underlying lessor or sublessor under each such Transferred Lease to the assignment thereof, if required pursuant to the terms of such Transferred Lease, in substantially the same form and substance as mutually agreed by the Parties as of the date hereof, with such changes thereto as are reasonably requested by such lessor or sublessor and reasonably approved by Buyers;

(x) the Escrow Agreement, executed by each Seller;

(xi) a non-foreign affidavit dated as of the Closing Date, sworn under the penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Code §1445 stating that the US Seller is not a "foreign person" as defined in Code §1445; and

(xii) such other agreements and instruments, executed by the applicable parties, as may be reasonably requested by Buyers to fully and effectively consummate the Transactions.

(b) Buyers' Closing Deliveries . At the Closing and subject thereto, Buyers shall deliver (or cause to be delivered) to Sellers the following:

(i) a cash payment in immediately available funds in the amount of the Estimated Adjusted Cash Purchase Price, *minus* an amount equal to the Escrow Amount;

(ii) the Cross-License Agreement, executed by each applicable Buyer;

(iii) the Joint Development Agreement, executed by each applicable Buyer;

(iv) the Transition Services Agreement, executed by US Buyer;

(v) the Non-Competition and Non-Solicitation Agreement, executed by each applicable Buyer;

(vi) the Bills of Sale, executed by each applicable Buyer;

(vii) the Assignment and Assumption Agreements, executed by each applicable Buyer;

(viii) the IP Assignment Agreement, executed by each applicable Buyer;

(ix) the Assignment of Lease as to each Transferred Lease, executed by each applicable Buyer;

(x) the Escrow Agreement, executed by each Buyer; and

(xi) such other agreements and instruments, executed by the applicable parties, as may be reasonably requested by Sellers to fully and effectively consummate the Transactions.

(c) Escrow Fund . At the Closing and subject thereto, Buyers shall deliver (or cause to be delivered) to the Escrow Agent a cash payment in immediately available funds in the aggregate amount of the Escrow Amount to the accounts designated in writing by the Escrow Agent prior to the Closing, which

shall be held in such accounts as partial security for the indemnification, compensation and reimbursement obligations of Sellers under this Agreement (collectively, the " Escrow Fund "). The Escrow Fund shall be held and disbursed by the Escrow Agent under and pursuant to the terms of the Escrow Agreement.

4.3 Closing Conditions

(a) Closing Conditions of Both Parties . The respective obligations of Buyers and Sellers to consummate the Transactions shall be subject to the satisfaction, at or prior to the Closing, of the following conditions:

(i) Receipt of Requisite Regulatory Approvals .

(A) All waiting periods (including extensions thereof) applicable to the Transactions under the HSR Act shall have expired or been terminated early; and

(B) The Competition Act Clearance shall have been satisfied or obtained.

(ii) Absence of Legal Restraints .

(A) No Governmental Authority shall have enacted, issued or promulgated any Law or Order that has the effect of rendering the Transactions or any of the other transactions contemplated by any of the Transaction Agreements, or the Parties' performance under any of the Transaction Agreements, illegal or otherwise prohibits or otherwise restrains the consummation of the Transactions or the Parties' performance under any of the Transaction Agreements.

(B) No Action shall be pending before any Governmental Authority, which is reasonably expected to result in an unfavorable Order (and no such Order shall have been issued or granted or be in effect) in respect thereof that would (1) prevent the performance of this Agreement or any of the Transaction Agreements or the consummation of any of the Transactions or any of the other transactions contemplated by any of the Transaction Agreements or declare unlawful any of the Transactions or any of the other transactions contemplated by any of the Transaction Agreements; (2) cause any of the Transactions or any of the other transactions contemplated by any of the Transaction Agreements to be rescinded following consummation; or (3) adversely affect in any material respect the right of Buyers and their Subsidiaries to own the Acquired Assets, receive the rights, licenses, services and benefits under the Transaction Agreements or operate the AirCard Business, other than any such Action to the extent it alleges infringement of any Patent owned, controlled or enforced by an entity generally known for a business strategy of conducting Patent litigation against alleged infringers, with no intention to manufacture or market the invention forming the subject matter of any applicable Patent, otherwise known as a "non-practicing entity".

(iii) IT Systems . All software development to support data management and the automated transmission (sending and receiving) of data to and from customers, suppliers and third parties supporting the AirCard Business, as specified on Schedule 4.3(a)(iii) , shall have been completed, tested and approved by Buyers and Sellers, acting reasonably; *provided* , that if Buyers fail to reasonably cooperate in the Parties' efforts to satisfy the condition set forth in this Section 4.3(a)(iii) , then such condition shall nevertheless be deemed satisfied.

(b) Additional Closing Conditions of Buyers . The obligations of Buyers to consummate the Transactions shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may only be waived in writing exclusively by Buyers:

(i) Accuracy of Sellers Representations and Warranties .

(A) Each of the representations and warranties of Sellers set forth in Section 5.1 (Sellers Organization and Good Standing; Authority and Enforceability), Section 5.4 (Title) and Section 5.19 (Brokerage Fees) shall have been true and correct in all respects on and as of the date of this Agreement and shall be true and correct in all respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than any such representations and warranties that address matters only as of a specified date, which shall have been true and correct in all respects as of such date).

(B) Each of the representations and warranties of Sellers set forth in this Agreement (other than in Section 5.1 (Sellers Organization and Good Standing; Authority and Enforceability), Section 5.4 (Title) and Section 5.19 (Brokerage Fees)) that is not qualified by "materiality", "Business Material Adverse Effect" or similar concept shall have been true and correct in all material respects on and as of the date of this Agreement and shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than any such representations and warranties that address matters only as of a specified date, which shall have been true and correct in all material respects as of such date).

(C) Each of the representations and warranties of Sellers set forth in this Agreement (other than in Section 5.1 (Sellers Organization and Good Standing; Authority and Enforceability), Section 5.4 (Title) and Section 5.19 (Brokerage Fees)) that is qualified by "materiality", "Business Material Adverse Effect" or similar concept shall have been true and correct in all respects (taking into account such "materiality" or "Business Material Adverse Effect" qualifier) on and as of the date of this Agreement and shall be true and correct in all respects (taking into account such "materiality" or "Business Material Adverse Effect" qualifier) on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than any such representations and warranties that address matters only as of a specified date, which shall have been true and correct in all respects as of such date).

(ii) Compliance with Covenants . Sellers shall have performed and complied in all material respects with the covenants and obligations under this Agreement required to be performed by and complied with by Sellers prior to the Closing.

(iii) Absence of Business Material Adverse Effect . Since the date of this Agreement, there shall not have occurred a Business Material Adverse Effect.

(iv) Sellers Closing Certificate . Buyers shall have received certificates, duly executed by an authorized officer of each of the Sellers, certifying as to the matters set forth in Section 4.3(b)(i) , Section 4.3(b)(ii) and Section 4.3(b)(iii) .

(v) Required Contract Consents . Each consent or waiver identified with an asterisk on Section 5.3 of the Sellers Disclosure Schedule shall have been obtained, shall be in full force and effect and such Transferred Contract shall not have been amended or modified in connection

therewith in a manner that would be adverse to Buyers, as determined by Buyers acting reasonably and in good faith.

(vi) Required Permits .

(A) Each Transferred Permit set forth on Schedule 4.3(b)(vi)(A) shall have been transferred and delivered to, and shall inure to the benefit of, Buyers, and Sellers shall have provided evidence of the transfer of each such Transferred Permit in form and substance reasonably satisfactory to Buyers.

(B) Each Permit set forth on Schedule 4.3(b)(vi)(B) shall have been obtained by Buyers so as to enable Buyers to own and operate the AirCard Business on the Closing Date after the Closing in the same manner in which Sellers operated the AirCard Business on the date hereof and on the Closing Date before the Closing.

(vii) Offered Employees . At least 85% of the Offered Employees (excluding for this purpose the Key Employees) and at least sixteen (16) of the nineteen (19) Offered Employees identified with a double asterisk on Section 5.15 (a)(i) of the Sellers Disclosure Schedule shall (A) be employees or independent contractors of Sellers (or one of Sellers' Subsidiaries) immediately prior to the Closing, (B) have accepted offers in writing of employment or service with Buyers (or any of Buyers' Subsidiaries) effective as of the Closing, which accepted offers of employment or service shall not have been repudiated or otherwise rejected by such employee or independent contractor, and (C) not have notified Sellers (or any of Sellers' Subsidiaries) or Buyers (or any of Buyers' Subsidiaries) that such Person will leave the employ or service of Buyers (or any of Buyers' Subsidiaries) shortly after Closing; *provided that* , in the event Buyers do not make written offers to one or more Offered Employees (excluding for this purpose the Key Employees) on the terms set forth in Article 9 , or following the acceptance of a written offer of employment or service by an Offered Employee (excluding for this purpose the Key Employees), Buyer (or any of its Subsidiaries) amends or withdraws such offer of employment or service in any respect, the applicable Offered Employees shall nevertheless be deemed to have accepted offers of employment or service with Buyers and shall be included in the calculation above.

(viii) Key Employees . Each of the Key Employees shall (A) be employees of Sellers (or one of Sellers' Subsidiaries) immediately prior to the Closing, (B) not have notified Sellers (or any of Sellers' Subsidiaries) or Buyers (or any of Buyers' Subsidiaries) that such Person will leave the employ of Buyers (or any of Buyers' Subsidiaries) shortly after the Closing Date, and (C) not have repudiated or otherwise rejected such Key Employee's Employment Offer Letter or Key Employee Non-Competition Agreement or any term thereof.

(ix) Financial Statements . If US Buyer is required to file with the SEC any Carve-Out Financial Statements, Sellers shall have delivered to Buyers a copy of such Carve-Out Financial Statements, in form and substance reasonably satisfactory to Buyers and which otherwise satisfy the requirements of Section 8.11(a) .

(x) Third Party Arrangements .

(A) Buyers shall have entered into written Contracts with the Persons identified with an asterisk on Section 5.13(a) of the Sellers Disclosure Schedule or Sellers shall have agreed to provide alternative arrangements to Buyers and their Subsidiaries in lieu of such written Contracts (pursuant to any of the other Transaction Agreements or

otherwise), in each case, sufficient to enable Buyers and their Subsidiaries to continue to design, develop, manufacture, test, market, support, distribute and sell AirCard Products uninterrupted from and after the Closing in a manner substantially the same as it was operated prior to the Closing.

(B) Buyers shall have entered into written Contracts with the Persons identified with a double asterisk on Section 5.13(a) of the Sellers Disclosure Schedule or Sellers shall have agreed to provide alternative arrangements to Buyers and their Subsidiaries in lieu of such written Contracts (pursuant to any of the other Transaction Agreements or otherwise), in each case, sufficient to enable Buyers and their Subsidiaries to continue to design, develop, manufacture, test, market, support, distribute and sell AirCard Products uninterrupted from and after the Closing in a manner substantially the same as it was operated prior to the Closing.

(xi) Sellers' Closing Deliveries . Sellers shall have delivered (or caused to be delivered) the following:

(A) releases of all Liens (other than Permitted Liens) relating to the Acquired Assets, including the Liens set forth on Schedule 4.3(b)(xi)(A) ; and

(B) the closing deliveries set forth in Section 4.2(a)(ii) through Section 4.2(a)(xii) .

(c) Additional Closing Conditions of Sellers . The obligations of Sellers to consummate the Transactions shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may only be waived in writing exclusively by Sellers:

(i) Accuracy of Buyers Representations and Warranties .

(A) Each of the representations and warranties of Buyers set forth in Section 6.1 (Organization and Good Standing) and Section 6.2 (Authority and Enforceability) shall have been true and correct in all respects on and as of the date of this Agreement and shall be true and correct in all respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than any such representations and warranties that address matters only as of a specified date, which shall have been true and correct in all respects as of such date).

(B) Each of the representations and warranties of Buyers set forth in this Agreement (other than the representations and warranties set forth in Section 6.1 and Section 6.2 ) that is not qualified by "materiality" or "Buyers' Material Adverse Effect" or similar concept shall have been true and correct in all material respects on and as of the date of this Agreement and shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than any such representations and warranties that address matters only as of a specified date, which shall have been true and correct in all material respects as of such date).

(C) Each of the representations and warranties of Buyers set forth in this Agreement (other than the representations and warranties set forth in Section 6.1 and Section 6.2 ) that is qualified by "materiality" or "Buyers' Material Adverse Effect" or similar concept shall have been true and correct in all respects on and as of the date of this Agreement and shall be true and correct in all respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than any such representations and warranties that address matters only as of a specified date, which shall have been true and correct in all respects as of such date).

(ii) Compliance with Covenants . Buyers shall have performed and complied in all material respects with the covenants and obligations under this Agreement required to be performed by and complied with by Buyers prior to the Closing.

(iii) Buyers Closing Deliveries . Buyers shall have delivered (or caused to be delivered) the following:

(A) certificates, duly executed by an authorized officer of each Buyer, certifying as to the matters set forth in Section 4.3(c)(i) and Section 4.3(c)(ii) ; and

(B) the closing deliveries set forth in Section 4.2(b)(ii) through Section 4.2(b)(xi) .

## ARTICLE 5
## REPRESENTATIONS AND WARRANTIES OF SELLERS

Subject to the exceptions and disclosures set forth in the disclosure schedule delivered by Sellers to Buyers concurrently with the execution and delivery of this Agreement, dated as of the date hereof (the " Sellers Disclosure Schedule ") (referencing the appropriate section, subsection, paragraph and subparagraph numbers of this Agreement; *provided, however*, that any such disclosure against any section or subsection of this Article 5 shall be deemed to be a disclosure against each of the other sections and subsections of this Article 5 to the extent the applicability of such disclosure to such other sections and subsections is reasonably apparent on the face of such disclosure), Sellers, jointly and severally, hereby represent and warrant to Buyers as follows:

5.1 Sellers' Organization and Good Standing; Authority and Enforceability

(a) Canadian Seller is a corporation duly organized, validly existing and in good standing under the Canada Business Corporations Act and is not a non-resident of Canada for purposes of the Income Tax Act (Canada). US Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Australian Seller is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. Each Seller and its applicable Subsidiaries has all necessary corporate power and authority to carry on the AirCard Business and to own and use the Acquired Assets.

(b) US Seller, being a non-resident of Canada for purposes of the Income Tax Act (Canada), is not selling or otherwise disposing of "taxable Canadian property" under this Agreement, as that term is defined in the Income Tax Act (Canada).

(c) Each Seller has all necessary corporate power and authority to execute and deliver this Agreement, the other Transaction Agreements to which it is or will be a party and each certificate and other instrument required by this Agreement or any other Transaction Agreements to be executed and delivered by such Seller pursuant hereto or thereto, to perform its obligations hereunder and thereunder and to consummate the Transactions and the other transactions contemplated hereby and thereby. The execution and delivery by each Seller of this Agreement, the other Transaction Agreements to which it is or will be a party and each certificate and other instrument required to be executed and delivered by such Seller pursuant hereto or thereto, the performance by such Seller of its obligations hereunder and thereunder and the consummation by such Seller of the Transactions and the other transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action on the part of such Seller or any of its Subsidiaries. The board of directors of each Seller has approved this Agreement, the other Transaction Agreements to which such Seller is or will be a party and the Transactions and the other transactions contemplated hereby and thereby, and no other corporate proceedings on the part of such Seller are necessary to authorize this Agreement or any other Transaction Agreements to which such Seller is or will be a party or to consummate the Transactions on the terms set forth herein and therein (other than a resolution of the sole shareholder of US Seller, which has been obtained.

(d) This Agreement, the other Transaction Agreements to which any Seller is or will be a party and each certificate and other instrument required to be executed and delivered by it pursuant hereto or thereto has been (or will be) duly and validly executed and delivered by such Seller and, assuming the due authorization, execution and delivery by Buyers, constitutes (or will constitute) a legal, valid and binding obligation of such Seller, enforceable against such Seller in accordance with its respective terms, subject in each case to bankruptcy, insolvency, reorganization or other similar Laws of general application affecting the rights and remedies of creditors, and to general principles of equity.

5.2 Governmental Approvals . Except as set forth in Section 5.2 of the Sellers Disclosure Schedule, no other consent, approval, order or authorization of, or registration, declaration or filing with any Governmental Authority (together, " Governmental Approvals ") is required on the part of any Seller or its Subsidiaries in connection with the execution and delivery of this Agreement, any other Transaction Agreements to which it is or will be a party or any certificate and other instrument required to be executed and delivered it pursuant hereto or thereto, the performance by each Seller of its obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, except for (a) filings that may be required under, and compliance with any other applicable requirements of, the HSR Act and the Competition Act, and (b) filings or reports required under, and compliance with, applicable securities law and stock exchange requirements.

5.3 Conflicts . Except as set forth in Section 5.3 of the Sellers Disclosure Schedule, the execution and delivery by each Seller of this Agreement, the other Transaction Agreements to which such Seller is or will be a party and each certificate and other instrument required to be executed and delivered by such Seller pursuant hereto or thereto, the performance by such Seller of its obligations hereunder and thereunder and the consummation by such Seller of the Transactions and the other transactions contemplated hereby and thereby do not and will not (a) conflict with or violate the certificate of incorporation or bylaws (or comparable organization documents) of such Seller or any of its Subsidiaries, (b) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of any obligations under, create in any party the right to accelerate, terminate, modify or cancel, give rise to any obligation under, result in the creation of any Lien upon any of the Acquired Assets pursuant to, require any notice, consent, approval or waiver under, or result in the loss of any benefit under, (i) any Transferred Contract, (ii) any Transferred Permit or Order relating to the AirCard Business, the Acquired Assets or Sellers or any of their Subsidiaries, or (c) violate any Law or Order applicable to the AirCard Business, the Acquired Assets or Sellers or any of their Subsidiaries.

5.4 Title . Sellers (or one or more of their Subsidiaries) have good and valid title to, or a valid leasehold interest in, the Acquired Assets, free and clear of all Liens except Permitted Liens and Liens described in Section 5.4 of the Sellers Disclosure Schedule, and upon consummation of the Transactions, Sellers shall transfer and convey to Buyers all right, title and interest of Sellers in and to the Acquired Assets, free and clear of all Liens, except Permitted Liens and Liens arising out of any actions of Buyers and their Subsidiaries.

5.5 Sufficiency of Assets

(a) Except as set forth in Section 5.5(a) of the Sellers Disclosure Schedule, the Acquired Assets, together with the other rights, licenses, services and benefits to be provided to Buyers and their Subsidiaries pursuant to this Agreement, the Cross-License Agreement, the Joint Development Agreement and the Transition Services Agreement, constitute (i) all of the properties, assets, rights and facilities, tangible and intangible, owned, used, held for use or leased by Sellers and their Subsidiaries in connection with the AirCard Business, and (ii) all of the specifications, files, records, data, documentation and other similar materials that specify the designs of the 9x15 Modules as of the Closing Date (as 9x15 Modules is defined in the Cross-License Agreement) or relate to the manufacture, testing or certification of the 9x15 Modules, and used or held for use by Sellers and their Subsidiaries as of the Closing Date; *provided, however,* that none of the foregoing are representations of non-infringement of the Intellectual Property Rights of any third party, which representations are solely set forth in Sections 5.12(d) and 5.12(e) .

(b) Except as set forth in Section 5.5(a) of the Sellers Disclosure Schedule, the Acquired Assets (i) together with the other rights, licenses, services and benefits to be provided to Buyers and their Subsidiaries pursuant to this Agreement, the Cross-License Agreement, the Joint Development Agreement and the Transition Services Agreement, constitute all of the properties, assets, rights and facilities, tangible and intangible, necessary to enable Buyers and their Subsidiaries, following the Closing, to continue to conduct the AirCard Business in the same manner as conducted as of the date hereof by Sellers and their Subsidiaries; *provided, however,* that none of the foregoing are representations of non-infringement of the Intellectual Property Rights of any third party, which representations are solely set forth in Section 5.12(d) and 5.12(e) .

