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

FORM 10-K

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

(Mark One)

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

For the fiscal year ended October 31, 2009

OR

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

For the transition period from _____ to _____

Commission file number 0-21969

Ciena Corporation

(Exact name of registrant as specified in its charter)

Delaware	**23-2725311**
(State or other jurisdiction of Incorporation or organization)	(I.R.S. Employer Identification No.)
1201 Winterson Road, Linthicum, MD	**21090-2205**
(Address of principal executive offices)	(Zip Code)

(410) 865-8500
(Registrant's telephone number, including area code)

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

Title of Each Class	Name of Each Exchange on Which Registered
Common Stock, $0.01 par value	**The NASDAQ Stock Market**

Securities registered pursuant to Section 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 o

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 o 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 o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.4-5 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 o NO o

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. o

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

Large accelerated filer ☑	Accelerated filer o	Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller reporting company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act) YES o NO ☑

The aggregate market value of the Registrant's Common Stock held by non-affiliates of the Registrant was approximately $929.3 million based on the closing price of the Common Stock on the NASDAQ Global Select Market on May 2, 2009.

The number of shares of Registrant's Common Stock outstanding as of December 11, 2009 was 92,038,629.

DOCUMENTS INCORPORATED BY REFERENCE

Part III of the Form 10-K incorporates by reference certain portions of the Registrant's definitive proxy statement for its 2010 Annual Meeting of Stockholders to be filed with the Commission not later than 120 days after the end of the fiscal year covered by this report.

CIENA CORPORATION
ANNUAL REPORT ON FORM 10-K
FOR FISCAL YEAR ENDED OCTOBER 31, 2009

TABLE OF CONTENTS

PART I

The information in this annual report contains certain forward-looking statements, including statements related to our business prospects, the markets for our products and services, and trends in our business that involve risks and uncertainties. Our actual results may differ materially from the results discussed in these forward-looking statements. Factors that might cause such a difference include those discussed in "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business" and elsewhere in this annual report.

Item 1. Business

Overview

We are a provider of communications networking equipment, software and services that support the transport, switching, aggregation and management of voice, video and data traffic. Our optical service delivery and carrier Ethernet service delivery products are used individually, or as part of an integrated solution, in communications networks operated by service providers, cable operators, governments and enterprises around the globe.

We are a network specialist targeting the transition of disparate, legacy communications networks to converged, next-generation architectures, better able to handle increased traffic and deliver more efficiently a broader mix of high-bandwidth communications services. Our products, with their embedded, network element software and our unified service and transport management, enable service providers to efficiently and cost-effectively deliver critical enterprise and consumer-oriented communication services. Together with our professional support and consulting services, our product offerings seek to offer solutions that address the business challenges and network needs of our customers. Our customers face an increasingly challenging and rapidly changing environment that requires them to quickly adapt their business strategies and deliver new, revenue-creating services. By improving network productivity, reducing operating costs and providing the flexibility to enable new and integrated service offerings, our offerings create business and operational value for our customers.

Pending Acquisition of Optical and Carrier Ethernet Assets of Nortel Metro Ethernet Networks (MEN) Business

Following our emergence as the winning bidder in the bankruptcy auction, we agreed to acquire substantially all of the optical networking and carrier Ethernet assets of Nortel's Metro Ethernet Networks (MEN) business for $530 million in cash and $239 million in aggregate principal amount of 6% senior convertible notes due June 2017. The terms of the notes to be issued upon closing are set forth in Note 22 of the Consolidated Financial Statements found under Item 8 of Part II of this annual report. Nortel's product and technology assets to be acquired include:

- long-haul optical transport portfolio;
- metro optical Ethernet switching and transport solutions;
- Ethernet transport, aggregation and switching technology;
- multiservice SONET/SDH product families; and
- network management software products.

In addition to these products, the acquired operations also include network implementation and support services. The assets to be acquired generated approximately $1.36 billion in revenue for Nortel in fiscal 2008 and approximately $556 million (unaudited) in the first six months of Nortel's fiscal 2009.

The pending acquisition encompasses a business that is a leading provider of next-generation, 40G and 100G optical transport technology with a significant, global installed base. The acquired transport technology allows network operators to upgrade their existing 10G networks to 40G capability, quadrupling capacity without the need for new fiber deployments or complex network re-engineering. In addition to transport capability, the optical platforms acquired include traffic switching and aggregation capability for traditional protocols such as SONET/SDH as well as newer packet protocols such as Ethernet. A suite of software products used to manage networks built from these technologies is also part of the transaction.

We believe that the transaction provides an opportunity to significantly transform Ciena and strengthen our position as a leader in next-generation, automated optical Ethernet networking. We believe that the additional resources, expanded geographic reach, new and broader customer relationships, and deeper portfolio of complementary network solutions derived from the transaction will augment Ciena's growth. We also expect that the transaction will add scale, enable operating model synergies and provide an opportunity to optimize our research and development investment. We expect these benefits of the transaction will help Ciena to better compete with traditional, larger network vendors.

We expect to make employment offers to at least 2,000 Nortel employees to become part of Ciena's global team of network specialists. The transaction will significantly enhance our existing Canadian-based development resources, making Ottawa our largest product and development center.

Given the structure of the transaction as an asset carve-out from Nortel, we expect that the transaction will result in a costly and complex integration with a number of operational risks. We expect to incur integration-related costs of approximately $180 million, with the majority of these costs to be incurred in the first 12 months following the completion of the transaction. We also expect to incur significant transition services expense, and we will rely upon an affiliate of Nortel to perform certain operational functions during an interim period following closing not to exceed two years.

We expect this pending transaction to close in the first calendar quarter of 2010. If the closing does not take place on or before April 30, 2010, the applicable asset sale agreements may be terminated by either party. Ciena has been granted early termination of the antitrust waiting periods under the Hart-Scott-Rodino Act and the Canadian Competition Act. On December 2, 2009, the bankruptcy courts in the U.S. and Canada approved the asset sale agreement relating to Ciena's acquisition of substantially all of the North American, Caribbean and Latin American and Asian optical networking and carrier Ethernet assets of Nortel's MEN business. Completion of the transaction remains subject to information and consultation with employee representatives and employees in certain international jurisdictions, an additional regional regulatory clearance and customary closing conditions.

Financial Overview — Fiscal 2009 and Effect of Market Conditions

Our results of operations for fiscal 2009 reflect the weakness, volatility and uncertainty presented by the global market conditions that we encountered during the year. Our results reflect cautious spending among our largest customers during fiscal 2009, as they sought to conserve capital, reduce debt or address uncertainties or changes in their own business models brought on by broader market challenges. As a result, we experienced lower demand across our customer base in all geographies, as well as lengthening sales cycles, customer delays in network build-outs and slowing deployments. We generated revenue of $652.6 million in fiscal 2009, representing a 27.7% decrease from fiscal 2008 revenue of $902.4 million. Net income decreased from $38.9 million, or $0.42 per diluted share, in fiscal 2008, to a loss of $581.2 million, or $6.37 per diluted share, in fiscal 2009, reflecting a goodwill impairment charge of $455.7 million in the second quarter of fiscal 2009. We generated $7.4 million in cash from operations during fiscal 2009 compared to $117.6 million in cash from operations during fiscal 2008. For more information regarding our results of operations and market conditions, see "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Item 7 of Part II of this annual report.

Business Segment Data and Certain Financial Information

We manage our business in one operating segment. The matters discussed in this "Business" section should be read in conjunction with the Consolidated Financial Statements found under Item 8 of Part II of this annual report, which includes additional financial information about our total assets, revenue, measures of profits and loss, and financial information about geographic areas and customers representing greater than 10% of revenue.

Corporate Information and Access to SEC Reports

We were incorporated in Delaware in November 1992, and completed our initial public offering on February 7, 1997. Our principal executive offices are located at 1201 Winterson Road, Linthicum, Maryland 21090. Our telephone number is (410) 865-8500, and our web site address is www.ciena.com. We make our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports, available free of charge on the Investor Relations page of our web site as soon as reasonably practicable after we file these reports with the Securities and Exchange Commission (SEC). We routinely post the reports above, recent news and announcements, financial results and other important information about our business on our website at www.ciena.com. Information contained on our web site is not a part of this annual report.

Industry Background

The markets in which we sell our equipment and services have been subject to dynamic changes in recent years, including increased competition, growth in traffic, expanded service offerings, and evolving market opportunities and challenges.

Increased Network Capacity Requirements and Multiservice Traffic Driving Increased Transmission Speeds and Flexible Infrastructures

Today's networks are experiencing strong traffic growth and new service demands, especially in the access and metro portions of wireline networks and the backhaul portions of wireless networks. Increasing use of and reliance upon communications services by consumer and enterprise end users for a wide range of personal and business tasks, and the expansion of high-bandwidth, wireline and wireless service offerings, are driving increased network capacity requirements. Business customers seeking to improve automation, efficiency and productivity have become increasingly dependent upon enterprise-oriented communications and data services. As their workforces are becoming more mobile, enterprises are driving demand for seamless access to these business applications. In addition, enterprise technology trends such as IT virtualization and cloud computing are also placing new capacity and service requirements on networks. At the same time, with consumer adoption of broadband technologies, including peer-to-peer Internet applications, video services, online gaming, music downloads and mobile web and data services, an increasing portion of network traffic is consumer-driven. This shift presents a challenge to service providers because, historically, consumers pay a lower price for their bandwidth usage than enterprises, yet they are becoming a bigger portion of overall traffic demand. All of these factors are requiring networks to be more flexible, scalable and cost effective.

This traffic growth is driving networks to achieve increased transmission speeds, including the emergence of 40G and 100G optical transport technology. The growing mix of high-bandwidth traffic, and an increasing focus on controlling network costs, is also driving a transition from multiple, disparate networks based on SONET/SDH to more efficient, converged, multi-purpose Ethernet/IP-based network architectures. As a global standard that is widely deployed, we believe that Ethernet is an ideal technology for reducing cost and consolidating multiple services on a single network. The industry has seen network technology transitions like this in the past. These large investment cycles tend to happen over multi-year periods. For instance, from the mid 1980s to the mid 1990s, service providers focused network upgrades on the transition required to digitize voice traffic. From the mid 1990s to the mid 2000s, service providers focused network upgrades on the transition to SONET/SDH networks designed to reliably handle substantially more network traffic. We believe that the industry is currently in the early stages of network transition to multi-purpose Ethernet/IP-based network architectures that more efficiently handle the growing mix of multiservice traffic. We see opportunities in providing a portfolio of carrier class solutions that facilitate this transition to automated optical Ethernet networks.

Wireless Networks

Several years ago, data surpassed voice as the dominant traffic on wireline networks. This transition drove substantial investment as service providers upgraded their wireline infrastructure to accommodate higher bandwidth requirements and new usage patterns associated with new applications and service offerings. A similar shift is now occurring in wireless networks. The emergence of smart mobile devices that deliver integrated voice, audio, photo, video, email and mobile web capabilities, like Apple's iPhone™, are rapidly changing the kind of traffic carried by wireless networks. Like the wireline networks before them, wireless networks initially were constructed principally to handle voice traffic, not the higher bandwidth, multiservice traffic that has grown in recent years. As a result, wireless networks are undergoing significant change as they evolve from today's second and third generation (2G and 3G) networks to include 4th generation (4G) technologies, such as WiMax and LTE, intended to support data rates in the hundreds of megabits per second. This evolution, together with growing mobility and expanding wireless applications, will require upgrades to existing wireless infrastructure, including wireline backhaul of mobile traffic.

Increased Competition Among Communications Service Providers and Effect on Network Investment

Competition continues to be fierce among communications services providers, particularly as traditional telecommunications companies and cable operators look to offer a broader mix of revenue-generating services. Service providers face new competitors, new technologies and intense price competition while traditional sources of revenue from voice and enterprise data services are under pressure. These dynamics place increased scrutiny and prioritization of network spending and heightened focus on the return on investment of enhancing existing infrastructures or building new communications networks. Service providers need to create and rapidly deliver new, robust service offerings and dedicated communications at increasing speeds to differentiate from competitors and grow their business. At the same time, they are increasingly seeking ways to reduce their network operating and capital costs and create new service offerings profitably. By utilizing scalable networks that are less complex, less expensive to operate and more adaptable, service providers can derive increased value from their network investments through the profitable and efficient delivery of new services.

Changes in Sourcing and Procurement Strategies

Challenging market conditions and the effects of the competitive landscape described above have only increased efforts among service providers to control network infrastructure costs. These conditions have resulted in the emergence of new sourcing and procurement strategies among service providers. Some of our customers have recently undertaken efforts to outsource entirely the building, operation and maintenance of their networks to suppliers or integrators. Others have

indicated a procurement strategy to reduce the number of vendors from which they purchase equipment. We have also experienced customer efforts to seek vendor financing or other purchasing mechanisms intended to minimize or defer capital expenditures, or address business needs related to inventory levels, lead times and operating costs. We believe that changes in procurement strategies, particularly among our largest customers, will present opportunities, as well as significant challenges, for equipment providers like us. In particular, we see our consultative approach and expanded professional services offering as a key differentiator to help strengthen the strategic role we play in our customer's networks.

Carrier-Managed Services and Private Networks

Enterprises are increasingly requiring additional bandwidth capacity to support data interconnection, facilitate global expansion of operations, enable employee mobility and utilize video services. As information technology and communications services have taken on a strategic role in operations, enterprises and government agencies have become more concerned about network reliability and security, business continuity and disaster recovery. Many enterprises have also had to address industry-specific compliance and regulatory requirements. These changing requirements have driven service providers to ensure that their network infrastructures and service offerings can meet the changing needs of their largest customers. As a result, service providers offer a wide range of enterprise-oriented, carrier-managed services. In addition to this expansion of carrier-managed services, a number of large enterprises, government agencies and research and education institutions have decided to forego carrier-managed communications services in favor of building their own, secure private networks, some on a global scale.

Shift in Value from Networks to Applications

In the past, enterprises and consumers perceived value in network connectivity. These end users of networks now place a higher value on the services or applications accessed and delivered over the network. As a result, service providers need to create, market and sell profitable services as opposed to simply selling connectivity. Some examples of applications causing this shift in value include:

- *Virtualization.* Virtualization moves a physical resource from a user's desktop into the network, thereby making more efficient use of information technology resources. Virtualization has many appealing attributes such as lowering barriers of entry into new markets, and even adding flexibility to scale certain aspects of a business faster and with less expense.
- *Software as a Service.* Software as a service involves the sale of an application hosted as a service provided to end users, replacing standardized applications for virtualized services and, in some cases, replacing aspects of the traditional IT infrastructure. By way of example, traditional customer relationship management applications can be replaced with services such as Salesforce.com™.
- *Mobility.* The increase in availability and improved ease of use of web-based applications from mobile devices expands the reach of virtualized services beyond a wireline connection. For instance, consumer-driven video and gaming are being virtualized, allowing broad access to these applications, regardless of the device or the network used.

We believe these shifts will require communications network infrastructures to be able to be more automated, robust and flexible.

Strategy

Our strategy has evolved to enable our customers to deal with the challenges and industry trends discussed above. We started in the 1990s as a provider of intelligent optical transport solutions. Our focus was on making the transport network scalable, flexible and resilient through software-enabled automation. We enabled a new generation of mesh networking that allowed for new, tiered services and reduced network operating expenditures. We then combined the economics of Ethernet with our heritage of resilient optics, creating connection-oriented Ethernet products and features with carrier-grade performance. We are entering a new stage of our strategic evolution with a focus on enabling service delivery. For service providers, new services drive revenue growth. For enterprises, new services support strategic business needs and improve operational efficiency.

Our vision is to enable a service-driven network that is automated and programmable remotely via software. Programmable networks allow our customers to adapt and scale as their business models, services mix and market demands change. Through our current product portfolio and ongoing research and development efforts, we seek to provide networking solutions, including hardware, embedded software and management software, that allow our customers to rapidly and efficiently introduce and provision new revenue-generating services while enabling operational cost savings. We believe our innovation will allow tomorrow's service-driven network to adapt and scale, manage unpredictability, and eliminate barriers to new services. In providing these solutions, we aim to change fundamentally the way our customers compete.

Our vision of a service-driven network is based on three key building blocks of our FlexSelect™ Architecture:

- Programmable network elements capable of being rapidly reconfigured by software applications;
- Embedded and management software that increases automation; and
- True Carrier Ethernet™ (TCE) technology to provide reliable, feature-rich and cost-effective Ethernet to support a wider variety of services.

Through these technology elements, we seek to offer customers the means to automate delivery and management of a broad mix of services and enable a software-defined, service-agnostic network that offers enhanced flexibility and is more cost-effective to deploy, scale and manage.

Incorporating this approach to service-driven networks into our strategy, we are pursuing the following initiatives:

- Maintain and extend technology leadership in the transition from legacy network infrastructures to automated optical Ethernet networking;
- Build upon our consultative approach and expand our professional services offerings to enhance the strategic value we bring to customer relationships in their design, deployment and delivery of new services; and
- Grow and diversify our customer base by expanding our geographic reach, addressing new network applications and penetrating new market and customer segments.

Customers and Markets

Our customer base and the markets into which we sell our equipment, software and services have expanded in recent years as new market opportunities have emerged and our product portfolio has grown to include additional products in the metro and access portions of communications networks. The networking equipment needs of our customers vary, depending upon their size, location, the nature of their end users and the applications or services that they deliver and support. We sell our products and services through our direct sales force and third party channel partners in the following markets:

Communications Service Providers

Our communications service provider customers include regional, national and international, wireline and wireless carriers. These customers include AT&T, BT, Cable & Wireless, CenturyLink, Clearwire, France Telecom, Korea Telecom, Qwest, Sprint, Tata Communications, Telmex, Verizon and XO Communications. Traditional telecommunications service providers are our historical customer base and continue to represent the largest contributor to our revenue. We provide service providers with products from the network core to the edge to enable access. Our products enable service providers to rapidly provision new services and reduce network costs by aggregating multiservice traffic, or additional capacity, over a converged network. Our network offering enables service providers to support consumer demand for video delivery, broadband data and wireless broadband services, while continuing to support legacy voice services. Our products also enable service providers to support private networks and applications for enterprise users, including carrier-managed services, wide area network consolidation, inter-site connectivity, storage and Ethernet services.

Cable Operators

Our customers include leading cable and multiservice operators in the U.S. and internationally. Our cable and multiservice operator customers rely upon us for carrier-grade, optical Ethernet transport and switching equipment to support enterprise-oriented services. Our platforms allow cable operators to integrate voice, video and data applications over a converged infrastructure. Our products support key cable applications including broadcast and digital video, voice over IP, video on demand and broadband data services.

Enterprise

Our enterprise customers include large, multi-site commercial organizations, including participants in the financial, healthcare, transportation and retail industries. Our solutions can enable enterprises to achieve operational improvements, increased automation and information technology cost reductions. We offer equipment, software and services that facilitate wide area network consolidation, and storage extension for business continuity and disaster recovery. Our products enable inter-site connectivity between data centers, sales offices, manufacturing plants, retail stores and research and development centers, using an owned or leased private fiber network or a carrier-managed service. Our products facilitate key enterprise

applications including data, voice, video, Ethernet services, online collaboration, conferencing and other business services. Our products also enable our enterprise customers to prevent unexpected network downtime and ensure the safety, security and availability of their data.

Government, Research and Education

Our government customers include federal and state agencies in the U.S. as well as government entities outside of the U.S. Our customers also include domestic and international research and education institutions seeking to take advantage of technology innovation and facilitate increased collaboration. Our products, software and services enable these customers to improve network performance, capacity, security, reliability and flexibility. Our products also enable government agencies and research and education institutions to build their own secure, private networks.

Products and Services

We offer a portfolio of communications networking equipment and management software that form the building blocks of a service-driven network. Our product portfolio consists of our optical service delivery products and our carrier Ethernet service delivery products. Together with our professional services, these offerings provide solutions to address the business needs of our customers and the tools necessary to face the market and technological challenges described above.

We have focused our product and service offerings on the following critical portions of the network: core networking, full-service metro, managed services and enterprise, and mobile backhaul. In the network's core, we deliver transport and switching equipment that creates an automated, dynamic optical infrastructure supporting a wide variety of network services. In the metro portion of the network, we deliver a comprehensive, converged transport and switching solution that manages circuits, wavelengths and packets. In managed services applications and enterprise networks, we enable services including storage, data connectivity, video and Ethernet services. In wireless and backhaul networks, we provide wireline and wireless carriers with the tools to migrate their networks to support mobile data applications and enable Ethernet-based backhaul.

Underpinning our product offerings are some common technology elements, including the key building blocks of our FlexSelect Architecture described above. These elements appear across our product portfolio and allow us to create differentiated solutions by combining various products from the core to the edge of customers' networks.

Optical Service Delivery

Our optical service delivery portfolio includes transport and switching platforms that act as automated optical infrastructures for the delivery of a wide variety of enterprise and consumer-oriented network services. These products address both the core and metro segments of communications networks, as well as key managed service and enterprise applications.

Our principal core switching product is our CoreDirector® Multiservice Optical Switch. CoreDirector is a multiservice, multi-protocol switching system that consolidates the functionality of an add/drop multiplexer, digital cross-connect and packet aggregator, into a single, high-capacity intelligent switching system. CoreDirector's mesh capability creates more efficient, more reliable networks. In addition to its application in core networks, CoreDirector may also be used in metro networks for aggregation and forwarding of multiple services, including Ethernet/TDM Private Line, Triple Play and IP services. In 2009, we introduced our CoreDirector-FS, an expansion of our CoreDirector offering incorporating our FlexSelect technology elements. We also introduced our 5400 family of reconfigurable switching systems. These multi-terabit Ethernet, OTN and TDM switching systems with integrated transport functionality can be flexibly configured to implement a broad range of network elements including a scalable optical cross-connect, feature-rich Carrier Ethernet switch, or a fully converged packet-optical transport and switching system. These new platforms provide the capabilities and reliability of CoreDirector, while providing service providers the ability to scale to higher capacities and transition to packet-based networks.

In nationwide networks, our switching elements are connected by a reliable long-haul transport infrastructure. Our principal long-haul, core transport product is our CoreStream® Agility Optical Transport System. CoreStream Agility is a flexible, scalable wavelength division multiplexing (WDM) solution that enables cost-effective and efficient transport of voice, video and data related to a variety of services for core networks as well as regional and metro networks.

Our optical service delivery solution in metro and regional networks is our CN 4200® FlexSelect Advanced Services Platform family. Our CN 4200 family of products provides optical transport, wavelength switching, TDM switching and packet switching, and includes a reconfigurable optical add-drop multiplexer (ROADM), several chassis sizes and a comprehensive set of line cards. Our CN 4200 platform is scalable and can be utilized from the customer premises, where space and power are critical, to the metropolitan/regional core, where the need for high capacity and carrier-class performance are essential.

Our optical service delivery products also include enterprise-oriented transport and switching products designed for storage and LAN extension, interconnection of data centers over distance, which, when used together with CN 4200, enable virtual private networks. These products address key enterprise applications while reducing bandwidth usage through hardware compression and efficient bandwidth utilization.

Carrier Ethernet Service Delivery

Our carrier Ethernet service delivery offering primarily consists of service delivery switching products and service aggregation platforms. This offering also includes our legacy broadband access products for residential services. These products allow customers to utilize the automation and capacity created by our optical service delivery products in core and metro networks and to deliver new, revenue-generating services to consumers and enterprises. Our carrier Ethernet service delivery products have applications from the edge of the metro/core network to the customer premises.

Our service delivery and aggregation switches provide True Carrier Ethernet, a more reliable and feature rich type of Ethernet that can support a wider variety of services. These products support the access and aggregation tiers of communications networks, and are typically deployed in metro and access networks. Service delivery products are often used at customer premises locations while aggregation platforms are used to combine service to improve network resource utilization. Employing sophisticated carrier Ethernet switching technology, these products deliver quality of service capabilities, virtual local area networking and switching functions, and carrier-grade operations, administration, and maintenance features. In 2009, we introduced several additions to our service delivery and aggregation offering intended to increase capacity for higher bandwidth user connections and a broader set of aggregation and switching capabilities, such as enterprise locations, backhaul from wireless cell sites, multi-tenant unit buildings and outside plant cabinets. Initial deployment of these products have principally been in support of wireless backhaul deployments, including, in large part, 4G WiMax, and business data services.

Our principal products for consumer broadband are our CNX-5 Broadband DSL System and CNX-5Plus Modular Broadband Loop Carrier. These broadband access platforms allow service providers to transition legacy voice networks to support next-generation services such as Internet-based (IP) telephony, video services and DSL, and enable cost-effective migration to higher bandwidth Ethernet network infrastructures.

Unified Software and Service Management Tools

Our optical service delivery and carrier Ethernet service delivery products include a shared suite of embedded operating system software and network management software tools that serve to unify our product portfolio and provide the underlying automation and management features. Our embedded operating system is a robust, service aware operating system that improves network utilization and availability, while delivering enhanced performance monitoring and reliability. ON-Center® Network & Service Management Suite, our integrated network and service management software, is designed to simplify network management and operation across our portfolio. ON-Center can track individual services across multiple product suites, facilitating planned network maintenance, outage detection and identification of customers or services affected by network troubles. By increasing network automation, minimizing network downtime and monitoring network performance and service metrics, our embedded operating system software and network management software tools enable customers to improve cost effectiveness, while increasing the performance and functionality of their network operations.

Consulting and Support Services

To complement our product portfolio, we offer a broad range of consulting and support services that help our customers design, deploy and operationalize their services. We provide these professional services through our internal services resources as well as through service partners. Our services portfolio includes:

- Network analysis, planning and design;
- Network optimization and tuning;
- Project management, including staging, site preparation and installation activities;
- Deployment services, including turnkey installation and turn-up and test services; and
- Maintenance and support services, including helpdesk and technical assistance and training, spares and logistics management, software updates, engineering dispatch, advanced technical support and hardware and software warranty extensions.

Product Development

Our industry is subject to rapid technological developments, evolving standards and protocols, and shifts in customer demand. To remain competitive, we must continually enhance existing product platforms by adding new features and functionality and introduce new product platforms that address next-generation technologies and facilitate the transition to automated optical Ethernet networking. Our current development investments are focused upon:

- Data-optimized switching solutions and evolution of our CoreDirector family and 5400 family of reconfigurable switching solutions;
- Extending and increasing capacity of our converged optical transport service delivery portfolio, including 100G transport technologies and capabilities;
- Expanding our carrier Ethernet service delivery portfolio, including larger Ethernet aggregation switches; and
- Extending the value of our network management software platform across our product portfolio.

Our product development investments are driven by market demand and technological innovation, involving close collaboration among our product development, sales and marketing organizations and input from customers. In some cases, we work with third parties pursuant to technology licenses, OEM arrangements and other strategic technology relationships or investments, to develop new components or products, modify existing platforms or offer complementary technology to our customers. In addition, we participate in industry and standards organizations, where appropriate, and incorporate information from these affiliations throughout the product development process.

We regularly review our product offerings and development projects to determine their fit within our portfolio and broader strategy. We assess the market demand, prospective return on investment and growth opportunities, as well as the costs and resources necessary to support these products or development projects. In recent years, our strategy has been to pursue technology and product convergence that allows us to consolidate multiple technologies and functionalities on a single platform, or to control and manage multiple elements throughout the network from a uniform management system, ultimately creating more robust and cost-effective network tools. We have also shifted our strategic development approach from delivering point products to comprehensive hardware, software and service solutions that address the business needs of our customers.

Our research and development expense was $127.3 million, $175.0 million and $190.3 million for fiscal 2007, 2008 and 2009, respectively. For more information regarding our research and development expense, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Item 7 of Part II of this report.

Sales and Marketing

We sell our communications networking equipment, software and services through our direct sales resources as well as through channel relationships. In addition to securing new customers, our sales strategy has focused on building long-term relationships with existing customers that allow us to leverage our incumbency by extending existing platforms and selling additional products to support new applications or facilitate new service offerings throughout our customers’ network.

We maintain a direct sales presence through which we sell our product and service offerings into customer markets in the following geographic locations: North America, Central and Latin America, Europe, Middle East and Africa, and Asia-Pacific. Within each geographic area, we maintain regional and customer-specific teams, including sales professionals, systems engineers and marketing, service and commercial management personnel, who ensure we operate closely with and provide a high level of support to our customers.

We also maintain a channel program that works with resellers, systems integrators and service providers to market and sell our products and services. Our third party channel sales and other distribution arrangements enable us to leverage our direct sales resources and reach additional geographic regions and customer segments. Our use of channel partners has been a key component in our sales to government, research and education and enterprise customers. Some of our service provider customers also serve as channel partners through which we sell products and services as part of their managed service offerings. We believe our channel strategy affords us expanded market opportunities and reduces the financial risk of entering new markets and pursuing new customer segments.

In support of our sales efforts, we engage in marketing activities intended to position and promote both our brand and our product, software and service offerings. Our marketing team supports sales efforts through direct customer interaction, industry events, public relations, general business publications, tradeshows, our website and other marketing channels for our customers and channel partners.

Manufacturing and Operations

Our manufacturing and operations personnel manage our relationships with our contract manufacturers, our supply chain, our product testing and quality, and logistics relating to our sales and distribution efforts. We utilize a global sourcing strategy that focuses on sourcing of materials in lower cost regions such as Asia. We also rely on contract manufacturers, with facilities principally in China and Thailand, to perform the majority of the manufacturing for our products. We believe that this allows us to conserve capital, lower costs of product sales, adjust quickly to changes in market demand, and operate without dedicating significant resources to manufacturing-related plant and equipment. We utilize a direct order fulfillment model for certain products. This allows us to rely on our contract manufacturers to perform final system integration and test, prior to direct shipment of products from their facilities to our customers. For certain product lines, we continue to perform a portion of the module assembly, final system integration and testing.

Our contract manufacturers procure components necessary for assembly and manufacture of our products based on our specifications, approved vendor lists, bill of materials and testing and quality standards. Our contract manufacturers' activity is based on rolling forecasts that we provide to them to estimate demand for our products. This build-to-forecast purchase model exposes us to the risk that our customers will not order those products for which we have forecast sales, or will purchase less than we have forecast. As a result, we may incur carrying charges or obsolete material charges for components purchased by our contract manufacturers. We work closely with our contract manufacturers to manage material, quality, cost and delivery times, and we continually evaluate their services to ensure performance on a reliable and cost-effective basis.

Shortages in components that we rely upon have occurred and are possible. Our products include some components that are proprietary in nature and only available from one or a small number of suppliers. Significant time would be required to establish relationships with alternate suppliers or providers of proprietary components. We do not have long-term contracts with any supplier or contract manufacturer that guarantees supply of components or manufacturing services. If component supplies become limited, production at a contract manufacturer is disrupted, or if we experience difficulty in our relationship with a key supplier or contract manufacturer, we may encounter manufacturing delays that could adversely affect our business.

Backlog

Generally, we make sales pursuant to purchase orders issued under framework agreements that govern the general commercial terms and conditions of the sale of our products and services. These agreements do not obligate customers to purchase any minimum or guaranteed order quantities. At any given time, we have orders for products that have not been shipped and for services that have not yet been performed. We also have products that have been delivered and services that have been performed that are awaiting customer acceptance. Generally, our customers may cancel or change their orders with limited advance notice, or they may decide not to accept these products and services. As a result, backlogged orders should not be viewed as an accurate indicator of future revenue in any particular period. As of October 31, 2008 and 2009, our backlog was approximately $301 million and $291 million, respectively. Backlog includes product and service orders from commercial and government customers combined. Backlog at October 31, 2009 includes approximately $54 million primarily related to orders for maintenance and support services that we do not reasonably expect to be filled within the next fiscal year. Our presentation of backlog may not be comparable with figures presented by other companies in our industry.

Seasonality

Like other companies in our industry, we have experienced quarterly fluctuations in customer activity due to seasonal considerations. We have experienced reductions in customer order volume toward the end of calendar year and again early in the calendar year as annual capital budgets are finalized. We have also experienced reductions in order volume, particularly in Europe, during the late summer months. As a result of these seasonal effects, we have experienced decreases in orders during our fiscal first quarter, which ends on January 31 of each year, and our fiscal third quarter, which ends on July 31 of each year. These seasonal effects do not apply consistently and do not always correlate to our financial results. Accordingly, they should not be considered a reliable indicator of our future revenue or results of operations.

Competition

Competition among providers of communications networking equipment, software and services is intense. The markets for our products and services are characterized by rapidly advancing and converging technologies. Competition in these markets is based on any one or a combination of the following factors:

- product functionality and performance;
- price;

- incumbency and existing business relationships;
- development plans and the ability of products and services to meet customers' immediate and future network requirements;
- flexibility and scalability of products;
- manufacturing and lead-time capability; and
- installation and support capability.

Competition for sales of communications networking equipment is dominated by a small number of very large, multinational companies. Our competitors have included Alcatel-Lucent, Cisco, Ericsson, Fujitsu, Huawei, Nokia Siemens Networks, Nortel and Tellabs. These competitors have substantially greater financial, operational and marketing resources than us. Many of our competitors also have well-established relationships with large service providers. In recent years, mergers among some of our larger competitors have intensified these advantages. Our industry has also experienced increased competition from low-cost producers in Asia, which can contribute to pricing pressure.

We also compete with several smaller, but established, companies that offer one or more products that compete directly or indirectly with our offerings or whose products address specific niches within the markets we address. These competitors include ADVA and Infinera. In addition, there are a variety of earlier-stage companies with products targeted at specific segments of the communications networking market. These competitors often employ aggressive competitive and business tactics as they seek to gain entry to certain customers or markets. Due to these practices and the narrower focus of their development efforts, these competitors may be able to develop and introduce products more quickly, or offer commercial terms that are more attractive to customers.

Patents, Trademarks and Other Intellectual Property Rights

We rely upon patents, copyrights, trademarks, and trade secret laws to establish and maintain proprietary rights in our technology. We regularly file applications for patents and trademarks and have a significant number of patents and trademarks in the United States and other countries where we do business. As of December 1, 2009, we had received 563 U.S. patents and had pending 189 U.S. patent applications. Of the patents that have been issued, the earliest any will expire is March 19, 2010. We also rely on non-disclosure agreements and other contracts and policies regarding confidentiality, with employees, contractors and customers to establish proprietary rights and protect trade secrets and confidential information. Our practice is to require employees and consultants to execute non-disclosure and proprietary rights agreements upon commencement of employment or consulting arrangements with us. These agreements acknowledge our exclusive ownership of intellectual property developed by the individual during the course of his or her work with us. The agreements also require that these persons maintain the confidentiality of all proprietary information disclosed to them.

Enforcing proprietary rights, especially patents, can be costly and uncertain. Moreover, monitoring unauthorized use of our technology is difficult, and we cannot be certain that the steps that we are taking will detect or prevent unauthorized use, particularly as we expand our operations, product development and the manufacturing of our products internationally, into countries that may not provide the same level of intellectual property protection as the United States. In recent years, we have filed suit to enforce our intellectual property rights and have been subject to several claims related to patent infringement. In some cases, resolution of these claims has resulted in our payment of substantial sums. We believe that the frequency of patent infringement claims is increasing as patent holders, including entities that are not in our industry and who purchase patents as an investment or to monetize such rights by obtaining royalties, use such claims as a competitive tactic and source of additional revenue. Third party infringement assertions, even those without merit, could cause us to incur substantial costs. If we are not successful in defending these claims, we could be required to enter into a license agreement requiring ongoing royalty payments, we may be required to redesign our products, or we may be prohibited from selling any infringing technology.

Our operating system, network and service management software and other products incorporate software and components under licenses from third parties. We may be required to license additional technology from third parties in order to develop new products or product enhancements. There can be no assurance that these licenses will be available or continue to be available on acceptable commercial terms. Failure to obtain or maintain such licenses or other rights could affect our development efforts, require us to re-engineer our products or obtain alternate technologies, which could harm our business, financial condition and operating results.

Environmental Matters

Our business and operations are subject to environmental laws in various jurisdictions around the world, including the Waste Electrical and Electronic Equipment (WEEE) and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS)

regulations adopted by the European Union. We seek to operate our business in compliance with such laws relating to the materials and content of our products and product takeback and recycling. Environmental regulation is increasing, particularly outside of the United States, and we expect that our domestic and international operations may be subject to additional environmental compliance requirements, which could expose us to additional costs. To date, our compliance costs relating to environmental regulations have not resulted in a material adverse effect on our business, results of operations or financial condition.

Employees

As of October 31, 2009, we had 2,163 employees. None of our employees is represented by labor unions or covered by a collective bargaining agreement. We have not experienced any work stoppages and we consider the relationships with our employees to be good. We believe that our future success depends in critical part on our continued ability to recruit, motivate and retain qualified personnel.

Directors and Executive Officers

The table below sets forth certain information concerning our directors and executive officers:

Name	Age	Position
Patrick H. Nettles, Ph.D.	66	Executive Chairman of the Board of Directors
Gary B. Smith	49	President, Chief Executive Officer and Director
Stephen B. Alexander	50	Senior Vice President, Chief Technology Officer
Michael G. Aquino	53	Senior Vice President, Global Field Operations
James E. Moylan, Jr.	58	Senior Vice President, Finance and Chief Financial Officer
Andrew C. Petrik	46	Vice President and Controller
David M. Rothenstein	41	Senior Vice President, General Counsel and Secretary
Arthur D. Smith, Ph.D.	43	Senior Vice President, Chief Integration Officer
Stephen P. Bradley, Ph.D. (2)(3)	68	Director
Harvey B. Cash (1)(3)	71	Director
Bruce L. Claflin (1)(2)	58	Director
Lawton W. Fitt (2)	56	Director
Judith M. O'Brien (1)(3)	59	Director
Michael J. Rowny (2)	59	Director
Patrick T. Gallagher (2)	54	Director

(1) Member of the Compensation Committee

(2) Member of the Audit Committee

(3) Member of the Governance and Nominations Committee

Our Directors hold staggered terms of office, expiring as follows: Ms. Fitt, Dr. Nettles and Mr. Rowny in 2010; Ms. O'Brien and Messrs. Cash and Smith in 2011; and Messrs. Bradley, Claflin and Gallagher in 2012. In accordance with Ciena's bylaws, Mr. Gallagher will stand for election by shareholders at the 2010 annual meeting to serve the remainder of the term above.

Patrick H. Nettles, Ph.D. has served as a Director of Ciena since April 1994 and as Executive Chairman of the Board of Directors since May 2001. From October 2000 to May 2001, Dr. Nettles was Chairman of the Board and Chief Executive Officer of Ciena, and he was President and Chief Executive Officer from April 1994 to October 2000. Dr. Nettles serves as a Trustee for the California Institute of Technology and serves on the board of directors of Axcelis Technologies, Inc. and The Progressive Corporation. Dr. Nettles also serves on the board of directors of Apptrigger, Inc., a privately held company.

Gary B. Smith joined Ciena in 1997 and has served as President and Chief Executive Officer since May 2001. Mr. Smith has served on Ciena's Board of Directors since October 2000. Mr. Smith also serves on the board of directors for CommVault Systems, Inc. Mr. Smith also serves as a member of the Global Information Infrastructure Commission.

Stephen B. Alexander joined Ciena in 1994 and has served as Chief Technology Officer since September 1998 and as a Senior Vice President since January 2000. Mr. Alexander has previously served as General Manager of Products & Technology and General Manager of Transport and Switching and Data Networking.

Michael G. Aquino joined Ciena in June 2002 and has served as Ciena's Senior Vice President, Global Field Operations since October 2008. Mr. Aquino served as Senior Vice President of Worldwide Sales from April 2006 to October 2008. Mr. Aquino previously held positions as Ciena's Vice President of Americas, with responsibility for sales activities in the region, and Vice President of Government Solutions, where he focused on supporting Ciena's relationships with the U.S. and Canadian government.

James E. Moylan, Jr. has served as Senior Vice President, Finance and Chief Financial Officer since December 2007. From June 2006 to December 2007, Mr. Moylan served as Executive Vice President and Chief Financial Officer of Swett & Crawford, a wholesale insurance broker. From March 2004 to February 2006, Mr. Moylan served as Executive Vice President and Chief Financial Officer of PRG-Shultz International, Inc., a publicly held recovery audit and business services firm. From June 2002 to April 2003, Mr. Moylan served as Executive Vice President in charge of Composite Panels Distribution and Administration for Georgia-Pacific Corporation's building products business. From November 1999 to May 2002, Mr. Moylan served as Senior Vice President and Chief Financial Officer of SCI Systems, Inc., an electronics contract manufacturing company.

Andrew C. Petrik joined Ciena in 1996 and has served as Vice President, Controller since August 1997.

David M. Rothenstein joined Ciena in January 2001 and has served as Senior Vice President, General Counsel and Secretary since November 2008. Mr. Rothenstein served as Vice President and Associate General Counsel from July 2004 to October 2008 and previously as Assistant General Counsel.

Arthur D. Smith, Ph.D. joined Ciena in May 1997 and has served as Chief Integration Officer since December 2009. Dr. Smith assumed this new role in support of the substantial integration effort associated with our acquisition of substantially all of the optical networking and carrier Ethernet assets of Nortel's Metro Ethernet Networks (MEN) business. Dr. Smith previously served as Ciena's Chief Operating Officer from October 2005 to December 2009. Dr. Smith served as Senior Vice President, Global Operations from September 2003 to October 2005. Previously, Dr. Smith served as Senior Vice President, Worldwide Customer Services and Support from June 2002 to September 2003.

Stephen P. Bradley, Ph.D. has served as a Director of Ciena since April 1998. Professor Bradley is the William Ziegler Professor of Business Administration at the Harvard Business School. A member of the Harvard faculty since 1968, Professor Bradley is also Chairman of Harvard's Executive Program in Competition and Strategy: Building and Sustaining Competitive Advantage. Professor Bradley serves on the board of directors of i2 Technologies, Inc. and the Risk Management Foundation of the Harvard Medical Institutions.

Harvey B. Cash has served as a Director of Ciena since April 1994. Mr. Cash is a general partner of InterWest Partners, a venture capital firm in Menlo Park, California, that he joined in 1985. Mr. Cash serves on the board of directors of First Acceptance Corp., Silicon Laboratories, Inc. and Argonaut Group, Inc.

Bruce L. Claflin has served as a Director of Ciena since August 2006. Mr. Claflin served as President and Chief Executive Officer of 3Com Corporation from January 2001 until his retirement in February 2006. Mr. Claflin joined 3Com as President and Chief Operating Officer in August 1998. Prior to 3Com, Mr. Claflin served as Senior Vice President and General Manager, Sales and Marketing, for Digital Equipment Corporation. Mr. Claflin also worked for 22 years at IBM, where he held various sales, marketing and management positions, including general manager of IBM PC Company's worldwide research and development, product and brand management, as well as president of IBM PC Company Americas. Mr. Claflin also serves on the board of directors of Advanced Micro Devices (AMD) where he is currently Chairman of the Board.

Lawton W. Fitt has served as a Director of Ciena since November 2000. From October 2002 to March 2005, Ms. Fitt served as Director of the Royal Academy of Arts in London. From 1979 to October 2002, Ms. Fitt was an investment banker with Goldman Sachs & Co., where she was a partner from 1994 to October 2002, and a managing director from 1996 to October 2002. Ms. Fitt serves on the board of directors of Thomson Reuters Corporation, Frontier Communications Corporation, The Progressive Corporation and Overture Acquisition Corp.

Judith M. O'Brien has served as a Director of Ciena since July 2000. Since November 2006, Ms. O'Brien has served as Executive Vice President and General Counsel of Obopay, Inc., a provider of mobile payment services. From February 2001 until October 2006, Ms. O'Brien served as a Managing Director at Incubic Venture Fund, a venture capital firm. From February 1984 until February 2001, Ms. O'Brien was a partner with Wilson Sonsini Goodrich & Rosati, where she specialized in corporate finance, mergers and acquisitions and general corporate matters.

Michael J. Rowny has served as a Director of Ciena since August 2004. Mr. Rowny has been Chairman of Rowny Capital, a private equity firm, since 1999. From 1994 to 1999, and previously from 1983 to 1986, Mr. Rowny was with MCI

Communications in positions including President and Chief Executive Officer of MCI's International Ventures, Alliances and Correspondent group, acting Chief Financial Officer, Senior Vice President of Finance, and Treasurer. Mr. Rowny serves on the board of directors of Neustar, Inc.

Patrick T. Gallagher has served as a Director of Ciena since May 2009. Mr. Gallagher currently serves as Chairman of Ubiquisys Ltd., a leading developer and supplier of femtocells for the global 3G mobile wireless market. From January 2008 until February 2009, Mr. Gallagher was Chairman of Macro 4 plc, a global software solutions company, and from May 2006 until March 2008, served as Vice Chairman of Golden Telecom Inc., a leading facilities-based provider of integrated communications in Russia and the CIS. From 2003 until 2006, Mr. Gallagher was Executive Vice Chairman and served as Chief Executive Officer of FLAG Telecom Group and, prior to that role, held various senior management positions at British Telecom. Mr. Gallagher also serves on the board of directors of Harmonic Inc. and Sollers JSC.

Item 1A. Risk Factors

Risks relating to our pending acquisition of certain Nortel Metro Ethernet Networks (MEN) Assets

Business combinations involve a high degree of risk. In addition to the other information contained in this report, you should consider the following risk factors related to our pending acquisition of certain Nortel MEN assets before investing in our securities.

The pending transaction may not be completed, may be delayed or may result in the imposition of conditions that could have a material adverse effect on Ciena's operation of the business following completion.

In addition to customary closing conditions, completion of the pending transaction is conditioned upon the receipt of certain governmental clearances or approvals that have not yet been obtained, including, without limitation, the Investment Canada Act and regional bankruptcy approvals in France and Israel. Completion of the transaction is also subject to information and consultation with employee representatives and/or employees in certain international jurisdictions. Ciena has previously been granted early termination of the antitrust waiting period under the Hart-Scott-Rodino Act and the Canadian Competition Act. There can be no assurance that these clearances and approvals will be obtained and that previous clearances will be maintained. Third parties could petition to have governmental entities reconsider previously granted clearances. In addition, the governmental entities from which clearances and approvals are required may impose conditions on the completion of the transaction, require changes to the terms of the transaction or impose restrictions on the operation of the business following completion of the transaction. If the transaction is not completed, completion is delayed or Ciena becomes subject to any material conditions in order to obtain any clearances or approvals required to complete the transaction, its business and results of operations may be adversely affected and its stock price may suffer.

We may fail to realize the anticipated benefits and operating synergies expected from the transaction, which could adversely affect our operating results and the market price of our common stock.

The success of the transaction will depend, in significant part, on our ability to successfully integrate the acquired business and realize the anticipated benefits and operating synergies to be derived from the combination of the two businesses. We believe that the additional resources, expanded geographic reach, new and broader customer relationships, and deeper portfolio of complementary network solutions derived from the pending transaction will accelerate the execution of our corporate and product development strategy and provide opportunities to optimize our product development investment. Actual cost, operating, strategic and sales synergies, if achieved at all, may be lower than we expect and may take longer to achieve than anticipated. If we are not able to adequately address the integration challenges above, we may be unable to realize the anticipated benefits of the transaction. The anticipated benefits of the transaction may not be realized fully or at all or may take longer to realize than expected. If we are not able to achieve these objectives, the value of Ciena's common stock may be adversely affected.

Our pending acquisition will result in significant integration costs and any material delays or unanticipated additional expense may harm our business and results of operations.

We expect the magnitude of the integration effort will be significant and that it will require material capital and operating expense by Ciena. We currently expect that integration expense associated with equipment and information technology costs, transaction expense, and consulting and third party service fees associated with integration, will be approximately $180 million over a two-year period, with a significant portion of such costs anticipated to be incurred in the first year after completion of the transaction. This amount does not give effect to any expense related to, among other things, facilities restructuring or inventory obsolescence charges. This amount also does not give effect to higher operating expense associated with transition services described below. As a result, the integration expense we incur and recognize for financial statement purposes could be significantly higher. Any material delays or unanticipated additional expense may harm our business and results of operations.

The integration of the acquired assets will be extremely complex and involve a number of risks. Failure to successfully integrate our respective operations, including the underlying information systems, could significantly harm our business and results of operations.

Because of the structure of the transaction, as an asset carve out from Nortel, upon completion of the transaction we will not be integrating an entire enterprise, with the back-office systems and processes that make the business run, when we complete this transaction. We must build the infrastructure and organizations, and retain third party services, to ensure business continuity and to support and scale our business. Integrating our operations will be extremely complex and there is no assurance that we will not encounter material delays or unanticipated costs that would adversely affect our business and results of operations. Successful integration involves numerous risks, including:

- assimilating product offerings and sales and marketing operations;
- coordinating research and development efforts;
- retaining and attracting customers following a period of significant uncertainty associated with the acquired business;
- diversion of management attention from business and operational matters;
- identifying and retaining key personnel;
- maintaining and transitioning relationships with key vendors, including component providers, manufacturers and service providers;
- integrating accounting, information technology, enterprise management and administrative systems which may be difficult or costly;
- making significant cash expenditures that may be required to retain personnel or eliminate unnecessary resources;
- managing tax costs or liabilities;
- coordinating a broader and more geographically dispersed organization;
- maintaining uniform standards, procedures and policies to ensure efficient and compliant administration of the organizaton; and
- making any necessary modifications to internal control to comply with the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated thereunder.

Delays encountered in the integration process, significant cost overruns and unanticipated expense could have a material adverse effect on our operating results and financial condition.

Following completion of the transaction we will rely upon an affiliate of Nortel to perform certain critical transition services during a transition period and there can be no assurance that such services will be performed timely and effectively.

Following the completion of the transaction, we will rely upon an affiliate of Nortel for certain transition services related to the operation and continuity of the business following completion of the transaction. These services include, among others, critical functions relating to accounting, information technology, maintenance services and facilities. We anticipate that transition service-related expense will be significant and the administration and oversight of these services will be complex. The transition service provider will be performing services on behalf of Ciena as well as certain other purchasers of those businesses that Nortel has divested in the course of its bankruptcy proceedings. Relying upon this transition services provider to perform critical operations and services raises a number of significant business and operational risks, including its ability to become an effective support partner for all of the Nortel purchasers, segregation of such services, and its ability to retain experienced and knowledgeable personnel. There can be no assurance such services will be performed timely and effectively. Significant disruption in these transition services or unanticipated costs related to such services could adversely affect our business and results of operations.

Upon the closing of the transaction, we will take on substantial additional indebtedness and materially reduce our cash balance.

In accordance with the applicable asset purchase agreements, upon completion of the transaction, we will pay the sellers $530 million in cash and issue them $239 million in aggregate principal of senior convertible notes due in fiscal 2017. This cash expenditure will significantly reduce our cash balance. In addition, the terms of the notes to be issued provide for an adjustment of the interest rate up to a maximum of 8% per annum, depending upon the market price of our common stock

upon the completion of the transaction. The lower cash balance and increased indebtedness resulting from this transaction could adversely affect our business. In particular, it could increase our vulnerability to sustained, adverse macroeconomic weakness, limit our ability to obtain further financing and limit our ability to pursue certain operational and strategic opportunities. Our indebtedness and lower cash balance may also put us in a competitive disadvantage to other vendors with greater resources.

The transaction may expose us to significant unanticipated liabilities that could adversely affect our business and results of operations.

Our purchase of the acquired business in connection with Nortel's bankruptcy proceedings may expose us to significant unanticipated liabilities. We may incur unforeseen liabilities relating to the operation of the business including employment related obligations under applicable law or benefits arrangements, legal claims, warranty or similar liabilities to customers, and claims by or amounts owed to vendors, including as a result of any contracts assigned to Ciena in the transaction. We may also incur liabilities or claims associated with our acquisition or licensing of Nortel's technology and intellectual property including claims of infringement. Our acquisition of Nortel's assets, particularly in international jurisdictions, could also expose us to tax liabilities and other amounts owed by Nortel. The incurrence of such unforeseen or unanticipated liabilities, should they be significant, could have a material adverse affect on our business, results of operations and financial condition.

The transaction may not be accretive and may cause dilution to our earnings per share, which may harm the market price of our common stock.

We currently anticipate that the transaction will be accretive to earnings per share for fiscal 2011. This expectation is based on preliminary estimates which may materially change after the completion of the transaction. We have previously incurred operating expense, on a stand alone basis, higher than we anticipated for periods during fiscal 2009. The magnitude of the integration relating to our pending transaction, together with the increased scale of our operations resulting from the transaction, will make forecasting, managing and constraining our operating expense even more difficult. We could also encounter additional transaction and integration-related costs or fail to realize all of the benefits of the transaction that underlie our financial model and expectations as to profitability. All of these factors could cause dilution to our earnings per share or decrease or delay the expected accretive effect of the transaction and cause a decrease in the price of our common stock.

The complexity of the integration and transition associated with our pending transaction, together with the increased scale of our operations, may challenge our internal control over financial reporting and our ability to effectively and timely report our financial results.

Following the completion of the pending transaction, we will rely upon a combination of Ciena information systems and critical transition services that are necessary for us to accurately and effectively compile and report our financial results. We will also have to train new employees and third party providers, and assume operations in jurisdictions where we have not previously had operations. The scale of these operations, together with the complexity of the integration effort, including changes to or implementation of critical information technology systems, may adversely affect our ability to report our financial results on a timely basis. We expect that the transaction may necessitate significant modifications to our internal control systems, processes and information systems. We cannot be certain that changes to our design for internal control over financial reporting will be sufficient to enable management or our independent registered public accounting firm to determine that our internal controls are effective for any period, or on an ongoing basis. If we are unable to accurately and timely report our financial results, or are unable to assert that our internal controls over financial reporting are effective, our business and market perception of our financial condition may be harmed and the trading price of our stock may be adversely affected.

Following our acquisition of the Nortel assets, the combined company must continue to retain, motivate and recruit key executives and employees, which may be difficult in light of uncertainty regarding the pending transaction and the significant integration efforts following closing.

For the pending transaction to be successful, during the period before the transaction is completed, both Ciena and Nortel must continue to retain, motivate and recruit executives and other key employees. Moreover, following the completion of the transaction, Ciena must be successful at retaining and motivating key employees. Experienced employees, particularly with experience in optical engineering, are in high demand and competition for their talents can be intense. Employees of both companies may experience uncertainty, real or perceived, about their future role with the combined company until, or even after, Ciena's post-closing strategies are announced or executed. These potential distractions may adversely affect the ability to retain, motivate and recruit executives and other key employees and keep them focused on corporate strategies and objectives. The failure to attract, retain and motivate executives and other key employees before and following completion of the transaction could have a negative impact on Ciena's business.

Risks related to our current business and operations

Investing in our securities involves a high degree of risk. In addition to the other information contained in this report, you should consider the following risk factors before investing in our securities.

Our business and operating results could be adversely affected by unfavorable macroeconomic and market conditions and reductions in the level of capital expenditure by our largest customers in response to these conditions.

Starting in the second half of fiscal 2008, our business began to experience the effects of worsening macroeconomic conditions and significant disruptions in the financial and credit markets globally. In the face of these conditions, many companies, including some of our largest communications service provider customers, significantly reduced their network infrastructure expenditures as they sought to conserve capital, reduce debt or address uncertainties or changes in their own business models brought on by broader market challenges. Our business experienced lengthening sales cycles, customer delays in network buildouts and slowing deployments, resulting in lower demand across our customer base in all geographies. Our results of operations for fiscal 2009 were materially adversely affected by the weakness, volatility and uncertainty presented by the global market conditions that we encountered during the year.

Broad macroeconomic weakness, customer financial difficulties, changes in customer business models and constrained spending on communications networks have previously resulted in sustained periods of decreased demand for our products and services that have adversely affected our operating results. Challenging economic and market conditions may also result in:

- difficulty forecasting, budgeting and planning due to limited visibility into the spending plans of current or prospective customers;
- increased competition for fewer network projects and sales opportunities;
- pricing pressure that may adversely affect revenue and gross margin;
- higher overhead costs as a percentage of revenue;
- increased risk of charges relating to excess and obsolete inventories and the write off of other intangible assets; and
- customer financial difficulty and increased risk of doubtful accounts receivable.

Our business and financial results are closely tied to the prospects, performance, and financial condition of our largest communications service provider customers and are significantly affected by market or industry-wide changes that affect their businesses and their level of infrastructure-related spending. These factors include the level of enterprise and consumer spending on communications services, adoption of new communications services or applications and consumption of available network capacity. We are uncertain as to how long current unfavorable macroeconomic and industry conditions will persist and the magnitude of their effects on our business and results of operations.

A small number of communications service providers account for a significant portion of our revenue. The loss of any of these customers, or a significant reduction in their spending, would have a material adverse effect on our business and results of operations.

A significant portion of our revenue is concentrated among a relatively small number of communications service providers. Eight customers accounted for greater than 60% of our revenue in fiscal 2009. Consequently, our financial results are closely correlated with the spending of a relatively small number of communications service providers. The terms of our frame contracts generally do not obligate these customers to purchase any minimum or specific amounts of equipment or services. Because their spending may be unpredictable and sporadic, our revenue and operating results can fluctuate on a quarterly basis. Reliance upon a relatively small number of customers increases our exposure to changes in their network and purchasing strategies. Some of our customers are pursuing efforts to outsource the management and operation of their networks, or have indicated a procurement strategy to reduce or rationalize the number of vendors from which they purchase equipment. These strategies may present challenges to our business and could benefit our larger competitors. Our concentration in revenue has increased in recent years, in part, as a result of consolidations among a number of our largest customers. Consolidations may increase the likelihood of temporary or indefinite reductions in customer spending or changes in network strategy that could harm our business and operating results. The loss of one or more large service provider customers, or a significant reduction in their spending, as a result of the factors above or otherwise, would have a material adverse effect on our business, financial condition and results of operations.

Our revenue and operating results can fluctuate unpredictably from quarter to quarter.

Our revenue and results of operations can fluctuate unpredictably from quarter to quarter. Our budgeted expense levels depend in part on our expectations of long-term future revenue and gross margin, and substantial reductions in expense are difficult and can take time to implement. Uncertainty or lack of visibility into customer spending, and changes in economic or market conditions, can make it difficult to prepare reliable estimates of future revenue and corresponding expense levels. Consequently, our level of operating expense or inventory may be high relative to our revenue, which could harm our ability to achieve or maintain profitability. Given market conditions and the effect of cautious spending in recent quarters, lower levels of backlog orders and an increase in the percentage of quarterly revenue relating to orders placed in that quarter could result in more variability and less predictability in our quarterly results.

Additional factors that contribute to fluctuations in our revenue and operating results include:

- broader economic and market conditions affecting us and our customers;
- changes in capital spending by large communications service providers;
- the timing and size of orders, including our ability to recognize revenue under customer contracts;
- variations in the mix between higher and lower margin products and services; and
- the level of pricing pressure we encounter.

Many factors affecting our results of operations are beyond our control, particularly in the case of large service provider orders and multi-vendor or multi-technology network infrastructure builds where the achievement of certain thresholds for acceptance is subject to the readiness and performance of the customer or other providers, and changes in customer requirements or installation plans. As a consequence, our results for a particular quarter may be difficult to predict, and our prior results are not necessarily indicative of results likely in future periods. The factors above may cause our revenue and operating results to fluctuate unpredictably from quarter to quarter. These fluctuations may cause our operating results to be below the expectations of securities analysts or investors, which may cause our stock price to decline.

We face intense competition that could hurt our sales and results of operations.

The markets in which we compete for sales of networking equipment, software and services are extremely competitive, particularly the market for sales to large communications service providers. The level of competition and pricing pressure that we face increases substantially during periods of macroeconomic weakness, constrained spending or fewer network projects. As a result of current market conditions, we have experienced significant competition and increased pricing pressure, particularly for our optical transport products. We face particularly intense competition in our efforts to attract additional large carrier customers in new geographies and secure new market opportunities with existing carrier customers. In an effort to secure attractive long-term customers or new customers, we may agree to pricing or other terms that that result in negative gross margins on a particular order or group of orders.

Competition in our markets, generally, is based on any one or a combination of the following factors: price, product features, functionality and performance, introduction of innovative network solutions, manufacturing capability and lead-times, incumbency and existing business relationships, scalability and the flexibility of products to meet the immediate and future network requirements of customers. A small number of very large companies have historically dominated our industry. These competitors have substantially greater financial, technical and marketing resources, greater manufacturing capacity, broader product offerings and more established relationships with service providers and other potential customers than we do. Because of their scale and resources, they may be perceived to be better positioned to offer network operating or management service for large carrier customers. Consolidation activity among large networking equipment providers has caused some of our competitors to grow even larger, which may increase their strategic advantages and adversely affect our competitive position.

We also compete with a number of smaller companies that provide significant competition for a specific product, application, customer segment or geographic market. Due to the narrower focus of their efforts, these competitors may achieve commercial availability of their products more quickly or may be more attractive to customers.

Increased competition in our markets has resulted in aggressive business tactics, including:

- significant price competition, particularly from competitors in Asia;
- customer financing assistance;
- early announcements of competing products and extensive marketing efforts;
- competitors offering equity ownership positions to customers;
- competitors offering to repurchase our equipment from existing customers;

- marketing and advertising assistance; and
- intellectual property assertions and disputes.

The tactics described above can be particularly effective in an increasingly concentrated base of potential customers such as communications service providers. If competitive pressures increase or we fail to compete successfully in our markets, our sales and profitability would suffer.

Our reliance upon third party manufacturers exposes us to risks that could negatively affect our business and operations.

We rely upon third party contract manufacturers to perform the majority of the manufacturing of our products and components. In recent years we have transitioned a significant portion of our product manufacturing to overseas suppliers in Asia, with much of the manufacturing taking place in China and Thailand. Some of our contract manufacturers ship products directly to our customers on behalf of Ciena. Our reliance upon these manufacturers could expose us to increased risks related to lead times, continued supply, on-time delivery, quality assurance and compliance with environmental standards and other regulations. Reliance upon third parties for manufacture of our products significantly exposes us to risks related to their business, financial position and continued viability, which may be adversely affected by broader negative macroeconomic conditions and difficulties in the credit markets. These conditions may disrupt their operations, result in discontinuation of services, or result in pricing increases that affect our manufacturing requirements. Disruptions to our business could also arise as a result of ineffective business continuity and disaster recovery plans by our manufacturers. We do not have contracts in place with some of our manufacturers and do not have guaranteed supply of components or manufacturing capacity. We could also experience difficulties as a result of geopolitical events, military actions or health pandemics in the countries where our products or components thereof are manufactured. During the first quarter of fiscal 2009, protests resulted in a blockade of Thailand's main international airport, which delayed product shipments from one of our key contract manufacturers. Significant disruptions or difficulties with our contract manufacturers could negatively affect our business and results of operations.

Investment of research and development resources in technologies for which there is not a matching market opportunity, or failure to sufficiently or timely invest in technologies for which there is market demand, would adversely affect our revenue and profitability.

The market for communications networking equipment is characterized by rapidly evolving technologies and changes in market demand. We continually invest in research and development to sustain or enhance our existing products and develop or acquire new products technologies. Our current development efforts are focused upon the evolution of our CoreDirector Multiservice Optical Switch family, the expansion of our carrier Ethernet service delivery and aggregation products, and the extension of our CN 4200 converged optical service delivery portfolio, including 100G technologies and capabilities. There is often a lengthy period between commencing these development initiatives and bringing a new or revised product to market. During this time, technology preferences, customer demand and the market for our products may move in directions we had not anticipated. There is no guarantee that new products or enhancements will achieve market acceptance or that the timing of market adoption will be as predicted. There is a significant possibility, therefore, that some of our development decisions, including our acquisitions or investments in technologies, will not turn out as anticipated, and that our investment in some projects will be unprofitable. There is also a possibility that we may miss a market opportunity because we failed to invest, or invested too late, in a technology, product or enhancement. Changes in market demand or investment priorities may also cause us to discontinue existing or planned development for new products or features, which can have a disruptive effect on our relationships with customers. If we fail to make the right investments or fail to make them at the right time, our competitive position may suffer and our revenue and profitability could be harmed.

Product performance problems could damage our business reputation and negatively affect our results of operations.

The development and production of highly technical and complex communications network equipment is complicated. Some of our products can be fully tested only when deployed in communications networks or when carrying traffic with other equipment. As a result, product performance problems are often more acute for initial deployments of new products and product enhancements. Our products have contained and may contain undetected hardware or software errors or defects. These defects have resulted in warranty claims and additional costs to remediate. Unanticipated problems can relate to the design, manufacturing, installation or integration of our products. Performance problems and product malfunctions can also relate to defects in components, software or manufacturing services supplied by third parties. Product performance, reliability and quality problems can negatively affect our business, including:

- increased costs to remediate software or hardware defects or replace products;
- payment of liquidated damages or similar claims for performance failures or delays;

- increased inventory obsolescence;
- increased warranty expense or estimates resulting from higher failure rates, additional field service obligations or other rework costs related to defects;
- delays in recognizing revenue or collecting accounts receivable; and
- declining sales to existing customers and order cancellations.

Product performance problems could also damage our business reputation and harm our prospects with potential customers. These consequences of product defects or quality problems could negatively affect our business and results of operations.

Network equipment sales to large communications service providers often involve lengthy sales cycles and protracted contract negotiations and may require us to assume terms or conditions that negatively affect our pricing, payment terms and the timing of revenue recognition.

Our future success will depend in large part on our ability to maintain and expand our sales to large communications service providers. These sales typically involve lengthy sales cycles, protracted and sometimes difficult contract negotiations, and extensive product testing and network certification. We are sometimes required to agree to contract terms or conditions that negatively affect pricing, payment terms and the timing of revenue recognition in order to consummate a sale. As a result of current market conditions, these customers may request extended payment terms, vendor or third-party financing and other alternative purchase structures. These terms may, in turn, negatively affect our revenue and results of operations and increase our susceptibility to quarterly fluctuations in our results. Service providers may ultimately insist upon terms and conditions that we deem too onerous or not in our best interest. Moreover, our purchase agreements generally do not require that a customer guarantee any minimum purchase level and customers often have the right to modify, delay, reduce or cancel previous orders. As a result, we may incur substantial expense and devote time and resources to potential relationships that never materialize or result in lower than anticipated sales.

Difficulties with third party component suppliers, including sole and limited source suppliers, could increase our costs and harm our business and customer relationships.

We depend on third party suppliers for our product components and subsystems, as well as for equipment used to manufacture and test our products. Our products include key optical and electronic components for which reliable, high-volume supply is often available from sole or limited sources. We have previously encountered shortages in availability for important components that have affected our ability to deliver products in a timely manner. Our business would be negatively affected if one or more of our suppliers were to experience any significant disruption in their operations affecting the price, quality, availability or timely delivery of components. Current unfavorable economic conditions, including a lack of liquidity, may adversely affect the business of our suppliers or the terms on which we purchase components. We have seen an increased incidence of component discontinuation as suppliers alter their businesses to adjust to market conditions. As a result of our reliance on third parties, we may be unable to secure the components or subsystems that we require in sufficient quantity and quality on reasonable terms. The loss of a source of supply, or lack of sufficient availability of key components, could require us to redesign products that use those components, which would increase our costs and negatively affect our product gross margin and results of operations. Difficulties with suppliers could also result in lost revenue, additional product costs and deployment delays that could harm our business and customer relationships.

We may not be successful in selling our products into new markets and developing and managing new sales channels.

We continue to take steps to sell our products into new geographic markets outside of our traditional markets and to a broader customer base, including other large communications service providers, enterprises, cable operators, wireless operators and federal, state and local governments. We have less experience in these markets and, in order to succeed in these markets, we believe we must develop and manage new sales channels and distribution arrangements. We expect these relationships to be an increasingly important part of our business. This strategy may not succeed and we may be exposed to increased expense and legal, business and financial risks associated with entering new markets and pursuing new customer segments through channel partners.

Part of our strategy is to pursue sales to federal, state and local governments. These sales require compliance with complex procurement regulations with which we have limited experience. We may be unable to increase our sales to government contractors if we determine that we cannot comply with applicable regulations. Our failure to comply with regulations for existing contracts could result in civil, criminal or administrative proceedings involving fines and suspension, or exclusion, from participation in federal government contracts. Failure to manage additional sales channels effectively would limit our ability to succeed in these new markets and could adversely affect our ability to expand our customer base and grow our business.

We may experience delays in the development of our products that may negatively affect our competitive position and business.

Our products are based on complex technology, and we can experience unanticipated delays in developing, manufacturing or deploying them. Each step in the development life cycle of our products presents serious risks of failure, rework or delay, any one of which could affect the cost-effective and timely development of our products. Intellectual property disputes, failure of critical design elements, and other execution risks may delay or even prevent the release of these products. Delays in product development may affect our reputation with customers and the timing and level of demand for our products. If we do not develop and successfully introduce products in a timely manner, our competitive position may suffer and our business, financial condition and results of operations would be harmed.

We may be required to write off significant amounts of inventory as a result of our inventory purchase practices, the convergence of our product lines or unfavorable macroeconomic or industry conditions.

To avoid delays and meet customer demand for shorter delivery terms, we place orders with our contract manufacturers and suppliers to manufacture components and complete assemblies based on forecasts of customer demand. As a result, our inventory purchases expose us to the risk that our customers either will not order the products we have forecasted or will purchase fewer products than forecasted. Unfavorable market or industry conditions can limit visibility into customer spending plans and compound the difficulty of forecasting inventory at appropriate levels. Moreover, our customer purchase agreements generally do not guarantee any minimum purchase level, and customers often have the right to modify, reduce or cancel purchase quantities. As a result, we may purchase inventory in anticipation of sales that do not occur. Historically, our inventory write-offs have resulted from the circumstances above. As features and functionalities converge across our product lines, and we introduce new products, however, we face an additional risk that customers may forego purchases of one product we have inventoried in favor of another product with similar functionality. If we are required to write off or write down a significant amount of inventory, our results of operations for the period would be materially adversely affected.

Restructuring activities could disrupt our business and affect our results of operations.

We have previously taken steps, including reductions in force, office closures, and internal reorganizations to reduce the size and cost of our operations and to better match our resources with market opportunities. We may take similar steps in the future. These changes could be disruptive to our business and may result in the recording of accounting charges, including inventory and technology-related write-offs, workforce reduction costs and charges relating to consolidation of excess facilities. Substantial charges resulting from any future restructuring activities could adversely affect our results of operations in the period in which we take such a charge.

Our failure to manage effectively our relationships with third party service partners could adversely impact our financial results and relationship with customers.

We rely on a number of third party service partners, both domestic and international, to complement our global service and support resources. We rely upon these partners for certain maintenance and support functions, as well as the installation of our equipment in some large network builds. In order to ensure the proper installation and maintenance of our products, we must identify, train and certify qualified service partners. Certification can be costly and time-consuming, and our partners often provide similar services for other companies, including our competitors. We may not be able to manage effectively our relationships with our service partners and cannot be certain that they will be able to deliver services in the manner or time required. If our service partners are unsuccessful in delivering services:

- we may suffer delays in recognizing revenue;
- our services revenue and gross margin may be adversely affected; and
- our relationship with customers could suffer.

Difficulties with service partners could cause us to transition a larger share of deployment and other services from third parties to internal resources, thereby increasing our services overhead costs and negatively affecting our services gross margin and results of operations.

We may incur significant costs as a result of our efforts to protect and enforce our intellectual property rights or respond to claims of infringement from others.

Our business is dependent upon the successful protection of our proprietary technology and intellectual property. We are subject to the risk that unauthorized parties may attempt to access, copy or otherwise obtain and use our proprietary technology, particularly as we expand our product development into India and increase our reliance upon contract manufacturers in Asia. These and other international operations could expose us to a lower level of intellectual property protection than in the United States. Monitoring unauthorized use of our technology is difficult, and we cannot be certain that

the steps that we are taking will prevent or minimize the risks of unauthorized use. If competitors are able to use our technology, our ability to compete effectively could be harmed.

From time to time we have been subject to litigation and other third party intellectual property claims, primarily alleging patent infringement. We have also been subject to third party claims arising as a result of our indemnification obligations to customers or resellers that purchase our products or as a result of alleged infringement relating to third party components that we include in our products. The frequency of these assertions is increasing as patent holders, including entities that are not in our industry and that purchase patents as an investment, use infringement assertions as a competitive tactic or as a source of additional revenue. Intellectual property infringement claims can significantly divert the time and attention of our personnel and result in costly litigation. These claims can also require us to pay substantial damages or royalties, enter into costly license agreements or develop non-infringing technology. Accordingly, the costs associated with intellectual property infringement claims could adversely affect our business, results of operations and financial condition.

Our international operations could expose us to additional risks and result in increased operating expense.

We market, sell and service our products globally. We have established offices around the world, including in North America, Europe, the Middle East, Latin America and the Asia Pacific region. We have also established a major development center in India and are increasingly reliant upon overseas suppliers, particularly in Asia, for sourcing of important components and manufacturing of our products. Our increasingly global operations may result in increased risk to our business and could give rise to unanticipated expense, difficulties or other effects that could adversely affect our financial results.

International operations are subject to inherent risks, including:

- effects of changes in currency exchange rates;
- greater difficulty in collecting accounts receivable and longer collection periods;
- difficulties and costs of staffing and managing foreign operations;
- the impact of economic conditions in countries outside the United States;
- less protection for intellectual property rights in some countries;
- adverse tax and customs consequences, particularly as related to transfer-pricing issues;
- social, political and economic instability;
- higher incidence of corruption;
- trade protection measures, export compliance, qualification to transact business and additional regulatory requirements; and
- natural disasters, epidemics and acts of war or terrorism.

We expect that our international activities will be dynamic, and we may enter new markets and withdraw from or reduce operations in others. These changes to our international operations may require significant management attention and result in additional expense. In some countries, our success will depend in part on our ability to form relationships with local partners. Our inability to identify appropriate partners or reach mutually satisfactory arrangements for international sales of our products could impact our ability to maintain or increase international market demand for our products.

Our use and reliance upon development resources in India may expose us to unanticipated costs or liabilities.

We have a significant development center in India and, in recent years, have increased headcount and development activity at this facility. There is no assurance that our reliance upon development resources in India will enable us to achieve meaningful cost reductions or greater resource efficiency. Further, our development efforts and other operations in India involve significant risks, including:

- difficulty hiring and retaining appropriate engineering resources due to intense competition for such resources and resulting wage inflation;
- the knowledge transfer related to our technology and resulting exposure to misappropriation of intellectual property or information that is proprietary to us, our customers and other third parties;
- heightened exposure to changes in the economic, security and political conditions of India; and
- fluctuations in currency exchange rates and tax compliance in India.

Difficulties resulting from the factors above and other risks related to our operations in India could expose us to increased expense, impair our development efforts, harm our competitive position and damage our reputation.

We may be exposed to unanticipated risks and additional obligations in connection with our resale of complementary products or technology of other companies.

We have entered into agreements with strategic partners that permit us to distribute their products or technology. We rely upon these relationships to add complementary products or technologies or to fulfill an element of our product portfolio. As part of our strategy to diversify our product portfolio and customer base, we may enter into additional original equipment manufacturer (OEM) or resale agreements in the future. We may incur unanticipated costs or difficulties relating to our resale of third party products. Our third party relationships could expose us to risks associated with delays in their development, manufacturing or delivery of products or technology. We may also be required by customers to assume warranty, indemnity, service and other commercial obligations greater than the commitments, if any, made to us by our technology partners. Some of our strategic partners are relatively small companies with limited financial resources. If they are unable to satisfy their obligations to us or our customers, we may have to expend our own resources to satisfy these obligations. Exposure to the risks above could harm our reputation with key customers and negatively affect our business and our results of operations.

Our exposure to the credit risks of our customers and resellers may make it difficult to collect receivables and could adversely affect our revenue and operating results.

In the course of our sales to customers, we may have difficulty collecting receivables and could be exposed to risks associated with uncollectible accounts. We may be exposed to similar risks relating to third party resellers and other sales channel partners. A continued lack of liquidity in the capital markets or a sustained period of unfavorable economic conditions may increase our exposure to credit risks. While we monitor these situations carefully and attempt to take appropriate measures to protect ourselves, it is possible that we may have to write down or write off doubtful accounts. Such write-downs or write-offs could negatively affect our operating results for the period in which they occur, and, if large, could have a material adverse effect on our revenue and operating results.

If we are unable to attract and retain qualified personnel, we may be unable to manage our business effectively.

Competition to attract and retain highly skilled technical and other personnel with experience in our industry is increasing in intensity, and our employees have been the subject of targeted hiring by our competitors. With respect to our engineering resources, we may find it particularly difficult to attract and retain sufficiently skilled personnel in areas including data networking, Ethernet service delivery and network management software engineering in certain geographic markets. We may experience difficulty retaining and motivating existing employees and attracting qualified personnel to fill key positions. Because we rely upon equity awards as a significant component of compensation, particularly for our executive team, a lack of positive performance in our stock price, reduced grant levels, or changes to our compensation program may adversely affect our ability to attract and retain key employees. In addition, none of our executive officers is bound by an employment agreement for any specific term. It may be difficult to replace members of our management team or other key personnel, and the loss of such individuals could be disruptive to our business. Because we generally do not have employment contracts with our employees, we must rely upon providing competitive compensation packages and a high-quality work environment in order to retain and motivate employees. If we are unable to attract and retain qualified personnel, we may be unable to manage our business effectively.

We may be adversely affected by fluctuations in currency exchange rates.

Because a significant portion of our sales is denominated in U.S. dollars, an increase in the value of the dollar could increase the real cost to our customers of our products in markets outside the United States. In addition, we face exposure to currency exchange rates as a result of our non-U.S. dollar denominated operating expense in Europe, Asia and Canada. In recent years, our international operations and our reliance upon international suppliers have grown considerably. A weakened dollar could increase the cost of local operating expenses and procurement of raw materials where we must purchase components in foreign currencies. As a result, we may be susceptible to negative effects of foreign exchange changes. We have previously hedged against currency exposure associated with anticipated foreign currency cash flows and may do so in the future. These hedging activities are intended to offset currency fluctuations on a portion of our non-U.S. dollar denominated operating expense. There can be no assurance that these hedging instruments will be effective in all circumstances and losses associated with these instruments may negatively affect our results of operations.

Our products incorporate software and other technology under license from third parties and our business would be adversely affected if this technology was no longer available to us on commercially reasonable terms.

We integrate third-party software and other technology into our embedded operating system, network management system tools and other products. Licenses for this technology may not be available or continue to be available to us on commercially reasonable terms. Third party licensors may insist on unreasonable financial or other terms in connection with our use of such technology. Difficulties with third party technology licensors could result in termination of such licenses,

which may result in significant costs and require us to obtain or develop a substitute technology. Difficulty obtaining and maintaining third-party technology licenses may disrupt development of our products and increase our costs, which could harm our business.

Our business is dependent upon the proper functioning of our internal business processes and information systems and modifications may disrupt our business, operating processes and internal controls.

The successful operation of various internal business processes and information systems is critical to the efficient operation of our business. If these systems fail or are interrupted, our operations may be adversely affected and operating results could be harmed. In recent years, we have experienced considerable growth in transaction volume, headcount and reliance upon international resources in our operations. Our business processes and information systems need to be sufficiently scalable to support the growth of our business. To improve the efficiency of our operations and achieve greater automation, we routinely upgrade business processes and information systems. Significant changes to our processes and systems expose us to a number of operational risks. These changes may be costly and disruptive, and could impose substantial demands on management time. These changes may also require the modification of a number of internal control procedures. Any material disruption, malfunction or similar problems with our business processes or information systems, or the transition to new processes and systems, could have a negative effect on the operation of our business and our results of operations.

Strategic acquisitions and investments may expose us to increased costs and unexpected liabilities.

We may acquire or make strategic investments in other companies to expand the markets we address, diversify our customer base or acquire or accelerate the development of technology or products. To do so, we may use cash, issue equity that would dilute our current stockholders' ownership, incur debt or assume indebtedness. These transactions involve numerous risks, including:

- significant integration costs;
- integration and rationalization of operations, products, technologies and personnel;
- diversion of management's attention;
- difficulty completing projects of the acquired company and costs related to in-process projects;
- the loss of key employees;
- ineffective internal controls over financial reporting;
- dependence on unfamiliar suppliers or manufacturers;
- exposure to unanticipated liabilities, including intellectual property infringement claims; and
- adverse tax or accounting effects including amortization expense related to intangible assets and charges associated with impairment of goodwill.

As a result of these and other risks, our acquisitions or strategic investments may not reap the intended benefits and may ultimately have a negative impact on our business, results of operation and financial condition.

Changes in government regulation affecting the communications industry and the businesses of our customers could harm our prospects and operating results.

The Federal Communications Commission, or FCC, has jurisdiction over the U.S. communications industry and similar agencies have jurisdiction over the communication industries in other countries. Many of our largest customers are subject to the rules and regulations of these agencies. Changes in regulatory requirements in the United States or other countries could inhibit service providers from investing in their communications network infrastructures or introducing new services. These changes could adversely affect the sale of our products and services. Changes in regulatory tariff requirements or other regulations relating to pricing or terms of carriage on communications networks could slow the development or expansion of network infrastructures and adversely affect our business, operating results, and financial condition.

Governmental regulations affecting the import or export of products, and environmental regulations relating to our products, could negatively affect our revenues.

The United States and various foreign governments have imposed controls, export license requirements and restrictions on the import or export of some technologies. Governmental regulation of imports or exports, or our failure to obtain required import or export approval for our products, could harm our international and domestic sales and adversely affect our revenues. Failure to comply with such regulations could result in penalties, costs and restrictions on export privileges. In addition, our operations may be negatively affected by environmental regulations, such as the Waste Electrical and Electronic Equipment (WEEE) and Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic

Equipment (RoHS) that have been adopted by the European Union. Compliance with these and similar environmental regulations may increase our cost of building and selling our products, make it difficult to obtain supply of compliant components or require us to write off non-compliant inventory, which could have a material adverse effect on our business and operating results.

We may be required to write down long-lived assets and a significant impairment charge would adversely affect our operating results.

At October 31, 2009, we had $154.7 million in long-lived assets, which includes $60.8 million of intangible assets on our balance sheet. Valuation of our long-lived assets requires us to make assumptions about future sales prices and sales volumes for our products. Our assumptions are used to forecast future, undiscounted cash flows. Given the current economic environment, uncertainties regarding the duration and severity of these conditions, forecasting future business is difficult and subject to modification. If actual market conditions differ or our forecasts change, we may be required to reassess long-lived assets and could record an impairment charge. Any impairment charge relating to long-lived assets would have the effect of decreasing our earnings or increasing our losses in such period. If we are required to take a substantial impairment charge, our operating results could be materially adversely affected in such period.

Failure to maintain effective internal controls over financial reporting could have a material adverse effect on our business, operating results and stock price.

Section 404 of the Sarbanes-Oxley Act of 2002 requires that we include in our annual report a report containing management's assessment of the effectiveness of our internal controls over financial reporting as of the end of our fiscal year and a statement as to whether or not such internal controls are effective. Compliance with these requirements has resulted in, and is likely to continue to result in, significant costs and the commitment of time and operational resources. Changes in our business will necessitate ongoing modifications to our internal control systems, processes and information systems. Increases in our global operations or expansion into new regions could pose additional challenges to our internal control systems as these operations become more significant. We cannot be certain that our current design for internal control over financial reporting will be sufficient to enable management or our independent registered public accounting firm to determine that our internal controls are effective for any period, or on an ongoing basis. If we or our independent registered public accounting firms are unable to assert that our internal controls over financial reporting are effective, our business may be harmed. Market perception of our financial condition and the trading price of our stock may be adversely affected, and customer perception of our business may suffer.

Obligations associated with our outstanding indebtedness on our convertible notes may adversely affect our business.

At October 31, 2009, indebtedness on our outstanding convertible notes totaled $798.0 million in aggregate principal. Our indebtedness and repayment obligations could have important negative consequences, including:

- increasing our vulnerability to adverse economic and industry conditions;
- limiting our ability to obtain additional financing, particularly in light of unfavorable conditions in the credit markets;
- reducing the availability of cash resources for other purposes, including capital expenditures;
- limiting our flexibility in planning for, or reacting to, changes in our business and the markets in which we compete; and
- placing us at a possible competitive disadvantage to competitors that have better access to capital resources.

We may also add additional indebtedness such as equipment loans, working capital lines of credit and other long-term debt.

Our stock price is volatile.

Our common stock price has experienced substantial volatility in the past and may remain volatile in the future. Volatility in our stock price can arise as a result of a number of the factors discussed in this "Risk Factors" section. During fiscal 2009, our stock price ranged from a high of $16.64 per share to a low of $4.98 per share. The stock market has experienced extreme price and volume fluctuations that have affected the market price of many technology companies, with such volatility often unrelated to the operating performance of these companies. Divergence between our actual or anticipated financial results and published expectations of analysts can cause significant swings in our stock price. Our stock price can also be affected by announcements that we, our competitors, or our customers may make, particularly announcements related to acquisitions or other significant transactions. Our common stock is included in a number of market indices and any change in the composition of these indices to exclude our company would adversely affect our stock price. On December 18, 2009, we were removed from the S&P 500, a widely-followed index. These factors, as well as conditions affecting the general economy or financial markets, may materially adversely affect the market price of our common stock in the future.

Item 1B. Unresolved Staff Comments

Not applicable.

Item 2. Properties

As of October 31, 2009, all of our properties are leased. Our principal executive offices are located in Linthicum, Maryland. We lease thirty-eight facilities related to our ongoing operations. These include five buildings located at various sites near Linthicum, Maryland, including an engineering facility, two supply chain and logistics facilities, and two administrative and sales facilities. We have engineering and/or service facilities located in San Jose, California; Alpharetta, Georgia; Spokane, Washington; Kanata, Canada; and Gurgaon, India. We also maintain a sales and service facility in London, England. In addition, we lease various small offices in the United States, Mexico, South America, Europe and Asia to support our sales and services operations. We believe the facilities we are now using are adequate and suitable for our business requirements.

We lease a number of properties that we no longer occupy. As part of our restructuring costs, we provide for the estimated cost of the future net lease expense for these facilities. The cost is based on the fair value of future minimum lease payments under contractual obligations offset by the fair value of the estimated future sublease payments that we may receive. As of October 31, 2009, our accrued restructuring liability related to these properties was $9.4 million. If actual market conditions relating to the use of these facilities are less favorable than those projected by management, additional restructuring costs associated with these facilities may be required. For additional information regarding our lease obligations, see Note 20 to the Consolidated Financial Statements in Item 8 of Part II of this annual report.

Item 3. Legal Proceedings

On May 29, 2008, Graywire, LLC filed a complaint in the United States District Court for the Northern District of Georgia against Ciena and four other defendants, alleging, among other things, that certain of the parties' products infringe U.S. Patent 6,542,673 (the "'673 Patent"), relating to an identifier system and components for optical assemblies. The complaint, which seeks injunctive relief and damages, was served upon Ciena on January 20, 2009. Ciena filed an answer to the complaint and counterclaims against Graywire on March 26, 2009, and an amended answer and counterclaims on April 17, 2009. On April 27, 2009, Ciena and certain other defendants filed an application for *inter partes* reexamination of the '673 Patent with the U.S. Patent and Trademark Office (the "PTO"). On the same date, Ciena and the other defendants filed a motion to stay the case pending reexamination of all of the patents-in-suit. On July 17, 2009, the district court granted the defendants' motion to stay the case. On July 23, 2009, the PTO granted the defendants' application for reexamination with respect to certain claims of the '673 Patent. We believe that we have valid defenses to the lawsuit and intend to defend it vigorously in the event the stay of the case is lifted.

As a result of our June 2002 merger with ONI Systems Corp., we became a defendant in a securities class action lawsuit filed in the United States District Court for the Southern District of New York in August 2001. The complaint named ONI, certain former ONI officers, and certain underwriters of ONI's initial public offering (IPO) as defendants, and alleges, among other things, that the underwriter defendants violated the securities laws by failing to disclose alleged compensation arrangements (such as undisclosed commissions or stock stabilization practices) in ONI's registration statement and by engaging in manipulative practices to artificially inflate ONI's stock price after the IPO. The complaint also alleges that ONI and the named former officers violated the securities laws by failing to disclose the underwriters' alleged compensation arrangements and manipulative practices. No specific amount of damages has been claimed. Similar complaints have been filed against more than 300 other issuers that have had initial public offerings since 1998, and all of these actions have been included in a single coordinated proceeding. The former ONI officers have been dismissed from the action without prejudice. In July 2004, following mediated settlement negotiations, the plaintiffs, the issuer defendants (including Ciena), and their insurers entered into a settlement agreement. The settlement agreement did not require Ciena to pay any amount toward the settlement or to make any other payments. While the partial settlement was pending approval, the plaintiffs continued to litigate their cases against the underwriter defendants. In October 2004, the district court certified a class with respect to the Section 10(b) claims in six "focus cases" selected out of all of the consolidated cases, which cases did not include Ciena, and which decision was appealed by the underwriter defendants to the U.S. Court of Appeals for the Second Circuit. On February 15, 2005, the district court granted the motion for preliminary approval of the settlement agreement, subject to certain modifications, and on August 31, 2005, the district court issued a preliminary order approving the revised stipulated settlement agreement. On December 5, 2006, the U.S. Court of Appeals for the Second Circuit vacated the district court's grant of class certification in the six focus cases. On April 6, 2007, the Second Circuit denied plaintiffs' petition for rehearing. In light of the Second Circuit's decision, the parties agreed that the settlement could not be approved. On June 25, 2007, the district court approved a stipulation filed by the plaintiffs and the issuer defendants terminating the proposed

settlement. On August 14, 2007, the plaintiffs filed second amended complaints against the defendants in the six focus cases. On September 27, 2007, the plaintiffs filed a motion for class certification based on their amended complaints and allegations. On March 26, 2008, the district court denied motions to dismiss the second amended complaints filed by the defendants in the six focus cases, except as to Section 11 claims raised by those plaintiffs who sold their securities for a price in excess of the initial offering price and those who purchased outside the previously certified class period. Briefing on the plaintiffs' motion for class certification in the focus cases was completed in May 2008. That motion was withdrawn without prejudice on October 10, 2008. On April 2, 2009, a stipulation and agreement of settlement between the plaintiffs, issuer defendants and underwriter defendants was submitted to the Court for preliminary approval. The Court granted the plaintiffs' motion for preliminary approval and preliminarily certified the settlement classes on June 10, 2009. The settlement fairness hearing was held on September 10, 2009. On October 6, 2009, the Court entered an opinion granting final approval to the settlement and directing that the Clerk of the Court close these actions. Notices of appeal of the opinion granting final approval have been filed. Due to the inherent uncertainties of litigation and because the settlement remains subject to appeal, the ultimate outcome of the matter is uncertain.

In addition to the matters described above, we are subject to various legal proceedings, claims and litigation arising in the ordinary course of business. We do not expect that the ultimate costs to resolve these matters will have a material effect on our results of operations, financial position or cash flows.

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

No matters were submitted to a vote of security holders in the fourth quarter of fiscal 2009.

PART II

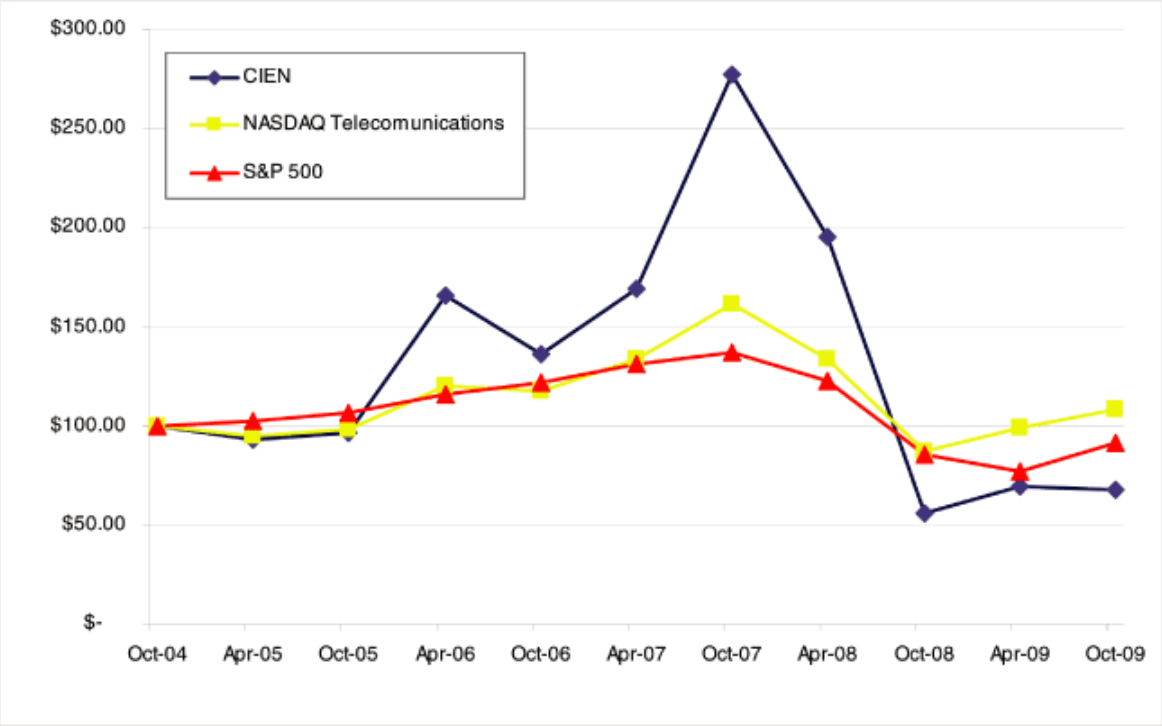
Item 5. Market for Registrant's Common Stock, Related Stockholder Matters and Issuer Purchases of Equity Securities

(a) Our common stock is traded on the NASDAQ Global Select Market under the symbol "CIEN." The following table sets forth the high and low sales prices of our common stock, as reported on the NASDAQ Global Select Market, for the fiscal periods indicated.

	Price Range of Common Stock	
	High	Low
Fiscal Year 2008		
First Quarter ended January 31	$48.82	$21.40
Second Quarter ended April 30	$35.82	$24.00
Third Quarter ended July 31	$35.14	$19.30
Fourth Quarter ended October 31	$20.10	$ 6.60
Fiscal Year 2009		
First Quarter ended January 31	$ 9.79	$ 5.07
Second Quarter ended April 30	$12.28	$ 4.98
Third Quarter ended July 31	$12.51	$ 8.45
Fourth Quarter ended October 31	$16.64	$11.08

As of December 11, 2009, there were approximately 949 holders of record of our common stock and 92,038,629 shares of common stock outstanding. We have never paid cash dividends on our capital stock. We intend to retain earnings for use in our business and we do not anticipate paying any cash dividends in the foreseeable future.

The following graph shows a comparison of cumulative total returns for an investment in our common stock, the NASDAQ Telecommunications Index and the S&P 500 Index from October 31, 2004 to October 31, 2009. The NASDAQ Telecommunications Index contains securities of NASDAQ-listed companies classified according to the Industry Classification Benchmark as Telecommunications and Telecommunications Equipment. They include providers of fixed-line and mobile telephone services, and makers and distributors of high-technology communication products. This graph is not deemed to be "filed" with the SEC or subject to the liabilities of Section 18 of the Securities Exchange Act of 1934, and the graph shall not be deemed to be incorporated by reference into any prior or subsequent filing by us under the Securities Act of 1933 or the Exchange Act.



Assumes $100 invested in Ciena Corporation, the NASDAQ Telecommunications Index and the S&P 500 Index on October 31, 2004 with all dividends reinvested at month-end.

(b) Not applicable.

(c) Not applicable.

Item 6. Selected Consolidated Financial Data

The following selected consolidated financial data should be read in conjunction with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the Consolidated Financial Statements and the notes thereto included in Item 8, "Financial Statements and Supplementary Data." We have a 52 or 53 week fiscal year, which ends on the Saturday nearest to the last day of October in each year. For purposes of financial statement presentation, each fiscal year is described as having ended on October 31. Fiscal 2005, 2006, 2008 and 2009 consisted of 52 weeks and fiscal 2007 consisted of 53 weeks.

Balance Sheet Data:

	Year Ended October 31, (in thousands)				
	2005	2006	2007	2008	2009
Cash and cash equivalents	$ 358,012	$ 220,164	$ 892,061	$ 550,669	$ 485,705
Short-term investments	$ 579,531	$ 628,393	$ 822,185	$ 366,336	$ 563,183
Long-term investments	$ 155,944	$ 351,407	$ 33,946	$ 156,171	$ 8,031
Total assets	$1,675,229	$1,839,713	$2,416,273	$2,024,594	$1,504,383
Short-term convertible notes payable	$ —	$ —	$ 542,262	$ —	$ —
Long-term convertible notes payable	$ 648,752	$ 842,262	$ 800,000	$ 798,000	$ 798,000
Total liabilities	$ 939,862	$1,086,087	$1,566,119	$1,025,645	$1,048,545
Stockholders' equity	$ 735,367	$ 753,626	$ 850,154	$ 998,949	$ 455,838

Statement of Operations Data:

	Year Ended October 31, (in thousands, except per share data)				
	2005	2006	2007	2008	2009
Revenue	$ 427,257	$ 564,056	$ 779,769	$ 902,448	$ 652,629
Cost of goods sold	291,067	306,275	417,500	451,521	367,799
Gross profit	136,190	257,781	362,269	450,927	284,830
Operating expenses:					
Research and development	137,245	111,069	127,296	175,023	190,319
Selling and marketing	115,022	104,434	118,015	152,018	134,527
General and administrative	36,317	44,445	50,248	68,639	47,509
Amortization of intangible assets	38,782	25,181	25,350	32,264	24,826
Restructuring (recoveries) costs	18,018	15,671	(2,435)	1,110	11,207
Goodwill impairment	176,600	—	—	—	455,673
Long-lived asset impairment	45,862	—	—	—	—
Gain on lease settlement	—	(11,648)	(4,871)	—	—
Total operating expenses	567,846	289,152	313,603	429,054	864,061
Income (loss) from operations	(431,656)	(31,371)	48,666	21,873	(579,231)
Interest and other income, net	31,294	50,245	76,483	36,762	9,487
Interest expense	(28,413)	(24,165)	(26,996)	(12,927)	(7,406)
Realized loss due to impairment of marketable debt investments	—	—	(13,013)	(5,101)	—
Gain (loss) on cost method investments	—	—	—	—	(5,328)
Gain on extinguishment of debt	3,882	7,052	—	932	—
Gain (loss) on equity investments, net	(9,486)	215	592	—	—
Income (loss) before income taxes	(434,379)	1,976	85,732	41,539	(582,478)
Provision (benefit) for income taxes	1,320	1,381	2,944	2,645	(1,324)
Net income (loss)	$ (435,699)	$ 595	$ 82,788	$ 38,894	$ (581,154)
Basic net income (loss) per common share	$ (5.30)	$ 0.01	$ 0.97	$ 0.44	$ (6.37)
Diluted net income (loss) per potential common share	$ (5.30)	$ 0.01	$ 0.87	$ 0.42	$ (6.37)
Weighted average basic common shares outstanding	82,170	83,840	85,525	89,146	91,167
Weighted average dilutive potential common shares outstanding	82,170	85,011	99,604	110,605	91,167

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

This section contains statements that discuss future events or expectations, projections of results of operations or financial condition, changes in the markets for our products and services, or other "forward-looking" information. Our "forward-looking" information is based on various factors and was derived using numerous assumptions. In some cases, you can identify these "forward-looking statements" by words like "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of those words and other comparable words. You should be aware that these statements only reflect our current predictions and beliefs. These statements are subject to known and unknown risks, uncertainties and other factors, and actual events or results may differ materially. Important factors that could cause our actual results to be materially different from the forward-looking statements are disclosed throughout this report, particularly under the heading "Risk Factors" in Item 1A of Part I of this annual report. You should review these risk factors for a more complete understanding of the risks associated with an investment in our securities. We undertake no obligation to revise or update any forward-looking statements. The following discussion and analysis should be read in conjunction with our "Selected Consolidated Financial Data" and consolidated financial statements and notes thereto included elsewhere in this annual report.

Overview

We are a provider of communications networking equipment, software and services that support the transport, switching, aggregation and management of voice, video and data traffic. Our optical service delivery and carrier Ethernet service delivery products are used individually, or as part of an integrated solution, in communications networks operated by communications service providers, cable operators, governments and enterprises around the globe.

We are a network specialist targeting the transition of disparate, legacy communications networks to converged, next-generation architectures, better able to handle increased traffic and deliver more efficiently a broader mix of high-bandwidth communications services. Our products, along with their embedded, network element software and unified service and transport management, enable service providers to efficiently and cost-effectively deliver critical enterprise and consumer-oriented communication services. Together with our professional support and consulting services, our product offerings seek to offer solutions that address the business challenges and network needs of our customers. Our customers face an increasingly challenging and rapidly changing environment that requires them to quickly adapt their business strategies and deliver new, revenue-creating services. By improving network productivity, reducing operating costs and providing the flexibility to enable new and integrated service offerings, our offerings create business and operational value for our customers.

Effect of Decline in Market Conditions

Our results of operations for fiscal 2009 described in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" section reflect the weakness, volatility and uncertainty presented by the global market conditions that we encountered during the year. Our fiscal 2009 results reflect cautious spending among our largest customers during fiscal 2009, as they sought to conserve capital, reduce debt or address uncertainties or changes in their own business models brought on by broader market challenges. As a result, we experienced lower demand across our customer base in all geographies. We also experienced lengthening sales cycles, customer delays in network build-outs, slowing deployments and deferral of new technology adoption. We have also experienced an increasingly competitive marketplace and a heightened customer focus on pricing and return on investment. While we have started to see some indications that conditions in North America may be improving, we remain uncertain as to how long unfavorable macroeconomic and industry conditions will persist and the magnitude of their effects on our business and results of operations.

Strategic Initiatives

Despite difficult market conditions, we continue to believe in our longer-term market opportunities and the potential represented by the underlying drivers of future demand for our hardware, software and services offerings in our target markets. We believe consumer and enterprise use of, and increased dependence upon, a growing variety of broadband applications and services will continue to consume bandwidth, requiring our customers to invest in next-generation network infrastructures that are more efficient and robust, and better able to handle higher capacity multiservice traffic and increased transmission rates. As a result, we continued to strategically invest in our business during fiscal 2009, prioritizing spending on key product and technology initiatives that we believe will strategically position us for longer-term growth when market conditions recover. In fact, research and development expense increased year over year despite the significant reduction in revenue during fiscal 2009 and the restructuring activities described below. We expect to continue to invest significantly in research and development. Specifically, our ongoing development is focused upon bringing several new platforms to market during fiscal 2010 and our broader development investments are focused upon:

- Data-optimized switching solutions and evolution of our CoreDirector family and 5400 family of reconfigurable switching solutions;
- Extending and increasing capacity of our converged optical transport service delivery portfolio, including 100G transport technologies and capabilities;
- Expanding our carrier Ethernet service delivery portfolio, including larger Ethernet aggregation switches; and
- Extending the value of our network management software platform across our product portfolio.

These broader development initiatives remain focused on delivering upon our vision of transforming customer networks to adapt and scale, manage unpredictability and eliminate barriers to new service offerings. This vision of simplified, highly-automated networks is based on the following technologies:

- Programmable network elements, including software-programmable hardware platforms and interfaces that use our FlexiPort technology, to enable on-demand and automated support for multiple services and applications;
- Common service-aware operating system and unified transport and service management software for an integrated solution ensuring all network elements work seamlessly together for rapid delivery of services and applications; and
- Optimized carrier Ethernet technology — our True Carrier Ethernet™ — for enhanced management, faster provisioning, higher reliability and support for a wider variety of services.

Through these capabilities, we seek to enable customers to automate delivery and management of a broad mix of services over networks that offer enhanced flexibility and are more cost-effective to deploy, scale and manage.

Pending Acquisition of Nortel Metro Ethernet Networks ("MEN") Assets

We believe that our pending acquisition of substantially all of the optical networking and carrier Ethernet assets of Nortel's ("MEN") business will accelerate the execution of our corporate and research and development strategy, and will create a leader in next-generation, automated optical Ethernet networks.

Following our emergence as the winning bidder in the bankruptcy auction, we agreed to acquire substantially all of the optical networking and carrier Ethernet assets of Nortel's MEN business for $530 million in cash and $239 million in aggregate principal amount of 6% senior convertible notes due June 2017. The terms of the notes to be issued upon closing are set forth in Note 22 of the Consolidated Financial Statements found under Item 8 of Part II of this annual report. Nortel's product and technology assets to be acquired include:

- long-haul optical transport portfolio;
- metro optical Ethernet switching and transport solutions;
- Ethernet transport, aggregation and switching technology;
- multiservice SONET/SDH product families; and
- network management software products.

In addition to these products, the acquired operations also include network implementation and support services. The assets to be acquired generated approximately $1.36 billion in revenue for Nortel in fiscal 2008 and approximately $556 million (unaudited) in the first six months of Nortel's fiscal 2009.

The pending acquisition encompasses a business that is a leading provider of next-generation, 40G and 100G optical transport technology with a significant, global installed base. The acquired transport technology allows network operators to upgrade their existing 10G networks to 40G capability, quadrupling capacity without the need for new fiber deployments or complex network re-engineering. In addition to transport capability, the optical platforms acquired include traffic switching and aggregation capability for traditional protocols such as SONET/SDH as well as newer packet protocols such as Ethernet. A suite of software products used to manage networks built from these technologies is also part of the transaction.

We believe that the transaction provides an opportunity to significantly transform Ciena and strengthen our position as a leader in next-generation, automated optical Ethernet networking. We believe that the additional resources, expanded geographic reach, new and broader customer relationships, and deeper portfolio of complementary network solutions derived from the transaction will augment Ciena's growth. We also expect that the transaction will add scale, enable operating model synergies and provide an opportunity to optimize our research and development investment. We expect these benefits of the transaction will help Ciena to better compete with traditional, larger network vendors.

We expect to make employment offers to at least 2,000 Nortel employees to become part of Ciena's global team of network specialists. The transaction will significantly enhance our existing Canadian-based development resources, making Ottawa our largest product and development center.

Given the structure of the transaction as an asset carve-out from Nortel, we expect that the transaction will result in a costly and complex integration with a number of operational risks. We expect to incur integration-related costs of approximately $180 million, with the majority of these costs to be incurred in the first 12 months following the completion of the transaction. This estimate principally reflects expense associated with equipment and information technology costs, transaction expense, and consulting and third party service fees associated with integration. This amount does not give effect to any expense related to, among other things, facilities restructuring or inventory obsolescence charges. As a result, the integration expense we incur and recognize for financial statement purposes could be significantly higher. Any material delays or unanticipated additional expense may harm our business and results of operations. In addition to these integration costs, we also expect to incur significant transition services expense, and we will rely upon an affiliate of Nortel to perform certain operational functions during an interim period following closing not to exceed two years.

We expect this pending transaction to close in the first calendar quarter of 2010. If the closing does not take place on or before April 30, 2010, the applicable asset sale agreements may be terminated by either party. Ciena has been granted early termination of the antitrust waiting periods under the Hart-Scott-Rodino Act and the Canadian Competition Act. On December 2, 2009, the bankruptcy courts in the U.S. and Canada approved the asset sale agreement relating to Ciena's acquisition of substantially all of the North American, Caribbean and Latin American and Asian optical networking and carrier Ethernet assets of Nortel's MEN business. Completion of the transaction remains subject to information and consultation with employee representatives and employees in certain international jurisdictions, an additional regional regulatory clearance and customary closing conditions.

As a result of the aggregate consideration to be paid as described above, we will incur significant additional indebtedness and will materially reduce our existing cash balance. Except where specifically indicated, the discussion in this "Management's Discussion and Analysis of Financial Condition and Results of Operations" does not give effect to the possible consummation of this pending transaction and the effect on our results of operations.

Goodwill Impairment

Based on a combination of factors, including the macroeconomic conditions described above and a sustained decline in our common stock price and market capitalization below our net book value, we conducted an interim impairment assessment of goodwill during the second quarter of fiscal 2009. The conclusion of this assessment was the write-off of all goodwill remaining on our balance sheet, resulting in an impairment charge of $455.7 million in the second quarter of fiscal 2009. This impairment charge significantly affected our operating expense and operating and net loss for fiscal 2009. It will not result in any current or future cash expenditures. See "Critical Accounting Policies and Estimates" below for more information regarding this assessment.

Restructuring Activities

During the second quarter of fiscal 2009, we took action to effect a headcount reduction of approximately 200 employees or 9% of our global workforce, with headcount reductions implemented across our organizations and geographies. As part of this action, we closed our Acton, Massachusetts research and development facility during the third quarter. We expect these steps will help better align our operating expense with market opportunities and the development strategy above. We incurred an $11.2 million charge in fiscal 2009, principally consisting of $4.1 million for employee-related restructuring, $3.4 million for Acton facilities-related restructuring, and $3.7 million related to the revision of previous estimates.

Financial Results

Revenue for the fourth quarter was $176.3 million, which represented a sequential increase of 7.0% from $164.8 million in the third quarter of fiscal 2009 and a 1.9% decrease from $179.7 million in the fourth quarter of fiscal 2008. The sequential quarterly increase in revenue reflects a $6.9 million increase in carrier Ethernet service delivery revenue, principally related to sales of carrier Ethernet switching and aggregation products in support of wireless backhaul deployments, including, in large part, 4G WiMax. Revenue for the fourth quarter of fiscal 2009 also benefited from a $2.3 million increase in optical service delivery revenue, primarily reflecting increased sales of CN4200, and a $2.4 million increase in service revenue.

In spite of slight improvements in revenue in the second half of fiscal 2009, and improved sales of carrier Ethernet switching and aggregation products during fiscal 2009, the unfavorable market conditions and reductions in customer spending described above resulted in significant declines in annual revenue as compared to fiscal 2008. Total revenue decreased from $902.4 million in fiscal 2008 to $652.6 million in fiscal 2009.

- Fiscal 2009 revenue reflects a $258.9 million decrease in sales of our optical service delivery products;
- Revenue from the U.S. for fiscal 2009 was $419.4 million, a decrease from $590.9 million in fiscal 2008;
- International revenue for fiscal 2009 was $233.2 million, a decrease from $311.6 million in fiscal 2008;
- As a percentage of revenue, international revenue was 35.7% during the fiscal 2009, a slight increase from 34.5% in fiscal 2008; and
- For fiscal 2009, one customer — AT&T representing 19.6% of revenue — accounted for greater than 10% of revenue. This compares to 2008, when two customers — AT&T representing 25.2%, and BT representing 12.6% of revenue — accounted for greater than 10% of our revenue.

Gross margin for the fourth quarter of fiscal 2009 was 44.0%, down from 45.3% in the third quarter of fiscal 2009. Gross margin for fiscal 2009 was 43.6%, as compared to 50.0% in fiscal 2008. Product gross margin was 45.9% in fiscal 2009, a decrease from 53.1% in fiscal 2008. Gross margin decreases during fiscal 2009 reflect the effect of increased competition, including increased pricing pressure across our optical transport products, and less favorable product and geographic mix, including fewer sales of core switching products as a percentage of total revenue. Gross margin for fiscal 2009 was also negatively affected by increased charges related to losses on committed customer sales contracts and higher charges relating to warranty. These additional costs of goods sold were partially offset by product cost reductions.

Operating expense for fiscal 2009 was $864.1 million, which includes a goodwill impairment charge of $455.7 million, compared to $429.1 million in fiscal 2008. Annual operating expense related to research and development, sales and marketing and general and administrative decreased by $23.3 million in fiscal 2009. This decrease reflects our efforts to manage our workforce and constrain general and administrative and sales and marketing expenses in the face of weaker market conditions. Exclusive of the goodwill impairment, we expect operating expense to increase from fiscal 2009, particularly if market conditions improve and we seek to fund and support the growth of our business.

Our loss from operations for fiscal 2009 was $579.2 million. This compares to income from operations of $21.9 million in fiscal 2008. Our net loss for fiscal 2009 was $581.2 million, or $6.37 per share. This compares to net income of $38.9 million, or $0.42 per diluted share, in fiscal 2008. Net loss and operating loss reflect the effect of market conditions and lower customer spending during fiscal 2009 and a goodwill impairment charge during the second quarter of fiscal 2009, each as described above.

We generated $7.4 million in cash from operations during fiscal 2009 as compared to $117.6 million during fiscal 2008. Cash from operations during fiscal 2009 consisted of $3.8 million in cash from net income (adjusted for non-cash charges) and $3.6 million resulting from changes in working capital. Cash from operations during fiscal 2008 consisted of $168.7 million in cash from net income (adjusted for non-cash charges) and a $51.1 million net decrease in cash resulting from changes in working capital.

At October 31, 2009, we had $485.7 million in cash and cash equivalents and $571.2 million of short-term and long-term investments in marketable debt securities.

As of October 31, 2009, headcount was 2,163, a decrease from 2,203 at October 31, 2008 and an increase from 1,797 at October 31, 2007.

Results of Operations

Our results of operations for fiscal 2008 include the operations of World Wide Packets (“WWP”) only after the March 3, 2008 acquisition date.

Revenue

We derive revenue from sales of our products and services, which we discuss in the following three major groupings:

1. *Optical Service Delivery*. Included in product revenue, this revenue grouping reflects sales of our transport and switching products and legacy data networking products and related software. This revenue grouping was previously referred to as our “converged Ethernet infrastructure” products.

2. *Carrier Ethernet Service Delivery*. Included in product revenue, this revenue grouping reflects sales of our service delivery and aggregation switches, broadband access products, and the related software.

3. *Global Network Services*. Included in services revenue are sales of installation, deployment, maintenance support, consulting and training activities.

A sizable portion of our revenue continues to come from sales to a small number of communications service providers. As a result, our revenues are closely tied to the prospects, performance, and financial condition of our largest customers and are significantly affected by market-wide changes, including reductions in enterprise and consumer spending, that affect the businesses and level of infrastructure-related spending by communications service providers. Our contracts do not have terms that obligate these customers to purchase any minimum or specific amounts of equipment or services. Because their spending may be unpredictable and sporadic, and their purchases may result in the recognition or deferral of significant amounts of revenue in a given quarter, our revenue can fluctuate on a quarterly basis. Our concentration of revenue increases the risk of quarterly fluctuations in revenue and operating results and can exacerbate our exposure to reductions in spending or changes in network strategy involving one or more of our significant customers. In particular, some of our customers are pursuing efforts to outsource the management and operation of their networks, or have indicated a procurement strategy to reduce the number of vendors from which they purchase equipment.

Given current market conditions and the effect of lower demand in fiscal 2009, as well as changes in the mix of our revenue toward products with shorter customer lead times, the percentage of our quarterly revenue relating to orders placed in that quarter has increased in comparison to prior periods. Lower levels of backlog orders and an increase in the percentage of quarterly revenue relating to orders placed in that quarter could result in more variability and less predictability in our quarterly results.

Cost of Goods Sold

Product cost of goods sold consists primarily of amounts paid to third-party contract manufacturers, component costs, direct compensation costs and overhead, shipping and logistics costs associated with manufacturing-related operations, warranty and other contractual obligations, royalties, license fees, amortization of intangible assets, cost of excess and obsolete inventory and, when applicable, estimated losses on committed customer contracts.

Services cost of goods sold consists primarily of direct and third-party costs, including personnel costs, associated with provision of services including installation, deployment, maintenance support, consulting and training activities, and, when applicable, estimated losses on committed customer contracts.

Gross Margin

Gross margin continues to be susceptible to quarterly fluctuation due to a number of factors. Product gross margin can vary significantly depending upon the mix of products and customers in a given fiscal quarter. Gross margin can also be affected by volume of orders, our ability to drive product cost reductions, geographic mix, the level of pricing pressure we encounter, our introduction of new products or entry into new markets, charges for excess and obsolete inventory and changes in warranty costs.

Service gross margin can be affected by the mix of customers and services, particularly the mix between deployment and maintenance services, geographic mix and the timing and extent of any investments in internal resources to support this business.

Operating Expense

Research and development expense primarily consists of salaries and related employee expense (including share-based compensation expense), prototype costs relating to design, development, testing of our products, and third-party consulting costs.

Sales and marketing expense primarily consists of salaries, commissions and related employee expense (including share-based compensation expense), and sales and marketing support expense, including travel, demonstration units, trade show expense, and third-party consulting costs.

General and administrative expense primarily consists of salaries and related employee expense (including share-based compensation expense), and costs for third-party consulting and other services.

Amortization of intangible assets primarily reflects purchased technology and customer relationships from our acquisitions.

Fiscal 2008 compared to Fiscal 2009

Revenue, cost of goods sold and gross profit

The table below (in thousands, except percentage data) sets forth the changes in revenue, cost of goods sold and gross profit for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2008	%*	2009	%*		%**
Revenue:						
Products	$791,415	87.7	$547,522	83.9	$(243,893)	(30.8)
Services	111,033	12.3	105,107	16.1	(5,926)	(5.3)
Total revenue	902,448	100.0	652,629	100.0	(249,819)	(27.7)
Costs:						
Products	371,238	41.1	296,170	45.4	(75,068)	(20.2)
Services	80,283	8.9	71,629	11.0	(8,654)	(10.8)
Total cost of goods sold	451,521	50.0	367,799	56.4	(83,722)	(18.5)
Gross profit	$450,927	50.0	$284,830	43.6	$(166,097)	(36.8)

* Denotes % of total revenue

** Denotes % change from 2008 to 2009

The table below (in thousands, except percentage data) sets forth the changes in product revenue, product cost of goods sold and product gross profit for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2008	%*	2009	%*		%**
Product revenue	$791,415	100.0	$547,522	100.0	$(243,893)	(30.8)
Product cost of goods sold	371,238	46.9	296,170	54.1	(75,068)	(20.2)
Product gross profit	$420,177	53.1	$251,352	45.9	$(168,825)	(40.2)

* Denotes % of product revenue

** Denotes % change from 2008 to 2009

The table below (in thousands, except percentage data) sets forth the changes in service revenue, service cost of goods sold and service gross profit (loss) for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2008	%*	2009	%*		%**
Service revenue	$ 111,033	100.0	$105,107	100.0	$ (5,926)	(5.3)
Service cost of goods sold	80,283	72.3	71,629	68.1	(8,654)	(10.8)
Service gross profit	$ 30,750	27.7	$ 33,478	31.9	$ 2,728	8.9

* Denotes % of service revenue

** Denotes % change from 2008 to 2009

The table below (in thousands, except percentage data) sets forth the changes in distribution of revenue for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2008	%*	2009	%*		%**
Optical service delivery	$731,260	81.0	$472,410	72.4	$(258,850)	(35.4)
Carrier Ethernet service delivery	60,155	6.7	75,112	11.5	14,957	24.9
Global network services	111,033	12.3	105,107	16.1	(5,926)	(5.3)
Total	$902,448	100.0	$652,629	100.0	$(249,819)	(27.7)

* Denotes % of total revenue

** Denotes % change from 2008 to 2009

Revenue from sales to customers outside of the United States is reflected as International in the geographic distribution of revenue below. The table below (in thousands, except percentage data) sets forth the changes in geographic distribution of revenue for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2008	%*	2009	%*		%**
United States	$590,868	65.5	$419,405	64.3	$(171,463)	(29.0)
International	311,580	34.5	233,224	35.7	(78,356)	(25.1)
Total	$902,448	100.0	$652,629	100.0	$(249,819)	(27.7)

* Denotes % of total revenue

** Denotes % change from 2008 to 2009

Certain customers each accounted for at least 10% of our revenue for the periods indicated (in thousands, except percentage data) as follows:

	Fiscal Year			
	2008	%*	2009	%*
AT&T	$227,737	25.2	$128,233	19.6
BT	113,981	12.6	n/a	—
Total	$341,718	37.8	$128,233	19.6

n/a Denotes revenue representing less than 10% of total revenue for the period

* Denotes % of total revenue

Revenue

- **Product revenue** decreased primarily due to a $258.9 million decrease in sales of our optical service delivery products. Lower optical service delivery revenue reflects decreases of $108.1 million in sales of core transport products, $104.8 million in sales of core switching products, and $46.5 million in sales of legacy data networking and metro transport products. This decline was partially offset by a $15.0 million increase in revenue from our carrier Ethernet service delivery products, reflecting a $34.7 million increase in sales of our switching and aggregation products and a $19.7 million decrease in sales of our broadband access products.
- **Services revenue** decreased due to a $10.9 million decrease in deployment services due to lower sales volume and installation activity. This decrease was partially offset by a $5.0 million increase in maintenance and support services.
- **United States revenue** decreased primarily due to a $180.8 million decrease in sales of our optical service delivery products. Lower optical service delivery revenue reflects decreases of $88.2 million in sales of core transport products, $87.0 million in sales of core switching products, and $25.2 million in sales of legacy data networking and metro transport products. These decreases were partially offset by a $19.7 million increase in sales of CN 4200. Revenue from carrier Ethernet service delivery products increased by $10.5 million, reflecting a $30.3 million increase in sales of our switching and aggregation products, partially offset by a $19.8 million decrease in sales of our broadband access products.

- **International revenue** decreased primarily due to a $78.1 million decrease in sales of our optical service delivery products. This primarily reflects decreases of $21.3 million in sales of legacy data networking and metro transport products, $19.9 million in sales of core transport products, $19.2 million in sales of CN 4200, and $17.8 million in sales of core switching products. This decrease was partially offset by a $4.5 million increase in revenue from our carrier Ethernet service delivery products, primarily related to sales of our switching and aggregation products.

Gross profit

- **Gross profit as a percentage of revenue** decreased due to less favorable product and geographic mix, including fewer sales of core switching products as a percentage of total revenue, increased charges related to losses on committed customer sales contracts and higher charges relating to warranty. Gross profit as a percentage of revenue for fiscal 2008 reflects a $5.3 million increase in product cost of goods sold related to the revaluation of the acquired WWP inventory due to purchase accounting rules.
- **Gross profit on products as a percentage of product revenue** decreased due to less favorable product and geographic mix, including fewer sales of core switching products as a percentage of total revenue, increased charges related to losses on committed customer sales contracts and higher charges relating to warranty. Gross profit as a percentage of revenue for fiscal 2008 reflects a $5.3 million increase in product cost of goods sold related to the revaluation of the acquired WWP inventory due to purchase accounting rules.
- **Gross profit on services as a percentage of services revenue** increased due to higher sales of maintenance contracts as a percentage of services revenue. Services gross margin remains heavily dependent upon the mix of services in a given period and may fluctuate from quarter to quarter.

Operating expense

The table below (in thousands, except percentage data) sets forth the changes in operating expense for the periods indicated:

	Fiscal Year				Increase	
	2008	*%	2009	%*	(decrease)	%**
Research and development	$ 175,023	19.4	$ 190,319	29.2	$ 15,296	8.7
Selling and marketing	152,018	16.8	134,527	20.6	(17,491)	(11.5)
General and administrative	68,639	7.6	47,509	7.3	(21,130)	(30.8)
Amortization of intangible assets	32,264	3.6	24,826	3.8	(7,438)	(23.1)
Restructuring costs	1,110	0.1	11,207	1.7	10,097	909.6
Goodwill impairment	—	—	455,673	69.8	455,673	100.0
Total operating expenses	$ 429,054	47.5	$ 864,061	132.4	$ 435,007	101.4

* Denotes % of total revenue

** Denotes % change from 2008 to 2009

- **Research and development** expense benefited by $5.3 million in favorable foreign exchange rates primarily due to the comparative strength of the U.S. dollar in relation to the previous year. The resulting $15.3 million net increase principally reflects an increase in prototype expense of $15.4 million. Other increases include $5.4 million in facilities and information systems expense, $2.8 million in depreciation expense, and higher employee compensation cost of $0.6 million, including a $2.6 million increase in share-based compensation expense. These increases were partially offset by decreases of $4.8 million in consulting services expense, $2.7 million in technology related expenses and $0.8 million in travel expense.
- **Selling and marketing** expense benefited by $2.8 million in favorable foreign exchange rates primarily due to the comparative strength of the U.S. dollar in relation to the previous year. The resulting $17.5 million net change reflects decreases of $7.8 million in employee compensation cost, $3.0 million in travel-related costs, $2.9 million in marketing program costs and $2.4 million in consulting services expense. These decreases were partially offset by a $1.2 million increase in facilities and information systems expense.

- **General and administrative** expense benefited by $0.5 million in favorable foreign exchange rates primarily due to the comparative strength of the U.S. dollar in relation to the previous year. The resulting $21.1 million net change reflects decreases of $6.1 million in employee compensation cost, $4.1 million in consulting services expense, $1.7 million in facilities and information systems expense, and $0.7 million in technology-related expense. Expense for fiscal 2008 included $7.7 million associated with the settlement of patent litigation.
- **Amortization of intangible assets** costs decreased due to certain intangible assets reaching the end of their useful life and becoming fully amortized during fiscal 2009.
- **Restructuring costs** during fiscal 2009 was primarily related to a headcount reduction of approximately 200 employees, the closure of our Acton, Massachusetts research and development facility and revisions of estimates related to previously restructured facilities. Restructuring costs for fiscal 2008 principally reflects costs associated with a workforce reduction of 56 employees during the fourth quarter.
- **Goodwill impairment** was based on a combination of factors, including the macroeconomic conditions described above and a sustained decline in our common stock price and market capitalization below our net book value. These factors required Ciena to conduct an interim impairment assessment of goodwill during the second quarter of fiscal 2009. The conclusion of this assessment was the write-off of all goodwill remaining on our balance sheet, resulting in an impairment charge of $455.7 million in the second quarter of fiscal 2009.

Other items

The table below (in thousands, except percentage data) sets forth the changes in other items for the periods indicated:

	Fiscal Year				Increase	
	2008	*%	2009	%*	(decrease)	%**
Interest and other income, net	$36,762	4.1	$ 9,487	1.5	$(27,275)	(74.2)
Interest expense	$12,927	1.4	$ 7,406	1.1	$ (5,521)	(42.7)
Realized loss due to impairment of marketable debt investments	$ 5,101	0.6	$ —	0.0	$ (5,101)	(100.0)
Loss on cost method investments	$ —	0.0	$ 5,328	0.8	$ 5,328	100.0
Gain on extinguishment of debt	$ 932	0.1	$ —	0.0	$ (932)	(100.0)
Provision (benefit) for income taxes	$ 2,645	0.3	$(1,324)	(0.2)	$ (3,969)	(150.1)

* Denotes % of total revenue

** Denotes % change from 2008 to 2009

- **Interest and other income, net** decreased due to lower average cash and investment balances and lower interest rates. Lower cash balances primarily relate to the repayment at maturity of the $542.3 million principal outstanding on our 3.75% convertible notes during the first quarter of fiscal 2008 and our use of $210.0 million in cash consideration and related expenses associated with our acquisition of WWP in the second quarter of fiscal 2008.
- **Interest expense** decreased primarily due to the repayment of 3.75% convertible notes at maturity at the end of the first quarter of fiscal 2008.
- **Realized loss due to impairment of marketable debt investments** for fiscal 2008 reflects a loss related to commercial paper investments in SIV Portfolio plc (formerly known as Cheyne Finance plc) and Rhinebridge LLC, two structured investment vehicles (SIVs) that entered into receivership during the fourth quarter of fiscal 2007 and failed to make payment at maturity. These SIVs completed their restructuring activities during fiscal 2008 and, as of the end of the fiscal year, we no longer held these investments.
- **Loss on cost method investments** during fiscal 2009 was due to the decline in value of our investments in two privately held technology companies that were determined to be other-than-temporary.
- **Gain on extinguishment of debt** reflects our repurchase of $2.0 million in principal amount of our outstanding 0.25% convertible senior notes due May 1, 2013 in an open market transaction. We used $1.0 million of our cash to effect this repurchase, which resulted in a gain of approximately $0.9 million.
- **Provision for income taxes** decreased primarily due to refundable federal tax credits made available by recent economic stimulus tax law changes. Availability of refundable credits currently expires on December 31, 2009. We will continue to maintain a valuation allowance against nearly all net deferred tax assets until sufficient evidence exists to support a reversal. See “Critical Accounting Policies and Estimates — Deferred Tax Valuation Allowance” below for information relating to our deferred tax valuation allowance and the conditions required for its release.

Fiscal 2007 compared to Fiscal 2008

Revenue, cost of goods sold and gross profit

The table below (in thousands, except percentage data) sets forth the changes in revenue, cost of goods sold and gross profit for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2007	%*	2008	%*		%**
Revenue:						
Products	$ 695,289	89.2	$ 791,415	87.7	$ 96,126	13.8
Services	84,480	10.8	111,033	12.3	26,553	31.4
Total revenue	779,769	100.0	902,448	100.0	122,679	15.7
Costs:						
Products	337,866	43.3	371,238	41.1	33,372	9.9
Services	79,634	10.2	80,283	8.9	649	0.8
Total cost of goods sold	417,500	53.5	451,521	50.0	34,021	8.1
Gross profit	$ 362,269	46.5	$ 450,927	50.0	$ 88,658	24.5

* Denotes % of total revenue

** Denotes % change from 2007 to 2008

The table below (in thousands, except percentage data) sets forth the changes in product revenue, product cost of goods sold and product gross profit for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2007	%*	2008	%*		%**
Product revenue	$ 695,289	100.0	$ 791,415	100.0	$ 96,126	13.8
Product cost of goods sold	337,866	48.6	371,238	46.9	33,372	9.9
Product gross profit	$ 357,423	51.4	$ 420,177	53.1	$ 62,754	17.6

* Denotes % of product revenue

** Denotes % change from 2007 to 2008

The table below (in thousands, except percentage data) sets forth the changes in service revenue, service cost of goods sold and service gross profit (loss) for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2007	%*	2008	%*		%**
Service revenue	$ 84,480	100.0	$ 111,033	100.0	$ 26,553	31.4
Service cost of goods sold	79,634	94.3	80,283	72.3	649	0.8
Service gross profit	$ 4,846	5.7	$ 30,750	27.7	$ 25,904	534.5

* Denotes % of service revenue

** Denotes % change from 2007 to 2008

The table below (in thousands, except percentage data) sets forth the changes in distribution of revenue for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2007	%*	2008	%*		%**
Optical service delivery	$ 645,159	82.8	$ 731,260	81.0	$ 86,101	13.3
Carrier Ethernet service delivery	50,129	6.4	60,155	6.7	10,026	20.0
Global network services	84,481	10.8	111,033	12.3	26,552	31.4
Total	$ 779,769	100.0	$ 902,448	100.0	$ 122,679	15.7

* Denotes % of total revenue

** Denotes % change from 2007 to 2008

Revenue from sales to customers outside of the United States is reflected as International in the geographic distribution of revenue below. The table below (in thousands, except percentage data) sets forth the changes in geographic distribution of revenue for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2007	%*	2008	%*		%**
United States	$ 553,582	71.0	$ 590,868	65.5	$ 37,286	6.7
International	226,187	29.0	311,580	34.5	85,393	37.8
Total	$ 779,769	100.0	$ 902,448	100.0	$ 122,679	15.7

* Denotes % of total revenue

** Denotes % change from 2007 to 2008

Certain customers each accounted for at least 10% of our revenue for the periods indicated (in thousands, except percentage data) as follows:

	Fiscal Year			
	2007	%*	2008	%*
AT&T	$ 196,924	25.3	$ 227,737	25.2
BT	n/a	—	113,981	12.6
Sprint	100,122	12.8	n/a	—
Total	$ 297,046	38.1	$ 341,718	37.8

n/a Denotes revenue representing less than 10% of total revenue for the period

* Denotes % of total revenue

Revenue

- **Product revenue** increased primarily due to an $86.1 million increase in sales of our optical service delivery products. Increased optical service delivery revenue reflects increases of $67.9 million in sales of CN 4200 and $52.6 million in sales of core switching products. These increases were offset by decreases of $17.7 million in sales of core transport products and $16.7 million in sales of legacy data networking and metro transport products. We believe that our optical service delivery revenue during fiscal 2008 benefited from increasing network capacity requirements and customer transition to more efficient and economical network architectures. In particular, sales of our core switching products benefited from an expansion in mesh-style optical networks. Revenue from our carrier Ethernet service delivery products increased by $10.0 million, reflecting the addition of $24.4 million in sales related to service delivery and aggregation switches from our acquisition of WWP. This increase offset a $14.6 million reduction in revenue from our broadband access products.
- **Services revenue** increased primarily due to a $15.1 million increase in deployment services and a $9.7 million increase in maintenance and support services, reflecting higher sales volume and increased installation activity.
- **United States revenue** increased primarily due to a $15.0 million increase in sales of optical service delivery products. Increased optical service delivery revenue reflects a $38.8 million increase in sales of CN 4200 and a $22.5 million increase in sales of core switching products. These increases were partially offset by a $23.6 million decrease in sales of core transport products and a $22.7 million decrease in sales of legacy data networking and metro transport products. Revenue from carrier Ethernet service delivery products increased by $5.2 million, reflecting the addition of $19.5 million in sales of products derived from our WWP acquisition. This increase offset a $14.6 million reduction in revenue from our broadband access products. In addition, U.S. revenue benefited from a $17.0 million increase in services revenue.

- **International revenue** increased primarily due to a $71.1 million increase in sales of our optical service delivery products. This primarily reflects increases of $30.1 million in sales of core switching products, $29.1 million in sales of CN 4200 and $5.9 million in sales of core transport products. International revenue also benefited from a $4.8 million increase in carrier Ethernet service delivery revenue and a $9.6 million increase in services revenue.

Gross profit

- **Gross profit as a percentage of revenue** increased due to significant improvements in services gross margin, product cost reductions and favorable product mix.
- **Gross profit on products as a percentage of product revenue** increased primarily due to significant product cost reductions and improved manufacturing efficiencies as a result of consolidation efforts relating to our supply chain and our increased use of lower cost contract manufacturers and suppliers in Asia. Improved gross margin also benefited from a favorable product mix. This improvement was partially offset by the effect on product costs of goods sold of $5.3 million in costs related to the revaluation of the acquired WWP inventory.
- **Gross profit on services as a percentage of services revenue** increased significantly due to improved deployment efficiencies.

Operating expense

The table below (in thousands, except percentage data) sets forth the changes in operating expense for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2007	%*	2008	%*		%**
Research and development	$ 127,296	16.3	$ 175,023	19.4	$ 47,727	37.5
Selling and marketing	118,015	15.1	152,018	16.8	34,003	28.8
General and administrative	50,248	6.4	68,639	7.6	18,391	36.6
Amortization of intangible assets	25,350	3.3	32,264	3.6	6,914	27.3
Restructuring (recoveries) costs	(2,435)	(0.3)	1,110	0.1	3,545	(145.6)
Gain on lease settlement	(4,871)	(0.6)	—	—	4,871	(100.0)
Total operating expenses	$ 313,603	40.2	$ 429,054	47.5	$ 115,451	36.8

* Denotes % of total revenue

** Denotes % change from 2007 to 2008

- **Research and development** expense increased due to higher employee compensation cost of $29.5 million, including a $3.6 million increase in share-based compensation expense, primarily reflecting increased headcount. Other increases included $7.3 million in consulting expense, $7.0 million in non-capitalized development tools and software maintenance support, and $2.4 million in depreciation expense.
- **Selling and marketing** expense increased primarily due a $19.4 million increase in employee compensation cost, including a $4.1 million increase in share-based compensation expense, primarily reflecting increased headcount. Other increases included $3.1 million in travel and entertainment expense, $2.5 million of demonstration equipment, $2.1 million in marketing programs, $2.1 million in facilities and information systems expense and $1.7 million in consulting expense.
- **General and administrative** expense increased due to higher employee compensation cost of $7.6 million, including a $2.1 million increase in share-based compensation expense, primarily reflecting increased headcount. In addition, legal expense increased by $5.8 million, reflecting increased patent litigation settlement costs. Fiscal 2008 expense also reflects a $3.3 million increase in facilities and information systems expense.

