

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

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

**For the quarterly period ended September 30, 2011**

or

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

**For the transition period from            to**

**Commission File Number 000-33387**

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**GSI Technology, Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**77-0398779**

(IRS Employer Identification No.)

**1213 Elko Drive**

**Sunnyvale, California 94089**

(Address of principal executive offices, zip code)

**(408) 331-8800**

(Registrant's telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

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

The number of shares of the registrant's common stock outstanding as of October 31, 2011: 28,632,887

## GSI TECHNOLOGY, INC.

## FORM 10-Q FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 2011

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**PART I — FINANCIAL INFORMATION****Item 1. Financial Statements****GSI TECHNOLOGY, INC.****CONDENSED CONSOLIDATED BALANCE SHEETS****(Unaudited)**

	<b>September 30, 2011</b>	<b>March 31, 2011</b>
	<b>(In thousands, except share and per share amounts)</b>	
<b>ASSETS</b>		
Cash and cash equivalents	\$ 25,549	\$ 25,952
Short-term investments	31,012	26,033
Accounts receivable, net	12,676	15,042
Inventories	23,039	21,380
Prepaid expenses and other current assets	8,554	5,575
Deferred income taxes	1,580	1,729
Total current assets	102,410	95,711
Property and equipment, net	12,738	13,545
Long-term investments	31,539	30,938
Other assets	1,772	1,723
Total assets	\$ 148,459	\$ 141,917
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Accounts payable	\$ 5,301	\$ 5,638
Accrued expenses and other liabilities	4,246	4,790
Deferred revenue	5,284	5,248
Total current liabilities	14,831	15,676
Income taxes payable	1,840	1,561
Total liabilities	16,671	17,237
Commitments and contingencies (Note 6)		
<b>Stockholders' equity:</b>		
Preferred stock: \$0.001 par value authorized: 5,000,000 shares; issued and outstanding: none	—	—
Common stock: \$0.001 par value authorized: 150,000,000 shares; issued and outstanding: 28,854,040 and 28,649,033 shares, respectively	29	29
Additional paid-in capital	59,203	57,063
Accumulated other comprehensive income	115	83
Retained earnings	72,441	67,505
Total stockholders' equity	131,788	124,680
Total liabilities and stockholders' equity	\$ 148,459	\$ 141,917

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

## GSI TECHNOLOGY, INC.

## CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(Unaudited)

	Three Months Ended September 30,		Six Months Ended September 30,	
	2011	2010	2011	2010
	(In thousands, except per share amounts)			
Net revenues	\$ 20,783	\$ 26,747	\$ 43,831	\$ 49,665
Cost of revenues	11,725	14,569	24,596	26,670
Gross profit	9,058	12,178	19,235	22,995
Operating expenses:				
Research and development	2,698	2,864	5,337	5,399
Selling, general and administrative	4,447	2,633	7,846	5,461
Total operating expenses	7,145	5,497	13,183	10,860
Income from operations	1,913	6,681	6,052	12,135
Interest income, net	131	168	270	354
Other expense, net	(32)	(145)	(25)	(90)
Income before income taxes	2,012	6,704	6,297	12,399
Provision for income taxes	348	1,457	1,361	2,773
Net income	\$ 1,664	\$ 5,247	\$ 4,936	\$ 9,626
Net income per share:				
Basic	\$ 0.06	\$ 0.19	\$ 0.17	\$ 0.35
Diluted	\$ 0.06	\$ 0.18	\$ 0.16	\$ 0.33
Weighted average shares used in per share calculations:				
Basic	28,880	27,825	28,819	27,748
Diluted	29,894	29,075	30,182	28,956

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

**GSI TECHNOLOGY, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(Unaudited)**

	<b>Six Months Ended September 30,</b>	
	<b>2011</b>	<b>2010</b>
	<b>(In thousands)</b>	
<b>Cash flows from operating activities:</b>		
Net income	\$ 4,936	\$ 9,626
<b>Adjustments to reconcile net income to net cash provided by operating activities:</b>		
Allowance for sales returns and doubtful accounts	99	(1)
Provision for excess and obsolete inventories	592	494
Depreciation and amortization	1,419	1,338
Stock-based compensation	1,025	876
Deferred income taxes	149	(804)
Windfall tax benefits from stock options exercised	(58)	(166)
Amortization of bond premium on investments	637	349
<b>Changes in assets and liabilities:</b>		
Accounts receivable	2,267	(5,865)
Inventory	(2,251)	(8,276)
Prepaid expenses and other assets	(3,084)	(989)
Accounts payable	(264)	4,027
Accrued expenses and other liabilities	(207)	1,146
Deferred revenue	36	4,212
Net cash provided by operating activities	<u>5,296</u>	<u>5,967</u>
<b>Cash flows from investing activities:</b>		
Purchase of investments	(20,431)	(25,107)
Proceeds from sales and maturities of investments	14,212	19,746
Purchases of property and equipment	(595)	(1,472)
Net cash used in investing activities	<u>(6,814)</u>	<u>(6,833)</u>
<b>Cash flows from financing activities:</b>		
Repurchase of common stock	(219)	—
Windfall tax benefits from stock options exercised	58	166
Proceeds from issuance of common stock under employee stock plans	1,276	1,005
Net cash provided by financing activities	<u>1,115</u>	<u>1,171</u>
Net increase (decrease) in cash and cash equivalents	(403)	305
Cash and cash equivalents at beginning of the period	25,952	24,658
Cash and cash equivalents at end of the period	<u>\$ 25,549</u>	<u>\$ 24,963</u>
<b>Non-cash financing activities:</b>		
Purchases of property and equipment through accounts payable and accruals	<u>\$ 188</u>	<u>\$ 351</u>
<b>Supplemental cash flow information:</b>		
Cash paid for income taxes	<u>\$ 3,123</u>	<u>\$ 2,497</u>

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

**GSI TECHNOLOGY, INC.**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**NOTE 1—THE COMPANY AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

***Basis of presentation***

The accompanying unaudited condensed consolidated financial statements of GSI Technology, Inc. and its subsidiaries ("GSI" or the "Company") have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") and pursuant to the instructions to Form 10-Q and Article 10 of Regulation S-X of the Securities and Exchange Commission. Accordingly, the interim financial statements do not include all of the information and footnotes required by generally accepted accounting principles for annual financial statements. These interim financial statements contain all adjustments (which consist of only normal, recurring adjustments) that are, in the opinion of management, necessary to state fairly the interim financial information included therein. The Company believes that the disclosures are adequate to make the information not misleading. However, these financial statements should be read in conjunction with the audited consolidated financial statements and related notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2011.

The consolidated results of operations for the three months and six months ended September 30, 2011 are not necessarily indicative of the results to be expected for the entire fiscal year.

***Significant accounting policies***

The Company's significant accounting policies are disclosed in the Company's Annual Report on Form 10-K for the fiscal year ended March 31, 2011.

***Litigation and Settlement Costs***

From time to time, the Company is involved in legal actions. The Company currently is a party to pending legal proceedings which it is defending aggressively. See Note 6 for additional information regarding this pending litigation. There are many uncertainties associated with any litigation, and the Company may not prevail. The litigation, regardless of its eventual outcome, will be costly and time consuming and, should the outcome be adverse to the Company, could result in the Company being required to pay significant monetary damages. If that occurs, our business, financial condition and results of operations could be materially and adversely affected. If information becomes available that causes us to determine that a loss in any of our pending litigation, or the settlement of such litigation, is probable, and we can reasonably estimate the loss associated with such events, we will record the loss in accordance with GAAP. However, the actual liability in any such litigation may be materially different from our estimates, which could require us to record additional costs.

***Comprehensive net income***

The Company's comprehensive net income for the three month and six month periods ended September 30, 2011 and 2010 was as follows:

	Three Months Ended September 30,		Six Months Ended September 30,	
	2011	2010	2011	2010
Net income	\$ 1,664	\$ 5,247	\$ 4,936	\$ 9,626
Net unrealized gain (loss) on available-for-sale investments	1	(6)	32	7
Comprehensive net income	\$ 1,665	\$ 5,241	\$ 4,968	\$ 9,633

***Recent accounting pronouncements***

In June 2011, the Financial Accounting Standards Board ("FASB") issued a new accounting standard on the presentation of comprehensive income. The new standard requires the presentation of comprehensive income, the components

of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The new standard also requires presentation of adjustments for items that are reclassified from other comprehensive income to net income in the statement where the components of net income and the components of other comprehensive income are presented. The Company is required to adopt this standard for interim and annual periods beginning after December 15, 2011. The Company is currently evaluating the impact of adopting this guidance, which may result in changes in the presentation of its financial statements.

In May 2011, the FASB amended its guidance to converge fair value measurement and disclosure guidance about fair value measurement under U.S. GAAP with International Financial Reporting Standards ("IFRS"). IFRS is a comprehensive series of accounting standards published by the International Accounting Standards Board. The amendment changes the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. For many of the requirements, the FASB does not intend for the amendment to result in a change in the application of the requirements in the current authoritative guidance. The amendment becomes effective prospectively for the Company's interim reporting period ending March 31, 2012. Early application is not permitted. The Company does not expect the amendment to have a material impact on its financial position, results of operations or cash flows.

In January 2010, the FASB issued authoritative guidance for fair value measurements. This guidance now requires a reporting entity to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and also to describe the reasons for these transfers. This authoritative guidance also requires enhanced disclosure of activity in Level 3 fair value measurements. The guidance for Level 1 and Level 2 fair value measurements became effective for the Company's fiscal year ended March 31, 2010, and the guidance for Level 3 fair value measurement disclosures became effective for the Company's interim reporting period ended June 30, 2011. Implementation of this guidance did not have an impact on the Company's consolidated financial position, results of operations or cash flows as it is disclosure-only in nature.

**NOTE 2—NET INCOME PER COMMON SHARE**

The Company uses the treasury stock method to calculate the weighted average shares used in computing diluted net income per share. The following table sets forth the computation of basic and diluted net income per share:

	<u>Three Months Ended September 30,</u>		<u>Six Months Ended September 30,</u>	
	<u>2011</u>	<u>2010</u>	<u>2011</u>	<u>2010</u>
	(In thousands, except per share amounts)			
Net income	\$ 1,664	\$ 5,247	\$ 4,936	\$ 9,626
Denominators:				
Weighted average shares—Basic	28,880	27,825	28,819	27,748
Dilutive effect of employee stock options	1,014	1,250	1,363	1,208
Weighted average shares—Dilutive	<u>29,894</u>	<u>29,075</u>	<u>30,182</u>	<u>28,956</u>
Net income per share—Basic	\$ 0.06	\$ 0.19	\$ 0.17	\$ 0.35
Net income per share—Diluted	<u>\$ 0.06</u>	<u>\$ 0.18</u>	<u>\$ 0.16</u>	<u>\$ 0.33</u>

The following shares of common stock underlying outstanding stock options, determined on a weighted average basis, were excluded from the computation of diluted net income per share as they had an anti-dilutive effect:

	<u>Three Months Ended September 30,</u>		<u>Six Months Ended September 30,</u>	
	<u>2011</u>	<u>2010</u>	<u>2011</u>	<u>2010</u>
	(In thousands)			
Stock options	<u>1,307</u>	<u>470</u>	<u>1,014</u>	<u>369</u>

**NOTE 3—BALANCE SHEET DETAIL**

	September 30, 2011	March 31, 2011
	(In thousands)	
<b>Inventories:</b>		
Work-in-progress	\$ 10,705	\$ 10,612
Finished goods	10,908	9,345
Inventory at distributors	1,426	1,423
	<u>\$ 23,039</u>	<u>\$ 21,380</u>

	September 30, 2011	March 31, 2011
	(In thousands)	
<b>Accounts receivable, net:</b>		
Accounts receivable	\$ 12,880	\$ 15,147
Less: Allowances for sales returns, doubtful accounts and other	(204)	(105)
	<u>\$ 12,676</u>	<u>\$ 15,042</u>

	September 30, 2011	March 31, 2011
	(In thousands)	
<b>Prepaid expenses and other current assets:</b>		
Prepaid tooling and masks	\$ 3,700	\$ 2,470
Prepaid income taxes	2,986	1,350
Other receivables	908	904
Other prepaid expenses	960	851
	<u>\$ 8,554</u>	<u>\$ 5,575</u>

	September 30, 2011	March 31, 2011
	(In thousands)	
<b>Property and equipment, net:</b>		
Computer and other equipment	\$ 15,146	\$ 14,638
Software	4,448	4,442
Land	3,900	3,900
Building and building improvements	2,249	2,249
Furniture and fixtures	110	110
Leasehold improvements	738	738
Construction in progress	201	201
	<u>26,792</u>	<u>26,278</u>
Less: Accumulated depreciation and amortization	(14,054)	(12,733)
	<u>\$ 12,738</u>	<u>\$ 13,545</u>

Depreciation and amortization expense was \$654,000 and \$634,000, respectively, for the three months ended September 30, 2011 and 2010, and \$1,323,000 and \$1,248,000, respectively, for the six months ended September 30, 2011 and 2010.



	September 30, 2011	March 31, 2011
	(In thousands)	
Other assets:		
Non-current deferred income taxes	\$ 677	\$ 535
Intangibles, net	1,014	1,105
Deposits	81	83
	<u>\$ 1,772</u>	<u>\$ 1,723</u>

The following table summarizes the components of intangible assets and related accumulated amortization balances at September 30, 2011 (in thousands):

	Life in Years	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Intangible assets:				
Product designs	7	\$ 590	\$ 176	\$ 414
Patents	9	720	167	553
Software	5	80	33	47
Total		<u>\$ 1,390</u>	<u>\$ 376</u>	<u>\$ 1,014</u>

Amortization of intangible assets included in cost of revenues was \$45,000 and \$90,000, respectively, for the three months and six months ended September 30, 2011 and 2010.

	September 30, 2011	March 31, 2011
	(In thousands)	
Accrued expenses and other liabilities:		
Accrued compensation	\$ 1,590	\$ 1,844
Accrued acquisition payments	—	347
Accrued professional fees	807	4
Accrued commissions	485	456
Accrued royalties	37	25
Accrued income taxes	321	790
Accrued equipment and software costs	51	51
Other accrued expenses	955	1,273
	<u>\$ 4,246</u>	<u>\$ 4,790</u>

#### NOTE 4—INCOME TAXES

The current portion of the Company's unrecognized tax benefits at September 30, 2011 and March 31, 2011 was \$544,000 and \$532,000, respectively. The long-term portion at September 30, 2011 and March 31, 2011 was \$1,840,000 and \$1,561,000, respectively, of which the timing of the resolution is uncertain. As of September 30, 2011, \$369,000 of unrecognized tax benefits had been recorded as a reduction to net deferred tax assets. The unrecognized tax benefit balance as of September 30, 2011 of \$2,574,000 would affect the Company's effective tax rate if recognized. It is possible, however, that some months or years may elapse before an uncertain position for which the Company has established a reserve is resolved.

There are no events that are expected to occur during the next twelve months that management believes would cause a material change in unrecognized tax benefits.

The Company's policy is to include interest and penalties related to unrecognized tax benefits within the provision for income taxes in the Condensed Consolidated Statements of Operations.

The Company is subject to taxation in the United States and various state and foreign jurisdictions. Fiscal years 2008 through 2011 remain open to examination by federal and most state tax authorities. The Company has ongoing tax examinations by the California Franchise Tax Board.

The Company's estimated annual effective income tax rate was approximately 21.6% and 22.6% as of September 30, 2011 and 2010, respectively. The differences between the effective income tax rate and the applicable statutory U.S. income tax rate in each period were primarily due to the effects of tax credits, foreign tax rate differentials and tax free interest income, offset by stock-based compensation expense.

## NOTE 5—FINANCIAL INSTRUMENTS

### *Fair value measurements*

Authoritative accounting guidance for fair value measurements provides a framework for measuring fair value and related disclosure. The guidance applies to all financial assets and financial liabilities that are measured on a recurring basis. The guidance requires fair value measurement to be classified and disclosed in one of the following three categories:

Level 1: Valuations based on quoted prices in active markets for identical assets and liabilities. The fair value of available-for-sale securities included in the Level 1 category is based on quoted prices that are readily and regularly available in an active market. As of September 30, 2011, the Level 1 category included money market funds of \$12.2 million, which were included in cash and cash equivalents in the Condensed Consolidated Balance Sheet.

Level 2: Valuations based on observable inputs (other than Level 1 prices), such as quoted prices for similar assets at the measurement date; quoted prices in markets that are not active; or other inputs that are observable, either directly or indirectly. The fair value of available-for-sale securities included in the Level 2 category is based on the market values obtained from an independent pricing service that were evaluated using pricing models that vary by asset class and may incorporate available trade, bid and other market information and price quotes from well established independent pricing vendors and broker-dealers. As of September 30, 2011, the Level 2 category included short-term investments of \$31.0 million and long term-investments of \$31.5 million, which were comprised of certificates of deposit, corporate debt securities and government and agency securities.

Level 3: Valuations based on inputs that are unobservable and involve management judgment and the reporting entity's own assumptions about market participants and pricing. As of September 30, 2011, the Company had no Level 3 financial assets measured at fair value in the Condensed Consolidated Balance Sheets.

The fair value of financial assets and liabilities measured on a recurring basis is as follows (in thousands):

	September 30, 2011	Fair Value Measurement at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets or Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Money market funds	\$ 12,237	\$ 12,237	\$ —	\$ —
Marketable securities	62,551	—	62,551	—
Total	\$ 74,788	\$ 12,237	\$ 62,551	\$ —

	March 31, 2011	Fair Value Measurement at Reporting Date Using		
		Quoted Prices in Active Markets for Identical Assets or Liabilities (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Money market funds	\$ 10,648	\$ 10,648	\$ —	\$ —
Marketable securities	56,971	—	56,971	—
Total	\$ 67,619	\$ 10,648	\$ 56,971	\$ —

### Short-term and long-term investments

All of the Company's short-term and long-term investments are classified as available-for-sale. Available-for-sale debt securities with maturities greater than twelve months are classified as long-term investments when they are not intended for use in current operations. Investments in available-for-sale securities are reported at fair value with unrecognized gains (losses), net of tax, as a component of accumulated other comprehensive income in the Condensed Consolidated Balance Sheets. The Company had money market funds of \$12.2 million and \$10.6 million at September 30, 2011 and March 31, 2011, respectively, included in cash and cash equivalents in the Condensed Consolidated Balance Sheet. The Company monitors its investments for impairment periodically and records appropriate reductions in carrying values when declines are determined to be other-than-temporary.

The following table summarizes the Company's available-for-sale investments:

	September 30, 2011			
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
(In thousands)				
Short-term investments:				
State and municipal obligations	\$ 20,428	\$ 45	\$ —	\$ 20,473
Corporate notes	6,038	6	—	6,044
Certificates of deposit	2,980	14	—	2,994
United States Government obligations	1,500	1	—	1,501
<b>Total short-term investments</b>	<b>\$ 30,946</b>	<b>\$ 66</b>	<b>\$ —</b>	<b>\$ 31,012</b>
Long-term investments:				
State and municipal obligations	\$ 21,184	\$ 54	\$ —	\$ 21,238
Corporate notes	2,064	—	(1)	2,063
Certificates of deposit	8,233	5	—	8,238
<b>Total long-term investments</b>	<b>\$ 31,481</b>	<b>\$ 59</b>	<b>\$ (1)</b>	<b>\$ 31,539</b>
March 31, 2011				
	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
(In thousands)				
Short-term investments:				
State and municipal obligations	\$ 10,363	\$ 30	\$ —	\$ 10,393
Corporate notes	10,633	33	—	10,666
Certificates of deposit	4,960	14	—	4,974
<b>Total short-term investments</b>	<b>\$ 25,956</b>	<b>\$ 77</b>	<b>\$ —</b>	<b>\$ 26,033</b>
Long-term investments:				
State and municipal obligations	\$ 22,872	\$ —	\$ (16)	\$ 22,856
Corporate notes	2,337	—	(12)	2,325
Certificates of deposit	5,680	77	—	5,757
<b>Total long-term investments</b>	<b>\$ 30,889</b>	<b>\$ 77</b>	<b>\$ (28)</b>	<b>\$ 30,938</b>

The Company's investment portfolio consists of both corporate and governmental securities that have a maximum maturity of three years. All unrealized gains are due to changes in interest rates and bond yields. The Company has the ability to realize the full value of all these investments upon maturity.

As of September 30, 2011, the deferred tax liability related to unrecognized gains and losses on short-term and long-term investments was \$9,000. At March 31, 2011, the deferred tax liability related to unrecognized gains and losses on short-term and long-term investments was \$40,000.

As of September 30, 2011, contractual maturities of the Company's available-for-sale non-equity investments were as

follows:

	Cost	Fair Value
	(In thousands)	
Maturing within one year	\$ 30,946	\$ 31,012
Maturing in one to three years	31,481	31,539
	<u>\$ 62,427</u>	<u>\$ 62,551</u>

The Company classifies its short-term investments as “available for sale” as they are intended to be available for use in current operations.

Effective April 1, 2009, the Company adopted the newly issued authoritative guidance for fair value measurements of all nonfinancial assets and nonfinancial liabilities not recognized or disclosed at fair value in the financial statements on a recurring basis. The adoption did not have a material impact on the Company’s financial position or results of operations.

## NOTE 6—COMMITMENTS AND CONTINGENCIES

### *Indemnification obligations*

The Company is a party to a variety of agreements pursuant to which it may be obligated to indemnify the other party with respect to certain matters. Typically, these obligations arise in the context of contracts entered into by the Company, under which the Company agrees to hold the other party harmless against losses arising from a breach of representations and covenants related to such matters as title to assets sold and certain intellectual property rights. In each of these circumstances, payment by the Company is conditioned on the other party making a claim pursuant to the procedures specified in the particular contract, which procedures typically allow the Company to challenge the other party’s claims. Further, the Company’s obligations under these agreements may be limited in terms of time and/or amount, and in some instances, the Company may have recourse against third parties for certain payments made by it under these agreements.

It is not possible to predict the maximum potential amount of future payments under these or similar agreements due to the conditional nature of the Company’s obligations and the unique facts and circumstances involved in each particular agreement. Historically, payments made by the Company under these agreements have not had a material effect on its business, financial condition, cash flows or results of operations.

### *Product warranties*

The Company warrants its products to be free of defects generally for a period of three years. The Company estimates its warranty costs based on historical warranty claim experience and includes such costs in cost of revenues. Warranty costs were not significant for the three months and six months ended September 30, 2011 and 2010.

### *Legal proceedings*

In March 2011, Cypress Semiconductor Corporation, a semiconductor manufacturer, filed a lawsuit against the Company in the United States District Court for the District of Minnesota alleging that the Company’s products, including its Sigma DDR and Sigma Quad families of Fast SRAMs, infringe five patents held by Cypress. The complaint seeks unspecified damages for past infringement and a permanent injunction against future infringement. On June 10, 2011, Cypress filed a complaint against the Company with the United States International Trade Commission (the “ITC”). The ITC complaint, as subsequently amended, alleges infringement by the Company of three of the five patents involved in the District Court case and one additional patent and also alleges infringement by three of our distributors and 11 of our customers who allegedly incorporate our SRAMs in their products. The ITC complaint seeks a limited exclusion order excluding the allegedly infringing SRAMs, and products containing them, from entry into the United States and permanent orders directing the Company and the other proposed respondents to cease and desist from selling or distributing such products in the United States. On July 21, 2011, the ITC formally instituted an investigation in response to Cypress’s complaint. Two of the distributor-respondents were subsequently dismissed from the investigation. The District Court case has been stayed pending the conclusion of the ITC proceeding. The Company believes that it has strong defenses against Cypress’s patent infringement claims and intends to defend itself vigorously. However, the case is in its preliminary stages, and the Company cannot predict its outcome with certainty. The litigation process is inherently uncertain, and the Company may not prevail. Patent litigation is particularly complex and can extend for a protracted period of time, which can substantially increase the cost of such litigation. The Company has not recorded any loss contingency during fiscal 2011 or during the six months ended September 30, 2011 in

connection with these legal proceedings as the Company cannot predict its outcome and cannot estimate the likelihood or potential dollar amount of any adverse results. However, an unfavorable outcome in this case could have a material adverse impact on the Company's financial position, results of operations or cash flows for the period in which the outcome occurs and in future periods.

**NOTE 7—STOCK OPTION PLANS**

As of September 30, 2011, 4,690,124 shares of common stock were available for grant under the Company's 2007 Equity Incentive Plan.

The following table summarizes the Company's stock option activities for the six months ended September 30, 2011:

	Number of Shares Underlying Outstanding Options	Weighted Average Remaining Contractual Life (Years)	Weighted Average Exercise Price	Intrinsic Value
Options outstanding as of March 31, 2011:	5,065,478		\$ 4.46	
Granted	511,063		\$ 6.42	
Exercised	(211,891)		\$ 4.96	\$ 384,808
Forfeited	(38,200)		\$ 5.37	
Options outstanding as of September 30, 2011	<u>5,326,450</u>	6.60	\$ 4.63	\$ 4,539,781
Options exercisable as of September 30, 2011	<u>2,911,527</u>	5.15	\$ 4.21	\$ 2,870,822
Options vested and expected to vest	<u>5,253,727</u>	6.57	\$ 4.61	\$ 4,510,595

The weighted average fair value per underlying share of options granted during the three months ended September 30, 2011 and 2010 was \$2.85 and \$3.15, respectively, and for the six months ended September 30, 2011 and 2010 was \$2.92 and \$2.95, respectively.

Options outstanding by exercise price at September 30, 2011 were as follows:

Exercise Price	Options Outstanding			Options Exercisable	
	Number of Shares Underlying Outstanding Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Life (Years)	Number of Shares Underlying Vested and Exercisable Options	Weighted Average Exercise Price
\$2.10 – 2.43	632,673	\$ 2.20	3.51	486,920	\$ 2.13
\$2.49 – 3.38	563,881	\$ 3.19	6.92	335,261	\$ 3.17
\$3.43 – 3.76	590,917	\$ 3.52	6.59	308,739	\$ 3.57
\$3.81 – 3.94	38,000	\$ 3.87	7.46	38,000	\$ 3.87
\$4.00	800,536	\$ 4.00	7.05	340,028	\$ 4.00
\$4.20 – 5.40	448,049	\$ 4.41	5.94	292,435	\$ 4.42
\$5.50	883,208	\$ 5.50	5.13	883,208	\$ 5.50
\$5.75 – 6.28	585,883	\$ 6.04	8.14	158,316	\$ 5.76
\$6.54 - 7.00	637,683	\$ 6.76	9.22	68,620	\$ 6.91
\$9.20	145,620	\$ 9.20	9.34	—	\$ —
	<u>5,326,450</u>	\$ 4.63		<u>2,911,527</u>	

***Stock-based compensation***

The following table summarizes stock-based compensation expense by line item in the Condensed Consolidated Statements of Operations, all relating to employee stock plans:

	Three Months Ended September 30,		Six Months Ended September 30,	
	2011	2010	2011	2010
	(In thousands)			
Cost of revenues	\$ 83	\$ 89	\$ 159	\$ 177
Research and development	258	199	511	413
Selling, general and administrative	174	142	355	286
Total	\$ 515	\$ 430	\$ 1,025	\$ 876

As stock-based compensation expense recognized in the Condensed Consolidated Statement of Operations is based on awards ultimately expected to vest, it has been reduced for estimated forfeitures in accordance with authoritative guidance. The Company estimates forfeitures at the time of grant and revises the original estimates, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

The Company recognized related income tax benefits of \$61,000 and \$36,000, respectively, for the three months ended September 30, 2011 and 2010 and \$120,000 and \$89,000, respectively, for the six months ended September 30, 2011 and 2010. Windfall tax benefits realized from exercised stock options were \$5,000 and \$116,000, respectively, for the three months ended September 30, 2011 and 2010 and \$58,000 and \$166,000, respectively, for the six months ended September 30, 2011 and 2010. Compensation cost capitalized within inventory at September 30, 2011 was insignificant. As of September 30, 2011, the Company's total unrecognized compensation cost was \$4.3 million, which will be recognized over the weighted average period of 2.1 years. The Company calculated the fair value of stock-based awards in the periods presented using the Black-Scholes option pricing model and the following weighted average assumptions:

	Three Months Ended September 30,		Six Months Ended September 30,	
	2011	2010	2011	2010
<u>Stock Option Plans:</u>				
Risk-free interest rate	1.19%	1.56%	1.19 - 1.89%	1.56 - 2.29%
Expected life (in years)	5.00	5.00	5.00	5.00
Volatility	51.8%	50.5%	50.8 - 51.8%	49.9 - 50.5%
Dividend yield	—%	—%	—%	—%
<u>Employee Stock Purchase Plan:</u>				
Risk-free interest rate	—%	—%	0.07%	0.23%
Expected life (in years)	—	—	0.50	0.50
Volatility	—%	—%	52.1%	73.6%
Dividend yield	—%	—%	—%	—%

#### NOTE 8—SEGMENT AND GEOGRAPHIC INFORMATION

Based on its operating management and financial reporting structure, the Company has determined that it has one reportable business segment: the design, development and sale of integrated circuits.