(c) Except as set forth in Section 5.5(c) of the Sellers Disclosure Schedule, the Acquired Assets, together with the Licensed Technology, includes all Business Software.

5.6 AirCard Business Financial Statements . The AirCard Business Financial Statements are attached as Section 5.6 of the Sellers Disclosure Schedule. The AirCard Business Financial Statements present fairly, and the financial statements required to be delivered pursuant to Section 8.12(c)(iii) when so delivered will present fairly, the results of operations and assets of the AirCard Business for the periods and as of the dates covered thereby. The AirCard Business Financial Statements have been prepared, and the financial statements required to be delivered pursuant to Section 8.12(c) when so delivered will have been prepared, in accordance with GAAP, applied on a consistent basis, throughout the periods covered.

5.7 Absence of Changes . Except as set forth in Section 5.7 of the Sellers Disclosure Schedule, since the Reference Date:

(a) there has not occurred a Business Material Adverse Effect;

(b) there has not been any material loss, damage or destruction to, or any material interruption in the use of, any Acquired Assets (excluding any Acquired Assets that are Intellectual Property Rights) (whether or not covered by insurance); and

(c) neither Sellers nor any of their Subsidiaries has taken any action that would be prohibited by the terms of Section 7.1 or paragraphs (b) , (c) , (g) , (h) , (i) , (j) , (l) , (n) and (o) (but in the case of paragraph (o) , only with respect to paragraphs (b) , (c) , (g) , (h) , (i) , (j) , (l) and (n) ) of Section 7.2 .

5.8 Taxes

(a) Except for matters that would not adversely affect Buyers or their Subsidiaries, their operation of the AirCard Business or their ownership of the Acquired Assets, all U.S. federal, state, local, and non U.S. Tax Returns relating to any and all Taxes concerning or attributable to Sellers, their Subsidiaries or the AirCard Business have been timely filed, and such Tax Returns are true and correct in all material respects and have been completed in accordance with applicable Law.

(b) Except for matters that would not adversely affect Buyers or their Subsidiaries, their operation of the AirCard Business, or their ownership of the Acquired Assets, (i) all Taxes required to be paid by or on behalf of Sellers or their Subsidiaries or with respect to the AirCard Business (whether or not shown on any Tax Return) have been timely paid, and (ii) all Taxes required to be paid or withheld with respect to employees or other third parties of Sellers or any of their Subsidiaries have been timely paid or withheld (and withheld amounts have been timely paid over to the appropriate Taxing Authority). There are no Liens for Taxes upon the Acquired Assets, except for Liens for Taxes not yet due and payable or which are being contested in good faith for which adequate reserves have been made in accordance with GAAP on the Financial Statements.

(c) There is no Tax deficiency outstanding, assessed or proposed again or with respect to Sellers or their Subsidiaries related to the AirCard Business or the Acquired Assets, nor has any outstanding waiver of any statute of limitations on or extension of the period for which the assessment or collection of any Tax of or with respect to Sellers or their Subsidiaries relating to the AirCard Business or the Acquired Assets been executed or requested.

(d) Except as set forth in Section 5.8(d) of the Sellers Disclosure Schedue, neither Sellers nor their Subsidiaries have been notified in writing of any request for an audit, examination or proceeding with respect to any Tax Return of or with respect to Seller related to the AirCard Business or the Acquired Assets, nor is any such audit, examination or proceeding presently in progress. No written adjustment relating to any Tax Return filed by or with respect to Sellers and their Subsidiaries related to the

AirCard Business or the Acquired Assets has been proposed by any Taxing Authority. No written claim has ever been made that any Seller or any of such Seller's Subsidiaries or its operations is or may be subject to taxation in a jurisdiction in which it does not file Tax Returns by virtue of the operation of the AirCard Business or ownership of the Acquired Assets.

(e) Except as set forth in Section 5.8(e) of the Sellers Disclosure Schedule, there is no Contract between Sellers or any of their Subsidiaries and the Offered Employees which, individually or collectively, could give rise to the payment of any amount that would not be, or could reasonably be expected not to be, deductible pursuant to Sections 280G or 404 of the Code in connection with or as a result of the Transactions, either alone or in conjunction with any other event (whether contingent or otherwise).

(f) Canadian Seller is duly registered under the Excise Tax Act (Canada) with respect to goods and services tax (" GST ") and harmonized sales tax (" HST ") and under applicable provincial Tax statutes in respect of all provincial sales Taxes which it is or has been required to collect.

5.9 Personal Property

(a) Section 5.9(a) of the Sellers Disclosure Schedule contains a complete and accurate list of all material Tangible Property located in the Carlsbad, California premises, as of the date hereof, which is not Excluded Carlsbad Tangible Property.

(b) Except as set forth in Section 5.9(b) of the Sellers Disclosure Schedule, all Transferred Tangible Property is in reasonable operating condition and repair, given its respective age, is free from any material defects, reasonable wear and tear excepted, and is suitable for the uses for which it is being used in all material respects.

(c) The Transferred Inventory which is not in transit is located at facilities of or used by the AirCard Business (including customer facilities, and distribution and/or logistics facilities) and has not been consigned to any Person not a party to this Agreement. Since the Reference Date, Sellers and their Subsidiaries have sold and continued to replenish the Inventory in the ordinary course of the AirCard Business.

5.10 Real Property

(a) Neither Sellers nor any of their Subsidiaries own any Real Property.

(b) Section 5.10(b) of the Sellers Disclosure Schedule sets forth the names of the lessor and lessee under, and the address of any parcel of Real Property subject to any Transferred Lease (collectively, the " Transferred Leasehold Property "). Sellers have made available to Buyers a true and complete copy of each Transferred Lease, including each amendment, extension, renewal, guaranty, license, concession or other agreement with respect thereto. With respect to each Transferred Lease, (i) such Transferred Lease constitutes all of the written and oral agreements of any kind for the leasing, rental, use or occupancy of the corresponding Transferred Leasehold Property, (ii) Sellers' or their Subsidiaries' possession of the corresponding Transferred Leasehold Property is not currently subject to disturbance, (iii) Sellers or their Subsidiaries, as applicable, hold a good and valid leasehold interest in the applicable Transferred Leasehold Property free and clear of all Liens other than Permitted Liens and (iv) neither Sellers nor any of their Subsidiaries have assigned, transferred, sublet, or granted any person the right to use or occupy the Transferred Leasehold Property or granted any other security interest in such Transferred Lease or any interest therein.

(c) Each Transferred Lease is a valid and binding agreement of the applicable Seller or its Subsidiary and is in full force and effect in accordance with its terms. Neither Sellers nor any of their Subsidiaries have violated or breached in any material respect, nor committed any material default under, any Transferred Lease to which it is a party, which remains uncured, and, to the Knowledge of Sellers, no other Person has violated or breached in any material respect, or committed any material default under, any Transferred Lease which remains uncured. To the Knowledge of Sellers, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to: (i) result in a material violation or material breach of any of the provisions of any Transferred Lease to which such Seller or its Subsidiary is a party; (ii) give any Person the right to declare a material default and exercise a remedy under any such Transferred Lease; (iii) give any Person the right to accelerate the maturity or performance of any such Transferred Lease; or (iv) give any Person the right to cancel, terminate or modify any such Transferred Lease. Neither Sellers nor any of their Subsidiaries have received any written notice (or, to the Knowledge of Sellers, other communication) regarding any actual or threatened material violation or material breach of, or material default under, any applicable Transferred Lease, which remains uncured. Neither Sellers nor any of their Subsidiaries have waived any of their respective material rights under any Lease to which they are a party.

(d) The Transferred Leasehold Property is in good operating condition and repair given its age, reasonable wear and tear excepted, and is suitable for the operation of the AirCard Business as presently conducted therein. No Seller is party to any agreement or subject to any claim that may require the payment of any real estate brokerage commissions, and no such commission is owed with respect to any of the Transferred Leasehold Property.

5.11 Environmental Matters

(a) Sellers and their Subsidiaries are, and have at all times been, in compliance in all material respects with all Environmental Laws that are applicable to the AirCard Business, any of the Acquired Assets or any Transferred Leasehold Property. No event has occurred, and no condition or circumstance exists, that will (with or without notice or lapse of time) constitute or result in a violation by Sellers or any of their Subsidiaries of, or a failure on the part of Sellers or any of their Subsidiaries to comply with, any Environmental Law that is applicable to the AirCard Business, any of the Acquired Assets or any Transferred Leasehold Property.

(b) Within the past three (3) years, neither Sellers nor any of their Subsidiaries have received any environmental claim that relates in any way to the AirCard Business, any of the Acquired Assets or the Transferred Leasehold Property; and no environmental claim is now pending or, to the Knowledge of Sellers, threatened against Sellers or any of their Subsidiaries (or against any other Person whose Liability Sellers or their Subsidiaries have retained or assumed either contractually or by operation of Law). To the Knowledge of Sellers, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will or would reasonably be expected to, give rise to or serve as a basis for the commencement of any Action under applicable Environmental Laws.

(c) Within the past three (3) years, there has been no Release of Hazardous Materials at any of the Leased Real Properties during the ownership and operation of the AirCard Business by Sellers or any of their Subsidiaries.

(d) Each Seller and each of its Subsidiaries (i) has all Permits required for the operation of the AirCard Business and the Transferred Leasehold Property under applicable Environmental Laws and (ii) is in compliance with all such Permits. Section 5.11 (d) of the Sellers Disclosure Schedule

identifies all Permits currently held by Sellers or any of their Subsidiaries pursuant to any Environmental Laws with respect to the AirCard Business and the Transferred Leasehold Property, and all underground and aboveground storage tanks located on property included in the AirCard Business and the Transferred Leasehold Property.

(e) Neither Sellers nor any of their Subsidiaries are party to, or subject to the terms of, any Order under any applicable Environmental Law applicable to the AirCard Business or the Transferred Leasehold Property.

(f) To the Knowledge of the Sellers, there are no past or present actions, activities, circumstances, conditions, events or incidents that could form the basis for Liability against Sellers or any of their Subsidiaries (or against any other Person whose Liability Sellers or their Subsidiaries have retained or assumed either contractually or by operation of Law) pursuant to the Environmental Laws with respect to the AirCard Business or the Transferred Leasehold Property.

(g) All AirCard Products offered for sale as of the date hereof are subject to, and compliant with, the RoHS Directive.

(h) To the Knowledge of Sellers, except as set forth in Section 5.11(h) of the Sellers Disclosure Schedule, there is no asbestos contained in or forming part of the Transferred Leasehold Property or any building, structure or asset currently owned or leased by Sellers or any of their Subsidiaries (or by any other Person whose Liability Sellers or their Subsidiaries have retained or assumed either contractually or by operation of Law) with respect to the AirCard Business, and there is no asbestos contained in or forming part of any products currently or previously manufactured, distributed or sold by Sellers or any of their Subsidiaries (or by any other Person whose Liability Sellers or their Subsidiaries have retained or assumed either contractually or by operation of Law) with respect to the AirCard Business.

(i) Sellers have made available to Buyers true and complete copies of all reports, studies, assessments, audits, correspondence and other documentation in the possession of Sellers materially bearing on environmental, health and safety matters in or on the Transferred Leasehold Property.

5.12 Intellectual Property

(a) Section 5.12(a)(i) of the Sellers Disclosure Schedule sets forth a list or description of Shared Technology which is Licensed Technology. Section 5.12(a)(ii) of the Sellers Disclosure Schedule sets forth a list or description of certain Prime Transferred Technology. Section 5.12(a)(iii) of the Sellers Disclosure Schedule sets forth a list or description of the Non-Prime Transferred Technology. Section 5.12(a)(iv) of the Sellers Disclosure Schedule sets forth a complete and accurate list of all Transferred IP that is Registered IP, in respect of each such item of Registered IP, including the current owner and, the jurisdiction in which each item has been registered or filed and the applicable registration, application or serial number or similar identifier, the filing date, and applicable issuance, registration or grant date. With respect to each item of Transferred IP that is Registered IP, other than with respect to abandoned Trademarks: (i) all necessary registration, maintenance and renewal fees and taxes have been paid, and all necessary documents and certificates have been filed with the Patent and Trademark Office, Copyright Office or other relevant authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of registering, maintaining and renewing, as applicable, and maintaining in full force and effect, such Intellectual Property Rights; (ii) each such item is currently in compliance with formal legal requirements (including payment of filing fees); and (iii) each such item is not subject to any late unpaid registration, maintenance or renewal fees. Sellers have made available to Buyers in the dataroom, complete and accurate copies of all unpublished

applications of Transferred IP that constitutes Registered IP and material correspondence with any Governmental Authority related to such unpublished applications filed or received by Sellers and their Subsidiaries. To the Knowledge of Sellers, each item of Registered IP included in the Transferred IP is subsisting, valid and enforceable. For purposes of the foregoing sentence, "subsisting, valid and enforceable" with respect to applications shall mean that the application for the registration of the Transferred Intellectual Property has been properly filed and is pending, and that such application or registration is true and complete.

(b) Sellers or one or more of their Subsidiaries exclusively own all Transferred IP. Except as set forth in Section 5.12(b) of the Sellers Disclosure Schedule, no licenses, covenants not to sue, or other similar rights (i) under the Transferred Patents have been granted to any Person; (ii) under the Transferred IP have been granted exclusively to any Person.

(c) Except as set forth in Section 5.12(c) of the Sellers Disclosure Schedule, there is not currently pending, and during the six (6) years prior to the date of this Agreement there has not been, any Action filed by any third party challenging the use, ownership, validity, enforceability or registrability of any Transferred IP or Licensed IP (excluding the Sagemcom and Wavecom Patents).

(d) Except as set forth in Section 5.12(d) of the Sellers Disclosure Schedule, to the Knowledge of Sellers (and for the purposes of this Section 5.12(d) only, Knowledge shall be limited to the actual Knowledge only of the individuals named on Schedule 1.1(xx) ), neither (i) the operation of the AirCard Business as conducted as of the date hereof, including the use of the Transferred Technology and the Licensed Technology (excluding the 9x15 Modules Technology, other than the 9x15 Modules Technology that is otherwise within the Transferred Technology) in existence as of the date hereof and as used by Sellers in the operation of the AirCard Business as of the date hereof, nor (ii) the use, sale, import, export and manufacture of the AirCard Products and Business Software that are, as of the date hereof, offered for sale or distribution infringes, misappropriates or otherwise violates or constitutes the unauthorized use of any Patent owned by any Person, and to the Knowledge of Sellers, such conduct will not constitute infringement, misappropriation or other violation of such Patent of any Person when conducted by Buyers in the same manner post-Closing. For clarity, nothing in this Section 5.12(d) expands or limits any of Sellers' indemnification obligations or the Buyers Indemnified Parties' rights to recover Liabilities incurred in respect of the Specified Matters.

(e) To the Knowledge of Sellers neither (i) the operation of the AirCard Business as conducted as of the date hereof, including the use of the Transferred Technology and the Licensed Technology in existence as of the date hereof and as used by Sellers as of the date hereof, nor (ii) the use, sale, import, export and manufacture of the AirCard Products and Business Software that are, as of the date hereof, offered for sale or distribution, infringes, misappropriates or otherwise violates or constitutes the unauthorized use of any Non-Patent IP owned by any Person, and to the Knowledge of Sellers, such conduct will not constitute infringement, misappropriation or other violation of such Non-Patent IP of any Person when conducted by Buyer in the same manner post-Closing. For clarity, nothing in this Section 5.12(e) expands or limits any of Sellers' indemnification obligations or the Buyers Indemnified Parties' rights to recover Liabilities incurred in respect of the Specified Matters.

(f) Except as set forth in Section 5.12(f) of the Sellers Disclosure Schedule, (i) none of William Waung, the executive officers or outside U.S. intellectual property counsel of any Seller has received written notice from any Person during the four (4) years prior to the date of this Agreement, and (ii) no Employee attorney has received written notice from any Person during the two (2) years prior to the date of this Agreement, in each of the preceding clauses (i) and (ii), (A) claiming that the operation of the AirCard Business, or any Transferred Technology, Licensed Technology or other Licensed IP (excluding the Sagemcom and Wavecom Patents) related to the operation of the AirCard Business, or the use, sale, import,

export or manufacture of AirCard Products or Business Software infringes, misappropriates or otherwise violates or constitutes the unauthorized use of any Intellectual Property Rights of any Person or (B) demanding or offering to license to Sellers or any of their Subsidiaries any Intellectual Property Rights in connection with the AirCard Business. No item of Transferred IP or Licensed IP (excluding the Sagemcom and Wavecom Patents) is subject to any outstanding Order or settlement agreement or stipulation in litigation that restricts in any manner the use, provision, transfer, assignment or licensing thereof by Sellers or any of their Subsidiaries or that may affect the validity, use, ownership, registrability or enforceability of such Transferred IP or Licensed IP (excluding the Sagemcom and Wavecom Patents).

(g) Except as set forth in Section 5.12(g) of the Sellers Disclosure Schedule, (i) no Actions have been brought against any Person by Sellers or any of their Subsidiaries during the six (6) years prior to the date of this Agreement, and (ii) no Actions have been threatened against any Person by Sellers or any of their Subsidiaries during the two (2) years prior to the date of this Agreement, in each case alleging that a Person is infringing, misappropriating or otherwise violating or is engaged in the unauthorized use of, any Transferred IP.

(h) Sellers and their Subsidiaries have and enforce a policy requiring each Employee engaged in research and development to execute an Invention Assignment Agreement and a Confidentiality Agreement containing proprietary information, confidentiality and assignment provisions that provide for (i) the non-disclosure by such Person of any of Sellers' or any of their Subsidiaries' confidential information relating to the AirCard Business, (ii) the assignment by such Person to Sellers or any of their Subsidiaries of full legal and beneficial title to all contributions, new improvements, inventions and Intellectual Property Rights arising out of such Person's employment or consulting relationship by Sellers or any of their Subsidiaries and (iii) a waiver of all moral rights in all copyrighted works, which forms have been provided to Buyers. To the Knowledge of Sellers, no Employee has made any assertions with respect to any alleged ownership or rights in any Transferred IP or Licensed IP (excluding the Sagemcom and Wavecom Patents). To the Knowledge of Sellers, (A) none of the Employees' work for Sellers or their Subsidiaries has been in any way performed in breach of such Employees' obligations to any Person, including any confidentiality or Intellectual Property Rights transfer obligations, and (B) there is no reasonable basis for any Person to claim rights to any Transferred IP or Licensed IP (excluding the Sagemcom and Wavecom Patents) as work for hire or otherwise in connection with any work done by an Employee or consultant for such Person at any time.

(i) Section 5.12(i) of the Sellers Disclosure Schedule contains a complete and accurate list of Third Party Components other than Open Source Software, in each case identifying (i) the AirCard Products or Business Software, as applicable, associated with such Third Party Component and (ii) the license or other agreement granting Sellers or any of their Subsidiaries rights in and to such Third Party Component.

(j) Section 5.12(j) of the Sellers Disclosure Schedule sets forth a complete and accurate list of Third Party Components that are Open Source Software embedded in any AirCard Product or Business Software that is, as of the date hereof, distributed or offered for distribution, that would, with respect to any Transferred Technology (i) require its disclosure or distribution in Source Code form, (ii) require the licensing thereof for the purpose of making derivative works, (iii) impose any restriction on the consideration to be charged for the distribution thereof, (iv) create, or purport to create, obligations for Sellers or any of their Subsidiaries with respect to any Transferred IP or grant, or purport to grant, to any third party, any rights or immunities under any Transferred IP, or (v) impose any other material limitation, restriction, or condition on the right of Sellers or any of their Subsidiaries with respect to its use or distribution.