- **Amortization of intangible assets** costs increased due to the purchase of intangible assets associated with our acquisition of WWP. See Note 2 to the Consolidated Financial Statements in Item 8 of Part II of this report for additional information related to purchased intangible assets.
- **Restructuring (recoveries) costs** for fiscal 2008 principally reflect costs associated with a workforce reduction of 56 employees during the fourth quarter. For fiscal 2007, recoveries primarily reflect adjustments related to the return to use of previously restructured facilities.
- **Gain on lease settlement** for fiscal 2007 was related to the termination of lease obligations for our former San Jose, CA facilities. During fiscal 2007, we paid $53.0 million in connection with the settlement of these lease obligations. This transaction resulted in a gain on lease settlement of approximately $4.9 million by eliminating the remaining unfavorable lease commitment balance of $34.9 million and reducing our restructuring liabilities by $23.5 million, offset by approximately $0.5 million of other expenses.

Other items

The table below (in thousands, except percentage data) sets forth the changes in other items for the periods indicated:

	Fiscal Year				Increase (decrease)	
	2007	%*	2008	%*		%**
Interest and other income, net	$76,483	9.8	$36,762	4.1	$(39,721)	(51.9)
Interest expense	$26,996	3.5	$12,927	1.4	$(14,069)	(52.1)
Realized loss due to impairment of marketable debt investments	$13,013	1.7	$ 5,101	0.6	$ (7,912)	(60.8)
Gain on extinguishment of debt	$ —	—	$ 932	0.1	$ 932	100.0
Gain on equity investments, net	$ 592	0.1	$ —	—	$ (592)	(100.0)
Provision for income taxes	$ 2,944	0.4	$ 2,645	0.3	$ (299)	(10.2)

* Denotes % of total revenue

** Denotes % change from 2007 to 2008

- **Interest and other income, net** decreased due to lower average cash and investment balances resulting from the repayment at maturity of the $542.3 million principal outstanding on our 3.75% convertible notes during the first quarter of fiscal 2008 and use of $210.0 million in cash consideration and acquisition-related expenses associated with our acquisition of WWP in the second quarter of fiscal 2008. Interest income was also significantly affected by lower interest rates on investment balances.
- **Interest expense** decreased primarily due to the repayment of 3.75% convertible notes at maturity at the end of the first quarter of fiscal 2008. This decrease was slightly offset by the interest associated with our June 11, 2007 issuance of $500.0 million in 0.875% convertible senior notes.
- **Realized loss due to impairment of marketable debt investments** reflects losses related to commercial paper investments in SIV Portfolio plc (formerly known as Cheyne Finance plc) and Rhinebridge LLC, two structured investment vehicles (SIVs) that entered into receivership during the fourth quarter of fiscal 2007 and failed to make payment at maturity.
- **Gain on extinguishment of debt** reflects our repurchase of $2.0 million in principal amount of our outstanding 0.25% convertible senior notes due May 1, 2013 in an open market transaction. We used $1.0 million of our cash to effect this repurchase, which resulted in a gain of approximately $0.9 million.
- **Gain on equity investments, net** during fiscal 2007 was related to a final payment from the sale of a privately held technology company in which we held a minority equity investment.
- **Provision for income taxes** was primarily attributable to foreign tax related to our foreign operations and recognition of domestic deferred tax assets from prior acquisitions. Federal tax is largely offset, except for any alternative minimum tax, by recognizing deferred tax assets that were previously reserved against by a valuation allowance.

Liquidity and Capital Resources

At October 31, 2009, our principal sources of liquidity were cash and cash equivalents, and short-term investments. During the second quarter of fiscal 2009, we reallocated our previous short and long-term investments principally into U.S. treasuries. As a result, at October 31, 2009, short-term and long term investments principally represent U.S. treasuries. The following table summarizes our cash and cash equivalents and investments (in thousands):

	October 31,		Increase (decrease)
	2008	2009	
Cash and cash equivalents	$ 550,669	$ 485,705	$ (64,964)
Short-term investments in marketable debt securities	366,336	563,183	196,847
Long-term investments in marketable debt securities	156,171	8,031	(148,140)
Total cash and cash equivalents and investments in marketable debt securities	$ 1,073,176	$ 1,056,919	$ (16,257)

The decrease in total cash and cash equivalents and investments in marketable debt securities during fiscal 2009 was primarily related to the purchase of capital assets, slightly offset by cash generated from operating activities described in "Operating Activities" below. Based on past performance and current expectations, we believe that our cash and cash equivalents, investments in marketable debt securities and cash generated from operations will satisfy our working capital needs, capital expenditures, payment of the cash consideration for our pending acquisition of Nortel's MEN assets, acquisition-related costs, integration costs, and other liquidity requirements associated with our existing operations through at least the next 12 months.

The following sections review the significant activities that had an impact on our cash during fiscal 2009.

Operating Activities

The following tables set forth (in thousands) components of our $7.4 million of cash generated by operating activities for fiscal 2009:

Net loss

	Year ended October 31, 2009
Net loss	$ (581,154)

Our net loss for fiscal 2009 included the significant non-cash items summarized in the following table (in thousands):

	Year Ended October 31, 2009
Depreciation of equipment, furniture and fixtures, and amortization of leasehold improvements	$ 21,933
Goodwill impairment	455,673
Share-based compensation costs	34,438
Amortization of intangible assets	31,429
Provision for inventory excess and obsolescence	15,719
Provision for warranty	19,286
Total significant non-cash charges	$ 578,478

Accounts Receivable, Net

Cash generated by accounts receivable, net of allowance for doubtful accounts receivable, was $20.1 million from the end of fiscal 2008 through the end of fiscal 2009. Our days sales outstanding (DSOs) increased from 55 days for fiscal 2008 to 65 days for fiscal 2009.

The following table sets forth (in thousands) changes to our accounts receivable, net of allowance for doubtful accounts receivable, from the end of fiscal 2008 through the end of fiscal 2009:

	October 31,		Increase
	2008	2009	(decrease)
Accounts receivable, net	$ 138,441	$ 118,251	$ (20,190)

Inventory

Cash consumed by inventory for fiscal 2009 was $10.4 million. Our inventory turns decreased from 4.0 for fiscal 2008 to 3.4 for fiscal 2009.

During fiscal 2009, changes in inventory reflect a $15.7 million reduction related to a non-cash provision for excess and obsolescence.

The following table sets forth (in thousands) changes to the components of our inventory from the end of fiscal 2008 through the end of fiscal 2009:

	October 31,		Increase
	2008	2009	(decrease)
Raw materials	$ 19,044	$ 19,694	$ 650
Work-in-process	1,702	1,480	(222)
Finished goods	95,963	90,914	(5,049)
Gross inventory	116,709	112,088	(4,621)
Provision for inventory excess and obsolescence	(23,257)	(24,002)	(745)
Inventory	$ 93,452	$ 88,086	$ (5,366)

Accounts payable, accruals and other obligations

Cash generated by accounts payable, accruals and other obligations during fiscal 2009 was $2.9 million. Between 2008 and 2009, the change in unpaid equipment purchases was $0.8 million. Changes in accrued liabilities in the table below reflect non-cash provisions of $19.3 million related to warranties.

The following table sets forth (in thousands) changes in our accounts payable, accruals and other obligations from the end of fiscal 2008 through the end of fiscal 2009:

	October 31,		Increase
	2008	2009	(decrease)
Accounts payable	$ 44,761	$ 53,104	$ 8,343
Accrued liabilities	96,143	103,349	7,206
Restructuring liabilities	4,225	9,605	5,380
Other long-term obligations	8,089	8,554	465
Accounts payable and accruals	$ 153,218	$ 174,612	$ 21,394

Interest Payable on Convertible Notes

We paid the final $10.2 million interest payment on our 3.75% convertible notes, due February 1, 2008, during fiscal 2008.

Interest on our outstanding 0.25% convertible senior notes, due May 1, 2013, is payable on May 1 and November 1 of each year. We paid $0.4 million in interest on our 0.25% convertible notes during fiscal 2009.

Interest on our outstanding 0.875% convertible senior notes, due June 15, 2017, is payable on June 15 and December 15 of each year. We paid $4.3 million in interest on our 0.875% convertible notes during fiscal 2009.

The indentures governing our outstanding convertible notes do not contain any financial covenants. The indentures provide for customary events of default, including payment defaults, breaches of covenants, failure to pay certain judgments and certain events of bankruptcy, insolvency and reorganization. If an event of default occurs and is continuing, the principal amount of the notes, plus accrued and unpaid interest, if any, may be declared immediately due and payable. These amounts automatically become due and payable if an event of default relating to certain events of bankruptcy, insolvency or reorganization occurs. For additional information about our convertible notes, see Note 14 to our Consolidated Financial Statements included in Item 8 of Part II of this report.

The following table reflects (in thousands) the balance of interest payable and the change in this balance from the end of fiscal 2008 through the end of fiscal 2009.

	October 31,		Increase
	2008	2009	(decrease)
Accrued interest payable	$ 1,683	$ 2,045	$ 362

Deferred revenue

Deferred revenue increased by $1.5 million during fiscal 2009. Product deferred revenue represents payments received in advance of shipment and payments received in advance of our ability to recognize revenue. Services deferred revenue is related to payment for service contracts that will be recognized over the contract term. The following table reflects (in thousands) the balance of deferred revenue and the change in this balance from the end of fiscal 2008 through the end of fiscal 2009:

	October 31,		Increase
	2008	2009	(decrease)
Products	$ 13,061	$ 11,998	$ (1,063)
Services	61,366	63,935	2,569
Total deferred revenue	$ 74,427	$ 75,933	$ 1,506

Investing Activities

During fiscal 2009, we had purchases, net of sales and maturities, of approximately $46.0 million of available for sale securities. Investing activities also included the purchase of approximately $24.1 million in equipment. At the end of fiscal 2009, we had outstanding accounts payable for equipment of $1.5 million, which represents a reduction of $0.8 million from the end of fiscal 2008.

Contractual Obligations

On November 23, 2009 we announced that we had been selected as the successful bidder in the auction of substantially all of the optical networking and carrier Ethernet assets of Nortel's MEN business. In accordance with the definitive purchase agreements, as amended, we have agreed to pay $530 million in cash and issue $239 million in aggregate principal amount of 6% Senior Convertible notes due in 2017 for a total consideration of $769 million for the assets. See Note 22 to our Consolidated Financial Statements in Item 8 of Part II of this report for more information regarding the pending acquisition of substantially all of the optical networking and carrier Ethernet assets of Nortel's MEN business and the terms of the notes.

The following is a summary of our future minimum payments under contractual obligations as of October 31, 2009 (in thousands):

	Total	Less than one year	One to three years	Three to five years	Thereafter
Interest due on convertible notes	$ 37,980	$ 5,120	$ 10,240	$ 9,495	$ 13,125
Principal due at maturity on convertible notes	798,000	—	—	298,000	500,000
Operating leases (1)	62,199	14,449	22,915	14,925	9,910
Purchase obligations (2)	79,631	79,631	—	—	—
Total (3)	$ 977,810	$ 99,200	$ 33,155	$ 322,420	$ 523,035

(1) The amount for operating leases above does not include insurance, taxes, maintenance and other costs required by the applicable operating lease. These costs are variable and are not expected to have a material impact.

(2) Purchase obligations relate to purchase order commitments to our contract manufacturers and component suppliers for inventory. In certain instances, we are permitted to cancel, reschedule or adjust these orders. Consequently, only a portion of the amount reported above relates to firm, non-cancelable and unconditional obligations.

(3) As of October 31, 2009, we had approximately $6.1 million of other long-term obligations in our consolidated balance sheet for unrecognized tax positions that are not included in this table because the periods of cash settlement with the respective tax authority cannot be reasonably estimated.

Some of our commercial commitments, including some of the future minimum payments set forth above, are secured by standby letters of credit. The following is a summary of our commercial commitments secured by standby letters of credit by commitment expiration date as of October 31, 2009 (in thousands):

	Total	Less than one year	One to three years	Three to five years	Thereafter
Standby letters of credit	$ 24,762	$ 22,600	$ 1,458	$ 704	$ —

Off-Balance Sheet Arrangements

We do not engage in any off-balance sheet financing arrangements. In particular, we do not have any equity interests in so-called limited purpose entities, which include special purpose entities (SPEs) and structured finance entities.

Critical Accounting Policies and Estimates

The preparation of our consolidated financial statements requires that we make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expense, and related disclosure of contingent assets and liabilities. By their nature, these estimates and judgments are subject to an inherent degree of uncertainty. On an ongoing basis, we reevaluate our estimates, including those related to bad debts, inventories, investments, intangible assets, goodwill, income taxes, warranty obligations, restructuring, and contingencies and litigation. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Among other things, these estimates form the basis for judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions. To the extent that there are material differences between our estimates and actual results, our consolidated financial statements will be affected.

We believe that the following critical accounting policies reflect those areas where significant judgments and estimates are used in the preparation of our consolidated financial statements.

Revenue Recognition

We recognize revenue when it is realized or realizable and earned. We consider revenue to be realized or realizable and earned when all of the following criteria are met: persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the price to the buyer is fixed or determinable; and collectibility is reasonably assured. Customer purchase agreements and customer purchase orders are generally used to determine the existence of an arrangement. Shipping documents and customer acceptance, when applicable, are used to verify delivery. We assess whether the price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund or adjustment. We assess collectibility based primarily on the creditworthiness of the customer as determined by credit checks and analysis, as well as the customer's payment history. In instances where final acceptance of the product, system, or solution is specified by the customer, revenue is deferred until all acceptance criteria have been met. Revenue for maintenance services is generally deferred and recognized ratably over the period during which the services are to be performed.

Some of our communications networking equipment is integrated with software that is essential to the functionality of the equipment. Software revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable, and collectibility is probable. In instances where final acceptance of the product is specified by the customer, revenue is deferred until all acceptance criteria have been met.

Arrangements with customers may include multiple deliverables, including any combination of equipment, services and software. If multiple element arrangements include software or software-related elements that are essential to the equipment, we allocate the arrangement fee to those separate units of accounting. Multiple element arrangements that include software are separated into more than one unit of accounting if the functionality of the delivered element(s) is not dependent on the undelivered element(s), there is vendor-specific objective evidence of the fair value of the undelivered element(s), and general revenue recognition criteria related to the delivered element(s) have been met. The amount of product and services revenue recognized is affected by our judgments as to whether an arrangement includes multiple elements and, if so, whether vendor-specific objective evidence of fair value exists. Changes to the elements in an arrangement and our ability to establish vendor-specific objective evidence for those elements could affect the timing of revenue recognition. For all other deliverables, we separate the elements into more than one unit of accounting if the delivered element(s) have value to the customer on a stand-alone basis, objective and reliable evidence of fair value exists for the undelivered element(s), and delivery of the undelivered element(s) is probable and substantially within our control. Revenue is allocated to each unit of

accounting based on the relative fair value of each accounting unit or using the residual method if objective evidence of fair value does not exist for the delivered element(s). The revenue recognition criteria described above are applied to each separate unit of accounting. If these criteria are not met, revenue is deferred until the criteria are met or the last element has been delivered.

Our total deferred revenue for products was $13.0 million and $12.0 million as of October 31, 2008 and October 31, 2009, respectively. Our services revenue is deferred and recognized ratably over the period during which the services are to be performed. Our total deferred revenue for services was $61.4 million and $63.9 million as of October 31, 2008 and October 31, 2009, respectively.

Share-Based Compensation

We measure and recognize compensation expense for share-based awards based on estimated fair values on the date of grant. We estimate the fair value of each option-based award on the date of grant using the Black-Scholes option-pricing model. This option pricing model requires that we make several estimates, including the option's expected life and the price volatility of the underlying stock. The expected life of employee stock options represents the weighted-average period the stock options are expected to remain outstanding. Because we considered our options to be "plain vanilla," we calculated the expected term using the simplified method for fiscal 2007. Options are considered to be "plain vanilla" if they have the following basic characteristics: they are granted "at-the-money;" exercisability is conditioned upon service through the vesting date; termination of service prior to vesting results in forfeiture; there is a limited exercise period following termination of service; and the options are non-transferable and non-hedgeable. Beginning in fiscal 2008 we gathered more detailed historical information about specific exercise behavior of our grantees, which we used to determine expected term. We considered the implied volatility and historical volatility of our stock price in determining our expected volatility, and, finding both to be equally reliable, determined that a combination of both measures would result in the best estimate of expected volatility. We recognize the estimated fair value of option-based awards, net of estimated forfeitures, as share-based compensation expense on a straight-line basis over the requisite service period.

We estimate the fair value of our restricted stock unit awards based on the fair value of our common stock on the date of grant. Our outstanding restricted stock unit awards are subject to service-based vesting conditions and/or performance-based vesting conditions. We recognize the estimated fair value of service-based awards, net of estimated forfeitures, as share-based expense ratably over the vesting period on a straight-line basis. Awards with performance-based vesting conditions require the achievement of certain financial or other performance criteria or targets as a condition to the vesting, or acceleration of vesting. We recognize the estimated fair value of performance-based awards, net of estimated forfeitures, as share-based expense over the performance period, using graded vesting, which considers each performance period or tranche separately, based upon our determination of whether it is probable that the performance targets will be achieved. At each reporting period, we reassess the probability of achieving the performance targets and the performance period required to meet those targets. Determining whether the performance targets will be achieved involves judgment, and the estimate of expense may be revised periodically based on changes in the probability of achieving the performance targets. Revisions are reflected in the period in which the estimate is changed. If any performance goals are not met, no compensation cost is ultimately recognized against that goal, and, to the extent previously recognized, compensation cost is reversed.

Because share-based compensation expense is based on awards that are ultimately expected to vest, the amount of expense takes into account estimated forfeitures. We estimate forfeitures at the time of grant and revise, if necessary, in subsequent periods if actual forfeitures differ from those estimates. Changes in these estimates and assumptions can materially affect the measure of estimated fair value of our share-based compensation. See Note 18 to our Consolidated Financial Statements in Item 8 of Part II of this report for information regarding our assumptions related to share-based compensation and the amount of share-based compensation expense we incurred for the periods covered in this report. As of October 31, 2009, total unrecognized compensation expense was: (i) $11.9 million, which relates to unvested stock options and is expected to be recognized over a weighted-average period of 1.0 year; and (ii) $42.1 million, which relates to unvested restricted stock units and is expected to be recognized over a weighted-average period of 1.2 years.

We recognize windfall tax benefits associated with the exercise of stock options or release of restricted stock units directly to stockholders' equity only when realized. A windfall tax benefit occurs when the actual tax benefit realized by us upon an employee's disposition of a share-based award exceeds the deferred tax asset, if any, associated with the award that we had recorded. When assessing whether a tax benefit relating to share-based compensation has been realized, we follow the tax law "with-and-without" method. Under the with-and-without method, the windfall is considered realized and recognized for financial statement purposes only when an incremental benefit is provided after considering all other tax benefits including our net operating losses. The with-and-without method results in the windfall from share-based compensation awards always being effectively the last tax benefit to be considered. Consequently, the windfall attributable to share-based compensation will not be considered realized in instances where our net operating loss carryover (that is unrelated to windfalls) is sufficient to offset the current year's taxable income before considering the effects of current-year windfalls.

Reserve for Inventory Obsolescence

We make estimates about future customer demand for our products when establishing the appropriate reserve for excess and obsolete inventory. We write down inventory that has become obsolete or unmarketable by an amount equal to the difference between the cost of inventory and the estimated market value based on assumptions about future demand and market conditions. Inventory write downs are a component of our product cost of goods sold. Upon recognition of the write down, 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. We recorded charges for excess and obsolete inventory of $18.3 million and $15.7 million in fiscal 2008 and 2009, respectively. These charges were primarily related to excess inventory due to a change in forecasted product sales. In an effort to limit our exposure to delivery delays and to satisfy customer needs we purchase inventory based on forecasted sales across our product lines. In addition, part of our research and development strategy is to promote the convergence of similar features and functionalities across our product lines. Each of these practices exposes us to the risk that our customers will not order products for which we have forecasted sales, or will purchase less than we have forecasted. Historically, we have experienced write downs due to changes in strategic direction, discontinuance of a product and declines in market conditions. If actual market conditions worsen or differ from those we have assumed, if there is a sudden and significant decrease in demand for our products, or if there is a higher incidence of inventory obsolescence due to a rapid change in technology, we may be required to take additional inventory write-downs, and our gross margin could be adversely affected. Our inventory net of allowance for excess and obsolete was $93.5 million and $88.1 as of October 31, 2008 and October 31, 2009, respectively.

Restructuring

As part of our restructuring costs, we provide for the estimated cost of the net lease expense for facilities that are no longer being used. The provision is equal to the fair value of the minimum future lease payments under our contracted lease obligations, offset by the fair value of the estimated sublease payments that we may receive. As of October 31, 2009, our accrued restructuring liability related to net lease expense and other related charges was $9.4 million. The total minimum lease payments for these restructured facilities are $14.5 million. These lease payments will be made over the remaining lives of our leases, which range from sixteen months to ten years. If actual market conditions are different than those we have projected, we will be required to recognize additional restructuring costs or benefits associated with these facilities.

Allowance for Doubtful Accounts

Our allowance for doubtful accounts receivable is based on management’s assessment, on a specific identification basis, of the collectibility of customer accounts. We perform ongoing credit evaluations of our customers and generally have not required collateral or other forms of security from customers. In determining the appropriate balance for our allowance for doubtful accounts receivable, management considers each individual customer account receivable in order to determine collectibility. In doing so, we consider creditworthiness, payment history, account activity and communication with such customer. If a customer’s financial condition changes, or if actual defaults are higher than our historical experience, we may be required to take a charge for an allowance for doubtful accounts receivable which could have an adverse impact on our results of operations. Our accounts receivable net of allowance for doubtful accounts was $138.4 million and $118.3 as of October 31, 2008 and October 31, 2009, respectively. Our allowance for doubtful accounts as of October 31, 2008 and October 31, 2009 was $0.1 million.

Goodwill

As discussed in “Overview” above, during the second quarter of fiscal 2009, we conducted an interim impairment assessment that resulted in the write-off of all goodwill remaining on our balance sheet. As a result, as of October 31, 2008 and October 31, 2009, our consolidated balance sheet included $455.7 million and $0 in goodwill, respectively.

Goodwill represents the excess purchase price over amounts assigned to tangible or identifiable intangible assets acquired and liabilities assumed from our acquisitions. We test goodwill for impairment on an annual basis, which we have determined to be the last business day of fiscal September each year. We also test goodwill for impairment between annual tests if an event occurs or circumstances change that would, more likely than not, reduce the fair value of the reporting unit below its carrying value. The first step is to compare the fair value of the reporting unit with the unit’s carrying amount, including goodwill. If this test indicates that the fair value is less than the carrying value, then step two is required to compare the implied fair value of the reporting unit’s goodwill with the carrying amount of the reporting unit’s goodwill. A non-cash goodwill impairment charge would have the effect of decreasing our earnings or increasing our losses in such period. If we are required to take a substantial impairment charge, our operating results would be materially adversely affected in such period.

We determine the fair value of our single reporting unit to be equal to our market capitalization plus a control premium. Market capitalization is determined by multiplying the shares outstanding on the assessment date by the average market price of our common stock over a 10-day period before and a 10-day period after each assessment date. We use this 20-day duration to consider inherent market fluctuations that may affect any individual closing price. We believe that our market capitalization alone does not fully capture the fair value of our business as a whole, or the substantial value that an acquirer would obtain from its ability to obtain control of our business. As such, in determining fair value, we add a control premium — which seeks to give effect to the increased consideration a potential acquirer would be required to pay in order to gain sufficient ownership to set policies, direct operations and make decisions related to our company — to our market capitalization.

Interim Impairment Assessment — Fiscal 2009

Based on a combination of factors, including the macroeconomic conditions described above and a sustained decline in our common stock price and market capitalization below our net book value, we conducted an interim impairment assessment of goodwill during the second quarter of fiscal 2009. When we performed the step one fair value comparison during the second quarter of fiscal 2009, our market capitalization was $721.8 million and our carrying value, including goodwill, was $949.0 million. We applied a 25% control premium to market capitalization to determine a fair value of $902.2 million. Because step one indicated that the fair value was less than our carrying value, we performed the step two analysis. Under the step two analysis, the implied fair value of goodwill requires valuation of a reporting unit's tangible and intangible assets and liabilities in a manner similar to the allocation of purchase price in a business combination. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, goodwill is deemed impaired and is written down to the extent of the difference. The implied fair value of the reporting unit's goodwill was determined to be $0, and, as a result, we recorded a goodwill impairment of $455.7 million, representing the full carrying value of the goodwill.

Long-lived Assets (excluding goodwill)

Our long-lived assets, excluding goodwill, include: equipment, furniture and fixtures; finite-lived intangible assets; and maintenance spares. As of October 31, 2008 and 2009 these assets totaled $182.3 million and $154.7 million, net, respectively. We test long-lived assets for impairment whenever events or changes in circumstances indicate that the assets' carrying amount is not recoverable from its undiscounted cash flows. Our long-lived assets are part of a single reporting unit which represents the lowest level for which we identify cash flows.

Due to effects on our business of difficult macroeconomic conditions, during fiscal 2009 we experienced order delays, lengthening sales cycles and slowing deployments. As a result of these conditions, we performed an impairment analysis of all our long-lived assets during the second quarter of fiscal 2009. Valuation of our long-lived assets requires us to make assumptions about future sales prices and sales volumes for our products that involve new technologies and uncertainties around customer acceptance of new products. These and other assumptions are used to forecast future, undiscounted cash flows. Based on our estimate of future, undiscounted cash flows as of April 30, 2009, no impairment was required. If actual market conditions differ or our forecasts change, we may be required to record a non-cash impairment charge related to long-lived assets in future periods. Such charges would have the effect of decreasing our earnings or increasing our losses in such period.

Investments

We have an investment portfolio comprised of marketable debt securities which are comprised of U.S. government obligations. The value of these securities is subject to market volatility for the period we hold these investments and until their sale or maturity. We recognize losses when we determine that declines in the fair value of our investments, below their cost basis, are other-than-temporary. In determining whether a decline in fair value is other-than-temporary, we consider various factors including market price (when available), investment ratings, the financial condition and near-term prospects of the investee, the length of time and the extent to which the fair value has been less than our cost basis, and our intent and ability to hold the investment until maturity or for a period of time sufficient to allow for any anticipated recovery in market value. We make significant judgments in considering these factors. If we judge that a decline in fair value is other-than-temporary, the investment is valued at the current fair value, and we would incur a loss equal to the decline, which could materially adversely affect our profitability and results of operations.

As of October 31, 2009, we held a minority investment of $0.9 million in a privately held technology company that is reported in other assets. The market for technologies or products manufactured by this company is in the early stage and markets may never materialize or become significant. This investment is inherently high risk and we could lose our entire investment. We monitor this investment for impairment and make appropriate reductions in carrying value when necessary. If market conditions, the expected financial performance, or the competitive position of this company deteriorates, we may be required to record a non-cash charge in future periods due to an impairment of the value of our investment.

During fiscal 2009, we recorded losses of $5.3 million related to a decline in value, determined to be other-than temporary, associated with two of our investments in privately held technology companies. One of the privately held companies was purchased by a publicly traded entity. As a result, this investment is now recorded as a trading security.

Deferred Tax Valuation Allowance

As of October 31, 2009, we have recorded a valuation allowance offsetting nearly all our net deferred tax assets of $1.2 billion. When measuring the need for a valuation allowance, we assess both positive and negative evidence regarding the realizability of these deferred tax assets. We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. In determining net deferred tax assets and valuation allowances, management is required to make judgments and estimates related to projections of profitability, the timing and extent of the utilization of net operating loss carryforwards, applicable tax rates, transfer pricing methodologies and tax planning strategies. The valuation allowance is reviewed quarterly and is maintained until sufficient positive evidence exists to support a reversal. Because evidence such as our operating results during the most recent three-year period is afforded more weight than forecasted results for future periods, our cumulative loss during this three-year period represents sufficient negative evidence regarding the need for nearly a full valuation allowance. We will release this valuation allowance when management determines that it is more likely than not that our deferred tax assets will be realized. Any future release of valuation allowance may be recorded as a tax benefit increasing net income or as an adjustment to paid-in capital, based on tax ordering requirements.

Uncertain Tax Positions

Ciena accounts for uncertainty in income tax positions using a two-step approach. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. Significant judgment is required in evaluating our uncertain tax positions and determining our provision for income taxes. Although we believe our reserves are reasonable, no assurance can be given that the final tax outcome of these matters will not be different from that which is reflected in our historical income tax provisions and accruals. We adjust these reserves in light of changing facts and circumstances, such as the closing of a tax audit or the refinement of an estimate. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences will affect the provision for income taxes in the period in which such determination is made. As of October 31, 2009, we had $1.3 million and $6.1 million recorded as current and long-term obligations, respectively, related to uncertain tax positions. The provision for income taxes includes the effect of reserve provisions and changes to reserves that are considered appropriate, as well as the related net interest.

Warranty

Our liability for product warranties, included in other accrued liabilities, was $37.3 million and $40.2 million as of October 31, 2008 and October 31, 2009, respectively. Our products are generally covered by a warranty for periods ranging from one to five years. We accrue for warranty costs as part of our cost of goods sold based on associated material costs, technical support labor costs, and associated overhead. Material cost is estimated based primarily upon historical trends in the volume of product returns within the warranty period and the cost to repair or replace the equipment. Technical support labor cost is estimated based primarily upon historical trends and the cost to support the customer cases within the warranty period. The provision for product warranties was $15.3 million and $19.3 million for fiscal 2008 and 2009, respectively. The provision for warranty claims may fluctuate on a quarterly basis depending upon the mix of products and customers in that period. If actual product failure rates, material replacement costs, service or labor costs differ from our estimates, revisions to the estimated warranty provision would be required. An increase in warranty claims or the related costs associated with satisfying these warranty obligations could increase our cost of sales and negatively affect our gross margin.

Loss Contingencies

We are subject to the possibility of various losses arising in the ordinary course of business. These may relate to disputes, litigation and other legal actions. We consider the likelihood of loss or the incurrence of a liability, as well as our ability to reasonably estimate the amount of loss, in determining loss contingencies. A loss is accrued when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. We regularly evaluate current information available to us to determine whether any accruals should be adjusted and whether new accruals are required.

Effects of Recent Accounting Pronouncements

See Note 1 to our Consolidated Financial Statements in Item 8 of Part II of this report for information relating to our discussion of the effects of recent accounting pronouncements.

Unaudited Quarterly Results of Operations

The tables below (in thousands, except per share data) set forth the operating results represented by certain items in our consolidated statements of operations for each of the eight quarters in the period ended October 31, 2009. This information is unaudited, but in our opinion reflects all adjustments (consisting only of normal recurring adjustments) that we consider necessary for a fair statement of such information in accordance with generally accepted accounting principles. The results for any quarter are not necessarily indicative of results for any future period.

	Jan. 31, 2008	Apr. 30, 2008	Jul. 31, 2008	Oct. 31, 2008	Jan. 31, 2009	Apr. 30, 2009	Jul. 31, 2009	Oct. 31, 2009
Revenue:								
Products	$ 201,790	$ 216,181	$ 223,661	$ 149,783	$ 139,717	$ 118,849	$ 139,903	$ 149,053
Services	25,626	26,018	29,518	29,871	27,683	25,352	24,855	27,217
Total Revenue	227,416	242,199	253,179	179,654	167,400	144,201	164,758	176,270
Cost of goods sold:								
Products	91,387	96,041	107,953	75,857	76,367	65,419	72,842	81,542
Services	19,460	18,562	19,595	22,666	19,190	18,062	17,251	17,126
Total costs of goods sold	110,847	114,603	127,548	98,523	95,557	83,481	90,093	98,668
Gross profit	116,569	127,596	125,631	81,131	71,843	60,720	74,665	77,602
Operating expenses:								
Research and development	35,444	44,628	47,809	47,142	46,700	49,482	44,442	49,695
Selling and marketing	33,608	38,591	39,440	40,379	33,819	33,295	31,468	35,945
General and administrative	22,628	16,650	14,758	14,603	11,585	12,615	11,524	11,785
Amortization of intangible assets	6,470	8,760	8,671	8,363	6,404	6,224	6,224	5,974
Restructuring costs	—	—	—	1,110	76	6,399	3,941	791
Goodwill impairment	—	—	—	—	—	455,673	—	—
Total operating expenses	98,150	108,629	110,678	111,597	98,584	563,688	97,599	104,190
Income (loss) from operations	18,419	18,967	14,953	(30,466)	(26,741)	(502,968)	(22,934)	(26,588)
Interest and other income, net	19,082	8,487	5,342	3,851	4,660	3,508	999	320
Interest expense	(7,358)	(1,861)	(1,855)	(1,853)	(1,844)	(1,852)	(1,856)	(1,854)
Realized gain (loss) due to impairment of marketable debt investments	—	—	(5,114)	13	—	—	—	—
Loss on cost method investments	—	—	—	—	(565)	(2,570)	(2,193)	—
Gain on extinguishment of debt	—	—	—	932	—	—	—	—
Income (loss) before income taxes	30,143	25,593	13,326	(27,523)	(24,490)	(503,882)	(25,984)	(28,122)
Provision (benefit) for income tax	1,336	1,833	1,603	(2,127)	341	(672)	470	(1,463)
Net income (loss)	$ 28,807	$ 23,760	$ 11,723	$ (25,396)	$ (24,831)	$ (503,210)	$ (26,454)	$ (26,659)
Basic net income (loss) per common share	$ 0.33	$ 0.27	$ 0.13	$ (0.28)	$ (0.27)	$ (5.53)	$ (0.29)	$ (0.29)
Diluted net income (loss) per potential common share	$ 0.28	$ 0.23	$ 0.12	$ (0.28)	$ (0.27)	$ (5.53)	$ (0.29)	$ (0.29)
Weighted average basic common shares outstanding	86,910	89,102	90,216	90,413	90,620	90,932	91,364	91,758
Weighted average dilutive potential common shares outstanding	109,009	110,770	111,681	90,413	90,620	90,932	91,364	91,758

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

The following discussion about our market risk disclosures involves forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements. We are exposed to market risk related to changes in interest rates and foreign currency exchange rates.

Interest Rate Sensitivity. We maintain a short-term and long-term investment portfolio. See Notes 5 and 6 to the Consolidated Financial Statements in Item 8 of Part II of this report for information relating to these investments and their fair value. These available-for-sale securities are subject to interest rate risk and will fall in value if market interest rates increase. If market interest rates were to increase immediately and uniformly by 10 percentage points from current levels, the fair value of the portfolio would decline by approximately $20.5 million.

Foreign Currency Exchange Risk. As a global concern, we face exposure to adverse movements in foreign currency exchange rates. Because our sales are primarily denominated in U.S. dollars, the impact of foreign currency fluctuations on revenue has not been material. Our primary exposures to foreign currency exchange risk are related to non-U.S. dollar denominated operating expense in Canadian Dollars ("CAD"), British Pounds ("GBP"), Euros ("EUR") and Indian Rupees ("INR"). During fiscal 2009, approximately 79% of our operating expense, exclusive of our goodwill impairment and restructuring costs, was U.S. dollar denominated.

To reduce variability in non-U.S. dollar denominated operating expense, we have previously entered into foreign currency forward contracts and may do so in the future. We utilize these derivatives to partially offset our market exposure to fluctuations in certain foreign currencies. These derivatives are designated as cash flow hedges and typically have maturities of less than one year. Ciena's foreign currency forward contracts were fully matured as of October 31, 2009. The effective portion of the derivative's gain or loss was initially reported as a component of accumulated other comprehensive income (loss) and, upon occurrence of the forecasted transaction, was subsequently reclassified into the operating expense line item to which the hedged transaction related. We recorded the ineffectiveness of the hedging instruments in interest and other income, net on our consolidated statements of operations.

Favorable foreign exchange translations, net of hedging, benefited total research and development, sales and marketing, and general and administrative expenses by approximately $9.9 million for fiscal 2009 compared to fiscal 2008. This favorable foreign exchange translation was due to the relative strength of the U.S. dollar in relation to the previous year. These foreign currency forward contracts were not designed to provide foreign currency protection over the long-term. In designing a specific approach, we considered several factors, including offsetting exposures, significance of exposures, costs associated with entering into a particular instrument, and potential effectiveness. As of October 31, 2009, there were no outstanding foreign currency forward contracts.

As of October 31, 2009, our assets and liabilities related to non-dollar denominated currencies were primarily related to intercompany payables and receivables. We do not enter into foreign exchange forward or option contracts for speculative or trading purposes.

Item 8. Financial Statements and Supplementary Data

The following is an index to the consolidated financial statements:

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of Ciena Corporation

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Ciena Corporation and its subsidiaries (the "Company") at October 31, 2009 and 2008, and the results of their operations and their cash flows for each of the three years in the period ended October 31, 2009 in conformity with accounting principles generally accepted in the United States of America. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of October 31, 2009, 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, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Report of Management on Internal Control over Financial Reporting. Our responsibility is to express opinions on these financial statements 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.

As discussed in Note 1 to the consolidated financial statements, the Company changed the manner in which it accounts for uncertain tax positions in 2008.

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
Baltimore, Maryland
December 21, 2009

CIENA CORPORATION
CONSOLIDATED BALANCE SHEETS
(in thousands, except share data)

	October 31, 2008	October 31, 2009
ASSETS		
Current assets:		
Cash and cash equivalents	$ 550,669	$ 485,705
Short-term investments	366,336	563,183
Accounts receivable, net	138,441	118,251
Inventories	93,452	88,086
Prepaid expenses and other	35,888	50,537
Total current assets	1,184,786	1,305,762
Long-term investments	156,171	8,031
Equipment, furniture and fixtures, net	59,967	61,868
Goodwill	455,673	—
Other intangible assets, net	92,249	60,820
Other long-term assets	75,748	67,902
Total assets	$ 2,024,594	$ 1,504,383
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 44,761	$ 53,104
Accrued liabilities	96,143	103,349
Restructuring liabilities	1,668	1,811
Deferred revenue	36,767	40,565
Total current liabilities	179,339	198,829
Long-term deferred revenue	37,660	35,368
Long-term restructuring liabilities	2,557	7,794
Other long-term obligations	8,089	8,554
Convertible notes payable	798,000	798,000
Total liabilities	1,025,645	1,048,545
Commitments and contingencies		
Stockholders' equity:		
Preferred stock — par value $0.01; 20,000,000 shares authorized; zero shares issued and outstanding	—	—
Common stock — par value $0.01; 290,000,000 shares authorized; 90,470,803 and 92,038,360 shares issued and outstanding	905	920
Additional paid-in capital	5,629,498	5,665,028
Accumulated other comprehensive income (loss)	(1,275)	1,223
Accumulated deficit	(4,630,179)	(5,211,333)
Total stockholders' equity	998,949	455,838
Total liabilities and stockholders' equity	$ 2,024,594	$ 1,504,383

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

CIENA CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Year Ended October 31,		
	2007	2008	2009
Revenue:			
Products	$ 695,289	$ 791,415	$ 547,522
Services	84,480	111,033	105,107
Total revenue	779,769	902,448	652,629
Cost of goods sold:			
Products	337,866	371,238	296,170
Services	79,634	80,283	71,629
Total cost of goods sold	417,500	451,521	367,799
Gross profit	362,269	450,927	284,830
Operating expenses:			
Research and development	127,296	175,023	190,319
Selling and marketing	118,015	152,018	134,527
General and administrative	50,248	68,639	47,509
Amortization of intangible assets	25,350	32,264	24,826
Restructuring (recoveries) costs	(2,435)	1,110	11,207
Gain on lease settlement	(4,871)	—	—
Goodwill impairment	—	—	455,673
Total operating expenses	313,603	429,054	864,061
Income (loss) from operations	48,666	21,873	(579,231)
Interest and other income, net	76,483	36,762	9,487
Interest expense	(26,996)	(12,927)	(7,406)
Realized loss due to impairment of marketable debt investments	(13,013)	(5,101)	—
Loss on cost method investments	—	—	(5,328)
Gain on extinguishment of debt	—	932	—
Gain on equity investments, net	592	—	—
Income (loss) before income taxes	85,732	41,539	(582,478)
Provision (benefit) for income taxes	2,944	2,645	(1,324)
Net income (loss)	$ 82,788	$ 38,894	$ (581,154)
Basic net income (loss) per common share	$ 0.97	$ 0.44	$ (6.37)
Diluted net income (loss) per potential common share	$ 0.87	$ 0.42	$ (6.37)
Weighted average basic common shares outstanding	85,525	89,146	91,167
Weighted average dilutive potential common shares outstanding	99,604	110,605	91,167

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

CIENA CORPORATION
CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY
(in thousands, except share data)

	Common Stock Shares	Par Value	Additional Paid-in- Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity
Balance at October 31, 2006	84,891,656	$ 849	$ 5,505,853	$ (1,076)	$ (4,752,000)	$ 753,626
Net income	—	—	—	—	82,788	82,788
Changes in unrealized losses on investments, net	—	—	—	846	—	846
Translation adjustment	—	—	—	(1,013)	—	(1,013)
Comprehensive income	—	—	—	—	—	82,621
Exercise of stock options, net	1,847,455	19	36,816	—	—	36,835
Share-based compensation expense	—	—	19,572	—	—	19,572
Exercise of warrant	12,958	—	—	—	—	—
Purchase of call spread option	—	—	(42,500)	—	—	(42,500)
Balance at October 31, 2007	86,752,069	868	5,519,741	(1,243)	(4,669,212)	850,154
Cummulative effect of adopting FIN 48	—	—	—	—	139	139
Net income	—	—	—	—	38,894	38,894
Changes in unrealized gains on investments, net	—	—	—	(1,479)	—	(1,479)
Translation adjustment	—	—	—	1,447	—	1,447
Comprehensive income	—	—	—	—	—	38,862
Exercise of stock options, net	1,253,350	12	5,764	—	—	5,776
Tax benefit from employee stock option plans	—	—	318			318
Share-based compensation expense	—	—	31,428	—	—	31,428
Issuance of common stock for acquisitions, net of issuance costs	2,465,384	25	72,247	—	—	72,272
Balance at October 31, 2008	90,470,803	905	5,629,498	(1,275)	(4,630,179)	998,949
Net loss	—	—	—	—	(581,154)	(581,154)
Changes in unrealized gains on investments, net	—	—	—	1,404	—	1,404
Translation adjustment	—	—	—	1,094	—	1,094
Comprehensive loss	—	—	—	—	—	(578,656)
Exercise of stock options, net	1,567,557	15	1,092	—	—	1,107
Share-based compensation expense	—	—	34,438	—	—	34,438
Balance at October 31, 2009	92,038,360	$ 920	$ 5,665,028	$ 1,223	$ (5,211,333)	$ 455,838

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

CIENA CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended October 31,		
	2007	2008	2009
Cash flows from operating activities:			
Net income (loss)	$ 82,788	$ 38,894	$ (581,154)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Early extinguishment of debt	—	(932)	—
Amortization of discount on marketable debt securities	(14,191)	(2,878)	(907)
Realized loss due to impairment of marketable debt investments	13,013	5,101	—
Loss on cost method investments	—	—	5,328
Depreciation of equipment, furniture and fixtures, and amortization of leasehold improvements	12,833	18,599	21,933
Goodwill impairment	—	—	455,673
Share-based compensation costs	19,572	31,428	34,438
Amortization of intangible assets	29,220	37,956	31,429
Deferred tax provision	—	1,640	(883)
Provision for inventory excess and obsolescence	12,180	18,325	15,719
Provision for warranty	12,743	15,336	19,286
Other	2,544	5,243	2,044
Changes in assets and liabilities, net of effect of acquisition:			
Accounts receivable	3,094	(32,471)	20,097
Inventories	(8,713)	3,713	(10,353)
Prepaid expenses and other	(20,568)	1,649	(9,678)
Accounts payable, accruals and other obligations	(60,524)	(23,945)	2,943
Income taxes payable	1,787	(7,655)	—
Deferred revenue	22,964	7,616	1,506
Net cash provided by operating activities	108,742	117,619	7,421
Cash flows from investing activities:			
Payments for equipment, furniture, fixtures and intellectual property	(32,105)	(29,998)	(24,114)
Restricted cash	(13,277)	1,340	(4,116)
Purchase of available for sale securities	(864,012)	(571,511)	(1,214,218)
Proceeds from maturities of available for sale securities	989,705	901,433	645,119
Proceeds from sales of available for sale securities	—	—	523,137
Minority equity investments, net	(181)	—	—
Acquisition of business, net of cash acquired	—	(210,016)	—
Net cash provided by (used in) investing activities	80,130	91,248	(74,192)
Cash flows from financing activities:			
Proceeds from issuance of convertible notes payable	500,000	—	—
Repayment of 3.75% convertible notes payable	—	(542,262)	—
Repurchase of 0.25% convertible notes payable	—	(1,034)	—
Debt issuance costs	(11,750)	—	—
Purchase of call spread option	(42,500)	—	—
Repayment of indebtedness of acquired business	—	(12,363)	—
Excess tax benefit from employee stock option plans	—	318	—
Proceeds from issuance of common stock and warrants	36,835	5,776	1,107
Net cash provided by (used in) financing activities	482,585	(549,565)	1,107
Effect of exchange rate changes on cash and cash equivalents	440	(694)	700
Net increase (decrease) in cash and cash equivalents	671,897	(341,392)	(64,964)
Cash and cash equivalents at beginning of period	220,164	892,061	550,669
Cash and cash equivalents at end of period	$ 892,061	$ 550,669	$ 485,705
Supplemental disclosure of cash flow information			
Cash paid during the period for:			
Interest	$ 21,504	$ 15,339	$ 4,748
Income taxes, net	$ 1,157	$ 3,120	$ 584
Non-cash investing and financing activities			
Purchase of equipment in accounts payable	$ 3,062	$ 2,316	$ 1,481
Value of common stock issued in acquisition	$ —	$ 62,360	$ —
Fair value of vested options assumed in acquisition	$ —	$ 9,912	$ —

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

(1) CIENA CORPORATION AND SIGNIFICANT ACCOUNTING POLICIES AND ESTIMATES

Description of Business

Ciena is a provider of communications networking equipment, software and services that support the transport, switching, aggregation and management of voice, video and data traffic. Ciena's optical service delivery and carrier Ethernet service delivery products are used individually, or as part of an integrated solution, in communications networks operated by service providers, cable operators, governments and enterprises around the globe. Ciena is a network specialist targeting the transition of disparate, legacy communications networks to converged, next-generation architectures, better able to handle increased traffic and deliver more efficiently a broader mix of high-bandwidth communications services. Ciena's products, along with its embedded, network element software and unified service and transport management, enable service providers to efficiently and cost-effectively deliver critical enterprise and consumer-oriented communication services. Ciena's principal executive offices are located at 1201 Winterson Road, Linthicum, Maryland 21090.

Principles of Consolidation

Ciena has 13 wholly owned U.S. and international subsidiaries, which have been consolidated in the accompanying financial statements.

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

Pending Acquisition of Nortel Metro Ethernet Networks ("MEN") Assets

Ciena has entered into definitive asset purchase agreements, as amended, relating to the acquisition of substantially all of the optical networking and carrier Ethernet assets of Nortel's MEN business. In accordance with these agreements, Ciena will pay the sellers a purchase price of $530 million in cash and issue them $239 million in aggregate principal amount of 6% senior convertible notes due June 2017. Additional details regarding this pending transaction and the terms of the notes to be issued are set forth in Note 22 below.

Fiscal Year

Ciena has a 52 or 53 week fiscal year, which ends on the Saturday nearest to the last day of October in each year (November 3, 2007, November 1, 2008 and October 31, 2009 for the periods reported). For purposes of financial statement presentation, each fiscal year is described as having ended on October 31. Fiscal 2008 and fiscal 2009 consisted of 52 weeks and fiscal 2007 consisted of 53 weeks.

Use of Estimates

The preparation of the financial statements and related disclosures in conformity with accounting principles generally accepted in the United States requires management to make estimates and judgments that affect the amounts reported in the consolidated financial statements and accompanying notes. Estimates are used for bad debts, valuation of inventories and investments, recoverability of intangible assets, other long-lived assets and goodwill, income taxes, warranty obligations, restructuring liabilities and contingencies and litigation. Ciena bases its estimates on historical experience and assumptions that it believes are reasonable. Actual results may differ materially from management's estimates.

Cash and Cash Equivalents

Ciena considers all highly liquid investments purchased with original maturities of three months or less to be cash equivalents. Restricted cash collateralizing letters of credits are included in other current assets and other long-term assets depending upon the duration of the restriction.

Investments

Ciena's investments are principally in marketable debt securities that are classified as available-for-sale and are reported at fair value, with unrealized gains and losses recorded in accumulated other comprehensive income. Realized gains or losses and declines in value on available-for-sale securities determined to be other-than-temporary are reported in other income or expensed as incurred. Ciena considers all marketable debt securities that it expects to convert to cash within one year or less to be classified as short-term investments. All others are considered long-term investments.

Inventories

Inventories are stated at the lower of cost or market, with cost computed using standard cost, which approximates actual cost on a first-in, first-out basis. Ciena records a provision for excess and obsolete inventory when an impairment has been identified.

Equipment, Furniture and Fixtures

Equipment, furniture and fixtures are recorded at cost. Depreciation and amortization are computed using the straight-line method over useful lives of two years to five years for equipment, furniture and fixtures and the shorter of useful life or lease term for leasehold improvements. Upon a triggering event or changes in circumstances, a review of the fair value of our equipment, furniture and fixtures is performed and an impairment loss is recognized only if the carrying amount of the asset or asset group is determined to not be recoverable and exceeds its fair value. An impairment loss is measured as the amount by which the carrying amount of the asset or asset group exceeds its fair value.

Qualifying internal use software and website development costs incurred during the application development stage that consist primarily of outside services and purchased software license costs, are capitalized and amortized straight-line over the estimated useful life.

Goodwill and Other Intangible Assets

Ciena has recorded goodwill and intangible assets as a result of several acquisitions. Ciena tests the reporting unit's goodwill for impairment on an annual basis, which Ciena has determined to be the last business day of its fiscal September each year. Testing is required between annual tests if events occur or circumstances change that would, more likely than not, reduce the fair value of the reporting unit below its carrying value. Ciena operates its business and tests its goodwill for impairment as a single reporting unit. See Note 4 below.

Finite-lived intangible assets are carried at cost less accumulated amortization. Amortization is computed using the straight-line method over the economic lives of the respective assets, generally three to seven years, which approximates the use of intangible assets. Upon a triggering event or changes in circumstances, a review of the fair value of our finite-lived intangible assets is performed. Impairments of finite-lived intangible assets are recognized only if the carrying amount of the asset or asset group is determined to not be recoverable and exceeds its fair value. Upon a triggering event or changes in circumstances, a review of the fair value of our finite-lived intangible assets is performed and an impairment loss is measured as the amount by which the carrying amount of the asset or asset group exceeds its fair value.

Minority Equity Investments

Ciena has certain minority equity investments in privately held technology companies that are classified as other assets. These investments are carried at cost because Ciena owns less than 20% of the voting equity and does not have the ability to exercise significant influence over these companies. These investments involve a high degree of risk as the markets for the technologies or products manufactured by these companies are usually early stage at the time of Ciena's investment and such markets may never be significant. Ciena could lose its entire investment in some or all of these companies. Ciena monitors these investments for impairment and makes appropriate reductions in carrying values when necessary.

Concentrations

Substantially all of Ciena's cash and cash equivalents and short-term and long-term investments in marketable debt securities are maintained at three major U.S. financial institutions. The majority of Ciena's cash equivalents consist of money market funds. Deposits held with banks may exceed the amount of insurance provided on such deposits. Generally, these deposits may be redeemed upon demand and, therefore, management believes that they bear minimal risk.

Historically, a large percentage of Ciena's revenue has been the result of sales to a small number of communications service providers. Consolidation among Ciena's customers has further increased this concentration. Consequently, Ciena's accounts receivable are concentrated among these customers. See Notes 7 and 21 below.

Additionally, Ciena's access to certain materials or components is dependent upon sole or limited source suppliers. The inability of any supplier to fulfill Ciena's supply requirements could affect future results. Ciena relies on a small number of contract manufacturers, principally in China and Thailand, to perform the majority of the manufacturing for its products. If Ciena cannot effectively manage these manufacturers and forecast future demand, or if they fail to deliver products or components on time, Ciena's business and results of operations may suffer.

Revenue Recognition

Ciena recognizes revenue when all of the following criteria are met: persuasive evidence of an arrangement exists; delivery has occurred or services have been rendered; the price to the buyer is fixed or determinable; and collectibility is reasonably assured. Customer purchase agreements and customer purchase orders are generally used to determine the existence of an arrangement. Shipping documents and evidence of customer acceptance, when applicable, are used to verify delivery. Ciena assesses whether the price is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund or adjustment. Ciena assesses collectibility based primarily on the creditworthiness of the customer as determined by credit checks and analysis, as well as the customer's payment history. In instances where final acceptance of the product, system, or solution is specified by the customer, revenue is deferred until all acceptance criteria have been met. Revenue for maintenance services is generally deferred and recognized ratably over the period during which the services are to be performed.

Some of Ciena's communications networking equipment is integrated with software that is essential to the functionality of the equipment. Software revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable, and collectibility is probable. In instances where final acceptance of the product is specified by the customer, revenue is deferred until all acceptance criteria have been met.

Arrangements with customers may include multiple deliverables, including any combination of equipment, services and software. If multiple element arrangements include software or software-related elements that are essential to the equipment, Ciena allocates the arrangement fee to be allocated to those separate units of accounting. Multiple element arrangements that include software are separated into more than one unit of accounting if the functionality of the delivered element(s) is not dependent on the undelivered element(s), there is vendor-specific objective evidence of the fair value of the undelivered element(s), and general revenue recognition criteria related to the delivered element(s) have been met. The amount of product and services revenue recognized is affected by Ciena's judgments as to whether an arrangement includes multiple elements and, if so, whether vendor-specific objective evidence of fair value exists. Changes to the elements in an arrangement and Ciena's ability to establish vendor-specific objective evidence for those elements could affect the timing of revenue recognition. For all other deliverables, Ciena separates the elements into more than one unit of accounting if the delivered element(s) have value to the customer on a stand-alone basis, objective and reliable evidence of fair value exists for the undelivered element(s), and delivery of the undelivered element(s) is probable and substantially in Ciena's control. Revenue is allocated to each unit of accounting based on the relative fair value of each accounting unit or using the residual method if objective evidence of fair value does not exist for the delivered element(s). The revenue recognition criteria described above are applied to each separate unit of accounting. If these criteria are not met, revenue is deferred until the criteria are met or the last element has been delivered.

Warranty Accruals

Ciena provides for the estimated costs to fulfill customer warranty obligations upon the recognition of the related revenue. Estimated warranty costs include material costs, technical support labor costs and associated overhead. The warranty liability is included in cost of goods sold and determined based upon actual warranty cost experience, estimates of failure rates and management's industry experience. Ciena's sales contracts do not permit the right of return of product by the customer after the product has been accepted.

Accounts Receivable, Net

Ciena's allowance for doubtful accounts receivable is based on its assessment, on a specific identification basis, of the collectibility of customer accounts. Ciena performs ongoing credit evaluations of its customers and generally has not required collateral or other forms of security from its customers. In determining the appropriate balance for Ciena's allowance for doubtful accounts receivable, management considers each individual customer account receivable in order to determine collectibility. In doing so, management considers creditworthiness, payment history, account activity and communication with such customer. If a customer's financial condition changes, Ciena may be required to take a charge for an allowance for doubtful accounts receivable.

Research and Development

Ciena charges all research and development costs to expense as incurred. Research and development expense includes costs related to employee compensation, prototypes, consulting, depreciation, facilities and information technologies.

Advertising Costs

Ciena expenses all advertising costs as incurred.

Legal Costs

Ciena expenses legal costs associated with litigation defense as incurred.

Share-Based Compensation Expense

Ciena measures and recognizes compensation expense for share-based awards based on estimated fair values on the date of grant. Ciena estimates the fair value of each option-based award on the date of grant using the Black-Scholes option-pricing model. This model is affected by Ciena's stock price as well as estimates regarding a number of variables including expected stock price volatility over the expected term of the award and projected employee stock option exercise behaviors. Ciena estimates the fair value of each share-based award based on the fair value of the underlying common stock on the date of grant. In each case, Ciena only recognizes expense to its consolidated statement of operations for those options or shares that are expected ultimately to vest. Ciena uses two attribution methods to record expense, the straight-line method for grants with service-based vesting and the graded-vesting method, which considers each performance period or tranche separately, for all other awards. See Note 18 below.

Income Taxes

Ciena accounts for income taxes using an asset and liability approach that recognizes deferred tax assets and liabilities for the expected future tax consequences attributable to differences between the carrying amounts of assets and liabilities for financial reporting purposes and their respective tax bases, and for operating loss and tax credit carry forwards. In estimating future tax consequences, Ciena considers all expected future events other than the enactment of changes in tax laws or rates. Valuation allowances are provided, if, based upon the weight of the available evidence, it is more likely than not that some or all of the deferred tax assets will not be realized.

Ciena adopted the accounting guidance on uncertainty related to income tax positions at the beginning of fiscal 2008. The total amount of unrecognized tax benefits increased by $1.8 million during fiscal 2009 to $7.4 million, which includes $1.2 million of interest and some minor penalties. Ciena classified interest and penalties related to uncertain tax positions as a component of income tax expense. All of the uncertain tax positions, if recognized, would decrease the effective income tax rate.

In the ordinary course of business, transactions occur for which the ultimate outcome may be uncertain. In addition, tax authorities periodically audit Ciena's income tax returns. These audits examine significant tax filing positions, including the timing and amounts of deductions and the allocation of income tax expenses among tax jurisdictions. Ciena's major tax jurisdictions include the United States, United Kingdom, Canada and India, with open tax years beginning with fiscal years 2006, 2004, 2005 and 2006, respectively. However, limited adjustments can be made to Federal tax returns in earlier years in order to reduce net operating loss carryforwards.

Ciena has not provided U.S. deferred income taxes on the cumulative unremitted earnings of its non-U.S. affiliates as it plans to permanently reinvest cumulative unremitted foreign earnings outside the U.S. and it is not practicable to determine the unrecognized deferred income taxes. These cumulative unremitted foreign earnings relate to ongoing operations in foreign jurisdictions and are required to fund foreign operations, capital expenditures, and any expansion requirements.

Ciena recognizes windfall tax benefits associated with the exercise of stock options or release of restricted stock units directly to stockholders' equity only when realized. A windfall tax benefit occurs when the actual tax benefit realized by Ciena upon an employee's disposition of a share-based award exceeds the deferred tax asset, if any, associated with the award that Ciena had recorded. When assessing whether a tax benefit relating to share-based compensation has been realized, Ciena follows the tax law "with-and-without" method. Under the with-and-without method, the windfall is considered realized and recognized for financial statement purposes only when an incremental benefit is provided after considering all other tax benefits including Ciena's net operating losses. The with-and-without method results in the windfall from share-based compensation awards always being effectively the last tax benefit to be considered. Consequently, the windfall attributable to share-based compensation will not be considered realized in instances where Ciena's net operating loss carryover (that is unrelated to windfalls) is sufficient to offset the current year's taxable income before considering the effects of current-year windfalls.

Loss Contingencies

Ciena is subject to the possibility of various losses arising in the ordinary course of business. These may relate to disputes, litigation and other legal actions. Ciena considers the likelihood of loss or the incurrence of a liability, as well as Ciena's ability to reasonably estimate the amount of loss, in determining loss contingencies. An estimated loss contingency is accrued when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. Ciena regularly evaluates current information available to it to determine whether any accruals should be adjusted and whether new accruals are required.

Fair Value of Financial Instruments

The carrying value of Ciena's cash and cash equivalents, accounts receivable, accounts payable, and accrued liabilities, approximates fair market value due to the relatively short period of time to maturity. The fair value of investments in marketable debt securities is determined using quoted market prices for those securities or similar financial instruments. For information related to the fair value of Ciena's convertible notes, see Note 6 below.

Fair value for the measurement of financial assets and liabilities is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. As such, fair value is a market-based measurement that should be determined based on assumptions that market participants would use in pricing an asset or liability. Ciena utilizes a valuation hierarchy for disclosure of the inputs for fair value measurement. This hierarchy prioritizes the inputs into three broad levels as follows:

- Level 1 inputs are unadjusted quoted prices in active markets for identical assets or liabilities;
- Level 2 inputs are quoted prices for identical or similar assets or liabilities in less active markets or model-derived valuations in which significant inputs are observable for the asset or liability, either directly or indirectly through market corroboration, for substantially the full term of the financial instrument;
- Level 3 inputs are unobservable inputs based on Ciena's assumptions used to measure assets and liabilities at fair value.

By distinguishing between inputs that are observable in the marketplace, and therefore more objective, and those that are unobservable and therefore more subjective, the hierarchy is designed to indicate the relative reliability of the fair value measurements. A financial asset or liability's classification within the hierarchy is determined based on the lowest level input that is significant to the fair value measurement.

Restructuring

Ciena has previously taken actions to align its workforce, facilities and operating costs with perceived market opportunities and business conditions. Ciena implements these restructuring plans and incurs the associated liability concurrently. Generally accepted accounting principles require that a liability for the cost associated with an exit or disposal activity be recognized in the period in which the liability is incurred, except for one-time employee termination benefits related to a service period of more than 60 days, which are accrued over the service period.

Foreign Currency

Some of Ciena's foreign branch offices and subsidiaries use the U.S. dollar as their functional currency because Ciena, as the U.S. parent entity, exclusively funds the operations of these branch offices and subsidiaries with U.S. dollars. For those subsidiaries using the local currency as their functional currency, assets and liabilities are translated at exchange rates in effect at the balance sheet date, and the statement of operations is translated at a monthly average rate. Resulting translation adjustments are recorded directly to a separate component of stockholders' equity. Where the U.S. dollar is the functional currency of foreign branch offices or subsidiaries, re-measurement adjustments are recorded in other income. The net gain (loss) on foreign currency re-measurement and exchange rate changes is immaterial for separate financial statement presentation.

Derivatives

Occasionally, Ciena uses foreign currency forward contracts to hedge certain forecasted foreign currency transactions relating to operating expenses. These derivatives, designated as cash flow hedges, have maturities of less than one year and permit net settlement.

At the inception of the cash flow hedge and on an ongoing basis, Ciena assesses the hedging relationship to determine its effectiveness in offsetting changes in cash flows attributable to the hedged risk during the hedge period. The effective portion of the hedging instrument's net gain or loss is initially reported as a component of accumulated other comprehensive income (loss), and upon occurrence of the forecasted transaction, is subsequently reclassified into the operating expense line item to which the hedged transaction relates. Any net gain or loss associated with the ineffectiveness of the hedging instrument is reported in interest and other income, net. See Note 13 below.

Computation of Basic Net Income (Loss) per Common Share and Diluted Net Income (Loss) per Potential Common Share

Ciena calculates basic earnings per share (EPS) by dividing earnings attributable to common stock by the weighted-average number of common shares outstanding for the period. Diluted EPS includes the potential dilution of common stock equivalent shares that would occur if securities or other contracts to issue common stock were exercised or converted into common stock. Ciena uses a dual presentation of basic and diluted EPS on the face of its income statement. A reconciliation of the numerator and denominator used for the basic and diluted EPS computations is set forth in Note 15.

Software Development Costs

Generally accepted accounting principles require the capitalization of certain software development costs incurred subsequent to the date technological feasibility is established and prior to the date the product is generally available for sale. The capitalized cost is then amortized straight-line over the estimated life of the product. Ciena defines technological feasibility as being attained at the time a working model is completed. To date, the period between Ciena achieving technological feasibility and the general availability of such software has been short, and software development costs qualifying for capitalization have been insignificant. Accordingly, Ciena has not capitalized any software development costs.

Segment Reporting

Operating segments are defined as components of an enterprise about which separate financial information is available that is evaluated regularly by the chief operating decision maker, or decision making group, in deciding how to allocate resources and in assessing performance. Ciena's chief operating decision maker is its chief executive officer, who reviews financial information presented on a consolidated basis for purposes of allocating resources and evaluating financial performance. Ciena has one business activity, and there are no segment managers who are held accountable for operations, operating results and plans for levels or components below the consolidated unit level. Accordingly, Ciena considers its business to be in a single reportable segment.

Newly Issued Accounting Standards

In October 2009, the FASB amended the accounting standards for revenue recognition with multiple deliverables. The amended guidance allows the use of management's best estimate of selling price for individual elements of an arrangement when vendor specific objective evidence or third-party evidence is unavailable. Additionally, it eliminates the residual method of revenue recognition in accounting for multiple deliverable arrangements. The guidance is effective for fiscal years beginning on or after June 15, 2010, early adoption is permitted. Ciena is currently evaluating the impact this new guidance could have on its financial condition, results of operations and cash flows.

In October 2009, the FASB amended the accounting standards for revenue arrangements with software elements. The amended guidance modifies the scope of the software revenue recognition guidance to exclude tangible products that contain both software and non-software components that function together to deliver the product's essential functionality. The pronouncement is effective for fiscal years beginning on or after June 15, 2010, early adoption is permitted. This guidance must be adopted in the same period an entity adopts the amended revenue arrangements with multiple deliverables guidance described above. Ciena is currently evaluating the impact this new guidance could have on its financial condition, results of operations and cash flows.

In May 2008, the FASB issued new guidance on accounting for convertible debt instruments. This new guidance requires that the liability and equity components of convertible debt instruments that may be settled in cash upon conversion (including partial cash settlement) be separately accounted for in a manner that reflects an issuer's nonconvertible debt borrowing rate. The resulting debt discount is amortized over the period the convertible debt is expected to be outstanding as additional non-cash interest expense. This guidance is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. Retrospective application to all periods presented is required except for instruments that were not outstanding during any of the periods that will be presented in the annual financial statements for the period of adoption but were outstanding during an earlier period. Ciena's existing convertible notes payable do not provide for settlement in cash upon conversion and Ciena believes this new guidance will not have a material effect on its financial condition, results of operations and cash flows.

In April 2008, the FASB issued new guidance which amends the factors that should be considered in developing renewal or extension assumptions used to determine the useful life of a recognized intangible asset. This guidance requires enhanced disclosures concerning a company's treatment of costs incurred to renew or extend the term of a recognized intangible asset. This new guidance is effective for fiscal years beginning after December 15, 2008. Ciena is currently evaluating the impact this new guidance could have on its financial condition, results of operations and cash flows.

In February 2008, the FASB issued new guidance on fair value measurements related to lease transactions. This guidance removes certain leasing transactions from its scope. Also, in February 2008 the FASB delayed the effective date of fair value measurements for all non-financial assets and non-financial liabilities, except for items that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually), until fiscal years beginning after November 15, 2008. In October 2008, the FASB clarified the application of fair value in a market that is not active, and provided guidance on the key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. Ciena is currently evaluating the impact this new guidance could have on its financial condition, results of operations and cash flows.

In December 2007, the FASB issued new guidance which requires all entities to report noncontrolling (minority) interests in subsidiaries as equity in the consolidated financial statements. This guidance is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008. Earlier adoption is prohibited. Ciena believes this new guidance will not have a material impact on its financial condition, results of operations and cash flows.

In December 2007, the FASB issued new guidance on business combinations. The new guidance is intended to simplify existing guidance and converge rulemaking under U.S. generally accepted accounting principles with international accounting rules. This guidance applies prospectively to business combinations where the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. An entity may not apply this guidance before that date. As of October 31, 2009, Ciena's consolidated balance sheet includes $12.5 million of capitalized acquisition costs which include direct costs related to its pending acquisition of substantially all of the optical networking and carrier Ethernet assets of Nortel's MEN business. Upon the adoption of this newly issued accounting guidance, Ciena will expense these acquisition costs in the first quarter of fiscal 2010. Future acquisition costs will be expensed as incurred. See Notes 9 and 22 below for further discussion of Ciena's pending business combination. Ciena is currently evaluating any additional impacts this guidance could have on its financial condition, results of operations and cash flows.

(2) BUSINESS COMBINATIONS

On March 3, 2008, Ciena acquired World Wide Packets, Inc. ("World Wide Packets" or "WWP") pursuant to the terms of an Agreement and Plan of Merger dated January 22, 2008 (the "Merger Agreement") by and among Ciena, World Wide Packets, Wolverine Acquisition Subsidiary, Inc., a wholly owned subsidiary of Ciena ("Merger Sub"), and Daniel Reiner, as stockholders' representative. Pursuant to the Merger Agreement, on March 3, 2008, Merger Sub was merged with and into World Wide Packets, with World Wide Packets continuing as the surviving corporation and a wholly owned subsidiary of Ciena. World Wide Packets is a supplier of communications networking equipment that enables the cost-effective delivery of a wide variety of carrier Ethernet-based services. Prior to the acquisition, World Wide Packets was a privately held company. Ciena's results of operations for fiscal 2008 in these financial statements include the operations of World Wide Packets beginning on March 3, 2008, the effective date of the acquisition.

Upon the closing of the acquisition, all of the outstanding shares of World Wide Packets' common stock and preferred stock were exchanged for approximately 2.5 million shares of Ciena common stock and approximately $196.7 million in cash. Of this amount, $20.0 million in cash and 340,000 shares of Ciena common stock were placed into escrow for a period of one year as security for the indemnification obligations of World Wide Packets' stockholders under the Merger Agreement. Upon the closing, Ciena also assumed all then outstanding World Wide Packets options and exchanged them for options to acquire approximately 0.9 million shares of Ciena common stock. Under the Merger Agreement, Ciena also agreed to indemnify certain officers and directors of World Wide Packets against third-party claims arising out of their employment relationship. Ciena has determined the fair value of this indemnification obligation to be insignificant.

The following table summarizes the purchase price for the acquisition (in thousands):

	Amount
Cash	$ 196,668
Acquisition-related costs	14,183
Value of common stock issued	62,360
Fair value of vested options assumed	9,912
Total purchase price	$ 283,123

The value of Ciena's common stock issued in the acquisition was based on the average closing price of Ciena's common stock for the two trading days prior to, the date of, and the two trading days after the announcement of the acquisition. The fair value of the vested options assumed was determined using the Black-Scholes option-pricing model.

The acquisition was accounted for under the purchase method of accounting, which requires the total purchase price to be allocated to the acquired assets and assumed liabilities based on their estimated fair values. The amount of the purchase price in excess of the amounts assigned to acquired tangible or intangible assets and assumed liabilities is recognized as goodwill. Amounts allocated to goodwill are not tax deductible. As set forth below, Ciena recorded acquired, finite-lived intangible assets related to developed technology, covenants not to compete, and customer relationships, outstanding purchase orders and contracts. The following table summarizes the allocation of the acquisition purchase price based on the estimated fair value of the acquired assets and assumed liabilities (in thousands):

	Amount
Cash	$ 835
Accounts receivable	2,049
Inventory	12,872
Equipment, furniture and fixtures	2,691
Other tangible assets	2,003
Developed technology	42,400
Covenants not to compete	3,200
Customer relationships, outstanding purchase orders and contracts	19,100
Goodwill	223,658
Accounts payable, accrued liabilities and deferred revenue	(13,322)
Promissory notes and loans payable	(12,363)
Total purchase price allocation	$ 283,123

Under purchase accounting rules, Ciena revalued the acquired finished goods inventory to fair value, which is defined as the estimated selling price less the sum of (a) costs of disposal, and (b) a reasonable profit allowance for Ciena's selling effort. This revaluation resulted in an increase in inventory carrying value of approximately $5.3 million for marketable inventory, slightly offset by a decrease of $0.7 million for unmarketable inventory.

Developed technology represents purchased technology which had reached technological feasibility and for which World Wide Packets had substantially completed development as of the date of acquisition. Fair value was determined using future discounted cash flows related to the projected income stream of the developed technology for a discrete projection period. Cash flows were discounted to their present value as of the closing date. Developed technology is amortized on a straight line basis over its estimated useful life of 4 years to 6 years.

Covenants not to compete represent agreements entered into with key employees of World Wide Packets. Covenants not to compete are amortized on a straight line basis over estimated useful lives of 3.5 years.

Customer relationships, outstanding purchase orders and contracts represent agreements with existing World Wide Packets' customers and have estimated useful lives of 4 months to 6 years.

The following unaudited pro forma financial information summarizes the results of operations for the periods indicated as if Ciena's acquisition of World Wide Packets had been completed as of the beginning of each of the periods presented. These pro forma amounts (in thousands, except per share data) do not purport to be indicative of the results that would have actually been obtained if the acquisition occurred as of the beginning of the periods presented or that may be obtained in the future.

	Years Ended October 31,	
	2007	2008
Pro forma revenue	$ 802,323	$ 909,098
Pro forma net income	$ 39,721	$ 22,179
Pro forma basic net income per common share	$ 0.45	$ 0.25
Pro forma diluted net income per potential common share	$ 0.43	$ 0.24

(3) RESTRUCTURING COSTS

The following table displays the activity and balances of the historical restructuring liability accounts for the fiscal years indicated (in thousands):

	Workforce reduction	Consolidation of excess facilities	Total
Balance at October 31, 2006	$ —	$ 35,634	$ 35,634
Additional liability recorded	72(a)	1(a)	73
Adjustment to previous estimates	—	(2,508)(a)	(2,508)
Lease settlements	—	(4,871)(a)	(4,871)
Cash payments	(72)	(23,568)	(23,640)
Balance at October 31, 2007	—	4,688	4,688
Additional liability recorded	1,057(b)	53(b)	1,110
Cash payments	(75)	(1,498)	(1,573)
Balance at October 31, 2008	982	3,243	4,225
Additional liability recorded	4,117(c)	3,419(c)	7,536
Adjustment to previous estimates	—	3,670(c)	3,670
Cash payments	(4,929)	(897)	(5,826)
Balance at October 31, 2009	$ 170	$ 9,435	$ 9,605
Current restructuring liabilities	$ 170	$ 1,641	$ 1,811
Non-current restructuring liabilities	$ —	$ 7,794	$ 7,794

(a) During the first quarter of fiscal 2007, Ciena recorded a charge of $0.1 million related to other costs associated with a previous workforce reduction and an adjustment of $0.5 million related to costs associated with previously restructured facilities.

During the second quarter of fiscal 2007, Ciena recorded an adjustment of $0.8 million related to its return to use of a facility that had been previously restructured.

During the third quarter of fiscal 2007, Ciena recorded an adjustment of $1.2 million primarily related to its return to use of a facility that had been previously restructured.

During the fourth quarter of fiscal 2007, Ciena recorded a gain on lease settlement of $4.9 million related to the termination of lease obligations for our former San Jose, CA facilities. Ciena paid $53.0 million in connection with the settlement of this lease obligation. This transaction eliminated Ciena's remaining unfavorable lease commitment balance of $34.9 million and reduced Ciena's restructuring liabilities by $23.5 million, offset by approximately $0.5 million of other expenses.

(b) During the fourth quarter of fiscal 2008, Ciena recorded a charge of $1.0 million related to a workforce reduction of 56 employees and a charge of approximately $0.1 million related to the closure of a facility located in San Antonio, Texas.

(c) During the first quarter of fiscal 2009, Ciena recorded a charge of $0.1 million in other costs associated with a previous workforce reduction.

During the second quarter of fiscal 2009, Ciena recorded a charge of $3.5 million of severance and other employee-related costs associated with a workforce reduction of 200 employees and an adjustment of $2.9 million associated with previously restructured facilities.

During the third quarter of fiscal 2009, Ciena recorded a charge of $0.5 million of severance and other employee-related costs and a charge of $3.4 million related to the Acton, MA facility closure.

During the fourth quarter of fiscal 2009, Ciena recorded an adjustment of $0.8 million associated with previously restructured facilities.

(4) GOODWILL AND LONG-LIVED ASSET ASSESSMENT

Goodwill

The table below sets forth changes in carrying amount of goodwill during the fiscal years indicated (in thousands):

	Total
Balance as October 31, 2006	$ 232,015
Goodwill acquired	—
Impairment losses	—
Balance as October 31, 2007	232,015
Goodwill acquired	223,658
Impairment losses	—
Balance as October 31, 2008	455,673
Goodwill acquired	—
Impairment losses	(455,673)
Balance as October 31, 2009	$ —

Ciena determines the fair value of its single reporting unit to be equal to its market capitalization plus a control premium. Market capitalization is determined by multiplying the shares outstanding on the assessment date by the average market price of Ciena's common stock over a 10-day period before and a 10-day period after each assessment date. Ciena uses this 20-day duration to consider inherent market fluctuations that may affect any individual closing price. Ciena believes that its market capitalization alone does not fully capture the fair value of its business as a whole, or the substantial value that an acquirer would obtain from its ability to obtain control of Ciena's business. As such, in determining fair value, Ciena added a control premium – which seeks to give effect to the increased consideration a potential acquirer would be required to pay in order to gain sufficient ownership to set policies, direct operations and make decisions related to Ciena – to its market capitalization. In determining an appropriate control premium, Ciena looked to recent transaction data in its industry. For fiscal 2007, 2008 and 2009, Ciena used a 25% control premium in its goodwill assessment.

Based on a combination of factors, including macroeconomic conditions and a sustained decline in Ciena's common stock price and market capitalization below net book value, Ciena conducted an interim impairment assessment of goodwill during the second quarter of fiscal 2009. Ciena performed the step one fair value comparison, and its market capitalization was $721.8 million and its carrying value, including goodwill, was $949.0 million. Ciena applied a 25% control premium to its market capitalization to determine a fair value of $902.2 million. Because step one indicated that Ciena's fair value was less than its carrying value, Ciena performed the step two analysis. Under the step two analysis, the implied fair value of goodwill requires valuation of a reporting unit's tangible and intangible assets and liabilities in a manner similar to the allocation of purchase price in a business combination. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, goodwill is deemed impaired and is written down to the extent of the difference. The implied fair value of the reporting unit's goodwill was determined to be $0, and, as a result, Ciena recorded a goodwill impairment of $455.7 million, representing the full carrying value of the goodwill.

Ciena also performed assessments of the fair value of its single reporting unit as of September 27, 2008 and September 29, 2007. Ciena compared its fair value on each assessment date to its carrying value, including goodwill, and determined that the carrying value, including goodwill, did not exceed fair value. Because the carrying amount was less than its fair value, no impairment loss was recorded.

Long-Lived Assets

Ciena's long-lived assets, excluding goodwill, include: equipment, furniture and fixtures; finite-lived intangible assets; and maintenance spares. Ciena tests long-lived assets for impairment whenever triggering events or changes in circumstances indicate that the assets' carrying amount is not recoverable from its undiscounted cash flows. Ciena's long-lived assets are part of a single reporting unit which represents the lowest level for which it can identify cash flows.

Due to effects of difficult macroeconomic conditions on Ciena's business, including lengthening sales cycles and slowing deployments resulting in lower demand, Ciena performed an impairment analysis of its long-lived assets during the fourth quarter of fiscal 2008 and the second quarter of fiscal 2009. Based on Ciena's estimate of future, undiscounted cash flows as of October 31, 2008 and April 30, 2009, respectively, no impairment was required. There were no triggering events or changes in circumstances that required a reassessment as of October 31, 2009. If actual market conditions differ or forecasts change, Ciena may be required to record a non-cash impairment charge related to long-lived assets in future periods. Such charges would have the effect of decreasing Ciena's earnings or increasing its losses in such period.

(5) MARKETABLE DEBT SECURITIES

As of the dates indicated, short-term and long-term investments in marketable debt securities are comprised of the following (in thousands):

	October 31, 2009			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
US government obligations	$ 570,505	$ 460	$ 2	$ 570,963
Publicly traded equity securities	251	—	—	251
	$ 570,756	$ 460	$ 2	$ 571,214
Included in short-term investments	562,781	404	2	563,183
Included in long-term investments	7,975	56	—	8,031
	$ 570,756	$ 460	$ 2	$ 571,214

	October 31, 2008			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Corporate bonds	$ 116,531	$ 81	$ 2,260	$ 114,352
Asset backed obligations	10,188	—	7	10,181
Commercial paper	49,871	7	8	49,870
US government obligations	334,195	949	40	335,104
Certificate of deposit	13,000	—	—	13,000
	$ 523,785	$ 1,037	$ 2,315	$ 522,507
Included in short-term investments	366,054	812	530	366,336
Included in long-term investments	157,731	225	1,785	156,171
	$ 523,785	$ 1,037	$ 2,315	$ 522,507

As of October 31, 2007 the estimated fair value of commercial paper included investments in SIV Portfolio plc (formerly known as Cheyne Finance plc) and Rhinebridge LLC, two structured investment vehicles (SIVs) that entered into receivership during the fourth quarter of fiscal 2007 and failed to make payment at maturity. Due to their mortgage-related assets, each of these entities was exposed to adverse market conditions that affected its collateral and its ability to access short-term funding. Ciena purchased these investments in the third quarter of fiscal 2007 and, at the time of purchase, each investment had a rating of A1+ by Standard and Poor's and P-1 by Moody's, their highest ratings respectively. In estimating fair value, Ciena used a valuation approach based on a liquidation of assets held by each SIV and their subsequent distribution of cash. Ciena utilized assessments of the underlying collateral from multiple indicators of value which were then discounted to reflect the expected timing of disposition and market risks. Based on this assessment of fair value, as of October 31, 2007, Ciena recognized realized losses of $13.0 million related to these investments. Giving effect to these losses, our investment portfolio at October 31, 2007 included an estimated fair value of $33.9 million in commercial paper issued by these entities. During fiscal 2008, Ciena recognized additional losses of $5.1 million related to these investments, received payments of $28.8 million in connection with the restructuring of these SIVs, and, as of October 31, 2008, no longer held these investments.

Gross unrealized losses related to marketable debt investments, included in short-term and long-term investments, were primarily due to changes in interest rates. Ciena's management has determined that the gross unrealized losses at October 31, 2009 and October 31, 2008 are temporary in nature because Ciena has the ability and intent to hold these investments until a recovery of fair value, which may be maturity. As of the dates indicated, gross unrealized losses were as follows (in thousands):

	October 31, 2009					
	Unrealized Losses Less Than 12 Months		Unrealized Losses 12 Months or Greater		Total	
	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value
US government obligations	$ 2	$ 37,744	$ —	$ —	$ 2	$ 37,744
	$ 2	$ 37,744	$ —	$ —	$ 2	$ 37,744

	October 31, 2008					
	Unrealized Losses Less Than 12 Months		Unrealized Losses 12 Months or Greater		Total	
	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value
Corporate bonds	$ 2,260	$ 88,176	$ —	$ —	$ 2,260	$ 88,176
Asset backed obligations	7	10,181	—	—	7	10,181
Commercial paper	8	29,709	—	—	8	29,709
US government obligations	40	23,438	—	—	40	23,438
	$ 2,315	$ 151,504	$ —	$ —	$ 2,315	$ 151,504

The following table summarizes legal maturities of marketable debt investments at October 31, 2009 (in thousands):

	Amortized Cost	Estimated Fair Value
Less than one year	$ 562,530	$ 562,932
Due in 1-2 years	7,975	8,031
	$ 570,505	$ 570,963

(6) FAIR VALUE MEASUREMENTS

As of the dates indicated, the following table summarizes the fair value of assets that are recorded at fair value on a recurring basis (in thousands):

	October 31, 2009			
	Level 1	Level 2	Level 3	Total
Assets:				
US government obligations	$ —	$ 570,963	$ —	$ 570,963
Publicly traded equity securities	251	—	—	251
Total assets measured at fair value	$ 251	$ 570,963	$ —	$ 571,214

Ciena's Level 1 assets include corporate equity securities publicly traded on major exchanges that are valued using quoted prices in active markets. Ciena's Level 2 investments include U.S. government obligations. These investments are valued using observable inputs such as quoted market prices, benchmark yields, reported trades, broker/dealer quotes or alternative pricing sources with reasonable levels of price transparency. Investments are held by a custodian who obtains investment prices from a third party pricing provider that uses standard inputs to models which vary by asset class.

As of October 31, 2009, Ciena did not hold financial assets or liabilities recorded at fair value based on Level 3 inputs.

As of the dates indicated, the assets and liabilities above were presented on Ciena's Consolidated Balance Sheet as follows (in thousands):

	October 31, 2009			
	Level 1	Level 2	Level 3	Total
Assets:				
Short-term investments	$ 251	$ 562,932	$ —	$ 563,183
Long-term investments	—	8,031	—	8,031
Total assets measured at fair value	$ 251	$ 570,963	$ —	$ 571,214

During fiscal 2009, a private technology company in which Ciena holds a minority equity investment completed a round of equity financing and merged with another private technology company. These events required Ciena to perform an impairment analysis and measure the investment at fair value. In determining fair value, Ciena utilized Level 3 inputs including the recapitalization resulting from both the completion of the merger and the equity financing. Also, during fiscal 2009, a separate private technology company in which Ciena held a minority equity investment was acquired by a publicly-traded company. This event required Ciena to perform an impairment analysis and measure the investment at fair value. In determining fair value, Ciena utilized Level 2 inputs including the relevant exchange ratio for the acquisition transaction and the market price of the acquirer's common stock. Based on Ciena's ownership interest and the value of its investment following these events, Ciena recorded a non-cash loss on cost method investments of $5.3 million.

At October 31, 2009, the fair value of the outstanding $500.0 million of 0.875% convertible senior notes and $298.0 million of 0.25% convertible senior notes was $299.1 million and $231.1 million, respectively. Fair value is based on the quoted market price for the notes on the dates above.

(7) ACCOUNTS RECEIVABLE

As of October 31, 2009, one customer accounted for 10.7% of net trade accounts receivable. As of October 31, 2008, three customers each accounted for 10% or more of net trade accounts receivable and 59.0% in the aggregate. Ciena's allowance for doubtful accounts as of October 31, 2007, 2008 and 2009 was $0.1 million.

The following table summarizes the activity in Ciena's allowance for doubtful accounts for the fiscal years indicated (in thousands):

Year ended October 31,	Balance at beginning of period	Net Provisions (Recovery)	Deductions	Balance at end of period
2007	$ 146	$ (14)	$ —	$ 132
2008	$ 132	$ 157	$ 165	$ 124
2009	$ 124	$ 93	$ 101	$ 116

(8) INVENTORIES

As of the dates indicated, inventories are comprised of the following (in thousands):

	October 31,	
	2008	2009
Raw materials	$ 19,044	$ 19,694
Work-in-process	1,702	1,480
Finished goods	95,963	90,914
	116,709	112,088
Provision for excess and obsolescence	(23,257)	(24,002)
	$ 93,452	$ 88,086

Ciena writes down its inventory for estimated obsolescence or unmarketable inventory equal to the difference between the cost of inventory and the estimated market value based on assumptions about future demand and market conditions. During fiscal 2007, fiscal 2008 and fiscal 2009, Ciena recorded provisions for inventory reserves of $12.2 million, $18.3 million and $15.7 million, respectively, primarily related to changes in forecasted sales for certain products. Deductions from the reserve for excess and obsolete inventory relate to disposal activities.

The following table summarizes the activity in Ciena's reserve for excess and obsolete inventory for the fiscal years indicated (in thousands):

Year ended October 31,	Balance at beginning of period	Provisions	Disposals	Balance at end of period
2007	$ 22,326	$ 12,180	$ 8,336	$ 26,170
2008	$ 26,170	$ 18,325	$ 21,238	$ 23,257
2009	$ 23,257	$ 15,719	$ 14,974	$ 24,002

(9) PREPAID EXPENSES AND OTHER

As of the dates indicated, prepaid expenses and other are comprised of the following (in thousands):

	October 31,	
	2008	2009
Interest receivable	$ 2,082	$ 993
Prepaid VAT and other taxes	15,160	14,527
Deferred deployment expense	4,481	4,242
Prepaid expenses	10,557	8,869
Capitalized acquisition costs	—	12,473
Restricted cash	1,717	7,477
Other non-trade receivables	1,891	1,956
	$ 35,888	$ 50,537

Capitalized acquisition costs include direct costs related to Ciena's pending acquisition of the optical networking and carrier Ethernet assets of Nortel's MEN business. See Note 22 below. In the first quarter of fiscal 2010, Ciena will adopt newly issued accounting guidance related to business combinations, which will require the full amount of these capitalized acquisition costs to be expensed in the consolidated statement of operations.

(10) EQUIPMENT, FURNITURE AND FIXTURES

As of the dates indicated, equipment, furniture and fixtures are comprised of the following (in thousands):

	October 31,	
	2008	2009
Equipment, furniture and fixtures	$ 286,940	$ 293,093
Leasehold improvements	40,574	45,761
	327,514	338,854
Accumulated depreciation and amortization	(267,547)	(276,986)
	$ 59,967	$ 61,868

During fiscal 2007, fiscal 2008 and fiscal 2009, Ciena recorded depreciation of equipment, furniture and fixtures, and amortization of leasehold improvements of $12.8 million, $18.6 million and $21.9 million, respectively.

(11) OTHER INTANGIBLE ASSETS

As of the dates indicated, other intangible assets are comprised of the following (in thousands):

	October 31,					
	2008			2009		
	Gross Intangible	Accumulated Amortization	Net Intangible	Gross Intangible	Accumulated Amortization	Net Intangible
Developed technology	$ 185,833	$ (128,255)	$ 57,578	$ 185,833	$ (147,504)	$ 38,329
Patents and licenses	47,370	(37,952)	9,418	47,370	(42,811)	4,559
Customer relationships, covenants not to compete, outstanding purchase orders and contracts	68,281	(43,028)	25,253	60,981	(43,049)	17,932
	$ 301,484		$ 92,249	$ 294,184		$ 60,820

The aggregate amortization expense of other intangible assets was $29.2 million, $38.0 million and $31.4 million for fiscal 2007, fiscal 2008 and fiscal 2009, respectively. During fiscal 2009, gross intangibles and the corresponding accumulated amortization related to covenants not to compete, outstanding purchase orders and contracts decreased by $7.3 million due to their expiration. Expected future amortization of other intangible assets for the fiscal years indicated is as follows (in thousands):

Year ended October 31,	
2010	$ 27,873
2011	13,852
2012	9,473
2013	7,217
Thereafter	2,405
	$ 60,820

(12) OTHER BALANCE SHEET DETAILS

As of the dates indicated, other long-term assets are comprised of the following (in thousands):

	October 31,	
	2008	2009
Maintenance spares inventory, net	$ 30,038	$ 31,994
Deferred debt issuance costs, net	15,127	12,832
Investments in privately held companies	6,671	907
Restricted cash	20,436	18,792
Other	3,476	3,377
	$ 75,748	$ 67,902

Deferred debt issuance costs are amortized using the straight line method which approximates the effect of the effective interest rate method on the maturity of the related debt. Amortization of deferred debt issuance costs, which is included in interest expense, were $4.0 million, $2.9 million and $2.3 million for fiscal 2007, fiscal 2008 and fiscal 2009, respectively.

As of the dates indicated, accrued liabilities are comprised of the following (in thousands):

	October 31,	
	2008	2009
Warranty	$ 37,258	$ 40,196
Compensation, payroll related tax and benefits	23,253	20,025
Vacation	11,947	11,508
Interest payable	1,683	2,045
Other	22,002	29,575
	$ 96,143	$ 103,349

The following table summarizes the activity in Ciena's accrued warranty for the fiscal years indicated (in thousands):

Year ended October 31,	Balance at beginning of period	Provisions	Settlements	Balance at end of period
2007	$ 31,751	$ 12,743	$ 10,914	$ 33,580
2008	$ 33,580	$ 15,336	$ 11,658	$ 37,258
2009	$ 37,258	$ 19,286	$ 16,348	$ 40,196

As of the dates indicated, deferred revenue is comprised of the following (in thousands):

	October 31,	
	2008	2009
Products	$ 13,061	$ 11,998
Services	61,366	63,935
	74,427	75,933
Less current portion	(36,767)	(40,565)
Long-term deferred revenue	$ 37,660	$ 35,368

(13) DERIVATIVES

Ciena uses foreign currency forward contracts to reduce variability in non-U.S. dollar denominated operating expenses. Ciena uses these derivatives to partially offset its market exposure to fluctuations in certain foreign currencies. These derivatives are designated as cash flow hedges and have maturities of less than one year. These forward contracts are not designed to provide foreign currency protection over the long-term. Ciena considers several factors, including offsetting exposures, significance of exposures, costs associated with entering into a particular instrument, and potential effectiveness when designing its hedging activities.

The effective portion of the derivative's gain or loss is initially reported as a component of accumulated other comprehensive income (loss) and, upon occurrence of the forecasted transaction, is subsequently reclassified into the operating expense line item to which the hedged transaction relates. Ciena records the ineffective portion of the hedging instruments in interest and other income, net. As of October 31, 2009, there were no foreign currency forward contracts outstanding.

Ciena's foreign currency forward contracts are classified as follows:

	Reclassified to Consolidated Statement of Operations (Effective Portion) Year Ended October 31,	
Line Item in Consolidated Statement of Operations	2008	2009
Research and development	$ —	$ (533)
Selling and marketing	—	(804)
	$ —	$ (1,337)

	Recognized in Other Comprehensive Income (Loss) Year Ended October 31,	
Line Item in Consolidated Balance Sheet	2008	2009
Accumulated other comprehensive income (loss)	$ —	$ 1,337
	$ —	$ 1,337

	Ineffective Portion Year Ended October 31,	
Line Item in Consolidated Statement of Operations	2008	2009
Interest and other income, net	$ —	$ —
	$ —	$ —

(14) CONVERTIBLE NOTES PAYABLE

Ciena 3.75% Convertible Notes, due February 1, 2008

During fiscal 2008, Ciena paid at maturity the remaining $542.3 million in aggregate principal amount on its 3.75% convertible notes. All of the notes were retired without conversion into common stock.

0.25% Convertible Senior Notes due May 1, 2013

On April 10, 2006, Ciena completed a public offering of 0.25% Convertible Senior Notes due May 1, 2013, in aggregate principal amount of $300.0 million. Interest is payable on May 1 and November 1 of each year. The notes are senior unsecured obligations of Ciena and rank equally with all of Ciena's other existing and future senior unsecured debt.

During the fourth quarter of fiscal 2008, Ciena repurchased $2.0 million in principal amount of its outstanding 0.25% convertible senior notes in an open market transaction. Ciena used $1.0 million of cash to effect these repurchases during the quarter, which resulted in a gain of approximately $0.9 million relating to this repurchase.

At the election of the holder, notes may be converted prior to maturity into shares of Ciena common stock at the initial conversion rate of 25.3001 shares per $1,000 in principal amount, which is equivalent to an initial conversion price of $39.5255 per share. The notes may be redeemed by Ciena if the closing sale price of Ciena's common stock for at least 20 trading days in any 30 consecutive trading day period ending on the date one day prior to the date of the notice of redemption exceeds 130% of the conversion price. Ciena may redeem the notes in whole or in part, at a redemption price in cash equal to the principal amount to be redeemed, plus accrued and unpaid interest.

If Ciena undergoes a "fundamental change" (as that term is defined in the indenture governing the notes to include certain change in control transactions), holders of notes will have the right, subject to certain exemptions, to require Ciena to purchase for cash any or all of their notes at a price equal to the principal amount, plus accrued and unpaid interest. If the holder elects to convert his or her notes in connection with a specified fundamental change, in certain circumstances, Ciena will be required to increase the applicable conversion rate, depending on the price paid per share for Ciena common stock and the effective date of the fundamental change transaction.

Ciena used approximately $28.5 million of the net proceeds of this offering to purchase a call spread option on its common stock that is intended to limit exposure to potential dilution from the conversion of the notes. See Note 16 below for a description of this call spread option.

0.875% Convertible Senior Notes due June 15, 2017

On June 11, 2007, Ciena completed a public offering of 0.875% Convertible Senior Notes due June 15, 2017, in aggregate principal amount of $500.0 million. Interest is payable on June 15 and December 15 of each year, beginning on December 15, 2007. The notes are senior unsecured obligations of Ciena and rank equally with all of Ciena's other existing and future senior unsecured debt.

At the election of the holder, notes may be converted prior to maturity into shares of Ciena common stock at the initial conversion rate of 26.2154 shares per $1,000 in principal amount, which is equivalent to an initial conversion price of approximately $38.15 per share. The notes are not redeemable by Ciena prior to maturity.

If Ciena undergoes a "fundamental change" (as that term is defined in the indenture governing the notes to include certain change in control transactions), holders of notes will have the right, subject to certain exemptions, to require Ciena to purchase for cash any or all of their notes at a price equal to the principal amount, plus accrued and unpaid interest. If the holder elects to convert his or her notes in connection with a specified fundamental change, in certain circumstances, Ciena will be required to increase the applicable conversion rate, depending on the price paid per share for Ciena common stock and the effective date of the fundamental change transaction.

Ciena used approximately $42.5 million of the net proceeds of this offering to purchase a call spread option on its common stock that is intended to limit exposure to potential dilution from conversion of the notes. See Note 16 below for a description of this call spread option.

(15) EARNINGS PER SHARE CALCULATION

The following table (in thousands except per share amounts) is a reconciliation of the numerator and denominator of the basic net income (loss) per common share ("Basic EPS") and the diluted net income (loss) per potential common share ("Diluted EPS"). Basic EPS is computed using the weighted average number of common shares outstanding. Diluted EPS is computed using the weighted average number of (i) common shares outstanding, (ii) shares issuable upon vesting of restricted stock units, (iii) shares issuable upon exercise of outstanding stock options, employee stock purchase plan options and warrants using the treasury stock method; and (iv) shares underlying the 0.25% and 0.875% convertible senior notes. Diluted EPS for fiscal 2007 reflects only a portion of the shares underlying the 0.875% convertible notes because they were issued on June 11, 2007.

Numerator

	Year Ended October 31,		
	2007	2008	2009
Net income (loss)	$ 82,788	$ 38,894	$(581,154)
Add: Interest expense for 0.25% convertible senior notes	1,882	1,874	—
Add: Interest expense for 0.875% convertible senior notes	2,261	5,510	—
Net income (loss) used to calculate Diluted EPS	$ 86,931	$ 46,278	$(581,154)

Denominator

	Year Ended October 31,		
	2007	2008	2009
Basic weighted average shares outstanding	85,525	89,146	91,167
Add: Shares underlying outstanding stock options, employees stock purchase plan options, warrants and restricted stock units	1,352	761	—
Add: Shares underlying 0.25% convertible senior notes	7,590	7,590	—
Add: Shares underlying 0.875% convertible senior notes	5,137	13,108	—
Dilutive weighted average shares outstanding	99,604	110,605	91,167

EPS

	Year Ended October 31,		
	2007	2008	2009
Basic EPS	$ 0.97	$ 0.44	$ (6.37)
Diluted EPS	$ 0.87	$ 0.42	$ (6.37)

Explanation of Shares Excluded due to Anti-Dilutive Effect

For fiscal 2009, the weighted average number of certain shares underlying outstanding stock options, employee stock purchase plan options, restricted stock units and warrants in the table below are considered anti-dilutive because the exercise price of these awards is greater than the average closing price per share on the NASDAQ Stock Market during this period. In addition, the weighted average number of shares issuable upon conversion of Ciena's 0.25% convertible senior notes and 0.875% convertible senior notes are considered anti-dilutive because the related interest expense on a per common share "if converted" basis exceeds Basic EPS for the period.

For fiscal 2007 and fiscal 2008, the weighted average number of certain shares underlying outstanding stock options, employee stock purchase plan options, restricted stock units, and warrants, is considered anti-dilutive because the exercise price of these equity awards is greater than the average closing price per share on the NASDAQ Stock Market during these periods. In addition, the weighted average number of shares underlying Ciena's previously outstanding 3.75% convertible notes are considered anti-dilutive because the related interest expense on a per common share "if converted" basis exceeds Basic EPS for the periods.

The following table summarizes the shares excluded from the calculation of the denominator for Basic and Diluted EPS due to their anti-dilutive effect for the fiscal years indicated (in thousands):

Shares excluded from EPS Denominator due to anti-dilutive effect

	Year Ended October 31,		
	2007	2008	2009
Shares underlying stock options, restricted stock units and warrants	3,041	5,311	8,302
3.750% convertible notes	742	182	—
0.250% convertible senior notes	—	—	7,539
0.875% convertible senior notes	—	—	13,108
Total excluded due to anti-dilutive effect	3,783	5,493	28,949

(16) STOCKHOLDERS' EQUITY

Call Spread Option

Ciena holds two call spread options on its common stock relating to the shares issuable upon conversion of its two issues of convertible notes. These call spread options are designed to mitigate exposure to potential dilution from the conversion of the notes. Ciena purchased a call spread option relating to the 0.25% Convertible Senior Notes due May 1, 2013 for $28.5 million during the second quarter of fiscal 2006. Ciena purchased a call spread option relating to the 0.875% Convertible Senior Notes due June 15, 2017 for $42.5 million during the third quarter of fiscal 2007. In each case, the call spread options were purchased at the time of the notes offering from an affiliate of the underwriter. The cost of each call spread option was recorded as a reduction in paid-in capital.

Each call spread option is exercisable, upon maturity of the relevant issue of convertible notes, for such number of shares of Ciena common stock issuable upon conversion of that series of notes in full. Each call spread option has a "lower strike price" equal to the conversion price for the notes and a "higher strike price" that serves to cap the amount of dilution protection provided. At its election, Ciena can exercise the call spread options on a net cash basis or a net share basis. The value of the consideration of a net share settlement will be equal to the value upon a net cash settlement and can range from $0, if the market price per share of Ciena common stock upon exercise is equal to or below the lower strike price, to approximately $45.7 million (in the case of the April 2006 call spread option) or approximately $76.1 million (in the case of the June 2007 call spread), if the market price per share of Ciena common stock upon exercise is at or above the higher strike price. If the market price on the date of exercise is between the lower strike price and the higher strike price, in lieu of a net settlement, Ciena may elect to receive the full number of shares underlying the call spread option by paying the aggregate option exercise price, which is equal to the original principal outstanding on that series of notes. Should there be an early unwind of the call spread option, the amount of cash or shares to be received by Ciena will depend upon the existing overall market conditions, and on Ciena's stock price, the volatility of Ciena's stock and the remaining term of the call spread option. The number of shares subject to the call spread options, and the lower and higher strike prices, are subject to customary adjustments.

(17) INCOME TAXES

For the periods indicated, the provision (benefit) for income taxes consists of the following (in thousands):

	October 31,		
	2007	2008	2009
Provision (benefit) for income taxes:			
Current:			
Federal	$ —	$ (712)	$ (3,488)
State	309	209	122
Foreign	2,635	1,508	2,925
Total current	2,944	1,005	(441)
Deferred:			
Federal	—	1,640	(860)
State	—	—	(23)
Foreign	—	—	—
Total deferred	—	1,640	(883)
Provision (benefit) for income taxes	$ 2,944	$ 2,645	$ (1,324)

For the periods indicated, income (loss) before provision (benefit) for income taxes consists of the following (in thousands):

	October 31,		
	2007	2008	2009
United States	$ 77,150	$ 32,868	$(591,637)
Foreign	8,582	8,671	9,159
Total	$ 85,732	$ 41,539	$(582,478)

For the periods indicated, the tax provision (benefit) reconciles to the amount computed by multiplying income or loss before income taxes by the U.S. federal statutory rate of 35% as follows:

	October 31,		
	2007	2008	2009
Provision at statutory rate	35.00%	35.00%	35.00%
Federal AMT	0.00%	0.89%	0.00%
State taxes	0.36%	0.50%	(0.02%)
Foreign taxes	0.11%	(3.67%)	0.05%
Research and development credit	(2.47%)	(2.60%)	0.60%
Goodwill impairment	0.00%	0.00%	(27.38%)
Non-deductible compensation and other	0.99%	10.31%	(1.45%)
Tax benefit attributable to other comprehensive income	0.00%	0.00%	0.03%
Valuation allowance	(30.55%)	(34.06%)	(6.60%)
Effective income tax rate	3.44%	6.37%	0.23%

The significant components of deferred tax assets and liabilities were as follows (in thousands):

	October 31,	
	2008	2009
Deferred tax assets:		
Reserves and accrued liabilities	$ 27,795	$ 31,088
Depreciation and amortization	130,617	159,858
NOL and credit carry forward	960,632	965,529
Other	45,340	42,292
Gross deferred tax assets	1,164,384	1,198,767
Valuation allowance	(1,164,384)	(1,198,067)
Net deferred tax asset	$ —	$ 700

A reconciliation of the beginning and ending amount of unrecognized tax benefits, excluding interest and penalties, is as follows (in thousands):

Unrecognized tax benefits at October 31, 2007	$ 4,924
Increase (decrease) related to positions taken in prior period	(724)
Increase (decrease) related to positions taken in current period	734
Reductions related to expiration of statute of limitations	(498)
Unrecognized tax benefits at October 31, 2008	4,436
Increase (decrease) related to positions taken in prior period	106
Increase (decrease) related to positions taken in current period	1,947
Reductions related to expiration of statute of limitations	(300)
Unrecognized tax benefits at October 31, 2009	$ 6,189

As of October 31, 2008 and 2009, Ciena had accrued $1.1 million and $1.2 million of interest, respectively, and some minor penalties related to unrecognized tax benefits within other long-term liabilities in the Consolidated Balance Sheets, of which $0.1 million and $0.1 million of interest was recorded to the provision for income taxes during fiscal 2008 and 2009, respectively. If recognized, the entire balance of unrecognized tax benefits would impact the effective tax rate. Over the next 12 months, Ciena does not estimate any material changes in the unrecognized income tax benefits.

During fiscal 2002, Ciena established a valuation allowance against its deferred tax assets. Ciena intends to maintain a valuation allowance until sufficient positive evidence exists to support a reversal. Any future release of valuation allowance may be recorded as a tax benefit increasing net income or as an adjustment to paid-in capital, based on tax ordering requirements. The following table summarizes the activity in Ciena's valuation allowance against its gross deferred tax assets (in thousands):

Year ended October 31,	Balance at beginning of period	Additions	Deductions	Balance at end of period
2007	$ 1,189,522	$ —	$ 9,399	$ 1,180,123
2008	$ 1,180,123	$ —	$ 15,739	$ 1,164,384
2009	$ 1,164,384	$ 33,683	$ —	$ 1,198,067

As of October 31, 2009, Ciena had a $2.4 billion net operating loss carry forward and an $84 million income tax credit carry forward which begin to expire in fiscal year 2018 and 2013, respectively. Ciena's ability to use net operating losses and credit carry forwards is subject to limitations pursuant to the ownership change rules of the Internal Revenue Code Section 382.

The income tax provision does not reflect the tax savings resulting from deductions associated with Ciena's equity compensation and convertible debt. The cumulative tax benefit through October 31, 2009 of approximately $77.3 million will be credited to additional paid-in capital when realized. For deductions associated with Ciena's equity compensation, credits to paid-in capital will be recorded when those tax benefits are used to reduce taxes payable.

Approximately $20.7 million of the valuation allowance as of October 31, 2009 was attributable to deferred tax assets associated with the acquisitions of WaveSmith, Catena, IPI and WWP.

(18) SHARE-BASED COMPENSATION EXPENSE

Ciena has outstanding equity awards issued under its legacy equity plans and equity plans assumed as a result of previous acquisitions. While Ciena maintains a number of legacy and acquired equity incentive plans that have awards outstanding, equity awards are currently made only from the 2008 Omnibus Incentive Plan and the 2003 Employee Stock Purchase Plan, each as described below.

Ciena Corporation 2008 Omnibus Incentive Plan

The 2008 Omnibus Incentive Plan (the "2008 Plan") was approved by Ciena's Board of Directors on December 12, 2007 and became effective upon the approval of Ciena's stockholders on March 26, 2008. The 2008 Plan has a ten year term. The 2008 Plan reserves eight million shares of common stock for issuance, subject to increase from time to time by the number of shares: (i) subject to outstanding awards granted under Ciena's prior equity compensation plans that terminate without delivery of any stock (to the extent such shares would have been available for issuance under such prior plan), and (ii) subject to awards assumed or substituted in connection with the acquisition of another company.

The 2008 Plan authorizes the issuance of awards including stock options, restricted stock units (RSUs), restricted stock, unrestricted stock, stock appreciation rights (SARs) and other equity and/or cash performance incentive awards to employees, directors, and consultants of Ciena. Subject to certain restrictions, the Compensation Committee of the Board of Directors has broad discretion to establish the terms and conditions for awards under the 2008 Plan, including the number of shares, vesting conditions and the required service or performance criteria. Options and SARs have a maximum term of ten years, and their exercise price may not be less than 100% of fair market value on the date of grant. Repricing of stock options and SARs is prohibited without stockholder approval. Each share subject to an award other than stock options or SARs will reduce the number of shares available for issuance under the 2008 Plan by 1.6 shares. Certain change in control transactions may cause awards granted under the 2008 Plan to vest, unless the awards are continued or substituted for in connection with the transaction. As of October 31, 2009, there were 3.3 million shares authorized and available for issuance under the 2008 Plan.

Stock Options

Outstanding stock option awards to employees are generally subject to service-based vesting restrictions and vest incrementally over a four-year period. The following table is a summary of Ciena's stock option activity for the periods indicated (shares in thousands):

	Shares Underlying Options Outstanding	Weighted Average Exercise Price
Balance as of October 31, 2006	7,110	$48.52
Granted	695	32.47
Exercised	(1,507)	23.04
Canceled	(427)	41.52
Balance as of October 31, 2007	5,871	53.67
Granted	760	28.92
Granted in exchange for WWP options	934	7.50
Exercised	(658)	7.12
Canceled	(508)	52.79
Balance as of October 31, 2008	6,399	48.84
Granted	234	8.63
Exercised	(107)	2.33
Canceled	(988)	61.40
Balance as of October 31, 2009	5,538	$45.80

The total intrinsic value of options exercised during fiscal 2007, fiscal 2008 and fiscal 2009 was $21.6 million, $14.7 million and $0.7 million, respectively. The weighted average fair value of each stock option granted by Ciena during fiscal 2007, fiscal 2008 and fiscal 2009 was $18.68, $14.52 and $4.94, respectively.

The following table summarizes information with respect to stock options outstanding at October 31, 2009, based on Ciena's closing stock price of $11.73 per share on the last trading day of Ciena's fiscal 2009 (shares and intrinsic value in thousands):

	Options Outstanding at October 31, 2009				Vested Options at October 31, 2009			
Range of Exercise Price	Number of Underlying Shares	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Aggregate Intrinsic Value	Number of Underlying Shares	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Aggregate Intrinsic Value
$ 0.01 – $ 16.52	929	6.89	$ 10.51	$ 3,029	650	5.95	$ 11.46	$ 2,009
$16.53 – $ 17.43	552	6.00	17.21	—	500	5.70	17.21	—
$17.44 – $ 22.96	460	5.38	21.77	—	405	4.97	21.90	—
$22.97 – $ 31.71	1,539	5.14	29.47	—	1,285	4.62	29.73	—
$31.72 – $ 46.90	904	6.47	39.45	—	617	5.72	40.21	—
$46.91 – $ 73.78	527	3.05	60.13	—	527	3.05	60.13	—
$73.79 – $1,046.50	627	1.77	178.12	—	627	1.77	178.12	—
$ 0.01 – $1,046.50	5,538	5.18	$ 45.80	$ 3,029	4,611	4.54	$ 50.16	$ 2,009

Assumptions for Option-Based Awards

Ciena recognizes the fair value of service-based options as share-based compensation expense on a straight-line basis over the requisite service period. Ciena estimates the fair value of each option award on the date of grant using the Black-Scholes option-pricing model, with the following weighted average assumptions:

	Year ended October 31,		
	2007	2008	2009
Expected volatility	55.8%	53.0%	65.0%
Risk-free interest rate	4.2%-5.1%	2.7%-3.6%	1.7%-3.1%
Expected term (years)	6.0-6.4	5.1-5.3	5.2-5.3
Expected dividend yield	0.0%	0.0%	0.0%

Ciena considered the implied volatility and historical volatility of its stock price in determining its expected volatility, and, finding both to be equally reliable, determined that a combination of both would result in the best estimate of expected volatility.

The risk-free interest rate assumption is based upon observed interest rates appropriate for the expected term of Ciena's employee stock options.

The expected life of employee stock options represents the weighted-average period the stock options are expected to remain outstanding. Because Ciena considered its options to be "plain vanilla," it calculated the expected term using the simplified method for fiscal 2007. Options are considered to be "plain vanilla" if they have the following basic characteristics: they are granted "at-the-money"; exercisability is conditioned upon service through the vesting date; termination of service prior to vesting results in forfeiture; there is a limited exercise period following termination of service; and the options are non-transferable and non-hedgeable. Beginning in fiscal 2008, Ciena gathered more detailed historical information about specific exercise behavior of its grantees, which it used to determine the expected term.

The dividend yield assumption is based on Ciena's history and expectation of dividend payouts.

Because share-based compensation expense is recognized only for those awards that are ultimately expected to vest, the amount of share-based compensation expense recognized reflects a reduction for estimated forfeitures. Ciena estimates forfeitures at the time of grant and revises those estimates in subsequent periods based upon new or changed information. Ciena relies upon historical experience in establishing forfeiture rates. If actual forfeitures differ from current estimates, total unrecognized share-based compensation expense will be adjusted for future changes in estimated forfeitures.

Restricted Stock Units

A restricted stock unit is a stock award that entitles the holder to receive shares of Ciena common stock as the unit vests. Ciena's outstanding restricted stock unit awards are subject to service-based vesting conditions and/or performance-based vesting conditions. Awards subject to service-based conditions typically vest in increments over a three to four-year period. Awards with performance-based vesting conditions require the achievement of certain operational, financial or other performance criteria or targets as a condition of vesting, or acceleration of vesting, of such awards.

Ciena's outstanding restricted stock units include "performance-accelerated" restricted stock units (PARS), which vest in full four years after the date of grant (assuming that the grantee is still employed by Ciena at that time). At the beginning of each of the first three fiscal years following the date of grant, the Compensation Committee establishes one-year performance targets which, if satisfied, provide for the acceleration of vesting of one-third of the award. As a result, the recipient has the opportunity, subject to satisfaction of performance conditions, to vest as to the entire award in three years. Ciena recognizes the estimated fair value of performance-based awards, net of estimated forfeitures, as share-based expense over the performance period, using graded vesting, which considers each performance period or tranche separately, based upon Ciena's determination of whether it is probable that the performance targets will be achieved. At each reporting period, Ciena reassess the probability of achieving the performance targets and the performance period required to meet those targets.

The aggregate intrinsic value of Ciena's restricted stock units is based on Ciena's closing stock price on the last trading day of each period as indicated. The following table is a summary of Ciena's restricted stock unit activity for the periods indicated, with the aggregate intrinsic value of the balance outstanding at the end of each period, based on Ciena's closing stock price on the last trading day of the relevant period (shares and aggregate intrinsic value in thousands):

	Restricted Stock Units Outstanding	Weighted Average Grant Date Fair Value Per Share	Aggregate Intrinsic Value
Balance as of October 31, 2006	162	$22.99	$ 3,829
Granted	1,216		
Vested	(176)		
Canceled or forfeited	(67)		
Balance as of October 31, 2007	1,135	27.94	53,236
Granted	1,411		
Vested	(513)		
Canceled or forfeited	(184)		
Balance as of October 31, 2008	1,849	30.85	17,773
Granted	3,364		
Vested	(1,358)		
Canceled or forfeited	(139)		
Balance as of October 31, 2009	3,716	$14.67	$43,591

The total fair value of restricted stock units that vested and were converted into common stock during fiscal 2007, fiscal 2008 and fiscal 2009 was $6.5 million, $14.6 million and $14.7 million, respectively. The weighted average fair value of each restricted stock unit granted by Ciena during fiscal 2007, fiscal 2008 and fiscal 2009 was $28.36, $32.38 and $7.02, respectively.

Assumptions for Restricted Stock Unit Awards

The fair value of each restricted stock unit award is estimated using the intrinsic value method, which is based on the closing price on the date of grant. Share-based expense for service-based restricted stock unit awards is recognized, net of estimated forfeitures, ratably over the vesting period on a straight-line basis.

Share-based expense for performance-based restricted stock unit awards, net of estimated forfeitures, is recognized ratably over the performance period based upon Ciena's determination of whether it is probable that the performance targets will be achieved. At each reporting period, Ciena reassesses the probability of achieving the performance targets and the performance period required to meet those targets. The estimation of whether the performance targets will be achieved involves judgment, and the estimate of expense is revised periodically based on the probability of achieving the performance targets. Revisions are reflected in the period in which the estimate is changed. If any performance goals are not met, no compensation cost is ultimately recognized against that goal and, to the extent previously recognized, compensation cost is reversed.

2003 Employee Stock Purchase Plan

In March 2003, Ciena stockholders approved the 2003 Employee Stock Purchase Plan (the "ESPP"), which has a ten-year term. Ciena stockholders subsequently approved an amendment increasing the number of shares available to 3.6 million and adopting an "evergreen" provision. On December 31 of each year, the number of shares available under the ESPP will increase by up to 0.6 million shares, provided that the total number of shares available at that time shall not exceed 3.6 million. Pursuant to the evergreen provision, the maximum number of shares that may be added to the ESPP during the remainder of its ten-year term is 2.4 million.

Under the ESPP, eligible employees may enroll in a six-month offer period during certain open enrollment periods. New offer periods begin March 16 and September 16 of each year. The purchase price equals 95% of the fair market value of Ciena common stock on the last day of each purchase period. As currently structured, the ESPP is non-compensatory for purposes of share-based compensation expense. The following table is a summary of ESPP activity for the periods indicated (shares and intrinsic value in thousands):

	ESPP shares available for issuance	Intrinisic value at stock issuance date
Balance as of October 31, 2006	2,976	
Evergreen provision	571	
Issued March 15, 2007	(119)	$1,137
Issued September 14, 2007	(45)	581
Balance as of October 31, 2007	3,383	
Evergreen provision	188	
Issued March 15, 2008	(38)	99
Issued September 15, 2008	(45)	26
Balance as of October 31, 2008	3,488	
Evergreen provision	83	
Issued March 16, 2009	(67)	23
Issued September 15, 2009	(35)	$ 28
Balance as of October 31, 2009	3,469	

Share-Based Compensation Expense for Periods Reported

The following table summarizes share-based compensation expense for the periods indicated (in thousands):

	Year ended October 31,		
	2007	2008	2009
Product costs	$ 1,257	$ 2,953	$ 2,116
Service costs	920	1,412	1,599
Share-based compensation expense included in cost of goods sold	2,177	4,365	3,715
Research and development	3,649	7,264	10,006
Sales and marketing	6,724	10,928	10,861
General and administrative	6,440	8,644	10,380
Share-based compensation expense included in operating expense	16,813	26,836	31,247
Share-based compensation expense capitalized in inventory, net	582	227	(524)
Total share-based compensation	$ 19,572	$ 31,428	$ 34,438

As of October 31, 2009, total unrecognized compensation expense was: (i) $11.9 million, which relates to unvested stock options and is expected to be recognized over a weighted-average period of 1.0 year; and (ii) $42.1 million, which relates to unvested restricted stock units and is expected to be recognized over a weighted-average period of 1.2 years.

(19) OTHER EMPLOYEE BENEFIT PLANS

Employee 401(k) Plan

Ciena has a 401(k) defined contribution profit sharing plan. The plan covers all U.S. based employees who are not part of an excluded group. Participants may contribute up to 60% of pre-tax compensation, subject to certain limitations. Effective January 1, 2007, the plan includes an employer matching contribution equal to 50% of the first 6% an employee contributes each pay period. Ciena may also make discretionary annual profit sharing contributions up to the IRS regulated limit. Ciena has made no profit sharing contributions to date. During fiscal 2007, fiscal 2008, and fiscal 2009, Ciena made matching contributions of approximately $2.3 million, $3.0 million and $3.2 million, respectively.

(20) COMMITMENTS AND CONTINGENCIES

Foreign Tax Contingencies

Ciena has received assessment notices from the Mexican tax authorities asserting deficiencies in payments between 2001 and 2005 related primarily to income taxes and import taxes and duties. Ciena has filed judicial petitions appealing these assessments. As of October 31, 2008 and October 31, 2009, Ciena had accrued liabilities of $1.0 million and $1.1 million, respectively, related to these contingencies, which are reported as a component of other current accrued liabilities. As of October 31, 2009, Ciena estimates that it could be exposed to possible losses of up to $5.8 million, for which it has not accrued liabilities. Ciena has not accrued the additional income tax liabilities because it does not believe that such losses are more likely than not to be incurred. Ciena has not accrued the additional import taxes and duties because it does not believe the incurrence of such losses are probable. Ciena continues to evaluate the likelihood of probable and reasonably possible losses, if any, related to these assessments. As a result, future increases or decreases to accrued liabilities may be necessary and will be recorded in the period when such amounts are estimable and more likely than not (for income taxes) or probable (for non-income taxes).

Operating Lease Commitments

Ciena has certain minimum obligations under non-cancelable operating leases expiring on various dates through 2019 for equipment and facilities. Future annual minimum rental commitments under non-cancelable operating leases at October 31, 2009 are as follows (in thousands):

Year ended October 31,	
2010	$ 14,450
2011	12,857
2012	10,058
2013	8,779
2014	6,146
Thereafter	9,909
Total	$ 62,199

Rental expense for fiscal 2007, fiscal 2008, and fiscal 2009 was approximately $10.6 million, $12.4 million and $14.7 million, respectively. In addition, Ciena paid approximately $29.9 million, $1.3 million and $2.2 million during fiscal 2007, fiscal 2008 and fiscal 2009, respectively, related to rent costs for restructured facilities and unfavorable lease commitments, which were offset against Ciena's restructuring liabilities and unfavorable lease obligations. The amount for operating lease commitments above does not include insurance, taxes, maintenance and other costs required by the applicable operating lease. These costs are variable and are not expected to have a material impact.

Purchase Commitments with Contract Manufacturers and Suppliers

As of October 31, 2009, Ciena has purchase commitments of $79.6 million. Purchase commitments relate to purchase order obligations to contract manufacturers and component suppliers for inventory. In certain instances, Ciena is permitted to cancel, reschedule or adjust these orders. Consequently, only a portion of the amount reported as purchase commitments relates to firm, non-cancelable and unconditional obligations.

Litigation

On November 7, 2008, JDS Uniphase Corp. ("JDSU") filed a complaint with the United States International Trade Commission (ITC) against Ciena and several other respondents, alleging infringement of two patents (U.S. Patent Nos. 6,658,035 and 6,687,278) relating to tunable laser chip technology. The complaint, which names Ciena as a company whose products incorporate the accused technology manufactured by certain other respondents and which technology is imported into the United States, seeks a determination and relief under Section 337 of the Tariff Act of 1930. On December 17, 2008, Ciena and certain other respondents entered into a Settlement Agreement and Agreement to be Bound with JDSU, whereby those respondents agreed, in exchange for dismissal from the investigation, to be bound by any exclusion order issued by the ITC in the investigation in favor of JDSU that takes effect against one or more of the non-settling respondents. Ciena was not required to make any payment in connection with this settlement agreement. Based on that agreement, JDSU contemporaneously filed a motion to terminate the investigation with respect to Ciena and certain other respondents. Based on the ITC staff's initial response to that motion, the parties entered into an amended settlement agreement and, on January 8, 2009, JDSU filed an amended motion to terminate. On February 3, 2009, the ITC judge issued an order granting JDSU's amended motion to terminate, which order was affirmed by the full commission on February 27, 2009. Accordingly, the ITC investigation has been terminated with respect to Ciena.

On May 29, 2008, Graywire, LLC filed a complaint in the United States District Court for the Northern District of Georgia against Ciena and four other defendants, alleging, among other things, that certain of the parties' products infringe U.S. Patent 6,542,673 (the "'673 Patent"), relating to an identifier system and components for optical assemblies. The complaint, which seeks injunctive relief and damages, was served upon Ciena on January 20, 2009. Ciena filed an answer to the complaint and counterclaims against Graywire on March 26, 2009, and an amended answer and counterclaims on April 17, 2009. On April 27, 2009, Ciena and certain other defendants filed an application for *inter partes* reexamination of the '673 Patent with the U.S. Patent and Trademark Office (the "PTO"). On the same date, Ciena and the other defendants filed a motion to stay the case pending reexamination of all of the patents-in-suit. On July 17, 2009, the district court granted the defendants' motion to stay the case. On July 23, 2009, the PTO granted the defendants' application for reexamination with respect to certain claims of the '673 Patent. Ciena believes that it has valid defenses to the lawsuit and intends to defend it vigorously in the event the stay of the case is lifted.

On January 31, 2008, Ciena Corporation and Northrop Grumman Guidance and Electronics Company (previously named Litton Systems, Inc.) entered into an agreement to settle patent litigation between the parties pending in the United States District Court for the Central District of California. Pursuant to the settlement agreement, Ciena agreed to indemnify the plaintiff, should it be unable to collect compensatory damages awarded, if any, in a final judgment in its favor against a specified Ciena supplier. This obligation is specific to this litigation and, while there is no maximum amount payable, Ciena's obligation is limited to plaintiff's inability to collect that portion of any compensatory damages award that relates to the supplier's sale of infringing products to Ciena. Ciena has determined the fair value of this guarantee to be insignificant.

As a result of our June 2002 merger with ONI Systems Corp., Ciena became a defendant in a securities class action lawsuit filed in the United States District Court for the Southern District of New York in August 2001. The complaint named ONI, certain former ONI officers, and certain underwriters of ONI's initial public offering (IPO) as defendants, and alleges, among other things, that the underwriter defendants violated the securities laws by failing to disclose alleged compensation arrangements (such as undisclosed commissions or stock stabilization practices) in ONI's registration statement and by engaging in manipulative practices to artificially inflate ONI's stock price after the IPO. The complaint also alleges that ONI and the named former officers violated the securities laws by failing to disclose the underwriters' alleged compensation arrangements and manipulative practices. No specific amount of damages has been claimed. Similar complaints have been filed against more than 300 other issuers that have had initial public offerings since 1998, and all of these actions have been included in a single coordinated proceeding. The former ONI officers have been dismissed from the action without prejudice. In July 2004, following mediated settlement negotiations, the plaintiffs, the issuer defendants (including Ciena), and their insurers entered into a settlement agreement. The settlement agreement did not require Ciena to pay any amount toward the settlement or to make any other payments. While the partial settlement was pending approval, the plaintiffs continued to litigate their cases against the underwriter defendants. In October 2004, the district court certified a class with respect to the Section 10(b) claims in six "focus cases" selected out of all of the consolidated cases, which cases did not include Ciena, and which decision was appealed by the underwriter defendants to the U.S. Court of Appeals for the Second Circuit. On February 15, 2005, the district court granted the motion for preliminary approval of the settlement agreement, subject to certain modifications, and on August 31, 2005, the district court issued a preliminary order approving the revised stipulated settlement agreement. On December 5, 2006, the U.S. Court of Appeals for the Second Circuit vacated the district court's grant of class certification in the six focus cases. On April 6, 2007, the Second Circuit denied plaintiffs' petition for rehearing. In light of the Second Circuit's decision, the parties agreed that the settlement could not be approved. On June 25, 2007, the district court approved a stipulation filed by the plaintiffs and the issuer defendants terminating the proposed settlement. On August 14, 2007, the plaintiffs filed second amended complaints against the defendants in the six focus cases. On September 27, 2007, the plaintiffs filed a motion for class certification based on their amended complaints and allegations. On March 26, 2008, the district court denied motions to dismiss the second amended complaints filed by the defendants in the six focus cases, except as to Section 11 claims raised by those plaintiffs who sold their securities for a price in excess of the initial offering price and those who purchased outside the previously certified class period. Briefing on the plaintiffs' motion for class certification in the focus cases was completed in May 2008. That motion was withdrawn without prejudice on October 10, 2008. On April 2, 2009, a stipulation and agreement of settlement between the plaintiffs, issuer defendants and underwriter defendants was submitted to the Court for preliminary approval. The Court granted the plaintiffs' motion for preliminary approval and preliminarily certified the settlement classes on June 10, 2009. The settlement fairness hearing was held on September 10, 2009. On October 6, 2009, the Court entered an opinion granting final approval to the settlement and directing that the Clerk of the Court close these actions. Notices of appeal of the opinion granting final approval have been filed. Due to the inherent uncertainties of litigation and because the settlement remains subject to appeal, the ultimate outcome of the matter is uncertain.

In addition to the matters described above, Ciena is subject to various legal proceedings, claims and litigation arising in the ordinary course of business. Ciena does not expect that the ultimate costs to resolve these matters will have a material effect on its results of operations, financial position or cash flows.

(21) ENTITY WIDE DISCLOSURES

The following table reflects Ciena's geographic distribution of revenue based on the location of the purchaser. Revenue attributable to geographic regions outside of the United States is reflected as "International" revenue, with any country accounting for greater than 10% of total revenue in the period specifically identified. For the periods below, Ciena's geographic distribution of revenue was as follows (in thousands, except percentage data):

	Fiscal Year					
	2007	%*	2008	%*	2009	%*
United States	$ 553,582	71.0	$ 590,868	65.5	$ 419,405	64.3
United Kingdom	100,681	12.9	149,426	16.5	81,784	12.5
Other International	125,506	16.1	162,154	18.0	151,440	23.2
Total	$ 779,769	100.0	$ 902,448	100.0	$ 652,629	100.0

* Denotes % of total revenue

The following table reflects Ciena's geographic distribution of equipment, furniture and fixtures. Equipment, furniture and fixtures attributable to geographic regions outside of the United States are reflected as "International," with any country attributable for greater than 10% of total equipment, furniture and fixtures specifically identified. For the periods below, Ciena's geographic distribution of equipment, furniture and fixtures was as follows (in thousands, except percentage data):

	Fiscal Year			
	2008	%*	2009	%*
United States	$ 49,351	82.3	$ 47,875	77.4
International	10,616	17.7	13,993	22.6
Total	$ 59,967	100.0	$ 61,868	100.0

* Denotes % of total equipment, furniture and fixtures

For the periods below, Ciena's distribution of revenue was as follows (in thousands, except percentage data):

	Fiscal Year					
	2007	%*	2008	%*	2009	%*
Optical service delivery	$ 645,159	82.8	$ 731,260	81.0	$ 472,410	72.4
Carrier Ethernet service delivery	50,129	6.4	60,155	6.7	75,112	11.5
Global network services	84,481	10.8	111,033	12.3	105,107	16.1
Total	$ 779,769	100.0	$ 902,448	100.0	$ 652,629	100.0

* Denotes % of total revenue

For the periods below, customers accounting for at least 10% of Ciena's revenue were as follows (in thousands, except percentage data):

	Fiscal Year					
	2007	%*	2008	%*	2009	%*
AT&T	$ 196,924	25.3	$ 227,737	25.2	$ 128,233	19.6
BT	n/a	—	113,981	12.6	n/a	—
Sprint	100,122	12.8	n/a	—	n/a	—
Total	$ 297,046	38.1	$ 341,718	37.8	$ 128,233	19.6

n/a Denotes revenue representing less than 10% of total revenue for the period

* Denotes % of total revenue

(22) SUBSEQUENT EVENTS

Ciena performed an evaluation of events that have occurred subsequent to the end of its fiscal year through the date that the consolidated financial statements were issued. As of December 22, 2009, the date of the filing of this Form 10-K, other than the pending acquisition of substantially all of the optical networking and carrier Ethernet assets of Nortel's Metro Ethernet Networks ("MEN") business as described below, there have been no subsequent events that occurred during such period that would require disclosure in this Form 10-K or would be required to be recognized in the consolidated financial statements.

Ciena Selected as Successful Bidder at Auction for the Optical and Carrier Ethernet Assets of Nortel's MEN Business

On November 23, 2009 Ciena announced that it had been selected as the successful bidder in the auction of substantially all of the optical networking and carrier Ethernet assets of Nortel's MEN business. In accordance with the definitive purchase agreements, as amended, Ciena has agreed to pay $530 million in cash and issue $239 million in aggregate principal amount of 6% Senior Convertible notes due 2017 ("Notes") for a total consideration of $769 million for the assets.

The Notes to be issued at closing will bear interest at the rate of 6.0% per annum, payable semi-annually, commencing six months after the date of issuance. The interest rate is subject to an upward adjustment, up to a maximum of 8% per annum, in the event that the volume weighted average price of Ciena's common stock price over the measurement period immediately preceding closing is less than $13.17 per share. The Notes mature on June 15, 2017.

The terms of the Notes to be issued will be substantially similar to Ciena's outstanding series of 0.875% senior convertible notes due 2017. The Notes will be senior unsecured obligations of Ciena and will rank equally with all of Ciena's other senior unsecured debt and senior to all of Ciena's future subordinated debt. The Notes will be structurally subordinated to all present and future debt and other obligations of Ciena's subsidiaries and will be effectively subordinated to all of Ciena's present and future secured debt to the extent of the value of the collateral securing such debt.

Following issuance, the Notes may be converted prior to maturity (unless earlier redeemed by Ciena) at the option of the holder into shares of Ciena common stock at the initial conversion rate of 60.7441 shares of Ciena common stock per $1,000 in principal amount of Notes, which is equal to an initial conversion price of approximately $16.4625 per share, subject to customary adjustments. Assuming the full conversion of the aggregate principal amount, the Notes are convertible into approximately 14.5 million shares of Ciena common stock, subject to customary adjustments.

Ciena is required to prepare and file a shelf registration statement on Form S-3 for purposes of registering the resale of the Notes, and the common stock underlying the Notes, by the later of thirty days following the closing or sixty days following Ciena's receipt from Nortel of certain financial statements required in connection with the filing and effectiveness of the registration statement. Ciena's failure to timely file the registration statement, and certain withdrawals or suspensions thereof, would result in liquidated damages of 0.25% to 0.50% per annum of the aggregate principal amount of the Notes, depending upon the duration of the registration default. Ciena has also granted certain demand registration rights requiring it to register and certain piggyback registration rights that afford the holders an opportunity to participate in certain registered offerings by Ciena.

Prior to closing, Ciena may elect to replace some or all of the Notes with cash equal to 102% of the face amount of such Notes replaced, provided that the volume weighted average price of Ciena's common stock is less than $17.00 per share over the ten trading days prior to the date Ciena makes such election, or, if such volume weighted average price of Ciena's common stock is equal to or greater than $17.00 per share, with cash in the principal amount equal to the greater of 105% of the face amount of the Notes to be replaced or 95% of the fair value of the Notes to be replaced as of the date of the election. In the event that it completes any capital raising transaction prior to the closing, Ciena will be required to use the net proceeds of the capital raising transaction to make the election described above and, if such transaction involves the issuance of convertible securities, the price used to determine the value of Ciena's common stock for the purposes of calculating the cost of the Notes replaced or redeemed will be the closing price per share prior to the time when such offering is priced, instead of the volume weighted average price as described in the preceding sentence.

After the closing, but prior to the effectiveness of the shelf registration statement above, Ciena has the right to redeem the Notes if they have been issued, with cash in the principal amount equal to the greater of 105% of the face amount of the Notes or 95% of the fair value of the Notes and any accrued and unpaid interest since the date of issue. Ciena must offer to use the net proceeds of any capital raising transaction completed during the above described period to redeem the Notes at the applicable redemption price above.

If Ciena undergoes a fundamental change, as defined in the proposed indenture and subject to certain exceptions, the holders have the right to require Ciena to repurchase for cash any or all of their Notes at a purchase price equal to 100% of the principal amount, plus accrued and unpaid interest, if any, to the repurchase date. If a holder elects to convert the Notes in connection with a qualified fundamental change, Ciena will in certain circumstances increase the conversion rate by a specified number of additional shares, depending upon the price paid per share of Ciena common stock in such fundamental change transaction.

On November 25, 2009, Ciena deposited in escrow approximately $38.5 million in cash pending the closing of the transaction. Upon closing, Ciena will receive a credit for the amount of the deposit against the aggregate cash consideration to be paid to the sellers. The deposit is subject to forfeiture in the event that all of the conditions to closing are satisfied and Ciena does not consummate the transaction and the sellers terminate the asset purchase agreement, pertaining principally to the North American assets, as a result of Ciena's material breach of its obligations under that agreement. If this agreement is terminated for any other reason, the deposit will be returned to Ciena.