The following is a summary of net revenues by geographic area based on the location to which product is shipped:

	Three Months Ended September 30,		Six Months Ended September 30,	
	2011	2010	2011	2010
	(In thousands)			
United States	\$ 4,554	\$ 8,882	\$ 9,473	\$ 15,444
China	4,032	5,429	9,428	10,397
Malaysia	6,857	7,169	14,207	12,691
Singapore	3,437	2,511	6,900	6,053
Rest of the world	1,903	2,756	3,823	5,080
	\$ 20,783	\$ 26,747	\$ 43,831	\$ 49,665

All sales are denominated in United States dollars.

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

*This Quarterly Report on Form 10-Q, and in particular the following Management's Discussion and Analysis of Financial Condition and Results of Operations, includes "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended ("the Exchange Act"). These forward-looking statements involve risks and uncertainties. Forward-looking statements are identified by words such as "anticipates," "believes," "expects," "intends," "may," "will," and other similar expressions. In addition, any statements which refer to expectations, projections, or other characterizations of future events, or circumstances, are forward-looking statements. Actual results could differ materially from those projected in the forward-looking statements as a result of a number of factors, including those set forth in this report under "Risk Factors," those described elsewhere in this report, and those described in our other reports filed with the Securities and Exchange Commission ("SEC"). We caution you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report, and we undertake no obligation to update these forward-looking statements after the filing of this report. You are urged to review carefully and consider our various disclosures in this report and in our other reports publicly disclosed or filed with the SEC that attempt to advise you of the risks and factors that may affect our business.*

**Overview**

We are a fabless semiconductor company that designs, develops and markets Very Fast static random access memories, or SRAMs, and low latency dynamic random access memories, or LDRAMs, primarily for the networking and telecommunications markets. We are subject to the highly cyclical nature of the semiconductor industry, which has experienced significant fluctuations, often in connection with fluctuations in demand for the products in which semiconductor devices are used. Beginning in fiscal 2001, the networking and telecommunications markets experienced an extended period of severe contraction, during which our operating results sharply declined. Between fiscal 2004 and fiscal 2006, demand for networking and telecommunications equipment recovered. During the first three quarters of fiscal 2007, demand for such equipment accelerated and, as a result, our operating results improved. In the fourth quarter of fiscal 2007 and the first quarter of fiscal 2008, revenues again declined due, in part, to the implementation of a "lean manufacturing" program by our largest customer, Cisco Systems. Our revenues have been substantially impacted by the fluctuations in sales to Cisco Systems, and we expect that future direct and indirect sales to Cisco Systems will continue to fluctuate significantly on a quarterly basis. The worldwide financial crisis and the resulting economic impact on the end markets we serve adversely impacted our financial results during the second half of fiscal 2009 and fiscal 2010, and we expect that the unsettled global economic environment will continue to affect our operating results in future periods. However, with no debt, substantial liquidity and anticipated positive cash flows from operations, we believe we are in a better financial position than many other companies of our size.

*Revenues.* Our revenues are derived primarily from sales of our Very Fast SRAM products. Sales to networking and telecommunications original equipment manufacturers, or OEMs, accounted for 65% to 80% of our net revenues during our last three fiscal years. We also sell our products to OEMs that manufacture products for defense applications such as radar and guidance systems, for professional audio applications such as sound mixing systems, for test and measurement applications such as high-speed testers, for automotive applications such as smart cruise control and voice recognition systems, and for medical applications such as ultrasound and CAT scan equipment.

As is typical in the semiconductor industry, the selling prices of our products generally decline over the life of the product. Our ability to increase net revenues, therefore, is dependent upon our ability to increase unit sales volumes of existing products and to introduce and sell new products with higher average selling prices in quantities sufficient to compensate for the anticipated declines in selling prices of our more mature products. Although we expect the average selling prices of individual products to decline over time, we believe that, over the next several quarters, our overall average selling prices will increase due to a continuing shift in product mix to a higher percentage of higher price, higher density products. Our ability to increase unit sales volumes is dependent primarily upon increases in customer demand but, particularly in periods of increasing demand, can also be affected by our ability to increase production through the availability of increased wafer fabrication capacity from Taiwan Semiconductor Manufacturing Company, or TSMC, and Powerchip, our wafer suppliers, and our ability to increase the number of good integrated circuit die produced from each wafer through die size reductions and yield enhancement activities.

We may experience fluctuations in quarterly net revenues for a number of reasons. Historically, orders on hand at the beginning of each quarter are insufficient to meet our revenue objectives for that quarter and are generally cancelable up to 30 days prior to scheduled delivery. Accordingly, we depend on obtaining and shipping orders in the same quarter to achieve our revenue objectives. In addition, the timing of product releases, purchase orders and product availability could result in significant product shipments at the end of a quarter. Failure to ship these products by the end of the quarter may adversely affect our operating results. Furthermore, our customers may delay scheduled delivery dates and/or cancel orders within

specified timeframes without significant penalty.

We sell our products through our direct sales force, international and domestic sales representatives and distributors. Revenues from product sales, except for sales to distributors, are generally recognized upon shipment, net of sales returns and allowances. Sales to consignment warehouses, who purchase products from us for use by contract manufacturers, are recorded upon delivery to the contract manufacturer. Sales to distributors are recorded as deferred revenues for financial reporting purposes and recognized as revenues when the products are resold by the distributors to the OEM. Sales to distributors are made under agreements allowing for returns or credits under certain circumstances. We therefore defer recognition of revenue on sales to distributors until products are resold by the distributor.

Cisco Systems, our largest OEM customer, purchases our products primarily through its consignment warehouses, SMART Modular Technologies, Jabil Circuit and Flextronics Technology, and also purchases some products through its contract manufacturers and directly from us. Historically, purchases by Cisco Systems have fluctuated from period to period. Based on information provided to us by Cisco Systems' consignment warehouses and contract manufacturers, purchases by Cisco Systems represented approximately 40%, 37%, 35% and 26% of our net revenues in the six months ended September 30, 2011 and in fiscal 2011, 2010 and 2009, respectively. Our revenues have been substantially impacted by the fluctuations in sales to Cisco Systems, and we expect that future direct and indirect sales to Cisco Systems will continue to fluctuate significantly on a quarterly basis and that such fluctuations may significantly affect our operating results in future periods. To our knowledge, none of our other OEM customers accounted for more than 10% of our net revenues in fiscal 2011, 2010 or 2009.

*Cost of Revenues.* Our cost of revenues consists primarily of wafer fabrication costs, wafer sort, assembly, test and burn-in expenses, the amortized cost of production mask sets, stock-based compensation and the cost of materials and overhead from operations. All of our wafer manufacturing and assembly operations, and a significant portion of our wafer sort testing operations, are outsourced. Accordingly, most of our cost of revenues consists of payments to TSMC and independent assembly and test houses. Because we do not have long-term, fixed-price supply contracts, our wafer fabrication and other outsourced manufacturing costs are subject to the cyclical fluctuations in demand for semiconductors. Cost of revenues also includes expenses related to supply chain management, quality assurance, and final product testing and documentation control activities conducted at our headquarters in Sunnyvale, California and our branch operations in Taiwan.

*Gross Profit.* Our gross profit margins vary among our products and are generally greater on our higher density products and, within a particular density, greater on our higher speed and industrial temperature products. We expect that our overall gross margins will fluctuate from period to period as a result of shifts in product mix, changes in average selling prices and our ability to control our cost of revenues, including costs associated with outsourced wafer fabrication and product assembly and testing.

*Research and Development Expenses.* Research and development expenses consist primarily of salaries and related expenses for design engineers and other technical personnel, the cost of developing prototypes, stock-based compensation and fees paid to consultants. We charge all research and development expenses to operations as incurred. We charge mask costs used in production to costs of revenues over a 12-month period. However, we charge costs related to pre-production mask sets, which are not used in production, to research and development expenses at the time they are incurred. These charges often arise as we transition to new process technologies and, accordingly, can cause research and development expenses to fluctuate on a quarterly basis. We believe that continued investment in research and development is critical to our long-term success, and we expect to continue to devote significant resources to product development activities. Accordingly, we expect that our research and development expenses will increase in future periods, although such expenses as a percentage of net revenues may fluctuate.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses consist primarily of commissions paid to independent sales representatives, salaries, stock-based compensation and related expenses for personnel engaged in sales, marketing, administrative, finance and human resources activities, professional fees, costs associated with the promotion of our products and other corporate expenses. We expect that our sales and marketing expenses will increase in absolute dollars in future periods as we continue to grow and expand our sales force but that, to the extent our revenues increase in future periods, these expenses will generally decline as a percentage of net revenues. We also expect that, in support of our continued growth, general and administrative expenses will continue to increase in absolute dollars for the foreseeable future and that, as we incur legal expenses in connection with our pending litigation with Cypress Semiconductor, our general and administrative expenses, as a percentage of net revenues, will be substantially higher than their historical levels.



## Results of Operations

The following table sets forth statement of operations data as a percentage of net revenues for the periods indicated:

	Three Months Ended September 30,		Six Months Ended September 30,	
	2011	2010	2011	2010
Net revenues	100.0%	100.0%	100.0%	100.0%
Cost of revenues	56.4	54.5	56.1	53.7
Gross profit	43.6	45.5	43.9	46.3
Operating expenses:				
Research and development	13.0	10.7	12.2	10.9
Selling, general and administrative	21.4	9.8	17.9	11.0
Total operating expenses	34.4	20.5	30.1	21.9
Income from operations	9.2	25.0	13.8	24.4
Interest and other income (expense), net	0.5	0.1	0.6	0.6
Income before income taxes	9.7	25.1	14.4	25.0
Provision for income taxes	1.7	5.5	3.1	5.6
Net income	8.0%	19.6%	11.3%	19.4%

*Net Revenues.* Net revenues decreased by 22.3% from \$26.7 million in the three months ended September 30, 2010 to \$20.8 million in the three months ended September 30, 2011. Net revenues decreased by 11.7% from \$49.7 million in the six months ended September 30, 2010 to \$43.8 million in the six months ended September 30, 2011. Net revenues in the three months ended September 30, 2010 were somewhat anomalous and benefited from two timing issues. First, second quarter revenues benefited as we were able to ship delinquent first-quarter backlog that had been pushed out as some of our customers had difficulty in procuring requisite components from other vendors. In addition, contract manufacturers for a major customer drew down \$1.2 million from inventories at the end of the second quarter rather than in the third quarter as we had originally expected, benefitting second quarter net revenues. Direct and indirect sales to Cisco Systems, our largest customer, decreased by \$2.5 million from \$10.4 million in the three months ended September 30, 2010 to \$7.9 million in the three months ended September 30, 2011 and by \$2.1 million from \$19.6 million in the six months ended September 30, 2010 to \$17.5 million in the six months ended September 30, 2011. Net revenues in the three months and six months ended September 30, 2011 included \$5.1 million and \$11.2 million, respectively, from the sale to Cisco Systems of products acquired in our August 28, 2009 acquisition of the Sony SRAM memory device product line, compared to \$3.5 million and \$6.7 million, respectively, in the three and six month periods ended September 30, 2010. Shipments of our SigmaQuad product line accounted for 33.9% of total shipments in the six months ended September 30, 2011 compared to 32.3% of total shipments in the six months ended September 30, 2010.

*Cost of Revenues.* Cost of revenues decreased by 19.5% from \$14.6 million in the three months ended September 30, 2010 to \$11.7 million in the three months ended September 30, 2011 and by 7.8% from \$26.7 million in the six months ended September 30, 2010 to \$24.6 million in the six months ended September 30, 2011. These decreases were primarily due to the corresponding decreases in net revenues, partially offset by increases in manufacturing overhead expenses as we prepare to support expected increases in the production levels of new and existing products, including our low latency DRAMs. Cost of revenues included stock-based compensation expense of \$83,000 and \$89,000, respectively, for the three months ended September 30, 2011 and 2010 and \$159,000 and \$177,000, respectively, for the six months ended September 30, 2011 and 2010.

*Gross Profit.* Gross profit decreased by 25.6% from \$12.2 million in the three months ended September 30, 2010 to \$9.1 million in the three months ended September 30, 2011 and by 16.4% from \$23.0 million in the six months ended September 30, 2010 to \$19.2 million in the six months ended September 30, 2011. Gross margin decreased from 45.5% in the three months ended September 30, 2010 to 43.6% in the three months ended September 30, 2011 and from 46.3% in the six months ended September 30, 2010 to 43.9% in the six months ended September 30, 2011. The decreases in gross profit were primarily related to the decreased net revenues. The decrease in gross margin was primarily related to the increases in manufacturing overhead expenses described above.

*Research and Development Expenses.* Research and development expenses decreased 5.8% from \$2.9 million in the three months ended September 30, 2010 to \$2.7 million in the three months ended September 30, 2011. This decrease was primarily due to a decrease of \$491,000 in research and development mask expense, partially offset by an increase of \$193,000

in payroll related expenses. Research and development expenses included stock-based compensation expense of \$258,000 and \$199,000, respectively, for the three months ended September 30, 2011 and 2010. Research and development expenses decreased 1.1% from \$5.4 million in the six months ended September 30, 2010 to \$5.3 million in the six months ended September 30, 2011. This decrease was primarily due to a decrease of \$491,000 in research and development mask expense, partially offset by an increase of \$295,000 in payroll related expenses and lesser increases in stock-based compensation expense and legal fees. The increase in payroll expenses were related to increases in headcount to support our low latency DRAM project and various high speed SRAM projects. Research and development expenses included stock-based compensation expense of \$511,000 and \$413,000, respectively, for the six months ended September 30, 2011 and 2010.

*Selling, General and Administrative Expenses.* Selling, general and administrative expenses increased 68.9% from \$2.6 million in the three months ended September 30, 2010 to \$4.4 million in the three months ended September 30, 2011. This increase was primarily due to an increase of \$1.9 million in legal fees related to the pending patent infringement and antitrust litigation involving Cypress Semiconductor Corporation, partially offset by a decrease in independent sales representative commissions of \$164,000. Selling, general and administrative expenses included stock-based compensation expense of \$174,000 and \$142,000, respectively, for the three months ended September 30, 2011 and 2010. Selling, general and administrative expenses increased 43.7% from \$5.5 million in the six months ended September 30, 2010 to \$7.8 million in the six months ended September 30, 2011. This increase was primarily related to an increase of \$2.7 million in legal fees related to the pending patent infringement and antitrust litigation involving Cypress Semiconductor Corporation, partially offset by a decrease in independent sales representative commissions of \$252,000 and a lesser decrease in non-legal professional fees. Selling, general and administrative expenses included stock-based compensation expense of \$355,000 and \$286,000, respectively, for the six months ended September 30, 2011 and 2010.

*Interest and Other Income (Expense), Net.* Interest and other income (expense), net increased 330.4%, from \$23,000 in the three months ended September 30, 2010 to \$99,000 in the three months ended September 30, 2011. Interest income decreased by \$37,000 due to lower interest rates received on our cash and short-term and long-term investments. In addition, we recorded an exchange loss of \$145,000 for the three months ended September 30, 2010 compared to \$33,000 for the three months ended September 30, 2011. Interest and other income (expense), net decreased 7.2% from \$264,000 in the six months ended September 30, 2010 to \$245,000 in the six months ended September 30, 2011. Interest income decreased by \$83,000 due to lower interest rates received on our cash and short-term and long-term investments. In addition, we recorded an exchange loss of \$90,000 for the six months ended September 30, 2010 compared to \$26,000 for the six months ended September 30, 2011. The exchange loss in each period was related to our Taiwan branch operations.

*Provision for Income Taxes.* The provision for income taxes decreased from \$1.5 million in the three months ended September 30, 2010 to \$348,000 in the three months ended September 30, 2011 and from \$2.8 million in the six months ended September 30, 2010 to \$1.4 million in the six months ended September 30, 2011. These decreases were due to the decreased pre-tax income in the three and six month periods.

*Net Income.* Net income decreased 68.3% from \$5.2 million in the three months ended September 30, 2010 to \$1.7 million in the three months ended September 30, 2011 and 48.7% from \$9.6 million in the six months ended September 30, 2010 to \$4.9 million in the six months ended September 30, 2011. These decreases were primarily due to the decreases in net revenues, gross profit and gross margin and the changes in operating expenses discussed above.

## **Liquidity and Capital Resources**

As of September 30, 2011, our principal sources of liquidity were cash, cash equivalents and short-term investments of \$56.6 million compared to \$52.0 million as of March 31, 2011.

Net cash provided by operating activities was \$5.3 million for the six months ended September 30, 2011 compared to \$6.0 million for the six months ended September 30, 2010. The primary sources of cash in the current six month period were net income of \$4.9 million and a decrease in accounts receivable of \$2.3 million, partially offset by an increase in prepaid expenses and other assets of \$3.1 million and an increase in inventory of \$2.3 million. Inventory levels increased primarily as a result of a planned inventory build-up to enable us to better respond to current and forecasted customer requirements.

Net cash used in investing activities was \$6.9 million in the six month period ended September 30, 2011. Investment activities consisted primarily of the purchase of state and municipal obligations and corporate notes of \$20.4 million. This use was offset by sales and maturities of investments of \$14.2 million. Net cash used in investing activities was \$6.8 million in the six month period ended September 30, 2010. Investment activities consisted primarily of the purchase of state and municipal obligations and corporate notes and purchases of property and equipment. These uses were offset by sales and maturities of investments of \$19.7 million.

Net cash provided by financing activities in the six months ended September 30, 2011 and September 30, 2010 primarily consisted of the net proceeds from the sale of common stock pursuant to our employee stock plans. We repurchased \$219,000 of our common stock in the six months ended September 30, 2011.

We believe that our existing balances of cash, cash equivalents and short-term investments, and cash flow expected to be generated from our future operations will be sufficient to meet our cash needs for working capital and capital expenditures for at least the next 12 months, although we could be required, or could elect, to seek additional funding prior to that time. Our future capital requirements will depend on many factors, including the rate of revenue growth that we experience, the extent to which we utilize subcontractors, the levels of inventory and accounts receivable that we maintain, the timing and extent of spending to support our product development efforts and the expansion of our sales and marketing efforts. Additional capital may also be required for the consummation of any acquisition of businesses, products or technologies that we may undertake. We cannot assure you that additional equity or debt financing, if required, will be available on terms that are acceptable or at all.

### Contractual Obligations

The following table describes our contractual obligations as of September 30, 2011:

	Payments due by period				Total
	Up to 1 year	1-3 years	3-5 years	More than 5 years	
Facilities leases	\$ 251,000	\$ —	\$ —	\$ —	\$ 251,000
Wafer, test and mask purchase obligations	4,745,000	944,000	—	—	5,689,000
	<u>\$ 4,996,000</u>	<u>\$ 944,000</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 5,940,000</u>

As of September 30, 2011, the current portion of our unrecognized tax benefits was \$544,000, and the long-term portion was \$1,840,000. The unrecognized tax benefits balance as of September 30, 2011 of \$2,574,000 would affect our effective tax rate if recognized. As of September 30, 2011, \$369,000 of unrecognized tax benefits have been recorded as a reduction to net deferred tax assets.

### Critical Accounting Policies and Estimates

Our critical accounting policies and estimates are disclosed in our Annual Report on Form 10-K for the fiscal year ended March 31, 2011.

### Off-Balance Sheet Arrangements

At September 30, 2011, we did not have any off-balance sheet arrangements or relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. Accordingly, we are not exposed to the type of financing, liquidity, market or credit risk that could arise if we had engaged in such relationships.

### Recent Accounting Pronouncements

In June 2011, the FASB issued a new accounting standard on the presentation of comprehensive income. The new standard requires the presentation of comprehensive income, the components of net income and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. The new standard also requires presentation of adjustments for items that are reclassified from other comprehensive income to net income in the statement where the components of net income and the components of other comprehensive income are presented. We are required to adopt this standard for interim and annual periods beginning after December 15, 2011. We are currently evaluating the impact of adopting this guidance, which may result in changes in the presentation of our financial statements.

In May 2011, the FASB amended its guidance to converge fair value measurement and disclosure guidance about fair value measurement under U.S. GAAP with International Financial Reporting Standards ("IFRS"). IFRS is a comprehensive series of accounting standards published by the International Accounting Standards Board. The amendment changes the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. For many of the requirements, the FASB does not intend for the amendment to result in a change in the application of the requirements in the current authoritative guidance. The amendment becomes effective prospectively for our interim reporting period ending March 31, 2012. Early application is not permitted. We do not expect the amendment to have a material impact on our financial position, results of operations or cash flows.

In January 2010, the FASB issued authoritative guidance for fair value measurements. This guidance now requires a reporting entity to disclose separately the amounts of significant transfers in and out of Level 1 and Level 2 fair value measurements and also to describe the reasons for these transfers. This authoritative guidance also requires enhanced disclosure of activity in Level 3 fair value measurements. The guidance for Level 1 and Level 2 fair value measurements became effective for our fiscal year ended March 31, 2010 and the guidance for Level 3 fair value measurement disclosures became effective for our interim reporting period ended June 30, 2011. Implementation of the guidance did not have an impact on our consolidated financial position, results of operations or cash flows as it is disclosure-only in nature.

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

*Foreign Currency Exchange Risk.* Our revenues and expenses, except those expenses related to our operations in Taiwan, including subcontractor manufacturing expenses, are denominated in U.S. dollars. As a result, we have relatively little exposure for currency exchange risks, and foreign exchange gains and losses have been minimal to date. We do not currently enter into forward exchange contracts to hedge exposure denominated in foreign currencies or any other derivative financial instruments for trading or speculative purposes. In the future, if we feel our foreign currency exposure has increased, we may consider entering into hedging transactions to help mitigate that risk.

*Interest Rate Sensitivity.* We had cash, cash equivalents, short term investments and long-term investments totaling \$88.1 million at September 30, 2011. These amounts were invested primarily in money market funds, state and municipal obligations, corporate notes and certificates of deposit. The cash, cash equivalents and short-term marketable securities are held for working capital purposes. We do not enter into investments for trading or speculative purposes. Due to the short-term nature of these investments, we believe that we do not have any material exposure to changes in the fair value of our investment portfolio as a result of changes in interest rates. We believe a hypothetical 100 basis point increase or decrease in interest rates would not materially affect the fair value of our interest-sensitive financial instruments. Declines in interest rates, however, will reduce future investment income.

**Item 4. *Controls and Procedures***

*Evaluation of Disclosure Controls and Procedures.* Based on their evaluation of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act as of September 30, 2011, our management, with the participation of our Chief Executive Officer and Chief Financial Officer, has concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report for the purpose of ensuring that the information required to be disclosed by us in this report is made known to them by others on a timely basis, and that the information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, in order to allow timely decisions regarding required disclosure, and that such information is recorded, processed, summarized, and reported by us within the time periods specified in the SEC's rules and instructions for Form 10-Q.

*Changes in Internal Control over Financial Reporting.* There were no changes in our internal control over financial reporting that occurred during the three months ended September 30, 2011 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**PART II — OTHER INFORMATION**

**Item 1. *Legal Proceedings***

In March 2011, Cypress Semiconductor Corporation, a semiconductor manufacturer, filed a lawsuit against us in the United States District Court for the District of Minnesota alleging that our products, including our Sigma DDR and Sigma Quad families of Fast SRAMs, infringe five patents held by Cypress. The complaint seeks unspecified damages for past infringement and a permanent injunction against future infringement.

On June 10, 2011, Cypress filed a complaint against GSI with the United States International Trade Commission (the "ITC"). The ITC complaint, as subsequently amended, alleges infringement by GSI of three of the five patents involved in the District Court case and one additional patent and also alleges infringement by three of our distributors and 11 of our customers who allegedly incorporate our SRAMs in their products. The ITC complaint seeks a limited exclusion order excluding the allegedly infringing SRAMs, and products containing them, from entry into the United States and permanent orders directing GSI and the other proposed respondents to cease and desist from selling or distributing such products in the United States. On July 21, 2011, the ITC formally instituted an investigation in response to Cypress's complaint. Two of the distributor-respondents were subsequently dismissed from the investigation. The District Court case has been stayed pending the conclusion of the ITC proceeding.

On July 22, 2011, we filed a complaint against Cypress in the United States District Court for the Northern District of California. Our complaint alleges that Cypress has conducted an unlawful combination and conspiracy to monopolize the market for certain high-performance SRAM devices, known as fast synchronous Quad Data Rate (or QDR) SRAMs and Double Data Rate (or DDR) SRAMs. The complaint alleges that the anti-competitive, collusive and conspiratorial conduct of Cypress and certain co-conspirators has violated Section 1 of the Sherman Act and also constitutes unlawful restraint of trade and unfair competition under applicable provisions of California law. The complaint seeks treble damages, in an amount to be determined at trial, a preliminary and permanent injunction prohibiting the continuation of the unfair and illegal business practices and recovery of GSI's attorneys' fees and costs. Cypress has moved to dismiss the complaint, and we will oppose the motion.

We believe that we have strong defenses against Cypress's patent infringement claims, and we intend to defend ourselves vigorously in the ITC proceeding while vigorously prosecuting our antitrust claims against Cypress. However, both proceedings are in their preliminary stages, and we cannot predict their outcome with certainty. The litigation process is inherently uncertain, and we may not prevail. Patent litigation is particularly complex and can extend for a protracted period of time, which can substantially increase the cost of such litigation. We have incurred and expect to continue to incur substantial legal fees and expenses in connection with the Cypress patent and antitrust litigation, and we expect the litigation to divert the efforts and attention of some of our key management and technical personnel. As a result, the litigation, regardless of its eventual outcome, will be costly and time consuming. Should the outcome of the ITC proceeding be adverse to us, we and the other respondents could be prohibited from selling or distributing those of our products found to be infringing Cypress's patents, or end products containing them, in the United States, unless and until we are able to negotiate a license from Cypress. Should the District Court case resume and its outcome be adverse to us, we could be required to pay significant monetary damages to Cypress and could be enjoined from selling those of our products found to infringe Cypress's patents unless and until we are able to negotiate a license from Cypress. Any such license arrangement with Cypress would likely require the payment of royalties which would increase our costs of revenues and reduce our gross profit. If we and the other respondents are prohibited from selling our products, or end products containing them, in the United States, or if we are required to pay significant monetary damages, are enjoined from selling any of our products or are required to make substantial royalty payments pursuant to any such license arrangement, our business would be significantly harmed.