(k) Except as set forth in Section 5.12(k) of the Sellers Disclosure Schedule, neither Sellers nor any of their Subsidiaries, nor any other Person acting on their behalf have disclosed, delivered or licensed to any escrow agent or other Person, agreed to disclose, deliver or license to any escrow agent or other Person, or permitted the disclosure, delivery or licensing to any escrow agent or other Person of, any Source Code for any AirCard Product or Business Software, that is, as of the date hereof, distributed or offered for distribution, except for disclosures to Employees and contractors and the provision of software development kits (SDKs) to existing customers for development purposes, in each case under binding written agreements that prohibit the disclosure thereof and prohibit the use thereof except, with respect to Employees and contractors, in the performances of services to Sellers or any of their Subsidiaries and, with respect to customers, for the purposes specified in the applicable SDK license agreement. Neither Sellers nor any of their Subsidiaries has any duty or obligation (whether present, contingent or otherwise) to deliver, license or make available the Source Code for any AirCard Product for Business Software that is, as of the date hereof, under development, sold or distributed, or offered for sale or distribution, to any escrow agent or other Person, including as a result of the consummation of this Agreement.

(l) To the Knowledge of Sellers, all AirCard Products and Transferred Technology and Licensed Technology are free of any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components that permit unauthorized access or the unauthorized disablement, data corruption or erasure.

(m) Except as set forth in Section 5.12(m) of the Sellers Disclosure Schedule, no government funding, facilities or resources of a Governmental Authority, university, college, or other educational institution or research center was used in the development of any AirCard Product or Business Software within eight (8) years prior to the date of this Agreement and no Governmental Authority, university, college, or other educational institution or research center has any claim or right in or to any Transferred Technology. To the Knowledge of Sellers, no Person (including any current or former Employee of Sellers or any of their Subsidiaries), who was involved in, or who contributed to, the creation or development of any AirCard Product offered for sale as of the date hereof and Transferred Technology, has performed services for a Governmental Authority, university, college, or other educational institution or research center during a period of time during which such Person was also performing services for Sellers or any of their Subsidiaries.

(n) Neither the execution, delivery or performance of this Agreement nor the consummation of the Transaction Agreements, nor the assignment of the Transferred Contracts (assuming that all consents listed on Section 5.3 of the Sellers Disclosure Schedule are obtained), will, with or without notice or lapse of time, result in: (i) a loss of any Transferred IP or Licensed IP that would adversely affect Buyers' rights to use the Transferred IP or Licensed IP; (ii) any encumbrance on any Transferred IP, or with respect to the Licensed IP, any encumbrance which would conflict with the licenses granted to Buyers under the Cross-License Agreement; (iii) except as set forth in Section 5.12(n)(iii) of the Sellers Disclosure Schedule, a payment or increased royalty or an obligation to offer any discount or be bound by any "most favored royalty" or "most favored pricing" terms under any Transferred Contract; or (iv) pursuant to any Contract, other than a Transferred Contract, to which any Seller or any of its Subsidiaries is a party, the grant, assignment or transfer to any other Person of any license or other right or interest in, under, or with respect to, any Transferred IP; *provided* , that, with respect to Licensed IP, the foregoing representation and warranty excludes the Sagemcom and Wavecom Patents. Following the Closing, all Transferred IP will be fully transferable, alienable or licensable by Buyers without restriction and without payment of any kind to any third party.

(o) Sellers and their Subsidiaries have used commercially reasonable efforts to maintain, protect and preserve the confidentiality of all confidential information and trade secrets included

within the Transferred Technology. To the Knowledge of Sellers, there has been no unauthorized disclosure by any Person of any such confidential information and trade secrets.

5.13 Contracts

(a) Section 5.13(a) of the Sellers Disclosure Schedule sets forth a complete and accurate list of all Material Contracts as of the date hereof and all Transferred Contracts. For purposes of this Agreement, " Material Contracts " means the following Contracts relating to the AirCard Business (whether in whole or in part):

(i) all purchase or supply agreements with customers of the AirCard Business (including distributors and resellers) accounting for at least 85% of the revenue of the AirCard Business in each of fiscal year 2011 and for the nine (9) month period ended September 30, 2012;

(ii) all supply agreements with the top four (4) largest suppliers of any raw material or components incorporated into AirCard Products;

(iii) all manufacturing agreements with a material contract manufacturer of the AirCard Business;

(iv) all Contracts pursuant to which a Seller or any of its Subsidiaries has licensed or is obligated to license any Transferred IP to a third party, excluding any non-exclusive licenses to (A) AirCard Products granted by a Seller or any of its Subsidiaries in the ordinary course of the AirCard Business incidental to the sale or manufacture of AirCard Products to an end customer; and (B) any Technology that is embedded or incorporated in, or distributed with, AirCard Products, in the ordinary course of the AirCard Business incidental to the sale or manufacture of AirCard Products to an end customer (the " Out-Licenses ");

(v) all Contracts pursuant to which a third party has licensed any Technology or Intellectual Property Rights to a Seller or any of its Subsidiaries that is material to the conduct of the AirCard Business as currently conducted (other than licenses for Standards Essential Patents, and licenses for enterprise software, Shrink-Wrap Code or any other Software licensed in Object Code only for internal use purposes) (the " In-Licenses "); and

(vi) any Contract, which is not an Standards Essential Patent license, that involves the payment of royalties to any other Person.

(b) Except as set forth in Section 5.13(b) of the Sellers Disclosure Schedule, Sellers have made available to Buyers true and correct copies of all Material Contracts and all Transferred Contracts (including all amendments, supplements and other modifications thereto) as in effect on the date hereof. Each Transferred Contract is a valid and binding agreement of Sellers or their Subsidiaries and is in full force and effect in accordance with its terms. Neither Sellers nor any of their Subsidiaries have violated or breached in any material respect, and neither Sellers nor any of their Subsidiaries have committed any material default under, any Transferred Contract, which remains uncured, and, to the Knowledge of Sellers, no other Person has violated or breached in any material respect, or committed any material default under, any Transferred Contract which remains uncured. To the Knowledge of Sellers and assuming that all consents set forth on Section 5.3 of the Sellers Disclosure Schedule are obtained no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to: (i) result in a material violation or material breach of any of the provisions of any Transferred Contract; (ii) give any Person the right to declare a default or exercise any remedy under any Transferred

Contract; (iii) give any Person the right to accelerate the maturity or performance of any Transferred Contract; or (iv) give any Person the right to cancel, terminate or modify any Transferred Contract. Neither Sellers nor any of their Subsidiaries have received any written notice (or, to the Knowledge of Sellers, other communication) regarding any actual or possible material violation or material breach of, or material default under, any Transferred Contract, which remains uncured. Neither Sellers nor any of their Subsidiaries have waived any of its respective material rights under any Transferred Contract.

5.14 Customers and Suppliers . Except as set forth on Section 5.14 of the Sellers Disclosure Schedule, neither Sellers nor any of their Subsidiaries have received any notice from any customer identified on Section 5.14 of the Sellers Disclosure Schedule to the effect that such Person will (i) stop purchasing AirCard Products, or (ii) decrease the rate of purchase of AirCard Products in a manner that is materially inconsistent with historical rates of purchases of products of the AirCard Business. Neither Sellers nor any of their Subsidiaries have received any notice from any supplier identified on Section 5.14 of the Sellers Disclosure Schedule to the effect that such Person will (i) stop supplying Transferred IP, Licensed IP or AirCard related products or services, or (ii) decrease the rates of supply of Transferred IP, Licensed IP or AirCard related products or services in a manner that is materially inconsistent with the historical rates of supply of such products and services.

5.15 Employee Matters

(a) The names of the Offered Employees are set forth on Section 5.15(a)(i) of the Sellers Disclosure Schedule. With respect to Offered Employees who are employees, Section 5.15(a)(ii) of the Sellers Disclosure Schedule sets forth a complete and accurate list as of the date hereof of (i) the employee IDs and rates of compensation of all such Offered Employees, (ii) the respective title and/or position, place of employment, date of hire and annual remuneration (including commission and bonus opportunity) of each such Offered Employee, and (iii) the names of those Offered Employees who are absent from active employment, including, but not limited to, leave of absence (excluding by reason of leave of absence attributable to holiday, approved vacation (which is not a sabbatical) and sick leave reasonably anticipated to be less than two (2) weeks in duration) or disability.

(b) With respect to Offered Employees who are independent contractors, Section 5.15(b) of the Sellers Disclosure Schedule sets forth a complete and accurate list as of the date hereof of the material terms and conditions of engagement of each such Offered Employee, including but not limited to, provisions as to notice of termination, remuneration and emoluments. To the Knowledge of Sellers, there are no ongoing negotiations (whether with any consultant or independent contractor or their representative) to vary any material term or condition of engagement of any such person, nor have any material representations, promises, offers or proposals concerning or affecting the terms and conditions of engagement of any such persons been made.

(c) Sellers and each of their Subsidiaries are, and have at all times been, in compliance in all material respects with all Laws restricting employment, including all applicable federal, state, provincial, local and foreign Laws concerning discrimination and equal opportunity in employment, wages, hours and working conditions of employment, meal and rest periods, vacations and vacation pay, leaves of absence, employee privacy, worker classification (including the proper classification of workers as exempt from overtime, or independent contractors and consultants), payment of wages (including overtime wages), workers' compensation, occupational safety and health, workers' hazardous materials, workplace safety and insurance, layoffs, immigration and employment practices, the payment of social security, employment insurance, statutory deductions and withholdings, and Taxes, and all reporting and recordkeeping related thereto, that are applicable to the AirCard Business, any of the Acquired Assets or the

Assumed Liabilities. No event has occurred, and no condition or circumstance exists, that will (with or without notice or lapse of time), constitute or result in a material violation by Sellers or their Subsidiaries of, or a material failure on the part of Sellers or any of their Subsidiaries to comply with, any Laws respecting employment that are applicable to the AirCard Business, any of the Acquired Assets or the Assumed Liabilities.

(d) To the Knowledge of Sellers, as of the date hereof, none of the Offered Employees are subject to any noncompete, nondisclosure, confidentiality, employment, consulting or similar agreements relating to, affecting or in conflict with the present or proposed activities of the AirCard Business, except for agreements between Sellers or any of their Subsidiaries, their Affiliates and their present and former Employees.

(e) Neither Sellers nor any of their Subsidiaries are a party to or bound by any collective bargaining agreement or other labor union contract (including any contract or agreement with any works council, trade union, or other labor-relations entity) with respect to any Offered Employee, and no such collective bargaining agreement or other union contract is being negotiated by Sellers or any of their Subsidiaries. There is no certification of a trade union as bargaining agent or pending demand for recognition or any other request or demand from a labor organization for representative status with respect to any Offered Employee. To the Knowledge of Sellers, there are no current activities or proceedings of any labor union to organize the Offered Employees. There is no labor dispute, strike or work stoppage against Sellers or any of their Subsidiaries pending or, to the Knowledge of Sellers, threatened which would reasonably be expected to materially interfere with the AirCard Business. To the Knowledge of Sellers, neither Sellers nor any of their Subsidiaries have engaged in any unfair labor practice in connection with the operation of the AirCard Business, or been subject to any pending or threatened charge or complaint of unfair labor practice in connection with the operation of the AirCard Business, before the National Labor Relations Board and any similar state, provincial, local or foreign agency.

(f) Within the past two (2) years, Sellers and their Subsidiaries have not implemented any layoff of any Offered Employees that implicated the WARN Act and for which there is any outstanding material liability of the Sellers and their Subsidiaries.

(g) Section 5.15(g) of the Sellers Disclosure Schedule sets forth the identities (by employee ID number) and work places of all Offered Employees whose employment was terminated by Sellers during the ninety (90) day period prior to the Closing Date other than as part of the transfer of employment from the Sellers or any of their Subsidiaries to Buyers or any of their Subsidiaries on the Closing Date and other than for Offered Employees who were terminated on account of the Closing or pursuant to a written request by Buyers.

(h) To the Knowledge of Sellers, Sellers and their Subsidiaries are and have been in compliance with all non-U.S. laws applicable to the Offered Employees concerning employer contributions and deduction and remission of employee contributions to any trade union, housing, unemployment, retirement, bonus, worker's compensation and welfare funds and all other funds to which an employer is required by Law to contribute.

(i) With respect to the Non-U.S. Employees, Sellers and their Subsidiaries do not have, either formally or informally, and whether or not reduced to writing, any policy, custom or practice of implementing redundancies on a selective basis in accordance with specific procedures, criteria or formulae with respect to any Offered Employees.

(j) Other than as set out in Section 5.15(j) of the Sellers Disclosure Schedule, as of the date hereof, no Offered Employee is currently in receipt of or, to the Knowledge of Sellers, has threatened to claim under a long term disability or permanent health insurance scheme or policy within the next twelve (12) months.

(k) There are no pending Actions with any dismissed Non-U.S. Employee engaged in the AirCard Business challenging the validity of such Person's termination pursuant to which such Person could potentially claim to have transferred into the employment of Buyers or any Affiliate of Buyers under the Transfer Regulations.

(l) To the Knowledge of Sellers, no Offered Employee has instituted any internal grievance procedure, corporate information disclosure procedure or malpractice notification procedure nor has any Offered Employee been the subject of disciplinary proceedings in the last twelve (12) months by reason of misconduct or suspected misconduct.

(m) The Closing will not give rise to the payment of any material remuneration, payments or benefits or any enhancements or accelerations thereof to any Offered Employee whether in accordance with the standard terms and conditions of employment of such Offered Employee or otherwise, except for such payments as are required by applicable Law, except as disclosed in Section 5.15(m) of the Sellers Disclosure Schedule.

(n) Except as would not reasonably be expected to result in a Liability to Buyers, Sellers have paid or provided when due all remuneration earned or due to Offered Employees, including, without limitation, all wages, salary, commissions, bonuses, vested grants of restricted stock options, vacation pay, statutory holiday pay, expenses and, in respect of Offered Employees in Canada, all amounts that would constitute "wages" under the Employment Standards Act (B.C.) (collectively, " Wages ").

5.16 Employee Benefits Plans

(a) Section 5.16(a) of the Sellers Disclosure Schedule identifies each material Employee Benefit Plan and Employee Non-Competition Agreement that is sponsored and maintained by Sellers or any of their Subsidiaries for the benefit of the Offered Employees or that binds any Offered Employee.

(b) Each Employee Benefit Plan that is intended to be a "qualified plan" as described in Section 401(a) of the Code has received a favorable opinion, advisory or determination letter with respect to its qualified status and is currently in compliance in all material respects with, and has been funded, administered and operated in material compliance with, its terms and all applicable Laws.

(c) Except as set forth in Section 5.16(c) of the Sellers Disclosure Schedule, with respect to the Offered Employees, neither Sellers nor their ERISA Affiliates maintain, sponsor, contribute to or have any liability or potential liability with respect to (i) any "defined benefit plan", as defined in Section 3(35) of ERISA, that is subject to ERISA or any other plan subject to the funding requirements of Section 412 of the Code or Section 302 of Title IV of ERISA, (ii) any "multiemployer plan", as defined in Section 3 (37) or 4001(a)(3) of ERISA, that is subject to ERISA, or (iii) any employee benefit plan, program or arrangement that provides for post-retirement medical, life insurance or other welfare-type benefits (other than health continuation coverage required by COBRA).

(d) To the Knowledge of Sellers, Section 5.16(d) of the Sellers Disclosure Schedule contains a complete and accurate list of each Contract or plan of Sellers or any of their Subsidiaries with an

Offered Employee that is a "nonqualified deferred compensation plan" (as defined for purposes of Code Section 409A(d)(1)) and, to the Knowledge of Sellers, each such Contract or plan is, or has been, in documentary and operational compliance with Code Section 409A and the applicable guidance issued thereunder. No Person has a right to any gross up or indemnification from Sellers or any of their Subsidiaries with respect to any such Employee Benefit Plan, payment or arrangement subject to Section 409A of the Code. Neither Sellers nor any of their Subsidiaries have any indemnity obligation to any Offered Employee for any Taxes imposed under Section 409A of the Code.

5.17 Legal Proceedings

(a) Except as set forth in Section 5.17(a) of the Sellers Disclosure Schedule, there is no Action, condemnation or expropriation pending, or to the Knowledge of Sellers, threatened against or affecting Sellers or any of their Subsidiaries that relates to the AirCard Business, any of the Acquired Assets or any of the Licensed IP, or that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Transactions or any other transaction contemplated by this Agreement or any other Transaction Agreement. Except as disclosed on Section 5.17(a) of the Sellers Disclosure Schedule, to the Knowledge of Sellers, no event has occurred, and no claim, dispute or other condition or circumstance exists, that will or would reasonably be expected to, give rise to or serve as a basis for the commencement of any such Action. To the Knowledge of Sellers and except as described on Section 5.17(a) of the Sellers Disclosure Schedule, there is no inquiry or investigation pending or threatened by or before a Governmental Authority against or affecting the AirCard Business, any of the Acquired Assets or any of the Licensed IP (including any inquiry as to the qualification of the AirCard Business, Sellers or any of their Subsidiaries to hold or receive any license or Permit related to the AirCard Business).

(b) There is no Order to which Sellers or any of their Subsidiaries are subject that affects the AirCard Business, any of the Acquired Assets or any of the Licensed IP.

(c) None of the representations and warranties in this Section 5.17 are representations and warranties given with respect to Intellectual Property Rights, which representations are solely set forth in Section 5.12 .

5.18 Compliance with Laws; Permits

(a) Sellers and their Subsidiaries are, and have at all times been, in compliance in all material respects with each Law that is applicable to the AirCard Business, any of the Acquired Assets, any of the Licensed IP or the Assumed Liabilities. No event has occurred, and no condition or circumstance exists, that will (with or without notice or lapse of time) constitute or result in a material violation by any Sellers or any of their Subsidiaries of, or a material failure on the part of it to comply with, any Law that is applicable to the AirCard Business, any of the Acquired Assets, any of the Licensed IP or the Assumed Liabilities. Neither Sellers nor any of their Subsidiaries have received any written notice (or, to the Knowledge of Sellers, other communication) from any Person regarding any actual or possible material violation of, or material failure to comply with, any Law that is applicable to the AirCard Business, any of the Acquired Assets, any of the Licensed IP or the Assumed Liabilities.

(b) Section 5.18(b) of the Sellers Disclosure Schedule sets forth a complete and accurate list of all material Permits pursuant to which Sellers or any of their Subsidiaries currently leases, operates or holds any interest in any Acquired Assets, and such Permits constitute all material Permits required to permit Sellers or any of their Subsidiaries to operate or conduct the AirCard Business. All Transferred Permits are in full force and effect. Sellers and their Subsidiaries are, and have at all times been, in compliance

in all material respects with each Transferred Permit. Neither Sellers nor any of their Subsidiaries have received any written notice (or, to the Knowledge of Sellers, other communication) from any Governmental Authority regarding: (i) any actual or possible material violation of or material failure to comply with any term or requirement of any Transferred Permit; or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Transferred Permit.

5.19 Brokerage Fees . Sellers and their Subsidiaries have not incurred any Liabilities for any brokerage, finder, investment banking or other similar fees, commissions or expenses in connection with the Transactions, except for such fees, commissions and expenses of which will be paid by Sellers.