We expect this pending transaction to close in the first calendar quarter of 2010. If the closing does not take place on or before April 30, 2010, the applicable asset sale agreements may be terminated by either party. Ciena has been granted early termination of the antitrust waiting periods under the Hart-Scott-Rodino Act and the Canadian Competition Act. On December 2, 2009, the bankruptcy courts in the U.S. and Canada approved the asset sale agreement relating to Ciena's acquisition of substantially all of the North American, Caribbean and Latin American and Asian optical networking and carrier Ethernet assets of Nortel's MEN business. Completion of the transaction remains subject to information and consultation with employee representatives and/or employees in certain international jurisdictions, additional regional regulatory clearances and customary closing conditions.

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

None.

Item 9A. Controls and Procedures

Disclosure Controls and Procedures

As of the end of the period covered by this report, Ciena carried out an evaluation under the supervision and with the participation of Ciena's management, including Ciena's Chief Executive Officer and Chief Financial Officer, of Ciena's disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended). Based upon this evaluation, Ciena's Chief Executive Officer and Chief Financial Officer concluded that Ciena's disclosure controls and procedures were effective as of the end of the period covered by this report.

Changes in Internal Control over Financial Reporting

There was no change in Ciena's internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended) during the most recently completed fiscal quarter that has materially affected, or is reasonably likely to materially affect, Ciena's internal control over financial reporting.

Report of Management on Internal Control Over Financial Reporting

The management of Ciena Corporation is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934).

The internal control over financial reporting at Ciena Corporation was designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America. Internal control over financial reporting includes those policies and procedures that:

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

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements.

Management of Ciena Corporation assessed the effectiveness of the company's internal control over financial reporting as of October 31, 2009. Management based this assessment on criteria for effective internal control over financial reporting described in "Internal Control – Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this assessment, management determined that, as of October 31, 2009, Ciena Corporation maintained effective internal control over financial reporting. Management reviewed the results of its assessment with the Audit Committee of our Board of Directors.

PricewaterhouseCoopers LLP, independent registered public accounting firm, who audited and reported on the consolidated financial statements of Ciena Corporation included in this annual report, has also audited the effectiveness of Ciena Corporation's internal control over financial reporting as of October 31, 2009, as stated in its report appearing under Item 8 of Part II of this annual report.

/s/ Gary B. Smith	/s/ James E. Moylan, Jr.
Gary B. Smith	James E. Moylan, Jr.
President and Chief Executive Officer	Senior Vice President and Chief Financial Officer
December 22, 2009	December 22, 2009

Item 9B. Other Information

On December 8, 2009, the Compensation Committee of the Ciena Board of Directors approved the 2010 Inducement Equity Award Plan, a copy of which is filed as Exhibit 10.35 to this report (the "2010 Plan"). The 2010 Plan is intended to enhance Ciena's ability to attract and retain certain key employees to be transferred to Ciena in connection with its pending acquisition of substantially all of the optical networking and carrier Ethernet assets of Nortel's Metro Ethernet Networks (MEN) business. The 2010 Plan authorizes issuance, by the Compensation Committee, of restricted stock or restricted stock units representing up to 2.25 million shares of Ciena common stock. The 2010 Plan provides that awards subject to time-based vesting conditions may not vest in full in less than three years from the date of grant. Awards subject to performance-based vesting conditions may not vest in full in less than one year from the date of grant. These minimum vesting periods are subject to exceptions where vesting has occurred due to (i) a participant's death, disability or retirement, or (ii) a change in control. The 2010 Plan will terminate automatically one year following the closing date of Ciena's pending acquisition of the Nortel assets described above. Upon termination, any shares that remain available for issuance under the 2010 Plan shall cease to be available thereunder and shall not be available for issuance under any other existing Ciena equity incentive plan. The 2010 Plan is intended to qualify under Nasdaq Marketplace Rule 5635(c)(4) permitting the adoption of the plan and issuance of awards thereunder without stockholder approval.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

Pursuant to General Instruction G(3) of Form 10-K, information relating to Ciena's directors and executive officers is set forth in Part I of this annual report under the caption Item 1. "Business—Directors and Executive Officers."

Additional information concerning our Audit Committee and regarding compliance with Section 16(a) of the Exchange Act responsive to this item is incorporated herein by reference to Ciena's definitive proxy statement with respect to our 2010 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

As part of our system of corporate governance, our board of directors has adopted a code of ethics that is specifically applicable to our chief executive officer and senior financial officers. This Code of Ethics for Senior Financial Officers, as well as our Code of Business Conduct and Ethics, applicable to all directors, officers and employees, are available on the corporate governance page of our web site at http://www.ciena.com. We intend to satisfy any disclosure requirement under Item 5.05 of Form 8-K regarding an amendment to, or waiver from, a provision of the Code of Ethics for Senior Financial Officers, by posting such information on our web site at the address above.

Item 11. Executive Compensation

Information responsive to this item is incorporated herein by reference to Ciena's definitive proxy statement with respect to our 2010 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

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

Information responsive to this item is incorporated herein by reference to Ciena's definitive proxy statement with respect to our 2010 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

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

Information responsive to this item is incorporated herein by reference to Ciena's definitive proxy statement with respect to our 2010 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

Item 14. Principal Accountant Fees and Services

Information responsive to this item is incorporated herein by reference to Ciena's definitive proxy statement with respect to our 2010 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of the fiscal year covered by this Form 10-K.

PART IV

Item 15. Exhibits and Financial Statement Schedules

(a) 1. The information required by this item is included in Item 8 of Part II of this annual report.

2. The information required by this item is included in Item 8 of Part II of this annual report.

3. Exhibits: See Index to Exhibits, which is incorporated by reference in this Item. The Exhibits listed in the accompanying Index to Exhibits are filed or incorporated by reference as part of this annual report.

(b) Exhibits. See Index to Exhibits, which is incorporated by reference in this Item. The Exhibits listed in the accompanying Index to Exhibits are filed or incorporated by reference as part of this annual report.

(c) Not applicable.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Linthicum, County of Anne Arundel, State of Maryland, on the 22nd day of December 2009.

Ciena Corporation

By: /s/ Gary B. Smith
Gary B. Smith
President, Chief Executive Officer and Director

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 date indicated.

Signatures	Title	Date
/s/ Patrick H. Nettles, Ph.D. Patrick H. Nettles, Ph.D.	Executive Chairman of the Board of Directors	December 22, 2009
/s/ Gary B. Smith Gary B. Smith (Principal Executive Officer)	President, Chief Executive Officer and Director	December 22, 2009
/s/ James E. Moylan, Jr. James E. Moylan, Jr. (Principal Financial Officer)	Sr. Vice President, Finance and Chief Financial Officer	December 22, 2009
/s/ Andrew C. Petrik Andrew C. Petrik (Principal Accounting Officer)	Vice President, Controller	December 22, 2009
/s/ Stephen P. Bradley, Ph.D. Stephen P. Bradley, Ph.D.	Director	December 22, 2009
/s/ Harvey B. Cash Harvey B. Cash	Director	December 22, 2009
/s/ Bruce L. Claflin Bruce L. Claflin	Director	December 22, 2009
/s/ Lawton W. Fitt Lawton W. Fitt	Director	December 22, 2009
/s/ Patrick T. Gallagher Patrick T. Gallagher	Director	December 22, 2009
/s/ Judith M. O'Brien Judith M. O'Brien	Director	December 22, 2009
/s/ Michael J. Rowny Michael J. Rowny	Director	December 22, 2009

INDEX TO EXHIBITS

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Here-with (X)
		Form and Registration or Commission No.	Exhibit	Filing Date	
2.1	Amended & Restated Asset Sale Agreement by and among Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks, Inc. and certain other entities identified therein as sellers and Ciena Corporation, dated as of November 24, 2009 ("Nortel ASA")+				X
2.2	Amendment No. 1 to Nortel ASA dated as of December 3, 2009+				X
2.3	Asset Sale Agreement (relating to the sale and purchase of certain Nortel assets in Europe, the Middle East and Africa) by and among the Nortel affiliates, Joint Administrators and Joint Israeli Administrators named therein and Ciena Corporation, dated as of October 7, 2009 ("Nortel EMEA ASA")+				X
2.4	Deed of Amendment, dated October 20, 2009, relating to the Nortel EMEA ASA+				X
2.5	Amending Agreement dated November 24, 2009 relating to the Nortel EMEA ASA+				X
2.6	Amending Agreement dated December 16, 2009 relating to the Nortel EMEA ASA+				X
3.1	Amended and Restated Certificate of Incorporation	8-K (333-17729)	3.1	3/27/2008	
3.2	Amended and Restated By-Laws of Ciena Corporation	8-K (000-21969)	3.1	8/28/2008	
4.1	Specimen Stock Certificate	10-K (000-21969)	4.1	12/27/2007	
4.2	Indenture dated as of April 10, 2006 between Ciena Corporation and The Bank of New York, as trustee, for 0.25% convertible senior notes due May 1, 2013, including the Form of Global Note attached as Exhibit A thereto	8-K (000-21969)	4.7	4/10/2006	
4.3	Indenture dated June 11, 2007 between Ciena Corporation and The Bank of New York, as trustee, for 0.875% Convertible Senior Notes due 2017, including the Form of Global Note attached as Exhibit A thereto	8-K (000-21969)	4.7	6/12/2007	
10.1	Lightera 1998 Stock Option Plan and Form of Stock Option Agreement**	10-Q (000-21969)	10.19	5/21/1999	
10.2	Omnia Communications, Inc. 1997 Stock Plan and Form of Agreements**	10-Q (000-21969)	10.20	8/19/1999	
10.3	1999 Non-Officer Stock Option Plan and Form of Stock Option Agreement**	10-K (000-21969)	10.22	12/10/1999	
10.4	Amendment No. 1 to 1999 Non-Officer Stock Option Plan**	10-K (000-21969)	10.25	12/3/2001	
10.5	Cyras Systems, Inc. 1998 Stock Plan as amended and Form of Stock Option Agreement**	10-Q (000-21969)	10.24	5/17/2001	
10.6	ONI 1997 Stock Plan**	S-1* (333-32104)	10.2	3/10/2000	
10.7	ONI 1998 Equity Incentive Plan**	S-1* (333-32104)	10.3	3/10/2000	
10.8	ONI 1999 Equity Incentive Plan**	S-1* (333-32104)	10.4	3/10/2000	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Here-with (X)
		Form and Registration or Commission No.	Exhibit	Filing Date	
10.9	WaveSmith Networks, Inc. 2000 Stock Option and Incentive Plan**	10-Q (000-21969)	10.36	8/21/2003	
10.10	Catena Networks, Inc. 1998 Equity Incentive Plan, as amended**	10-Q (000-21969)	10.38	5/20/2004	
10.11	Internet Photonics, Inc. Amended and Restated 2000 Corporate Stock Option Plan**	10-Q (000-21969)	10.39	5/20/2004	
10.12	Ciena Corporation 2000 Equity Incentive Plan (Amended and Restated ONI Systems Corp. 2000 Equity Incentive Plan) **	10-K (000-21969)	10.37	12/11/2003	
10.13	Form of Stock Option Award Agreement for executive officers under Ciena Corporation 2000 Equity Incentive Plan**	8-K (000-21969)	10.1	11/04/2005	
10.14	Form of Restricted Stock Unit Agreement for executive officers under Ciena Corporation 2000 Equity Incentive Plan**	8-K (000-21969)	10.2	11/04/2005	
10.15	Form of Performance Stock Unit Award Agreement for executive officers under Ciena Corporation 2000 Equity Incentive Plan**	8-K (000-21969)	10.3	11/04/2005	
10.16	Form of Stock Option Award Agreement for directors under Ciena Corporation 2000 Equity Incentive Plan**	8-K (000-21969)	10.4	11/04/2005	
10.17	Form of Restricted Stock Unit Award Agreement for directors under Ciena Corporation 2000 Equity Incentive Plan**	8-K (000-21969)	10.5	11/04/2005	
10.18	Amended and Restated 2003 Employee Stock Purchase Plan (as amended on May 30, 2006)**	10-Q (000-21969)	10.1	8/31/2006	
10.19	1996 Outside Directors Stock Option Plan**	S-1 (333-17729)	10.4	12/12/1996	
10.20	Forms of 1996 Outside Directors Stock Option Agreement**	S-1 (333-17729)	10.5	12/12/1996	
10.21	Third Amended and Restated 1994 Stock Option Plan**	S-1 (333-17729)	10.2	12/12/1996	
10.22	Amended and Restated 1994 Stock Option Plan Forms of Employee Stock Option Agreement**	S-1 (333-17729)	10.3	12/12/1996	
10.23	2008 Omnibus Incentive Compensation Plan**	8-K (000-21969)	10.1	3/27/2008	
10.24	Form of 2008 Omnibus Incentive Plan Restricted Stock Unit Agreement (Employee)**	10-Q (000-21969)	10.1	6/4/2009	
10.25	Form of 2008 Omnibus Incentive Plan Non-Qualified Stock Option Agreement (Employee)**	10-Q (000-21969)	10.2	6/4/2009	
10.26	Form of 2008 Omnibus Incentive Plan Restricted Stock Unit Agreement (Director)**	10-Q (000-21969)	10.3	6/4/2009	
10.27	World Wide Packets, Inc. 2000 Stock Incentive Plan, as amended**	S-8 (333-149520)	10.1	3/4/2008	
10.28	Form of Indemnification Agreement with Directors and Executive Officers**	10-Q (000-21969)	10.1	3/3/2006	
10.29	Amended and Restated Change in Control Severance Agreement between Ciena Corporation and Gary B. Smith**	10-Q (000-21969)	10.1	3/2/2007	
10.30	Amendment 1 to Amended and Restated Change In Control Severance Agreement between Ciena Corporation and Gary B. Smith**	10-Q (000-21969)	10.2	8/31/2007	
10.31	Form of Amended and Restated Change in Control Severance Agreement between Ciena and Executive Officers**	10-Q (000-21969)	10.2	3/2/2007	
10.32	Form of Amendment 1 to Amended and Restated Change in Control Severance Agreement between Ciena Corporation and Executive Officers **	10-Q (000-21969)	10.3	8/31/2007	

Exhibit Number	Exhibit Description	Incorporated by Reference			Filed Here-with (X)
		Form and Registration or Commission No.	Exhibit	Filing Date	
10.33	Ciena Corporation Directors Restricted Stock Deferral Plan**	10-Q (000-21969)	10.1	8/31/2007	
10.34	Ciena Corporation Incentive Bonus Plan, as amended October 2007**	10-Q (000-21969)	10.28	12/27/2007	
10.35	Ciena Corporation 2010 Inducement Equity Award Plan**				X
10.36	Form of 2010 Inducement Equity Award Plan Restricted Stock Unit Agreement **				X
12.1	Computation of Earnings to Fixed Charges	—	—	—	X
21.1	Subsidiaries of registrant	—	—	—	X
23.1	Consent of Independent Registered Public Accounting Firm	—	—	—	X
31.1	Certification of Chief Executive Officer Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	—	—	—	X
31.2	Certification of Chief Financial Officer Pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934 as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002	—	—	—	X
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	—	—	—	X
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	—	—	—	X

* ONI Systems Corp. Form S-1 (333-32104)

** Represents management contract or compensatory plan or arrangement

\+ Pursuant to Item 601(b)(2) of Regulation S-K (i) all schedules and exhibits referenced in the table of contents to Exhibit 2.1 have been omitted; and (ii) schedules 5, 6, 7, 9, 10 and 11 to Exhibit 2.3 have been omitted. Ciena hereby agrees to furnish supplementally a copy of any omitted exhibit or schedule to the SEC upon request. In addition, representations and warranties included in these asset sale agreements, as amended, were made by the parties to one another in connection with a negotiated transaction. These representations and warranties were made as of specific dates, only for purposes of these agreements and for the benefit of the parties thereto. These representations and warranties were subject to important exceptions and limitations agreed upon by the parties, including being qualified by confidential disclosures, made for the purposes of allocating contractual risk between the parties rather than establishing these matters as facts. These agreements are filed with Ciena's annual report only to provide investors with information regarding its terms and conditions, and not to provide any other factual information regarding Ciena or any other party thereto. Accordingly, investors should not rely on the representations and warranties contained in these agreements or any description thereof as characterizations of the actual state of facts or condition of any party, its subsidiaries or affiliates. The information in these agreements should be considered together with Ciena's public reports filed with the SEC.

AMENDED AND RESTATED ASSET SALE AGREEMENT

BY AND AMONG

NORTEL NETWORKS CORPORATION

NORTEL NETWORKS LIMITED

NORTEL NETWORKS INC.

AND

THE OTHER ENTITIES IDENTIFIED HEREIN AS SELLERS

AND

CIENA CORPORATION

DATED AS OF NOVEMBER 24, 2009

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

EXHIBITS

Exhibit A — Other Sellers

Exhibit B — EMEA Sellers

Exhibit C — Canadian Debtors; U.S. Debtors; Israeli Company; Non-Debtor Sellers; EMEA Debtors

Exhibit D — Original EMEA Asset Sale Agreement

Exhibit D-1 — Deed of Amendment

Exhibit E — EMEA Amendment Agreement

Exhibit F — Intellectual Property License Agreement

Exhibit G — Knowledge of the Purchaser

Exhibit H — Intentionally Omitted

Exhibit I — Loaned Employee Agreement

Exhibit J — Intentionally Omitted

Exhibit K — Intentionally Omitted

Exhibit L-1 — Lab 10 Lease Agreement

Exhibit L-2 — Carling Property Non-Disturbance Agreements

Exhibit M —Intentionally Omitted

Exhibit N — Intentionally Omitted

Exhibit O — Intentionally Omitted

Exhibit P — Trademark License Agreement

Exhibit Q — Transition Services Agreement

Exhibit R — Intentionally Omitted

Exhibit S — Intentionally Omitted

Exhibit T — Intentionally Omitted

Exhibit U — Intentionally Omitted

Exhibit V — Form of Assignment of Patent Rights

Exhibit W —Form of Assignment of Trademark Rights

Exhibit X — Restricted Seller Revenue

Exhibit Y — Real Estate Terms and Conditions

Exhibit Z — Flextronics Back-to-Back Supply Agreement Term Sheet

Exhibit AA — Deposit Escrow Agreement

Exhibit 1.1 — Contract Manufacturing Inventory Agreements (Term Sheet)

Exhibit 2.1.1 — Sellers and Purchaser

Exhibit 2.2.1(b)(ii) — Related Share Adjustment Table

Exhibit 2.2.1(b)(iii) — Conversion Rate Table

Exhibit 5.1(a) — Forms of U.S. Bidding Procedures Order and U.S. Sale Order

Exhibit 5.2.1 — Form of Canadian Sales Process Order

Exhibit 5.2.2 — Form of Canadian Approval and Vesting Order

Exhibit 5.9 — Purchaser's Representatives for Interim Covenants Consents

Exhibit 5.12 — Purchaser's Representatives for Sellers Disclosure Schedule and Certain Information Updates

SELLERS DISCLOSURE SCHEDULE

Section 1.1(a) — Contract Manufacturers

Section 1.1(b) — Persons Having Knowledge

Section 1.1(d) — Nortel Accounting Principles

Section 1.1(e) — Owned Equipment

Section 1.1(g) — Permitted Encumbrances

Section 1.1(h) — Products

Section 1.1(i) — Seller Contracts

Section 1.1(j) — Services

Section 1.1(k) — Patents

Section 1.1(l) — Trademarks

Section 1.1(m) — Seconded Employees

Section 2.1.1(g) — Seller Consents

Section 2.1.2(n) — Excluded Assets

Section 2.1.3(c) — Assumed Intellectual Property Liabilities

Section 2.1.3(i) — Assumed Specified Employee Liabilities

Section 2.1.4(n) — Other Excluded Liabilities

Section 2.1.5(a) — 365 Vendor Contracts

Section 2.1.5(b) — 365 Customer Contracts

Section 2.1.6(a) — Other Vendor Contracts

Section 2.1.6(b) — Non-Assignable Contracts with Suppliers

Section 2.1.6(c) — Designated Other Customer Contracts

Section 2.1.6(d) — Designated Non-Assignable Customer Contracts

Section 2.1.7(a) — Cure Costs

Section 2.1.7(b) — Payment of Cure Costs

Section 2.1.7(c) — Customer Contract Cure Costs

Section 2.2.3(d) — Manner for Exclusion of Sellers

Section 2.2.7(a) — Allocations for Shares

Section 4.3(c)(i) — Inbound License Agreements and Patent Cross Licenses

Section 4.3(c)(ii) — Other Assets and Rights

Section 4.4(a) — Material Customer and Supplier Contracts

Section 4.4(b) — Material Seller Contracts

Section 4.5(b) — Transferred Intellectual Property

Section 4.5(h) — Infringement

Section 4.5(j)(i) — Patent Cross Licenses

Section 4.5(j)(ii) — Inbound License Agreements

Section 4.5(j)(iii) — Outbound License Agreements

Section 4.5(k) — Open Source Software

Section 4.6 — Litigation

Section 4.7 — Financial Statements

Section 4.8 — Compliance with Laws

Section 4.9(a)(i) — Owned Real Property

Section 4.9(a)(ii) — Leased Real Property

Section 4.9(a)(iii) — 6-Month Locations

Section 4.9(a)(iv) — Short-Term Licensed Property

Section 4.9(a)(v) — Locations where Owned Assets Located

Section 4.10(a)(i) — Seller Employee Plans

Section 4.10(b) — Employee Information

Section 4.10(c) — Strike, Material Grievance, Work Stoppage

Section 4.10(d) — Collective Labor Agreements

Section 4.10(e) — Multiemployer Plans

Section 4.12(c) —Deficiency for Material Amount of Taxes

Section 5.9 — Conduct of Business in the Ordinary Course Exceptions

Section 5.15 — Bundled Contracts

Section 5.21(a) — Security Deposits

Section 5.28 — Covenants in respect of Transition Services

Section 5.35 — India

Section 7.1.1(a) — Employees Transferring by Operation of Law

Section 7.1.1(c) — Countries with Ten or More Employees

Section 7.1.2(b)(ii)(B) — Accrued Amounts Owing to Specified Transferred Employees

Section 7.1.2(b)(iv) — Australia Long Service Leave and Sick Leave

Section 11.15(a)(i) — Appointment of NNC as Representative

Section 11.15(a)(ii) — Appointment of NNL as Representative

Section 11.15(a)(iii) — Appointment of NNI as Representative

AMENDED AND RESTATED ASSET SALE AGREEMENT

This Amended and Restated Asset Sale Agreement is dated as of November 24, 2009, among Nortel Networks Corporation, a corporation organized under the laws of Canada ("**NNC**"), Nortel Networks Limited, a corporation organized under the laws of Canada ("**NNL**"), Nortel Networks Inc., a corporation organized under the laws of Delaware ("**NNI**" and, together with NNC and NNL, the "**Main Sellers**"), the affiliates of the Main Sellers listed in Exhibit A hereto (the "**Other Sellers**" and, together with the Main Sellers, the "**Sellers**") and Ciena Corporation, a corporation organized under the laws of Delaware (the "**Purchaser**").

WHEREAS, the Sellers and the affiliates of the Main Sellers listed in Exhibit B hereto (the "**EMEA Sellers**") beneficially own and operate, respectively, the Business (as defined below);

WHEREAS, on the Petition Date (as defined herein), NNC, NNL and the Other Sellers listed in part 1 of Exhibit C hereto (together, the "**Canadian Debtors**") filed with the Canadian Court (as defined below) an application for protection under the Companies' Creditors Arrangement Act (the "**CCAA**") (the proceedings commenced by such application, the "**CCAA Cases**") and were granted certain initial creditor protection pursuant to an order issued by the Canadian Court on the same date, which also appointed Ernst & Young Inc. as "**Monitor**" in connection with the CCAA Cases and has been extended by further order of the Canadian Court from time to time, most recently on July 30, 2009, as the same may be amended and restated from time to time by the Canadian Court.

WHEREAS, NNI and the Other Sellers listed in part 2 of Exhibit C hereto (the "**U.S. Debtors**") are debtors-in-possession under the U.S. Bankruptcy Code (as defined below) which commenced cases under Chapter 11 of the U.S. Bankruptcy Code on the Petition Date by filing voluntary petitions for relief in the U.S. Bankruptcy Court for the District of Delaware (the "**Chapter 11 Cases**");

WHEREAS, the EMEA Debtors (as defined below) on the Petition Date filed applications with the English Court (as defined below), pursuant to the Insolvency Act of 1986, as amended (the "**Insolvency Act**") and the European Union's Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings (the proceedings commenced by such applications, the "**EMEA Cases**") and the English Court appointed Alan Bloom, Stephen Harris, Christopher Hill and Alan Hudson of Ernst & Young LLP as joint administrators of all the EMEA Debtors (other than Nortel Networks (Ireland) Limited, for which David Hughes of Ernst & Young Chartered Accountants and Alan Bloom serve as joint administrators) (the "**Joint Administrators**") under the Insolvency Act;

WHEREAS, the entity listed under the heading "Israeli Company" in part 3 of Exhibit C hereto (the "**Israeli Company**") on January 18, 2009 filed an application with the Tel-Aviv-Jaffa District Court, pursuant to the Israeli Companies Law, 1999, and the regulations relating thereto (collectively, the "**Israeli Companies Law**") for a stay of proceedings, and the Israeli Court appointed Yaron Har-Zvi and Avi D. Pelossof (the "**Joint Israeli Administrators**") on January 19, 2009, as joint administrators of the Israeli Company under the Israeli Companies Law;

WHEREAS, on May 28, 2009, the Commercial Court of Versailles, France ordered the commencement of secondary proceedings and the appointment of a French administrator in respect of Nortel Networks S.A.;

WHEREAS, on July 14, 2009, Nortel Networks (CALA) Inc. commenced a case under Chapter 11 of the U.S. Bankruptcy Code by filing a voluntary petition for relief in the U.S. Bankruptcy Court for the District of Delaware;

WHEREAS, the Other Sellers listed in part 4 of Exhibit C hereto (the "**Non-Debtor Sellers**") are not subject to any Bankruptcy Proceedings (as defined below) as of the date hereof;

WHEREAS, the Sellers have agreed to transfer to the Purchaser and/or the Designated Purchasers (as defined below) and the Purchaser has agreed to purchase and assume, and cause the Designated Purchasers to purchase and assume, including, to the extent applicable, pursuant to Sections 363 and 365 of the U.S. Bankruptcy Code and pursuant to the Canadian Approval and Vesting Order, the Assets and the Assumed Liabilities (each as defined below) from the Sellers upon the terms and conditions set forth hereinafter;

WHEREAS, the Sellers and the Purchaser previously entered into that certain Asset Sale Agreement, dated as of October 7, 2009 (the "**Original Asset Sale Agreement**"), pursuant to which the Purchaser was selected as the stalking horse bidder for the purposes of the Auction (as defined below);

WHEREAS, simultaneously with the execution of the Original Asset Sale Agreement, the EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators and the Purchaser entered into a separate agreement in the form set forth in Exhibit D hereto (the "**Original EMEA Asset Sale Agreement**") providing for the sale to the Purchaser (or the EMEA Designated Purchasers (as defined therein)) of the EMEA Assets (as defined below), the Original EMEA Asset Sale Agreement being amended by a Deed of Amendment dated October 20, 2009 in the form set forth in Exhibit D-1 hereto;

WHEREAS, on November 20-22, 2009, the Auction was held, during which time the Sellers and the Purchaser agreed to modify a number of terms in connection with the Sellers' selection of the Purchaser as the Successful Bidder (as defined below) at the Auction;

WHEREAS, the Purchaser and the Sellers desire to amend and restate the Original Asset Sale Agreement in its entirety to incorporate the terms agreed to in connection with the Sellers' selection of the Purchaser as the Successful Bidder at the Auction;

WHEREAS, simultaneously with the execution of this Agreement, the EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators and the Purchaser are entering into an amendment agreement to amend further the Original EMEA Asset Sale Agreement to incorporate the terms agreed to in connection with the Sellers' selection of Purchaser as the Successful Bidder at the Auction (the "**EMEA Amendment Agreement**" a form of which is set forth in Exhibit E hereto);

WHEREAS, the Parties (as defined below) acknowledge and agree that the purchase by the Purchaser (and the Designated Purchasers, if any) of the Assets and the EMEA Assets, the license of Intellectual Property rights under the Intellectual Property License Agreement and the Trademark License Agreement (each as defined below), and the assumption by the Purchaser and the Designated Purchasers of the Assumed Liabilities and the EMEA Assumed Liabilities (as defined below) are being made at arm's length and in good faith and without intent to hinder, delay or defraud creditors of the Sellers and their Affiliates and each Seller acknowledges that the consideration to be paid is fair value and reasonably equivalent value for the acquisitions by the Purchaser and the Designated Purchasers of the Assets and the EMEA Assets, the license of Intellectual Property rights under the Intellectual Property License Agreement and the Trademark License Agreement and the assumption by the Purchaser and the Designated Purchasers of the Assumed Liabilities and the EMEA Assumed Liabilities, as set forth hereunder and in the EMEA Asset Sale Agreement; and

WHEREAS, in addition, at the Closing, the Purchaser, certain Sellers (or affiliates of the Sellers) and certain EMEA Sellers will enter into the following ancillary agreements (together, the "**Ancillary Agreements**") (i) the Local Sale Agreements, (ii) the Real Estate Agreements, (iii) the Intellectual Property License Agreement, (iv) the Transition Services Agreement, (v) the Trademark License Agreement, (vi) the Loaned Employee Agreement; (vii) the Subcontract Agreement, (viii) the Contract Manufacturing Inventory Agreements, (ix) the Carling Property Lease Agreements, (x) the Patent Assignments, (xi) the Trademark Assignments, (xii) the Indenture (unless the Cash Election Option has been exercised in full), (xiii) if requested by the Purchaser in accordance with the terms hereof, the Flextronics Back-to-Back Supply Agreement and (xiv) such other back-to-back supply agreements as are requested by the Purchaser in accordance with the terms hereof, and, subject to the negotiation prior to Closing of each such agreement to the mutual satisfaction of each party thereto, in their sole and absolute discretion, will enter into the Mutual Development Agreement, the Seller Supply Agreement, the NETAS Distribution Agreement; the NGS Distribution Agreement, the EFA Development Agreement, and the LGN/Korea Distribution Agreement (each as defined below).

NOW, THEREFORE, in consideration of the respective covenants, representations and warranties made herein, and of the mutual benefits to be derived hereby (the sufficiency of which is acknowledged), the Parties agree as follows:

ARTICLE I
INTERPRETATION

SECTION 1.1. Definitions. Capitalized terms used but not otherwise defined herein shall have the meanings set forth below:

"**2008 Revenues**" has the meaning set forth in Section 2.2.3(b).

"**365 Contracts**" has the meaning set forth in Section 2.1.5(b).

"**365 Customer Contract List**" has the meaning set forth in Section 2.1.5(b).

"**365 Customer Contracts**" has the meaning set forth in Section 2.1.5(b).

"**365 Vendor Contract List**" has the meaning set forth in Section 2.1.5(a).

"**365 Vendor Contracts**" has the meaning set forth in Section 2.1.5(a).

"**6 Month Location**" has the meaning set forth in Section 4.9(a).

"**Accounting Arbitrator**" has the meaning set forth in Section 2.2.4.1(b).

"**Action**" means any litigation, action, audit, hearing, investigation, suit (whether civil, criminal, administrative or investigative), charge, binding arbitration, Tax audit or other legal, administrative or judicial proceeding.

"**Additional Adverse Bankruptcy Proceeding**" has the meaning set forth in Section 2.2.3(a).

"**Additional Premises Lease Agreement**" means the lease agreement between NNTC on the one hand and the Purchaser or Designated Purchaser on the other hand in respect of the leasing of those parts of the Lab 2 Building of the Carling Property as more particularly defined in the Real Estate Terms and Conditions.

"**Additional Statements**" has the meaning set forth in Section 8.1(a)(i).

"**Adjustment Amount**" has the meaning set forth in Section 2.2.4.2(a).

"**Adverse International Injunction**" has the meaning set forth in Section 2.2.3(a).

"**Affiliate**" means, as to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is Controlled by, such Person; provided, however, that no EMEA Seller or Subsidiary of an EMEA Seller shall be deemed an Affiliate of any Seller.

"**Aggregate Principal Amount**" has the meaning set forth in Section 2.2.1(a).

"**Agreement**" means this Amended and Restated Asset Sale Agreement, the Sellers Disclosure Schedule and all Exhibits and Schedules attached hereto and thereto and all amendments hereto and thereto made in accordance with Section 11.4.

"**Alternative Arrangements**" has the meaning set forth in Section 5.15(b).

"**Alternative Transaction**" means the sale, transfer or other disposition, directly or indirectly, including through an asset sale, stock sale, merger, amalgamation, plan of arrangement or other similar transaction, of all or a substantial portion of the Business, or all or a substantial portion of the Assets and the EMEA Assets, in each case, in a transaction or a series of transactions with a Successful Bidder (as such term has been defined in Exhibit 5.1(a), which may include multiple bidders whose bids are combined) other than the Purchaser and/or its Affiliates; provided, however, that an "Alternative Transaction" shall not include: (i) the retention of the Business or all or any portion of the Assets and the EMEA Assets, by all or part of the Sellers and/or the EMEA Sellers (or their successor entities emerging from the Bankruptcy

Proceedings) pursuant to a stand-alone plan of reorganization or plan of arrangement approved by any Bankruptcy Court, or (ii) the sale, transfer or other disposition, directly or indirectly, of any portion of the Assets or the EMEA Assets (other than as a going concern) in connection with the closure, liquidation or winding-up of any of the Sellers.

"**Ancillary Agreements**" has the meaning set forth in the recitals to this Agreement.

"**Antitrust Approvals**" means the HSR Approval and the Competition Act Approval.

"**Antitrust Laws**" means the Competition Act, the HSR Act, the EC Merger Regulation, and any competition, merger control and anti-trust Law of the European Union, any applicable European Union member states and EFTA states, and any other applicable supranational, national, federal, state, provincial or local Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolizing or restraining trade or lessening competition of any other country or jurisdiction, to the extent applicable to the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement).

"**ARD Transferring Employee**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**Assets**" has the meaning set forth in Section 2.1.1.

"**Assigned Contracts**" means all Seller Contracts except: (i) the Excluded 365 Contracts, (ii) the Excluded Other Vendor Contracts, (iii) the Excluded Non-Assignable Supply Contracts, (iv) the Non-Assigned Contracts and (v) leases, subleases, licenses and other occupancy agreements in respect of any Real Property, unless an assignment of such contract is contemplated by the Real Estate Terms and Conditions.

"**Assumed and Assigned Contracts**" has the meaning set forth in Section 2.1.5(b).

"**Assumed Liabilities**" has the meaning set forth in Section 2.1.3.

"**Auction**" has the meaning set forth in the U.S. Bidding Procedures and Sale Motion.

"**Audited Financial Statements**" has the meaning set forth in Section 5.26.

"**Balance Sheet Date**" has the meaning set forth in Section 4.7.

"**Bankruptcy Consents**" has the meaning set forth in Section 4.1(a).

"**Bankruptcy Court**" means the U.S. Bankruptcy Court, the Canadian Court, the English Court and any other court before which Bankruptcy Proceedings are held.

"**Bankruptcy Laws**" means the U.S. Bankruptcy Code, the CCAA, the Insolvency Act and the other applicable bankruptcy, insolvency, administration or similar Laws of any jurisdiction where Bankruptcy Proceedings are held.

"**Bankruptcy Proceedings**" means the Chapter 11 Cases, the CCAA Cases, the EMEA Cases and, in each case, any proceedings thereunder, as well as any other voluntary or involuntary bankruptcy, insolvency, administration or similar judicial proceedings concerning any of the Sellers or the EMEA Sellers that are held from time to time.

"**Base Cash Purchase Price**" has the meaning set forth in Section 2.2.1(a).

"**Break-Up Fee**" has the meaning set forth in Section 10.2(a).

"**Bundled Contract**" has the meaning set forth in Section 5.15(a).

"**Business**" means the optical networking solutions and carrier ethernet switching segments of NNC's "Metro Ethernet Networks" business through which the Sellers and the EMEA Sellers, individually, jointly or in collaboration with, or pursuant to Contracts with, Third Parties: (a) design, develop and cause the manufacture, assembly and testing of the Products; (b) market, sell, distribute and supply the Products; and (c) provide the Services, all as conducted as at the date of this Agreement, but excludes:

(i) any financial, information technology, legal, marketing, human resource operations (including supply management and technical and product support), real estate or other "corporate" or related functions supporting or utilized by such activities, unless such functions are exclusively dedicated to the support of the activities described in (a) through (c), in which event such functions are included;

(ii) Overhead and Shared Services (other than Transferred Overhead and Shared Services); and

(iii) any products and/or services provided by businesses or business segments of any of the Sellers or the EMEA Sellers, other than those specified in (a) through (c) above.

"**Business Day**" means a day on which the banks are opened for business (Saturdays, Sundays, statutory and civic holidays excluded) in (i) New York, New York, United States, (ii) Toronto, Ontario, Canada, and (iii) London, England, United Kingdom.

"**Business Information**" means, as of the Closing Date, all books, records, files, research and development log books, ledgers, documentation, sales literature or similar documents in the possession or under control of the Sellers and to the extent that such information relates to the Business, including policies and procedures, Owned Equipment manuals and materials and procurement documentation; provided, that, to the extent any of the foregoing is also used in any business or business segment of any Seller other than the Business, then such portion of the Business Information as used in such business or business segment of any Seller other than the Business shall be segregated and shall not form part of Business

Information, provided further that, where such segregation shall be impracticable, Business Information shall be limited to copies of the foregoing. Business Information shall not include any Employee Records or Tax records.

"**Canadian Approval and Vesting Order**" has the meaning set forth in Section 5.2.2.

"**Canadian Approval and Vesting Order Motion**" has the meaning set forth in Section 5.2.2.

"**Canadian Court**" means the Ontario Superior Court of Justice (Commercial List).

"**Canadian DB Replacement Plan**" has the meaning set forth in Section 7.5.3.

"**Canadian Debtors**" has the meaning set forth in the recitals to this Agreement.

"**Canadian Non-Union DC Replacement Plan**" has the meaning set forth in Section 7.5.1.

"**Canadian Sales Process Order**" has the meaning set forth in Section 5.2.1(a).

"**Canadian Sales Process Order Motion**" has the meaning set forth in Section 5.2.1(a).

"**Canadian Sellers**" means each of the Sellers that are organized under the laws of Canada (or any province of Canada).

"**Canadian Union DC Replacement Plan**" has the meaning set forth in Section 7.5.4.

"**Canadian Union Retiree**" means any individual who was employed by any of the Sellers or any of their Affiliates in Canada in respect of the Business and whose terms and conditions of employment were governed by a Collective Labor Agreement.

"**Carling Property**" means the "Premises" as defined in the Carling Property Lease Agreements.

"**Carling Property Escrow Amount**" means, pursuant to the Carling Property Lease Agreements, an initial amount in immediately available funds equal to $33,500,000 which amount shall secure exclusively the break-fee, if any, payable by the Sellers to the Purchaser in respect of the early termination of the Carling Property Lease Agreements by the Sellers in the exercise of the Sellers' early termination rights thereunder.

"**Carling Property Lease Agreements**" means, collectively, the Lab 10 Lease Agreement and the Additional Premises Lease Agreement, and non-disturbance agreements from any existing mortgagees registered on title to the Carling Property in the form attached as Exhibit L-2 hereto, each of the foregoing agreements to be entered into and delivered on or before Closing by each of the parties to such agreements substantially in the forms aforesaid.

"**Cash Purchase Price**" has the meaning set forth in Section 2.2.1(a).

"**Cash Replacement Election**" has the meaning set forth in Section 2.2.1(a).

"**CCAA**" has the meaning set forth in the recitals to this Agreement.

"**CCAA Cases**" has the meaning set forth in the recitals to this Agreement.

"**CCAA Service List**" means the Canadian Debtors' service list as posted on the Monitor's website (http://www.ey.com/ca/nortel) as the same may be updated from time to time in the context of the CCAA Cases.

"**CERCLA**" has the meaning set forth in Section 4.13(c).

"**Chapter 11 Cases**" has the meaning set forth in the recitals to this Agreement.

"**CIP Accounts Receivable**" means all uninvoiced accounts receivable relating to the Business with respect to Contracts in progress, but only to the extent that such accounts receivable have not been invoiced because of milestones, deliverables or other commitments arising pursuant to such Contracts which have not yet been satisfied or fulfilled and excluding all EMEA CIP Accounts Receivable.

"**Claim**" has the meaning set forth in Section 101(5) of the U.S. Bankruptcy Code.

"**Claim Notice**" has the meaning set forth in Section 6.7(b).

"**Closing**" has the meaning set forth in Section 2.3.1.

"**Closing Accrued Vacation and Service Award Amount**" means, as of the Closing Date, (i) the amount of compensation with respect to the accrued and unused vacation with respect to each Specified Transferred Employee and each EMEA Transferring Employee (including all Taxes required to be withheld on behalf of the applicable Specified Transferred Employee and EMEA Transferring Employee by his or her respective employer) calculated by taking, with respect to each such employee (A) an amount equal to the number (not less than zero) of such employee's accrued and unused vacation hours as of the Closing Date multiplied by such employee's hourly rate of pay (with such hourly rate of pay derived by dividing such employee's annual base salary by the number of standard work hours per year for such employee), and (ii) in respect of Transferred Employees in Australia with five (5) years or more of service as an employee of Sellers, the EMEA Sellers or their respective Affiliates as of the Closing Date, the amounts specified in Section 7.1.2(b)(iv) of the Sellers Disclosure Schedules in respect of long service leave multiplied by the applicable percentage as set forth in the Nortel Accounting Principles, plus, without duplication, the aggregate amount of employer Taxes required to be paid in connection with all such amounts.

"**Closing CIP Accounts Receivable Amount**" means, as of the Closing Date, the amount accrued for CIP Accounts Receivable and EMEA CIP Accounts Receivable as of the Closing Date in accordance with GAAP applied in a manner consistent with the Nortel Accounting Principles (to the extent consistent with GAAP).

"**Closing Date**" has the meaning set forth in Section 2.3.1.

"**Closing Date Net Working Capital Transferred**" has the meaning set forth in Section 2.2.4.1(a).

"**Closing Inventory Amount**" means, as of the Closing Date, the book value of the Owned Inventory and the EMEA Owned Inventory, net of applicable provisions, that would be required to be reflected on a balance sheet of the Business as of such date prepared in accordance with GAAP applied in a manner consistent with the Nortel Accounting Principles (to the extent consistent with GAAP).

"**Closing KPD Provision**" means, as of the Closing Date, the provision for Known Product Defects accrued by the Business in accordance with GAAP applied in a manner consistent with the Nortel Accounting Principles (to the extent consistent with GAAP).

"**Closing Net Deferred Revenues**" means, as of the Closing Date, (x) deferred revenues for services to be performed or products to be provided by the Business after the Closing Date but for which an account receivable has been recorded prior to the Closing Date minus (y) associated deferred costs to the extent incurred by the Business prior to the Closing Date in connection with such products or services, in each case, that would be required to be reflected on a balance sheet of the Business as of such date prepared in accordance with GAAP applied in a manner consistent with the Nortel Accounting Principles (to the extent consistent with GAAP).

"**Closing Other Accrued and Contractual Liabilities**" means, as of the Closing Date, (i) such current Assumed Liabilities and current EMEA Assumed Liabilities of a type accrued on the Business' historic Financial Statements under the heading "Other Accrued and Contractual Liabilities" (including "Accrued Known Project Losses", "Accrued Liquidated Damages", "Accrued Marketing Program Liabilities", "Accrued Product Credits" (including, for the avoidance of doubt, all credits for EMEA Products or EMEA Services to be assumed by the Purchaser pursuant to Section 2.4.2(B)(4) of the EMEA Asset Sale Agreement) and "Accrued Training Credits", but excluding "COS Accruals" and "Representative Fees"), that would be required to be reflected on a balance sheet of the Business as of such date prepared in accordance with GAAP applied in a manner consistent with the Nortel Accounting Principles (to the extent consistent with GAAP).

"**Closing Retirement Obligation Amount**" means, as of the Closing Date, the amount of the actual unfunded obligations accrued in any period preceding the Closing Date that will be assumed by the Purchaser, a Designated Purchaser or an EMEA Designated Purchaser at Closing (if any) whether pursuant to this Agreement or by operation of Law under a plan providing retirement or retiree welfare benefits of any Seller or EMEA Seller, and under any plan providing jubilee benefits (anniversary bonuses) of Nortel GmbH, in all cases determined in accordance with GAAP applied in a manner consistent with the Nortel Accounting Principles (to the extent consistent with GAAP), and using reasonable actuarial assumptions consistent with the assumptions most recently used for determining unfunded obligations for the applicable plan prior to the date hereof. For purposes of this definition, an unfunded obligation shall be deemed to be under (A) with respect to any Seller or EMEA Seller, a plan providing retirement or retiree welfare benefits to the extent it is required to be accounted for under FAS 87 (paragraphs 11, 72

and 73) or FAS 106 (paragraphs 16 and 85), as applicable, and (B) with respect to Nortel GmbH, a plan providing jubilee benefits (anniversary bonuses) to the extent it is required to be accounted for under FAS 112. Notwithstanding the foregoing, an unfunded obligation shall not be taken into account to the extent that it is a Liability in respect of which there is, and to the extent of, a separate Purchase Price adjustment that is expressly provided for, if any, under this Agreement or the EMEA Asset Sale Agreement.

"**Closing Statement**" has the meaning set forth in Section 2.2.4.1(a).

"**Closing Warranty Provision**" means, as of the Closing Date, the provision for potential claims by customers under the Warranty Obligations to be recognized and measured by the Business in accordance with GAAP applied in a manner consistent with the Nortel Accounting Principles (to the extent consistent with GAAP).

"**COBRA**" means the continuation coverage required by Section 4980B of the Code or any similar Law.

"**Code**" means the United States Internal Revenue Code of 1986, as amended.

"**Collective Labor Agreement**" means any written agreement that a Person has entered into with any union or collective bargaining agent with respect to terms and conditions of employment of such Person's employees.

"**Commissioner**" means the Commissioner of Competition appointed under the Competition Act or any person duly authorized to exercise the powers and perform the duties of the Commissioner of Competition.

"**Common Stock**" means shares of common stock, par value $0.01 per share, of the Purchaser.

"**Common Stock VWAP**" means, for any Trading Day, the per share volume-weighted average price as displayed under the heading "Bloomberg VWAP" on Bloomberg page "CIEN.Q <equity> AQR" (or any successor thereto) in respect of the period from the scheduled opening of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of Common Stock on such Trading Day, determined using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for such purpose that is mutually acceptable to Purchaser and Sellers). The Common Stock VWAP will be determined without regard to after hours trading or any other trading outside of the regular trading session trading hours.

"**Competing Transaction**" has the meaning set forth in Section 5.29(a).

"**Competition Act**" means the Competition Act (Canada), as amended, and the regulations promulgated in connection therewith.

"**Competition Act Approval**" means that: (a) the Commissioner shall have issued an advance ruling certificate pursuant to Section 102 of the Competition Act in respect of the transactions contemplated by this Agreement; or (b)(i) the applicable waiting period has

expired, been terminated pursuant to Section 123 of the Competition Act or compliance with Part IX of the Competition Act has been waived pursuant to Section 113(c) of the Competition Act, and (ii) the Commissioner or his/her authorized representative shall have advised the Purchaser in writing that the Commissioner does not intend to make an application under Section 92 of the Competition Act with respect to the transactions contemplated by this Agreement, and neither the Commissioner nor any of his/her authorized representatives shall have rescinded or amended such advice.

"**Confidentiality Agreement**" means collectively, the confidentiality agreement between the Purchaser, NNC and its subsidiaries and the Joint Administrators dated March 27, 2009, the clean team confidentiality agreement between the Purchaser and its subsidiaries and NNL and its subsidiaries, dated April 15, 2009, the second clean team confidentiality agreement between the Purchaser and its subsidiaries and NNL and its subsidiaries, dated May 8, 2009, and the third clean team confidentiality agreement between the Purchaser and its subsidiaries and NNL and its subsidiaries, dated June 19, 2009.

"**Consent**" means any approval, authorization, consent, order, license, permission, permit, qualification, exemption or waiver by, or notice to (including the expiry of any related notice or waiting period), any Government Entity or other Third Party.

"**Contract**" means any written binding contract, agreement, subcontract, purchase order, work order, sales order, indenture, note, bond, instrument, lease, mortgage, ground lease, commitment, covenant or undertaking.

"**Contract Manufacturing Inventory Agreements**" means the agreements between the Purchaser and/or any Designated Purchasers, on the one hand, the relevant Sellers, on the other hand, and the contract manufacturers of the Business listed in Section 1.1(a) of the Sellers Disclosure Schedule that the relevant Parties will use commercially reasonable efforts to execute on or before the Closing in the form that shall be negotiated in good faith pursuant to Section 5.25 and the term sheet attached as Exhibit 1.1.

"**Control**", including, with its correlative meanings, "**Controlled by**" and "**under common Control with**", means, in connection with a given Person, the possession, directly or indirectly, of the power to either (i) elect more than fifty percent (50%) of the directors of such Person or (ii) direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, contract or otherwise.

"**Conversion Price**" has the meaning set forth in Section 2.2.1(a).

"**Convertible Note Recipient Sellers**" means each of the Canadian Sellers, the UK Sellers and the U.S. Sellers.

"**Convertible Notes**" has the meaning set forth in Section 2.2.1(a).

"**Convertible Securities**" has the meaning set forth in Section 8.2(d).

"**Covered Assets and Persons**" has the meaning set forth in Section 5.20(a).

"**Cure Cost**" has the meaning set forth in Section 2.1.7(b) of the Sellers Disclosure Schedule.

"**Customer Contract**" means any Seller Contract pursuant to which a Seller provides Products and/or Services to the counterparty.

"**Customer Contract Cure Cost**" has the meaning set forth in Section 2.1.7(c) of the Sellers Disclosure Schedule.

"**Daily Trading Limit**" as of any date shall mean the lesser of (i) 10% of the average reported daily trading volume of the shares of Common Stock on NASDAQ for the 20 consecutive Trading Days immediately preceding such date and (ii) 10% of the reported daily trading volume of the shares of Common Stock for the trading date immediately preceding such date.

"**Deficit Amount**" has the meaning set forth in Section 2.2.4.2(b)(ii).

"**Demand Note**" has the meaning set forth in Section 2.2.7(b).

"**Deposit Amount**" has the meaning set forth in Section 5.37.

"**Deposit Escrow Agent**" has the meaning set forth in Section 5.37.

"**Deposit Escrow Agreement**" has the meaning set forth in Section 5.37.

"**Designated Non-Assignable Contracts**" has the meaning set forth in Section 2.1.6(d).

"**Designated Non-Assignable Customer Contracts**" has the meaning set forth in Section 2.1.6(d).

"**Designated Non-Assignable Supply Contracts**" has the meaning set forth in Section 2.1.6(b).

"**Designated Other Customer Contracts**" has the meaning set forth in Section 2.1.6(c).

"**Designated Other Vendor Contracts**" has the meaning set forth in Section 2.1.6(a).

"**Designated Purchaser**" has the meaning set forth in Section 2.4.

"**Determination Date**" has the meaning set forth in Section 2.2.4.1(b).

"**Distribution Agent**" means the Person that will act as distribution agent for the Sellers and the EMEA Sellers hereunder, to be notified by the Main Sellers to the Purchaser and the Escrow Agent by and not later than January 25, 2010.

"**Domain Name**" means an alphanumeric name that identifies a specific computer or website on the Internet, and all rights in and to such domain name, including any registrations therefor with a domain name registrar.

"**DTC**" has the meaning set forth in Section 8.5(a)(x).

"**E&O Inventory**" has the meaning set forth in Section 5.9(a).

"**EC Merger Regulation**" means Council Regulation (EC) No. 139/2004 of January 20, 2004 on the control of concentrations between undertakings, as amended.

"**EFA Development Agreement**" means the agreement between the Purchaser and LG Nortel Co. Ltd. for development services related to ethernet fiber access (EFA) to be provided by the Purchaser to LG Nortel Co. Ltd., such agreement to be effective on Closing, that the relevant Parties will use commercially reasonable efforts to negotiate before the Closing pursuant to Section 5.25.

"**Effective Hire Date**" means the day on which the employment of an Employee commences or continues with the Purchaser or its Affiliates as provided in this Agreement.

"**Effective Period**" has the meaning set forth in Section 8.1(a).

"**EMEA Asset Sale Agreement**" means the Original EMEA Asset Sale Agreement as amended on October 20, 2009 and the date hereof.

"**EMEA Assets**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**EMEA Assumed Liabilities**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**EMEA Business**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**EMEA Cases**" has the meaning set forth in the recitals to this Agreement.

"**EMEA CIP Accounts Receivable**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**EMEA Debtors**" means those entities listed under the heading "EMEA Debtors" in part 5 of Exhibit C hereto.

"**EMEA Designated Purchaser**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**EMEA Employee**" means an employee of any of the EMEA Sellers engaged in the EMEA Business.

"**EMEA Excluded Liabilities**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**EMEA Excluded Taxes**" has the meaning set forth in Section 6.8(a).

"**EMEA Intellectual Property**" has the meaning set forth in Section 4.5(a).

"**EMEA Owned Inventory**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**EMEA Purchaser Party**" has the meaning set forth in Section 6.8(a).

"**EMEA Sellers**" has the meaning set forth in the recitals to this Agreement.

"**EMEA Tax Claim**" has the meaning set forth in Section 6.8(b).

"**EMEA Tax Claim Notice**" has the meaning set forth in Section 6.8(b).

"**EMEA Tax Escrow Amount**" means $2,500,000, which amount shall secure the EMEA Sellers' obligations under Section 6.8.

"**EMEA Transferring Employee**" has the meaning ascribed to the term "Transferring Employee" in the EMEA Asset Sale Agreement.

"**Employee**" means an employee of any of the Sellers or their Affiliates (excluding the EMEA Sellers) engaged in the Business (excluding the EMEA Business), in each instance as listed in Section 4.10(b) of the Sellers Disclosure Schedule.

"**Employee Data**" has the meaning set forth in Section 7.4(b).

"**Employee Information**" has the meaning set forth in Section 4.10(b).

"**Employee Records**" means books, records, files, or other documentation with respect to Employees.

"**Employee Transfer Date**" means with respect to each jurisdiction where Employees, other than Inactive Employees, Visa Employees and Seconded Employees, will become Transferred Employees in accordance with this Agreement, 12:01 a.m. local time in such jurisdiction immediately following the Closing.

"**English Court**" means the High Court of Justice of England and Wales.

"**Environment**" means soil, land, surface or subsurface strata, waters (including navigable ocean, stream, pond, reservoirs, drainage, basins, wetland, ground and drinking), sediments, ambient air (including indoor), noise, plant life, animal life and all other environmental media or natural resources.

"**Environmental Laws**" means any applicable Laws relating to pollution or protection of the Environment, human health and safety, including those relating to the presence,

use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, transfer, storage, disposal, distribution, importing, labeling, testing, processing, discharge, release, control, or other action or failure to act involving cleanup of any Hazardous Materials, including without limitation and by way of example only the following laws as in effect now and as of the Closing Date: (i) Clean Air Act (42 USC 7401, et seq.); (ii) Clean Water Act (33 USC 1251, et seq.); (iii) Resource Conservation and Recovery Act (42 USC 6901, et seq.); (iv) Comprehensive Environmental Response, Compensation and Liability Act (41 USC 9601, et seq.); (iv) Toxic Substances Control Act (15 USC 2601, et seq.).

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**Escrow Agent**" has the meaning ascribed to such term in the Escrow Agreement.

"**Escrow Amount**" means the portion of the Cash Purchase Price to be paid to the Escrow Agent on the Closing Date in accordance with Section 2.3.2(b) and, subject to adjustment in accordance with Section 2.1.7(b) of the Sellers Disclosure Schedule, such amount will consist of (i) the Working Capital Escrow Amount, (ii) the Carling Property Escrow Amount, (iii) the Tax Escrow Amount, (iv) the EMEA Tax Escrow Amount and (v) the Italian Tax Escrow Amount.

"**Escrow Agreement**" means a "joint instruction" Escrow Agreement to be entered into on or prior to Closing with respect to the deposit, investment and disbursement of the Escrow Amount and the Transition Services Escrow Amount and requiring that any amounts to be distributed thereunder shall require the written instruction of one or more the Main Sellers and the Purchaser which shall be given in accordance with this Agreement or the applicable Transaction Document to which any portion of the Escrow Amount and the Transition Services Escrow Amount relates and otherwise on terms and conditions reasonably satisfactory to each of the Purchaser, the Sellers, the EMEA Sellers and the Escrow Agent.

"**Estimated Adjustment Amount**" has the meaning set forth in Section 2.2.2(b).

"**Estimated Closing Date Net Working Capital Transferred**" has the meaning set forth in Section 2.2.2(a).

"**Excess ARD Employees Amount**" has the meaning ascribed to such term in the EMEA Asset Sale Agreement.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Excluded 365 Contract**" has the meaning set forth in Section 2.1.5(d).

"**Excluded Assets**" has the meaning set forth in Section 2.1.2.

"**Excluded Employee Liabilities**" has the meaning set forth in Section 7.3.

"**Excluded Liabilities**" has the meaning set forth in Section 2.1.4.

"**Excluded Non-Assignable Supply Contracts**" has the meaning set forth in 2.1.6(b).

"**Excluded Other Seller**" has the meaning set forth in Section 5.32(a).

"**Excluded Other Vendor Contracts**" has the meaning set forth in Section 2.1.6(a).

"**Excluded Taxes**" has the meaning set forth in Section 6.7(a).

"**Executory Contract**" means an 'executory contract' for the purposes of Section 365 of the U.S. Bankruptcy Code.

"**Existing 2017 Senior Notes**" means the 0.875% Convertible Senior Notes due 2017 issued by the Purchaser that are outstanding as of the date hereof.

"**Expense Reimbursement**" has the meaning set forth in Section 10.2(a).

"**Expense Reimbursement Notice**" has the meaning set forth in Section 10.2(a).

"**Extra Services**" has the meaning set forth in Section 5.28 of the Sellers Disclosure Schedule.

"**Filing Party**" has the meaning set forth in Section 6.4(b)(ii).

"**Final Order**" means an order of any Bankruptcy Court, any court of competent jurisdiction or other Government Entity (i) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for further appeal or rehearing thereon; (ii) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired; and (iii) as to which no stay is in effect; provided, however, that, with respect to an order issued by the U.S. Bankruptcy Court, the filing or pendency of a motion under Federal Rule of Bankruptcy Procedure 9024 or Federal Rule of Civil Procedure 60 shall not cause an order not to be deemed a "Final Order" unless such motion shall be filed within ten (10) days of the entry of the order at issue.

"**Financial Statements**" has the meaning set forth in Section 4.7.

"**Flextronics Back-to-Back Supply Agreement**" means the agreement between the relevant Sellers and the Purchaser and/or any Designated Purchasers which may be executed, if required, on or before Closing on the terms set forth in the Flextronics Back-to-Back Supply Agreement Term Sheet attached as Exhibit Z hereto and such other terms as the Main Sellers and the Purchaser may reasonably agree.

"**Freely Tradeable**" means, with respect to a Convertible Note, a Convertible Note that at any time of determination (i) may be sold to the public in accordance with Rule 144 under the Securities Act by a holder of such Convertible Note where no conditions of Rule 144

under the Securities Act are then applicable (other than the holding period requirement of paragraph (d) of Rule 144 under the Securities Act so long as such holding period requirement is satisfied at such time of determination), including without limitation, the volume limitations set forth in Rule 144(e) under the Securities Act and (ii) does not bear any restrictive legends relating to the Securities Act.

"**GAAP**" means United States generally accepted accounting principles, consistently applied.

"**Government Entity**" means any U.S., Canadian, United Kingdom, foreign, domestic, supra-national, multi-national, federal, territorial, provincial, state, municipal or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, bureau, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing, including the European Commission.

"**GST**" means goods and services tax payable under Part IX of the Excise Tax Act (Canada).

"**Hazardous Materials**" means (a) petroleum, petroleum products, asbestos in any form that is friable or polychlorinated biphenyls and (b) any chemical, waste, material, pollutant, contaminant or other substance, whether solid, liquid or gaseous, the presence of which is regulated by any Government Entity or which requires investigation or remediation under any Environmental Laws.

"**Handling of Hazardous Materials**" means the production, use, generation, Release, storage, treatment, formulation, processing, labeling, distribution, introduction into commerce, registration, transportation, reclamation, recycling, disposal, discharge, or other handling or disposition of Hazardous Materials.

"**HSR Act**" means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and any rules and regulations promulgated in connection therewith.

"**HSR Approval**" means expiration of all applicable waiting periods under the HSR Act (including any voluntary agreed extensions) or earlier termination thereof.

"**ICA Approval**" means that: (i) if required pursuant to Part IV of the Investment Canada Act, the Purchaser shall have received confirmation in writing from the responsible Minister under the Investment Canada Act that he/she is satisfied or is deemed to be satisfied that the transactions contemplated in this Agreement that are subject to the provisions of the Investment Canada Act are likely to be of net benefit to Canada, on terms and conditions satisfactory to the Purchaser, acting reasonably; and (ii) the responsible Minister shall not have issued a notice to the Purchaser pursuant to Section 25.2(1) of the Investment Canada Act or an order pursuant to Section 25.3(1) of the Investment Canada Act. If either a notice pursuant to Section 25.2(1) or an order pursuant to Section 25.3(1) has been issued, the Purchaser shall also have received (a) confirmation in writing from the responsible Minister either that no order will be made under Section 25.3(1) or that no further action will be taken or (b) a copy of an order

under Section 25.4(1)(b) authorizing the transaction, provided that order is on terms and conditions satisfactory to the Purchaser, acting reasonably.

"**Inactive Employees**" means Employees (other than Employees whose employment transfers to the Purchaser or a Designated Purchaser by operation of Law) who have accepted the Purchaser's or Designated Purchaser's offer of employment as provided in Section 7.1.1 and are on any Seller's approved leave of absence as of the Employee Transfer Date.

"**Identified Employees**" has the meaning set forth in Section 7.1.1(a).

"**IFSA**" means the Interim Funding and Settlement Agreement dated June 9, 2009 among NNL, NNL, the Joint Administrators and the other parties thereto.

"**Inbound License Agreements**" has the meaning set forth in Section 4.5(j)(ii).

"**Included Services**" has the meaning set forth in Section 5.28 of the Sellers Disclosure Schedule.

"**Increase Amount**" has the meaning set forth in Section 2.2.4.2(b)(i).

"**Indebtedness**" of any Person at any date means (a) indebtedness for borrowed money, (b) indebtedness evidenced by bonds, debentures, notes or similar instruments, (c) leases that are capitalized in accordance with GAAP under which such Person is the lessee, (d) reimbursement obligations of such Person with respect to letters of credit or performance bonds that are drawn prior to Closing, (e) obligations in respect of the deferred purchase price of property or services (other than current trade payables incurred on a basis consistent with past practices), (f) obligations (under conditional sale or other title retention agreements, (g) obligations (including without limitation, breakage costs) under interest rate cap agreements, interest rate swap agreements, foreign currency exchange contracts or other hedging contracts and (h) any guarantee of the obligations of another Person with respect to any of the foregoing.

"**Indenture**" means the indenture providing for the issuance of the Convertible Notes.

"**Independent Auditor**" means Deloitte & Touche LLP or, in the case such firm cannot carry-out its duties for whatever reason, such other auditing firm of international reputation that is (i) jointly selected by the Primary Parties, or (ii) in case the Primary Parties cannot agree on any such firm, selected by Deloitte & Touche LLP at the request of the first Primary Party to move.

"**Indemnitee**" has the meaning set forth in Section 8.8(b).

"**Indemnitor**" has the meaning set forth in Section 8.8(b).

"**Initial Shelf Registration Statement**" has the meaning set forth in Section 8.1(a).

"**Insolvency Act**" has the meaning set forth in the recitals to this Agreement.

"**Intellectual Property**" means any and all intellectual property, whether protected or arising under the laws of the United States, Canada or any other jurisdiction, including all intellectual property rights in respect of any of the following: (a) Trademarks; (b) Patents; (c) copyrights and works of authorship (including any registrations therefor or applications for registration); (d) mask works; (e) trade secrets, know-how and confidential technical or business information; (f) industrial design or similar rights; and (g) any Software and technology.

"**Intellectual Property License Agreement**" means the agreement to be entered into between NNL, on the one hand, and the Purchaser (or the relevant Designated Purchasers), on the other hand, on or prior to the Closing in the form attached hereto as Exhibit F.

"**Investment Canada Act**" means the Investment Canada Act, as amended, and the regulations promulgated in connection therewith.

"**Israeli Companies Law**" has the meaning set forth in the recitals to this Agreement.

"**Israeli Company**" has the meaning set forth in the recitals to this Agreement.

"**Italian Excluded Taxes**" has the meaning set forth in Section 6.9(a).

"**Italian Purchaser Party**" has the meaning set forth in Section 6.9(a).

"**Italian Tax Claim**" has the meaning set forth in Section 6.9(b).

"**Italian Tax Claim Notice**" has the meaning set forth in Section 6.9(b).

"**Italian Tax Escrow Amount**" means $5,000,000, as such amount is adjusted in accordance with Section 6.9, which amount shall secure Nortel Italy's obligations under Section 6.9.

"**Joint Administrators**" has the meaning set forth in the recitals to this Agreement.

"**Joint Israeli Administrators**" has the meaning set forth in the recitals to this Agreement.

"**KEIP**" shall mean the Nortel Networks Corporation Key Executive Incentive Plan approved by the U.S. Bankruptcy Court in the District of Delaware on March 5, 2009, and approved by the Canadian Court on March 6, 2009 and March 20, 2009, with such further amendments and/or supplements as may be approved by the Canadian Court and/or the U.S. Bankruptcy Court from time to time.

"**KERP**" shall mean the Nortel Networks Corporation Key Employee Retention Plan approved by the U.S. Bankruptcy Court in the District of Delaware on March 5, 2009, and approved by the Canadian Court on March 6, 2009, with such further amendments and/or supplements as may be approved by the Canadian Court and/or U.S. Bankruptcy Court from time to time.

"**Knowledge**" or "**aware of**" or "**notice of**" or a similar phrase shall mean, with reference to the Sellers, the actual knowledge of those Persons listed on Section 1.1(b) of the Sellers Disclosure Schedule, and, with reference to the Purchaser, the actual knowledge of those Persons listed on Exhibit G.

"**Known Product Defects**" means those defects of Products and/or Services that have been sold by the Business and which are known by the Sellers as of the Closing Date.

"**Lab 10 Lease Agreement**" means the lease agreement between NNTC on the one hand and the Purchaser or Designated Purchaser on the other hand in respect of the leasing of the whole of the Lab 10 Building as more particularly defined in the Lab 10 Lease Agreement to be entered into on or before Closing in the form attached hereto as Exhibit L-1.

"**Law**" means any U.S., Canadian, United Kingdom, foreign, domestic, supra-national federal, territorial, state, provincial, local or municipal statute, law, common law, ordinance, rule, regulation, order, writ, injunction, directive, judgment, decree or policy or guideline having the force of law.

"**Leased Real Property**" has the meaning set forth in Section 4.9(a).

"**Leases**" has the meaning set forth in Section 4.9(a).

"**LGN Joint Venture**" means LG-Nortel Co. Ltd., which was established in November 2005 as a joint venture between NNL and LG Electronics Inc. for the purpose of jointly developing and marketing certain telecommunications equipment and network solutions.

"**LGN/Korea Distribution Agreement**" means the agreement to be entered into between the Purchaser and/or one or more Designated Purchasers designated by it and the LGN Joint Venture that the relevant Parties will use commercially reasonable efforts to negotiate before the Closing pursuant to Section 5.25.

"**Liabilities**" means debts, liabilities and obligations, whether accrued or fixed, direct or indirect, absolute or contingent, asserted or unasserted, liquidated or unliquidated, matured or unmatured, known or unknown or determined or undeterminable, including those arising under any Law or Action and those arising under any contract, agreement, arrangement, commitment or undertaking or otherwise, including any Tax liability.

"**Licensed Intellectual Property**" means the Intellectual Property being licensed to the Purchaser or the relevant Designated Purchasers under the Intellectual Property License Agreement and the Trademark License Agreement.

"**Lien**" means any lien (statutory or otherwise), mortgage, pledge or security interest, hypothecation, deed of trust, deemed trust, option, right of use, right of first offer or first refusal, servitude, encumbrance, easement, encroachment, right-of-way, restrictive covenant on real property, real property license, charge, prior claim, lease, conditional sale arrangement or other similar restriction of any kind, but does not include any prior Intellectual Property license granted by any of the Sellers.

"**Liquidity Date**" has the meaning set forth in Section 2.2.1(c).

"**Loaned Employee Agreement**" means the agreement between the relevant Sellers, on the one hand, and the Purchaser and/or any Designated Purchasers, on the other hand, to be executed on or before the Closing attached hereto as Exhibit I.

"**Local Sale Agreements**" has the meaning set forth in Section 2.1.8.

"**Losses**" means all losses, damages and reasonable and documented out-of-pocket costs and expenses.

"**Main Sellers**" has the meaning set forth in the preamble to this Agreement.

"**Market Value**" as of any date shall mean the arithmetic average of the Common Stock VWAP during the ten (10) Trading Days immediately prior to, but not including, such date.

"**Material Adverse Effect**" means any event, change or circumstance that, individually or in the aggregate, has had, or would reasonably be expected to have a material adverse effect on the assets, liabilities, operations, results of operations or condition (financial or otherwise) of the Business to be transferred hereunder and under the EMEA Asset Sale Agreement, taken as a whole, but in each case shall not include the effect of events, changes and circumstances to the extent arising from (a) changes in the industries and markets in which the Business operates, except to the extent such changes disproportionately affect the Business, (b) macroeconomic factors, interest rates, currency exchange rates, general financial market conditions, acts of God, war, terrorism or hostilities, (c) changes in Law, generally accepted accounting principles or official interpretations of the foregoing, (d) compliance with this Agreement, including any effect on the Business resulting from failure to take any action to which the Purchaser refused consent under this Agreement, (e) the transactions contemplated hereby or any announcement hereof or the identity of the Purchaser, (f) the attrition of customers or employees prior to the Closing Date, (g) the pendency of the Bankruptcy Proceedings and any action approved by the Bankruptcy Courts, or (h) the failure of the Business to achieve internal or external financial forecasts or projections, by itself; provided, however, that in the case of clauses (f) and (h), the reason for the customer attrition or the failure of the Business to achieve internal or external financial forecasts or projections shall not be excluded as a result of such clauses.

"**Material Contracts**" has the meaning set forth in Section 4.4(b).

"**Monitor**" means Ernst & Young Inc., in its capacity as the Canadian Court-appointed Monitor in connection with the CCAA Cases.

"**Montreal Landlord**" has the meaning set forth in the Real Estate Terms and Conditions.

"**Montreal Lease Termination Penalty**" has the meaning set forth in the Real Estate Terms and Conditions.

"**Montreal Premises**" means that portion of the third and fourth floors of the North Tower of the building municipally known as 2351 Alfred Nobel Blvd., St. Laurent,

Quebec that is used by the Business as of the date hereof or any alternate or additional premises in such building if contemplated by the Montreal Premises Restructured Lease or Montreal Premises Sublease, as the case may be.

"**Montreal Premises Amended Lease**" has the meaning set forth in the Real Estate Terms and Conditions.

"**Montreal Premises Lease**" means that certain lease dated June 27, 2007 in respect of the Montreal Premises by and between BREOF/Belmont Ban L.P., acting through its general partner BREOF/Belmont Ban G.P. Limited, as landlord, and NNL, as tenant, as amended by a first lease amending agreement dated October 8, 2008.

"**Montreal Premises Restructured Lease**" has the meaning set forth in the Real Estate Terms and Conditions.

"**Montreal Premises Sublease**" has the meaning set forth in the Real Estate Terms and Conditions.

"**Montreal Premises Sublease Consent**" has the meaning set forth in the Real Estate Terms and Conditions.

"**Mutual Development Agreement**" means the agreement between the Purchaser and/or any Designated Purchasers, on the one hand, and the relevant Sellers, on the other hand, relating to the development (i) by the Purchaser and/or any Designated Purchasers of new features of certain of products used by the Sellers and/or (ii) by the relevant Sellers of new features of certain of the Products that the relevant Parties will use commercially reasonable efforts to negotiate before the Closing pursuant to Section 5.25.

"**NETAS**" means Nortel Networks NETAS Telekomunikasyon A.S., a company incorporated in Turkey and having its principal place of business at Alemdag Caddesi, Umraniye 34768, Istanbul, Turkey.

"**NETAS Distribution Agreement**" means the agreement between the Purchaser and/or one or more Designated Purchasers and NETAS relating to the sale of Products by the Purchaser to NETAS for resale in Turkey that the relevant Parties will use commercially reasonable efforts to negotiate before the Closing pursuant to Section 5.25.

"**Net Working Capital Transferred**" has the meaning set forth in Section 2.2.4.1(a).

"**New York Courts**" has the meaning set forth in Section 11.6(b).

"**NGS**" means Nortel Government Solutions Incorporated, a corporation organized under the laws of Delaware with offices at 12730 Fair Lakes Circle, Fairfax, Virginia.

"**NGS Distribution Agreement**" means the agreement between the Purchaser and/or one or more Designated Purchasers and NGS relating to the sale of Products by the Purchaser to NGS that the relevant Parties will use commercially reasonable efforts to negotiate before the Closing pursuant to Section 5.25.

"**NNC**" has the meaning set forth in the preamble to this Agreement.

"**NNI**" has the meaning set forth in the preamble to this Agreement.

"**NNL**" has the meaning set forth in the preamble to this Agreement.

"**NNTC**" has the meaning set forth in Section 6.5(b).

"**Non-ARD Transferring Employee**" has the meaning attributed to that term in the EMEA Asset Sale Agreement.

"**Non-Assignable Contracts**" has the meaning set forth in Section 5.14(a).

"**Non-Assigned Contracts**" means the Non-Assignable Contracts, to the extent all applicable Consents to assignment thereof to the Purchaser or a Designated Purchaser have not been granted prior to the Closing Date, provided that if such Consents are granted within one (1) year after the Closing Date, such Non-Assignable Contracts will cease to be Non-Assignable Contracts as of the effective date of such Consents, and shall then be assigned by the relevant Seller to the Purchaser or a Designated Purchaser in accordance with this Agreement.

"**Non-Convertible Note Recipient Sellers**" means each of the Sellers and EMEA Sellers other than the Convertible Note Recipient Sellers.

"**Non-Debtor Sellers**" has the meaning set forth in the recitals to this Agreement.

"**Non-Exclusive Supply Contract**" means any supply Contract to which any Seller is a party that relates to the Business and also relates to one or more other businesses of the Sellers.

"**Non-Filing Party**" has the meaning set forth in Section 6.4(b)(ii).

"**Non-Solicitation Period**" means the twenty-four (24) month period immediately following the Closing Date.

"**Non-Union Employee**" means an Employee whose terms and conditions of employment are not governed by a Collective Labor Agreement.

"**Nortel Accounting Expenses**" has the meaning set forth in Section 8.7.

"**Nortel Accounting Principles**" means the accounting principles employed in the preparation of the Financial Statements, as set forth in Section 1.1(d) of the Sellers Disclosure Schedule.

"**Nortel Italy**" means Nortel Networks SpA (in administration).

"**Nortel Plan**" has the meaning set forth in Section 7.5.1.

"**Occupancy Agreement**" has the meaning set forth in the Real Estate Terms and Conditions.

"**Offer**" has the meaning set forth in Section 7.1.1(a).

"**Offer Consideration Period**" has the meaning set forth in Section 7.1.1(a).

"**Offering Limitation**" means that the underwriter selected by the Purchaser in an underwritten offering pursuant to a Piggyback Registration advises the Purchaser in writing that in its opinion the number of Shares or aggregate principal amount of Convertible Notes requested to be included in such offering by the Sellers and the EMEA Sellers exceeds the number of shares of Common Stock or aggregate principal amount of Convertible Securities (as applicable) which can be sold in such offering without adversely affecting the price, timing, distribution or marketability of the offering.

"**Omitted Patent Cross License**" has the meaning set forth in Section 4.5(j)(i).

"**Ontario Court**" has the meaning set forth in Section 11.6(b).

"**Open Source Software**" means Software that is made available under a license agreement that: (i) conditions use, modification or distribution of any Software program, or any Software integrated with or derived from such Software program, or into which such Software program is incorporated, on the disclosure, licensing or distribution of the source code of such Software program (or such Software); or (ii) otherwise materially limits the licensee's freedom of action with regard to seeking compensation in connection with sublicensing, licensing or distributing such Software program or Software.

"**Optional Redemption Price**" has the meaning set forth in Section 2.2.1(b).

"**Order**" means any award, writ, injunction, judgment, order or decree entered into, issued, made or rendered by any Government Entity.

"**Ordinary Course**" means the ordinary course of the Business (excluding the EMEA Business) through the date hereof consistent with past practice since the filing of the Bankruptcy Proceedings, as such practice may be modified from time to time to the extent necessary to reflect the Bankruptcy Proceedings.

"**Original Asset Sale Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Original EMEA Asset Sale Agreement**" has the meaning set forth in the recitals to this Agreement.

"**Other Seller Contracts**" means Seller Contracts other than 365 Contracts.

"**Other Sellers**" has the meaning set forth in the preamble to this Agreement.

"**Other Vendor Contract**" means any Other Seller Contract that is not a Customer Contract.

"**Outbound License Agreements**" has the meaning set forth in Section 4.5(j)(iii).

"**Overhead and Shared Services**" means corporate or shared services provided to or in support of the Business that are general corporate or other overhead services and are provided to both (a) the Business and (b) other businesses or business segments of any Seller, including travel and entertainment services, temporary labor services, office supplies services (including copiers and faxes), personal telecommunications services, computer hardware and software services, fleet services, energy/utilities services, procurement and supply arrangements, treasury services, public relations, legal, compliance and risk management services (including workers' compensation), payroll services, sales and marketing support services, information technology and telecommunications services, accounting services, tax services, human resources and employee relations management services, employee benefits services, credit, collections and accounts payable services, logistics services, property management services, environmental support services and customs and excise services, in each case including services relating to the provision of access to information, operating and reporting systems and databases and including all hardware and software or other intellectual property necessary for or used in connection therewith.

"**Owned Equipment**" means (a) those items of tangible personal property owned by the Sellers that are held or used primarily in connection with the Business and that are located at the Carling Property, the Montreal Premises or any Real Property which is the subject of a Real Estate Agreement, (b) those items of tangible personal property owned by the Sellers that are personally assigned to, a Transferred Employee, (c) those other items of tangible personal property owned by the Sellers not included in clause (a) or (b) above that are held or used exclusively in the Business and (d) those other items of tangible personal property owned and paid for by the Sellers not included in clauses (a), (b) or (c) above and that are listed in Section 1.1(e) of the Sellers Disclosure Schedule excluding, in each case, any Owned Inventory and any Intellectual Property provided, however that the Owned Equipment shall not include any items of tangible personal property that are Excluded Assets described on Section 2.1.2(n) of the Sellers Disclosure Schedule.

"**Owned Inventory**" means any inventories of raw materials, manufactured and purchased parts, work-in-process, packaging, stores and supplies, unassigned finished goods inventories (which are finished goods not yet assigned to a specific customer order), "excess" or "obsolete" inventory, assets on loan, and merchandise in each case owned and paid for by the Sellers and held or used exclusively in connection with the Business, including any of the above items which is owned by the Sellers but remains in the possession or control of a contract manufacturer or another Third Party provided, however that the Owned Inventory shall not include any inventories that are Excluded Assets described on Section 2.1.2(n) of the Sellers Disclosure Schedule.

"**Owned Real Property**" has the meaning set forth in Section 4.9(a).

"**Partial Allocation**" has the meaning set forth in Section 2.2.6(b).

"**Party**" or "**Parties**" means individually or collectively, as the case may be, the Sellers and the Purchaser.

"**Patent Assignments**" means written assignments of the Patents included in the Transferred Intellectual Property, appropriate for filing with the patent office of the jurisdiction

in which each such Patent is registered. Such assignments shall be substantially in the form of Exhibit V, except for any such variations as are legally necessary or customary in patent assignments in the local jurisdiction where a Patent is registered.

"**Patent Cross Licenses**" means all Contracts between the Sellers or their Affiliates and a Third Party under which the Sellers or such Affiliates, as applicable, both (i) grant a license under patents and/or patent applications owned by (or licensed to) them, and (ii) receive from the counter-party a license under patents and/or patent applications owned by (or licensed to) such counter-party (but other than inbound or outbound license agreements where the only grant back from the licensee is under improvements on the licensed Intellectual Property) in such case, to the extent the scope of such licenses include Patents licensed under the Intellectual Property License Agreement or assigned pursuant to the terms of this Agreement or that are otherwise used in the Business.

"**Patents**" includes all national (including the United States and Canada) and multinational statutory invention registrations, patents, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions.

"**Permitted Encumbrances**" means (i) statutory Liens for Taxes or governmental assessments, charges or claims the payment of which is not yet due, or, if due, for Taxes the validity of which is being contested in good faith by appropriate proceedings, provided that in each case adequate reserves have been established to the extent required by GAAP, and which Tax Liens and the associated amount of Taxes (other than Real Property Tax Liens for assessments, charges or claims) are set forth in Section 1.1(g) of the Sellers Disclosure Schedule; (ii) mechanics', carriers', workers', repairers', landlords', warehouses and similar Liens arising or incurred in the Ordinary Course for sums not yet delinquent or overdue; (iii) any Liens imposed by any Bankruptcy Court in connection with the Bankruptcy Proceedings that are to be discharged at Closing pursuant to the terms of the Canadian Approval and Vesting Order and the U.S. Sale Order; (iv) any other Liens set forth in Section 1.1(g) of the Sellers Disclosure Schedule; and (v) present zoning, entitlement, building and land use regulations, covenants, minor defects of title, easements, rights of way, development agreements, restrictions and other similar charges or encumbrances which do not impair, individually or in the aggregate, in any material respect the use of the related assets in the Business as currently conducted.

"**Person**" means an individual, a partnership, a corporation, an association, a limited or unlimited liability company, a joint stock company, a trust, a joint venture, an unincorporated organization or other legal entity or Government Entity.

"**Petition Date**" means January 14, 2009, except with respect to Nortel Networks (CALA) Inc. in which case "Petition Date" shall mean July 14, 2009.

"**Piggyback Notice**" has the meaning set forth in Section 8.3(a).

"**Piggyback Registration**" has the meaning set forth in Section 8.3(a).

"**Plan of Record**" means the Products under development as included in Section 1.1(h) of the Sellers Disclosure Schedule.

"**Post-Closing Taxable Period**" means any Taxable period beginning after the Closing Date.

"**Pre-Closing Taxable Period**" means any Taxable period ending on or prior to the Closing Date.

"**Primary Party**" means each of (i) the Main Sellers and (ii) the Purchaser.

"**Prime Rate**" has the meaning set forth in Section 2.2.4.2(b)(i).

"**Products**" means those products that are (i) manufactured by or on behalf of and marketed by the Business, or (ii) in the Plan of Record, all as set forth in Section 1.1(h) of the Sellers Disclosure Schedule.

"**Provider**" has the meaning set forth in the Transition Services Agreement.

"**Purchase Price**" has the meaning set forth in Section 2.2.1(a).

"**Purchaser**" has the meaning set forth in the preamble to this Agreement.

"**Purchaser Employee Plan**" means any "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not subject thereto, and any other employee benefit plan, agreement or arrangement, including any profit sharing plan, savings plan, bonus plan, performance awards plan, incentive compensation plan, deferred compensation plan, stock purchase plan, stock option plan, vacation plan, leave of absence plan, employee assistance plan, automobile leasing/subsidy/allowance plan, meal allowance plan, redundancy or severance plan, relocation plan, change in control plan, family support plan, pension plan, supplemental pension plan, retirement plan, retirement savings plan, post-retirement plan, medical, health, hospitalization or life insurance plan, disability plan, sick leave plan, retention plan, education assistance plan, expatriate assistance plan, compensation arrangement, including any base salary arrangement, overtime, on-call or call-in policy, death benefit plan, or any other similar plan, program, agreement, arrangement or policy that is maintained or otherwise contributed to, or required to be maintained or contributed to, by or on behalf of the Purchaser or any of its Subsidiaries or Affiliates with respect to their employees employed in those countries where they will employ Transferred Employees pursuant to this Agreement.

"**Purchaser Party**" has the meaning set forth in Section 6.7(a).

"**Qualified Expenditures**" has the meaning set forth in Section 6.5(b).

"**Real Estate Agreements**" means (i) the Carling Property Lease Agreements; (ii) as to the Montreal Premises, either the Montreal Premises Amended Lease, the Montreal Premises Restructured Lease (and any consent, assignment and assumption agreement in respect thereof, if applicable, between the Montreal Landlord, the Sellers, the Purchaser or any Designated Purchaser, as the case may be) or the Montreal Premises Sublease, as applicable in accordance with the Real Estate Terms and Conditions and the Montreal Premises Sublease

Consent, as applicable; (iii) the leases; subleases and license agreements between the relevant Sellers on the one hand, and the Purchaser or any Designated Purchasers, on the other hand, as provided by the Real Estate Terms and Conditions; and (v) any other ancillary agreements entered into in connection with, or to otherwise give effect to the occupancies contemplated by, the aforesaid agreements, in each such case to be executed and delivered on or prior to Closing, in accordance with and as provided by, the Real Estate Terms and Conditions.

"**Real Estate Terms and Conditions**" means the Real Estate Terms and Conditions attached hereto as Exhibit Y, the provisions of which are hereby incorporated into this Agreement by reference.

"**Real Property**" has the meaning set forth in Section 4.9(a).

"**Recognized Dealer**" has the meaning set forth in Section 8.9

"**Records Custodian**" means Deloitte & Touche LLP or in case such firm is unable to carry out its duties for whatever reason, such other auditing firm of international reputation that is acceptable to each of the Purchaser and the Main Sellers, each acting reasonably.

"**Registrable Securities**" has the meaning set forth in Section 8.1(a).

"**Registration Default**" has the meaning set forth in Section 8.11.

"**Registration Default Period**" has the meaning set forth in Section 8.11.

"**Registration Statement**" means each registration statement, including each Shelf Registration Statement, under the Securities Act, of the Purchaser that covers any of the Registrable Securities pursuant to this Agreement, including any information deemed to be part of and included in such registration statement pursuant to the rules of the SEC and all amendments and supplements to such registration statement and including all post-effective amendments to, all exhibits of, and all materials incorporated by reference or deemed to be incorporated by reference in, such registration statement, amendment or supplement.

"**Regulation D**" has the meaning set forth in Section 3.7(c).

"**Regulatory Approvals**" means the Antitrust Approvals and the ICA Approval.

"**Rejecting Employee**" has the meaning set forth in Section 7.1.1(h).

"**Rejecting Employees Liability Limit**" has the meaning set forth in Section 7.1.1(h).

"**Release**" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration at, into or onto the Environment, including movement or migration through or in the Environment, whether sudden or non-sudden and whether accidental or non-accidental, or any release, emission or discharge as those terms are defined in any applicable Environmental Laws.

"**Respective Affiliates**" has the meaning set forth in Section 11.15(c).

"**Restricted Assets**" has the meaning set forth in Section 2.2.3(a).

"**Restricted Employee**" has the meaning set forth in Section 2.2.3(b).

"**Restricted Liabilities**" has the meaning set forth in Section 2.2.3(b).

"**Restricted Seller**" has the meaning set forth in Section 2.2.3(b).

"**Restricted Technical Records**" means the Livelink database or any other similar database containing all necessary documents with respect to the technical aspects of the Qualified Expenditures of NNTC or NNL in their 2007 and subsequent taxation years.

"**SEC**" has the meaning set forth in Section 3.7(g).

"**SEC Filings**" has the meaning set forth in Section 3.7(g).

"**Seconded Employee**" means Employees who are located in, or employed by the Sellers in any of the countries set forth in Section 1.1(m) of the Sellers Disclosure Schedule in which a Designated Purchaser is not ready to employ the Employees as of the Closing Date as determined in good faith by Purchaser and who having accepted an Offer or who transfer by operation of Law would otherwise be Transferred Employees on the Employee Transfer Date.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Security Deposits**" has the meaning set forth in Section 5.21(a).

"**Seller Consents**" has the meaning set forth in Section 2.1.1(g).

"**Seller Contracts**" means (i) those Contracts of a Seller that relate exclusively to the Business (excluding licenses of Intellectual Property) and (ii) the Contracts listed in Section 1.1(i) of the Sellers Disclosure Schedule.

"**Seller Employee Plan**" means any "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not subject thereto, and any other employee benefit plan, agreement or arrangement, including any profit sharing plan, savings plan, bonus plan, performance awards plan, incentive compensation plan, deferred compensation plan, stock purchase plan, stock option plan, vacation plan, leave of absence plan, employee assistance plan, automobile leasing/subsidy/allowance plan, meal allowance plan, redundancy or severance plan, relocation plan, family support plan, pension plan, supplemental pension plan, retirement plan, retirement savings plan, post retirement plan, medical, health, hospitalization or life insurance plan, disability plan, sick leave plan, retention plan, education assistance plan, expatriate assistance plan, change in control plan, compensation arrangement, including any base salary arrangement, overtime, on-call or call-in policy, death benefit plan, or any other similar plan, program, agreement, arrangement or policy that is maintained or otherwise contributed to, or required to be maintained or contributed to, by or on behalf of the Sellers or any of their Subsidiaries or Affiliates (excluding any EMEA Sellers) with respect to Employees.

"**Seller Insurance Policies**" has the meaning set forth in Section 5.20(a).

"**Seller Supply Agreement**" means the agreement between the relevant Sellers or the purchaser of the Sellers' Enterprise business, on the one hand, and the Purchaser and/or any Designated Purchasers, on the other hand, relating to the purchase and sale of certain hardware and Software products related to the Sellers' Carrier Ethernet business, that the relevant Parties will use commercially reasonable efforts to negotiate before the Closing pursuant to Section 5.25.

"**Sellers**" has the meaning set forth in the preamble to this Agreement.

"**Sellers Disclosure Schedule**" means the disclosure schedule delivered by the Sellers to the Purchaser on the date hereof.

"**Sellers' Trademarks**" has the meaning set forth in Section 5.22.

"**Service Readiness Date**" has the meaning set forth in Section 5.28 of the Sellers Disclosure Schedule.

"**Services**" means those services that are provided by or on behalf of the Sellers in connection with the Business to customers as set forth in Section 1.1(j) of the Sellers Disclosure Schedule.

"**Shares**" means the shares of Common Stock issued or issuable upon conversion of the Convertible Notes.

"**Shelf Offering**" has the meaning set forth in Section 8.2(a).

"**Shelf Registration Statement**" has the meaning set forth in Section 8.1(a).

"**Shelf Take-Down Notice**" has the meaning set forth in Section 8.2(a).

"**Short-Term Licensed Property**" has the meaning set forth in Section 4.9(a).

"**Software**" means any and all (i) computer programs, whether in source code or object code, (ii) computerized databases and compilations, and (iii) all user manuals and architectural and design specifications, training materials and other documentation relating to any of the foregoing.

"**Solicitation Period**" has the meaning set forth in Section 5.3(f).

"**Specified Employee Liabilities**" has the meaning set forth in Section 2.1.3(i).

"**Specified Transferred Employees**" has the meaning set forth in Section 7.1.2(b)(ii)(A).

"**Sponsored Reorganization Plan**" means a plan of reorganization under Section 1129 of the Bankruptcy Code providing for the retention by all or part of the Sellers (or their successor entities emerging from the Bankruptcy Proceedings) of all or substantially all of the

Assets and the EMEA Assets taken as a whole, that is filed or otherwise sponsored by one or more of the Third Party creditors of the Sellers.

"**Straddle Period**" has the meaning set forth in Section 6.4(b)(i).

"**Subcontract Agreement**" means one or more agreements between the relevant Sellers, on the one hand, and the Purchaser and/or any Designated Purchasers, on the other hand, to be executed on or before the Closing in a form mutually agreed to by the Parties so as to pass through the benefits and burdens of the underlying Contract with customers as if the Purchaser or the applicable Designated Purchaser were party thereto.

"**Subsidiary**" of any Person means any Person Controlled by such first Person.

"**Substituted Convertible Notes**" has the meaning set forth in Section 2.2.7(b).

"**Successful Bidder**" has the meaning set forth in the U.S. Bidding Procedures Order.

"**Succession Tax Lien**" has the meaning given to that term in the EMEA Asset Sale Agreement.

"**Succession Tax Liabilities**" has the meaning given to that term in the EMEA Asset Sale Agreement.

"**Tax**" means (a) any domestic or foreign federal, state, local, provincial, territorial or municipal taxes or other impositions by or on behalf of any Government Entity, including the following taxes and impositions: net income, gross income, individual income, capital, value added, goods and services, gross receipts, sales, use, ad valorem, business rates, transfer, franchise, profits, business, environmental, real property, personal property, service, service use, withholding, payroll, employment, unemployment, severance, occupation, social security, excise, stamp, stamp duty reserve, customs, and all other taxes, fees, duties, assessments, deductions, withholdings or charges of the same or of a similar nature, however denominated, together with any interest and penalties, additions to tax or additional amounts imposed or assessed with respect thereto, whether or not disputed and (b) any obligation to pay Taxes of a Third Party or Affiliate, whether by contract, as a result of transferee or successor liability, as a result of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise.

"**Tax Authority**" means any local, municipal, governmental, state, provincial, territorial, federal, including any U.S., Canadian, U.K. or other fiscal, customs or excise authority, body or officials anywhere in the world with responsibility for, and competent to impose, collect or administer, any form of Tax.

"**Tax Claim**" has the meaning set forth in Section 6.7(b).

"**Tax Credit Purchaser**" has the meaning set forth in Section 6.5(b).

"**Tax Escrow Amount**" means $10,000,000, as such amount is adjusted in accordance with Section 6.7, which amount shall secure the Sellers' obligations under Section 6.7.

"**Tax Indemnitee**" has the meaning set forth in Section 2.2.7(c).

"**Tax Return**" means all returns, reports (including elections, declarations, schedules, estimates and information returns) and other information filed or required to be filed with any Tax Authority relating to Taxes, including any amendments thereto.

"**Third Party**" means any Person that is neither a Party nor an Affiliate of a Party, but for the purposes of Section 5.6(e)(ii)(B), includes an Affiliate that is a joint venture between such Person and a Person who is not an Affiliate of such Person.

"**Third Party Beneficiaries**" has the meaning set forth in Section 11.3.

"**Third Party Provisions**" has the meaning set forth in Section 11.3.

"**TIA**" has the meaning specified in Section 8.5(a)(xiv).

"**Trademark Assignments**" means written assignments of the Trademarks included in the Transferred Intellectual Property, in the case of registered Trademarks appropriate for filing with the trademark office of the jurisdiction in which each such Trademark is registered. Such assignments shall be substantially in the form of Exhibit W, except for any such variations as are legally necessary or customary in Trademark assignments in the local jurisdiction where a Trademark is registered.

"**Trademarks**" means, together with the goodwill associated therewith, all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including, but not limited to, all marks registered in the United States Patent and Trademark Office, the trademark offices of the states and territories of the United States of America, and the trademark offices of other nations throughout the world (including the Canadian Intellectual Property Office), and all rights therein provided by multinational treaties or conventions.

"**Trademark License Agreement**" means the trademark license agreement between the relevant Sellers, on the one hand, and the Purchaser and/or any Designated Purchasers, on the other hand, in respect of certain Trademarks used in respect of the Products and/or Services to be entered into on or before the Closing in the form attached hereto as Exhibit P.

"**Trading Day**" shall mean any scheduled trading day in New York City on which there is no material market disruption event, as determined by a nationally recognized independent investment banking firm retained for such purpose that is mutually acceptable to the Purchaser and the Sellers.

"**Transaction Documents**" means this Agreement, the EMEA Asset Sale Agreement, the Ancillary Agreements and all other ancillary agreements to be entered into, or documentation delivered by, any Party and/or any Designated Purchaser pursuant to this Agreement or any Local Sale Agreement.

"**Transfer**" means, directly or indirectly, to sell, transfer, assign, pledge, hedge, encumber, hypothecate or similarly dispose of, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, hedge, encumbrance, hypothecation or similar disposition.

"**Transfer Taxes**" means all goods and services, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated (including any real property transfer taxes and conveyance and recording fees), together with interest, penalties and additional amounts imposed with respect thereto. For the avoidance of doubt, Transfer Taxes shall not include withholding Taxes.

"**Transfer Tax Determination**" has the meaning set forth in Section 2.2.6(b).

"**Transfer Tax Reduction Determination**" has the meaning set forth in Section 6.1(b).

"**Transfer Tax Return**" has the meaning set forth in Section 6.1(d).

"**Transferred Employee**" means (i) those Employees who accept an offer of employment by, and commence employment with, the Purchaser or a Designated Purchaser in accordance with the terms of Section 7.1 or Section 7.2, and (ii) those Employees whose employment transfers by operation of Law.

"**Transferred Employee Plans**" means those Seller Employee Plans that are (x) established or maintained in accordance with a Collective Labor Agreement that is transferred to the Purchaser or a Designated Purchaser under the terms of Section 7.2, and transferred (or the liabilities of which are transferred) to the Purchaser or Designated Purchaser pursuant to this Agreement or by operation of Law or (y) transferred (or the liabilities of which are transferred) to the Purchaser or Designated Purchaser pursuant to this Agreement or by operation of Law.

"**Transferred Intellectual Property**" means (i) the Patents listed in Section 1.1(k) of the Sellers Disclosure Schedule, which the Sellers will update to reflect any Patent applications filed between the date hereof and the Closing with respect to which the Sellers determine in good faith is used predominantly in the Business, (ii) the Trademarks set forth in Section 1.1(l) of the Sellers Disclosure Schedule, and (iii) the Intellectual Property (other than Patents and Trademarks) owned by any of the Sellers that is exclusively used in connection with the Business as of the Closing Date, including the Software (including previous versions being utilized or supported as of the date hereof and versions in development) exclusively used in the Business.

"**Transferred Overhead and Shared Services**" means Overhead and Shared Services to be provided to or in support of the Business post-Closing by Transferred Employees.

"**Transition Services Agreement**" means the agreement between the relevant Sellers, and the relevant EMEA Sellers on the one hand, and the Purchaser and/or any Designated Purchasers, on the other hand, to be executed on or prior to the Closing, in the form attached hereto as Exhibit Q.

"**Transition Services Escrow Amount**" has the meaning set forth in the Transition Services Agreement.

"**Trustee**" means the trustee under the Indenture.

"**TSA Arbitrator**" has the meaning set forth in Section 5.28 of the Sellers Disclosure Schedule.

"**TSA Sellers**" means the Main Sellers, Nortel Networks UK Limited, Nortel Networks (Ireland) Limited and the Other Sellers.

"**UK Sellers**" means Nortel Networks UK Limited (in administration).

"**Unaudited September 30, 2008 Financial Statements**" has the meaning set forth in Section 5.26.

"**Union Employee**" means an Employee whose terms and conditions of employment are covered by a Collective Labor Agreement as specified in Section 4.10(d) of the Sellers Disclosure Schedule.

"**U.S. Bankruptcy Code**" means Title 11 of the United States Code.

"**U.S. Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware.

"**U.S. Bankruptcy Rules**" means the U.S. Federal Rules of Bankruptcy Procedure.

"**U.S. Bidding Procedures and Sale Motion**" has the meaning set forth in Section 5.1(a).

"**U.S. Bidding Procedures Order**" has the meaning set forth in Section 5.1(a).

"**U.S. Debtor Contract**" means any Seller Contract to which a U.S. Debtor is a party.

"**U.S. Debtors**" has the meaning set forth in the recitals to this Agreement.

"**U.S. Sale Hearing**" means the hearing before the U.S. Bankruptcy Court to consider approval of the relief set forth in the U.S. Sale Order.

"**U.S. Sale Order**" has the meaning set forth in Section 5.1(a).

"**U.S. Sellers**" means each of the Sellers that are organized under the laws of any state or commonwealth of the United States.

"**VAT**" has the meaning set forth in the EMEA Asset Sale Agreement.

"**Visa Employees**" means Employees (other than Employees whose employment transfers by operation of Law) who are identified as having and requiring a visa or permit in Section 4.10(b) of the Sellers Disclosure Schedule and whose employment with the Purchaser or a Designated Purchaser cannot commence or continue on the Employee Transfer Date solely due to the Purchaser's or a Designated Purchaser's inability to obtain the required visa or permit with respect to such Employee's employment on the Employee Transfer Date.

"**WARN Act**" means the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar Law.

"**Warranty Obligations**" means the warranty obligations relating to Products and Services assumed by the Purchaser and/or a Designated Purchaser and/or an EMEA Designated Purchaser pursuant to Sections 2.1.3(b) and 2.1.3(e) of this Agreement and clause 2.4.2(B)(2) of the EMEA Asset Sale Agreement, excluding those warranty obligations that relate to Known Product Defects.

"**Working Capital Escrow Amount**" means an amount in immediately available funds equal to $5,000,000, which amount shall secure Sellers' and the EMEA Sellers' obligations hereunder to pay the Deficit Amount, if any.

SECTION 1.2. Interpretation.

1.2.1. Gender and Number. Any reference in this Agreement to gender includes all genders and words importing the singular include the plural and *vice versa*.

1.2.2. Certain Phrases and Calculation of Time. In this Agreement (i) the words "including" and "includes" mean "including (or includes) without limitation", (ii) the terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, and Article, Section, paragraph, Exhibit and Schedule references are to the Articles, Sections, paragraphs, Exhibits and Schedules to this Agreement unless otherwise specified, (iii) except as used in Section 11.17, the terms "the date hereof," "the date of this Agreement" and words of similar import shall, unless otherwise stated, be construed to refer to the date of the Original Asset Sale Agreement, and (iv) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding". If the last day of any such period is not a Business Day, such period will end on the next Business Day.

When calculating the period of time "within" which, "prior to" or "following" which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day.

1.2.3. Headings, *etc*. The inclusion of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect or be used in the construction or interpretation of this Agreement.

1.2.4. Currency. All monetary amounts in this Agreement and the other Transaction Documents, unless otherwise specifically indicated, are stated in United States currency. All calculations and estimates to be performed or undertaken, unless otherwise specifically indicated, are to be expressed in United States currency. All payments required under this Agreement shall be paid in United States currency in immediately available funds, unless otherwise specifically indicated herein. Where another currency is to be converted into United States currency it shall be converted on the basis of the exchange rate published in the Wall Street Journal, Eastern Edition, for the day in question.

1.2.5. EMEA. The EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators and the Purchaser will enter into the EMEA Asset Sale Agreement providing, *inter alia*, for the sale to the Purchaser (or the EMEA Designated Purchasers) of the EMEA Business. For greater certainty, (i) nothing in this Agreement shall be considered or construed in any manner as a sale or transfer of the EMEA Business, the EMEA Assets or the EMEA Employees (except to the extent that any of the Assets owned by the Sellers are used or held for use in the EMEA Business), and (ii) no reference to Sellers herein, including any reference to the Sellers in any representation in Article IV hereof shall include the EMEA Sellers (except to the extent that the EMEA Sellers are expressly included) in the applicable provision of this Agreement. By entering into both this Agreement and the EMEA Asset Sale Agreement the Purchaser would be purchasing the entire optical networking solutions and carrier ethernet switching division of the Sellers and the EMEA Sellers' "Metro Ethernet Networks" business.

1.2.6. Recitals. The recitals to this Agreement form an integral part of this Agreement for all purposes.

1.2.7. Statutory References. Unless otherwise specifically indicated, any reference to a statute in this Agreement refers to that statute and to the regulations made under that statute as in force from time to time.

1.2.8. Amendment and Restatement of Original Asset Sale Agreement. The Original Asset Sale Agreement is hereby amended and restated in accordance with the provisions of this Agreement and this Agreement replaces and supersedes the Original Asset Sale Agreement.

ARTICLE II
PURCHASE AND SALE OF ASSETS

SECTION 2.1. Purchase and Sale.

2.1.1. Assets. Upon and subject to the terms and conditions of this Agreement, at the Closing, the Purchaser shall, and shall cause the relevant Designated Purchasers to, purchase or be assigned and assume from the relevant Sellers (as set forth in Exhibit 2.1.1), and each Seller shall transfer or assign to the Purchaser or the relevant Designated Purchasers (as set forth in Exhibit 2.1.1), all of its right, title and interest in and to the following assets other than

the Excluded Assets (such assets, excluding the Excluded Assets, the "**Assets**") (x) in the case of Assets that are transferred or assigned by U.S. Debtors, free and clear of all Liens and Claims (other than the Permitted Encumbrances of a type described in clause (v) of the definition thereof, Assumed Liabilities and Liens created by or through the Purchaser, the Designated Purchasers or any of their Affiliates or, with respect to the Transferred Intellectual Property, as expressly provided in Section 2.1.1(e) below) pursuant to Sections 363 and 365 of the U.S. Bankruptcy Code, (y) in the case of Assets that are transferred or assigned by the Canadian Debtors, free and clear of all Liens (other than the Permitted Encumbrances of a type described in clause (v) of the definition thereof, Assumed Liabilities and Liens created by or through the Purchaser, the Designated Purchasers or any of their Affiliates or, with respect to the Transferred Intellectual Property, as expressly provided in Section 2.1.1(e) below) pursuant to the Canadian Approval and Vesting Order, when granted, and (z) in the case of Assets that are transferred or assigned by the Other Sellers, free and clear of all Liens (other than the Permitted Encumbrances, Assumed Liabilities and Liens created by or through the Purchaser, the Designated Purchasers or any of their Affiliates or, with respect to the Transferred Intellectual Property, as expressly provided in Section 2.1.1(e) below):

(a) the Owned Inventory as of the Closing Date;

(b) the Owned Equipment as of the Closing Date;

(c) the Assigned Contracts in force as at the Closing Date;

(d) the Business Information existing as at the Closing Date, subject to, in the case of the Business Information used in connection with a service provided to the Purchaser under the Transition Services Agreement, a license to the Sellers to use such Business Information solely for the purpose of providing any services thereunder, for so long as such services are provided under the Transition Services Agreement, and thereafter, such Business Information will be delivered to the Purchaser subject to a mutually agreed plan to deliver electronic Business Information to the Purchaser, and further subject to Section 2.1.2(g);

(e) the Transferred Intellectual Property as of the Closing Date, subject to the licenses granted under such Intellectual Property prior to the date hereof or coming into existence after the date hereof, but prior to the Closing Date, and not in violation of Section 5.9(c), together with all claims against Third Parties for infringement, misappropriation or other violation of Law with respect to any of the Transferred Intellectual Property, whether for any past, present or future infringement, misappropriation or other violation;

(f) all rights as of the Closing under all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent related to the Assets described above;

(g) the Consents of Government Entities and pending applications therefor listed in Section 2.1.1(g) of the Sellers Disclosure Schedule (the "**Seller Consents**");

(h) the Employee Records with respect to Employees whose employment transfers to the Purchaser or a Designated Purchaser by operation of Law;

(i) any Tax records required by Law to be transferred to the Purchaser; and

(j) the CIP Accounts Receivable.

2.1.2. Excluded Assets. Notwithstanding anything in this Section 2.1.2 or elsewhere in this Agreement or in any of the Transaction Documents to the contrary, the Sellers shall retain their respective right, title and interest in and to, and the Purchaser and the Designated Purchasers shall have no rights with respect to the right, title and interest of the Sellers in and to, the following assets (collectively, the "**Excluded Assets**"):

(a) cash and cash equivalents, accounts receivable (including intercompany receivables but excluding CIP Accounts Receivable), bank account balances and all petty cash of the Sellers;

(b) subject to Section 5.20, any refunds due from, or payments due on, claims with the insurers of any of the Sellers in respect of losses arising prior to the Closing Date;

(c) all rights to Tax refunds, credits or similar benefits relating to the Assets or the Business allocable to a Pre-Closing Taxable Period or to the portion of a Straddle Period ending on and including the Closing Date, except to the extent expressly transferred by this Agreement to the Purchaser or a Designated Purchaser;

(d) any Security Deposits of the Sellers (including those relating to Assigned Contracts) except to the extent such Security Deposits are assigned to the Purchaser or a Designated Purchaser in accordance with Section 5.21;

(e) other than the Assigned Contracts, any rights of the Sellers under any contract, arrangement or agreement (including, for the avoidance of doubt, and without limiting any rights under, the Subcontract Agreement, the Excluded 365 Contracts, the Non-Assigned Contracts, the Bundled Contracts and the Excluded Other Vendor Contracts);

(f) the minute books, stock ledgers and Tax records of the Sellers other than the Tax records included in Section 2.1.1(i);

(g) (i) any books, records, files, documentation or sales literature other than the Business Information, (ii) any Employee Records other than those required to be delivered to the Purchaser pursuant to Article VII and other than those that constitute Assets pursuant to Section 2.1.1(h), and (iii) such portion of the Business Information that the Sellers are required by Law (including Laws relating to privilege or privacy) to retain (provided that copies of such information shall be provided to the Purchaser to the extent permitted by applicable Law or such agreement) and/or not to disclose;

(h) except for the Transferred Intellectual Property and any rights transferred or licensed under the other Transaction Documents, Intellectual Property of any

Seller (including the Sellers' names) or any Affiliates of any Seller or Intellectual Property owned by a Third Party;

(i) all rights of the Sellers under this Agreement and the Ancillary Agreements;

(j) all of the rights and claims of the U.S. Debtors available to the U.S. Debtors under the U.S. Bankruptcy Code, of whatever kind or nature, as set forth in Sections 544 through 551, inclusive, 553, 558 and any other applicable provisions of the U.S. Bankruptcy Code, and any related claims and actions arising under such Sections by operation of Law or otherwise, including any and all proceeds of the foregoing;

(k) all records prepared in connection with the sale of the Business, other than those records that relate exclusively to the sale of the Business to the Purchaser and the Designated Purchasers (other than those records containing personal communication or notes relating to same which shall be Excluded Assets). For greater certainty, any records relating to negotiations with Third Parties in connection with the sale of the Business shall be Excluded Assets other than any confidentiality agreements with Third Parties executed in connection with the sale of the Business which are otherwise being assigned to the Purchaser in accordance with the provisions of this Agreement;

(l) all stock or other equity interests in any Person;

(m) any business, asset, product or service run, owned, managed and/or provided by NETAS, the LGN Joint Venture or any other joint venture (or similar arrangement) of the Sellers and the EMEA Sellers unless expressly included in this Agreement;

(n) any assets set forth on Section 2.1.2(n) of the Sellers Disclosure Schedule; and

(o) any and all other assets and rights of the Sellers not specifically included in Section 2.1.1.

In addition to the above, the Sellers shall have the right to retain, following the Closing, copies of any book, record, literature, list and any other written or recorded information constituting Business Information to which the Sellers in good faith determine they are reasonably likely to need access for *bona fide* business or legal purposes, which retained Business Information shall be held in accordance with Section 5.11.

2.1.3. Assumed Liabilities. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, the Purchaser shall, and shall cause the relevant Designated Purchasers to, assume and become responsible for, and perform, discharge and pay when due (in accordance with their respective terms and subject to the respective conditions thereof), the following Liabilities (the "**Assumed Liabilities**") and no others:

(a) all Liabilities arising after the Closing Date to the extent related to the operation of the Business (excluding the EMEA Business) by the Purchaser following the

Closing, including (i) all Liabilities incurred after the Closing Date with respect to the ownership and operation of the Assets, (ii) all Liabilities incurred after the Closing Date related to Actions or claims brought against the Business (excluding the EMEA Business), and (iii) all Liabilities arising after the Closing Date under any products liability Laws or similar Laws concerning defective products manufactured or sold by the Business (excluding the EMEA Business) following the Closing Date;

(b) (i) all Liabilities arising from or in connection with the performance of the Assigned Contracts (or breach thereof) after the Closing Date and (ii) all Liabilities, whether arising before, on or after the Closing Date, with respect to (A) any Cure Costs payable by the Purchaser pursuant to Section 2.1.7(b) of the Sellers Disclosure Schedule, (B) any obligation to buy back from the relevant resellers the Products sold by the Business (excluding the EMEA Business) to its resellers under the Seller Contracts (to the extent such Contracts are Assigned Contracts), (C) any obligations under any warranty liabilities relating to the Products and Services which have been supplied under any Assigned Contract including warranties in respect of Known Product Defects and (D) all liabilities and obligations of a type accrued on the Business' historic Financial Statements under the heading "Other Accrued and Contractual Liabilities" to the extent reflected in the final calculation of Net Working Capital Transferred;

(c) all Liabilities resulting from any licensing assurances, declarations, agreements or undertakings relating to the Transferred Intellectual Property that the Sellers may have granted or committed to Third Parties including standard-setting bodies, that are set forth on Section 2.1.3(c) of the Sellers Disclosure Schedule, it being understood that the Sellers or their Affiliates may have made other licensing assurances, declarations or undertakings to various standard-setting bodies concerning the Transferred Intellectual Property, the Liabilities for such other assurances, declarations or undertakings are not assumed hereunder but are being referenced merely to provide notice thereof;

(d) all Liabilities for, or related to, any obligation for, any Tax that the Purchaser or any Designated Purchaser bears under Article VI;

(e) all obligations under any warranty liabilities, including warranties with respect to Known Product Defects, relating to Products and Services which have been supplied under any Bundled Contract subcontracted to the Purchaser or any Designated Purchaser under the Subcontract Agreement;

(f) except to the extent otherwise expressly set forth in Article VII, all Liabilities related to or arising from or in connection with: (i) the Purchaser's or any Designated Purchasers' (or any of their Affiliates') employment or termination of employment (whether or not arising under or in respect of any Purchaser Employee Plan) of Transferred Employees after Closing; (ii) Purchaser's or a Designated Purchaser's failure to offer employment to any Employee that constitutes a violation of applicable Law; (iii) the failure of the Purchaser or any Designated Purchaser to satisfy its obligations with respect to the Employees, including the Transferred Employees, as set out in Article VII;

(g) all Liabilities that relate to or arise from or in connection with any Purchaser Employee Plan;

(h) any obligation to provide continuation coverage pursuant to COBRA or any similar Laws under any Purchaser Employee Plan that is a "group health plan" (as defined in Section 5000(b)(1) of the Code) to Transferred Employees and/or their qualified beneficiaries with respect to a qualifying event occurring on or after such Transferred Employees' Effective Hire Date;

(i) all Liabilities related to the Transferred Employees set forth on Section 2.1.3(i) of the Sellers Disclosure Schedule (the "**Specified Employee Liabilities**"); and

(j) all Liabilities related to Transferred Employees expressly assumed by the Purchaser or a Designated Purchaser as set out in Article VII.

2.1.4. Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, the Purchaser shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of the Sellers, and the Sellers shall be solely and exclusively liable with respect to all Liabilities of the Sellers, other than the Assumed Liabilities (collectively, the "**Excluded Liabilities**"). For the purpose of clarity, and without limitation of the generality of the foregoing, the Excluded Liabilities shall include, without limitation, each of the following liabilities of the Sellers:

(a) all Indebtedness of the Sellers and their Affiliates;

(b) all guarantees of Third Party obligations by the Sellers and reimbursement obligations to guarantors of the Sellers' obligations or under letters of credit;

(c) any Liability of the Sellers or their directors, officers, stockholders or agents (acting in such capacities), arising out of, or relating to, this Agreement or the transactions contemplated by this Agreement, whether incurred prior to, at or subsequent to the Closing Date, including, without limitation, other than as specifically set forth herein, including with respect to the Assumed Liabilities, all finder's or broker's fees and expenses and any and all fees and expenses of any representatives of the Sellers;

(d) other than as specifically set forth herein, any Liability relating to events or conditions occurring or existing in connection with, or arising out of, the Business as operated prior to the Closing Date, or the ownership, possession, use, operation or sale or other disposition prior to the Closing Date of the Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing Date, with the Business) including, without limitation, any liability with respect to Customer Contract Cure Costs or any Cure Cost payable by the Sellers pursuant to Section 2.1.7(b) and Section 2.1.7(c) of the Sellers Disclosure Schedule;

(e) other than as specifically set forth in Article VII, the Assumed Liabilities, or as specifically set forth in the Loaned Employee Agreement, any Liability to any Person at any time employed by the Sellers or to any such Person's spouse, children, other dependents or beneficiaries, with respect to incidents, events, exposures or circumstances occurring at any time during the period or periods of any such Person's employment by the Sellers and arising from or related to such Person's employment by the

Sellers whenever such claims mature or are asserted, including, without limitation (except as otherwise specifically set forth in Article VII, the Assumed Liabilities or the Loaned Employee Agreement), all Liabilities arising (i) under the Seller Employee Plans, (ii) under any employment, wage and hour restriction, equal opportunity, discrimination, plant closing or immigration and naturalization Laws, (iii) under any collective bargaining Laws, agreements or arrangements or (iv) in connection with any workers' compensation or any other employee health, accident, disability or safety claims;

(f) any Liability relating to any real properties owned, operated or otherwise controlled by the Sellers or their Affiliates (including the Real Property) to the extent arising from events or conditions occurring or existing prior to the Closing Date, including, without limitation, where connected with, arising out of or relating to: (i) Releases, Handling of Hazardous Materials or violations of Environmental Laws or (ii) claims relating to employee health and safety, including claims for injury, sickness, disease or death of any Person;

(g) any Liability of the Sellers under Title IV of ERISA;

(h) any pension or retirement Liability of the Sellers;

(i) all Liabilities for, or related to, any obligation for any Tax that the Sellers bear under Article VI, and, for the avoidance of doubt, the Parties intend that no Purchaser or Designated Purchaser shall have any transferee or successor liability for any Tax Sellers bear under Article VI;

(j) all Actions pending against the Sellers on or before the Closing Date or to the extent relating to the Business or the Assets prior to the Closing Date even if instituted after the Closing Date;

(k) any Liability incurred by the Sellers or their respective directors, officers, stockholders, agents or employees (acting in such capacities) after the Closing Date;

(l) except as provided in Section 2.1.3(b), all liabilities for accounts payable;

(m) any Liability relating to or arising out of the ownership or operation of an Excluded Asset or the operation by the Sellers of any business other than the Business, whether before, on or after the Closing Date; and

(n) those Liabilities set forth on Section 2.1.4(n) of the Sellers Disclosure Schedule.

2.1.5. Assumption and/or Assignment or Rejection of 365 Contracts.

(a) On or before the date of the U.S. Bidding Procedures Order hearing, the Sellers shall provide to the Purchaser Section 2.1.5(a) of the Sellers Disclosure Schedule which shall set forth a list of all U.S. Debtor Contracts (other than Customer Contracts) that are Executory Contracts or unexpired leases entered into before the Petition Date. On or

before three (3) days before the date of the Auction, the Purchaser will provide to the Main Sellers a list (the "**365 Vendor Contract List**") of those U.S. Debtor Contracts from Section 2.1.5(a) of the Sellers Disclosure Schedule, that the Purchaser has elected to have the relevant U.S. Debtor assume and assign to the Purchaser or a Designated Purchaser at Closing pursuant to Section 365 of the U.S. Bankruptcy Code (Contracts that may be included on the 365 Vendor Contract List, the "**365 Vendor Contracts**"). Any time prior to January 15, 2010, the Purchaser may, by written notice to the Sellers, remove any 365 Vendor Contract from the 365 Vendor Contract List, in which event such 365 Vendor Contract shall cease to be an Assumed and Assigned Contract and shall instead be an Excluded 365 Contract for all purposes hereunder.

(b) On or before the date of the U.S. Bidding Procedures Order hearing, the Sellers shall provide to the Purchaser Section 2.1.5(b) of the Sellers Disclosure Schedule which shall set forth a list (the "**365 Customer Contract List**") of all Customer Contracts of a U.S. Debtor that are Executory Contracts and were entered into before the Petition Date and that the relevant U.S. Debtor will assume and assign to the Purchaser or a Designated Purchaser at Closing pursuant to Section 365 of the U.S. Bankruptcy Code (Contracts that may be included on the 365 Customer Contract List, the "**365 Customer Contracts**" and, together with the 365 Vendor Contracts, the "**Assumed and Assigned Contracts**" (as referred to herein from time to time as "**365 Contracts**")).

(c) The U.S. Debtors shall seek the approval of the U.S. Bankruptcy Court to the assumption and/or assignment of the Assumed and Assigned Contracts as part of the U.S. Sale Order in accordance with Section 5.1.

(d) Any U.S. Debtor Contracts that are Executory Contracts or unexpired leases that the Purchaser elects not to have assigned pursuant to Section 2.1.5(a) shall be referred to as an "**Excluded 365 Contract**" and shall not be an Assigned Contract hereunder.

2.1.6. <u>Assignment of Other Vendor Contracts and Other Customer Contracts</u>.

(a) On or before a date that is thirty (30) days from the date hereof, the Sellers shall provide to the Purchaser Section 2.1.6(a) of the Sellers Disclosure Schedule which shall set forth a list of Other Vendor Contracts (other than Non-Assignable Contracts). On or before December 31, 2009, the Purchaser shall notify the Sellers of (i) any Other Vendor Contracts (other than Non-Assignable Contracts) that the Purchaser wants the relevant Seller to assign to the Purchaser or a Designated Purchaser at the Closing (the "**Designated Other Vendor Contracts**") and (ii) any Other Vendor Contracts (other than Non-Assignable Contracts) that Purchaser does not want the relevant Seller to assign to the Purchaser or a Designated Purchaser at the Closing (the "**Excluded Other Vendor Contracts**"). On or before January 15, 2010 the Purchaser may by written notice to the Main Sellers, modify the lists of Designated Other Vendor Contracts and Excluded Other Vendor Contracts for all purposes hereunder.

(b) On or before a date that is thirty (30) days from the date hereof, the Sellers shall provide to the Purchaser Section 2.1.6(b) of the Sellers Disclosure Schedule

which shall set forth a list of Non-Assignable Contracts with suppliers of products or services to the Business. On or before December 31, 2009, the Purchaser shall notify the Sellers of (i) any Non-Assignable Contracts with suppliers of products or services to the Business that the Purchaser wants the relevant Seller to attempt to assign to the Purchaser or a Designated Purchaser at the Closing (the "**Designated Non-Assignable Supply Contracts**") and (ii) any Non-Assignable Contracts with suppliers of products or services to the Business that the Purchaser does not want the relevant Seller to assign to the Purchaser or a Designated Purchaser at the Closing (the "**Excluded Non-Assignable Supply Contracts**"). On or before January 15, 2010, the Purchaser may by written notice to the Main Sellers, modify the lists of Designated Non-Assignable Contracts and Excluded Non-Assignable Contracts for all purposes hereunder.

(c) On or before a date that is thirty (30) days from the date hereof, the Sellers shall provide to the Purchaser Section 2.1.6(c) of the Sellers Disclosure Schedule which shall set forth a list of those Customer Contracts other than 365 Customer Contracts and other than Non-Assignable Contracts to be assigned by the relevant Seller to the Purchaser or a Designated Purchaser at Closing (the "**Designated Other Customer Contracts**").

(d) On or before a date that is thirty (30) days from the date hereof, the Sellers shall provide to the Purchaser Section 2.1.6(d) of the Sellers Disclosure Schedule which shall set forth a list of Non-Assignable Contracts (other than 365 Contracts) with customers of the Business which the relevant Seller will attempt to assign to the Purchaser or a Designated Purchaser at Closing (the "**Designated Non-Assignable Customer Contracts**" and together with the Designated Non-Assignable Supply Contracts, the "**Designated Non-Assignable Contracts**").

(e) The Parties shall use commercially reasonable efforts to obtain all Consents required to permit the assignment to the Purchaser or a Designated Purchaser of the Designated Non-Assignable Contracts; provided, however, that the Sellers shall be under no obligation to compromise any right, asset or benefit or to expend any amount or incur any Liability in seeking such Consents and, for greater certainty, the failure to obtain any or all of such Consents shall not in itself entitle the Purchaser to terminate this Agreement or fail to complete the transactions contemplated hereby or entitle the Purchaser to any adjustment to the Purchase Price.

(f) Subject to Section 2.1.10 and Section 5.14, all the Designated Other Vendor Contracts, Designated Other Customer Contracts and the Designated Non-Assignable Contracts in force at the Closing shall be assigned to the Purchaser or a Designated Purchaser at the Closing pursuant to Section 2.1.1(c).

(g) For those Designated Non-Assignable Customer Contracts for which the Sellers are unable to obtain any required Consent on or before January 25, 2010, the relevant Sellers shall use commercially reasonable efforts to enter into one or more Subcontract Agreements between the Sellers and the Purchaser with respect to such Designated Non-Assignable Customer Contracts; provided that (x) the Sellers shall not renew any Designated Non-Assignable Customer Contract once it has expired unless both the relevant Seller and Purchaser agree, (y) the Sellers shall have the right, any time after the

date that is one year after the Closing Date, to exercise any right to terminate any Designated Non-Assignable Customer Contract, and (z) the Sellers shall be under no obligation to compromise any right, asset or benefit or to expend any amount or incur any Liabilities in order to comply with its obligations under this sentence.

2.1.7. Cure Costs; Adequate Assurance.

(a) On or before the date of the U.S. Bidding Procedures Order hearing, the Sellers shall provide to the Purchaser Section 2.1.7(a) of the Sellers Disclosure Schedule which shall set forth a list of all of the following: (i) each 365 Vendor Contract and the aggregate amount of Cure Costs, in the Sellers' estimate, owed to each counterparty to such 365 Vendor Contract, (ii) each exclusive Other Vendor Contract that, in the Sellers' estimate, is subject to Cure Costs in excess of $100,000 and the aggregate amount of Cure Costs, in the Sellers' estimate, owed with respect to such Other Vendor Contract, and (iii) each supplier to the Business who supplies products or services pursuant to Non-Exclusive Supply Contracts who, in the Sellers' estimate, is owed Cure Costs thereunder in excess of $100,000 and the aggregate amount of Cure Costs, in the Sellers' estimate, owed to each such supplier.

(b) Section 2.1.7(b) of the Sellers Disclosure Schedule sets forth the manner in which Cure Costs shall be paid under this Agreement and certain agreements of the Parties with respect thereto.

(c) Section 2.1.7(c) of the Sellers Disclosure Schedule sets forth the manner in which Customer Contract Cure Costs shall be paid under this Agreement and certain agreements of the Parties with respect thereto.

(d) This Agreement may be terminated by the Purchaser at any time prior to Closing in accordance with clause (C) of Section 2.1.7(b)(I) of the Sellers Disclosure Schedule, and in the event of such termination, the Purchaser shall be entitled to a termination payment of $21,392,000.

(e) Prior to the U.S. Sale Hearing, the Purchaser shall provide adequate assurance of its and the relevant Designated Purchasers' future performance under each Assumed and Assigned Contract to the parties thereto (other than the U.S. Debtors) in satisfaction of Section 365(f)(2)(B) of the U.S. Bankruptcy Code.

2.1.8. Local Sale Agreements. Subject to the terms and conditions hereof, if reasonably requested in writing by the Purchaser or the Sellers to effect the Closing on the terms hereof, the relevant Sellers shall, and the Purchaser shall, and shall cause the relevant Designated Purchasers to, enter into such agreements or instruments, including bills of sale and/or assignment and assumption agreements (the "**Local Sale Agreements**"), providing for (i) the sale, transfer, assignment or other conveyance to the Purchaser and relevant Designated Purchasers, in accordance with the requirements of applicable local Law, of any Assets located in the specified countries reasonably requested by the Sellers or the Purchaser, and (ii) the assumption by the Designated Purchasers of any Assumed Liability that the Purchaser intends to allocate to them. Such Local Sale Agreements shall promptly be negotiated in good faith

between the Main Sellers and the Purchaser. In the event of a conflict between this Agreement and the Local Sale Agreements, this Agreement shall prevail.

2.1.9. EMEA Asset Sale Agreement. Notwithstanding anything to the contrary in this Agreement, except to the extent expressly incorporated by reference into the EMEA Asset Sale Agreement, none of the EMEA Sellers or the directors of any of them, the Joint Administrators or the Joint Israeli Administrators shall assume, or be deemed to assume, any obligation or liability whatsoever under this Agreement and nothing in this Agreement shall apply to, or govern, the sale, assignment, transfer, retention or assumption of assets, rights, properties or Liabilities of, or by, any EMEA Seller, the Joint Administrators or the Joint Israeli Administrators in any manner whatsoever. The only assets, rights, properties and Liabilities of the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators that are being sold, assigned or transferred to, and assumed by, the Purchaser or the EMEA Designated Purchasers, and the terms and conditions thereof, and except as expressly set forth in this Agreement as made by the Sellers, and not, for the avoidance of doubt, the EMEA Sellers, the representations with respect thereto are solely as expressly set forth in the EMEA Asset Sale Agreement. Except as provided in the EMEA Asset Sale Agreement, neither the Purchaser nor any Designated Purchaser shall be entitled to make any claim under this Agreement, or assert any right hereunder, against any Person other than the Sellers, their successors or assigns.

2.1.10. Non-Assignable Assets. Notwithstanding anything in this Agreement to the contrary, if the requisite Consent has not been obtained on or prior to Closing, then, unless such Consent is subsequently obtained, this Agreement shall not constitute an agreement to sell, transfer or assign, directly or indirectly, any Asset, or any obligation or benefit arising thereunder if an attempted direct or indirect sale, transfer or assignment thereof, without the Consent of a Third Party, including a Government Entity, would constitute a breach, default, violation or other contravention of the rights of such Third Party or would be ineffective with respect to any party to a Contract concerning such Asset. For greater certainty, failure to obtain any such Consent shall not entitle the Purchaser to terminate this Agreement or fail to complete the transactions contemplated hereby or entitle the Purchaser to any adjustment of the Purchase Price. In the case of Consents, Contracts and other commitments included in the Assets (i) that cannot be transferred or assigned without the consent of Third Parties, which consent has not been obtained prior to the Closing, the Sellers shall, at the Purchaser's sole out-of-pocket cost, reasonably cooperate with the Purchaser in endeavoring to obtain such Consent and, if any such Consent is not obtained, the Sellers shall, following the Closing, at the Purchaser's sole out-of-pocket cost, cooperate with the Purchaser in all reasonable respects to provide to the Purchaser with the benefit of such Consent, Contract or other commitment, or (ii) that are otherwise not transferable or assignable, the Sellers shall, following the Closing, at the Purchaser's sole out-of-pocket cost, reasonably cooperate with the Purchaser to provide to the Purchaser with the benefit of such Consent, Contract or other commitment. The obligation of the Sellers to provide such reasonable cooperation under this Section 2.1.10 shall terminate on the date that is one (1) year following the Closing Date and after such time period, the Sellers shall have no further obligation to so cooperate nor shall the Sellers bear any liability for the failure to obtain such Consents within such one year period.

SECTION 2.2. Purchase Price.

2.2.1. Purchase Price.

(a) Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the purchase, sale, assignment and conveyance of the Sellers' and EMEA Sellers' right, title and interest in, to and under the Assets and the EMEA Assets, respectively, pursuant to the terms hereof and pursuant to the terms of the EMEA Asset Sale Agreement, respectively, and of the rights granted by certain Sellers and the EMEA Sellers under the Intellectual Property License Agreement and the Trademark License Agreement, the Purchaser, on its own behalf and as agent for the relevant Designated Purchasers, shall (i) assume and become obligated to pay, perform and discharge, when due, the Assumed Liabilities and the EMEA Assumed Liabilities, (ii) subject to adjustment following the Closing in accordance with Section 2.2.4.2, pay to the Distribution Agent an amount of cash (the "**Cash Purchase Price**") equal to Five Hundred Thirty Million dollars ($530,000,000) (the "**Base Cash Purchase Price**") less the Escrow Amount and as adjusted pursuant to Sections 2.2.2 and 2.2.4 and Section 5.28 of the Sellers Disclosure Schedule or as otherwise expressly provided herein, in the Real Estate Terms and Conditions or in the EMEA Asset Sale Agreement, and (iii) subject to Section 2.2.7, issue to the Distribution Agent, as agent for the Sellers and the EMEA Sellers, $239,000,000 aggregate principal amount (the "**Aggregate Principal Amount**") of 6.0% Senior Notes due June 15, 2017 (the "**Convertible Notes**", and together with the Cash Purchase Price, as adjusted, the "**Purchase Price**") convertible at the holder's option into Common Stock at a conversion price equal to $16.4625 (the "**Conversion Price**"), subject to adjustments contemplated in the Indenture; provided, however, that the Purchaser may, by written notice to the Sellers on or before the Closing Date, elect to increase the Cash Purchase Price and the Base Cash Purchase Price payable pursuant to clause (ii) above by up to the Aggregate Principal Amount in lieu of issuing the corresponding face amount of the Convertible Notes (such election, if exercised, the "**Cash Replacement Election**"); provided further, that if the Market Value of the Common Stock on the date of the notice of such election (or in the case the replacement is made with the proceeds of a simultaneous convertible security offering the most recent closing price per share of the Common Stock on the NASDAQ Global Select Market at the time such convertible security offering is priced) is equal to or greater than $17.00 per share of Common Stock, then in lieu of increasing the Cash Purchase Price by the Aggregate Principal Amount such increase will equal the Optional Redemption Price corresponding to such Aggregate Principal Amount.

(b) Except as provided in Section 2.2.1(a), the Convertible Notes shall be issued on terms substantially the same as the terms of the Existing 2017 Senior Notes as set forth in the indenture with respect thereto except that (i) references to quotation on an automated over the counter trading market contained in the "Fundamental Change" definition of the 2017 Existing Senior Notes indenture will be omitted in the equivalent definition in the documentation for the Convertible Notes, (ii) the related share adjustment amount table (with conforming changes to minimum and maximum adjustment amounts described elsewhere) is replaced by the table attached hereto as Exhibit 2.2.1(b)(ii), (iii) following the Closing but prior to the Liquidity Date, the Purchaser may redeem the Convertible Notes at any time for cash at a redemption price per $1,000 principal amount of Convertible Notes equal to the greater of (a) $1,050.00 and (b) the product of (x) the closing

price per share of the Common Stock on the NASDAQ Global Select Market on the date of notice of such redemption (or in the case of redemption with the proceeds of a simultaneous convertible bond offering the most recent closing price per share of the Common Stock on the NASDAQ Global Select Market at the time such convertible bond offering is priced) multiplied by (y) the Conversion Rate (as defined in the Indenture) applicable to the Convertible Notes on such date, as increased by a number of additional shares determined by reference to the number of such additional Shares, the most recent closing price per share of the Common Stock on the NASDAQ Global Select Market at the time the simultaneous convertible security offering is priced and the time of such redemption as set forth in the table attached hereto as Exhibit 2.2.1(b)(iii) (using the date of notice of redemption or the date of pricing of such simultaneous convertible security offering as the referenced effective date and the closing price per share of the Common Stock on The NASDAQ Global Select Market), multiplied by (z) .95, plus, in each case, accrued and unpaid interest from the date of issuance (the "**Optional Redemption Price**"), and (iv) the indenture with respect to the Convertible Notes will reflect the post-Closing offer requirement set forth in Section 2.2.1(c) below.