#### **Item 1A. Risk Factors**

*Our future performance is subject to a variety of risks. If any of the following risks actually occur, our business, financial condition and results of operations could suffer and the trading price of our common stock could decline. Additional risks that we currently do not know about or that we currently believe to be immaterial may also impair our business operations. You should also refer to other information contained in this report, including our condensed consolidated financial statements and related notes. Except for the additional disclosure updating the risk factor captioned "We are subject to pending patent infringement litigation," the risk factors described below do not contain any material changes from those previously disclosed in Item 1A of our Annual Report on Form 10-K for the fiscal year ended March 31, 2011.*

##### ***Unpredictable fluctuations in our operating results could cause our stock price to decline.***

Our quarterly and annual revenues, expenses and operating results have varied significantly and are likely to vary in the future. For example, in the ten fiscal quarters ended September 30, 2011, we recorded net revenues of as much as \$26.7 million and as little as \$14.2 million and quarterly operating income of as much as \$6.7 million and as little as \$1.5 million. We therefore believe that period-to-period comparisons of our operating results are not a good indication of our future performance, and you should not rely on them to predict our future performance or the future performance of our stock price. In future periods, we may not have any revenue growth, or our revenues could decline. Furthermore, if our operating expenses exceed our expectations, our financial performance could be adversely affected. Factors that may affect periodic operating results in the future include:

- our ability to anticipate and conform to new industry standards;

- unpredictability of the timing and size of customer orders, since most of our customers purchase our products on a purchase order basis rather than pursuant to a long term contract;
- changes in our customers' inventory management practices;
- fluctuations in availability and costs associated with materials needed to satisfy customer requirements;
- manufacturing defects, which could cause us to incur significant warranty, support and repair costs, lose potential sales, harm our relationships with customers and result in write-downs;
- changes in our product pricing policies, including those made in response to new product announcements and pricing changes of our competitors; and
- our ability to address technology issues as they arise, improve our products' functionality and expand our product offerings.

Our expenses are, to a large extent, fixed, and we expect that these expenses will increase in the future. We will not be able to adjust our spending quickly if our revenues fall short of our expectations. If this were to occur, our operating results would be harmed. If our operating results in future quarters fall below the expectations of market analysts and investors, the price of our common stock could fall.

***Cisco Systems, our largest OEM customer, accounts for a significant percentage of our net revenues. If Cisco Systems, or any of our other major customers reduce the amount they purchase or stop purchasing our products, our operating results will suffer.***

Cisco Systems, our largest OEM customer, purchases our products through its consignment warehouses and its contract manufacturers and directly from us. Based on information provided to us by its consignment warehouses and contract manufacturers, purchases by Cisco Systems represented approximately 37%, 35% and 26% of our net revenues in fiscal 2011, 2010 and 2009, respectively, and 40% in the six months ended September 30, 2011. We expect that our operating results in any given period will continue to depend significantly on orders from our key OEM customers, particularly Cisco Systems, and our future success is dependent to a large degree on the business success of these OEMs over which we have no control. We do not have long-term contracts with Cisco Systems or any of our other major OEM customers, distributors or contract manufacturers that obligate them to purchase our products. We expect that future direct and indirect sales to Cisco Systems will continue to fluctuate significantly on a quarterly basis and that such fluctuations may significantly affect our operating results in future periods. If we fail to continue to sell to our key OEM customers, distributors or contract manufacturers in sufficient quantities, our business could be harmed.

***We have incurred significant losses in prior periods and may incur losses in the future.***

We have incurred significant losses in prior periods. For example, in fiscal 2003 and 2004, we incurred losses of \$7.4 million and \$670,000, respectively. Although we have operated profitably during the last eight fiscal years, there can be no assurance that our Very Fast SRAMs will continue to receive broad market acceptance or that we will be able to sustain revenue growth or profitability. Our failure to do so may result in additional losses in the future. In addition, we expect our operating expenses to increase as we expand our business. If our revenues do not grow to offset these expected increased expenses, our business will suffer.

***We depend upon the sale of our Very Fast SRAMs for most of our revenues, and a downturn in demand for these products could significantly reduce our revenues and harm our business.***

We derive most of our revenues from the sale of Very Fast SRAMs, and we expect that sales of these products will represent the substantial majority of our revenues for the foreseeable future. Our business depends in large part upon continued demand for our products in the markets we currently serve, and adoption of our products in new markets. Market adoption will be dependent upon our ability to increase customer awareness of the benefits of our products and to prove their high-performance and cost-effectiveness. We may not be able to sustain or increase our revenues from sales of our products, particularly if the networking and telecommunications markets were to experience another significant downturn in the future. Any decrease in revenues from sales of our products could harm our business more than it would if we offered a more diversified line of products.

***We are subject to the highly cyclical nature of the networking and telecommunications markets.***

Our products are incorporated into routers, switches, wireless local area network infrastructure equipment, wireless base stations and network access equipment used in the highly cyclical networking and telecommunications markets. Our operating results declined sharply in fiscal 2002 and 2003 as a result of the severe contraction in demand for networking and telecommunications equipment in which our products are incorporated. Prior to this period of contraction, the networking and telecommunications markets experienced a period of rapid growth, which resulted in a significant increase in demand for our products. We expect that the networking and telecommunications markets will continue to be highly cyclical, characterized by periods of rapid growth and contraction. Our business and our operating results are likely to fluctuate, perhaps quite severely, as a result of this cyclicity.

***We are subject to pending patent infringement litigation.***

In March 2011, Cypress Semiconductor Corporation, a semiconductor manufacturer, filed a lawsuit against us alleging that our products, including our Sigma DDR and Sigma Quad families of Fast SRAMs, infringe five patents held by Cypress. The complaint seeks unspecified damages for past infringement and a permanent injunction against future infringement. On June 10, 2011, Cypress filed a complaint against GSI with the ITC. The ITC complaint, as subsequently amended, alleges infringement by GSI of three of the five patents involved in the District Court case and one additional patent and also alleges infringement by three of our distributors and 11 of our customers who allegedly incorporate our SRAMs in their products. The ITC complaint seeks a limited exclusion order excluding the allegedly infringing SRAMs, and products containing them, from entry into the United States and permanent orders directing GSI and the other proposed respondents to cease and desist from selling or distributing such products in the United States. On July 21, 2011, the ITC formally instituted an investigation in response to Cypress's complaint. Two of the distributor-respondents were subsequently dismissed from the investigation. The District Court case has been stayed pending the conclusion of the ITC proceeding. We believe that we have strong defenses against Cypress's patent infringement claims and intend to defend ourselves vigorously. However, the case is in its preliminary stages, and we cannot predict its outcome with certainty. The litigation process is inherently uncertain, and we may not prevail. Patent litigation is particularly complex and can extend for a protracted period of time, which can substantially increase the cost of such litigation. We have incurred and expect to continue to incur substantial legal fees and expenses in connection with this litigation, and related antitrust litigation that we have commenced against Cypress, and we expect the litigation to divert the efforts and attention of some of our key management and technical personnel. As a result, the litigation, regardless of its eventual outcome, will be costly and time consuming. Should the outcome of the ITC proceeding be adverse to us, we and the other respondents could be prohibited from selling or distributing those of our products found to be infringing Cypress's patents, or end products containing them, in the United States, unless and until we are able to negotiate a license from Cypress. Should the District Court case resume and its outcome be adverse to us, we could be required to pay significant monetary damages to Cypress and could be enjoined from selling those of our products found to infringe Cypress's patents unless and until we are able to negotiate a license from Cypress. Any such license arrangement with Cypress would likely require the payment of royalties which would increase our costs of revenues and reduce our gross profit. If we and the other respondents are prohibited from selling our products, or end-products containing them, in the United States, or if we are required to pay significant monetary damages, are enjoined from selling any of our products or are required to make substantial royalty payments pursuant to any such license arrangement, our business would be significantly harmed.

***The average selling prices of our products are expected to decline, and if we are unable to offset these declines, our operating results will suffer.***

Historically, the average unit selling prices of our products have declined substantially over the lives of the products, and we expect this trend to continue. A reduction in overall average selling prices of our products could result in reduced revenues and lower gross margins. Our ability to increase our net revenues and maintain our gross margins despite a decline in the average selling prices of our products will depend on a variety of factors, including our ability to introduce lower cost versions of our existing products, increase unit sales volumes of these products, and introduce new products with higher prices and greater margins. If we fail to accomplish any of these objectives, our business will suffer. To reduce our costs, we may be required to implement design changes that lower our manufacturing costs, negotiate reduced purchase prices from our independent foundries and our independent assembly and test vendors, and successfully manage our manufacturing and subcontractor relationships. Because we do not operate our own wafer foundry or assembly facilities, we may not be able to reduce our costs as rapidly as companies that operate their own foundries or facilities.

***Current unfavorable economic and market conditions, domestically and internationally, may adversely affect our business, financial condition, results of operations and cash flows.***

We have significant customer sales both in the United States and internationally. We are also reliant upon U.S. and international suppliers, manufacturing partners and distributors. We are therefore susceptible to adverse U.S. and international economic and market conditions, including the challenging economic conditions that have prevailed and continue to prevail in the United States and worldwide. The recent turmoil in the financial markets has resulted in higher borrowing costs and tightened credit markets which have made it more difficult (in some cases, prohibitively so) for many companies to fund their working capital obligations. If any of our manufacturing partners, customers, distributors or suppliers experiences serious financial difficulties or ceases operations, our business could be adversely affected. In addition, the adverse impact of the credit crisis on consumers, including higher unemployment rates, is expected to adversely impact consumer spending, which will adversely impact demand for consumer products such as certain end products in which our SRAMs are embedded. As a result of the difficulty that businesses (including our customers) may have in obtaining credit and the decreased consumer spending that may result from the credit market crisis, high unemployment rates and continued global economic and market turmoil are likely to have an adverse impact on our business, financial condition, results of operations and cash flows.

***We are dependent on a number of single source suppliers, and if we fail to obtain adequate supplies, our business will be harmed and our prospects for growth will be curtailed.***

We currently purchase several key components used in the manufacture of our products from single sources and are dependent upon supply from these sources to meet our needs. If any of these suppliers cannot provide components on a timely basis, at the same price or at all, our ability to manufacture our products will be constrained and our business will suffer. Most significantly, we obtain wafers for our Very Fast SRAM products from a single foundry, TSMC, and most of them are packaged at ASE. Wafers for our LLDRAM products are obtained from Powerchip. If we are unable to obtain an adequate supply of wafers from TSMC or Powerchip or find alternative sources in a timely manner, we will be unable to fulfill our customer orders and our operating results will be harmed. We do not have supply agreements with TSMC, Powerchip, ASE or any of our other independent assembly and test suppliers, and instead obtain manufacturing services and products from these suppliers on a purchase-order basis. Our suppliers, including TSMC, have no obligation to supply products or services to us for any specific product, in any specific quantity, at any specific price or for any specific time period. As a result, the loss or failure to perform by any of these suppliers could adversely affect our business and operating results.

Should any of our single source suppliers experience manufacturing failures or yield shortfalls, be disrupted by natural disaster or political instability, choose to prioritize capacity or inventory for other uses or reduce or eliminate deliveries to us, we likely will not be able to enforce fulfillment of any delivery commitments and we would have to identify and qualify acceptable replacements from alternative sources of supply. In particular, if TSMC or Powerchip is unable to supply us with sufficient quantities of wafers to meet all of our requirements, we would have to allocate our products among our customers, which would constrain our growth and might cause some of them to seek alternative sources of supply. Since the manufacturing of wafers and other components is extremely complex, the process of qualifying new foundries and suppliers is a lengthy process and there is no assurance that we would be able to find and qualify another supplier without materially adversely affecting our business, financial condition and results of operations.

***Because we outsource our wafer manufacturing and independent wafer foundry capacity is limited, we may be required to enter into costly long-term supply arrangements to secure foundry capacity.***

We do not have long-term supply agreements with TSMC or Powerchip, but instead obtain our wafers on a purchase



order basis. In order to secure future wafer supply from TSMC or Powerchip or from other independent foundries, we may be required to enter into various arrangements with them, which could include:

- contracts that commit us to purchase specified quantities of wafers over extended periods;
- investments in and joint ventures with the foundries; or
- non-refundable deposits with or prepayments or loans to foundries in exchange for capacity commitments.

We may not be able to make any of these arrangements in a timely fashion or at all, and these arrangements, if any, may not be on terms favorable to us. Moreover, even if we are able to secure independent foundry capacity, we may be obligated to use all of that capacity or incur penalties. These penalties may be expensive and could harm our financial results.

***If we are unable to offset increased wafer fabrication costs by increasing the average selling prices of our products, our gross margins will suffer.***

If there is a significant upturn in the networking and telecommunications markets that results in increased demand for our products and competing products, the available supply of wafers may be limited. As a result, we could be required to obtain additional manufacturing capacity in order to meet increased demand. Securing additional manufacturing capacity may cause our wafer fabrication costs to increase. If we are unable to offset these increased costs by increasing the average selling prices of our products, our gross margins will decline.

***We rely heavily on distributors and our success depends on our ability to develop and manage our indirect distribution channels.***

A significant percentage of our sales are made to distributors and to contract manufacturers who incorporate our products into end products for OEMs. For example, in the six months ended September 30, 2011 and in fiscal 2011, 2010 and 2009, our distributor Avnet Logistics accounted for 18.7%, 17.0%, 21.7% and 25.3%, respectively, of our net revenues. Avnet Logistics and our other existing distributors may choose to devote greater resources to marketing and supporting the products of other companies. Since we sell through multiple channels and distribution networks, we may have to resolve potential conflicts between these channels. For example, these conflicts may result from the different discount levels offered by multiple channel distributors to their customers or, potentially, from our direct sales force targeting the same equipment manufacturer accounts as our indirect channel distributors. These conflicts may harm our business or reputation.

***We may be unable to accurately predict future sales through our distributors, which could harm our ability to efficiently manage our resources to match market demand.***

Our financial results, quarterly product sales, trends and comparisons are affected by fluctuations in the buying patterns of the OEMs that purchase our products from our distributors. While we attempt to assist our distributors in maintaining targeted stocking levels of our products, we may not consistently be accurate or successful. This process involves the exercise of judgment and use of assumptions as to future uncertainties, including end user demand. Inventory levels of our products held by our distributors may exceed or fall below the levels we consider desirable on a going-forward basis. This could result in distributors returning unsold inventory to us, or in us not having sufficient inventory to meet the demand for our products. If we are not able to accurately predict sales through our distributors or effectively manage our relationships with our distributors, our business and financial results will suffer.

***A small number of customers generally account for a significant portion of our accounts receivable in any period, and if any one of them fails to pay us, our operating results will suffer.***

At September 30, 2011, three customers accounted for 24%, 16% and 13% of our accounts receivable, respectively. If any of these customers do not pay us, our operating results will be harmed. Generally, we do not require collateral from our customers.

***Our acquisition of companies or technologies could prove difficult to integrate, disrupt our business, dilute stockholder value and adversely affect our operating results.***

In August 2009, we consummated the acquisition of substantially all of the assets related to the SRAM memory device product line of Sony Corporation. In the future, we may make additional acquisitions or investments in companies, assets or technologies that we believe are complementary or strategic. Prior to the Sony acquisition, we had not made any such

acquisitions or investments, and therefore our experience as an organization in making such acquisitions and investments is limited. In connection with future acquisitions or investments we may make, we face numerous risks, including:

- difficulties in integrating operations, technologies, products and personnel;
- diversion of financial and managerial resources from existing operations;
- risk of overpaying for or misjudging the strategic fit of an acquired company, asset or technology;
- problems or liabilities stemming from defects of an acquired product or intellectual property litigation that may result from offering the acquired product in our markets;
- challenges in retaining key employees to maximize the value of the acquisition or investment;
- inability to generate sufficient return on investment;
- incurrence of significant one-time write-offs; and
- delays in customer purchases due to uncertainty.

If we proceed with additional acquisitions or investments, we may be required to use a considerable amount of our cash, or to finance the transaction through debt or equity securities offerings, which may decrease our financial liquidity or dilute our stockholders and affect the market price of our stock. As a result, if we fail to properly evaluate and execute acquisitions or investments, our business and prospects may be harmed.

***Claims that we infringe third party intellectual property rights could seriously harm our business and require us to incur significant costs.***

In recent years, there has been significant litigation in the semiconductor industry involving patents and other intellectual property rights. We are currently involved in patent infringement litigation. See "We are subject to pending patent infringement litigation" above. We could become subject to additional claims or litigation in the future as a result of allegations that we infringe others' intellectual property rights or that our use of intellectual property otherwise violates the law. Claims that our products infringe the proprietary rights of others would force us to defend ourselves and possibly our customers, distributors or manufacturers against the alleged infringement. Any such litigation regarding intellectual property could result in substantial costs and diversion of resources and could have a material adverse effect on our business, financial condition and results of operations. Similarly, changing our products or processes to avoid infringing the rights of others may be costly or impractical. If any claims received in the future were to be upheld, the consequences to us would be severe and could require us to:

- stop selling our products that incorporate the challenged intellectual property;
- obtain a license to sell or use the relevant technology, which license may not be available on reasonable terms or at all;
- pay damages; or
- redesign those products that use the disputed technology.

Although patent disputes in the semiconductor industry have often been settled through cross-licensing arrangements, we may not be able in any or every instance to settle an alleged patent infringement claim through a cross-licensing arrangement. We have a more limited patent portfolio than many of our competitors. If a successful claim is made against us or any of our customers and a license is not made available to us on commercially reasonable terms or we are required to pay substantial damages or awards, our business, financial condition and results of operations would be materially adversely affected.

***Our business will suffer if we are unable to protect our intellectual property.***

Our success and ability to compete depends in large part upon protecting our proprietary technology. We rely on a combination of patent, trade secret, copyright and trademark laws and non-disclosure and other contractual agreements to protect our proprietary rights. These agreements and measures may not be sufficient to protect our technology from third-party infringement, or to protect us from the claims of others. Monitoring unauthorized use of our products is difficult and we cannot

be certain that the steps we have taken will prevent unauthorized use of our technology, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States. Our attempts to enforce our intellectual property rights could be time consuming and costly. Litigation may be necessary in order to enforce our intellectual property rights, to protect our trade secrets, to determine the validity and scope of the proprietary rights of others or to defend against claims of infringement. If competitors are able to use our technology without our approval or compensation, our ability to compete effectively could be harmed.

***The market for Very Fast SRAMs is highly competitive.***

The market for Very Fast SRAMs, which are used primarily in networking and telecommunications equipment, is characterized by price erosion, rapid technological change, cyclical market patterns and heightened foreign and domestic competition. Several of our competitors offer a broad array of memory products and have greater financial, technical, marketing, distribution and other resources than we have. Some of our competitors maintain their own semiconductor fabrication facilities, which may provide them with capacity, cost and technical advantages over us. We cannot assure you that we will be able to compete successfully against any of these competitors. Our ability to compete successfully in this market depends on factors both within and outside of our control, including:

- real or perceived imbalances in supply and demand of Very Fast SRAMs;
- the rate at which OEMs incorporate our products into their systems;
- the success of our customers' products;
- our ability to develop and market new products; and
- the supply and cost of wafers.

In addition, we are vulnerable to advances in technology by competitors, including new SRAM architectures and new forms of DRAM, or the emergence of new memory technologies that could enable the development of products that feature higher performance, lower cost or lower power capabilities. Additionally, the trend toward incorporating SRAM into other chips in the networking and telecommunications markets has the potential to reduce future demand for Very Fast SRAM products. There can be no assurance that we will be able to compete successfully in the future. Our failure to compete successfully in these or other areas could harm our business.

***We may experience difficulties in transitioning to smaller geometry process technologies and other more advanced manufacturing process technologies, which may result in reduced manufacturing yields, delays in product deliveries and increased expenses.***

In order to remain competitive, we expect to continue to transition the manufacture of our products to smaller geometry process technologies. This transition will require us to migrate to new manufacturing processes for our products and redesign certain products. The manufacture and design of our products is complex, and we may experience difficulty in transitioning to smaller geometry process technologies or new manufacturing processes. These difficulties could result in reduced manufacturing yields, delays in product deliveries and increased expenses. We are dependent on our relationships with TSMC and Powerchip to transition successfully to smaller geometry process technologies and to more advanced manufacturing processes. We cannot assure you that TSMC or Powerchip will be able to effectively manage the transition or that we will be able to maintain our relationship with them. If we or TSMC or Powerchip experience significant delays in this transition or fail to implement these transitions, our business, financial condition and results of operations could be materially and adversely affected.

***Manufacturing process technologies are subject to rapid change and require significant expenditures for research and development.***

We continuously evaluate the benefits of migrating to smaller geometry process technologies in order to improve performance and reduce costs. Historically, these migrations to new manufacturing processes have resulted in significant initial design and development costs associated with pre-production mask sets for the manufacture of new products with smaller geometry process technologies. For example, in fiscal 2010 and 2011, we incurred \$650,000 and \$727,000, respectively, in research and development expense associated with pre-production mask sets, which were not later used in production as part of the transition to our new 65 nanometer SRAM process technology and 72 nanometer DRAM process technology, respectively. We will incur similar expenses in the future as we continue to transition our products to smaller geometry processes. The

transition costs inherent in the transition to new manufacturing process technologies will adversely affect our operating results and our gross margin.

***Our products are complex to design and manufacture and could contain defects, which could reduce revenues or result in claims against us.***

We develop complex products. Despite testing by us and our OEM customers, design or manufacturing errors may be found in existing or new products. These defects could result in a delay in recognition or loss of revenues, loss of market share or failure to achieve market acceptance. These defects may also cause us to incur significant warranty, support and repair costs, divert the attention of our engineering personnel from our product development efforts, result in a loss of market acceptance of our products and harm our relationships with our OEM customers. Our OEM customers could also seek and obtain damages from us for their losses. A product liability claim brought against us, even if unsuccessful, would likely be time consuming and costly to defend.

Defects in wafers and other components used in our products and arising from the manufacturing of these products may not be fully recoverable from TSMC or other suppliers. For example, in the quarter ended December 31, 2005, we incurred a charge of approximately \$900,000 related to the write-off of inventory resulting from an error in the assembly process at one of our suppliers. This write-off adversely affected our operating results for fiscal 2006.

***Demand for our products may decrease if our OEM customers experience difficulty manufacturing, marketing or selling their products.***

Our products are used as components in our OEM customers' products. For example, Cisco Systems, our largest OEM customer, incorporates our products in a number of its networking routers and switches. Accordingly, demand for our products is subject to factors affecting the ability of our OEM customers to successfully introduce and market their products, including:

- capital spending by telecommunication and network service providers and other end users who purchase our OEM customers' products;
- the competition our OEM customers face, particularly in the networking and telecommunications industries;
- the technical, manufacturing, sales and marketing and management capabilities of our OEM customers;
- the financial and other resources of our OEM customers; and
- the inability of our OEM customers to sell their products if they infringe third-party intellectual property rights.

As a result, if OEM customers reduce their purchases of our products, our business will suffer.

***Downturns in the semiconductor industry may harm our revenues and margins.***

The semiconductor industry is highly cyclical. The industry has experienced significant downturns, often in connection with, or in anticipation of, maturing product cycles of both semiconductor companies' and their customers' products and declines in general economic conditions. These downturns have been characterized by production overcapacity, high inventory levels and accelerated erosion of average selling prices. From time to time, the semiconductor industry also has experienced periods of increased demand and production capacity constraints.

Our operating results may suffer during the down portion of these cycles. Downturns in the semiconductor industry could cause our stock price to be volatile, and a prolonged decline in the industry could adversely affect our revenues. If we are unable to control our expenses adequately in response to reduced net sales, our results of operations would be negatively impacted. For example, the industry downturn in 2001 resulted in a \$3.9 million inventory write-off in fiscal 2002.

***If we do not successfully develop new products to respond to rapid market changes due to changing technology and evolving industry standards, particularly in the networking and telecommunications markets, our business will be harmed.***

If we fail to offer technologically advanced products and respond to technological advances and emerging standards, we may not generate sufficient revenues to offset our development costs and other expenses, which will hurt our business. The development of new or enhanced products is a complex and uncertain process that requires the accurate anticipation of technological and market trends. In particular, the networking and telecommunications markets are rapidly evolving and new

standards are emerging. We are vulnerable to advances in technology by competitors, including new SRAM architectures, new forms of DRAM and the emergence of new memory technologies that could enable the development of products that feature higher performance or lower cost. We may experience development, marketing and other technological difficulties that may delay or limit our ability to respond to technological changes, evolving industry standards, competitive developments or end-user requirements. For example, because we have limited experience developing integrated circuits, or IC, products other than Very Fast SRAMs, our efforts to introduce new products may not be successful and our business may suffer. Other challenges that we face include:

- our products may become obsolete upon the introduction of alternative technologies;
- we may incur substantial costs if we need to modify our products to respond to these alternative technologies;
- we may not have sufficient resources to develop or acquire new technologies or to introduce new products capable of competing with future technologies;
- new products that we develop may not successfully integrate with our end-users' products into which they are incorporated;
- we may be unable to develop new products that incorporate emerging industry standards;
- we may be unable to develop or acquire the rights to use the intellectual property necessary to implement new technologies; and
- when introducing new or enhanced products, we may be unable to manage effectively the transition from older products.

***Our products have lengthy sales cycles that make it difficult to plan our expenses and forecast results.***

Our products are generally incorporated in our OEM customers' products at the design stage. However, their decisions to use our products often require significant expenditures by us without any assurance of success, and often precede volume sales, if any, by a year or more. If an OEM customer decides at the design stage not to incorporate our products into their products, we will not have another opportunity for a design win with respect to that customer's product for many months or years, if at all. Our sales cycle can take up to 24 months to complete, and because of this lengthy sales cycle, we may experience a delay between increasing expenses for research and development and our sales and marketing efforts and the generation of volume production revenues, if any, from these expenditures. Moreover, the value of any design win will largely depend on the commercial success of our OEM customers' products. There can be no assurance that we will continue to achieve design wins or that any design win will result in future revenues.

***Any significant order cancellations or order deferrals could adversely affect our operating results.***

We typically sell products pursuant to purchase orders that customers can generally cancel or defer on short notice without incurring a significant penalty. Any significant cancellations or deferrals in the future could materially and adversely affect our business, financial condition and results of operations. Cancellations or deferrals could cause us to hold excess inventory, which could reduce our profit margins, increase product obsolescence and restrict our ability to fund our operations. We generally recognize revenue upon shipment of products to a customer. If a customer refuses to accept shipped products or does not pay for these products, we could miss future revenue projections or incur significant charges against our income, which could materially and adversely affect our operating results.

***As our business grows, such growth may place a significant strain on our management and operations and, as a result, our business may suffer.***

We plan to continue expanding our business, and our expected growth could place a significant strain on our management systems, infrastructure and other resources. To manage the expected growth of our operations and increases in the number of our personnel, we will need to invest the necessary capital to improve our operational, financial and management controls and our reporting systems and procedures. Our controls, systems and procedures might not be adequate to support a growing public company. In addition, we may not have sufficient administrative staff to support our operations. For example, we currently have only five employees in our finance department in the United States, including our Chief Financial Officer. Furthermore, our officers have limited experience in managing large or rapidly growing businesses and the majority of our management had no previous experience in managing a public company or communicating with securities analysts and public

company investors prior to the initial public offering of our common stock in 2007. If our management fails to respond effectively to changes in our business, our business may suffer.