5.20 Related Party Transactions . (a) No Related Party has, and no Related Party has had, any interest in any material asset used in or otherwise relating to the AirCard Business; (b) no Related Party has entered into, or has had any financial interest in, any material Contract, transaction or business dealing or involving the AirCard Business; and (c) to the Knowledge of Sellers, no Related Party is competing with the AirCard Business. As used herein, " Related Party " shall mean: (i) each individual who is an officer or director of Sellers or any of their Subsidiaries; (ii) each member of the immediate family of each of the individuals referred to in clause (ii) above; and (iii) any trust or other Person in which any one of the Persons referred to in clauses (i) and (ii) above holds (or in which more than one of such Persons collectively hold), beneficially or otherwise, a material voting, proprietary or equity interest.

5.21 Credit Support . Section 5.21 of the Sellers Disclosure Schedule sets forth a complete and accurate list of all letters of credit, guarantees, surety bonds, or other credit support provided by or arranged by Sellers or their Affiliates with third parties which benefit the AirCard Business and for which Buyers would be reasonably expected to provide replacement letters of credit, guarantees, surety bonds, or other credit support following the Closing.

5.22 Anticorruption . Neither Sellers, nor any of their Subsidiaries, nor any of their respective officers, directors, employees, stockholders, agents or representatives, nor any Person associated with or acting for or on behalf of any Seller or such Seller's Subsidiaries, have directly or indirectly (a) made, offered, or attempted to make any contribution, gift, bribe, rebate, payoff, influence payment, kickback, any other payment, or provided anything of value to any Person, private or public (including foreign public officials), regardless of what form, whether in money, property, or services: (i) to obtain or retain business or favorable treatment for business, (ii) or to direct business to another, (iii) to obtain special concessions or for special concessions already obtained, or (iv) in violation of any requirement of applicable anticorruption and anti-bribery laws, or (b) established or maintained any fund or asset outside of a Seller's or any of its Subsidiaries' normal business books and records.

5.23 Export Control Laws . Each Seller and each of its Subsidiaries has at all times conducted its export transactions in connection with the AirCard Business in all material respects in accordance with (x) all applicable U.S. export and reexport controls, including the United States Export Administration Act and Regulations and Foreign Assets Control Regulations and (y) all other applicable import/export controls in other countries in which Seller conducts the AirCard Business. Without limiting the foregoing,

(a) Sellers and their Subsidiaries have obtained all export and import licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations and filings with any Governmental Authority required for (i) the export, import and reexport of products, services, Software and technologies used in, held for use in or necessary for the operation of the AirCard Business and (ii) releases of technologies and Software used in, held for use in or necessary for the operation of the AirCard Business to non-U.S. nationals located in the United States and abroad (" Export Approvals ");

(b) Sellers and their Subsidiaries are, and have at all times been, in compliance in all material respects with the terms of all applicable Export Approvals that are applicable to the AirCard Business or any of the Acquired Assets;

(c) There are no pending or, to the Knowledge of Sellers, threatened claims against Sellers or their Subsidiaries with respect to such Export Approvals;

(d) To the Knowledge of Sellers, there are no presently existing facts or circumstances pertaining to Sellers' or their Subsidiaries' export transactions in respect of the AirCard Business that would constitute a reasonable basis for any future claims with respect to such Export Approvals;

(e) No Export Approvals for the transfer of export licenses to Buyers are required, or such Export Approvals can be obtained expeditiously without material cost; and

(f) Section 5.23(f) of the Sellers Disclosure Schedule sets forth the true, complete and accurate export control classifications applicable to the AirCard Products offered for sale as of the date hereof.

5.24 AirCard Products; Product Defect and Warranty

(a) The AirCard Products are listed on Section 5.24(a)(i) of the Sellers Disclosure Schedule and Section 5.24(a)(ii) of the Sellers Disclosure Schedule.

(b) Neither Sellers or any of their Subsidiaries nor any customers of the AirCard Business have, at any time, engaged in or instituted a product recall related to any AirCard Product (or predecessor to any AirCard Product) or received a notice from any Governmental Authority or other entity that product recall related to any AirCard Product (or predecessor to any AirCard Product) is or might be necessary (whether for any safety issue, quality issue or otherwise). To the Knowledge of Sellers, no circumstance or condition exists (that with or without notice or lapse of time, or both) that will, or would reasonably be expected to, require or result in a product recall related to any AirCard Product.

(c) Section 5.24(c) of the Sellers Disclosure Schedule sets forth the refund or return policies of, and all warranties given or made by Sellers or their Subsidiaries in respect of the AirCard Products, other than the refund or return policies of, and all warranties given or made by Sellers or their Subsidiaries which are set out in the Transferred Contracts.

(d) Except as disclosed in Section (d)5.24(d) of the Sellers Disclosure Schedule, no epidemic failure (or similar concept) under any Transferred Contract has occurred, and to the Knowledge of Sellers, no circumstance or condition exists (with or without notice or lapse of time, or both) that will, or would reasonably be expected to, result in an Epidemic Failure of any AirCard Product or predecessor to any AirCard Product (and, including, for the avoidance of doubt, any component part of any AirCard Product or predecessor of any AirCard Product).

5.25 Books and Records . Sellers and their Subsidiaries have made and kept (and provided Buyers reasonable access to) all Transferred Books and Records, which, in reasonable detail, accurately and fairly reflect the activities of the AirCard Business, except as such is reflected in the Excluded Books and Records. Neither Sellers nor any of their Subsidiaries have engaged in any transaction in connection with the AirCard Business, except as reflected in its normally maintained books and records of Sellers and their Subsidiaries. Except as disclosed in Section 5.25 of the Sellers Disclosure Schedule, the Transferred Books and Records have been maintained in accordance with sound business practices, including the maintenance of an adequate system of internal controls.

5.26 Complete Copies of Materials . Sellers have made available to Buyers true, correct and complete copies (or with respect to oral agreements, written summaries of the same) of each Transferred Contract.

## ARTICLE 6
## REPRESENTATIONS AND WARRANTIES OF BUYERS

Buyers, jointly and severally, hereby represent and warrant to Sellers as follows:

6.1 Organization and Good Standing . US Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. IP Buyer is a limited company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. International Buyer is a limited company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. Canadian Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. Australian Buyer is a proprietary company duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation.

6.2 Authority and Enforceability .

(a) Each Buyer has all necessary corporate power and authority to execute and deliver this Agreement, the other Transaction Agreements to which such Buyer is or will be a party and each certificate and other instrument required by this Agreement or any other Transaction Agreements to be executed and delivered by Buyers pursuant hereto or thereto, to perform their obligations hereunder and thereunder and to consummate the Transactions and the other transactions contemplated hereby and thereby. The execution, delivery and performance by each Buyer of this Agreement, the other Transaction Agreements to which such Buyer is or will be a party and each certificate and other instrument required to be executed and delivered by such Buyer pursuant hereto or thereto, the performance by such Buyer of its obligations hereunder and thereunder and the consummation by such Buyer of the Transactions and the other transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary corporate action on the part of such Buyer. The board of directors of each Buyer has approved this Agreement, the other Transaction Agreements to which such Buyer is or will be a party and the Transactions and the other transactions contemplated hereby and thereby, and no other corporate proceedings on the part of such Buyer or any of its Subsidiaries are necessary to authorize this Agreement or any other Transaction Agreements to which such Buyer is or will be a party or to consummate the Transactions on the terms set forth herein and therein.

(b) This Agreement, the other Transaction Agreements to which any Buyer is or will be a party and each certificate and other instrument required to be executed and delivered by such Buyer pursuant hereto or thereto has been (or will be) duly and validly executed and delivered by such Buyer and,

assuming the due authorization, execution and delivery by Sellers, constitutes (or will constitute) a legal, valid and binding obligation of such Buyer, enforceable against such Buyer in accordance with its respective terms, subject in each case to bankruptcy, insolvency, reorganization or other similar Laws of general application affecting the rights and remedies of creditors, and to general principles of equity.

6.3 Governmental Approvals . No Governmental Approvals are required on the part of any Buyer or any of their Subsidiaries in connection with the execution and delivery of this Agreement, any other Transaction Agreements to which such Buyer is or will be a party or any certificate and other instrument required to be executed and delivered by such Buyer pursuant hereto or thereto, the performance by such Buyer of its obligations hereunder or thereunder or the consummation of the Transactions or any other transactions contemplated hereby or thereby, except for (a) filings that may be required under, and compliance with any other applicable requirements of, the HSR Act and the Competition Act and (b) filings or reports required under, and compliance with, applicable federal U.S. Securities Laws and the Securities Act (B.C.).

6.4 Conflicts . The execution and delivery by each Buyer of this Agreement, the other Transaction Agreements to which such Buyer is or will be a party and each certificate and other instrument required to be executed and delivered by such Buyer pursuant hereto or thereto, the performance by such Buyer of its obligations hereunder and thereunder and the consummation by such Buyer of the Transactions and the other transactions contemplated hereby and thereby do not and will not (a) conflict with or violate the certificate of incorporation or bylaws (or other comparable organization documents) of such Buyer or any of its Subsidiaries, (b) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of any obligations under, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, or result in the loss of any benefit to which such Buyer is entitled under, any Contract to which such Buyer is a party or by which such Buyer is bound or to which its assets are subject, or (c) violate any Law applicable to such Buyer or any of its properties or assets, other than in the case of the preceding clauses (b) or (c) for any conflicts, breaches, defaults or violations that would not have a Buyer Material Adverse Effect.

6.5 Funds . Buyers will have sufficient funds at the Closing to pay the Adjusted Cash Purchase Price.

6.6 Brokers and Finders . Buyers have not incurred any Liabilities for any brokerage, finder, investment banking or other similar fees, commissions or expenses in connection with the Transactions, except for such fees, commissions and expenses of which will be paid by Buyers (which, for purposes of clarity, will not be paid by Sellers or factored into any adjustments to the Estimated Adjusted Cash Purchase Price or the Final Adjusted Cash Purchase Price contemplated by this Agreement).

6.7 GST/HST Registration . NETGEAR Holdings Limited and NETGEAR International Limited are not registered for GST or HST under Part IX of the Excise Tax Act (Canada) and do not carry on any business in Canada.

## ARTICLE 7
## INTERIM CONDUCT OF AIRCARD BUSINESS

7.1 Conduct of AirCard Business . Except as expressly contemplated by this Agreement, as set forth in Section 7.1 of the Sellers Disclosure Schedule, or as Buyers may otherwise consent in writing (which consent will not be unreasonably withheld, delayed or conditioned), at all times from the date hereof until the earlier to occur of the Closing and the valid termination of this Agreement in accordance with the terms hereof, Sellers shall and shall also cause their Subsidiaries to:

(a) operate the AirCard Business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted;

(b) take all commercially reasonable steps to preserve and protect the Transferred Tangible Property in the condition it existed as of the date of this Agreement, ordinary wear and tear excepted, and in the event of any damage to or destruction of any of the Acquired Assets prior to the Closing, at Sellers sole option replace, repair or restore such Acquired Assets;

(c) comply with all requirements of Law, Orders and contractual obligations applicable to the operation of the AirCard Business;

(d) use commercially reasonable efforts to (i) preserve intact the AirCard Business, (ii) keep available the services of the AirCard Business's officers, employees and agents and (iii) maintain the AirCard Business's current relations and goodwill with suppliers, customers, distributors, licensors, licensees, landlords, creditors, employees, agents and others having business relationships with the AirCard Business, including by promptly paying all amounts owing to such Persons that arise out of the AirCard Business as and when such amounts are due, other than amounts being disputed in good faith;

(e) sell and continue to replenish Transferred Inventory in a normal and customary manner;

(f) continue in full force and effect all insurance coverage pertaining to the AirCard Business, the Acquired Assets or the Licensed IP that are in effect as of the date hereof or obtain substantially equivalent policies;

(g) maintain the Transferred Books and Records in the ordinary course of business consistent with past practice; and

(h) file new Patent applications on inventions arising from the development of the AirCard Products or the operation of the AirCard Business in the ordinary course of business consistent with past practice (and to not delay any such filings in order to avoid such Patent application from becoming an Acquired Asset).

7.2 Restrictions on AirCard Business . Except as expressly contemplated by this Agreement, as set forth in Section 7.2 of the Sellers Disclosure Schedule, or as Buyers may otherwise consent in writing (which consent, in the case of paragraphs (d) , (e)(iii) , (h) , (i) , (j) , (k) , (m) and (o) (but only, in the case of paragraph (o) , to the extent related to (d) , (e)(iii) , (h) , (i) , (j) , (k) , or (m) ), will not be unreasonably withheld, delayed or conditioned), at all times from the date hereof until the earlier to occur of the Closing and the valid termination of this Agreement in accordance with the terms hereof, Sellers shall not, and shall ensure that their Subsidiaries shall not, take any of the following actions with respect to the AirCard Business, the Acquired Assets, the Licensed IP or the Assumed Liabilities:

(a) modify or amend in any material respect or terminate any Transferred Contract, Transferred Lease or Transferred Permit, other than pursuant to the expiration of a Transferred Contract, Transferred Lease or Transferred Permit in accordance with its terms;

(b) other than sales of Inventory in the ordinary course of business, sell, lease, license, transfer or otherwise dispose of or encumber any Acquired Assets or Licensed IP (but only to the extent such sale, lease, license, transfer, disposition or encumbrance would conflict with licenses granted to Buyers under the Cross-License Agreement or adversely affect Buyers' right to use Licensed IP), or grant or otherwise create or consent to the creation of any Lien affecting any Acquired Assets, Licensed IP (but only to the extent such grant, creation or consent would conflict with licenses granted to Buyers under the Cross-License Agreement or adversely affect Buyers' right to use Licensed IP) or any part thereof;

(c) make or change any Tax election that would affect the Acquired Assets;

(d) grant any severance, change in control, termination pay or similar pay benefits (in cash or otherwise) to any Offered Employee, including any officer, except as required under the terms of any pre-existing employment agreement or arrangement disclosed in the Sellers Disclosure Schedule;

(e) (i) adopt, establish, enter into, amend or terminate any Employee Benefit Plan other than ordinary course actions that apply to Employees generally, (ii) enter into any employment agreement, (iii) agree to pay any special bonus or special remuneration to any Offered Employee, or (iv) increase or agree to increase the salaries, wage rates, or other compensation or benefits of any Offered Employee, except as required under applicable Law or the terms of any pre-existing employment agreement or arrangement disclosed in the Sellers Disclosure Schedule;

(f) terminate the employment of any Offered Employee other than for "cause"; provided that in the event Sellers terminate any Offered Employee for "cause", Sellers shall promptly notify Buyers of such termination;

(g) abandon or permit to lapse any Transferred IP (other than Patents expiring at the end of their statutory terms (and not as a result of any act or omission by Sellers or any of their Subsidiaries, including a failure by Sellers or any of their Subsidiaries to pay any required registration or maintenance fees));

(h) take or omit to take any action that has or would reasonably be expected to have the effect of accelerating sales to customers or revenues of the AirCard Business to pre-Closing periods that would otherwise be expected to take place or be incurred in post-Closing periods;

(i) fail to make any capital expenditures or commitment therefor as set forth in Section 7.2(i) of the Sellers Disclosure Schedule;

(j) make any changes to its normal and customary practices regarding the solicitation, booking and fulfillment of orders or the shipment and delivery of goods relating to the AirCard Business;

(k) compromise, settle or waive any material claims or rights of the AirCard Business which would be prejudicial against Buyers;

(l) enter into any settlement of, or cease to defend, any pending or threatened Actions that relate to the AirCard Business, the Acquired Assets or the Licensed IP if, pursuant to or as a result of

such settlement or cessation, (i) any royalty payment obligation or injunctive or equitable relief will be imposed against Buyers and their Subsidiaries, or (ii) such settlement or cessation does not expressly and unconditionally release Buyers and their Subsidiaries from all Liabilities with respect to such Action, with prejudice;

(m) commence any Action relating to the AirCard Business or the Acquired Assets other than (i) for the routine collection of amounts owed or (ii) in such cases where the failure to commence litigation could have a material adverse effect on the AirCard Business, provided that Sellers consult with Buyers prior to filing such litigation;

(n) transfer any Transferred Tangible Property which is located at Transferred Leasehold Property located in Carlsbad, California to another location; or

(o) agree to take any of the actions described in Section 7.2(a) through Section 7.2(n) , inclusive.

## ARTICLE 8
## COVENANTS OF PARTIES

8.1 Reasonable Best Efforts . On the terms and subject to the conditions set forth in this Agreement, each Party shall use its reasonable best efforts to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, all things necessary, proper or advisable under applicable Laws to consummate and make effective, in the most expeditious manner practicable, the Transactions and the other transactions contemplated by this Agreement and the other Transaction Agreements, including using reasonable best efforts to (a) cause the conditions precedent set forth in Section 4.3 to be satisfied as soon as practicable after the date hereof, (b) obtain all necessary actions or non-actions, waivers, consents, approvals, Orders and authorizations from Governmental Authorities, the expiration or termination of any applicable waiting periods, making all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any), and (c) prepare, execute and deliver any additional certificates and other instruments that are necessary or required to consummate the Transactions and to fully carry out the purpose and intent of this Agreement and the other Transaction Agreements.

8.2 Regulatory Filings; Permits .

(a) Without limiting the generality of the foregoing provisions of Section 8.1 , as soon as may be reasonably practicable following the execution and delivery of this Agreement, (i) each of Buyers, on the one hand, and Sellers, on the other hand, shall make all necessary filings under the HSR Act with the FTC and the Antitrust Division of the DOJ a Notification and Report Form relating to the Transactions and any other transactions contemplated by this Agreement and the other Transaction Agreements, and (ii) Buyers shall submit a letter to the Commissioner requesting an advance ruling certificate pursuant to Section 102 of the Competition Act or, in the alternative, a No-Action Letter, and, if the Competition Act Clearance has not been obtained within twenty-one (21) days from when Buyers submitted the letter to the Commissioner, Buyers or Sellers may, at any time thereafter, notify the other Parties that they intend to file a notification pursuant to subsection 114(1) of the Competition Act in which case Buyers and Sellers shall each submit their respective notification to the Commissioner within seven (7) Business Days thereof. Each of Buyers, on the one hand, and Sellers, on the other hand, shall promptly (i) cooperate and coordinate with the other in the making of such filings or other filings or submissions to a Governmental Authority under an Antitrust Law, (ii) supply the other with any information that may be required in order to effectuate such

filings or other filings or submissions to a Governmental Authority under an Antitrust Law, other than information that is confidential competitively-sensitive information, (iii) supply any additional information that reasonably may be required or requested by a Governmental Authority under an Antitrust Law, (iv) advise the other of any material written or verbal communications that it receives from a Governmental Authority in respect of any filing, submission or request for information under an Antitrust Law and shall permit such other Party to participate in any meetings with any Governmental Authority (subject to any opposition by a Governmental Authority to a particular Party's participation in such meeting) and participate or review any material written or verbal communication before it is made to any Governmental Authority and (iv) share equally all fees and expenses incurred in connection with filings made in connection with this Section 8.2(a) . Each Party hereto shall promptly inform the other Party or Parties hereto, as the case may be, of any communication from any Governmental Authority regarding any of the transactions contemplated by this Agreement (including the Transactions) or any of the other Transaction Agreements. If any Party hereto or Affiliate thereof receives a request for additional information or documentary material from any such Governmental Authority with respect to the transactions contemplated by this Agreement (including the Transactions) or any of the other Transaction Agreements, then such Party shall use reasonable best efforts to make, or cause to be made, as soon as reasonably practicable and after consultation with the other Parties, an appropriate response in compliance with such request.

(b) Without limiting the generality of the foregoing provisions of Section 8.1 , on the terms and subject to the conditions set forth in this Agreement, Buyers and Sellers shall use their reasonable best efforts to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, all things necessary, proper or advisable under applicable Laws to obtain all Permits, and take all such actions, described in Schedule 4.3(b)(vi)(B) so as to enable Buyers to own and operate the AirCard Business on the Closing Date after the Closing in the same manner in which Sellers operated the AirCard Business on the date hereof and on the Closing Date before the Closing.