(c) In the event that the Purchaser completes any capital raising transaction through the issuance and sale of debt or equity securities for cash during the period after the date hereof through and including the Closing Date, the Purchaser shall be required to exercise the Cash Replacement Election to the extent of the net proceeds of such capital raising transaction. In the event that the Purchaser completes any capital raising transaction through the issuance and sale of debt or equity securities for cash during the period following the Closing Date but prior to the earlier of the date on which the Initial Shelf Registration Statement becomes effective or the date on which the Registrable Securities are otherwise Freely Tradeable (such date, the "**Liquidity Date**"), the Purchaser shall be required to offer to use the net proceeds therefrom to replace the Convertible Notes for an amount equal to the Optional Redemption Price.

(d) Notwithstanding Sections 2.2.1(a), (b) and (c) above, in the event that the Market Value of the Common Stock (rounded to the nearest whole cent) as of the Closing Date is less than $13.17, the interest rate on the Convertible Notes shall be increased as follows:

Market Value	Interest Rate
More than $13.16	6.00%
$13.00-$13.16	6.25%
$12.75-$12.99	6.50%
$12.50-$12.74	6.75%
$12.25-$12.49	7.00%
$12.00-$12.24	7.25%
$11.75-$11.99	7.50%
$11.50-$11.74	7.75%
Less than $11.49	8.00%

2.2.2. Estimated Cash Purchase Price.

(a) For purposes of determining the amount of cash to be paid as the Cash Purchase Price by the Purchaser to the Sellers at the Closing pursuant to Section 2.2.1, at least three (3) Business Days prior to the Closing Date but no more than ten (10) Business Days prior to the Closing Date, the Main Sellers shall deliver to the Purchaser their good faith estimate of the Closing Date Net Working Capital Transferred (the "**Estimated Closing Date Net Working Capital Transferred**") setting forth in reasonable detail the Main Sellers' calculation thereof. The Main Sellers' calculation of the Estimated Closing Date Net Working Capital shall be subject to the review and approval of the Purchaser, which approval shall not be unreasonably withheld. The Main Sellers shall cooperate with the Purchaser and shall provide such information as may be reasonably requested in connection with such review.

(b) The "**Estimated Adjustment Amount**," which may be positive or negative, shall mean (i) the Estimated Closing Date Net Working Capital Transferred, minus (ii) $167,000,000. If the Estimated Adjustment Amount is a positive number, then the Cash Purchase Price shall be increased on the Closing Date by the Estimated Adjustment Amount, and if the Estimated Adjustment Amount is a negative number, then the Cash Purchase Price shall be decreased on the Closing Date by the absolute value of the Estimated Adjustment Amount.

(c) The Parties agree that the Cash Purchase Price to be paid at Closing shall also be decreased in accordance with clause 3.5 and Schedule 8 of the EMEA Asset Sale Agreement.

2.2.3. Additional Adverse Bankruptcy Proceedings; Adverse International Injunctions; Excluded Entities.

(a) Other than as set forth in Section 2.2.3(d), if at any time prior to the Closing Date, (i) any Seller that is a Non-Debtor Seller as of the date hereof shall have commenced voluntary or involuntary bankruptcy, insolvency, administration or judicial proceedings similar to the Bankruptcy Proceedings in any country or other jurisdiction (each such proceeding, an "**Additional Adverse Bankruptcy Proceeding**") or (ii) there shall be in effect any Law or Order of any court or other Government Entity in any country or other jurisdiction (other than the U.S., Canada or the United Kingdom) prohibiting in such jurisdiction the consummation of the transactions contemplated hereby or any pending proceeding by any such Government Entity seeking such prohibition (such Law, Order or proceeding, an "**Adverse International Injunction**"), then (A) the Main Sellers shall promptly notify the Purchaser of such Additional Adverse Bankruptcy Proceeding or such an Adverse International Injunction, as applicable, and, to the extent the Main Sellers are aware of the same, identify the Assets or assets of a Person that are subject to such Additional Adverse Bankruptcy Proceeding or Adverse International Injunction (the "**Restricted Assets**"), (B) the Parties shall, in respect of the Restricted Assets, use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to transfer, sell and assign all of the Sellers' right, title and interest in the Restricted Assets to the Purchaser or a Designated Purchaser, as applicable, as

contemplated hereby on the Closing Date on the terms and conditions set forth herein, notwithstanding the Additional Adverse Bankruptcy Proceeding or Adverse International Injunction, as applicable; provided, however, nothing contained herein shall require the Purchaser or any Designated Purchaser to take any action in violation of applicable Law or any Order or which would subject the Purchaser or any Designated Purchaser to any material liability other than the Assumed Liabilities or to incur any material out-of-pocket cost.

(b) If, ten (10) Business Days prior to Closing, it has become apparent to the Parties that such Additional Adverse Bankruptcy Proceeding or Adverse International Injunction will or may prevent one or more Sellers (each a "**Restricted Seller**") from assigning the Restricted Assets to the Purchaser or a Designated Purchaser, as applicable, as of the Closing Date, then, as of the Closing Date, such Restricted Assets shall automatically be deemed Excluded Assets hereunder, the Sellers shall be excused from delivering the Restricted Assets and, without prejudice to all other obligations of the Purchaser and the other Sellers hereunder, the Purchaser shall be relieved from its rights and obligations to acquire such Restricted Assets, to assume any Assumed Liabilities in respect thereof (the "**Restricted Liabilities**") or to make offers to, or employ, any Employee who is employed by any Seller who is subject to such Additional Adverse Bankruptcy Proceeding or Adverse International Injunction or who devotes more than 50% of his or her working time to the business of any such Sellers (each a "**Restricted Employee**"). The Purchase Price, including the Cash Purchase Price paid to the Sellers at the Closing, shall be reduced, with respect to such Restricted Assets and Restricted Liabilities, by an amount equal to the product of (x) the sum of the revenues for the one year period ended on December 31, 2008 (the "**2008 Revenues**") for all Restricted Sellers as set forth on Exhibit X, times (y) 0.4088**;** provided, however, if the sum of the 2008 Revenues for all Restricted Sellers and all EMEA Sellers that are designated Restricted Sellers pursuant to the EMEA Asset Sale Agreement as set forth on Exhibit X exceeds $120,000,000, the Purchase Price, including the Cash Purchase Price paid to the Sellers at the Closing, shall be reduced, with respect to such Restricted Assets and Restricted Liabilities, by an amount equal to the product of (x) the sum of the 2008 Revenues for all Restricted Sellers as set forth on Exhibit X, times (y) 0.5314.

(c) Subject to Section 5.4 and Section 5.5, for a period of thirty (30) days following the Closing, the Sellers and the Purchaser shall, in respect of the Restricted Assets, continue to use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to assign the Restricted Assets of the relevant Restricted Seller to the Purchaser or a Designated Purchaser, as promptly as reasonably practicable within such period; provided, however, nothing contained herein shall require the Purchaser or any Designated Purchaser to take any action in violation of applicable Law or any Order or which would subject the Purchaser or a Designated Purchaser to any material liability other than the Assumed Liabilities or to incur any material out-of-pocket cost. In the event that the Sellers are unable to cause the Adverse International Injunction to be terminated or to otherwise complete the transaction in accordance with the proviso above on or before the date that is 30 days after the Closing Date, neither the Purchaser nor any Designated Purchaser shall have any further obligation

with respect to the Restricted Assets, Restricted Liabilities or the Restricted Employees. To the extent the Restricted Assets are assigned to the Purchaser or a Designated Purchaser, as applicable, the Purchaser or a Designated Purchaser shall assume the related Restricted Liabilities and make offers to and employ as provided in Article VII the Restricted Employees, then as of the transfer date: (i) the Restricted Assets, the Restricted Liabilities and the Restricted Employees shall be deemed respectively Assets, Assumed Liabilities and Transferred Employees hereunder; and (ii) the Purchaser shall pay to the Distribution Agent, as an adjustment to the Purchase Price hereunder, by wire transfer to the account designated by the Distribution Agent pursuant to Section 2.3.2(b) an amount in cash equal to the amount that the Purchase Price was reduced pursuant to subsection (b) above with respect to such Restricted Seller.

(d) Section 2.2.3(d) of the Sellers Disclosure Schedule sets forth the manner in which certain Sellers or Affiliates of any Seller (and their Assets, and Liabilities) may be excluded from the transactions contemplated by this Agreement.

(e) The Purchase Price, including the Cash Purchase Price, shall also be adjusted in accordance with clause 3.5 and Schedule 8 of the EMEA Asset Sale Agreement.

2.2.4. Purchase Price Adjustment.

2.2.4.1 Closing Statement; Dispute Resolution

(a) As promptly as practicable (and in any event within 90 days after the Closing), the Purchaser shall prepare and deliver to the Main Sellers and the EMEA Sellers an unaudited statement (the "**Closing Statement**") setting forth in reasonable detail the Net Working Capital Transferred of the Business as of the Closing Date (the "**Closing Date Net Working Capital Transferred**") and each component thereof. Following the Closing, the Purchaser shall provide the Main Sellers and their representatives access to the records and employees of the Business to the extent relevant for the preparation of the Closing Statement and shall cause the employees of the Business to cooperate with the Main Sellers in connection with their review of the Closing Statement. "**Net Working Capital Transferred**" as of the Closing Date shall mean an amount equal to (i) the Closing Inventory Amount, plus (ii) the Closing CIP Accounts Receivable Amount, minus (iii) the Closing Warranty Provision, minus (iv) the Closing KPD Provision, minus (v) the Closing Net Deferred Revenues, minus (vi) the Closing Other Accrued and Contractual Liabilities, minus (vii) the Closing Accrued Vacation and Service Award Amount, minus (viii) the Closing Retirement Obligation Amount, minus (ix) the Excess ARD Employees Amount.

(b) If the Main Sellers disagree with the calculation of Closing Date Net Working Capital Transferred, they shall notify the Purchaser of such disagreement in writing, setting forth in reasonable detail the particulars of such disagreement, within thirty (30) days after their receipt of the Closing Statement. In the event that the Main Sellers do not provide such a notice of disagreement within such thirty (30) day period, the Main Sellers shall be deemed to have accepted the Closing Statement and the calculation of the Closing Date Net Working Capital Transferred delivered by the Purchaser, which shall be final, binding and conclusive for all purposes hereunder. In the event any such notice of disagreement is timely provided, the Purchaser and the Main Sellers shall use commercially reasonable efforts for a period of thirty (30) days (or such longer period as they may mutually agree) to resolve any disagreements with respect to the calculations of Closing

Date Net Working Capital Transferred. If, at the end of such period, they are unable to resolve such disagreements, then the Independent Auditor as arbitrator (or such other independent accounting firm of recognized national standing as may be mutually selected by the Purchaser and the Main Sellers) (the "**Accounting Arbitrator**") shall resolve any remaining disagreements. The Accounting Arbitrator shall determine as promptly as practicable, but in any event within thirty (30) days of the date on which such dispute is referred to the Accounting Arbitrator, whether the Closing Statement was prepared in accordance with the standards set forth in Section 2.2.4.1 and (only with respect to the remaining disagreements submitted to the Accounting Arbitrator) whether and to what extent (if any) Closing Date Net Working Capital Transferred require adjustment. The fees and expenses of the Accounting Arbitrator shall be paid inverse *pro rata* by the Primary Parties based on the final position of each of the Primary Parties as submitted to the Accounting Arbitrator relative to the Accounting Arbitrator's final determination. The determination of the Accounting Arbitrator shall be final, conclusive and binding on the Parties. The date on which Closing Date Net Working Capital Transferred is finally determined in accordance with this Section 2.2.4.1 is hereinafter referred as to the "**Determination Date**."

2.2.4.2. Purchase Price Adjustment

(a) The "**Adjustment Amount**," which may be positive or negative, shall mean the Closing Date Net Working Capital Transferred, minus the Estimated Closing Date Net Working Capital Transferred. If the Adjustment Amount is a positive number, then the Base Cash Purchase Price shall be increased by the Adjustment Amount, and if the Adjustment Amount is a negative number, the Base Cash Purchase Price shall be decreased by the absolute value of the Adjustment Amount. The Adjustment Amount shall be paid in accordance with Section 2.2.4.2(b) below.

(b) **Adjustment Payments.**

(i) If the Adjustment Amount is a positive number (such amount, the "**Increase Amount**"), then, promptly following the Determination Date, and in any event within five (5) Business Days of the Determination Date:

(A) the Purchaser shall pay to the Distribution Agent the Increase Amount, as finally determined, together with interest thereon from the Closing Date to the date of payment at the prime rate of interest published in the "Money Rates" column of the Eastern Edition of the Wall Street Journal (or the average of such rates if more than one rate is indicated) on the Closing Date (the "**Prime Rate**"); and

(B) the Parties shall cause the Escrow Agent to pay to the Distribution Agent the full Working Capital Escrow Amount, together with interest thereon from the Closing Date to the date of payment at the Prime Rate.

Any cash payment of the Increase Amount shall be paid in cash by wire transfer of immediately available funds to the bank account(s) designated in writing by the Distribution Agent.

(ii) If the Adjustment Amount is a negative number (the absolute value of such amount, the "**Deficit Amount**"), then, promptly following the Determination Date, and in any event within five (5) Business Days of the Determination Date:

(A) the Parties shall cause the Escrow Agent to pay to the Purchaser, on its own behalf and in its capacity as agent for the Designated Purchasers and EMEA Designated Purchasers, the lesser of (x) the Deficit Amount, as finally determined, together with interest thereon from the Closing Date to the date of payment at the Prime Rate, and (y) the Working Capital Escrow Amount;

(B) in the event that the Deficit Amount exceeds the Working Capital Escrow Amount, the Sellers shall cause the Distribution Agent to pay to the Purchaser, on its own behalf and in its capacity as agent for the Designated Purchasers and EMEA Designated Purchasers, an amount equal to the amount by which the Deficit Amount, as finally determined, together with the interest thereon from the Closing Date to the date of payment at the Prime Rate, exceeds the Working Capital Escrow Amount; and

(C) to the extent that there is any Working Capital Escrow Amount remaining after payment of the Deficit Amount, such amount shall be returned to the Distribution Agent in accordance with the terms of the Escrow Agreement.

Any cash payment of the Deficit Amount shall be paid in cash by wire transfer of immediately available funds to the bank account(s) designated in writing by the Purchaser or the Distribution Agent, as applicable.

2.2.5. Escrows.

(a) At the Closing, each of the Main Sellers, the EMEA Sellers or an authorized representative of the EMEA Sellers and the Purchaser shall enter into the Escrow Agreement with the Escrow Agent in respect of the Working Capital Escrow Amount, the Transition Services Escrow Amount, the Carling Property Escrow Amount, the Tax Escrow Amount, the EMEA Tax Escrow Amount, the Italian Tax Escrow Amount and the matters set forth on Section 2.1.7(b) of the Sellers Disclosure Schedule.

(b) Each of the Main Sellers, the EMEA Sellers or an authorized representative of the EMEA Sellers and the Purchaser hereby undertake to promptly execute and deliver to the Escrow Agent, in accordance with the Escrow Agreement, instructions to pay to the Sellers or the Purchaser, as applicable, funds from the escrow account established pursuant to the Escrow Agreement any time that such Person becomes entitled to such payment from the escrow account pursuant to the terms of the Escrow Agreement and (i) Section 2.2.4.2 in respect of the Working Capital Escrow Amount, (ii) the terms of the Transition Services Agreement in respect of the Transition Services Escrow Amount, (iii) the terms of the Carling Property Lease Agreements in respect of the Carling Property Escrow Amount, (iv) Section 6.7 in respect of the Tax Escrow Amount, (v) Section 6.8 in respect of the EMEA Tax Escrow Amount, (vi) Section 6.9 in respect of the Italian Tax Escrow Amount and (vii) the terms of Section 2.1.7(b) of the Sellers Disclosure Schedule.

2.2.6. Purchase Price Allocation.

(a) The Parties and the EMEA Sellers shall (i) first allocate to the tangible Assets, the tangible EMEA Assets, the CIP Accounts Receivable and the EMEA CIP Accounts Receivable, a portion of the Purchase Price as adjusted in accordance with the terms of this Agreement and the EMEA Asset Sale Agreement (and, to the extent properly taken into account under the applicable Tax Laws, the Assumed Liabilities and the EMEA Assumed Liabilities), if any, equal to the net book value of such tangible Assets, tangible EMEA Assets, the CIP Accounts Receivable and the EMEA CIP Accounts Receivable as of the Closing Date and (ii) then allocate the balance of the Purchase Price, as adjusted in clause (i) of this Section 2.2.6(a), to the intangible Assets and the intangible EMEA Assets.

(b) To the extent necessary to file Transfer Tax Returns, the Parties and the EMEA Sellers shall negotiate in good faith to determine an allocation of the Purchase Price (and, to the extent properly taken into account under the applicable Tax Laws, the Assumed Liabilities), among the Assets and the EMEA Assets in accordance with the principles of Section 1060 of the Code and the Treasury regulations promulgated thereunder and other applicable Tax Laws, which allocation shall be subject to the principles of Section 2.2.6(a) (such allocation, a "**Partial Allocation**"). If the Parties and the EMEA Sellers do not reach agreement on a Partial Allocation after negotiating in good faith, the Partial Allocation shall be submitted to the Accounting Arbitrator, which shall prepare a final Partial Allocation; provided, however, that if a different Partial Allocation is required by a Government Entity (including for this purpose an allocation required, approved or authorized pursuant to a Bankruptcy Proceeding), then the Partial Allocation shall be modified as necessary to be consistent with the required allocation (but in all cases shall be subject to the principles of Section 2.2.6(a)). Notwithstanding the preceding sentence, if the Parties have not reached agreement on the Partial Allocation and the Accounting Arbitrator has not submitted its determination on or before the date that a Transfer Tax Return is required to be filed with the relevant Tax Authority (giving effect to any valid extensions), then such Transfer Tax Return shall be timely filed in the manner that the Party with primary responsibility for the payment of the Transfer Taxes under this Agreement reasonably determines (the "**Transfer Tax Determination**"), provided that such Transfer Tax Determination shall have a reasonable prospect of being sustained, and shall, upon receiving the Accounting Arbitrator's later determination and to the extent permitted under applicable Law, the filing Party shall promptly file, or cause to be filed, an amended return in accordance therewith. The Purchaser agrees to indemnify and hold harmless the Sellers and their respective officers and directors from any Losses arising out of or resulting from the Transfer Tax Determination, including without limitation, any Tax, interest, penalty or sanction. The Parties agree to be bound by the final Partial Allocation accepted by the Parties or prepared by the Accounting Arbitrator (as modified to be consistent with the allocation required by a Government Entity, described above), as applicable. The Parties and the EMEA Sellers agree to act in accordance with the allocations contained in such final Partial Allocation for all purposes relating to Transfer Taxes (including the preparation, filing and audit of any Transfer Tax Returns).

2.2.7. Certain Payment Mechanics and Allocations for the Convertible Notes.

(a) Notwithstanding anything to the contrary in this Agreement, but subject to Section 2.2.7(b) unless, prior to the Closing, the Purchaser notifies the Sellers in writing that this Section 2.2.7 shall not apply or unless the Purchaser exercises the Cash Replacement Election in full, (i) a portion of the Purchase Price payable to the Distribution Agent, as agent for the U.S. Sellers, as consideration for the U.S. Sellers' right, title and interest in, to and under the Assets transferred by such U.S. Sellers to the Purchaser or a Designated Purchaser hereunder will include that portion of the Convertible Notes being delivered pursuant to Section 2.2.1 set forth on Section 2.2.7(a)(i) of the Sellers Disclosure Schedule and any remaining portion of the Purchase Price payable to the Distribution Agent as agent for the U.S. Sellers hereunder shall be paid to the Distribution Agent in cash as part of the Cash Purchase Price, (ii) a portion of the Purchase Price payable to the Distribution Agent, as agent for the UK Sellers, as consideration for the UK Sellers' right, title and interest in, to and under the EMEA Assets transferred by such UK Sellers to the Purchaser or an EMEA Designated Purchaser under the EMEA Asset Sale Agreement will include that portion of the Convertible Notes being delivered pursuant to Section 2.2.1 set forth on Section 2.2.7(a)(ii) of the Sellers Disclosure Schedule and any remaining portion of the Purchase Price payable to the Distribution Agent as agent for the UK Sellers hereunder shall be paid to the Distribution Agent in cash as part of the Cash Purchase Price, (iii) a portion of the Purchase Price payable to the Distribution Agent, as agent for the Canadian Sellers, as consideration for the Canadian Sellers' right, title and interest in, to and under the Assets transferred by such Canadian Sellers to the Purchaser or a Designated Purchaser hereunder will include that portion of the Convertible Notes being delivered pursuant to Section 2.2.1 set forth on Section 2.2.7(a)(iii) of the Sellers Disclosure Schedule and any remaining portion of the Purchase Price payable to the Distribution Agent as agent for the Canadian Sellers hereunder shall be paid to the Distribution Agent in cash as part of the Cash Purchase Price, and (iv) the Purchase Price payable as consideration for the right, title and interest in, to and under the Assets or EMEA Assets of any Non-Convertible Note Recipient Seller transferred to Purchaser, a Designated Purchaser or an EMEA Designated Purchaser will not include any Convertible Notes and shall consist entirely of cash paid to the Distribution Agent as part of the Cash Purchase Price. Neither the initial allocation of Common Stock to the U.S. Sellers, UK Sellers and Canadian Sellers, nor the allocation of a portion of the Convertible Notes in accordance with this Section 2.2.7(a) is intended by the Sellers, the EMEA Sellers or the Purchaser to establish, or otherwise serve as evidence of, the absolute or relative value of the Assets or the EMEA Assets sold by, or the Assumed Liabilities or the EMEA Assumed Liabilities assumed by the Purchaser, a Designated Purchaser or an EMEA Designated Purchaser from, any such Seller or EMEA Seller hereunder or under the EMEA Asset Sale Agreement for any purpose.

(b) In lieu of paying any portion of the Purchase Price payable to one or more of the Convertible Note Recipient Sellers in Convertible Notes in accordance with Section 2.2.7(a), the Purchaser may, or may cause the relevant Designated Purchaser or EMEA Designated Purchaser to, deliver to the Distribution Agent, as agent for such Convertible Note Recipient Seller, a non-interest bearing, redeemable promissory note in form and substance reasonably satisfactory to the Purchaser and such Convertible Note

Recipient Seller (each a "**Demand Note**") issued by the Purchaser, the relevant Designated Purchaser or EMEA Designated Purchaser to the Distribution Agent, as agent for such Convertible Note Recipient Seller, in an initial principal amount equal to the aggregate principal amount of the Convertible Notes otherwise deliverable to the Distribution Agent, as agent for such Convertible Note Recipient Seller, in accordance with Section 2.2.7(a) (the "**Substituted Convertible Notes**"). The Demand Note shall either be (i) redeemable upon demand by the Distribution Agent, the Convertible Note Recipient Seller or the Purchaser, by delivery by the Purchaser to the Distribution Agent, as agent for such Convertible Note Recipient Seller, Convertible Notes having an aggregate initial principal amount equal to the aggregate principal amount of the Substituted Convertible Notes or (ii) subject to put and call options allowing the Distribution Agent, the Convertible Note Recipient Seller or the Purchaser, as applicable, to exercise such option and exchange the Demand Note for Convertible Notes having an aggregate initial principal amount equal to the aggregate principal amount of the Substituted Convertible Notes; provided, that the delivery of such Demand Note shall be deemed to satisfy the Purchaser's obligations with respect to issuance of the Substituted Convertible Notes under this Agreement only if, immediately following the Closing and on the Closing Date, the Purchaser tenders to the Distribution Agent, as agent for the applicable Convertible Note Recipient Seller, in satisfaction of, or as consideration for the acquisition of, such Demand Note, Convertible Notes having an aggregate initial principal amount equal to the aggregate principal amount of the Substituted Convertible Notes.

(c) Without limiting the obligations of the Purchaser to pay Transfer Taxes in accordance with Section 6.1 of this Agreement or clause 11 (Tax) of the EMEA Asset Sale Agreement, and without limiting any other remedy available to the Sellers, the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators (collectively, the "**Tax Indemnitees**" and individually, a "**Tax Indemnitee**") under this Agreement or the EMEA Asset Sale Agreement, but without duplication, the Purchaser shall indemnify the Tax Indemnitees for any Taxes imposed upon or payable by a Tax Indemnitee or for the fair value of any loss of Tax attributes arising in connection with the transactions contemplated or necessitated by this Section 2.2.7, including, without limitation, with respect to the delivery or redemption of a Demand Note, the issuance, delivery or receipt of Substituted Convertible Notes, the exercise of put or call options and any other transfer or disposition of the Convertible Notes, Demand Notes or Substituted Convertible Notes or rights in and to any of the foregoing, but not including any Taxes that would have been imposed upon or payable by a Tax Indemnitee on the assumption that Section 2.2.7 of this Agreement did not apply.

SECTION 2.3. Closing.

2.3.1. Closing Date. The completion of the purchase and sale of the Assets and the assumption of the Assumed Liabilities (the "**Closing**") shall occur simultaneously with closing of the transaction contemplated by the EMEA Asset Sale Agreement and shall take place at the offices of Ogilvy Renault LLP in Toronto, Canada commencing at 9:00 a.m. local time on the date which is the later of (i) February 1, 2010, (ii) the date that is the earlier of (x) ten (10) Business Days after the Service Readiness Date and (y) April 30, 2010, and (iii) five (5) Business Days after the day upon which all of the conditions set forth under Article IX (other than conditions to be satisfied at the Closing, but subject to the waiver or fulfillment of those

conditions) have been satisfied or, if permissible, waived by the Main Sellers and/or the Purchaser (as applicable), or on such other place, date and time as shall be mutually agreed upon in writing by the Purchaser and the Main Sellers (the day on which the Closing takes place being the "**Closing Date**").

Legal title, equitable title and risk of loss with respect to the Assets will transfer to the Purchaser or the relevant Designated Purchaser, and the Assumed Liabilities will be assumed by the Purchaser and the relevant Designated Purchasers, at the Closing.

2.3.2. Closing Actions and Deliveries. At the Closing:

(a) the Sellers and the Purchaser shall, and the Purchaser shall cause the Designated Purchasers to, enter into the Ancillary Agreements to which it is contemplated that they will be parties, respectively, to the extent such agreements have not yet been entered into (except, with respect to Real Estate Agreements, as otherwise provided in the Real Estate Terms and Conditions) and subject to Section 5.25;

(b) the Purchaser shall deliver or cause to be delivered (i) to the Distribution Agent, an amount in cash equal to the Base Cash Purchase Price (as adjusted in accordance with Sections 2.2.2 and 2.2.3) less the Escrow Amount by wire transfer in immediately available funds to an account or accounts designated at least two (2) Business Days prior to the Closing Date by the Distribution Agent in a written notice to the Purchaser, (ii) to the Escrow Agent, an amount equal to the Escrow Amount to be held and disbursed in accordance with the Escrow Agreement, this Agreement and the Carling Property Lease Agreements, (iii) as directed by the Sellers, the amount owing pursuant to Section 4(a)(ii) of the Transition Services Agreement, and (iv) subject to Section 2.2.7, to the Distribution Agent one or more stock certificates representing the Shares issued to the Distribution Agent;

(c) immediately following delivery of the amount described in Section 2.3.2(b), at the Closing the Sellers shall deliver or cause to be delivered to the Escrow Agent by wire transfer of immediately available funds, an amount equal to the Transition Services Escrow Amount to be held and disbursed in accordance with the Escrow Agreement, this Agreement and the Transition Services Agreement; and

(d) each Party shall deliver, or cause to be delivered, to the other any other documents reasonably requested by such other Party in order to effect, or evidence the consummation of, the transactions contemplated herein.

(e) Purchaser's Deliveries. The Purchaser shall deliver or cause to be delivered to the Sellers:

(i) an assumption agreement, in form mutually acceptable to the Primary Parties, pursuant to which the Purchaser shall assume the Assumed Liabilities, duly executed by the Purchaser;

(ii) a certificate, in form reasonably acceptable to the Sellers, executed by a duly authorized senior officer of the Purchaser certifying that the conditions set forth in Section 9.2(a) and Section 9.2(b) have been satisfied;

(iii) executed counterparts of each Ancillary Agreement to be entered into at Closing;

(iv) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably acceptable to the Sellers, as the Sellers may reasonably request to transfer and assign the Assumed Liabilities to the Purchaser;

(v) in respect of the Montreal Premises, (X) such agreements or other instruments in respect of the Montreal Premises as are required to effect the transactions contemplated by Article I of the Real Estate Terms and Conditions consistent with the Purchaser's decision relating thereto, together with, if applicable based upon the decision not to receive an assignment of and assume the Montreal Premises Amended Lease, (Y) the Montreal Lease Termination Penalty payable to NNL, or if directed by NNL, to the Montreal Landlord in accordance with the Real Estate Terms and Conditions. For the avoidance of doubt, any such amount shall not be construed or deemed to constitute any portion of the Purchase Price; and

(vi) an irrevocable notice dated as of the Closing Date, in a form reasonably acceptable to the Sellers, exercising the call option with respect to each Demand Note issued by the Purchaser, a Designated Purchaser or an EMEA Designated Purchaser.

(f) Sellers' Deliveries. The Sellers shall deliver or cause to be delivered to the Purchaser:

(i) one or more bills of sale and/or deeds of transfer, in form reasonably acceptable to the Purchaser, duly executed by the applicable Sellers;

(ii) executed counterparts of each Ancillary Agreement to be entered into at Closing;

(iii) one or more instruments of assignment, in form reasonably acceptable to the Purchaser, duly executed by the applicable Sellers, with respect to assignment and transfer of the Assets, together with executed Consents from landlords in respect of Leases forming part of the Assigned Contracts, and such other documents relating to such Consents required from such landlords;

(iv) a certificate, in form reasonably acceptable to the Purchaser, executed by a duly authorized senior officer of each Main Seller certifying that the conditions set forth in Section 9.3(a) and Section 9.3(b) have been satisfied;

(v) copies of the U.S. Sale Order and the Canadian Approval and Vesting Order;

(vi) the Sellers shall deliver an affidavit of NNI and Nortel Networks (CALA) Inc. certifying as to their non-foreign status, which affidavit complies with the requirements of Section 1445 of the Code;

(vii) NNL and NNC shall each deliver, in form reasonably acceptable to the Purchaser, an original, valid, complete, correct and properly executed IRS Form W-8BEN with Part II completed claiming entitlement to the benefits under Article XII of the income tax treaty between the United States and Canada;

(viii) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to the Purchaser, as the Purchaser may reasonably request to vest in the Purchaser all the right, title and interest of the Sellers in, to or under any or all the Assets; and

(ix) such agreements or other instruments in respect of the Montreal Premises as are required to effect the Purchaser's decision contemplated by the Real Estate Terms and Conditions with respect thereto.

SECTION 2.4. Designated Purchaser(s).

(a) The Purchaser shall be entitled to designate, in accordance with the terms and subject to the limitations set forth in this Section 2.4, one or more wholly-owned Subsidiaries to (i) purchase specified Assets (including specified Assigned Contracts), (ii) assume specified Assumed Liabilities, (iii) employ specified Transferred Employees on and after the Closing Date and/or (iv) to be made a party to any Real Estate Agreement (any Subsidiary of the Purchaser that shall be properly designated by the Purchaser in accordance with this clause, a "**Designated Purchaser**"); it being understood and agreed, however, that any such right of the Purchaser to designate a Designated Purchaser is conditioned upon (x) such Designated Purchaser being able to perform the covenants under Section 2.1.7 and Article VII and demonstrate satisfaction of the requirements of Section 365 of the U.S. Bankruptcy Code, including the provision of adequate assurance for future performance, with respect to the Assumed and Assigned Contracts and (y) any such designation not creating any net Liability (including any Liability relating to Taxes other than Taxes for which Purchaser is liable pursuant to Article VI and taking into account any savings of, or reduction in Taxes of any Seller or its Affiliates that would result from the use of such Designated Purchaser) for the Sellers or their Affiliates that would not have existed had the Purchaser purchased the Assets. No such designation shall relieve the Purchaser of any of its obligations hereunder, and the Purchaser and each Designated Purchaser shall be jointly and severally liable for any obligations assumed by any of them hereunder. For the avoidance of doubt, the Purchaser and each Designated Purchaser shall not be liable for any Excluded Liabilities, including any Excluded Liabilities for Taxes imposed on the Purchaser or a Designated Purchaser under applicable Law.

(b) The above designation shall be made by the Purchaser by way of one or more written notices, together with corresponding updates to the list under the heading "Designated Purchasers" in Exhibit 2.1.1, to be delivered to the Sellers with respect to each jurisdiction, on or before the date necessary to comply with any regulatory requirements or the Purchaser's obligations under this Agreement, in each case without resulting in any material delay to the Closing (but in no event later than fifteen (15) Business Days before the Closing Date), which written notice shall contain the legal name of the Designated Purchaser, the jurisdiction of its incorporation or formation and the actual (and if there is any intention to change such residence on or prior to Closing, proposed) jurisdiction of Tax residence and shall indicate which Assets, Assumed Liabilities and Transferred Employees the Purchaser intends such Designated Purchaser(s) to purchase, assume and/or employ, as applicable, hereunder (to the extent such information necessary to comply with the obligation under this subsection (b) is actually available or has been made available to the Purchaser), and include a signed counterpart to this Agreement in a form acceptable to the Main Sellers, agreeing to be bound by the terms of this Agreement and authorizing the Purchaser to act as such Designated Purchaser(s)' agent for all purposes hereunder.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Sellers as follows:

SECTION 3.1. Organization and Corporate Power.

(a) The Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware. Each Designated Purchaser other than the Purchaser is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is organized. Each of the Purchaser and the Designated Purchasers has the requisite corporate or other organizational power and authority necessary to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party and to consummate the transactions contemplated thereby.

(b) Each of the Designated Purchasers is duly qualified or licensed to do business and to own or lease and operate its properties and assets, including the Assets, and is in good standing as applicable in each jurisdiction in which the nature of its properties or the character of its business requires it to so qualify or be licensed, except to the extent that the failure to be so qualified or licensed would not materially hinder, delay or impair the Purchaser's or any such Designated Purchaser's ability to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement and the Ancillary Agreements to which it is or will become a party.

SECTION 3.2. Authorization; Binding Effect; No Breach.

(a) The execution, delivery and performance of each Transaction Document to which the Purchaser or any of the Designated Purchasers is a party and the consummation of the transaction contemplated thereby have been duly and validly authorized by all corporate or other organizational action by the Purchaser and the relevant

Designated Purchasers, as applicable. This Agreement has been duly and validly executed and delivered by the Purchaser and each other Transaction Document required to be executed and delivered by the Purchaser or a Designated Purchaser at the Closing will be duly and validly executed and delivered by the Purchaser or such Designated Purchaser, as applicable, at the Closing. This Agreement and the other Transaction Documents constitute, with respect to the Purchaser or Designated Purchaser that is a party thereto, a legal, valid and binding obligation of the Purchaser or such Designated Purchaser, as applicable, enforceable against such Person in accordance with its respective terms.

(b) The execution, delivery and performance by each of the Purchaser and the Designated Purchasers of the Transaction Documents to which the Purchaser or such Designated Purchaser is, or on the Closing Date will be, a party and the consummation of the transactions contemplated thereby do not and will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, or require any Consent (other than the Regulatory Approvals and the Bankruptcy Consents) or other action by or declaration or notice to any Person pursuant to (i) the articles, charter, by-laws or other governing documents of the Purchaser or the relevant Designated Purchaser, (ii) any agreement, indenture or other instrument to which the Purchaser or the relevant Designated Purchaser is bound or (iii) any Laws to which the Purchaser, the Designated Purchaser, or any of their assets is subject, except in the case of (ii) and (iii) above to the extent that the failure to be so qualified or licensed would not, individually or in the aggregate, materially hinder, delay or impair the Purchaser's or any such Designated Purchaser's ability to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement and the Ancillary Agreements to which it is or will become a party.

SECTION 3.3. Availability of Funds. The Purchaser has as of the date hereof, and will have as of the Closing, sufficient funds to enable the Purchaser to pay the Base Cash Purchase Price in full at Closing and all related fees and expenses.

SECTION 3.4. Adequate Assurance of Future Performance. To the extent required by any Bankruptcy Laws or other Laws, the Purchaser will be able to provide, at Closing or on such earlier date as is designated by the U.S. Bankruptcy Court, adequate assurance of its and/or the relevant Designated Purchasers' future performance under each Assumed and Assigned Contract to the parties thereto (other than the U.S. Debtors) in satisfaction of Section 365(f)(2)(B) of the U.S. Bankruptcy Code, and no other or further assurance will be necessary thereunder with respect to any Assumed and Assigned Contract.

SECTION 3.5. Purchaser's Acknowledgments; Exclusivity of Representations and Warranties. The Purchaser acknowledges and agrees that:

(a) The Purchaser is experienced and sophisticated with respect to transactions of the type contemplated by this Agreement and the other Transaction Documents. In consultation with experienced counsel and advisors of its choice, the Purchaser has conducted its own independent review and analysis of the Business, the Assets, the EMEA Assets, the Assumed Liabilities, the EMEA Assumed Liabilities and the rights and obligations it is acquiring and assuming under this Agreement and the other Transaction Documents. The Purchaser acknowledges that it and its representatives have

been permitted such access to the books and records, facilities, equipment, contracts and other properties and assets of the Business as it has requested to complete its review, and that it and its representatives have had an opportunity to meet with the officers and other employees of the Sellers, the EMEA Sellers and the Business to discuss the Business.

(b) The Purchaser acknowledges and agrees that:

(i) except for the representations and warranties expressly set forth in this Agreement and the other Transaction Documents, the Purchaser has not relied on any representation or warranty from the Sellers, the EMEA Sellers or any Affiliate of any such Person or any employee, officer, director, accountant, financial, legal or other representative of the Sellers or the EMEA Sellers in determining whether to enter into this Agreement;

(ii) except for the representations and warranties expressly set forth in this Agreement and the other Transaction Documents, none of the Sellers, the EMEA Sellers or any employee, officer, director, accountant, financial, legal or other representative of the Sellers, the EMEA Sellers or any Affiliate of any such Person has made any representation or warranty, express or implied, as to the Business (or the value or future thereof), the Assets or the EMEA Assets (including any implied representation or warranty as to the condition, merchantability, suitability or fitness for a particular purpose of any of the Assets or the EMEA Assets, including under the International Convention on Contracts for the Sale of Goods (Geneva Convention)) and any other applicable sale of goods Laws), the Assumed Liabilities, the EMEA Assumed Liabilities or any Affiliate of any such Person or the accuracy or completeness of any information regarding any of the foregoing that the Sellers, the EMEA Sellers or any other Person furnished or made available to the Purchaser and its representatives (including any projections, estimates, budgets, offering memoranda, management presentations or due diligence materials);

(iii) except for the representations and warranties expressly set forth in this Agreement and the other Transaction Documents, and subject to the terms of the Bankruptcy Consents, the Purchaser or any Designated Purchaser takes the Assets on an “as is” and “where is” basis;

(iv) the enforceability of this Agreement against the Sellers is subject to receipt of the Bankruptcy Consents; and

(v) notwithstanding anything to the contrary contained herein, the Purchaser’s obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon the receipt of financing from any Person.

(c) Except for the representations and warranties expressly set forth in this Agreement and the other Transaction Documents, THE PURCHASER ACKNOWLEDGES THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF NONINFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS,

OR REGARDING THE SCOPE, VALIDITY OR ENFORCEABILITY OF ANY TRANSFERRED INTELLECTUAL PROPERTY OR LICENSED INTELLECTUAL PROPERTY RIGHTS.

SECTION 3.6. Brokers. Except for fees and commissions or other similar payments that will be paid or otherwise settled or provided for by the Purchaser, no broker, finder, agent or investment banker is entitled to any brokerage, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement and the other Transaction Documents based upon arrangements made by or on behalf of the Purchaser or any of its Affiliates for which the Sellers are or will become liable, and the Purchaser shall indemnify and hold harmless the Sellers from any claims with respect to any such fees and commissions.

SECTION 3.7. Representations and Warranties Relating to the Shares.

(a) As of October 31, 2009, the authorized capital stock of the Purchaser consists of 290,000,000 shares of common stock, of which 92,038,360 shares are issued and outstanding and 20,000,000 shares of preferred stock, of which no shares are issued and outstanding. As of October 31, 2009, except for 5,538,342 shares issuable under outstanding stock options, 3,716,169 restricted stock units outstanding, 3,469,262 shares reserved for issuance under stock purchase plans and 20,647,130 shares reserved for issuance in connection with convertible notes, there are no options, warrants or other agreements obligating the Purchaser to issue or sell any shares of capital stock of, or other equity interests in the Purchaser. Except as disclosed in the SEC Filings, there are no outstanding obligations of the Purchaser to repurchase, redeem or otherwise acquire any shares of its capital stock. All of the issued and outstanding shares of capital stock of the Purchaser have been duly authorized and validly issued in accordance with applicable Laws and are fully paid and non-assessable and not subject to preemptive rights. Except for (i) the $500,000,000 principal amount of 0.875% convertible notes due June 15, 2017, (ii) the $298,000,000 principal amount of 0.25% convertible senior notes due May 1, 2013, (iii) other Indebtedness which does not exceed $50,000,000, individually or in the aggregate, disclosed in the SEC Filings, and (iv) other Indebtedness incurred in the ordinary course of business since July 31, 2009 which does not exceed $10,000,000, individually or in the aggregate, as of the date hereof, the Purchaser has no outstanding Indebtedness that is senior to, or *pari passu* with, the Convertible Notes.

(b) The issued and outstanding shares of common stock of the Purchaser are listed for trading solely on the NASDAQ Stock Market, and no order ceasing or suspending trading in any securities of the Purchaser has been issued and, to the Knowledge of the Purchaser, no proceedings for such purpose are threatened or pending.

(c) All of the Shares will be, when issued, duly authorized, validly issued, fully paid and non-assessable, free and clear of all Liens and not subject to any pre-emptive rights or restrictions on transfer (other than restrictions arising under U.S. securities Laws or the securities Laws of any state of the United States or any other jurisdiction), and prior to the Closing Date the Purchaser shall have reserved for issuance such number of shares of Common Stock as are issuable upon conversion of the Convertible Notes. None of the Purchaser or any of its affiliates (as defined in Rule 501(b) of Regulation D ("**Regulation D**") under the Securities Act) has, directly or through an agent, engaged in any

form of general solicitation or general advertising (as those terms are used in Regulation D) in connection with the offering of the Convertible Notes or the Shares under the Securities Act or in any manner involving a public offering within the meaning of Section 4(2) of the Securities Act; the Purchaser has not entered into any contractual arrangement with respect to the distribution of the Convertible Notes or the Shares except for this Agreement; and the Purchaser will not enter into any such arrangement, except in connection with a capital raising transaction to generate proceeds to exercise the Cash Replacement Election or otherwise as contemplated by Article VIII.

(d) The Purchaser does not have a shareholder rights plan or "poison pill" or similar plan.

(e) The Purchaser is a "well-known seasoned issuer" (as defined in Rule 405 under the Securities Act), including not being an "ineligible issuer" (as defined in Rule 405 under the Securities Act). The Purchaser is eligible to file an automatic shelf registration statement.

(f) The Purchaser is not a "reporting issuer" as such term is defined in the Securities Act (Ontario) or the equivalent under securities legislation in any other province or territory of Canada and to the Knowledge of the Purchaser, after giving effect to the issue of the Shares, residents of Canada do not own directly or indirectly more than ten percent (10%) of the outstanding shares of Common Stock of the Purchaser and do not represent in number more than ten percent (10%) of the total number of owners directly or indirectly of the outstanding shares of Common Stock of the Purchaser.

(g) The Purchaser has timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the Securities and Exchange Commission (the "**SEC**") during the period since November 1, 2008 through and including the date hereof (such reports, schedules, forms, statements and other documents together with any documents furnished during such period by the Purchaser to the SEC on a voluntary basis on Current Reports on Form 8-K but excluding any exhibits required to be filed with any of the foregoing in accordance with Item 601 of Regulation S-K, the "**SEC Filings**"). As of its filing date, each SEC Filing (i) complied in all material respects with the applicable requirements of the Exchange Act, and (ii) did not, at the time they were filed, contain any untrue statements of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. As of the date hereof, there are no outstanding or unresolved comments from the staff of the SEC with respect to any of the SEC Filings. Each of the financial statements (including the related notes) of the Purchaser included or incorporated by reference in the SEC Filings were prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q of the SEC and the requirements of Regulation S-X under the Securities Act) and each fairly presents, in all material respects, the consolidated financial position of the Purchaser and its consolidated Subsidiaries as of the respective dates thereof and their consolidated results of operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal and recurring year-end audit adjustments and the absence of footnotes). To the extent required, each SEC Filing filed with the SEC by the Purchaser

during the twelve (12) month period prior to the date hereof, was accompanied by the certifications required to be filed or submitted by the Purchaser's chief executive officer and chief financial officer pursuant to the Sarbanes-Oxley Act of 2002.

(h) The Purchaser maintains a system of internal control over financial reporting (within the meaning of Rules 13a-15(f) and 15d-15(f) of the Exchange Act) designed to provide reasonable assurances regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.

(i) The Purchaser shall not, and shall cause its affiliates (as defined in Rule 405 under the Securities Act) not to, purchase, resell or otherwise transfer any Convertible Notes unless and until the Convertible Notes are Freely Tradeable.

(j) The issuance of the Convertible Notes and the Shares will not require the approval of shareholders or any securityholders of the Purchaser pursuant to NASDAQ Listing Rule 5635 or require any other action or consent pursuant to any applicable exchange rules, regulations, interpretations or Laws.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Except (a) for disclosure in any section of the Sellers Disclosure Schedule of any facts or circumstances, whether or not such disclosure is specifically associated with or purports to respond to one or more of such representations or warranties, if it is reasonably apparent on its face from the Sellers Disclosure Schedule that such disclosure is applicable, (b) as expressly contemplated by this Agreement or (c) other than with respect to Section 4.7, to the extent relating to the Excluded Assets or the Excluded Liabilities, each of the Main Sellers jointly and severally represents and warrants to the Purchaser as set forth in this Article IV:

SECTION 4.1. Organization and Corporate Power.

(a) Each Seller is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is organized. Subject to entry of the U.S. Bidding Procedures Order and the U.S. Sale Order in the case of the U.S. Debtors and the Canadian Sales Process Order and Canadian Approval and Vesting Order in the case of the Canadian Debtors and receipt of such other Consents from the U.S. Bankruptcy Court and the Canadian Court in connection with the transactions contemplated hereby and by the other Transaction Documents (collectively, the "**Bankruptcy Consents**"), each of the Sellers has the requisite corporate or other organizational power and authority necessary to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or will become a party and to consummate the transactions contemplated thereby.

(b) Each of the Sellers is duly qualified or licensed to do business and to own or lease and operate its properties and assets, including the Assets, as applicable in each jurisdiction in which the nature of its properties or the character of its business relating to the Business (excluding the EMEA Business) requires it to so qualify or be licensed, except

to the extent that the failure to be so qualified would not have, or reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

SECTION 4.2. Authorization; Binding Effect; No Breach.

(a) Subject to the Bankruptcy Consents, the execution, delivery and performance of this Agreement and such other Transaction Documents by each Seller and the consummation by such Seller of the transactions contemplated herein and therein have been duly and validly authorized by all corporate or other organizational action by such Seller. This Agreement has been duly and validly executed and delivered by each Seller and each other Transaction Document required to be executed and delivered by a Seller at the Closing will be duly and validly executed and delivered by such Seller at the Closing. Subject to the Bankruptcy Consents, and assuming the due authorization, execution and delivery by the Purchaser, this Agreement and the other Transaction Documents constitute, with respect to each Seller that is party thereto, a legal, valid and binding obligation of such Seller enforceable against it in accordance with its terms.

(b) The execution, delivery and performance by each Seller of the Transaction Documents to which such Seller is, or on the Closing Date will be, a party and the consummation of the transactions contemplated thereby do not and will not conflict with or result in a breach of the terms, conditions or provisions of, result in a loss of benefits or constitute a default under, result in a violation of, result in the creation or imposition of any Lien upon any of the Assets, cause any acceleration of or give any Person the right to accelerate any obligation of such Seller under, or require any Consent (other than the Regulatory Approvals and the Bankruptcy Consents) or other action by or declaration, filing or notice to any Person pursuant to (i) the articles, charter, by-laws or other governing documents of any Seller, (ii) any agreement, indenture, or other instrument to which any Seller is a party or to which any of its assets is subject or (iii) any Laws to which any of the Sellers or any of the Assets are subject, except, in the case of (ii) and (iii) above, for such defaults, violations, actions and notifications that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 4.3. Title to Tangible Assets; Sufficiency of Assets.

(a) Except for Permitted Encumbrances, the Owned Inventory and the Owned Equipment is owned beneficially by one or more of the Sellers, free and clear of all Liens, and those Sellers have good and marketable title thereto.

(b) All tangible assets included in the Assets are in satisfactory operating condition for the uses to which they are being put, subject to ordinary wear and tear and ordinary maintenance requirements, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(c) Assuming the assignment or novation of all Seller Contracts and all Non-Assignable Contracts to the Purchaser or a Designated Purchaser, the Assets, the EMEA Assets and the rights of, or to be acquired by, the Purchaser and/or the Designated Purchasers under this Agreement and the EMEA Asset Sale Agreement, together with the rights to be provided to the Purchaser and/or the Designated Purchasers under the other

Transaction Documents, considered together, include such material assets and material rights (other than Inbound License Agreements and Patent Cross Licenses set forth on Section 4.3(c)(i) of the Sellers Disclosure Schedule) as are necessary and sufficient to conduct the Business substantially in the manner conducted as of the date hereof other than (x) those assets and rights that are used to provide the Overhead and Shared Services and are not otherwise used in the Business and (y) those assets and rights disclosed on Section 4.3(c)(ii) of the Sellers Disclosure Schedule. For the avoidance of doubt, any effects arising from or out of the failure of the Purchaser to hire all of the Employees will not, or be deemed to, constitute a breach of this Section 4.3(c).

SECTION 4.4. Material Contracts.

(a) Section 4.4(a) of the Sellers Disclosure Schedule sets forth, as of the date hereof:

(i) in respect of any customer of the Business which, in the most recent completed fiscal year of the Main Sellers resulted in, or is reasonably expected by the Main Sellers in 2009 to result in, the payment to or receipt by the Business of more than $10,000,000 per annum from such customer taken on an aggregate basis, a true and complete list of every written contract with such customer (other than purchase orders issued thereunder) that relates to the Business and to which a Seller is a party; and

(ii) in respect of any supplier of the Business which, in the most recent completed fiscal year of the Main Sellers resulted in, or is reasonably expected by the Main Sellers in 2009 to result in, the payment by the Business of more than $10,000,000 per annum to such supplier, taken on an aggregate basis, a true and complete list of every written contract with such supplier (other than purchase orders issued thereunder) that relates to the Business and to which a Seller is a Party.

(b) Section 4.4(b) of the Sellers Disclosure Schedule sets forth, as of the date hereof, a true and complete list of every Seller Contract, in each case other than purchase orders and invoices (which shall be deemed to be a part of the Seller Contract under which such purchase order or invoice is issued) that:

(i) in respect of the Business, is (x) a non-competition agreement or other agreement which otherwise materially restricts the Seller party thereto from engaging in any business activity anywhere in the world or (y) an exclusive distribution agreement (whether such agreement is exclusive by geography, product type or otherwise);

(ii) creates a material joint venture or partnership in respect of the Business or which otherwise involves the sharing of profits, losses, costs or liabilities in respect of the Business with any other Person;

(iii) is a research and development Contract that, in respect of the Business, involves consideration or expenditures, in the most recent completed

fiscal year of the Main Sellers (or is reasonably expected by the Main Sellers under the terms of such Contract in 2009 to be) in excess of $2,000,000 or requiring such expenditures of more than $2,000,000 in the aggregate after the date hereof;

(iv) is a distribution or reseller Contract that, in respect of the Business, involves the sale or distribution of Products, in the most recent completed fiscal year of the Main Sellers that is (or is reasonably expected by the Main Sellers under the terms of such Contract in 2009 to be) valued at more than $10,000,000;

(v) is a distribution or reseller Contract that, in respect of the Business, contains any express inventory repurchase requirement (whether contingent or otherwise);

(vi) is a Contract between the Business and the Sellers or any of their Affiliates (other than agreements related to Overhead and Shared Services or agreements which will be terminated prior to or at Closing);

(vii) relates to Indebtedness (including personal property leases) in excess of $1,000,000 to be assumed by the Purchaser or a Designated Purchaser;

(viii) has a "take or pay" or "requirements" provisions committing the Seller party thereto to purchase, in respect of the Business, goods or services in excess of $10,000,000 in 2009 or any calendar year thereafter;

(ix) contains any material obligation secured by a Lien on any material Asset (other than a Permitted Encumbrance or any encumbrance that will be released prior to or at Closing); or

(x) involves capital expenditures in respect of the Business in excess of $2,000,000 after the date hereof.

The Customer Contracts and the Seller Contracts set forth in Section 4.4(a) and Section 4.4(b), together with such Seller Contracts exclusive to the Business as are entered into, pursuant to Section 5.9, after the date hereof that would have been required to be set forth in Section 4.4(a) and Section 4.4(b) of the Sellers Disclosure Schedule had they been in effect as of the date hereof, are collectively referred to in this Agreement as the "**Material Contracts**".

(c) The Seller Contracts listed on Section 1.1(i) of the Sellers Disclosure Schedule together with the Bundled Contracts listed in Section 5.15 of the Sellers Disclosure Schedule include all of the customer and supplier Contracts of the Sellers that in the most recent completed fiscal year of the Main Sellers resulted in, or is reasonably expected by the Main Sellers under its terms in 2009 to result in, the payment or receipt by the Business of more than $2,000,000 per annum in the aggregate.

(d) Other than with respect to Bundled Contracts, the Sellers have made available to the Purchaser or its representatives pursuant to the clean team confidentiality agreement between the Purchaser and its subsidiaries and NNL and its subsidiaries, dated

April 15, 2009 and the second clean team confidentiality agreement between the Purchaser and its subsidiaries and NNL and its subsidiaries, dated May 8, 2009, copies of all of the Material Contracts in the Sellers' possession which the Purchaser has requested (as such copies exist in the Sellers' contract database(s)) and the Sellers have no specific Knowledge that the copies provided are incomplete in any material respect. With respect to Bundled Contracts, the Sellers have made available to the Purchaser copies of such Bundled Contracts to the extent that they relate to the Business which the Purchaser has requested (as such copies exist in the Sellers' contract database(s)) and the Sellers have no specific Knowledge that the copies provided are incomplete in any material respect. Each Material Contract is in full force and effect and is a legal, valid and binding obligation of each Seller party thereto and enforceable against the Seller party thereto, and to the Knowledge of the Sellers, the other parties thereto, in accordance with its terms and conditions, in each case except as such enforceability may be limited by bankruptcy, insolvency or other similar Laws affecting the enforcement of creditors' rights generally (and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at Law).

(e) To the Knowledge of the Sellers, neither any Seller nor any other party thereto, is in material violation, breach of or default under a Material Contract, and no event has occurred that with notice or lapse of time, or both, would constitute a material violation, breach of or default under a Material Contract by any Seller, or to the Sellers' Knowledge, any other party thereto. Except as disclosed in Section 4.4(a) or Section 4.4(b) of the Sellers Disclosure Schedule, the Sellers (or any Affiliate of the Sellers other than the EMEA Sellers) have not been notified in writing that any of them is in breach or default under any Material Contract, nor have the Sellers or any of their respective Affiliates (other than the EMEA Sellers) been notified in writing of such other party's intention to terminate any Seller Contract.

SECTION 4.5. Intellectual Property.

(a) The Transferred Intellectual Property, the Intellectual Property transferred by the EMEA Asset Sale Agreement (the "**EMEA Intellectual Property**"), the Licensed Intellectual Property and the Intellectual Property licensed to the Sellers and/or their Affiliates (other than any joint venture between any Seller or EMEA Seller or their Affiliates and any Third Party, whether or not such joint venture is controlled by the Sellers, the EMEA Sellers or their Affiliates), including the EMEA Sellers, under the Inbound License Agreements and the Patent Cross Licenses include all the material Intellectual Property owned or controlled by any of the Sellers or EMEA Sellers or their respective Affiliates (other than any joint venture between any Seller or EMEA Seller or their Affiliates and any Third Party, whether or not such joint venture is controlled by the Sellers, the EMEA Sellers or their Affiliates) that covers or is used in connection with the conduct and operation of the Business, except any Intellectual Property included in Overhead and Shared Services. No Seller or EMEA Seller licenses or uses any Intellectual Property that is owned or licensed by any joint venture between any Seller or EMEA Seller and any Third Party and that is material to the Business other than any Intellectual Property that will be licensed to Purchaser at the Closing pursuant to the Intellectual Property License Agreement. For the purposes of this Section 4.5, "**controlled**" has the meaning set forth in the Intellectual Property License Agreement.

(b) An accurate, true and complete list of all the Transferred Intellectual Property registered in the name of the Sellers is set forth in Section 4.5(b) of the Sellers Disclosure Schedule. To the Knowledge of the Sellers, the EMEA Sellers do not have any Patents or Trademarks or other Intellectual Property registered in their names that are included in either Transferred Intellectual Property or Licensed Intellectual Property.

(c) The list identified in Section 4.5(b) of the Sellers Disclosure Schedule will include: (1) for each issued Patent and Patent application, the Patent number or application serial number for each jurisdiction in which such Patent is filed, and date issued and filed; (2) for each registered Trademark, the application serial number or registration number, by country, province and state; (3) for any Domain Names, the registration date and name of registry; and (4) for each copyright registration or application, the number and date of such registration or application by country, province and state.

(d) To the Knowledge of the Sellers, the Transferred Intellectual Property and EMEA Intellectual Property that is material to the Business is subsisting and in full force and effect. The foregoing will not be construed as a warranty that any Patent or Trademark will issue or be registered based on any application.

(e) The Transferred Intellectual Property and EMEA Intellectual Property are not subject to any Liens other than Permitted Encumbrances. The Sellers own all right, title, and interest in and to each item of Transferred Intellectual Property and the EMEA Sellers own all right, title, and interest in and to each item of EMEA Intellectual Property. To the Knowledge of the Sellers, none of the Transferred Intellectual Property or EMEA Intellectual Property is subject to any outstanding order, judgment or stipulation restricting the use, transfer or exploitation thereof by the Sellers and their Affiliates in any material respect.

(f) To the Knowledge of the Sellers, the Sellers and their Affiliates and the EMEA Sellers hold sufficient rights in the Licensed Intellectual Property to grant the licenses of the Licensed Intellectual Property contemplated to be granted by the Sellers and their Affiliates and the EMEA Sellers in the Intellectual Property License Agreement.

(g) The Sellers have no Knowledge that any Third Party infringes upon, misappropriates or violates the Transferred Intellectual Property.

(h) To the Knowledge of the Sellers, except as set forth in Section 4.5(h) of the Sellers Disclosure Schedule, no Seller or EMEA Seller has received any written assertions since January 1, 2007 that (i) any Seller's or its Affiliates' (including any EMEA Seller or its Affiliates) operations of the Business, including such Seller's or its Affiliates' (including any EMEA Seller or its Affiliates) use, performance, licensing, copying, distribution, sale, offer for sale, lease, manufacture, having made, importation, or any other exploitation of the Products sold by the Business or of the Services rendered by the Business infringes, misappropriates or violates in any material respect any Intellectual Property right or moral right of any Third Party; or (ii) the use or exploitation of any of Transferred Intellectual Property or EMEA Intellectual Property infringes or violates in any material respect any Intellectual Property of or was misappropriated from a Third Party.

(i) To the Knowledge of the Sellers, as of the date hereof, there has been no assertion or claim made in writing to the Sellers or their Affiliates or the EMEA Sellers or their Affiliates since January 1, 2007 asserting invalidity, misuse or unenforceability of any Transferred Intellectual Property or EMEA Intellectual Property or challenging the Sellers' or their Affiliates' (including any EMEA Seller or its Affiliates) right to use, right to transfer, or ownership of any Transferred Intellectual Property or EMEA Intellectual Property; in each case, excluding any such assertions or claims that would not reasonably be expected to result in any invalidity, unenforceability, loss or other material impairment of any rights or interest in the subject Intellectual Property.

(j)

(i) To the Knowledge of the Sellers, Section 4.5(j)(i) of the Sellers Disclosure Schedule sets forth a complete and accurate list of all Patent Cross Licenses, indicating for each Patent Cross License, the title and the parties thereto, except to the extent a Patent Cross License prohibits disclosure of its existence without consent of the relevant Third Party, which consent the Sellers were unable to reasonably obtain, in which case such Patent Cross License has been omitted from Section 4.5(j)(i) of the Sellers Disclosure Schedule (an "**Omitted Patent Cross License**"). No royalties or other amounts are due or payable by or on behalf of Nortel under any such Omitted Patent Cross Licenses, nor will any such royalties or other amounts be due or payable by Purchaser under any Omitted Cross License in connection with entering into this Agreement.

(ii) To the Knowledge of the Sellers, Section 4.5(j)(ii) of the Sellers Disclosure Schedule sets forth a complete and accurate list of all material Contracts (other than Patent Cross Licenses) granting to the Sellers or any of their Affiliates or the EMEA Sellers or their Affiliates any license under or to any Intellectual Property owned by a Third Party that is, as of the date hereof, incorporated in or used in connection with the design, development, testing, manufacturing, sale, distribution, support or servicing of any Products or the provision of Services (collectively, the "**Inbound License Agreements**"), indicating for each Inbound License Agreement whether such Contract is included in the definition of "Seller Contracts" hereunder, and the title and the parties thereto.

(iii) To the Knowledge of the Sellers, Section 4.5(j)(iii) of the Sellers Disclosure Schedule sets forth a complete and accurate list of all Contracts in effect (other than (x) Patent Cross Licenses, (y) non-exclusive object code licenses granted to end users or other purchasers of Products or non-exclusive licenses granted by the Sellers or their Affiliates or the EMEA Sellers to customers, distributors or suppliers in connection with the manufacture or sale of products or Services and (z) any non-exclusive license granted to any purchaser of any subsidiary or assets of a business unit of the Sellers, the EMEA Sellers or their respective Affiliates the sale of which was consummated prior to January 1, 2007) under which the Sellers or their Affiliates or the EMEA Sellers or their Affiliates grant a license to a Third Party under Transferred Intellectual Property

(collectively, the "**Outbound License Agreements**"), indicating the title and the parties thereto.

(iv) To the Knowledge of the Sellers, there is no outstanding dispute or disagreement with respect to (1) any Inbound License Agreement, (2) any Outbound License Agreement or (3) any Patent Cross License, in each case, that materially affects any of the Intellectual Property rights granted to the Purchaser herein. To the Knowledge of the Sellers, the Sellers have made available to Purchaser or its counsel true and complete copies of each Inbound License Agreement, Outbound License Agreement and Patent Cross License (excluding Omitted Patent Cross Licenses).

(k) To the Knowledge of the Sellers, Section 4.5(k) of the Sellers Disclosure Schedule sets forth a true and complete list of any Open Source Software incorporated into any of the Products and describes (i) the specific Open Source Software used, (ii) the specific Open Source Software version, (iii) the licensor(s) of the specific Open Source Software, and (iv) the Products or portions thereof into which such Open Source Software is incorporated.

(l) To the Knowledge of the Sellers, the conduct of the Business, including the design, development, testing, manufacturing, sale, distribution, support or servicing of any Products or the use or exploitation of any Transferred Intellectual Property, EMEA Intellectual Property or Licensed Intellectual Property or the provision of any Services by any Seller or its Affiliates or the EMEA Sellers or their Affiliates in connection with any of the foregoing, does not infringe upon, misappropriate or otherwise violate in any material respect any Intellectual Property of any Third Party.

(m) Notwithstanding any provision herein to the contrary, this Section 4.5 consists of the sole representation and warranty in this Agreement regarding non-infringement, non-violation and non-misappropriation of Intellectual Property.

SECTION 4.6. Litigation. As of the date hereof, except for the Bankruptcy Proceedings and except as set forth in Section 4.6 of the Sellers Disclosure Schedule, there is no Action pending or, to the Knowledge of the Sellers, threatened before any Government Entity or arbitration tribunal against any Seller involving the Business (excluding the EMEA Business) or the Assets or that seeks to restrain or prohibit or otherwise challenge the consummation, legality or validity of the transactions contemplated hereby or that has had, or otherwise would reasonably be expected to have a Material Adverse Effect. To the Knowledge of the Sellers, except for the Bankruptcy Proceedings, there is no outstanding Order to which the Sellers are subject in respect of the Business (excluding the EMEA Business) or the Assets, nor are any of the Sellers in default with respect to any such Order.

SECTION 4.7. Financial Statements. Section 4.7 of the Sellers Disclosure Schedule sets forth the unaudited combined (i) balance sheet of the Business as of December 31, 2008 (the "**Balance Sheet Date**") and December 31, 2007, (ii) statements of earnings and cash flows of the Business for each of the fiscal years ended December 31, 2008 and December 31, 2007, (iii) balance sheet of the Business as of June 30, 2009 and (iv) statements of earnings and cash flows of the Business for the six (6) months ended June 30, 2009 (collectively, the

"**Financial Statements**"). The Financial Statements were prepared in accordance with GAAP (subject to normal year-end adjustments, the effect of which are not material in nature, and except for the omission of certain footnotes and other presentation items required by GAAP with respect to audited financial statements) using the Nortel Accounting Principles, and fairly present in all material respects the combined financial position, results of operations and cash flows of the Business as of the date thereof and for the periods covered thereby.

SECTION 4.8. Compliance with Laws; Consents.

(a) Except as set forth in Section 4.8 of the Sellers Disclosure Schedule, no Seller is in violation of any Law applicable to the operation of the Business or the Assets, except for such violations as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, and none of the Sellers has received any written notice or written claims from any Government Entity within the twelve (12) months preceding the date hereof relating to any material non-compliance of the Business or the Assets with any applicable Law nor are there, to the Knowledge of the Sellers, any such notice or claims threatened or pending, except where such notices or claims would not, individually or in the aggregate, materially hinder, delay or impair the performance by the Sellers of any of their obligations under the Transaction Documents.

(b) (i) All of the Consents of Government Entities necessary for, or otherwise material to, the conduct of the Business (excluding the EMEA Business) as conducted on the date hereof, have been duly obtained and are in full force and effect and (ii) the relevant Sellers are in compliance with the terms of each of such Consents, in each case except for such violations as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. None of the Sellers has received any notice or written claims from any Government Entity relating to any material non-compliance of the Business (excluding the EMEA Business) or the Assets with such Consents nor are there, to the Knowledge of the Sellers, any such notice or claims threatened or pending, except where such claims would not, individually or in the aggregate, materially hinder, delay or impair the performance by the Sellers of any of their obligations under the Transaction Documents.

SECTION 4.9. Real Property.

(a) Section 4.9(a)(i) of the Sellers Disclosure Schedule lists, as of the date hereof, all real property which is owned by the Sellers in respect of which a real property lease or license between the applicable Seller and the Purchaser or one or more Designated Purchasers shall be entered into on Closing on terms set forth in the Real Estate Terms and Conditions (collectively, the "**Owned Real Property**"). Section 4.9(a)(ii) of the Sellers Disclosure Schedule lists, as of the date hereof, all leases, subleases, space licenses or other occupancy agreements (collectively, "**Leases**") of real property (the "**Leased Real Property**") to be assigned to the Purchaser or one or more Designated Purchasers on Closing on the terms set forth in the Real Estate Terms and Conditions. Section 4.9(a)(iii) of the Sellers Disclosure Schedule lists, as of the date hereof, those Leases in respect of which an Occupancy Agreement is to be entered into on Closing on the terms set forth in the Real Estate Terms and Conditions (collectively, the "**6 Month Locations**"). Section 4.9(a)(iv) of the Sellers Disclosure Schedule lists, as of the date hereof, those Leases in respect of which a short-term license is to be entered into on Closing on the terms set forth

in the Real Estate Terms and Conditions (collectively, the "**Short-Term Licensed Property**" and together with the Owned Real Property, the Leased Real Property and the 6 Month Locations, the "**Real Property**"). Section 4.9(a)(v) of the Sellers Disclosure Schedule lists, as of the date hereof, those locations where any Owned Assets used in carrying the Business are located. The Sellers have provided true, complete and correct copies of the Leases with respect to the Real Property to the Purchaser, including any amendments thereto. There are no written or oral subleases, licenses, concessions, occupancy agreements or other contractual obligations granting to any other Person the right of use or occupancy of any part of the Real Property which is occupied for purposes of the Business, or which will be occupied for purposes of the Business on or after Closing in accordance with the segregation, consolidation and demising plans contemplated by the Real Estate Terms and Conditions, save and except with respect to such rights retained by the Sellers or granted to the purchasers of other Nortel business segments which are co-located at such premises, the effect of which would not have a material adverse effect on the lease, license or occupancy by the Purchaser or any Designated Purchaser of such part of the Real Property to be occupied for the purposes of the Business.

(b) The Sellers have received all Consents that are necessary in connection with the Sellers' occupancy, ownership or leasing of the Real Property, and the present use of the Real Property by the Sellers does not violate the Consents applicable thereto, except where the (A) failure to receive or (B) violation of a Consent would not have a Material Adverse Effect.

(c) Except to the extent that any Cure Cost is payable with respect to any Lease with respect to a breach of such Lease prior to the Petition Date, and except for the Bankruptcy Proceedings, (i) no Seller is in material breach or default of its obligations under any Lease, (ii) no condition exists that with notice or lapse of time or both would constitute a material default by any Seller under any Lease and (iii) to the Knowledge of the Sellers, no other party to any Lease is in breach or default thereunder, except in each case, as would not, individually or in the aggregate, reasonably be expected to result in the termination of such Lease or otherwise have a Material Adverse Effect.

(d) The Sellers have not received written notice of any threatened (i) condemnation, eminent domain, expropriation or similar proceeding affecting the Real Property, (ii) proceeding to change the zoning classification of any portion of the Real Property or (iii) imposition of any special assessments for public betterments affecting the Real Property, which in each of clauses (i), (ii) and (iii) would materially and adversely impact the use of the Real Property for the purposes for which it is being used as of the date hereof.

SECTION 4.10. Labor and Employee Benefits Matters.

(a) Section 4.10(a)(i) of the Sellers Disclosure Schedule contains an accurate and complete list, by country, of (i) all material Seller Employee Plans and (ii) all employment agreements or other commitments for employment or engagement by the Sellers or their Affiliates with respect to Employees that deviate in any material respect from the standard form offer letter for the applicable jurisdiction or provide for retention, severance or change in control payments or benefits to the Employees, excluding in each

case Seller Employee Plans. The Sellers have provided the Purchaser with a true and complete copy of the plan document or summary plan description of each material Seller Employee Plan or, if such plan document or summary plan description does not exist, an accurate written summary of such Seller Employee Plan. The Sellers have provided the Purchaser or its Affiliate with a true and complete copy of the standard form (or where such individual agreement is materially different from the standard form, the individual written agreement) of such employment, retention, change in control or severance agreements between the Sellers (or any Affiliate of Sellers (excluding EMEA Sellers)) and any Employee.

(b) The information contained in Section 4.10(b) of the Sellers Disclosure Schedule in respect of the Employees (the "**Employee Information**") is accurate in all material respects as of the date hereof, and sets forth with respect to each Employee (except where that is not permissible under applicable data privacy Laws): (i) unique identifier, (ii) service date, (iii) job title/position, (iv) annual base salary and annual incentive plan target amount, (v) work location, (vi) visa type, if any and expiry date, (vii) the applicable Collective Labor Agreement, works council or other applicable labor organization, if any, (viii) leave status, reason for the leave, the start date of the leave and expected return date, (ix) vacation accrual rate, (x) status as full-time or part-time, (xi) home country of residence, (xii) Job Complexity Indicator, (xiii) country of payroll, (xiv) sales indicator, (xv) Exempt/Non-Exempt status (U.S. only), (xvi) payment currency, (xvii) department/function, to the extent applicable, (xviii) work schedule and (xix) whether such Employee has any individual written agreement that provides for length of notice or severance payment required to terminate his or her employment in excess of that required by applicable Law or pursuant to a Seller Employee Plan disclosed in Section 4.10(a)(i) of the Sellers Disclosure Schedule as a result of which there could be a payment to such employee in excess of $50,000 in addition to such payment required by applicable Law or such Seller Employee Plan.

(c) Except as set forth in Section 4.10(c) of the Sellers Disclosure Schedule, there has not been for a period of twelve (12) consecutive months prior to the date hereof, nor is there existent or, to the Sellers' Knowledge, has there been threatened, any strike, material grievance, slowdown, lockout, picketing or work stoppage against the Sellers by or on behalf of the Employees.

(d) Section 4.10(d) of the Sellers Disclosure Schedule identifies and lists all of the Collective Labor Agreements and works councils or similar labor organizations in effect with respect to the Employees and in the case of Collective Labor Agreements that have expired, whether notice to bargain has been given and the status of the bargaining process. For a period of twelve (12) consecutive months prior to the date hereof, no petition has been filed or proceedings instituted by a union, works council, collective bargaining agent, employee or group of employees with any Government Entity seeking recognition of a collective bargaining agent with respect to any Employees, and, to the Sellers' Knowledge, no such organizational effort is currently being made or has been threatened by or on behalf of any union, works council, employee, group of employees or collective bargaining agent to organize any Employees. The Sellers have provided the Purchaser with a true and complete copy of each Collective Labor Agreement listed in Section 4.10(d) of the Sellers Disclosure Schedule.

(e) There are no Transferred Employee Plans and, except as set forth in Section 4.10(e) of the Sellers Disclosure Schedule, there are no Seller Employee Plans that are multiemployer plans within the meaning of Section 3(37) of ERISA, and none of the Sellers or any of their ERISA Affiliates has, within the past six (6) years, ever maintained, contributed to or participated in, any such multiemployer plans.

(f) None of the Sellers or any of their Affiliates (excluding the EMEA Sellers) have, with respect to the Business, any Liability to provide retiree welfare benefits to any Person for any reason, except as may be required by COBRA, a Seller Employee Plan listed in Section 4.10(a)(i) of the Sellers Disclosure Schedule or applicable Law.

SECTION 4.11. Brokers. Except for fees and commissions or other similar payments that will be paid or otherwise settled or provided for by the Sellers, no broker, finder, agent or investment banker is entitled to any brokerage, finder's or other similar fee or commission in connection with the transactions contemplated by this Agreement and the other Transaction Documents based upon arrangements made by or on behalf of the Sellers or any of their Affiliates for which the Purchaser is or will become liable, and the Sellers shall indemnify and hold harmless the Purchaser from any claims with respect to any such fees and commissions.

SECTION 4.12. Taxes**.** Except as set forth in the corresponding sections of the Sellers Disclosure Schedules, if any, or with respect to any Taxes, Liens and Claims of the Sellers that will be discharged on the Closing Date as provided for in the U.S. Sales Order and the Canadian Approval and Vesting Orders;

(a) There are no Liens for Taxes on any Asset (other than Permitted Encumbrances).

(b) The Sellers have timely filed with the appropriate Tax Authorities all material Tax Returns required to be filed with respect to the Assets and the Business (excluding the EMEA Business) and all such Tax Returns are true, correct and complete in all material respects. All material Taxes due and payable with respect to the Assets and the Business (excluding the EMEA Business) have been timely paid.

(c) No deficiency for any material amount of Taxes has been claimed, proposed or assessed by any Tax Authority against any Seller and there is no pending audit, examination or other proceeding involving any Seller in respect of any material amount of Taxes, (i), in the case of each Seller not listed on Section 4.12(c)(i) of the Sellers Disclosure Schedule, relating to any Asset or the Business (excluding the EMEA Business) and (ii) in the case of each Seller listed on Section 4.12(c)(ii) of the Sellers Disclosure Schedule, relating to each such Seller.

(d) No Seller has entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the assessment, payment or collection of material Taxes relating to any Asset or the Business (excluding the EMEA Business).

(e) None of the Assets located within the United States or which is owned by a U.S. Debtor (i) is property required to be treated as being owned by another

person pursuant to the provisions of Section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately prior to the enactment of the Tax Reform Act of 1986, (ii) constitutes "tax-exempt use property" within the meaning of Section 168(h)(1) of the Code and (iii) is "tax-exempt bond financed property" within the meaning of Section 168(g) of the Code.

(f) The Sellers have, in accordance with applicable Law, invoiced, collected, withheld, reported and remitted to the appropriate Government Entity (within the time prescribed) all material: (i) Transfer Taxes which are due and payable or collectible by the Sellers; (ii) withholding, payroll or employment taxes, and other deductions at source as required by applicable Law; and (iii) all non-resident withholding Taxes as required by applicable Law.

(g) Any Seller that is selling any Asset that constitutes "taxable Canadian property" as defined under the Income Tax Act (Canada) is not a non-resident of Canada within the meaning of the Income Tax Act (Canada).

(h) No Seller that is not a "United States person," as such term is defined in Section 7701(a)(30) of the Code, is transferring pursuant to this Agreement any "United States real property interest," as such term is defined in Section 897(c)(1) of the Code.

SECTION 4.13. Environmental Matters. Except as disclosed in the Sellers Disclosure Schedule, if any:

(a) The Business (excluding the EMEA Business) is and since January 1, 2005, has been in material compliance with, all applicable Environmental Laws and all material licenses, permits and approvals issued under Environmental Laws.

(b) All material licenses, permits and approvals required under Environmental Laws required to own or operate the Business (excluding the EMEA Business) have been obtained, and remain in full force and effect.

(c) None of the Sellers has received any written request for information, or been notified in writing that it is a potentially responsible party, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), or any similar state, local or foreign laws that relates in any respect to the Business (excluding the EMEA Business) or any facility used by the Business (excluding the EMEA Business) as of the date hereof.

(d) There are no writs, injunctions, decrees, orders or judgments to which any of the Sellers is a party that are outstanding, and there are no material actions, suits, claims, orders, proceedings or investigations to which any of the Sellers is a party that are pending or, to the Knowledge of the Sellers, threatened, relating to the compliance of the Sellers with, or the liability of the Sellers under, any Environmental Laws in connection with the Business (excluding the EMEA Business) or any facility used by the Business (excluding the EMEA Business) as of the date hereof.

(e) None of the real property currently owned, leased or operated by the Sellers in respect of the Business (excluding the EMEA Business), is listed or, to the Knowledge of the Sellers, proposed for listing on the "National Priorities List" under CERCLA, or on the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the United States Environmental Protection Agency, as updated through the Closing Date, or any similar state or foreign list of sites requiring investigation or cleanup.

(f) To the Knowledge of the Sellers, there has heretofore been no material Release of any Hazardous Material in connection with the Business (excluding the EMEA Business) or the operations of the Business (excluding the EMEA Business).

(g) The Sellers have made available to, or provided the Purchaser with, true and correct copies of all material environmental assessment reports (including Phase I or Phase II reports) and any other material environmental studies in the possession of the Sellers relating to the Business (excluding the EMEA Business) or its operations.

SECTION 4.14. Undisclosed Liabilities**.** There are no Assumed Liabilities or EMEA Assumed Liabilities of a type that would be required to be included on a balance sheet of the Business prepared in accordance with GAAP (or reflected in the notes thereto) except Liabilities that (i) in the aggregate are adequately provided for in the Financial Statements; (ii) have been incurred in the Ordinary Course since the date of the last balance sheet included in the Financial Statements; (iii) have been incurred in connection with this Agreement or the transactions contemplated hereby; or (iv) which (not including Liabilities referred to in clauses (i) through (iii) above) would not have a Material Adverse Effect.

SECTION 4.15. Reliance On Exemption From Registration Under Section 4(2) of the Securities Act.

(a) The Distribution Agent is receiving the Convertible Notes (and, in the event of their conversion thereof, the Shares) in its capacity as agent for the Sellers and the EMEA Sellers, and does not exercise independent voting or investment power over the Convertible Notes (and, in the event of their conversion thereof, the Shares). The Convertible Notes and the Shares are being acquired by the Sellers and the EMEA Sellers for investment only and not with a view to distribution, except as contemplated by this Agreement. The Sellers and the EMEA Sellers have been advised and understand that the issuance of the Convertible Notes (and, in the event of their conversion thereof, the Shares) to the Distribution Agent has not been registered under the Securities Act or under the "blue sky" or similar Laws of any jurisdiction and that the Convertible Notes and the Shares may be resold only in a transaction registered under the Securities Act and in accordance with such "blue sky" or similar Laws as may be applicable, or, subject to the terms and conditions of this Agreement, if an exemption from registration is available. The Sellers and the EMEA Sellers have been advised and understand that the Purchaser, in issuing the Convertible Notes (and, in the event of their conversion thereof, the Shares), is relying upon, among other things, the representations and warranties of the Sellers herein in concluding that such issuance is not a "public offering" and is exempt from the registration requirements of the Securities Act.

(b) Each of the Sellers and the EMEA Sellers is an "accredited investor" as that term is defined in Rule 501(a) of Regulation D under the Securities Act and is able to bear the risk of its investment in the Convertible Notes (and, in the event of their conversion thereof, the Shares). Each of the Sellers and the EMEA Sellers have such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of acquiring the Convertible Notes (and, in the event of their conversion thereof, the Shares).

(c) Each of the Sellers and the EMEA Sellers understand that no United States federal or state agency has passed on or made any recommendation or endorsement of the Convertible Notes and the Shares or the fairness or suitability of an investment in the Convertible Notes and the Shares nor have such authorities passed upon or endorsed the merits thereof.

(d) Each of the Sellers and the EMEA Sellers understand that the Convertible Notes and the Shares are restricted securities and must be held until an exemption from registration under the Securities Act is available and all of the requirements of such exemption have been met or unless and until the resale of such Convertible Notes and the Shares is registered under the Securities Act or subject to the terms and conditions of this Agreement and the applicable U.S. securities Laws, an exemption from registration is available.

(e) The Sellers and the EMEA Sellers have been furnished with all materials relating to the business, finances and operations of the Purchaser and its subsidiaries and materials relating to the offer and transfer of the Convertible Notes and the Shares which have been requested by them. The Sellers and the EMEA Sellers and their advisors, if any, have been afforded the opportunity to ask such questions of the Purchaser as they deem appropriate for purposes of the investment contemplated hereby. Each of the Sellers and the EMEA Sellers understands that beneficial ownership of the Convertible Notes and the Shares involves a high degree of risk and that each may lose its entire investment in the Convertible Notes and the Shares and that each can afford to do so without material adverse consequences to its financial condition. In choosing to acquire beneficial ownership over any Convertible Notes and the Shares, none of the Sellers or the EMEA Sellers is relying on any information provided by the Purchaser and its subsidiaries, except to the extent provided herein.

(f) The Sellers, the EMEA Sellers and their respective "Ultimate Parent Entities" (including all entities under the control of such Ultimate Parent Entities) within the meaning of the HSR Act are acquiring, and will hold, the Convertible Notes and the Shares "solely for the purposes of investment" within the meaning of Section 18a(c)(9) of the HSR Act. As of the Closing, neither the Sellers and the EMEA Sellers nor their respective "Ultimate Parent Entities" (including all entities under the control of such Ultimate Parent Entities) within the meaning of the HSR Act, shall hold more than ten million (10,000,000) shares of Common Stock.

SECTION 4.16. Representations and Warranties by the Other Sellers.

Except as set forth in the Sellers Disclosure Schedule, each Other Seller severally but not jointly will, as of the date such Other Seller will execute this Agreement pursuant to Section 11.17, represent and warrant to the Purchaser as follows:

4.16.1. Organization and Corporate Power.

(a) Such Other Seller is duly organized and validly existing under the Laws of the jurisdiction in which it is organized. Subject to the receipt of the Bankruptcy Consents, at the time it executes this Agreement, such Other Seller will have the requisite corporate or other organizational power and authority necessary to enter into, deliver and perform its obligations pursuant to each of the Transaction Documents to which it is or, at the Closing Date, will become a party.

(b) Such Other Seller is qualified to do business and to own, lease or operate its properties and assets, including the Assets, as applicable in each jurisdiction in which the nature of its properties or the character of its business relating to the Business (excluding the EMEA Business) requires it to so qualify, except to the extent that the failure to be so qualified would not have or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.16.2. Authorization; Binding Effect; No Breach.

(a) Subject to the Bankruptcy Consents, the execution, delivery and performance by such Other Seller of the Transaction Documents to which such Other Seller will be a party will have been duly and validly authorized by all corporate or other organizational action by such Other Seller. Subject to the Bankruptcy Consents, and assuming due authorization, execution and delivery by the Purchaser, the Transaction Documents to which such Other Seller will be a party will constitute a legal, valid and binding obligation of such Other Seller, enforceable against it in accordance with its terms, except to the extent that such enforceability may be limited by applicable principles of equity regarding the availability of remedies (whether in proceeding at law or in equity).

(b) The execution, delivery and performance by such Other Seller of the Transaction Documents to which such Other Seller will be a party will not conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, result in a violation of, result in the creation or imposition of any Lien upon any of the Assets, or (subject to the receipt of Consents in connection with the Assigned Contracts and other Consents expressly provided for herein) require any Consent of any Person (other than the Regulatory Approvals and the Bankruptcy Consents) or other action by or declaration, filing or notice to any Person pursuant to (i) the articles, charter, by-laws or other governing documents of such Other Seller, (ii) any Material Contract to which the such Other Seller is a party or to which any of its assets is subject, (iii) any Laws to which such Other Seller, or any of the Assets owned by such Other Seller is subject, except, in the case of (ii) and (iii) above, for such defaults, violations, actions and notifications that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

ARTICLE V
COVENANTS AND OTHER AGREEMENTS

SECTION 5.1. U.S. Bankruptcy Actions. On the timetables and subject to the terms set forth below, the Sellers who are U.S. Debtors shall (i) file with the U.S. Bankruptcy Court one or more motions and proposed orders as set forth below, (ii) notify, as required by the U.S. Bankruptcy Code, the U.S. Bankruptcy Rules, and any order of the U.S. Bankruptcy Court, all parties entitled to notice of such motions and orders, as modified by orders in respect of notice which may be issued at any time and from time to time by the U.S. Bankruptcy Court, and such additional parties as the Purchaser may reasonably request, and (iii) subject to the provisions of this Agreement, including the provisions of Section 10.1, and the U.S. Order, if entered, use commercially reasonable efforts to obtain U.S. Bankruptcy Court approval of such orders.

(a) As promptly as practicable, but in no event later than the second (2nd) Business Day after the date hereof, the U.S. Debtors shall file with the U.S. Bankruptcy Court a motion (the "**U.S. Bidding Procedures and Sale Motion**") and two (2) proposed orders substantially in the forms set forth in Exhibit 5.1(a) (as attached as exhibits to the U.S. Bidding Procedures and Sale Motion and as may be modified pursuant to Section 5.1(c) and Section 5.1(d), the "**U.S. Bidding Procedures Order**" and the "**U.S. Sale Order**") seeking approval by the U.S. Bankruptcy Court of, respectively, (i) as for the U.S. Bidding Procedures Order, a process for the sale of the Business, the provision of the Solicitation Period as set forth in Section 5.3(f) and the provision of the Break-Up Fee and Expense Reimbursement as set forth in Section 10.2, and (ii) as for the U.S. Sale Order, pursuant to Sections 105, 363 and 365 of the U.S. Bankruptcy Code, the sale of the Assets to the Purchaser or a Designated Purchaser and the assumption by the U.S. Debtors and assignment to the Purchaser or a Designated Purchaser of the Assumed and Assigned Contracts.

(b) The Sellers who are U.S. Debtors shall use their reasonable best efforts to cause the U.S. Bankruptcy Court to (i) schedule a hearing to consider the U.S. Bidding Procedures and Sale Motion and (ii) enter the U.S. Bidding Procedures Order within two (2) Business Days of the hearing referred to in clause (i) of this sentence.

(c) The U.S. Bidding Procedures Order and the bidding procedures approved therein shall not be materially amended by the Sellers without the prior approval of the Purchaser in its reasonable discretion; provided, however, it shall not be deemed unreasonable for the Purchaser to withhold its consent to any change to the U.S. Bidding Procedures Order that conflict with any express provisions of this Agreement, including without limitation Section 5.1(g) below.

(d) Material failure to adhere to the U.S. Bidding Procedures Order by the Sellers from and after the entry thereof shall constitute a breach of this Agreement and entitle the Purchaser to all rights and remedies set forth herein with respect to such breach, subject to the Sellers' cure right set out in Section 10.1(b)(ii).

(e) The U.S. Sale Order shall contain the provisions (it being understood that certain of such provisions must constitute findings of fact or conclusions of Law to be

made by the U.S. Bankruptcy Court as part of the U.S. Sale Order) set forth in the form of Exhibit 5.1(a) attached hereto, without modification thereto unless the Purchaser expressly consents in writing to such modification in its reasonable discretion.

(f) The Sellers shall request that the U.S. Bankruptcy Court schedule, subject to the availability of the U.S. Bankruptcy Court, a U.S. Sale Hearing on the fourth (4th) Business Day following the conclusion of the Auction and shall use their reasonable best efforts to cause the U.S. Bidding Procedures and Sale Motion to be heard on that date or the earliest date thereafter permitted by the Bankruptcy Court's schedule.

(g) Notwithstanding anything to the contrary herein or in the U.S. Bidding Procedures Order, under no circumstances (i) will the Purchaser be required to remain obligated under this Agreement (as amended, at the Auction or otherwise) as the Alternate Bidder (as such term is defined in the U.S. Bidding Procedures Order) if any Alternative Transaction is selected by the Sellers at the Auction or (ii) will the Purchaser be required to pay any deposit as a condition of participating in the Auction or otherwise.

SECTION 5.2. Canadian Bankruptcy Actions.

5.2.1. Canadian Sales Process Order.

(a) Within five (5) days of execution of this Agreement, the Canadian Debtors shall serve on the CCAA Service List and file with the Canadian Court a motion (the "**Canadian Sales Process Order Motion**") in form and substance acceptable to the Sellers and the Purchaser, each acting reasonably, seeking an order approving the execution, delivery and performance of this Agreement, including payment of the Break-Up Fee and Expense Reimbursement and a process for the sale of the Business. The Canadian Sales Process Order Motion, as served and filed, shall include a copy of the order in the form set forth in Exhibit 5.2.1 with such amendments as the Canadian Debtors and the Purchaser may agree (the "**Canadian Sales Process Order**"). Any amendment to the form of the Canadian Sales Process Order, after the Canadian Sales Process Order Motion has been served, shall be subject to the prior written approval of the Purchaser in its reasonable discretion.

(b) The Canadian Debtors shall use their reasonable best efforts to cause the Canadian Court to (i) schedule and hear the Canadian Sales Process Order Motion within seven (7) days of filing the Canadian Sales Process Order Motion, and (ii) the Canadian Debtors shall enter the issued order forthwith after its issuance.

5.2.2. Canadian Approval and Vesting Order. As promptly as practicable, but in no event later than three (3) Business Days following completion of the Auction (although, provided that service shall take place at least one (1) Business Day prior to the Canadian Approval and Vesting Order Motion unless consented to by the Purchaser), the Canadian Debtors shall serve on the CCAA Service List with such reasonable additions as are requested by the Purchaser and file with the Canadian Court a motion (the "**Canadian Approval and Vesting Order Motion**") in form and substance acceptable to the Sellers and the Purchaser, each acting reasonably, seeking an order approving this Agreement and the transactions contemplated herein. The Canadian Approval and Vesting Order Motion, as served and filed, shall include a copy of the order in the form set forth in Exhibit 5.2.2 with

such amendments as the Canadian Debtors and the Purchaser may agree (the "**Canadian Approval and Vesting Order**"). Any amendment to the form of the Canadian Approval and Vesting Order, after the Canadian Approval and Vesting Order Motion has been served, shall be subject to the prior written approval of the Purchaser.

SECTION 5.3. Consultation; Notification; Cooperation; Solicitation.

(a) The Purchaser and the U.S. Debtors shall cooperate with filing and prosecuting the U.S. Bidding Procedures and Sale Motion, a draft of which shall be delivered by the Sellers to the Purchaser no later than one (1) day after the date hereof, and obtaining entry of the U.S. Bidding Procedures Order and the U.S. Sale Order, and the U.S. Debtors shall deliver to the Purchaser prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for the Purchaser and its counsel to review and comment, copies of all proposed pleadings, motions, responses to objections, notices, statements, schedules, applications, reports and other material papers to be filed by the U.S. Debtors in connection with such motions and relief requested therein and any challenges thereto.

(b) The Purchaser and the Canadian Debtors shall cooperate with filing and prosecuting the Canadian Sales Process Order Motion and the Canadian Approval and Vesting Order Motion, and obtaining issuance and entry of the Canadian Sales Process Order and the Canadian Approval and Vesting Order, and the Canadian Debtors shall deliver to the Purchaser prior to filing, and as early in advance as is practicable to permit adequate and reasonable time for the Purchaser and its counsel to review and comment, copies of all of the Canadian Debtors' proposed pleadings, motions, responses to objections, notices, statements schedules, applications, reports and other material papers to be filed by the Canadian Debtors in connection with such motions and relief requested therein and any challenges thereto.

(c) If the U.S. Sale Order or any other order of the U.S. Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing, re-argument or stay shall be filed with respect thereto), the U.S. Debtors agree to, and to cause their Subsidiaries to, use their reasonable best efforts, to defend against such appeal, petition or motion, and the Purchaser agrees to cooperate in such efforts. Each of the Parties hereby agrees to use its reasonable best efforts to obtain an expedited resolution of such appeal; provided, however, that, subject to the conditions set forth herein, nothing contained in this Section shall preclude the Parties from consummating, or permit the Parties not to consummate, the transactions contemplated hereby if the U.S. Sale Order shall have been entered and shall not have been stayed, modified, revised or amended, in which event the Purchaser and the relevant Designated Purchasers shall be able to assert the benefits of Section 363(m) of the U.S. Bankruptcy Code and, as a consequence of which, such appeal shall become moot.

(d) If the Canadian Approval and Vesting Order or any other order of the Canadian Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing, re-argument or stay shall be filed with respect thereto), the Canadian Debtors agree to, and to cause their Affiliates (other than the EMEA Sellers and their respective Subsidiaries) to, take all commercially reasonable steps, and use their

reasonable best efforts to defend against such appeal, petition or motion, and the Purchaser agrees to cooperate in such efforts. Each of the Parties hereby agrees to use its reasonable best efforts to obtain an expedited resolution of such appeal; provided, however, that, subject to the conditions set forth herein, nothing in this Section shall preclude the Parties from consummating, or permit the Parties not to consummate, the transactions contemplated hereby if the Canadian Approval and Vesting Order shall have been entered and shall not have been stayed, modified, revised or amended.

(e) Prior to Closing, the Sellers shall, from time to time, at the request of the Purchaser, request such further Order or Orders from the Canadian Court or the U.S. Bankruptcy Court as the Sellers and the Purchaser both agree, each acting reasonably, are required in order to give effect to this Agreement and the transactions contemplated hereby. The terms of such requested Orders shall be satisfactory to the Sellers and the Purchaser, each acting reasonably. Upon any such request each of the Purchaser and the Sellers, acting reasonably, shall cooperate with each other, as necessary or as may be reasonably requested, in order to obtain such further Order or Orders.

(f) From the date of the later of (i) the entry of the U.S. Bidding Procedures Order or (ii) the entry of the Canadian Sales Process Order, until the conclusion of the Auction (the "**Solicitation Period**"), the Sellers are permitted to cause their authorized representatives and Affiliates to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to the Purchaser and its Affiliates, agents and authorized representatives) in connection with any Competing Transaction. In addition, during such Solicitation Period, the Sellers shall have the right to respond to any inquiries or offers to purchase all or any part of the Business and perform any and all other acts related thereto which are required under the Bankruptcy Code or other applicable Law, including supplying information relating to the Business and Assets to prospective buyers. The Sellers shall contemporaneously, or as soon as possible thereafter, provide the Purchaser with any information concerning the Business or Assets provided to any prospective purchasers not previously provided to the Purchaser. The Main Sellers shall provide the Purchaser with a copy of any Qualified Bid received by the Sellers on the day that the determination is made that such bid is a Qualified Bid but in no event later than 48 hours prior to the commencement of the Auction and otherwise in accordance with the U.S. Bidding Procedures Order. In the event that the time at which the final Qualified Bid to be delivered is less than 48 hours from the scheduled time for commencement of the Auction, either the Sellers or the Purchaser, may, by written notice, require that the scheduled commencement date and time of the Auction be delayed until such time the Purchaser has had possession of the Qualified Bids for 48 hours prior to commencement of the Auction. Nothing herein shall limit the Sellers' ability to consummate a Sponsored Reorganization Plan.

SECTION 5.4. Pre-Closing Cooperation.

(a) Prior to the Closing, upon the terms and subject to the conditions of this Agreement, each of the Parties shall use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the transactions contemplated by this Agreement as soon as practicable, including (i) the

preparation and filing of all forms, registrations and notices required to be filed to consummate the Closing and the taking of such actions as are necessary to obtain any requisite Consent, provided that the Sellers shall not be obligated to make any payment or deliver anything of value to any Third Party (other than filing and application fees to Government Entities, all of which shall be paid or reimbursed by the Purchaser) in order to obtain any Consent; (ii) taking reasonable actions to defend any Actions filed against such Party by or before any Government Entity challenging this Agreement or the consummation of the Closing (or to cooperate with the other Party in the case of any such Action filed against such other Party); and (iii) using reasonable efforts to cause to be lifted or rescinded any injunction, decree, ruling, order or other action of any Government Entity adversely affecting the ability of the Parties to consummate the Closing; provided, that such reasonable efforts described in clauses (ii) and (iii) above shall not require either Party to take, or agree to take any action, that would reasonably be expected to materially and adversely impact the Business or any other business of such Party.

(b) Each Primary Party shall promptly notify the other Primary Party of the occurrence, to such party's knowledge, of any event or condition, or the existence, to such party's knowledge, of any fact, that would reasonably be expected to result in any of the conditions set forth in Article IX not being satisfied.

(c) The Purchaser hereby covenants and agrees until the Closing Date or the earlier termination of this Agreement in accordance with Article X:

(i) not to pay any dividend or make any cash distribution on or in respect of its outstanding common stock or take any other action that would trigger the adjustment of the Conversion Rate (as defined in the Indenture) pursuant to Section 6.5(a) of the Indenture; and

(ii) that except with respect to any matter expressly contemplated by this Agreement, it will not acquire or agree to acquire by amalgamating, merging or consolidating with, purchasing a substantial equity interest in or a substantial portion of the assets of or otherwise, any business or Person which acquisition or other transaction would reasonably be expected to prevent or materially delay the transactions contemplated by this Agreement; provided, however, notwithstanding anything to the contrary herein, nothing in this clause (iii) shall prevent or otherwise restrict the Purchaser from being acquired or agreeing to be acquired (whether by merger, consolidation, tender offer or otherwise) by any other Person.

SECTION 5.5. Antitrust and Other Regulatory Approvals.

(a) In furtherance and not in limitation of the provisions of Section 5.4, each of the Parties has prior to the date of this Agreement prepared and filed: (i) a request for an advance ruling certificate pursuant to Section 102 of the Competition Act, and if deemed advisable by the Purchaser, acting reasonably, a pre-merger notification filing under the Competition Act; (ii) an appropriate filing of a Notification and Report Form pursuant to the HSR Act; and (iii) all other necessary documents, registrations, statements, petitions,

filings and applications for ICA Approval and any other Consent of any other Government Entities required to satisfy the condition set forth in Section 9.1(a).

(b) If a Party or any of its Affiliates receives a request for information or documentary material from any Government Entity with respect to this Agreement or any of the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement), then such Party shall endeavor in good faith to make, or cause to be made, as soon as reasonably practicable and after consultation with the other Party, an appropriate response in compliance with such request.

(c) The Parties shall keep each other apprised of the status of matters relating to the completion of the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement) and work cooperatively in connection with obtaining the requisite Regulatory Approvals of each applicable Government Entity, including:

(i) cooperating with each other in connection with filings required under the applicable Antitrust Laws or any Laws regulating foreign investment of any jurisdiction in connection with the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement) and each Antitrust Approval, and liaising with each other in relation to each step of the procedure before the relevant Government Entities and as to the contents of all communications with such Government Entities. In particular, and except for any filings made pursuant to the Investment Canada Act, no Party will make any notification or other filing with or to any Government Entity in relation to the transactions contemplated hereunder without first providing the other Party or its outside counsel on an outside counsel only basis with a copy of such notification in draft form (except with respect to any documents relating to Item 4(c) of the notification form required by the HSR Act) and giving such other party or its outside counsel a reasonable opportunity to discuss its content before it is filed with the relevant Government Entities, and such first Party shall consider and take account of all reasonable comments timely made by the other Party or its outside counsel in this respect. For the avoidance of doubt, draft filings, materials or information provided under this section or under any other provision of this Agreement to the other Party's counsel on an outside counsel only basis shall only be given to outside counsel of the recipient and will not be disclosed by such outside counsel to employees, officers or directors of the recipient without the advance written consent of the Party providing such draft filing or materials;

(ii) furnishing to the other party or its outside counsel in a timely fashion all information within its possession that is required for any application or other filing to be made by the other party pursuant to the applicable Antitrust Laws or any Laws regulating foreign investment of any jurisdiction in connection with the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement); provided, however, that no such information shall be required to be provided by a Party if it determines, acting reasonably, that the provision of such information would jeopardize any attorney-client or other legal privilege (it being understood, however, that the Parties shall cooperate in any reasonable

efforts and requests that would enable otherwise required disclosure to the other Party or its outside counsel to occur without so jeopardizing the privilege);

(iii) promptly notifying each other of any communications from or with any Government Entity with respect to the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement) and ensuring that each of the parties or its outside counsel (as determined by the Purchaser in its reasonable discretion in the case of meetings or appearances related to ICA Approval), where acceptable to the Government Entity, is represented at any meetings with or other appearances before any Government Entity with respect to the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement); and

(iv) consulting and cooperating with one another and the other Party's outside counsel in connection with all analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to the Antitrust Laws or any Laws regulating foreign investment of any jurisdiction in connection with the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement).

(d) In addition, and subject to Section 5.5(e), the Purchaser shall, and shall cause each of the Designated Purchasers to, use its reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to the Purchaser's obligations hereunder as set forth in Section 9.1(a) to the extent the same is within its control and to take, or cause to be taken, all other actions and to do, or cause to be done, all other things necessary, proper or advisable under all applicable Laws to consummate the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement), including using its reasonable efforts to obtain all Regulatory Approvals, and any other Consent of a Government Entity required to be obtained in order for the Parties to consummate the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement).

(e) The obligations of the Purchaser pursuant to Section 5.5(d) shall include committing, and causing the Designated Purchasers to commit, to any and all undertakings, divestitures, licenses or hold separate or similar arrangements with respect to their respective assets and/or the Assets and/or the EMEA Assets and/or to any and all arrangements for the conduct of any business and/or to any termination of any and all existing relationships and contractual rights and obligations as a condition to obtaining any and all Consents from any Government Entity necessary to consummate the transactions contemplated by this Agreement (and/or by the EMEA Asset Sale Agreement), including taking, and causing the Designated Purchasers to take, any and all Consents from any Government Entity necessary to consummate the transactions contemplated hereby, including taking any and all actions necessary in order to ensure the receipt of the necessary Consents and Regulatory Approvals; provided, however, that nothing in this Agreement or the EMEA Asset Sale Agreement shall require or be construed to require the Purchaser, any Designated Purchaser, any EMEA Designated Purchaser or any of their respective Subsidiaries to commit to any undertaking, divestiture, license or hold separate or similar arrangement or conduct of business arrangement or to terminate any relationships, rights or

obligations or to do any other act, to the extent such commitment, termination or action would be reasonably likely to be materially adverse to the Business or the Purchaser, or financial condition or prospects of the Business or the Purchaser.

(f) For the avoidance of doubt, the covenants under this Section 5.5 shall not apply to any action, effort, filing, Consent, proceedings, or other activity or matter relating to the Bankruptcy Courts, the Bankruptcy Proceedings and/or the Bankruptcy Consents, and the ICA Approval.

SECTION 5.6. Pre-Closing Access to Information.

(a) Prior to the Closing, the Sellers shall, and shall cause their Subsidiaries (other than the EMEA Sellers) to, (i) give the Purchaser and its authorized representatives, upon reasonable advance notice and during regular business hours, reasonable access to all books, records, personnel, officers and other facilities and properties of the Business (excluding the EMEA Business), (ii) permit the Purchaser to make such copies and inspections thereof, upon reasonable advance notice and during regular business hours, as the Purchaser may reasonably request, (iii) grant the Purchaser and its representatives reasonable access to each of the facilities of the Business where Assets are located for purposes of completing an updated inventory of the fixed assets of the Business for purposes of completing an appraisal of the value thereof, and (iv) cause the officers of the Sellers to (A) after each month-end promptly (and in any event within thirty (30) days thereafter) furnish the Purchaser with copies of the Sellers' standard Business review of orders and revenue as is regularly prepared in the Ordinary Course, and (B) after each quarter-end promptly (and in any event within thirty (30) days thereafter) furnish the Purchaser with an unaudited quarter-end balance sheet for the Business as of the end of such quarter, and unaudited combined statements of earnings and cash flows of the Business for the three (3) month period then ended; provided, however, that (1) any such access shall be conducted at the Purchaser's expense, in accordance with Law (including any applicable Antitrust Laws and Bankruptcy Laws), at a reasonable time, under the supervision of the Sellers' personnel and in such a manner as to maintain confidentiality and not to unreasonably interfere with the normal operations of the businesses of the Sellers and their Affiliates, and (2) the Sellers will not be required to provide to the Purchaser access to or copies of any Tax records except as otherwise provided herein.

(b) In order to facilitate the Purchaser's entry into new supply arrangements effective as of the Closing, the Sellers shall make available to the Purchaser unredacted copies of all Contracts with suppliers of the Business, or in the case of any Non-Exclusive Supply Contracts, unredacted copies of any portion thereof that are applicable to the Business (other than pricing/cost information or other competitively sensitive information the sharing of which Sellers or their representatives reasonably determine may violate applicable Law), promptly following the date hereof (or in the event that any such Contract is subject to confidentiality restrictions promptly following the receipt of any required consent which the Sellers will cooperate with the Purchaser to obtain as promptly as practicable). So long as the Purchaser is the winning bidder in the Auction, the Sellers shall provide such information not provided in accordance with the preceding sentence upon the later of the entry of the U.S. Sale Order, the receipt of the HSR Approval and the receipt of the Competition Act Approval. Any such disclosures shall be made to any employees or

representatives of the Purchaser who are designated by the Purchaser, who reasonably require access to such information for any reasonable business purpose related to the acquisition of the Business by the Purchasers and who have executed the applicable "Clean Room Agreements," provided, however, that employees of the Purchaser shall not have access to such information unless they are not involved in making decisions regarding pricing or the other material competitive terms offered to any customer of a competing business to the Business, and if the transaction does not close, agree not to be employed in such a role for an agreed-upon minimum period of time.

(c) In connection with the procedures set forth in Section 5.15 with respect to the Bundled Contracts, the Sellers will provide unredacted copies of any portion of any Bundled Contracts that relates to the Business (other than pricing information and other competitive sensitive information the sharing of which the Sellers or their representatives reasonably determine may violate applicable Law) promptly following the date hereof, and so long as the Purchaser is the winning bidder in the Auction, will provide such information upon the later of the entry of the U.S. Sale Order, the receipt of the HSR Approval and the receipt of the Competition Act Approval. Any such disclosures shall be made to any employees or representatives of the Purchaser who are designated by the Purchaser, who reasonably require access to such information for any reasonable business purpose related to the acquisition of the Business by the Purchasers and who have executed the applicable "Clean Room Agreements," provided, however, that employees of the Purchaser shall not have access to such information unless they are not involved in making decisions regarding pricing or the other material competitive terms offered to any customer of a competing business to the Business, and if the transaction does not close, agree not to be employed in such a role for an agreed-upon minimum period of time.

(d) Promptly following the date hereof, the Sellers will provide to Purchaser a correct and complete list of table values from the Sellers' SAP HR system for the following fields: (i) job, (ii) organization/HR Department, and (iii) location. Within twenty (20) days following the date hereof, the Sellers will provide to the Purchaser a set of test files from the Sellers' SAP HR system, which shall include actual employee data (including at least one person per country), but excluding in such data any information revealing the identity of any Employees (including names, addresses, tax identification numbers and any other information that would allow the Purchaser to individually identify any Employee). Such test files shall be in the same format as the format that will be subsequently provided to the Purchaser by the Sellers when actual payroll data is transferred from the Sellers to the Purchaser. Within three (3) Business Days following the completion of the Auction, the Sellers will provide the following additional information with respect to each of the Employees whose information was provided in Section 4.10(b) of the Sellers Disclosure Schedule: (i) full name, (ii) work e-mail address, (iii) work telephone number, (iv) specific recurring allowances paid to employees (if applicable), (v) supervisor and (vi) pay schedule. Within three (3) Business Days following the notification from Purchaser to Sellers of any Identified Employee pursuant to Section 7.1.1, the Sellers will provide Purchaser with the Identified Employee's home address. Additionally, provided that Purchaser provides Seller with proof that an Identified Employee has consented to its release and, if applicable, transfer across boundaries, the Sellers will provide the Purchaser with the following additional information with respect to such Identified Employees as soon as

practicable following the receipt by Seller of such proof: (ix) tax identification number, (x) date of birth, and (xi) gender. In addition, upon Purchaser's reasonable request, the Sellers will promptly provide Purchaser with aggregate census data with respect to gender and age (using five-year bands) of the Identified Employees' employee population (without individually identifying any Identified Employee).

(e) Notwithstanding anything contained in this Agreement or any other agreement between the Purchaser and the Sellers executed on or prior to the date hereof, the Sellers shall not have any obligation to make available to the Purchaser or its representatives, or provide the Purchaser or its representatives with, (i) any Tax Return filed by the Sellers or any of their Affiliates or predecessors or (ii) any other information, if in each case under subsection (i) and (ii), making such information available would (A) jeopardize any attorney-client or other legal privilege or (B) potentially cause the Sellers to be found in contravention of any applicable Law or contravene any fiduciary duty or agreement (including any confidentiality agreement with a Third Party to which the Sellers or any of their Affiliates are a party) between Sellers and a Third Party, it being understood that the Sellers shall cooperate in any reasonable efforts and requests for waivers that would enable otherwise required disclosure to the Purchaser to occur without so jeopardizing privilege or contravening such Law, duty or agreement.

(f) Promptly following the date of the U.S. Sale Order, the Sellers agree to provide the Purchaser with access to such documentation, records and databases to the extent reasonably required to review and assess the Sellers' use of Open Source Software incorporated into any of the Products or Services.

SECTION 5.7. Public Announcements. The initial press release relating to this Agreement shall be a joint press release, the text of which shall be agreed to by the Purchaser and the Sellers acting reasonably. Unless otherwise required by applicable Law or by obligations of the Parties or their Affiliates pursuant to any listing agreement with or rules of any securities exchange, the Parties hereto shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other Party and shall not issue any such release or make any such statement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

SECTION 5.8. Further Actions. From and after the Closing Date, each of the Parties shall execute and deliver such documents and other papers and take such further actions as may reasonably be required to carry out the provisions of this Agreement and the other Transaction Documents to which they are a party and give effect to the transactions contemplated herein and therein, including the execution and delivery of such assignments, deeds and other documents as may be necessary to transfer any Assets as provided in this Agreement, including the assignment of any Assigned Contract; provided, that subject to Section 5.5, the Sellers shall not be obligated to make any payment or deliver anything of value to any Third Party (other than filing and application fees to Government Entities, all of which shall be paid or reimbursed by the party required to pay such fees under the Agreement) in order to obtain any Consent to the transfer of Assets or the assumption of Assumed Liabilities.

SECTION 5.9. Conduct of Business. The Sellers covenant that, subject to any limitation imposed as a result of being subject to the Bankruptcy Proceedings and except as (i) the Purchaser may approve otherwise in writing as set forth below (such approval not to be unreasonably withheld or delayed), (ii) set forth in Section 5.9 of the Sellers Disclosure Schedule, (iii) otherwise contemplated or permitted by this Agreement or another Transaction Document, (iv) required by Law (including any applicable Bankruptcy Laws or by any order of a Bankruptcy Court), or (v) relates solely to Excluded Assets or Excluded Liabilities, the Sellers shall and shall cause their Affiliates to (A) conduct the Business and maintain the Owned Equipment in the Ordinary Course, (B) use efforts that are commercially reasonable in the context of the Bankruptcy Proceedings and taking into account employee attrition to continue operating the Business (excluding the EMEA Business) as a going concern, and to maintain the business organizations of the Business (excluding the EMEA Business) intact and (C) abstain from any of the following actions:

(a) sell or otherwise dispose of material Assets, other than sales of inventory (including, without limitation, inventory that has been designated as "excess" or "obsolete" ("**E&O Inventory**")) on a basis consistent with past practice;

(b) incur any Lien on any Assets, other than Liens that will be discharged at or prior to Closing and Permitted Encumbrances;

(c) (i) grant any license or sublicense of any rights under or with respect to any Transferred Intellectual Property other than licenses to suppliers, resellers and customers in the Ordinary Course and licenses or sublicenses granted in accordance with the Intellectual Property License Agreement (if such agreement were in effect as of the date hereof), or (ii) enter into any exclusive license agreement that would restrict the Business or the Assets after the Closing in any material respect or which is in conflict with the provisions of this Agreement or that would be in conflict with the Intellectual Property License Agreement if it were in effect as of the date hereof;

(d) increase the rate of cash compensation or other fringe, incentive, equity incentive, pension, welfare or other employee benefits payable to the Employees, other than normal periodic increases consistent with past practice or as required by applicable Law, Contracts or Seller Employee Plans in effect as of the date hereof, or pursuant to the KEIP or KERP (provided that the Sellers provide the Purchaser with notice of amendments, modifications, supplements or replacements to the KEIP as may be approved by the Canadian Court or to the KERP as may be approved by the Canadian Court or the U.S. Bankruptcy Court), or increases to welfare benefits that apply to substantially all similarly situated employees (including the Employees) of the Sellers or the applicable Affiliates of the Sellers, or (ii) except as otherwise expressly permitted under Section 5.9, enter into, or increase the benefits or any payments under, any employment, deferred compensation, severance or other similar agreement or arrangement with any Employee;

(e) voluntarily terminate or waive any material right under, or materially amend any Material Contract or any Bundled Contract material to the Business (other than as necessary to effect the unbundling of any Bundled Contract required with respect to any other business or business segment of the Sellers), unless such Contract has become an

Excluded Other Vendor Contract, an Excluded 365 Vendor Contract or a Non-Assigned Contract;

(f) waive, release, assign, settle or compromise any material claim, litigation or arbitration relating to the Business to the extent that such waiver, release, assignment, settlement or compromise imposes any binding obligation, whether contingent or realized, on the Business that will bind the Designated Purchasers after the Closing Date and is materially adverse to the Business;

(g) fail to make any budgeted capital expenditures with respect to the Business (excluding the EMEA Business) or make any unbudgeted capital expenditure with respect to the Business (excluding the EMEA Business) in excess of $100,000 individually or $250,000 in the aggregate;

(h) enter into any Material Contract for or relating to the Business that cannot be assigned to the Purchaser;

(i) fail to maintain tangible property which, individually or in the aggregate, is material to the Business and which is included in the Assets, consistent with past practice since the filing of the Bankruptcy Proceedings;

(j) enter into, or agree to enter into, any sale-leaseback transactions with respect to the Business;

(k) take any action, other than actions that an employer in bankruptcy would take, to cause any employee of the Sellers who would otherwise be an Employee as of the Closing not to be such an employee (other than termination for cause or termination of Employees who failed to receive an offer of employment from the Purchaser or a Designated Purchaser pursuant to this Agreement provided the Sellers make a reasonable effort to provide notice to the Purchaser prior to such employment termination);

(l) fail to maintain the material Consents with respect to the Business (excluding the EMEA Business);

(m) on or before the Closing Date, make or rescind any material election in relation to Taxes that would materially and adversely impact the Purchaser after the Closing;

(n) grant any lease, sublease, license, sublicense or other occupancy rights under or with respect to any portion of Real Property used in the Business (except with respect to such rights granted to the purchasers of other Nortel business segments which are co-located at such premises and the effect of which would not have a material adverse effect on the lease, license or occupancy by the Purchaser or any Designated Purchaser of such Real Property) or terminate or surrender or agree to release any Lease, in whole or in part, which is identified in the Real Estate Terms and Conditions except in accordance with the Real Estate Terms and Conditions;

(o) construct, or permit to be constructed any capital improvements or major alterations at any portion of the Real Property used for the Business (excluding the EMEA Business, except with respect to any capital improvements or major alterations at any portion of the Real Property required in connection with the purchase by purchasers of other Nortel business segments), or as otherwise contemplated in the Real Estate Terms and Conditions;

(p) enter into any Collective Labor Agreement affecting Transferred Employees except as required by applicable Law; or

(q) enter into any Contract not to compete in any line of business or geographic area that would reasonably be expected to bind the Purchaser or any of its Affiliates after the Closing in any material respect;

(r) enter into any Contract granting an indemnity in respect of intellectual property infringement or misappropriation other than in the Ordinary Course that would bind the Purchaser or any of its Affiliates after the Closing in any material respect, except for those Contracts that will not be, or that the Purchaser may elect not to have, assigned to the Purchaser hereunder; or

(s) authorize, or commit or agree to take, any of the foregoing actions.

If a Seller desires to take any action described in this Section 5.9, the Main Sellers may, prior to any such action being taken, request the Purchaser's consent via an electronic mail or facsimile sent to the individual(s) at the addresses listed on Exhibit 5.9. The Purchaser shall respond to such notice in writing by 11:59 p.m. (New York time) on the second Business Day after the day of delivery of such electronic mail or facsimile. The failure of the Purchaser to respond within such two (2) Business Days shall not be deemed to be consent to such action.

The Purchaser acknowledges and agrees that: (i) prior to the Closing Date, the Sellers shall exercise, consistent with the terms and conditions of this Agreement, control and supervision of the Business (excluding the EMEA Business) and the EMEA Sellers shall exercise, consistent with the terms and conditions of the EMEA Asset Sale Agreement, the EMEA Business and (ii) notwithstanding anything to the contrary set forth in this Agreement, no consent of the Purchaser shall be required with respect to any matter set forth in Section 5.9 or elsewhere in this Agreement to the extent the requirement of such consent would, upon advice of the Purchaser's counsel, violate any Law.

SECTION 5.10. Transaction Expenses. Except as otherwise provided in this Agreement or the Ancillary Agreements, each of the Purchaser and the Sellers shall bear its own costs and expenses (including brokerage commissions, finders' fees or similar compensation, and legal fees and expenses) incurred in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby.

SECTION 5.11. Confidentiality.

(a) The Parties acknowledge that the Confidentiality Agreement remains in full force and effect in accordance with its terms, which are incorporated herein

by reference, and the Parties agree to be bound thereby in the same manner and to the same extent as if the terms had been set forth herein in full, except that the Sellers shall be at liberty to disclose the terms of this Agreement to any court or to any liquidator or in connection with any auction process with respect to the Business or the Assets approved by the Bankruptcy Court and show appropriate figures in their administration records, accounts and returns; provided, that after the completion of the transactions contemplated herein, the Purchaser's confidentiality obligations under this Section 5.11 and the confidentiality agreement between the Purchaser**,** NNC and its subsidiaries and Alan Bloom dated March 27, 2009, with respect to information and data relating to the Business and/or the Assets shall terminate. For greater certainty, the Purchaser's confidentiality obligations under the third clean team confidentiality agreement between the Purchaser and its subsidiaries and NNL and its subsidiaries, dated June 19, 2009, shall not terminate after the completion of the transactions contemplated herein.

(b) Subject to the requirements of the Bankruptcy Laws or as may be imposed by the Bankruptcy Court or as otherwise required by applicable Law, from and after the Closing: (i) the Sellers shall, and shall cause their Affiliates to, hold in confidence all confidential information (including trade secrets, customer lists, marketing plans and pricing information) of the Sellers relating to the Business or the Assets; (ii) in the event that the Sellers or an Affiliate thereof shall be legally compelled to disclose any such information, the Sellers shall provide the Purchaser with prompt written notice of such requirement so that the Purchaser may seek a protective order or other remedy; and (iii) in the event that such protective order or other remedy is not obtained, the Sellers or their Affiliates shall furnish only such information as is legally required to be provided.

(c) It is acknowledged by the Purchaser and the Sellers that in the course of attempting to sell the Assets, one or more of the Sellers has entered into several confidentiality agreements with Third Parties in respect of information relating to the Assets and has disclosed such information to certain of those Third Parties.

(d) Each Seller shall assign to the Purchaser, at or prior to, and with effect from and after the Closing, all of its rights under any such confidentiality agreement made by such Seller with any Third Party but only as such confidentiality agreements relate to the Assets and the Business and only to the extent that such agreements permit such assignments without the consent of any Third Party. To the extent such agreements do not permit any assignment without the consent of any Third Party, at the Purchaser's request and the Purchaser's expense, provided that the Sellers receive an indemnity from the Purchaser in form and substance satisfactory to the Sellers, to the extent permitted by applicable Laws and the terms of such confidentiality agreements, shall appoint the Purchaser as such Sellers' representative and agent in respect of confidential information relating to the Business and Assets under such confidentiality agreements and any amounts recovered or expenses incurred in enforcing those confidentiality agreements in respect of the Sellers shall accrue to the benefit of or be for the account of the Purchaser.

(e) Notwithstanding anything to the contrary contained in this Section 5.11, nothing contained in this Agreement shall be construed as precluding, prohibiting, restricting or otherwise limiting the ability of the Sellers, the Sellers' Affiliates or their respective representatives to: (i) make permitted disclosures under Section 5.7 or as

otherwise permitted under this Agreement; (ii) make any disclosures that are required by applicable Law; (iii) use or disclose information that is not exclusive to the Business to the extent necessary to operate the other business segments of the Sellers or their Affiliates or otherwise engage in any manner in any business activities unrelated to the Business; (iv) perform any retained Contracts, whether or not exclusively related to the Business; or (v) make customary disclosures, subject to customary confidentiality agreements, regarding information that is not exclusive to the Business and is primarily related to other business segments of the Sellers in connection with acquiring, merging or otherwise combining with, or being acquired by, or selling all or part of their assets to, any Person (whether in a single transaction or a series of related transactions or whether structured as an acquisition of assets, securities or otherwise). Notwithstanding anything to the contrary contained in this Section 5.11, nothing contained in this Agreement shall be construed as precluding, prohibiting, restricting or otherwise limiting the ability of the Purchaser, the Purchaser's Affiliates or their respective representatives to: (i) make permitted disclosures under Section 5.7 or as otherwise permitted under this Agreement or (ii) make any disclosures that are required by applicable Law.

SECTION 5.12. Disclosure Schedules and Certain Information.

(a) The Sellers shall submit to the Purchaser via electronic mail or facsimile sent to the individual(s) at the addresses listed in Exhibit 5.12, every two (2) weeks, written updates to Section 4.10(b) of the Sellers Disclosure Schedule with respect to additions, deletions or other status changes of Employees or, after finalization of the Identified Employees, only with respect to Identified Employees. The Sellers shall submit to the Purchaser at least three (3) Business Days prior to the Closing Date, written updates to the Sellers Disclosure Schedules in respect of Article IV disclosing any events or developments that occurred or any information learned between the date of this Agreement and the Closing Date that reflect any matters hereafter arising which, if existing, occurring or known to the Sellers at the date hereof, would have been required to be set forth or described in the Sellers Disclosure Schedule in relation to Article IV.

(b) The Sellers shall give prompt notice to the Purchaser, and the Purchaser shall give prompt notice to the Sellers, upon obtaining knowledge of the occurrence or nonoccurrence of any event that, individually or in the aggregate, would make the timely satisfaction of the conditions set forth in Article IX impossible or unlikely.

(c) The delivery of any update or notice pursuant to this Section 5.12 shall not cure any breach of any representation or warranty requiring disclosure of such matter or otherwise limit or affect the remedies available hereunder to any party receiving such notice.

SECTION 5.13. Certain Payments or Instruments Received from Third Parties. To the extent that, after the Closing Date, (a) the Purchaser or any Designated Purchaser receives any payment or instrument that is for the account of a Seller according to the terms of this Agreement or relates primarily to any business or business segment of the Sellers other than the Business, the Purchaser shall, and shall cause the Designated Purchasers to promptly deliver such amount or instrument to the relevant Seller, and (b) any of the Sellers receives any payment that is for the account of the Purchaser or any of the Designated Purchasers

according to the terms of this Agreement or relates primarily to the Business, the Main Sellers shall, and shall cause the Other Sellers to promptly deliver such amount or instrument to the Purchaser or the relevant Designated Purchasers. All amounts due and payable under this Section 5.13 shall be due and payable by the applicable Party in immediately available funds, by wire transfer to the account designated in writing by the relevant Party. Notwithstanding the foregoing, each Party hereby undertakes to use reasonable best efforts to direct or forward all bills, invoices or like instruments to the appropriate Party.

SECTION 5.14. Non-Assignable Contracts.

(a) To the extent that any Seller Contract or any Seller Consent is not capable of being assigned under Section 365 of the U.S. Bankruptcy Code (or, if inapplicable, pursuant to other applicable Laws or the terms of such Contract or Consent) to the Purchaser or a Designated Purchaser at the Closing without the Consent of the issuer thereof or the other party thereto or any Third Party (including a Government Entity) (collectively, the "**Non-Assignable Contracts**"), this Agreement will not constitute an assignment thereof, or an attempted assignment, unless any such Consent is obtained.

(b) For the purposes of this Agreement (including Section 5.14(a) and all representations and warranties of the Sellers contained herein), the relevant Sellers shall be deemed to have obtained all required Consents in respect of the assignment of any 365 Vendor Contract and 365 Customer Contract if, and to the extent that, pursuant to the U.S. Sale Order, the Sellers are authorized to assume and assign to the Purchaser or Designated Purchasers such Seller Contract pursuant to Section 365 of the U.S. Bankruptcy Code and any applicable Cure Cost has been, or will be, satisfied as provided in Section 2.1.7. In furtherance thereof, the U.S. Bidding Procedures Order shall contain procedures, in form and substance acceptable to the Purchaser, for obtaining U.S. Bankruptcy Court approval that all 365 Contracts other than the Non-Assignable Contracts can and shall be assigned to the Purchaser on the Closing Date.

SECTION 5.15. Bundled Contracts.

(a) Section 5.15 of the Sellers Disclosure Schedule lists each Contract that the Sellers or their Affiliates have entered into prior to the date hereof providing for the sale or provision of Products and/or Services and the sale or provision of other products and services of the Sellers or their Affiliates (each, a "**Bundled Contract**").

(b) During the period from the date hereof until the Auction, the Sellers and their Affiliates shall cooperate (consistent with applicable Laws and any confidentiality restrictions requiring consent of Third Parties) with the Purchaser in developing a strategy with respect to transitioning each customer of the Business that is party to a Bundled Contract by, among other things, making available those employees who are responsible for managing the customer relationship with each such customer, by providing unredacted copies of all Contracts to which any Seller is a party (or in the case of Bundled Contracts, the portions of such Bundled Contracts as are applicable to the Business) with each of the top 40 customers of the Business by revenue for the year ended December 31, 2008 (other than pricing information and other competitive sensitive information the sharing of which Sellers or their representatives reasonably determine may violate applicable Law) and such

other information as the Purchaser may reasonably request, which disclosures shall be subject to the Confidentiality Agreement. On or before the date that is five (5) Business Days after the date of the Auction, the Purchaser shall notify the Sellers of those counterparties to Bundled Contracts with which the Purchaser elects to attempt to negotiate alternative arrangements (effective as of and conditioned upon the Closing) ("**Alternative Arrangements**") directly with such counterparty to such Bundled Contract, including without limitation, such counterparty's purchase or sale of items under an existing Contract between such counterparty and the Purchaser or the entry into a new contract covering the Products and Services. Promptly following the later of (x) the entry of the U.S. Sale Order and (y) the receipt of HSR Approval and Competition Act Approval, the Sellers and their Affiliates shall (i) provide such competitive sensitive information as was redacted pursuant to the first sentence of this subsection (b) in such a manner, and subject to, Section 5.6(c) so as not to violate any applicable Law and (ii) cooperate with the Purchaser with respect to the negotiation of any such Alternative Arrangements, including without limitation, by making introductions to customers with whom the Purchaser does not have an existing customer relationship, by, subject to applicable Law, participating in telephone calls and meetings with such customers and by providing such forecast and other information as is necessary to assist the Purchaser negotiate such Alternative Arrangements. The Purchaser agrees that any Alternative Arrangements it reaches with counterparties shall, effective as of the occurrence of the Closing, expressly release each Seller that is a party to the affected Bundled Contract from any obligations and Liabilities under such Bundled Contract from and after the Closing Date as they relate to the Products and Services sold or provided after the Closing Date.

(c) With respect to those Bundled Contracts other than those which the Purchaser has elected to negotiate Alternative Arrangements, promptly following the later of (i) the entry of the U.S. Sale Order and (ii) the receipt of HSR Approval and Competition Act Approval, the Purchaser and the Sellers shall cooperate to jointly contact each party thereto including without limitation, by making such contacts (by phone or in person) as may be reasonably requested by Purchaser and by sending a joint letter, in form and substance satisfactory to each of Sellers and Purchaser notifying the counterparty to each such Bundled Contract of the transactions and requesting the counterparty to agree to amend such Bundled Contract from and after the Closing Date so as to delete all obligations and Liabilities therefrom as they relate to the Products and the Services and enter into a new Contract (effective as of, and conditioned upon the occurrence of, the Closing) with the applicable customer and which only relates to Products and Services, in which event such new Contract shall be deemed to be a Seller Contract, provided, however, that the Sellers shall be under no obligation to compromise any right, asset or benefit or to expend any amount or incur any Liabilities in obtaining such arrangements, and the failure to enter into such arrangements shall not entitle the Purchaser to terminate this Agreement, fail to complete the transactions contemplated hereby or reduce the Purchase Price payable hereunder (except as otherwise provided in Section 2.2.1); provided, further, that without the express written consent of Purchaser, Sellers shall not agree to amend the material terms of any Bundled Contract as a condition of such counterparty agreeing to amend the Bundled Contract in the manner set forth in this subsection (c) and if so requested, Sellers shall notify Purchaser and, unless Purchaser consents to such amendment, Sellers shall not enter into a new Contract with such customer as set forth in this subsection (c) but shall instead enter

into a Subcontract Agreement with respect to such Bundled Contract as provided in subsection (d) below. Each of the Sellers and the Purchaser shall notify the other Party if any customer has contacted such Party with regard to the matters set forth in this Section 5.15 and shall keep such other Party reasonably informed regarding the content of any discussions with the customer.

(d) For those Bundled Contracts for which the arrangements mentioned in Section 5.15 (a) - (c) have not been entered into by January 25, 2010 or such later date as the Parties may mutually agree, the Sellers and the Purchaser shall use commercially reasonable efforts to enter into one or more Subcontract Agreements between the Sellers and the Purchaser or the applicable Designated Purchaser with respect to such Bundled Contracts on such terms as are reasonably satisfactory to each of them; provided that (x) nothing in this Section 5.15 shall require the Sellers to renew any Bundled Contract once it has expired, (y) the Sellers shall have the right, any time after the date that is one (1) year after the Closing Date, to exercise any right to terminate any Bundled Contract, and (z) the Sellers shall be under no obligation to compromise any right, asset or benefit or to expend any amount or incur any Liabilities in order to comply with its obligations under this sentence.

SECTION 5.16. Post-Closing Assistance for Litigation.

(a) After the Closing, the Purchaser shall, upon the request of the Sellers and at the Sellers' cost (including reimbursement of reasonable out of pocket expenses of the Purchaser and the Designated Purchasers and payment of a reasonable *per diem* to the Purchaser or a Designated Purchaser which *per diem* shall be based on the total compensation of the affected Transferred Employees at the time), require the Transferred Employees to make themselves reasonably available at reasonable times and cooperate in all reasonable respects with the Sellers and their Affiliates in the preparation for, and defense of, any lawsuit, arbitration or other Action (whether disclosed or not disclosed in the Sellers Disclosure Schedule) filed or claimed against the Sellers or any of their Affiliates or any of the respective agents, directors, officers and employees of the Sellers and their Affiliates, whether currently pending or asserted in the future, concerning the operation or conduct of the Business prior to the Closing Date; provided, however, that the obligations of the Purchaser hereunder shall only extend to the Transferred Employees who remain employed by the Purchaser or a Designated Purchaser as of the date of the Sellers' request and shall not apply to former employees no longer employed by the Purchaser or a Designated Purchaser as of such date and shall not require the Purchaser or a Designated Purchaser to continue the employment of any such employee.

(b) After the Closing, the Sellers shall, upon the request of the Purchaser, and at the Purchaser's cost (including reimbursement of reasonable out of pocket expenses of the Sellers and payment of a reasonable *per diem* to the Sellers which *per diem* shall be based on the total compensation of the affected employees at the time), require their employees that were not Transferred Employees to make themselves reasonably available and cooperate in all reasonable respects with the Purchaser and the Designated Purchasers and their Affiliates in the preparation for, and defense of, any lawsuit, arbitration or other Action filed or claimed against the Purchaser, any of the Designated Purchasers, any of their Affiliates or any of the respective agents, directors, officers and employees of any of the

foregoing, whether currently pending or asserted in the future, concerning the operation or conduct of the Business prior to the Closing Date; provided, that the obligations of the Sellers or their Affiliates under this Section 5.16(b) shall only extend to the employees of such Sellers or Sellers' Affiliates as of the date of the Purchaser's request and shall not apply to former employees no longer employed by such Sellers or Sellers' Affiliates as of such date and shall not require such Sellers or Sellers' Affiliates to continue the employment of any such employee.

SECTION 5.17. Tangible Asset Removal. Except as otherwise set forth in the Real Estate Terms and Conditions and the Real Estate Agreements, the Purchaser shall, and shall cause the relevant Designated Purchasers to remove all tangible Assets from all premises owned or leased by the Sellers or their Affiliates that are not being leased, subleased or licensed to the Purchaser or any Designated Purchaser in accordance with the Real Estate Terms and Conditions within sixty (60) days after the Closing Date; provided, however, that in the event that the Sellers notify the Purchaser in writing that the Sellers desire, or are required, to vacate earlier, (i) the Sellers shall have the right by written notice to the Purchaser to require the Purchaser to remove all tangible Assets from all premises owned or leased by the Sellers or their Affiliates prior to the date that is thirty (30) days after the Closing Date or (ii) the Sellers may remove and store all tangible Assets at the Sellers' sole cost and expense until the date that is sixty (60) days after the Closing Date. The Sellers shall cooperate with such efforts, including by providing access to such facilities during normal business hours or where necessary to minimize disruption to the Business and to the other businesses of the Sellers, to provide reasonable access during non-working hours for the purpose of facilitating such removal.

SECTION 5.18. Termination of Overhead and Shared Services and Intercompany Licensing Arrangements.

(a) The Purchaser acknowledges and agrees that, except as otherwise expressly provided in the Transition Services Agreement, effective as of the Closing Date (i) all Overhead and Shared Services provided to the Business (excluding the EMEA Business and except the Transferred Overhead and Shared Services) shall cease and (ii) the Sellers or their Affiliates shall have no further obligation to provide any Overhead and Shared Services to the Business (excluding the EMEA Business).