***Our international business exposes us to additional risks.***

Products shipped to destinations outside of the United States accounted for 78.4%, 70.3%, 68.9% and 61.6% of our net revenues in the six months ended September 30, 2011 and in fiscal 2011, 2010 and 2009, respectively. Moreover, a substantial portion of our products is manufactured and tested in Taiwan. We intend to expand our international business in the future. Conducting business outside of the United States subjects us to additional risks and challenges, including:

- heightened price sensitivity from customers in emerging markets;
- compliance with a wide variety of foreign laws and regulations;
- legal uncertainties regarding taxes, tariffs, quotas, export controls, competition, export licenses and other trade barriers;
- political and economic instability in, or foreign conflicts that involve or affect, the countries of our customers;
- difficulties in collecting accounts receivable and longer accounts receivable payment cycles;
- difficulties in staffing and managing personnel, distributors and representatives;
- limited protection for intellectual property rights in some countries; and
- fluctuations in freight rates and transportation disruptions.

Moreover, our reporting currency is the U.S. dollar. However, a portion of our cost of revenues and our operating expenses is denominated in currencies other than the U.S. dollar, primarily the New Taiwanese dollar. As a result, appreciation or depreciation of other currencies in relation to the U.S. dollar could result in transaction gains or losses that could impact our operating results. We do not currently engage in currency hedging activities to reduce the risk of financial exposure from fluctuations in foreign exchange rates.

***TSMC, our other independent suppliers and many of our OEM customers have operations in the Pacific Rim, an area subject to significant earthquake risk and adverse consequences related to the potential outbreak of contagious diseases such as the H1N1 Flu.***

The foundry that manufactures our Fast SRAM products, TSMC, and all of the principal independent suppliers that assemble and test our products are located in Taiwan. Many of our customers are also located in the Pacific Rim. The risk of an earthquake in these Pacific Rim locations is significant. The occurrence of an earthquake or other natural disaster near the fabrication facilities of TSMC or our other independent suppliers could result in damage, power outages and other disruptions that impair their production and assembly capacity. Any disruption resulting from such events could cause significant delays in the production or shipment of our products until we are able to shift our manufacturing, assembling, packaging or production testing from the affected contractor to another third-party vendor. In such an event, we may not be able to obtain alternate foundry capacity on favorable terms, or at all.

The outbreak of SARS in 2003 curtailed travel to and from certain countries, primarily in the Asia-Pacific region, and limited travel within those countries. If there were to be another outbreak of a contagious disease, such as SARS or the H1N1 Flu, that significantly affected the Asia-Pacific region, the operations of our key suppliers could be disrupted. In addition, our business could be harmed if such an outbreak resulted in travel being restricted, as it was during parts of 2003, or if it adversely affected the operations of our suppliers or our OEM customers or the demand for our products or our OEM customers' products.

***Changes in Taiwan's political, social and economic environment may affect our business performance.***

Because much of the manufacturing and testing of our products is conducted in Taiwan, our business performance may be affected by changes in Taiwan's political, social and economic environment. For example, any political instability resulting from the relationship among the United States, Taiwan and the People's Republic of China could damage our business. Moreover, the role of the Taiwanese government in the Taiwanese economy is significant. Taiwanese policies toward economic

liberalization, and laws and policies affecting technology companies, foreign investment, currency exchange rates, taxes and other matters could change, resulting in greater restrictions on our ability and our suppliers' ability to do business and operate facilities in Taiwan. If any of these changes were to occur, our business could be harmed and our stock price could decline.

***We are substantially dependent on the continued services and performance of our senior management and other key personnel.***

Our future success is substantially dependent on the continued services and continuing contributions of our senior management who must work together effectively in order to design our products, expand our business, increase our revenues and improve our operating results. Members of our senior management team have long-standing and important relationships with our key customers and suppliers. The loss of services of Lee-Lean Shu, our President and Chief Executive Officer, Robert Yau, our Vice President of Engineering, any other executive officer or other key employee could significantly delay or prevent the achievement of our development and strategic objectives. We do not have employment contracts with, nor maintain key person insurance on, any of our executive officers.

***If we are unable to recruit or retain qualified personnel, our business and product development efforts could be harmed.***

We must continue to identify, recruit, hire, train, retain and motivate highly skilled technical, managerial, sales and marketing and administrative personnel. Competition for these individuals is intense, and we may not be able to successfully recruit, assimilate or retain sufficiently qualified personnel. We may encounter difficulties in recruiting and retaining a sufficient number of qualified engineers, which could harm our ability to develop new products and adversely impact our relationships with existing and future end-users at a critical stage of development. The failure to recruit and retain necessary technical, managerial, sales, marketing and administrative personnel could harm our business and our ability to obtain new OEM customers and develop new products.

***We may need to raise additional capital in the future, which may not be available on favorable terms or at all, and which may cause dilution to existing stockholders.***

We may need to seek additional funding in the future. We do not know if we will be able to obtain additional financing on favorable terms, if at all. If we cannot raise funds on acceptable terms, if and when needed, we may not be able to develop or enhance our products, take advantage of future opportunities or respond to competitive pressures or unanticipated requirements, and we may be required to reduce operating costs, which could seriously harm our business. In addition, if we issue equity securities, our stockholders may experience additional dilution or the new equity securities may have rights, preferences or privileges senior to those of our common stock.

***Our products are incorporated into advanced military electronics, and changes in international geopolitical circumstances and domestic budget considerations may hurt our business.***

Some of our products are incorporated into advanced military electronics such as radar and guidance systems. Military expenditures and appropriations for such purchases have risen significantly in recent years. However, should the current conflicts in Iraq and Afghanistan and the general war on terror subside, our operating results would likely suffer. Domestic budget considerations may also adversely affect our operating results. For example, if governmental appropriations for military purchases of electronic devices that include our products are reduced, our revenues will likely decline.

***If we fail to maintain proper and effective internal controls, our ability to produce accurate financial statements could be impaired, which could adversely affect our operating results, our ability to operate our business and investors' views of us.***

Ensuring that we have adequate internal financial and accounting controls and procedures in place so that we can produce accurate financial statements on a timely basis is a costly and time-consuming process. On a continuous basis, we update our internal controls documentation and, where appropriate, improve our internal controls and procedures. Section 404 of the Sarbanes-Oxley Act of 2002 requires annual management assessments of the effectiveness of our internal control over financial reporting and a report by our independent registered public accounting firm addressing the effectiveness of our internal control over financial reporting. Both we and our independent registered public accounting firm test our internal controls and, as part of that documentation and testing process, identify areas for further attention and improvement. Implementing any appropriate changes to our internal controls may entail substantial costs in order to modify our existing financial and accounting systems, take a significant period of time to complete, and distract our officers, directors and employees from the operation of our business. These changes may not, however, be effective in maintaining the adequacy of our internal controls. Any failure to

maintain that adequacy, or a consequent inability to produce accurate financial statements on a timely basis, could increase our operating costs, materially impair our ability to operate our business, and adversely affect our stock price.

***Our operations involve the use of hazardous and toxic materials, and we must comply with environmental laws and regulations, which can be expensive, and may affect our business and operating results.***

We are subject to federal, state and local regulations relating to the use, handling, storage, disposal and human exposure to hazardous and toxic materials. If we were to violate or become liable under environmental laws in the future as a result of our inability to obtain permits, human error, accident, equipment failure or other causes, we could be subject to fines, costs, or civil or criminal sanctions, face property damage or personal injury claims or be required to incur substantial investigation or remediation costs, which could be material, or experience disruptions in our operations, any of which could have a material adverse effect on our business. In addition, environmental laws could become more stringent over time imposing greater compliance costs and increasing risks and penalties associated with violations, which could harm our business.

We also face increasing complexity in our product design as we adjust to new and future requirements relating to the materials composition of our products, including the restrictions on lead and other hazardous substances applicable to specified electronic products placed on the market in the European Union (Restriction on the Use of Hazardous Substances Directive 2002/95/EC, also known as the RoHS Directive). We also expect that our operations will be affected by other new environmental laws and regulations on an ongoing basis. Although we cannot predict the ultimate impact of any such new laws and regulations, they will likely result in additional costs, and could require that we change the design and/or manufacturing of our products, any of which could have a material adverse effect on our business.

***The trading price of our common stock is subject to fluctuation and is likely to be volatile.***

The trading price of our common stock may fluctuate significantly in response to a number of factors, some of which are beyond our control, including:

- actual or anticipated declines in operating results;
- changes in financial estimates or recommendations by securities analysts;
- the institution of legal proceedings against us or adverse developments in such proceedings;
- announcements by us or our competitors of financial results, new products, significant technological innovations, contracts, acquisitions, strategic relationships, joint ventures, capital commitments or other events;
- rapid changes in industry estimates in demand for Very Fast SRAM products;
- the gain or loss of significant orders or customers;
- recruitment or departure of key personnel; and
- market conditions in our industry, the industries of our customers and the economy as a whole.

In recent years the stock market in general, and the market for technology stocks in particular, have experienced extreme price fluctuations, which have often been unrelated to the operating performance of affected companies. The market price of our common stock might experience significant fluctuations in the future, including fluctuations unrelated to our performance. These fluctuations could materially adversely affect our business relationships, our ability to obtain future financing on favorable terms or otherwise harm our business. In addition, in the past, securities class action litigation has often been brought against a company following periods of volatility in the market price of its securities. This risk is especially acute for us because the extreme volatility of market prices of technology companies has resulted in a larger number of securities class action claims against them. Due to the potential volatility of our stock price, we may in the future be the target of similar litigation. Securities litigation could result in substantial costs and divert management's attention and resources. This could harm our business and cause the value of our stock to decline.

***Our executive officers, directors and entities affiliated with them hold a substantial percentage of our common stock.***

As of September 30, 2011, our executive officers, directors and entities affiliated with them beneficially owned approximately 23% of our outstanding common stock. As a result, these stockholders will be able to exercise substantial



influence over, and may be able to effectively control, matters requiring stockholder approval, including the election of directors and approval of significant corporate transactions, which could have the effect of delaying or preventing a third party from acquiring control over or merging with us.

***The provisions of our charter documents might inhibit potential acquisition bids that a stockholder might believe are desirable, and the market price of our common stock could be lower as a result.***

Our Board of Directors has the authority to issue up to 5,000,000 shares of preferred stock. Our Board of Directors can fix the price, rights, preferences, privileges and restrictions of the preferred stock without any further vote or action by our stockholders. The issuance of shares of preferred stock might delay or prevent a change in control transaction. As a result, the market price of our common stock and the voting and other rights of our stockholders might be adversely affected. The issuance of preferred stock might result in the loss of voting control to other stockholders. We have no current plans to issue any shares of preferred stock. Our charter documents also contain other provisions, which might discourage, delay or prevent a merger or acquisition, including:

- our stockholders have no right to remove directors without cause;
- our stockholders have no right to act by written consent;
- our stockholders have no right to call a special meeting of stockholders; and
- stockholders must comply with advance notice requirements to nominate directors or submit proposals for consideration at stockholder meetings.

These provisions could also have the effect of discouraging others from making tender offers for our common stock. As a result, these provisions might prevent the market price of our common stock from increasing substantially in response to actual or rumored takeover attempts. These provisions might also prevent changes in our management.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds****Stock Repurchase Program**

On November 6, 2008, our Board of Directors authorized us to repurchase, at management's discretion, up to \$10 million of our common stock. Under the repurchase program, we may repurchase shares from time to time on the open market or in private transactions. The specific timing and amount of the repurchases will be dependent on market conditions, securities law limitations and other factors. The repurchase program may be suspended or terminated at any time without prior notice. During the quarter ended September 30, 2011, we repurchased 44,699 shares at an average price of \$4.92. Below is a summary of our common stock repurchases during the quarter ended September 30, 2011.

Period	Shares Repurchased	Average Price Per Share	Value of Shares that May Yet Be Repurchased Under the Program
Beginning approximate dollar value available to be repurchased as of June 30, 2011			\$5,852,529
July 1 to July 31, 2011	—	—	5,852,529
August 1 to August 31, 2011	—	—	5,852,529
September 1 to September 31, 2011	44,699	\$4.92	5,632,735
Total shares repurchased	<u>44,699</u>		
Ending approximate dollar value that may be repurchased under the Program as of September 31, 2011			<u>\$5,632,735</u>

**Item 6.Exhibits**

<b>Exhibit Number</b>	<b>Name of Document</b>
10.1(1)	Master Purchase Agreement dated August 31, 2011 between Registrant and Cisco Systems Inc.
10.2(1)	Master Purchase Agreement dated August 31, 2011 between Registrant and Cisco Systems International B.V.
31.1	Certification of Lee-Lean Shu, President and Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of Douglas M. Schirle, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Lee-Lean Shu, President and Chief Executive Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Douglas M. Schirle, Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS(2)	XBRL Instance Document
101.SCH(2)	XBRL Taxonomy Extension Schema Document
101.CAL(2)	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF(2)	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB(2)	XBRL Taxonomy Extension Label Linkbase Document
101.PRE(2)	XBRL Taxonomy Extension Presentation Linkbase Document

(1) Portions of the exhibit, for which confidential treatment has been requested, have been omitted.

(2) XBRL information is furnished and not filed for purposes of Sections 11 and 12 of the Securities Act of 1933 and Section 18 of the Securities Exchange Act of 1934, and is not subject to liability under those sections, is not part of any registration statement or prospectus to which it relates and is not incorporated or deemed to be incorporated by reference into any registration statement, prospectus or other document.



**EXHIBIT INDEX**

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**EXHIBIT 10.1**

**MASTER PURCHASE AGREEMENT**

This Master Purchase Agreement (“Agreement”) is made as of July 18, 2011 (“Effective Date”) between Cisco Systems Inc., a California corporation, having its principal place of business at 170 West Tasman Drive, San Jose, California 95134, on behalf of itself and its Subsidiaries (collectively, “Cisco”), and GSI Technology, Inc., a Delaware corporation having a place of business at 1213 Elko Dr., Sunnyvale, CA 94089 (“Supplier”).

**PRELIMINARY UNDERSTANDING**

- A. Supplier is in the business of developing, manufacturing and selling components that are required to achieve the desired functionality of some of Cisco’s products.
- B. Cisco desires to set forth the terms and conditions under which Cisco and Authorized Purchasers may purchase Products.

NOW, THEREFORE, in consideration of the mutual promises contained herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Definitions.**

“Authorized Purchaser” means an EMS Provider or any other third party designated by Cisco in writing.

“China RoHS” means the regulations entitled “Management Methods for Controlling Pollution by Electronic Information Products” (Ministry of Information Industry Order #39).

“Custom Product” means a Product that Cisco and Supplier have agreed to designate as ‘Liable’ in connection with the price negotiation process and is documented as such in Cisco’s then-current commodity information/attributes database. The parties acknowledge that a Product is generally designated ‘Liable’ when (i) it contains intellectual property of Cisco or a Cisco subsidiary or was designed or produced to meet specific requirements unique to a Cisco product and (ii) Supplier has no alternate redistribution channel.

“Cycle Time to Replenish (“CT2R”)” means the period of time beginning with the receipt of an Order or request for Product(s) through the arrival of such Product(s) at a Hub or such other specified delivery site as Cisco may require. CT2R shall consist solely of: order processing time + process planning time + manufacturing cycle time + transit time to the applicable delivery site, and does not include lead time for raw materials or other Product inputs.

“EMS Provider” means one of Cisco’s authorized contract manufacturers. A current list of such manufacturers is attached hereto as Exhibit A. Cisco may revise such list from time to time upon written

notice to Supplier.

“EU Directives” means, collectively, EU RoHS Directive 2002/95/EC and the EU WEEE Directive 2002/96/EC.

“Hazardous Materials” means materials which are radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment.

“Hub” means a Cisco Lean Hub which may include, but is not limited to, Cisco’s Global Hub and Cisco Memory Hub.

“Hub Order” means an instruction to the Supplier to ship Product to the Hub, either on a single date or multiple pre-scheduled dates. Such instruction shall originate from an EMS Provider or a Cisco Memory Hub Operator pursuant to a valid Lean VMI Agreement or a Lean VMI Agreement for Third Party Hubs (as both are defined below). The instruction may take one of the following forms: discrete zero dollar purchase orders (manual or electronic), electronic data interchange releases against blanket purchase orders, or any other method agreed to between EMS Provider and Supplier or the Cisco Memory Hub Provider and Supplier, as applicable.

“Hub Provider” means any third party providing warehousing services in connection with a Cisco Lean Hub.

“Hub Pull Signal” means an instruction from the EMS Provider to the Hub Provider to ship or deliver Product from the Hub to the EMS Provider.

“Intellectual Property” means any and all: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and maskworks, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

“JIG” means the Joint Industry Guide of the Electronic Industries Alliance.

“Lean Hub Plan” means Cisco’s Global Hub Plan and/or Cisco’s Memory Hub Plan.

“Non-Hub Order” means an instruction from Cisco or the Authorized Purchaser to the Supplier to ship Product directly to Cisco or the Authorized Purchaser. Such instruction may take one of the following forms: discrete purchase orders (manual or electronic), electronic data interchange releases against blanket purchase orders, or any other method agreed to between Authorized Purchaser and Supplier or Cisco and Supplier.

“Order” means a Hub Order and/or a Non-Hub Order.

“Product” means any product (including hardware and software, user documentation (if applicable) and Supplier’s standard packaging) set forth in a list provided by Supplier to Cisco on a quarterly basis which includes the current Products offered for sale by Supplier to Cisco and Authorized Purchasers, and any purchased from Supplier, or an authorized distributor of Supplier by Cisco or on

Cisco's behalf by an Authorized Purchaser.

"Product Price" means the most recent mutually agreed upon price that Cisco (and its Authorized Purchasers) shall pay for a Product, as established via any price negotiation process (including, without limitation, reverse auction, request for pricing, direct negotiation or other process) and contained in Cisco's then-current commodity information database.

"Rolling Forecast" or "Forecast" means a non-binding estimate of Product forecast to be purchased by Cisco and its EMS Providers, as updated periodically.

"Software" means any computer code in object code or executable code format and whether embedded in or bundled with a Product in any manner, including as firmware, separately on disks or other media or by electronic transmission, together with all bug fixes, revisions and upgrades thereto.

"Specifications" means (i) the specifications identified in Supplier's then-current Product data sheet and (ii) any additional specifications agreed to by the parties in writing.

"Standard Product" means a Product that is not a Custom Product.

"Subsidiary" means an entity, excluding, in the case of Cisco, Cisco Systems International B.V., in which a party effectively owns or controls, directly or indirectly, more than fifty percent (50%) of the voting stock or shares.

**2. Cisco Lean Hub Participation.** Supplier shall participate in a Cisco Lean Hub Plan as set forth below.

2.1 Participation in a Cisco Lean Hub program shall include, but not be limited to, execution of and adherence to the terms of a Hub agreement between Supplier and one or more EMS Provider (a "Lean VMI Agreement") in substantially the same form as set forth in Exhibit B (such Lean VMI Agreement attached hereto for purposes of reference only), or an agreement between Supplier and the Hub Operator of a Cisco Memory Hub (a "Lean VMI Agreement For Third Party Hubs"), as applicable.

2.2 No Product Price shall be increased and no other cost shall be imposed upon Cisco or any EMS Provider arising from or related in any way to Supplier's participation in the Hubs.

2.3 Supplier shall (i) utilize Cisco approved transporters of all Products into and from any Hub, and (ii) establish with Cisco, at least quarterly, the applicable CT2R(s) for each Product and/or location to be shipped.

2.4 Supplier shall provide to Cisco and its EMS Providers visibility to inventory volumes, shipment information and location of Products en route to, within, and transferred from the Hubs whether via electronic data interchange or other Cisco-approved method.

2.5 Cisco shall have no liability for any Orders placed by the EMS Providers, including any Products placed in the Hub.

2.6 The terms of this Agreement that relate to Supplier's participation in a Cisco Lean Hub shall only become effective with respect to (i) those EMS Providers that have entered into a Lean VMI Agreement with the Supplier, and (ii) a Cisco Memory Hub Provider that has entered into a Lean VMI Agreement for Third Party Hubs with Supplier. Until such time as a Lean VMI Agreement or Lean VMI



Agreement for Third Party Hubs, as applicable, has been executed, the other terms of this Agreement, without the Cisco Lean Hub terms, shall remain in full force and effect.

### **3. Sales to Authorized Purchasers.**

3.1 Supply of Product. Supplier agrees to supply Products pursuant to the terms and conditions of this Agreement. Supplier shall sell Product to Cisco or its Authorized Purchasers solely for purposes of allowing Cisco or its Authorized Purchasers to incorporate such Product into (or bundle such Product with) Cisco's products. Supplier shall manage all aspects of delivery and fulfillment of Products to Authorized Purchasers and/or to a Hub. Notwithstanding anything to the contrary in this Agreement, an Authorized Purchaser may not purchase Product from Supplier under this Agreement for any other customer of such Authorized Purchaser or for any other purpose.

3.2 Limitations. The Parties acknowledge that Supplier and Cisco Systems International B.V. ("Cisco BV") have entered into a purchase agreement (the "Cisco BV Agreement") substantially similar to this Agreement governing the purchase of products from Supplier by Cisco BV and contract manufacturers identified in the Cisco BV Agreement. Supplier acknowledges that (i) Cisco Authorized Purchasers' purchases of Products under this Agreement will be made solely for the purpose of incorporating such Products into or bundling such Products with products ultimately made for Cisco and (ii) Cisco Authorized Purchasers' purchases under the Cisco BV Agreement will be made solely for the purpose of incorporating such purchased property into or bundling such purchased property with products ultimately made for Cisco BV.

3.3 Application of certain sections to Authorized Purchasers. The following sections of this Agreement shall apply to purchases by Authorized Purchasers of Product for inclusion in Cisco products (collectively, the "Authorized Purchaser Required Sections"): Sections 2 (Cisco Lean Hub Participation), 3.1 (Supply of Product), 4 (Orders), 5 (Product Pricing and Payment), 6 (Delivery and Acceptance), 7 (Flexibility), 8 (Late Deliveries), 9 (Reschedules and Cancellations), 10 (Shipping Documents, Packaging and Markings), 11.2 (Allocation of Products During Shortages), 12 (Quality and Testing), 13 (Product Changes and Discontinuation), 14 (Software), 15 (Failure Analysis and Support), 16 (Warranties), 20 (Compliance with Laws) and 24 (Scrap and Supply Chain Visibility). Notwithstanding anything to the contrary in this Agreement or any non-disclosure agreement executed by the parties, Cisco may disclose the Authorized Purchaser Required Sections to its Authorized Purchasers and the Hub Provider(s) solely for their use in purchasing Product to be included in (or bundled with) Cisco products or providing Hub services, respectively, so long as Cisco has confidentiality agreements with such Authorized Purchasers and Hub Provider(s) that protects such information. Cisco shall disclose the Authorized Purchaser Required Sections to its Authorized Purchasers in the format attached hereto and incorporated herein as Exhibit C. Supplier shall ensure that the Authorized Purchaser Required Sections shall be adhered to with and provided to Cisco Authorized Purchasers in the course of their purchase of Products for inclusion in Cisco products. If Supplier provides terms to any Authorized Purchaser more favorable to such Authorized Purchaser than those in the Authorized Purchaser Required Sections, Supplier shall provide such terms to Cisco. With respect to Product ordered by any Authorized Purchaser, Supplier shall invoice such Authorized Purchaser directly, and Cisco shall have no liability for any such order. Supplier shall be entitled to refuse to sell Products to any Authorized Purchaser with reference to this Agreement if (a)(i) such Authorized Purchaser has failed to pay Supplier amounts due Supplier, and (ii) such non-payment remains outstanding despite Supplier's diligent resolution efforts, and (iii) Supplier has notified Cisco in writing and has afforded to Cisco a reasonable period of time, but in no event less than ten (10) business days, in which to intervene and resolve such non-payment by Authorized Purchaser, or (b) for any other bona fide reason, as mutually determined and agreed by both Supplier and Cisco. Upon subsequent resolution of any such non-payment by a Cisco Authorized Purchaser as presented in (a), or upon Supplier's and Cisco's mutual agreement to resume shipment to such Authorized Purchaser as presented in (b) above, Supplier's obligations hereunder shall resume immediately. For purposes of volume pricing or other terms or conditions dependent on volume, all purchases of Products by Cisco, its subsidiaries and its Authorized Purchasers (incident to providing manufacturing services to Cisco) under this Agreement and the Cisco BV Agreement shall be aggregated for the benefit of Cisco and each Cisco Authorized Purchaser. Supplier agrees that any Cisco Authorized Purchaser may enforce the Authorized Purchaser Required Sections, notwithstanding the fact that Orders for the Products may issue from another Cisco Authorized Purchaser or Cisco; however, if any Authorized Purchaser makes a claim to Supplier

regarding any Product, Supplier may request that Cisco, Supplier and the applicable Authorized Purchaser meet to determine if the claim should be made directly by Cisco or the original Authorized Purchaser.

3.4 Enforcement of Terms. Supplier agrees that Cisco may, at its discretion, enforce all terms under this Agreement directly, notwithstanding the fact that Orders for the Products may issue from Cisco Authorized Purchasers.

4. Orders. Supplier shall accept and acknowledge in writing or electronically all Orders within one (1) business day after receipt thereof and identify a firm date for delivery of the Products at or within CT2R; provided, however, that Supplier shall not be liable for delays in transit time or delivery that are beyond the reasonable control of Supplier. Orders placed at the CT2R for a Product which are not acknowledged by Supplier within three (3) business days of receipt are deemed accepted; however, if during a particular Cisco fiscal calendar quarter, Supplier receives an Order for Product that was not part of a Cisco award of product during that quarter, Supplier reserves the right to discuss and, if necessary, modify the applicable CT2R for that Product. Cisco shall not be liable for any verbal commitments. If Supplier cannot meet the identified delivery date, and Cisco wishes to purchase the Products from one of Supplier's distributors, Supplier will make reasonable commercial efforts to extend to such distributor a price which would enable the distributor to sell Products to Cisco at the Product Price. All Orders placed with Supplier by Cisco directly shall be subject to the terms and conditions of this Agreement without specific reference hereto.

## 5. Product Pricing and Payment

5.1 Product Pricing. Supplier shall sell the Products to Cisco and the Authorized Purchasers at the Product Price for each respective Product. Product prices are in U.S. dollars. Supplier shall not increase the Product Price or impose any additional costs on Cisco or any Authorized Purchaser arising from or related in any way to Supplier's participation in the Cisco Lean Hub plan. Supplier shall consider in good faith Cisco's quarterly cost reduction targets. Supplier will extend to Cisco and its Authorized Purchasers all reductions in Product Price for any Orders placed but not yet shipped to Cisco or its Authorized Purchasers (including pursuant to a Hub Pull Signal) as of the effective date of the reduction. Supplier represents and warrants that the Product Prices are, and shall be throughout the Term, no higher than the lowest prices normally offered by Supplier to any similarly situated customer purchasing the same or lesser total aggregate dollar or unit volume of the same Product under similar terms and conditions, on a quarterly basis.

5.2 Payment by Cisco. For Non-Hub Orders, Supplier will invoice Cisco (or its Authorized Purchaser in the case of purchases by an Authorized Purchaser) for the Product Price of the Products on or after the applicable shipment date for the Products covered by such invoice. Each shipment will be invoiced and paid for when due without regard to other scheduled deliveries. All invoices for Products ordered pursuant to a Non-Hub Order will be due and payable no later than thirty (30) days after the date of the invoice.