(c) Notwithstanding anything in this Agreement to the contrary, it is expressly understood and agreed that: (i) neither Buyers nor Sellers shall have any obligation to litigate or contest any administrative or judicial action or proceeding or any decree, judgment, injunction or other order, whether temporary, preliminary or permanent; and (ii) neither Buyers nor Sellers shall be under any obligation to make proposals, execute or carry out agreements, enter into consent decrees or submit to orders providing for (A) the sale, divestiture, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets of Buyers or any of their Affiliates or Sellers or any of their Subsidiaries, (B) the imposition of any limitation or regulation on the ability of Buyers or any of their Affiliates to freely conduct their business or own such assets, or (C) the holding separate of the AirCard Business or any of the Acquired Assets or any limitation or regulation on the ability of Buyers or any of their Affiliates to exercise full rights of ownership of the AirCard Business and the Acquired Assets.

8.3 Access to Information .

(a) During the period from the date hereof and prior to the earlier of the Closing or the termination of this Agreement, except as otherwise prohibited by applicable Law (it being understood and agreed that the Parties shall use their commercially reasonable efforts to cause any information that is withheld pursuant to applicable Law to be provided or made available in a manner that is not prohibited by applicable Law), Sellers shall afford Buyers and their accountants, counsel and other representatives, reasonable access during Sellers' normal business hours to all of the assets, properties, books and records, Contracts, Permits, commitments, documents, information and personnel of Sellers and their Subsidiaries that are related to the AirCard Business (but only to the extent applicable to the AirCard Business), as Buyers may reasonably request. No information or knowledge obtained by Buyers in any investigation conducted

pursuant to this Section 8.3(a) shall be deemed to affect or modify, amend or supplement any representation or warranty set forth herein or the Sellers Disclosure Schedule, or the conditions to the obligations of the Parties to consummate the Transactions in accordance with the terms and conditions hereof, or the remedies available to the Parties hereunder.

(b) From and after the Closing, Sellers shall provide Buyers and their representatives with reasonable access (with the right to make copies), during normal business hours and upon reasonable advance notice, to the books and records of Sellers and their Subsidiaries related to the AirCard Business (but only to the extent applicable to the AirCard Business) as Buyers may reasonably request.

8.4 Notification of Certain Matters .

(a) Sellers shall promptly notify Buyers of (i) the occurrence or non-occurrence of any event that would reasonably be expected to cause any representation or warranty of Sellers or their Subsidiaries set forth in this Agreement to be untrue or inaccurate in any material respect at or prior to the Closing, (ii) any failure of Sellers or their Subsidiaries to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder in any material respect, and (iii) the occurrence or failure of any event, that, individually or in the aggregate, results in or would reasonably be expected to result in, a Business Material Adverse Effect.

(b) Buyers shall promptly notify Sellers of (i) the occurrence or non-occurrence of any event that would cause any representation or warranty of Buyers set forth in this Agreement to be untrue or inaccurate in any material respect at or prior to the Closing, and (ii) any failure of Buyers to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder in any material respect.

(c) The delivery of any notice pursuant to this Section 8.4 shall not be deemed to affect or modify, amend or supplement any representation or warranty set forth herein or the Sellers Disclosure Schedule, or the conditions to the obligations of the Parties to consummate the Transactions in accordance with the terms and conditions hereof, or the remedies available to the Parties hereunder.

8.5 Confidentiality .

(a) Buyers and Sellers acknowledge and agree that the existence of this Agreement (including the Sellers Disclosure Schedule) and the other Transaction Agreements, and the terms and conditions hereof and thereof, shall constitute "Proprietary Information" under and within the meaning of the Amended and Restated Confidentiality Agreement, dated as of July 27, 2011, by and between the Parties (the " Confidentiality Agreement ").

(b) For a period of five (5) years after the Closing, unless required by Law or Order to disclose any Business Confidential Information, as is necessary to perform its covenants, agreements and obligations, or exercise its rights or ownership, under this Agreement or any of the other Transaction Agreements, or as explicitly permitted by this Section 8.5 or Section 8.7 or any other provision of this Agreement or any of the other Transaction Agreements, Sellers agree not to use or disclose at any time (and shall cause each of their Subsidiaries and controlled Affiliates not to use or disclose at any time) any Business Confidential Information. In the event Sellers or any of their controlled Affiliates are required by Law or Order to disclose any Business Confidential Information, Sellers shall promptly notify Buyers in writing (unless such requirement is in relation to any Action to which Sellers or any of their Subsidiaries are a party), which notification shall include the nature of the legal requirement and the extent of the required disclosure, and Sellers and their controlled Affiliates shall cooperate with Buyers and Sellers to preserve the

confidentiality of such information consistent with such applicable Law or Order. For all purposes of and under this Agreement, the term " Business Confidential Information " shall mean all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, to the extent related to the business, products, financial condition, services, or research or development of the AirCard Business, or the suppliers, distributors, customers, employees, independent contractors or other business relations of the AirCard Business, including the following: (i) internal business and financial information (including information relating to strategic and staffing plans and practices, business, finances, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, the AirCard Business, the suppliers, distributors, customers, employees, independent contractors or other business relations of the AirCard Business and their confidential information; (iii) trade secrets, know how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and databases relating thereto; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (v) any other Technology.

(c) For a period of five (5) years after the Closing, unless required by Law or Order to disclose any Retained Business Confidential Information, as is necessary to perform its covenants, agreements and obligations, or exercise its rights or ownership, under this Agreement or any of the other Transaction Agreements, or as explicitly permitted by this Section 8.5 or Section 8.7 or any other provision of this Agreement or any of the other Transaction Agreements, Buyers agree not to use or disclose at any time (and shall cause each of their Subsidiaries and controlled Affiliates not to use or disclose at any time) any Retained Business Confidential Information. In the event Buyers or any of their controlled Affiliates are required by Law or Order to disclose any Retained Business Confidential Information, Buyers shall promptly notify Sellers in writing (unless such requirement is in relation to any Action to which Buyers or any of their Subsidiaries are a party), which notification shall include the nature of the legal requirement and the extent of the required disclosure, and Buyers and their controlled Affiliates shall cooperate with Sellers and Buyers to preserve the confidentiality of such information consistent with such applicable Law or Order. For all purposes of and under this Agreement, the term " Retained Business Confidential Information " shall mean all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, to the extent delivered in connection with the consummation of the Transactions and related to the business, products, financial condition, services, or research or development of the Retained Business, or the suppliers, distributors, customers, employees, independent contractors or other business relations of the Retained Business, including the following: (i) internal business and financial information (including information relating to strategic and staffing plans and practices, business, finances, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods); (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, the Retained Business, the suppliers, distributors, customers, employees, independent contractors or other business relations of the Retained Business and their confidential information; (iii) trade secrets, know how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and databases relating thereto; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable); and (v) any other Technology.

(d) For a period of five (5) years after the Closing, unless required by Law or Order to disclose any Transaction Confidential Information, as is necessary to perform its covenants, agreements and obligations, or exercise its rights or ownership, under this Agreement or any of the other Transaction

Agreements, or as explicitly permitted by this Section 8.5 or Section 8.7 or any other provision of this Agreement or any of the other Transaction Agreements, each Buyer and Seller agrees not to (i) disclose at any time (and shall cause each of their Subsidiaries and controlled Affiliates not to use or disclose at any time) any of the terms or conditions of this Agreement or any of the other Transaction Agreements, and (ii) use or disclose at any time (and shall cause each of their Subsidiaries and controlled Affiliates not to use or disclose at any time) any Transaction Confidential Information disclosed by Buyers (in the case of Sellers) or disclosed by Sellers (in the case of Buyers). In the event any Party or any of its controlled Affiliates are required by Law or Order to disclose any Transaction Confidential Information disclosed by Buyers (in the case of Sellers) or disclosed by Sellers (in the case of Buyers), such Party shall promptly notify the other Parties in writing, which notification shall include the nature of the legal requirement and the extent of the required disclosure, and such Party and its controlled Affiliates shall cooperate with the other Parties to preserve the confidentiality of such information consistent with such applicable Law or Order. For all purposes of and under this Agreement, the term " Transaction Confidential Information " shall mean all information of a confidential or proprietary nature (whether or not specifically labeled or identified as "confidential"), in any form or medium, to the extent disclosed by or on behalf of any Buyer or any of its Subsidiaries or controlled Affiliates to any Seller or any of its Subsidiaries or controlled Affiliates, or by or on behalf of any Seller or any of its Subsidiaries or controlled Affiliates to any Buyer or any of its Subsidiaries or controlled Affiliates, as the case may be, pursuant to the terms or conditions of, or in connection with the performance of any covenants, agreements or obligations, or exercise of rights, under this Agreement or any of the other Transaction Agreements.

(e) Notwithstanding the foregoing provisions of this Section 8.5 :

(i) Sellers shall have no obligation under this Section 8.5 with respect to (A) any information included in the Excluded Assets that is Technology (other than any Licensed Technology), (B) Seller Owned Developed Technology (as defined in the Joint Development Agreement) other than Seller Owned Developed Technology listed on Schedule B of the Joint Development Agreement, (C) information that was or has become generally available to the public other than as a result of disclosure by Sellers or their Affiliates after the date hereof, or (D) information that is independently developed by Sellers or their Affiliates (other than by or on behalf of the AirCard Business or Sellers and their Subsidiaries either prior to the Closing or, under the Joint Development Agreement, after the Closing) without the use of any Business Confidential Information, Buyers' or their Affiliates' confidential information or any Transaction Confidential Information disclosed by Buyers or their Affiliates. For the avoidance of doubt, Licensed Technology and Seller Owned Developed Technology listed on Schedule B of the Joint Development Agreement shall be considered both Business Confidential Information subject to Section 8.5(b) and Retained Business Confidential Information subject to Section 8.5 (c) .

(ii) Buyers shall have no obligation under this Section 8.5 with respect to (A) any information included in the Acquired Assets that is Technology (other than any Non-Prime Transferred Technology), (B) Buyer Owned Developed Technology (as defined in the Joint Development Agreement) other than Buyer Owned Developed Technology listed on Schedule A of the Joint Development Agreement, (C) information that was or has become generally available to the public other than as a result of disclosure by Buyers or their Affiliates after the date hereof, or (D) information that is independently developed by Buyers or their Affiliates (other than on behalf of the Retained Business, under the Joint Development Agreement, after the Closing) without the use of any Retained Business Confidential Information or any Transaction Confidential Information disclosed by Sellers or their Affiliates. For the avoidance of doubt, Non-Prime Transferred Technology and Buyer Owned Developed Technology listed on Schedule A of the Joint Development Agreement shall be considered both Business Confidential Information subject to Section 8.5(b) and Retained Business Confidential Information subject to Section 8.5(c) .

(iii) Sellers may disclose such copies of the Transaction Agreements (including the schedules and exhibits attached to such Transaction Agreements and the Sellers Disclosure Schedule) in connection with any material investment to be made in Sellers or their Subsidiaries or in connection with a business combination involving, or change of control of, Sellers; *provided* that prior to disclosing such copies, Sellers shall have entered into a customary confidentiality agreement with the recipient of such copies restricting the disclosure and use of such copies by such recipient in the same manner as any other confidential or proprietary information disclosed by Sellers to such recipient.

(iv) Buyers may disclose such copies of the Transaction Agreements (including the schedules and exhibits attached to such Transaction Agreements and the Sellers Disclosure Schedule) in connection with any material investment to be made in Buyers or their Subsidiaries or in connection with a business combination involving, or change of control of, Buyers; *provided* that prior to disclosing such copies, Buyers shall have entered into a customary confidentiality agreement with the recipient of such copies restricting the disclosure and use of such copies by such recipient in the same manner as any other confidential or proprietary information disclosed by Buyers to such recipient.

(v) To the extent this Section 8.5 imposes obligations on Sellers to protect the confidentiality of, or not to disclose, any Shared Technology, any Jointly Owned Developed Technology (as defined in the Joint Development Agreement) or any Technology licensed to Buyers or Sellers under the Cross-License Agreement or the Joint Development Agreement, Sellers' obligations shall be deemed limited solely to using the same, reasonable care and discretion as Sellers use with their own similar Technology of like importance.

(vi) To the extent this Section 8.5 imposes obligations on Buyers to protect the confidentiality of, or not to disclose, any Shared Technology, any Jointly Owned Developed Technology (as defined in the Joint Development Agreement) or any Technology licensed to Sellers or Buyers under the Cross-License Agreement or the Joint Development Agreement, Buyers' obligations shall be deemed limited solely to using the same, reasonable care and discretion as such Buyers use with their own similar Technology of like importance.

8.6 Exclusivity . Sellers shall not, and shall cause their Subsidiaries and their respective Affiliates, representatives, officers, employees, directors and agents not to, directly or indirectly, (a) solicit, initiate, consider, entertain, encourage or accept the submission of any proposal or offer from any Person (other than Buyers and their Affiliates in connection with the Transactions) relating to the acquisition of the AirCard Business as a separate and stand-alone acquisition or any portion of the Acquired Assets as separate and distinct from the other assets of the Sellers (other than Inventory in the ordinary course of business consistent with past practice), (b) participate in any discussions or negotiations (and as of the date hereof, Sellers shall immediately cease any discussions or negotiations that are ongoing) regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any third party to do or seek any of the foregoing, or (c) furnish any confidential information regarding the AirCard Business or the Acquired Assets to any third party that is seeking to make, or has made, any such proposal or offer. Sellers will notify Buyers promptly, and in any event within twenty-four (24) hours, if any third party makes any proposal, offer, inquiry or contact with respect to any acquisition of the AirCard Business as a separate and stand-alone acquisition or any portion of the Acquired Assets as separate and distinct from the other assets of the Sellers (other than Inventory in the ordinary course of business consistent with past practice). Sellers shall be deemed to have breached the terms of this Section 8.6 if any of their Subsidiaries or any of their respective Affiliates, representatives, officers, employees, directors or agents takes any action, whether in his or her capacity as such or in any other capacity, that is prohibited by this Section 8.6 .

8.7 Public Statements . Except as required by Law, prior to the Closing, neither Buyers, on the one hand, nor Sellers, on the other hand, shall, without the prior written consent of the other, directly or indirectly make or issue any statement or other communication to the public or any third party regarding the subject matter of this Agreement or any of the other Transaction Agreements, or the terms and conditions hereof or thereof, including, if applicable, the termination of this Agreement and the reasons therefor, or any disputes or arbitration proceedings hereunder or thereunder. The Parties shall issue a mutually agreed joint press release on the date hereof. After the Closing, except as required by Law, a Party hereto may issue any releases of information without the consent of the other Party; *provided, however,* that each such release is in compliance with the provisions of Section 8.5 and the Confidentiality Agreement. Notwithstanding the foregoing, the Parties agree and acknowledge that US Buyer and Canadian Seller may be required to file this Agreement and disclose the acquisition/divestiture of the AirCard Business in its periodic reports filed with the Securities and Exchange Commission.

8.8 Record Retention . Each Party agrees, on behalf of itself and its controlled Affiliates, that for a period of not less than six (6) years following the Closing Date, it shall not 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. Each Party shall have the right to destroy all or part of such books and records after the sixth (6th) anniversary of the Closing Date or, at an earlier time by giving each other party hereto twenty (20) 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. Notwithstanding the foregoing, (a) immediately after the Closing and if Sellers possess and can locate using commercially reasonable efforts, Sellers shall deliver to Buyers or destroy copies of Transferred Technology which is not licensed back to Sellers or otherwise permitted to be retained by Sellers pursuant to Section 2.7(b) , that are in addition to copies delivered to Buyers as part of the Closing, whether such copies are in paper form, on computer media or stored in another form, and (b) immediately after the Closing and if Buyers possess and can locate using commercially reasonable efforts, Buyers shall deliver to Sellers or destroy copies of any Technology of Sellers or their Subsidiaries which is not licensed to Buyers or necessary for Buyers to perform their obligations under and during the term of the Transition Services Agreement, whether such copies are in paper form, on computer media or stored in another form.

8.9 Bulk Sales . It will not be practicable to comply or to attempt to comply with the procedures of the Uniform Commercial Code or other bulk sales laws or similar laws of the jurisdiction in which the Acquired Assets to be conveyed hereby are situated or of any other jurisdictions which may be asserted to be applicable to the Transactions and the parties believe that it is not clear that any such laws are applicable to such transaction. Accordingly, to induce Buyers to waive any requirement for compliance on the part of Sellers with the procedures of any such laws (which Buyers hereby waive), Sellers hereby agree to indemnify and hold harmless the Buyer Indemnified Parties, in accordance with the provisions of Article 12 , from and against, and to compensate and reimburse the Buyer Indemnified Parties, in accordance with the provisions of Article 12 , for, any and all Losses arising out of or resulting from the failure of Sellers to comply with or perform any actions in connection with the provisions of any such law of any states or jurisdictions applicable to the Transactions. Notwithstanding the foregoing, Buyers agree to provide all reasonable cooperation to Sellers in connection with obtaining bulk sales exemptions in all jurisdictions where Sellers determine to seek such exemption.

8.10 Business Relationships; Payments.

(a) Sellers shall provide reasonable cooperation at the expense of, and upon the written request of, Buyers to assist in the transition of the business relationships of the AirCard Business existing prior to the Closing, including relationships with customers, suppliers and others.

(b) After the Closing, Sellers shall, and shall cause their Subsidiaries to, as promptly as practicable, deliver, and if necessary endorse over to Buyers, any cash, checks or other instruments of payment Sellers or any of their Subsidiaries receive that relate to the Acquired Assets, the Assumed Liabilities or the AirCard Business to which Buyers are entitled and shall hold such cash, checks or other instruments of payment in trust for Buyers until such delivery.

(c) After the Closing, Buyers shall, as promptly as practicable, deliver to Sellers (or any of their Subsidiaries, as applicable) any mail and payments received by Buyers that do not relate to the Acquired Assets or the AirCard Business and to which Sellers or their Subsidiaries are entitled.

8.11 Carve-Out Financial Statements.

(a) In the event that, as a result of the consummation of the Transactions, US Buyer is required to file Carve-Out Financial Statements with the SEC (regardless of when such Carve-Out Financial Statements are required to be filed with the SEC), then prior to the Closing (and as a condition to consummation of the Transactions) Sellers shall prepare and deliver to Buyers the Carve-Out Financial Statements. In addition, in the event that, at any time following the Closing, US Buyer determines in good faith that it is required to file with the SEC (or furnish to the SEC) any financial statements of the AirCard Business (in addition to the Carve-Out Financial Statements) under any U.S. Securities Laws (including as a result of actions taken by Buyers, such as an offering of securities or the acquisition or one or more businesses or other assets that, when aggregated with the AirCard Business, require Buyers to file financial statements of the AirCard Business, either on a stand-alone basis or consolidated with the financial statements of such other businesses or assets), then Sellers shall, at the sole cost and expense of Buyers, prepare and deliver to Buyers such financial statements of the AirCard Business that US Buyer so determines are required to be filed or furnished with the SEC, and any such financial statements of the AirCard Business that are as of a fiscal year end or for a fiscal year shall be audited and accompanied by an unqualified opinion of an internationally recognized independent accounting firm. Any Carve-Out Financial Statements or other financial statements of the AirCard Business prepared by Sellers pursuant to this Section 8.11(a) shall be prepared in accordance with GAAP, applied on a consistent basis, throughout the periods covered, shall present fairly the financial condition of the AirCard Business as of the respective dates thereof and the results of operations and cash flows of the AirCard Business for the periods covered thereby, and shall in all cases comply in all respects with the U.S. Securities Laws that are applicable to US Buyer. For the avoidance of doubt, none of the Parties or their respective Affiliates shall be required to petition the SEC or its staff for an exemption from the requirements of the Exchange Act in order to limit the requirements of the Exchange Act relating to any requirement to file or furnish Carve-Out Financial Statements or other financial statements of the AirCard Business in connection with the Transactions.