(b) The Sellers shall, on or before Closing, provide the Purchaser with reasonable evidence confirming that Nortel Networks S.A. has agreed:

(i) not to assert its Intellectual Property and exclusive license rights, if any, in a manner that could restrict or conflict with the ability of the Purchaser or its successors, assigns, licensees, sub-licensees or customers to operate in the field of the Business and its natural evolutions; and

(ii) to the fullest extent permitted under French Law, to relinquish, waive and terminate all its Intellectual Property and license rights (including any enforcement rights) to the extent (but only to the extent) that they relate to the Intellectual Property that is sold or licensed to the Purchaser in connection with the sale of the Business.

(c) The Sellers (other than NNL) shall, on or before Closing, provide the Purchaser with Appropriate License Termination agreements (as defined in the IFSA) executed by each of them and shall use commercially reasonable efforts to obtain and provide the Purchaser with Appropriate License Termination agreements from each of their Affiliates who are not Sellers.

SECTION 5.19. Financing. Notwithstanding anything to the contrary set forth herein, the Purchaser acknowledges and agrees that (i) its obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon receipt of any financing and the failure to consummate the transactions contemplated herein as a result of the failure to obtain financing shall constitute a breach of this Agreement by the Purchaser (including its obligations pursuant to Section 2.3).

SECTION 5.20. Insurance Matters.

(a) The Purchaser acknowledges and agrees that coverage of the assets, tangible or intangible property, Liabilities, ownership, activities, businesses, operations, current and former shareholders, and current and former directors, officers, employees and agents of, the Business (excluding the EMEA Business) (collectively, the "**Covered Assets and Persons**") under all current or previous insurance policies of the Sellers and their Affiliates, including, without limitation, all environmental, directors' and officers' Liability, fiduciary Liability, employed lawyers, property and casualty flood, ocean marine, contaminated products and all other insurance policies or programs arranged or otherwise provided or made available by the Sellers or their Affiliates that cover (or covered) any of the Covered Assets and Persons at any time prior to the Closing (the "**Seller Insurance Policies**") shall cease as of the Closing Date and the Covered Assets and Persons will be deleted in all respects as insured (or additional insured, as the case may be) under all Seller Insurance Policies. Except as expressly provided herein, the Sellers shall retain any rights to, including any right to any proceeds received in respect of, any claim pending as of the date hereof or made after the date hereof under any Seller Insurance Policy, even if such claims relates to the capital assets or properties of the Business (excluding the EMEA Business).

(b) If after the Closing Date the Purchaser or the Sellers (or any of their respective Affiliates) reasonably require any information regarding claim data or other information pertaining to a claim or an occurrence reasonably likely to give rise to a claim (including any pre-Closing claims under the Seller Insurance Policies that are to be covered under the retrospective component of the new insurance policy) in order to give notice to or make filings with insurance carriers or claims adjustors or administrators or to adjust, administer or otherwise manage a claim, then the Sellers or the Purchaser, as the case may be, shall cause such information to be supplied to the other (or their designee), to the extent such information is in their possession and control or can be reasonably obtained by the Sellers or the Purchaser (or their respective Affiliates), as applicable, promptly upon a written request therefore. If the Purchaser desires access to, and utilization of, claims data or information maintained by an insurance company or other Third Party in respect of any claim (including any pre-Closing claims under any Seller Insurance Policies that are covered under the retrospective component of the new insurance policies), the Purchaser shall be exclusively responsible for acquiring from such insurance company or Third Party, at the

Purchaser's sole cost and expense, the rights necessary to permit them to obtain access to and utilization of such claims data or information. If any Third Party requires the consent of the Sellers or any of their Affiliates to the disclosure of such information, such consent shall not be unreasonably withheld.

(c) Prior to Closing, the Sellers shall maintain the Seller Insurance Policies, or in the event any such policies are cancelled or otherwise terminated, shall obtain other substantially comparable insurance policies that have the same coverage limits and deductibles or self-retention amounts. In respect of insurance claims relating to the Owned Equipment (excluding for the purposes of this Section 5.20(c), any fixtures and improvements forming part of the Carling Property) or the premises subject to a Real Estate Agreement (except for the Carling Property) occurring prior to Closing, the following provisions shall apply:

(i) The Sellers shall make and diligently pursue any applicable insurance claims related to damage or destruction to any Owned Equipment wherever located.

(ii) If and to the extent that any Owned Equipment, wherever located, is destroyed or damaged prior to Closing, and is not replaced or repaired or restored to its condition prior to such damage or destruction, then at Closing, the Sellers shall pay to the Purchaser the amount of any net insurance proceeds received (or which would have been received had the Sellers maintained the Seller Insurance Policies) in respect of such Owned Equipment that have not been applied to repair, replacement or restoration, as applicable, and assign any such claim and the rights to receive the proceeds of any such claim that has not yet been finally adjusted. In the event that insurance proceeds would have been available but for the Sellers' failure to maintain the Seller Insurance Policies, or due to the rights of any superior lender, then in such event, the Purchase Price shall be reduced by an amount equal to the cost of repair, or, if destroyed or damaged beyond repair, by an amount equal to the cost of replacing the Owned Equipment so damaged or destroyed with equipment of comparable age and condition.

(iii) Except in respect of the Carling Property, if and to the extent that any leasehold improvements at any premises subject to a Real Estate Agreement are destroyed or damaged prior to Closing, then to the extent of the receipt of insurance proceeds relating to such damage or destruction by the Sellers or which would have been received had the Sellers complied with the Seller Insurance Policies, or tenant's insurance requirements under the applicable Lease, as applicable (but excluding any proceeds related to business interruption insurance or related to any part of any premises in the applicable building not forming part of the premises subject to a Real Estate Agreement) the Sellers shall be responsible to the extent required under the terms of the applicable Lease, to utilize such insurance proceeds received to restore the applicable improvements and leasehold improvements in accordance with the provisions of the applicable Lease. To the extent that any Real Property which is the subject of a Real Estate Agreement is destroyed or damaged after Closing, the applicable terms of the

applicable Real Estate Agreement shall apply; and to the extent that the subject Real Estate Agreement provides that it is the responsibility of the landlord to repair or restore any destruction or damage to real or personal property, the Sellers shall make and diligently pursue any applicable claims against the landlord related to such damage or destruction.

(d) If and to the extent that the Carling Property is destroyed or damaged prior to Closing and the Purchaser does not elect to terminate this Agreement pursuant to Section 10.1(f), hereof, then to the extent of the Sellers' receipt of insurance proceeds relating to such damage or destruction or which would have been received had the Seller maintained the Seller Insurance Policies, (but excluding any proceeds related to business interruption insurance), and subject to the rights of any superior landlord or mortgagee in respect of the Carling Property, the Sellers shall be responsible to the extent required under the terms of the Carling Property Lease Agreements (as if such Lease Agreements were in effect prior to Closing and as if the landlord were required to restore tenant improvements in the same manner as other improvements) to restore the applicable improvements and fixtures to a condition substantially comparable to the condition prior to such damage or destruction. In the event that (i) insurance proceeds are not immediately available to the Sellers on Closing for purposes of the repair and restoration of the Carling Property (including any fixtures and tenant improvements forming a part thereof); or (ii) insurance proceeds would have been available but for the Sellers' failure to maintain the Seller Insurance Policies, or due to the rights of any superior landlord or mortgagee, the Purchaser may withhold from the Purchase Price due on Closing and pay into the Escrow Account an amount equivalent to the aggregate cost of repairing such damage and restoring the Carling Property (including any fixtures and improvements forming a part thereof) to a condition substantially comparable to the condition prior to such damage or destruction (such cost to be determined by an independent and qualified architect or engineer mutually acceptable to the Sellers and Purchaser, each acting reasonably). The provisions of Article II.C of the Real Estate Terms and Conditions shall apply mutatis mutandis in respect of these escrow amounts and the completion of the repair and restoration works. To the extent that the Carling Property is destroyed or damaged after Closing, the terms of the Carling Property Lease Agreements shall apply.

SECTION 5.21. Sellers Deposits, Guarantees and Other Credit Support of the Business.

(a) Following the Closing, the Purchaser shall, or shall cause the applicable Designated Purchaser to, cooperate with the Sellers to procure the return and/or release by the applicable counterparty, as soon as reasonably practicable, of any lease security deposits given by the Sellers under any Leases that are Assigned Contracts or any deposits, bonds or other security posted in connection with Assigned Contracts and that are set forth in Section 5.21(a) of the Sellers Disclosure Schedule (which such Section of the Sellers Disclosure Schedule may be updated by the Sellers upon notice to the Purchaser up until three (3) Business Days prior to the Closing Date) (the "**Security Deposits**"), including where required by the applicable counterparty, offering to post such Security Deposits on terms and conditions no less favorable than offered to such Seller by such counterparty. Except as required by the immediately preceding sentence, the Purchaser shall in no event be required to provide any replacement financial security or any financial security or other deposits with

respect to any premises leased pursuant to any lease or sublease arrangement with any Seller, all of which shall be the sole responsibility of the Seller.

(b) The Purchaser shall, or shall cause the applicable Designated Purchaser to, hold the Sellers and their Affiliates harmless from and against any and all Losses suffered by the Sellers and their Affiliates resulting from, or relating to, the failure of the Purchaser or the applicable Designated Purchaser, as the case may be, to procure the return and/or release of the Security Deposits to the relevant Seller in accordance with Section 5.21(a); provided, however, that (i) the Purchaser shall have no liability to the Sellers and their Affiliates pursuant to this Section 5.21(b) unless the Sellers and their Affiliates assign to the Purchaser all of the Sellers' and their Affiliates' right, title and interest in the unreturned Security Deposits and (ii) the Purchaser's liability to the Sellers and their Affiliates shall be limited, in each case, to the amount of such Security Deposits.

SECTION 5.22. Use of Sellers' Trademarks. Except as expressly provided in the Trademark License Agreement, as of the Closing Date, the Purchaser shall not have the right to use the name "Nortel" or any Trademarks owned by the Sellers or any of their Affiliates or any other mark employing the word "Nortel" or any part or variation of any of the foregoing or any confusingly similar Trademarks to any of the foregoing (collectively, the "**Sellers' Trademarks**").

SECTION 5.23. Accessible Information. After the Closing, the Purchaser shall have the right to reasonably request from the Main Sellers copies of all books, records, files, documentation and sales literature (other than Tax records and Employee Records, except as provided in Sections 5.6(d) and 7.4(d)) in the possession or under control of the Sellers and held or used in the Business (other than records to the extent prohibited by applicable Law), to which the Purchaser in good faith determines it needs access for *bona fide* business or legal purposes. The Sellers shall use commercially reasonable efforts to, or cause their Respective Affiliates to use commercially reasonable efforts to, provide such copies to the Purchaser (at the Purchaser's expense) as soon as reasonably practicable; provided, that the Sellers shall be allowed to redact any such requested document in order to delete any information and data relating to business segments of any such Seller and its Respective Affiliates not included in the Business; provided, further, that nothing herein shall require the Sellers to (i) disclose any information to the Purchaser if such information disclosure would jeopardize any attorney-client or legal privilege or (ii) contravene any applicable Law, fiduciary duty or agreement (including any confidentiality agreement to which the Sellers or any of their Affiliates is a party); it being understood, that the Sellers shall cooperate in any reasonable efforts and requests for waivers that would enable otherwise required disclosure to the Purchaser to occur without so jeopardizing privilege or contravening such Law, duty or agreement).

SECTION 5.24. Maintenance of Books and Records. After the Closing, each Primary Party shall, and shall cause its Affiliates to, preserve, until at least the third (3rd) anniversary of the Closing Date (or, in the case of Tax records (including VAT records), such later date as may be required by Law), all pre-Closing Date records to the extent relating to the Business possessed or to be possessed by such Person. After the Closing Date and up until at least the third (3rd) anniversary of the Closing Date, upon any reasonable request from any Primary Party or its representatives, the other Primary Party shall, and/or shall cause the Person holding such records to, (a) provide to the requesting Primary Party or its representatives

reasonable access to such records during normal business hours and (b) permit the requesting Primary Party or its representatives to make copies of such records, in each case at no cost to the requesting Primary Party or its representatives (other than for reasonable out-of-pocket expenses). In addition, in the event that the financial statements of the Business are audited for any period prior to the Closing Date, upon execution of a customary access letter if required, the requesting Primary Party and its representatives (including their outside accountants) shall be granted access to all relevant documents and information in connection with the requesting Primary Party completing the audit of its accounts for the 2009 fiscal year; provided, however, that nothing herein shall require the non-requesting Primary Party to disclose any information to the requesting Primary Party if such disclosure would jeopardize any attorney-client or other legal privilege or contravene any applicable Law, fiduciary duty or agreement (it being understood that the non-requesting Primary Party shall cooperate in any reasonable efforts and requests for waivers that would enable otherwise required disclosure to the requesting Primary Party to occur without so jeopardizing privilege or contravening such Law, duty or agreement). Such records may be sought under this Section 5.24 for any reasonable purpose, including to the extent reasonably required in connection with accounting, litigation, federal securities disclosure or other similar needs of the requesting Primary Party (other than claims between the Primary Parties or any of their respective Subsidiaries under this Agreement or any Ancillary Agreement). Notwithstanding the foregoing, any and all such records may be destroyed by the non-requesting Primary Party if the non-requesting Primary Party sends to the requesting Primary Party written notice of its intent to destroy such records, specifying in reasonable detail the contents of the records to be destroyed; (i) such records may then be destroyed after the 60th day following such notice unless the requesting Primary Party notify the destroying party that the requesting Primary Party desire to obtain possession of such records, in which event the non-requesting Primary Party shall transfer or cause to be transferred the records to the requesting Primary Party and the requesting Primary Party shall pay all reasonable expenses of the non-requesting Primary Party in connection therewith, and (ii) neither Primary Party shall be required to provide the other Party access to, or copies of any of its Tax records.

SECTION 5.25. Certain Ancillary Agreements. The Primary Parties shall use their commercially reasonable efforts to:

(a) promptly negotiate in good faith with the relevant contract manufacturers and finalize the terms of the Contract Manufacturing Inventory Agreements based on the term sheet attached hereto as Exhibit 1.1;

(b) promptly negotiate in good faith with the LGN Joint Venture with respect to the LGN/Korea Distribution Agreement;

(c) promptly negotiate in good faith with NETAS with respect to the NETAS Distribution Agreement;

(d) negotiate in good faith with the relevant counterparties with respect to the NGS Distribution Agreement and the EFA Development Agreement;

(e) negotiate in good faith with respect to any Subcontract Agreement;

(f) on or before the Closing and subject to the completion prior to Closing of the negotiation of each such agreement to the mutual satisfaction of each party thereto, enter into the Contract Manufacturing Inventory Agreements, the LGN/Korea Distribution Agreement and the NETAS Distribution Agreement, the Mutual Development Agreement, the Seller Supply Agreement, the NGS Distribution Agreement and the EFA Development Agreement, each as negotiated and finalized pursuant to this Section 5.25; and

(g) negotiate, or to cause to be negotiated, in good faith on commercially reasonable terms and taking into account options available to the Primary Parties, appropriate commercial arrangements, including a potential Seller Supply Agreement and Mutual Development Agreement, in order to address interdependencies to the extent any bilateral relationships with other businesses, business segments or divisions (or former businesses, business segments or divisions) of certain Sellers for the supply of products are required to be in place in order to fulfill customer commitments existing as of the Closing Date and which will continue thereafter.

Notwithstanding the foregoing, the Primary Parties shall have no obligation to enter into any of the agreements described in this Section 5.25 unless each of them are satisfied, in their sole and absolute discretion with the terms thereof and it shall not be a breach of this Agreement to fail to enter into such agreements before, on or after the Closing Date; provided however, that the Parties acknowledge that the failure to enter into any such Agreement shall not be deemed a failure of any condition precedent to any Party's obligations hereunder. In the event that the Purchaser is unable prior to the Closing to negotiate terms and conditions for the Seller Supply Agreement that are satisfactory to it in its sole discretion, the Purchaser may by written notice to the Sellers given by January 18, 2010 elect to require that the Sellers purchase such amount of the components and other products intended to be supplied under the Seller Supply Agreement and such components and other products shall be transferred to the Purchaser as part of the Owned Inventory hereunder.

SECTION 5.26. Additional Financial Statements. The Sellers shall use commercially reasonable efforts to cause KPMG (as their independent accountants) to complete the audit of the combined carve-out (A) balance sheets for the Business at December 31, 2007 and 2008, (B) related statements of earnings and cash flows of the Business for the fiscal years ended December 31, 2007 and 2008, and (C) balance sheet for the Business at September 30, 2009, and (D) the related statements of earnings and cash flows of the Business for the nine (9) month period ending on September 30, 2009 and (E) only if the Closing Date is February 12, 2010 or later, a balance sheet for the Business at December 31, 2009 and related statements of earnings and cash flows of the Business for the fiscal year ended December 31, 2009 (any such balance sheets and statements of earnings and cash flows, collectively, the "**Audited Financial Statements**") and to deliver to the Purchaser as promptly as practicable, and in any event within three (3) Business Days of receipt thereof the Audited Financial Statements. The Sellers shall use commercially reasonable efforts to prepare and furnish the Purchaser with any other financial and other pertinent information regarding the Business as may be reasonably requested by the Purchaser, including all financial statements (including, to the extent required, unaudited combined carve-out financial statements of the Business as of the end of and for the nine (9) month period ended September 30, 2008, the "**Unaudited September 30, 2008 Financial Statements**") and financial data, in each case of the type required by Regulation S-X and Regulation S-K under the Securities Act or in order for the Purchaser to comply with its financial

reporting obligations as established by the SEC under the Exchange Act. The Sellers shall provide the Purchaser and its representatives with such cooperation and information as they shall reasonably request in connection with the Purchaser's compliance with its obligations under Section 8.1(a) hereof, or in order for the Purchaser to comply with its obligations as established by the SEC under the Securities Act and the Exchange Act.

SECTION 5.27. Securities Compliance. The Purchaser shall notify NASDAQ of the listing of the Shares as required by the NASDAQ listing rules prior to the Closing Date.

SECTION 5.28. Transition Services. Section 5.28 of the Sellers Disclosure Schedule addresses certain matters related to the Transition Services Agreement and the services to be performed by certain Affiliates of the Sellers for the Purchaser. The Parties agree that the terms and conditions set forth in Section 5.28 of the Sellers Disclosure Schedule are incorporated by reference herein and form a part of this Agreement.

SECTION 5.29. Standstill Period.

(a) From the date of this Agreement until the entry of the U.S. Bidding Procedures Order, and from the date of the conclusion of the Auction until the Closing Date or termination of this Agreement, neither any Seller nor any Affiliate of any Seller shall, directly or indirectly through any of its authorized representatives, (i) solicit, initiate or encourage or engage in discussions or negotiations with respect to any proposal or offer from any Person (other than the Purchaser or its Affiliates) relating to in each case any acquisition, divestiture, recapitalization, business combination or reorganization of or involving all or a substantial part of the business and operations of the Business (a "**Competing Transaction**"), (ii) furnish any information with respect to, or participate in, or assist, any effort or attempt by any Person to do or seek a Competing Transaction, (iii) execute any letter of intent or agreement providing for a Competing Transaction, or (iv) seek or support Bankruptcy Court approval of a motion or Order inconsistent with the transactions contemplated herein, provided, however, that nothing contained herein shall prohibit the Sellers from providing any Person with the bidding procedures for the sale of the Business and related documents, answering questions about the bidding procedures for the sale of the Business, announcing the execution of this Agreement or the Auction or selecting an Alternate Bid (as such term is defined in the U.S. Bidding Procedures Order) at Auction and obtaining approval of such Alternate Bid as an alternate bid; and provided that nothing herein shall limit the Sellers' ability to negotiate, file, seek approval of or consummate a Sponsored Reorganization Plan prior to the completion of the Auction.

(b) Notwithstanding the foregoing, the Sellers may provide continued access to written due diligence materials about the Business in an electronic data room (including written responses to requests for information made after the date hereof), to only such Person or Persons that (i) have access to such electronic data room as of the date hereof, and (ii) have satisfied the requirements of paragraph (a) of the "Participation Requirements" of the U.S. Bidding Procedures Order within ten (10) Business Days from the date hereof, it being understood that, during such ten (10) Business Day period, the Sellers will be allowed to (x) request such Persons to enter into amendments to their existing confidentiality agreements in order to render them compliant with the requirements of the bidding procedures for the sale of the Business, (y) discuss and negotiate such amendments

with those Persons, and (z) execute such amendments, and each such action shall not constitute a breach of this Section 5.29, provided, however, that the Sellers must provide the Purchaser at least equivalent access to all such written due diligence materials.

(c) Without prejudice to any other methods or actions that may result in the cure of any breach of this Section 5.29, the Parties acknowledge and agree that in the event that any officer or other employee of any Seller acting alone (without the assistance of outside advisors) in violation of a corporate policy approved by the board of directors of NNC takes an action that constitutes a breach of Section 5.29(a)(i) but does not constitute a breach of any other clause of this Section 5.29, such breach shall be deemed cured in the event such action ceases and one or more of the Sellers notifies the counterparty or counterparties to the potential Competing Transaction in writing that the Sellers will not undertake such Competing Transaction, in each case no later than the fifth (5th) day after the Sellers become aware of such breach (for such purposes excluding the knowledge of the employee or officer whose action constitutes such breach), provided that such action that constituted the breach did not involve substantive negotiations regarding the terms of such Competing Transaction.

SECTION 5.30. Hazardous Materials at the Carling Property.

(a) The Sellers acknowledge that the Purchaser and any Designated Purchaser did not cause or contribute to, and shall not be liable or responsible for, any currently or formerly existing Hazardous Materials contamination in, under, at, near or migrating from, to or through the Carling Property prior to or at the Closing Date.

(b) The Sellers that own and lease the Carling Property and the Purchaser agree that the relevant Sellers and the Purchaser or a Designated Purchaser shall include in the Carling Property Lease Agreements: (i) an acknowledgement that the Purchaser or a Designated Purchaser did not cause or contribute to, and shall not be liable or responsible for, the currently or formerly existing Hazardous Materials contamination in, under, at, near or migrating from, to or through the Carling Property prior to or at the commencement of the Carling Property Lease Agreements; (ii) an indemnity by the relevant Sellers in favor of the Purchaser and any Designated Purchaser for (A) any Liabilities, including any Order, arising (directly or indirectly) out of or relating to any currently or formerly existing Hazardous Materials contamination in, under, at, near or migrating from, to or through the Carling Property prior to or at the commencement of the Carling Property Lease Agreements and (B) if and to the extent caused by Sellers, any Liabilities, including any Order, arising (directly or indirectly) out of or relating to any Hazardous Materials contamination in, under, at, near or migrating from, to or through the Carling Property; and (iii) an indemnity by the Purchaser or Designated Purchaser, as the case may be, in favor of the Sellers for, if and to the extent caused by the Purchaser or Designated Purchaser, as the case may be, any Liabilities, if and to the extent caused by the Purchaser or Designated Purchaser, as the case may be, including any Order, arising (directly or indirectly) out of or relating to any Hazardous Materials contamination in, under, at, near or migrating from, to or through the Carling Property after the commencement of the Carling Property Lease Agreements.

SECTION 5.31. Montreal Premises and Other Real Estate. Before, on and after the Closing Date, the Parties shall take such actions as are contemplated by, and comply with, the Real Estate Terms and Conditions which shall be incorporated herein by reference. Without limiting the foregoing, at the Closing, the Purchaser and/or a Designated Purchaser and each applicable Seller shall enter into an Occupancy Agreement with respect to each Critical Location (identified in the Real Estate Terms and Conditions) and shall enter into a license agreement with respect to each Short-Term Licensed Property location which the Purchaser shall be licensed to occupy following the Closing Date, in each case on the terms and conditions specified in the Real Estate Terms and Conditions.

SECTION 5.32. Right to Exclude.

(a) At any time prior to the date of the Auction, the Purchaser may elect, by written notice to the Main Sellers, but without any effect on the Purchase Price or the Purchaser's obligation to offer employment to at least the numbers of Employees set out in Section 7.1.1, to designate as Excluded Assets all of the assets, interests and rights of any Other Seller other than any Other Seller with respect to which it has previously made an election under Section 2.2.3 if it is the case that, absent such election, by consummating the transactions contemplated hereby, the Purchaser or a Designated Purchaser would be reasonably likely to succeed to Liabilities of such Other Seller that are not Assumed Liabilities hereunder, or Liabilities of such Other Seller would be reasonably likely to be transferred to, or assumed by, the Purchaser or a Designated Purchaser, whether by operation of Law or otherwise (including, without limitation, any Liability for Taxes) (any such Other Seller so designated by the Purchaser, an "**Excluded Other Seller**". For the avoidance of doubt, if the Purchaser makes an election under this Section 5.32 with respect to any Excluded Other Seller, the provisions of Section 2.2.3 shall not apply to such Excluded Other Seller. Upon designation of any Excluded Other Seller, the assets, interests and rights of such Excluded Other Seller shall be Excluded Assets and any Liabilities of such Excluded Other Seller or otherwise relating to such Excluded Assets shall be Excluded Liabilities, and such Excluded Other Seller shall not be a Party to this Agreement, shall not be an Other Seller, and shall have no rights or obligations hereunder, provided that each Excluded Other Seller shall remain bound by the provisions of Article XI. In addition to the foregoing, following the designation of an Excluded Other Seller by the Purchaser, no sublease and no license or other arrangement pursuant to the Real Estate Terms and Conditions shall be required to be entered into with respect to any premises related to such Excluded Other Seller's operations prior to the date of the Purchaser's election. For the avoidance of doubt, the designation of assets, interests or rights in any country as Excluded Assets shall not in any way prevent the Purchaser or any of its Affiliates from engaging in the Business (defined as if such assets, interests or rights were not Excluded Assets) in such country either before or after the Closing. If a TSA Seller becomes an Excluded Other Seller pursuant to this Section 5.32, such entity shall not be required to be a party to the Transition Services Agreement. For the avoidance of doubt, the failure of any TSA Seller to become party to the Transition Services Agreement shall not in any way diminish the obligations of the remaining TSA Sellers to provide, or to cause one or more of the Providers to provide, all Services (as defined in the Transition Services Agreement). Notwithstanding anything herein to the contrary, the Parties agree that neither the Included Services nor the Extra Services shall include any service currently provided by an Excluded

Seller unless such service can reasonably be provided by the TSA Sellers without materially changing or burdening the operations of the TSA Sellers.

(b) The Main Sellers agree that, as of the Closing, (i) neither any Seller nor any Seller's Affiliate will be a party to any Contract with any Excluded Seller that will restrict the Purchaser or a Designated Purchaser, in any material respect, from engaging after the Closing in any business activity relating to the Business in the country where such Excluded Seller is located or organized; and (ii) the Sellers and their Affiliates will cease to supply Products or Services or provide other assistance to an Excluded Seller with respect to the Business (except to the extent required in order to allow such Excluded Seller to continue to perform any obligations under (x) a contract with one of its customers existing as of the date hereof, or (y) a contract with one of its customers entered into after the date hereof but before Closing that was entered into in the Ordinary Course, in each case which such Excluded Seller is required by such contract to perform until the earliest of (A) the expiration of such contract (without giving effect to any extension of the term thereof other than at the option of the counterparty thereto), (B) the earliest date on which such Excluded Seller has the right to terminate such contract without penalty or (C) the date on which such contract is terminated by the counterparty thereto; provided that the Purchaser and its Affiliates shall be under no obligation to make Products or Services (or any other products or services) available to the Sellers or their Affiliates or provide other assistance in connection therewith) and the Purchaser and its Affiliates will have no obligation to supply Products or Services (or any other products or services) or provide other assistance to the Excluded Sellers; provided that, notwithstanding clauses (i) and (ii) above, the Purchaser or a Designated Purchaser will, if requested to do so, perform any Subcontract Agreement that it enters into pursuant to Section 5.15(c) at the request of an Excluded Seller and the Sellers may be a conduit through which the Purchaser supplies Products or Services to an Excluded Seller.

SECTION 5.33. Authorization of Shares. The Purchaser will, at all times, duly authorize and reserve for issuance the Shares.

SECTION 5.34. Patent Assignments. Prior to the Closing Date, the Purchaser shall notify the Sellers in writing of any defects in title affecting any of the transferred Patents and the Sellers shall take, as soon as reasonably practicable thereafter, all reasonable steps necessary to ensure that NNL is the assignee on record in the relevant government registry or patent office, as applicable, for all transferred Patents and to correct all material defects in title affecting any of the transferred Patents that are still in force in the relevant jurisdiction.

SECTION 5.35. India. Section 5.35 of the Sellers Disclosure Schedule addresses certain matters related to the transfer of assets that are used by Nortel Networks Singapore Pte. Limited, Nortel Networks India International Inc. and Nortel Networks (India) Private Limited in the Business in India. The Parties agree that the terms and conditions set forth in Section 5.35 of the Sellers Disclosure Schedule are incorporated by reference herein and form a part of this Agreement.

SECTION 5.36. No Vote. The Purchaser will not take any action that would result in a requirement for the approval of shareholders or any securityholders of the Purchaser pursuant to NASDAQ Listing Rule 5635 or require any other action or consent pursuant to any

applicable exchange rules, regulations, interpretations or Laws in connection with the issuance of the Convertible Notes or the Shares upon the conversion thereof.

SECTION 5.37. Deposit. On or before November 25, 2009, the Purchaser shall deposit Thirty-Eight Million Four Hundred Fifty Thousand dollars ($38,450,000) (the "**Deposit Amount**") with Citibank, N.A. (the "**Deposit Escrow Agent**") pursuant to the terms and conditions of the Deposit Escrow Agreement substantially in the form attached as Exhibit AA hereto (the "**Deposit Escrow Agreement**"). Notwithstanding anything to the contrary set forth herein or the Deposit Escrow Agreement, the Deposit Amount shall not become a part of the Sellers' or the EMEA Sellers' estate until such time as the Deposit Escrow Agent receives joint written instructions from the Parties and Nortel Networks UK Limited instructing the Deposit Escrow Agent to disburse the Deposit Amount to the Distribution Agent or the Main Sellers. At the Closing, the Purchaser shall be entitled to a credit for the amount of the Deposit Amount against the Base Cash Purchase Price and the Parties and Nortel Networks UK Limited shall jointly instruct the Deposit Escrow Agent to disburse the Deposit Amount to the Distribution Agent. The Deposit Amount shall be returned and/or disbursed in accordance with the U.S. Bidding Procedures Order, this Agreement and the Deposit Escrow Agreement. In the event that all of the conditions to the Purchaser's obligations to Closing are satisfied and Purchaser fails to consummate the transactions contemplated hereby and by the Deposit Escrow Agreement and the Main Sellers terminate this Agreement pursuant to, and in accordance with Section 10.1(b)(ii), the Main Sellers and the EMEA Sellers shall be entitled to the Deposit Amount (less any interest earned thereon which shall be disbursed to the Purchaser) and within two (2) Business Days of such termination, the Parties shall jointly instruct the Deposit Escrow Agent to disburse the Deposit Amount to the Distribution Agent.

ARTICLE VI
TAX MATTERS

SECTION 6.1. Transfer Taxes.

(a) The Parties agree that the Purchase Price is exclusive of any Transfer Taxes. The Purchaser shall (on behalf of itself and the Designated Purchasers) promptly pay directly to the appropriate Tax Authority all applicable Transfer Taxes that are properly imposed upon or payable or collectible or incurred in connection with the purchase by the Purchaser (or a Designated Purchaser) of the Assets under this Agreement and in connection with the other Transaction Documents including, for greater certainty, any stamp, documentary, recording, filing and similar Taxes that may be imposed upon or payable or collectible or incurred in connection with the execution of this Agreement and any other Transaction Documents; provided that if any such Taxes are required to be collected, remitted, or paid by the Sellers or any Subsidiary of the Sellers or any agent thereof (as requested by the Sellers or any Subsidiary of the Sellers), they shall be paid by the Purchaser to the Sellers or any Subsidiary of the Sellers or any such agent, as applicable, at the Closing, as applicable, or thereafter as requested of or by the Sellers. For greater certainty, the Purchaser shall remain liable in respect of any Transfer Taxes for which it is liable under the terms hereof regardless of the date that the Assets purchased under this Agreement are removed by the Purchaser or its agents from the premises of the Sellers or any of the Sellers' suppliers. Upon request from a Seller, the Purchaser shall provide to such Seller an original receipt (or other such evidence as

shall be reasonably satisfactory to such Seller) evidencing the payment of Transfer Taxes by the Purchaser to the applicable Tax Authority under this Section 6.1(a).

(b) If the Purchaser or any Designated Purchaser wishes to claim or elect any exemption relating to, or a reduced rate of, Transfer Taxes, in connection with this Agreement or the other Transaction Documents (other than the EMEA Asset Sale Agreement, with respect to which Transfer Taxes are separately addressed therein), the Purchaser or any Designated Purchaser, as the case may be, acting reasonably and in good faith, shall be solely responsible for determining that such exemption, reduction or election (a "**Transfer Tax Reduction Determination**") applies. In such case, the Purchaser or the Designated Purchaser, as the case may be, shall provide the Sellers prior to Closing with its permit number, GST or other similar registration numbers and/or any appropriate certificate of exemption, election and/or other document or evidence to support the claimed entitlement to such exemption by the Purchaser or such Designated Purchaser, as the case may be, it being understood that Purchaser shall remain responsible for any Transfer Taxes whether or not shown due on such Tax Return and shall indemnify and hold harmless the Sellers and their respective officers and directors from any Losses arising out of or resulting from the Transfer Tax Reduction Determination, including without limitation, any Tax, interest, penalty or sanction. The Sellers shall, if applicable, agree to make a joint election under Section 167 of the Excise Tax Act (Canada) and other similar Canadian provincial sales tax elections. If the Purchaser or any Designated Purchaser pays any Transfer Taxes pursuant to this Section 6.1 and a Seller thereafter becomes entitled to a refund for, or a reduction in Liability for, Transfer Taxes payable by such Seller in respect of such Transfer Taxes paid by the Purchaser or a Designated Purchaser, then such Seller shall promptly reimburse the Purchaser or Designated Purchaser for an amount equal to such refund or reduction (including any interest paid in connection with such refund or reduction and net of reasonable out of pocket expenses incurred in obtaining such refund or reduction).

(c) Each of the Sellers shall cooperate with the Purchaser and its Affiliates in complying with the reporting requirements relating to any Transfer Taxes under applicable Law with respect to this Agreement and the Transaction Documents, and shall make reasonable efforts to cooperate to the extent necessary to obtain any exemption from, or any reduction in amount or rate of, Transfer Taxes sought by Purchaser or any Designated Purchaser. For the avoidance of doubt, such cooperation shall include any applicable Seller using reasonable efforts to obtain and/or furnish to the Purchaser or any Designated Purchaser any applicable information that is reasonably requested by Purchaser or any Designated Purchaser in connection with its efforts to obtain any exemption or reduction in amount or rate of Transfer Taxes, including through the provision of invoices, receipts or other documentation requested by Purchaser or any Designated Purchaser to document the payment of or establish the entitlement to a recovery or refund of, such Transfer Taxes or the eligibility of the transactions to qualify as a "transfer of a going concern" under applicable Law. Each Seller that is required by Law to collect VAT in connection with this Agreement and the Transaction Documents shall, prior to and on the Closing Date, be registered for VAT purposes in any jurisdiction applicable to such Seller.

(d) Each Tax Return with respect to Transfer Taxes (a "**Transfer Tax Return**") imposed upon or payable or collectible or incurred in connection with the purchase by the Purchaser (or a Designated Purchaser) of the Assets under this Agreement

shall be prepared by the Party that customarily has primary responsibility for filing such Transfer Tax Return pursuant to applicable Law. Any Transfer Tax Returns prepared by the Sellers pursuant to this Section 6.1(d) shall be made available to the Purchaser at least five (5) Business Days before such Tax Returns are due to be filed. The Purchaser shall be entitled to review and comment on any Transfer Tax Return prepared by the Sellers prior to making any payment in respect thereof, and the Sellers shall incorporate any reasonable comments received from Purchaser at least three (3) Business Days before such Tax Returns are due to be filed, it being understood that the Purchaser shall remain responsible for any Transfer Taxes whether or not shown due on such Tax Return. Subject to Section 6.1(a), the Purchaser shall pay to the Sellers the amount of any Transfer Taxes payable in respect of Transfer Tax Returns to be filed by the Sellers pursuant to this Section 6.1(d) at least one (1) Business Day before such Transfer Tax becomes due and payable.

(e) With respect to any provision of this Article VI that by its terms applies to another Transaction Document, such provision shall not apply to the other Transaction Document to the extent that such other Transaction Document contains a contrary provision or contains a provision that is inconsistent with the relevant provision of this Article VI. A reference to a Transaction Document in this Article VI shall not include the EMEA Asset Sale Agreement or the schedules thereto.

SECTION 6.2. Withholding Taxes. Subject to Section 2.4, the Purchasers and Designated Purchasers shall be entitled to deduct and withhold from the Purchase Price and other payments made under this Agreement and the Transaction Documents (other than the Transition Services Agreement, with respect to which withholding Taxes are separately addressed therein) such amounts as the Purchaser or Designated Purchasers, as the case may be, are required to deduct and withhold under the Code or under any provision of state, local or foreign Tax Law, with respect to the making of such payment. To the extent such amounts are so withheld by the Purchaser or a Designated Purchaser, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement and the Transaction Documents as having been paid to the relevant Seller in respect of whom such deduction and withholding was made by such Purchaser or Designated Purchaser. If any of the Parties learns of any obligation to deduct and withhold from the Purchase Price and other payments made under this Agreement or the Transaction Documents (other than the Transition Services Agreement, with respect to which withholding Taxes are separately addressed therein) on or prior to the Closing Date, then (i) in the case of a Seller, such Seller shall promptly provide reasonable notice of such obligation to the Purchaser, and (ii) in the case of the Purchaser, the Purchaser shall promptly provide reasonable notice of such obligation to the Sellers. The Parties shall cooperate in good faith to minimize the amounts that the Purchaser or Designated Purchasers, as the case may be, are required to deduct and withhold. In connection therewith, the Parties shall cooperate to obtain any applicable forms, certificates, or other documentation or information that is reasonably requested by a Party to obtain any exemption from, or reduced rate of, withholding on any payments made pursuant to this Agreement and the other Transaction Documents.

SECTION 6.3. Tax Characterization of Payments Under This Agreement. The Sellers and the Purchaser agree to treat all payments made either to or for the benefit of the other Party under this Agreement (other than any interest payments) 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.

SECTION 6.4. Apportionment of Taxes.

(a) Except as otherwise provided in this Article VI, (i) the Main Sellers shall and shall cause the Other Sellers, as the case may be, to bear all Taxes of any kind relating to the Assets or the conduct or operation of the Business (excluding the EMEA Business), in each case, for all Tax periods or portions thereof ending on or before the Closing Date and (ii) the Purchaser shall and shall cause the Designated Purchasers to bear all Taxes of any kind relating to the Assets or the conduct or operation of the Business (excluding the EMEA Business) for all Tax periods or portions thereof beginning after the Closing Date. The Sellers shall pay, when due, all Taxes apportioned to the Sellers under this Section 6.4(a) that could result in a liability of a Purchaser or Designated Purchaser as a successor or transferee or a Lien on any of the Assets in the hands of the Purchaser or Designated Purchaser. For purposes of the preceding sentence, a Tax shall be considered due when required to be paid after assessment (it being understood that Sellers shall have the right to pursue any action for reconsideration or appeal that under applicable law tolls the time for the payment of the disputed Tax and prevents the Tax Authority from availing itself of its collection remedies); provided that no Tax shall be considered due for purposes of this subsection to the extent payment thereof is excused under applicable Bankruptcy Law.

(b)

(i) For purposes of this Agreement, any Taxes for a "**Straddle Period**" (a Tax period that includes, but does not end on, the Closing Date) shall be apportioned between the Sellers, on the one hand, and the Purchaser and the Designated Purchasers, on the other hand, based on the portion of the period ending on and including the Closing Date and the portion of the period beginning after the Closing Date, respectively. The amount of any Taxes based on or measured by income or receipts of the Business (excluding the EMEA Business) shall be allocated between the Pre-Closing Taxable Period and the Post-Closing Taxable Period on a closing-of-the-books basis. The amount of other 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 (excluding, for the avoidance of doubt, any income Tax) and that applies rateably 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 6.1), such Taxes shall be allocated to the portion of the Straddle Period in which the relevant transaction occurred.

(ii) In the case where the parties do not file their own separate Tax Return for any Straddle Period under applicable Law, the party legally obligated to file any Tax Return for a Straddle Period (the "**Filing Party**") shall timely and accurately prepare and file such Tax Return and timely pay all Taxes due and payable on such Tax Return. Promptly upon the filing of any Tax Return for a Straddle Period, the party filing such Tax Return shall provide a copy of such Tax

Return to the Purchaser or Sellers, as the case may be, of the Assets to which such Tax Return relates, (the "**Non-Filing Party**") along with a calculation of the allocation of the Taxes shown to be due on such Tax Return between the Filing Party and the Non-Filing Party pursuant to this Section 6.4(b). Within ten (10) Business Days of the receipt of such Tax Return, the Non-Filing party shall, unless it timely objects to the calculation of the apportioned Tax based upon the principles set forth in this Section 6.4(b), pay to the Filing Party the amount shown in the calculation to be due by the Non-Filing Party. If the Non-Filing Party objects to the calculation of the apportioned Tax as prepared by the Filing Party in writing within ten (10) Business Days of the receipt of such Tax Return, the Filing Party and the Non-Filing Party shall negotiate in good faith a resolution of the calculation and the Non-Filing Party shall promptly pay to the Filing Party the amount of the apportioned Tax as finally resolved. If after five (5) Business Days of negotiation, the Parties cannot agree upon the apportioned Tax amount, they shall promptly submit the matter to the Accounting Arbitrator for final resolution as promptly as practical and the Accounting Arbitrator's decision shall be final and binding upon the Parties as to the amount of any disputed apportioned Tax, and the Non-Filing Party shall promptly pay to the Filing Party the amount of the disputed apportioned Tax as determined by the Accounting Arbitrator. The costs of the Accounting Arbitrator shall be borne by the Party whose position is less correct in the judgment of the Accounting Arbitrator.

(c) Prior to, on and after the Closing Date, each of the Sellers shall reasonably cooperate with the Purchaser and its Affiliates (i) to obtain any applicable forms, certificates, or other information and (ii) to comply with clearance procedures established under applicable Law in the jurisdictions in which the Assets are being transferred hereunder to establish, quantify, reduce or eliminate the extent to which the Purchaser or any Designated Purchaser could be liable for any Taxes of the Sellers that are Excluded Liabilities, including by reason of a Lien being filed on the Assets or as a result of such Purchaser or Designated Purchaser having liability as a transferee or successor under applicable Law; provided that such cooperation shall not include a liquidation or restructuring of a Seller or any business of a Seller, and provided further that such cooperation would not: (i) in the Sellers' opinion, acting reasonably and in good faith, result in the imposition on the Sellers of any director's or officer's liability or Tax liability (other than any amount necessary to pay any Taxes of the Sellers that are Excluded Liabilities that Sellers are required to pay (as being due) under Section 6.4(a) at the time such cooperation is provided and any interest, penalties and additions to Tax thereon) that is not fully and promptly reimbursed by the Purchaser and its Affiliates; or (ii) cause any of the Sellers to bear any other out-of-pocket cost or expense that is not fully and promptly reimbursed by the Purchaser and its Affiliates; and provided further that such cooperation would not violate applicable Law, including Bankruptcy Laws as applied to the relevant Seller(s) and any order or other legal obligation of a Seller arising out of the Bankruptcy Proceedings. For the avoidance of doubt, such cooperation shall include taking actions necessary to comply with Tax clearance procedures established under applicable Law in Argentina and Hong Kong.

SECTION 6.5. Tax Records.

(a) Notwithstanding the provisions of Section 5.6(a), Section 5.23 and Section 5.24, but subject to the provisions of Section 5.6(e) (i) after the date of the Auction, the Purchaser and the Designated Purchasers, on the one hand, and the Sellers, on the other hand, will make available to the other, as reasonably requested, and to any Tax Authority, all information, records or documents relating to Taxes with respect to the Assets, Assumed Liabilities or the Business (excluding the EMEA Business) for all periods prior to and including 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 (ii) in the event that one party reasonably needs access to the records in the possession of a second party relating to the Assets, Assumed Liabilities or the Business (excluding the EMEA Business) for purposes of preparing Tax Returns or complying with any Tax audit request, subpoena or any 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 and 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 6.5(a) shall terminate at the time the relevant applicable statute of limitations expires (giving effect to any extension thereof).

(b) On or prior to Closing, the Sellers shall cause copies of Restricted Technical Records to be placed into escrow with the Records Custodian, who shall hold such Restricted Technical Records for ten (10) years in accordance with an escrow agreement between the Purchaser, the Sellers and the Records Custodian, in form satisfactory to the Purchaser and the Main Sellers. The escrow agreement will provide for access to the copies of the Restricted Technical Records only by the relevant Canadian Tax Authority or by Tax advisors of any purchaser ("**Tax Credit Purchaser**") of the scientific research and experimental development tax credits of the Sellers under the Income Tax Act (Canada), and only if such advisors have executed an appropriate confidentiality agreement in form satisfactory to the Purchaser. The access permitted by the escrow agreement shall be only for the limited purpose of defending any audit, claim or action by any Canadian Tax Authority in respect of the characterization of expenditures by NNL or Nortel Networks Technology Corporation ("**NNTC**") as qualified expenditures on scientific research and experimental development for purposes of the applicable provisions of the Income Tax Act (Canada) ("**Qualified Expenditures**").

(c) The Purchaser shall use reasonable efforts to make available to the relevant Taxing Authority or Tax advisors of the Tax Credit Purchaser, those former employees of NNL or NNTC, as the case may be, with direct knowledge of the Qualified Expenditures who are then employed by the Purchaser and whose cooperation is necessary for the purpose of defending any audit, claim or action by any Taxing Authority of the characterization of expenditures by NNL or NNTC, as the case may be, as Qualified Expenditures, and provided such advisors have executed an appropriate confidentiality agreement satisfactory to the Purchaser.

(d) The Purchaser shall have no obligation to provide any access under this provision unless the Seller (if there is no Tax Credit Purchaser in respect of the request for access) or the Tax Credit Purchaser pays all the Purchaser's reasonable expenses in connection with the foregoing provisions, including a reasonable per diem rate for access to former employees of NNL or NNTC, as the case may be (based on the total compensation of the employee at the time access is provided).

SECTION 6.6. Cooperation.

(a) The Sellers and the Purchaser shall reasonably cooperate with each other in connection with the conduct of any Tax audit, investigation, dispute, or appeal relating to any Pre-Closing Taxable Period.

(b) Notwithstanding the provisions of Section 5.6, but subject to the provisions of Section 5.6(e) and, solely with respect to the subject matter addressed therein, subject to Section 6.5(a), from and after the date hereof through the Closing Date, (i) the Sellers shall reasonably cooperate with the Purchaser and its Affiliates to develop and provide such information as is reasonably requested and reasonably necessary to permit the Purchaser and its Affiliates to identify and timely comply with their respective obligations under applicable Tax Laws arising out of this Agreement and the other Transaction Documents and (ii) the Sellers shall reasonably cooperate with the Purchaser and its Affiliates to structure and carry out the transactions between the Sellers, on the one hand, and the Purchaser and its Affiliates, on the other hand, contemplated by this Agreement and the other Transaction Documents in a tax-efficient manner (including, without limitation, to limit withholding Taxes and irrecoverable VAT with respect to the transactions contemplated by this Agreement and the Transaction Documents); provided that any such cooperation to be provided in (i) and (ii) above would not include a liquidation or restructuring of a Seller or any business of a Seller, would not result in the imposition on any Seller of any additional Tax Liability or cause any Seller to bear any additional out-of-pocket cost or expense, in each case which is not fully and promptly reimbursed by the Purchaser and its Affiliates and such cooperation would not violate applicable law, including Bankruptcy Laws as applicable to the relevant Seller(s) and any order or other legal obligation of a Seller arising out of the Bankruptcy Proceedings

SECTION 6.7. North American Tax Escrow.

(a) In the event that any Tax Authority shall (A) make any claim against any Purchaser, Designated Purchaser, or any of their Affiliates (a "**Purchaser Party**") for any Taxes that are Excluded Liabilities of any Seller or (B) have in its favor a Lien on any of the Assets arising out of the non-payment of any Taxes that are Excluded Liabilities of a Seller (any Taxes described in (A) and (B) above hereby are referred to collectively as "**Excluded Taxes**"), such Purchaser Party shall be entitled to recover all Losses arising out of or in connection with such Excluded Taxes promptly (in accordance with the following provisions) by obtaining cash from the Tax Escrow Amount in an amount equal to the aggregate amount of such Losses, provided that (i) the aggregate amount to be recovered under this Section 6.7 in respect of such Losses shall not exceed the Tax Escrow Amount (plus any accrued interest on the Tax Escrow Amount); and (ii) the only Losses recoverable under this Section 6.7 shall be Losses incurred by a Purchaser Party after the earlier of the

date on which a Tax Authority has made a claim described in (A) above or registered or imposed a Lien described in (B) above, as applicable.

(b) If a claim for Losses under Section 6.7(a) (a "**Tax Claim**") is to be made by a Purchaser Party, the Purchaser shall give written notice (a "**Claim Notice**") on behalf of such Purchaser Party to the Main Sellers promptly after such Purchaser Party becomes aware that a Tax Authority has made a claim against it for any Excluded Taxes or that such Taxes have given rise to a Lien described in clause (B) of subsection (a) above, as applicable, stating, with reasonable specificity, the basis for the Tax Claim, and including a copy of all relevant documents received from the relevant Tax Authority. In the event that any Purchaser Party is entitled to recover the amount of any such Losses from the Tax Escrow Amount, the Purchaser and the Main Sellers shall issue joint written instructions to the Escrow Agent authorizing distribution of the amount of such Losses to such Purchaser Party and such Purchaser Party shall be responsible for paying over to the relevant Tax Authority the amount of Excluded Taxes distributed to it from the Tax Escrow Amount to the extent it has not already done so at the time of the distribution of such amount from such fund and shall provide Sellers with such written evidence as is reasonably requested in writing to confirm that payment to the relevant Tax Authority has been duly made.

(c) Upon delivery by the Sellers to the Purchaser prior to Closing of a certificate or other documentation issued by the Hong Kong Inland Revenue Department reasonably satisfactory in form and content to the Purchaser confirming that Nortel Networks (Asia) Limited has no outstanding Tax Liabilities, the Tax Escrow Amount payable on Closing to the Escrow Agent shall be reduced by $5,000,000.

(d) Upon delivery by the Sellers to the Purchaser after Closing of a certificate or other documentation issued by the Hong Kong Inland Revenue Department reasonably satisfactory in form and content to the Purchaser confirming that Nortel Networks (Asia) Limited has no outstanding tax liabilities, and provided that a Purchaser Party has not served a valid Claim Notice to the Main Sellers before that time in respect of a Tax Claim relating to Excluded Taxes of Nortel Networks (Asia) Limited, the Purchaser and the Main Sellers shall deliver to the Escrow Agent joint written instructions to release to the Distribution Agent, on behalf of the Sellers and the EMEA Sellers, $5,000,000 out of the Tax Escrow Amount (or such lesser amount remaining therein at that time).

(e) On the date that is the first Business Day after the third anniversary of the Closing Date, the Purchaser and the Main Sellers shall deliver to the Escrow Agent joint written instructions to release to the Distribution Agent, on behalf of the Sellers and the EMEA Sellers, any remaining portion of the Tax Escrow Amount (including any accrued interest thereon) in excess of an amount equal to the aggregate of all Tax Claims which have been asserted prior to such date evidenced by one or more Claim Notices and which remain pending and unresolved on such date. Thereafter, as soon as reasonably practicable after the final resolution of any such Tax Claims, the Purchaser and the Main Sellers shall issue joint written instructions to the Escrow Agent to release to the Distribution Agent, on behalf of the Sellers and the EMEA Sellers, any remaining portion of the Tax Escrow Amount (including any accrued interest thereon).

(f) In the event that a Claim Notice is served, the Purchaser shall take such steps as are commercially reasonable to mitigate or otherwise defend the assessment(s) made by the relevant Tax Authority. In the event that a payment is made to a Purchaser Party pursuant to this Section 6.7, and subsequently a Purchaser Party becomes entitled to and receives a refund of Excluded Taxes (in whole or in part), then the Purchaser shall, or shall cause the relevant Purchaser Party to, promptly pay to the Distribution Agent, on behalf of the Sellers and the EMEA Sellers, an amount equal to such refund (including any interest paid in connection with such refund), net of reasonable out-of-pocket expenses incurred by the Purchaser Party in obtaining such refund, unless (i) such refund is received prior to the third anniversary of the Closing Date or (ii) at the time the refund is received, the Tax Escrow Amount is less than the sum of the Tax Claims that are evidenced by one or more Claim Notices and which remain pending and unresolved on such date, then, in each case, the Purchaser Party shall pay the net amount of such refund to the Escrow Agent to be added to the Tax Escrow Amount.

(g) Notwithstanding anything to the contrary in this Agreement (including, without limitation, the provisions of Section 11.1 of this Agreement as applied to provisions other than those contained in this Article VI), recourse to the Tax Escrow Amount under this Section 6.7 shall be the sole and exclusive remedy available to the Purchaser and any Designated Purchaser following the Closing in respect of any liability for Taxes that are Excluded Liabilities of a Seller or any liability for Taxes that give rise to any Lien on any Assets.

SECTION 6.8. EMEA Tax Escrow.

(a) In the event that any Tax Authority shall make any claim against Purchaser or any EMEA Designated Purchaser or any of their Affiliates (an "**EMEA Purchaser Party**") for (A) any Taxes that are EMEA Excluded Liabilities of any EMEA Seller or (B) any Succession Tax Liabilities or (C) any Succession Tax Lien (any Taxes described in (A) and (B) and (C) above hereby are referred to collectively as "**EMEA Excluded Taxes**"), such EMEA Purchaser Party shall be entitled to recover all Losses arising out of or in connection with such EMEA Excluded Taxes promptly (in accordance with the following provisions) by obtaining cash from the EMEA Tax Escrow Amount in an amount equal to the aggregate amount of such Losses, provided that: (i) the aggregate amount to be recovered under this Section 6.8 in respect of such Losses shall not exceed the EMEA Tax Escrow Amount (plus any accrued interest on the EMEA Tax Escrow Amount); (ii) the only Losses recoverable under this Section 6.8 shall be Losses incurred by an EMEA Purchaser Party after a Tax Authority has made a claim described in (A), (B) or (C) above, as applicable; and (iii) no claim shall be allowed by any EMEA Purchaser Party in respect of Italian Excluded Taxes other than pursuant to Section 6.9 below.

(b) If a claim for Losses under subsection (a) (an "**EMEA Tax Claim**") is to be made by an EMEA Purchaser Party, the Purchaser shall give written notice (an "**EMEA Tax Claim Notice**") on behalf of such EMEA Purchaser Party to the Joint Administrators promptly after such EMEA Purchaser Party becomes aware that a Tax Authority has made a claim against it for any EMEA Excluded Taxes or that such Taxes have given rise to any Succession Tax Lien for which recovery is sought under this Section 6.8, stating, with reasonable specificity, the basis for the EMEA Tax Claim and the amount

of EMEA Excluded Taxes claimed, and including a copy of all relevant documents received from the relevant Tax Authority. In the event that any EMEA Purchaser Party is entitled to recover the amount of any such Losses from the EMEA Tax Escrow Amount, the Purchaser and the Joint Administrators shall issue joint written instructions to the Escrow Agent authorizing distribution of the amount of such Loss to such EMEA Purchaser Party and such EMEA Purchaser Party shall be responsible for paying over to the relevant Tax Authority the amount of such EMEA Excluded Taxes distributed to it from the EMEA Tax Escrow Amount to the extent it has not already done so at the time of the distribution of such amount from such fund, and shall provide the Joint Administrators with such written evidence as is reasonably requested in writing to confirm that payment to the relevant Tax Authority has been duly made.

(c) On the date that is the first Business Day after the third anniversary of the Closing Date, the Purchaser and the Joint Administrators shall deliver to the Escrow Agent joint written instructions to release to the Distribution Agent, on behalf of the Sellers and EMEA Sellers, any remaining portion of the EMEA Tax Escrow Amount (including any accrued interest thereon) in excess of an amount equal to the aggregate of all EMEA Tax Claims which have been asserted prior to such date evidenced by one or more EMEA Tax Claim Notices and which remain pending and unresolved on such date. Thereafter, as soon as reasonably practicable after the final resolution of all such EMEA Tax Claim(s), the Purchaser and the Joint Administrators shall issue joint written instructions to the Escrow Agent to release to the Distribution Agent, on behalf of the Sellers and EMEA Sellers, the remaining portion of the EMEA Tax Escrow Amount (including any accrued interest thereon).

(d) In the event that an EMEA Claim Notice is served, the Purchaser shall take such steps as are commercially reasonable to mitigate or otherwise defend the assessment(s) made by the relevant Tax Authority. In the event that a payment is made to an EMEA Purchaser Party pursuant to this Section 6.8, and subsequently an EMEA Purchaser Party or any Affiliate becomes entitled to and receives a refund of amounts in respect of EMEA Excluded Taxes, then the Purchaser shall or shall procure that the relevant EMEA Purchaser Party shall promptly pay to Distribution Agent, on behalf of the Sellers and EMEA Sellers, an amount equal to such refund (including any interest paid in connection with such refund), net of reasonable out-of-pocket expenses incurred by the EMEA Purchaser Party in obtaining such refund, unless (i) such refund is received prior to the third anniversary of the Closing Date or (ii) at the time the refund is received, the EMEA Tax Escrow Amount is less than the sum of the EMEA Tax Claims that are evidenced by one or more EMEA Tax Claim Notices and which remain pending and unresolved on such date, then, in each case, the Purchaser Party shall pay the net amount of such refund to the Escrow Agent to be added to the EMEA Tax Escrow Amount.

SECTION 6.9. Italian Tax Escrow.

(a) In the event that any Tax Authority in Italy shall make any claim against the Purchaser or any EMEA Designated Purchaser or any of their Affiliates (an "**Italian Purchaser Party**") for (A) any Taxes that are EMEA Excluded Liabilities of any EMEA Seller or (B) any Succession Tax Liabilities or (C) any Succession Tax Lien (any such Taxes are hereby are referred as "**Italian Excluded Taxes**"), such Italian Purchaser

Party shall be entitled to recover all Losses arising out of or in connection with such Italian Excluded Taxes promptly (in accordance with the following provisions) by obtaining cash from the Italian Tax Escrow Amount in an amount equal to the aggregate amount of such Losses, provided that: (i) the aggregate amount to be recovered under this Section 6.9 in respect of such Losses shall not exceed the Italian Tax Escrow Amount (plus any accrued interest on the Italian Tax Escrow Amount); and (ii) the only Losses recoverable under this Section 6.9 shall be Losses incurred by an Italian Purchaser Party after a Tax Authority in Italy has made a claim.

(b) If a claim for Losses under subsection (a) (an "**Italian Tax Claim**") is to be made by an Italian Purchaser Party, the Purchaser shall give written notice (an "**Italian Tax Claim Notice**") on behalf of such Italian Purchaser Party to the Joint Administrators promptly after such Italian Purchaser Party becomes aware that a Tax Authority in Italy has made a claim against it for Italian Excluded Taxes or that such Taxes have given rise to any Succession Tax Lien for which recovery is sought under this Section 6.9, stating, with reasonable specificity, the basis for the Italian Tax Claim and the amount of Italian Excluded Taxes claimed, and including a copy of all relevant documents received from the relevant Tax Authority. In the event that any Italian Purchaser Party is entitled to recover the amount of any such Losses from the Italian Tax Escrow Amount, the Purchaser and the Joint Administrators shall issue joint written instructions to the Escrow Agent authorizing distribution of the amount of such Loss to such Italian Purchaser Party and such Italian Purchaser Party shall be responsible for paying over to the relevant Tax Authority the amount of such Italian Excluded Taxes distributed to it from the Italian Tax Escrow Amount to the extent it has not already done so at the time of the distribution of such amount from such fund, and shall provide the Joint Administrators with such written evidence as is reasonably requested in writing to confirm that payment to the relevant Tax Authority has been duly made.

(c) On the date that is the first Business Day after the third anniversary of the Closing Date, the Purchaser and the Joint Administrators shall deliver to the Escrow Agent joint written instructions to release to the Distribution Agent, on behalf of the Sellers and EMEA Sellers, any remaining portion of the Italian Tax Escrow Amount (including any accrued interest thereon) in excess of an amount equal to the aggregate of all Italian Tax Claims which have been asserted prior to such date evidenced by one or more Italian Tax Claim Notices and which remain pending and unresolved on such date. Thereafter, as soon as reasonably practicable after the final resolution of all such Italian Tax Claim(s), the Purchaser and the Joint Administrators shall issue joint written instructions to the Escrow Agent to release to the Distribution Agent, on behalf of the Sellers and EMEA Sellers, the remaining portion of the Italian Tax Escrow Amount (including any accrued interest thereon).

(d) In the event that an Italian Claim Notice is served, the Purchaser shall take such steps as are commercially reasonable to mitigate or otherwise defend the assessment(s) made by the relevant Tax Authority. In the event that a payment is made to an Italian Purchaser Party pursuant to this Section 6.9, and subsequently an Italian Purchaser Party or any Affiliate becomes entitled to and receives a refund of amounts in respect of Italian Excluded Taxes, then the Purchaser shall or shall procure that the relevant Italian Purchaser Party shall promptly pay to Distribution Agent, on behalf of the Sellers and

EMEA Sellers, an amount equal to such refund (including any interest paid in connection with such refund), net of reasonable out-of-pocket expenses incurred by the Italian Purchaser Party in obtaining such refund, unless (i) such refund is received prior to the third anniversary of the Closing Date (other than where, prior to such refund being received, the provisions at Section 6.9(f) have applied) or (ii) at the time the refund is received, the Italian Tax Escrow Amount is less than the sum of the Italian Tax Claims that are evidenced by one or more Italian Tax Claim Notices and which remain pending and unresolved on such date, then, in each case, the Purchaser Party shall pay the net amount of such refund to the Escrow Agent to be added to the Italian Tax Escrow Amount.

(e) Upon delivery by Nortel Italy to the Purchaser prior to Closing of a certificate, ruling or other documentation issued by the Tax Authorities in Italy (including but not limited to a response to the Interpellation addressed to the regional department of the Revenue Office of Lombardy as submitted by Nortel Italy on 4 August 2009) reasonably satisfactory in form and content to the Purchaser (acting in good faith), and, if such certificate, ruling or other documentation does not address Succession Tax Liens, such other written evidence as is reasonably satisfactory in form and content to the Purchaser (acting in good faith) addressing Succession Tax Liens, together confirming either:

(i) that Nortel Italy does not have any liabilities for Tax that could become Succession Tax Liabilities or Succession Tax Liens; or

(ii) that it is not possible (whether as a result of Bankruptcy Proceedings or otherwise) for liabilities for Tax of Nortel Italy to become Succession Tax Liabilities or Succession Tax Liens,

then the Italian Escrow Amount payable on Closing to the Escrow Agent shall be reduced to nil.

(f) Upon delivery by Nortel Italy to the Purchaser after Closing of a certificate, ruling or other documentation issued by the Tax Authorities in Italy (including but not limited to a response to the Interpellation addressed to the regional department of the Revenue Office of Lombardy as submitted by Nortel Italy on 4 August 2009) reasonably satisfactory in form and content to the Purchaser (acting in good faith) and, if such certificate, ruling or other documentation does not address Succession Tax Liens, such other written evidence as is reasonably satisfactory in form and content to the Purchaser (acting in good faith) addressing Succession Tax Liens, together confirming either:

(i) that Nortel Italy does not have any liabilities for Tax that could become Succession Tax Liabilities or Succession Tax Liens; or

(ii) that it is not possible (whether as a result of Bankruptcy Proceedings or otherwise) for liabilities for Tax of Nortel Italy to become Succession Tax Liabilities or Succession Tax Liens,

then the Purchaser and Joint Administrators shall deliver to the Escrow Agent joint written instructions to release to the Distribution Agent, on behalf of the Sellers and the EMEA Sellers, any remaining portion of the Italian Tax Escrow Amount (including any accrued

interest thereon) in excess of an amount equal to the aggregate of all Italian Tax Claims which have been asserted prior to such date evidenced by one or more Italian Tax Claim Notices and which remain pending and unresolved on such date, provided that as soon as reasonably practicable after the final resolution of each such Italian Tax Claim, the Purchaser and the Joint Administrators shall issue joint written instructions to the Escrow Agent to release to the Distribution Agent, on behalf of the Sellers and EMEA Sellers, the remaining portion of the Italian Tax Escrow Amount referable to that Italian Tax Claim (including any accrued interest thereon).

ARTICLE VII
EMPLOYMENT MATTERS

SECTION 7.1. Employment Obligations with Respect to Non-Union Employees.

Except for the provisions of Section 7.1.1(a) and the first three (3) sentences of Section 7.1.2(b)(ii)(B), the provisions of this Section 7.1 shall apply only with respect to Non-Union Employees. Subject to the clarificatory wording in 7.1.1(a) and the provisions relating to the Closing Accrued Vacation and Service Award Amount, the Excess ARD Employees Amount and the Closing Retirement Obligation Amount, the provisions of this Agreement shall not apply to EMEA Employees.

7.1.1. Employment Terms.

(a) Within thirty (30) days following the completion of the Auction, the Purchaser shall notify the Sellers of the identity of the Employees on Section 4.10(b) of the Sellers Disclosure Schedule by unique identifier (the "**Identified Employees**") to whom the Purchaser or a Designated Purchaser intends to provide a written offer of employment or notice of continued employment in accordance with applicable Law (each an "**Offer**" and collectively, the "**Offers**"); provided that, promptly after the date hereof, the relevant Sellers have permitted the Purchaser with access to such information as the Purchaser reasonably requires in accordance with Section 5.6(d) and Section 7.4(c) in order to make such identifications (except as prohibited by Law). As soon as reasonably practicable following the latest of the granting of the U.S. Sale Order and the Canadian Approval and Vesting Order, but in any event no later than the time required to provide the Offer Consideration Period described below, the Purchaser shall, or shall cause a Designated Purchaser to, extend a minimum of Two Thousand (2,000) Offers, which number shall include all EMEA Transferring Employees, whose employment shall be governed by the EMEA Asset Sale Agreement (for the avoidance of doubt, no Offers will be required to be made to ARD Transferring Employees whose contracts of employment will transfer to the Purchaser by operation of Law, but the number of EMEA Transferring Employees will be included within the minimum number set forth above, and the terms of Offers made to Non-ARD Transferring Employees will be governed by the EMEA Asset Sale Agreement), plus a sufficient number of Employees equal to, in total, such minimum number, with employment of such Employee who is not an EMEA Employee to take effect as of the Effective Hire Date, as defined below. Such Offers to Employees (who are not EMEA Employees) shall be contingent (i) in the discretion of the Purchaser, on each such Employee passing a background check and, if such Employee is located in the United States, drug screening, in all cases, to the extent permitted and consistent with applicable Law and except with respect

to Union Employees, and (ii) in the case of Inactive Employees, upon their return to active status (other than Employees set forth on Section 7.1.1(a) of the Sellers Disclosure Schedule whose employment transfers automatically by operation of Law to the Purchaser or a Designated Purchaser) with the Purchaser or one of its Affiliates within two (2) years following the date of the commencement of the leave or such longer period as provided under applicable Law. The Offers shall be made prior to the Closing in compliance with Section 7.1.1 and shall provide each such Employee with a consideration period prior to the Closing that is no less than two (2) weeks with respect to Employees located in Japan and with respect to Employees located in other countries, one week, or such longer period as required by applicable Law (the "**Offer Consideration Period**"). The Sellers shall have the right to review any form Offer with respect to a particular jurisdiction (and any Offer that deviates in any material respect from the form Offer with respect to the relevant country) made pursuant to Section 7.1.1 prior to it being sent to any Employee. As soon as reasonably practicable following the Sellers' receipt from the Purchaser of the notice containing the Identified Employees (as required pursuant to the first sentence of this Section 7.1.1(a)) but in all events prior to Closing, the Sellers shall take any and all action permitted under applicable Law legally necessary to cause the termination of employment, effective prior to the Closing, of each Employee set forth on Section 4.10(b) who is not an Identified Employee but only to the extent such employment would otherwise transfer to the Purchaser or a Designated Purchaser by operation of Law.

(b) For Employees employed in Canada and the United States, the Offers shall be in accordance with applicable Law and provide terms and conditions of employment as of such Employee's Effective Hire Date that will consist of (i) either the same annual base salary (whether on a salary, wage or hourly rate basis) and annual incentive plan target amount for such Employee as set out in the Employee Information or a substantially comparable overall compensation package (taking into account any equity-based compensation that may be offered by Purchaser or its Affiliates to such Employee) to such annual base salary and annual incentive plan target amount set out in the Employee Information, (ii) a location of employment reasonably close to such Employee's current location as set out in the Employee Information, and (iii) employee benefits that are substantially comparable in the aggregate to (A) employee benefits received by such Employee from the Sellers as of the date hereof or (B) employee benefits provided by the Purchaser (or any of its Affiliates) to its similarly situated employees.

(c) For all Employees set forth in Section 4.10(b) of the Sellers Disclosure Schedule (other than Employees in Canada and the United States) in any country set forth on Section 7.1.1(c) of the Seller Disclosure Schedule where the number of Employees in such country is ten (10) or more, the Purchaser's Offer to Employees in such country shall be in accordance with applicable Law and on terms and conditions not less favorable in the aggregate than those terms and conditions received by the Employees as of the date hereof as disclosed in Section 4.10(a) and Section 4.10(b) of the Sellers Disclosure Schedule, subject to certain adjustments to conform to the Purchaser's (or its Affiliates') standard employment policies where legally possible; provided, that, following the Employee Transfer Date, nothing shall prohibit the Purchaser or any Designated Purchaser from making changes to such terms and conditions of employment that are generally applicable and broadly based across the Purchaser's or Designated Purchaser's employee

population in the particular country; provided, further that in no event other than as required by applicable Law, shall the Purchaser or a Designated Purchaser be required to (i) provide defined benefit pension plans, or (ii) take into account defined benefit pension benefits, post retirement health and welfare benefits, severance or retention, the KEIP or KERP, equity compensation, non-qualified deferred compensation plans, non-qualified retirement plans or retirement allowance plans of the Sellers or any of their Affiliates when determining whether terms and conditions of employment are no less favorable in the aggregate.

(d) For Employees other than Employees referred to in Section 7.1.1(b) or Section 7.1.1(c), the Purchaser's Offer to such Employee shall be in accordance with applicable Law and on such terms and conditions of employment reasonably competitive with those received by similarly situated employees in the local market.

(e) Employees whose employment transfers automatically by operation of Law to the Purchaser or a Designated Purchaser will have their terms and conditions of employment governed by such applicable Laws, but at a minimum shall receive terms and conditions of employment that are no less favorable than those employees in Section 7.1.1(c) or Section 7.1.1(d), as applicable, based on the number of the Sellers' Employees in the country where such Employees are employed, except with respect to Employees located in the Province of Quebec, Canada, as indicated in the Employee Information, who shall be treated in accordance with 7.1.1(b).

(f) Any Employee who accepts an Offer and commences employment with the Purchaser or a Designated Purchaser pursuant to this Agreement, and any Employees whose employment transfers by operation of Law, shall each be deemed to be a Transferred Employee for all purposes of this Agreement. Inactive Employees shall remain employed by the relevant Seller until their release in the Ordinary Course to return to active status with the Purchaser or one of its Affiliates within two (2) years following the date of the commencement of the leave or such longer period as provided under applicable Law. Visa Employees and Seconded Employees shall remain employed by the relevant Seller under the terms and conditions of the Loaned Employee Agreement. The Purchaser or a Designated Purchaser shall use commercially reasonable efforts beginning immediately after the date of the Auction to obtain, prior to the Closing Date, and beyond if necessary, at Purchaser's cost, such visas or permits as are required for Purchaser or a Designated Purchaser to employ any Visa Employee who accepts an Offer effective as of the Effective Hire Date. The Purchaser or Designated Purchaser shall use commercially reasonable efforts beginning promptly following the notification to Sellers of the Identified Employees (as provided for in Section 7.1.1(a)) to resolve, as soon as reasonably practicable following such notification, at the Purchaser's cost, any impediments to Purchaser's or Designated Purchaser's employment of Employees in countries set forth in Section 1.1(m) of the Sellers Disclosure Schedule.

(g) The Effective Hire Date for Employees is (i) the Employee Transfer Date for those Employees other than Inactive Employees, Seconded Employees and Visa Employees, (ii) 12:01 a.m. on the first Business Day following the release to return to active employment from leave for all Inactive Employees and (iii) the date specified in the Loaned Employee Agreement with respect to Visa Employees and Seconded Employees, as applicable. As of the Effective Hire Date and, except as otherwise provided herein, for a

period of not less than twelve (12) months after the Closing Date, the employment of Non-Union Employees shall be, at a minimum, on the terms and conditions set forth in Section 7.1.

(h) With respect to all Employees (other than EMEA Employees and Union Employees) to whom the Purchaser extends an Offer pursuant to Section 7.1.1 but who do not accept or who reject such an Offer (each, a "**Rejecting Employee**"), the Purchaser shall reimburse the Sellers for payments made by Sellers in an aggregate amount up to $2,000,000 in respect of pay in lieu of notice (including WARN Act notice) and/or severance liability relating to such Rejecting Employees (the "**Rejecting Employees Liability Limit**"); provided that any such payments shall have been made by the Sellers as required by applicable Law or the Seller Employee Plans listed in Section 4.10(a)(i) of the Sellers Disclosure Schedule or pursuant to a Contract in effect as of the date hereof, and a copy of which will be delivered to the Purchaser at the time such liability is incurred. Notwithstanding anything to the contrary in this Agreement, the Sellers shall retain, and neither the Purchaser nor any of its Affiliates shall assume any Liability whatsoever related to or arising from the Rejecting Employees in respect of pay in lieu of notice (including WARN Act notice) and/or severance liability, including without limitations, any Liability relating to or arising from Claims with respect to a change in the terms of employment made with respect to any Rejecting Employee in the Province of Quebec) to the extent such Liabilities exceed the Rejecting Employees Liability Limit.

7.1.2. Employee Benefits.

(a) The Purchaser or a Designated Purchaser shall, and shall cause its relevant Affiliates to, recognize the service date of each Transferred Employee as set out in the Employee Information for all purposes other than benefit accrual under any defined benefit pension plan, and except as would result in a duplication of benefits.

(b) Without limiting the generality of the foregoing, the Purchaser shall, or shall cause its relevant Affiliates to, provide the following benefits to Transferred Employees:

(i) For the period beginning on the Closing Date and ending on the date that is twelve (12) months from the Closing Date, the Purchaser shall, or shall cause its relevant Affiliates to, provide Transferred Employees with severance payments and severance benefits that are substantially similar to the severance payments and severance benefits provided to similarly situated employees of the Purchaser or the Designated Purchaser.

(ii)

(A) The Sellers shall pay the amount of compensation with respect to the accrued and unused vacation hours that is due and owing to the Transferred Employees (other than Transferred Employees whose accrued and unused vacation is specified in Section 7.1.2(b)(ii)(B) of the Sellers Disclosure Schedule (the "**Specified Transferred Employees**")), up to their Effective Hire Date, to such Transferred Employees by the date required under applicable Law. The

Purchaser will, and will cause the relevant Designated Purchasers to, make commercially reasonable efforts to accommodate time off requests of such Transferred Employees until such time as they accrue sufficient paid time off under the Purchaser Employee Plans to address their vacation plans.

(B) Section 7.1.2(b)(ii)(B) of the Sellers Disclosure Schedule sets forth the amount of accrued and unused vacation hours that are due and owing to the Specified Transferred Employees as of the date hereof and updated by the Sellers as of the Closing Date. The Purchaser shall, or shall cause its relevant Affiliates to, grant each Specified Transferred Employee paid time off in an amount equal to such accrued unused vacation hours for such Specified Transferred Employee as set forth in Section 7.1.2(b)(ii)(B) of the Sellers Disclosure Schedule. If such Specified Transferred Employee terminates employment with the Purchaser or an Affiliate of the Purchaser prior to receiving such paid time off, as described above, the Purchaser shall pay such Specified Transferred Employee an amount equal to any such unused paid time off upon such employment termination. Under the vacation policy of the Purchaser or an Affiliate of the Purchaser, the vacation accrual rate of each Transferred Employee on and after the Effective Hire Date shall be equal to either, in the sole discretion of the Purchaser or its Affiliate, the Transferred Employee's vacation accrual rate (i) as reflected in the Employee Information or (ii) under the vacation policy of the Purchaser or its relevant Affiliate applicable to similarly situated employees after taking into account such Transferred Employee's service, if applicable, as provided in Section 7.1.2(a). For the avoidance of doubt, such vacation accrual rate applicable to Specified Transferred Employees shall not be decreased by the Purchaser or its Affiliates as a result of the obligation in this Section 7.1.2(b)(ii)(B) that the Purchaser or its Affiliates grant such Employees accrued and unused vacation hours due and owing as of the Closing Date.

(iii)

(A) With respect to each Transferred Employee (and his or her eligible dependents, as applicable) in Canada and the United States, the Purchaser or the relevant Purchaser's Affiliates shall (x) waive any eligibility periods, evidence of insurability or pre-existing condition limitations and (y) honor any deductibles, co-payments, co-insurance or out-of-pocket expenses paid or incurred by such employee, including with respect to his or her dependents, under comparable Seller Employee Plans during the Purchaser Employee Plan year in which the relevant Effective Hire Date occurs, provided that such employee provides documentation of such expenses paid or incurred to the Purchaser or its Affiliates, and in each case to the extent waived or honored under the Seller Employee Plans in which such Transferred Employee participated immediately prior to the Closing and to the extent doing so will not result in the duplication of benefits.

(B) With respect to each Transferred Employee (and his or her eligible dependents, as applicable) in all countries other than those described in Section 7.1.2(b)(iii)(A), the Purchaser or the relevant Purchaser's Affiliates shall use commercially reasonable efforts to cause the Purchaser Employee Plans to (x)

waive any eligibility periods, evidence of insurability or pre-existing condition limitations and (y) honor any deductibles, co-payments, co-insurance or out-of-pocket expenses paid or incurred by such employee, including with respect to his or her dependents, under comparable Seller Employee Plans during the Purchaser Employee Plan year in which the relevant Effective Hire Date occurs, provided that such employee provides documentation of such expenses paid or incurred to the Purchaser or its Affiliates, and in each case to the extent waived or honored under the Seller Employee Plans in which such Transferred Employee participated immediately prior to the Closing and to the extent doing so will not result in the duplication of benefits.

(iv) The Purchaser or Designated Purchaser shall provide each Transferred Employee employed in Australia, with the benefit of the amount set forth in Section 7.1.2(b)(iv) of the Sellers Disclosure Schedule of long service leave and sick leave, at such time, if any, as payment of such amount is due and owing to each such Transferred Employee under applicable Law, taking into account in the calculation of such total payment due, the service of such Transferred Employee as set forth in the Employee Information together with such Transferred Employee's service with the Purchaser on and after the Closing Date. Section 7.1.2(b)(iv) of the Sellers Disclosure Schedule shall be updated no later than ten (10) Business Days prior to the Closing Date to reflect additions or deletions of Identified Employees or other status changes that are not prohibited under Section 5.9.

SECTION 7.2. Employment Obligations with Respect to Union Employees. The provisions of this Section 7.2 shall apply to Union Employees. As of the Closing Date the Purchaser or its relevant Affiliate will be bound by the terms and obligations of the Collective Labor Agreements specified in the Employee Information with respect to the employment of the relevant Union Employees who are Transferred Employees as a successor, assign or purchaser of the relevant Seller. With respect to all Union Employees who are not Identified Employees, the Purchaser shall reimburse the Sellers for payments made by Sellers in respect of severance liability pursuant to the Collective Labor Agreement or as required by applicable Law relating to such Union Employees; provided, that, the Sellers agree to use commercially reasonable efforts to mitigate the Liabilities associated with the termination of such Union Employees by providing, upon notice from the Purchaser identifying any Union Employee who will not be an Identified Employee, working notice to such Union Employees and, in the case of Union Employees located in the province of Quebec, written notice, and the Minister of Employment and Social Solidarity in the case of a mass or group termination in all material respects in accordance with applicable Law.

SECTION 7.3. Excluded Employee Liabilities. For purposes of clarity, the Sellers shall retain, and neither the Purchaser nor any of the Designated Purchasers or Purchaser Employee Plans shall assume, any of the following Liabilities of the Sellers or Seller Employee Plans (the "**Excluded Employee Liabilities**"):

(a) Liabilities related to the Seller Employee Plans or any employee plans or arrangements related to former employees of the Business (excluding the EMEA Business), including the Sellers' or any of their Affiliates' (excluding the EMEA Sellers) or

Seller Employee Plans' obligations to make payments or provide benefit accrued under any Seller Employee Plan, except with respect to the Specified Employee Liabilities or as specified in the Loaned Employee Agreement;

(b) Any obligation to provide continuation coverage pursuant to COBRA under any Seller Employee Plan that is a "group health plan" (as defined in Section 5000(b)(1) of the Code) to the Employees and/or their qualified beneficiaries with respect to a COBRA qualifying event that occurs prior to such Employees' Effective Hire Date including, for avoidance of doubt, an Employee's termination of employment from the Sellers or their Affiliates;

(c) Liabilities related to the stock or other equity interests in the Seller or any of its Affiliates;

(d) Except with respect to the Assumed Liabilities and as provided for in Article VII, Liabilities relating to (i) any Employee's or a former employee's employment or termination of employment with any of the Sellers or their Affiliates, including any severance or similar obligations that may arise as a result of the transfer of an Employee's employment to the Purchaser or one of its Affiliates or as a result of the Employee's refusal of the Purchaser's Offer and any Liabilities that relate to the Inactive Employees', Visa Employees' and Seconded Employees' employment or termination of employment with any of the Sellers or their Affiliates, except as otherwise provided in the Loaned Employee Agreement, (ii) an applicant with respect to potential employment with any of the Sellers or their Affiliates, (iii) the purported class action filed in Ontario Superior Court of Justice under Court file number 08-CV41878CP, (iv) any Action arising on or prior to the Closing filed by any Person in connection with any Employee's employment or the termination thereof with the Sellers, or (v) any Action arising prior to, on or after the Closing relating to or filed by any of the Employees set forth in Section 4.10(b) who are not Identified Employees in connection with any such Employee's employment or termination of employment with the Sellers; and

(e) Any Liabilities with respect to Canadian Union Retirees.

SECTION 7.4. Other Employee Covenants.

(a) After the date hereof, and subject to each Party's disclosure obligations imposed by Law or by Government Entities and each Party's obligations hereunder, the Purchaser shall not, and shall procure that the Designated Purchasers and any of the Purchaser's Affiliates shall not, issue any announcement or communication to their respective employees or the Employees, prior to consultation with, and the approval of, the Main Sellers (not to be unreasonably withheld or delayed) with respect to this Agreement or any of the transactions contemplated hereby. If requested, the non-requesting Party shall cooperate with the requesting Party in respect of the development and distribution of any announcement and communication to the employees of the Sellers, including Employees, with respect to this Agreement or any of the transactions contemplated hereby.

(b) The Purchaser undertakes to keep the Employee Data and any additional information provided to the Purchaser by the Sellers with respect to individually

identifiable Employees (collectively, "**Employee Data**") in confidence and agrees that, until the relevant Employee Transfer Date with respect to those Employees who become Transferred Employees, and at all times with respect to those Employees who do not become Transferred Employees:

(i) the Purchaser shall, and shall cause the Designated Purchasers to, restrict the disclosure of the Employee Data only to such of its employees, agents and advisors as is reasonably necessary for the purposes of complying with its obligations pursuant to this Agreement;

(ii) the Employee Data shall not be used except for the purposes of complying with the obligations of the Purchaser and the Designated Purchasers pursuant to this Agreement and shall be returned to the Sellers or destroyed, at the Sellers' election, if this Agreement is terminated; and

(iii) the Purchaser shall, and shall cause the Designated Purchasers to, comply with such additional obligations as may be reasonably required in any particular jurisdiction to comply with any applicable data privacy Laws.

(c) The Purchaser and the Sellers shall cooperate with each other to provide for an orderly transition of the Transferred Employees from the Sellers to the Purchaser or the Designated Purchasers, as applicable (including the providing of any information by the Sellers to the Purchaser as may be reasonably requested by Purchaser for purposes of complying with its obligations pursuant to Article VII), subject to Section 5.6(d), and to minimize the disruption to the respective businesses of the Parties resulting from the transactions contemplated hereby.

(d) Within sixty (60) days following the relevant Effective Hire Date, except to the extent prohibited by applicable data privacy Laws and subject to consent by such employee to be obtained by the Purchaser or Designated Purchaser in his or her Offer (including any consent, if required, to transfer Employee Records across geographical boundaries), or as otherwise required by Law, the Sellers shall provide the Purchaser or the Designated Purchaser with the Employee Records (or a copy thereof) of Transferred Employees other than those Employee Records that constitute Assets pursuant to Section 2.1.1(h) hereof. Further, after the Effective Hire Date, the Purchaser may request in writing an individual Employee Record in relation to a reasonably contemplated employment termination by the Purchaser and, except to the extent prohibited by applicable data privacy Laws and subject to consent by such employee to be obtained by the Purchaser or Designated Purchaser in his or her Offer (including any consent, if required, to transfer Employee Records across geographical boundaries), the Seller shall provide such individual Employee Record within two (2) Business Days. With respect to such Employee Records provided by the Sellers to the Purchaser or Designated Purchasers, in the event that the Sellers reasonably need access to such records for purposes of complying with a subpoena or in connection with any pending or threatened Action, the Purchaser or Designated Purchaser will allow the Sellers reasonable access to such records for the sole purpose of obtaining information for use as aforesaid and will permit the Sellers to make copies thereof as may be necessary or convenient.

(e) During the Non-Solicitation Period the Sellers shall not, without the advance written consent of the Purchaser, either directly or indirectly solicit for employment or hire any Transferred Employee unless the employment of such employee is involuntarily terminated by the Purchaser or Designated Purchaser prior to such action by the Sellers; provided, however, that nothing in this Section 7.4(e) shall prevent the Sellers from (i) conducting generalized employment searches, including placing bona fide public advertisements, that are not specifically targeted at such Transferred Employees, or (ii) hiring such Transferred Employees identified through such generalized employment searches.

(f) During the Non-Solicitation Period, the Purchaser and the Designated Purchasers shall not, without the Sellers' advance written consent, either directly or indirectly solicit for employment (i) any of the employees of the Sellers who are not Employees, unless the employment of such employee is involuntarily terminated by the Sellers prior to such action by the Purchaser or the Designated Purchasers, (ii) any Employees who have rejected their Offer or objected to their transfer of employment to the Purchaser or Designated Purchasers pursuant to this Agreement, or (iii) any Employees to whom the Purchaser or any Designated Purchaser have not made an Offer; provided, however, that nothing in this Section 7.4(f) shall prevent the Purchaser or the Designated Purchasers from (A) conducting generalized employment searches, including placing *bona fide* public advertisements, that are not specifically targeted at such employees or former employees of the Sellers, or (B) hiring such employees or former employees identified through such generalized employment searches; provided, further, that, with respect to any Employee described in clauses (ii) and (iii) above who becomes employed with the Purchaser or a Designated Purchaser (other than by operation of Law) during the ninety-day period following the Closing Date, the Purchaser and the Designated Purchasers shall be required to reimburse the Sellers, if applicable, for any pay in lieu of notice (including WARN Act notice) and/or severance payments to the extent paid by the Sellers to such Employee.

(g) Neither the Sellers nor any of their Affiliates shall enforce against any Transferred Employee any, non-compete, non-solicit or similar contractual obligations, or otherwise assert, with respect to any such Transferred Employee or the Purchaser or any of its Affiliates, claims that would otherwise prohibit or restrict such Transferred Employee's employment with the Purchaser or any of its Affiliates in the Business.

SECTION 7.5. Canadian Pension Plans.

7.5.1. Non-Union Defined Benefit. As of the relevant Effective Hire Date, each Non-Union Employee who has any entitlement to defined benefits under the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan (the "**Nortel Plan**"), whether such Non-Union Employee was accruing such benefits as of such Effective Hire Date or whether accrual had ceased prior to such date, shall cease to participate actively in such Seller Employee Plan. The Purchaser shall cause all such Non-Union Employees who become Transferred Employees to participate in a defined contribution registered pension plan (the "**Canadian Non-Union DC Replacement Plan**") to be established by the relevant Designated Purchaser effective as of the day after the Closing Date. The Purchaser shall cause the Canadian Non-Union DC Replacement Plan to recognize the prior service of such Transferred Employees with the Seller

for the purposes of eligibility to participate, vesting and entitlement to benefits. The Canadian Non-Union DC Replacement Plan shall contain an employer contribution formula of at least 1% of the salary of such Transferred Employees, subject to any applicable Tax Law. The Designated Purchaser shall maintain the Canadian Non-Union DC Replacement Plan in respect of such Transferred Employees (A) for at least five (5) years after the Closing Date or their respective employment termination dates with the Designated Purchaser or (B) until the wind-up of the Nortel Plan, whichever is earlier, without any adverse amendment. For greater certainty, there shall be no transfer of assets or liabilities from the Nortel Plan to the Canadian Non-Union DC Replacement Plan or any other Purchaser Employee Plan in respect of defined benefit accruals.

7.5.2. Non-Union Defined Contribution. As of the relevant Effective Hire Date, each Non-Union Employee who participates only in the defined contribution component of the Nortel Plan shall cease to participate actively in, and accrue benefits under, such Seller Employee Plan. The Purchaser shall cause all such Non-Union Employees to participate in the Canadian Non-Union DC Replacement Plan beginning as of the relevant Effective Hire Date. The Purchaser shall cause the Canadian Non-Union DC Replacement Plan to recognize the prior service of such Transferred Employees with the Seller for the purposes of eligibility to participate, vesting and entitlement to benefits. The Canadian Non-Union DC Replacement Plan shall contain an employer contribution formula of at least 1% of the salary of such Transferred Employees, subject to any applicable Tax Law.

7.5.3. Union Defined Benefit. As of the relevant Effective Hire Date, each Union Employee who was accruing defined benefits under the Nortel Networks Negotiated Pension Plan shall cease to participate actively in, and accrue benefits under, such Seller Employee Plan. The Purchaser shall cause all such Union Employees who become Transferred Employees to participate in a defined benefit registered pension plan (the "**Canadian DB Replacement Plan**") to be established by the relevant Designated Purchaser effective as of the day after the Closing Date and which shall contain a benefit formula which is no less favorable than the formula in the Nortel Networks Negotiated Pension Plan and which shall otherwise comply with the applicable Collective Labor Agreement. The Purchaser shall cause the Canadian DB Replacement Plan to recognize the prior service of such Transferred Employees with the Seller for the purposes of eligibility to participate, vesting and entitlement to benefits, but not for the purpose of benefit accrual. For greater certainty, there shall be no transfer of assets or liabilities from the Nortel Networks Negotiated Pension Plan to the Canadian DB Replacement Plan or any other Purchaser Employee Plan.

7.5.4. Union Defined Contribution. As of the relevant Effective Hire Date, each Union Employee who participates in the defined contribution component of the Nortel Networks Negotiated Pension Plan shall cease to participate actively in, and accrue benefits under, such plan. The Purchaser shall cause all such Union Employees who become Transferred Employees to participate in a defined contribution registered pension plan (the "**Canadian Union DC Replacement Plan**") to be established by the Purchaser effective as of the day after the Closing Date and which shall comply with the applicable Collective Labor Agreement. The Purchaser shall cause the Canadian Union DC Replacement Plan to recognize the prior service of such Transferred Employees with the Seller for the purposes of eligibility to participate, vesting and entitlement to benefits.

SECTION 7.6. Sole Benefit of Sellers and Purchaser. The terms and provisions of this Article VII are for the sole benefit of the Parties. Nothing contained herein, express or implied (i) shall be construed to establish, amend, or modify any Seller Employee Plan, any Purchaser Employee Plan, or any other benefit plan, program, agreement or arrangement, (ii) shall alter or limit the ability of the Purchaser, the Sellers, or any of their respective Affiliates to amend, modify or terminate any Seller Employee Plan, any Purchaser Employee Plan (other than as provided in Section 7.5), or any other benefit or employment plan, program, agreement or arrangement after the Closing Date, (iii) is intended to confer or shall confer upon any current or former employee any right to employment or continued employment, or constitute or create an employment agreement with any Transferred Employee, or (iv) is intended to confer or shall confer upon any individual or any legal representative of any individual (including employees, retirees, or dependents or beneficiaries of employees or retirees and including collective bargaining agents or representatives) any right as a third-party beneficiary of this Agreement.

ARTICLE VIII
REGISTRATION AND SALE OF CONVERTIBLE NOTES

SECTION 8.1. Shelf Registration.

(a) In the event that, at issuance, the Convertible Notes and all Shares issuable upon conversion thereof (the "**Registrable Securities**") are not freely transferable by the Distribution Agent without restrictions under the Securities Act, provided that the Sellers have complied with their obligations to deliver the information, including the Audited Financial Statements and Unaudited September 30, 2008 Financial Statements, as may be required by and within the time periods specified in Section 5.26, on or prior to the later of (x) the 30th calendar day following the Closing and (y) sixty (60) days following the receipt of such information and financial statements from the Sellers as are required by the rules and regulations promulgated under the Securities Act in connection with the filing and effectiveness of the Shelf Registration Statement referred to below, the Purchaser shall prepare and file an automatic shelf registration statement on Form S-3 (or other applicable form) (together with any amendments or supplements thereto, the "**Initial Shelf Registration Statement**"), to permit the immediate resale of the Registrable Securities under the Securities Act by the Sellers and shall use its commercially reasonable efforts to cause the Initial Shelf Registration Statement or any shelf registration statement filed to replace the Initial Registration Statement to permit the resale of the Registrable Securities should the Initial Shelf Registration Statement no longer be effective (together with any amendments or supplements thereto, and collectively with the Initial Shelf Registration Statement, the "**Shelf Registration Statement**") to remain continuously effective until the later of (i) one year after the Closing and (ii) when the sale by the Sellers of the Registrable Securities are no longer subject to the volume limitations set forth in Rule 144(e) under the Securities Act (such period, the "**Effective Period**"); provided that the Purchaser may by written notice to the Distribution Agent immediately suspend the use of the Shelf Registration Statement for:

(i) any period starting on the date on which additional financial statements for the Business with respect to any interim period that begins after the date of the latest period covered by the Audited Financial Statements but ends

prior to the Closing Date and that are not then included in the Shelf Registration Statement and any financial statements for the corresponding period of the preceding fiscal year that, in each case, are required by the rules and regulations promulgated under the Securities Act to be included or incorporated by reference in the Shelf Registration Statement (the "**Additional Statements**") and ending three (3) Business Days after the date on which the Sellers have provided such Additional Statements to the Purchaser. The Purchaser shall provide the Main Sellers and their representatives reasonable access to the records and employees of the Business to the extent relevant for the preparation and delivery of any Additional Statements and shall cause the employees of the Business to provide the Main Sellers with such cooperation as they shall reasonably request in connection with their preparation and delivery of any Additional Statements;

(ii) any period starting on the date that the Purchaser's board of directors (or a committee thereof) concludes that any previously issued financial statements included in, or incorporated by reference into, such Shelf Registration Statement should no longer be relied upon because of an error in such financial statements as addressed in Accounting Principles Board Opinion No. 20, as may be modified, supplemented or succeeded, and ending on the date on which the Purchaser takes corrective action necessary to permit sales under the Shelf Registration Statement to resume; and

(iii) a period not to exceed twenty (20) consecutive days in any one instance and for a period not to exceed forty-five (45) days in any six (6) month period, without regard to any period of suspension pursuant to the immediately preceding clauses, at any time that the Purchaser becomes engaged in a material business activity or negotiation or any other event has occurred or is anticipated, which activity, negotiation or event is not disclosed in that prospectus and that the Purchaser's board of directors (or a committee thereof) reasonably believes after consultation with counsel should be disclosed therein under applicable Law and determines in good faith that such disclosure would be premature or would adversely affect the Purchaser or its business or prospects; provided, however, that the Purchaser may not suspend the use of the Shelf Registration Statement pursuant to this clause (iii) during the sixty (60) consecutive Trading Day period commencing on the effective date of the Shelf Registration Statement.

The Purchaser will use its reasonable best efforts to ensure that the use of the Shelf Registration Statement may be resumed immediately following any such period of suspension (including by taking such corrective actions as referred to in clause (ii) above).

(b) At its expense, the Purchaser will use reasonable best efforts during the Effective Period to:

(i) prepare and file with the SEC such amendments and supplements to the Shelf Registration Statement and the prospectus used in connection therewith as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of the Registrable Securities covered by the Shelf Registration Statement;

(ii) furnish such number of prospectuses and any amendments or supplements thereto, as the Distribution Agent, the Sellers or the EMEA Sellers from time to time may reasonably request;

(iii) promptly amend the Shelf Registration Statement onto a form the Purchaser is then eligible to use or file a new registration statement on such form and to keep such registration statement effective in accordance with the requirements otherwise applicable under this Agreement if the Purchaser ceases to be a WKSI;

(iv) make and keep adequate current public information with respect to the Purchaser available in accordance with Rule 144 under the Securities Act; and

(v) file with the SEC in a timely manner all reports and other documents required of the Purchaser under the Securities Act and the Exchange Act.

SECTION 8.2. Offerings.

(a) At any time that a Shelf Registration Statement covering Registrable Securities pursuant to Section 8.1 is effective, if the Sellers and the EMEA Sellers deliver a notice to the Purchaser (a "**Shelf Take-Down Notice**") stating that the Sellers and the EMEA Sellers intend to effect an offering of all or part of the Registrable Securities included by the Sellers and the EMEA Sellers on the Shelf Registration Statement (a "**Shelf Offering**") and stating the number or dollar amount of the Registrable Securities to be included in such Shelf Offering, then the Purchaser shall amend or supplement the Shelf Registration Statement as may be necessary in order to enable such Registrable Securities to be distributed pursuant to the Shelf Offering as contemplated by the Shelf Take-Down Notice.

(b) The Sellers and the EMEA Sellers may withdraw their Registrable Securities from a Shelf Offering at any time by providing the Purchaser with written notice. Upon receipt of such written notice, the Purchaser shall cease all efforts to secure registration.

(c) In connection with an underwritten public Shelf Offering, the Sellers and the EMEA Sellers shall have the right to select an internationally recognized investment banking firm reasonably acceptable to the Purchaser as the lead or managing underwriter.

(d) In connection with any underwritten public offering made pursuant to a Registration Statement, the Purchaser will not effect any public sale or distribution of any shares of its Common Stock (or securities convertible into or exchangeable or exercisable for its Common Stock ("**Convertible Securities**")) for its own account (other than (x) a registration statement (i) on Form S-4, Form S-8 or any successor forms thereto or (ii) filed solely in connection with an exchange offer or any employee benefit or dividend reinvestment plan or (y) pursuant to such underwritten offering), during the period commencing on, and continuing for not more than 60 days (or such shorter period as the managing underwriter(s) may permit) after the effective date of such Registration Statement

pursuant to which such underwritten offering shall be made or, in the case of a Shelf Registration Statement, the period commencing on, and continuing for not more than 60 days (or such shorter period as the managing underwriter(s) may permit) after the Purchaser's notice of a distribution in connection with such offering, or, in either case, on such earlier date as the Sellers and the EMEA Sellers give notice to the Purchaser that they decline to proceed with any such offering, except (i) for the issuance of shares of Common Stock upon the conversion, exercise or exchange, by the holders thereof, of Convertible Securities pursuant to the terms of such Convertible Securities, (ii) pursuant to the terms of any other agreement to issue shares of Common Stock or any Convertible Securities in effect on the date of the notice of a proposed Transfer, including any such agreement in connection with any previously disclosed acquisition, merger, consolidation or other business combination, and (iii) in connection with Transfers to dividend reinvestment plans or to employee benefit plans in order to enable any such employee benefit plan to fulfill its funding obligations in the ordinary course, unless the managing underwriter(s) agree otherwise. Notwithstanding the foregoing, the provisions of this Section 8.2(d) shall be subject to the provisions of Section 8.1(a), and if the Purchaser exercises its rights of postponement pursuant to Section 8.1(a) with respect to any proposed underwritten public offering, the provisions of this Section 8.2(d) shall not apply unless and until such time as the Purchaser notifies the Sellers and the EMEA Sellers of the termination of such postponement and the Sellers and the EMEA Sellers notify the Purchaser of their intention to continue with such proposed offering.

SECTION 8.3. Piggyback Registration.

(a) If at any time after the issuance of Convertible Notes, the Purchaser proposes or is required to file a registration statement under the Securities Act with respect to an offering of shares of Common Stock or Convertible Securities for its own account (other than (i) a registration statement filed pursuant to Section 8.1(a), (ii) a registration statement on Form S-4 or S-8 or any successors thereto, or (iii) a registration statement solely relating to an offering and sale to employees or directors of the Purchaser pursuant to any employee stock plan or other employee benefit plan arrangement), then the Purchaser shall give prompt written notice of such proposed filing at least ten (10) days before the anticipated filing date (the "**Piggyback Notice**") to the Distribution Agent. The Piggyback Notice shall offer the Sellers and the EMEA Sellers the opportunity to include in such registration statement the number of Shares (with respect to an offering of shares of Common Stock) or the aggregate principal amount of Convertible Notes (with respect to an offering of Convertible Securities) as they may request (a "**Piggyback Registration**"). Subject to Section 8.3(b), the Purchaser shall include in each such Piggyback Registration all Shares or Convertible Notes (as applicable) with respect to which the Purchaser has received a written request for inclusion therein within five (5) days after notice has been given to the Distribution Agent. The Sellers and the EMEA Sellers shall be permitted to withdraw all or part of any Registrable Securities from a Piggyback Registration at any time up to the pricing date.

(b) If any of the shares of Common Stock or Convertible Securities to be registered pursuant to the registration giving rise to the Sellers' and the EMEA Sellers' rights under this Section 8.3 are to be sold in an underwritten public offering, the Sellers and the EMEA Sellers shall be permitted to include all Registrable Securities requested to be

included in such registration in such offering on the same terms and conditions as any other shares of Common Stock or Convertible Securities of the Purchaser included therein; provided, that if such offering is subject to an Offering Limitation, then there shall be included in such offering: (i) first, the number of shares of Common Stock or Convertible Securities the Purchaser proposes to sell, and (ii) second, the number of Registrable Securities requested to be included in such registration by the Sellers and the EMEA Sellers that in the opinion of the underwriter selected by the Purchaser can be sold without adversely affecting the price, timing, distribution or marketability of such offering.

(c) The Purchaser may select the lead underwriter and co-manager or co-managers to administer any offering of Registrable Securities pursuant to a Piggyback Registration; provided, however, that if the Sellers and the EMEA Sellers' Registrable Securities that are expected to be included in any such offering constitute, in the Purchaser's reasonable judgment, at least 25% of the shares of Common Stock or aggregate principal amount of Convertible Securities expected to be transferred in such offering, the Sellers and the EMEA Sellers shall have the right to appoint one co-manager (reasonably acceptable to the Purchaser) for such offering, who shall participate in such offering on the same terms as the co-managers appointed by the Purchaser.

(d) In the event that the Purchaser gives the Distribution Agent notice of its intention to effect an offering pursuant to a Piggyback Registration and subsequently declines to proceed with such offering, the Sellers and the EMEA Sellers shall have no rights in connection with such offering. The Sellers and the EMEA Sellers shall participate in any offering of Registrable Securities pursuant to a Piggyback Registration in accordance with the same plan of distribution for such Piggyback Registration as the Purchaser.

(e) No registration of Shares effected pursuant to a request under this Section 8.3 shall relieve the Purchaser of its obligations under Section 8.1 or 8.2.

SECTION 8.4. No Inconsistent Agreements. Nothing herein shall restrict the authority of the Purchaser to grant to any Person the rights to obtain registration under the Securities Act of any equity securities of the Purchaser, or any securities convertible into or exchangeable or exercisable for such securities; provided, however, that the Purchaser shall not grant any such rights with respect to the Common Stock or Convertible Securities that conflicts with the rights of the Sellers or the EMEA Sellers under this Agreement; provided that in the event that Purchaser issues any Common Stock or Convertible Securities in connection with any acquisition of any other Person, the Purchaser may grant such other Person registration rights (including the rights in Section 8.3(b) which shall be deemed modified hereby) that are *pari passu* with the Sellers.

SECTION 8.5. Registration Procedures.

(a) The Purchaser is required to effect the registration of any Registrable Securities under the Securities Act as provided in Article VIII in a manner to permit the sale of such Registrable Securities in accordance with the intended method or methods of disposition thereof, and pursuant thereto the Purchaser shall cooperate in the sale of the securities and shall, as expeditiously as possible:

(i) Before filing a Registration Statement or any prospectus (including any issuer free writing prospectus related thereto) or any amendments or supplements thereto, furnish or otherwise make available to the Sellers, the EMEA Sellers, their counsel and the managing underwriter(s), if any, copies of all such documents proposed to be filed, which documents will be subject to the reasonable review and comment of such counsel (provided that any comments made on behalf of the Sellers, the EMEA Sellers or the managing underwriter(s), if any, are provided to the Purchaser promptly upon receipt of the documents but in no event later than three (3) Business Days after receipt of such documents by the Sellers and the EMEA Sellers), and the managing underwriters, if any, and such other documents reasonably requested by such counsel, including any comment letter from the SEC, and, if requested by such counsel, provide such counsel reasonable opportunity to participate in the preparation of such Registration Statement and each prospectus included therein (including any issuer free writing prospectus related thereto) and such other opportunities to conduct a reasonable investigation within the meaning of the Securities Act, including reasonable access to the Purchaser's books and records, officers, accountants and other advisors. The Purchaser shall not file any such Registration Statement or prospectus (including any issuer free writing prospectus related thereto) or any amendments or supplements thereto with respect to any registration pursuant to which the Sellers, the EMEA Sellers, their counsel, or the managing underwriter(s), if any, shall reasonably object, in writing, on a timely basis, unless, in the opinion of the Purchaser, such filing is necessary to comply with applicable Law.

(ii) Notify the Sellers, the EMEA Sellers and the managing underwriter(s), if any, promptly (A) when a prospectus or any prospectus supplement, issuer free writing prospectus or post-effective amendment has been filed, and, with respect to the Registration Statement or any post-effective amendment, when the same has become effective, (B) of any request by the SEC or any other Government Entity for amendments or supplements to the Registration Statement or related prospectus or issuer free writing prospectus or for additional information, (C) of the issuance by the SEC of any stop order suspending the effectiveness of any registration statement of the Purchaser or the initiation of any proceedings for that purpose, (D) if at any time the representations and warranties of the Purchaser contained in any agreement related to the Registrable Securities (including this Agreement and any underwriting agreement contemplated hereunder) cease to be true and correct, (E) of the receipt by the Purchaser of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Registrable

Securities for sale in any jurisdiction, or the initiation or threatening of any proceeding for such purpose, and (F) of the happening of any event that makes any statement made in such Registration Statement or related prospectus or issuer free writing prospectus untrue in any material respect or that requires the making of any changes in such Registration Statement, prospectus, documents or issuer free writing prospectus so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of any prospectus or issuer free writing prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(iii) Use its reasonable best efforts to obtain the withdrawal of any order suspending the effectiveness of the Registration Statement, or the lifting of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction at the reasonably earliest practical date.

(iv) If requested by the managing underwriter(s), if any, or the Sellers and the EMEA Sellers, promptly include in a prospectus supplement, post-effective amendment or issuer free writing prospectus such information as the managing underwriter(s), if any, or the Sellers and the EMEA Sellers may reasonably request in order to permit the intended method of distribution of such securities and make all required filings of such prospectus supplement, such post- effective amendment or issuer free writing prospectus as soon as practicable after the Purchaser has received such request.

(v) Furnish or make available to the Sellers, the EMEA Sellers and each managing underwriter, if any, without charge, such number of conformed copies of the Registration Statement and each post-effective amendment thereto, including financial statements (but excluding schedules, all documents incorporated or deemed to be incorporated therein by reference, and all exhibits, unless requested in writing by the Sellers, the EMEA Sellers, counsel or managing underwriter(s)), and such other documents, as the Sellers, the EMEA Sellers or such managing underwriter(s) may reasonably request, and upon request a copy of any and all transmittal letters or other correspondence to or received from the SEC or any other Government Entity relating to such offering.

(vi) Deliver to the Sellers, the EMEA Sellers and the managing underwriter(s), if any, without charge, as many copies of the prospectus or prospectuses (including each form of prospectus and any issuer free writing prospectus related to any such prospectuses) and each amendment or supplement thereto as such Persons may reasonably request in connection with the distribution of the Registrable Securities; and the Purchaser, subject to Section 8.5(b), hereby consents to the use of such prospectus and each amendment or supplement thereto by each of the Sellers, the EMEA Sellers and the managing underwriter(s), if any, in connection with the offering and sale of the Registrable

Securities covered by such prospectus and any such amendment or supplement thereto.

(vii) Prior to any public offering of Registrable Securities, use its commercially reasonable efforts to register or qualify or cooperate with the Sellers, the EMEA Sellers, the managing underwriter(s), if any, and their respective counsel in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities for offer and sale under the securities or "blue sky" laws of such jurisdictions within the United States as any Seller, EMEA Seller or managing underwriter(s) reasonably requests in writing and to keep each such registration or qualification (or exemption therefrom) effective during the Effective Period and to take any other action that may be necessary or advisable to enable the Sellers and the EMEA Sellers to consummate the disposition of such Registrable Securities in such jurisdiction; provided, however, that the Purchaser will not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified or (ii) take any action that would subject it to general service of process in any such jurisdiction where it is not then so subject.

(viii) Cooperate with the Sellers, the EMEA Sellers and the managing underwriter(s), if any, to facilitate the timely preparation and delivery of certificates (not bearing any legends) representing Registrable Securities to be sold after receiving a written representation from the Sellers and the EMEA Sellers that the Registrable Securities represented by the certificates so delivered by the Sellers and the EMEA Sellers will be transferred in accordance with the Registration Statement, and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriter(s), if any, or the Sellers and the EMEA Sellers may request at least two (2) Business Days prior to any sale of Registrable Securities.

(ix) Upon the occurrence of any event contemplated by Section 8.5(a)(ii)(B) through Section 8.5(a)(ii)(F), at the request of the Sellers and the EMEA Sellers, prepare and file with the SEC a supplement or post-effective amendment to such Registration Statement, prospectus or issuer free writing prospectus so that, as thereafter delivered to the purchasers of such Registrable Securities, such prospectus will not contain an untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading.

(x) Prior to the effective date of the Registration Statement, provide a CUSIP number for the Registrable Securities (if the Registrable Securities do not already have a CUSIP number) and make the Registrable Securities eligible for settlement and transfer through the facilities of The Depository Trust Company ("**DTC**").

(xi) So long as the Common Stock is listed on any United States securities exchange, quotation system or market, use its commercially reasonable

efforts to cause all of the Shares to be listed on such exchange, quotation system or market.

(xii) Provide and cause to be maintained a transfer agent or registrar, as applicable, for all Registrable Securities covered by such Registration Statement from and after a date not later than the effective date of such Registration Statement.

(xiii) Enter into such agreements (including an underwriting agreement in form, scope and substance as is customary in underwritten offerings) and take all such other actions reasonably requested by the Sellers, the EMEA Sellers or by the managing underwriter(s), if any, to expedite or facilitate the disposition of such Registrable Securities, and in connection therewith, whether or not an underwriting agreement is entered into and whether or not the registration is an underwritten registration, (i) make such representations and warranties to the Sellers, the EMEA Sellers and the managing underwriter(s), if any, with respect to the business of the Purchaser and its Subsidiaries, and the Registration Statement, prospectus and documents, if any, incorporated or deemed to be incorporated by reference therein, in each case, in form, substance and scope as are customarily made by the Purchaser in its underwritten offerings, and, if true, confirm the same if and when requested, (ii) use its commercially reasonable efforts to furnish to the Sellers and the EMEA Sellers opinions of counsel to the Purchaser and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the managing underwriter(s), if any, and counsel to the Sellers and the EMEA Sellers), addressed to the Sellers, the EMEA Sellers and each of the managing underwriter(s), if any, covering the matters customarily covered in opinions provided by the Purchaser in its underwritten offerings and such other matters as may be reasonably requested by such counsel and managing underwriter(s), (iii) use its commercially reasonable efforts to obtain “cold comfort” letters and updates thereof from the independent registered public accounting firm of the Purchaser (and, if necessary, any other independent registered public accounting firm of any Subsidiary of the Purchaser or of any business acquired by the Purchaser for which financial statements and financial data are, or are required to be, included in the Registration Statement) who have certified the financial statements included in such Registration Statement, addressed to the Sellers and the EMEA Sellers (unless such accountants shall be prohibited from so addressing such letters by applicable standards of the accounting profession) and to each of the managing underwriter(s), if any, such letters to be in customary form and covering matters of the type customarily covered in “cold comfort” letters in connection with the Purchaser’s underwritten offerings, (iv) if an underwriting agreement is entered into, the same shall contain indemnification provisions substantially to the effect set forth in Section 8.8 hereof with respect to all parties to be indemnified pursuant to said Section except as otherwise agreed by the Sellers, the EMEA Sellers and the managing underwriter(s) and (v) deliver such documents and certificates as may be reasonably requested by the Sellers, the EMEA Sellers, their counsel and the managing underwriter(s), if any, to evidence the continued

validity of the representations and warranties made pursuant to clause (i) above and to evidence compliance with any customary conditions contained in the underwriting agreement or other agreement entered into by the Purchaser. The above shall be done at each closing under such underwriting or similar agreement, or as and to the extent required thereunder.

(xiv) Not later than the effective date of the Shelf Registration Statement, cause the Indenture to be qualified under the Trust Indenture Act of 1939 (as amended, the "**TIA**"); and, in connection therewith, cooperate with the Trustee to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the TIA and execute, and use its reasonable best efforts to cause the Trustee to execute, all documents as may be required to effect such changes, and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner.

(xv) If requested by the lead manager for any underwritten offering of any Convertible Notes, the Purchaser shall at its own expense, use its best efforts to (a) if the Convertible Notes have been rated prior to such underwritten offering, confirm such ratings will apply to the Convertible Notes to be offered in such underwritten offering, or (b) if the Convertible Notes were not previously rated, cause the Convertible Notes to be offered in such offering to be rated by such rating agencies, as requested by the managing underwriters of such underwritten offering.

(b) Each of the Parties will treat all notices of proposed transfers and registrations, and all information relating to any periods of suspension of the Shelf Registration Statement under Section 8.1(a) received from the other party with the strictest confidence (and in accordance with the provisions of Section 5.11) and will not disseminate such information. Nothing herein shall be construed to require the Purchaser or any of its Affiliates to make any public disclosure of information at any time. In the event the Purchaser has notified the Sellers and the EMEA Sellers of any occurrence of any event contemplated by Section 8.5(a)(ii)(B) through Section 8.5(a)(ii)(F) then the Sellers and the EMEA Sellers shall not deliver such prospectus or issuer free writing prospectus to any purchaser and will forthwith discontinue disposition of any Registrable Securities covered by such Registration Statement, prospectus or issuer free writing prospectus unless and until a supplement or post-effective amendment to such prospectus or issuer free writing prospectus has been prepared and filed as set forth in Section 8.5(a)(ix) or until the Purchaser advises the Sellers and the EMEA Sellers in writing that the use of such prospectus or issuer free writing prospectus may be resumed.

SECTION 8.6. Cooperation by Management. The Purchaser shall make available members of the management of the Purchaser and its Affiliates for reasonable assistance in the selling efforts relating to any offering of the Registrable Securities, to the extent customary for such offering (including, without limitation, to the extent customary, senior management attendance at due diligence meetings with prospective investors or underwriters and their counsel and if requested by the lead underwriter with respect to any underwritten offering "road shows" at a time that does not unreasonably interfere with the operation of the business

either by conference call or, if in person, at a location acceptable to the Purchaser acting reasonably), and for such assistance as is reasonably requested by the Sellers, the EMEA Sellers and their counsel in the selling efforts relating to any such offering; provided, however, that management need only be made available for one offering in any 6-month period.

SECTION 8.7. Registration Expenses and Legal Counsel. The Purchaser shall pay all reasonable fees and expenses incident to the performance of or compliance with its obligations under this Article VIII, including (i) all registration and filing fees (including fees and expenses (A) with respect to filings required to be made with all applicable securities exchanges and/or the Financial Industry Regulatory Authority, Inc., and (B) of compliance with securities or "blue sky" laws including any fees and disbursements of counsel for the underwriter(s) in connection with "blue sky" qualifications of the Registrable Securities pursuant to Section 8.5(a)(viii), (ii) printing expenses (including expenses of printing certificates for Registrable Securities in a form eligible for deposit with DTC and of printing prospectuses if the printing of prospectuses is requested by the managing underwriter(s), if any, or by the Sellers and the EMEA Sellers), (iii) messenger, telephone and delivery expenses of the Purchaser, (iv) fees and disbursements of counsel for the Purchaser, (v) expenses of the Purchaser incurred in connection with any "road show" and (vi) fees and disbursements of all independent registered public accounting firms (including, without limitation, the expenses of any special audit and "cold comfort" letters required by or incident to this Agreement) and any other persons, including special experts, retained by the Purchaser other than the fees and expenses of KPMG or any other accounting firm in connection with the preparation or audit of the Audited Financial Statements or the Additional Statements or any comfort given thereon ("**Nortel Accounting Expenses**"). For the avoidance of doubt, the Purchaser shall not be required to pay underwriting discounts and commissions and transfer taxes, if any, relating to the sale or disposition of Registrable Securities pursuant to any Registration Statement, the fees and expenses of counsel for the underwriter selected by the Sellers and the EMEA Sellers, the Nortel Accounting Expenses or any other expenses of the Sellers and the EMEA Sellers. In addition, the Purchaser shall bear all of its internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the Common Stock issuable upon conversion of Convertible Notes on any securities exchange or inter-dealer quotation system and the fees and expenses of any Person, including special experts, retained by the Purchaser.

SECTION 8.8. Indemnification.

(a) As a condition to any Seller's or EMEA Seller's inclusion in a Registration Statement as a selling shareholder, such Seller or EMEA Seller shall, severally and not jointly, indemnify the Purchaser, each person, if any, who controls the Purchaser within the meaning of the Securities Act or the Exchange Act, and each officer or director of the Purchaser, against all losses, claims, damages or liabilities (including any loss, damage, claim or liability under the Securities Act, the Exchange Act, state securities laws or otherwise) arising out of or based upon any untrue statement or alleged untrue statement of any material fact contained in the Registration Statement, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereof, or arising out of or based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading and each agrees, severally and not jointly, to reimburse the Purchaser and each such officer, director

and controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending such loss, claim, damage, liability or action, provided, however, that any Seller or EMEA Seller shall only be liable hereunder in any such case if and only to the extent that any such loss, claim, damage, liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement, preliminary prospectus or final prospectus, or any such amendment or supplement, in reliance upon and in conformity with information pertaining to such Seller or EMEA Seller, as such, as furnished in writing to the Purchaser by or on behalf of the Sellers or the EMEA Sellers, respectively, specifically for use in the preparation thereof, provided, further, however, that the liability of each of the Sellers and the EMEA Sellers hereunder shall not in any event exceed the net proceeds received by such Seller or EMEA Seller from the sale of Registrable Securities covered by such Registration Statement. The Purchaser will indemnify and hold harmless each of the Sellers and the EMEA Sellers selling Registrable Securities registered on such Registration Statement and each other person, if any, who controls any of them within the meaning of the Securities Act or Exchange Act, and each officer, director or agent of any of them, against any losses, claims, damages or liabilities (including any loss, damage, claim or liability under the Securities Act, the Exchange Act or state securities Laws) or otherwise to the extent such losses, claims, damages or liabilities arise out of or based upon any untrue statement or alleged untrue statement of any material fact contained in such Registration Statement, any preliminary prospectus or final prospectus contained therein, or any amendment or supplement thereof, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading and the Purchaser will reimburse each such Seller and EMEA Seller and each such officer, director, agent and controlling person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action, provided, however, that the Purchaser will not be liable hereunder in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in such Registration Statement, preliminary prospectus or final prospectus or any such amendment or supplement, in reliance upon and in conformity with information pertaining to any of the Sellers or the EMEA Sellers, as such, as furnished in writing to the Purchaser by or on behalf of any of them specifically for use in the preparation thereof. The Purchaser shall bear all costs and expenses associated with the registration of the Registrable Securities as specified in Article VIII and the preparation and filing of such Registration Statement, the Purchaser's outside counsel, NASDAQ and "blue sky" registration and filing fees and transfer agents' and registrars' fees and legal fees and disbursements of counsel to the Sellers or the EMEA Sellers.

(b) If the indemnification provided for in Section 8.8(a) is unavailable to a Person intended to be indemnified under Section 8.8(a) (an "**Indemnitee**") in respect of any losses, damages, claims or liabilities referred to herein, then, as a condition to any Seller's or EMEA Seller's inclusion in such Registration Statement as a selling shareholder, the Person who was to provide the indemnity under Section 8.8(a) (an "**Indemnitor**"), in lieu of indemnifying such Indemnitee hereunder, shall contribute to the amount paid or payable by such Indemnitee as a result of such losses, damages, claims or liabilities in such proportion as is appropriate to reflect the relative fault of the Indemnitor and the Indemnitee

and the Persons acting on behalf of or controlling the Indemnitor or the Indemnitee in connection with the statements or omissions or violations which resulted in such losses, damages, claims or liabilities, as well as any other relevant equitable considerations. If the indemnification described in Section 8.8(a) is unavailable to an Indemnitee, the relative fault of the Indemnitor and the Indemnitee and Persons acting on behalf of or controlling the Indemnitor or the Indemnitee shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Indemnitor or the Indemnitee or the Persons acting on behalf of or controlling the Indemnitor or the Indemnitee and their relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Indemnitor shall not be required to contribute pursuant to this Section 8.8(b) if there has been a settlement of any proceeding affected without its written consent. No claim against the assets of the Sellers or the EMEA Sellers shall be created by this Section 8.8(b), except as and to the extent permitted by applicable Law. Notwithstanding the foregoing, no Seller or EMEA Seller shall be required to make a contribution in excess of the net amount received by such Seller or EMEA Seller from the sale of the Registrable Securities in the offering giving rise to such liability.

SECTION 8.9. Trading Limitation. The Sellers and EMEA Sellers agree that (i) none of them will transfer any Convertible Notes or the right to receive the Convertible Notes other than (w) to the Sellers, the EMEA Sellers or their respective subsidiaries, (x) distributions to the Sellers' or the EMEA Sellers' creditors and other stakeholders, either directly or indirectly through a liquidating trust or other similar vehicle, whether pursuant to a plan of compromise and/or arrangement, plan of reorganization, plan of liquidation, scheme of arrangement, or otherwise, (y) through a "block trade" or a broadly marketed offering effected through an internationally recognized convertible bond dealer ("**Recognized Dealer**") in accordance with Section 8.1 or (z) outside the context of clause (y), with the consent of the Purchaser, to a Recognized Dealer in accordance with applicable securities laws, which consent of the Purchaser shall not be unreasonably withheld or delayed (it being understood that such consent may be withheld unless such Recognized Dealer provides Purchaser with reasonable assurances that the Convertible Notes will not ultimately be placed in an unreasonably concentrated manner); and (ii) to the extent the Convertible Notes have been converted into Common Stock, the aggregate amount of Shares sold for the account of the Sellers and EMEA Sellers collectively, whether pursuant to a Registration Statement or otherwise, shall not exceed the Daily Trading Limit.

SECTION 8.10. Agent of Sellers. The Sellers, the EMEA Sellers or any of them may act through the Distribution Agent in connection with the exercise of any rights or the performance of any actions or obligations under this Article VIII.

SECTION 8.11. Liquidated Damages.

In the event that (i) the Purchaser has not filed the Shelf Registration Statement on or before the date on which such registration statement is required to be filed pursuant to Section 8.1(a), or (ii) any Shelf Registration Statement required by Section 8.1(a) hereof is filed and declared effective but shall thereafter either be withdrawn by the Purchaser in violation of its obligations in Section 8.1 (a), or shall become subject to an effective stop order issued pursuant to Section 8(d) of the Securities Act suspending the effectiveness of such registration statement without being succeeded immediately by an additional registration statement filed and declared

effective (each such event referred to in clauses (i) and (ii), a "**Registration Default**" and each period during which a Registration Default has occurred and is continuing, a "**Registration Default Period**"), then, as liquidated damages for such Registration Default, subject to the provisions of Section 11.13, liquidated damages shall accrue on the Aggregate Principal Amount at a per annum rate of 0.25% for the first 90 days of the Registration Default Period, and at a per annum rate of 0.50% thereafter for the remaining portion of the Registration Default Period.

ARTICLE IX
CONDITIONS TO THE CLOSING

SECTION 9.1. Conditions to Each Party's Obligation. The Parties' obligation to effect, and, as to the Purchaser, to cause the relevant Designated Purchasers to effect, the Closing is subject to the satisfaction or the express written waiver of the Primary Parties, at or prior to the Closing, of the following conditions:

(a) *Regulatory Approvals*. All Regulatory Approvals shall have been obtained.

(b) *No Injunctions or Restraints*. There shall not be in effect any Law or Order of any court or other Government Entity in the U.S., Canada or the United Kingdom (in respect of the transactions contemplated under the EMEA Asset Sale Agreement) prohibiting the consummation of the transactions contemplated hereby and there shall not be any proceeding pending by any Government Entity in the U.S., Canada or the United Kingdom seeking such prohibition.

(c) *Bidding Procedures Order and Canadian Sales Process Order*. The U.S. Bidding Procedures Order and the Canadian Sales Process Order shall have been entered and shall not have been stayed as of the Closing Date and such orders shall have become Final Orders.

(d) *U.S. Sale Order and Canadian Approval and Vesting Order*. The U.S. Sale Order and the Canadian Approval and Vesting Order shall have been entered and shall not have been stayed and (x) such orders shall have become Final Orders, (y) following Closing any such appeal of either such Order shall become moot under applicable Law or (z) any ruling or order by the court in respect of the issue on appeal could not reasonably be expected to have a material adverse effect on the Purchaser or the Business taken as a whole.

(e) *Satisfaction of Conditions under EMEA Asset Sale Agreement*. The conditions to Closing of the EMEA Asset Sale Agreement set out in clauses 15.1, 15.2 and 15.3 thereof (other than the condition regarding the satisfaction of the conditions hereunder) shall have been satisfied or waived in accordance with the terms of the EMEA Asset Sale Agreement.

(f) *Consummation of Closing under EMEA Asset Sale Agreement*. The transaction contemplated by the EMEA Asset Sale Agreement shall be completed simultaneously with the Closing hereunder.

SECTION 9.2. Conditions to Sellers' Obligation. The Sellers' obligation to effect the Closing shall be subject to the fulfillment (or express written waiver by the Main Sellers), at or prior to the Closing, of each of the following conditions:

(a) *No breach of Representations and Warranties*. Each of the representations and warranties set forth in Article III (other than the representations and warranties set forth in Section 3.7 if the Purchaser exercises the Cash Replacement Election in full), disregarding all materiality and material adverse effect qualifications contained therein, shall be true and correct (i) as if restated on and as of the Closing Date or (ii) if made as of a date specified therein, as of such date, except, in each case, for any failure to be true and correct that has not had or would not reasonably be expected to have individually or in the aggregate (i) a material adverse effect on the Purchaser's ability to consummate the transactions contemplated hereby or (ii) a material adverse effect on the assets, liabilities, results of operations or condition (financial or otherwise) of the Purchaser and its subsidiaries taken as a whole.

(b) *No breach of Covenants*. The material covenants, obligations and agreements contained in this Agreement to be complied with by the Purchaser on or before the Closing shall not have been breached in any material respect.

(c) *Notification of NASDAQ for Listing*. The Purchaser has submitted a notification of listing of the Shares to NASDAQ, such listing to be effective as of the Closing Date, subject to the filing of required documentation, notice of issuance and/or other usual requirements at least fifteen (15) days prior to the Closing Date and has not received any notification of objection from NASDAQ with respect to such listing.

(d) *Purchaser's Deliveries*. Each of the deliveries required to be made by the Purchaser pursuant to Sections 2.3.2(b), and 2.3.2(e) shall have been so delivered.

SECTION 9.3. Conditions to Purchaser's Obligation. The Purchaser's obligation to effect, and to cause the relevant Designated Purchasers to effect, the Closing shall be subject to the fulfillment (or express written waiver by the Purchaser), at or prior to the Closing, of each of the following conditions:

(a) *No breach of Representations and Warranties*. Each of the representations and warranties set forth in Article IV, disregarding all materiality and Material Adverse Effect qualifications contained therein, shall be true and correct (i) as if restated on and as of the Closing Date or (ii) if made as of a date specified therein, as of such date, except in each case for any failure to be true and correct that has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) *No breach of Covenants*. The material covenants, obligations and agreements contained in this Agreement to be complied with by the Sellers on or before the Closing shall not have been breached in any material respect, provided that a failure by the Sellers to achieve First Day Ready (as defined in Section 5.28 of the Sellers Disclosure Schedule) on or before April 30, 2010 shall not fall within the scope of this condition.

(c) *Sellers' Deliveries*. Each of the deliveries required to be made by the Sellers pursuant to Section 2.3.2(f) shall have been so delivered except if such deliverable is a Non-Assigned Contract in respect of which a Consent is outstanding.

(d) *Financial Statements*. The Sellers shall have delivered to the Purchaser at least five (5) days prior to the Closing Date, the Audited Financial Statements and Unaudited September 30, 2008 Financial Statements as required by and pursuant to Section 5.26 hereof and the Audited Financial Statements and Unaudited September 30, 2008 Financial Statements shall be consistent in all material respects with the Financial Statements for such periods that are included in the Financial Statements (other than to the extent such differences arise from the differences between the carve-out accounting guidelines promulgated by the SEC and the principals used to allocate corporate overhead used by the Sellers in preparing the Financial Statements).

(e) *Carling Property*. The premises in Lab 10 of the Carling Property to be leased to the Purchaser in accordance with the Carling Property Lease Agreements shall not have been destroyed or substantially damaged.

ARTICLE X
TERMINATION

SECTION 10.1. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written consent of the Primary Parties;

(b) by either Primary Party, upon written notice to the other:

(i) if the Closing does not take place on or before April 30, 2010.

(ii) in the event of a material breach by such other Primary Party of such other Primary Party's representations, warranties, agreements or covenants set forth in this Agreement, which breach (x) would result in a failure of the conditions to Closing set forth in Section 9.1(a), Section 9.2(a), Section 9.2(b), Section 9.3(a) or Section 9.3(b), as applicable, and (y) is not cured within 30 days from receipt of a written notice from the non-breaching Primary Party;

(iii) if the U.S. Bidding Procedures Order and the Canadian Sales Process Order are not entered by the respective courts by October 19, 2009 in the case of any termination pursuant to this clause (iii) by the Purchaser or October 30, 2009 in the case of any termination pursuant to this clause (iii) by the Main Sellers, provided however, that the Main Sellers shall only have the right to terminate pursuant to this Section 10.1(b)(iii) if they are not otherwise in breach of Section 5.1 or Section 5.2;

(iv) if the U.S. Sale Order and Canadian Approval and Vesting Order are not entered into by December 17, 2009;

(v) upon the entry of an order by the Bankruptcy Court authorizing an Alternative Transaction;

(vi) if the EMEA Asset Sale Agreement is terminated in accordance with its terms;

(vii) if a Government Entity in the U.S., Canada or the United Kingdom issues a ruling or Final Order prohibiting the transactions contemplated hereby; or

(viii) if the Auction is not completed by December 11, 2009;

(c) by the Purchaser in the event that the Sellers fail to consummate the Closing in breach of Section 2.3, within ten (10) Business Days of a written demand by the Purchaser to consummate the Closing;

(d) by the Purchaser if any of the Sellers withdraw or seek authority to withdraw the Canadian Approval and Vesting Order Motion or the U.S. Bidding Procedures and Sale Motion, or publicly announce any stand-alone plan of reorganization or plan of arrangement in respect of the Business or liquidation or winding up of all or substantially all of the Assets or the EMEA Assets or any of the Sellers or the EMEA Sellers (or support any such plan filed by any other Person);

(e) by the Main Sellers upon the entry of an order by the Bankruptcy Court authorizing a Sponsored Reorganization Plan; or

(f) by the Purchaser if premises in Lab 10 of the Carling Property to be leased to the Purchaser in accordance with the Carling Property Lease Agreements is destroyed or substantially damaged,

provided, however, that the right to terminate this Agreement pursuant to Section 10.1(b)(i), Section 10.1(b)(ii), Section 10.1(b)(iii), Section 10.1(b)(iv), Section 10.1(b)(vi) and Section 10.1(b)(viii) shall not be available to any Party whose breach hereof has been the principal cause of, or has directly resulted in, the event or condition purportedly giving rise to a right to terminate this Agreement under such clauses; and further provided however, that a Party shall not be permitted to terminate under Section 10.1(b)(ii) if such Party is then itself in material breach of this Agreement.

SECTION 10.2. Termination Payments.

(a) In the event that this Agreement is terminated by either Primary Party pursuant to Section 10.1(b)(v) or by the Purchaser pursuant to Section 10.1(b)(ii), Section 10.1(c) or Section 10.1(d) or by the Main Sellers pursuant to Section 10.1(b)(iii), Section 10.1(b)(iv), Section 10.1(b)(viii) or Section 10.1(e) or in the event that the EMEA Asset Sale Agreement is terminated by the Purchaser pursuant to clause 15.4.4 or clause 15.4.5 of the EMEA Asset Sale Agreement, then the Sellers shall pay to the Purchaser in immediately available funds, (i) within two (2) Business Days following such termination (other than with respect to any termination pursuant to Section 10.1(b)(v)) or (ii) within two (2) Business Days following the consummation of an Alternative Transaction that is

consummated at any time on or prior to the date that is twelve (12) months following any termination pursuant to Section 10.1(b)(v), a cash fee equal to $10,696,000 (the "**Break-Up Fee**"). Additionally, if this Agreement is terminated by either Party pursuant to Section 10.1 (other than Section 10.1(a) or by Sellers pursuant to Section 10.1(b)(ii) or pursuant to Section 10.1(b)(vi) to the extent that no EMEA Expense Reimbursement (as defined in the EMEA Asset Sale Agreement) is payable under the EMEA Asset Sale Agreement), the Sellers shall pay to the Purchaser an amount in cash equal to the total amount of all reasonable and documented fees, costs and expenses incurred by the Purchaser in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all filing and notification fees, and all fees and expenses of the Purchaser and its Affiliates in an amount not to exceed $3,565,333 (the "**Expense Reimbursement**"). The Sellers acknowledge and agree that the Expense Reimbursement is a reasonable amount given the size and complexity of the transactions contemplated by this Agreement. The Expense Reimbursement shall be paid by wire transfer or other means acceptable to the Purchaser not later than two (2) Business Days following the receipt by the Main Sellers of a written notice from the Purchaser describing the fees and expenses which constitute the Expense Reimbursement in reasonable detail (the "**Expense Reimbursement Notice**").

(b) Notwithstanding anything to the contrary in this Agreement, the payment of any fees payable pursuant to Section 10.2(a) shall be the sole and exclusive remedy of the Purchaser, whether at Law or in equity, under this Agreement in the event this Agreement is terminated in accordance with Article X and the Purchaser is paid such fees.