5.3 Taxes. Each party shall bear any and all taxes it incurs as a direct or indirect result of entering into this Agreement, unless the parties have agreed otherwise. If sales/use tax, VAT, GST, or similar indirect tax (collectively the "Applicable Tax") is payable as a consequence of any supply made or deemed to be made in connection with this Agreement, Cisco or its Authorized Purchaser shall pay to Supplier the Applicable Tax amount upon receiving a tax invoice complying with any legislation under which the Applicable Tax is imposed. Any Applicable Tax shall appear as separate additional items on the invoice from Supplier.

## **6. Delivery and Acceptance.**

6.1 **Delivery.** Supplier shall deliver the Products to the agreed ship-to location on the agreed delivery date using Cisco approved carriers.

For Non-Hub Orders, delivery terms shall be FCA Supplier's shipping point, freight collect, per Incoterms 2000. The carrier will be selected by Supplier in the absence of specific instructions by Cisco or the Authorized Purchaser.

For Hub Orders, Supplier shall retain title and risk of loss for the Products during transit to the Hub and while stored at the Hub and until the Products have been loaded on the carrier's means of transport at the Hub for delivery to the EMS Provider. Charges incurred prior to delivery of the Products to the carrier for shipment to the Hub will be paid by Supplier. Freight charges to deliver the Products to the Hub, will be paid by Cisco; however, customs clearance charges will be paid by Supplier. Notwithstanding the fact that Supplier may not have responsibility to pay for these transit charges, Supplier shall retain the responsibility to maintain insurance on the Products during transit and while the Products remain in the Hub, consistent with Supplier's risk of loss for the Products.

6.2 **Acceptance.** Products ordered pursuant to a Non-Hub Order shall be deemed accepted by Cisco or its Authorized Purchaser, as applicable, unless notice of defect is received within ten (10) days of Cisco or Authorized Purchaser's receipt thereof and the Product is returned to Supplier within twenty (20) days of receipt. Only such Products that, upon receipt, are determined to be damaged or fail to conform to the Specifications ("DOAs") may be rejected. In the event of discovery of a DOA Product, Supplier's entire liability, and Cisco or its Authorized Purchaser's sole remedy shall be to exchange such Product for another of the same type. However, in no event shall this Section be construed as modifying or otherwise limiting Supplier's obligations under Sections 15, 16, 17, or 18.

7. **Flexibility.** Supplier will ensure that it can increase or decrease production of Products in all market conditions, using the amount of any Product for week 10 of the previous fiscal quarter's Rolling Forecast as a baseline from which to increase or decrease production ("Baseline"), as follows:

- Increase or decrease of [\*\*\*\*] of Baseline if the increase or decrease is to be implemented within four (4) weeks;
- Increase or decrease of an additional [\*\*\*\*] of Baseline (i.e., [\*\*\*\*] in aggregate) if the increase or decrease is to be implemented between four (4) weeks and eight (8) weeks.

Supplier shall bear all reasonable costs incurred to meet Baseline increases or decreases, unless the parties otherwise agree in writing. Notwithstanding the above, this Section shall not apply to the extent Supplier is fully participating in a Cisco Lean Hub Plan pursuant to a valid Lean VMI Agreement or Lean VMI Agreement for Third Party Hubs, as applicable, and is shipping Product to such Hub. For example, Supplier shall only be relieved of the flexibility requirements for those Products and those Hubs that are operating under a valid Lean VMI or Lean VMI Agreement for Third Party Hubs, as applicable.

8. **Late Deliveries.** Supplier shall notify Cisco and any affected Cisco Authorized Purchasers promptly if Supplier reasonably anticipates that delivery consistent with CT2R may be delayed. In the event that delivery is delayed for more than [\*\*\*\*] business days for reasons caused in whole or in substantial part by Supplier and the parties cannot reasonably agree on a new delivery date, Cisco or its Authorized Purchaser may reschedule or cancel the affected Order(s) without penalty and Supplier shall not be liable to Cisco or any Authorized Purchaser for any monetary damages resulting from such delay,

reschedule or cancellation, or assume any liability in connection with the shipment, nor shall the carrier be deemed an agent of Supplier.

**9. Reschedules, Reconfigurations and Cancellations.** At any time more than [\*\*\*\*] days prior to the originally scheduled delivery date, Cisco or its Authorized Purchaser may cancel, reschedule or reconfigure an Order in whole or in part provided that the Order had not previously been designated by the parties as NCNR, as defined below. To cancel, reschedule and/or reconfigure a shipment or a particular pending purchase, Cisco or its Authorized Purchaser shall provide written notification to Supplier at least [\*\*\*\*] days prior to the scheduled delivery date. If modified, the new delivery date shall be within [\*\*\*\*] days from the original scheduled delivery date. An order may only be re-configured or rescheduled once. No Order that has been mutually agreed by Cisco and Supplier in writing to be non-cancelable or non-returnable (“NCNR”) may be cancelled, rescheduled, reconfigured or returned. Except for a cancellation related to a late delivery as set forth in Section 8, or related to Cisco’s termination as a result of Supplier’s material breach as set forth in Section 23.2, Cisco may not cancel, reschedule or reconfigure an order within [\*\*\*\*] days of a scheduled deliver date.

**10. Shipping Documents, Packaging and Markings.** Supplier will ship Product with accurate shipping documents including (i) commercial invoice, packing list and applicable export and transportation documents and declarations; (ii) an itemized packing list bearing the purchase order number, the description, part number and quantity of each Product shipped, the number of shipping containers in the delivery and the waybill or bill of lading number, and (iii) external packaging labeling conforming to such labeling specifications as Cisco may provide from time to time. Supplier will package Products in accordance with good commercial practice, and in a manner acceptable to common carriers for shipment and adequate to ensure undamaged arrival of the Products. Supplier will mark all containers with necessary information (i.e. lifting, handling and shipping information, country of origin, purchase order numbers, date of shipment and the names of the consignee and consignor, etc.) and any other markings that may be required by applicable law.

### **11. Disaster Recovery and Allocation during Shortages.**

11.1 Disaster Recovery and Business Continuity. Within [\*\*\*\*] days following a request by Cisco and receipt of Cisco’s disaster recovery and business continuity questionnaire, Supplier shall submit to Cisco the completed disaster recovery and business continuity questionnaire for the location(s) upon which Supplier relies to provide the Products (“Business Continuity Plan Response” or “BCP Response”). Such Business Continuity Plan Response shall respond to the disaster recovery and business continuity questions of Cisco in the questionnaire, which may include questions about primary site locations, available alternate facilities, time to recover (in weeks), emergency contacts, infrastructure and logistics and any security and protective measures necessary within commercial reasonability to ensure minimal impact to Cisco’s supply of Products. Cisco may request that Supplier complete the questionnaire on a periodic basis, but no more frequent than biannually. An updated BCP Response provided by Supplier will supersede the prior BCP Response. Cisco’s internal auditors, or an independent third party selected by Cisco, may conduct an inspection of Supplier’s facilities for business continuity risks in accordance with the process set forth in Section 25.

11.2 Allocation of Product during Shortages. In the event of a shortage of any Product included on the Rolling Forecast, Supplier shall notify Cisco and shall provide Cisco and its Authorized Purchasers an allocation of such Product during such shortage that is no less favorable than that provided to any other similarly situated customer, whether internal or external.

**12. Quality and Testing.** Supplier shall adhere to such quality and qualification requirements as may be specified by Cisco in writing from time to time and agreed to by Supplier. Supplier shall test Product prior to shipment to ensure Product is in compliance with Specifications.

**13. Product Changes and Discontinuation.**

13.1 Product Change Notices. Supplier shall not change any Specification, process characteristic, or the form, fit or function of any Product except in accordance with the Product Change Notification (“PCN”) terms set out and referenced in Exhibit D.

13.2 Minimum Manufacturing Period. Except for those Products identified in Exhibit E, Supplier shall manufacture each Product for a minimum of [\*\*\*\*] from Cisco’s first customer ship (“FCS”) of a product containing such Product (the “Minimum Manufacturing Period”), unless (i) Cisco terminates this Agreement under Section 23; (ii) Supplier terminates this Agreement under Section 23; (iii) there has been no demand by Cisco for a particular Product for [\*\*\*\*], at which time Supplier may provide notice to Cisco of the discontinuance of the Products as called for in Section 13.4.1. It is understood that Supplier is able to meet this requirement through the use of die revisions.

13.3 Failure to Meet Minimum Manufacturing Period. If Supplier fails to meet its obligations under Section 13.2, Supplier shall, at Cisco’s option, either (i) compensate Cisco for all reasonable direct costs Cisco incurs in the transition to an alternate manufacturer/seller or replacement product or (ii) buffer and manage, at Supplier’s expense, an amount of Product to be forecasted by Cisco for the remainder of the Minimum Manufacturing Period. If any buffered Product built per (ii) above remain at the expiration of the Minimum Manufacturing Period, the parties shall mutually determine how such Product will be disposed of, including Cisco’s payment therefor.

13.4 Product End of Life

13.4.1. EOL Notice and EOL Purchases. If Supplier determines to cease the manufacture or sale of any Product (an “End of Life” or “EOL”), Supplier shall provide at least [\*\*\*\*] prior written notice (the “EOL Notice Period”) in accordance with Cisco’s PCN process set forth in Exhibit D. Cisco may place Orders during the EOL Notice Period and Supplier will use best efforts to accept them, subject to Supplier’s manufacturing and supply constraints. Cisco shall take delivery on a date no later than [\*\*\*\*] after the end of the EOL Notice Period. If Supplier accepts a purchase order from a third party after the EOL Notice Period has run, it shall notify Cisco and offer the same opportunity for Product purchase to Cisco as set forth in such purchase order.

13.4.2. Alternative Source; EOL Support. If requested, Supplier shall assist Cisco in identifying alternative products or sources. Supplier shall continue to provide support pursuant to Section 15 for each Product that is the subject of an EOL notice.

**14. Software.** The parties acknowledge that no Software will be provided by Supplier pursuant to this Agreement.

**15. Failure Analysis and Support.** Supplier will make available the following services for a period of at least [\*\*\*\*] years from the date of last Product shipment by Supplier:

15.1 Failure Analysis. Supplier will provide failure analysis as set out in Exhibit F hereto; and

15.2 Technical Support. Upon request, Supplier will provide in electronic or other acceptable form, all bug notes or other documentation regarding verified Product problems, including accurate records of any known or suspected defects. This information is the Confidential Information of Supplier. Supplier will provide this information and any corrective action at no charge during the term of this Agreement; and

15.3 Emergency Replacement. Supplier shall ship Product within twenty-four (24) hours of any Cisco request for emergency replacement. If no replacement is available, Supplier will provide replacement Product as soon as reasonably practicable and will notify Cisco of the estimated delivery date. Emergency replacements may not be available for EOL'd Products.

## **16. Warranties.**

16.1 Product Warranty. The warranty period for each Product shall be three (3) years beginning on the date that Cisco or the Authorized Purchaser or the Hub receives the Product (the "Warranty Period") unless a longer period is agreed to in writing between the parties. Supplier represents and warrants that, when sold, all Products will be new and unused and, during the applicable Warranty Period (i) will comply in all respects with the Specifications, (ii) will be free from defects in materials, design and workmanship, and (iii) each Product, when delivered, shall have no less than [\*\*\*\*] remaining weeks of shelf-life. Cisco shall notify Supplier of any nonconformance during the Warranty Period, obtain a return materials authorization ("RMA") from Supplier, and return the nonconforming Product to Supplier's designated repair facility, with a statement describing the nonconformity. Warranty claims not made during the Warranty Period are waived. For valid warranty claims, Supplier will, at its expense, either provide a credit or refund to Cisco or repair or replace all Products not conforming to the requirements of this Section with repaired or new and unused Products shipped to a location designated by Cisco within [\*\*\*\*] or as soon as commercially practicable after receipt of the defective Product. Supplier may select the applicable warranty option; however, the parties acknowledge that replacement may not be a viable option for EOL'd Products, and that the decision to either provide a credit or refund will be mutually determined by the parties. Supplier reserves the right to charge additional fees for repairs or replacements performed outside the Warranty Period for the Product. The foregoing is the sole and exclusive remedy for breach of warranty by Supplier with respect to the Products.

16.2 Limitations on Warranty. The warranties set forth in section 16.1 shall not apply to any Product which has been, following receipt by Cisco and/or an Authorized Purchaser, (a) subjected to accident, abuse, misuse, neglect or operating or environmental conditions that deviate from the parameters established in the Specifications or (b) improperly installed, packaged, tested or altered by anyone other than Supplier.

16.3. Disclaimer of Warranties. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY SUPPLIER IN CONNECTION WITH THE PRODUCTS AND SUPPLIER DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THE THIRD PARTY RIGHTS UNDER THE UCC.**

## **17. Epidemic Failure.**

17.1 Definition and Process. In the event that, during the [\*\*\*\*] period after delivery of a Product, a substantially similar repetitive root cause, failure mode or defect occurs in such Product

indicating a common or systemic failure (an “Epidemic Failure”), the terms set forth in this Article 17 shall apply. The parties agree that no defect will constitute an Epidemic Failure unless, at a minimum, such defect would have been covered by Supplier’s Product warranty as set forth in Section 16.1 if it had occurred during the Warranty Period.

- (i) The party that discovers the failure will notify the other promptly; provided, however, that in the event Supplier discovers a failure that creates a risk of injury or death, Supplier will immediately notify Cisco and will also provide Cisco with written notice within twelve (12) hours of any notification made by Supplier to any governmental body responsible for regulation of product safety;
- (ii) Supplier shall provide to Cisco a preliminary plan for problem diagnosis within one (1) business day of the notification, which plan Supplier will revise on Cisco’s request;
- (iii) Supplier and Cisco will use commercially reasonable efforts to diagnose the problem, plan an initial work-around and effect a permanent solution; and
- (iv) Supplier and Cisco will mutually agree on a plan for customer notification, replacement scheduling and remediation, which may include field removal, return and reinstallation, work in process (“WIP”), inventory replacement, and repair, or retrofitting, regardless of location or status of WIP completion.

Notwithstanding the foregoing Cisco may undertake any and all action necessary independently of Supplier.

**17.2 Costs of Epidemic Failure.** Subject to the limitations set forth in Section 21.1, Supplier will compensate Cisco for all commercially reasonable, direct costs incurred by Cisco or its Authorized Purchasers in rectifying any Epidemic Failure. The parties acknowledge and agree that such commercially reasonable direct costs shall include: (a) the cost of replacement Products and repair materials, (b) the costs relating to communications to Cisco customers and channels of distribution regarding the Epidemic Failure, its effect and the corrective/remediation process; (c) the cost of returning affected Products, (d) labor and travel costs relating to removing or repairing the affected Products and installing replacement Products into the applicable Cisco products wherever located, but only where the parties agree that the Cisco customer should not remove the affected Product and install the replacement, (e) the cost of shipping replacement Products, and (f) costs incurred by Cisco and its Authorized Purchasers for retooling, remanufacturing, retesting or recalibration as a result of such Epidemic Failure. In addition, if any Epidemic Failure causes a subassembly which contains the Product to be rendered unusable, then Supplier will compensate Cisco for the costs in replacing, returning or repairing such subassembly, including any costs incurred in shipping a replacement subassembly. The parties agree that after the liability cap set forth in Section 21.1 has been reached for any Epidemic Failure, they will meet to negotiate in good faith an appropriate possible allocation for any costs in excess of such cap.

## **18. Indemnification.**

18.1 **Supplier’s Indemnification.** Supplier will defend each of Cisco and its officers, directors, employees, successors and assigns (collectively the “Indemnified Parties”) from and against all claims, suits, demands and actions brought or made by third parties against the Indemnified Parties or tendered to the Indemnified Parties for defense and/or indemnification (collectively “Claims”), and shall indemnify and hold harmless the Indemnified Parties from and against all damages, losses, costs, and liabilities including reasonable attorney and professional fees (collectively “Losses”) as incurred that result or arise from Claims, directly or indirectly that: (i) allege that one or more Products, or any part thereof, or their

manufacture, use, import, support, sale or distribution infringe, misappropriate, or violate any Intellectual Property rights of any third party; or (ii) allege that one or more Products, or any part thereof, have caused bodily injury (including death) or physical damage to tangible property. In addition, Supplier will pay all amounts agreed to in a monetary settlement of the Claims that are agreed to by Supplier in settlement.

18.2 Continued Use. Upon the assertion of a Claim under Section 18.1(i) deemed valid by Cisco in its sole discretion, such discretion exercised in good faith and following a good faith discussion with Supplier regarding the Claim, Cisco may request, and Supplier shall, at Supplier's sole expense use all diligent commercial efforts to either: (i) obtain a license that allows the continued use, manufacture, import, support, sale and distribution of the Products, or (ii) replace or modify the Products so as to be non-infringing. In the event that Supplier cannot achieve either (i) or (ii) above, or neither are commercially feasible after all diligent efforts have been expended by Supplier, Supplier shall refund to Cisco the price of any affected Products that are, or may reasonably be, subject to an injunction or other order prohibiting their continued use, manufacture, import, support, sale or distribution, and which are returned to Supplier, including the costs for such return. The obligations of Supplier under this Section 18.2 shall be in addition to its obligations of indemnity under this Section 18.

18.3 Notification and Control. Cisco will promptly notify Supplier, in writing, of any Claim for which Cisco seeks indemnification (provided that Cisco's failure to provide such notice will relieve Supplier of its obligations only to the extent that such failure prejudices Supplier's ability to defend the Claim). Supplier shall have sole control of the Claim, its defense and all negotiations for its settlement or compromise and shall exercise such control in good faith. Supplier shall use counsel reasonably acceptable to the Indemnified Parties. The Indemnified Parties may employ counsel at its own expense (provided that if counsel is employed due to a conflict of interest or because Supplier does not assume control, then Supplier will bear such expense). Supplier shall have no liability for any costs, losses or damages resulting from any settlement or compromise made by the Indemnified Parties without Supplier's prior written consent. Supplier shall not settle any Claim in a manner that admits fault or establishes liability on the part of the Indemnified Parties without the Indemnifying Party's prior written consent, which consent may be withheld for any reason. If the Claim is one of multiple claims in a lawsuit against an Indemnified Party or tendered to an Indemnified Party, some of which claims may not be subject to the indemnity obligation under this Section 18, then Supplier and the Indemnified Parties shall cooperate in good faith in determining the appropriate roles and responsibilities in the defense, settlement, adjustment or compromise of the claims; provided that Supplier shall not be relieved of its obligations hereunder with respect to any Losses (but not attorneys' fees related to those claims not subject to the indemnity obligations under this Section 18) and shall remain liable for its proportionate share of the Losses (less those attorneys' fees related to those claims not subject to the indemnity obligations under this Section 18) relating to the Claim(s).

18.4 Exceptions to Supplier's Indemnity. Supplier shall have no obligation under Section 18.1 to the extent any claim of infringement is caused by (i) use of the Product in combination with any other products not intended by or provided by Supplier if the infringement would not have occurred but for such combination (except to the extent (a) where the sale or use of the Product would constitute contributory infringement by Supplier; (b) the combination is pursuant to Supplier's information and instructions applicable to the Product, or (c) there is no commercially reasonable non-infringing use for the Product other than in such combination); (ii) any alteration or modification of the Product not undertaken or authorized by Supplier, if the infringement would not have occurred but for such alteration or modification (the parties agree that incorporation of the Product into a Cisco product shall not be an alteration or modification of the Product); (iii) Supplier's compliance with Cisco's unique written specifications if the infringement would not have occurred but for such unique written specifications



excepting any implementation thereof by Supplier; or (iv) Cisco's failure to comply with written instructions provided by Supplier identified by Supplier as necessary to render the Product non-infringing and which would have rendered the Product non-infringing, provided that a reasonable time period is given to Cisco to enable it to implement the written instructions and that Supplier remains obligated under Section 18.1 with respect to any infringement occurring up to the end of such time period.

18.5 Application to Authorized Purchaser Purchases. The obligations of this Article 18 shall apply as between Cisco and Supplier irrespective of whether the Products at issue were purchased directly by Cisco or by a Cisco Authorized Purchaser as contemplated in Section 3.3 (Application of certain sections to Authorized Purchasers) above.

18.6 No Implied Indemnity. The foregoing states the entire liability of Supplier for patent, copyright, trademark or other intellectual property rights infringement by any Product furnished under this Agreement. There are no implied indemnities.

19. Confidentiality. The parties shall treat the terms and conditions of this Agreement as Confidential Information (as defined in the NDA referenced below) of Cisco and Supplier. Upon execution hereof, the parties shall comply with the provisions of the Master Mutual Non-Disclosure Agreement (with Supplements) executed by Supplier and Cisco Systems, Inc. on December 16, 2002 (the "NDA"). Notwithstanding the foregoing, Supplier authorizes Cisco to disclose Supplier's Confidential Information and this Agreement in confidence on a need to know basis to Cisco Authorized Purchasers and other third parties involved in the manufacture of Cisco's products.

## **20. Compliance With Laws; Social Responsibility; Use in Life Support Applications.**

20.1 General Compliance with Laws. Supplier represents and warrants that it has complied and shall comply with all applicable laws, regulations and other governmental requirements in effect at the time of manufacture of each of the Products. Supplier shall comply with Cisco's materials content requirements as provided to Supplier from time to time, and reviewed and agreed to by Supplier, and shall undertake testing sufficient to validate compliance with such requirements. Supplier agrees at all times to act consistently with Cisco's global anti-corruption policy posted at [http://www.cisco.com/legal/anti\\_corruption.html](http://www.cisco.com/legal/anti_corruption.html).

20.2 Compliance with Certain Environmental Laws. Supplier shall also adhere to the following:

(i) The Products and the processes used to produce and/or manufacture such Products shall comply with all applicable laws, regulations and ordinances which regulate use of Hazardous Materials or which impact, in whole or in part, a Product's sale or placement into commerce by or on behalf of Cisco or Cisco Authorized Purchasers. Such laws, regulations and ordinances include but are not limited to, the EU RoHS Directives, China RoHS, those regulations listed in the then-current JIG and similar laws, rules, statutes, treaties or orders; and

(ii) The Products shall not contain substances which are above the threshold levels established in Annex A of the then-current JIG; provided, however, that for Level A Substances, the mercury threshold shall be reduced to 1000 ppm. Use of materials containing any such substance in an amount exceeding the JIG Annex A threshold levels may be used only if and in the manner specified in advance written approval by Cisco.

20.3 Social Responsibility. To the extent applicable and commercially practicable and consistent with Supplier's business practices, Supplier shall diligently pursue effecting its operations and

performance hereunder in accordance with Cisco's Manufacturing Supplier Code of Conduct as published at Cisco.com and updated from time to time. Supplier shall promote Cisco's supplier diversity goals by including suppliers, where warranted, that qualify as diverse suppliers in any one or more of the categories identified on Cisco's Supplier Diversity Business Development Website [www.cisco.com/supplier/diversity](http://www.cisco.com/supplier/diversity) and as further defined at: <http://www.cisco.com/supplier/diversity/definitions.shtml>. Upon Cisco's request, Supplier shall provide to Cisco reports of Supplier's expenditures with such diverse suppliers.

20.4 **Life Support Applications.** The Products are not designed for use in life support appliances or devices implanted in the human body or other similar direct life support machines, commercial aviation, nuclear facilities or systems or any other applications where malfunctions of the Product can reasonably be expected to result directly in death or personal injury to human beings or catastrophic property damage or any other ultrahazardous use. Cisco or its customers using or selling the Products for use in life support and such other applications do so at their own risk.

## **21. LIMITATION OF LIABILITY.**

21.1 **Consequential Damages Waiver.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR THOSE DAMAGES ENUMERATED IN SECTION 17 (EPIDEMIC FAILURE) AND FOR SUPPLIER'S OBLIGATIONS IN SECTION 18 (INDEMNIFICATION), AND FOR BREACH OF A PARTY'S OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 19, UNDER NO CIRCUMSTANCES WILL ANY PARTY, ITS EMPLOYEES, OFFICERS OR DIRECTORS, AGENTS, SUCCESSORS OR ASSIGNS BE LIABLE UNDER ANY CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL COSTS OR DAMAGES, ARISING OUT OF OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS SECTION DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR BODILY INJURY (INCLUDING DEATH) OR PHYSICAL DAMAGE TO TANGIBLE PROPERTY.

21.2 **Cap on Liability.** Except for Supplier's obligations in Section 18 (Indemnification) and Section 17 (Epidemic Failure), and for a breach of a party's obligations of confidentiality under Section 19, the liability of either party hereunder, on a per occurrence basis, shall not exceed the greater of [\*\*\*\*] or [\*\*\*\*] percent of the sum of the amount Supplier has received in connection with this Agreement from Cisco and its Authorized Purchasers (for Product bought for inclusion in Cisco products) in the most recent twelve (12) full calendar months immediately prior to the event giving rise to the claim, notwithstanding any failures of the essential purpose of this Agreement or any limited remedy hereunder. Supplier's liability for Epidemic Failure under Section 17 of this Agreement, on a per Epidemic Failure occurrence or basis, and excluding Supplier's cost of providing replacement Products, shall not exceed [\*\*\*\*] per claim. This Section does not limit either party's liability for bodily injury (including death) or physical damage to tangible property where caused by Supplier's gross negligence or intentional misconduct, nor does it limit Cisco's express payment obligations.

22. **Insurance.** Supplier shall, at its own expense and at all times during the term of this Agreement and after its termination as required below, maintain in effect the insurance and minimum limits of coverage designated below, together with any other insurance required by law in any jurisdiction where Supplier provides Products and/or services under this Agreement, in insurance companies authorized to do business in such jurisdictions. These minimum requirements do not limit or reduce

Supplier's liability arising from its obligations under this Agreement.

22.1 General Liability Insurance. Supplier shall maintain general liability insurance covering all operations by or on behalf of Supplier arising out of or connected with this Agreement and providing coverage for bodily injury, property damage and products liability. Such insurance can be maintained in any combination of the following types of insurance: Commercial General Liability, Foreign General Liability, Public Liability, Products Liability, Umbrella Liability and/or Excess Liability, or equivalent insurance. Such insurance shall provide limits of not less than the equivalent of [\*\*\*\*] per occurrence or per claim. If such insurance is maintained on an "occurrence" basis, such insurance shall be maintained for at least one year after the expiration of this Agreement, and if such insurance is maintained on a "claims made" basis, such insurance shall be maintained for at least three years after the expiration of this Agreement.

22.2 Proof of Insurance. Certificates of Insurance or other evidence of the coverages required above shall be furnished by Supplier to Cisco when this Agreement is signed, or within a reasonable time thereafter, and within a reasonable time after such coverage is renewed or replaced. Cisco's receipt and/or acceptance of such proof shall not limit or relieve Supplier of the duties and responsibilities with respect to maintaining insurance required by this Agreement. Such proof shall be delivered to Global Risk Management Cisco Systems, Inc. 170 W. Tasman Drive, M/S SJC-11/3 San Jose, CA 95134.

22.3 Waiver of Subrogation. The insurance maintained by Supplier pursuant to Section 22.1 above shall provide that, except to the extent prohibited by law, Supplier and its insurer waive all rights of recovery or subrogation against Cisco, its officers, directors, employees, and agents, but only for injury, damage or loss that falls within Supplier's indemnity obligations under this Agreement.

22.4 Policies to be Primary. The insurance maintained by Supplier pursuant to this Agreement shall provide that Supplier's insurance is primary to and noncontributory with any and all other insurance maintained by or otherwise afforded to Cisco, its officers, directors, employees and agents, but only for injury, damage or loss that falls within Supplier's indemnity obligations under this Agreement.