(b) From and after the Closing, upon the request of US Buyer, Sellers shall (i) use their reasonable best efforts to cause its independent accounting firm to deliver to the SEC any auditor's consent that is required to be included in any filing with the SEC that includes or incorporates by reference the Carve-Out Financial Statements or other financial statements of the AirCard Business prepared by Sellers pursuant to this Section 8.11(a) and (ii) to the extent US Buyer conducts or intends to conduct an offering of securities (and if the registration statement, prospectus or offering memorandum for such offering includes

or incorporates by reference the Carve-Out Financial Statements or other financial statements of the AirCard Business prepared by Sellers pursuant to this Section 8.11(a) ), use their reasonable best efforts to cause their independent accounting firm to deliver a letter containing statements and information of the type ordinarily included in accountant's "comfort letters" with respect to the Carve-Out Financial Statements or other financial statements of the AirCard Business prepared by Sellers pursuant to this Section 8.11(a) contained or incorporated by reference in any such document relating to any such offering, in the case of each of clause (i) and (ii) above, within the period reasonably requested by US Buyer. In addition, in connection with any SEC filing required to be made by US Buyer (or any SEC review of such filing), Sellers shall permit Buyers and their authorized representatives to have reasonable access, during normal business hours and upon reasonable advance notice, to the properties, books and records of Sellers and their Affiliates relating to the AirCard Business for the purpose of preparing any such SEC filing or responding to SEC questions, comments or requests on such SEC filing, and to cause their Affiliates' and such Affiliates' representatives to cooperate fully in such preparation or response.

8.12 Other Actions Required to Be Taken .

(a) Buyers and Sellers shall use their respective reasonable best efforts to cause the Person identified on Section 8.12 (a) of the Sellers Disclosure Schedule to enter into a Specified Agreement with US Buyer as promptly as practicable after the date hereof. If the Person identified on Section 8.12(a) of the Sellers Disclosure Schedule offers to enter into a Specified Agreement with US Buyer for no additional consideration and subject to no additional terms or conditions, US Buyer shall promptly enter into a Specified Agreement with such Person.

(b) Sellers shall deliver a non-GAAP statement setting forth the amount of net revenues and gross margin for each month, and the amount of inventory, accrued warranty and marketing development fund liabilities as of each month end, for the AirCard Business that are prepared in a manner consistent with the AirCard Business Financial Statements within twenty (20) days after each month end during the period between execution of this Agreement and the Closing Date.

(c) Sellers shall prepare and deliver (i) on or prior to the Closing Date, an unaudited balance sheet of the AirCard Business as of December 31, 2011, (ii) on or prior to March 1, 2013, unaudited financial statements of the AirCard Business for the quarterly period ended December 31, 2012, including an unaudited balance sheet of the AirCard Business as of December 31, 2012, and (iii) as promptly as practicable following the end of each applicable quarterly period, unaudited financial statements of the AirCard Business for any quarterly period ending after the date hereof but prior to the Closing Date. The financial statements required under (i) and (ii) above shall present fairly the results of operations and financial condition of the AirCard Business for the periods and as of the dates covered thereby, shall be prepared in accordance with GAAP, applied on a consistent basis, throughout the periods covered, and (in the case of any income statements) shall be delivered in the same format as the AirCard Business Financial Statements.

(d) Immediately following the Closing, Sellers shall deliver a letter to each of the parties identified with a triple asterisk on Section 5.13(a) of the Sellers Disclosure Schedule, affirming that Sellers are responsible for any indemnification obligations under the applicable Transferred Contract to the extent they relate to AirCard Products sold or licensed prior to the Closing, and requesting that such parties contact Sellers in respect of such indemnification obligations. If, following the Closing, Buyers receive any claim from such party that in whole, or in part, relates to an AirCard Product sold or licensed prior to the Closing, Buyers promptly shall request that such party contact Sellers in respect of such claim.

(e) Sellers shall, and shall cause their Subsidiaries to, use reasonable best efforts to complete, as promptly as practicable, the development of the AirVantage Management Services, as detailed in the ACMS Marketing Requirements Document delivered by Sellers to Buyers on January 27, 2013 (the " ACMS Marketing Requirements "), at no cost to Buyers. Sellers and their Subsidiaries shall charge Buyers, per the terms of the ACMS Terms and Conditions, in form and substance substantially the same as the version thereof delivered by Sellers to Buyers on January 27, 2013 (the " ACMS Terms and Conditions "), for any technical integration support, as identified on the ACMS Terms and Conditions, for the AirVantage Management Services development provided after the Closing by Sellers or any of their Subsidiaries to any Buyer or any of its Subsidiaries, at such Buyer's reasonable request. If any Buyer makes a reasonable request for Sellers or any of their Subsidiaries to develop and implement any new features and/or services for the AirVantage Management Services not contemplated in the ACMS Marketing Requirements, Sellers agree to negotiate with Buyers, in good faith, commercially reasonable terms and conditions, including release schedule and applicable fees, for the development and operation of such new features and services requested by Buyers.

(f) The applicable Seller (or a Subsidiary thereof) and the applicable Buyer (or a Subsidiary thereof) shall enter into a commercial agreement as promptly as practicable after the date hereof (and shall use their commercially reasonable efforts to enter into such commercial agreement prior to the Closing) for Sellers' provision to Buyers of the AirVantage Management Services, in form and substance substantially the same as detailed in the ACMS Marketing Requirements, (i) on terms and conditions that are substantially the same as those provided in the ACMS Terms and Conditions, with such changes thereto as are necessary to make the pricing, support offerings and service levels for the AirVantage Management Services be no less favorable to Buyers and their Subsidiaries than the pricing, support offerings and service levels for the AirVantage Management Services provided to other customers using substantially similar storage amounts and services of the AirVantage Management Services, and (ii) on such other terms and conditions that are substantially the same as those provided in the AirVantage Services Agreement, in form and substance substantially the same as the version thereof delivered by Sellers to Buyers on January 27, 2013, with such changes thereto as are necessary to make such other terms and conditions for the AirVantage Management Services (including the service offerings and availability) be no less favorable to Buyers and their Subsidiaries, taken as a whole, than such other terms and conditions for the AirVantage Management Services (including the service offerings and availability) provided to other customers using substantially similar storage amounts and services of the AirVantage Management Services.

(g) As promptly as practicable after the Closing, Canadian Seller shall transfer to the applicable Buyer (or a Subsidiary thereof) the license, rights, covenant not to sue and privileges, provided under that certain patent license and settlement agreement between Canadian Seller and the Person identified on Section 8.12(g) of the Sellers Disclosure Schedule, solely with respect to the AirCard Products listed in Section 5.24(a)(i) of the Sellers Disclosure Schedule, and future, replacement and successor versions of or natural extensions of such products (the " Transfer of Rights "). The Transfer of Rights shall be "AS IS" without any representations or warranties by Canadian Seller and shall be subject to the applicable terms and conditions provided in such patent license and settlement agreement. Canadian Seller acknowledges and agrees that under no circumstances shall Buyers or any of their Subsidiaries be under any obligation to pay any amounts which may become due under Section 3.1 of such patent license and settlement agreement, if any.

8.13 Cooperation Regarding Intellectual Property Matters . Following the Closing, Buyers will have the right, but not the obligation to prosecute, license, and enforce the Transferred Patents, and Sellers will have the right, but not the obligation to prosecute, license, and enforce all Retained Patents. However, (a) upon Buyers' reasonable request and at no charge to Buyers, Sellers will reasonably cooperate with and

assist Buyers in connection with (i) the prosecution, licensing, and enforcement of the Transferred Patents and defending against any Patents asserted against Buyers with respect to the AirCard Business, and (ii) third-party licensing arrangements, including making reasonably available to Buyers, upon reasonable advance notice, any employees retained by Sellers and their Subsidiaries, and (b) upon Sellers' reasonable request and at no charge to Sellers, Buyers will reasonably cooperate with and assist Sellers in connection with (i) the prosecution, licensing, and enforcement of the Retained Patents and defending against any Patents asserted against Sellers with respect to the AirCard Business and/or the Retained Business, and (ii) third-party licensing arrangements, including making reasonably available to Sellers, upon reasonable advance notice, any Transferred Employees. The obligations of Sellers, on the one hand, and Buyers, on the other hand, to reasonably cooperate with and assist the other under this Section 8.13 are intended by the Parties to be reasonably equal, including, specifically with respect to the number of employees and employee man-hours to be provided.

## ARTICLE 9
## EMPLOYEE MATTERS

9.1 Employment Offers

(a) Prior to the Closing, Buyers shall, or shall cause one of their Subsidiaries to, extend a written offer of employment or service to each Offered Employee (excluding for this purpose the Key Employees), in each case effective as of the Closing, on the same or better terms as existed immediately prior to the date hereof with respect to salary and on comparable terms, in the aggregate, with respect to bonus and employee benefits (other than long term equity incentives). Sellers shall have the right to review each offer of employment or service made pursuant to this section prior to it being sent to any Offered Employee. Such offer of employment or service shall provide for an employee or independent contractor consideration period of one (1) week, except in the case of any Offered Employee hired within one (1) week of the Closing, in which case such offer shall provide for an employee or independent contractor consideration period from the date of the offer until the Closing. Notwithstanding the foregoing, in the event the condition set forth in Section 4.3(b)(vi) has not been satisfied at the end of such one (1)-week period (or such shorter period, if applicable), then Buyer shall extend the employee or independent contractor consideration period for one or more one (1)-week periods until such condition is satisfied; *provided however* that Buyers shall not be obligated to extend the consideration period past the Outside Date. If Buyers, on the one hand, or Sellers, on the other hand, reasonably believe in good faith that an Offered Employee intends to leave the employ or service of Buyers or their Subsidiaries shortly after Closing, then such party shall promptly notify the other party of such fact. For purposes of determining eligibility to participate, vesting and entitlement to benefits where length of service is relevant under an employee benefit plan of Buyers or any of their Subsidiaries (other than with respect to benefit accruals under a defined benefit pension plan) and to the extent expressly not denied under applicable Law, Buyers shall provide that the Offered Employees who are employees immediately prior to the Closing shall receive service credit under each employee benefit plan of Buyers or one of their Subsidiaries (other than with respect to benefit accruals under a defined benefit plan) for their period of service with Sellers prior to the Closing and, with respect to Offered Employees who are employed by Canadian Seller immediately prior to the Closing, shall recognize the past services of each such Offered Employees for the purposes of severance entitlement (including notice of termination of employment required under Employment Standards Act (B.C.)). Effective as of the Closing, Buyers or one of their Subsidiaries shall hire and engage each Offered Employee who accepts the offer of employment or service extended to such Offered Employee pursuant to this section. If an Offered Employee does not accept the offer of employment or service extended by Buyers or any of their Subsidiaries pursuant to this Section 9.1(a) , then such Offered Employee's employment or service shall be terminated by Sellers or their Subsidiaries, as applicable, unless Buyers otherwise agree, effective as of immediately prior to the Closing.

Sellers shall provide all reasonable assistance to Buyers and their Subsidiaries in connection with the offers of employment or service to the Offered Employees contemplated by this section. Those Offered Employees who accept employment or service from Buyers or one of their Subsidiaries pursuant to the offers of employment or service made pursuant to this Section 9.1(a) and commence employment or service with Buyers or one of their Subsidiaries as of the Closing shall be referred to herein collectively as " Transferred Employees ". For the Offered Employees on approved leave of absence as set out in Section 5.15(a)(ii) of the Sellers Disclosure Schedule, Buyers shall make offers of employment effective upon the expiration of the leave of absence.

(b) Except as required by applicable Law, from and after the Closing the Transferred Employees shall cease to participate in and/or accrue further rights or benefits under any Employee Benefit Plan.

9.2 Sellers Payment of Pre-Closing Wages and Seller Benefit Plan Contributions . Sellers, jointly and severally, shall pay all Wages earned or owing up to the Closing Date in respect of all Transferred Employees at or no later than thirty (30) days following the Closing Date. Without limiting the generality of the foregoing, Sellers, jointly and severally, shall pay or provide to Transferred Employees all earned but untaken vacation pay and all commissions, bonus and vested restricted stock units properly earned up to the Closing Date. Sellers, jointly and severally, shall also pay all contributions to Employee Benefit Plans due or owing up to the Closing Date in respect of all Transferred Employees at or no later than thirty (30) days following the Closing Date.

9.3 280G Information . Within ten (10) days after the date hereof, Sellers shall deliver to Buyers a schedule setting forth (i) the name of each Offered Employee that Sellers reasonably determine are "disqualified individuals" within the meaning of Section 280G of the Code, (ii) a determination of each disqualified individual's "base amount" within the meaning of Section 280G of the Code, and (iii) the amount of cash compensation and information related to the acceleration of any equity awards that will be paid or accelerated in connection with such disqualified individual's termination of employment with Sellers **.**

9.4 Buyers' 401(k) Plan . US Buyer shall ensure that the 401(k) plan sponsored by it or one of its Affiliates in which the Transferred Employees who are employees will participate after the Closing will accept a rollover contribution of each such Transferred Employee's account balance from the 401(k) plan sponsored by US Seller or one of its Affiliates in accordance with US Buyer's usual procedures.

9.5 No Third Party Beneficiaries . The Parties acknowledge and agree that all provisions set forth in this Article 9 or any other provision of this Agreement with respect to Offered Employees are included for the sole benefit of the respective Parties and shall not create any right (a) in any other Person, including any Offered Employees, any participant in any Employee Benefit Plan or any beneficiary thereof, (b) to continued employment, either before or after the Closing, with Sellers, Buyers or any of their respective Subsidiaries, or (c) to be construed to modify, amend or establish any benefit plan, program or arrangement or in any way affect the ability of the Parties hereto or any other Person to modify, amend or terminate any of its benefit plans, programs or arrangements.

## ARTICLE 10
## TAX MATTERS

10.1 Straddle Period . For purposes of this Agreement, any Taxes relating to the Acquired Assets or the conduct or operation of the AirCard Business (excluding, for the avoidance of doubt, any income or gross receipts Tax) for a Tax Period that includes, but does not end on, the Closing (a " Straddle Period " and

such Taxes, " Straddle Period Taxes ") shall be apportioned between the applicable Seller, on the one hand, and the applicable Buyer, on the other hand, based on the portion of the period ending at 11:59 p.m. on the Closing Date and the portion of the period beginning on the day after the Closing Date, respectively. The amount of Taxes shall be allocated between portions of a Straddle Period in the following manner: (a) in the case of a Tax imposed in respect of property and that applies ratably to a Straddle Period, the amount of Tax allocable to a portion of the Straddle Period shall be the total amount of such Tax for the period in question multiplied by a fraction, the numerator of which is the total number of days in such portion of such Straddle Period and the denominator of which is the total number of days in such Straddle Period, and (b) in the case of sales, value-added and similar transaction-based Taxes (other than Transfer Taxes allocated under Section 10.2 ), such Taxes shall be allocated to the portion of the Straddle Period in which the relevant transaction occurred. The Party required by Law to pay any such Straddle Period Tax (the " Paying Party ") shall prepare and the other Party shall cooperate in the preparation and filing of such Tax Return. Any Tax Return for Straddle Period Tax prepared by the Paying Party pursuant to this section shall be made available to the other Party at least ten (10) Business Days before such Tax Return is due to be filed. The Paying Party shall file such Tax Return within the time period prescribed by Law and shall timely pay such Straddle Period Tax. To the extent any such payment exceeds the obligation of the Paying Party hereunder, the Paying Party shall provide the other party (the " Non-Paying Party ") with notice of payment details, within ten (10) days of receipt of such notice of payment, the Non-Paying Party shall reimburse the Paying Party for the Non-Paying Party's shares of such Straddle Period Taxes.

10.2 Transfer Taxe s. All sales, use, transfer, value-added, goods and services, recording, ad valorem, privilege, documentary, gains, gross receipts, registration, conveyance, excise, license, stamp, duties or similar Taxes and fees (" Transfer Taxes ") assessed in connection with the transfer of the Acquired Assets pursuant to this Agreement, and that is not recoverable, shall be borne one half by the relevant Buyer and one half by the relevant Seller. The Party responsible for filing shall prepare any Tax Returns that must be filed in connection with such Transfer Taxes at its own expense. The Parties shall make reasonable best efforts to cooperate to the extent necessary to obtain any such exemption or reduction of Transfer Taxes incurred in connection with this Agreement and the transactions contemplated herein. Buyers shall pay to Sellers or Sellers shall pay to Buyers, as applicable, half of any such Transfer Taxes actually recovered by such Party.

10.3 Tax Elections . If available, Canadian Buyer shall jointly execute with Canadian Seller an election under subsection 167 (1) of Part IX of the Excise Tax Act (Canada) and any equivalent election provided under provincial Laws, in the forms prescribed for such purposes, such that the sale of the Acquired Assets sold by Canadian Seller to Canadian Buyer will take place without payment of any GST or HST. Canadian Buyer shall register for GST and HST in accordance with the Excise Tax Act (Canada) and shall file within the prescribed filing period all forms supporting such election with the relevant Tax Authority, together with its Tax Returns for the applicable reporting periods during which the sale of the Acquired Assets contemplated herein occurs. If the election contemplated in this Section 10.3 is not available, Canadian Seller will charge GST, HST or relevant provincial sales tax as required to those Buyers purchasing Acquired Assets sold by Canadian Seller in respect of the Transactions undertaken by Canadian Seller and such Buyers, and such Buyers will pay such amount to Canadian Seller at Closing. Canadian Seller shall provide each Buyer subject to GST, HST or relevant provincial sales tax with a valid Canadian tax invoice before such Buyer is required to remit the respective tax to Canadian Seller.

10.4 Tax Characterization of Payments Under this Agreement . Sellers and Buyers agree to treat all payments made either to or for the benefit of the other Party under this Agreement (other than payment of the Purchase Price) as adjustments to the Purchase Price for Tax purposes and that such treatment shall govern for purposes hereof to the extent permitted under applicable Tax Law.

10.5 Records . Notwithstanding the provisions of Section 8.3 or Section 8.8 , (a) after the Closing Date, Buyers, on the one hand, and Sellers, on the other hand, will make available to the other, as reasonably requested, all information, records or documents relating to Liability for Taxes with respect to the Acquired Assets, the Assumed Liabilities, or the AirCard Business for all periods prior to the Closing Date (including Straddle Periods), and will preserve such information, records or documents until the expiration of any applicable statute of limitations or extensions thereof, and (b) in the event that any Party needs access to records in the possession of a second Party relating to any of the Acquired Assets, the Assumed Liabilities or the AirCard Business for purposes of preparing Tax Returns or complying with any Tax audit request, subpoena or other investigative demand by any Tax Authority, or for any other legitimate Tax-related purpose not injurious to the second Party, the second Party will allow representatives of the other Party access to such records during regular business hours at the second Party's place of business for the sole purpose of obtaining information for use as aforesaid and will permit such other Party to make extracts and copies thereof as may be necessary or convenient. The obligation to cooperate pursuant to this Section 10.5 shall terminate at the time the relevant applicable statute of limitations expires (giving effect to any extension thereof).