(c) The Sellers' obligation to pay the Expense Reimbursement and the Break-Up Fee pursuant to this Section 10.2 shall survive termination of this Agreement and shall, to the extent owed by the U.S. Debtors, constitute an administrative expense of the U.S. Debtors under Section 503(b) of the U.S. Bankruptcy Code.

(d) Notwithstanding anything to the contrary herein, the Sellers' obligation to pay the Break-Up Fee and Expense Reimbursement pursuant to this Section 10.2 is expressly subject to entry of the U.S. Bidding Procedures Order and the Canadian Sales Process Order.

SECTION 10.3. Effects of Termination. If this Agreement is terminated pursuant to Section 10.1:

(a) all further obligations of the Parties under or pursuant to this Agreement shall terminate without further liability of any Party to the other except for the provisions of (i) Section 5.7 (Public Announcements), (ii) Section 5.10 (Transaction Expenses), (iii) Section 5.11 (Confidentiality), (iv) Section 7.4(b)(ii) (Other Employee Covenants), (v) Section 10.1 (Termination) (vi) Section 10.2 (Termination Payments), (vii) Section 10.3 (Effects of Termination) and (vii) Article XI (Miscellaneous); provided, that neither the termination or anything in this Section 10.3 shall relieve any Party hereto from liability for any breach of this Agreement occurring before the termination hereof and thereof;

(b) except as required by applicable Law, the Purchaser shall return to the Sellers or destroy all documents, work papers and other material of any of the Sellers relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof; and

(c) the provisions of the Confidentiality Agreement will continue in full force and effect.

ARTICLE XI
MISCELLANEOUS

SECTION 11.1. Survival of Representations and Warranties or Covenants.

(a) No representations or warranties, covenants or agreements of the Sellers or the Other Sellers in this Agreement shall survive beyond the Closing Date, except for covenants and agreements that by their terms are to be satisfied after the Closing Date, which shall survive until satisfied in accordance with their terms. For the avoidance of doubt, the covenants of the Sellers in Section 5.26, Article VI and Article VIII shall survive until fully discharged.

(b) No representations or warranties, covenants or agreements of the Purchaser in this Agreement shall survive beyond the Closing Date, except the representations and warranties, covenants and agreements of the Purchaser set forth in Section 3.1, Section 3.2, Section 3.5, Section 3.7 (unless the Purchaser exercises the Cash Replacement Election in full), Section 5.27 and Section 5.36 shall survive beyond the Closing Date, as shall any covenants and agreements set forth in Article VI and Article VIII and covenants and agreements of the Purchaser that by their terms are to be satisfied after the Closing Date, which shall survive until satisfied in accordance with their terms.

SECTION 11.2. Remedies. No failure to exercise, and no delay in exercising, any right, remedy, power or privilege under this Agreement or the documents referred to in this Agreement by any Party will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege under this Agreement preclude any other or further exercise of such right, remedy, power or privilege or the exercise of any other right, remedy, power or privilege. To the maximum extent permitted by applicable Law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

SECTION 11.3. Third-Party Beneficiaries. The acknowledgements, rights, undertakings, representations or warranties contained in this Agreement and expressed to be for the benefit of the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators (including the provisions of Section 2.2, Section 3.7, Section 5.4(c), Section 5.27, Section 5.37, Section 6.8, Section 6.9, Section 5.28 of the Sellers Disclosure Schedule (other than subsection (k)) and Article VIII) (collectively, the "**Third Party Provisions**") shall inure to, are expressly intended to be for the benefit of, and shall be enforceable by, each of the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators (and their applicable successors or representatives) (the "**Third Party Beneficiaries**"), as applicable, and shall be binding on the Purchaser and its successors and assigns. In the event that any Party or any of its successors or

assigns (a) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger, or (b) transfers all or a majority of its properties and assets to any Person, then, and in each such case, proper provision shall be made so that the successors and assigns of such Party, assumes the obligations thereof contained in the Third Party Provisions or otherwise in this Agreement. Except as provided in this Section 11.3, this Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

SECTION 11.4. Consent to Amendments; Waivers. No Party shall be deemed to have waived any provision of this Agreement or any of the other Transaction Documents unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver. This Agreement and the Ancillary Documents shall not be amended, altered or qualified except by an instrument in writing signed by all the parties hereto or thereto, as the case may be. Notwithstanding the foregoing provisions of this Section 11.4, (a) no Third Party Beneficiary shall be deemed to have waived any Third Party Provision unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver and (b) no Third Party Provision shall be amended, altered or qualified except by an instrument in writing signed by all the parties hereto and the Third Party Beneficiaries affected by such amendment, alteration or qualification.

SECTION 11.5. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder may be assigned (whether directly or indirectly) by any Party without the prior written consent of the other Party, which consent may be withheld in such party's sole discretion, except for (i) direct assignment by any Seller to an Affiliate (provided that the applicable Seller remains liable jointly and severally with its assignee Affiliate for the assigned obligations), (ii) direct assignment by the Purchaser to a Designated Purchaser (provided that the Purchaser remains liable jointly and severally with its assignee Designated Purchaser for the assigned obligations), (iii) direct assignment by a U.S. Debtor to a succeeding entity following such U.S. Debtor's emergence from Chapter 11, and (iv) direct assignment by any of the Canadian Debtors pursuant to any plan of arrangement approved by the Canadian Court, which will not require the consent of the Purchaser.

SECTION 11.6. Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) Any questions, claims, disputes, remedies or Actions arising from or related to this Agreement, and any relief or remedies sought by any Parties, shall be governed exclusively by the Laws of the State of New York without regard to the rules of conflict of laws of the State of New York or any other jurisdiction.

(b) To the fullest extent permitted by applicable Law, each Party: (i) agrees that any claim, action or proceeding by such Party seeking any relief whatsoever

arising out of, or in connection with, this Agreement, or the transactions contemplated hereby shall be brought only in (a) either the U.S. Bankruptcy Court, if brought prior to the entry of a final decree closing the Chapter 11 Cases or the Canadian Court, if brought prior to the termination of the CCAA Cases and (b) in the United States District Court for the Southern District of New York or, if that court lacks subject matter jurisdiction, the Supreme Court of the State of New York, County of New York (collectively, the "**New York Courts**") or the *Superior Court of Justice* for the Province of Ontario ("**Ontario Court**"), if brought after entry of a final decree closing the Chapter 11 Cases and termination of the CCAA Cases, and shall not be brought in each case, in any other court in the United States of America, Canada or any court in any other country; (ii) agrees to submit to the jurisdiction of the U.S. Bankruptcy Court, the Canadian Court, the New York Courts and the Ontario Court, as applicable, pursuant to the preceding clauses (i)(a) and (b) for purposes of all legal proceedings arising out of, or in connection with, this Agreement or the transactions contemplated hereby; (iii) waives and agrees not to assert any objection that it may now or hereafter have to the laying of the venue of such action brought in any such court or any claim that any such action brought in such court has been brought in an inconvenient forum; (iv) agrees that the mailing of process or other papers in connection with any such action or proceeding in the manner provided in Section 11.7 or any other manner as may be permitted by Law should be valid and sufficient service thereof; and (v) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdictions by suit on the judgment and in any other manner provided by applicable Law.

(c) Section 11.6(b) shall not limit the jurisdiction of (i) the Accounting Arbitrator set forth in Section 2.2.4.1(b) with respect to all disputes hereunder which the Parties have agreed to be arbitrated by the Accounting Arbitrator, or (ii) the TSA Arbitrator set forth in Section 5.28(m)(i) of Section 5.28 of the Sellers Disclosure Schedule with respect to all disputes thereunder which the Parties have agreed to be arbitrated by the TSA Arbitrator, although claims described in the foregoing may be asserted in the courts referred to in Section 11.6(b) for purposes of enforcing the jurisdiction and judgments of the Accounting Arbitrator and the TSA Arbitrator.

(d) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY OR THEREBY. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE ANCILLARY AGREEMENTS, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 11.6.

SECTION 11.7. Notices. All demands, notices, communications and reports provided for in this Agreement shall be in writing and shall be either sent by facsimile transmission with confirmation to the number specified below or personally delivered or sent by

reputable overnight courier service (delivery charges prepaid) to any Party at the address specified below, or at such address, to the attention of such other Person, and with such other copy, as the recipient Party has specified by prior written notice to the sending Party pursuant to the provisions of this Section 11.7.

If to the **Purchaser** to:

Ciena Corporation
1201 Winterson Road
Linthicum, Maryland 21090
Attention: David Rothenstein,
Senior Vice President and General Counsel
Facsimile: +1-410-865-8001

With copies (that shall not constitute notice) to:

Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
Attention: David S. Dantzic
Joseph A. Simei
Facsimile: +1-202-637-2201

and

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9
Attention: Brian M. Pukier
Facsimile: +1-416-947-0866

If to the **Main Sellers** or the **Sellers**, to:

Nortel Networks Corporation
5945 Airport Road
Suite 360
Mississauga, ON L4V 1R9
Attention: Anna Ventresca
General Counsel — Corporate and Corporate Secretary
Facsimile: +1-905-863-7739

and

Nortel Networks Limited
5945 Airport Road

Suite 360
Mississauga, ON L4V 1R9
Attention: Anna Ventresca
General Counsel — Corporate and Corporate Secretary
Facsimile: +1-905-863-7739

and

Nortel Networks Inc.
Legal Department
220 Athens Way, Suite 300
Nashville, Tennessee 37228
Attention: Lynn C. Egan
Assistant Secretary
Facsimile: +1-615-432-4067

With copies (that shall not constitute notice) to:

Nortel Networks Inc.
Legal Department
220 Athens Way, Suite 300
Nashville, Tennessee 37228
Attention: Robert Fishman
Senior Counsel
Facsimile: +1-347-427-3815 & +1-615-432-4067

and

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006
Attention: Daniel S. Sternberg
Facsimile: +1-212-225-3999

and

Ogilvy Renault LLP
200 Bay Street
Suite 3800, P.O. Box 84
Royal Bank Plaza, South Tower
Toronto, Ontario M5J 2Z4
Attention: Michael J. Lang
Facsimile: +1-416-216-3930

and

Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
211 Commerce Street
Nashville, Tennessee 37201
Attention: Robert J. Looney
Facsimile: +1-615-744-5647

Any such demand, notice, communication or report shall be deemed to have been given pursuant to this Agreement when delivered personally, when confirmed if by facsimile transmission, or on the calendar day after deposit with a reputable overnight courier service, as applicable.

SECTION 11.8. Exhibits; Sellers Disclosure Schedule.

(a) The Sellers Disclosure Schedule and the Exhibits attached hereto constitute a part of this Agreement and are incorporated into this Agreement for all purposes as if fully set forth herein.

(b) For purposes of the representations and warranties of the Sellers contained in this Agreement, disclosure in any Section of the Sellers Disclosure Schedule of any facts or circumstances shall be deemed to be adequate response and disclosure of such facts or circumstances with respect to all representations or warranties by the Sellers calling for disclosure of such information, whether or not such disclosure is specifically associated with or purports to respond to one or more of such representations or warranties, if it is reasonably apparent from the Sellers Disclosure Schedule that such disclosure is applicable. The inclusion of any information in any Section of the Sellers Disclosure Schedule or other document delivered by the Sellers pursuant to this Agreement shall not be deemed to be an admission or evidence of the materiality of such item, nor shall it establish a standard of materiality for any purpose whatsoever.

SECTION 11.9. Counterparts. The Parties may execute this Agreement in two or more counterparts (no one of which need contain the signatures of all Parties), each of which will be an original and all of which together will constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or electronic mail attachment shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 11.10. No Presumption. The Parties agree that this Agreement was negotiated fairly between them at arm's length and that the final terms of this Agreement are the product of the Parties' negotiations. Each Party represents and warrants that it has sought and received experienced legal counsel of its own choosing with regard to the contents of this Agreement and the rights and obligations affected hereby. The Parties agree that this Agreement shall be deemed to have been jointly and equally drafted by them, and that the provisions of this Agreement therefore should not be construed against a Party on the grounds that such Party drafted or was more responsible for drafting the provisions.

SECTION 11.11. Severability. If any provision, clause, or part of this Agreement, or the application thereof under certain circumstances, is held invalid, illegal or incapable of

being enforced in any jurisdiction, (i) as to such jurisdiction, the remainder of this Agreement or the application of such provision, clause or part under other circumstances, and (ii) as for any other jurisdiction, any provision of this Agreement, shall not be affected and shall remain in full force and effect, unless, in each case, such invalidity, illegality or unenforceability in such jurisdiction materially impairs the ability of the Parties to consummate the transactions contemplated by this Agreement. Upon such determination that any clause or other provision is invalid, illegal or incapable of being enforced in such jurisdiction, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible even in such jurisdiction.

SECTION 11.12. Entire Agreement.

(a) This Agreement, the EMEA Asset Sale Agreement, the Ancillary Agreements and the Confidentiality Agreement set forth the entire understanding of the Parties relating to the subject matter thereof, and all prior or contemporaneous understandings, agreements, representations and warranties, whether written or oral, are superseded by this Agreement, the Ancillary Agreements and the Confidentiality Agreement, and all such prior or contemporaneous understandings, agreements, representations and warranties are hereby terminated. In the event of any irreconcilable conflict between this Agreement and any of the Ancillary Agreements or the Confidentiality Agreement, the provisions of this Agreement shall prevail, regardless of the fact that certain Ancillary Agreements, such as the Local Sale Agreement, may be subject to different governing Laws (unless the Ancillary Agreement expressly provides otherwise).

(b) For the sake of clarity, the provisions of the EMEA Asset Sale Agreement have been drafted separately from the provisions in the body of this Agreement to reflect differing market practices in the countries of jurisdiction of the EMEA Sellers. Unless the context specifically requires, the provisions contained in the body of this Agreement and the provisions of the EMEA Asset Sale Agreement shall be interpreted independently and without reference to each other.

SECTION 11.13. Availability of Equitable Relief. Each Party agrees that irreparable damage would occur in the event that any of the provisions of this Agreement that it is required to perform were not performed in accordance with their specific terms or were otherwise breached. Accordingly, subject to the limitations set forth in this Section 11.13 and Section 10.2(a), each Party shall be entitled to equitable relief to prevent or remedy breaches of this Agreement prior to the Closing, and for any breach of Section 5.36, Section 8.1, Section 8.2, Section 8.3, Section 8.4, Section 8.5 and Section 8.6 following the Closing, without the proof of actual damages, including in the form of an injunction or injunctions or orders for specific performance in respect of such breaches. Each Party agrees to waive any requirement for the security or posting of any bond in connection with any such equitable remedy. Each Party further agrees that the only permitted objection that it may raise in response to any action for equitable relief is that it contests the existence of a breach or threatened breach of the provisions of this Agreement. For avoidance of doubt, under no circumstances shall the Sellers be liable for punitive damages or indirect, special, incidental, or consequential damages arising out of or in connection with this Agreement or the transactions contemplated hereby or any breach or alleged breach of any of the terms hereof, including damages alleged as a result of tortious conduct.

SECTION 11.14. Bulk Sales Laws. Each Party waives compliance by the other Party with any applicable bulk sales Law.

SECTION 11.15. Main Sellers as Representatives of Other Sellers.

(a) For all purposes of this Agreement:

(i) each Other Seller listed in Section 11.15(a)(i) of the Sellers Disclosure Schedule hereby irrevocably appoints NNC as its representative;

(ii) each Other Seller listed in Section 11.15(a)(ii) of the Sellers Disclosure Schedule hereby irrevocably appoints NNL as its representative; and

(iii) each Other Seller listed in Section 11.15(a)(iii) of the Sellers Disclosure Schedule hereby irrevocably appoints NNI as its representative.

(b) Pursuant to Section 11.15(a), each of NNC, NNL and NNI shall expressly have the power to, in the name and on behalf of each of its Respective Affiliates (as defined below), (i) make all decisions and carry out any actions required or desirable in connection with this Agreement, (ii) send and receive all notices and other communications required or permitted hereby, and (iii) consent to any amendment, waivers and modifications hereof.

(c) For the purposes of this Agreement, "**Respective Affiliates**" means: (i) with respect to NNC, each Other Seller listed in Section 11.15(a)(i) of the Sellers Disclosure Schedule; (ii) with respect to NNL, each Other Seller listed in Section 11.15(a)(ii) of the Sellers Disclosure Schedule, and (iii) with respect to NNI, all the other U.S. Debtors and each Other Seller listed in Section 11.15(a)(iii) of the Sellers Disclosure Schedule.

(d) Each Respective Affiliate shall indemnify the Main Seller that acts as representative of such Respective Affiliate pursuant to this Section for, and hold it harmless against, any loss, liability or expense, including reasonable attorneys' fees, incurred by such Main Seller without gross negligence, bad faith or willful misconduct, for serving in the capacity of representative of such Respective Affiliate hereunder.

SECTION 11.16. Obligations of Sellers. When references are made in this Agreement to certain Sellers causing Other Sellers or other Affiliate(s) to undertake (or to not undertake) certain actions, or agreements are being made on behalf of certain Other Sellers or other Affiliates, "Sellers" for purposes of such clause shall be deemed to mean, respectively, NNI (in the case of a U.S. Debtor) and NNL (in the case of a Canadian Debtor — other than NNC — and a Non-Debtor Seller).

SECTION 11.17. Execution by Other Sellers. The Purchaser hereby acknowledges that the Other Sellers are not executing this Agreement as of the date hereof. This Agreement shall be binding on all parties that have executed this Agreement from the time of such execution, regardless of whether all Sellers have done so. Between the date hereof and the Closing Date, the Main Sellers hereby agree that they shall cause each Other Seller to execute a

counterpart to this Agreement as promptly as practicable but in no event later than the day that is sixty (60) days after the date hereof, agreeing to be bound as a Seller under this Agreement and authorizing NNC, NNL or NNI, as applicable, to act as its representative under Section 11.15.

[Remainder of this page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties have duly executed this Asset Sale Agreement as of the date first written above.

CIENA CORPORATION

Per: /s/ Gary B. Smith
Gary B. Smith
President and Chief Executive Officer

NORTEL NETWORKS CORPORATION

Per: /s/ Pavi Binning
Pavi Binning
Executive Vice-President, Chief Financial Officer and Chief Restructuring Officer

Per: /s/ Anna Ventresca
Anna Ventresca
General Counsel — Corporate and Corporate Secretary

NORTEL NETWORKS LIMITED

Per: /s/ Pavi Binning
Pavi Binning
Executive Vice-President, Chief Financial Officer and Chief Restructuring Officer

Per: /s/ Anna Ventresca
Anna Ventresca
General Counsel — Corporate and Corporate Secretary

NORTEL NETWORKS INC.

Per: /s/ Anna Ventresca
Anna Ventresca
Chief Legal Officer

Amendment No. 1 to the Amended and Restated Asset Sale Agreement

This Amendment No. 1 ("Amendment No. 1"), dated as of the 3rd day of December 2009, to the Amended and Restated Asset Sale Agreement (the "Agreement"), dated as of November 24, 2009, by and among Nortel Networks Corporation, a corporation organized under the laws of Canada ("NNC"), Nortel Networks Limited, a corporation organized under the laws of Canada ("NNL"), Nortel Networks Inc., a corporation organized under the laws of Delaware ("NNI" and, together with NNC and NNL, the "Main Sellers"), and the other entities identified therein as Sellers, and Ciena Corporation, a corporation organized under the laws of Delaware (the "Purchaser"). Capitalized terms used herein and not defined shall have the meaning set forth in the Agreement.

WHEREAS, pursuant to the Agreement, among other things, the Sellers have agreed to transfer to the Purchaser, and the Purchaser has agreed to purchase and assume, the Assets and the Assumed Liabilities from the Sellers upon the terms and conditions set forth therein;

WHEREAS, pursuant to the Recitals to the Agreement, "Ancillary Agreements" is defined;

WHEREAS, pursuant to Section 2.2.1 of the Agreement, certain provisions related to the payment of a portion of the Purchase Price with the Convertible Notes are set forth;

WHEREAS, pursuant to Section 2.3.2(b) of the Agreement, certain Closing deliverables are set forth;

WHEREAS, Exhibits 2.2.1(b)(ii) and 2.2.1(b)(iii) of the Agreement set out certain economic terms of the Convertible Notes; and

WHEREAS, pursuant to Section 11.4 of the Agreement, the Parties desire to amend the Recitals to the Agreement, Section 2.2.1 and Section 2.3.2(b) of the Agreement, and Exhibits 2.2.1(b)(ii) and 2.2.1(b)(iii) to the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein and for other good, valuable and binding consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. In clause (xii) of the definition of "Ancillary Agreements" in the last paragraph of the Recitals to the Agreement, replace "Cash Election Option" with "Cash Replacement Election".

2. Section 2.2.1(a) of the Agreement is hereby amended and restated in its entirety as follows:

> "Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the purchase, sale, assignment and conveyance of the

Sellers' and EMEA Sellers' right, title and interest in, to and under the Assets and the EMEA Assets, respectively, pursuant to the terms hereof and pursuant to the terms of the EMEA Asset Sale Agreement, respectively, and of the rights granted by certain Sellers and the EMEA Sellers under the Intellectual Property License Agreement and the Trademark License Agreement, the Purchaser, on its own behalf and as agent for the relevant Designated Purchasers, shall (i) assume and become obligated to pay, perform and discharge, when due, the Assumed Liabilities and the EMEA Assumed Liabilities, (ii) subject to adjustment following the Closing in accordance with Section 2.2.4.2, pay to the Distribution Agent an amount of cash (the "**Cash Purchase Price**") equal to Five Hundred Thirty Million dollars ($530,000,000) (the "**Base Cash Purchase Price**") less the Escrow Amount and as adjusted pursuant to Sections 2.2.2 and 2.2.4 and Section 5.28 of the Sellers Disclosure Schedule or as otherwise expressly provided herein, in the Real Estate Terms and Conditions or in the EMEA Asset Sale Agreement, and (iii) subject to Section 2.2.7, issue to the Distribution Agent, as agent for the Sellers and the EMEA Sellers, $239,000,000 aggregate principal amount (the "**Aggregate Principal Amount**") of 6.0% Senior Notes due June 15, 2017 (the "**Convertible Notes**", and together with the Cash Purchase Price, as adjusted, the "**Purchase Price**") convertible at the holder's option into Common Stock at a conversion price equal to $16.4625 (the "**Conversion Price**"), subject to adjustments contemplated in the Indenture; provided, however, that the Purchaser may, by written notice to the Sellers on or before the Closing Date, elect to increase the Cash Purchase Price and the Base Cash Purchase Price payable pursuant to clause (ii) above by an amount equal to $1,020.00 in cash in lieu of issuing each corresponding $1,000.00 in principal amount of the Convertible Notes (such election, if exercised, the "**Cash Replacement Election**"); provided further, that if the Market Value of the Common Stock on the date of the notice of such election (or in the case the replacement is made with the proceeds of a simultaneous convertible security offering the most recent closing price per share of the Common Stock on the NASDAQ Global Select Market at the time such convertible security offering is priced) is equal to or

greater than $17.00 per share of Common Stock, then in lieu of increasing the Cash Purchase Price as provided above such increase will equal the Optional Redemption Price corresponding to such principal amount."

3. Section 2.3.2(b)(iv) of the Agreement is hereby amended and restated in its entirety as follows:

"subject to Section 2.2.7, and unless the Cash Replacement Election has been exercised in full, on behalf of the Distribution Agent one or more permanent Global Notes (as defined in the Indenture) deposited with the Notes Custodian (as defined in the Indenture) for the Depositary (as defined in the Indenture) for the account of the Distribution Agent in the Depositary, duly executed by the Purchaser and authenticated by the Trustee (as defined in the Indenture) in the aggregate principal amount of the Aggregate Principal Amount minus any amounts reduced by the Cash Replacement Election pursuant to Section 2.2.1(a) (as amended);"

4. The Exhibit to the Agreement currently labeled "Exhibit 2.2.1(b)(ii) — Related Share Adjustment Table" shall instead be labeled "Exhibit 2.2.1(b)(iii) — Redemption — Additional Shares Table".

5. The Exhibit to the Agreement currently labeled "Exhibit 2.2.1(b)(iii) — Conversion Table" shall instead be labeled "Exhibit 2.2.1(b)(ii) — Fundamental Change Make-Whole Table".

6. The list of Exhibits in the Agreement shall be amended to correspond to the changes in Paragraph 4 and Paragraph 5 above.

7. This Amendment No. 1 shall not constitute a modification of any provision, term or condition of the Agreement or any other Transaction Document except solely to the extent and solely for the purposes described herein. Except to the extent that provisions of the Agreement are hereby expressly modified as set forth herein, the Agreement and the other Transaction Documents shall remain unchanged and in full force and effect.

8. This Amendment No. 1 may be executed in multiple counterparts, each of which shall constitute one and the same document.

9. This Amendment No. 1 shall be binding upon the parties hereto and their respective successors and assigns.

10. Any term or provision of this Amendment No. 1 that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the

remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

11. This Amendment No. 1 shall be governed by and construed in all respects by the Laws of the State of New York without regard to the rules of conflict of laws of the State of New York or any other jurisdiction. Any Action arising out of or relating to this Amendment No. 1 shall be resolved in accordance with Section 11.6 of the Agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have signed, or caused this Amendment No. 1 to be signed by their respective officers thereunto duly authorized, as of the date first written above.

NORTEL NETWORKS CORPORATION,
on its own behalf and on behalf of the Other Sellers
listed in Section 11.15(a)(i) of the Sellers
Disclosure Schedule

By: /s/ John Doolittle
John Doolittle
SVP, Finance and Corporate Services

By: /s/ Anna Ventresca
Anna Ventresca
General Counsel – Corporate and Corporate Secretary

NORTEL NETWORKS LIMITED,
on its own behalf and on behalf of the Other Sellers
listed in Section 11.15(a)(ii) of the Sellers
Disclosure Schedule

By: /s/ John Doolittle
John Doolittle
SVP, Finance and Corporate Services

By: /s/ Anna Ventresca
Anna Ventresca
General Counsel – Corporate and Corporate Secretary

NORTEL NETWORKS INC.,
on its own behalf and on behalf of the Other Sellers
listed in Section 11.15(a)(iii) of the Sellers
Disclosure Schedule

By: /s/ Anna Ventresca
Anna Ventresca
Chief Legal Officer

CIENA CORPORATION

By: /s/ Gary B. Smith
Name: Gary B. Smith
Title: President and Chief Executive Officer

Herbert Smith

DATED 7 October 2009

THE EMEA SELLERS

ALAN BLOOM, STEPHEN HARRIS, ALAN HUDSON, DAVID HUGHES AND CHRISTOPHER HILL AS JOINT ADMINISTRATORS

YARON HAR-ZVI AND AVI D. PELOSSOF AS JOINT ISRAELI ADMINISTRATORS

CIENA CORPORATION

ASSET SALE AGREEMENT RELATING TO THE SALE AND PURCHASE OF THE EMEA ASSETS

Herbert Smith LLP
Ref: 2170/7967

TABLE OF CONTENTS

THIS AGREEMENT is made on 7 October 2009

BETWEEN

(1) **THE EMEA SELLERS**, the details of which are set out in Schedule 2 which, in the case of the EMEA Debtors which are set out in Schedule 3, are acting by their joint administrators Alan Robert Bloom, Stephen John Harris, Alan Michael Hudson and Christopher John Wilkinson Hill of Ernst & Young LLP of 1 More London Place, London SE1 2AF (other than Nortel Networks (Ireland) Limited (in administration), for which David Hughes of Ernst & Young Chartered Accountants of Harcourt Centre, Harcourt Street, Dublin 2, Ireland and Alan Robert Bloom serve as joint administrators), who act as agents of the EMEA Debtors only and without any personal liability whatsoever (the **"Joint Administrators"**) and, in the case of the Israeli Company which is acting by its joint administrators Yaron Har-Zvi and Avi D. Pelossof, who act as agents of the Israeli Company only and without any personal liability whatsoever (the **"Joint Israeli Administrators"**);

(2) **THE JOINT ADMINISTRATORS**;

(3) **THE JOINT ISRAELI ADMINISTRATORS**; and

(4) **CIENA CORPORATION** a Delaware corporation (the **"Purchaser"**).

WHEREAS

(A) On the Petition Date, the Canadian Debtors filed with the Canadian Court an application for protection under the CCAA and were granted certain initial creditor protection pursuant to an order issued by the Canadian Court on the same date, which also appointed Ernst & Young Inc. as "Monitor" in connection with the CCAA Cases and was extended by further order of the Canadian Court on 10 February 2009, and 28 April 2009, as the same may be amended and restated from time to time by the Canadian Court.

(B) The U.S. Debtors are debtors-in-possession under the U.S. Bankruptcy Code which commenced the Chapter 11 Cases on the Petition Date.

(C) The EMEA Debtors on the Petition Date filed applications with the Court, pursuant to the Insolvency Act and the EC Regulation and the Court appointed the Joint Administrators on the Petition Date as joint administrators of each of the EMEA Debtors under the Insolvency Act.

(D) The Non-Debtor Sellers and the EMEA Non-Debtor Sellers are not involved in any Bankruptcy Proceedings as at 7 October 2009.

(E) On 18 January 2009, the Israeli Company filed an application with the Israeli Court, pursuant to the Israeli Companies Law 1999, and the regulations relating thereto, for a stay of proceedings and the Israeli Court appointed the Joint Israeli Administrators on 19 January 2009 as joint administrators of the Israeli Company under the Israeli Companies Law 1999, and the regulations relating thereto.

(F) The EMEA Sellers have agreed to sell, transfer or assign on an "as-is" and "where is" basis except in relation to the Israeli Assets (which, to the extent so ordered by the Israeli Court, shall be free and clear of all Liens), and the Purchaser has agreed to, or agreed to cause the EMEA Designated Purchasers to, purchase or be assigned and assumed: (i) on an "as-is"

and "where is" basis, except in relation to the Israeli Assets (which, to the extent so ordered by the Israeli Court, shall be free and clear of all Liens), all right, title and interest that such EMEA Sellers may have (if any) to the EMEA Assets; and (ii) the EMEA Assumed Liabilities, subject to the terms and conditions of this Agreement.

(G) Simultaneously with this Agreement, the Sellers have agreed to transfer to the Purchaser and/or the Designated Purchasers, and the Purchaser has agreed to purchase and assume, and cause the Designated Purchasers to purchase and assume, to the extent applicable, pursuant to sections 363 and 365 of the U.S. Bankruptcy Code and pursuant to the Canadian Approval and Vesting Order, the Assets and the Assumed Liabilities from the Sellers upon the terms and conditions set out in the North American Agreement.

THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (including the recitals and Schedules) words shall have the meanings given to them in Schedule 1 (*Definitions*) or otherwise in this Agreement. To the extent capitalised words are not defined in Schedule 1 (*Definitions*) or otherwise in this Agreement those words shall have the meanings given to them in the North American Agreement.

1.2 In this Agreement (including the recitals and Schedules), unless the context requires otherwise:

1.2.1 a reference to a party, Clause, recital or Schedule is, unless otherwise stated, a reference to a party, Clause, recital or Schedule of this Agreement;

1.2.2 headings used in this Agreement are for convenience only and shall not affect interpretation;

1.2.3 any word or expression in the singular shall include the plural and vice versa;

1.2.4 where the word "including" is used the words following it are illustrative and are not exhaustive;

1.2.5 a reference to the Joint Administrators or the Joint Israeli Administrators shall be construed as being either to the Joint Administrators (jointly and severally) or the Joint Israeli Administrators (jointly and severally) (as appropriate) (but severally as between the Joint Administrators and the Joint Israeli Administrators) and to any other person who is appointed as an administrator in substitution for any Joint Administrator or the Joint Israeli Administrators (as appropriate) or as an additional administrator in conjunction with the Joint Administrators or the Joint Israeli Administrators (as appropriate);

1.2.6 all references to "dollars" or "$" are references to the lawful currency of the United States, and all references to "pounds", "sterling" or "£" are references to the lawful currency of the United Kingdom. All calculations and estimates to be performed or undertaken, unless otherwise specifically indicated, are to be expressed in the lawful currency of the United States. Where pounds sterling or another currency is to be converted into United States currency it shall be converted on the basis of the exchange rate published in the Wall Street Journal, Eastern Edition newspaper for the day in question;

1.2.7 all references to time in Clause 4 (*Payments and Closing*) and Clauses 15.1 (*General Conditions*) to 15.3 (*Other Conditions*) are to Toronto Canada time, and all other references to time are references to London UK time;

1.2.8 references to any enactment or statutory provision shall be deemed to include any amendment, modification or re-enactment of such enactment or provision, any previous enactment which has been replaced or amended and any subordinate legislation made under such enactment or provision;

1.2.9 the Sellers and the Purchaser will enter into the North American Agreement which, together with this Agreement, provide, inter alia, for the sale to the Purchaser (or the Designated Purchasers or the EMEA Designated Purchasers) of the Business. For greater certainty, nothing in this Agreement shall be considered or construed in any manner as a sale or transfer of the Business (except the EMEA Business) or the Assets;

1.2.10 unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each in relation to periods of time, mean "to but excluding". If the last day of any such period is not a Business Day, such period will end on the next Business Day. When calculating the period of time "within" which, "prior to" or "following" which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is excluded from the calculation. If the last day of any such period is not a Business Day, such period will end on the next Business Day;

1.2.11 the recitals of this Agreement form an integral part of this Agreement for all purposes;

1.2.12 any amounts payable pursuant to this Agreement are expressed to be exclusive of VAT (if any), though for the avoidance of doubt the payment of such VAT shall be governed by the provisions of Clause 11 (*Tax*);

1.2.13 in determining whether an asset is "exclusively" used in connection with the EMEA Business, incidental, de minimis or casual uses outside the EMEA Business and other uses in the Business (other than the EMEA Business) shall not be considered; and

1.2.14 "Knowledge" or "knowledge" or "aware of" or "notice of" or a similar phrase shall mean: with reference to (i) the EMEA Debtors other than Nortel Ireland, the actual knowledge of those Persons listed in Section 1(d)(i) of the EMEA Sellers' Disclosure Schedule, after their due enquiry of the staff of the Joint Administrators working on the administration of the relevant EMEA Debtor; (ii) Nortel Ireland, the actual knowledge of those Persons listed in Section 1(d)(ii) of the EMEA Sellers' Disclosure Schedule, after their due enquiry of the staff of the Joint Administrators working on the administration of Nortel Ireland; (iii) Nortel Switzerland, the actual knowledge of those Persons listed in Section 1(d)(iii) of the EMEA Sellers' Disclosure Schedule; (iv) o.o.o. Nortel Networks, the actual knowledge of the Persons listed in Section 1(d)(iv) of the EMEA Sellers' Disclosure Schedule; (v) Nortel Northern Ireland, the actual knowledge of those Persons listed in Section 1(d)(v) of the EMEA Sellers' Disclosure Schedule; (vi) the Israeli Company (in respect only of Clause 10.7), the actual knowledge of those Persons (for so long as those Persons serve as Joint Israeli

Administrators of the Israeli Company pursuant to the stay proceedings in the Israeli Court and the Joint Israeli Administrators shall not be deemed to have knowledge unless expressly stated otherwise) listed in Section 1(d)(vi) of the EMEA Sellers' Disclosure Schedule, after their due enquiry of the staff of the Joint Israeli Administrators working on the administration of the Israeli Company; and (vii) the Purchaser, the actual knowledge of James Moylan (CFO) and David Rothenstein (General Counsel) and, in respect only of paragraph 18M of Part III of Schedule 5 of this Agreement, Jay Negandhi (Senior Director Accounting and EMEA Facilities) and Michael White (Director of Facilities (Global)).

2. SALE AND PURCHASE

EMEA Assets

2.1 Subject to the terms and conditions of this Agreement (and in particular to Schedule 5 (*Real Estate*), Clause 2.10 (*Non-assignable EMEA Assets*), Clause 5 (*EMEA Seller Contracts*), Clause 7 (*Insolvency Proceedings*) and Clause 6 of Schedule 6 (*Employees*), at Closing the Purchaser hereby agrees to, and hereby agrees to cause the relevant EMEA Designated Purchasers to, purchase or be assigned and assume from the relevant EMEA Sellers, and each EMEA Seller hereby agrees to transfer or assign to the Purchaser or the relevant EMEA Designated Purchasers on an "as-is" basis, except in relation to the Israeli Assets (which, to the extent so ordered by the Israeli Court, shall be free and clear of all Liens) all right, title and interest that such EMEA Seller may have (if any) to the following properties, rights and assets other than the EMEA Excluded Assets, (such properties, rights and assets, excluding the EMEA Excluded Assets, the **"EMEA Assets"**):

2.1.1 the EMEA Owned Inventory as of the Closing Date;

2.1.2 the EMEA Owned Equipment as of the Closing Date;

2.1.3 subject to Clause 5 (*EMEA Seller Contracts*), the EMEA Seller Contracts in force as of the Closing Date;

2.1.4 subject to Clause 2.2.6 (*EMEA Excluded Assets*), the EMEA Business Information existing as at the Closing Date subject to, in the case of the EMEA Business Information used in connection with a service provided to the Purchaser or any relevant EMEA Designated Purchaser under the Transition Services Agreement, a license to the EMEA Sellers to use such EMEA Business Information solely for the purpose of providing any services thereunder for so long as such services are provided under the Transition Services Agreement and thereafter, such EMEA Business Information will be delivered to the Purchaser subject to a mutually agreed plan to deliver electronic EMEA Business Information to the Purchaser;

2.1.5 the EMEA Transferred Intellectual Property as of the Closing Date, subject to the license rights of any Third Parties under such Intellectual Property prior to 7 October 2009, or coming into existence after 7 October 2009, but prior to the Closing Date, and not in violation of Clause 10.23.3 (*Conduct of Business*) together with all claims against Third Parties for infringement, misappropriation or other violation of Law with respect to any of the EMEA Transferred

Intellectual Property, whether for any past, present or future infringement, misappropriation or other violation;

2.1.6 all rights as of the Closing Date under all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent related to the EMEA Assets;

2.1.7 the Consents of Government Entities and pending applications therefore listed in Section 2.1.7 of the EMEA Sellers Disclosure Schedule (the **"EMEA Seller Consents"**);

2.1.8 all goodwill exclusively associated with the EMEA Business including the goodwill associated with the EMEA Transferred Intellectual Property;

2.1.9 Tax Records and VAT Records required by Law to be transferred to the Purchaser or an EMEA Designated Purchaser;

2.1.10 subject to Clause 2.2.6 (*EMEA Excluded Assets*), the EMEA Transferring Employee Records; and

2.1.11 the EMEA CIP Accounts Receivable as of the Closing Date.

EMEA Excluded Assets

2.2 Notwithstanding anything in this Clause 2 or elsewhere in this Agreement or in any of the Transaction Documents to the contrary, nothing herein shall be deemed to sell, transfer or assign (or require any EMEA Seller to do any of the foregoing as to) the following assets to the Purchaser or any EMEA Designated Purchaser, and each EMEA Seller shall retain all of its respective rights, title and interests in and to, and the Purchaser and the EMEA Designated Purchasers shall have no rights with respect to the rights, title and interests of each of the EMEA Sellers in any of the following assets (collectively, the **"EMEA Excluded Assets"**):

2.2.1 cash, cash equivalents, accounts receivable (including intercompany receivables but excluding EMEA CIP Accounts Receivable), bank account balances and all petty cash of the EMEA Sellers;

2.2.2 subject to Clause 10.43 (*Insurance*), any refunds due from, or payments due on, claims with the insurers of any of the EMEA Sellers in respect of losses arising prior to the Closing Date;

2.2.3 any Security Deposits of the EMEA Sellers (including those relating to EMEA Seller Contracts);

2.2.4 other than the EMEA Seller Contracts, any rights of the EMEA Sellers under any contract, arrangement or agreement (including for the avoidance of doubt any rights of the EMEA Sellers under the Subcontract Agreement and the EMEA Bundled Contracts);

2.2.5 the minute books, share ledgers and Tax Records and VAT Records of the EMEA Sellers other than Tax Records and VAT Records included in Clause 2.1.9 (*EMEA Assets*);

2.2.6 without prejudice to Clause 2.2.5: (i) any books, records, files, documentation or sales literature other than the EMEA Business Information; (ii) subject to Clause 12.1 (*Employees*) and Schedule 6 (*Employees*), the EMEA Employee Records; and (iii) such portion of the EMEA Business Information or the EMEA Transferring Employee Records that the EMEA Sellers are required to retain by Law (including Laws relating to privilege or privacy) (provided that copies of such information shall be provided to the Purchaser to the extent permitted by applicable Law or such agreement) and/or not to disclose;

2.2.7 except for the EMEA Transferred Intellectual Property and any rights transferred or licensed under the other Transaction Documents, Intellectual Property of any EMEA Seller (including the EMEA Sellers' names) or any Affiliates of any EMEA Seller or Intellectual Property owned by a Third Party;

2.2.8 all rights of the EMEA Sellers under this Agreement and the Ancillary Agreements;

2.2.9 all records prepared in connection with the sale of the Business other than those records that relate solely to the sale of the Business to the Purchaser and the EMEA Designated Purchasers (other than those records containing personal communication or notes relating to the same which shall be EMEA Excluded Assets). For greater certainty, any records relating to negotiations with Third Parties in connection with the sale of the Business shall be Excluded Assets other than any confidentiality agreements with Third Parties executed in connection with the sale of the Business which are otherwise being assigned to the Purchaser in accordance with the provisions of this Agreement;

2.2.10 all share or other equity interests in any Person;

2.2.11 any business asset, product or service run, owned, managed and/or provided by NETAS, the LGN Joint Venture or any other joint venture (or similar arrangement) of the Sellers and the EMEA Sellers unless expressly included in this Agreement;

2.2.12 any assets set out in Section 2.2.12 (*EMEA Excluded Assets*) of the EMEA Sellers' Disclosure Schedule;

2.2.13 any Tax Relief of the EMEA Sellers or any member of the EMEA Sellers' Group, save to the extent expressly transferred by this Agreement to the Purchaser or an EMEA Designated Purchaser; and

2.2.14 any and all other assets and rights of the EMEA Sellers not specifically included in Clause 2.1 (*EMEA Assets*).

2.3 In addition to the above, the EMEA Sellers shall have the right to retain, following Closing, copies of any book, record, literature, list and any other written or recorded information constituting EMEA Business Information to which the EMEA Sellers, the Joint Administrators and/or the Joint Israeli Administrators in good faith determine they are reasonably likely to need access for bona fide business or legal purposes, which retained EMEA Business Information shall be held in accordance with Clauses 10.25-10.28 (*Confidentiality*).

EMEA Assumed Liabilities

2.4 On the terms and subject to the conditions set out in this Agreement and subject to Clause 5 (*EMEA Seller Contracts*) at Closing, the Purchaser shall, and shall cause the relevant EMEA Designated Purchasers to, assume and become responsible for, and perform, discharge and pay and indemnify the EMEA Sellers against, when due, (in accordance with their respective terms and subject to the respective conditions thereof) the following Liabilities (the **"EMEA Assumed Liabilities"**) and no others:

2.4.1 without prejudice to Schedule 6 (*Employees*) or Clause 2.4.2, all Liabilities arising after the Closing Date to the extent related to the operation of the EMEA Business by the Purchaser following Closing, including: (i) all Liabilities incurred after the Closing Date with respect to the ownership and operation of the EMEA Assets; (ii) all Liabilities incurred after the Closing Date related to Actions or claims brought against the EMEA Business; and (iii) all Liabilities arising after the Closing Date under any products liability Laws or similar Laws concerning defective products manufactured or sold by the EMEA Business following the Closing Date;

2.4.2 all Liabilities:

(A) arising from or in connection with the performance of the EMEA Assigned Contracts (or breach thereof) after the Closing Date;

(B) whether arising and/or made before, on or after the Closing Date with respect to:

(1) any obligation to buy back from the relevant resellers the EMEA Products sold by the EMEA Business to its resellers under the EMEA Assigned Contracts;

(2) any obligations under any warranty liabilities relating to the EMEA Products and EMEA Services which have been supplied under any EMEA Assigned Contract, including warranties in respect of Known Product Defects;

(3) any obligations or liabilities pursuant to outstanding purchase orders for goods or services that have not yet been delivered to the EMEA Sellers (to the extent that such goods or services relate to the EMEA Business and are delivered to the Purchaser or a Designated Purchaser after the Closing Date); and

(4) any outstanding obligations or liabilities for credits for EMEA Products and EMEA Services granted by the EMEA Sellers after the Petition Date, but only in relation to such credits arising before the Closing Date to the extent that they are reflected in "Accrued Product Credits" in "Closing Other Accrued and Contractual Liabilities", each as defined in the North American Agreement,

but, in each case, excluding, for the avoidance of doubt (i) all outstanding accounts payable as set out in Clause 2.5.9 (*EMEA Excluded Liabilities*) and (ii) all Liabilities incurred before the Petition Date to the extent such

Liabilities would be treated as an unsecured claim in the administration (or subsequent insolvency proceedings) of the relevant EMEA Debtor,

all such Liabilities being the "**EMEA Assumed Contract Liabilities**";

2.4.3 all Liabilities resulting from any licensing assurances, declarations, agreements or undertakings relating to the EMEA Transferred Intellectual Property which the EMEA Sellers may have granted or committed to Third Parties including standard-setting bodies, as set forth in Section 2.4.3 of the EMEA Sellers' Disclosure Schedule, it being understood that the EMEA Sellers or their Affiliates may have made other licensing assurances, declarations, agreements or undertakings to various other standard-setting bodies concerning the EMEA Transferred Intellectual Property, the Liabilities for such other assurances, declarations, agreements or undertakings are not assumed hereunder but are being referenced merely to provide notice thereof;

2.4.4 all Liabilities for, or related to, any obligation for, any Tax that the Purchaser or any EMEA Designated Purchaser bears under Clause 11 (*Tax*); and

2.4.5 all obligations under any warranty liabilities, including warranties with respect to Known Product Defects, relating to EMEA Products and EMEA Services which have been supplied under any EMEA Bundled Contract subcontracted to the Purchaser or to any EMEA Designated Purchaser under the Subcontract Agreement, or the benefit and burden of which has otherwise been transferred to the Purchaser or an EMEA Designated Purchaser in accordance with Clauses 10.36.2 and 10.36.3; and

2.4.6 the EMEA Assumed Employment Liabilities.

EMEA Excluded Liabilities

2.5 Subject to Clause 5.5 (*EMEA Seller Contracts*), but notwithstanding any other provision in this Agreement to the contrary, neither the Purchaser nor any of the EMEA Designated Purchasers shall assume or be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of the EMEA Sellers, and the EMEA Sellers shall be solely and exclusively liable with respect to all Liabilities of the EMEA Sellers, other than the EMEA Assumed Liabilities (collectively, the **"EMEA Excluded Liabilities"**). For the purposes of clarity, and without limitation of the generality of the foregoing, the EMEA Excluded Liabilities shall include, without limitation, each of the following Liabilities of the EMEA Sellers:

2.5.1 all Indebtedness of the EMEA Sellers and their Affiliates;

2.5.2 all guarantees of Third Party obligations by the EMEA Sellers and reimbursement obligations to guarantors of the EMEA Sellers' obligations or under letters of credit;

2.5.3 any Liability of the EMEA Sellers or their directors, officers, stockholders or agents (acting in such capacities), arising out of, or relating to, this Agreement or the transactions contemplated by this Agreement, whether incurred prior to, at or subsequent to the Closing Date, including, without limitation, other than as specifically set forth herein, including with respect to the EMEA Assumed

Liabilities, all finder's or broker's fees and expenses and any and all fees and expenses of any representatives of the EMEA Sellers;

2.5.4 other than as specifically set forth herein, any Liability relating to events or conditions occurring or existing in connection with, or arising out of, the EMEA Business operated prior to the Closing Date, or the ownership, possession, use, operation or sale or other disposition prior to the Closing Date of the EMEA Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing Date, with the EMEA Business);

2.5.5 all Liabilities for, or related to, any obligation for, any Tax that the EMEA Sellers bear under Clause 11 (*Tax*), and for the avoidance of doubt, the parties intend that no Purchaser or EMEA Designated Purchaser shall have any Succession Tax Liabilities;

2.5.6 all Actions pending against the EMEA Sellers arising on or before the Closing Date or to the extent relating to the EMEA Business or the EMEA Assets prior to the Closing Date even if instituted after the Closing Date;

2.5.7 any Liability incurred by the EMEA Sellers or their respective directors, officers, shareholders, agents or employees (acting in such capacities) after the Closing Date;

2.5.8 any Liability relating to, or arising out of, the ownership or operation of an EMEA Excluded Asset or the operation by the EMEA Sellers of any business other than the EMEA Business, whether before, on, or after, the Closing Date;

2.5.9 any Liability relating to any real properties owned, operated or otherwise controlled by the EMEA Sellers or their Affiliates (including the Properties) to the extent arising from events or conditions occurring or existing prior to the Closing Date and connected with, arising out of or relating to: (i) Releases, Handling of Hazardous Materials or violations of Environmental Laws or (ii) claims relating to employee health and safety, including claims for injury, sickness, disease or death of any Person; (and the parties hereby agree that (in relation to the Monkstown Property) this sub-clause shall, if and to the extent permitted in the context of any statutory guidance introduced to accompany Part 3 of the Waste and Contaminated Land (Northern Ireland) Order 1997 once that Part of the Order is brought into force, be treated as the equivalent of an "Agreement on Liabilities" as that concept is used in paragraph D38 of Annex 3 of DEFRA Circular 01/2006 in relation to Part 2A of the Environmental Protection Act 1990 as applicable in England & Wales and the Purchaser or an EMEA Designated Purchaser may provide a copy of this Agreement to the relevant regulatory authority in circumstances where the Purchaser or any of the EMEA Designated Purchasers has been identified as an appropriate person to undertake remediation of contaminated land in order that the regulatory authority shall give effect to this Agreement and neither party will challenge this Agreement);

2.5.10 any Liability for outstanding accounts payable other than those referred to in Clause 2.4.2(B)(3) (*EMEA Assumed Liabilities*); and

2.5.11 any EMEA Excluded Employment Liabilities, as set out in Clause 11 of Schedule 6 (*Employees*).

2.6 Without prejudice to Clause 9 (*Warranties from the EMEA Sellers, Joint Administrators and Joint Israeli Administrators*), no indemnity or warranty whatsoever is given by the EMEA Sellers, the Joint Administrators and/or the Joint Israeli Administrators in respect of any EMEA Excluded Liabilities that, notwithstanding the provisions of Clause 2.4 (*EMEA Assumed Liabilities*), Clause 2.5 (*EMEA Excluded Liabilities*) and Clause 13 (*Pensions*), are assumed by, or borne by, or imposed on, the Purchaser or an EMEA Designated Purchaser, except due to any action (not including, for the avoidance of doubt, the entering into of this Agreement) of the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators, and the Purchaser shall not, and shall procure that any EMEA Designated Purchaser does not, make any claim against the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators in respect of such liabilities save that, for the avoidance of doubt, this Clause 2.6 shall not serve to limit any claim in respect of a breach of Clause 10.23.2 or any claim pursuant to Section 6.8 *(EMEA Tax Escrow)* or Section 6.9 (*Italian Tax Escrow*) of the North American Agreement.

2.7 For Irish law purposes, the parties hereto agree and acknowledge that this Agreement shall be an agreement to transfer, and not a conveyance, and any EMEA Assets shall only be transferred to the Purchaser upon the execution and delivery of, and pursuant to, the Global Bill of Sale and the Irish Bill of Sale.

Main Sellers

2.8 Notwithstanding anything to the contrary in this Agreement, none of the Main Sellers shall assume, or are deemed to assume, any obligation or Liability whatsoever under this Agreement and this Clause 2 (*Sale and Purchase*) shall not apply to or govern the sale, assignment, transfer, retention or assumption of assets, rights, properties or liabilities of, or by, any Main Seller in any manner whatsoever. The only assets, rights, properties and liabilities of the Main Sellers that are being sold, assigned or transferred to, and assumed by, the Purchaser or Designated Purchasers, and the terms and conditions thereof, and representations with respect thereto, are solely as expressly set out in the North American Agreement.

2.9 Subject to Clause 14.9 (*Limitations on Post-Closing Obligations*), neither the Purchaser nor any EMEA Designated Purchaser shall be entitled to make any claim under this Agreement, or assert any right hereunder, against any entity or other Person other than the EMEA Sellers and their successors and assigns. Subject to Clause 14.9 (*Limitations on Post-Closing Obligations*), any breach of this Agreement by the Joint Administrators or Joint Israeli Administrators shall be deemed to be a breach by them in their capacities as administrators of the EMEA Debtors and the Israeli Company respectively, and, in such a case, the Purchaser or the relevant Designated Purchaser shall have the right to make claims and assert its rights hereunder, against the EMEA Debtors and the Israeli Company and their respective successors and assigns.

Non-assignable EMEA Assets

2.10 Except in relation to Consents required with respect to the sale, transfer or assignment of EMEA Seller Contracts (which shall be governed in accordance with the provisions of Clause 5 (*EMEA Seller Contracts*)) notwithstanding anything in this Agreement to the contrary, if the requisite Consent has not been obtained on or prior to Closing, then, unless such Consent is subsequently obtained, this Agreement shall not constitute an agreement to sell, transfer or assign, directly or indirectly, any EMEA Asset, or any obligation or benefit arising thereunder if an attempted direct or indirect sale, transfer or assignment thereof,

without the Consent of a Third Party (including a Government Entity), would constitute a breach, default, violation or other contravention of the rights of such Third Party or would be ineffective with respect to any party to a Contract concerning such EMEA Asset. For greater certainty, failure to obtain any such Consent shall not entitle the Purchaser to terminate or rescind this Agreement or fail to complete the transactions contemplated hereby or entitle the Purchaser to any adjustment of the Purchase Price. In the case of Consents, Contracts and other commitments included in the EMEA Assets (except EMEA Seller Contracts) (i) that cannot be transferred or assigned without the consent of Third Parties, which consent has not been obtained prior to Closing, the EMEA Sellers shall, at the Purchaser's sole out-of-pocket cost, reasonably cooperate with the Purchaser in endeavouring to obtain such Consent and, if any such Consent is not obtained, the EMEA Sellers shall, following Closing, at the Purchaser's sole out-of-pocket cost, cooperate with the Purchaser in all reasonable respects to provide to the Purchaser the benefit of such Consent, Contract or other commitment, or (ii) that are otherwise not transferable or assignable, the EMEA Sellers shall, following Closing, at the Purchaser's sole out-of-pocket cost, reasonably cooperate with the Purchaser to provide to the Purchaser the benefit of such Consent, Contract or other commitment. The obligation of the EMEA Sellers to provide such reasonable cooperation under this Clause 2.10 shall, subject to Clause 14.8 (*Limitations on Post-Closing Obligations*), be for a period commencing on the Closing Date, of one year and after such time period, the EMEA Sellers shall have no further obligation to so cooperate nor, save for any liability in respect of any prior breach of this Clause 2.10, shall the EMEA Sellers bear any further liability for the failure to obtain such Consents within such time period.

Israeli Assets

2.11 Notwithstanding any other term of this Agreement, the Joint Israeli Administrators and the Israeli Company hereby undertake to procure that any application to the Israeli Court to approve the transactions contemplated hereunder shall seek an order that the Israeli Assets will be sold, transferred and assigned to the Purchaser or a Designated Purchaser free and clear of all Liens and that this Agreement shall be effective as from the date of this Agreement.

3. PURCHASE PRICE

Payment of Purchase Price

3.1 Pursuant to the terms and subject to the conditions set forth in this Agreement, in consideration of the purchase, sale, assignment and conveyance of the Sellers' and EMEA Sellers' right, title and interest in, to and under the Assets and the EMEA Assets, respectively, pursuant to the terms of the North American Agreement and the terms hereof, respectively, and of the rights granted by certain Sellers and the EMEA Sellers under the Intellectual Property License Agreement and the Trademark License Agreement, the Purchaser, on its own behalf and as agent for the relevant Designated Purchasers and EMEA Designated Purchasers shall:

3.1.1 assume and become responsible for, and perform, discharge and pay and indemnify the EMEA Sellers against, when due, the EMEA Assumed Liabilities hereunder; and

3.1.2 pay the Cash Purchase Price, as adjusted pursuant to the terms of the North American Agreement, to the Distribution Agent as agent for the Sellers and the

EMEA Sellers, in accordance with Section 2.2.1 of the North American Agreement, subject to any further adjustments pursuant to Clause 3.5 (*Purchase Price adjustments*), provided that, for the avoidance of doubt, amounts of or in respect of VAT and/or Transfer Taxes shall be paid directly to the relevant EMEA Seller, the relevant Tax Authority, the Joint Administrators and/or the Joint Israeli Administrators (as relevant) pursuant to and in accordance with Clause 11 (*Tax*) of this Agreement and shall not be paid to the Distribution Agent; and

3.1.3 subject to Section 2.2.7 of the North American Agreement, issue to the Distribution Agent, as trustee for the Sellers and the EMEA Sellers, shares of the Purchaser's Common Stock, par value $0.01 per share, in accordance with Section 2.2.1 of the North American Agreement.

3.2 Notwithstanding any other term of this Agreement or the North American Agreement, the parties hereto expressly acknowledge and agree that (i) if the Purchaser makes payment to the Distribution Agent or issues shares to the Distribution Agent in accordance with Section 2.2.1 of the North American Agreement, the Distribution Agent is authorized to receive such cash and shares, and such receipt shall be an effective discharge of the Purchaser's obligations to make such payment or issue such shares under this Agreement or the North American Agreement, and the Purchaser shall not be concerned to see the application, or answerable for the loss or misapplication, of such payment or issue of such shares, and (ii) the Purchaser shall have no Liability whatsoever with respect to the allocation of cash paid or shares issued to the Distribution Agent as between EMEA Sellers or any other Persons, and in no event will the Purchaser be under an obligation to indemnify the EMEA Sellers, Joint Administrators or Joint Israeli Administrators against any Liability relating to such allocation.

3.3 The Purchase Price shall be paid less any applicable Irish Revenue Commissioner withholding tax to the extent that a certificate or certificates of the type referred to in Clause 4.3.8 (*Closing Obligations*) have not been furnished on or before Closing to the Purchaser or an EMEA Designated Purchaser, and for the avoidance of doubt the provisions of Clauses 11.13 to 11.15 (*Deductions and Withholding)* shall apply where any such deduction is made.

3.4 The Purchase Price shall be paid less any applicable withholding tax imposed by a Tax Authority in Israel to the extent that a certificate or certificates of the type referred to in Clause 4.3.9 (*Closing Obligations*) have not been furnished on or before Closing to the Purchaser of an EMEA Designated Purchaser and for the avoidance of doubt the provisions of Clauses 11.13 to 11.15 (*Deductions and Withholding)* shall apply where any such deduction is made.

Purchase Price adjustments

3.5 In addition to any adjustments pursuant to Sections 2.2.2, 2.2.3 or 2.2.4 of the North American Agreement, if, any EMEA Seller becomes a Restricted Seller and all or some of the EMEA Assets or EMEA Assumed Liabilities held by it become Removed Assets and/or Removed Liabilities pursuant to Clause 7 (*Insolvency Proceedings*) or Clause 6 of Schedule 6 (*Employees*), then the Purchase Price including the Cash Purchase Price paid by the Purchaser at Closing, shall be reduced with respect to all such Removed Assets and Removed Liabilities in accordance with the provisions of Schedule 8 (*Purchase Price Adjustment*).

3.6 To the extent that Restricted Assets and/or Restricted Liabilities are designated Removed Assets or (as applicable) Removed Liabilities pursuant to Clauses 7.1 to 7.4 (*Insolvency Proceedings*) and continue to be Removed Assets or Removed Liabilities at Closing, then for a period of thirty (30) days following Closing, the relevant Restricted Sellers (subject to Clause 10.4 (*Limitations*)) and the Purchaser or an EMEA Designated Purchaser shall, in respect of such Removed Assets and Removed Liabilities of the relevant Restricted Seller, continue to use their reasonable endeavours to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to give effect, and the Restricted Sellers shall so far as they are able, procure that the officeholder in the Secondary Proceeding gives effect, to the transfer of such Removed Assets to the Purchaser or an EMEA Designated Purchaser and assumption of such Removed Liabilities by the Purchaser or an EMEA Designated Purchaser (provided, however, nothing contained herein shall require the Purchaser or any EMEA Designated Purchaser to take any action in violation of applicable Law or any Order) as promptly as reasonably practicable within such period on the terms set forth in this Agreement, subject to such amendments as may be agreed by the Purchaser or necessary to comply with local law regulation or requirements (to the extent not materially adverse to the Purchaser), provided, however, in no event shall the Purchaser be required to (i) pay a purchase price for such Removed Assets greater than the Downward Adjustment calculated in accordance with Schedule 8 (*Purchase Price Adjustment*) in respect of such Removed Assets and/or (ii) assume any EMEA Excluded Liabilities or material Liabilities that are not EMEA Assumed Liabilities hereunder and/or (iii) incur or pay any unreasonable or disproportionate out-of-pocket costs (including legal costs and expenses) in respect of such transfer. Notwithstanding the foregoing, in relation to any Restricted Seller, no Removed Liability shall be assumed by the Purchaser or an EMEA Designated Purchaser to the extent that the Removed Asset to which it relates is not transferred to the Purchaser or such EMEA Designated Purchaser, and to the extent Removed Assets are transferred to the Purchaser or an EMEA Designated Purchaser, as applicable, the Purchaser or an EMEA Designated Purchaser shall assume the related Removed Liabilities.

4. PAYMENT AND CLOSING

Closing

4.1 The completion of the purchase and sale of the EMEA Assets and the assumption of the EMEA Assumed Liabilities (the **"Closing"**) pursuant to this Agreement shall occur simultaneously with the closing of the transaction contemplated by the North American Agreement and shall take place at the offices of Ogilvy Renault LLP in Toronto, Canada, commencing at 9:00 a.m. local time on the date which is the later of (i) 1 February, 2010, (ii) the date that is the earlier of (x) ten (10) Business Days after the Service Readiness Date and (y) 30 April, 2010, and (iii) five (5) Business Days after the day upon which all of the conditions set out in Clause 15 (*Conditions to Closing and Termination*) of this Agreement (other than conditions to be satisfied at Closing, but subject to the waiver or fulfilment of those conditions) have been satisfied or, if permissible, waived by the EMEA Sellers, the Joint Administrators, or the Joint Israeli Administrators, as applicable, and/or the Purchaser (as applicable), or at such other place, date and time as shall be mutually agreed upon in writing by the Purchaser, the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators (the day on which Closing takes place being the **"Closing Date"**).

4.2 Such right, title and interest as has been agreed to be transferred pursuant to Clause 2 (*Sale and Purchase*) and risk with respect to the EMEA Assets will transfer to, and the EMEA Assumed Liabilities will be assumed by, the Purchaser and the relevant EMEA Designated Purchasers, with effect from Closing.

Closing obligations

4.3 At Closing:

4.3.1 Subject to Schedule 5 (*Real Estate*), the EMEA Sellers and the Purchaser shall, and the Purchaser shall cause the EMEA Designated Purchasers to, enter into the Ancillary Agreements to which it is contemplated that they will be parties respectively, to the extent such agreements have not yet been entered into;

4.3.2 the EMEA Sellers shall, so far as they are able, deliver or cause to be delivered to the Purchaser or the EMEA Designated Purchasers, the EMEA Assets that are capable of passing by delivery and any documents of title or ownership relating to them in the possession or control of the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators;

4.3.3 the Purchaser shall:

(A) comply with its obligations under Sections 2.3.2 of the North American Agreement;

(B) deliver to the EMEA Sellers those duly executed Real Estate Agreements to be entered into in accordance with paragraph 11.3 of Part II of Schedule 5 (*Real Estate*); and

(C) deliver to the EMEA Sellers the Global Bill of Sale and the Irish Bill of Sale duly executed by the Purchaser and/or the relevant Designated Purchasers;

(D) deliver to the EMEA Sellers executed counterparts of each Ancillary Agreement to which it is to be a party to be entered into at Closing;

4.3.4 the Purchaser and each relevant EMEA Designated Purchaser shall deliver, or cause to be delivered to the EMEA Sellers, the Joint Administrators and/or Joint Israeli Administrators any other documents reasonably requested by the EMEA Sellers, the Joint Administrators and/or the Joint Israeli Administrators in order to effect, or evidence the consummation of, the transactions contemplated herein;

4.3.5 the EMEA Non-Debtor Sellers shall deliver, or cause to be delivered, to the Purchaser or the relevant EMEA Designated Purchaser copies of resolutions of the board of directors (or a duly constituted committee of the board) of each EMEA Non-Debtor Seller authorising, and of any other corporate authorizations required in relation to, the execution of this Agreement and any other agreements to be executed by the EMEA Non-Debtor Sellers at Closing;

4.3.6 the relevant EMEA Sellers shall deliver (as applicable), or cause to be delivered, to the Purchaser or the relevant EMEA Designated Purchaser:

(A) such bills of sale and/or deeds of transfer and instruments of assignment, in a form satisfactory to the Purchaser (acting reasonably), duly executed by the applicable EMEA Seller, as are required or (at the sole cost and expense of the Purchaser) reasonably desirable (provided that for this purpose a bill of sale and/or deed of transfer or instrument of assignment shall not be "reasonably desirable" to the extent that it would create any additional liability on any of the EMEA Sellers, Joint Administrators or Joint Israeli Administrators or result in any delay of Closing) to transfer the EMEA Assets to the Purchaser or an EMEA Designated Purchaser that have been reasonably requested in writing by the Purchaser to the relevant EMEA Sellers at least five (5) days prior to the Closing Date;

(B) those duly executed Real Estate Agreements to be entered into in accordance with paragraph 11.3 of Part II of Schedule 5 (*Real Estate*);

(C) executed counterparts of each Ancillary Agreement to which it is to be a party to be entered into at Closing;

(D) the Global Bill of Sale and the Irish Bill of Sale duly executed by the relevant EMEA Sellers; and

(E) subject to the limitations set out in Clause 10.4 (*Limitations*) any other documents reasonably requested by the Purchaser in order to effect, or evidence the consummation of, the transactions contemplated herein;

4.3.7 each of the EMEA Sellers (or their authorised representative) and the Purchaser shall enter into the Escrow Agreement with the Escrow Agent which, the EMEA Sellers and the Purchaser acknowledge, shall also be executed by the Main Sellers pursuant to Section 2.2.5 of the North American Agreement;

4.3.8 the EMEA Sellers shall deliver or cause to be delivered to the Purchaser any CG50A clearance certificates in respect of Irish capital gains tax that are necessary under Irish Law for any payments under this Agreement or the North American Agreement to be made free from Irish withholding tax provided that if such certification is not delivered, Clause 3.3 (*Payment of Purchase Price*) shall apply and the Purchaser shall have no further remedy in relation to such non-delivery and in particular this Clause 4.3.8 shall not be a condition to Closing pursuant to Clauses 15.1 to 15.3 (*General Conditions*) inclusive, and breach of this Clause 4.3.8 shall not be a reason for termination of this Agreement pursuant to Clause 15.4 (*Termination*);

4.3.9 the EMEA Sellers shall deliver or cause to be delivered to the Purchaser any exemption from withholding tax certificates in respect of Tax in Israel that are necessary under Israeli Law for any payments under this Agreement or the North American Agreement to be made free from Israeli withholding tax provided that if such certification is not delivered, Clause 3.4 (*Payment of Purchase Price*) shall apply and the Purchaser shall have no further remedy in relation to such non-delivery and in particular this Clause 4.3.9 shall not be a condition to Closing pursuant to Clauses 15.1 to 15.3 (*General Conditions*) inclusive, and breach of this Clause 4.3.9 shall not be a reason for termination of this Agreement pursuant to Clause 15.4 (*Termination*).

EMEA Designated Purchasers

4.4 The Purchaser shall be entitled to designate, in accordance with the terms and subject to the limitations set out in this Clause 4.4, one or more Wholly Owned Subsidiaries to: (i) purchase specified EMEA Assets (including specified EMEA Seller Contracts); (ii) assume specified EMEA Assumed Liabilities; and/or (iii) subject to any overriding legal requirement, employ specified Transferring Employees with effect from Closing in the case of ARD Transferring Employees, and at the time set forth in paragraph 5.1 of Schedule 6 (*Employees*) in the case of Non-ARD Transferring Employees (any Wholly Owned Subsidiary of the Purchaser that shall be properly designated by the Purchaser in accordance with this Clause 4.4, an "**EMEA Designated Purchaser**"); it being understood and agreed, however, that:

(i) any such right of the Purchaser to designate an EMEA Designated Purchaser is conditional upon the Purchaser having provided reasonable evidence to the relevant EMEA Seller that:

(A) any such designation does not create any net Liability for the EMEA Debtors or net reduction in the amount of consideration received by the EMEA Debtors, including any Liability relating to Taxes and any increased withholding or deduction on account of Tax from any payment (other than Taxes for which Purchaser or an EMEA Designated Purchaser is liable pursuant to Clause 11 (*Tax*)) and taking into account any savings of, or reduction in Taxes of any EMEA Debtors that would not have existed had the purchase, assumption and/or employment (as relevant) been made by the Purchaser (provided however that it is agreed that an obligation to pay or account for VAT shall not be treated as a Liability for the purposes of this Clause 4.4 only);

(B) any such designation does not create any net Liability for any individual EMEA Non-Debtor Seller or the Israeli Company or net reduction in the amount of consideration received by any individual EMEA Non-Debtor Seller or the Israeli Company, including any Liability relating to Taxes and any increased withholding or deduction on account of Tax from any payment (other than Taxes for which Purchaser or an EMEA Designated Purchaser is liable pursuant to Clause 11 (*Tax*)) and taking into account any savings of, or reduction in Taxes of such EMEA Non-Debtor Seller or the Israeli Company that would not have existed had the purchase, assumption and/or employment (as relevant) been made by the Purchaser (provided however that it is agreed that an obligation to pay or account for VAT shall not be treated as a Liability for the purposes of this Clause 4.4 only);

(ii) no such designation shall relieve the Purchaser of any of its obligations hereunder and the Purchaser and each EMEA Designated Purchaser shall be jointly and severally liable for any obligations assumed by such EMEA Designated Purchaser hereunder, subject, in respect of the Monkstown Property, to the terms of Schedule 5 (*Real Estate*); and

(iii) any breach of any Transaction Document by an EMEA Designated Purchaser shall be deemed a breach by the Purchaser to the extent that the EMEA Designated Purchaser incurs any Liability to the EMEA Sellers, the Joint

Administrators or the Joint Israeli Administrators pursuant to such breach, subject, in respect of the Monkstown Property, to the terms of Schedule 5 (*Real Estate*).

4.5 Subject to any overriding legal requirement, the above designations shall be made by one or more written notices by the Purchaser, to be delivered to the EMEA Non-Debtor Sellers, the Joint Administrators (in relation to the EMEA Debtors) and the Joint Israeli Administrators (in relation to the Israeli Company only), with respect to each jurisdiction, on or before the date necessary to comply with any applicable regulatory requirements or the Purchaser's obligations hereunder, in each case without resulting in any material delay to the Closing (but in no event later than fifteen (15) Business Days before the Closing Date), which written notice shall contain the legal name of the EMEA Designated Purchaser(s), the jurisdiction of incorporation or formation of the EMEA Designated Purchaser(s), the actual and (if there is any intention to change such residence on or prior to Closing, proposed) jurisdiction of Tax residence of the EMEA Designated Purchaser(s), and shall (a) indicate which EMEA Assets and EMEA Assumed Liabilities and Transferring Employees the Purchaser intends such EMEA Designated Purchaser(s) to purchase, assume and/or employ, as applicable, hereunder (to the extent such information necessary to comply with the obligation under this clause (a) is actually available or has been made available to the Purchaser); and (b) include a signed counterpart to this Agreement, in a form reasonably acceptable to the EMEA Non-Debtor Sellers, the Joint Administrators (in relation to the EMEA Debtors) and the Joint Israeli Administrators (in relation to the Israeli Company only), agreeing to be bound by the terms of this Agreement and authorising the Purchaser to act as the EMEA Designated Purchaser(s)' agent for all purposes hereunder.

5. EMEA SELLER CONTRACTS

5.1 Other than in relation to such EMEA Seller Contracts set out in a Novation Notice provided by the Purchaser pursuant to Clause 5.2 (and in such case, only for so long as, in the case of any EMEA Seller Contract which is capable of assignment, Clause 5.2 requires novation to be sought), the EMEA Sellers shall, subject to Clause 5.8, on or with effect from Closing assign or procure the assignment to the Purchaser or the relevant EMEA Designated Purchaser at the Purchaser's cost and expense of all of the EMEA Seller Contracts which are capable of assignment without the consent of Third Parties, provided, however, the assignment and /or subletting of the Properties shall be governed by Schedule 5 *(Real Estate)*.

5.2 No later than fifteen (15) days prior to the Closing Date, the Purchaser may provide the EMEA Sellers with a written notice requesting the novation of the rights and obligations of the EMEA Seller Contracts set out thereunder (a "**Novation Notice**"). Subject to Clause 10.4 *(Limitations)*, the EMEA Sellers shall, from as soon as reasonably practicable following the date of receipt of a Novation Notice until the expiry of the period ending sixty (60) days following Closing, at the Purchaser's cost and expense, use reasonable endeavours to have novated to the Purchaser the rights and obligations of the EMEA Sellers under each of the EMEA Seller Contracts to which the Novation Notice relates on terms and conditions consistent with the terms and conditions of this Agreement. The Purchaser acknowledges that the EMEA Sellers may (at the EMEA Sellers' sole cost and expense) seek from the relevant Third Party, in relation to any novation, a longstop date to any Third Party claims not transferred to the Purchaser in accordance with Clause 2.4 *(EMEA Assumed Liabilities)*, and the Purchaser agrees to reasonably assist (provided that the EMEA Sellers shall pay the Purchaser's out-of-pocket costs reasonably and properly incurred in connection with the provision of such assistance) the relevant EMEA Sellers in

the seeking of a request to such agreement with such Third Party (provided that the Purchaser shall not be required to assume any such Third Party claims not transferred to the Purchaser in accordance with Clause 2.4 *(EMEA Assumed Liabilities)*), provided, however that such request does not delay or adversely affect the willingness of such Third Party to enter into such novation. To the extent that the EMEA Sellers are unable to effect any such novation in respect of any EMEA Seller Contract prior to the Closing Date, the remaining provisions of this Clause 5 (except that such EMEA Seller Contract shall be deemed to be a Non-Assignable Contract from the Closing Date until the expiry of such sixty (60) day period) shall apply to such EMEA Seller Contract unless and until such EMEA Seller Contract is novated. The Purchaser undertakes to (or shall cause the relevant EMEA Designated Purchaser to) perform and discharge at its own cost all of the EMEA Assumed Contract Liabilities.

5.3 The Purchaser shall indemnify each of the Joint Administrators and the Joint Israeli Administrators fully and completely against all actions, proceedings, claims, demands, costs, expenses, damages, compensation, fines, penalties and other Liabilities which may be brought against or incurred by the Joint Administrators and/or the Joint Israeli Administrators, in their personal capacities, as a result of any breach by the Purchaser of its obligations under Clause 2.4.2 (*EMEA Assumed Liabilities*).

5.4 The Purchaser acknowledges that the EMEA Sellers may not be entitled to assign or novate the entire benefit or burden of the EMEA Seller Contracts without the prior consent of certain Third Parties (such EMEA Seller Contracts being the **"Non-Assignable Contracts"**) and that the EMEA Sellers shall not, and do not, purport to assign or novate any benefit or burden of any such contract otherwise than in accordance with this Agreement. If however, such consents are received within one year after the Closing Date, such Non-Assignable Contract will become an EMEA Assigned Contract as of the effective date of such Consent and shall be assigned or novated, as applicable, by the relevant EMEA Seller to the Purchaser or relevant EMEA Designated Purchaser in accordance with this Agreement.

5.5 In respect of Non-Assignable Contracts, prior to Closing the EMEA Sellers (subject to Clauses 5.8 and 10.4 (*Limitations*)) shall use reasonable endeavours to (and the Purchaser shall provide such assistance as may be reasonably required by the EMEA Sellers (provided that, for the avoidance of doubt, it shall not be reasonable for the Purchaser to be required to assume any obligations, which are not EMEA Assumed Liabilities, under such Non-Assignable Contracts)), and after Closing (to the extent not received prior to Closing) the Purchaser, or the relevant EMEA Designated Purchaser, shall use reasonable endeavours (provided that, for the avoidance of doubt, the use of such reasonable endeavours shall not require the Purchaser to assume any obligations, which are not EMEA Assumed Liabilities, under such Non-Assignable Contracts) to (and subject to Clauses 5.8 and 10.4 (*Limitations*) the EMEA Sellers, at the Purchaser's cost and expense, shall provide such assistance as may be reasonably required by the Purchaser) obtain all necessary Consents for their assignment or, at the request of the Purchaser or as requested by the applicable Third Party, to arrange their novation and provide the Purchaser or the EMEA Sellers, the Joint Administrators and/or the Joint Israeli Administrators (as the case may be) with a copy of all such Consents and/or executed assignments and/or novations. The Purchaser acknowledges that the EMEA Sellers may (at the EMEA Sellers' sole cost and expense) seek from the relevant Third Party, in relation to any novation, a longstop date to any Third Party claims not transferred to the Purchaser in accordance with Clause 2.4 (*EMEA Assumed Liabilities*), and the Purchaser agrees to reasonably assist (provided that the EMEA Sellers shall pay the Purchaser's out-of-pocket costs reasonably and properly

incurred in connection with the provision of such assistance) the relevant EMEA Sellers in the seeking of a request to such agreement with any such Third Party (provided that the Purchaser shall not be required to assume any such Third Party claims not transferred to the Purchaser in accordance with Clause 2.4 (*EMEA Assumed Liabilities*)), provided however that such request does not delay or adversely affect the willingness of such Third Party to enter into such novation. Until each Non-Assignable Contract has been assigned or novated (as appropriate) in accordance with this Clause 5.5:

5.5.1 the relevant EMEA Seller shall, to the extent reasonably within its contractual or other ability or control and subject also to Clauses 5.5, 5.6, 5.8 and 10.4 (*Limitations*), take reasonable steps to provide the benefit of that Non-Assignable Contract to the Purchaser or the relevant EMEA Designated Purchaser, and all such benefit shall vest in, and be held on trust, to the extent the relevant EMEA Seller is not constrained by operation of Law or any Third Party from granting such rights or benefits, by the relevant EMEA Seller for, the Purchaser, or the relevant EMEA Designated Purchaser (provided that the relevant EMEA Seller, the Joint Administrators and the Joint Israeli Administrators shall have no Liability to the Purchaser when acting under the direction of the Purchaser and as its agent), and the relevant EMEA Seller shall account to the Purchaser or the relevant EMEA Designated Purchaser accordingly in respect of any monies or other benefits received by the relevant EMEA Seller in relation thereto (and to the extent that such monies or other benefits can not, as a matter of Law, be held on trust for the Purchaser or relevant EMEA Designated Purchaser, such monies or other benefits shall, for the avoidance of doubt, be an expense of the administration as described in Paragraph 99(4) of Schedule B1 and Rule 2.67 of the Insolvency Act); and

5.5.2 to the extent that the Purchaser, or the relevant EMEA Designated Purchaser, receives, has received, or has a legally binding right against the Person providing the benefits under the relevant Non-Assignable Contract, to receive, the benefits of such Non-Assignable Contract in accordance with Clause 5.5, the Purchaser shall (or shall cause the relevant EMEA Designated Purchaser to) (if sub-contracting or agency is permitted under the relevant Non-Assignable Contract), as the relevant EMEA Seller's sub-contractor or agent, perform on behalf of the relevant EMEA Seller (but at the Purchaser's expense) all the obligations of the relevant EMEA Seller arising under the relevant Non-Assignable Contract, but provided that if such Non-Assignable Contract does not permit sub-contracting or agency, the parties shall make such other arrangements between themselves as may be permissible to implement so far as possible the effective transfer of the benefit and burden of such Non-Assignable Contract to the Purchaser or the relevant EMEA Designated Purchaser.

5.6 Notwithstanding the foregoing:

5.6.1 nothing in Clause 5.5 shall require any EMEA Seller to renew, modify or amend any Non-Assignable Contract once it has expired;

5.6.2 any endeavours required of the EMEA Sellers pursuant to Clause 5.5 shall, subject to Clause 14.8 (*Limitations on Post-Closing Obligations*), be for a period of one year commencing on the Closing Date; and

5.6.3 the EMEA Sellers shall have the right, any time after the Closing Date, to exercise any right to terminate any Non-Assignable Contract, such termination to take effect, subject to Clause 14.8 (*Limitations on Post-Closing Obligations*), at, on or after the date that is one year after the Closing Date.

5.7 Subject to Clause 5.10, the Purchaser shall, or shall cause the relevant EMEA Designated Purchaser to indemnify each of the EMEA Sellers, Joint Administrators and the Joint Israeli Administrators fully and completely against all actions, proceedings, claims, demands, costs, expenses, damages, compensation, fines, penalties and other Liabilities which the EMEA Sellers, Joint Administrators and/or the Joint Israeli Administrators may incur as a result of any reasonable actions taken pursuant to Clause 5.5.

5.8 The EMEA Sellers, the Joint Administrators and/or the Joint Israeli Administrators shall not be required in any circumstances to agree to the terms of any proposed assignment or novation of the benefit of any EMEA Seller Contract unless the Purchaser or an EMEA Designated Purchaser shall at the same time assume the burden of the EMEA Sellers under such EMEA Seller Contract.

5.9 Any failure to assign or to novate any EMEA Seller Contract shall not entitle the Purchaser to annul the sale, claim compensation or damages or entitle the Purchaser to a reduction in or repayment of the Purchase Price paid or payable or entitle the Purchaser to terminate or rescind this Agreement without prejudice to any right of the Purchaser to terminate this Agreement in accordance with Clause 15.4 (*Termination*) on any breach of this Clause 5, individually or together with any other breach or breaches of this Agreement.

5.10 Any references in Clauses 5.1, 5.2, 5.5 and 5.7 to the indemnification or payment by the Purchaser of costs and expenses of the EMEA Sellers, Joint Administrators or Joint Israeli Administrators shall not include any internal fees and costs of the EMEA Sellers, Joint Administrators or Joint Israeli Administrators, and are references to the indemnification or payment by the Purchaser of the EMEA Sellers', Joint Administrators', or Joint Israeli Administrators', third party costs, fees and expenses reasonably and properly incurred by such EMEA Sellers, Joint Administrators or Joint Israeli Administrators provided that the Purchaser shall have previously approved such costs, fees and expenses (such approval, except in relation to legal costs, fees, expenses and disbursements, not to be unreasonably withheld or delayed). To the extent that any such third party costs, fees, and expenses reasonably and properly incurred are not approved by the Purchaser under this Clause 5.10, the obligations of the relevant EMEA Sellers, Joint Administrators and Joint Israeli Administrators to perform their obligations under Clauses 5.1, 5.2 and 5.5 (except the obligation of the relevant EMEA Sellers, under Clause 5.5.1, to hold the benefit of Non Assignable Contracts on trust and to account to the Purchaser or the relevant EMEA Designated Purchaser for any such monies or other benefits received in relation thereto) requiring the incurrence of such costs, fees, and expenses shall be, to such extent, suspended.

5.11 Notwithstanding any other term of this Agreement, no party shall be obligated to compromise any right, asset or benefit, make any payment, incur any Liability or deliver anything of value to any Third Party (other than filing and application fees to Government Entities) in connection with its obligations under Clauses 5.1, 5.2 and 5.5, and neither the Purchaser nor any Designated Purchaser shall be obligated to reimburse or indemnify the EMEA Sellers, Joint Administrators or Joint Israeli Administrators in relation thereto, unless the Purchaser or the relevant Designated Purchaser has expressly requested, in

writing, the making of such compromise, the making of such payment, incurrence of such Liability or delivery of such value.

6. EMEA THIRD PARTY ASSETS

6.1 The parties recognise that the EMEA Assets may include EMEA Third Party Assets. In relation to the EMEA Third Party Assets (that the Purchaser is, or becomes, aware are EMEA Third Party Assets) the Purchaser undertakes, or shall cause the relevant EMEA Designated Purchaser to undertake, (from the time from which it becomes so aware):

6.1.1 not to hold itself out as the owner of such assets nor to sell, offer for sale, assign, charge, pledge, create or permit the creation of an encumbrance on or otherwise deal with such assets;

6.1.2 to maintain such assets in its possession, at its own expense, and in the same repair and condition as they were at Closing;

6.1.3 either (i) if still in possession of the Purchaser or the relevant EMEA Designated Purchaser, to deliver-up, such assets to the relevant Third Party or the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators forthwith on demand or (ii) to make such payment to or arrangements with such Third Party as may be necessary to discharge the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators from any claim in respect of an EMEA Third Party Asset; and

6.1.4 to keep the Joint Administrators and the Joint Israeli Administrators fully and completely indemnified against all claims, demands, costs, expenses, damages, compensation, fines, penalties and other Liabilities whatsoever which may be brought against or incurred by the Joint Administrators or the Joint Israeli Administrators, in their personal capacities, in connection with the Purchaser failing to observe or perform the provisions of this Clause 6.

6.2 Subject to the other provisions of this Agreement, the Purchaser and the relevant EMEA Designated Purchasers shall take whatever right, title and interest the EMEA Sellers may have (if any) in any EMEA Third Party Assets.

6.3 The Purchaser shall have no right to annul the sale, to claim compensation or damages or a reduction in or repayment of the Purchase Price paid or payable, nor be entitled to terminate or rescind this Agreement if any of the EMEA Assets are or are found to be EMEA Third Party Assets.

6.4 Without prejudice to its obligations under Clause 6.1.3, if the Purchaser or an EMEA Designated Purchaser wishes to negotiate any arrangement with any Third Party in relation to any EMEA Third Party Asset and/or dispute any claim in respect of an EMEA Third Party Asset, the relevant EMEA Seller shall, subject to being fully indemnified and secured for all reasonable costs by the Purchaser or an EMEA Designated Purchaser, provide to the Purchaser or EMEA Designated Purchaser such assistance and cooperation as the Purchaser or an EMEA Designated Purchaser may reasonably request provided, however, that this Clause 6.4 shall not require any relevant EMEA Seller to take any legal action in respect of any such dispute provided however, that (to the extent that the Purchaser complies with Clause 6.1.4), the Purchaser may delay compliance with Clause 6.1.3 while so disputing any such claim until such time that, in the reasonable opinion of the applicable

EMEA Seller, legal proceedings are likely to be commenced against the relevant EMEA Seller in relation thereto.

7. INSOLVENCY PROCEEDINGS

Insolvency Proceedings

7.1 If at any time on or prior to the Closing Date, Insolvency Proceedings (except (i) any solvent liquidation of Nortel Northern Ireland (provided such solvent liquidation does not affect the completion of the transactions contemplated under this Agreement in accordance with the terms of this Agreement); (ii) the administration of the EMEA Debtors; (iii) the stay of proceedings in relation to the Israeli Company, including a proposed scheme of arrangement, arising in connection with the current stay of proceedings, primarily involving the distribution of a cash dividend (provided such scheme does not otherwise affect the completion of the transactions contemplated under this Agreement in accordance with the terms of this Agreement, does not involve the distribution of Israeli Assets, and does not affect the ability of the Israeli Company to comply with its obligations under this Agreement); or (iv) the Bankruptcy Proceedings applicable to the EMEA Sellers, as set out in the recitals to the North American Agreement, in each case as at 7 October 2009, and any subsequent judicial proceedings thereunder and limited thereto (not including, for the avoidance of doubt, Secondary Proceedings in relation to such Bankruptcy Proceedings) provided such judicial proceedings do not affect the completion of the transactions contemplated under this Agreement in accordance with the terms of this Agreement) are opened in relation to an EMEA Seller in any EMEA Jurisdiction, that EMEA Seller (a "**Restricted Seller**") shall, as soon as is reasonably practicable following such EMEA Seller becoming aware of such Insolvency Proceedings provide a notice to the Purchaser confirming the opening of such Insolvency Proceedings, and in relation to the Israeli Company, the Israeli Company or the Joint Israeli Administrators shall provide to the Purchaser a copy of the notice of the Joint Israeli Administrators to the Israeli Court in respect of the opening of such Insolvency Proceedings ("**Insolvency Proceeding Notice**") and such EMEA Seller will identify in such detail as can be reasonably provided at such time the Restricted Assets subject to such Insolvency Proceedings, provided that full details of those assets will be provided to the Purchaser as soon as reasonably practicable following such notice. Immediately upon receipt of an Insolvency Proceeding Notice, and notwithstanding any provision contained in this Agreement to the contrary:

7.1.1 if the Restricted Assets of that Restricted Seller comprise all of the EMEA Assets that are held by that Restricted Seller, then (except to the extent that the liquidator or other officer appointed under such Insolvency Proceedings chooses to and is permitted by Law to accede to the terms of this Agreement as they apply to such Restricted Seller or for so long as such liquidator or other officer consents to the continuing application of the terms of this Agreement to such Restricted Seller), subject to Clauses 3.5 and 3.6 (*Purchase Price adjustments*), this Clause 7 and Schedule 8 (*Purchase Price Adjustment*), that Restricted Seller shall, without prejudice to the continuing obligations of the Purchaser or any EMEA Designated Purchaser or any other EMEA Sellers under this Agreement, cease to have the benefit of any rights and shall, without any liability to the Purchaser or any other Person under this Agreement or otherwise, be relieved of its obligations under this Agreement (including in relation to any obligation to transfer any Restricted Asset or such of the EMEA Assumed Liabilities held by such Restricted Seller (such EMEA Assumed Liabilities, **"Restricted Liabilities"**) to the Purchaser or an EMEA Designated Purchaser)

and the Purchaser shall be relieved from its obligation to acquire such Restricted Assets and/or assume such Restricted Liabilities of such Restricted Seller under the terms of this Agreement; and

7.1.2 if the Restricted Seller holds any EMEA Asset that is not a Restricted Asset, then it shall continue to be bound by the terms of this Agreement except that, for the purposes of this Agreement, any Restricted Asset of the relevant Restricted Seller shall be deemed to be an EMEA Excluded Asset, and any Restricted Liability shall be deemed to be an EMEA Excluded Liability.

7.2 Notwithstanding Clause 7.1, where a Restricted Seller has provided an Insolvency Proceeding Notice pursuant to Clause 7.1 as a result of an Insolvency Proceeding the Purchaser shall or shall cause the relevant EMEA Designated Purchaser to and the Restricted Seller shall, subject to Clause 10.4 (*Limitations*) and notwithstanding the existence of the Insolvency Proceeding, use their reasonable endeavours to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to give effect to the transfer of such Restricted Assets to the Purchaser or an EMEA Designated Purchaser and the assumption of such Restricted Liabilities by the Purchaser or an EMEA Designated Purchaser on the terms, and in accordance with, this Agreement (provided, however, nothing contained herein shall require the Purchaser or any EMEA Designated Purchaser to take any action in violation of applicable Law or any Order, and in no event shall the Purchaser be required to (i) pay a purchase price for such Restricted Assets greater than the Downward Adjustment reasonably estimated to be payable based upon the principles set out in Schedule 8 (*Purchase Price Adjustment*) in respect of such Restricted Assets and/or (ii) assume any EMEA Excluded Liabilities or material Liabilities that are not EMEA Assumed Liabilities hereunder and/or (iii) incur or pay any unreasonable or disproportionate out-of-pocket costs (including legal costs and expenses) in respect of such transfer subject to such amendments as may be agreed by the Purchaser or relevant EMEA Designated Purchaser or necessary to comply with local law or regulation requirements (to the extent not materially adverse to the Purchaser); provided that the Purchaser shall be released from such obligation if such Restricted Seller solicits proposals for an alternative transaction to sell the relevant Restricted Assets and/or the relevant Restricted Liabilities (and such Restricted Seller shall notify the Purchaser of such solicitation immediately after so soliciting) or negotiates with, or provides material information to, a Third Party considering such an alternative transaction (save to the extent of such EMEA Seller's participation in the Auction), in each case otherwise than as permitted by Clause 10.52 (*Standstill Period*). If the transfers, on the Closing Date, of Restricted Assets and/or Restricted Liabilities to the Purchaser are prohibited by any Insolvency Proceedings (or by the solicitation of an alternative transaction by a Restricted Seller), then the relevant Restricted Assets and Restricted Liabilities (if any) shall (respectively) be designated as Removed Assets and Removed Liabilities for the purposes of Clause 3.5 and Clause 3.6 (*Purchase Price adjustments*) and Schedule 8 (*Purchase Price Adjustment*) of this Agreement shall apply.

7.3

7.3.1 NNUK and Nortel Ireland and the Joint Administrators agree for the purposes of this Clause 7 not to open Secondary Proceedings in relation to NNUK or Nortel Ireland at any time before the earlier of the date which is:

(A) the day after the Closing Date; or

(B) 1 May 2010;

7.3.2 the EMEA Debtors (other than NNUK and Nortel Ireland) and the Joint Administrators agree for the purposes of this Clause 7 not to open Secondary Proceedings in relation to the EMEA Debtors (other than NNUK and Nortel Ireland) at any time before the earlier of the date which is:

(A) the day after the Closing Date; or

(B) 6 January 2010;

7.3.3 the Israeli Company and the Joint Israeli Administrators agree that in the event any Insolvency Proceedings (other than a proposed scheme of arrangement, arising in connection with the current stay of proceedings, primarily involving the distribution of a cash dividend (provided such scheme does not otherwise affect the completion of the transactions contemplated under this Agreement in accordance with the terms of this Agreement, does not involve the distribution of Israeli Assets, and does not affect the ability of the Israeli Company to comply with its obligations under this Agreement)) shall commence against the Israeli Company at any time before the earlier of the date which is:

(A) the day after the Closing Date; or

(B) 6 January 2010,

the Purchaser may elect to remove the Israeli Assets and Israeli Liabilities from the transaction contemplated hereunder pursuant to Section 7.5 herein *(Israeli Court Approval)*. For the avoidance of doubt, in the event of the commencement of such Insolvency Proceedings, the EMEA Sellers (other than the Israeli Company, to the extent that Israeli Company is subject to the stay of proceedings in effect on the date of this Agreement and this Agreement has not been approved by the Israeli Court) agree that such commencement shall be a deemed, for the purpose of enabling the Purchaser to exercise its rights under this Agreement, to be a breach of this Agreement by the Israeli Company, including such rights as it has under Clause 15 of this Agreement,

provided that:

7.3.4 the opening of Secondary Proceedings in respect of an EMEA Debtor by (a) a Third Party; or (b) the Joint Administrators where, in the reasonable opinion of the Joint Administrators the opening of Secondary Proceedings is necessary in order to prevent the opening by a Third Party of Secondary Proceedings in relation to any EMEA Debtor, shall not be deemed a breach by that EMEA Debtor of this Agreement; and

7.3.5 if pursuant to Clause 10.5 (*Limitations*), the Joint Administrators open Secondary Proceedings or procure the opening of Secondary Proceedings in relation to any EMEA Debtor in breach of this Clause 7.3, such action will be a breach of this Agreement by the relevant EMEA Debtor.

7.4 Subject to Clause 10.52 (*Standstill Period*) each EMEA Seller, covenants to the Purchaser that if it becomes a Restricted Seller it shall not and, so far as it is reasonably able to do so, shall procure that any officeholder in any Insolvency Proceedings does not, solicit proposals for an alternative transaction to sell any Restricted Assets or negotiate with, or

provide material to, a Third Party considering such an alternative transaction, unless required to do so under applicable Law.

Israeli Court approval

7.5 If the condition set out in Clause 15.1.4 (*General Conditions*) is not satisfied (and therefore deemed waived in accordance with Clause 15.1.4) on the earlier of the date falling sixty (60) days from 7 October 2009 or the date on which all of the other conditions in Clause 15 (other than the conditions in Clauses 15.1.2, 15.1.4 and 15.1.6 (*General Conditions*)) shall have been satisfied or, if permissible, waived, then:

7.5.1 the Israeli Company shall, without prejudice to the continuing obligations of the Purchaser or any other EMEA Sellers under this Agreement, cease to have the benefit of any rights and shall be relieved of their obligations under this Agreement (including in relation to any obligation to transfer any Israeli Asset or Israeli Liability to the Purchaser or an EMEA Designated Purchaser) and the Purchaser shall be relieved from its obligation to acquire such Israeli Assets and/or assume any Israeli Liabilities of the Israeli Company; and

7.5.2 any such Israeli Assets and any such Israeli Liabilities (if any) shall (respectively) be designated as Removed Assets and Removed Liabilities for the purposes of Clause 3.5 and Clause 3.6 (*Purchase Price adjustments*) and Schedule 8 (*Purchase Price Adjustment*) of this Agreement shall apply.

Notwithstanding the above, in the event the stay of proceeding order with respect to the Israeli Company shall terminate prior to Closing, this Clause 7.5 and the provisions relating to the Joint Israeli Administrators shall be of no further force and effect and the Israeli Company shall be treated as an EMEA Non-Debtor Seller, except (i) the Israeli Company shall not be treated as an EMEA Non-Debtor Seller for the purposes of Clause 9.9 (*EMEA Non-Debtor Seller Warranties*), and (ii) the warranties given by the Israeli Company as set out in Clause 9.6 (*Israeli Company Warranties*) shall remain in full force and effect (except in relation to any reference to the Joint Israeli Administrators which shall be deemed to be deleted).

Monkstown

7.6 NNUK and Nortel Northern Ireland hereby agree to procure that (i) prior to the commencement of any Insolvency Proceedings (except for those in (ii) next following) or (ii) upon any solvent liquidation of Nortel Northern Ireland, all right title and interest in the Monkstown Property owned by Nortel Northern Ireland is validly transferred to NNUK at the sole cost and expense of NNUK and Nortel Northern Ireland.

8. WARRANTIES AND ACKNOWLEDGEMENTS OF THE PURCHASER

8.1 The Purchaser hereby warrants to the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators in the terms set out in Article III of the North American Agreement.

8.2 The Purchaser agrees and undertakes that it does not have any rights against, and shall not make any claim against, any employee, director, agent, officer or adviser of any member of the EMEA Sellers' Groups or the firm, partners, employees, agents, advisers and/or representatives of either the Joint Administrators or the Joint Israeli Administrators on whom it may have relied before agreeing to any term of this Agreement or any other

Transaction Document or before entering into this Agreement or any other Transaction Document.

8.3 Notwithstanding that the EMEA Sellers are not party to the North American Agreement, the Purchaser hereby agrees that Section 2.1.9 (*EMEA Asset Sale Agreement*), 11.3 *(Third Party Beneficiaries)* and 11.4 *(Consent to Amendments; Waivers)* of the North American Agreement are enforceable against and binding upon the Purchaser in respect of the EMEA Sellers and that the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators may enforce the rights under those Sections against the Purchaser as if they were party to that agreement.

8.4 None of the EMEA Sellers, the Joint Administrators nor the Joint Israeli Administrators shall be entitled to recover damages or otherwise obtain payment, reimbursement or restitution more than once in respect of the same loss or liability (including, without limitation, where such recovery of damages or obtaining of payment, reimbursement or restitution is made under the North American Agreement).

8.5 Notwithstanding any other term of this Agreement, neither the Purchaser nor any Designated Purchaser shall have any liability to any EMEA Seller, the Joint Administrators or the Joint Israeli Administrators, (i) if such liability would not have arisen but for any voluntary act, omission, transaction or arrangement carried out after Closing by any member of the EMEA Sellers' Group, the Joint Administrators or the Joint Israeli Administrators, or any of their respective employees, directors, agents, officers, advisers, firm, or partners, (ii) to the extent that it relates to any loss for which any member of the EMEA Sellers' Group, the Joint Administrators or the Joint Israeli Administrators have recovered whether by contribution or indemnity by insurance, or (iii) to the extent that the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators, as the case may be, fail to satisfy their common law duty to mitigate their loss.

9. WARRANTIES FROM THE EMEA SELLERS, JOINT ADMINISTRATORS AND JOINT ISRAELI ADMINISTRATORS

9.1 Except to the extent set out in Clauses 9.4 (*Joint Administrators Warranties)* to 9.9 (*EMEA Non-Debtor Seller Warranties*), none of the EMEA Sellers, Joint Administrators and/or the Joint Israeli Administrators gives any representations or warranties whether express or implied and whether statutory or otherwise (including warranties and covenants: (i) for or as to title, quiet possession, merchantable quality, fitness for purpose, sufficiency, description; (ii) in relation to regulatory compliance; (iii) in relation to compliance with any laws relating to telecommunications; (iv) in relation to compliance with any Antitrust Laws; (v) that the EMEA Transferred Intellectual Property and the Intellectual Property licensed pursuant to the Intellectual Property License Agreement is free from all encumbrances, restrictions or deficiencies (including encumbrances, restrictions or deficiencies that may not have been disclosed to the EMEA Sellers, the Joint Administrators and/or the Joint Israeli Administrators, or does not infringe any Third Party rights); (vi) (with respect to the Joint Administrators and the Joint Israeli Administrators) in relation to Clause 2.7).

9.2 The Purchaser acknowledges and agrees that the terms and conditions of this Agreement and the exclusions which it contains are fair and reasonable in the context of the transactions contemplated by this Agreement or a sale by a company or companies in administration.

9.3 Notwithstanding that the EMEA Sellers, Joint Administrators and the Joint Israeli Administrators are not party to the North American Agreement, the EMEA Sellers, hereby agree that the obligations of the EMEA Sellers set out in Sections 2.2.1 (*Purchase* Price), 2.2.2 (*Estimated Cash Purchase Price)*, 2.2.4 (*Purchase Price* Adjustment), 2.2.5 *(Escrows)*, 2.2.6 *(Purchase Price Allocation)*, 2.2.7 (*Certain Payment Mechanics and Allocation for the* Shares), 5.18 *(Termination of Overhead and Shared Services)*, 5.33 (*Purchaser Management Presentation*), 6.8 (*EMEA Tax Escrow*), 6.9 (*Italian Tax Escrow*), 8.2 and 8.3 *(Trading Limitation)* of the North American Agreement, and Section 5.28 (other than subection (k) (*Taxes*)) of the Sellers' Disclosure Schedule, are hereby incorporated into this Agreement by reference, and are enforceable against the EMEA Sellers in accordance with the terms of such Sections as if set out in this Agreement and subject to the limitations set forth in this Agreement, under the terms of this Agreement. Each EMEA Seller that either receives a portion of the Shares pursuant to Section 2.2 of the North American Agreement, or receives or will own any beneficial interest in such Shares (the **"EMEA Shares Recipient Sellers"**) hereby warrants, with respect to itself only, to the Purchaser in the terms set out in Section 4.15 of the North American Agreement (except for the final sentence of Section 4.15(f) of the North American Agreement), and Section 4.15 of the North American Agreement (except for the final sentence of Section 4.15(f) of the North American Agreement) is hereby incorporated into this Agreement by reference, and is enforceable against each EMEA Shares Recipient Seller, individually, in accordance with the terms of such Section as if set out in this Agreement and subject to the limitations set forth in this Agreement, under the terms of this Agreement.

Joint Administrators Warranties

9.4 The Joint Administrators warrant to the Purchaser that they:

9.4.1 are duly authorised to act as insolvency practitioners in accordance with Part XIII of the Insolvency Act as at the date of the Agreement; and

9.4.2 were appointed by the Court on the Petition Date as administrators of each EMEA Debtor in accordance with the Insolvency Act and such appointment has not been terminated by the Court or the Joint Administrators as at 7 October 2009.

EMEA Debtor Warranties

9.5 Each EMEA Debtor (acting by the Joint Administrators) warrants to the Purchaser that, with respect to itself:

9.5.1 this Agreement has been duly executed and delivered by a representative of the Joint Administrators as agent for and on behalf of such EMEA Debtor, and constitutes legal, valid and binding obligations of such EMEA Debtor enforceable against such EMEA Debtor in accordance with its terms;

9.5.2 during the period from 8:00pm on 14 January 2009 until 7 October 2009, so far as it is aware, no Secondary Proceedings have been commenced with respect to, and no petitions in connection with the commencement of Insolvency Proceedings (except proceedings in the administration of the relevant EMEA Debtors, in the ordinary course, to the extent such proceedings do not affect the completion of the transactions contemplated under this Agreement in accordance with the terms of this Agreement) have been filed against, such

EMEA Debtor in any jurisdiction, save as set out in Schedule 9.5.2 of the EMEA Sellers' Disclosure Schedule. For the avoidance of doubt, the awareness of an EMEA Debtor includes the awareness of its Joint Administrators; and

9.5.3 since 8:00pm on 14 January 2009, it has, save for any Permitted Encumbrance, not executed or knowingly suffered to be done or been party to any document which would charge or encumber or affect the title of such EMEA Debtor to the EMEA Assets or hinder the sale of the EMEA Assets under this Agreement.

Israeli Company Warranties

9.6 The Israeli Company (acting by the Joint Israeli Administrators) warrants to the Purchaser that, with respect to itself:

9.6.1 as at 7 October 2009, this Agreement has been duly executed and delivered by a representative of the Joint Israeli Administrators as agent for and on behalf of the Israeli Company, and (subject to the Israeli Court's approval of this Agreement, to the extent that the Israeli Company remains in, and is, subject to, the stay of proceedings in effect on the date of this Agreement) constitutes legal, valid and binding obligations of the Israeli Company enforceable against the Israeli Company in accordance with its terms;

9.6.2 it has provided the Purchaser, or an EMEA Designated Purchaser, with all filings, in its possession, which were submitted to the Israeli Court, with respect to the Israeli Company; and

9.6.3 since the grant of the stay of proceedings order on 19 January 2009, it has, save for any Permitted Encumbrance, not knowingly executed or has knowingly suffered to be done or been party to any document which would charge or encumber or affect the title of the Israeli Company to the Israeli Assets or hinder the sale of the Israeli Assets under this Agreement.

Joint Israeli Administrators Warranties

9.7 The Joint Israeli Administrators warrant to the Purchaser that:

9.7.1 they have been appointed by the Israeli Court to act as trustees in the duty of stay proceedings taking place in Israel, in connection with the Israeli Company in accordance with the Israeli Companies Law 1999, and the regulations relating thereto, as at the date of this Agreement such appointment has not been terminated by the Israeli Court or the Joint Israeli Administrators as at the date of this Agreement;

9.7.2 they caused the Israeli Company to provide the Purchaser or an EMEA Designated Purchaser with all filings, in their possession, which were submitted to the Israeli Court, with respect to the Israeli Company; and

9.7.3 as secured by the personal undertaking provided by the Joint Israeli Administrators to the Israeli Court on January 25, 2009 they have no knowledge of any personal interest in or with the Israeli Company or any of its creditors.

9.8 The Joint Israeli Administrators warrant to the Purchaser that subject to the fulfilment of the condition set forth in Clause 15.1.4 (*General Conditions*), if applicable, this Agreement has been duly executed and delivered by the Joint Israeli Administrators as officers of the

Israeli Courts for and on behalf of the Israeli Company, provided that the stay of proceedings in Israel continue to be in effect through the day of execution of this Agreement and Closing thereof. In the event that the stay of proceedings in Israel under the Israeli Court shall come to an end prior to the Closing Date, the effectuation of this Agreement in connection with the Israeli Company shall not be at the responsibility of the Joint Israeli Administrators and the Israeli Company shall be treated as an EMEA Non-Debtor Seller, provided the Israeli Company shall give such warranties as set out in Clause 9.6 (*Israeli Company Warranties*), but not those set out in Clause 9.9 (*EMEA Non-Debtor Seller Warranties*).

EMEA Non-Debtor Seller Warranties

9.9 Each EMEA Non-Debtor Seller warrants to the Purchaser with respect to itself that:

9.9.1 this Agreement and any other documents executed by it pursuant to this Agreement as of 7 October 2009 has been duly executed and delivered by it, and constitutes legal, valid and binding obligations of such EMEA Non-Debtor Seller enforceable against such EMEA Non-Debtor Seller in accordance with its terms;

9.9.2 it has taken all necessary action and has all requisite power and authority to enter into and perform this Agreement and any other document it is required to execute pursuant to the terms of this Agreement, in accordance with their terms;

9.9.3 since 8.00pm on 14 January 2009, it has, save for any Permitted Encumbrance, not executed or knowingly suffered to be done or been party to any document which would charge or encumber or affect the title of such EMEA Non-Debtor Seller to the EMEA Assets or hinder the sale of the EMEA Assets under this Agreement; and

9.9.4 compliance with the terms of this Agreement or any other documents it is required to execute pursuant to the terms of this Agreement shall not breach or constitute a default, under any of the following:

(A) so far as such EMEA Non-Debtor Seller is aware, any material agreement or instrument to which such EMEA Non-Debtor Seller is a party or by which it is bound;

(B) any constitutional or organizational documents of such EMEA Non-Debtor Seller; or

(C) so far as such EMEA Non-Debtor Seller is aware, any order, judgment or decree applicable to such EMEA Non-Debtor Seller.

10. COVENANTS AND OTHER AGREEMENTS

Israeli Company

10.1 The Joint Israeli Administrators agree to provide the Purchaser or an EMEA Designated Purchaser with all filings, in their possession, which are submitted to the Israeli Court, with respect to the Israeli Company.

Benefit of Covenants

10.2 Without prejudice to any provision of this Agreement, the parties hereby agree that any rights, undertakings, representations, warranties, acknowledgments or other obligations, provided by the Purchaser in the North American Agreement in favour of the Sellers or Main Sellers (**"Beneficial Undertakings"**), including, the rights, undertakings, representations, warranties, acknowledgements or other obligations of the Purchaser set out in Sections 2.2, 3.3. to 3.7 (*Purchaser Representations*) 5.4(c), 5.19 (*Financing*), 5.27 (*Securities Compliance*), 5.33, 6.8 and 6.9 and Article VIII of the North American Agreement, and Section 5.28 (other than subection (k) (*Taxes*)) of the Sellers' Disclosure Schedule, shall (to the extent not set out in this Agreement) be deemed to be repeated in full in this Agreement in favour of the EMEA Sellers, the Joint Administrators and/or the Joint Israeli Administrators, mutatis mutandis, save that all references to "Seller" or "Main Seller" (as the case may be) shall be deemed to be a reference to the "EMEA Sellers" and any other variations shall be made as may be necessary in the reasonable opinion of the EMEA Sellers, to ensure that the EMEA Sellers are provided with, and can take, the full benefit of each Beneficial Undertaking as if such Beneficial Undertaking had been made by the Purchaser in favour of the EMEA Sellers under this Agreement.

Limitations

10.3 Nothing in this Agreement shall preclude the Joint Administrators or the Joint Israeli Administrators from terminating the administration of the EMEA Debtors (in the case of the Joint Administrators) or the Israeli Company (in the case of the Joint Israeli Administrators) and seeking their discharge as administrators and the Purchaser shall raise no objection thereto, but for the avoidance of doubt, notwithstanding the foregoing, the Purchaser shall not be restricted from claiming against the EMEA Debtors, or, as relevant, the Israeli Company, and receiving any remedy, or exercising any right, other than a claim against the Joint Administrators or the Joint Israeli Administrators (as applicable) in their personal capacity, to which it is otherwise entitled pursuant to the terms of this Agreement, for any breach of this Agreement and shall be entitled to terminate this Agreement in accordance with the provisions of Clause 15.4 (*Termination*).

10.4 Under this Agreement, except for any documents, the forms of which have been agreed by the Joint Administrators, the Joint Israeli Administrators or the Non Debtor Seller Directors as of 7 October 2009, none of the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors shall be required to enter into or execute any document in their personal capacities or as administrators or directors of the EMEA Sellers (as applicable), to the extent that such document would cause the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors (as applicable) to incur any personal liability which they are not required to incur under this Agreement, unless such document contains, in relation to the Joint Administrators or the Joint Israeli Administrators, exclusions of liability in favour of the Joint Administrators, the Joint Israeli Administrators (as applicable) to an extent consistent with, or more favourable than, the exclusions of liability provided in favour of the Joint Administrators and the Joint Israeli Administrators (as applicable) in this Agreement, or, in relation to the Non-Debtor Seller Directors an exclusion of liability in favour of the Non-Debtor Seller Directors consistent with, or more favourable than, the exclusion of liability set out at Clause 14.2 (*Exclusion of Liability and Acknowledgements*) of this Agreement (but subject to the qualifications in Clause 14.9 (*Limitations on Post-Closing Obligations*)).

10.5 Nothing in this Agreement shall operate to derogate from, restrict, or prevent the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors from complying with their statutory duties or legal obligations in relation to the exercise of their powers, duties or functions as administrators of the EMEA Debtors (or, in relation to the Joint Israeli Administrators as administrators of the Israeli Company or, in relation to the Non-Debtor Seller Directors, as directors of the EMEA Non-Debtor Sellers), under the Insolvency Act or any other applicable legislation or statutory instrument, provided that, notwithstanding the foregoing, any failure to comply with the terms of this Agreement by any EMEA Seller after giving effect to the provisions of Clause 2.9 (*Main Sellers*) will be a breach of this Agreement by the relevant EMEA Seller, and the Purchaser shall not be restricted from claiming against the relevant EMEA Seller and receiving any remedy, or exercising any right, other than a claim against the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors in their respective personal capacities, to which it is otherwise entitled pursuant to the terms of this Agreement, for any breach of this Agreement and shall be entitled to terminate this Agreement in accordance with the provisions of Clause 15.4 (*Termination*) notwithstanding that the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors (as applicable) are complying with such statutory duties or legal obligations in accordance with this Clause 10.5.

Pre-Closing cooperation

10.6 Subject to Clause 10.4 (*Limitations*), prior to Closing, upon the terms and subject to the conditions of this Agreement, each of the EMEA Sellers and the Purchaser and the EMEA Designated Purchasers shall use its reasonable endeavours to take, or cause to be taken, all actions and to do, or cause to be done, and cooperate with each other in order to do, all things necessary, proper or advisable under applicable Law to consummate the transactions contemplated by this Agreement as soon as practicable, including:

10.6.1 the preparation and filing of all forms, registrations and notices required to be filed to consummate Closing and the taking of such actions as are necessary to obtain any requisite Consent, provided, that the EMEA Sellers shall not be obligated to make any payment or deliver anything of value to any Third Party (other than filing and application fees to Government Entities, all of which shall be paid or reimbursed by the Purchaser) in order to obtain any Consent;

10.6.2 taking all reasonable actions to defend any Actions filed against such party by or before any Government Entity challenging this Agreement or the consummation of Closing (or to cooperate with the other party in the case of any such Action filed against such other party); and

10.6.3 using reasonable endeavours to cause to be lifted or rescinded any injunction, decree, ruling, order or other action of any Government Entity adversely affecting the ability of the parties to consummate Closing provided, that such reasonable endeavours described in Clauses 10.6.1 and 10.6.2 above shall not require either such party to take, or agree to take any action, that would reasonably be expected to materially and adversely impact the EMEA Business or any other business of such party.

10.7 The Purchaser, the EMEA Sellers (acting by the Joint Administrators), and the Israeli Company (acting by the Joint Israeli Administrators) shall promptly notify the other of the occurrence, to such party's Knowledge, of any event or condition, or the existence, to such

party's Knowledge, of any fact, that would reasonably be expected to result in any of the conditions set out in Clause 15 (*Conditions to Closing and Termination*) not being satisfied.

10.8 The Purchaser hereby covenants and agrees to comply with the provisions of Section 5.4(c) of the North American Agreement.

Antitrust and other Regulatory Approvals

10.9 In furtherance and not in limitation of the provisions in Clauses 10.6, 10.7 and 10.8 (*Pre-Closing cooperation*), the Purchaser shall comply with Section 5.5(a) of the North American Agreement and the EMEA Sellers shall comply with Section 5.5(a)(iii) of the North American Agreement (as if set out in this Agreement and subject to the limitations set forth in this Agreement) and if any obligation on the Purchaser pursuant to Section 5.5(a) of the North American Agreement is waived, the Purchaser shall comply with the provisions of Section 5.5(a) of the North American Agreement (as if set out in this Agreement and subject to the limitations set forth in this Agreement) as if there were no such waiver, subject to any separate waiver validly entered into under this Agreement pursuant to Clause 16.6 (*General Provisions and Construction*). The EMEA Sellers shall provide reasonable assistance to the Purchaser in preparing and filing those documents, registrations, statements, petitions, filings and applications which are required pursuant to Section 5.5(a) of the North American Agreement and are relevant to the EMEA Sellers.

10.10 If the Purchaser, an EMEA Seller, the Joint Administrators (in their capacity as administrators of the EMEA Debtors), or the Joint Israeli Administrators (in their capacity as administrators of the Israeli Company), or in the case of the Purchaser, its Affiliates, and in the case of the EMEA Sellers, their respective Wholly Owned Subsidiaries, receive a request for information or documentary material from any Government Entity with respect to this Agreement or any of the transactions contemplated by this Agreement (and/or by the North American Agreement), then such party shall endeavour in good faith to make, or cause to be made, as soon as reasonably practicable and after consultation with the other party and the Joint Administrators, an appropriate response in compliance with such request, in the case of any Wholly Owned Subsidiaries, only to the extent that they are legally able.

10.11 The Purchaser, the EMEA Sellers, the Joint Administrators (in their capacity as administrators of the EMEA Debtors) and the Joint Israeli Administrators (in their capacity as administrators of the Israeli Company) shall keep each other and the Joint Administrators, or the Joint Israeli Administrators, as applicable, apprised of the status of matters relating to the completion of the transactions contemplated by this Agreement (and/or by the North American Agreement) and work cooperatively in connection with obtaining the requisite Regulatory Approvals of each applicable Government Entity, including:

10.11.1 cooperating with each other and the Joint Administrators, or the Joint Israeli Administrators, as applicable, in connection with filings required under the applicable Antitrust Laws or any Laws regulating foreign investment of any jurisdiction in connection with the transactions contemplated by this Agreement (and/or by the North American Agreement) and each Antitrust Approval, and liaising with each other in relation to each step of the procedure before the relevant Government Entities and as to the contents of all communications with such Government Entities. In particular, and except for any filings made pursuant to the Investment Canada Act, the Purchaser and each EMEA Seller

will not make any notification or other filing with or to any Government Entity in relation to the transactions contemplated hereunder without first providing the other party and the Joint Administrators (or each of their external counsel on an external counsel only basis) with a copy of such notification in draft form (except with respect to any documents relating to item 4(c) of the notification form required by the HSR Act) and giving such other party and the Joint Administrators (or their external counsel) a reasonable opportunity to discuss its content before it is filed with the relevant Government Entities, and such party shall consider and take account of all reasonable comments timely made by the other party or the Joint Administrators (or their external counsel) in this respect. For the avoidance of doubt, draft filings, materials or information provided under this section or under any other provision of this Agreement to another party's counsel on an external counsel only basis shall only be given to external counsel of the recipient and will not be disclosed by such external counsel to employees, officers or directors of the recipient without the advance written consent of the party providing such draft filing or materials;

10.11.2 furnishing to the other party and the Joint Administrators, or the Joint Israeli Administrators, as applicable (or their external counsel) in a timely fashion all information within its possession that is required for any application or other filing to be made by the other party pursuant to the applicable Antitrust Laws or any Laws regulating foreign investment of any jurisdiction in connection with the transactions contemplated by this Agreement (and/or by the North American Agreement); provided, however, that no such information shall be required to be provided by the Purchaser or any of the EMEA Sellers if it determines, acting reasonably, that the provision of such information would jeopardise any solicitor-client or other legal privilege (it being understood, however, that the parties shall cooperate in any reasonable endeavours and requests that would enable otherwise required disclosure to the other party and/or the Joint Administrators (or their external counsel) to occur without so jeopardising the privilege);

10.11.3 promptly notifying each other and the Joint Administrators, or the Joint Israeli Administrators, as applicable, of any communications from or with any Government Entity with respect to the transactions contemplated by this Agreement (and/or by the North American Agreement) and ensuring that each of the parties and the Joint Administrators, or the Joint Israeli Administrators, as applicable (or their external counsel) (as determined by the Purchaser in its reasonable discretion in the case of meetings or appearances related to ICA Approval), where acceptable to the Government Entity, is represented at any meetings with or other appearances before any Government Entity with respect to the transactions contemplated by this Agreement (and/or by the North American Agreement); and

10.11.4 consulting and cooperating with one another and the other party's external counsel in connection with all analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of the Purchaser, EMEA Sellers or Joint Administrators, or the Joint Israeli Administrators, as applicable, in connection with proceedings under or relating to the Antitrust Laws or any Laws regulating foreign investment of any jurisdiction in connection with the transactions contemplated by this Agreement (and/or by the North American Agreement).

10.12 In addition, and subject to Clause 10.13 the Purchaser shall, and shall cause each of the EMEA Designated Purchasers to, use its reasonable endeavours to satisfy (or cause the satisfaction of) the conditions precedent to the Purchaser's obligations hereunder as set out in Clause 15.1.3 (*General Conditions*) to the extent the same is within its control and to take, or cause to be taken, all other actions and to do, or cause to be done, all other things necessary, proper or advisable under all applicable Laws to consummate the transactions contemplated by this Agreement (and/or by the North American Agreement), including using its reasonable endeavours to obtain all Regulatory Approvals, and any other Consent of a Government Entity required to be obtained in order for the parties to consummate the transactions contemplated by this Agreement (and/or by the North American Agreement).

10.13 The obligations of the Purchaser pursuant to Clause 10.12 shall include an obligation to commit, and to cause the EMEA Designated Purchasers to commit, to any and all undertakings, divestitures, licences or hold separate or similar arrangements with respect to their respective assets and/or the Assets and/or the EMEA Assets and/or to any and all arrangements for the conduct of any business and/or to any termination of any and all existing relationships and contractual rights and obligations as a condition to obtaining any and all Consents from any Government Entity necessary to consummate the transactions contemplated by this Agreement (and/or by the North American Agreement), and shall include an obligation to take, and to cause the EMEA Designated Purchasers to take, any and all Consents from any Government Entity necessary to consummate the transactions contemplated by this Agreement or by the North American Agreement, including any and all actions necessary in order to ensure the receipt of the necessary Consents and Regulatory Approvals; provided, however, that nothing in this Agreement or the North American Agreement shall require or be construed to require the Purchaser, any Designated Purchaser, any EMEA Designated Purchaser or any of their respective Subsidiaries to commit to any undertaking, divestiture, licence or hold separate or similar arrangement or conduct of business arrangement or to terminate any relationships, rights or obligations or to do any other act, to the extent such commitment, termination or action would be reasonably likely to be materially adverse to the Business or the Purchaser, or financial condition or prospects of the Business or the Purchaser.

10.14 For the avoidance of doubt the covenants under Clauses 10.9 to 10.13 shall not apply to any action, effort, filing, Consent, proceedings, or other activity or matter relating to the Bankruptcy Courts, the Bankruptcy Consents and/or the Bankruptcy Proceedings, and the ICA Approval.

Pre-Closing access to information

10.15 Prior to Closing, the EMEA Sellers shall, and shall (to the extent they are legally able) cause their Wholly Owned Subsidiaries to:

10.15.1 give the Purchaser and its authorised representatives, upon reasonable advance notice and during regular business hours, reasonable access to all books, records, personnel, officers and other facilities and properties of the EMEA Business to the extent that such items are under the control of the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators, provided however that, subject to Clause 10.15.2, the EMEA Sellers will not be required to provide to the Purchaser access to or copies of any information in relation to employees of the EMEA Sellers (other than as legally required);

10.15.2 provide information requested by the Purchaser in order to enable the Purchaser to carry out the duties imposed by the Transfer Regulations or any other applicable Law and in order to provide an orderly transition of the Transferring Employees, provided that it is reasonable to do so having regard to the EMEA Sellers legal and/or contractual obligations (excluding the applicable policies of the EMEA Sellers) and subject to works council or other appropriate representative body consent where such consent is appropriate and necessary, provided, however, that the EMEA Sellers shall use all their reasonable endeavours to obtain such consent. The EMEA Seller will provide such information as expeditiously as is reasonably practicable, having regard to the nature and content of the request;

10.15.3 permit the Purchaser to make such copies and inspections thereof, upon reasonable advance notice and during regular business hours, as the Purchaser may reasonably request; and

10.15.4 grant the Purchaser and its representatives reasonable access to each of the facilities of the EMEA Business where EMEA Assets are located for purposes of completing an updated inventory of the fixed assets of the EMEA Business for purposes of completing an appraisal of the value thereof; and

10.15.5 cause the officers of the EMEA Non-Debtor Sellers to cooperate with the Main Sellers in their preparation and delivery of the financial statements contemplated by Section 5.6(a) of the North American Agreement;

provided, however, that:

10.15.6 any such access shall be conducted at Purchaser's expense, in accordance with Law (including any applicable Antitrust Law and Bankruptcy Laws), at a reasonable time, under the supervision of the EMEA Sellers' personnel and in such a manner as to maintain confidentiality and not to unreasonably interfere with the normal operations of the businesses of the EMEA Sellers and their Affiliates;

10.15.7 the EMEA Sellers will not be required to provide to the Purchaser access to or copies of any Tax Records save as required by Law or except as otherwise provided in Clause 11 (*Tax*); and

10.15.8 the EMEA Sellers will not be required to provide the Purchaser access to or copies of any working papers or other documentation (including court orders or other documents) prepared by the Joint Administrators or the Joint Israeli Administrators which the Joint Administrators or the Joint Israeli Administrators are required to maintain in confidence under applicable Law.

10.16 In order to facilitate the Purchaser's entry into new supply arrangements effective as of Closing, the EMEA Sellers shall make available to the Purchaser unredacted copies of all Contracts with suppliers of the EMEA Business (or in the case of any EMEA Non-Exclusive Supply Agreements, unredacted copies of any portion thereof that are applicable to the EMEA Business) (other than pricing/cost information or other competitively sensitive information the sharing of which the EMEA Sellers or their representatives reasonably determine may violate applicable Law) promptly following 7 October 2009 (or in the event that any such Contract is subject to confidentiality restrictions promptly following the receipt of any required consent which the EMEA Sellers will cooperate with

the Purchaser to obtain as promptly as practicable). So long as the Purchaser is the winning bidder in the Auction, the EMEA Sellers shall provide such information not provided in accordance with the preceding sentence upon the later of the entry of the U.S. Sale Order, the receipt of the HSR Approval and the receipt of the Competition Act Approval. Any such disclosures shall be made to any employees or representatives of the Purchaser who are designated by the Purchaser, who reasonably require access to such information for any reasonable business purpose related to the acquisition of the EMEA Business by the Purchaser and who have executed the applicable "Clean Room Agreements," provided, however, that employees of the Purchaser shall not have access to such information unless they are not involved in making decisions regarding pricing or other material competitive terms offered to any customer of a competing business to the EMEA Business and, if the transaction does not close, agree not to be employed in such a role for an agreed-upon minimum period of time..

10.17 In connection with the procedures set forth in Clauses 10.33 to 10.36 (*EMEA Bundled Contracts*) with respect to the EMEA Bundled Contracts, the EMEA Sellers will provide unredacted copies of any portion of any EMEA Bundled Contracts that relates to the EMEA Business (other than pricing information and other competitively sensitive information the sharing of which the EMEA Sellers or their representatives reasonably determine may violate applicable Law) promptly following 7 October 2009, so long as the Purchaser is the winning bidder in the Auction, and will provide such information upon the later of the entry of the U.S. Sale Order, the receipt of the HSR Approval and the receipt of the Competition Act Approval. Any such disclosures shall be made to any employees or representatives of the Purchaser who are designated by the Purchaser, who reasonably require access to such information for any reasonable business purpose related to the acquisition of the EMEA Business by the Purchaser and who have executed the applicable "**Clean Room Agreements**", provided, however, that employees of the Purchaser shall not have access to such information unless they are not involved in making decisions regarding pricing or the other material competitive terms offered to any customer of a competing business to the EMEA Business and, if the transaction does not close, agree not to be employed in such a role for an agreed-upon minimum period of time.

10.18 Notwithstanding anything contained in this Agreement or any other agreement between the Purchaser and the EMEA Sellers executed on or prior to 7 October 2009, the EMEA Sellers shall not have any obligation to make available to the Purchaser or its representatives, or provide the Purchaser or its representatives with any information if making such information available would:

10.18.1 jeopardise or result in the loss of any solicitor-client or other legal privilege; or

10.18.2 potentially cause the EMEA Sellers to be found in contravention of any applicable Law or contravene any fiduciary duty or agreement (including any confidentiality agreement with a Third Party to which the EMEA Sellers or any of their Affiliates are a party) between the EMEA Sellers and a Third Party, it being understood that the EMEA Sellers shall cooperate in any reasonable endeavours and requests for waivers that would enable otherwise required disclosure to the Purchaser to occur without so jeopardizing privilege or contravening such Law, duty or agreement.

10.19 Promptly following the date of the U.S. Sale Order, the EMEA Sellers agree to provide the Purchaser with access to such documentation, records and databases to the extent

reasonably required to review and assess the EMEA Sellers' use of Open Source Software incorporated into any of the EMEA Products or EMEA Services.

Public announcements

10.20 Subject to the provisions of Clause 9 of Schedule 6 (*Employees*) with respect to communications and announcements to the Transferring Employees and the employees of the Purchaser and the EMEA Designated Purchasers and subject to the parties' disclosure obligations imposed by Law (including any obligations under the Insolvency Act), the initial press release relating to this Agreement shall be a joint press release, the text of which shall be agreed to by the Purchaser, the EMEA Sellers and the Joint Administrators acting reasonably. Unless otherwise required by applicable Law or by obligations of the parties or their Affiliates pursuant to any listing agreement with or rules of any securities exchange, the parties hereto shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby or the activities and operations of the other party and shall not issue any such release or make any such statement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) provided that approval shall not be required where a party determines, based on advice of counsel and after consultation with the other parties and the Joint Administrators that such disclosure is required by Law or by obligations of the parties or their Affiliates pursuant to any listing agreement with, or rules of, any securities exchange.

Further actions

10.21 From and after the Closing Date, subject to Clauses 10.4 (*Limitations*) and 14.7 (*Limitations on Post-Closing Obligations*), the EMEA Sellers and the Purchaser shall execute and deliver (and, if applicable, procure notarization of) such documents and other papers and take such further actions as may reasonably be required to carry out the provisions of this Agreement and the other Transaction Documents to which they are a party and give effect to the transactions contemplated herein and therein, including the execution and delivery of such assignments, deeds and other documents as may be necessary to transfer any EMEA Assets as provided in this Agreement; provided that subject to Clauses 10.9 to 10.13 (*Antitrust and other Regulatory Approvals*), the EMEA Sellers shall not be obligated to make any payment or deliver anything of value to any Third Party (other than filing and application fees to Government Entities) all of which shall be paid or reimbursed by the party required to pay such fees under this Agreement in order to obtain any Consent to the transfer of EMEA Assets or the assumption of the EMEA Assumed Liabilities.

Other Assets

10.22 If after Closing any EMEA Seller, Purchaser or EMEA Designated Purchaser, as the case may be, shall have in its possession any asset or right which should have been delivered to the Purchaser or an EMEA Designated Purchaser or retained by an EMEA Seller, as applicable, the EMEA Sellers, the Purchaser or the EMEA Designated Purchaser shall, or shall (to the extent they are legally able to) cause their respective Affiliates (in the case of the Purchaser and Designated Purchaser) or Wholly Owned Subsidiaries (in the case of the EMEA Sellers), as the case may be, to promptly deliver such asset or right to the other party.

Conduct of Business

10.23 The EMEA Sellers covenant that, subject to Clause 10.5 (*Limitations*) and to any limitation imposed as a result of being subject to the Bankruptcy Proceedings, and except as: (i) the Purchaser may approve otherwise in writing as set out below (such approval not to be unreasonably withheld or delayed; (ii) set out in Section 10.21 (*Ordinary Course of Business*) of the EMEA Sellers' Disclosure Schedule; (iii) otherwise contemplated or permitted by this Agreement or another Transaction Document (iv) required by Law (including the Insolvency Act) or by any order of a Bankruptcy Court; (v) relates solely to EMEA Excluded Assets or EMEA Excluded Liabilities; the EMEA Sellers shall and shall (to the extent they are legally able) cause their Wholly Owned Subsidiaries to: (A) conduct the EMEA Business and maintain the EMEA Owned Equipment in the Ordinary Course; (B) use endeavours that are reasonable in the context of the Bankruptcy Proceedings and taking into account employee attrition to continue operating the EMEA Business as a going concern, and to maintain the business organizations of the EMEA Business intact and (C) abstain from any of the following actions:

10.23.1 sell or otherwise dispose of material EMEA Assets, other than sales of inventory (including, without limitation, inventory that has been designated as "excess" or "obsolete" (E&O Inventory)) on a basis consistent with past practice;

10.23.2 execute or knowingly suffer to be done or be party to any document which would create or permit any Lien on any EMEA Assets other than (i) Liens that will be discharged at or prior to Closing or (ii) Permitted Encumbrances;

10.23.3 (i) grant any license or sublicense of any rights under or with respect to any EMEA Transferred Intellectual Property other than licenses to suppliers, resellers and customers in the Ordinary Course and licences and sublicences granted in accordance with the Intellectual Property License Agreement (if such agreement were in effect as of 7 October 2009), or (ii) enter into any exclusive license agreement that would restrict the EMEA Business or the EMEA Assets after Closing in any material respect or which is in conflict with the provisions of this Agreement or that would be in conflict with the Intellectual Property License Agreement if it were in effect as of 7 October 2009;

10.23.4 (i) increase the rate of cash compensation or other fringe, incentive, equity incentive, pension or other employee benefits payable to the Transferring Employees, including under any incentive or retention plan, other than normal periodic increases consistent with past practice or as required by applicable Law or Contracts in effect as of 7 October 2009, or pursuant to KERP or KEIP or (ii) enter into, or increase the benefits or any payments under any employment, severance or other similar agreement or arrangement with any Transferring Employees;

10.23.5 voluntarily terminate or waive any material rights under, or materially amend any Material Contract or any EMEA Bundled Contract material to the EMEA Business (other than as necessary to effect the unbundling of any EMEA Bundled Contract required with respect to any other business or business segment of the EMEA Sellers);

10.23.6 waive, release, assign, settle or compromise any material claim, litigation or arbitration relating to the EMEA Business to the extent that such waiver, release,

assignment, settlement or compromise imposes any binding obligation, whether contingent or realised, on the EMEA Business that will bind the Purchaser and/or the EMEA Designated Purchasers after the Closing Date and is materially adverse to the EMEA Business;

10.23.7 fail to make any budgeted capital expenditures with respect to the EMEA Business or make any unbudgeted capital expenditure with respect to the EMEA Business in excess of $100,000 individually or $250,000 in the aggregate;

10.23.8 enter into any Material Contract for or relating to the EMEA Business that cannot be assigned to the Purchaser;

10.23.9 fail to maintain tangible property which, individually or in the aggregate, is material to the EMEA Business and which is included in the EMEA Assets, consistent with past practice since the filing of the Bankruptcy Proceedings;

10.23.10 enter into, or agree to enter into, any sale-leaseback transactions with respect to the EMEA Business;

10.23.11 fail to maintain the material Consents with respect to the EMEA Business;

10.23.12 grant any lease, sublease, license, sublicense or other occupancy rights under or with respect to any portion of premises which are proposed to be the subject of a Real Estate Agreement used in the EMEA Business (except with respect to such rights granted to the purchasers of other Nortel business segments which are co-located at such premises and the effect of which would not have a material adverse effect on the lease, license or occupancy by the Purchaser or any EMEA Designated Purchaser of such premises), except in accordance with Schedule 5 (*Real Estate*);

10.23.13 construct, or permit to be constructed any capital improvements or major alterations at any portion of the premises which are proposed to be the subject of a Real Estate Agreement used for the EMEA Business (except with respect to any capital improvements or major alterations at any portion of such premises required in connection with the purchase by purchasers of other Nortel business segments);

10.23.14 enter into any Contract granting an indemnity in respect of intellectual property infringement or misappropriation other than in the Ordinary Course that would bind the Purchaser or any of its Affiliates after Closing in any material respect except for the Contracts that will not be, or that the Purchaser may elect not to have, assigned to the Purchaser hereunder;

10.23.15 enter into any Collective Labor Agreement affecting Transferring Employees except as required by applicable Law or as would not result in material Liability to the EMEA Business;

10.23.16 enter into any Contract not to compete in any line of business or geographic area that would reasonably be expected to bind the Purchaser or any of its Affiliates after Closing in any material respect; or

10.23.17 authorise, or commit or agree to take, any of the foregoing actions.