22.5 Use of Subcontractors. Supplier shall ensure that any subcontractor that Supplier directly engages to manufacture the Products for Cisco hereunder will maintain substantially similar insurance as required by Supplier hereunder or is insured under Supplier's insurance.

### **23. Term and Termination.**

23.1 Term. Unless terminated earlier as provided herein, this Agreement will have a term of three (3) years commencing on the Effective Date and shall automatically renew for additional periods of one (1) year ("Term") unless either party provides the other written notice of non-renewal at least one hundred and twenty (120) days prior to the expiration of the then-current Term.

23.2 Termination. Cisco may terminate this Agreement and/or any Order in the event of Supplier's material breach that remains uncured thirty (30) days after Cisco has provided written notice thereof. Supplier may terminate this Agreement in the event of Cisco's material breach that remains uncured thirty (30) days after Supplier has provided written notice thereof and Section 9 shall apply to any Orders that may be cancelled as a result of Cisco's material breach.

23.3 Survival. Sections 1 (Definitions), 13.4 (Product End of Life), 14 (Software), 15 (Failure Analysis and Support), 16 (Warranties), 17 (Epidemic Failure), 18 (Indemnification), 19 (Confidentiality), 21 (Limitation of Liability), 22 (Insurance), 23.3 (Survival), 24 (Scrap and Supply Chain Visibility), 25 (Audit) and 27 (General) and all end user licenses shall survive termination of this Agreement. Neither party will be liable to the other for compensation, reimbursement, or damages for the loss of prospective profits, anticipated sales or goodwill, on account of any expenditures, investments or commitments made by either party, or for any other reason whatsoever, due to the termination of this Agreement in accordance with its terms.

**24. Scrap and Supply Chain Visibility.** For Custom Products, or any Standard Products that include Cisco logos or other proprietary markings, Supplier shall comply with Cisco's Scrap Policy and Supply Chain Visibility Policy as communicated to Supplier from time to time.

**25. Audit.** Upon not less than thirty (30) days' notice and not more than once per year (unless a prior audit revealed a non-compliance with this Agreement), Cisco may verify Supplier's compliance with the terms and conditions of this Agreement by conducting an audit at any Supplier facility at which books and records related to the performance of this Agreement are kept or at which any Product is produced, stored or shipped. Any such audit shall be conducted during Supplier's normal hours of operation and in a manner that does not unreasonably interfere with Supplier's normal business activities and operations. Audits may only be conducted by an independent third party and Supplier shall not be required to disclose or share confidential information of its other customers. The auditors shall be selected by Cisco and must be acceptable to Supplier (not to be unreasonably withheld). An audit shall be subject to the auditor executing any standard Supplier confidentiality agreement that allows the auditor to produce a confidential report for Cisco which certifies whether Supplier is in material breach of this Agreement, but which otherwise requires the auditor to keep confidential all information of Supplier learned as a result of the audit. Supplier shall be entitled to receive a copy of the auditor's report. All audits shall be conducted at Cisco's expense, except that if any audit reveals a material breach of this Agreement, Supplier shall pay the reasonable fees and expenses of such audit.

## **26. Force Majeure**

26.1 General. Neither party shall be considered in default of performance under this Agreement to the extent that performance of such obligation is delayed or prevented by fire, flood, earthquake or similar natural disasters, riot, war, terrorism, civil strife, labor disputes or disturbances, governmental regulations, communication or utility failures, or casualties or any other similar event or circumstance that is beyond the reasonable control of such party (a "Force Majeure Event"). A party shall resume performance under this Agreement immediately after the delaying cause ceases and, as it pertains to Supplier, within any time to recover objective defined in the BCP Response, as described below. The parties may mutually agree to extend the then current term for a period equivalent to the length of time the excused delay endured.

26.2 Disaster Recovery. In the event Supplier experiences a Force Majeure Event that makes continuation of normal business impossible such that Supplier cannot deliver Product to Cisco for a period of time, Supplier shall use commercially reasonable efforts to comply with the requirements of its BCP Response to resume pre-disaster Product production levels within the time to recover objective stated in the BCP Response. The provisions of paragraph 26.1 above are inapplicable to the extent that Supplier does not use commercially reasonable efforts to continuously comply with the BCP Response.

## **27. General.**

27.1 Assignment. A party may not assign or transfer this Agreement or delegate its obligations hereunder, in whole or in part, without the prior written consent of the other party; provided, however, either party may assign or transfer this Agreement in connection with a merger, acquisition or sale of all or substantially all of its assets to which this Agreement relates (each, an "Acquisition Transaction") or to a Subsidiary of such party without prior written consent, so long as prior notice is provided to the other party and, in the case of an assignment in connection with an "Acquisition Transaction", the party to whom this Agreement will be transferred or assigned is not a competitor of the other party. Any attempt to assign or transfer or delegate without such consent is void.

27.2 Notices. All notices shall be in writing and delivered via express courier, via registered or certified mail, or via fax if confirmed by registered or certified mail, to the following addresses:

Cisco Systems, Inc. 170 West Tasman Drive San Jose, CA 95134 Attn: V.P., Global Supply Chain Management	GSI Technology, Inc. 1213 Elko Dr. Sunnyvale, CA 94089 Attn: Cisco Account Manager
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with a copy to: Cisco Systems, Inc. 170 West Tasman Drive San Jose, CA 95134 Attn: Sr. V.P. and General Counsel Fax: (408) 526-8220	with a copy to: GSI Technology, Inc. 1213 Elko Dr. Sunnyvale, CA 94089 Attn: VP of Sales Fax: (408) 331-9795
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27.3 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from this application to this Agreement.

27.4 Entire Agreement. This Agreement, together with its Exhibits and information and documents referenced herein, contain the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior written or oral agreements between the parties regarding the subject matter. In the event of a conflict between the terms of this Agreement and the terms of any Exhibit, the terms of the Exhibit shall govern.

27.5 Unenforceable Provisions. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

27.6 Construction. This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof shall not be construed for or against any party. The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement, which shall be considered as a whole. Except as otherwise set forth in Section 3.3, there are no third party beneficiaries to this Agreement.

27.7 Controlling Language. This Agreement, and the exhibits hereto, are prepared and

executed in the English language only, which language shall be controlling in all respects. Any translations of this Agreement into any other language are for reference only and shall have no legal or other effect. All proceedings related to this Agreement shall be conducted in the English language.

27.8 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27.9 Export Control. In exercising its rights under this Agreement, Cisco agrees to comply with all export controls imposed on the Products, by any country or nations within whose jurisdiction Cisco operates or does business. Cisco agrees not to export or permit exportation of the Products, technical data or any Specifications, without complying with the export control laws in the relevant jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date by persons duly authorized.

**Cisco Systems, Inc.**

**GSI Technology, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## Exhibit A

### Designation of Authorized EMS Providers

The following entities are authorized contract manufacturers for purposes of this Agreement:

**1. Celestica Corporation and all its affiliates, including:**

Celestica International Inc., an Ontario corporation  
Celestica Corporation, a Delaware corporation  
Celestica Monterrey S.A. de C.V., a Mexican corporation  
Celestica (Thailand) Limited, a Thai corporation  
Celestica Holdings Pte. Limited, a Singapore corporation

**2. Jabil Circuit, Inc. and all its affiliates, including:**

Jabil Circuit, Inc.  
Jabil Circuit, Inc.  
Jabil Circuit, Sdn Bhd  
Jabil Circuit de Mexico S. de R.L. de C.V.  
Jabil Luxembourg Manufacturing Sarl  
Jabil Circuit (Shanghai) Co. Ltd.  
Jabil Circuit Hungary Contract Manufacturing Services Ltd.

**3. Solectron Corporation and all its affiliates, including:**

Solectron Corporation  
Solectron Technology Sdn Bhd  
Solectron USA, LLC

**4. Flextronics Telecom Systems Ltd. and all its affiliates, including:**

Flextronics Telecom Systems Ltd.  
Flextronics International USA, Inc.  
Flextronics Manufacturing (H.K.) Ltd.  
Flextronics Manufacturing (Zhuhai) Co., Ltd.  
Flextronics International SRO  
Flextronics Logistics USA Inc.  
Flextronics Marketing (L) Ltd.

**5. Hon Hai Precision Industry Co. Ltd. and all its affiliates, including:**

Hon Hai Precision Industry Co. Ltd.  
NSG Technology Inc.  
Foxconn CZ s.r.o  
Focus PC Enterprises Ltd.  
Hong Fu Jin Precision Ind. (Shenzhen) Co., Ltd.  
Foxconn Corporation (Houston)  
Foxconn India Private Limited

**6. Inventec Electronics (M) Sdn Bhd and all its affiliates, including:**

Inventec Electronics (M) Sdn Bhd., a Malaysian Corporation  
Inventec Electronics

**7. Quantacomp and all its affiliates, including:**

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QCH Nashville LLC Wyoming, Limited Liability Corporation

**8. Hewlett Packard Company and all its affiliates, including:**

Hewlett Packard Company Harris County, Houston, TX

**9. Amphenol TCS, a division of Amphenol Corporation**

**10. Sanmina-SCI Corporation**

**11. Smart Modular Technologies, Inc.**

**12. Teradyne Incorporated**

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EXHIBIT B

Lean VMI Agreement for Cisco Global Hubs

This Lean VMI Agreement for Cisco Global Hubs (the "Agreement") is entered into by and between \_\_\_\_\_ [EMS Provider name], a \_\_\_\_\_ [jurisdiction] \_\_\_\_\_ [type of legal entity] with its principal place of business located at \_\_\_\_\_ [address] ("EMS Provider") and \_\_\_\_\_ [supplier name], a \_\_\_\_\_ [jurisdiction] \_\_\_\_\_ [type of legal entity] with its principal place of business located at \_\_\_\_\_ [address] ("Supplier") as of \_\_\_\_\_ [effective date] ("Effective Date").

**Whereas**

Cisco Systems, Inc. ("Cisco Inc.") and Cisco Systems International B.V. ("Cisco BV") (each, a "Cisco Entity") have entered into agreements with a third party provider of logistics and warehousing services ("Hub Operator") pursuant to which Hub Operator will establish warehouse facilities in close geographic proximity to certain EMS Provider facilities at which products are manufactured for Cisco Inc. and/or Cisco BV (each such warehouse, a "Hub") for the purpose of receiving, storing and forwarding the materials, components and assemblies used in the manufacture of, or bundled with, such products (each such material, component and assembly, a "Component"); and

EMS Provider and Supplier have previously established a set of terms (which may take the form of a written agreement, purchase order terms, course of dealing or other form) governing EMS Provider's purchases of Components to be incorporated into, or bundled with, Cisco Products (as defined below) (such terms, as EMS Provider and Supplier may alter them from time to time, the "Existing Purchase Terms"); and

EMS Provider and Supplier wish to document the terms under which, among other things, Supplier will deliver Components to one or more Hubs pursuant to instructions from EMS Provider, EMS Provider will request delivery of Components located in the Hubs as needed to produce Cisco Products, Supplier will invoice EMS Provider for such delivered Components and EMS Provider will pay such invoices.

**Now Therefore**, in furtherance of the foregoing and upon due consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

**a. Scope**

1.1 Cisco Supply Chain Only. This Agreement relates solely to Components ordered by EMS Provider for incorporation into, or bundling with, Cisco Products. This Agreement shall have no application to any commodity or component ordered for any other customer of EMS Provider or for any other purpose.

1.2 Order of Precedence. Subject to Section 1.1 above, this Agreement supplements and is cumulative with the Existing Purchase Terms; provided that in the event of a conflict with the Existing Purchase Terms, the terms of this Agreement will prevail.

1.3 Components Covered. This Agreement shall apply to all Components specified in any Hub Order (as defined below) placed with Supplier by EMS Provider.

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## **b. Definitions**

“Cisco Product” means a product manufactured by or for Cisco Inc. or Cisco BV.

“Custom Component” means a Component that the Cisco Entities and Supplier have agreed to designate as ‘Liable’ in connection with the Component costing process (and any applicable purchase agreements between the Cisco Entities and Supplier), as documented in the Cisco Entities’ component attributes database. The parties acknowledge that a Component is generally designated ‘Liable’ when it contains intellectual property of a Cisco Entity or was designed or produced to meet specific requirements unique to a Cisco Product and when Supplier has no alternate redistribution channel.

“Cycle Time to Replenish” or “CT2R” means, with respect to a given Component and a given Hub, the period of time between Supplier’s receipt of a Hub Order for such Component and arrival of such Component at such Hub. CT2R consists solely of Supplier’s order processing time, process planning time, manufacturing cycle time and transit time to the Hub, and does not include lead time for raw materials or other Component inputs.

“EDI” means Electronic Data Interchange.

“Hub Order” or “Replenishment Signal” means an instruction to Supplier to ship Components to one or more Hubs, either on a single date or on multiple pre-scheduled dates. The instruction may take the form of a discrete or blanket purchase order (fax or electronic), EDI demand signal, or any other method agreed between EMS Provider and Supplier.

“MOQ” means minimum order quantity, as agreed between Supplier and EMS Provider or Supplier and the Cisco Entities, whichever is lower.

“MPQ” means minimum package quantity, as agreed between Supplier and EMS Provider or Supplier and the Cisco Entities, whichever is lower.

“Pull Signal” means an instruction from the EMS Provider to the Hub Operator to ship or deliver Components from a Hub to the EMS Provider.

“Standard Component” means any Component that is not a Custom Component. Standard Components are generally designated ‘Non-liable’ in the Cisco Entities’ component attributes database.

## **c. Forecast and Acknowledgment**

3.1 EMS Provider will use commercially reasonable efforts to provide Supplier with a weekly, non-binding, rolling forecast of its requirements for Components for the following fifty-two (52) week or greater period (a “Forecast”). EMS Provider will provide the Forecast electronically in a format agreed between EMS Provider and Supplier.

3.2 Supplier will use Forecasts solely for materials and capacity planning purposes. Forecasts do not create any materials liability or obligation to purchase on EMS Provider’s part.

## **d. Capacity and Material Planning**

Supplier will use commercially reasonable efforts to conduct capacity and materials planning and

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management sufficient to enable Supplier to meet EMS Provider's Forecast at then-current CT2Rs agreed between Supplier and EMS Provider, as reflected in EMS Provider's enterprise resource planning ("ERP") system ("Agreed CT2R").

#### **e. Hub Orders and Shipment to Hub**

5.1 Inventory Sizing. On a monthly or other periodic basis, EMS Provider will use the Cisco Lean methodology and algorithms to calculate (i) the optimal amount of each Component that should be on-hand and on-order in the supply chain (the "Supply Chain Target"); (ii) an optimal quantity below which the on-hand inventory of a given Component in a given Hub should not fall (the "Hub Min Target"); and (iii) an optimal quantity above which the on-hand inventory of a given Component in a given Hub should not rise (the "Hub Max Target").

#### 5.2 Hub Orders.

5.2.1 Eligible Components. EMS Provider will not include any Component on any Hub Order prior to the time such Component has been assigned an alphanumeric version code (e.g. 'A0') in the Cisco Entities' ERP system, indicating that the Cisco Entities have approved such Component for use in the manufacture for sale (as opposed to manufacture for test) of a Cisco Product.

5.2.2 Placement of Hub Orders. When inventory on-hand and on-order in the supply chain falls below the Supply Chain Target, EMS Provider will place a Hub Order with Supplier. A Hub Order shall not constitute an offer to purchase, or create an obligation to purchase (other than as set out in Sec. 9.2 hereof (Freshness) and Art. 8 (Reschedules, Cancellations and Returns)), irrespective of the form in which the Hub Order is transmitted (e.g. discrete P.O., the boilerplate terms of which purport to form an offer to purchase). Hub Orders and Supplier's fulfillment of Hub Orders shall comply with MOQ and MPQ.

5.3 Hub Order Confirmation. Following receipt of each Hub Order, Supplier will transmit a notice to EMS Provider confirming order receipt and committing to ship the quantity of Components specified on the order to the designated Hub(s) on the dates specified, or, if Supplier is unable to commit to such dates, alternate dates consistent with the Agreed CT2R for each Component (an "Alternate Date"); provided, however, that the aggregate quantity of each Component committed to be shipped shall always be the same as the aggregate quantity of such Component requested on the Hub Order. Supplier will use commercially reasonable efforts to transmit the notice to both EMS Provider and Hub Operator within one business day after receipt of the Hub Order.

#### 5.4 Shipment to Hub.

5.4.1 Supplier will ship the quantity of Components specified in each Hub Order to the Hub(s) designated on such order and will use commercially reasonable efforts to ensure that such shipment(s) are made (i) on the date or dates specified on such order; or (ii) any applicable Alternate Date; or (iii) if such order contains no dates, then on a timetable to allow delivery to the destination Hub within the Agreed CT2R. Supplier will not ship Components to any Hub except in response to, and in conformance with, a valid Hub Order.

5.4.2 Supplier will ship Components to the applicable Hub(s) using a carrier approved by the Cisco Entities. EMS Provider will provide a list of such carriers to Supplier and will update such list from time to time. Or, in the event the Cisco Entities determine to manage all shipping from Supplier to Hub, Supplier will coordinate with the Cisco Entities or their designated shipper with respect to all

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shipments.

5.4.3 Following any shipment of Components to any Hub, Supplier will transmit an advanced ship notice (“ASN”) to Hub Operator. Supplier shall transmit each ASN electronically (or, on an exception-only basis, e.g. when electronic means such as B2B have temporarily failed, by fax), no later than 24 hours prior to scheduled delivery for overseas shipments or 4 hours prior to scheduled delivery for local shipments.

5.4.4 Supplier will retain title and risk of loss for each Component shipped to a Hub until such time as title and risk of loss pass to EMS Provider as provided in Section 6.2 below.

5.5 Inventory Monitoring. Pursuant to Section 5.1 above, EMS Provider shall maintain the primary responsibility for monitoring inventory levels in the Hub. As a supplement to EMS Provider’s monitoring activities, Supplier shall monitor the inventory level of each of its Components in each applicable Hub. In the event the inventory level for any Component in any Hub falls substantially below the Hub Min Target and Supplier does not receive a Hub Order to replenish the inventory within a reasonable time, Supplier shall notify EMS Provider.

#### **f. Pull Process and Shipment to EMS Provider**

6.1 Pull Signal. In order to draw Component inventory from a Hub, EMS Provider will transmit a Pull Signal to Hub Operator specifying at least the following: Component (by Cisco part number, including version) and quantity to be delivered to EMS Provider. Each such quantity shall be (i) no smaller than the MPQ for the applicable Component; and (ii) if greater than such MPQ, shall be a multiple of such MPQ. Hub Operator will retrieve the applicable Components from the Hub and arrange for delivery to EMS Provider. Such Pull Signal must reference the purchase order number included in the original Hub Order or other applicable order number as generated by EMS Provider prior to the Pull Signal.

6.2 Shipment to EMS Provider. For each shipment, Hub Operator will transmit a numbered notice to Supplier (a “Delivery Notice”) and will transmit an ASN to EMS Provider. Title and risk of loss will transfer from Supplier to EMS Provider at the point when the Components have been loaded on the carrier’s means of transport at the Hub for delivery to EMS Provider. The parties anticipate that freight costs will be paid by the applicable Cisco Entity or Hub Operator, and accordingly, that neither EMS Provider nor Supplier will be required to pay such costs. In the event EMS Provider and Supplier have agreed to GRN-based Invoicing (as defined in Sec. 7.1 below), EMS Provider will transmit a numbered notice to Supplier and Hub Operator upon EMS Provider’s receipt of each shipment (a “Goods Received Notice” or “GRN”).

#### **g. Invoicing and Payment**

7.1 Invoicing. Supplier will invoice EMS Provider for Components once the Components have been shipped from the Hub, or, if Supplier and EMS Provider have so agreed in writing, Supplier will invoice EMS Provider for Components upon Supplier’s receipt of EMS Provider’s GRN (“GRN-based Invoicing”). Supplier will include the Delivery Notice number (or, if GRN-based Invoicing is in effect, the GRN number) and any purchase order number included in the original Hub Order or other applicable order number as agreed with EMS Provider.

7.2 Pricing. Supplier invoices will reflect Component prices in effect on the date of shipment to EMS Provider, as determined by the Existing Purchase Terms. For Components with respect to which

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Supplier paid freight and/or duties for transport to the Hub, Supplier's invoice will include the applicable amount of such costs. In the event Supplier has included in any Component price any amount intended to reimburse Supplier for the costs of a previous vendor managed inventory or other hubbing arrangement, Supplier shall reduce such price by such amount prior to including such price on any invoice.

7.3 Payment Terms. EMS Provider shall pay the amount of each invoice (or, in the event of a disputed invoice, the undisputed portion of such invoice) to Supplier within twenty (20) days after the date of such invoice; provided that Supplier shall not date any invoice prior to the date on which the relevant Component was shipped to EMS Provider.

#### **h. Reschedules, Cancellations and Returns**

8.1 Reschedules. Rescheduling of Hub Orders prior to Supplier's shipment to a Hub will be governed by the Existing Purchase Terms. Following receipt of any reschedule request, Supplier will transmit a notice to EMS Provider and Hub Operator confirming receipt of the request and committing to new ship dates and/or Component quantities as per the reschedule request, to the extent consistent with the Existing Purchase Terms. Supplier will use commercially reasonable efforts to transmit the notice to both EMS Provider and Hub Operator within one business day after receipt of the reschedule request.

8.2 Cancellations and Returns. Cancellation of Hub Orders and return of Components will be governed by the Existing Purchase Terms. Unless otherwise directed by Supplier or agreed between Supplier and EMS Provider, EMS Provider will not ship Components for return to any Hub location.

#### **i. Inventory Aging, Freshness and Overstock**

##### 9.1 Inventory Aging.

a. Supplier will monitor and track aging of all Components in each Hub using information provided by the Hub Operator.

b. In the event any Component in any Hub ages beyond any Component or packaging effectiveness period recommended by Supplier (or, if shorter, any Component or packaging effectiveness period agreed between the applicable Cisco Entity and Supplier), Supplier will (i) notify EMS Provider and the Cisco Entities; and (ii) arrange with Hub Operator either to rebake, repackage or otherwise refresh such Component if applicable, or to remove such Component from the Hub and replace it with a newer Component. Supplier will undertake such activities at its own expense.

c. For purposes of Section 9.2 below (Freshness), if Supplier replaces an aged Component (an "Aged Component") with a new or refreshed Component (a "Replacement Component"), the Replacement Component will be deemed to have entered the Hub on the same date as the Aged Component; provided however that any period during which the Aged Component could not be used due to excessive aging shall not be applied towards satisfaction of the applicable Freshness Period.

9.2 Freshness. With respect to Custom Components, Supplier will notify EMS Provider and the Cisco Entities in the event any such Component has remained in any Hub for more than [\*\*\*\*] (the "Freshness Period"). Upon receipt of such notice, EMS Provider will, within two business days, issue a Pull Signal to Hub Operator with respect to such Component, subject to the following exceptions:

a. Components shipped to any Hub in excess of amounts specified in a valid Hub Order will be excluded; and;

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b. With respect to any Components that have been subject to any quality-related quarantine or hold while in the Hub, the Freshness Period will be extended by the duration of such quarantine or hold.

This Section 9.2 shall not apply to Standard Components.

9.3 Overstock. In the event that inventory of a given Component at a given Hub is greater than the Hub Max Level for such Component in such Hub, Supplier may instruct Hub Operator to remove the amount of inventory that is greater than the Hub Max Level from such Hub and to ship such inventory pursuant to Supplier's direction or to make such inventory available for pickup by Supplier or its authorized agent. Prior to instructing Hub Operator to remove any such inventory, Supplier shall so notify EMS Provider and the applicable Cisco Entity in writing.

#### **j. Component Changes**

10.1 Quality-related Changes. In the event Supplier implements a recall or other quality-related change to any Standard Component or Custom Component located in a Hub, Supplier will notify EMS Provider and the Cisco Entities of the change, including whether the Component can be reworked at the Hub and the date on which Supplier will have replacement or re-worked Components available at the Hub. Upon agreement between Supplier and EMS Provider to the changes proposed, Supplier will carry out such changes or replace such Component in the Hub. Supplier will undertake such activities at its own expense.

10.2 Other Changes. Engineering change orders ("ECOs") and other changes to Custom Components not governed by Section 10.1 above will be governed by the Existing Purchase Terms.

#### **k. Movement of Components Between Hubs**

In the event EMS Provider or Supplier wishes to move Components between Hubs, the party that wishes to move the Components will obtain the written approval of the other and of the applicable Cisco Entity prior to instructing the Hub Operator to move the Components, and such moves shall be reflected in the appropriate records. The party initiating the move will forward the approvals of the other party and of the applicable Cisco Entity to the Hub Operator contemporaneously with the move instructions. Costs of moving Components between Hubs will be borne by the party initiating the move, unless the parties agree otherwise in writing.

#### **l. Term and Termination**

This Agreement shall be effective from the Effective Date until one of the parties gives 90 days prior written notice of its intent to terminate. The party providing such notice shall provide copies to the Cisco Entities contemporaneously.

#### **m. Confidentiality**

The terms of this Agreement shall constitute confidential information pursuant to the Existing Purchase Terms or other existing confidentiality terms in place between EMS Provider and Supplier; provided however that either party may disclose the existence of this Agreement, and the terms of this Agreement in their entirety to Cisco Inc., Cisco BV and/or their authorized agents.

#### **n. General Provisions**

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14.1 Dispute Resolution. In the event of a dispute arising between the parties under this Agreement that remains unresolved following good faith commercial negotiations between the parties, the parties shall escalate such matter to their respective contacts at the Cisco Entities for assistance. In the event such dispute is not thereafter resolved within a reasonable time, the parties shall proceed to resolve such dispute in accordance with the Existing Purchase Terms.

14.2 Governing Law. The governing law and venue for this Agreement will be as specified in the Existing Purchase Terms.

14.3 Third Party Beneficiaries. The parties agree that each of Cisco Inc. and Cisco BV is an intended third party beneficiary of this Agreement, and is entitled to enforce its terms. There are no other third party beneficiaries. This agreement shall not be interpreted to alter any party's obligations to Cisco Inc. or Cisco B.V. under any existing or future agreement with Cisco Inc. or Cisco BV.

14.4 Entire Agreement. This Agreement, together with the Existing Purchase Terms, constitutes the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties relating to such transactions.

14.5 No Oral Waiver. No change, modification or waiver of any of the terms and conditions of this Agreement shall be binding upon the parties unless made in writing and signed by duly authorized representatives of the parties.

In witness whereof and intending to be bound hereby, each party has caused a duly authorized representative to execute this Agreement as of the Effective Date.

**Accepted and Agreed: Accepted and Agreed:**

[EMS Provider name] [Supplier name]

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: Name:

Title: Title:

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## EXHIBIT C

### AUTHORIZED PURCHASER REQUIRED SECTIONS

The following sections of this Agreement between Cisco and GSI Technology, Inc. are applicable to purchase or supply of Product by Supplier to Authorized Purchasers and/or the Hub Provider for inclusion in (or bundling with) Cisco product or providing Hub Services, respectively.

#### **1. Definitions.**

“Authorized Purchaser” means an EMS Provider or any other third party designated by Cisco in writing.

“China RoHS” means the regulations entitled “Management Methods for Controlling Pollution by Electronic Information Products” (Ministry of Information Industry Order #39).

“Custom Product” means a Product that Cisco and Supplier have agreed to designate as ‘Liable’ in connection with the price negotiation process and is documented as such in Cisco’s then-current commodity information/attributes database. The parties acknowledge that a Product is generally designated ‘Liable’ when (i) it contains intellectual property of Cisco or a Cisco subsidiary or was designed or produced to meet specific requirements unique to a Cisco product and (ii) Supplier has no alternate redistribution channel.