## ARTICLE 11
## PRE-CLOSING TERMINATION

11.1 Pre-Closing Termination . Subject to the terms of Section 11.2 , this Agreement may be terminated and the Transactions abandoned at any time prior to the Closing:

(a) by mutual written agreement of Buyer and Sellers;

(b) by either Buyers, on the one hand, or Sellers, on the other hand, if the Closing shall not have occurred on or before 11:59 p.m. (Pacific time) on the date which is 180 days following the date hereof; *provided, however,* that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any Party whose action or failure to act has been a principal cause of, or resulted in, the failure of the Transactions to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by either Buyers, on the one hand, or Sellers, on the other hand, if:

(i) a Governmental Authority shall have enacted, issued or promulgated a Law that has the effect of rendering the Transactions illegal; or

(ii) a Governmental Authority shall have issued an Order prohibiting the Transactions that has become final and nonappealable;

(d) by Buyers (provided that Buyers are not then in material breach of this Agreement), if there has been a material breach of any representation, warranty, covenant or agreement of Sellers set forth in this Agreement such that the conditions set forth in Section 4.3(b)(i) or (ii) would not be satisfied at such time and such breach has not been cured within twenty (20) Business Days after written notice thereof to Sellers; or

(e) by Sellers (provided that Sellers are not then in material breach of this Agreement), if there has been a material breach of any representation, warranty, covenant or agreement of Buyer set forth in this Agreement such that the conditions set forth in Section 4.3(c)(i) or (ii) would not be satisfied at such time and such breach has not been cured within twenty (20) Business Days after written notice thereof to Buyers.

11.2 Effect of Pre-Closing Termination . In the event of the valid termination of this Agreement in accordance with the terms of this Section 11.2 , this Agreement shall thereupon and forthwith become void and of no further force or effect whatsoever, and there shall be no liability or obligation on the part of Buyers, Sellers or their respective Affiliates or representatives in connection herewith; *provided, however,* that no such termination shall relieve any Party from Liability resulting from or arising out of any intentional breach of such Party's representations, warranties, covenants or agreements set forth herein or impair the right of any Party to compel specific performance by the other Party of its obligations under this Agreement; and *provided further* that the provisions of Section 8.5 (Confidentiality), Section 8.7 (Public Statements), this Section 11.2 and Article 13 shall remain in full force and effect and survive any termination of this Agreement under the terms of Section 11.1 .

## ARTICLE 12
## POST-CLOSING INDEMNIFICATION

12.1 Survival of Representations and Warranties .

(a) If the Transactions are consummated, the representations and warranties of Buyers set forth in this Agreement or in any certificate delivered by or on behalf of Buyers pursuant to the terms of this Agreement shall terminate as of the Closing.

(b) If the Transactions are consummated:

(i) the representations and warranties of Sellers set forth in this Agreement or in the certificate delivered by or on behalf of Sellers pursuant to Section 4.3(b)(iv) (other than (A) the Seller Fundamental Representations, (B) the IP Representations, and (C) the Sufficiency Representation) shall survive the Closing and remain in full force and effect until 11:59 p.m. (California time) on the first (1st) anniversary of the Closing Date, at which time such representations and warranties shall terminate;

(ii) the Seller Fundamental Representations shall survive the Closing and remain in full force and effect indefinitely;

(iii) the IP Representations and the right to obtain indemnification, compensation or reimbursement under this Article 12 in respect of the Specified Matters shall survive the Closing and remain in full force and effect until 11:59 p.m. (California time) on the third (3rd) anniversary of the Closing Date; and

(iv) the Sufficiency Representation shall survive the Closing and remain in full force and effect until 11:59 p.m. (California time) on the date which is eighteen (18) months after the Closing Date; and

(v) the right to obtain indemnification, compensation or reimbursement under Section 12.2(a)(v) shall survive the Closing and remain in full force and effect until the earlier to occur of (A) the entry into a Specified Agreement by US Buyer and (B) 11:59 p.m. (California time) on the first (1st) anniversary of the Closing Date;

at which time such representations and warranties shall terminate (the periods referred to in clauses (i), (ii), (iii), (iv) and (v), the " Survival Period "); *provided, however,* that in the event that any Buyer Indemnified Party shall deliver a Claim Certificate to Sellers setting forth a claim for indemnification, compensation or reimbursement under this Article 12 in respect of a breach of a representation or

warranty of Sellers set forth in this Agreement, or in respect of the Specified Matters, or in the certificate delivered by or on behalf of Sellers pursuant to Section 4.3(b)(iv) prior to the expiration of the applicable Survival Period, then such representation or warranty or right shall survive the expiration of the applicable Survival Period and remain in full force and effect solely with respect to such claim until the final resolution thereof.

12.2 Indemnification

(a) Subject to the limitations set forth in this Article 12 , from and after the Closing, each of the Sellers, jointly and severally, shall indemnify and hold harmless Buyers and their Subsidiaries and their respective directors, officers, employees, Affiliates and other persons who control or are controlled by Buyers or any of their Subsidiaries, and their respective agents and other representatives (collectively, the " Buyer Indemnified Parties "), from and against, and shall compensate and reimburse the Buyer Indemnified Parties for, any and all Losses suffered or incurred by any of the Buyer Indemnified Parties or to which any of the Buyer Indemnified Parties may otherwise directly or indirectly become subject (regardless of whether or not such Losses relate to any third party claim) and which arise directly or indirectly from or as a result of, or are directly or indirectly connected with:

(i) any Excluded Liabilities;

(ii) any breach of or inaccuracy in any of the representations or warranties made by Sellers in this Agreement on and as of the date of this Agreement or on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date, or in the certificate delivered by or on behalf of Sellers pursuant to Section 4.3(b)(iv) ;

(iii) any non-fulfillment or breach of any covenant or other agreement of Sellers under this Agreement;

(iv) any Closing MDF Liabilities in excess of Eight Million U.S. Dollars (US $8,000,000) that have not previously been reflected in the Final Adjusted Cash Purchase Price pursuant to Section 3.2 ;

(v) any failure of US Buyer to enter into a Specified Agreement on or prior to the Closing; and

(vi) any Action relating to any matter of the type referred to in clauses (i), (ii), (iii), (iv) or (v) above (including any Action commenced by any Buyer Indemnified Party for the purpose of enforcing any of its rights under this Article 12 ).

(b) Subject to the limitations set forth in this Article 12 , from and after the Closing, Buyers, jointly and severally, shall indemnify and hold harmless Sellers and each of their Subsidiaries and their respective directors, officers, employees, Affiliates and other persons who control or are controlled by Sellers or any of their Subsidiaries, and their respective agents and other representatives (collectively, the " Seller Indemnified Parties "), from and against, and shall compensate and reimburse the Seller Indemnified Parties for, any and all Losses suffered or incurred by any of the Seller Indemnified Parties or to which any of the Seller Indemnified Parties may otherwise directly or indirectly become subject (regardless of whether or not such Losses relate to any third party claim) and which arise directly or indirectly from or as a result of, or are directly or indirectly connected with:

(i) any Assumed Liabilities;

(ii) any non-fulfillment or breach of any covenant or other agreement of Buyers under this Agreement; and

(iii) any Action relating to any matter of the type referred to in clauses (i) or (ii) above (including any Action commenced by any Seller Indemnified Party for the purpose of enforcing any of its rights under this Article 12 ).

(c) Except in the event of fraud, intentional misrepresentation or willful breach, from and after the Closing, the rights of Buyers and Sellers to indemnification, compensation or reimbursement under this Agreement shall be the exclusive remedies of the Parties with respect to any breach of, inaccuracy in or nonfulfillment of any representation, warranty, covenant or agreement contained in this Agreement. Notwithstanding the foregoing, the limitations set forth in this Section 12.2(c) shall not apply to any actions to specifically enforce the covenants in this Agreement.

(d) Solely for purposes of determining the amount of Losses suffered by an Indemnified Person as a result of any breach of, inaccuracy in or failure of any representation, warranty, covenant or agreement given or made by Sellers that is qualified or limited in scope as to materiality (and, for clarification, not for any determination of whether a representation, warranty, covenant or agreement has been breached or is inaccurate), such representation, warranty, covenant or agreement shall be deemed to be made or given without such qualification or limitation.

(e) The right to indemnification, compensation or reimbursement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or that could or should have been acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy of, inaccuracy in of or compliance with, any representation, warranty, covenant or agreement or by the waiver of any condition. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or agreement, will not affect the right to indemnification, compensation or reimbursement based on any such representation, warranty, covenant or agreement. No Buyer Indemnified Party shall be required to show reliance on any representation, warranty, covenant or other agreement in order for such Buyer Indemnified Party to be entitled to indemnification, compensation or reimbursement hereunder.

12.3 Limitations on Indemnification . Except for claims arising out of fraud, intentional misrepresentation or willful breach, or for claims in respect of Assumed Liabilities or Excluded Liabilities (other than claims in respect of the Specified Matters, which are specifically addressed in this section):

(a) The Buyer Indemnified Parties shall not be entitled to recover any Losses under Section 12.2(a)(ii) in respect of any breach of or inaccuracy in any representations or warranties made by Sellers set forth in this Agreement or in the certificate delivered by or on behalf of Sellers pursuant to Section 4.3(b)(iv) : (i) which, in respect of a breach of or inaccuracy in the Sufficiency Representation, are, individually, less than $10,000; and (ii) otherwise until such time as the total amount of all Losses (including the Losses described in clause (i) above) suffered or incurred by any one or more of the Buyer Indemnified Parties, or to which any one or more of the Buyer Indemnified Parties has or have otherwise directly or indirectly become subject, exceeds Five Hundred Thousand U.S. Dollars (US $500,000) (the " Loss Threshold "), in which case the Buyer Indemnified Parties shall be entitled to recovery for all such Losses (including the amount of the Loss Threshold); *provided, however,* that the limitation contained in this Section 12.3(a) shall not apply to any breach of or inaccuracy in any Seller Fundamental Representation or any IP Representation.

(b) The maximum aggregate amount of Losses that the Buyer Indemnified Parties shall be entitled to recover:

(i) under Section 12.2(a)(ii) and Section 12.2(a)(vi) , in each case, in respect of all breaches of or inaccuracies in all representations or warranties made by Sellers set forth in this Agreement or in the certificate delivered by or on behalf of Sellers pursuant to Section 4.3(b)(iv) (other than the IP Representation and the Sufficiency Representation), collectively shall be limited to the amount then available in the Escrow Fund;

(ii) under (A) Section 12.2(a)(i) and Section 12.2(a)(vi) , in each case, in respect of the Specified Matters and (B) Section 12.2(a)(ii) and Section 12.2(a)(vi), in each case, in respect of all breaches of or inaccuracies in the IP Representation, collectively (that is, Section 12.3(b)(ii)(A) and Section 12.3(b)(ii)(B) ) shall be limited in the aggregate to Forty-One Million Four Hundred Thousand U.S. Dollars (US $41,400,000);

(iii) under Section 12.2(a)(ii) and Section 12.2(a)(vi) , in each case, in respect of all breaches of or inaccuracies in the Sufficiency Representation, collectively shall be limited in the aggregate to Sixty-Nine Million Dollars (US $69,000,000); and

(iv) under Section 12.2(a)(v) and Section 12.2(a)(vi) , in each case, in respect of Losses described in Section 12.2(a)(v) , collectively shall be limited in the aggregate to Four Million Dollars (US $4,000,000);

*provided, however,* that the limitations contained in this Section 12.3(b)(i) , Section 12.3(b)(ii) , Section 12.3(b)(iii) and Section 12.3(b)(iv) shall not apply to any breach of or inaccuracy in any Seller Fundamental Representation.

(c) The maximum aggregate amount of Losses (i) that the Buyer Indemnified Parties shall be entitled to recover under Section 12.2(a)(ii) (subject to the maximum amounts specified in Section 12.3(b) ), Section 12.2(a)(iii) and Section 12.2(a)(vi) (but in the case of Section 12.2(a)(vi) solely in respect of any Action relating to any matter of the type referred to in Section 12.2(a)(ii) or Section 12.2(a)(iii) ), collectively, shall be limited to the Final Adjusted Cash Purchase Price and (ii) that the Seller Indemnified Parties shall be entitled to recover under Section 12.2(b)(ii) and Section 12.2(b)(iii) (but in the case of Section 12.2(b)(iii) solely in respect of any Action relating to any matter of the type referred to in Section 12.2(b)(ii) ), collectively, shall be limited to the Final Adjusted Cash Purchase Price; *provided , however* , that the limitations contained in this Section 12.3(c) shall not apply to any non-fulfillment or breach of any covenant or other agreement contained in Section 8.5 and Section 8.7 .

(d) So long as the amount available in the Escrow Fund exceeds the aggregate amount of all claims for indemnification, compensation or reimbursement that have been asserted but not resolved, the Buyer Indemnified Parties shall seek to recover amounts in respect of any claims for indemnification, compensation or reimbursement under Section 12.2(a)(ii) , Section 12.2 (a)(iii) and Section 12.2(a)(vi) (but in the case of Section 12.2(a)(vi) solely in respect of any Action relating to any matter of the type referred to in Section 12.2(a)(ii) or Section 12.2(a)(iii) ) from the Escrow Fund prior to seeking to recover amounts in respect of such claims directly from Sellers; *provided, however,* that to the extent any amounts are released from the Escrow Fund to any Buyer Indemnified Party with respect to claims for indemnification, compensation or reimbursement that are not subject to the limitation set forth in Section 12.3(b)(i) , such recovered amounts shall not reduce the amount that the Buyer Indemnified Parties may recover with respect

to claims for indemnification, compensation or reimbursement that are subject to the limitation contained in Section 12.3(b)(i) .

(e) All Losses shall be net of any third-party insurance proceeds which have been paid in connection with the facts giving rise to the right of indemnification, which proceeds shall be net of any related costs and expenses, including the cost of pursuing any related insurance claims; *provided, however,* that no Indemnified Party shall have any obligation to pursue or recover any insurance claim in connection with any Losses sustained by such Indemnified Party.

(f) For the avoidance of doubt, (i) in the event that a particular matter entitles a Buyer Indemnified Party to indemnification pursuant to more than one clause of Section 12.2(a) or pursuant to any other Transaction Agreement, such Buyer Indemnified Party shall be entitled to recover a particular dollar of Losses associated with such matter only once under this Article 12 and the Transaction Agreements, and (ii) in the event that a particular matter entitles a Seller Indemnified Party to indemnification pursuant to more than one clause of Section 12.2(b) or pursuant to any other Transaction Agreement, such Seller Indemnified Party shall be entitled to recover a particular dollar of Losses associated with such matter only once under this Article 12 and the Transaction Agreements.

(g) The Buyer Indemnified Parties shall not be entitled to recover any Losses under Section 12.2(a)(ii) and Section 12.2(a)(vi) in each case in respect of any breach of or inaccuracy in the Sufficiency Representation unless and until the remediation process next described is complied with and fully implemented and completed. In the event of any breach of or inaccuracy in the Sufficiency Representation, the Parties shall work together promptly and diligently in a cooperative and collaborative manner to address such breach or inaccuracy through the addition of, or modification to, the services provided by Sellers and their Subsidiaries under the Transition Services Agreement, or by the transfer, for no additional consideration, of an asset (or assets) or property (or properties) by Sellers and their Subsidiaries to Buyers or through such other means as the Parties may agree. Any continuing failure to work in a cooperative and collaborative manner shall be referred to the Chief Executive Officers of the Canadian Seller and US Buyer for resolution. If resolution satisfactory to Buyers, acting reasonably and in good faith, is not reached within fifteen (15) Business Days of the date Buyers first notify Sellers, in writing, of the breach or inaccuracy in the Sufficiency Representation, only then may Buyers elect to pursue the indemnification remedies available in this Article.

12.4 Indemnification Claims .

(a) If an Indemnified Party is of the opinion that it has or may have a right to indemnification, compensation or reimbursement under this Agreement (an " Indemnification Claim "), such Indemnified Party shall so notify the Indemnifying Party in a written notice (a " Claim Certificate "), prior to the expiration of the applicable Survival Period (if applicable): (i) stating that such Indemnified Party has directly or indirectly suffered or incurred any Losses, or reasonably anticipates that it will directly or indirectly suffer or incur any Losses, for which it is entitled to indemnification, compensation or reimbursement under this Agreement; (ii) a brief description in reasonable detail (to the extent available to such Indemnified Party) of the facts, circumstances or events giving rise to each item of Losses based on such Indemnified Party's good faith belief thereof; and (iii) the basis for indemnification, compensation or reimbursement under this Agreement to which such item of Losses is related.

(b) In the event that the Indemnifying Party shall seek to contest any matter set forth in a Claim Certificate, the Indemnifying Party shall so notify the Indemnified Party in writing within thirty (30) days after receipt of such Claim Certificate, which notice shall set forth a brief description in reasonable

detail of the Indemnifying Party's basis for objecting to such matter. In the event that the Indemnifying Party shall fail to object to any matter set forth in a Claim Certificate within the foregoing thirty (30)-day period, the Indemnifying Party shall be deemed to have irrevocably agreed and consented to indemnify, compensate and reimburse the Indemnified Party in respect of such items of Loss pursuant to the terms of this Agreement.

12.5 Third Party Claims . In the event any claim, demand, complaint or Action is instituted by a third party against an Indemnified Party which involves or appears reasonably likely to involve an Indemnification Claim hereunder (a " Third Party Claim "), the Indemnified Party shall, promptly after receipt of notice of any such Third Party Claim, notify the Indemnifying Party of the commencement thereof; *provided, however,* that the failure to so notify the Indemnifying Party of the commencement of any such Third Party Claim will relieve the Indemnifying Party from liability in connection therewith only if and to the extent that such failure caused damages, for which the Indemnified Party is obligated, which are greater than the damages would have been had the Indemnified Party given the Indemnifying Party prompt notice hereunder. Upon receipt of such notice, the Indemnifying Party shall have the right, in its sole discretion, to control the defense or settlement of such Third Party Claim by appointing a recognized and reputable counsel acceptable to the Indemnified Party to be the lead counsel in connection with such defense; *provided* that prior to the Indemnifying Party assuming control of such defense it shall first verify to the Indemnified Party in writing that the Indemnifying Party shall be responsible for all liabilities and obligations relating to such Third Party Claim up to the limitations set forth in Section 12.3 and subject to such limitations. Notwithstanding the foregoing provisions of this Section 12.5 :

(a) the Indemnified Party shall be entitled to participate in the defense of such Third Party Claim and to employ counsel of its choice for such purpose; *provided* that the fees and expenses of such separate counsel shall be borne by the Indemnified Party (other than any reasonable fees and expenses of such separate counsel that are incurred prior to the date the Indemnifying Party effectively assumes control of such defense which, notwithstanding the foregoing, shall be borne by the Indemnifying Party, and except that the Indemnifying Party shall pay all of the reasonable fees and expenses of such separate counsel if the Indemnified Party has been advised by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnifying Party and the Indemnified Party);

(b) notwithstanding anything to the contrary set forth in Section 12.5(c) , the Indemnifying Party shall control the defense or settlement of any Third Party Claim by appointing counsel reasonably acceptable to the Indemnified Party to be the lead counsel in connection with such defense (i) to the extent such Third Party Claim is described in Section 2.4(m) or (ii) if such Third Party Claim is listed on Section 2.4(o) of the Sellers Disclosure Schedule;

(c) except as provided in Section 12.5(b) , the Indemnifying Party shall not be entitled to assume control of the defense of any Third Party Claim (unless otherwise agreed to in writing by the Indemnified Party) and shall pay the reasonable fees and expenses of counsel retained by the Indemnified Party if: (i) the claim for indemnification, compensation or reimbursement relates to or arises in connection with any criminal or quasi criminal proceeding, action, indictment, allegation or investigation; (ii) the Indemnified Party reasonably believes an adverse determination with respect to the Third Party Claim would be detrimental to or injure the Indemnified Party's reputation, business, operations or future business prospects in a material respect; (iii) the claim seeks an injunction or equitable relief against the Indemnified Party, or is an Action before the United States International Trade Commission; (iv) the amount of Losses reasonably estimated to be incurred pursuant to such Third Party Claim (when combined with all other outstanding claims for indemnification, compensation or reimbursement and any amount previously paid by the Indemnifying Party that applies toward the applicable cap under Section 12.3 (if any) would exceed the applicable cap contemplated by Section 12.3 (if any)); (v) the claim relates to a breach or alleged breach

of or inaccuracy or alleged inaccuracy in Section 5.4 (Title) or Section 5.12 (Intellectual Property); (vi) the claim is made by a customer of the AirCard Business; (vii) the claim is in respect of a Specified Matter; or (viii) the claim is in respect of the matters described in Section 12.2(a)(v) ; *provided that* the Indemnifying Party shall be entitled to participate in (but not control) the defense of such Third Party Claim (and any and all settlement discussions related to such Third Party Claim) and to employ, at its sole expense, separate counsel of its choice to advise the Indemnifying Party for such purpose;

(d) if the Indemnifying Party shall control the defense of any Third Party Claim, the Indemnifying Party may not settle or otherwise resolve such claim or cease to defend such claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed) unless (i) prior to the Indemnifying Party entering into such settlement or ceasing to defend such claim, the Indemnifying Party first verifies to the Indemnified Party in writing that the Indemnifying Party shall be responsible for all liabilities and obligations relating to such Third Party Claim, (ii) such settlement or cessation involves, with respect to the Indemnified Party, only the payment of a lump sum amount of money and the Indemnifying Party pays such lump sum amount of money when due, and (iii) such settlement expressly and unconditionally releases the Indemnified Party from all Liabilities with respect to such claim, with prejudice; and

(e) in the event the Indemnified Party controls the defense of any Third Party Claim, it shall request the prior written consent of the Indemnifying Party before entering into any settlement of such claim or ceasing to defend such claim; *provided* , that the Indemnified Party shall be entitled to settle or cease to defend such claim without the prior written consent of the Indemnifying Party, and the failure of the Indemnifying Party to provide such prior written consent shall not impair or otherwise limit any of the Indemnified Party's rights to indemnification, compensation and reimbursement hereunder. If the Indemnified Party settles any Third Party Claim without the prior written consent of the Indemnifying Party, then neither the decision to settle nor the settlement amount shall be conclusive evidence of, or give rise to any presumption of the commercial reasonableness of, the terms of the settlement or the commercial reasonableness of the amount of indemnifiable Losses relating thereto, and any claim for indemnification, reimbursement or compensation brought by the Indemnified Party against the Indemnifying Party under this Article 12 with respect to the settlement of such Third Party Claim will be subject to the dispute resolution procedures set forth in Section 13.11 .