If an EMEA Seller desires to take any action described in this Clause 10.23, the EMEA Sellers or the Joint Administrators may, prior to any such action being taken, request the Purchaser's consent via an electronic mail or facsimile sent to the individual(s) and addresses listed on Schedule 7 (*Names and Addresses*). The Purchaser shall respond to such notice in writing by 11:59 p.m. (London time) on the second (2nd) Business Day after the day of delivery of such email or facsimile. The failure of the Purchaser to respond within two (2) Business Days shall not be deemed to be consent to such action.

The Purchaser acknowledges and agrees that: (i) prior to the Closing Date, the EMEA Sellers shall exercise, consistent with the terms and conditions of this Agreement, control and supervision of the EMEA Business and (ii) notwithstanding anything to the contrary set forth in this Agreement (but subject to Clause 10.5 (*Limitations*), no consent of the Purchaser shall be required with respect to any matter set forth in Clause 10.23 or elsewhere in this Agreement to the extent the requirement of such consent would, upon advice of the Purchaser's counsel, violate any Law.

Transaction expenses

10.24 Except as otherwise provided in this Agreement or the Ancillary Agreements, each of the Purchaser and the EMEA Sellers shall bear its own costs and expenses (including brokerage commissions, finders' fees or similar compensation, and legal fees and expenses) incurred in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby.

Confidentiality

10.25 The parties acknowledge that the Confidentiality Agreement remains in full force and effect in accordance with its terms, which are incorporated herein by reference, and the parties agree to be bound thereby in the same manner and to the same extent as if the terms had been set forth herein in full, except that the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators shall be at liberty to disclose the terms of this Agreement to any court or to any liquidator, successor officeholder or officeholder in a Secondary Proceedings, or to any member of any committee of creditors (provided that such member of any committee of creditors has either (i) entered into an agreement no less stringent than the terms of this Clause 10.25 to protect the confidentiality of such disclosure; or (ii) already received a copy of this Agreement in their capacity as a member of a creditor committee of any Main Seller, and further provided that in the case of (i) such disclosure shall be made without disclosing any copy or extract of this Agreement and by disclosing only a summary of such principal terms as is necessary to fulfil reporting obligations to members of any such committee, and provided at all times that no part of the provisions of Clauses 7.6, 10.3, 14.7, 14.8 may be disclosed), or to any Tax Authority or Government Entity or in connection with any auction process with respect to the EMEA Business or the EMEA Assets approved by the Bankruptcy Court and show appropriate figures in their administration records, accounts and returns provided, that after the completion of the transactions contemplated herein, the Purchaser's confidentiality obligations under this Clause 10.25 and the confidentiality agreement between the Purchaser, NNC and its subsidiaries, the EMEA Sellers and the Joint Administrators dated March 27, 2009, with respect to information and data relating to the Business, the Assets and/or the EMEA Assets shall terminate. For greater certainty, the Purchaser's confidentiality obligations under the third clean team confidentiality agreement between the Purchaser and its subsidiaries and NNL and its subsidiaries, dated June 19, 2009, shall not terminate after the completion of the transactions contemplated herein. Subject to the

requirements of the Bankruptcy Laws, or as may be imposed by the Bankruptcy Court or any other court of competent jurisdiction or as otherwise required by applicable Law, from and after Closing: (i) the EMEA Sellers shall, and shall (to the extent they are legally able) cause their Wholly Owned Subsidiaries to hold in confidence all confidential information (including trade secrets, customer lists, marketing plans and pricing information) of the EMEA Sellers relating to the EMEA Business or the EMEA Assets; (ii) in the event that the EMEA Sellers or Subsidiaries thereof shall be legally compelled to disclose any such information, the EMEA Sellers shall provide the Purchaser with prompt written notice of such requirement so that the Purchaser may seek a protective order or other remedy; and (iii) in the event that such protective order or other remedy is not obtained, the EMEA Sellers or their Wholly Owned Subsidiaries shall furnish only such information as is legally required to be provided.

10.26 It is acknowledged by the Purchaser and the EMEA Sellers that in the course of attempting to sell the EMEA Assets, one or more of the EMEA Sellers has entered into several confidentiality agreements with Third Parties in respect of information relating to the EMEA Assets and has disclosed such information to certain of those Third Parties.

10.27 Each EMEA Seller shall assign to the Purchaser, at or prior to, and with effect from and after Closing, all of its rights under any such confidentiality agreement made by such EMEA Seller with any Third Party but only as such confidentiality agreements relate to the EMEA Assets and the EMEA Business and only to the extent that such agreements permit such assignments without the consent of any Third Party. To the extent such agreements do not permit any assignment without the consent of any Third Party, at the Purchaser's request and the Purchaser's expense, provided that the EMEA Sellers receive an indemnity from the Purchaser in form and substance satisfactory to the EMEA Sellers, to the extent permitted by applicable Laws and the terms of such confidentiality agreements, shall appoint the Purchaser as such EMEA Sellers' representative and agent in respect of confidential information relating to the EMEA Business and EMEA Assets under such confidentiality agreements and any amounts recovered or expenses incurred in enforcing those confidentiality agreements in respect of the EMEA Seller shall accrue to the benefit of or be for the account of the Purchaser.

10.28 Notwithstanding anything to the contrary contained in Clauses 10.25 to 10.27, nothing contained in this Agreement shall be construed as precluding, prohibiting, restricting or otherwise limiting the ability of the EMEA Sellers or their Affiliates or their respective representatives to: (i) make permitted disclosures under Clause 10.20 (*Public announcement*) or as otherwise permitted under this Agreement; (ii) make any disclosures that are required by applicable Law; (iii) use or disclose information that is not exclusive to the EMEA Business to the extent necessary to operate the other business segments of the EMEA Sellers or their Affiliates or otherwise engage in any manner in any business activities unrelated to the EMEA Business; or (iv) perform any retained Contracts, whether or not exclusively related to the EMEA Business; or (v) make customary disclosures, subject to customary confidentiality agreements, regarding information that is not exclusive to the EMEA Business and is primarily related to other business segments of the EMEA Sellers in connection with acquiring, merging or otherwise combining with, or being acquired by, or selling all or part of their assets to, any Person (whether in a single transaction or a series of related transactions or whether structured as an acquisition of assets, securities or otherwise). Notwithstanding anything to the contrary contained in this Clause 10.28, nothing contained in this Agreement shall be construed as precluding, prohibiting, restricting or otherwise limiting the ability of the Purchaser, the Purchaser's Affiliates or their respective representatives to: (i) make permitted disclosures under Clause

10.20 (*Public announcements*) or as otherwise permitted under this Agreement or (ii) make any disclosures that are required by applicable Law.

Schedules and Certain Information: Disclosure

10.29 The EMEA Sellers shall submit to the Purchaser by electronic mail or facsimile sent to the individual(s) and addresses listed on Schedule 7 (*Names and Addresses*), every two (2) weeks from 7 October 2009 until the Closing Date, written updates to Appendices A and B of Schedule 6 (*Employees*) to this Agreement with respect to additions or deletions of employees. The EMEA Sellers shall submit to the Purchaser at least 3 Business Days prior to the Closing Date, written updates to the EMEA Sellers' Disclosure Schedule in respect of Clause 9 Disclosing any events or developments that occurred or any information learned between 7 October 2009 and the Closing Date that reflect any matters hereafter arising which, if existing, occurring or known to the EMEA Sellers at 7 October 2009, would have been required to be set forth or described in the EMEA Sellers' Disclosure Schedule in relation to Clause 9 and, with respect to the warranties given in Clause 9, in order to prevent such warranties being untrue or incorrect.

10.30 The EMEA Sellers shall give prompt notice to the Purchaser, and the Purchaser shall give prompt notice to the EMEA Sellers, upon obtaining knowledge of the occurrence or non-occurrence of any event that, individually or in the aggregate, would make the timely satisfaction of the conditions set forth in Clause 15 (*Conditions to Closing and Termination*) impossible or unlikely.

10.31 The delivery of any update or notice pursuant to Clauses 10.29 and 10.30 shall not cure any breach of any representation or warranty requiring disclosure of such matter or otherwise limit or affect the remedies available hereunder to any party receiving such notice.

Certain payments or instruments received from Third Parties

10.32 To the extent that, after the Closing Date: (a) the Purchaser and/or any EMEA Designated Purchaser receives any payment or instrument that is for the account of an EMEA Seller according to the terms of this Agreement or relates primarily to any business or business segment of the EMEA Sellers other than the EMEA Business, the Purchaser shall, and shall cause the EMEA Designated Purchasers promptly to deliver such amount or instrument to the relevant EMEA Seller; and (b) any of the EMEA Sellers receives any payment that is for the account of the Purchaser or any of the EMEA Designated Purchasers according to the terms of this Agreement or relates primarily to the EMEA Business the EMEA Sellers shall promptly deliver such amount or instrument to the Purchaser or the relevant EMEA Designated Purchaser. All amounts due and payable under this Clause 10.32 shall be due and payable by the applicable party in immediately available funds, by wire transfer to the account designated in writing by the relevant party. Notwithstanding the foregoing, the Purchaser and each EMEA Seller hereby undertakes to use reasonable endeavours to direct or forward all bills, invoices or like instruments to the appropriate party.

EMEA Bundled Contracts

10.33 Section 10.33 of the EMEA Sellers' Disclosure Schedule lists each Contract that the EMEA Sellers or their Affiliates have entered into prior to 7 October 2009 providing for the sale or provision of EMEA Products and/or EMEA Services and the sale or provision of other products and services of the EMEA Sellers (each, an **"EMEA Bundled Contract"**).

10.34 During the period from 7 October 2009 until the Auction, the EMEA Sellers shall, and

shall (to the extent they are legally able) cause their Wholly Owned Subsidiaries to, cooperate (consistent with applicable Laws and any confidentiality restrictions requiring consent of Third Parties) with the Purchaser in developing a strategy with respect to transitioning each customer of the EMEA Business that is party to an EMEA Bundled Contract by, among other things, making available those employees who are responsible for managing the customer relationship with each such customer, by providing unredacted copies of all Contracts to which any EMEA Seller is a party (or in the case of EMEA Bundled Contracts, the portions of such EMEA Bundled Contracts as are applicable to the EMEA Business) with each of the top forty (40) customers of the Business by revenue for the year ended December 31, 2008 (other than pricing information and other competitively sensitive information the sharing of which the EMEA Sellers or their representatives reasonably determine may violate applicable Law) and any such other information as the Purchaser may reasonably request, which disclosures shall be subject to the Confidentiality Agreement. On or before the date that is five (5) Business Days after the date of the Auction, the Purchaser shall notify the EMEA Sellers of those counterparties to the EMEA Bundled Contracts with which the Purchaser elects to attempt to negotiate alternative arrangements (effective as of and conditioned upon Closing) (**"Alternative Arrangements"**) directly with such counterparty to such EMEA Bundled Contract, including without limitation, such counterparty's purchase or sale of items under an existing Contract between such counterparty and the Purchaser or the entry into a new contract covering the EMEA Products and EMEA Services. Promptly following the later of (x) the entry of the U.S. Sale Order and (y) the receipt of HSR Approval and Competition Act Approval, the EMEA Sellers shall and (to the extent they are legally able to) shall cause their Wholly Owned Subsidiaries to (i) provide such competitively sensitive information as was redacted pursuant to the first sentence of this Clause 10.34 in such a manner, and subject to Clause 10.17 (*Pre-Closing access to information*) so as not to violate any applicable Law, and (ii) cooperate with the Purchaser with respect to the negotiation of any such Alternative Arrangements, including without limitation, by making introductions to customers with whom the Purchaser does not have an existing customer relationship, by, subject to applicable Law, participating in telephone calls and meetings with such customers and by providing such forecast and other information as is necessary to assist the Purchaser negotiate such Alternative Arrangements. The Purchaser agrees that any Alternative Arrangements it reaches with counterparties shall, effective as of the occurrence of Closing, expressly release each EMEA Seller that is a party to the affected EMEA Bundled Contract from any obligations and Liabilities (wherever arising) under such EMEA Bundled Contract from and after the Closing Date as they relate to the EMEA Products and EMEA Services sold or provided after the Closing Date.

10.35 With respect to those EMEA Bundled Contracts other than those in respect of which the Purchaser has elected to negotiate Alternative Arrangements, promptly following the later of (i) the entry of the U.S. Sale Order and (ii) the receipt of HSR Approval and Competition Act Approval, the Purchaser and the EMEA Sellers shall cooperate to jointly contact each party thereto including without limitation, by making such contacts (by phone or in person) as may be reasonably requested by Purchaser and by sending a joint letter, in form and substance satisfactory to each of EMEA Sellers and Purchaser notifying the counterparty to each such EMEA Bundled Contract of the transactions and requesting the counterparty to agree to amend such EMEA Bundled Contract from and after the Closing Date so as to delete all obligations and Liabilities therefrom as they relate to the EMEA Products and the EMEA Services and enter into a new Contract (effective as of, and conditional upon the occurrence of, Closing) with the applicable customer and which only relates to EMEA Products and EMEA Services, in which event such new Contract shall be

deemed to be an EMEA Seller Contract; provided, however, that:

10.35.1 the relevant EMEA Seller shall be under no obligation to compromise any right, asset or benefit or to expend any amount or incur any Liabilities in obtaining such arrangements, and the failure to enter into such arrangements with respect to any EMEA Bundled Contract shall not entitle the Purchaser to terminate this Agreement, fail to complete the transactions contemplated hereby or to reduce the Purchase Price (except as provided under Section 2.2.1 of the North American Agreement) payable hereunder or under the North American Agreement; and

10.35.2 without the express written consent of the Purchaser, the EMEA Sellers shall not agree to amend the material terms of any relevant EMEA Bundled Contract as a condition of such counterparty agreeing to amend the relevant EMEA Bundled Contract in the manner set forth in this Clause 10.35 and if so requested, the EMEA Seller shall notify the Purchaser and, unless the Purchaser consents to such amendments, the EMEA Sellers shall not enter into a new Contract with such customer as set forth in this Clause 10.35 but shall instead enter into a Subcontract Agreement with respect to such EMEA Bundled Contract as provided in Clause 10.36 below. Each of the EMEA Sellers and the Purchaser shall notify the other party if any customer has contacted such party with regard to the matters set forth in Clauses 10.33 to 10.36 and shall keep such other party reasonably informed regarding the content of any discussions with the customer.

10.36 For those EMEA Bundled Contracts for which the arrangements mentioned in Clauses 10.33 to 10.35 have not been entered into by 25 January, 2010 (or such later date as the Purchaser and the relevant EMEA Seller may mutually agree):

10.36.1 to the extent permitted under each such EMEA Bundled Contract, the EMEA Sellers shall use reasonable endeavours to enter into one or more Subcontract Agreements between the relevant EMEA Seller and the Purchaser, or the applicable EMEA Designated Purchaser, with respect to such EMEA Bundled Contracts on such terms as are reasonably satisfactory to each of them;

10.36.2 if and to the extent that any EMEA Bundled Contract is not subcontracted to the Purchaser pursuant to a Subcontract Agreement, the relevant EMEA Seller shall, to the extent reasonably within its contractual or other ability or control and subject also to Clause 10.4, take reasonable steps to provide the benefit of such EMEA Bundled Contract (as it relates to EMEA Products and EMEA Services) to the Purchaser or the relevant EMEA Designated Purchaser, and all such benefit shall vest in, and be held on trust, to the extent the relevant EMEA Seller is not constrained by operation of Law or any Third Party from granting such rights or benefits, by the relevant EMEA Seller for, the Purchaser, or the relevant EMEA Designated Purchaser (provided that the relevant EMEA Seller, the Joint Administrators and the Joint Israeli Administrators shall have no liability to the Purchaser when acting under the direction of the Purchaser and as its agent), and the relevant EMEA Seller shall account to the Purchaser or the relevant EMEA Designated Purchaser accordingly in respect of any monies or other benefits received by the relevant EMEA Seller in relation thereto (and to the extent that such monies or other benefits can not, as a matter of Law, be held on trust for the Purchaser or relevant EMEA Designated Purchaser, such monies or other benefits shall be an expense of the administration as described in Paragraph 99(4) of

Schedule B1 and Rule 2.67 of the Insolvency Act; and

10.36.3 to the extent that the Purchaser, or the relevant EMEA Designated Purchaser, receives, or has received, the benefits of such EMEA Bundled Contract in accordance with Clause 10.36.2 the Purchaser shall (or shall cause the relevant EMEA Designated Purchaser to) (if sub-contracting or agency is permitted under the relevant EMEA Bundled Contract), as the relevant EMEA Seller's sub-contractor or agent, perform on behalf of the relevant EMEA Seller (but at the Purchaser's expense) all the obligations of the relevant EMEA Seller arising under the relevant EMEA Bundled Contract (as it relates to EMEA Products and EMEA Services), but provided that if such EMEA Bundled Contract does not permit sub-contracting or agency, the parties shall make such other arrangements between themselves as may be permissible to implement so far as possible the effective transfer of the benefit and burden of such EMEA Bundled Contract (as it relates to EMEA Products and EMEA Services) to the Purchaser or the relevant EMEA Designated Purchaser.

provided that:

10.36.4 any endeavours required of the EMEA Sellers pursuant to this Clause 10.36 shall be required for a period of one year commencing on the Closing Date, subject to Clause 14.8 (*Limitations on Post- Closing Obligations*);

10.36.5 nothing in this Clause 10.36 shall require the EMEA Sellers to renew any EMEA Bundled Contract once it has expired;

10.36.6 the EMEA Sellers shall have the right, to exercise any right to terminate any EMEA Bundled Contract such termination to take effect any time after the date that is one year from the Closing Date subject to Clause 14.8 (*Limitations on Post- Closing Obligations*); and

10.36.7 the EMEA Sellers shall be under no obligation to compromise any right, asset or benefit or to expend any amount or incur any Liabilities in order to comply with its obligations under this Clause 10.36.

Post-Closing assistance for litigation

10.37 After Closing, the Purchaser and those of its Affiliates that employ Transferring Employees or have custody of relevant documents, shall, upon the request of the EMEA Sellers, and at the EMEA Sellers' cost, (including reimbursement of reasonable out of pocket expenses of the Purchaser and the EMEA Designated Purchasers and payment of a reasonable *per diem* fee to the Purchaser or an EMEA Designated Purchaser, which *per diem* fee shall be based on the total compensation of the affected Transferring Employee at the time), require the Transferring Employees to make themselves, and make any necessary documents (and the terms of the Confidentiality Agreement shall apply to such documents) reasonably available at reasonable times and cooperate in all reasonable respects with the EMEA Sellers and their Affiliates in the preparation for, and defence of, any lawsuit, arbitration or other Action (whether disclosed or not disclosed in Section 10.37 (*Lawsuits or other Actions*) (if any) of the EMEA Sellers' Disclosure Schedule) filed or claimed against the EMEA Sellers or any of their Affiliates or any of the respective agents, directors, officers and employees of the EMEA Sellers and their Affiliates, whether currently pending or asserted in the future, concerning the operation or conduct of the EMEA Business prior to the Closing Date, provided, however, that the obligation of the Purchaser and the EMEA

Designated Purchasers hereunder shall only extend to the Transferring Employees who remain employed by the Purchaser or an EMEA Designated Purchaser as of the date of the EMEA Seller's request and shall not apply to former employees no longer employed by the Purchaser or an EMEA Designated Purchaser as of such date and shall not require the Purchaser or an EMEA Designated Purchaser to continue the employment of any such employee.

10.38 After Closing, the EMEA Sellers shall, upon the request of the Purchaser, and at the Purchaser's cost (including reimbursement of reasonable out-of-pocket expenses of the EMEA Sellers and payment of a reasonable *per diem* fee to the EMEA Seller, which *per diem* fee shall be based on the total compensation of the affected employee at the time), require their employees that were not Transferring Employees to make themselves reasonably available at reasonable times and cooperate in all reasonable respects with the Purchaser and the EMEA Designated Purchasers and their Affiliates in the preparation for, and defence of, any lawsuit, arbitration or other Action filed or claimed against the Purchaser, any of the EMEA Designated Purchasers, any of their Affiliates or any of the respective agents, directors, officers and employees of any of the foregoing, whether currently pending or asserted in the future, concerning the operation or conduct of the EMEA Business prior to the Closing Date, provided, however, that the obligations of the EMEA Sellers under this Clause 10.38 shall only extend to the employees of such EMEA Sellers as of the date of the Purchaser's request and shall not apply to former employees no longer employed by such EMEA Sellers as of such date and shall not require EMEA Sellers to continue the employment of any such employee.

Tangible Asset Removal

10.39 Save as provided in Schedule 5 (*Real Estate*), the Purchaser shall, and shall cause the relevant EMEA Designated Purchasers to remove all tangible Assets from all premises owned or leased by the EMEA Sellers that are not being leased, subleased or licensed to the Purchaser or any EMEA Designated Purchaser in accordance with Schedule 5 (*Real Estate*) within sixty (60) days after the Closing Date; provided, however, that in the event that the EMEA Sellers notify the Purchaser in writing that the EMEA Sellers intend, or are required, to vacate any such premises earlier, (i) the EMEA Sellers shall have the right by written notice to the Purchaser to require the Purchaser to remove all tangible EMEA Assets from all premises owned or leased by the EMEA Sellers prior to the date that is thirty (30) days after the Closing Date or (ii) the EMEA Sellers may remove and store all tangible EMEA Assets at the EMEA Sellers' sole cost and expense until the date that is sixty (60) days after the Closing Date. The EMEA Sellers shall cooperate with such efforts, including by providing access to such facilities during normal business hours or where necessary to minimize disruption to the Business and to the other businesses of the EMEA Sellers, to provide reasonable access during non-working hours for the purpose of facilitating such removal.

Termination of Overhead and Shared Services and Intercompany Licensing Agreements

10.40 The Purchaser acknowledges and agrees that except as otherwise expressly provided in the Transition Services Agreement, effective as of the Closing Date.

10.40.1 all Overhead and Shared Services provided to the EMEA Business (except the Transferred Overhead and Shared Services) shall cease; and

10.40.2 the EMEA Sellers or their Affiliates shall have no further obligation to provide any Overhead and Shared Services to the EMEA Business.

10.41 The EMEA Sellers shall, on or before Closing, provide the Purchaser with Appropriate License Termination agreements (as defined in the IFSA) executed by each of them and shall use commercially reasonable efforts to obtain and provide the Purchaser with Appropriate License Termination agreements from each of their Wholly-Owned Subsidiaries who are a party to the IFSA and who are not EMEA Sellers.

Financing

10.42 Notwithstanding anything to the contrary set forth herein, the Purchaser acknowledges and agrees that its obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent in any way upon receipt of any financing and the failure to consummate the transactions contemplated herein as a result of the failure to obtain financing shall constitute a breach of this Agreement by the Purchaser (including its obligations pursuant to Clause 4 (*Payment and Closing*)).

Insurance

10.43 The Purchaser acknowledges and agrees that coverage of the assets, tangible or intangible property, Liabilities, ownership, activities, businesses, operations, current and former shareholders, and current and former directors, officers, employees and agents of, the Business (collectively with the EMEA Business, the **"EMEA Covered Assets and Persons"**) under all current or previous insurance policies of the Sellers, EMEA Sellers and their Affiliates, including, all environmental, directors' and officers' Liability, fiduciary Liability, employed lawyers, property and casualty flood, ocean marine, contaminated products and all other insurance policies or programs arranged or otherwise provided or made available by the EMEA Sellers or their Affiliates that cover (or covered) any of the EMEA Covered Assets and Persons at any time prior to Closing (the **"EMEA Seller Insurance Policies"**) shall cease as of the Closing Date and the EMEA Covered Assets and Persons will be deleted in all respects as insured (or additional insured, as the case may be) under all EMEA Seller Insurance Policies. Except as expressly provided herein, the EMEA Sellers shall retain any rights to, including any right to any proceeds received in respect of, any claim pending as of 7 October 2009 or made after 7 October 2009 under any EMEA Seller Insurance Policy, even if such claims relate to the capital assets or properties of the EMEA Business.

10.44 If after the Closing Date the Purchaser or, subject to Clause 14.8 (*Limitations on Post-Closing Obligations*), the EMEA Sellers (or any of their respective Affiliates) reasonably require any information regarding claim data or other information pertaining to a claim or an occurrence reasonably likely to give rise to a claim (including any pre-Closing claims under the EMEA Seller Insurance Policies that are to be covered under the retrospective component of the new insurance policy) in order to give notice to or make filings with insurance carriers or claims adjustors or administrators or to adjust, administer or otherwise manage a claim, then the EMEA Sellers or the Purchaser, as the case may be, shall cause such information to be supplied to the other (or their designee), to the extent such information is in their possession and control or can be reasonably obtained by the EMEA Sellers (or their respective Wholly Owned Subsidiaries) or the Purchaser (or its Affiliates), as applicable, promptly upon a written request therefore. If the Purchaser desires access to, and utilization of, claims data or information maintained by an insurance company or other Third Party in respect of any claim (including any pre-Closing claims under any EMEA

Seller Insurance Policies that are covered under the retrospective component of the new insurance policies), the Purchaser shall be exclusively responsible for acquiring from such insurance company or Third Party, at the Purchaser's sole cost and expense, the rights necessary to permit them to obtain access to and utilization of such claims data or information. If any Third Party requires the consent of the EMEA Sellers or any of their Wholly Owned Subsidiaries to the disclosure of such information, such consent shall not be unreasonably withheld by the EMEA Sellers, and the EMEA Sellers shall procure (to the extent they are legally able) that such consent shall not be unreasonably withheld by their respective Wholly Owned Subsidiaries.

10.45 Prior to Closing, the EMEA Sellers shall maintain the EMEA Seller Insurance Policies (or in the event any such policies are cancelled or otherwise terminated) shall obtain other substantially comparable insurance policies that have the same coverage limits and deductibles or self-retention amounts. In respect of insurance claims relating to the EMEA Owned Equipment or the premises subject to a Real Estate Agreement occurring prior to the Closing, the following provisions shall apply:

10.45.1 The EMEA Sellers shall make and diligently pursue any applicable insurance claims related to damage or destruction to any EMEA Owned Equipment wherever located.

10.45.2 If and to the extent that any EMEA Owned Equipment, wherever located, is destroyed or damaged prior to Closing, and is not replaced or repaired or restored to its condition prior to such damage or destruction, then at Closing, the EMEA Sellers shall pay to the Purchaser the amount of any net insurance proceeds received (or which would have been received had the EMEA Sellers maintained the EMEA Sellers' Insurance Policies in respect of such EMEA Owned Equipment that have not been applied to repair, replacement or restoration, as applicable, and assign any such claim and the rights to receive the proceeds of any such claim that has not yet been finally adjusted. In the event that insurance proceeds would have been available but for the EMEA Sellers' failure to maintain the EMEA Sellers' Insurance Policies, or due to the rights of any superior lender, then in such event, the Purchase Price shall be reduced by an amount equal to the cost of repair, or, if destroyed or damaged beyond repair, by an amount equal to the cost of replacing the EMEA Owned Equipment so damaged or destroyed with equipment of comparable age and condition.

10.45.3 If and to the extent that any leasehold improvements at any premises subject to a Real Estate Agreement are destroyed or damaged prior to Closing, then to the extent of the receipt of insurance proceeds relating to such damage or destruction by the EMEA Sellers or which would have been received had the EMEA Sellers complied with the EMEA Sellers' Insurance Policies, or tenant's insurance requirements under the applicable Lease, as applicable (but excluding any proceeds related to business interruption insurance or related to any part of any premises in the applicable building not forming part of the premises subject to a Real Estate Agreement) the EMEA Sellers shall be responsible to the extent required under the terms of the applicable Lease, to utilize such insurance proceeds received to restore the applicable improvements and leasehold improvements in accordance with the provisions of the applicable Lease. To the extent that any premises which are proposed to be the subject of a Real Estate Agreement is destroyed or damaged after Closing, the applicable terms of

the applicable Real Estate Agreement shall apply; and to the extent that the subject Real Estate Agreement provides that it is the responsibility of the landlord to repair or restore any destruction or damage to real or personal property, the EMEA Sellers shall make and diligently pursue any applicable claims against the landlord related to such damage or destruction.

Use of EMEA Sellers' Trade Marks

10.46 Except as expressly provided in the Trademark License Agreement, as of the Closing Date, the Purchaser shall not have the right to use the name "Nortel" or any Trade Mark owned by the EMEA Sellers or any of their Affiliates or any other mark employing the word "Nortel" or any part or variation of any of the foregoing or any confusingly similar Trademarks to any of the foregoing (collectively, the **"EMEA Sellers' Trade Marks"**).

EMEA Sellers' Accessible Information

10.47 For a period of one year after Closing, both the Purchaser on the one hand, subject to Clause 14.8 (*Limitations on Post- Closing Obligations*), and the EMEA Sellers on the other (for the purposes of this Clause 10.47 each a **"Requesting Party"**) shall have the right to reasonably request from the other party (for the purposes of this Clause 10.47 the **"Responding Party"**) copies of all books, records, files, the documentation and sales literature (other than Tax Records save as required by Law or pursuant to Clause 11 *(Tax)*) in the possession or under Control of the Responding Party and held or used in the EMEA Business (other than EMEA Employee Records), to which the Requesting Party in good faith determines it needs access for bona fide business or legal purposes. The Responding Party shall, or shall (to the extent it is legally able) cause in the case of the EMEA Sellers, its respective Wholly Owned Subsidiaries, and in the case of the Purchaser, its respective Affiliates, to, use reasonable endeavours to provide such copies to the Requesting Party (at the Requesting Party's expense) as soon as reasonably practicable, provided that the Responding Party shall be allowed to redact any such requested document in order to delete any information and data relating to business segments of any such Responding Party and in the case of the Purchaser, its respective Affiliates or, in the case of the EMEA Sellers, their respective Wholly Owned Subsidiaries not included in the EMEA Business; provided, however, that nothing herein shall require the Responding Party to disclose any information to the Requesting Party if such disclosure would jeopardise any solicitor-client or other legal privilege or contravene any applicable Law, fiduciary duty or agreement (including any confidentiality agreement to which the Responding Party or in the case of the Purchaser, any of its Affiliates or, in the case of the EMEA Sellers, their respective Wholly Owned Subsidiaries is a party), it being understood, that the Responding Party shall cooperate in any reasonable endeavours and requests for waivers that would enable otherwise required disclosure to the Requesting Party to occur without so jeopardizing privilege or contravening such Law, duty or agreement).

Maintenance of books and records

10.48 After Closing, the Purchaser and each EMEA Designated Purchaser (as applicable) shall, and shall, to the extent legally able, shall cause its Affiliates to, and, each EMEA Seller shall, and to the extent legally able to shall cause its Wholly Owned Subsidiaries to, preserve, until at least the third (3rd) anniversary of the Closing Date, all pre-Closing Date records to the extent relating to the EMEA Business possessed or controlled, or to be possessed or controlled, by such Person, provided that this Clause 10.48 shall not apply to Tax Records (for which the provisions at Clause 11 *(Tax)* shall instead apply) or to EMEA

Employee Records. After the Closing Date and up until at least the third (3rd) anniversary of the Closing Date, upon any reasonable request from the Purchaser, on the one hand or the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators or their representatives on the other (for the purposes of this Clause 10.48 each a **"Requesting Party"**), the other party (for the purposes of this Clause 10.48 the **"Responding Party"**) shall, and/or shall cause the Person holding such records to: (a) provide to the Requesting Party or its representatives reasonable access to such records during normal business hours; and (b) permit the Requesting Party or its representatives to make copies of such records, in each case at no cost to the Requesting Party or its representatives (other than for reasonable out-of-pocket expenses). In addition, in the event that the financial statements of the EMEA Business are audited for any period prior to the Closing Date, upon execution of a customary access letter if required, the Requesting Party and its representatives (including their outside accountants) shall be granted access to all relevant documents prepared in connection with the Requesting Party completing the audit of their accounts for the 2009 financial year; provided, however, that nothing herein shall require the Responding Party to disclose any information to the Requesting Party if such disclosure would jeopardise any solicitor-client or other legal privilege or contravene any applicable Law, fiduciary duty or agreement (it being understood that the Responding Party shall cooperate in any reasonable endeavours and requests for waivers that would enable otherwise required disclosure to the Requesting Party to occur without so jeopardising privilege or contravening such Law, duty or agreement) and nothing in this Clause 10.48 shall require the Responding Party to disclose its Tax Records (save as required by applicable Law, and subject to the provisions of Clause 11 (*Tax*)). Such records may be sought under this Clause 10.48 for any reasonable purpose, including to the extent reasonably required in connection with accounting, litigation, securities disclosure or other similar needs of the Requesting Party (other than claims between the EMEA Sellers and the Purchaser or any of their respective Subsidiaries under this Agreement or any Ancillary Agreement). Notwithstanding the foregoing, any and all such records may be destroyed by a party if it sends to the other parties written notice of its intent to destroy such records, specifying in reasonable detail the contents of the records to be destroyed; (i) such records may then be destroyed after the sixtieth (60th) day following such notice unless such other party notifies the destroying party that they desire to obtain possession of such records, in which event the destroying party shall transfer or cause to be transferred the records to that party, (and such other party shall pay all reasonable expenses of the destroying party in connection therewith); and (ii) the Responding Party shall not be required pursuant to this Clause 10.48 to provide the other party access to, or copies of, any Tax Records (save as required by applicable Law, and subject to the provisions of Clause 11 (*Tax*). For the avoidance of doubt, this Clause 10.48 is without prejudice to any requirements imposed by law on EMEA Sellers to maintain, preserve or disclose Tax Records (save as required by applicable Law, and subject to the provisions of Clause 11 (*Tax*).

Real Estate

10.49 Before, on and after the Closing Date, the parties hereto shall take such actions as are contemplated by, and comply with, the provisions of Schedule 5 (*Real Estate*).

Certain Ancillary Agreements

10.50 The parties shall use their reasonable endeavours to negotiate in good faith with respect to any Subcontract Agreement, provided, that, the parties shall have no obligation to enter into any Subcontract Agreement unless each of them is satisfied, in their sole and absolute discretion, with the terms thereof and it shall not be a breach of this Agreement to fail to

enter into such agreements before, on or after the Closing Date, provided, futher, that, the parties acknowledge that the failure to enter into any such Subcontract Agreement shall not be deemed a failure of any condition precedent of any party's obligations hereunder.

Standstill Period

10.51 From the date of this Agreement until the entry of the U.S. Bidding Procedures Order, and from the date of the conclusion of the Auction until the Closing Date or termination of this Agreement, no EMEA Seller (nor the Joint Administrators or Joint Israeli Administrators in their capacities as administrators of the EMEA Debtors and Israeli Company, respectively) shall, directly or indirectly through any of its authorized representatives, (i) solicit, initiate or encourage or engage in discussions or negotiations with respect to any proposal or offer from any Person (other than the Purchaser or its Affiliates) relating to in each case any acquisition, divestiture, recapitalization, business combination or reorganization of or involving all or a substantial part of the business and operations of the EMEA Business (a **"Competing Transaction"**), (ii) furnish any information with respect to, or participate in, or assist, any effort or attempt by any Person to do or seek a Competing Transaction, (iii) execute any letter of intent or agreement providing for a Competing Transaction, or (iv) seek or support Bankruptcy Court approval of a motion or Order inconsistent with the transactions contemplated herein, provided, however, that nothing contained herein shall prohibit the EMEA Sellers (or the Joint Administrators or Joint Israeli Administrators in their capacities as administrators of the EMEA Debtors and Israeli Company, respectively) from providing any Person with the bidding procedures for the sale of the Business and related documents, answering questions about such bidding procedures or, announcing the execution of this Agreement or the Auction or selecting an Alternate Bid at Auction and obtaining approval of such Alternate Bid as an alternate bid.

10.52 Notwithstanding the foregoing, the EMEA Sellers (and the Joint Administrators and Joint Israeli Administrators in their capacities as administrators of the EMEA Debtors and Israeli Company, respectively) may provide continued access to written due diligence materials about the EMEA Business in an electronic data room (including written responses to requests for information made after 7 October 2009), to only such Person or Persons that (i) have access to such electronic data room as of 7 October 2009, and (ii) have satisfied the requirements of paragraph (a) of the "Participation Requirements" of the U.S. Bidding Procedures Order within ten (10) Business Days from 7 October 2009, it being understood that, during such ten (10) Business Day period, the EMEA Sellers (and the Joint Administrators and Joint Israeli Administrators in their capacities as administrators of the EMEA Debtors and Israeli Company, respectively) will be allowed to (x) request such Persons to enter into amendments to their existing confidentiality agreements in order to render them compliant with the requirements of the bidding procedures for the sale of the EMEA Business (y) discuss and negotiate such amendments with those Persons, and (z) execute such amendments, and each such action shall not constitute a breach of this Clause 10.52, provided, however, that the EMEA Sellers (and the Joint Administrators and Joint Israeli Administrators in their capacities as administrators of the EMEA Debtors and Israeli Company, respectively) must provide the Purchaser at least equivalent access to all such written due diligence materials.

10.53 Without prejudice to any other methods or actions that may result in the cure of any breach of Clauses 10.51 to 10.53, the EMEA Sellers (and the Joint Administrators and Joint Israeli Administrators in their capacities as administrators of the EMEA Debtors and Israeli Company, respectively) and the Purchaser acknowledge and agree that in the event that any officer or other employee of any EMEA Seller acting alone (without the assistance of

outside advisors) in violation of a corporate policy approved by the board of directors (and if applicable, as amended by the Joint Administrators or the Joint Israel Administrators) of the relevant EMEA Seller takes an action that constitutes a breach of Clause 10.51 (i) but does not constitute a breach of Clauses 10.51 (ii) to 10.51 (iv) or any of Clause 10.52 or this Clause 10.53, such breach shall be deemed cured in the event such action ceases and one or more of the EMEA Sellers notifies the counterparty or counterparties to the potential Competing Transaction in writing that the EMEA Sellers will not undertake such Competing Transaction, in each case no later than the fifth (5th) day after the EMEA Sellers become aware of such breach (for such purposes excluding the knowledge of the employee or officer whose action constitutes such breach), provided that such action that constituted the breach did not involve substantive negotiations regarding the terms of such Competing Transaction.

Securities Compliance

10.54 The Purchaser hereby covenants and agrees with the provisions of Sections 5.27 of the North American Agreement.

Hazardous Materials at the Monkstown Property

10.55 The EMEA Sellers and the Joint Administrators acknowledge that neither the Purchaser nor any EMEA Designated Purchaser has caused or contributed to any currently or formerly existing Hazardous Materials contamination in, under, at, near or migrating from, to or through the Monkstown Property prior to or at the Closing Date and for the avoidance of doubt Liabilities of the EMEA Sellers in relation to the Hazardous Materials contamination are Excluded Liabilities in accordance with the provisions of Clause 2.5.9 of this Agreement.

10.56 The EMEA Sellers that own and lease the Monkstown Property and the Purchaser agree that the relevant EMEA Sellers and the Purchaser or an EMEA Designated Purchaser shall include in the Monsktown Property Lease Agreement an acknowledgement that neither the Purchaser nor any EMEA Designated Purchaser has caused or contributed to the currently or formerly existing Hazardous Materials contamination in, under, at, near or migrating from, to or through the Monkstown Property prior to or at the commencement of the lease agreement relating to the Monkstown Property and for the avoidance of doubt Liabilities of the EMEA Sellers in relation to the Hazardous Materials contamination are Excluded Liabilities in accordance with the provisions of Clause 2.5.9 (*EMEA Excluded Liabilities*) of this Agreement.

Israeli Company

10.57 The Joint Israeli Administrators agree to provide the Purchaser or the EMEA Designated Purchaser with all filings, in their possession, which were submitted to the Israeli Court, with respect to the Israeli Company.

Right to Exclude

10.58 At any time prior to the date of the Auction, the Purchaser may elect, by written notice to the Joint Administrators, but without any effect on the Purchase Price, to designate as EMEA Excluded Assets all of the assets, interests and rights of any In Scope Seller, if it is the case that, absent such election, by consummating the transactions contemplated hereby, the Purchaser or an EMEA Designated Purchaser would be reasonably likely to succeed to liabilities for Tax of such In Scope Seller that are not EMEA Assumed Liabilities

hereunder, or liabilities for Tax of such In Scope Seller (that are not EMEA Assumed Liabilities) would be reasonably likely to be transferred to, or assumed by, the Purchaser or an EMEA Designated Purchaser, whether by operation of law or otherwise (any such In Scope Seller so designated by the Purchaser, an "**EMEA Excluded Seller**", and such liabilities for Tax being **"In Scope Tax Liabilities"**). Upon designation of any EMEA Excluded Seller, the assets, interests and rights of such EMEA Excluded Seller shall be EMEA Excluded Assets and any Liabilities of such EMEA Excluded Seller or otherwise relating to such EMEA Excluded Assets shall be EMEA Excluded Liabilities, and such EMEA Excluded Seller shall not be a party to this Agreement, shall not be an EMEA Seller, and shall have no rights or obligations hereunder, provided that each EMEA Excluded Seller shall remain bound by the provisions of this Clause 10.58, Clauses 10.25 and 10.28 (*Confidentiality*), and Clause 21 (*Governing Law and Jurisdiction*). In addition to the foregoing, following the designation of an EMEA Excluded Seller by the Purchaser, no lease or sublease and no license or other arrangement pursuant to the Schedule 5 (*Real Estate*) shall be required to be entered into with respect to any premises related to such EMEA Excluded Seller's operations. For the avoidance of doubt, the designation of assets, interests or rights in any country as EMEA Excluded Assets shall not in any way prevent the Purchaser or any of its Affiliates from engaging in the Business (defined as if such assets, interests or rights were not EMEA Excluded Assets) in such country either before or after the Closing.

10.59 The EMEA Sellers agree that, as of the Closing, (i) neither any EMEA Seller nor, to the extent that the EMEA Seller is legally able to procure, any Wholly Owned Subsidiary of any EMEA Seller will be a party to any Contract with any EMEA Excluded Seller that will restrict the Purchaser or an EMEA Designated Purchaser, in any material respect, from engaging after the Closing in any business activity relating to the Business in the country where such EMEA Excluded Seller is located or organised; and (ii) the EMEA Sellers and, to the extent that the EMEA Seller is legally able to procure, any Wholly Owned Subsidiary of any EMEA Seller will cease to supply EMEA Products or EMEA Services or provide other assistance to an EMEA Excluded Seller with respect to the Business except to the extent required in order to allow such EMEA Excluded Seller to continue to perform any obligations under (x) a contract with one of its customers existing as of the date hereof, or (y) a contract with one of its customers entered into after the date hereof but before Closing that was entered into in the Ordinary Course, in each case which such EMEA Excluded Seller is required by such contract to perform until the earliest of (A) the expiration of such contract (without giving effect to any extension of the term thereof other than at the option of the counterparty thereto), (B) the earliest date on which such EMEA Excluded Seller has the right to terminate such contract without penalty or (C) the date on which such contract is terminated by the counterparty thereto; provided that the Purchaser and its Affiliates shall, except as expressly set out in this Clause 10.59, be under no obligation to make EMEA Products or EMEA Services (or any other products or services) available to the EMEA Excluded Sellers; provided that notwithstanding clauses (i) and (ii) above: (a) the Purchaser or an EMEA Designated Purchaser will, if requested to do so, perform any Subcontract Agreement that it enters into pursuant to this Agreement at the request of an EMEA Excluded Seller; (b) the Purchaser shall, if requested to do so, discuss and negotiate with the EMEA Sellers or the EMEA Excluded Seller, acting reasonably and in good faith, appropriate agreements for the provision of such goods and/or services (including without limitation technical support and supply of kit and equipment) by the Purchaser or its Affiliates in order for any EMEA Excluded Seller to continue to perform its obligations under customer contracts as set out in (x) and (y) above, in each case subject to the conditions in (A), (B) and (C) above; and (c) the EMEA Sellers may, at their sole

discretion, be a conduit through which the Purchaser or EMEA Designated Purchaser supplies EMEA Products or EMEA Services to an EMEA Excluded Seller. The Purchaser agrees that any EMEA Excluded Seller shall be entitled to the benefit of the rights and licences granted under the Intellectual Property License Agreement as if it had continued to be an EMEA Seller under the terms of such agreement.

10.60 For the purposes of clause 10.58 above, "In Scope Seller" means Nortel Networks Polska Sp z.o.o (in administration) (Poland) and any two of:

10.60.1 Nortel Networks AB (in administration) (Sweden), for the purpose of Clause 10.58 in respect only of those EMEA Assets and EMEA Assumed Liabilities of Nortel Networks AB (in administration) other than those of the Danish branch of Nortel Networks AB (in administration);

10.60.2 Nortel Networks s.r.o (in administration) (Czech Republic);

10.60.3 Nortel Networks Portugal SA (in administration) (Portugal);

10.60.4 Danish branch of Nortel Networks AB (in administration) (Sweden), for the purpose of Clause 10.58 in respect only of those EMEA Assets and EMEA Assumed Liabilities of the Danish branch of Nortel Networks AB (in administration),

provided that the Purchaser shall only be entitled to elect for two of the entities/branches listed at clauses 10.60.1 to 10.60.4 above to be EMEA Excluded Sellers.

10.61 If, prior to the date of the Auction, the EMEA Sellers deliver to the Purchaser a certificate, clearance, ruling or other documentation issued by the Tax Authorities in the jurisdiction of an In Scope Seller reasonably satisfactory in form and content to the Purchaser (acting in good faith) confirming that either:

10.61.1 the In Scope Seller does not have and can not have any liabilities for Tax of any type that could become In Scope Tax Liabilities; and/or

10.61.2 it is not possible (whether as a result of Bankruptcy Proceedings or otherwise), for any existing or future liabilities for Tax of the In Scope Seller to become In Scope Tax Liabilities,

then the In Scope Seller in question shall cease to be an In Scope Seller, and (to the extent that the Purchaser has elected for such In Scope Seller to become an EMEA Excluded Seller) the parties acknowledge that such election shall for all purposes be revoked.

10.62 If, after the date of the Auction, but on or before 15 January 2010, the EMEA Sellers deliver to the Purchaser a certificate, clearance, ruling or other documentation issued by the Tax Authorities in the jurisdiction of an EMEA Excluded Seller reasonably satisfactory in form and content to the Purchaser (acting in good faith) confirming that either:

10.62.1 the EMEA Excluded Seller does not have and can not have any liabilities for Tax of any type that could become In Scope Tax Liabilities; and/or

10.62.2 it is not possible (whether as a result of Bankruptcy Proceedings or otherwise), for any existing or future liabilities for Tax of the EMEA Excluded Seller to become In Scope Tax Liabilities,

then the EMEA Excluded Seller in question shall cease to be an EMEA Excluded Seller, and shall for all purposes be treated as an EMEA Debtor under this Agreement.

11. TAX

VAT

11.1 Each EMEA Seller shall use reasonable endeavours, including (but not limited to) promptly providing the Purchaser or relevant EMEA Designated Purchaser with relevant details of: (x) the VAT registration details of each EMEA Seller; (y) any currently valid Option to Tax; and (z) if requested in writing by the Purchaser or relevant EMEA Designated Purchaser, relevant details of the business carried on by that EMEA Seller using the EMEA Assets and (if relevant) EMEA Assumed Liabilities, in order to procure that the sale of the EMEA Assets and (if relevant) assumption of the EMEA Assumed Liabilities is treated as a TOGC by each relevant Tax Authority for each jurisdiction in which the EMEA Assets are located for VAT purposes and in so procuring that TOGC treatment applies, the relevant EMEA Seller(s) shall at all times act reasonably and in good faith, provided that:

11.1.1 the parties acknowledge that the sale of the EMEA Assets and assumption of EMEA Assumed Liabilities in Austria, Hungary and Israel will not be capable of being a TOGC (each such sale and assumption being a **"Non TOGC Sale"**); and

11.1.2 the parties acknowledge that they do not intend to make an application (joint or otherwise) to any Tax Authority for the Purchaser or any EMEA Designated Purchaser to inherit or otherwise become registered under the VAT registration number of any EMEA Seller.

11.2 In addition, and without prejudice to the other provisions of this Clause 11:

11.2.1 the parties acknowledge that:

(A) for the purposes of VAT in Slovakia, the sale of the EMEA Assets and assumption of EMEA Assumed Liabilities in Slovakia may effect the sale of a business forming a separate organisational unit;

(B) for the purposes of VAT in Italy the sale of the EMEA Assets and assumption of EMEA Assumed Liabilities in Italy may constitute a "ramo d'azienda" or "azienda" (branch of a business concern or business concern);

(C) for the purposes of VAT in Romania, the sale of the EMEA Assets and assumption of EMEA Assumed Liabilities in Romania may represent an independent unit, capable of performing separate economic activities and that therefore the transfer of such EMEA Assets and EMEA Assumed Liabilities may be capable of being a transfer outside the scope of VAT in accordance with the provisions of the Law relating to VAT in Romania;

(D) for the purposes of VAT in Ireland the sale of the EMEA Assets and the assumption of EMEA Assumed Liabilities in Ireland may be capable of being treated as a transfer of a business or part thereof under section

3(5)(b)(iii) and section 5(8) of the Value Added Tax Act 1972, as amended;

(E) for the purposes of VAT in the United Kingdom the sale of the EMEA Assets and assumption of EMEA Assumed Liabilities in the United Kingdom may be capable of being treated as a transfer of a business as a going concern to which article 5 of the Value Added Tax (Special Provisions) Order 1995 (SI 1995/1268) may apply;

(F) for the purposes of VAT in the Netherlands, the sale of EMEA Assets and assumption of EMEA Assumed Liabilities in the Netherlands may qualify as a transfer for which article 31 Dutch VAT Act 1968 is applicable as a consequence of which for VAT purposes no supplies of goods or services are deemed to take place; and

(G) for the purposes of VAT in Belgium, the sale of the EMEA Assets and assumption of EMEA Assumed Liabilities in Belgium may be capable of being treated as a transfer of a business under section 11 of the Belgian VAT Code; and

11.2.2 if the sale of the EMEA Assets and assumption of the EMEA Assumed Liabilities in Switzerland constitutes the transfer of an entire or partial property in the course of restructuring for the purposes of Swiss VAT, the parties shall use reasonable endeavours to act together as far as necessary to make any valid notification to the Swiss Federal Tax Administration (Main Division of the Value Added Tax) required pursuant to Article 47 para 3 of the Swiss Federal VAT Act of 2 September 1999 (if Closing is on or before 31 December 2009) or, should Closing take place on or after 1 January 2010, Article 38 paragraph 1 of the Swiss Federal VAT Act of 12 June 2009, in each case with such notification to be made on or before Closing.

VAT — warranties

11.3 Other than in respect of any Non TOGC Sales, the Purchaser hereby warrants to the EMEA Sellers and the Joint Administrators that:

11.3.1 each entity (whether the Purchaser or an EMEA Designated Purchaser) acquiring EMEA Assets and (if relevant) assuming EMEA Assumed Liabilities the supply of which, but for the availability of TOGC treatment, would for VAT purposes be treated as made in any jurisdiction in which an EMEA Seller belongs (the **"Relevant EMEA Jurisdiction"**) shall be either: (A) registered for VAT on or before Closing in the Relevant EMEA Jurisdiction and on or before Closing the Purchaser shall provide the relevant EMEA Seller(s) with a copy of each relevant certificate of VAT registration; or (B) required to be registered for VAT on or before Closing in the Relevant EMEA Jurisdiction (including required to be registered as a result of the relevant acquisition and (if relevant) assumption) provided that the warranty in this Clause 11.3.1(B) shall only be given in place of that at Clause 11.3.1(A) where the acquisition and (if relevant) assumption by such Purchaser or EMEA Designated Purchaser (that is not registered for VAT at Closing but is required to be registered for VAT on or before Closing) does not result in TOGC treatment being unavailable in respect of the relevant acquisition and (if relevant) assumption, and where the warranty in this Clause 11.3.1(B) is given the relevant Purchaser or EMEA Designated

Purchaser shall provide the relevant EMEA Seller(s) with a copy of the relevant certificate of VAT registration as soon as reasonably practicable after Closing;

11.3.2 each entity (whether the Purchaser or an EMEA Designated Purchaser) acquiring EMEA Assets and (if relevant) assuming EMEA Assumed Liabilities intends to carry on the same kind of business in relation to those EMEA Assets and (if relevant) EMEA Assumed Liabilities with effect from Closing as that carried on by the relevant EMEA Seller of such EMEA Assets and (if relevant) assumed EMEA Assumed Liabilities prior to Closing, and does not intend to liquidate such business;

11.3.3 the EMEA Assets and (if relevant) EMEA Assumed Liabilities of each EMEA Seller will be acquired and (if relevant) assumed either: (A) by a single entity, whether that be the Purchaser or an EMEA Designated Purchaser; or (B) by more than one entity (being the Purchaser and/or one or more EMEA Designated Purchaser), provided that the warranty in this Clause 11.3.3(B) shall only be given in place of that at Clause 11.3.3(A) to the extent that the acquisition and (if relevant) assumption by the relevant multiple entities does not result in TOGC treatment being unavailable in respect of the relevant acquisition and (if relevant) assumption, and where the warranty in this Clause 11.3.3(B) is given the Purchaser shall provide prior to Closing such evidence to the relevant EMEA Seller(s) as the relevant EMEA Seller(s) may reasonably request in writing in order to confirm, acting reasonably, that the acquisition and (if relevant) assumption by the relevant multiple entities does not result in TOGC treatment being unavailable; and

11.3.4 to the extent required to ensure TOGC treatment and where the relevant EMEA Seller(s) have notified the Purchaser that an Option to Tax has been exercised in respect of an EMEA Asset (in writing with a copy of the notice of such exercise and not less than twenty (20) Business Days prior to the Closing Date), the Purchaser or relevant EMEA Designated Purchaser has exercised its Option to Tax in respect of the relevant EMEA Assets,

provided that the Purchaser shall not be required to give the warranties at Clauses 11.3.1, 11.3.2, 11.3.3 and 11.3.4 in respect of any particular entity acquiring EMEA Assets and (if relevant) assuming EMEA Assumed Liabilities if the Purchaser notifies the relevant EMEA Seller(s) of those EMEA Assets and (if relevant) EMEA Assumed Liabilities in writing not less than fifteen (15) Business Days prior to Closing that any or all of such warranties will not be given by or in respect of such entity (whether the Purchaser or an EMEA Designated Purchaser) acquiring such EMEA Assets and (if relevant) assuming such EMEA Assumed Liabilities, and for the purposes of this Clause 11 any EMEA Seller to whom a notification is given by the Purchaser pursuant to this Clause 11.3 is a **"Notified EMEA Seller"**.

VAT — determinations by a Tax Authority

11.4 If, notwithstanding the provisions of Clause 11.1 and Clause 11.2 (*VAT*) and subject to Clauses 11.5, 11.6 and 11.7, any Tax Authority determines in writing that VAT is chargeable in respect of the supply of all or any part of the EMEA Assets or (if relevant) assumption of EMEA Assumed Liabilities under this Agreement or in respect of any other payment made by the Purchaser or an EMEA Designated Purchaser, pursuant to this Agreement then:

11.4.1 the relevant EMEA Seller(s) shall notify the Purchaser in writing of that determination within five (5) Business Days of it being so advised by such Tax Authority with such notification to include a copy of the determination and confirmation of whether or not the relevant EMEA Seller(s) have appealed or intend to appeal against such determination; and

11.4.2 the Purchaser shall or shall procure that the relevant EMEA Designated Purchaser shall pay to the relevant EMEA Seller(s) in addition to the Purchase Price or other relevant payment made by the Purchaser or relevant EMEA Designated Purchaser a sum equal to the amount of VAT determined by the relevant Tax Authority to be so chargeable, (but for the avoidance of doubt excluding any interest or penalties thereon, save to the extent that such interest or penalties arise as a result of or in connection with a breach of any of the warranties given under Clause 11.3), with payment to be made by the Purchaser or relevant EMEA Designated Purchaser within the later of: (x) three (3) Business Days of receipt by the Purchaser or an EMEA Designated Purchaser of an appropriate valid VAT invoice; and (y) the Closing Date.

VAT — determination by EMEA Sellers

11.5 If, notwithstanding the provisions of Clause 11.1 and Clause 11.2 (*VAT*), the relevant EMEA Seller(s) form the view, acting at all times reasonably and in good faith, that the supply of any EMEA Assets or (if relevant) assumption of any EMEA Assumed Liabilities is not capable of being a TOGC, or that any other amounts payable by the Purchaser or an EMEA Designated Purchaser (in each case pursuant to this Agreement) are subject to VAT, then:

11.5.1 the relevant EMEA Seller(s) shall notify the Purchaser in writing of that view (such notification to include the reasons for the EMEA Seller(s) forming that view, including full details of the EMEA Assets and EMEA Assumed Liabilities as are known to the EMEA Seller(s)) acting at all times reasonably and in good faith, as soon as is practicable after the relevant EMEA Seller(s) form that view, such notification being referred to as the "**Seller VAT Notification**"; and

11.5.2 the Purchaser shall or shall procure that the relevant EMEA Designated Purchaser shall pay to the relevant EMEA Seller(s) in addition to the Purchase Price or other payment made by the Purchaser or relevant EMEA Designated Purchaser a sum equal to the amount of VAT determined by the relevant EMEA Seller(s) to be so chargeable, (but for the avoidance of doubt excluding any interest or penalties thereon, save to the extent that such interest or penalties arise as a result of or in connection with a breach of any of the warranties given under Clause 11.3), with payment to be made by the Purchaser or relevant EMEA Designated Purchaser within the later of: (x) three (3) Business Days of receipt by the Purchaser or an EMEA Designated Purchaser of an appropriate valid VAT invoice; and (y) the Closing Date, save that if the Seller VAT Notification is not received at least ten (10) Business Days before Closing, then notwithstanding any other provisions in this Clause 11.5 the payment of VAT by the Purchaser or relevant EMEA Designated Purchaser for the supply described in such Seller VAT Notification shall be made within the later of ten (10) Business Days of receipt by the Purchaser or relevant EMEA Designated Purchaser of an appropriate valid VAT invoice and the Closing Date; and

11.5.3 the relevant EMEA Seller(s) agree to act as promptly as is reasonably possible at all times in forming the view that the supply of any EMEA Assets or assumption of any EMEA Assumed Liabilities is not capable of being a TOGC. The relevant EMEA Seller(s) agree, within forty (40) Business Days following the date of this Agreement, to provide the relevant Purchaser or EMEA Designated Purchaser with an initial written determination (the "**Preliminary Partial TOGC Determination**"), together with a reasonable supporting analysis prepared in good faith and based upon the assumption that the warranties at Clauses 11.3.1, 11.3.2, 11.3.3 and 11.3.4 apply, of whether supplies made by NNUK, Nortel Networks France SAS (in administration), Nortel GmbH (in administration), Nortel Networks AG, Nortel Networks (Ireland) Limited (in administration) and Nortel Networks N.V. (in administration) will constitute a TOGC for the purposes of VAT. The parties acknowledge that the Preliminary Partial TOGC Determination may be subject to change in the Seller VAT Notification based on further analysis and/or a change in facts.

11.6 If, following receipt of the Preliminary Partial TOGC Determination or a Seller VAT Notification, the Purchaser believes that the relevant supply is capable of being a TOGC, the Purchaser shall notify the relevant EMEA Seller(s) in writing of this belief within fifteen (15) Business Days of receipt of the Preliminary Partial TOGC Determination or the Seller VAT Notification (such notification from the Purchaser to include the reasons for the Purchaser believing that the supply is capable of being a TOGC, and if no such notification is received from the Purchaser within fifteen (15) Business Days of receipt of the Preliminary Partial TOGC Determination or the Seller VAT Notification (as the case may be), the EMEA Sellers shall cease to have any obligations under this Clause 11.6 as hereinafter set forth), and, if the relevant EMEA Seller(s) or Joint Administrators consider (acting at all times reasonably and in good faith) that there is a reasonable prospect that the relevant Tax Authority would provide a binding determination that the relevant supply is capable of being a TOGC, then the relevant parties shall co-operate (acting at all times reasonably and in good faith, and at the Purchaser's sole cost) in approaching the relevant Tax Authority to seek a binding determination on whether or not the relevant supply is capable of being a TOGC. In the event that the Tax Authority provides a binding determination that the relevant supply is:

11.6.1 not capable of being a TOGC prior to payment in accordance with Clause 11.5.2, the Purchaser shall and shall procure that the relevant EMEA Designated Purchaser shall comply with its payment obligations under Clause 11.5.2; or

11.6.2 capable of being a TOGC prior to any payment in accordance with Clause 11.5.2, then the Purchaser or relevant EMEA Designated Purchaser shall have no liability under Clauses 11.5 or 11.6 to pay any VAT in respect of such supply (provided that the Tax Authority does not rescind or change its interpretation that the relevant supply is capable of being a TOGC); or

11.6.3 capable of being a TOGC after the Purchaser or EMEA Designated Purchaser has made the relevant payment of VAT in accordance with Clause 11.5.2, the provisions at Clause 11.10 (*VAT — Other*) shall apply,

provided that, for the avoidance of doubt, in the event that a binding determination has not been received from a Tax Authority prior to the due dates for payment of VAT pursuant to Clause 11.5.2 the provisions of Clause 11.5.2 shall continue to apply.

VAT — Other

11.7 In relation to the Non TOGC Sales or any sale of EMEA Assets or transfer of EMEA Assumed Liabilities by a Notified EMEA Seller, the Purchaser shall or shall procure that the relevant EMEA Designated Purchaser shall pay to the relevant EMEA Sellers in addition to the Purchase Price or other payment made by the Purchaser or EMEA Designated Purchaser a sum equal to the amount of VAT determined by the relevant EMEA Seller to be so chargeable, with payment to be made by the Purchaser or relevant EMEA Designated Purchaser within the later of: (x) the date falling three (3) Business Days after the Purchaser's or EMEA Designated Purchaser's receipt of an appropriate valid VAT invoice and (y) the Closing Date.

11.8 Where the liability for VAT in respect of any supply is a liability of the Purchaser or any EMEA Designated Purchaser (whether under section 8 of the Value Added Tax Act 1994 or similar or equivalent provisions in any member of the European Union or any other jurisdiction) the Purchaser shall and shall procure that the EMEA Designated Purchaser shall promptly account for all applicable VAT to the relevant Tax Authority.

11.9 ***[Intentionally Blank]***

11.10 In the event that (1) (a) an amount of VAT is payable under the terms of this Agreement and (b) the consideration as stated on the relevant VAT invoice in respect of such amount of VAT differs from the actual consideration for the relevant supply for VAT purposes (which shall include where the Purchase Price is adjusted in accordance with Clauses 3.5 and 3.6 (*Purchase Price adjustments*), and/or where the allocation of consideration to any EMEA Assets or EMEA Assumed Liabilities is amended and/or where no VAT invoice was actually issued), or (2) where a Tax Authority determines in writing that a supply by an EMEA Seller in respect of which the Purchaser or an EMEA Designated Purchaser has paid VAT should properly be characterised as a TOGC, the parties agree to co-operate in good faith to correct the respective invoices/VAT returns, and in particular:

11.10.1 where the purchase price for any EMEA Assets is increased, the Purchaser shall or shall procure that the relevant EMEA Designated Purchaser shall, pay to the relevant EMEA Seller an amount equal to any additional VAT that becomes due to be accounted for by the relevant EMEA Seller to a Tax Authority as a result of such increase, with payment to be made by the Purchaser or relevant EMEA Designated Purchaser within the later of seven (7) Business Days of receipt of an appropriate valid VAT invoice and the Closing Date; and

11.10.2 where the purchase price for any EMEA Assets is decreased, or to the extent that a Tax Authority determines in writing that a supply by an EMEA Seller in respect of which the Purchaser or an EMEA Designated Purchaser has paid VAT should properly be characterised as a TOGC, the relevant EMEA Seller shall issue a valid VAT credit note or equivalent to the Purchaser or EMEA Designated Purchaser (as relevant) and shall, to the extent the Excess VAT is following reasonable efforts of the relevant EMEA Seller actually recovered and retained by it or is creditable by such EMEA Seller against any VAT liability of such EMEA Seller, without unreasonable delay pay such Excess VAT to the Purchaser or EMEA Designated Purchaser (as relevant), provided that no payment shall be due under this Clause 11.10.2 from an EMEA Seller where any part of the consideration (inclusive of VAT) payable pursuant to this Agreement or any Transaction Document which is subject to adjustment under

this Clause 11.10.2 remains outstanding. For the purposes of this Clause 11.10.2 **"Excess VAT"** means the VAT actually paid (after deducting any previous refund under this Clause 11.10.2) by the Purchaser or an EMEA Designated Purchaser that would not have been payable had the purchase price at all times reflected the relevant adjustment or change in allocation or correct TOGC status as determined in writing by the relevant Tax Authority.

11.11 Notwithstanding any other provision of this Agreement, the parties agree that each entity acquiring EMEA Assets and (if relevant) assuming EMEA Assumed Liabilities as part of a TOGC shall, after Closing, be entitled (at its own cost) to inspect (upon giving reasonable notice) and take copies of any VAT Records in the possession of or under the control of an EMEA Seller, where and solely to the extent that such VAT Records relate to goods transferred as part of such TOGC that, as at the Closing Date, are subject to potential adjustment under the Adjustment Provisions. Each EMEA Seller agrees to act at all times reasonably and in good faith to give effect to the provisions of this Clause 11.11.

Transfer Taxes

11.12 The Purchaser (on behalf of itself and the EMEA Designated Purchasers):

11.12.1 shall promptly pay directly to the appropriate Tax Authority all applicable Transfer Taxes that may be imposed upon or payable or collectible or incurred (in each case at any time and where the Purchaser or relevant EMEA Designated Purchaser has the primary or joint obligation under Law to pay such Transfer Taxes) in connection with the acquisition of the EMEA Assets and assumption of EMEA Assumed Liabilities pursuant to this Agreement and the transactions contemplated in Schedule 5 (*Real Estate*) and 6 (*Employees*) of this Agreement or any Transfer Taxes payable by any EMEA Seller by virtue of the transactions described in the Intellectual Property Licence Agreement (such Transfer Taxes being the **"Relevant Transfer Taxes"**). Upon request from an EMEA Seller or the Joint Administrators or the Joint Israeli Administrators the Purchaser shall provide to such EMEA Seller or the Joint Administrators or the Joint Israeli Administrators an original receipt (or such other evidence as shall be reasonably satisfactory to such EMEA Seller or the Joint Administrators or the Joint Israeli Administrators) evidencing the payment of Transfer Taxes by the Purchaser to the applicable Tax Authority under this Clause 11.12.1;

11.12.2 shall reimburse the EMEA Sellers (for themselves and on behalf of all members of the EMEA Sellers' Group) where any Relevant Transfer Taxes (notwithstanding the provisions of Clause 11.12.1) are required to be collected, remitted or paid by any of the EMEA Sellers or the Joint Administrators or the Joint Israeli Administrators or any member of the EMEA Seller's Group, such reimbursement to be made promptly (and in any event within three (3) Business Days) following receipt by the Purchaser of a written demand accompanied by proof of payment of such Relevant Transfer Taxes, if such payment has not already been made pursuant to Clause 11.12.5 below (and, for the avoidance of doubt, the timing of payments under Clause 11.12.5 below shall take precedence over the timing of payments under this Clause 11.12.2, where both provisions are capable of applying);

11.12.3 If the Purchaser or any EMEA Designated Purchaser wishes to claim or elect any exemption relating to, or a reduced rate of, Relevant Transfer Taxes subject

to this Clause 11.12, the Purchaser or any EMEA Designated Purchaser, as the case may be, shall be solely responsible for determining (acting in good faith) that such exemption, reduction or election applies (where the liability for the Relevant Transfer Taxes is, as a matter of law, a liability of the Purchaser or EMEA Purchaser and is not a liability, whether primary, secondary or otherwise, of an EMEA Seller) it being understood that the Purchaser shall remain responsible for any Transfer Taxes whether or not shown due on a Tax Return with respect to Transfer Taxes. If the Purchaser or any Designated Purchaser pays any Relevant Transfer Taxes pursuant to this Clause 11.12 and an EMEA Seller thereafter becomes entitled to and receives a refund for, or receives a reduction in liability for, Transfer Taxes payable by such EMEA Seller in respect of such Relevant Transfer Taxes paid by the Purchaser or EMEA Designated Purchaser, then such EMEA Seller shall promptly reimburse the Purchaser or EMEA Designated Purchaser for an amount equal to such refund or actual reduction (including any interest paid in connection with such refund or reduction and net of reasonable out of pocket expenses incurred in obtaining such refund or reduction and net of any Tax in the hands of the relevant EMEA Seller on such refund or reduction);

11.12.4 Each of the parties shall provide the other with reasonable cooperation in complying with the reporting requirements relating to any Transfer Taxes under applicable Law that are subject to this Clause 11.12, and shall make reasonable efforts to cooperate to the extent necessary to obtain any exemption from, or any reduction in amount or rate of, Transfer Taxes sought by Purchaser or any EMEA Designated Purchaser. For the avoidance of doubt, such cooperation shall include any applicable EMEA Seller using reasonable efforts to obtain and/or furnish to the Purchaser or any Designated Purchaser any applicable information that is reasonably requested by Purchaser or any EMEA Designated Purchaser and reasonably necessary in connection with its efforts to obtain any exemption or reduction in amount or rate of Transfer Taxes, and the Purchaser or EMEA Designated Purchaser using reasonable efforts to obtain and/or furnish to the relevant EMEA Sellers with any applicable information that is reasonably requested by such EMEA Seller and reasonably necessary in connection with any exemption or reduction in the amount or rate of Transfer Taxes;

11.12.5 Each Tax Return with respect to Transfer Taxes (a **"Transfer Tax Return"**) imposed in respect of this Agreement shall be prepared by the party that customarily has primary responsibility for filing such Transfer Tax Return pursuant to applicable Law. Any Transfer Tax Returns prepared by the EMEA Sellers pursuant to this Clause 11.12.5 shall be made available to the Purchaser at least five (5) Business Days before such Tax Returns are due to be filed. The Purchaser shall be entitled to review and comment on any Transfer Tax Return prepared by the EMEA Sellers prior to making any payment in respect thereof, and the EMEA Sellers shall incorporate any reasonable comments received from Purchaser at least three (3) Business Days before such Transfer Tax Returns are due to be filed, it being understood that the Purchaser shall remain responsible for any Transfer Taxes whether or not shown due on such Transfer Tax Return. The Purchaser shall pay to the EMEA Sellers the amount of any Transfer Taxes payable in respect of Transfer Tax Returns to be filed by the EMEA Sellers pursuant to this Clause 11.12.5 at least one (1) Business Day

before such Transfer Tax becomes due and payable provided that the relevant Transfer Tax Return has been made available to the Purchaser in compliance with this Clause 11.12.5,

and for the purposes of this Clause 11.12 only "Transfer Tax" and "Transfer Taxes" do not include VAT, for which the provisions at Clauses 11.1 to 11.11 (*VAT*) shall instead apply.

Deductions and withholding

11.13 Any payments made by or due from the Purchaser or EMEA Designated Purchaser pursuant to the terms of this Agreement and the Transaction Documents shall be free and clear of all deductions or withholdings of or on account of Tax whatsoever save only for any deductions or withholdings required by Law. To the extent such amounts are so withheld by the Purchaser or EMEA Designated Purchaser, as the case may be, such withheld amounts shall be treated for all purposes of this Agreement and the Transaction Documents as having been paid to the relevant EMEA Seller in respect of whom such deduction or withholding was made. With respect to any provision of this Clause 11.13 that by its terms applies to the other Transaction Documents, such provision shall not apply to another Transaction Document to the extent that such Transaction Document contains a contrary or inconsistent provision to the provision in this Clause 11.13.

11.14 All parties shall make reasonable endeavours to cooperate to minimise the amounts that the Purchaser or EMEA Designated Purchasers, as the case may be, are required to deduct and withhold. In connection therewith, the Parties shall cooperate to the extent necessary to obtain any exemption from or reduction in deduction or withholding Tax.

11.15 In the event that any deductions or withholdings on account of Tax are required by Law, the Purchaser shall or shall cause any relevant EMEA Designated Purchaser to promptly pay such withheld or deducted Tax to the relevant Tax Authority (to the extent required by Law) and shall furnish the relevant EMEA Seller and the Joint Administrators and the Joint Israeli Administrators with such evidence as may be required by the applicable Tax Authorities to establish that any such Tax has been paid.

Allocations

11.16 The parties shall participate in good faith in the procedures set forth in Section 2.2.6 of the North American Agreement as they apply to the Purchaser, EMEA Designated Purchasers and EMEA Sellers and in particular agree to act in accordance with the allocations contained in such allocation as is determined under Section 2.2.6 of the North American Agreement for all purposes relating to VAT or other Transfer Taxes (including the preparation, filing and audit of any VAT invoices or Transfer Tax Returns).

11.17 If it is not possible for the parties in accordance with the procedures set forth in Section 2.2.6 of the North American Agreement to determine in a timely manner an amount of consideration for: (x) Transfer Taxes purposes including for the purposes of VAT invoicing (where an amount in respect of Transfer Taxes is required to be collected, remitted or paid to a Tax Authority by any of the EMEA Sellers or the Joint Administrators or the Joint Israeli Administrators or any member of the EMEA Sellers' Group); or (y) for Transfer Taxes purposes including for the purposes of VAT invoicing (where an amount in respect of Transfer Taxes is required to be collected, remitted or paid to a Tax Authority by the Purchaser or any EMEA Designated Purchaser) then:

11.17.1 in the case of (x) above, the relevant EMEA Seller, Joint Administrator or Joint Israeli Administrator shall consult with the Purchaser or relevant EMEA Designated Purchaser concerning the relevant amount of consideration for VAT or other Transfer Taxes purposes and meaningfully consider its reasonable input, acting at all times reasonably and in good faith in determining the amount of such consideration provided that, subject to Clause 11.10, the determination of the relevant EMEA Seller, Joint Administrator or Joint Israeli Administrator, acting in accordance with this Clause 11.17.1, shall be accepted by the parties for VAT and Transfer Taxes purposes until and unless replaced pursuant to Section 2.2.6 of the North American Agreement; and

11.17.2 in the case of (y) above, the Purchaser or relevant EMEA Designated Purchaser shall consult with the relevant EMEA Seller concerning the relevant amount of consideration for Transfer Taxes purposes and meaningfully consider its reasonable input, acting at all times reasonably and in good faith in determining the amount of such consideration provided that, subject to Clause 11.10, the determination of the Purchaser or relevant EMEA Designated Purchaser, acting in accordance with this Clause 11.17.2, shall be accepted by the parties for Transfer Taxes purposes unless and until replaced pursuant to Section 2.2.6 of the North American Agreement.

Miscellaneous

11.18 The provisions of Section 6.3 (*Tax Characterisation of Payments under this Agreement*) of the North American Agreement shall apply mutatis mutandis to payments made under this Agreement.

11.19 After the Closing Date, the EMEA Sellers shall preserve all Tax Records and VAT Records until the expiration of any applicable statute of limitations or extensions or reductions, whether as a result of Bankruptcy Proceedings or otherwise, thereof. Subject to the limitations in Clauses 10.15.6 and 10.15.8 (applied mutatis mutandis), after the date of the Auction, the Purchaser and the EMEA Designated Purchasers, on the one hand, and the EMEA Sellers, on the other hand, will to the extent that they are legally able:

11.19.1 make available to the other, as reasonably requested in writing and as reasonably necessary, all information, records or documents relating to liability for Taxes with respect to the EMEA Assets, EMEA Assumed Liabilities or the EMEA Business for all periods prior to and including the Closing Date; and

11.19.2 in the event that it is reasonably necessary for one party to access the Tax Records in the possession of a second party relating to the EMEA Assets, EMEA Assumed Liabilities or the EMEA Business for purposes of preparing Tax Returns or complying with any Tax audit request, subpoena or any other investigative demand by any Tax Authority or for any other legitimate Tax-related purpose, the second party will allow representatives of the other party reasonable 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 (at the requesting party's sole cost) to make extracts and copies thereof as may be necessary or convenient,

provided that the obligation to cooperate pursuant to this Clause 11.19 shall terminate at the time the relevant applicable statute of limitations expires (giving effect to any

extension or reductions, whether as a result of Bankruptcy Proceedings or otherwise, thereof), and:

(A) disclosure of/access to information, records and documents shall not be given unless, a reasonable time prior to the requested date of access/such information, documents or records are requested to be made available, the requesting party provides to the second party a written request which (a) sets out in reasonable detail either the information, records and documents for which access is required or which the requesting party wishes to be made available or, as a minimum, the type of information, documents or records requested and (b) explains why access to such information, records and documents (or such information, records or information being made available) is reasonably necessary for the requesting party;

(B) the parties agree and acknowledge that any information, records of documents provided pursuant to this Clause shall only be used for the purposes contemplated in this Clause; or

(C) the parties agree and acknowledge that either shall be entitled, prior to any disclosure or making available, to redact the Tax Records, information or documents described in this Clause 11.19 to ensure that they show only information relevant to the EMEA Assets, EMEA Assumed Liabilities or EMEA Business and do not show any other information.

11.20 From and after the date hereof:

11.20.1 until the date one year from Closing, the EMEA Sellers shall reasonably cooperate with Purchaser and its Affiliates to provide such information (subject to the limitations of Clauses 10.15.6 and 10.15.8 applied mutatis mutandis) as is reasonably requested in writing and reasonably necessary to permit Purchaser and its Affiliates to identify and timely comply with their respective obligations under applicable Tax Law arising out of this Agreement;

11.20.2 until the date of Closing, the EMEA Sellers shall reasonably cooperate with the Purchaser and its Affiliates to structure and carry out the transactions between the EMEA Sellers, on the one hand, and the Purchaser and its Affiliates, on the other hand, contemplated by this Agreement in a tax-efficient manner (including, without limitation, to limit withholding Taxes and irrecoverable VAT with respect to the transactions contemplated in this Agreement);

11.20.3 for so long as any EMEA Seller provides services to the Purchaser or an Affiliate of the Purchaser under the Transition Services Agreement (such EMEA Seller(s) being the "**TSA Sellers**", and such services being the "**TSA Services**"), the TSA Sellers shall undertake to determine as soon as reasonably practicable after the date of this Agreement, and throughout the term of the Transition Services Agreement, whether and to what extent any material irrecoverable VAT will be included within the price charged by them for TSA Services (such irrecoverable VAT being "**Included Irrecoverable VAT**"), and the relevant TSA Seller will provide prompt written notice to the Purchaser upon so determining that such material irrecoverable VAT will arise. Upon the written request of a TSA Seller, the Purchaser or relevant EMEA Designated

Purchaser shall promptly provide such information as the TSA Sellers reasonably request in order to assist the TSA Sellers with such determination. "Material" for the purposes of this Clause 11.20.3 only shall mean, in respect of TSA Sellers, an aggregate amount of Included Irrecoverable VAT, in excess of £37,500 (thirty seven thousand five hundred pounds sterling);

11.20.4 for so long as any TSA Seller provides TSA Services to the Purchaser or an Affiliate of the Purchaser under the Transition Services Agreement, the TSA Sellers and the Purchaser shall co-operate in examining and implementing such reasonable ways in which the provision of TSA Services or portions thereof may be structured, either to minimise the amount of Included Irrecoverable VAT and/or to minimise the amount of any irrecoverable VAT (as notified by the Purchaser to the TSA Sellers) incurred by the Purchaser or any Affiliate of the Purchaser on receipt of the TSA Services under the Transition Services Agreement;

11.20.5 other than as expressly provided in Clauses 11.23 (*German Confirmation*) and 11.25 (*Belgian Confirmation*) below, the EMEA Sellers shall reasonably cooperate with the Purchaser and its Affiliates (i) to obtain any applicable forms, certificates, or other information and (ii) to comply with any procedure established by applicable Law or a Government Entity, in each case as is reasonably required and reasonably necessary to establish, quantify, reduce or eliminate the extent to which the Purchaser or any EMEA Designated Purchaser could be liable under applicable Law for any Taxes of the EMEA Sellers that are EMEA Excluded Liabilities, including by reason of a Lien being filed on the EMEA Assets or as a result of such Purchaser or EMEA Designated Purchaser being a transferee or successor under applicable Law,

provided that the parties agree and acknowledge that any information, records of documents provided pursuant to this Clause 11.20 shall only be used for the purposes contemplated in this Clause and provided further that any such cooperation to be provided in this Clause 11.20 above shall not include or extend to:

(A) a liquidation or restructuring of an EMEA Seller or any business of an EMEA Seller, including the transfer of any assets or EMEA Assets or liabilities or EMEA Assumed Liabilities between EMEA Sellers or their Affiliates; or

(B) any action or omission that would result in the imposition on any EMEA Seller or any Affiliate of any additional Tax liability or additionally (in the case of Clause 11.20.5) making any payment to any Tax Authority or Government Entity in respect of Tax which is an EMEA Excluded Liability, Succession Tax Liabilities or Succession Tax Lien; or

(C) any action or omission that would result in any material out of pocket cost or expense for any EMEA Seller or any Affiliate, unless such EMEA Seller or Affiliate is (prior to the relevant action or omission), indemnified against such cost or expense to their satisfaction (acting at all times reasonably and in good faith) by the Purchaser; or

(D) any action or omission which would cause the EMEA Sellers or any Affiliates to be in contravention of any applicable Law (including Bankruptcy Law) or published practice of a Tax Authority; or

(E) changing the identity or Tax residence of any EMEA Sellers, the location of any EMEA Assets or EMEA Assumed Liabilities, the nature or extent of any EMEA Assets or EMEA Assumed Liabilities, the EMEA Assets or EMEA Assumed Liabilities to be transferred by any particular EMEA Seller or the structure of the transaction as an asset sale rather than the sale of any form of entity; or

(F) any reduction in the obligations of the Purchaser or rights of the EMEA Sellers, in each case under Clauses 4.4 and 4.5 (*EMEA Designated Purchasers*); or

(G) any EMEA Seller being required to approach or contact any Tax Authority or Government Entity where the relevant EMEA Seller (acting at all times reasonably and in good faith) considers that the making of such approach or contact will be materially prejudicial to the EMEA Seller or any Affiliate.

Succession Tax

11.21 Save in respect of the rights of the Purchaser and EMEA Designated Purchasers under Section 6.8 (*EMEA Tax Escrow*) and Section 6.9 (*Italian Tax Escrow*) of the North American Agreement and Clause 10.23.2, the Purchaser shall and shall procure that the EMEA Designated Purchasers shall expressly waive, to the extent permissible under applicable Law, any right or entitlement that the Purchaser or EMEA Designated Purchaser may have to recover Succession Tax Liabilities or amounts representing Succession Tax Liabilities from any EMEA Seller or the Joint Administrators or the Joint Israeli Administrators, and the Purchaser acknowledges that, in respect of any (a) Succession Tax Liabilities; (b) Tax which is an EMEA Excluded Liability; and (c) Lien for Tax that arises over EMEA Assets acquired by the Purchaser or an EMEA Designated Purchaser pursuant to this Agreement, as a result of a failure by an EMEA Seller to pay a liability for Tax that is primarily a liability of that EMEA Seller (other than any Tax for which the Purchaser or an EMEA Designated Purchaser is liable or responsible under this Clause 11) ("**Succession Tax Lien**"), the provisions of Section 6.8 (*EMEA Tax Escrow*) and Section 6.9 (*Italian Tax Escrow*) of the North American Agreement and Clause 10.23.2 shall represent the sole remedy for the Purchaser and any EMEA Designated Purchaser as against the EMEA Sellers, the Joint Administrators and/or the Joint Israeli Administrators and that no other warranty or indemnity is given in respect of Succession Tax Liabilities, Tax which is an EMEA Excluded Liability or Succession Tax Liens.

German Confirmation

11.22 The Purchaser shall procure that the transferee of the Business as transferred by Nortel GmbH (in administration) pursuant to this Agreement shall promptly, and in any event within 30 (thirty) days of Closing, deliver to all competent authorities a proper notification of the transfer of the Business (as transferred by Nortel GmbH (in administration)) to the relevant Purchaser or EMEA Designated Purchaser within the meaning of Section 138 of the German Fiscal Code (Abgabenordnung), and shall confirm in writing to Nortel GmbH (in administration) and the Joint Administrators that such notification has been delivered within 5 (five) Business Days of the making of such notification.

11.23 Nortel GmbH (in administration) shall provide to the Purchaser, as of the date falling thirteen months after Closing, with, at its option, either (i) confirmation in writing from the relevant Tax Authority or (ii) such other evidence (for example, a signed statement from

the auditors of Nortel GmbH (in administration)) which can reasonably be expected to be acceptable to the Purchaser, acting reasonably and in good faith in either (i) or (ii) detailing the amount of assessed and unpaid Tax liabilities of Nortel GmbH (in administration) for the calendar year in which Closing takes place and the preceding calendar year and with the confirmation or evidence under (i) or (ii) to be provided promptly following the date falling thirteen months from Closing.

Belgian Confirmation

11.24 The Purchaser shall procure that the transferee of the Business (if any) as transferred by Nortel Networks N.V. (in administration) pursuant to this Agreement shall promptly, and in any event within 30 (thirty) days of Closing, deliver to the Belgian Income Tax Collector, the Belgian VAT Tax Collector , the Collecting Agency for Social Security premiums for independents and the Collecting Agency for Social Security premiums for blue and white collar workers competent for Nortel Networks N.V. (in administration) for the purposes of Art. 442bis Belgium Income Tax Code and Art 93 undecies B of the Belgium VAT Code, Art. 16ter of RD n° 38 and Art. 41 quinquies of the Law of June, 27 1969 respectively, a notification made in accordance with the provisions of Art 442bis Belgian Income Tax Code and Art 93 undecies B of the Belgium VAT Code respectively of the transfer of the Business (as transferred by Nortel Networks N.V. (in administration)) to the relevant Purchaser or EMEA Designated Purchaser, and shall confirm in writing to Nortel Networks N.V. (in administration) and the Joint Administrators that such notification (**"Belgian Notification"**) has been delivered within 5 (five) Business Days of the making of such notification. The Purchaser shall also procure that the transferee of the Business (if any) as transferred by Nortel Networks N.V. (in administration) pursuant to this Agreement shall promptly, and in any event within 30 (thirty) days of determination of the allocation of consideration to such transfer pursuant to this Agreement, inform the authorities mentioned in this Clause 11.24 of the amount of the consideration allocated to the transfer and of the fact that the allocated consideration was paid at Closing.

11.25 Nortel Networks N.V. (in administration) shall provide to the Purchaser, with, at its option, either (i) a confirmation in writing from the relevant Tax Authority; or (ii) such other evidence (for example, a signed statement from the auditors of Nortel Networks N.V. (in administration)) which can reasonably be expected to be acceptable to the Purchaser, acting reasonably and in good faith, in either of (i) or (ii) detailing the amount of outstanding assessed and unpaid Tax liabilities of Nortel Networks N.V. (in administration) as at the last day of the month following the month during which the Belgian Notification was made, and with the confirmation or evidence under (i) or (ii) to be provided promptly following the last day of the month following the month during which the Belgian Notification was made provided Nortel Networks N.V (in administration) shall have no obligations under this Clause 11.25 if (a) the parties, as part of the process of agreeing the TOGC status of the transfer by Nortel Networks N.V (in administration) pursuant to Clauses 11.5 and 11.6, agree that there is no transfer of a business by Nortel Networks N.V (in administration) pursuant to this Agreement or (b) if a Tax Authority provides binding confirmation that it considers that there is no transfer of a business by Nortel Networks N.V (in administration) pursuant to this Agreement.

11.26 The EMEA Sellers and the Purchaser shall reasonably co-operate with each other in connection with the conduct of any Tax audit, investigation, dispute or appeal relating to any Taxes which could result in a Succession Tax Liability.

12. EMPLOYEES

12.1 The EMEA Sellers shall comply with and the Purchaser shall, and shall procure that the EMEA Designated Purchasers shall comply with the provisions set out in Schedule 6 (*Employees*) to this Agreement.

13. PENSIONS

13.1 In relation to each of the Transferring Employees the Purchaser shall, or shall cause an EMEA Designated Purchaser to, provide retirement and death benefits equal to at least the minimum level, if any, required by applicable Law.

13.2 In the event that the Purchaser, or any EMEA Designated Purchaser, is unable to provide appropriate Swiss retirement and death benefit arrangements at the Closing Date, Nortel Switzerland agrees to use its reasonable endeavours to cause the appropriate EMEA Seller Pension Plan in Switzerland to continue to insure the relevant Transferring Employees until such time as the Purchaser, or any EMEA Designated Purchaser, becomes able to provide such appropriate Swiss arrangements. This obligation on Nortel Switzerland will apply only to the extent that it is required by the applicable Law and the Purchaser, or the appropriate EMEA Designated Purchaser, continues to pay the employer's contributions and related costs to, and continues to arrange for the employees' contributions to be paid to, the appropriate EMEA Seller Pension Plan in Switzerland with respect to the period beginning on and after the Closing Date.

14. EXCLUSION OF LIABILITY AND ACKNOWLEDGEMENTS

14.1 Notwithstanding that this Agreement shall have been signed by the Joint Administrators and the Joint Israeli Administrators both in their capacities as administrators of the EMEA Debtors for and on behalf of the EMEA Debtors and of the Israeli Company for and on behalf of the Israeli Company respectively and in their personal capacities, it is hereby expressly agreed and declared that no personal Liability under or in connection with this Agreement shall fall on the Joint Administrators, the Joint Israeli Administrators or their respective firm, partners, employees, agents, advisers or representatives whether such personal Liability would arise under paragraph 99(4) of schedule B1 to the Insolvency Act, or otherwise howsoever. For the avoidance of doubt, this Clause 14.1 shall not operate to prevent any claim of the Purchaser against the EMEA Debtors under this Agreement being an expense of the administration as described in Paragraph 99(4) of Schedule B1 and Rule 2.67 of the Insolvency Act or against the Israeli Company under this Agreement being "expenses of the stay of proceedings".

14.2 It is hereby expressly agreed and declared that no personal Liability, or any Liability whatsoever, under or in connection with this Agreement shall fall on any of the Non-Debtor Seller Directors on 7 October 2009 and from time to time howsoever such Liability should arise.

14.3 For the avoidance of doubt, (but without prejudice to the other terms of this Agreement) the parties hereby agree that the terms of Clauses 14.1 and 14.2 do not, in and of themselves, provide that the Purchaser is under any obligation to indemnify, nor become liable or responsible for, any actions, proceedings, claims, demands, costs, expenses, damages, compensation, fines, penalties or other Liabilities against the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors by any Person.

14.4 The Joint Administrators and the Joint Israeli Administrators are party to this Agreement in their personal capacities only for the purpose of receiving the benefit of this Clause 14 and the exclusions, limitations, undertakings, covenants and indemnities in their favour contained in this Agreement. The Purchaser acknowledges and agrees that in the negotiation and the completion of this Agreement the Joint Administrators and the Joint Israeli Administrators are acting only as agents for and on behalf of the EMEA Debtors and the Israeli Company, respectively, and without any personal Liability whatsoever.

14.5 The Purchaser further acknowledges the following:

14.5.1 it has entered into this Agreement without reliance on any warranties made by the EMEA Sellers or by any of their employees, agents or representatives, or by the Joint Administrators, the Joint Israeli Administrators or any of their respective firms, partners, employees, agents, advisors or representatives other than as set forth in Clause 9 (*Warranties from the EMEA Sellers, Joint Administrators and Joint Israeli Administrators*) and it shall not have any remedy in respect of any misrepresentation or untrue statement by such persons, other than with respect to any warranty set forth in Clause 9 (*Warranties from the EMEA Sellers, Joint Administrators and Joint Israeli Administrators*) made by or on behalf of any other party to this Agreement; and

14.5.2 neither the EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators, nor the EMEA Non-Debtor Seller Directors shall incur any Liability to the Purchaser, any EMEA Designated Purchaser or their respective Affiliates under or in connection with this Agreement by reason of any fault or defect in all or any of the EMEA Assets, without prejudice to the definition of EMEA Excluded Liabilities, or the provisions of Clause 2.5, any breach of the obligations of the EMEA Sellers arising under any products liability Laws, health and safety Laws, Laws relating to telecommunications, or similar Laws, of any EMEA Jurisdiction, or of the State of Israel.

Nothing in this Clause 14 shall affect the rights of the Parties under the North American Agreement, nor shall affect any covenant, representation, warranty or provision under the North American Agreement, or any right, claim or remedy that the the Purchaser may have under the North American Agreement.

14.6 Whenever and wherever in this Agreement it has agreed to indemnify the Joint Administrators and/or the Joint Israeli Administrators, the Purchaser shall also indemnify any firm, partner or employee of the Joint Administrators and/or the Joint Israeli Administrators (as applicable) to the same extent and in the same regard provided that such indemnity only relates to such person to the extent acting in relation to the Joint Administrators or Joint Israeli Administrators appointment as administrators of the EMEA Debtors.

Limitations on Post-Closing Obligations

14.7 Notwithstanding any other provisions in this Agreement, all outstanding obligations of each EMEA Seller under this Agreement (except under Clauses 10.25 to 10.28 (*Confidentiality*), Clause 10.48 (*Maintenance of Books and Records*), Clause 11 (*Tax*), and Clause 13 of Schedule 6 (*Employees*)) shall cease on and from the date following the first anniversary of the Closing Date (in this Clause 14, the "**Drop Dead Date**"), without prejudice to (i) any accrued obligations of the EMEA Sellers, (ii) any accrued rights of the Purchaser or EMEA Designated Purchasers, or (iii) any accrued Liabilities in relation to

any obligations to have been carried out by the EMEA Sellers, in each of (i), (ii) or (iii), prior to the Drop Dead Date.

14.8 If at any time, after the Closing Date, Secondary Proceedings are opened in respect of an EMEA Debtor:

14.8.1 in the case of any EMEA Debtor by its Joint Administrators acting in accordance with their statutory duties or legal obligations (but without reference to the benefits if any accruing to any EMEA Debtor from that EMEA Debtor being relieved of any obligation or liability by operation of this Clause 14.8) in relation to the exercise of their powers, duties or functions as administrators of such EMEA Debtor;

14.8.2 in the case of any EMEA Debtor, by its Joint Administrators having determined in their reasonable opinion that it is necessary to do so in order to prevent the opening by a Third Party of Secondary Proceedings in relation to such EMEA Debtor; or

14.8.3 by any other Person or party,

then the parties agree that any right to claim any amount as an Administration Expense in respect of any breach of any outstanding obligations, without prejudice to (i) any accrued obligations of the EMEA Sellers, (ii) any accrued rights of the Purchaser or EMEA Designated Purchasers, or (iii) any accrued Liabilities in relation to any obligations to have been carried out by the EMEA Sellers, in each of (i), (ii) or (iii), prior to the opening of Secondary Proceedings, of such EMEA Debtor shall cease then on and from the later of (i) the date of commencement of Secondary Proceedings, and (ii) the effective date notified by such EMEA Debtor to the Purchaser:

(A) in the case of Clauses 14.8.1, such effective date not to be earlier than the later of: (i) one hundred and eighty (180) days after the Closing Date; (ii) thirty (30) days after the receipt of such notice by the Purchaser, and (iii) in the case of NNUK and Nortel Ireland, the earlier of the Drop Dead Date and the date on which all obligations of, such EMEA Debtor under the Transition Services Agreement have been completed or terminated or the date on which all such services have been transferred to one or more other EMEA Sellers, Main Sellers or any of their respective Affiliates, or a reasonable Third Party, without material disruption to the Business or the EMEA Business, in each case, in accordance with the terms of the Transition Services Agreement;

(B) in the case of 14.8.2, such effective date not being earlier than the date on which the Joint Administrators have determined in their reasonable opinion that it is necessary to commence Secondary Proceedings in order to prevent the opening by a Third Party of Secondary Proceedings, nor earlier than the date on which such notice is received by the Purchaser; and

(C) in the case of 14.8.3, such effective date not being earlier than the date on which the Joint Administrators become aware that a Third Party will commence Secondary Proceedings, nor earlier than the date on which such notice is received by the Purchaser,

and any such claim shall instead rank as an unsecured claim against such EMEA Debtor

provided that:

(D) the Joint Administrators shall have used all reasonable steps available to them in the circumstances to agree with the liquidator in the Secondary Proceeding for the Joint Administrators to maintain that degree of control over that EMEA Debtor necessary for that EMEA Debtor to perform its obligations under this Agreement (including, if, reasonable in the circumstances, applying to the Court that opened the Secondary Proceeding to stay (and renew any prior stay of) the Secondary Proceeding); and otherwise procured so far as they are reasonably able, that the liquidator in the Secondary Proceeding shall comply with the obligations of that EMEA Debtor pursuant to this Agreement; and

(E) the Secondary Proceeding prevents the Joint Administrators from procuring that the EMEA Debtor performs its obligations under this Agreement, provided further that any right to claim any amount as an Administration Expense in respect of any breach of outstanding obligations of the EMEA Debtor under this Agreement shall cease only to the extent of that part of their performance that the Joint Administrators are thus prevented from procuring.

14.9 Nothing in this Clause 14 (*Exclusions of Liability and Acknowledgements*) or any other provision of this Agreement shall prevent any party from bringing any action against any other party, whether in a personal or any other capacity, for fraud, fraudulent misrepresentation or fraudulent misstatement.

15. CONDITIONS TO CLOSING AND TERMINATION

General conditions

15.1 The parties' obligations to effect, and, as to the Purchaser, to cause the relevant EMEA Designated Purchasers to effect, Closing is subject to the satisfaction or the express written waiver of the EMEA Sellers and the Joint Administrators and the Purchaser, at or prior to Closing, of the following conditions:

15.1.1 the conditions to Closing (as that term is defined in the North American Agreement) of the North American Agreement set out in Article IX thereof (other than the condition regarding the satisfaction of the conditions hereunder) shall have been satisfied or waived in accordance with the terms of the North American Agreement;

15.1.2 that the transactions contemplated by the North American Agreement shall be completed contemporaneously with Closing hereunder;

15.1.3 that all Regulatory Approvals shall have been obtained;

15.1.4 for as long as the Israeli Company is subject to the stay of proceedings or Insolvency Proceedings, approval by the Israeli Court of the sale of the Israeli Assets (whether or not free and clear of all Liens) and transfer of the Israeli Liabilities by the Israeli Company to the Purchaser or an EMEA Designated

Purchaser and of the effectiveness of this Agreement as from the date of this Agreement, provided that this condition (if not satisfied earlier) shall be deemed to be waived on the earlier of the date falling sixty (60) days from the date of this Agreement or the date on which all of the other conditions in this Clause 15 (other than the conditions in Clauses 15.1.2, and 15.1.6) shall have been satisfied or, if permissible, waived;

15.1.5 there shall not be in effect any Law, or Order of any court or other Government Entity in the United Kingdom, prohibiting the consummation of the transactions contemplated hereby or in the U.S. or Canada prohibiting the consummation of the transactions contemplated by the North American Agreement and there shall not be any proceedings pending by any Government Entity in the U.S., Canada or the United Kingdom seeking such prohibition; and

15.1.6 acceptance of the Irrevocable Offers by the Reserved Territory Sellers in accordance with Clause 6 of Schedule 6 (*Employees*), provided that this condition (if not satisfied earlier) shall be deemed to be waived on the date falling sixty (60) days from the date which is the later of (i) the date the Purchaser provides to the Relevant EMEA Seller sufficient information regarding their proposed measures in compliance with the obligations set out in Clause 8.1 (*Purchaser Obligations*) of Schedule 6 (*Employees*) and (ii) the date immediately following completion of the Auction.

Other conditions

15.2 The EMEA Sellers' obligation to effect Closing shall be subject to the fulfilment (or express written waiver by the EMEA Sellers), at or prior to Closing, of each of the following conditions:

15.2.1 each of the warranties of the Purchaser set forth in Clause 8.1 (*Warranties and acknowledgement to the Purchaser*) of this Agreement, disregarding all materiality and material adverse effect qualifications contained therein shall be true and correct: (i) as if restated on and as of the Closing Date; or (ii) if made as of a date specified therein, as of such date, except, in the case of each of (i) and (ii), for any failure to be true and correct that has not had or would not reasonably be expected to have individually or in the aggregate (i) a material adverse effect on the Purchaser's ability to consummate the transactions contemplated hereby or (ii) a material adverse effect on the assets, liabilities, results of operations or condition (financial or otherwise) of Purchaser and its subsidiaries taken as a whole;

15.2.2 the material covenants obligations and agreements contained in this Agreement and the North American Agreement to be complied with by the Purchaser on or before Closing shall not have been breached in any material respect; and

15.2.3 each of the deliveries required to be made by the Purchaser pursuant to Clause 4.3.3(B), 4.3.3(C), 4.3.3(D) and 4.3.4 (*Closing Obligations*) shall have been so delivered.

15.3 The Purchaser's obligation to effect, and cause the relevant EMEA Designated Purchasers to effect, Closing shall be subject to the fulfilment (or express written waiver by the Purchaser), at or prior to Closing, of each of the following conditions:

15.3.1 each of the warranties of the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators set forth in Clause 9 (*Warranties from the EMEA Sellers, Joint Administrators and Joint Israeli Administrators*) of this Agreement, and the representations and warranties of the Main Sellers set forth in Article IV of the North American Agreement, disregarding all materiality and Material Adverse Effect qualifications contained therein shall be true and correct: (i) as if restated on and as of the Closing Date; or (ii) if made as of a date specified therein, as of such date except in the case in each of (i) or (ii), for any failure to be true and correct that has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

15.3.2 the material covenants, obligations and agreements contained in this Agreement and the North American Agreement to be complied with by the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators on or before Closing shall not have been breached in any material respect (provided that a failure by the EMEA Sellers to achieve First Day Ready on or before 30 April, 2010 shall not fall within the scope of this condition); and

15.3.3 each of the deliveries required to be made by the EMEA Sellers pursuant to Clauses 4.3.5 and 4.3.6 (*Closing Obligations*) shall have been so delivered except if such deliverable is a Non-Assignable Contract in respect of which a Consent is outstanding.

Termination

15.4 This Agreement may be terminated at any time prior to Closing:

15.4.1 by mutual written consent of the EMEA Sellers and the Purchaser;

15.4.2 by either the Purchaser or the EMEA Sellers, Joint Administrators and Joint Israeli Administrators, upon written notice to the other, if Closing does not take place on or before 30 April 2010;

15.4.3 by the EMEA Sellers, in the event of a material breach by the Purchaser of the Purchaser's warranties, agreements or covenants set out in this Agreement or in the North American Agreement, which breach: (i) would result in a failure of the conditions to Closing set out in Clauses 15.2.1 or 15.2.2 (*Other Conditions*) or Clause 15.1.3 *(General Conditions)*; and (ii) is not cured within thirty (30) days from receipt of a written notice from EMEA Sellers or Joint Administrators;

15.4.4 by the Purchaser, in the event of a material breach by the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators of the relevant parties' representations, warranties, agreements or covenants set out in this Agreement, which breach: (i) would result in a failure of the conditions to Closing set out in Clause 15.3.1 or 15.3.2 (*Other Conditions*) or Clause 15.1.3 *(General Conditions)*; and (ii) is not cured within thirty (30) days from receipt of a written notice from the Purchaser;

15.4.5 by the Purchaser in the event that the EMEA Sellers (or the Joint Administrators or Joint Israeli Administrators in their capacities as administrators of the EMEA Debtors and Israeli Company, respectively), fail to consummate Closing in

breach of Clause 4 (*Payment and Closing*), within ten (10) Business Days of written demand by the Purchaser to consummate Closing; and

15.4.6 by either the Purchaser or the EMEA Sellers, Joint Administrators and Joint Israeli Administrators if the North American Agreement is terminated in accordance with its terms,

provided, however, that the right to terminate this Agreement pursuant to Clauses 15.4.2, 15.4.3, 15.4.4 or 15.4.6 shall not be available to any party whose breach hereof has been the principle cause of, or has directly resulted in, the event or condition purportedly giving rise to a right to terminate this Agreement under such clauses; and further provided, however, that a party shall not be permitted to terminate under Clause 15.4.3 or Clause 15.4.4 if such party is then in material breach of this Agreement.

EMEA Break-Up Fee

15.5 In the event that this Agreement is terminated (i) by the Purchaser pursuant to Clause 15.4.4 or Clause 15.4.5; or (ii) in the event that the North American Agreement is terminated by either Primary Party pursuant to Section 10.1(b)(v) of the North American Agreement or by the Purchaser pursuant to Section 10.1(b)(ii), Section 10.1(c) or Section 10.1(d) of the North American Agreement or by the Main Sellers pursuant to Section 10.1(b)(iii), Section 10.1(b)(iv), Section 10.1(b)(viii) or Section 10.1(e) of the North American Agreement, then the EMEA Sellers shall pay to the Purchaser in immediately available funds, within two (2) Business Days following such termination, a cash fee equal to five million, three hundred and forty-eight thousand U.S. dollars (U.S.$5,348,000) (the **"EMEA Break-Up Fee"**). Additionally, if this Agreement is terminated by any party pursuant to Clause 15.4 (other than Clauses 15.4.1 or 15.4.3, or Clause 15.4.6 to the extent that no Expense Reimbursement is payable under the North American Agreement), the EMEA Sellers shall pay to the Purchaser an amount in cash equal to the total amount of all reasonable and documented fees, costs and expenses incurred by the Purchaser in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all filing and notification fees, and all fees and expenses of the Purchaser and its Affiliates in an amount not to exceed one million, seven hundred and eighty-two thousand, six hundred and sixty-seven U.S. dollars (U.S.$1,782,667) (the "**EMEA Expense Reimbursement**"). The Joint Administrators (in their capacities as administrators of the EMEA Debtors), the Joint Israeli Administrators (in their capacities as administrators of the Israeli Company) and the EMEA Sellers acknowledge and agree that the EMEA Expense Reimbursement is a reasonable amount given the size and complexity of the transactions contemplated by this Agreement. The EMEA Expense Reimbursement shall be paid by wire transfer or other means acceptable to the Purchaser not later than two (2) Business Days following the receipt by the Joint Administrators and the Joint Israeli Administrators of a written notice from the Purchaser describing the fees and expenses which constitute the EMEA Expense Reimbursement in reasonable detail.

15.6 Notwithstanding anything to the contrary in this Agreement, the payment of any fees payable pursuant to Clause 15.5 shall be the sole and exclusive remedy of the Purchaser, whether at Law or in equity, under this Agreement in the event this Agreement is terminated in accordance with Clause 15.4 and the Purchaser is paid such fees.

15.7 Notwithstanding anything to the contrary herein, the EMEA Sellers' obligation to pay the Break-Up Fee pursuant to Clause 15.5 is expressly subject to entry of the U.S. Bidding

Procedures Order and the Canadian Sales Process Order.

15.8 The EMEA Sellers' obligation to pay the EMEA Expense Reimbursement and the EMEA Break-Up Fee pursuant to Clause 15.5 shall survive termination of this Agreement, and the parties agree that in the case of the EMEA Debtors, for the avoidance of doubt, any sum payable under Clause 15.5 shall be an expense of the administration as described in Paragraph 99(4) of Schedule B1 and Rule 2.67 of the Insolvency Act, and in relation to the Israeli Company deemed to be "expenses of the stay of proceedings".

Effects of termination

15.9 This Clause 15.9 and the following Clauses will survive termination of this Agreement: Clause 10.20 (*Public Announcements*), Clause 10.24 (*Transaction Expenses*), Clauses 10.25 and 10.28 (*Confidentiality*), Clause 14 (*Exclusion of Liability and Acknowledgements*), Clause 15.4 (*Termination*), Clauses 15.5 to 15.8, (*EMEA Break-Up Fee*), Clause 16 (*General Provisions and Construction*), Clause 17 (*Notices and Receipts*), Clause 18 (*Whole Agreement*), Clause 19 (*Availability of Equitable Relief*), Clause 20 (*Third Party Right*s), and Clause 21 (*Governing Law and jurisdictions*) and Clause 13 of Schedule 6 (*Employees*) (save that reference to the "Non-Solicitation Period" in Clause of Schedule 6 (*Employees*) shall be read as "12 months from the date of termination of this Agreement"); provided, that neither the termination of this Agreement nor anything in this Clause 15.9 shall relieve any party from liability for any breach of this Agreement occurring before the termination of this Agreement.

15.10 If this Agreement is terminated pursuant to this Clause 15 (*Conditions to Closing and Termination*):

15.10.1 except as required by applicable Law, the Purchaser shall promptly return to the EMEA Sellers or destroy all documents, work papers and other material of any EMEA Seller relating to the transactions contemplated hereunder, whether so obtained before or after the execution of this Agreement; and

15.10.2 the provisions of the Confidentiality Agreement will continue in full force and effect.

16. GENERAL PROVISIONS AND CONSTRUCTION

16.1 No warranties, covenants or agreements in this Agreement shall survive beyond the Closing Date, except for covenants and agreements that by their terms are to be satisfied after the Closing Date which shall survive until satisfied in accordance with their terms. The parties further agree that the sole remedies of the Purchaser for the breach by the EMEA Sellers, the Joint Administrators, or the Joint Israeli Administrators of Clause 7.3 (*Insolvency Proceedings*) shall be (i) if applicable, an adjustment to the Purchase Price calculated in accordance with Schedule 8 (*Purchase Price Adjustment*) or (ii) the exercise by the Purchaser of its termination rights (if any) pursuant to Clause 15.4 (*Termination*) and/or payment of the EMEA Break-Up Fee, (if payable) pursuant to Clause 15.5 (*EMEA Break-Up Fee*) if the Purchaser is paid such fees.

16.2 None of the rights or obligations and undertakings set out in this Agreement may be assigned or transferred without the prior written consent of all the parties except for direct assignment by the Purchaser to a EMEA Designated Purchaser in accordance with Clause 4.4 and 4.5 (*EMEA Designated Purchasers*) (provided that the Purchaser remains liable jointly and severally with its assignee EMEA Designated Purchaser for the assigned

obligations). Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

16.3 No failure to exercise nor any delay in exercising, on the part of any party, any right or remedy under this Agreement or the documents referred to in this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. To the maximum extent permitted by applicable Law: (i) no waiver that may be given by a party hereto shall be applicable except in the specific instance for which it is given; and (ii) no notice to or demand on one party hereto shall be deemed to be a waiver of any right of the party giving such notice or demand to take further action without notice or demand. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by Law.

16.4 Without prejudice to Clause 14 (*Exclusion of Liability and Acknowledgements*) to the extent that the benefit of any provision in this Agreement is expressed to be conferred upon:

16.4.1 the Joint Administrators or the Joint Israeli Administrators, where necessary to give effect to any such provision the EMEA Debtors or the Israeli Company (as the case may be) shall hold such benefit as trustees for each Joint Administrator or each Joint Israeli Administrator; and

16.4.2 the firm, partners, employees, agents, advisers and/or representatives of the Joint Administrators or the Joint Israeli Administrators, where necessary to give effect to any such provision the Joint Administrators and/or the Joint Israeli Administrators (or failing that the EMEA Debtors or the Israeli Company) shall hold such benefit as trustees for each such person.

16.5 The provisions of this Agreement relating to the Joint Administrators or the Joint Israeli Administrators in their personal capacities shall survive for the benefit of the Joint Administrators, the Joint Israeli Administrators their firm, partners, employees, agents, advisers and representatives notwithstanding the discharge of the Joint Administrators as joint administrators of the EMEA Debtors, of the Joint Israeli Administrators as administrator of the Israeli Company and shall be in addition to and not in substitution for any other right or indemnity or relief otherwise available to each of them.

16.6 No party shall be deemed to have waived any provision of this Agreement or any of the other Transaction Documents unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver. This Agreement and the Ancillary Agreements shall not be amended, altered or qualified except by an instrument in writing signed by all the parties hereto or thereto, as the case may be.

16.7 Notwithstanding anything herein to the contrary, the obligations of each EMEA Seller, the Joint Administrators and the Joint Israeli Administrators hereunder shall be several and not joint other than in respect of the payment of any sum pursuant to Clause 15.5 (*EMEA Break-Up Fee*), the liability for which shall be joint and several between the EMEA Sellers. For the avoidance of doubt, other than in respect of the payment of any sum pursuant to Clause 15.5 (*EMEA Break-Up Fee*), any reference in this Agreement to the EMEA Sellers shall mean (where the context so admits) the particular EMEA Seller which owns the relevant assets and/or liabilities in question and no EMEA Seller shall assume any responsibility or liability for any obligations relating to any assets and/or liabilities that are not owned by it and each EMEA Seller’s liability to the Purchaser (and any EMEA

Designated Purchaser) in relation to any matter contained in this Agreement shall be limited to the assets and/or liabilities that it owns.

16.8 None of the EMEA Sellers, the Joint Administrators or the Joint Israeli Administrators shall incur any liability under this Agreement unless and until: (i) the U.S. Bankruptcy Court enters the U.S. Bidding Procedures Order; and (ii) the Canadian Court enters the Canadian Sales Process Order ((i) and (ii) as entered into being the "**Court Orders**"), provided however that from the date of the Court Orders, any such liability of the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators shall take effect as if from the date of this Agreement they had been in full force and effect as of such date and the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators were subject to all their respective obligations under this Agreement as of such date. For the avoidance of doubt, the intent of this Clause 16.8 is to have the obligations and liabilities of the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators under this Agreement arise concurrently with the obligations and liabilities of the Sellers under the North American Agreement. The EMEA Sellers covenant to the Purchaser (and the Joint Administrators and the Joint Israeli Administrators hereby acknowledge such covenant) that, to the extent that any breach of any provision of this Agreement (that would have had full force and effect from the date of this Agreement if the Court Orders had been entered into on the date of this Agreement) by any of the EMEA Sellers, Joint Administrators and Joint Israeli Administrators, has occurred between the date of this Agreement and the entering into of the Court Orders, the Purchaser shall be entitled to any remedy on and from the date on which the Court Orders are entered into, as if the breach had occurred at a time when all provisions under this Agreement were fully effective, and the EMEA Sellers, the Joint Administrators and the Joint Israeli Administrators had incurred liability under this Agreement.

16.9 This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

17. NOTICES AND RECEIPTS

17.1 All demands, notices, communications and reports provided for in this Agreement shall be in writing and shall be either sent by facsimile transmission with confirmation to the number specified below or personally delivered or sent by reputable overnight courier service (delivery charges prepaid) to any party at the address specified below, or at such address, to the attention of such other Person, and with such other copy, as the recipient party has specified by prior written notice to the sending party pursuant to the provisions of this Clause 17.1.

If to the Purchaser to:

Ciena Corporation
1201 Winterson Road
Linthicum, Maryland 21090
Attention: David Rothenstein
Senior Vice President and General Counsel
Facsimile: +1-410-865-8001

With copies (that shall not constitute notice) to:

Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
Attention: David S. Dantzic, Joseph A. Simei
Facsimile: +1-202-637-2201

If to the EMEA Debtors, to:

Alan Bloom / Stephen Harris
Ernst & Young LLP
1 More London Place
London
SE1 2AF
United Kingdom
Facsimile: +44 (0)20 7951 1345

With copies (that shall not constitute notice) to:

Gavin Davies / Alan Montgomery
Herbert Smith LLP
Exchange House
Primrose Street
London
EC2A 2HS
Facsimile: +44 (0) 20 7098 4618

If to the EMEA Non-Debtor Sellers, to:

Sharon Rolston / Simon Freemantle
Maidenhead Office Park
Westacott Way
Maidenhead
Berkshire SL6 3QH
United Kingdom
Facsimile: +44 (0) 1628 432 416

With copies (that shall not constitute notice) to:

Gavin Davies / Alan Montgomery
Herbert Smith LLP
Exchange House
Primrose Street
London
EC2A 2HS
Facsimile: +44 (0) 20 7098 4618

Sandy Shandro
3-4 South Square
Gray’s Inn
London
WC1R 5HP
Facsimile: +44 (0)20 7696 9911

If to the Joint Administrators, to:

Alan Bloom / Stephen Harris
Ernst & Young LLP
1 More London Place
London
SE1 2AF
United Kingdom
Facsimile: +44 (0)20 7951 1345

With copies (that shall not constitute notice) to:

Gavin Davies / Alan Montgomery
Herbert Smith LLP
Exchange House
Primrose Street
London
EC2A 2HS
Facsimile: +44 (0)20 7098 4618

If to the Joint Israeli Administrators, to:

Avi D. Pelossof
Zellermayer, Pelossof & Co.
The Rubenstein House
20 Lincoln Street
Tel Aviv
67131
Israel
Facsimile: +972 3 6255500

17.2 Any such demand, notice, communication or report shall be deemed to have been given pursuant to this Agreement when delivered personally, when confirmed if by facsimile transmission, or on the calendar day after deposit with a reputable overnight courier service, as applicable.

18. WHOLE AGREEMENT

18.1 Each of the parties to this Agreement confirms that this Agreement (including the Schedules) together with the Transaction Documents, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at Law or by custom.

18.2 Each party confirms that:

18.2.1 in entering into this Agreement it has not relied on any warranty or undertaking which is not contained in this Agreement or the other Transaction Documents; and

18.2.2 in any event, without prejudice to any Liability for fraudulent misrepresentation or fraudulent misstatement, no party shall be under any Liability or shall have any remedy in respect of misrepresentation or untrue statement unless and to the extent that a claim lies under this Agreement.

18.3 In the event that any provision of this Agreement shall be void or unenforceable by reason of any provision of applicable Law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and if necessary, be so amended as shall be necessary to give effect to the spirit of this Agreement so far as possible (unless such invalidity or unenforceability materially impairs the ability of the parties hereto to consummate the transactions contemplated by this Agreement).

19. AVAILABILITY OF EQUITABLE RELIEF

19.1 Each party agrees that irreparable damage would occur in the event that any of the provisions of this Agreement that it is required to perform were not performed in accordance with their specific terms or were otherwise breached. Accordingly, subject to the limitations set forth in this Clause 19.1, Clause 15.5 (*EMEA Break-Up Fee*) and Clause 16.1 (*General Provisions and Construction*), each of the parties shall be entitled to non-monetary equitable relief, including in the form of specific performance and/or injunctive relief to prevent or remedy an anticipatory or actual breach of this Agreement prior to Closing, and for breach of Clause 10.54 (*Securities Compliance*) following Closing without the proof of actual damages. In any application for injunctive relief or an order for specific performance under this Clause 19.1:

19.1.1 each party agrees to waive any requirement for the security or posting of any bond or the provision of any undertaking as to damages in connection with any such application;

19.1.2 each party agrees that it shall not contest that damages are an inadequate remedy to cure such anticipatory or actual breach the subject of the application; and

19.1.3 each party agrees that the only permitted objection that it may raise in response to any such application is that it contests the existence of a breach or threatened breach of the provisions of this Agreement.

19.2 It is acknowledged and agreed that under no circumstances shall any party be liable for punitive or indirect damages arising out of or in connection with this Agreement or the transactions contemplated hereby or any breach or alleged breach of any of the terms hereof, including damages alleged as a result of tortious conduct.

20. THIRD PARTY RIGHTS

Except for those acknowledgements, rights, undertakings, or warranties contained in this Agreement which are expressed to be for the benefit of (i) the EMEA Non-Debtor Seller Directors (including the provisions of Clauses 8.2, 10.4, 10.5, 14.2 and 14.5.2); or (ii) the Sellers, which acknowledgements, rights, undertakings, or warranties shall inure to, are expressly intended to be for the benefit of, and shall be enforceable by (i) the directors of the EMEA Non-Debtor Sellers; and (ii) the Sellers (respectively), this Agreement is for the sole benefit of the parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement and no term of this Agreement is enforceable under the Contract (Right of Third Parties) Act 1999 by a person who is not a party to this Agreement. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any Person that is not a party to this Agreement.

21. GOVERNING LAW AND JURISDICTION

21.1 This Agreement is governed by and shall be construed in accordance with English law.

21.2 Subject as provided below, the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement and the parties agree to the exclusive jurisdiction of the English courts, except as mutually agreed by the parties.

21.3 Notwithstanding Clause 21.2, the English courts shall have exclusive jurisdiction to settle any claim, action or proceeding set forth in Clause 14 (*Exclusion of Liability and Acknowledgements*) of this Agreement.

21.4 The parties waive any objection to the English courts on the grounds that they are an inconvenient or inappropriate forum to settle any such dispute.

21.5 The Purchaser irrevocably appoints Ciena Limited of 43 Worship Street, London EC2A 2DX as its agent in England for service of process, and each of the EMEA Sellers irrevocably appoints Law Debenture Corporate Services Limited of Fifth Floor, 100 Wood Street, London, EC2V 7EX as its agent in England for service of process.

22. JOINT ADMINISTRATORS AS AGENTS OF EMEA DEBTORS AND AS REPRESENTATIVES OF EMEA NON-DEBTOR SELLERS

22.1 For all purposes of this Agreement, the Joint Administrators and Joint Israeli Administrators act without personal liability as agents of the EMEA Debtors and the Israeli Company respectively.

22.2 For all purposes of this Agreement, each EMEA Non-Debtor Seller hereby irrevocably appoints the Joint Administrators as its representative.

22.3 Pursuant to Clause 22.1 and 22.2, the Joint Administrators and Joint Israeli Administrators (where applicable) shall expressly have the power to, in the name and on behalf of each EMEA Debtor as its agent, and each EMEA Non-Debtor Seller as its representative: (i) take all decisions and carry out any actions required or desirable in connection with this Agreement; (ii) send and receive all notices and other communications required or permitted hereby; and (iii) consent to any amendment, waivers and modifications hereof.

IN WITNESS whereof the parties have executed this Agreement on the date first mentioned above.

SCHEDULE 1: DEFINITIONS

In this Agreement (including the recitals and Schedules), unless the context otherwise requires:

"Action" has the meaning given to that term in the North American Agreement;

"Adjustment Provisions" means the provisions relating to the adjustment to the deduction of input tax set out in Chapter 5 of Title X of EC Council Directive 2006/112 on the common system of value added tax or any similar scheme or provisions under the Law of any other jurisdiction;

"Administration Expense" means any liability of an EMEA Seller which ranks as an administration expense in accordance with paragraph 99 of Schedule B1 to the Insolvency Act 1986 or Rule 2.67 of the Insolvency Rules 1986;

"Affiliate" means, as to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, or is under common Control with, or is controlled by, such Person; provided, that no Canadian Debtor or U.S. Debtor or Subsidiary of a Canadian Debtor or a U.S. Debtor (other than Subsidiaries that are EMEA Sellers hereunder) shall be deemed an Affiliate of any EMEA Seller;

"Agreement" means this Asset Sale Agreement, the EMEA Sellers Disclosure Schedule and all Schedules attached hereto and thereto and all amendments hereto and thereto made;

"Alternative Arrangements" has the meaning given to that term in Clause 10.34 (*EMEA Bundled Contracts*);

"Alternate Bid" has the meaning given to that term in the U.S. Bidding Procedures Order;

"Ancillary Agreements" has the meaning given to that term in the North American Agreement;

"Antitrust Approvals" has the meaning given to that term in the North American Agreement;

"Antitrust Laws" has the meaning given to that term in the North American Agreement;

"ARD Transferring Employees" has the meaning given to that term in Schedule 6 (*Employees*);

"Assets" has the meaning given to that term in the North American Agreement;

"Assumed Liabilities" has the meaning given to that term in the North American Agreement;

"Auction" has the meaning given to that term in the North American Agreement;

"Bankruptcy Consents" has the meaning given to that term in the North American Agreement;

"Bankruptcy Court" has the meaning given to that term in the North American Agreement;

"Bankruptcy Laws" has the meaning given to that term in the North American Agreement;

"Bankruptcy Proceedings" has the meaning given to that term in the North American Agreement;

"Beneficial Undertakings" has the meaning given to that term in Clause 10.2 (*Benefit of Covenants*);

"Business" has the meaning given to that term in the North American Agreement;

"Business Day" has the meaning given to that term in the North American Agreement;

"Canadian Approval and Vesting Order" has the meaning given to that term in the North American Agreement;

"Canadian Court" has the meaning given to that term in the North American Agreement;

"Canadian Debtors" has the meaning given to that term in the North American Agreement;

"Canadian Sales Process Order" has the meaning given to that term in the North American Agreement;

"Cash Purchase Price" has the meaning given to that term in the North American Agreement;

"CCAA" has the meaning given to that term in the North American Agreement;

"CCAA Cases" has the meaning given to that term in the North American Agreement;

"Chapter 11 Cases" has the meaning given to that term in the North American Agreement;

"Closing" has the meaning given to that term in Clause 4.1 (*Closing*);

"Closing Date" has the meaning given to that term in Clause 4.1 (*Closing*);

"Collective Labor Agreement" means any written agreement that a Person has entered into with any union or collective bargaining agent with respect to terms and conditions of employment of such Person's employees;

"Common Stock" has the meaning given to that term in the North American Agreement;

"Competition Act Approval" has the meaning given to that term in the North American Agreement;

"Competing Transaction" has the meaning given to that term in Clause 10.51 (*Standstill Period*);

"Confidentiality Agreement" has the meaning given to that term in the North American Agreement;

"Consent" has the meaning given to that term in the North American Agreement;

"Contract" has the meaning given to that term in the North American Agreement;

"Control" including, with its correlative meanings, **"Controlled by"** and **"under common Control with"**, means, in connection with a given Person, the possession, directly or indirectly, of the power to either: (i) elect more than fifty percent (50%) of the directors of such Person; or (ii) direct or cause the direction of the management and policies of such Person, whether through the ownership of securities, contract or otherwise;

"Court" means the High Court of Justice in England and Wales;

"Designated Purchaser" has the meaning given to that term in the North American Agreement;

"Disclosed" means fully, fairly and specifically disclosed in the EMEA Seller's Disclosure Schedule in sufficient detail and clarity to enable a reader to form an informed legal and commercial judgment as to the information given and consequences, and **"Disclosing"** shall be construed accordingly;

"Distribution Agent" has the meaning given to that term in the North American Agreement;

"Downwards Adjustment" has the meaning given to that term in Clause 2.1 of Schedule 8 (*Purchase Price Adjustment*);

"Drop Dead Date" has the meaning given to that term in Clause 14.7;

"EC Regulation" means the European Union's Council Regulations (EC) No. 1346/2000 on Insolvency Proceedings;

"EMEA Assets" has the meaning given to that term in Clause 2.1 (*EMEA Assets*);

"EMEA Assigned Contracts" means:

(i) all EMEA Seller Contracts other than the Non-Assignable Contracts;

(ii) all Non-Assignable Contracts in relation to which Consent to assign or novate is granted within one year after the Closing Date and which are then subsequently assigned or novated (as applicable) to the Purchaser or an EMEA Designated Purchaser in accordance with this Agreement; and

(iii) the EMEA Bundled Contracts to the extent they are assigned or subcontracted to the Purchaser or any Designated Purchaser, or to the extent the benefit and burden thereof is otherwise transferred to the Purchaser or any Designated Purchaser, in each case within one year after the Closing Date;

"EMEA Assumed Contract Liabilities" has the meaning given to their term in Clause 2.4.2 (*EMEA Assumed Liabilities*);

"EMEA Assumed Employment Liabilities" has the meaning given to that term in Clause 10 of Schedule 6 (*Employees*);

"EMEA Assumed Liabilities" has the meaning given to that term in Clause 2.4 (*EMEA Assumed Liabilities*);

"EMEA Break-Up Fee" has the meaning given to that term in Clause 15.5 (*EMEA Break-Up Fee)*;

"EMEA Bundled Contract" has the meaning given to that term in Clause 10.33 (*EMEA Bundled Contracts*);

"EMEA Business" means the optical networking solutions and carrier ethernet switching segments of NNC's "Metro Ethernet Networks" business through which the EMEA Sellers, individually, jointly or in collaboration with, or pursuant to Contracts with, Third Parties: (a) design, develop and cause the manufacture, assembly and testing of the EMEA Products; (b) market, sell, distribute and supply the EMEA Products; and (c) provide the EMEA Services, all as conducted by as at the date of this Agreement, but excludes:

(i) any financial, information technology, legal, marketing, human resource operations (including supply management and technical and product support), real estate or other "corporate" or related functions supporting or utilized by such activities, unless such functions are exclusively dedicated to the support of the activities described in (a) through (c), in which event such functions are included;

(ii) Overhead and Shared Services (other than Transferred Overhead and Shared Services); and

(iii) any products and/or services provided by businesses or business segments of any of the EMEA Sellers, other than those specified in (a) through (c) above;

"EMEA Business Information" means, as of the Closing Date, all books, records, files, research and development log books, ledgers, documentation, sales literature or similar documents in the possession or under control of the EMEA Sellers and to the extent that such information relates to the EMEA Business, including policies and procedures, EMEA Owned Equipment manuals and materials and procurement documentation; provided, that, to the extent any of the foregoing is also used in any business or business segment of any EMEA Seller other than the EMEA Business, then such portion of the EMEA Business Information as used in such business or business segment of any EMEA Seller other than the EMEA Business shall be segregated and shall not form part of EMEA Business Information, provided further that, where such segregation shall be impracticable, EMEA Business Information shall be limited to copies of the foregoing. EMEA Business Information shall not include any EMEA Employee Records or Tax records;

"EMEA CIP Accounts Receivable" means all uninvoiced accounts receivable relating to the EMEA Business with respect to Contracts in progress, but only to the extent that such accounts receivable have not been invoiced because of milestones, deliverables or other commitments arising pursuant to such Contracts which have not yet been satisfied or fulfilled;

"EMEA Covered Assets and Persons" has the meaning given to that term in Clause 10.43 (*Insurance*);

"EMEA Debtors" means the companies listed in Schedule 3 (*EMEA Debtors*);

"EMEA Designated Purchaser" has the meaning given to that term in Clause 4.4 (*EMEA Designated Purchasers*);

"EMEA Employee Records" means the employee records of any employee of the EMEA Sellers other than the Transferring Employees;

"EMEA Excluded Assets" has the meaning given to that term in Clause 2.2 (*EMEA Excluded Assets*);

"EMEA Excluded Employment Liabilities" has the meaning given to that term in Clause 11 of Schedule 6 (*Employees*);

"EMEA Excluded Liabilities" has the meaning given to that term in Clause 2.5 (*EMEA Excluded Liabilities*);

"EMEA Excluded Seller" has the meaning given to that term in Clause 10.58;

"EMEA Expense Reimbursement" has the meaning set forth in Clause 15.5 (*EMEA Break-Up Fee*);

"EMEA Jurisdiction" means those jurisdictions in which each of the EMEA Sellers and/or their respective assets are located;

"EMEA Non-Debtor Sellers" means the companies listed in Schedule 4 (*EMEA Non-Debtor Sellers*);

"EMEA Non-Exclusive Supply Agreements" means any supply Contract to which any EMEA Seller is a party that relates to the EMEA Business and also relates to one or more other businesses of the EMEA Sellers;

"EMEA Owned Equipment" means: (i) those items of tangible personal property owned by any of the EMEA Sellers that are held or used primarily in connection with the EMEA Business and are located at the premises from which the EMEA Business is operated, (ii) those items of tangible personal property owned by the EMEA Sellers that are personally assigned to a Transferring Employee, (iii) those other items of tangible personal property owned by the EMEA Sellers not included in (i) or (ii) above that are held or used exclusively in the EMEA Business, and (iv) those other items of tangible personal property owned and paid for by the EMEA Sellers not included in (i), (ii) or (iii) above and that are listed in Section 1(a) of the EMEA Sellers Disclosure Schedule excluding, in each case, any EMEA Owned Inventory and any Intellectual Property, provided, however that the EMEA Owned Equipment shall not include any items of tangible personal property that are EMEA Excluded Assets described on Section 2.2.12 (*EMEA Excluded Assets*) of the EMEA Sellers' Disclosure Schedule;

"EMEA Owned Inventory" means any inventories of raw materials, manufactured and purchased parts, work-in-process, packaging, stores and supplies, unassigned finished goods inventories (which are finished goods not yet assigned to a specific customer order), "excess" or "obsolete" inventory or assets on loan and merchandise in each case owned and paid for by the EMEA Sellers and held or used exclusively in connection with the Business, including any of the above items which is owned by the EMEA Sellers but remains in the possession or control of a contract manufacturer or another Third Party, provided, however that the EMEA Owned Inventory shall not include any items of tangible personal property that are EMEA Excluded Assets described on Section 2.2.12 (*EMEA Excluded Assets*) of the EMEA Sellers' Disclosure Schedule;

"EMEA Products" means those products that are: (i) manufactured by or on behalf of and marketed by the EMEA Business; or (ii) in the Plan of Record (in relation to (ii), to the extent they are being developed by or on behalf of the EMEA Sellers), all as set forth in Section 1.1(h) of the Sellers Disclosure Schedule;

"EMEA Seller Consents" has the meaning given to that term in Clause 2.1.7;

"EMEA Seller Contracts" means (i) those Contracts of an EMEA Seller that relate exclusively to the EMEA Business (excluding licences of Intellectual Property) and (ii) the Contracts of the EMEA Sellers listed in Section 1(b) of the EMEA Sellers Disclosure Schedule but (for the avoidance of doubt) excludes any Contract assigned or otherwise transferred to the Purchaser or a Designated Purchaser pursuant to the North American Agreement;

"EMEA Seller Pension Plan" means any pension plan, supplemental pension plan, retirement plan, retirement savings plan, death benefit plan, or any other similar plan, program, arrangement or policy that is maintained or otherwise contributed to, or required to be maintained or contributed to, by or on behalf of the EMEA Sellers or any of their Subsidiaries or Affiliates with respect to the Transferring Employees;

"EMEA Sellers" means the companies listed in Schedule 2 (*EMEA Sellers*);

"EMEA Sellers' Disclosure Schedule" means the disclosure schedule, scheduled to and forming part of this Agreement at Schedule 11;

"EMEA Sellers' Group" means the EMEA Sellers and their respective Subsidiaries;

"EMEA Sellers Insurance Policies" has the meaning given to it in Clause 10.43 (*Insurance*);

"EMEA Sellers' Trade Marks" has the meaning given to that term in Clause 10.46 (*Use of EMEA Sellers' Trade Marks*);

"EMEA Services" means those services that are provided by or on behalf of the EMEA Sellers in connection with the EMEA Business to customers as set out in Section 1(f) of the EMEA Sellers Disclosure Schedule;

"EMEA Shares Recipient Sellers" has the meaning given to that term in Clause 9.3;

"EMEA Third Party Assets" means any of the EMEA Assets of which the Purchaser is given possession pursuant to this Agreement which although used in connection with the EMEA Business are found after Closing not to be owned by the EMEA Sellers or to be otherwise subject to an encumbrance;

"EMEA Transferred Intellectual Property" means: (i) the Patents listed in Section 1(c)(i) (*Patents*) of the EMEA Sellers' Disclosure Schedule (if any), which the EMEA Sellers will update to reflect any Patent applications filed between 7 October 2009 and Closing with respect to which the EMEA Sellers determine in good faith relate predominantly to the EMEA Business; (ii) the Trade Marks listed in Section 1(c)(ii) (*Trade Marks*) of the EMEA Sellers' Disclosure Schedule (if any); and (iii) the Intellectual Property (other than Patents and Trade Marks and excluding any Intellectual Property that is co-owned with a Third Party other than a Seller) owned by any of the EMEA Sellers that is exclusively used in connection with the EMEA Business as of the Closing Date including intellectual property rights in the Software (including previous versions being utilized or supported as of the 7 October 2009 and versions in development) exclusively used in the EMEA Products;

"EMEA Transferring Employee Records" means the employee records of the Transferring Employees;

"Environmental Laws" has the meaning given to that term in the North American Agreement;

"Escrow Agent" has the meaning given to that term in the North American Agreement;

"Escrow Agreement" has the meaning given to that term in the North American Agreement;

"Excess VAT" has the meaning given to that term in Clause 11.10.2 (*VAT – Other*);

"Expense Reimbursement" has the meaning given to that term in the North American Agreement;

"Financial Statements" has the meaning given to that term in the North American Agreement;

"First Day Ready" has the meaning given to that term in Section 5.28 of the Sellers Disclosure Schedule;

"Global Bill of Sale" means the global bill of sale substantially in the form attached as Schedule 9 hereto;

"Government Entity" has the meaning given to that term in the North American Agreement;

"Handling of Hazardous Materials" has the meaning given to that term in the North American Agreement;

"Hazardous Materials" has the meaning given to that term in the North American Agreement;

"HSR Act" has the meaning given to that term in the North American Agreement;

"HSR Approval" has the meaning given to that term in the North American Agreement;

"ICA Approval" has the meaning given to that term in the North American Agreement;

"IFSA" has the meaning given to that term in the North American Agreement;

Investment Canada Act has the meaning given to that term in the North American Agreement;

"Irish Bill of Sale" means the Irish bill of sale substantially in the form attached as Schedule 10 hereto;

"In Scope Tax Liabilities" has the meaning given to that term in Clause 10.58;

"In Scope Seller" has the meaning given to that term in Clause 10.60;

"Indebtedness" has the meaning given to that term in the North American Agreement;

"Insolvency Act" means the Insolvency Act 1986 and the Insolvency Rules 1986 (as amended);

"Insolvency Proceedings" means any Bankruptcy Proceedings and/or Secondary Proceedings;

"Insolvency Proceeding Notice" has the meaning given to that term in Clause 7.1 (*Insolvency Proceedings*);

"Intellectual Property" means any and all intellectual property, whether protected or arising under the laws of England and Wales or any other jurisdiction including all intellectual property rights in respect of any of the following: (a) Trade Marks; (b) Patents; (c) copyrights and works of authorship (including any registrations therefor or applications for registration); (d) mask works; (e) trade secrets, know-how and confidential, technical or business information; (f) industrial design or similar rights; and (g) any Software and technology;

"Intellectual Property License Agreement" has the meaning given to that term in the North American Agreement;

"Invoice" has the meaning given to that term in Appendix C to Schedule 6 (*Employees*);

"Irrevocable Offer" has the meaning given to that term in Clause 1.1 of Schedule 6 (*Employees*);

"Israeli Assets" means such of the EMEA Assets held by the Israeli Company;

"Israeli Court" means Tel-Aviv-Jaffa District Court;

"Israeli Company" means Nortel Networks Israel (Sales and Marketing) Limited, a company incorporated in accordance with the laws of the state of Israel and with registered number 51-295692-1;

"Israeli Liabilities" means such of the EMEA Assumed Liabilities held by the Israeli Company;

"Joint Administrators" means Alan Robert Bloom, Stephen John Harris, Alan Michael Hudson and Christopher John Wilkinson Hill (other than for Nortel Networks (Ireland) Limited where it means David Hughes and Alan Robert Bloom);

"Joint Israeli Administrators" means Yaron Har-Zvi and Avi D. Pelossof, as appointed by the Israeli Courts pursuant to a Stay of Proceeding Order issued on 19 January 2009;

"KEIP" has the meaning given to that term in the North American Agreement;

"KERP" has the meaning given to that term in the North American Agreement;

"Known Product Defects" means those defects of EMEA Products and/or EMEA Services that have been sold by the Business and which are known by the EMEA Sellers as of the Closing Date;

"Law" has the meaning given to that term in the North American Agreement;

"Liabilities" has the meaning given to that term in the North American Agreement;

"Lien" has the meaning given to that term in the North American Agreement;

"LGN Joint Venture" has the meaning given to that term in the North American Agreement;

"Longstop Date" has the meaning given to that term in Appendix C to Schedule 6 (*Employees*);

"Main Seller" has the meaning given to that term in the North American Agreement;

"Material Adverse Effect" has the meaning given to that term in the North American Agreement;

"Material Contract" has the meaning given to that term in the North American Agreement provided however that references to "Seller Contracts" shall be read as references to "EMEA Seller Contracts";

"Monkstown Property" means that part of the Direct Let Property (as defined in Part I of Schedule 5 (*Real Estate*)) which is to be demised by the Monkstown Property Lease Agreement;

"Monkstown Property Lease Agreement" means the Direct Lease as defined in Part I of Schedule 5 (*Real Estate*);

"NETAS" has the meaning given to that term in the North American Agreement;

"Net Working Capital Transferred" has the meaning given to that term in the North American Agreement;

"NNC" has the meaning given to that term in the North American Agreement;

"NNL" has the meaning given to that term in the North American Agreement;

"NNUK" means Nortel Networks UK Limited (in administration), a company incorporated with the laws of England and with registered number 3937799;

"Non-ARD Transferring Employee" has the meaning given to that term in Clause 1.1 of Schedule 6 (*Employees*);

"Non-Assignable Contracts" has the meaning given to that term in Clause 5.4 (*EMEA Seller Contracts*);

"Non-Debtor Sellers" has the meaning given to that term in the North American Agreement;

"Non-Debtor Seller Directors" means the directors of the EMEA Non-Debtor Sellers from time to time;

"Non TOGC Sale" has the meaning given to that term in Clause 11.1 (*VAT*);

"Nortel GmbH" means Nortel GmbH (in administration), a company incorporated in accordance with the laws of Germany and with registered number HRB 12489;

"Nortel Ireland" means Nortel Networks (Ireland) Limited (in administration), a company incorporated in accordance with the laws of Ireland and with registered number 40287;

"Nortel Northern Ireland" means Nortel Networks (Northern Ireland) Limited, a company incorporated in accordance with the laws of Northern Ireland and with registered number NI 5145;

"Nortel Switzerland" means Nortel Networks AG, a company incorporated in accordance with the laws of Switzerland and with registered number 020 3918.846-4;

"North American Agreement" means the asset sale agreement between Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Inc and certain of their Affiliates and the Purchaser dated on or about the date of this Agreement;

"Notified EMEA Seller" has the meaning given to it in Clause 11.3 (*VAT – warranties*);

"Novation Notice" has the meaning given to that term in Clause 5.2 (*EMEA Seller Contracts*);

"Offer" has the meaning given to it in Clause 1.1 of Schedule 6 (*Employees*);

"Open Source Software" has the meaning given to that term in the North American Agreement;

"Option to Tax" means an option to tax a property for VAT purposes pursuant to Article 137 of EC Council Directive 2006/112 on the common system of value added tax or any similar rules in accordance with the Law relating to VAT in any other jurisdiction;

"Order" has the meaning given to that term in the North American Agreement;

"Ordinary Course" means the ordinary course of the EMEA Business through 7 October 2009 consistent with past practice since the filing of the Bankruptcy Proceedings, as such practice may be modified from time to time to the extent necessary to reflect the Bankruptcy Proceedings.