“Cycle Time to Replenish (“CT2R”)” means the period of time beginning with the receipt of an Order or request for Product(s) through the arrival of such Product(s) at a Hub or such other specified delivery site as Cisco may require. CT2R shall consist solely of: order processing time + process planning time + manufacturing cycle time + transit time to the applicable delivery site, and does not include lead time for raw materials or other Product inputs.

“EMS Provider” means one of Cisco’s authorized contract manufacturers. A current list of such manufacturers is attached hereto as Exhibit A. Cisco may revise such list from time to time upon written notice to Supplier.

“EU Directives” means, collectively, EU RoHS Directive 2002/95/EC and the EU WEEE Directive 2002/96/EC.

“Hazardous Materials” means materials which are radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment.

“Hub” means a Cisco Lean Hub which may include, but is not limited to, Cisco’s Global Hub and Cisco Memory Hub.

“Hub Order” means an instruction to the Supplier to ship Product to the Hub, either on a single date or multiple pre-scheduled dates. Such instruction shall originate from an EMS Provider or a Cisco Memory Hub Operator pursuant to a valid Lean VMI Agreement or a Lean VMI Agreement for Third Party Hubs (as both are defined below). The instruction may take one of the following forms: discrete zero dollar purchase orders (manual or electronic), electronic data interchange releases against blanket purchase orders, or any other method agreed to between EMS Provider and Supplier or the Cisco Memory Hub Provider and Supplier, as applicable.

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“Hub Provider” means any third party providing warehousing services in connection with a Cisco Lean Hub.

“Hub Pull Signal” means an instruction from the EMS Provider to the Hub Provider to ship or deliver Product from the Hub to the EMS Provider.

“JIG” means the Joint Industry Guide of the Electronic Industries Alliance.

“Lean Hub Plan” means Cisco’s Global Hub Plan and/or Cisco’s Memory Hub Plan.

“Non-Hub Order” means an instruction from Cisco or the Authorized Purchaser to the Supplier to ship Product directly to Cisco or the Authorized Purchaser. Such instruction may take one of the following forms: discrete purchase orders (manual or electronic), electronic data interchange releases against blanket purchase orders, or any other method agreed to between Authorized Purchaser and Supplier or Cisco and Supplier.

“Order” means a Hub Order and/or a Non-Hub Order.

“Product” means any product (including hardware and software, user documentation (if applicable) and Supplier’s standard packaging) set forth in a list provided by Supplier to Cisco on a quarterly basis which includes the current Products offered for sale by Supplier to Cisco and Authorized Purchasers, and any purchased from Supplier, or an authorized distributor of Supplier by Cisco or on Cisco’s behalf by an Authorized Purchaser.

“Product Price” means the most recent mutually agreed upon price that Cisco (and its Authorized Purchasers) shall pay for a Product, as established via any price negotiation process (including, without limitation, reverse auction, request for pricing, direct negotiation or other process) and contained in Cisco’s then-current commodity information database.

“Rolling Forecast” or “Forecast” means a non-binding estimate of Product forecast to be purchased by Cisco and its EMS Providers, as updated periodically.

“Software” means any computer code in object code or executable code format and whether embedded in or bundled with a Product in any manner, including as firmware, separately on disks or other media or by electronic transmission, together with all bug fixes, revisions and upgrades thereto.

“Specifications” means (i) the specifications identified in Supplier’s then-current Product data sheet and (ii) any additional specifications agreed to by the parties in writing.

“Standard Product” means a Product that is not a Custom Product.

**2. Cisco Lean Hub Participation.** Supplier shall participate in a Cisco Lean Hub Plan as set forth below.

2.1 Participation in a Cisco Lean Hub program shall include, but not be limited to, execution of and adherence to the terms of a Hub agreement between Supplier and one or more EMS Provider (a “Lean VMI Agreement”) in substantially the same form as set forth in Exhibit B (such Lean VMI Agreement attached hereto for purposes of reference only), or an agreement between Supplier and the Hub Operator of a Cisco Memory Hub (a “Lean VMI Agreement For Third Party Hubs”), as applicable.

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2.2 No Product Price shall be increased and no other cost shall be imposed upon Cisco or any EMS Provider arising from or related in any way to Supplier's participation in the Hubs.

2.3 Supplier shall (i) utilize Cisco approved transporters of all Products into and from any Hub, and (ii) establish with Cisco, at least quarterly, the applicable CT2R(s) for each Product and/or location to be shipped.

2.4 Supplier shall provide to Cisco and its EMS Providers visibility to inventory volumes, shipment information and location of Products en route to, within, and transferred from the Hubs whether via electronic data interchange or other Cisco-approved method.

2.5 Cisco shall have no liability for any Orders placed by the EMS Providers, including any Products placed in the Hub.

2.6 The terms of this Agreement that relate to Supplier's participation in a Cisco Lean Hub shall only become effective with respect to (i) those EMS Providers that have entered into a Lean VMI Agreement with the Supplier, and (ii) a Cisco Memory Hub Provider that has entered into a Lean VMI Agreement for Third Party Hubs with Supplier. Until such time as a Lean VMI Agreement or Lean VMI Agreement for Third Party Hubs, as applicable, has been executed, the other terms of this Agreement, without the Cisco Lean Hub terms, shall remain in full force and effect.

### **3. Sales to Authorized Purchasers.**

3.1 Supply of Product. Supplier agrees to supply Products pursuant to the terms and conditions of this Agreement. Supplier shall sell Product to Cisco or its Authorized Purchasers solely for purposes of allowing Cisco or its Authorized Purchasers to incorporate such Product into (or bundle such Product with) Cisco's products. Supplier shall manage all aspects of delivery and fulfillment of Products to Authorized Purchasers and/or to a Hub. Notwithstanding anything to the contrary in this Agreement, an Authorized Purchaser may not purchase Product from Supplier under this Agreement for any other customer of such Authorized Purchaser or for any other purpose.

4. Orders. Supplier shall accept and acknowledge in writing or electronically all Orders within one (1) business day after receipt thereof and identify a firm date for delivery of the Products at or within CT2R; provided, however, that Supplier shall not be liable for delays in transit time or delivery that are beyond the reasonable control of Supplier. Orders placed at the CT2R for a Product which are not acknowledged by Supplier within three (3) business days of receipt are deemed accepted; however, if during a particular Cisco fiscal calendar quarter, Supplier receives an Order for Product that was not part of a Cisco award of product during that quarter, Supplier reserves the right to discuss and, if necessary, modify the applicable CT2R for that Product. Cisco shall not be liable for any verbal commitments. If Supplier cannot meet the identified delivery date, and Cisco wishes to purchase the Products from one of Supplier's distributors, Supplier will make reasonable commercial efforts to extend to such distributor a price which would enable the distributor to sell Products to Cisco at the Product Price. All Orders placed with Supplier by Cisco directly shall be subject to the terms and conditions of this Agreement without specific reference hereto.

### **5. Product Pricing and Payment.**

5.1 Product Pricing. Supplier shall sell the Products to Cisco and the Authorized Purchasers at the Product Price for each respective Product. Product prices are in U.S. dollars. Supplier shall not increase the Product Price or impose any additional costs on Cisco or any Authorized Purchaser arising from or related in any way to Supplier's participation in the Cisco Lean Hub plan. Supplier shall consider

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in good faith Cisco's quarterly cost reduction targets. Supplier will extend to Cisco and its Authorized Purchasers all reductions in Product Price for any Orders placed but not yet shipped to Cisco or its Authorized Purchasers (including pursuant to a Hub Pull Signal) as of the effective date of the reduction. Supplier represents and warrants that the Product Prices are, and shall be throughout the Term, no higher than the lowest prices normally offered by Supplier to any similarly situated customer purchasing the same or lesser total aggregate dollar or unit volume of the same Product under similar terms and conditions, on a quarterly basis.

5.2 Payment by Cisco. For Non-Hub Orders, Supplier will invoice Cisco (or its Authorized Purchaser in the case of purchases by an Authorized Purchaser) for the Product Price of the Products on or after the applicable shipment date for the Products covered by such invoice. Each shipment will be invoiced and paid for when due without regard to other scheduled deliveries. All invoices for Products ordered pursuant to a Non-Hub Order will be due and payable no later than thirty (30) days after the date of the invoice.

5.3 Taxes. Each party shall bear any and all taxes it incurs as a direct or indirect result of entering into this Agreement, unless the parties have agreed otherwise. If sales/use tax, VAT, GST, or similar indirect tax (collectively the "Applicable Tax") is payable as a consequence of any supply made or deemed to be made in connection with this Agreement, Cisco or its Authorized Purchaser shall pay to Supplier the Applicable Tax amount upon receiving a tax invoice complying with any legislation under which the Applicable Tax is imposed. Any Applicable Tax shall appear as separate additional items on the invoice from Supplier.

## **6. Delivery and Acceptance**

6.1 Delivery. Supplier shall deliver the Products to the agreed ship-to location on the agreed delivery date using Cisco approved carriers.

For Non-Hub Orders, delivery terms shall be FCA Supplier's shipping point, freight collect, per Incoterms 2000. The carrier will be selected by Supplier in the absence of specific instructions by Cisco or the Authorized Purchaser.

For Hub Orders, Supplier shall retain title and risk of loss for the Products during transit to the Hub and while stored at the Hub and until the Products have been loaded on the carrier's means of transport at the Hub for delivery to the EMS Provider. Charges incurred prior to delivery of the Products to the carrier for shipment to the Hub will be paid by Supplier. Freight charges to deliver the Products to the Hub, will be paid by Cisco; however, customs clearance charges will be paid by Supplier. Notwithstanding the fact that Supplier may not have responsibility to pay for these transit charges, Supplier shall retain the responsibility to maintain insurance on the Products during transit and while the Products remain in the Hub, consistent with Supplier's risk of loss for the Products.

6.2 Acceptance. Products ordered pursuant to a Non-Hub Order shall be deemed accepted by Cisco or its Authorized Purchaser, as applicable, unless notice of defect is received within ten (10) days of Cisco or Authorized Purchaser's receipt thereof and the Product is returned to Supplier within twenty (20) days of receipt. Only such Products that, upon receipt, are determined to be damaged or fail to conform to the Specifications ("DOAs") may be rejected. In the event of discovery of a DOA Product, Supplier's entire liability, and Cisco or its Authorized Purchaser's sole remedy shall be to exchange such Product for another of the same type. However, in no event shall this Section be construed as modifying or otherwise limiting Supplier's obligations under Sections 15, 16, 17, or 18.

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**7. Flexibility.** Supplier will ensure that it can increase or decrease production of Products in all market conditions, using the amount of any Product for week 10 of the previous fiscal quarter's Rolling Forecast as a baseline from which to increase or decrease production ("Baseline"), as follows:

- Increase or decrease of [\*\*\*\*] of Baseline if the increase or decrease is to be implemented within four (4) weeks;
- Increase or decrease of an additional [\*\*\*\*] of Baseline (i.e., [\*\*\*\*] in aggregate) if the increase or decrease is to be implemented between four (4) weeks and eight (8) weeks.

Supplier shall bear all reasonable costs incurred to meet Baseline increases or decreases, unless the parties otherwise agree in writing. Notwithstanding the above, this Section shall not apply to the extent Supplier is fully participating in a Cisco Lean Hub Plan pursuant to a valid Lean VMI Agreement or Lean VMI Agreement for Third Party Hubs, as applicable, and is shipping Product to such Hub. For example, Supplier shall only be relieved of the flexibility requirements for those Products and those Hubs that are operating under a valid Lean VMI or Lean VMI Agreement for Third Party Hubs, as applicable.

**8. Late Deliveries.** Supplier shall notify Cisco and any affected Cisco Authorized Purchasers promptly if Supplier reasonably anticipates that delivery consistent with CT2R may be delayed. In the event that delivery is delayed for more than [\*\*\*\*] business days for reasons caused in whole or in substantial part by Supplier and the parties cannot reasonably agree on a new delivery date, Cisco or its Authorized Purchaser may reschedule or cancel the affected Order(s) without penalty and Supplier shall not be liable to Cisco or any Authorized Purchaser for any monetary damages resulting from such delay, reschedule or cancellation, or assume any liability in connection with the shipment, nor shall the carrier be deemed an agent of Supplier.

**9. Reschedules, Reconfigurations and Cancellations.** At any time more than thirty (30) days prior to the originally scheduled delivery date, Cisco or its Authorized Purchaser may cancel, reschedule or reconfigure an Order in whole or in part provided that the Order had not previously been designated by the parties as NCNR, as defined below. To cancel, reschedule and/or reconfigure a shipment or a particular pending purchase, Cisco or its Authorized Purchaser shall provide written notification to Supplier at least [\*\*\*\*] days prior to the scheduled delivery date. If modified, the new delivery date shall be within [\*\*\*\*] days from the original scheduled delivery date. An order may only be re-configured or rescheduled once. No Order that has been mutually agreed by Cisco and Supplier in writing to be non-cancelable or non-returnable ("NCNR") may be cancelled, rescheduled, reconfigured or returned. Except for a cancellation related to a late delivery as set forth in Section 8, or related to Cisco's termination as a result of Supplier's material breach as set forth in Section 23.2, Cisco may not cancel, reschedule or reconfigure an order within [\*\*\*\*] days of a scheduled deliver date.

**10. Shipping Documents, Packaging and Markings.** Supplier will ship Product with accurate shipping documents including (i) commercial invoice, packing list and applicable export and transportation documents and declarations; (ii) an itemized packing list bearing the purchase order number, the description, part number and quantity of each Product shipped, the number of shipping containers in the delivery and the waybill or bill of lading number, and (iii) external packaging labeling conforming to such labeling specifications as Cisco may provide from time to time. Supplier will package Products in accordance with good commercial practice, and in a manner acceptable to common carriers for shipment and adequate to ensure undamaged arrival of the Products. Supplier will mark all containers with necessary information (i.e. lifting, handling and shipping information, country of origin, purchase order numbers, date of shipment and the names of the consignee and consignor, etc.) and any

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other markings that may be required by applicable law.

### **11. Disaster Recovery and Allocation during Shortages.**

11.2 Allocation of Product during Shortages. In the event of a shortage of any Product included on the Rolling Forecast, Supplier shall notify Cisco and shall provide Cisco and its Authorized Purchasers an allocation of such Product during such shortage that is no less favorable than that provided to any other similarly situated customer, whether internal or external.

**12. Quality and Testing.** Supplier shall adhere to such quality and qualification requirements as may be specified by Cisco in writing from time to time and agreed to by Supplier. Supplier shall test Product prior to shipment to ensure Product is in compliance with Specifications.

### **13. Product Changes and Discontinuation.**

13.1 Product Change Notices. Supplier shall not change any Specification, process characteristic, or the form, fit or function of any Product except in accordance with the Product Change Notification (“PCN”) terms set out and referenced in Exhibit D.

13.2 Minimum Manufacturing Period. Except for those Products identified in Exhibit E, Supplier shall manufacture each Product for a minimum of [\*\*\*\*] from Cisco’s first customer ship (“FCS”) of a product containing such Product (the “Minimum Manufacturing Period”), unless (i) Cisco terminates this Agreement under Section 23; (ii) Supplier terminates this Agreement under Section 23; (iii) there has been no demand by Cisco for a particular Product for [\*\*\*\*], at which time Supplier may provide notice to Cisco of the discontinuance of the Products as called for in Section 13.4.1. It is understood that Supplier is able to meet this requirement through the use of die revisions.

13.3 Failure to Meet Minimum Manufacturing Period. If Supplier fails to meet its obligations under Section 13.2, Supplier shall, at Cisco’s option, either (i) compensate Cisco for all reasonable direct costs Cisco incurs in the transition to an alternate manufacturer/seller or replacement product or (ii) buffer and manage, at Supplier’s expense, an amount of Product to be forecasted by Cisco for the remainder of the Minimum Manufacturing Period. If any buffered Product built per (ii) above remain at the expiration of the Minimum Manufacturing Period, the parties shall mutually determine how such Product will be disposed of, including Cisco’s payment therefor.

#### 13.4 Product End of Life

13.4.1. EOL Notice and EOL Purchases. If Supplier determines to cease the manufacture or sale of any Product (an “End of Life” or “EOL”), Supplier shall provide at least [\*\*\*\*] prior written notice (the “EOL Notice Period”) in accordance with Cisco’s PCN process set forth in Exhibit D. Cisco may place Orders during the EOL Notice Period and Supplier will use best efforts to accept them, subject to Supplier’s manufacturing and supply constraints. Cisco shall take delivery on a date no later than [\*\*\*\*] after the end of the EOL Notice Period. If Supplier accepts a purchase order from a third party after the EOL Notice Period has run, it shall notify Cisco and offer the same opportunity for Product purchase to Cisco as set forth in such purchase order.

13.4.2. Alternative Source; EOL Support. If requested, Supplier shall assist Cisco in identifying alternative products or sources. Supplier shall continue to provide support pursuant to Section 15 for each Product that is the subject of an EOL notice.

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**14. Software.** The parties acknowledge that no Software will be provided by Supplier pursuant to this Agreement.

**15. Failure Analysis and Support.** Supplier will make available the following services for a period of at least [\*\*\*\*] years from the date of last Product shipment by Supplier:

15.1 Failure Analysis. Supplier will provide failure analysis as set out in Exhibit F hereto; and

15.2 Technical Support. Upon request, Supplier will provide in electronic or other acceptable form, all bug notes or other documentation regarding verified Product problems, including accurate records of any known or suspected defects. This information is the Confidential Information of Supplier. Supplier will provide this information and any corrective action at no charge during the term of this Agreement; and

15.3 Emergency Replacement. Supplier shall ship Product within twenty-four (24) hours of any Cisco request for emergency replacement. If no replacement is available, Supplier will provide replacement Product as soon as reasonably practicable and will notify Cisco of the estimated delivery date. Emergency replacements may not be available for EOL'd Products.

**16. Warranties.**

16.1 Product Warranty. The warranty period for each Product shall be three (3) years beginning on the date that Cisco or the Authorized Purchaser or the Hub receives the Product (the "Warranty Period") unless a longer period is agreed to in writing between the parties. Supplier represents and warrants that, when sold, all Products will be new and unused and, during the applicable Warranty Period (i) will comply in all respects with the Specifications, (ii) will be free from defects in materials, design and workmanship, and (iii) each Product, when delivered, shall have no less than [\*\*\*\*] remaining weeks of shelf-life. Cisco shall notify Supplier of any nonconformance during the Warranty Period, obtain a return materials authorization ("RMA") from Supplier, and return the nonconforming Product to Supplier's designated repair facility, with a statement describing the nonconformity. Warranty claims not made during the Warranty Period are waived. For valid warranty claims, Supplier will, at its expense, either provide a credit or refund to Cisco or repair or replace all Products not conforming to the requirements of this Section with repaired or new and unused Products shipped to a location designated by Cisco within [\*\*\*\*] or as soon as commercially practicable after receipt of the defective Product. Supplier may select the applicable warranty option; however, the parties acknowledge that replacement may not be a viable option for EOL'd Products, and that the decision to either provide a credit or refund will be mutually determined by the parties. Supplier reserves the right to charge additional fees for repairs or replacements performed outside the Warranty Period for the Product. The foregoing is the sole and exclusive remedy for breach of warranty by Supplier with respect to the Products.

16.2 Limitations on Warranty. The warranties set forth in section 16.1 shall not apply to any Product which has been, following receipt by Cisco and/or an Authorized Purchaser, (a) subjected to accident, abuse, misuse, neglect or operating or environmental conditions that deviate from the parameters established in the Specifications or (b) improperly installed, packaged, tested or altered by anyone other than Supplier.

16.3. Disclaimer of Warranties. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY SUPPLIER IN CONNECTION WITH THE PRODUCTS AND SUPPLIER DISCLAIMS AND EXCLUDES ALL OTHER**

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**WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THE THIRD PARTY RIGHTS UNDER THE UCC.**

**20. Compliance With Laws; Social Responsibility; Use in Life Support Applications.**

20.1 General Compliance with Laws. Supplier represents and warrants that it has complied and shall comply with all applicable laws, regulations and other governmental requirements in effect at the time of manufacture of each of the Products. Supplier shall comply with Cisco's materials content requirements as provided to Supplier from time to time, and reviewed and agreed to by Supplier, and shall undertake testing sufficient to validate compliance with such requirements. Supplier agrees at all times to act consistently with Cisco's global anti-corruption policy posted at [http://www.cisco.com/legal/anti\\_corruption.html](http://www.cisco.com/legal/anti_corruption.html).

20.2 Compliance with Certain Environmental Laws. Supplier shall also adhere to the following:

(iii) The Products and the processes used to produce and/or manufacture such Products shall comply with all applicable laws, regulations and ordinances which regulate use of Hazardous Materials or which impact, in whole or in part, a Product's sale or placement into commerce by or on behalf of Cisco or Cisco Authorized Purchasers. Such laws, regulations and ordinances include but are not limited to, the EU RoHS Directives, China RoHS, those regulations listed in the then-current JIG and similar laws, rules, statutes, treaties or orders; and

(iv) The Products shall not contain substances which are above the threshold levels established in Annex A of the then-current JIG; provided, however, that for Level A Substances, the mercury threshold shall be reduced to 1000 ppm. Use of materials containing any such substance in an amount exceeding the JIG Annex A threshold levels may be used only if and in the manner specified in advance written approval by Cisco.

20.3 Social Responsibility. To the extent applicable and commercially practicable and consistent with Supplier's business practices, Supplier shall diligently pursue effecting its operations and performance hereunder in accordance with Cisco's Manufacturing Supplier Code of Conduct as published at Cisco.com and updated from time to time. Supplier shall promote Cisco's supplier diversity goals by including suppliers, where warranted, that qualify as diverse suppliers in any one or more of the categories identified on Cisco's Supplier Diversity Business Development Website [www.cisco.com/supplier/diversity](http://www.cisco.com/supplier/diversity) and as further defined at: <http://www.cisco.com/supplier/diversity/definitions.shtml>. Upon Cisco's request, Supplier shall provide to Cisco reports of Supplier's expenditures with such diverse suppliers.

20.4 Life Support Applications. The Products are not designed for use in life support appliances or devices implanted in the human body or other similar direct life support machines, commercial aviation, nuclear facilities or systems or any other applications where malfunctions of the Product can reasonably be expected to result directly in death or personal injury to human beings or catastrophic property damage or any other ultrahazardous use. Cisco or its customers using or selling the Products for use in life support and such other applications do so at their own risk.

**24. Scrap and Supply Chain Visibility.** For Custom Products, or any Standard Products that

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include Cisco logos or other proprietary markings, Supplier shall comply with Cisco's Scrap Policy and Supply Chain Visibility Policy as communicated to Supplier from time to time.

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**Exhibit D**  
**Product Change Notification**

1. Product Change Notification Required. Supplier shall provide to Cisco prior written notice, in the manner required by this Exhibit (a “Product Change Notice” or “PCN”), for all changes to any Product or any process characteristic which could potentially result in non-compliance with Cisco’s physical, mechanical, optical and/or electrical requirements (“Covered Changes”). Such PCN, at a minimum, shall be provided to Cisco when the following Covered Changes are contemplated:

- a) Form, fit or function change\*
- b) EOL/Product Discontinuation
- c) Manufacturing Process & Procedure change (e.g. wafer fab, assembly or test)
- d) Die shrinks or revision\*
- e) Material change (e.g. plating, Underbump Metallization (UBM), Resin, base metal, dopants, die attach materials, molding compounds)
- f) Manufacturing site (Wafer fab/assembly/test facility change)
- g) Part numbering convention\*
- h) Design changes\*
- i) Layout changes\*
- j) Changes to dimensions of any layer
- k) Manufacturing process and reliability screen for optical Products
- l) Change in internal sub-component design, manufacturer(s), manufacturing location(s), part number or sourcing
- m) Product from new, “identical” equipment with known impact to reliability (i.e. Epitaxial systems, deposition/ etching/deposition tools, burn-in systems and so forth, etc.)
- n) Changes to burn-in or reliability screen processes for component and constituent sub-components
- o) Changes that impact safety for components/assemblies that require safety agency approval
- p) Change to lead-free plating\*
- q) Change to make the Product compliant with hazardous materials directives such as the European Union’s RoHS Directive (Requires EOL PCN also) \*

\* Cisco requires Supplier to assign new ordering part numbers

2. Notice of Proposed Changes. PCNs must be provided a minimum of [\*\*\*\*] prior to the delivery of any Product affected by a Covered Change, with the exception of EOL PCNs which must be provided a minimum of [\*\*\*\*] in advance of such EOL.

3. Samples; Qualification by Cisco. Samples of any such affected Product must be provided a minimum of [\*\*\*\*] following such PCN (and in no event less than [\*\*\*\*] prior to proposed shipment of a changed Product), unless otherwise agreed by the parties in writing. If the initial PCN was in the form of a Horizon Report, Supplier shall submit a formal written PCN with the samples of the proposed changed Product. A proposed changed Product shall be deemed “qualified” by Cisco only upon written confirmation to Supplier of such qualification. Samples of changed Products furnished to Cisco must be accompanied by a completed sample information form. Supplier may contact Cisco component engineering at [component-pcn@cisco.com](mailto:component-pcn@cisco.com) for a sample information template. Supplier must keep a log of all samples furnished to Cisco and provide a copy of the log to component engineering upon request.

Supplier shall send all PCNs to [component-pcn@cisco.com](mailto:component-pcn@cisco.com), and all change notices must be approved by Cisco’s Component Engineering department.

4. Relevant Change Data. Supporting data and qualification data for each proposed changed Product

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for which Supplier has given Cisco a PCN shall be forwarded to Cisco for evaluation with the proposed sample of the new Product.

Such data must include, at a minimum, the following information:

- a) Description of change
- b) Reason for change
- c) Affected Product part numbers (Supplier and Cisco as available)
- d) Specification, errata or datasheet update, as needed
- e) Proposed date of shipment of changed Products
- f) Traceability information for changed Products
- g) Supplier PCN tracking number
- h) Last time buy date of the unchanged Product
- i) Additional data pursuant to Cisco manufacturing 1st and 2nd level component qualification requirements
- j) Sample availability data

5. Additional Changes. If Supplier implements any change other than that in the PCN which results in a Cisco-qualified changed Product, Cisco shall be entitled to: (i) terminate without penalty any previously accepted purchase order for any affected Products remaining undelivered; (ii) place a last time order to purchase the unchanged Products pursuant to Section 13.3 of this Agreement; or (iii) return any changed Products if Cisco has found that the changed Product does not perform for Cisco's intended purpose, whether or not it meets the Specification.

6. Engineering Change Requested by Cisco. In the event that Cisco desires an engineering change in any of the Products, Cisco shall suggest such proposed engineering change to Supplier. Supplier and Cisco agree to work with each other in good faith to determine what such change will involve and the cost and timing implications of implementing such change. Upon Cisco's determination that it wishes to proceed with such change(s), the parties will coordinate their efforts to effect such implementation.

7. Costs of Engineering Changes Requested By Cisco. If a change agreed upon pursuant to Section 6 of this Exhibit, but not yet implemented, may result in scrap costs, Supplier agrees to stop WIP and/or orders for materials within [\*\*\*\*] of notice by Cisco, which notice may be in electronic form. If materials-on-order ("MOO") or WIP becomes obsolete as a result of a Cisco' engineering change, Supplier shall make every reasonable effort to cancel and/or use such MOO or WIP for a period of at least [\*\*\*\*] after change implementation. In the event Supplier provides satisfactory evidence to Cisco establishing that such MOO or WIP cannot be so cancelled or re-used by Supplier, Cisco shall issue to Supplier a purchase order and pay the corollary invoice for the same.