12.6 Tax Treatment . All indemnity payments made pursuant to this Agreement shall be treated for all Tax purposes as adjustments to the Adjusted Cash Purchase Price, unless otherwise required by applicable Law.

12.7 Mitigation . Each of the Parties acknowledges that under applicable principles of common law in the State of Delaware, a party may have a duty to mitigate damages and losses arising out of a breach of contract under certain circumstances. This Agreement is not intended to, and does not, expand upon, or extend in any manner, any such duty or other similar obligation.

## ARTICLE 13
## MISCELLANEOUS

13.1 Notices . All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered personally, (b) the next Business Day, if sent by a nationally-recognized overnight delivery service (unless the records of the delivery service indicate otherwise), (c) three (3) Business Days after deposit in the United States mail, certified and with proper postage prepaid, addressed as follows; or (d) upon delivery if sent by facsimile during a Business

Day (or on the next Business Day if sent by electronic mail or facsimile after the close of normal business hours or on a non-Business Day):

(i) if to Buyers, to:

NETGEAR, Inc.
350 E. Plumeria Dr.
San Jose, CA 95134
Attention: General Counsel
Facsimile: (408) 907-8000

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
One Market Plaza, Spear Tower
San Francisco, California 94105
Attention: Michael Ringler and Denny Kwon
Facsimile: (415) 947-2099

(ii) if to Sellers, to:

Sierra Wireless, Inc.
13811 Wireless Way
Richmond, British Columbia V6V 3A4
Attention: President and CEO
Facsimile: (604) 231-1103

with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
Suite 2600, Three Bentall Centre
595 Burrard Street
P.O. Box 49314
Vancouver, British Columbia V7X 1L3
Attention: Jocelyn M. Kelley
Facsimile: (604) 631-3309

Any party or other recipient may from time to time change its contact information for purposes of this Agreement by giving notice of such change as provided herein.

13.2 Amendments and Waivers . Subject to applicable Law, any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each of the Parties, or, in the case of a waiver, by the Party against whom the waiver is to be effective. No course of dealing and no failure or delay on the part of any Party hereto in exercising any right, power or remedy conferred by this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. The failure of any of the Parties to this Agreement to require the performance of a term or obligation under this Agreement or the waiver by any of the Parties to this Agreement of any breach hereunder shall not prevent subsequent enforcement of such term or obligation

or be deemed a waiver of any subsequent breach hereunder. No single or partial exercise of any right, power or remedy conferred by this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

13.3 Successors and Assigns . All covenants and agreements and other provisions set forth in this Agreement and made by or on behalf of either Party shall bind and inure to the benefit of the successors, heirs and permitted assigns of such party, whether or not so expressed. Neither Party may assign or transfer any of its rights or obligations under this Agreement without the consent in writing of the other Party, except that, without the consent of the other Party: (a) Buyers may assign their rights and obligations hereunder (including their right to purchase the Acquired Assets), in whole or in part, to any Affiliate, (b) either Party may assign their rights and obligations pursuant to this Agreement, in whole or in part, to an entity that succeeds to all or substantially all of the business of such Party (whether by sale of stock, sale of assets, merger, recapitalization, business combination or otherwise) and (c) either Party may assign any or all of its rights pursuant to this Agreement, and each of the other agreements and instruments contemplated hereby, including its rights to indemnification, compensation or reimbursement, to any of its lenders as collateral security.

13.4 Severability . In the event that any one or more of the provisions of this Agreement is held invalid, illegal or unenforceable in any respect for any reason in any jurisdiction, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected (so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party), it being intended that each Parties' rights and privileges shall be enforceable to the fullest extent permitted by applicable Law, and any such invalidity, illegality and unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction (so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any party).

13.5 Expenses . Except as otherwise provided herein, each of Sellers, on the one hand, and Buyers, on the other hand, shall pay all of their own respective fees, costs and expenses (including fees, costs and expenses of legal counsel, investment bankers, brokers and other representatives and consultants) incurred in connection with the negotiation of this Agreement, the performance of its obligations hereunder and thereunder and the consummation of the Transactions. Losses suffered by a Party for a breach of this Agreement shall in no way be limited by the amounts described in this Section 13.5 .

13.6 Specific Performance . The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the Parties shall be entitled to an injunction or injunctions (without proof of damages) to prevent actual or threatened breaches of this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity and the Parties hereby agree to waive any requirements for posting a bond in connection with any such action.

13.7 Other Remedies . Except to the extent set forth otherwise herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such Party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy.

13.8 No Third Party Beneficiaries . Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person any rights or remedies under or by reason of this Agreement or any other certificate, document, instrument or agreement executed in connection herewith nor be relied upon other than the Parties hereto and their permitted successors or assigns. The representations and warranties in this Agreement are the product of negotiations among the Parties and are for the sole benefit of the Parties in accordance with and subject to the terms and conditions of this Agreement, and are not necessarily intended as characterization of actual facts or circumstances as of the date of this Agreement or as of any earlier date.

13.9 Entire Agreement . This Agreement, including the Sellers Disclosure Schedule (and all schedules thereto) and all Schedules to this Agreement, and all other agreements referred to herein is complete, and all promises, representations, understandings, warranties and agreements with reference to the subject matter hereof, and all inducements to the making of this Agreement relied upon by all the Parties hereto, have been expressed herein or in such Sellers Disclosure Schedule, Schedules or such other agreements and this Agreement, including such Sellers Disclosure Schedule, Schedules and such other agreements supersedes any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent that they related in any way to the subject matter hereof.

13.10 Governing Law . This Agreement, including the validity hereof and the rights and obligations of the Parties hereunder, shall be construed in accordance with and governed by the Laws of the State of Delaware applicable to contracts made and to be performed entirely in such state without giving effect to the conflicts of Laws principles thereof.

13.11 Dispute Resolution

(a) As used in this Agreement, " Dispute " shall mean any dispute or disagreement between Buyers and Sellers concerning the interpretation of this Agreement, the validity of this Agreement, any breach or alleged breach by any Party under this Agreement, any claim for indemnification, compensation or reimbursement under Article 12 or any other matter relating in any way to this Agreement; *provided, however,* that "Dispute" shall not include any dispute which is subject to the procedures set forth in Section 3.2 or in which a Party seeks equitable relief (including pursuant to Section 13.6 ).

(b) If a Dispute arises, the parties to the Dispute shall follow the procedures set forth in this Section 13.11 .

(c) The Parties shall promptly attempt in good faith to resolve any Dispute by negotiations between Buyers and Sellers. Buyers and Sellers shall meet at a mutually acceptable time and place within twenty (20) calendar days after delivery of such notice, and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute in good faith.

(d) If a Dispute is not resolved by negotiation pursuant to Section 13.11(c) , the Parties agree that such Dispute and any other claims arising out of or relating to this Agreement (other than any dispute which is subject to the procedures set forth in Section 3.2 or in which a Party seeks equitable relief (including pursuant to Section 13.6 )) shall be heard, adjudicated and determined exclusively and only by final and binding arbitration conducted by JAMS in Los Angeles, California, in accordance with the JAMS rules and procedures. The Parties further understand and agree that this Agreement evidences a transaction involving commerce within the understanding of 9 U.S.C. Section 2, and that this Agreement shall therefore be governed by the Federal Arbitration Act, 9 U.S.C. Sections 1, et seq.

(e) Notwithstanding any statute or rule governing limitations of actions, any arbitration relating to or arising from any Dispute shall be commenced by service of an arbitration demand.

(f) To commence an arbitration pursuant to this Agreement, a Party shall serve a written arbitration demand (the " Demand ") on the other Party in accordance with this Agreement and at the same time submit a copy of the Demand to JAMS, together with a check payable to JAMS in the amount of that entity's then-current arbitration filing fee; *provided* that in no event shall the claimant be required to pay an arbitration filing fee exceeding the sum then required to file a civil action in the United States District Court for Central District of California. The claimant shall attach a copy of this Agreement to the Demand, which shall also describe the Dispute in sufficient detail to advise the respondent of the nature of the Dispute, state the date on which the Dispute first arose, list the names and addresses of every Person whom the claimant believes does or may have information relating to the Dispute, and state the relief requested by the claimant, including a monetary amount, if the claimant seeks a monetary award of any kind. Within thirty (30) days after receiving the Demand, the respondent shall mail to the claimant a written response to the Demand (the " Response "), and submit a copy of the Response to JAMS, together with a check for the difference, if any, between the filing fee paid by the claimant and JAMS' then-current arbitration filing fee. The Response shall describe the Dispute in sufficient detail to fairly inform the claimant of the respondent's position in the matter, list the names and addresses of every Person whom the respondent believes does or may have information relating to the Dispute, and, if the respondent has asserted a counterclaim, state with particularity the relief requested by the respondent, including a specific monetary amount, if the respondent seeks a monetary award of any kind.

(g) Promptly after service of the Response, the Parties shall confer in good faith to attempt to agree upon a suitable arbitrator. If the Parties are unable to agree upon an arbitrator, JAMS shall select the arbitrator, based, if possible, on his or her expertise with respect to the subject matter of the Dispute.

(h) Notwithstanding the choice-of-law principles of any jurisdiction, the arbitrator shall be bound by and shall resolve all Disputes in accordance with the substantive law of the State of Delaware, federal law as enunciated by the federal courts situated in the District of Delaware, and all federal rules relating to the admissibility of evidence, including, without limitation, all relevant privileges and the attorney work product doctrine.

(i) Before the arbitration hearing, each Party shall be entitled to take a discovery deposition of up to three (3) representatives of the opposing Party who has knowledge of the matters in Dispute. In addition, upon the application of a Party showing good cause for the taking of a deposition intended to preserve evidence for introduction at trial, the arbitrator shall enter such orders as may be necessary to permit the preservation of such Person or Person(s) and such deposition(s) shall not count with respect to any limit imposed by agreement or otherwise on the number of discovery depositions allowed to be taken in connection with the arbitration. Further, upon the written request of either Party, the other Party shall promptly produce documents relevant to the Dispute or reasonably likely to lead to the discovery of admissible evidence. The manner, timing and extent of any further discovery shall be committed to the arbitrator's sound discretion, provided that under no circumstances shall the arbitrator allow more depositions or interrogatories than permitted by the presumptive limitations set forth in F.R.Civ.P. 30(a)(2)(A) and 22(a). The arbitrator shall levy appropriate sanctions, including an award of reasonable attorneys' fees, against any party that fails to cooperate in good faith in discovery permitted by this Section 13.11(i) or ordered by the arbitrator.

(j) Within thirty (30) days after the arbitration hearing is closed, the arbitrator shall issue a written award setting forth his or her decision and the reasons thereof. If a Party prevails on a statutory

claim that affords the prevailing Party the right to recover attorneys' fees and/or costs, then the arbitrator shall award to the Party that substantially prevails in the arbitration its costs and expenses, including reasonable attorneys' fees. The arbitrator's award shall be final, nonappealable and binding upon the Parties, subject only to the provisions of 9 U.S.C. Section 10, and may be entered as a judgment in any court of competent jurisdiction. The arbitrator shall have authority to award any remedy or relief that a court of the State of California could order or grant, including specific performance of any obligation created under this Agreement, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process. The arbitrator shall award reasonable attorneys' fees, costs, and expert witness fees to the prevailing Party.

13.12 Consent to Jurisdiction . Subject to Section 13.11 , and without limiting the other provisions of this Section 13.12 , the Parties hereto agree that any legal proceeding by or against any Party hereto or with respect to or arising out of this Agreement shall be brought in the Chancery Court of the State of Delaware located within New Castle County. Subject to Section 13.11 , by execution and delivery of this Agreement, each Party hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts solely for the purposes of disputes arising under this Agreement and not as a general submission to such jurisdiction or with respect to any other dispute, matter or claim whatsoever. The Parties hereto irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the delivery of copies thereof by overnight courier to the address for such party to which notices are deliverable hereunder. Any such service of process shall be effective upon delivery. Nothing herein shall affect the right to serve process in any other manner permitted by applicable Law. The Parties hereto hereby waive any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of (a) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason, or that it or any of its property is immune from the above-described legal process, (b) that such action or proceeding is brought in an inconvenient forum, that venue for the action or proceeding is improper or that this Agreement may not be enforced in or by such courts, or (c) any other defense that would hinder or delay the levy, execution or collection of any amount to which any Party hereto is entitled pursuant to any final judgment of any court having jurisdiction.

13.13 WAIVER OF JURY TRIAL . EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AND ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

13.14 Counterparts . This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, may be executed in two or more counterparts and by the different Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a fax machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an " Electronic Delivery ") shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No Party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or

instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent that such defense relates to lack of authenticity.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date first above written.

**NETGEAR, INC.**

By: /s/ Patrick C. S. Lo

Name: Patrick C. S. Lo

Title: Chairman, CEO

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date first above written.

**NETGEAR HOLDINGS LIMITED**

By: /s/ Christopher Page

Name: Christopher Page

Title: Director

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date first above written.

**NETGEAR INTERNATIONAL LIMITED**

By: /s/ Patrick C. S. Lo

Name: Patrick C. S. Lo

Title: Director

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date first above written.

**NETGEAR CANADA LIMITED**

By: /s/ Andrew Kim

Name: Andrew Kim

Title: Director

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date first above written.

**NETGEAR AUSTRALIA PTY LTD**

By: /s/ Patrick C. S. Lo

Name: Patrick C. S. Lo

Title: Director

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date first above written.

**SIERRA WIRELESS, INC.**

By: /s/ Jason W. Cohenour
Name: Jason W. Cohenour
Title: CEO

**SIERRA WIRELESS AMERICA, INC.**

By: /s/Jason W. Cohenour
Name: Jason W. Cohenour
Title: CEO

**SIERRA WIRELESS (AUSTRALIA) PTY LTD**

By: /s/ David McLennan
Name: David McLennan
Title: Director

Exhibit 21.1

Subsidiaries and Affiliates of the Registrant

NETGEAR, INC.
NETGEAR INTERNATIONAL, INC.
SKIPJAM CORP
Avaak, Inc,
INFRANT TECHNOLOGIES LLC
Netgear Canada Ltd.
NETGEAR HOLDINGS LTD
NETGEAR INTERNATIONAL LTD
Netgear Asia Holding Ltd
NETGEAR ASIA PTE. LIMITED
Netgear Australia Pty Ltd.
NETGEAR AUSTRIA GMBH
Netgear (Beijing) Network Technology Co., Ltd
NETGEAR Belgium BVBA
NETGEAR Cyprus Ltd.
NETGEAR CZECH REPUBLIC SRO
Netgear Denmark ApS
NETGEAR DEUTSCHLAND GMBH
NETGEAR DO BRASIL PRODUTOS ELECTRONICS LTDA
NETGEAR FRANCE SAS
NETGEAR HONG KONG LIMITED
NETGEAR Italy Srl
NETGEAR JAPAN GK
Netgear Luxembourg SARL
NETGEAR MEXICO S. DE R.L.
NETGEAR NETHERLANDS B.V.
NETGEAR NEW ZEALAND
NETGEAR POLAND SP ZOO
Netgear Research India Pvt. Ltd.
NETGEAR SWITZERLAND GMBH
NETGEAR TAIWAN CO LTD
NETGEAR TECHNOLOGIES PRIVATE LIMITED
NETGEAR U.K. LTD

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (Nos. 333-107718, 333-136892, 333-136895, 333-151638, 333-160869, 333-168349 and 333-181892) of NETGEAR, Inc. of our report dated February 26, 2013 relating to the financial statements, financial statement schedule and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP
San Jose, California
February 26, 2013

**EXHIBIT 31.1**

**CHIEF EXECUTIVE OFFICER CERTIFICATION**

I, Patrick C.S. Lo, certify that:

1. I have reviewed this annual report on Form 10-K of NETGEAR, Inc. (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 Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer(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: February 26, 2013

/s/ PATRICK C.S. LO

Patrick C.S. Lo
Chairman and
Chief Executive Officer
NETGEAR, Inc.

EXHIBIT 31.2

CHIEF FINANCIAL OFFICER CERTIFICATION

I, Christine M. Gorjanc, certify that:

1. I have reviewed this annual report on Form 10-K of NETGEAR, Inc. (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 Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer(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: February 26, 2013

By: /s/ CHRISTINE M. GORJANC
Christine M. Gorjanc
Chief Financial Officer
NETGEAR, Inc.

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEYACT OF 2002

In connection with the Annual Report of NETGEAR, Inc. (the "Company") on Form 10-K for the year ended December 31, 2012 , as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Patrick C.S. Lo, Chairman and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), that:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended ; 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: February 26, 2013

By: /s/ PATRICK C.S. LO
Patrick C.S. Lo
Chairman and
Chief Executive Officer
NETGEAR, Inc.

*This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of this Form 10-K), irrespective of any general incorporation language contained in such filing.*

EXHIBIT 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEYACT OF 2002

In connection with the Annual Report of NETGEAR, Inc. (the "Company") on Form 10-K for the year ended December 31, 2012 , as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Christine M. Gorjanc, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 ("Section 906"), that:

(1) The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934, as amended; 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: February 26, 2013

By: /s/ CHRISTINE M. GORJANC
Christine M. Gorjanc
Chief Financial Officer
NETGEAR, Inc.

*This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of this Form 10-K), irrespective of any general incorporation language contained in such filing.*