"Overhead and Shared Services" means corporate or shared services provided to or in support of the EMEA Business that are general corporate or other overhead services or provided to both: (i) the EMEA Business; and (ii) other businesses or business segments of any EMEA Seller, including travel and entertainment services, temporary employment services, office supplies services (including copiers and faxes), personal telecommunications services, computer hardware and software services, fleet services, energy/utilities services, procurement and supply arrangements, treasury services, public relations, legal, compliance and risk management services (including workers' compensation), payroll services, sales and marketing support services, information technology and telecommunications services, accounting services, tax services, human resources and employee relations management services, employee benefits services, credit, collections and accounts payable services, logistics services, property management services, environmental support services and customs and excise services, in each case including services relating to the provision of access to information, operating and reporting systems and databases and including all hardware and software and other intellectual property necessary for or used in connection therewith;

"Patents" includes all national and multinational statutory invention registrations, patents, patent applications, provisional patent applications, industrial designs, industrial models, including all reissues, divisions, continuations, continuations-in-part, extensions and re-examinations, and all rights therein provided by multinational treaties or conventions;

"Permitted Encumbrances" means: (i) Liens arising by operation of Law for Taxes or governmental assessments, charges or claims (which, in relation to an EMEA Debtor, rank as an Administration Expense) the payment of which is not yet due or, if due for Taxes the validity of which is being contested in good faith by appropriate proceedings provided that in each case adequate reserves have established to the extent required by the relevant accounting principles; (ii) mechanics', carriers', workers', repairers', landlords', warehousemans' and other similar Liens

arising in the Ordinary Course for sums which are not yet due or overdue or which are being contested in good faith by appropriate proceedings; (iii) any other Liens set out in Section 1(e) *(Permitted Encumbrances)* (if any) of the EMEA Sellers' Disclosure Schedules; and (iv) present zoning, entitlement, building and land use regulations, customary covenants, minor defects of title, easements, rights of way, development agreements, restrictions and other similar charges or encumbrances which do not impair, individually or in the aggregate in any material respect the use of the related assets in the Business as currently conducted;

"Person" has the meaning given to that term in the North American Agreement;

"Petition Date" has the meaning given to it in the North American Agreement;

"Plan of Record" has the meaning given to that term in the North American Agreement;

"**Preliminary Partial TOGC Determination**" has the meaning given to that term in Clause 11.5.3;

"Primary Party" has the meaning given to that term in the North American Agreement;

"Properties" has the meaning given to that term in Schedule 5 (*Real Estate*);

"Purchase Price" has the meaning given to that term in the North American Agreement;

"Purchaser" has the meaning given to that term in the Introduction hereto;

"Purchaser's Solicitors" means Latham & Watkins LLP, 555 Eleventh Street, NW, Suite 1000, Washington, DC 20004.

"Regulatory Approvals" has the meaning given to that term in the North American Agreement;

"Release" has the meaning given to that term in the North American Agreement;

"Relevant EMEA Jurisdiction" has the meaning given to that term in Clause 11.3.1 (*VAT – warranties*);

"Relevant EMEA Seller" has the meaning given to that term in Clause 1.1 Schedule 6 (*Employees*);

"Relevant Transfer Taxes" has the meaning given to that term in Clause 11.12.1 (*Transfer Taxes*);

"Removed Assets" means any EMEA Assets designated as Removed Assets pursuant to Clause 7, or Clause 6 of Schedule 6 (*Employees*);

"Removed Liabilities" means any EMEA Assumed Liabilities designated as Removed Liabilities pursuant to Clause 7 (*Insolvency Proceedings*), or Clause 6 of Schedule 6 (*Employees*);

"Requesting Party" has the meaning given to that term in Clause 10.47 (*EMEA Sellers' Accessible Information*) or 10.48 (*Maintenance of books and records*), as the context requires;

"Reserved Territory Seller" has the meaning given to that term in Clause 1.1 of Schedule 6 (*Employees*);

"Responding Party" has the meaning given to that term in Clause 10.47 (*EMEA Sellers' Accessible Information*) or 10.48 (*Maintenance of books and records*), as the context requires;

"Restricted Asset" means; (i) in respect of any EMEA Debtor; any EMEA Asset which is subject to Secondary Proceedings (ii) in respect of any EMEA Non-Debtor Seller, any EMEA Asset which is subject to Insolvency Proceedings; (iii) in respect of the Israeli Company, any EMEA Asset which is subject to Insolvency Proceedings (other than the current stay of proceedings as at the date of this Agreement (and any proceedings thereunder and limited thereto, provided that such proceedings do not affect the completion of the transactions contemplated by this Agreement under the terms of this Agreement) and a proposed scheme of arrangement, arising in connection with the current stay of proceedings, primarily involving the distribution of a cash dividend (provided such scheme does not otherwise affect the completion of the transactions contemplated under this Agreement in accordance with the terms of this Agreement, does not involve the distribution of Israeli Assets, and does not affect the ability of the Israeli Company to comply with its obligations under this Agreement));

"Restricted Liabilities" has the meaning given to that term in Clause 7.1 (*Insolvency Proceedings*);

"Restricted Seller" has the meaning given to that term in Clause 7.1 (*Insolvency Proceedings*);

"Secondary Proceedings" means any Insolvency Proceedings opened in accordance with Article 3(3) of the EC Regulation and set out in Annex B thereto;

"Security Deposits" means any lease security deposits given by the EMEA Sellers under real estate leases;

"Sellers" has the meaning given to that term in the North American Agreement;

"Sellers Disclosure Schedule" has the meaning given to that term in the North American Agreement;

"Seller Employee Plan" means any employee benefit plan, agreement or arrangement, including any profit sharing plan, savings plan, bonus plan, performance awards plan, incentive compensation plan, deferred compensation plan, stock purchase plan, stock option plan, vacation plan, leave of absence plan, employee assistance plan, automobile leasing/subsidy/allowance plan, meal allowance plan, redundancy or severance plan, relocation plan, family support plan, pension plan, supplemental pension plan, retirement plan, retirement savings plan, post retirement plan, medical, health, hospitalization or life insurance plan, disability plan, sick leave plan, retention plan, education assistance plan, expatriate assistance plan, change in control plan, compensation arrangement, including any base salary arrangement, overtime, on-call or call-in policy, death benefit plan, or any other similar plan, program, agreement, arrangement or policy that is maintained or otherwise contributed to, or required to be maintained or contributed to, by or on behalf of the EMEA Sellers or any of their Subsidiaries or Affiliates (other than the EMEA Sellers) with respect to EMEA Employees;

"Seller VAT Notification" has the meaning given to that term in Clause 11.5.1 (*VAT determination by EMEA Sellers and Joint Administrators*);

"Service Readiness Date" has the meaning given to that term in the North American Agreement;

"Shares" has the meaning given to that term in the North American Agreement;

"Software" has the meaning given to the term in the North American Agreement;

"Subcontract Agreement" means one or more agreements between the relevant EMEA Sellers, on the one hand, and the Purchaser and/or any Designated Purchasers, on the other, to be executed

on or before Closing in a form mutually agreed by the parties so as to pass through the benefits and burdens of the underlying Contract with customers as if the Purchaser or the applicable EMEA Designated Purchaser were party thereto;

"Subsidiary" has the meaning given to that term in the North American Agreement;

"Succession Tax Liabilities" means any liability for Tax of an EMEA Seller or of the Joint Administrators or of the Joint Israeli Administrators which: (i) becomes a liability of the Purchaser or of an EMEA Designated Purchaser or of any person deriving its rights from the Purchaser or an EMEA Designated Purchaser, whether by operation of Law or otherwise, and whether as a result of the Purchaser or the EMEA Designated Purchasers becoming the successors to the Business of the EMEA Sellers or of the Joint Administrators or the Joint Israeli Administrators; or (ii) is otherwise paid or is payable by the Purchaser or an EMEA Designated Purchaser whether or not such liability also remains (on a joint and several basis or otherwise) a liability of the EMEA Sellers or of the Joint Administrators or of the Joint Israeli Administrators, provided that Succession Tax Liabilities do not include any liability for Tax (including VAT and Transfer Taxes) for which the Purchaser or any EMEA Designated Purchaser is liable or responsible pursuant to Clause 11 (*Tax*), and shall not include any liability arising for the Purchaser or an EMEA Designated Purchaser under the Adjustment Provisions;

"Succession Tax Lien" has the meaning given to that term in Clause 11.21;

"Tax" means: (i) any domestic or foreign federal, state, local, provincial, territorial or municipal taxes or other impositions by or on behalf of any Tax Authority or Government Entity, including but not limited to the following taxes and impositions: corporation tax, advance corporation tax, capital gains tax, net income, gross income, individual income, capital, capital acquisition tax, VAT, goods and services, gross receipts, sales, use, ad valorem, Transfer Taxes, business rates, transfer, franchise, profits, business, environmental, real property, personal property, service, service use, withholding, payroll (including PAYE), employment, unemployment, severance, occupation, social security, national insurance excise, stamp, stamp duty, stamp duty reserve, customs, and all other taxes, fees, duties, rates, levies, imposts, assessments, deductions, withholdings or charges of the same or of a similar nature, or replaced by or replacing any of them, however denominated, together with any interest and penalties, fine, additions to tax or additional amounts imposed or assessed with respect thereto; and (ii) any obligation to pay Taxes of any Person, whether by contract, as a result of transferee or successor Liability, as a result of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise and (iii) to the extent not covered by (ii), any Liability to make a payment by way of reimbursement, recharge, indemnity, damages or management charge connected in any way with any taxation and, for each of (i), (ii) and (iii) regardless of whether any such taxes, duties, rates, levies, charges, imposts, withholdings, interest, penalties or fines or other are chargeable directly or primarily against or attributable directly or primarily to any person and of whether any amount in respect of any of them is recoverable from any other person;

"Tax Authority" means any local, municipal, governmental, state, federal, or other fiscal, customs or excise authority, body or officials anywhere in the world (or any entity or individual acting on behalf of such authority, body or officials) with responsibility for or competent to impose, collect or administer any form of Tax;

"Tax Records" means all information, records or documents relating to Tax or any liability for Tax;

"Tax Relief" means: (i) any relief, loss, allowance, exemption, set-off or credit in respect of any Tax; (ii) any deduction in computing income, profits or gains for the purposes of any Tax; or (iii) any right to repayment of Tax including any repayment supplement or interest in respect of Tax;

"Tax Return" has the meaning given to that term in the North American Agreement;

"Third Party" has the meaning given to that term in the North American Agreement;

"TOGC" means a supply that is treated neither as a supply of goods nor services for the purposes of VAT pursuant to Article 19 and Article 29 of EC Council Directive 2006/112 on the common system of value added tax or any similar or analogous rules in any jurisdiction, including but not limited to the provisions at both section 49(1) of the VAT Act 1994 and article 5 of the Value Added Tax (Special Provisions) Order 1995 SI 1995/1268;

"Trade Marks" means, together with the goodwill associated therewith, all trade marks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including without limitation, all marks registered in the trade mark offices of any nation throughout the world, and all rights therein provided by multinational treaties or conventions;

"Trademark License Agreement" has the meaning given to that term in the North American Agreement;

"Transaction Documents" has the meaning given to that term in the North American Agreement;

"Transfer Date" means 12:01 a.m. (London time) on the Closing Date;

"Transfer Regulations" has the meaning given to that term in Clause 1.1 of Schedule 6 (*Employees*);

"Transfer Tax Return" has the meaning given to that term in Clause 11.12.5;

"Transfer Taxes" means all goods and services, sales, excise, use, transfer, gross receipts, documentary, filing, recordation, value-added, stamp, stamp duty reserve, and all other similar taxes, duties or other like charges, however denominated (including any real property transfer taxes and conveyance and recording fees and notarial fees) and including but not limited to Austrian real estate transfer tax and Czech real estate transfer tax and Italian registration tax, Italian cadastral and Italian mortgage tax (in each case whether provisionally or finally assessed), together with interest, penalties, penalties and additional amounts imposed with respect thereto though for the avoidance of doubt shall not include any withholding or deduction for or on account of Tax;

"Transferred Intellectual Property" has the meaning given to that term in the North American Agreement;

"Transferred Overhead and Shared Services" means Overhead and Shared Services to be provided to or in support of the EMEA Business post-Closing by Transferring Employees;

"Transferring Employees" has the meaning given to that term in Clause 1.1 Schedule 6 (*Employees*);

"Transition Services Agreement" has the meaning given to that term in the North American Agreement;

"U.S. Bankruptcy Code" has the meaning given to that term in the North American Agreement;

"US Bankruptcy Court" has the meaning given to that term in the North American Agreement;

"U.S. Bidding Procedures Order" has the meaning given to that term in the North American Agreement;

"U.S. Debtors" has the meaning given to that term in the North American Agreement;

"U.S. Sale Order" has the meaning given to that term in the North American Agreement;

"VAT" means value added tax imposed in any member state of the European Union pursuant to EC Council Directive 2006/112 on the common system of value added tax and national legislation implementing that Directive or any predecessor to it or supplemental to that Directive and any other sales or turnover tax of a similar nature imposed in any country that is not a member of the European Union together with all penalties or interest thereon or any tax of a similar nature which may be substituted for or levied in addition to it;

"VAT Records" means the records of the EMEA Business, as carried on by the EMEA Sellers, relating to VAT; and

"Wholly Owned Subsidiaries" means, as to any Person, any Subsidiary of such Person all of the capital stock or other equity interests in which is held directly or indirectly by such Person except, if applicable, for any capital stock or equity interest which is held by a nominee or a director of such Subsidiary as required by applicable laws.

SCHEDULE 2: EMEA SELLERS

EMEA Seller	Jurisdiction	Registered Number	Registered Office
Nortel Networks UK Limited (in administration)	United Kingdom	3937799	Maidenhead Office Park, Westacott Way, Maidenhead Berks SL6 3QH, United Kingdom
Nortel Networks (Ireland) Limited (in administration)	Republic of Ireland	40287	Mervue Business Park, Mervue Galway, Republic of Ireland
Nortel GmbH (in administration)	Germany	HRB 12489	Main Airport Center, Unterschweinstiege 6, 60549, Frankfurt am Main, Germany
Nortel Networks France SAS (in administration)	France	552 150 724 R.C.S Versailles	Parc d'Activités de Magny- Châteaufort, Châteaufort 78117, France
Nortel Networks Hispania SA (in administration)	Spain	A-78693603	Camino del Cerro de los Gamos, no. 1 Edificio 6, 28.224 Pozuelo de Alarcon, Madrid, Spain
Nortel Networks B.V. (in administration)	Netherlands	34054624	Siriusdreef 42-72, 2132WT Hoofddorp, Netherlands
Nortel Networks SpA (in administration)	Italy	1307425 Milan 05650 290017	Via Montefeltro no. 6, Milan, 20156, Italy
o.o.o. Nortel Networks	Russia	1047796092960	9th Floor, Krasnopresnenskaya, Naberezhnaya, Moscow 123317, Russia
Nortel Networks (Northern Ireland) Limited	Northern Ireland	NI 5145	Doagh Road Newtownabbey County Antrim Northern Ireland BT3 66XA

EMEA Seller	Jurisdiction	Registered Number	Registered Office
Nortel Networks AG	Switzerland	CH-020.3.918.846-4	Flughofstrasse 54, 8152 Opfikon, Switzerland
Nortel Networks Polska Sp z.o.o. (in administration)	Poland	KRS 158506 (former RHB 49659)	Roma Office Center, Ul. Nowogrodzka Street 47a, Warsaw, 00-695, Poland
Nortel Networks (Austria) GmbH (in administration)	Austria	FN 173973v	1100 Wien, Business Park, Vienna, Clemens-Holzmeisterstrasse 4, Austria
Nortel Networks N.V. (in administration)	Belgium	Brussels 378.358	Ikaroslaan 14, 1930 Zaventem, Belgium
Nortel Networks Portugal SA (in administration)	Portugal	502 338 393	Edificio Tivoli-Forum, Avda da Liberdade no. 180- 3o andar, Lisbon, Portugal
Nortel Networks AB (in administration)	Sweden	556453-7305	Box 6701, 113 85 Stockholm, Sweden
Nortel Networks s.r.o. (in administration)	Czech Republic	25 79 84 72	Klimentska 1216/46, 11002 Prague 1, Czech Republic
Nortel Networks Israel (Sales and Marketing) Limited (subject to a stay of proceedings)	Israel	51-295692-1	Ha’arava Street, Lod 70151 at Airport City, POB 266 Ben-Gurion Airport 70100, Israel

SCHEDULE 3: EMEA DEBTORS

- Nortel Networks UK Limited (in administration)
- Nortel GmbH (in administration)
- Nortel Networks France SAS (in administration)
- Nortel Networks Hispania SA (in administration)
- Nortel Networks B.V. (in administration)
- Nortel Networks SpA (in administration)
- Nortel Networks (Ireland) Limited (in administration)
- Nortel Networks Polska Sp z.o.o. (in administration)
- Nortel Networks (Austria) GmbH (in administration)
- Nortel Networks N.V. (in administration)
- Nortel Networks Portugal SA (in administration)
- Nortel Networks AB (in administration)
- Nortel Networks s.r.o. (in administration)

SCHEDULE 4: EMEA NON-DEBTOR SELLERS

- o.o.o. Nortel Networks
- Nortel Networks AG
- Nortel Networks (Northern Ireland) Limited

SCHEDULE 8: PURCHASE PRICE ADJUSTMENT

1. DEFINITIONS

For purposes of this Schedule 8:

"Downward Adjustment" has the meaning given to it in paragraph 2.1 of this Schedule 8;

"Estimate Delivery Date" means the date on which the Estimated Closing Date Net Working Capital Transferred is delivered by the Main Sellers to the Purchaser pursuant to Section 2.2.2(a) of the North American Agreement;

"Estimated Closing Date Net Working Capital Transferred" has the meaning given to that term in the North American Agreement;

"Estimated EMEA Downwards Adjustment" has the meaning given to it in paragraph 2.4 of this Schedule;

"Market Value" means, in relation to any Removed Assets (being a positive value) and/or Removed Liabilities (being a negative value) of a Restricted Seller: (i) the market value of such Removed Assets and/or Removed Liabilities determined as of the date of this Agreement on the basis that the Removed Assets and/or Removed Liabilities are acquired as a going concern by a willing buyer from a willing seller on arm's length commercial terms as part of a sale of the assets and liabilities of the Business and the EMEA Business in which value is fairly allocated to such Removed Assets and/or Removed Liabilities, and assuming that all historic business arrangements between the Business and the EMEA Business and the owner and operator of such Removed Assets and/or Removed Liabilities will continue indefinitely as agreed between the Joint Administrators and the Purchaser (or, in each case, their duly appointed representatives); or (ii) if the Joint Administrators and the Purchaser (or their duly appointed representatives) are unable to agree on the market value of any such Removed Assets and/or Removed Liabilities within 3 Business Days after any EMEA Seller has been designated such a Restricted Seller, the market value of such Removed Assets and/or Removed Liabilities as of the date of this Agreement as determined by arbitration in accordance with the arbitration procedures set forth in Section 2.2.4.1(b) of the North American Agreement (such terms to apply *mutatis mutandis* to the extent possible), **PROVIDED THAT** the Joint Administrators and the Purchaser (or their duly appointed representatives) shall instruct the arbitrator that, in determining the relevant market value of any such Removed Assets and/or Removed Liabilities, the arbitrator shall: (A) value such Removed Assets and/or Removed Liabilities on the basis that such Removed Assets and/or Removed Liabilities are acquired as a going concern by a willing buyer from a willing seller on arm's length commercial terms as part of a sale of the assets and liabilities of the Business and the EMEA Business by the Purchaser in which the Purchase Price is to be fairly allocated among all of the Assets and the EMEA Assets, and the Assumed Liabilities and the EMEA Assumed Liabilities (including, without limitation, the Removed Assets and/or Removed Liabilities); (B) assume that all historic business arrangements between the Business and the EMEA Business and the owner and operator of such Removed Assets and/or Removed Liabilities will continue indefinitely; (C) disregard the price or other consideration paid or payable by the Purchaser for, or allocated to, such Removed Assets and/or Removed Liabilities in any transaction or under any agreement entered into by the Purchaser or any of its Affiliates with the owner of such assets, other than the transaction contemplated by this Agreement; (D) assume that all historic customer

and supply relationships as at the date of this Agreement will continue indefinitely on the terms and conditions in effect as of the date of this Agreement;

"Net Market Value" means the difference, whether positive or negative, of the Market Value of any (i) Removed Assets, minus (ii) any Removed Liabilities; and

"Prime Rate" has the meaning given to it in the North American Agreement.

2. PURCHASE PRICE ADJUSTMENTS

2.1 If any EMEA Seller is designated as a Restricted Seller pursuant to Clause 7 (Insolvency Proceedings) or paragraph 6 of Schedule 6 (Employees), the Purchase Price including the Cash Purchase Price shall be decreased (each a "Downwards Adjustment") by an amount equal to the Net Market Value of the Removed Assets and/or Removed Liabilities of such Restricted Seller, PROVIDED HOWEVER that if the Net Market Value is negative, the Downward Adjustment shall be zero.

2.2 The EMEA Downwards Adjustment shall be the sum of the Downward Adjustments for each Restricted Seller as calculated in accordance with paragraph 2.1 of this Schedule 8.

2.3 If the Downwards Adjustment for every Restricted Seller has been finally agreed or determined prior to the Estimate Delivery Date, the Cash Purchase Price shall be reduced by the EMEA Downwards Adjustment.

2.4 If the Downwards Adjustment for one or more Restricted Sellers has not been agreed or determined prior to the Estimate Delivery Date:

2.4.1 on the Estimate Delivery Date, the EMEA Sellers shall deliver to the Purchaser a statement setting forth an amount (the **"Estimated EMEA Downwards Adjustment"**) calculated as the sum of:

(A) each Downwards Adjustment of each Restricted Seller that has been agreed or determined in accordance with this Schedule 8 prior to the Estimate Delivery Date (if any); and

(B) the EMEA Sellers' good faith best estimate of each other Downwards Adjustment of each Restricted Seller setting forth in reasonable detail the EMEA Sellers calculation thereof,

and the Cash Purchase Price payable by the Purchaser at Closing pursuant to Clause 3.1 (*Payment of Purchase Price*) and Section 2.2.1 of the North American Agreement shall be reduced by the Estimated EMEA Downwards Adjustment; and

2.4.2 no later than 5 Business Days after the final agreement or determination of the last of the Downwards Adjustments for all Restricted Sellers, in accordance with this Schedule 8, the difference between the Estimated EMEA Downwards Adjustment and the EMEA Downwards Adjustment shall be paid as follows:

(A) if the EMEA Downwards Adjustment minus the Estimated EMEA Downwards Adjustment is a negative amount, the absolute value of such amount shall be paid by the Purchaser to the Distribution Agent together with interest thereon from the Closing Date to the date of payment at the Prime Rate by wire transfer of immediately available funds to the bank

account(s) designated in writing by the Distribution Agent by way of repayment of the Purchase Price; or

(B) if the EMEA Downwards Adjustment minus the Estimated EMEA Downwards Adjustment is a positive amount, the EMEA Sellers shall cause the Distribution Agent to pay such amount to the Purchaser on its own behalf and in its capacity as agent for the Designated Purchasers, EMEA Purchaser and EMEA Designated Purchaser together with interest thereon from the Closing Date to the date of payment at the Prime Rate by wire transfer of immediately available funds to the bank account(s) designated in writing by the Purchaser.

SIGNED for and on behalf of **Nortel Networks UK Limited** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:	)	/s/ Christopher Hill Christopher Hill
Witness signature /s/ Olivia Schofield Name: Olivia Schofield Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.	)	
SIGNED for and on behalf of **Nortel GmbH** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:	)	/s/ Christopher Hill Christopher Hill
Witness signature /s/ Olivia Schofield Name: Olivia Schofield Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.	)	
SIGNED for and on behalf of **Nortel Networks SpA** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:	)	/s/ Christopher Hill Christopher Hill
Witness signature /s/ Olivia Schofield Name: Olivia Schofield Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.	)	

SIGNED for and on behalf of **Nortel Networks Hispania S.A.** (in administration) by Christ opher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:	)	/s/ Christopher Hill Christopher Hill
Witness signature /s/ Olivia Schofield Name: Olivia Schofield Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.	)	
SIGNED for and on behalf of **Nortel Networks B.V.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:	)	/s/ Christopher Hill Christopher Hill
Witness signature /s/ Olivia Schofield Name: Olivia Schofield Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.	)	
SIGNED for and on behalf of **Nortel Networks AB** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:	)	/s/ Christopher Hill Christopher Hill
Witness signature /s/ Olivia Schofield Name: Olivia Schofield Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.	)	

SIGNED for and on behalf of **Nortel Networks N.V.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.

SIGNED for and on behalf of **Nortel Networks (Austria) GmbH** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.

SIGNED for and on behalf of **Nortel Networks Polska Sp. z.o.o.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.

SIGNED for and on behalf of **Nortel Networks**	)	/s/ Christopher Hill
Portugal S.A. (in administration) by Christopher Hill	)	Christopher Hill
	)	
as Joint Administrator (acting as agent and	)	
without personal liability) in the presence of:		
Witness signature		
/s/ B. Dandridge	)	
Name: B. Dandridge	)	
Address: c/o Nortel Networks	)	
Maidenhead UK		

SIGNED for and on behalf of **Nortel Networks**	)	/s/ Christopher Hill
s.r.o. (in administration) by Christopher Hill	)	Christopher Hill
	)	
as Joint Administrator (acting as agent and	)	
without personal liability) in the presence of:		
Witness signature		
/s/ B. Dandridge	)	
Name: B. Dandridge	)	
Address: c/o Nortel Networks	)	
Maidenhead UK		

SIGNED for and on behalf of **Nortel Networks**	)	/s/ Kerry Trigg
France S.A.S. (in administration) by Kerry	)	Kerry Trigg
Trigg acting as authorised representative for	)	
Christopher Hill	)	
as Joint Administrator (acting as agent and	)	
without personal liability) in the presence of:		

Witness signature

/s/ Sharon Perlmutter	)	
Name: Sharon Perlmutter	)	
Address: ERNST & YOUNG LLP 1 More London Place, London, SE1 2AF.	)	

SIGNED outside of the Republic of Ireland for and on behalf of **Nortel Networks (Ireland) Limited** (in administration) by Andrew Dann (acting as an authorised representative and without personal liability) in exercise of his power of attorney for and on behalf of David Hughes as Joint Administrator (acting as agent and without personal liability) in the presence of:	)	/s/ Andrew Dann Andrew Dann Location: Jersey

Witness signature

/s/ Alexandra Martin	)	
Name: Alexandra Martin	)	
Address: 3 La Carre La Route De St Jean St John Jersey JE3 4EP	)	

SIGNED by John Freebairn	)	/s/ John Freebairn
duly authorised for and on behalf of **Nortel**	)	John Freebairn
Networks (Northern Ireland) Limited in the	)	
presence of:	)	

Witness signature

/s/ Tina McAuley	)	
Name: Tina McAuley	)	
Address: 10 Knockagh Heights	)	
Carrickfergus		
BT38 8QZ		

SIGNED by Sergei Fishkin	)	/s/ Sergei Fishkin
duly authorised for and on behalf of **o.o.o.**	)	Sergei Fishkin
Nortel Networks in the presence of:	)	

Witness signature

/s/ Igor Kotlyar	)	
Name: Igor Kotlyar	)	
Address: 18-62 Pavshino, Krasnogorsk-5, Moscow Region 143400, Russia	)	

SIGNED by Sharon Rolston	)	/s/ Sharon Rolston
duly authorised for and on behalf of **Nortel Networks AG** in the presence of:	)	Sharon Rolston
	)	

Witness signature

/s/ B. Scherwath		)
Name:	B. Scherwath	)
Address:	c/o Nortel Networks Maidenhead, UK	)

SIGNED for and on behalf of **Nortel Networks**	)	
Israel (Sales and Marketing) Limited (in	)	/s/ Yaron Har-Zvi
administration) by Yaron Har-Zvi and Avi D.	)	Yaron Har-Zvi
Pelossof as Joint Israeli Administrators (acting		
jointly and without personal liability) in	)	/s/ Avi D. Pelossof
connection with the Israeli Assets and	)	Avi D. Pelossof
Liabilities:	)	
	)	effection subjected to
	)	Israeli court approval

Witness signature
/s/ Sarit Moussayoff)
Name: Sarit Moussayoff)
Address: 20 Lincoln St. Tel-Aviv)

SIGNED by Yaron Har-Zvi
Subject to the Israeli Court's Approval

in his own capacity and on behalf of the Joint Israeli Administrators without personal liability and solely for the benefit of the provisions of this Agreement expressed to be conferred on or given to the Joint Israeli Administrators	)))	/s/ Yaron Har-Zvi Yaron Har-Zvi

Witness signature:

/s/ Itay Lavi
Name: Itay Lavi
Address: 20 Lincoln St.
Tel-Aviv

SIGNED by Avi D. Pelossof
Subject to the Israeli Court's Approval

in his own capacity and on behalf of the Joint Israeli Administrators without personal liability and solely for the benefit of the provisions of this Agreement expressed to be conferred on or given to the Joint Israeli Administrators	)))	/s/ Avi D. Pelossof Avi D. Pelossof

Witness signature

/s/ Itay Lavi
Name: Itay Lavi
Address: 20 Lincoln St.
Tel-Aviv

SIGNED by Christopher Hill	)	/s/ Christopher Hill
	)	Christopher Hill
in his own capacity and on behalf of the Joint Administrators without personal liability and solely for the benefit of the provisions of this Agreement expressed to be conferred on or given to the Joint Administrators:	)	
Witness signature		
/s/ Olivia Schofield	)	
Name: Olivia Schofield	)	
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England.	)	

SIGNED by Gary B. Smith	)	/s/ Gary B. Smith
duly authorised for an on behalf of **CIENA**	)	
CORPORATION in the presence of:	)	

Witness Signature

/s/ David M. Rothenstein

Name: David M. Rothenstein
Address: 1201 Winterson Road
Linthicum, MD 21090
USA

20 October 2009

THE EMEA SELLERS

ALAN BLOOM, STEPHEN HARRIS, ALAN HUDSON, DAVID HUGHES AND CHRISTOPHER HILL AS JOINT ADMINISTRATORS

YARON HAR-ZVI AND AVI D. PELOSSOF AS JOINT ISRAELI ADMINISTRATORS

CIENA CORPORATION

DEED OF AMENDMENT

relating to the Asset Sale Agreement relating to the sale
and purchase of the EMEA Assets

Herbert Smith LLP

THIS DEED is made on this 20th day of October 2009.

BETWEEN:

(1) **THE EMEA SELLERS** (the details of which are set out in Schedule 2 of the Agreement (as defined below)) which, in the case of the EMEA Debtors (the details of which are set out in Schedule 3 of the Agreement (as defined below)), are acting by their joint administrators Alan Robert Bloom, Stephen John Harris, Alan Michael Hudson and Christopher John Wilkinson Hill of Ernst & Young LLP of 1 More London Place, London SE1 2AF (other than Nortel Networks (Ireland) Limited (in administration), for which David Hughes of Ernst & Young Chartered Accountants of Harcourt Centre, Harcourt Street, Dublin 2, Ireland and Alan Robert Bloom serve as joint administrators), who act as agents of the EMEA Debtors only and without any personal liability whatsoever (the **"Joint Administrators"**) and, in the case of the Israeli Company (the details of which are set out in Schedule 2 of the Agreement (as defined below)) which is acting by its joint administrators Yaron Har-Zvi and Avi D. Pelossof, who act as agents of the Israeli Company only and without any personal liability whatsoever (the **"Joint Israeli Administrators"**);

(2) **THE JOINT ADMINISTRATORS**;

(3) **THE JOINT ISRAELI ADMINISTRATORS**; and

(4) **CIENA CORPORATION** a Delaware corporation (the **"Purchaser"**).

RECITAL:

A. On 7 October 2009 the EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators and the Purchaser entered into an Asset Sale Agreement (the **"Agreement"**) whereby the EMEA Sellers agreed to sell and transfer to the Purchaser the EMEA Assets (as defined in the Agreement) for the consideration and upon the terms and subject to the conditions set out in the Agreement. On the same date the Sellers and the Purchaser entered into the North American Agreement whereby the Sellers agreed to sell and transfer to the Purchaser the Assets (as defined in the North American Agreement) for the consideration and upon the terms and subject to the conditions set out in the North American Agreement.

B. On 15 October 2009 hearings were held in the US Bankruptcy Court and the Canadian Court to approve, amongst other things, the Sellers' entry into the North American Agreement and the Bidding Procedures and Bid Protections.

C. On 16 October 2009, each of the US Bankruptcy Court and the Canadian Court entered orders approving the North American Agreement and the Bidding Procedures and Bid Protections, subject to certain amendments, as set out in those orders (the "**Court Orders**").

D. Pursuant to the Court Orders, consistent amendments are to be made to the Agreement. Accordingly, the parties agree that the Agreement shall be amended on the terms set out in this Deed.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Unless the context otherwise requires or unless otherwise defined in this Deed words and phrases defined in the Agreement (as amended by this Deed) shall have the same meanings where used in this Deed.

1.2 References in the Agreement to "this Agreement" shall, with effect from and including the date of this Deed and unless the context dictates otherwise, be a reference to the Agreement as amended by this Deed and words such as "herein", "hereof", "hereby" and "hereto" where they appear in the Agreement shall be construed accordingly.

2. AMENDMENTS TO THE AGREEMENT

2.1 The first sentence of clause 15.5 of the Agreement shall be deleted and replaced (without prejudice to the remainder of Clause 15.5 of the EMEA ASA) with the following:

"*In the event that (i) this Agreement is terminated by the Purchaser pursuant to Clause 15.4.4 or Clause 15.4.5; or (ii) the North American Agreement is terminated by either Primary Party pursuant to Section 10.1(b)(v) of the North American Agreement or by the Purchaser pursuant to Section 10.1(b)(ii), Section 10.1(c) or Section 10.1(d) of the North American Agreement or by the Main Sellers pursuant to Section 10.1(b)(iii), Section 10.1(b)(iv), Section 10.1(b)(viii) or Section 10.1(e) of the North American Agreement, then the EMEA Sellers shall pay to the Purchaser in immediately available funds, (A) within two (2) Business Days following such termination (other than with respect to any termination pursuant to Section 10.1(b)(v) of the North American Agreement), or (B) within two (2) Business Days following the consummation of an Alternative Transaction that is consummated at any time on or prior to the date that is twelve (12) months following any termination of the North American Agreement pursuant to Section 10.1(b)(v) of the North American Agreement, a cash fee equal to five million, three hundred and forty-eight thousand U.S. dollars (U.S.$5,348,000) (the* ***"EMEA Break-Up Fee")****.*"

2.2 A new definition shall be inserted in Schedule 1 of the EMEA ASA as follows:

"**"North American Agreement Amendment"** means Amendment No. 1 to the Asset Sale Agreement between the Main Sellers and the Purchaser."

2.3 In Clause 10.9 of the EMEA ASA, every reference to "Section 5.5(a) of the North American Agreement" and "Section 5.5(a)(iii) of the North American Agreement" shall be followed by the words: "(as amended by the North American Agreement Amendment")"

2.4 Subject to the terms of, and except as amended by this Deed, the Agreement shall remain in full force and effect between the parties.

3. EXCLUSION OF LIABILITY AND ACKNOWLEDGEMENT

3.1 Subject to Clause 3.4.2, notwithstanding that this Deed shall have been signed by the Joint Administrators and the Joint Israeli Administrators both in their capacities as administrators of the EMEA Debtors for and on behalf of the EMEA Debtors and of the Israeli Company for and on behalf of the Israeli Company respectively and in their personal capacities, it is hereby expressly agreed and declared that no personal Liability under or in connection with this Deed shall fall on the Joint Administrators, the Joint Israeli Administrators or their respective firm, partners, employees, agents, advisers or representatives whether such personal Liability would arise under paragraph 99(4) of schedule B1 to the Insolvency Act, or otherwise howsoever. For the avoidance of doubt, this Clause 3.1 shall not operate to prevent any claim of the Purchaser against the EMEA Debtors under this Deed or the Agreement being an expense of the administration as described in Paragraph 99(4) of Schedule B1 and Rule 2.67 of the Insolvency Act or against the Israeli Company under this Agreement being "expenses of the stay of proceedings".

3.2 Subject to Clause 3.4.2, it is hereby expressly agreed and declared that no personal Liability, or any Liability whatsoever, under or in connection with this Deed shall fall on any of the Non-Debtor Seller Directors howsoever such Liability should arise.

3.3 For the avoidance of doubt, (but without prejudice to the other terms of this Deed) the parties hereby agree that the terms of Clauses 3.1 and 3.2 do not, in and of themselves, provide that the Purchaser is under any obligation to indemnify, nor become liable or responsible for, any actions, proceedings, claims, demands, costs, expenses, damages, compensation, fines, penalties or other Liabilities against the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors by any Person.

3.4 The Joint Administrators and the Joint Israeli Administrators are party to this Deed in their personal capacities only for the purpose of receiving the benefit of this Clause 3 and the exclusions, limitations, undertakings, covenants and indemnities in their favour contained in this Deed. The Purchaser acknowledges and agrees that in the negotiation and the completion of this Deed the Joint Administrators and the Joint Israeli Administrators are acting only as agents for and on behalf of the EMEA Debtors and the Israeli Company, respectively, and without any personal Liability whatsoever.

3.5 Subject to Clause 3.4.2, the Purchaser further acknowledges the following:

3.5.1 it has entered into this Deed without reliance on any warranties or representations made by the EMEA Sellers or by any of their employees, agents or representatives, or by the Joint Administrators, the Joint Israeli Administrators or any of their respective firms, partners, employees, agents, advisors or representatives and (save in respect of fraud, fraudulent misrepresentation or fraudulent misstatement) it shall not have any remedy in respect of any misrepresentation or untrue statement by such persons made by or on behalf of any other party to this Deed; and

3.5.2 nothing in this Clause 3 or any other provision of this Deed shall prevent any party from bringing any action against any other party, whether in a personal or any other capacity, for fraud, fraudulent misrepresentation or fraudulent misstatement.

4. MISCELLANEOUS

4.1 Each party shall bear its own costs and expenses in relation to this Deed and the matters referred to in this Deed.

4.2 None of the rights or obligations and undertakings set out in this Deed may be assigned or transferred without the prior written consent of all the parties except for direct assignment by the Purchaser to a EMEA Designated Purchaser in accordance with Clauses 4.4 and 4.5 of the Agreement (provided that the Purchaser remains liable jointly and severally with its assignee EMEA Designated Purchaser for the assigned obligations). Subject to the foregoing, this Deed shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

4.3 In the event that any provision of this Deed shall be void or unenforceable by reason of any provision of applicable Law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and if necessary, be so amended as shall be necessary to give effect to the spirit of this Deed so far as possible (unless such invalidity or unenforceability materially impairs the ability of the parties hereto to consummate the transactions contemplated by this Deed).

4.4 The provision for services of notices set out in Clause 17 (*Notices and Receipts*) of the Agreement shall also apply for the purposes of this Deed.

4.5 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

4.6 Without prejudice to Clause 3 (*Exclusion of Liability and Acknowledgement*) of this Deed to the extent that the benefit of any provision in this Deed is expressed to be conferred upon:

4.6.1 the Joint Administrators or the Joint Israeli Administrators, where necessary to give effect to any such provision the EMEA Debtors or the Israeli Company (as the case may be) shall hold such benefit as trustees for each Joint Administrators, or the Joint Israeli Administrators; and

4.6.2 the firm, partners, employees, agents, advisers and/or representatives of the Joint Administrators or the Joint Israeli Administrators, where necessary to give effect to any such provision the Joint Administrators and/or the Joint Israeli Administrators (as the case may be) (or failing that the EMEA Debtors or the Israeli Company) shall hold such benefit as trustees for each such person.

4.7 The provisions of this Deed relating to the Joint Administrators or the Joint Israeli Administrators in their personal capacities shall survive for the benefit of the Joint Administrators, the Joint Israeli Administrators, their firm, partners, employees, agents, advisers and representatives notwithstanding the discharge of the Joint Administrators as joint administrators of the EMEA Debtors, or the Joint Israeli Administrators as administrator of the Israeli Company, and shall be in addition to and not in substitution for any other right or indemnity or relief otherwise available to each of them.

4.8 No failure to exercise nor any delay in exercising, on the part of any party, any right or remedy under this Deed shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by Law.

4.9 No party shall be deemed to have waived any provision of this Deed unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver. This Deed shall not be amended, altered or qualified except by an instrument in writing signed by all the parties hereto.

4.10 This Deed is for the sole benefit of the parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Deed and no term of this Deed is enforceable under the Contract (Right of Third Parties) Act 1999 by a person who is not a party to this Deed.

5. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

5.1 This Deed is governed by and shall be construed in accordance with English Law.

5.2 The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed and the parties agree to the exclusive jurisdiction of the English courts, except as mutually agreed by the parties.

5.3 The parties waive any objection to the English courts on the grounds that they are an inconvenient or inappropriate forum to settle any such dispute.

5.4 The Purchaser irrevocably appoints Ciena Limited of 43 Worship Street, London EC2A 2DX as its agent in England for service of process, and each of the EMEA Sellers irrevocably appoints Law Debenture Corporate Services Limited of Fifth Floor, 100 Wood Street, London, EC2V 7EX as its agent in England for service of process.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

EXECUTED AS A DEED for and on behalf of **Nortel Networks UK Limited** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin

Name: Sharon Austin

Address: ERNST & YOUNG LLP
1 More London Place,
London,
SE1 2AF.

EXECUTED AS A DEED for and on behalf of **Nortel GmbH** (in administration) by Christopher Hill

as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin

Name: Sharon Austin

Address: 1 More London Place
SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks SpA** (in administration) by Christopher Hill

as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin

Name: Ernst & Young

Address: 1 More London Place
SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks Hispania S.A.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin

Name: Sharon Austin
Address: Ernst & Young
1 More London Place
London SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks B.V.** (in administration) by Christopher Hill

as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin

Name: Sharon Austin
Address: Ernst & Young
1 More London Place
London SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks AB** (in administration) by Christopher Hill

as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin

Name: Sharon Austin
Address: Ernst & Young
1 More London Place
London SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks N.V.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin
Name: Sharon Austin
Address: Ernst & Young
1 More London Place
London SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks (Austria) GmbH** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin
Name: Sharon Austin
Address: Ernst & Young
1 More London Place
SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks Polska Sp. z.o.o.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin
Name: Sharon Austin
Address: Ernst & Young
1 More London Place
London
SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks Portugal S.A.** (in administration) by Christopher Hill)

as Joint Administrator (acting as agent and without personal liability) in the presence of:)

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin
Name: Sharon Austin
Address: Ernst & Young
1 More London Place
SE1 2AF

EXECUTED AS A DEED for and on behalf of **Nortel Networks s.r.o.** (in administration) by Christopher Hill)

as Joint Administrator (acting as agent and without personal liability) in the presence of:)

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin
Name: Sharon Austin
Address: 1 More London Place
London
SE1 2AF

EXECUTED AS A DEED for and on behalf of)
Nortel Networks France S.A.S. (in)
administration) by KerryTrigg acting as)
authorised representative for)
Christopher Hill)

/s/ Kerry Trigg
Kerry Trigg

as Joint Administrator (acting as agent and
without personal liability) in the presence of:

Witness signature

)
/s/ Sharon Perlmutter)
Name: Sharon Perlmutter)
Address: ERNST & YOUNG LLP
1 More London Place,
London,
SE1 2AF.

EXECUTED AS A DEED outside of the Republic of Ireland for and on behalf of **Nortel Networks (Ireland) Limited** (in administration) by Andrew Dann (acting as an authorised representative and without personal liability) in exercise of his power of attorney for and on behalf of David Hughes as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Andrew Dann
Andrew Dann

Location: Jersey

Witness signature

/s/ Alexandra Martin

Name: Alexandra Martin

Address: 3 La Carre
La Route De St Jean
St John
Jersey JE3 4EP

EXECUTED AS A DEED by John Freebairn and John Bell duly authorised for and on behalf of **Nortel Networks (Northern Ireland) Limited**)

/s/ John Freebairn
John Freebairn

/s/ John Bell
John Bell

in the presence of:

Witness signature

/s/ Tina McAuley
Name: Tina McAuley
Address: 10 Knockagh Heights
Carrickfergus BT38 8QZ

Witness signature

/s/ Tina McAuley
Name: Tina McAuley
Address: 10 Knockagh Heights
Carrickfergus BT38 8QZ

EXECUTED AS A DEED by Sergei Fishkin duly authorised for and on behalf of **o.o.o. Nortel Networks** in the presence of:

/s/ Sergei Fishkin
Sergei Fishkin

Witness signature

/s/ Maria Bogachkina
Name: Maria Bogachkina
Address: 19-2-267 Gurievski lane, 115597
Moscow Russia

EXECUTED AS A DEED by Sharon Rolston	)	/s/ Sharon Rolston
duly authorised for and on behalf of **Nortel Networks AG** in the	)	Sharon Rolston
presence of:	)	

Witness signature

/s/ B. Scherwath	)	
Name: B. Scherwath	)	
Address: c/o Nortel Networks	)	
Maidenhead		
SLG 3QH, UK		

EXECUTED AS A DEED for and on behalf of **Nortel Networks Israel (Sales and Marketing) Limited** (in administration) by Yaron Har-Zvi and Avi D. Pelossof as Joint Israeli Administrators (acting jointly and without personal liability) in connection with the Israeli Assets and Liabilities:

/s/ Yaron Har-Zvi
Yaron Har-Zvi

/s/ Avi D. Pelossof
Avi D. Pelossof

Witness signature

/s/ Itay Lavi
Name: Itay Lavi
Address: 20 Lincoln St.
Tel-Aviv

EXECUTED AS A DEED by Christopher Hill)
)
in his own capacity and on behalf of the Joint)
Administrators without personal liability and solely for the
benefit of the provisions of this Agreement expressed to be
conferred on or given to the Joint Administrators:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Sharon Austin)
Name: Sharon Austin)
Address: Ernst & Young LLP
1 More London Place)
London
SE1 2AF

EXECUTED AS A DEED by Yaron Har-Zvi)

in his own capacity and on behalf of the Joint Israeli Administrators without personal liability and solely for the benefit of the provisions of this Agreement expressed to be conferred on or given to the Joint Israeli Administrators:)

/s/ Yaron Har-Zvi
Yaron Har-Zvi

Witness signature

/s/ Itay Lavi)
Name: Itay Lavi)
Address: 20 Lincoln St.)
Tel-Aviv

EXECUTED AS A DEED by Avi D. Pelossof)

in his own capacity and on behalf of the Joint Israeli Administrators without personal liability and solely for the benefit of the provisions of this Agreement expressed to be conferred on or given to the Joint Israeli Administrators:)

/s/ Avi D. Pelossof
Avi D. Pelossof

Witness signature

/s/ Itay Lavi)
Name: Itay Lavi)
Address: 20 Lincoln St.)
Tel-Aviv

EXECUTED AS A DEED by)
Gary B. Smith)
Duly authorised for and on behalf of **CIENA**)
CORPORATION in the presence of:

/s/ Gary B. Smith

Witness signature

/s/ David M. Rothenstein)
Name: David M. Rothenstein)
Address: 1201 Winterson Road,)
Linthicum, MD 21090, USA

24 November 2009

THE EMEA SELLERS

ALAN BLOOM, STEPHEN HARRIS, ALAN HUDSON, DAVID HUGHES AND CHRISTOPHER HILL AS JOINT ADMINISTRATORS

YARON HAR-ZVI AND AVI D. PELOSSOF AS JOINT ISRAELI ADMINISTRATORS

CIENA CORPORATION

AMENDMENT AGREEMENT

relating to the Asset Sale Agreement relating to the sale and purchase of the EMEA Assets

---

Herbert Smith LLP

THIS AGREEMENT is made on this 24th day of November 2009.

BETWEEN:

(1) **THE EMEA SELLERS** (the details of which are set out in Schedule 2 of the EMEA ASA (as defined below)) which, in the case of the EMEA Debtors (the details of which are set out in Schedule 3 of the EMEA ASA (as defined below)), are acting by their joint administrators Alan Robert Bloom, Stephen John Harris, Alan Michael Hudson and Christopher John Wilkinson Hill of Ernst & Young LLP of 1 More London Place, London SE1 2AF (other than Nortel Ireland, for which David Hughes of Ernst & Young Chartered Accountants of Harcourt Centre, Harcourt Street, Dublin 2, Ireland and Alan Robert Bloom serve as joint administrators), who act as agents of the EMEA Debtors only and without any personal liability whatsoever (the **"Joint Administrators"**) and, in the case of the Israeli Company (the details of which are set out in Schedule 2 of the EMEA ASA (as defined below)) which is acting by its joint administrators Yaron Har-Zvi and Avi D. Pelossof, who act as agents of the Israeli Company only and without any personal liability whatsoever (the **"Joint Israeli Administrators"**);

(2) **THE JOINT ADMINISTRATORS**;

(3) **THE JOINT ISRAELI ADMINISTRATORS**; and

(4) **CIENA CORPORATION** a Delaware corporation (the **"Purchaser"**).

RECITAL:

This Agreement amends the Asset Sale Agreement dated 07 October 2009 between the EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators and the Purchaser (the **"Asset Sale Agreement"**) whereby the EMEA Sellers agreed to sell and transfer to the Purchaser the EMEA Assets (as defined in the Asset Sale Agreement) for the consideration and upon the terms and subject to the conditions set out in the Asset Sale Agreement, as amended by a deed of amendment dated 20 October 2009 (the **"Deed of Amendment"**) (the Asset Sale Agreement together with the Deed of Amendment, the **"EMEA ASA"**).

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Unless the context otherwise requires or unless otherwise defined in this Agreement words and phrases defined in the EMEA ASA (as amended by this Agreement) shall have the same meanings where used in this Agreement.

1.2 References in the EMEA ASA to "this Agreement" shall, with effect from and including the date of this Agreement and unless the context dictates otherwise, be a reference to the EMEA ASA as amended by this Agreement and words such as "herein", "hereof", "hereby" and "hereto" where they appear in the EMEA ASA shall be construed accordingly.

2. AMENDMENTS

2.1 The Agreement shall be amended as follows:

2.1.1 Clause 3.1.3 shall be amended by deleting the phrase "*shares of the Purchaser's Common Stock, par value $0.01 per share,*" and replacing it with "*Convertible Notes*".

2.1.2 Clause 3.2 shall be amended by deleting all references to "*shares*" and replacing them with "*Convertible Notes*."

2.1.3 Clause 9.3 shall be amended as follows:

(A) the reference to "*5.33* (*Purchaser Management Presentation*)" shall be deleted and replaced with "*Section 5.37 (Deposit) of the North American Agreement"*;

(B) the reference to "*Section 2.2.7 (Certain Payment Mechanics and Allocation for the Shares)*" shall be deleted and replaced with "*Section 2.2.7 (Certain Payment Mechanics and Allocations for the Convertible Notes)*";

(C) the reference to "*8.2 and 8.3 (Trading Limitation) of the North American Agreement*" shall be deleted and replaced with "*8.5(b) (Registration Procedures), 8.8 (Indemnification) and 8.9 (Trading Limitation) of the North American Agreement*";

(D) all references to "*Shares*" shall be deleted and replaced with "*Convertible Notes*"; and

(E) the defined term ***"EMEA Shares Recipient Sellers"*** shall be renamed ***"EMEA Convertible Notes Recipient Sellers"*** and such term shall be added to Schedule 1.

2.1.4 All references to "*EMEA Shares Recipient Sellers*" shall be replaced with "*EMEA Convertible Notes Recipient Sellers*" throughout the agreement.

2.1.5 Clause 10.2 shall be amended by adding a reference to "*Section 5.37*".

2.1.6 Clause 10.54 shall be amended by adding the words "and 5.36" after the words "Sections 5.27;

2.1.7 Schedule 1 shall be amended as follows:

(A) the definitions ***"Common Stock"*** and ***"EMEA Shares Recipient Sellers"*** shall be deleted; and

(B) the following new definitions shall be inserted in alpha order:

"Convertible Notes" *has the meaning given to that term in the North American Agreement*."

"***"North American Agreement"*** *means the asset sale agreement between Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Inc and certain of their Affiliates and the Purchaser dated 7 October 2009 as amended and restated on or about 24 November 2009.*"

2.1.8 Schedule 6 of the EMEA ASA shall be amended as follows to insert the following definitions and Clause 1.1.22 shall be renumbered as Clause 1.1.25:

(A) "*1.1.22 "**TSA EMEA Seller Employee**" means an employee of a TSA EMEA Seller who is assigned to the TSA Services provided by that TSA EMEA Seller*";

(B) "*1.1.23 "**TSA EMEA Sellers**" has the meaning given to that term in the Transition Services Agreement*"; and

(C) "*1.1.24 "**TSA Services**" means those services defined as "Services" in the Transition Services Agreement*".

2.1.9 Schedule 6 of the EMEA ASA shall be amended to insert the following as a new clause 7.4(b) and 7.4 shall be renumbered as Clause 7.4(a):

"*7.4(b) Subject to Section 7.6, the TSA EMEA Sellers will pay an amount to the Purchaser equal to the statutory redundancy costs, contractual notice pay, contractual redundancy costs and (provided that the Purchaser takes reasonable steps to follow a fair dismissal procedure) unfair dismissal awards incurred and discharged by the Purchaser or relevant transferee in relation to any TSA EMEA Seller Employee whose employment transfers by operation of law as a result of the termination in accordance with the TSA of any Service provided by a TSA EMEA Seller provided that (a) the Purchaser (or appropriate transferee) terminates the employment of the TSA EMEA Seller Employee by reason of redundancy within 45 days of the date of such transfer; and (b) notifies the TSA EMEA Seller as soon as reasonably possible of the fact that such TSA EMEA Seller Employee has so transferred*."

2.1.10 Clause 7.6 of Schedule 6 shall be deleted and replaced with the following:

"*7.6 In the event that any Excess ARD Transferring Employee or TSA EMEA Seller Employee whose employment is terminated by the Purchaser or any EMEA Designated Purchaser within 120 days from the Transfer Date or the date on which the relevant TSA EMEA Seller Employee's employment is terminated (as applicable) is within a period of six (6) months from such termination taking effect, re-employed by the Purchaser or any EMEA Designated Purchaser, the Purchaser shall, within seven days of such employee having been re-employed by the Purchaser or any EMEA Designated Purchaser, pay to the EMEA Sellers a sum equal to the Average Redundancy Costs for such employee and such sum shall be repayable as a debt to the EMEA Sellers*."

3. EXCLUSION OF LIABILITY AND ACKNOWLEDGEMENT

3.1 Subject to Clause 3.6, notwithstanding that this Agreement shall have been signed by the Joint Administrators and the Joint Israeli Administrators both in their capacities as administrators of the EMEA Debtors for and on behalf of the EMEA Debtors and of the Israeli Company for and on behalf of the Israeli Company respectively and in their personal capacities, it is hereby expressly agreed and declared that no personal Liability under or in connection with this Agreement shall fall on the Joint Administrators, the Joint Israeli Administrators or their respective firm, partners, employees, agents, advisers or representatives whether such personal Liability would arise under paragraph 99(4) of schedule B1 to the Insolvency Act, or otherwise howsoever. For the avoidance of doubt, this Clause 3.1 shall not operate to prevent any claim of the Purchaser against the EMEA Debtors under this Agreement or the EMEA ASA being an expense of the administration as described in Paragraph 99(4) of Schedule B1 and Rule 2.67 of the Insolvency Act or against the Israeli Company under this Agreement being "expenses of the stay of proceedings".

3.2 Subject to Clause 3.6, it is hereby expressly agreed and declared that no personal Liability, or any Liability whatsoever, under or in connection with this Agreement shall fall on any of the Non-Debtor Seller Directors howsoever such Liability should arise.

3.3 For the avoidance of doubt, (but without prejudice to the other terms of this Agreement) the parties hereby agree that the terms of Clauses 3.1 and 3.2 do not, in and of themselves, provide that the Purchaser is under any obligation to indemnify, nor become liable or responsible for, any actions, proceedings, claims, demands, costs, expenses, damages, compensation, fines, penalties or other Liabilities against the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors by any Person.

3.4 The Joint Administrators and the Joint Israeli Administrators are party to this Agreement in their personal capacities only for the purpose of receiving the benefit of this Clause 3 and the exclusions, limitations, undertakings, covenants and indemnities in their favour contained in this Agreement. The Purchaser acknowledges and agrees that in the negotiation and the completion of this Agreement the Joint Administrators and the Joint Israeli Administrators are acting only as agents for and on behalf of the EMEA Debtors and the Israeli Company, respectively, and without any personal Liability whatsoever.

3.5 Subject to Clause 3.6, the Purchaser further acknowledges that it has entered into this Agreement without reliance on any warranties or representations made by the EMEA Sellers or by any of their employees, agents or representatives, or by the Joint Administrators, the Joint Israeli Administrators or any of their respective firms, partners, employees, agents, advisors or representatives and (save in respect of fraud, fraudulent misrepresentation or fraudulent misstatement) it shall not have any remedy in respect of any misrepresentation or untrue statement by such persons made by or on behalf of any other party to this Agreement.

3.6 Nothing in this Clause 3 or any other provision of this Agreement shall prevent any party from bringing any action against any other party, whether in a personal or any other capacity, for fraud, fraudulent misrepresentation or fraudulent misstatement.

4. MISCELLANEOUS

4.1 Each party shall bear its own costs and expenses in relation to this Agreement and the matters referred to in this Agreement.

4.2 None of the rights or obligations and undertakings set out in this Agreement may be assigned or transferred without the prior written consent of all the parties except for direct assignment by the Purchaser to a EMEA Designated Purchaser in accordance with Clauses 4.4 and 4.5 of the EMEA ASA (provided that the Purchaser remains liable jointly and severally with its assignee EMEA Designated Purchaser for the assigned obligations). Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

4.3 In the event that any provision of this Agreement shall be void or unenforceable by reason of any provision of applicable Law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and if necessary, be so amended as shall be necessary to give effect to the spirit of this Agreement so far as possible (unless such invalidity or unenforceability materially impairs the ability of the parties hereto to consummate the transactions contemplated by this Agreement).

4.4 The provision for services of notices set out in Clause 17 (*Notices and Receipts*) of the EMEA ASA shall also apply for the purposes of this Agreement.

4.5 This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

4.6 Without prejudice to Clause 3 (*Exclusion of Liability and Acknowledgement*) of this Agreement to the extent that the benefit of any provision in this Agreement is expressed to be conferred upon:

4.6.1 the Joint Administrators or the Joint Israeli Administrators, where necessary to give effect to any such provision the EMEA Debtors or the Israeli Company (as the case may be) shall hold such benefit as trustees for each Joint Administrators, or the Joint Israeli Administrators; and

4.6.2 the firm, partners, employees, agents, advisers and/or representatives of the Joint Administrators or the Joint Israeli Administrators, where necessary to give effect to any such provision the Joint Administrators and/or the Joint Israeli Administrators

(as the case may be) (or failing that the EMEA Debtors or the Israeli Company) shall hold such benefit as trustees for each such person.

4.7 The provisions of this Agreement relating to the Joint Administrators or the Joint Israeli Administrators in their personal capacities shall survive for the benefit of the Joint Administrators, the Joint Israeli Administrators, their firm, partners, employees, agents, advisers and representatives notwithstanding the discharge of the Joint Administrators as joint administrators of the EMEA Debtors, or the Joint Israeli Administrators as administrator of the Israeli Company, and shall be in addition to and not in substitution for any other right or indemnity or relief otherwise available to each of them.

4.8 No failure to exercise nor any delay in exercising, on the part of any party, any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by Law.

4.9 No party shall be deemed to have waived any provision of this Agreement unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver. This Agreement shall not be amended, altered or qualified except by an instrument in writing signed by all the parties hereto.

4.10 This Agreement is for the sole benefit of the parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement and no term of this Agreement is enforceable under the Contract (Right of Third Parties) Act 1999 by a person who is not a party to this Agreement.

5. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

5.1 This Agreement is governed by and shall be construed in accordance with English Law.

5.2 The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement and the parties agree to the exclusive jurisdiction of the English courts, except as mutually agreed by the parties.

5.3 The parties waive any objection to the English courts on the grounds that they are an inconvenient or inappropriate forum to settle any such dispute.

5.4 The Purchaser irrevocably appoints Ciena Limited of 43 Worship Street, London EC2A 2DX as its agent in England for service of process, and each of the EMEA Sellers irrevocably appoints Law Debenture Corporate Services Limited of Fifth Floor, 100 Wood Street, London, EC2V 7EX as its agent in England for service of process.

IN WITNESS whereof the parties have executed this Agreement on the date first mentioned above.

SIGNED for and on behalf of **Nortel Networks UK Limited** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel GmbH** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks SpA** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks Hispania S.A.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks B.V.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks AB** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks N.V.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks (Austria) GmbH** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks Polska Sp. z.o.o.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks Portugal S.A.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks s.r.o.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange Square, Primrose Street, London, EC2A 2HS, England

SIGNED for and on behalf of **Nortel Networks France S.A.S.** (in administration) by Kerry Trigg acting as authorised representative for Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Kerry Trigg
Kerry Trigg

Witness signature

/s/ Sharon Perlmutter
Name: Sharon Perlmutter
Address: ERNST & YOUNG LLP
1 More London Place,
London,
SE1 2AF.

SIGNED outside of the Republic of Ireland for and on behalf of **Nortel Networks (Ireland) Limited** (in administration) by Andrew Dann (acting as an authorised representative and without personal liability) in exercise of his power of attorney for and on behalf of David Hughes as Joint Administrator (acting as agent and without personal liability) in the presence of:	)	/s/ Andrew Dann Andrew Dann Location: Jersey

Witness signature

/s/ Alexandra Martin	)
Name: Alexandra Martin	)
Address: 3 La Carre La Route De St Jean St John Jersey, JE3 4EP	)

SIGNED by John Freebairn	)	/s/ John Freebairn
duly authorised for and on behalf of **Nortel**	)	John Freebairn
Networks (Northern Ireland) Limited in the	)	
presence of:	)	

Witness signature

/s/ Tina McAuley	)	
Name: Tina McAuley	)	
Address: 10 Knockagh Heights	)	
Carrickfergus		
BT38 8QZ		

SIGNED by Sergei Fishkin	)	/s/ Sergei Fishkin
duly authorised for and on behalf of **o.o.o.**	)	Sergei Fishkin
Nortel Networks in the presence of:	)	
Witness signature		
/s/ Irina Bussova	)	
Name: Irina Bussova		
	)	
Address: 127434 Moscow	)	
Russia Dmitrovskoye shosse 7/2, 172		

SIGNED by Sharon Rolston	)	/s/ Sharon Rolston
duly authorised for and on behalf of **Nortel**	)	Sharon Rolston
Networks AG in the presence of:	)	
Witness signature		
/s/ B. Scherwath	)	
Name: B. Scherwath	)	
Address: c/o Nortel Networks	)	
Maidenhead, SLG 3QH UK		

SIGNED for and on behalf of **Nortel Networks Israel (Sales and Marketing) Limited** (in administration) by Yaron Har-Zvi and Avi D. Pelossof as Joint Israeli Administrators (acting jointly and without personal liability) in connection with the Israeli Assets and Liabilities:	)	/s/ Yaron Har-Zvi Yaron Har-Zvi /s/ Avi D. Pelossof Avi D. Pelossof

Witness signature

/s/ Itay Lavi
Name: Itay Lavi
Address: 20 Lincoln St.
Tel-Aviv

SIGNED by Yaron Har-Zvi)
in his own capacity and on behalf of the Joint Israeli Administrators without)
personal liability and solely for the benefit of the provisions of this Agreement)
expressed to be conferred on or given to the Joint Israeli Administrators:

/s/ Yaron Har-Zvi
Yaron Har-Zvi

Witness signature

/s/ Itay Lavi)
Name: Itay Lavi)
Address: 20 Lincoln St.)
Tel-Aviv

SIGNED by Avi D. Pelossof)
)
in his own capacity and on behalf of the)
Joint Israeli Administrators without personal
liability and solely for the benefit of the
provisions of this Agreement expressed to be
conferred on or given to the Joint Israeli
Administrators:

/s/ Avi D. Pelossof
Avi D. Pelossof

Witness signature

/s/ Itay Lavi)
Name: Itay Lavi)
Address: 20 Lincoln St.)
Tel-Aviv

SIGNED by Alan Bloom	)	/s/ Alan Bloom
in his own capacity and on behalf of the Joint	)	Alan Bloom
Administrators without personal liability and	)	
solely for the benefit of the provisions of this		
Agreement expressed to be conferred on or given to		
the Joint Administrators:		

Witness signature

/s/ Olivia Schofield	)	
Name: Olivia Schofield	)	
Address: Herbert Smith LLP	)	
Exchange House		
Primrose Street		
London EC2A 2HS		
England		

SIGNED by Gary Smith	)	/s/ Gary Smith
duly authorised for and on behalf of Ciena	)	Gary Smith
Corporation in the presence of:	)	
Witness signature		
/s/ David Rothenstein	)	
Name: David Rothenstein	)	
Address: 1201 Winterson Road	)	
Linthicum, Maryland 21090		

16 December 2009

THE EMEA SELLERS

ALAN BLOOM, STEPHEN HARRIS, ALAN HUDSON, DAVID HUGHES AND CHRISTOPHER HILL AS JOINT ADMINISTRATORS

YARON HAR-ZVI AND AVI D. PELOSSOF AS JOINT ISRAELI ADMINISTRATORS

CIENA CORPORATION

DEED OF AMENDMENT (AMENDMENT NO. 3)

relating to the Asset Sale Agreement relating to the sale and purchase of the EMEA Assets

---

Herbert Smith LLP

THIS DEED is made on this 16 day of December 2009.

BETWEEN:

(1) **THE EMEA SELLERS** (the details of which are set out in Schedule 2 of the Agreement (as defined below)) which, in the case of the EMEA Debtors (the details of which are set out in Schedule 3 of the Agreement (as defined below)), are acting by their joint administrators Alan Robert Bloom, Stephen John Harris, Alan Michael Hudson and Christopher John Wilkinson Hill of Ernst & Young LLP of 1 More London Place, London SE1 2AF (other than Nortel Networks (Ireland) Limited (in administration), for which David Hughes of Ernst & Young Chartered Accountants of Harcourt Centre, Harcourt Street, Dublin 2, Ireland and Alan Robert Bloom serve as joint administrators), who act as agents of the EMEA Debtors only and without any personal liability whatsoever (the **"Joint Administrators"**) and, in the case of the Israeli Company (the details of which are set out in Schedule 2 of the Agreement (as defined below)) which is acting by its joint administrators Yaron Har-Zvi and Avi D. Pelossof, who act as agents of the Israeli Company only and without any personal liability whatsoever (the **"Joint Israeli Administrators"**);

(2) **THE JOINT ADMINISTRATORS**;

(3) **THE JOINT ISRAELI ADMINISTRATORS**; and

(4) **CIENA CORPORATION** a Delaware corporation (the **"Purchaser")**.

RECITAL:

A. On 7 October 2009 the EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators and the Purchaser entered into an Asset Sale Agreement (the **"EMEA Agreement")** whereby the EMEA Sellers agreed to sell and transfer to the Purchaser the EMEA Assets (as defined in the EMEA Agreement) for the consideration and upon the terms and subject to the conditions set out in the EMEA Agreement. On the same date the Sellers and the Purchaser entered into the North American Agreement whereby the Sellers agreed to sell and transfer to the Purchaser the Assets (as defined in the North American Agreement) for the consideration and upon the terms and subject to the conditions set out in the North American Agreement.

B. On 16 October 2009, each of the US Bankruptcy Court and the Canadian Court entered orders approving the North American Agreement and the Bidding Procedures and Bid Protections, subject to certain amendments, as set out in those orders (the "**Court Orders**"). On 20 October 2009 the EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators and the Purchaser entered into a Deed of Amendment (the "**Deed of Amendment**") amending the terms of the EMEA Agreement pursuant to the Court Orders.

C. On 24 November 2009 following the selection of the Purchaser as the successful Bidder at the Auction the EMEA Sellers, the Joint Administrators, the Joint Israeli Administrators and the Purchaser entered into an Amendment Agreement amending the EMEA Agreement as amended by the Deed of Amendment (such amended agreement the "**Agreement**").

D. On 2 December 2009 the US Bankruptcy Court and the Canadian Court approved, amongst other things, the sale transaction contemplated by Agreement in respect of the sale of certain assets relating to Nortel's Metro Ethernet Networks business.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Unless the context otherwise requires or unless otherwise defined in this Deed words and phrases defined in the Agreement (as amended by this Deed) shall have the same meanings where used in this Deed.

1.2 References in the Agreement to "this Agreement" shall, with effect from and including the date of this Deed and unless the context dictates otherwise, be a reference to the Agreement as amended by this Deed and words such as "herein", "hereof", "hereby" and "hereto" where they appear in the Agreement shall be construed accordingly.

2. AMENDMENTS TO THE AGREEMENT

2.1 The definition of North American Agreement in the Agreement shall be deleted and replaced with the following:

2.1.1 **"North American Agreement"** means the asset sale agreement between Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Inc and certain of their Affiliates and the Purchaser dated 7 October 2009 as amended and restated on or about 24 November 2009 and as further amended on 3 December 2009."

3. EXCLUSION OF LIABILITY AND ACKNOWLEDGEMENT

3.1 Subject to Clause 3.6, notwithstanding that this Deed shall have been signed by the Joint Administrators and the Joint Israeli Administrators both in their capacities as administrators of the EMEA Debtors for and on behalf of the EMEA Debtors and of the Israeli Company for and on behalf of the Israeli Company respectively and in their personal capacities, it is hereby expressly agreed and declared that no personal Liability under or in connection with this Deed shall fall on the Joint Administrators, the Joint Israeli Administrators or their respective firm, partners, employees, agents, advisers or representatives whether such personal Liability would arise under paragraph 99(4) of schedule B1 to the Insolvency Act, or otherwise howsoever. For the avoidance of doubt, this Clause 3.1 shall not operate to prevent any claim of the Purchaser against the EMEA Debtors under this Deed or the Agreement being an expense of the administration as described in Paragraph 99(4) of Schedule B1 and Rule 2.67 of the Insolvency Act or against the Israeli Company under this Agreement being "expenses of the stay of proceedings".

3.2 Subject to Clause 3.6, it is hereby expressly agreed and declared that no personal Liability, or any Liability whatsoever, under or in connection with this Deed shall fall on any of the Non-Debtor Seller Directors howsoever such Liability should arise.

3.3 For the avoidance of doubt, (but without prejudice to the other terms of this Deed) the parties hereby agree that the terms of Clauses 3.1 and 3.2 do not, in and of themselves, provide that the Purchaser is under any obligation to indemnify, nor become liable or responsible for, any actions, proceedings, claims, demands, costs, expenses, damages, compensation, fines, penalties or other Liabilities against the Joint Administrators, the Joint Israeli Administrators or the Non-Debtor Seller Directors by any Person.

3.4 The Joint Administrators and the Joint Israeli Administrators are party to this Deed in their personal capacities only for the purpose of receiving the benefit of this Clause 3 and the exclusions, limitations, undertakings, covenants and indemnities in their favour contained in this Deed. The Purchaser acknowledges and agrees that in the negotiation and the completion of this Deed the Joint Administrators and the Joint Israeli Administrators are acting only as agents for and on behalf of the EMEA Debtors and the Israeli Company, respectively, and without any personal Liability whatsoever.

3.5 Subject to Clause 3.6, the Purchaser further acknowledges that it has entered into this Deed without reliance on any warranties or representations made by the EMEA Sellers or by any of their employees, agents or representatives, or by the Joint Administrators, the Joint Israeli Administrators or any of their respective firms, partners, employees, agents, advisors or representatives and (save in respect of fraud, fraudulent misrepresentation or fraudulent misstatement) it shall not have any remedy in respect of any misrepresentation or untrue statement by such persons made by or on behalf of any other party to this Deed.

3.6 Nothing in this Clause 3 or any other provision of this Deed shall prevent any party from bringing any action against any other party, whether in a personal or any other capacity, for fraud, fraudulent misrepresentation or fraudulent misstatement.

4. MISCELLANEOUS

4.1 Each party shall bear its own costs and expenses in relation to this Deed and the matters referred to in this Deed.

4.2 None of the rights or obligations and undertakings set out in this Deed may be assigned or transferred without the prior written consent of all the parties except for direct assignment by the Purchaser to a EMEA Designated Purchaser in accordance with Clauses 4.4 and 4.5 of the Agreement (provided that the Purchaser remains liable jointly and severally with its assignee EMEA Designated Purchaser for the assigned obligations). Subject to the foregoing, this Deed shall inure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

4.3 In the event that any provision of this Deed shall be void or unenforceable by reason of any provision of applicable Law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and if necessary, be so amended as shall be necessary to give effect to the spirit of this Deed so far as possible (unless such invalidity or unenforceability materially impairs the ability of the parties hereto to consummate the transactions contemplated by this Deed).

4.4 The provision for services of notices set out in Clause 17 (*Notices and Receipts*) of the Agreement shall also apply for the purposes of this Deed.

4.5 This Deed may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered shall be an original but all the counterparts together constitute one instrument.

4.6 Without prejudice to Clause 3 (*Exclusion of Liability and Acknowledgement*) of this Deed to the extent that the benefit of any provision in this Deed is expressed to be conferred upon:

4.6.1 the Joint Administrators or the Joint Israeli Administrators, where necessary to give effect to any such provision the EMEA Debtors or the Israeli Company (as the case may be) shall hold such benefit as trustees for each Joint Administrators, or the Joint Israeli Administrators; and

4.6.2 the firm, partners, employees, agents, advisers and/or representatives of the Joint Administrators or the Joint Israeli Administrators, where necessary to give effect to any such provision the Joint Administrators and/or the Joint Israeli Administrators (as the case may be) (or failing that the EMEA Debtors or the Israeli Company) shall hold such benefit as trustees for each such person.

4.7 The provisions of this Deed relating to the Joint Administrators or the Joint Israeli Administrators in their personal capacities shall survive for the benefit of the Joint

Administrators, the Joint Israeli Administrators, their firm, partners, employees, agents, advisers and representatives notwithstanding the discharge of the Joint Administrators as joint administrators of the EMEA Debtors, or the Joint Israeli Administrators as administrator of the Israeli Company, and shall be in addition to and not in substitution for any other right or indemnity or relief otherwise available to each of them.

4.8 No failure to exercise nor any delay in exercising, on the part of any party, any right or remedy under this Deed shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in this Deed are cumulative and not exclusive of any rights or remedies provided by Law.

4.9 No party shall be deemed to have waived any provision of this Deed unless such waiver is in writing, and then such waiver shall be limited to the circumstances set forth in such written waiver. This Deed shall not be amended, altered or qualified except by an instrument in writing signed by all the parties hereto.

4.10 This Deed is for the sole benefit of the parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Deed and no term of this Deed is enforceable under the Contract (Right of Third Parties) Act 1999 by a person who is not a party to this Deed.

5. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

5.1 This Deed is governed by and shall be construed in accordance with English Law.

5.2 The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed and the parties agree to the exclusive jurisdiction of the English courts, except as mutually agreed by the parties.

5.3 The parties waive any objection to the English courts on the grounds that they are an inconvenient or inappropriate forum to settle any such dispute.

5.4 The Purchaser irrevocably appoints Ciena Limited of 43 Worship Street, London EC2A 2DX as its agent in England for service of process, and each of the EMEA Sellers irrevocably appoints Law Debenture Corporate Services Limited of Fifth Floor, 100 Wood Street, London, EC2V 7EX as its agent in England for service of process.

IN WITNESS whereof this Deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

EXECUTED AS A DEED for and on behalf of **Nortel Networks UK Limited** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel GmbH** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks SpA** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks Hispania S.A.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks B.V.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks AB** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks N.V.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks (Austria) GmbH** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks Polska Sp. z.o.o.** (in administration) by Christopher Hill as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks Portugal S.A.** (in administration) by Christopher Hill

as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of **Nortel Networks s.r.o.** (in administration) by Christopher Hill

as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield
Name: Olivia Schofield
Address: Herbert Smith LLP, Exchange House
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED for and on behalf of) /s/ Kerry Trigg
Nortel Networks France S.A.S. (in) Kerry Trigg
administration) by Kerry Trigg acting as)
authorised representative for)
Christopher Hill)
as Joint Administrator (acting as agent and
without personal liability) in the presence of:

Witness signature

/s/ Sharon Perlmutter)

Name: Sharon Perlmutter
Address: Ernst & Young LLP
1 More London Place
London
SE1 2AF)

EXECUTED AS A DEED outside of the Republic of Ireland for and on behalf of **Nortel Networks (Ireland) Limited** (in administration) by Andrew Dann (acting as an authorised representative and without personal liability) in exercise of his power of attorney for and on behalf of David Hughes as Joint Administrator (acting as agent and without personal liability) in the presence of:

/s/ Andrew Dann
Andrew Dann

Location: Jersey

Witness signature

/s/ Alexandra Martin
Name: Alexandra Martin
Address: 3 La Carrie
La Route 80 St. Jean
St. John
Jersey JE3 HEP

EXECUTED AS A DEED by John Freebairn)
and John Bell duly authorised for and on behalf)
of **Nortel Networks (Northern Ireland)**)
Limited

/s/ John Freebairn
John Freebairn

/s/ John Bell
John Bell

in the presence of:

Witness signature

/s/ Tina McAuley)
Name: Tina McAuley)
Address: 10 Knockagh Heights)
Carrick Ferqus
BT38 8QZ

Witness signature

/s/ Tina McAuley)
Name: Tina McAuley)
Address: 10 Knockagh Heights)
Carrick Ferqus
BT38 8QZ

EXECUTED AS A DEED by Sergei Fishkin	)	/s/ Sergei Fishkin
duly authorised for and on behalf of **o.o.o. Nortel**	)	Sergei Fishkin
Networks in the presence of:	)	

Witness signature

/s/ Maria Boqachkina	)
Name: Maria Boqachkina	)
Address: 19-2-267 Courievsky Lane	)
Moscow 115597 Russia	

EXECUTED AS A DEED by Sharon Rolston duly authorised for and on behalf of **Nortel Networks AG** in the presence of:

/s/ Sharon Rolston
Sharon Rolston

Witness signature

/s/ B. Scherwath
Name: B. Scherwath
Address: C/o Nortel Networks
Maiden Head
SL6 3QH, UK

EXECUTED AS A DEED for and on behalf of **Nortel Networks Israel (Sales and Marketing) Limited** (in administration) by Yaron Har-Zvi and Avi D. Pelossof as Joint Israeli Administrators (acting jointly and without personal liability) in connection with the Israeli Assets and Liabilities:

/s/ Yaron Har-Zvi
Yaron Har-Zvi

/s/ Avi D. Pelossof
Avi D. Pelossof

Witness signature

/s/ Itay Lavi
Name: Itay Lavi
Address: The Rubinstein House
20 Lincoln St.
Tel-Aviv, Israel

EXECUTED AS A DEED by Christopher Hill)
)
in his own capacity and on behalf of the Joint)
Administrators without personal liability and
solely for the benefit of the provisions of this
Agreement expressed to be conferred on or
given to the Joint Administrators:

/s/ Christopher Hill
Christopher Hill

Witness signature

/s/ Olivia Schofield)
Name: Olivia Schofield)
Address: Herbert Smith LLP, Exchange House)
Primrose Street, London EC2A 2HS

EXECUTED AS A DEED by Yaron Har-Zvi)
)
in his own capacity and on behalf of the Joint)
Israeli Administrators without personal liability
and solely for the benefit of the provisions of
this Agreement expressed to be conferred on or
given to the Joint Israeli Administrators:

/s/ Yaron Har-Zvi
Yaron Har-Zvi

Witness signature

/s/ Itay Lavi)
Name: Itay Lavi)
Address: The Rubinstein House)
20 Lincoln St.
Tel-Aviv, Israel

EXECUTED AS A DEED by Avi D. Pelossof)
)
in his own capacity and on behalf of the Joint)
Israeli Administrators without personal liability
and solely for the benefit of the provisions of
this Agreement expressed to be conferred on or
given to the Joint Israeli Administrators:

/s/ Avi D. Pelossof
Avi D. Pelossof

Witness signature

/s/ Itay Lavi)
Name: Itay Lavi)
Address: The Rubinstein House)
20 Lincoln St.
Tel-Aviv, Israel

EXECUTED AS A DEED by)
)
Duly authorised for and on behalf of **CIENA CORPORATION** in the presence of:)

Witness signature

/s/ David M. Rothenstein)
Name: David M. Rothenstein)
Address: Ciena Corporation)
1201 Winterson Road
Linthicum, MD 21090

/s/ Gary B. Smith
Gary B. Smith

CIENA CORPORATION

2010 INDUCEMENT EQUITY AWARD PLAN

TABLE OF CONTENTS

CIENA CORPORATION
2010 INDUCEMENT EQUITY AWARD PLAN

Ciena Corporation, a Delaware corporation (the "Company"), sets forth herein the terms of its 2010 Inducement Equity Award Plan (the "Plan"), as follows:

1. PURPOSE

The Plan is principally intended to enhance the Company's and its Affiliates' (as defined herein) ability to attract and retain certain key employees transferred to the Company in connection with its pending acquisition of substantially all of the optical networking and carrier Ethernet assets of Nortel's Metro Ethernet Networks (MEN) business. This Plan is also intended to motivate such persons to serve the Company and its Affiliates and to expend maximum effort to improve the business results and earnings of the Company, by providing to such persons an opportunity to acquire or increase a direct proprietary interest in the operations and future success of the Company. To this end, the Plan provides for the grant of Restricted Stock Units and Restricted Stock. The Plan, eligibility of Grantees and Awards to be issued hereunder are intended to qualify under Nasdaq Marketplace Rule 5635(c)(4) permitting the adoption of the Plan and issuance of Awards hereunder without stockholder approval.

2. DEFINITIONS

For purposes of interpreting the Plan and related documents (including Award Agreements), the following definitions shall apply:

2.1 **"Affiliate"** means, with respect to the Company, any company or other trade or business that controls, is controlled by or is under common control with the Company within the meaning of Rule 405 of Regulation C under the Securities Act, including, without limitation, any Subsidiary.

2.2 **"Award"** means a grant of Restricted Stock or Restricted Stock Unit under the Plan.

2.3 **"Award Agreement"** means the agreement between the Company and a Grantee that evidences and sets out the terms and conditions of an Award.

2.4 **"Benefit Arrangement"** shall have the meaning set forth in **Section 11** hereof.

2.5 **"Board"** means the Board of Directors of the Company.

2.6 **"Cause"** means, as determined by the Board and unless otherwise provided in an applicable agreement with the Company or an Affiliate, (i) gross negligence or willful misconduct in connection with the performance of duties; (ii) plea of a felony or conviction of a criminal offense (other than minor traffic offenses); or (iii) material breach of any term of any employment, consulting or other services, confidentiality, intellectual property or non-competition agreements, if any, between the Grantee and the Company or an Affiliate.

2.7 **"Code"** means the Internal Revenue Code of 1986, as now in effect or as hereafter amended.

2.8 **"Committee"** means a committee of, and designated from time to time by resolution of, the Board, which shall be constituted as provided in **Section 3.2**.

2.9 **"Company"** means Ciena Corporation.

2.10 **"Corporate Transaction"** means (i) any person or group of persons (as defined in Section 13(d) and 14(d) of the Exchange Act) together with its affiliates, excluding employee benefit plans of the Company, is or becomes, directly or indirectly, the "beneficial owner" (as defined in Rule 13d-3 of the Exchange Act) of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities; (ii) the dissolution or liquidation of the Company or a merger, consolidation, or reorganization of the Company with one or more other entities in which the Company is not the surviving entity, (iii) a sale of substantially all of the assets of the Company to another person or entity, or (iii) any transaction (including without limitation a merger or reorganization in which the Company is the surviving entity) which results in any person or entity owning 50% or more of the combined voting power of all classes of stock of the Company.

2.11 **"Disability"** means the Grantee is unable to perform each of the essential duties of such Grantee's position by reason of a medically determinable physical or mental impairment which is potentially permanent in character or which can be expected to last for a continuous period of not less than 12 months.

2.12 **"Effective Date"** means December 8, 2009, provided that the effectiveness of any Awards granted hereunder shall be contingent upon the successful completion of the Company's acquisition of substantially all of the optical networking and carrier Ethernet assets of the Metro Ethernet Networks business of Nortel Networks Corporation ("Nortel") and its Affiliates pursuant to those certain asset purchase agreements, as amended, by and between the Company, Nortel, certain Affiliates of each party and certain administrators acting in such capacity in connection with various Nortel's insolvency proceedings (the "Nortel Asset Acquisition").

2.13 **"Exchange Act"** means the Securities Exchange Act of 1934, as now in effect or as hereafter amended.

2.14 **"Fair Market Value"** means the value of a share of Stock, determined as follows: if on the Grant Date or other determination date the Stock is listed on an established national or regional stock exchange, or is publicly traded on an established securities market, the Fair Market Value of a share of Stock shall be the closing price of the Stock on such exchange or in such market (if there is more than one such exchange or market the Board shall determine the appropriate exchange or market) on the Grant Date or such other determination date (or if there is no such reported closing price, the Fair Market Value shall be the mean between the highest bid and lowest asked prices or between the high and low sale prices on such trading day) or, if no sale of Stock is reported for such trading day, on the next preceding day on which any sale shall have been reported. If the Stock is not listed on such an exchange or traded on such a market, Fair Market Value shall be the value of the Stock as determined by the Board by the reasonable application of a reasonable valuation method, in a manner consistent with Code Section 409A.

2.15 **"Grant Date"** means, as determined by the Board, the latest to occur of (i) the date as of which the Board approves an Award, (ii) the date on which the recipient of an Award first becomes eligible to receive an Award under **Section 6** hereof, or (iii) such other date as may be specified by the Board.

2.16 **"Grantee"** means a person who receives or holds an Award under the Plan.

2.17 **"Other Agreement"** shall have the meaning set forth in **Section 12** hereof.

2.18 **"Outside Director"** means a member of the Board who is not an officer or employee of the Company.

2.19 **"Plan"** means this Ciena Corporation 2010 Inducement Award Plan.

2.20 **"Purchase Price"** means the purchase price for each share of Stock pursuant to a grant of Restricted Stock or Unrestricted Stock.

2.21 **"Reporting Person"** means a person who is required to file reports under Section 16(a) of the Exchange Act.

2.22 **"Restricted Stock"** means shares of Stock, awarded to a Grantee pursuant to **Section 8** hereof.

2.23 **"Restricted Stock Unit"** means a bookkeeping entry representing the equivalent of one share of Stock awarded to a Grantee pursuant to **Section 8** hereof.

2.24 **"Securities Act"** means the Securities Act of 1933, as now in effect or as hereafter amended.

2.25 **"Service"** means service as an employee to the Company or an Affiliate. Unless otherwise stated in the applicable Award Agreement, a Grantee's change in position or duties shall not result in interrupted or terminated Service, so long as such Grantee continues to be an employee to the Company or an Affiliate. Subject to the preceding sentence, whether a termination of Service shall have occurred for purposes of the Plan shall be determined by the Board, which determination shall be final, binding and conclusive.

2.26 **"Stock"** means the common stock, par value $0.01 per share, of the Company.

2.27 **"Subsidiary"** means any "subsidiary corporation" of the Company within the meaning of Section 424(f) of the Code.

3. ADMINISTRATION OF THE PLAN

3.1. Board.

The Board shall have such powers and authorities related to the administration of the Plan as are consistent with the Company's certificate of incorporation and by-laws and applicable law. The Board shall have full power and authority to take all actions and to make all determinations required or provided for under the Plan, any Award or any Award Agreement, and shall have full power and authority to take all such other actions and make all such other determinations not inconsistent with the specific terms and provisions of the Plan that the Board deems to be necessary or appropriate to the administration of the Plan, any Award or any Award Agreement. All such actions and determinations shall be by the affirmative vote of a majority of the members of the Board present at a meeting or by unanimous consent of the Board executed in writing in accordance with the Company's certificate of incorporation and by-laws and applicable law. The interpretation and construction by the Board of any provision of the Plan, any Award or any Award Agreement shall be final, binding and conclusive.

3.2. Committee.

The Board from time to time may delegate to the Committee such powers and authorities related to the administration and implementation of the Plan, as set forth in **Section 3.1** above and other applicable provisions, as the Board shall determine, consistent with the certificate of incorporation and by-laws of the Company and applicable law.

(i) Except as provided in Subsection (ii) and except as the Board may otherwise determine, the Committee, if any, appointed by the Board to administer the Plan shall consist of two or more Outside Directors of the Company who: (a) qualify as "outside directors" within the meaning of Section 162(m) of the Code and who (b) meet such other requirements as may be established from time to time by the Securities and Exchange Commission for plans intended to qualify for exemption under Rule 16b-3 (or its successor) under the Exchange Act and who (c) comply with the independence requirements of the stock exchange on which the Common Stock is listed. Discretionary Awards to Outside Directors shall be administered only by the Committee and may not be subject to discretion of or determination by the Company's management.

(ii) The Board may also appoint one or more separate Committees of the Board, each composed of one or more directors of the Company who need not be Outside Directors, who may administer the Plan with respect to employees who are not executive officers (as defined under Rule 3b-7 or the Exchange Act) or directors of the Company, may grant Awards under the Plan to such employees, and may determine all terms of such Awards.

In the event that the Plan, any Award or any Award Agreement entered into hereunder provides for any action to be taken by or determination to be made by the Board, such action may be taken or such determination may be made by the Committee if the power and authority to do so has been delegated to the Committee by the Board as provided for in this Section. Unless otherwise expressly determined by the Board, any such action or determination by the Committee shall be final, binding and conclusive. To the extent permitted by law, the Committee may delegate its authority under the Plan to a member of the Board or such other person.

3.3. Terms of Awards.

Subject to the other terms and conditions of the Plan, the Board shall have full and final authority to:

(i) designate Grantees,

(ii) determine the type or types of Awards to be made to a Grantee,

(iii) determine the number of shares of Stock to be subject to an Award,

(iv) establish the terms and conditions of each Award relating to the vesting, transfer, or forfeiture of an Award or the shares of Stock subject thereto, the treatment of an Award in the event of a change of control, and any other terms or conditions,

(v) prescribe the form of each Award Agreement evidencing an Award, and

(vi) amend, modify, or supplement the terms of any outstanding Award. Such authority specifically includes the authority, in order to effectuate the purposes of the Plan but without amending the Plan, to make or modify Awards to eligible individuals who are foreign nationals or are individuals who are employed outside the United States to recognize differences in local law, tax policy, or custom. Notwithstanding the foregoing, no amendment, modification or supplement of any Award shall, without the consent of the Grantee, impair the Grantee's rights under such Award.

The Company may retain the right in an Award Agreement to cause a forfeiture of the gain realized by a Grantee on account of actions taken by the Grantee in violation or breach of or in conflict with any employment agreement, non-competition agreement, any agreement prohibiting solicitation of employees or clients of the Company or any Affiliate thereof or any confidentiality obligation with respect to the Company or any Affiliate thereof or otherwise in competition with the Company or any Affiliate thereof, to the extent specified in such Award Agreement applicable to the Grantee. In addition, the Company may terminate and cause the forfeiture of an Award if the Grantee is an employee of the Company or an Affiliate thereof and is terminated for Cause as defined in the applicable Award Agreement or the Plan, as applicable.

Furthermore, if the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley Act of 2002 and any Grantee who knowingly engaged in the misconduct, was grossly negligent in engaging in the misconduct, knowingly failed to prevent the misconduct or was grossly negligent in failing to prevent the misconduct, shall reimburse the Company the amount of any payment in settlement of an Award earned or accrued during the 12-month period following the first public issuance or filing with the United States Securities and Exchange Commission (whichever first occurred) of the financial document that contained such material noncompliance.

3.4. Deferral Arrangement.

The Board may permit or require the deferral of any Award payment into a deferred compensation arrangement, subject to such rules and procedures as it may establish, which may include provisions for the payment or crediting of interest or dividend equivalents, including converting such credits into deferred Stock equivalents. Any such deferrals shall be made in a manner that complies with Code Section 409A.

3.5. No Liability.

No member of the Board or the Committee shall be liable for any action or determination made in good faith with respect to the Plan or any Award or Award Agreement.

3.6. Share Issuance/Book-Entry.

Notwithstanding any provision of this Plan to the contrary, the issuance of the Stock under the Plan may be evidenced in such a manner as the Board, in its discretion, deems appropriate, including, without limitation, book-entry registration or issuance of one or more Stock certificates.

4. STOCK SUBJECT TO THE PLAN

4.1. Number of Shares Available for Awards.

Subject to adjustment as provided in **Section 13** hereof, the number of shares of Stock available for issuance under the Plan shall be two million two hundred fifty thousand (2,250,000). Stock issued or to be issued under the Plan shall be authorized but unissued shares; or, to the extent permitted by applicable law, issued shares that have been reacquired by the Company.

4.2. Share Usage.

Shares covered by an Award shall be counted as used as of the Grant Date. Any shares subject to Awards shall be counted against the limit set forth in **Section 4.1** as one share for every one share granted.

5. EFFECTIVE DATE, DURATION AND AMENDMENTS

5.1. Effective Date.

The Plan shall be effective as of the Effective Date.

5.2. Term.

The Plan shall terminate automatically one year following the closing date of the Nortel Asset Acquisition and may be terminated on any earlier date as provided in **Section 5.3**. No Awards may be issued under the Plan following termination. Upon termination, any shares of Stock available for Awards under **Section 4.1** shall cease to be available under this Plan and shall not be available for issuance under any other existing equity incentive plan of the Company.

5.3. Amendment and Termination of the Plan.

The Board may, at any time and from time to time, amend, suspend, or terminate the Plan as to any shares of Stock as to which Awards have not been made. An amendment shall be contingent on approval of the Company's stockholders to the extent stated by the Board, required by applicable law or required by applicable stock exchange listing requirements. No Awards shall be made after termination of the Plan. No amendment, suspension, or termination of the Plan shall, without the consent of the Grantee, impair rights or obligations under any Award theretofore awarded under the Plan.

6. AWARD ELIGIBILITY AND LIMITATIONS

6.1. Eligible Employees and Other Persons.

Awards under the Plan shall be limited to (i) employees of the Company or any Affiliate who are former employees of Nortel or its Affiliates and who become employees of the Company or any Affiliate in connection with the Nortel Asset Acquisitions, and (ii) any other individual whose participation in the Plan is determined to be in the best interests of the Company by the Board and compliant with Nasdaq requirements applicable to the Plan.

7. AWARD AGREEMENT

Each Award granted pursuant to the Plan shall be evidenced by an Award Agreement, in such form or forms as the Board shall from time to time determine. Award Agreements granted from time to time or at the same time need not contain similar provisions but shall be consistent with the terms of the Plan.

8. TERMS AND CONDITIONS OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS

8.1. Grant of Restricted Stock or Restricted Stock Units.

Awards of Restricted Stock or Restricted Stock Units may be made for no consideration (other than par value of the shares which is deemed paid by Services already rendered).

8.2. Restrictions.

(a) At the time a grant of Restricted Stock or Restricted Stock Units is made, the Board may, in its sole discretion, establish a period of time (a "restricted period") applicable to such Restricted Stock or Restricted Stock Units. Each Award of Restricted Stock or Restricted Stock Units may be subject to a different restricted period. The Board may in its sole discretion, at the time a grant of Restricted Stock or Restricted Stock Units is made, prescribe restrictions in addition to or other than the expiration of the restricted period, including the satisfaction of corporate or individual performance objectives, which may be applicable to all or any portion of the Restricted Stock or Restricted Stock Units. Neither Restricted Stock nor Restricted Stock Units may be sold, transferred, assigned, pledged or otherwise encumbered or disposed of during the restricted period or prior to the satisfaction of any other restrictions prescribed by the Board with respect to such Restricted Stock or Restricted Stock Units.

(b) Notwithstanding the terms of **Section 8.2(a)**, and subject to **Section 8.9** below, (i) Restricted Stock and Restricted Stock Units that vest solely by the passage of time shall not vest in full in less than three years from the Grant Date; and (ii) Restricted Stock and Restricted Stock Units that vest, or are subject to acceleration of vesting, upon the achievement of performance targets shall not vest in full in less than one year from the Grant Date.

8.3. Restricted Stock Certificates.

The Company shall issue, in the name of each Grantee to whom Restricted Stock has been granted, stock certificates representing the total number of shares of Restricted Stock granted to the Grantee, as soon as reasonably practicable after the Grant Date. The Board may provide in an Award Agreement that either (i) the Secretary of the Company shall hold such certificates for the Grantee's benefit until such time as the Restricted Stock is forfeited to the Company or the restrictions lapse, or (ii) such certificates shall be delivered to the Grantee, provided, however, that such certificates shall bear a legend or legends that comply with the applicable securities laws and regulations and makes appropriate reference to the restrictions imposed under the Plan and the Award Agreement.

8.4. Rights of Holders of Restricted Stock.

Unless the Board otherwise provides in an Award Agreement, holders of Restricted Stock shall have the right to vote such Stock and the right to receive any dividends declared or paid with respect to such Stock. The Board may provide that any dividends paid on Restricted Stock must be reinvested in shares of Stock, which may or may not be subject to the same vesting conditions and restrictions applicable to such Restricted Stock. All distributions, if any, received by a Grantee with respect to Restricted Stock as a result of any stock split, stock dividend, combination of shares, or other similar transaction shall be subject to the restrictions applicable to the original Grant.

8.5. Rights of Holders of Restricted Stock Units.

8.5.1. Voting and Dividend Rights.

Holders of Restricted Stock Units shall have no rights as stockholders of the Company. The Board may provide in an Award Agreement evidencing a grant of Restricted Stock Units that the holder of such Restricted Stock Units shall be entitled to receive, upon the Company's payment of a cash dividend on its outstanding Stock, a cash payment for each Restricted Stock Unit held equal to the per-share dividend paid on the Stock. Such Award Agreement may also provide that such cash payment will be deemed reinvested in additional Restricted Stock Units at a price per unit equal to the Fair Market Value of a share of Stock on the date that such dividend is paid.

8.5.2. Creditor's Rights.

A holder of Restricted Stock Units shall have no rights other than those of a general creditor of the Company. Restricted Stock Units represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Award Agreement.

8.6. Termination of Service.

(a) Unless the Board otherwise provides in an Award Agreement or in writing after the Award Agreement is issued, upon the termination of a Grantee's Service, any Restricted Stock or Restricted Stock Units held by such Grantee that have not vested, or with respect to which all applicable restrictions and conditions have not lapsed, shall immediately be deemed forfeited. Upon forfeiture of Restricted Stock or Restricted Stock Units, the Grantee shall have no further rights with respect to such Award, including but not limited to any right to vote Restricted Stock or any right to receive dividends with respect to shares of Restricted Stock or Restricted Stock Units.

(b) Notwithstanding the terms of **Section 8.6(a)**, and subject to **Section 8.9** below, the Board may not (i) grant Restricted Stock or Restricted Stock Units that provide for acceleration of vesting, except in the case of a Grantee's death, disability or retirement, or upon or in connection with a Corporate Transaction, or upon the satisfaction of performance-based vesting conditions as provided in **Section 8.2(b)(ii)**; or (ii) waive vesting restrictions or conditions applicable to Restricted Stock or Restricted Stock Units, except in the case of a Grantee's death, disability or retirement or upon or in connection with a Corporation Transaction.

8.7. Purchase of Restricted Stock and Shares Subject to Restricted Stock Units.

The Grantee shall be required, to the extent required by applicable law, to purchase the Restricted Stock or shares of Stock subject to vested Restricted Stock Units from the Company at a Purchase Price equal to the greater of (i) the aggregate par value of the shares of Stock represented by such Restricted Stock or Restricted Stock Units and (ii) the Purchase Price, if any, specified in the Award Agreement relating to such Restricted Stock or Restricted Stock Units. The Purchase Price shall be payable in a form described in **Section 9** or, in the discretion of the Board, in consideration for past or future Services rendered to the Company or an Affiliate.

8.8. Delivery of Stock.

Upon the expiration or termination of any restricted period and the satisfaction of any other conditions prescribed by the Board, the restrictions applicable to shares of Restricted Stock or Restricted Stock Units settled in Stock shall lapse, and, unless otherwise provided in the Award Agreement, a stock certificate for such shares shall be delivered, free of all such restrictions, to the Grantee or the Grantee's beneficiary or estate, as the case may be. Neither the Grantee, nor the Grantee's beneficiary or estate, shall have any further rights with regard to a Restricted Stock Unit once the share of Stock represented by the Restricted Stock Unit has been delivered.

9. FORM OF PAYMENT FOR RESTRICTED STOCK

9.1. General Rule.

Payment of the Purchase Price for Restricted Stock shall be made in cash or in cash equivalents acceptable to the Company.

9.2. Surrender of Stock.

To the extent the Award Agreement so provides, payment of the Purchase Price for Restricted Stock may be made all or in part through the tender or attestation to the Company of shares of Stock, which shall be valued, for purposes of determining the extent to which the Purchase Price has been paid thereby, at their Fair Market Value on the date of surrender.

9.3. Other Forms of Payment.

To the extent the Award Agreement so provides, payment of the Purchase Price for Restricted Stock may be made in any other form that is consistent with applicable laws, regulations and rules, including, without limitation, Service.

10. RESERVED

11. PARACHUTE LIMITATIONS

Notwithstanding any other provision of this Plan or of any other agreement, contract, or understanding heretofore or hereafter entered into by a Grantee with the Company or any Affiliate, except an agreement, contract, or understanding that expressly addresses Section 280G or Section 4999 of the Code (an "Other Agreement"), and notwithstanding any formal or informal plan or other arrangement for the direct or indirect provision of compensation to the Grantee (including groups or classes of Grantees or beneficiaries of which the Grantee is a member), whether or not such compensation is deferred, is in cash, or is in the form of a benefit to or for the Grantee (a "Benefit Arrangement"), if the Grantee is a "disqualified individual," as defined in Section 280G(c) of the Code, any Restricted Stock or Restricted Stock Unit held by that Grantee and any right to receive any payment or other benefit under this Plan shall not become vested (i) to the extent that such right to vesting, payment, or benefit, taking into account all other rights, payments, or benefits to or for the Grantee under this Plan, all Other Agreements, and all Benefit Arrangements, would cause any payment or benefit to the Grantee under this Plan to be considered a "parachute payment" within the meaning of Section 280G(b)(2) of the Code as then in effect (a "Parachute Payment") and (ii) if, as a result of receiving a Parachute Payment, the aggregate after-tax amounts received by the Grantee from the Company under this Plan, all Other Agreements, and all Benefit Arrangements would be less than the maximum after-tax amount that could be received by the Grantee without causing any such payment or benefit to be considered a Parachute Payment. In the event that the receipt of any such right to vesting, payment, or benefit under this Plan, in conjunction with all other rights, payments, or benefits to or for the Grantee under any Other Agreement or any Benefit Arrangement would cause the Grantee to be considered to have received a Parachute Payment under this Plan that would have the effect of decreasing the after-tax amount received by the Grantee as described in clause (ii) of the preceding sentence, then the Grantee shall have the right, in the Grantee's sole discretion, to designate those rights, payments, or benefits under this Plan, any Other Agreements, and any Benefit Arrangements that should be reduced or eliminated so as to avoid having the payment or benefit to the Grantee under this Plan be deemed to be a Parachute Payment.

12. REQUIREMENTS OF LAW

12.1. General.

The Company shall not be required to sell or issue any shares of Stock under any Award if the sale or issuance of such shares would constitute a violation by the Grantee, or the Company of any provision of any law or regulation of any governmental authority, including without limitation any federal or state securities laws or regulations. If at any time the Company shall determine, in its discretion, that the listing, registration or qualification of any shares subject to an Award upon any securities exchange or under any governmental regulatory body is necessary or desirable as a condition of, or in connection with, the issuance or purchase of shares hereunder, no shares of Stock may be issued or sold to the Grantee or any other individual pursuant to such Award unless such listing, registration, qualification, consent or approval shall have been effected or obtained free of any conditions not acceptable to the Company, and any delay caused thereby shall in no way affect the date of termination of the Award. Without limiting the generality of the foregoing, in connection with the Securities Act, upon the delivery of any shares of Stock underlying an Award, unless a registration statement under such Act is in effect with respect to the shares of Stock covered by such Award, the Company shall not be required to sell or issue such shares unless the Board has received evidence satisfactory to it that the Grantee may acquire such shares pursuant to an exemption from registration under the Securities Act. Any determination in this connection by the Board shall be final, binding, and conclusive. The Company may, but shall in no event be obligated to, register any securities covered hereby pursuant to the Securities Act. The Company shall not be obligated to take any affirmative action in order to cause the issuance of shares of Stock pursuant to the Plan to comply with any law or regulation of any governmental authority.

12.2. Rule 16b-3.

During any time when the Company has a class of equity security registered under Section 12 of the Exchange Act, it is the intent of the Company that Awards pursuant to the Plan will qualify for the exemption provided by Rule 16b-3 under the Exchange Act. To the extent that any provision of the Plan or action by the Board does not comply with the requirements of Rule 16b-3, it shall be deemed inoperative to the extent permitted by law and deemed advisable by the Board, and shall not affect the validity of the Plan. In the event that Rule 16b-3 is revised or replaced, the Board may exercise its discretion to modify this Plan in any respect necessary to satisfy the requirements of, or to take advantage of any features of, the revised exemption or its replacement.

13. EFFECT OF CHANGES IN CAPITALIZATION

13.1. Changes in Stock.

If the number of outstanding shares of Stock is increased or decreased or the shares of Stock are changed into or exchanged for a different number or kind of shares or other securities of the Company on account of any recapitalization, reclassification, stock split, reverse split, combination of shares, exchange of shares, stock dividend or other distribution payable in capital stock, or other increase or decrease in such shares effected without receipt of consideration by the Company occurring after the Effective Date, the number and kinds of shares for which grants of Awards may be made under the Plan, shall be adjusted proportionately and accordingly by the Company. In addition, the number and kind of shares for which Awards are outstanding shall be adjusted proportionately and accordingly so that the proportionate interest of the Grantee immediately following such event shall, to the extent practicable, be the same as immediately before such event. The conversion of any convertible securities of the Company shall not be treated as an increase in shares effected without receipt of consideration. Notwithstanding the foregoing, in the event of any distribution to the Company's stockholders of securities of any other entity or other assets (including an extraordinary dividend but excluding a non-extraordinary dividend of the Company) without receipt of consideration by the Company, the Company shall, in such manner as the Company deems appropriate, adjust the number and kind of shares subject to outstanding Awards.

13.2. Reorganization in Which the Company Is the Surviving Entity Which does not Constitute a Corporate Transaction.

Subject to any contrary language in an Award Agreement evidencing an Award, any restrictions applicable to such Award shall apply as well to any replacement shares received by the Grantee as a result of the reorganization, merger or consolidation. In the event of a transaction described in this **Section 13.2**, Restricted Stock Units shall be adjusted so as to apply to the securities that a holder of the number of shares of Stock subject to the Restricted Stock Units would have been entitled to receive immediately following such transaction.

13.3. Corporate Transaction in which Awards are not Assumed.

Upon the occurrence of a Corporate Transaction in which outstanding Restricted Stock Units and Restricted Stock are not being assumed, substituted or continued all outstanding shares of Restricted Stock shall be deemed to have vested, and all Restricted Stock Units shall be

deemed to have vested and the shares of Stock subject thereto shall be delivered, immediately prior to the occurrence of such Corporate Transaction. The Board may elect, in its sole discretion, to cancel any outstanding Awards of Restricted Stock or Restricted Stock Units and pay or deliver, or cause to be paid or delivered, to the holder thereof an amount in cash or securities having a value (as determined by the Board acting in good faith), equal to the formula or fixed price per share paid to holders of shares of Stock.

13.4. Corporate Transaction in which Awards are Assumed.

The Plan, Restricted Stock Units and Restricted Stock theretofore granted shall continue in the manner and under the terms so provided in the event of any Corporate Transaction to the extent that provision is made in writing in connection with such Corporate Transaction for the assumption or continuation of the Restricted Stock Units and Restricted Stock theretofore granted, or for the substitution for such Restricted Stock Units and Restricted Stock for new restricted stock units and restricted stock relating to the stock of a successor entity, or a parent or subsidiary thereof, with appropriate adjustments as to the number of shares (disregarding any consideration that is not common stock).

13.5. Adjustments.

Adjustments under this **Section 13** related to shares of Stock or securities of the Company shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. No fractional shares or other securities shall be issued pursuant to any such adjustment, and any fractions resulting from any such adjustment shall be eliminated in each case by rounding downward to the nearest whole share. The Board may provide in the Award Agreements at the time of grant, or any time thereafter with the consent of the Grantee, for different provisions to apply to an Award in place of those described in **Sections 13.1, 13.2, 13.3** and **13.4**. This **Section 13** does not limit the Company's ability to provide for alternative treatment of Awards outstanding under the Plan in the event of change of control events that are not Corporate Transactions.

13.6. No Limitations on Company.

The making of Awards pursuant to the Plan shall not affect or limit in any way the right or power of the Company to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure or to merge, consolidate, dissolve, or liquidate, or to sell or transfer all or any part of its business or assets.

14. GENERAL PROVISIONS

14.1. Disclaimer of Rights.

No provision in the Plan or in any Award or Award Agreement shall be construed to confer upon any individual the right to remain in the employ or service of the Company or any Affiliate, or to interfere in any way with any contractual or other right or authority of the Company either to increase or decrease the compensation or other payments to any individual at any time, or to terminate any employment or other relationship between any individual and the Company. In addition, notwithstanding anything contained in the Plan to the contrary, unless otherwise stated in the applicable Award Agreement, no Award granted under the Plan shall be affected by any change of duties or position of the Grantee, so long as such Grantee continues to be a director, officer, consultant or employee of the Company or an Affiliate. The obligation of the Company to pay any benefits pursuant to this Plan shall be interpreted as a contractual obligation to pay only those amounts described herein, in the manner and under the conditions prescribed herein. The Plan shall in no way be interpreted to require the Company to transfer any amounts to a third party trustee or otherwise hold any amounts in trust or escrow for payment to any Grantee or beneficiary under the terms of the Plan.

14.2. Nonexclusivity of the Plan.

The adoption of the Plan shall not be construed as creating any limitations upon the right and authority of the Board to adopt such other incentive compensation arrangements (which arrangements may be applicable either generally to a class or classes of individuals or specifically to a particular individual or particular individuals) as the Board in its discretion determines desirable.

14.3. Withholding Taxes.

The Company or an Affiliate, as the case may be, shall have the right to deduct from payments of any kind otherwise due to a Grantee any federal, state, or local taxes of any kind required by law to be withheld with respect to the vesting of or other lapse of restrictions applicable to an Award or upon the issuance of any shares of Stock pursuant to any Award. In furtherance of the foregoing, the Company may provide in an Award Agreement that the Grantee shall, as a condition of accepting the Award, direct a bank or broker, upon vesting or otherwise, to sell a portion of the Shares underlying such Award that represent the amount, reasonably determined by the Company it its discretion, necessary to cover the Company's withholding obligation related to the Award and remit the appropriate cash amount to the Company. If not otherwise provided in an Award Agreement, at the time of such vesting, lapse, the Grantee shall pay to the Company or the Affiliate, as the case may be, any amount that the Company or the Affiliate may reasonably determine to be necessary to satisfy such withholding obligation. Subject to the prior approval of the Company or the Affiliate, which may be withheld by the Company or the Affiliate, as the case may be, in its sole discretion, the Grantee may elect to satisfy such obligations, in whole or in part, (i) by causing the Company or the Affiliate to withhold shares of Stock otherwise issuable to the Grantee or (ii) by delivering to the Company or the Affiliate shares of Stock already owned by the Grantee. The shares of Stock so delivered or withheld shall have an aggregate Fair Market Value equal to such withholding obligations. The Fair Market Value of the shares of Stock used to satisfy such withholding obligation shall be determined by the Company or the Affiliate as of the date that the amount of tax to be withheld is to be determined. A Grantee who has made an election pursuant to this **Section 14.3** may satisfy his or her withholding obligation only with shares of Stock that are not subject to any repurchase, forfeiture, unfulfilled vesting, or other similar requirements. The maximum number of shares of Stock that may be withheld from any Award to satisfy any federal, state or local tax withholding requirements upon the vesting, lapse of restrictions applicable to such Award or payment of shares pursuant to such Award, as applicable, cannot exceed such number of shares having a Fair Market Value equal to the minimum statutory amount required by the Company to be withheld and paid to any such federal, state or local taxing authority with respect to such vesting, lapse of restrictions or payment of shares.

14.4. Captions.

The use of captions in this Plan or any Award Agreement is for the convenience of reference only and shall not affect the meaning of any provision of the Plan or such Award Agreement.

14.5. Other Provisions.

Each Award granted under the Plan may contain such other terms and conditions not inconsistent with the Plan as may be determined by the Board, in its sole discretion.

14.6. Number and Gender.

With respect to words used in this Plan, the singular form shall include the plural form, the masculine gender shall include the feminine gender, etc., as the context requires.

14.7. Severability.

If any provision of the Plan or any Award Agreement shall be determined to be illegal or unenforceable by any court of law in any jurisdiction, the remaining provisions hereof and thereof shall be severable and enforceable in accordance with their terms, and all provisions shall remain enforceable in any other jurisdiction.

14.8. Governing Law.

The validity and construction of this Plan and the instruments evidencing the Awards hereunder shall be governed by the laws of the State of Delaware, other than any conflicts or choice of law rule or principle that might otherwise refer construction or interpretation of this Plan and the instruments evidencing the Awards granted hereunder to the substantive laws of any other jurisdiction.

14.9. Section 409A of the Code.

The Board intends to comply with Section 409A of the Code ("Section 409A"), or an exemption to Section 409A, with regard to Awards hereunder that constitute nonqualified deferred compensation within the meaning of Section 409A. To the extent that the Board determines that a Grantee would be subject to the additional 20% tax imposed on certain nonqualified deferred compensation plans pursuant to Section 409A as a result of any provision of any Award granted under this Plan, such provision shall be deemed amended to the minimum extent necessary to avoid application of such additional tax. The nature of any such amendment shall be determined by the Board.

14.10. Stockholder Approval Not Required.

It is expressly intended that approval of the Company's stockholders not be required as a condition of the effectiveness of the Plan, and the Plan's provisions shall be interpreted in a manner consistent with such intent for all purposes. Specifically, Rule 5635(c)(4) promulgated by The Nasdaq Stock Market generally requires stockholder approval for equity compensation arrangements adopted by companies whose securities are listed on the Nasdaq Global Market pursuant to which stock awards or stock may be acquired by officers, directors, employees, or consultants of such companies. Nasdaq Marketplace Rule 5635(c)(4) provides an exception to this requirement for issuances of securities to a person not previously an employee or director of the issuer, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the issuer, provided such issuances are approved by either the issuer's independent compensation committee or a majority of the issuer's independent directors. Notwithstanding anything to the contrary herein, Awards under this Plan may only be made to employees who have not previously been an employee or member of the Board of the Company or an employee or director of a Parent or Subsidiary, or following a bona fide period of non-employment by the Company or a Parent or Subsidiary, as an inducement material to the employee's entering into employment with the Company or a Subsidiary. Awards under the Plan will be approved as set forth in Section 3 above by (i) the Committee, provided it is comprised solely of two or more Independent Directors or (ii) a majority of the Company's Independent Directors. Accordingly, pursuant to Nasdaq Marketplace Rule 5635(c)(4), the issuance of Awards and the Stock issuable from such Awards pursuant to this Plan are not subject to the approval of the Company's stockholders.

* * *

To record adoption of the Plan by the Board as of December 8, 2009, the Company has caused its authorized officer to execute the Plan.

CIENA CORPORATION

/s/ David M. Rothenstein

Name: David M. Rothenstein
Title: Senior Vice President & General Counsel
Date: December 17, 2009

Exhibit 10.36

CIENA CORPORATION
2010 INDUCEMENT EQUITY AWARD PLAN

RESTRICTED STOCK UNIT AGREEMENT

Ciena Corporation, a Delaware corporation, (the "Company"), hereby grants restricted stock units relating to shares of its common stock, $.01 par value, (the "Stock"), to the individual named below as the Grantee, subject to the vesting conditions set forth in this Agreement. This grant is subject to the terms and conditions set forth in (i) this Agreement, including any appendix attached hereto (as may be applicable for non-U.S. employees), (ii) the 2010 Inducement Equity Award Plan (the "Plan") and (iii) the grant details for this award contained in your account with the Company's selected broker. Capitalized terms not defined in this Agreement are defined in the Plan, and have the meaning set forth in the Plan.

Grant Date: _____ __, 200_

Grant Number: _____

Name of Grantee: _____

Grantee's Employee Identification Number: _____

Number of Restricted Stock Units Covered by Grant: _____

Vesting Start Date (if other than Grant Date): _____

Vesting Schedule:

[One fourth of this Grant will vest on the first anniversary of the first March 20, June 20, September 20 or December 20 following the Grant Date and thereafter one-twelfth of this Grant will vest on each such date] OR [One-sixteenth of this Grant will vest on March 20, June 20, September 20 and December 20 of each calendar year following the Grant Date, provided you remain in Service.]

By accepting this grant (whether by signing this Agreement or accepting the grant electronically via the website of the Company's selected broker), you agree to the terms and conditions in this Agreement and in the Plan and agree that the Plan will control in the event any provision of this Agreement should appear to be inconsistent.

Holder:

_____
(Signature)

Ciena Corporation:

_____
By: David M. Rothenstein
Senior Vice President and Secretary

CIENA CORPORATION
2010 INDUCEMENT EQUITY AWARD PLAN

RESTRICTED STOCK UNIT AGREEMENT

Restricted Stock Unit Transferability

This grant is an award of restricted stock units in the number of units set forth on the first page of this Agreement, subject to the vesting conditions described in this Agreement ("Stock Units"). Your Stock Units may not be transferred, assigned, pledged or hypothecated, whether by operation of law or otherwise, nor may the Stock Units be made subject to execution, attachment or similar process.

Vesting

Your Stock Units will vest as indicated on the first page of this Agreement, provided you remain in Service on the vesting date and meet any applicable vesting requirements set forth in this Agreement. Except as provided in this Agreement, or in any other agreement between you and the Company, no additional Stock Units will vest after your Service has terminated.

Share Delivery Pursuant to Vested Units; Withholding Tax

Shares underlying the vested portion of the Stock Units will be delivered to you by the Company as soon as practicable following the applicable vesting date for those shares, but in no event beyond 2½ months after the end of the calendar year in which the shares would have been otherwise delivered.

On the vesting date (or as soon as practicable thereafter), a brokerage account in your name will be credited with Stock representing the number of shares that vested under this grant (the "Vesting Shares"). If the vesting date is not a trading day, the Stock will be delivered on the next trading day. The Company will determine, in its sole discretion, the number of the Vesting Shares necessary to cover the amount of any federal, state, local, and foreign taxes that the Company is required to withhold or pay (on behalf of the Company or you as holder) with respect to the Stock Units vesting, rounding up to the nearest whole Share of Stock (the "Withholding Shares").

By accepting this award of Stock Units, you irrevocably (i) instruct the Company to deliver the Vesting Shares to your account; and (ii) authorize and direct the broker, to sell, on your behalf, the Withholding Shares at the market price per share at the time of such sale, and (iii) expressly consent to

the delivery of the proceeds of the sale of Withholding Shares to the Company to be used to fund the payment of any applicable taxes (whether on behalf of the Company or you as holder) with respect to the Stock Units. You further acknowledge that this irrevocable written instruction is intended to constitute an instruction pursuant to Rule 10b5-1 of the Exchange Act. The Company shall be responsible for the payment of any brokerage commissions relating to the sale of the Withholding Shares.

You acknowledge that until the first trading day following the broker's sale of the Withholding Shares, you shall not be entitled to effect transactions in the net Vesting Shares credited to your brokerage account.

The purchase price for the vested Shares of Stock is deemed paid by your prior services to the Company.

Forfeiture of Unvested Units

Except as specifically provided in this Agreement or as may be provided in other agreements between you and the Company, no additional Stock Units will vest after your Service has terminated for any reason and you will forfeit to the Company all of the Stock Units that have not yet vested or with respect to which all applicable restrictions and conditions have not lapsed.

Death

If your Service terminates because of your death, the Stock Units granted under this Agreement will automatically vest as to the number of Stock Units that would have vested had you remained in Service for the 12 month period immediately following your death.

Disability

If your Service terminates because of your Disability, the Stock Units granted under this Agreement will automatically vest as to the number of Stock Units that would have vested had you remained in Service for the 12 month period immediately following your Disability.

Termination For Cause

If your Service is terminated for Cause, then you shall immediately forfeit all rights to your Stock Units and this award shall immediately terminate.

Leaves of Absence

For purposes of this grant, your Service does not terminate when you go on a *bona fide* leave of absence approved by the Company, if the terms of your leave provide for continued Service crediting, or when continued Service crediting is required by applicable law. The Company will determine, in

	its sole discretion, whether and when a leave of absence constitutes a termination of Service under the Plan.
Retention Rights	Neither your Stock Units nor this Agreement give you the right to be retained by the Company or any Affiliate in any capacity and your Service may be terminated at any time and for any reason.
Shareholder Rights	You have no rights as a shareholder unless and until the Stock relating to the Stock Units has been issued to you (or an appropriate book entry has been made). Except as described in the Plan or herein, no adjustments are made for dividends or other rights if the applicable record date occurs before your Stock is issued (or an appropriate book entry has been made). If the Company pays a dividend on its Stock, you will, however, be entitled to receive a cash payment equal to the per-share dividend paid on the Stock times the number of vested Stock Units that you hold as of the record date for the dividend.
Applicable Law	Any suit, action or other legal proceeding that is commenced to resolve any matter arising under or relating to this Agreement or the Plan shall be commenced only in a court in the State of Delaware and the parties to this Agreement consent to the jurisdiction of such court. You agree to waive your rights to a jury trial for any claim or cause of action based upon or arising out of this Agreement or the Plan.
Data Privacy	In order to administer the Plan, the Company may process personal data about you. Such data includes the information provided in this Agreement, other appropriate personal and financial data about you such as home address and business addresses and other contact information, payroll information and any other information deemed appropriate by the Company to facilitate the administration of the Plan. By accepting this Stock Unit award, you consent to the Company's processing of such personal data and the transfer of such data outside the country in which you work or are employed, including, with respect to non-U.S. residents, to the United States, to transferees who shall include the Company and other persons designated by the Company to administer the Plan.
Consent to Electronic Delivery	Certain statutory materials relating to the Plan have been delivered to you in electronic form. By accepting this grant, you consent to electronic delivery and acknowledge receipt

	of these materials, including the Plan and Plan prospectus.
Non-U.S. Residents	If you are a non-U.S. resident, additional terms and conditions with respect to your award may apply as set forth on the Stock Administration page of the MyCiena intranet.

This Agreement is not a stock certificate or a negotiable instrument.

APPENDIX A
TO
RESTRICTED STOCK UNIT AGREEMENT
FOR NON-U.S. EMPLOYEES

This Appendix A includes additional terms and conditions that govern the Award granted to you under the Plan if you reside in one of the countries listed below. Certain capitalized terms used but not defined in this Appendix A have the meanings set forth in the Plan and/or the Agreement governing your Award.

INDIA

Fringe Benefit Tax Treatment. By accepting the grant of the Stock Units, you consent and agree to assume any and all liability for fringe benefit tax that may be payable by the Company or any employer subsidiary thereof (the "Employer") in connection with your Award and participation in the Plan as determined in the sole discretion of the Company or the Employer. You understand that the grant of the Stock Units is contingent upon your agreement to assume liability for fringe benefit tax payable on the Stock Units and Stock acquired under the Plan. Further, by accepting this award and participating in the Plan, you agree that the Company and/or the Employer may collect the fringe benefit tax from you by any reasonable method including the means set forth in the "Share Delivery Pursuant to Vested Units; Withholding Tax" section of the Agreement. You grant the Company and Employer the irrevocable authority, as your agent, to sell, retain or procure the sale of Stock subject to the Award, on your behalf, so that the net proceeds receivable by the Company or Employer are not less than the amount of any tax for which you and/or the Company may be liable and the Company or Employer shall remit any balance to you. You agree to reimburse or pay the Company or Employer, in full, any liability that the Company or Employer incurs towards any fringe benefit tax, social tax, or other tax paid or payable in respect of the grant of this Award, vesting of the Award, delivery of the Stock Units or allotment/transfer of the underlying Stock, within the time and in the manner prescribed by the Company or Employer. As a condition of this award, you also agree to execute any other consents or elections required to accomplish the foregoing, promptly upon request of the Company or the Employer.

Exchange Control Notification. To the extent required by local law, you must immediately repatriate all proceeds resulting from the sale of shares of Stock issued upon vesting of the Stock Units to India and convert the proceeds into local currency. You will receive a foreign inward remittance certificate ("FIRC") from the bank where you deposit the foreign currency. You should maintain the FIRC as evidence of the repatriation of funds in the event the Reserve Bank of India or the Employer requests proof of repatriation.

EXHIBIT 12.1

Statement of Computation of Ratio of Earnings to Fixed Charges

	October 31,		
	2007	**2008**	**2009**
Pre-tax income (loss) from continuing operations	$ 85,732	$ 41,539	$(582,478)
Fixed charges:			
Interest expense	26,996	12,927	7,406
Portion of rental expense representative of interest factor	3,505	4,104	4,111
Total fixed charges	30,501	17,031	11,517
Pre-tax income (loss) from continuing operations plus fixed charges	$116,233	$ 58,570	$(570,961)
Ratio of earnings (loss) to fixed charges	3.81	3.44	—(1)

(1) Earnings for the year ended October 31, 2009 were inadequate to cover total fixed charges. The amount of the deficiency was $582.5 million.

EXHIBIT 21.1

Subsidiary	Jurisdiction of Incorporation or Organization
CIENA Communications, Inc.	Delaware

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 (No. 333-27131, 333-76915, 333-83581, 333-30900, 333-53146, 333-72474, 333-91294, 333-102462, 333-103328, 333-104825, 333-113872, 333-115287, 333-121110, 333-123509, 333-123510, 333-149520 and 333-149929) and on Form S-3 (No. 333-143490, 333-108476 and 333-149519) of Ciena Corporation of our report dated December 21, 2009 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Baltimore, Maryland
December 21, 2009

EXHIBIT 31.1

CIENA CORPORATION

CERTIFICATION OF CHIEF EXECUTIVE OFFICER

I, Gary B. Smith, certify that:

1. I have reviewed this annual report of Ciena Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of 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: December 22, 2009

/s/ Gary B. Smith

Gary B. Smith
President and Chief Executive Officer

EXHIBIT 31.2

CIENA CORPORATION

CERTIFICATION OF CHIEF FINANCIAL OFFICER

I, James E. Moylan, Jr., certify that:

1. I have reviewed this annual report of Ciena Corporation;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 22, 2009

/s/ James E. Moylan, Jr.

James E. Moylan, Jr.
Senior Vice President and Chief Financial Officer

EXHIBIT 32.1

CIENA CORPORATION

Written Statement of Chief Executive Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

The undersigned, the Chief Executive Officer of Ciena Corporation (the "Company"), hereby certifies that, to his knowledge, on the date hereof:

(a) the Report on Form 10-K of the Company for the year ended October 31, 2009 filed on the date hereof with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(b) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Gary B. Smith
Gary B. Smith
President and Chief Executive Officer
December 22, 2009

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Ciena Corporation and will be retained by Ciena Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

CIENA CORPORATION

Written Statement of Chief Financial Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

The undersigned, the Chief Financial Officer of Ciena Corporation (the "Company"), hereby certifies that, to his knowledge, on the date hereof:

(a) the Report on Form 10-K of the Company for the year ended October 31, 2009 filed on the date hereof with the Securities and Exchange Commission (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(b) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ James E. Moylan, Jr.
Senior Vice President and Chief Financial Officer
December 22, 2009

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to Ciena Corporation and will be retained by Ciena Corporation and furnished to the Securities and Exchange Commission or its staff upon request.