8. Engineering Changes Due to Defect. Notwithstanding Section 7 of this Exhibit, all engineering changes resulting from defects in or nonconformity of the Products shall be implemented at the sole expense of Supplier, unless the defect or nonconformity arises from defective specifications for Products which specifications were provided in writing to Supplier by Cisco.

9. Lead-free Material Changes. Supplier must adhere to the following requirements for changes to lead-free materials:

- a) Lead-free BGAs ("Ball Grid Arrays") will not be accepted by Cisco, unless specifically requested and approved in writing by Cisco Component Engineering or Commodity Management.
- b) All non-BGA Products should not transition to lead-free until they are qualified pursuant to the

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standard Cisco PCN process.

- c) Supplier shall continue to provide a SnPb (tin-lead) supply of all Products until the equivalent lead-free version is qualified by Cisco.
- d) Suppliers must understand and are required to adhere to Cisco's Pb-free Specification EDCS-281405, the "Cisco Pb-free Qualification Specification" for component qualification.

10. Support of Unchanged Product. Supplier shall continue to support the unchanged Product pursuant to Section 15 of this Agreement.

11. Update of Process. From time to time, this PCN process may be updated by Cisco as set forth in Cisco's Electronic Document Control System ("EDCS") document number [\*\*\*\*]. In the event of a conflict between this Exhibit and the updated PCN process set forth in the EDCS document, and so long as the parties have not mutually agreed to continue under the previously adopted EDCS document, the EDCS document shall prevail. Supplier has access to the EDCS via the following:

External Partners SOP  
<https://mco.cisco.com/>

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**Exhibit E**  
**Legacy Products Minimum Manufacturing Periods**

The parties will review and update this Exhibit E on an annual basis, or such earlier time frame as mutually agreed by the parties.

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**Exhibit F**  
**Failure Analysis Procedure**

With respect to any Product returned to Supplier, in the event that (i) Cisco requests a failure analysis; or (ii) Supplier suspects such returned Product is defective, Supplier shall, without charge to Cisco, perform an analysis sufficient to fully determine the root cause of any failure and to identify corrective actions sufficient to prevent reoccurrence (a “Failure Analysis”). The results of the Failure Analysis, root cause and corrective actions shall be reported to Cisco in conformance with “8D corrective action” format and disciplines.

Cisco will classify Failure Analysis requests into two categories – urgent and normal. Urgent requests are made when the component failure impacts Cisco’s ability to ship products or when the failure impacts the performance of Cisco products/equipment installed at a customer location. All other requests shall be within the normal category.

From time to time, this Failure Analysis process may be updated by Cisco as set forth in Cisco’s Electronic Document Control System (“EDCS”) document number [\*\*\*\*]. In the event of a conflict between this Exhibit and the updated Failure Analysis process set forth in the EDCS document, the EDCS document shall prevail, unless otherwise modified by written agreement of the parties. Supplier has access to the EDCS via the following:

External Partners SOP

<https://mco.cisco.com/mcoapps/portal/mymco/instanceId/150078/path/0>

Supplier will use its best efforts to complete any Failure Analysis and implement correction in a timely manner. Supplier’s responsiveness will be measured using the following criteria:

Failure Analysis type	Normal	Urgent	Deliverables
Initial response	[****]	[****]	Functional status If fail, outline of analysis steps and timeline If pass, return parts to Cisco via overnight carrier
Preliminary failure analysis	[****]	[****]	Preliminary identification of root cause Recommendations for containment of problem
Completed failure analysis	[****]	[****]	Completed failure analysis summary If appropriate, corrective action plan and timeline
Update schedule	[****]	[****]	Progress report on work completed Projection on next actions Updated timelines

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**EXHIBIT 10.2**

**MASTER PURCHASE AGREEMENT**

This Master Purchase Agreement (“Agreement”) is made as of July 18, 2011 (“Effective Date”) between Cisco Systems International B.V., a Dutch corporation, having its principal place of business at Haalerbergpark, Haalerbergweg 13-19, 1101 CH, Amsterdam, The Netherlands, on behalf of itself and its Subsidiaries (collectively, “Cisco”), and GSI Technology, Inc., a Delaware corporation having a place of business at 1213 Elko Dr., Sunnyvale, CA 94089 (“Supplier”).

**PRELIMINARY UNDERSTANDING**

- A. Supplier is in the business of developing, manufacturing and selling components that are required to achieve the desired functionality of some of Cisco’s products.
- B. Cisco desires to set forth the terms and conditions under which Cisco and Authorized Purchasers may purchase Products.

NOW, THEREFORE, in consideration of the mutual promises contained herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Definitions.**

“Authorized Purchaser” means an EMS Provider or any other third party designated by Cisco in writing.

“China RoHS” means the regulations entitled “Management Methods for Controlling Pollution by Electronic Information Products” (Ministry of Information Industry Order #39).

“Custom Product” means a Product that Cisco and Supplier have agreed to designate as ‘Liable’ in connection with the price negotiation process and is documented as such in Cisco’s then-current commodity information/attributes database. The parties acknowledge that a Product is generally designated ‘Liable’ when (i) it contains intellectual property of Cisco or a Cisco subsidiary or was designed or produced to meet specific requirements unique to a Cisco product and (ii) Supplier has no alternate redistribution channel.

“Cycle Time to Replenish (“CT2R”)” means the period of time beginning with the receipt of an Order or request for Product(s) through the arrival of such Product(s) at a Hub or such other specified delivery site as Cisco may require. CT2R shall consist solely of: order processing time + process planning time + manufacturing cycle time + transit time to the applicable delivery site, and does not include lead time for raw materials or other Product inputs.

“EMS Provider” means one of Cisco’s authorized contract manufacturers. A current list of such manufacturers is attached hereto as Exhibit A. Cisco may revise such list from time to time upon written notice to Supplier.

“EU Directives” means, collectively, EU RoHS Directive 2002/95/EC and the EU WEEE Directive 2002/96/EC.

“Hazardous Materials” means materials which are radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment.

“Hub” means a Cisco Lean Hub which may include, but is not limited to, Cisco’s Global Hub and Cisco Memory Hub.

“Hub Order” means an instruction to the Supplier to ship Product to the Hub, either on a single date or multiple pre-scheduled dates. Such instruction shall originate from an EMS Provider or a Cisco Memory Hub Operator pursuant to a valid Lean VMI Agreement or a Lean VMI Agreement for Third Party Hubs (as both are defined below). The instruction may take one of the following forms: discrete zero dollar purchase orders (manual or electronic), electronic data interchange releases against blanket purchase orders, or any other method agreed to between EMS Provider and Supplier or the Cisco Memory Hub Provider and Supplier, as applicable.

“Hub Provider” means any third party providing warehousing services in connection with a Cisco Lean Hub.

“Hub Pull Signal” means an instruction from the EMS Provider to the Hub Provider to ship or deliver Product from the Hub to the EMS Provider.

“Intellectual Property” means any and all: (i) rights associated with works of authorship throughout the world, including but not limited to copyrights, neighboring rights, moral rights, and maskworks, and all derivative works thereof, (ii) trademark and trade name rights and similar rights, (iii) trade secret rights, (iv) patents, designs, algorithms and other industrial property rights, (v) other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise, and (vi) registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing).

“JIG” means the Joint Industry Guide of the Electronic Industries Alliance.

“Lean Hub Plan” means Cisco’s Global Hub Plan and/or Cisco’s Memory Hub Plan.

“Non-Hub Order” means an instruction from Cisco or the Authorized Purchaser to the Supplier to ship Product directly to Cisco or the Authorized Purchaser. Such instruction may take one of the following forms: discrete purchase orders (manual or electronic), electronic data interchange releases against blanket purchase orders, or any other method agreed to between Authorized Purchaser and Supplier or Cisco and Supplier.

“Order” means a Hub Order and/or a Non-Hub Order.

“Product” means any product (including hardware and software, user documentation (if applicable) and Supplier’s standard packaging) set forth in a list provided by Supplier to Cisco on a quarterly basis which includes the current Products offered for sale by Supplier to Cisco and Authorized Purchasers, and any purchased from Supplier, or an authorized distributor of Supplier by Cisco or on Cisco’s behalf by an Authorized Purchaser.

“Product Price” means the most recent mutually agreed upon price that Cisco (and its Authorized Purchasers) shall pay for a Product, as established via any price negotiation process (including, without limitation, reverse auction, request for pricing, direct negotiation or other process) and contained in Cisco’s then-current commodity information database.

“Rolling Forecast” or “Forecast” means a non-binding estimate of Product forecast to be purchased by Cisco and its EMS Providers, as updated periodically.

“Software” means any computer code in object code or executable code format and whether embedded in or bundled with a Product in any manner, including as firmware, separately on disks or other media or by electronic transmission, together with all bug fixes, revisions and upgrades thereto.

“Specifications” means (i) the specifications identified in Supplier’s then-current Product data sheet and (ii) any additional specifications agreed to by the parties in writing.

“Standard Product” means a Product that is not a Custom Product.

“Subsidiary” means an entity in which a party effectively owns or controls, directly or indirectly, more than fifty percent (50%) of the voting stock or shares.

**2. Cisco Lean Hub Participation.** Supplier shall participate in a Cisco Lean Hub Plan as set forth below.

2.1 Participation in a Cisco Lean Hub program shall include, but not be limited to, execution of and adherence to the terms of a Hub agreement between Supplier and one or more EMS Provider (a “Lean VMI Agreement”) in substantially the same form as set forth in Exhibit B (such Lean VMI Agreement attached hereto for purposes of reference only), or an agreement between Supplier and the Hub Operator of a Cisco Memory Hub (a “Lean VMI Agreement For Third Party Hubs”), as applicable.

2.2 No Product Price shall be increased and no other cost shall be imposed upon Cisco or any EMS Provider arising from or related in any way to Supplier’s participation in the Hubs.

2.3 Supplier shall (i) utilize Cisco approved transporters of all Products into and from any Hub, and (ii) establish with Cisco, at least quarterly, the applicable CT2R(s) for each Product and/or location to be shipped.

2.4 Supplier shall provide to Cisco and its EMS Providers visibility to inventory volumes, shipment information and location of Products en route to, within, and transferred from the Hubs whether via electronic data interchange or other Cisco-approved method.

2.5 Cisco shall have no liability for any Orders placed by the EMS Providers, including any Products placed in the Hub.

2.6 The terms of this Agreement that relate to Supplier’s participation in a Cisco Lean Hub shall only become effective with respect to (i) those EMS Providers that have entered into a Lean VMI Agreement with the Supplier, and (ii) a Cisco Memory Hub Provider that has entered into a Lean VMI Agreement for Third Party Hubs with Supplier. Until such time as a Lean VMI Agreement or Lean VMI Agreement for Third Party Hubs, as applicable, has been executed, the other terms of this Agreement, without the Cisco Lean Hub terms, shall remain in full force and effect.



### **3. Sales to Authorized Purchasers.**

3.1 Supply of Product. Supplier agrees to supply Products pursuant to the terms and conditions of this Agreement. Supplier shall sell Product to Cisco or its Authorized Purchasers solely for purposes of allowing Cisco or its Authorized Purchasers to incorporate such Product into (or bundle such Product with) Cisco's products. Supplier shall manage all aspects of delivery and fulfillment of Products to Authorized Purchasers and/or to a Hub. Notwithstanding anything to the contrary in this Agreement, an Authorized Purchaser may not purchase Product from Supplier under this Agreement for any other customer of such Authorized Purchaser or for any other purpose.

3.2 Limitations. The Parties acknowledge that Supplier and Cisco Systems, Inc. ("SI") have entered into a purchase agreement (the "CSI Agreement") substantially similar to this Agreement governing the purchase of products from Supplier by CSI and contract manufacturers identified in the CSI Agreement. Supplier acknowledges that (i) Cisco Authorized Purchasers' purchases of Products under this Agreement will be made solely for the purpose of incorporating such Products into or bundling such Products with products ultimately made for Cisco and (ii) Cisco Authorized Purchasers' purchases under the CSI Agreement will be made solely for the purpose of incorporating such purchased property into or bundling such purchased property with products ultimately made for CSI.

3.3 Application of certain sections to Authorized Purchasers. The following sections of this Agreement shall apply to purchases by Authorized Purchasers of Product for inclusion in Cisco products (collectively, the "Authorized Purchaser Required Sections"): Sections 2 (Cisco Lean Hub Participation), 3.1 (Supply of Product), 4 (Orders), 5 (Product Pricing and Payment), 6 (Delivery and Acceptance), 7 (Flexibility), 8 (Late Deliveries), 9 (Reschedules and Cancellations), 10 (Shipping Documents, Packaging and Markings), 11.2 (Allocation of Products During Shortages), 12 (Quality and Testing), 13 (Product Changes and Discontinuation), 14 (Software), 15 (Failure Analysis and Support), 16 (Warranties), 20 (Compliance with Laws) and 24 (Scrap and Supply Chain Visibility). Notwithstanding anything to the contrary in this Agreement or any non-disclosure agreement executed by the parties, Cisco may disclose the Authorized Purchaser Required Sections to its Authorized Purchasers and the Hub Provider(s) solely for their use in purchasing Product to be included in (or bundled with) Cisco products or providing Hub services, respectively, so long as Cisco has confidentiality agreements with such Authorized Purchasers and Hub Provider(s) that protects such information. Cisco shall disclose the Authorized Purchaser Required Sections to its Authorized Purchasers in the format attached hereto and incorporated herein as Exhibit C. Supplier shall ensure that the Authorized Purchaser Required Sections shall be adhered to with and provided to Cisco Authorized Purchasers in the course of their purchase of Products for inclusion in Cisco products. If Supplier provides terms to any Authorized Purchaser more favorable to such Authorized Purchaser than those in the Authorized Purchaser Required Sections, Supplier shall provide such terms to Cisco. With respect to Product ordered by any Authorized Purchaser, Supplier shall invoice such Authorized Purchaser directly, and Cisco shall have no liability for any such order. Supplier shall be entitled to refuse to sell Products to any Authorized Purchaser with reference to this Agreement if (a)(i) such Authorized Purchaser has failed to pay Supplier amounts due Supplier, and (ii) such non-payment remains outstanding despite Supplier's diligent resolution efforts, and (iii) Supplier has notified Cisco in writing and has afforded to Cisco a reasonable period of time, but in no event less than ten (10) business days, in which to intervene and resolve such non-payment by Authorized Purchaser, or (b) for any other bona fide reason, as mutually determined and agreed by both Supplier and Cisco. Upon subsequent resolution of any such non-payment by a Cisco Authorized Purchaser as presented in (a), or upon Supplier's and Cisco's mutual agreement to resume shipment to such Authorized Purchaser as presented in (b) above, Supplier's obligations hereunder shall resume immediately. For purposes of volume pricing or other terms or conditions dependent on volume, all purchases of Products by Cisco, its subsidiaries and its Authorized Purchasers (incident to providing manufacturing services to Cisco) under this Agreement and the Cisco BV Agreement shall be aggregated for the benefit of Cisco and each Cisco Authorized Purchaser. Supplier agrees that any Cisco Authorized Purchaser may enforce the Authorized Purchaser Required Sections, notwithstanding the fact that Orders for the Products may issue from another Cisco Authorized Purchaser or Cisco; however, if any Authorized Purchaser makes a claim to Supplier regarding any Product, Supplier may request that Cisco, Supplier and the applicable Authorized Purchaser meet to determine if the claim should be made directly by Cisco or the original Authorized Purchaser.

3.4 Enforcement of Terms. Supplier agrees that Cisco may, at its discretion, enforce all terms

under this Agreement directly, notwithstanding the fact that Orders for the Products may issue from Cisco Authorized Purchasers.

**4. Orders.** Supplier shall accept and acknowledge in writing or electronically all Orders within one (1) business day after receipt thereof and identify a firm date for delivery of the Products at or within CT2R; provided, however, that Supplier shall not be liable for delays in transit time or delivery that are beyond the reasonable control of Supplier. Orders placed at the CT2R for a Product which are not acknowledged by Supplier within three (3) business days of receipt are deemed accepted; however, if during a particular Cisco fiscal calendar quarter, Supplier receives an Order for Product that was not part of a Cisco award of product during that quarter, Supplier reserves the right to discuss and, if necessary, modify the applicable CT2R for that Product. Cisco shall not be liable for any verbal commitments. If Supplier cannot meet the identified delivery date, and Cisco wishes to purchase the Products from one of Supplier's distributors, Supplier will make reasonable commercial efforts to extend to such distributor a price which would enable the distributor to sell Products to Cisco at the Product Price. All Orders placed with Supplier by Cisco directly shall be subject to the terms and conditions of this Agreement without specific reference hereto.

#### **5. Product Pricing and Payment.**

5.1 **Product Pricing.** Supplier shall sell the Products to Cisco and the Authorized Purchasers at the Product Price for each respective Product. Product prices are in U.S. dollars. Supplier shall not increase the Product Price or impose any additional costs on Cisco or any Authorized Purchaser arising from or related in any way to Supplier's participation in the Cisco Lean Hub plan. Supplier shall consider in good faith Cisco's quarterly cost reduction targets. Supplier will extend to Cisco and its Authorized Purchasers all reductions in Product Price for any Orders placed but not yet shipped to Cisco or its Authorized Purchasers (including pursuant to a Hub Pull Signal) as of the effective date of the reduction. Supplier represents and warrants that the Product Prices are, and shall be throughout the Term, no higher than the lowest prices normally offered by Supplier to any similarly situated customer purchasing the same or lesser total aggregate dollar or unit volume of the same Product under similar terms and conditions, on a quarterly basis.

5.2 **Payment by Cisco.** For Non-Hub Orders, Supplier will invoice Cisco (or its Authorized Purchaser in the case of purchases by an Authorized Purchaser) for the Product Price of the Products on or after the applicable shipment date for the Products covered by such invoice. Each shipment will be invoiced and paid for when due without regard to other scheduled deliveries. All invoices for Products ordered pursuant to a Non-Hub Order will be due and payable no later than thirty (30) days after the date of the invoice.

5.3 **Taxes.** Each party shall bear any and all taxes it incurs as a direct or indirect result of entering into this Agreement, unless the parties have agreed otherwise. If sales/use tax, VAT, GST, or similar indirect tax (collectively the "Applicable Tax") is payable as a consequence of any supply made or deemed to be made in connection with this Agreement, Cisco or its Authorized Purchaser shall pay to Supplier the Applicable Tax amount upon receiving a tax invoice complying with any legislation under which the Applicable Tax is imposed. Any Applicable Tax shall appear as separate additional items on the invoice from Supplier.

## **6. Delivery and Acceptance.**

6.1 **Delivery.** Supplier shall deliver the Products to the agreed ship-to location on the agreed delivery date using Cisco approved carriers.

For Non-Hub Orders, delivery terms shall be FCA Supplier's shipping point, freight collect, per Incoterms 2000. The carrier will be selected by Supplier in the absence of specific instructions by Cisco or the Authorized Purchaser.

For Hub Orders, Supplier shall retain title and risk of loss for the Products during transit to the Hub and while stored at the Hub and until the Products have been loaded on the carrier's means of transport at the Hub for delivery to the EMS Provider. Charges incurred prior to delivery of the Products to the carrier for shipment to the Hub will be paid by Supplier. Freight charges and customs clearance charges to deliver the Products to the Hub, will be paid by Cisco. Notwithstanding the fact that Supplier may not have responsibility to pay for these transit charges, Supplier shall retain the responsibility to maintain insurance on the Products during transit and while the Products remain in the Hub, consistent with Supplier's risk of loss for the Products.

6.2 **Acceptance.** Products ordered pursuant to a Non-Hub Order shall be deemed accepted by Cisco or its Authorized Purchaser, as applicable, unless notice of defect is received within ten (10) days of Cisco or Authorized Purchaser's receipt thereof and the Product is returned to Supplier within twenty (20) days of receipt. Only such Products that, upon receipt, are determined to be damaged or fail to conform to the Specifications ("DOAs") may be rejected. In the event of discovery of a DOA Product, Supplier's entire liability, and Cisco or its Authorized Purchaser's sole remedy shall be to exchange such Product for another of the same type. However, in no event shall this Section be construed as modifying or otherwise limiting Supplier's obligations under Sections 15, 16, 17, or 18.

7. **Flexibility.** Supplier will ensure that it can increase or decrease production of Products in all market conditions, using the amount of any Product for week 10 of the previous fiscal quarter's Rolling Forecast as a baseline from which to increase or decrease production ("Baseline"), as follows:

- Increase or decrease of [\*\*\*\*] of Baseline if the increase or decrease is to be implemented within four (4) weeks;
- Increase or decrease of an additional [\*\*\*\*] of Baseline (i.e., [\*\*\*\*] in aggregate) if the increase or decrease is to be implemented between four (4) weeks and eight (8) weeks.

Supplier shall bear all reasonable costs incurred to meet Baseline increases or decreases, unless the parties otherwise agree in writing. Notwithstanding the above, this Section shall not apply to the extent Supplier is fully participating in a Cisco Lean Hub Plan pursuant to a valid Lean VMI Agreement or Lean VMI Agreement for Third Party Hubs, as applicable, and is shipping Product to such Hub. For example, Supplier shall only be relieved of the flexibility requirements for those Products and those Hubs that are operating under a valid Lean VMI or Lean VMI Agreement for Third Party Hubs, as applicable.

8. **Late Deliveries.** Supplier shall notify Cisco and any affected Cisco Authorized Purchasers promptly if Supplier reasonably anticipates that delivery consistent with CT2R may be delayed. In the event that delivery is delayed for more than [\*\*\*\*] business days for reasons caused in whole or in substantial part by Supplier and the parties cannot reasonably agree on a new delivery date, Cisco or its Authorized Purchaser may reschedule or cancel the affected Order(s) without penalty and Supplier shall not be liable to Cisco or any Authorized Purchaser for any monetary damages resulting from such delay,

reschedule or cancellation, or assume any liability in connection with the shipment, nor shall the carrier be deemed an agent of Supplier.

**9. Reschedules, Reconfigurations and Cancellations.** At any time more than [\*\*\*\*] days prior to the originally scheduled delivery date, Cisco or its Authorized Purchaser may cancel, reschedule or reconfigure an Order in whole or in part provided that the Order had not previously been designated by the parties as NCNR, as defined below. To cancel, reschedule and/or reconfigure a shipment or a particular pending purchase, Cisco or its Authorized Purchaser shall provide written notification to Supplier at least [\*\*\*\*] days prior to the scheduled delivery date. If modified, the new delivery date shall be within [\*\*\*\*] days from the original scheduled delivery date. An order may only be re-configured or rescheduled once. No Order that has been mutually agreed by Cisco and Supplier in writing to be non-cancelable or non-returnable (“NCNR”) may be cancelled, rescheduled, reconfigured or returned. Except for a cancellation related to a late delivery as set forth in Section 8, or related to Cisco’s termination as a result of Supplier’s material breach as set forth in Section 23.2, Cisco may not cancel, reschedule or reconfigure an order within [\*\*\*\*] days of a scheduled deliver date.

**10. Shipping Documents, Packaging and Markings.** Supplier will ship Product with accurate shipping documents including (i) commercial invoice, packing list and applicable export and transportation documents and declarations; (ii) an itemized packing list bearing the purchase order number, the description, part number and quantity of each Product shipped, the number of shipping containers in the delivery and the waybill or bill of lading number, and (iii) external packaging labeling conforming to such labeling specifications as Cisco may provide from time to time. Supplier will package Products in accordance with good commercial practice, and in a manner acceptable to common carriers for shipment and adequate to ensure undamaged arrival of the Products. Supplier will mark all containers with necessary information (i.e. lifting, handling and shipping information, country of origin, purchase order numbers, date of shipment and the names of the consignee and consignor, etc.) and any other markings that may be required by applicable law.

**11. Disaster Recovery and Allocation during Shortages.**

11.1 **Disaster Recovery and Business Continuity.** Within [\*\*\*\*] days following a request by Cisco and receipt of Cisco’s disaster recovery and business continuity questionnaire, Supplier shall submit to Cisco the completed disaster recovery and business continuity questionnaire for the location(s) upon which Supplier relies to provide the Products (“Business Continuity Plan Response” or “BCP Response”). Such Business Continuity Plan Response shall respond to the disaster recovery and business continuity questions of Cisco in the questionnaire, which may include questions about primary site locations, available alternate facilities, time to recover (in weeks), emergency contacts, infrastructure and logistics and any security and protective measures necessary within commercial reasonability to ensure minimal impact to Cisco’s supply of Products. Cisco may request that Supplier complete the questionnaire on a periodic basis, but no more frequent than biannually. An updated BCP Response provided by Supplier will supersede the prior BCP Response. Cisco’s internal auditors, or an independent third party selected by Cisco, may conduct an inspection of Supplier’s facilities for business continuity risks in accordance with the process set forth in Section 25.

11.2 **Allocation of Product during Shortages.** In the event of a shortage of any Product included on the Rolling Forecast, Supplier shall notify Cisco and shall provide Cisco and its Authorized Purchasers an allocation of such Product during such shortage that is no less favorable than that provided to any other similarly situated customer, whether internal or external.

**12. Quality and Testing.** Supplier shall adhere to such quality and qualification requirements as may be specified by Cisco in writing from time to time and agreed to by Supplier. Supplier shall test Product prior to shipment to ensure Product is in compliance with Specifications.

**13. Product Changes and Discontinuation.**

13.1 Product Change Notices. Supplier shall not change any Specification, process characteristic, or the form, fit or function of any Product except in accordance with the Product Change Notification (“PCN”) terms set out and referenced in Exhibit D.

13.2 Minimum Manufacturing Period. Except for those Products identified in Exhibit E, Supplier shall manufacture each Product for a minimum of [\*\*\*\*] from Cisco’s first customer ship (“FCS”) of a product containing such Product (the “Minimum Manufacturing Period”), unless (i) Cisco terminates this Agreement under Section 23; (ii) Supplier terminates this Agreement under Section 23; (iii) there has been no demand by Cisco for a particular Product for [\*\*\*\*], at which time Supplier may provide notice to Cisco of the discontinuance of the Products as called for in Section 13.4.1. It is understood that Supplier is able to meet this requirement through the use of die revisions.

13.3 Failure to Meet Minimum Manufacturing Period. If Supplier fails to meet its obligations under Section 13.2, Supplier shall, at Cisco’s option, either (i) compensate Cisco for all reasonable direct costs Cisco incurs in the transition to an alternate manufacturer/seller or replacement product or (ii) buffer and manage, at Supplier’s expense, an amount of Product to be forecasted by Cisco for the remainder of the Minimum Manufacturing Period. If any buffered Product built per (ii) above remain at the expiration of the Minimum Manufacturing Period, the parties shall mutually determine how such Product will be disposed of, including Cisco’s payment therefor.

13.4 Product End of Life

13.4.1. EOL Notice and EOL Purchases. If Supplier determines to cease the manufacture or sale of any Product (an “End of Life” or “EOL”), Supplier shall provide at least [\*\*\*\*] prior written notice (the “EOL Notice Period”) in accordance with Cisco’s PCN process set forth in Exhibit D. Cisco may place Orders during the EOL Notice Period and Supplier will use best efforts to accept them, subject to Supplier’s manufacturing and supply constraints. Cisco shall take delivery on a date no later than [\*\*\*\*] after the end of the EOL Notice Period. If Supplier accepts a purchase order from a third party after the EOL Notice Period has run, it shall notify Cisco and offer the same opportunity for Product purchase to Cisco as set forth in such purchase order.

13.4.2. Alternative Source; EOL Support. If requested, Supplier shall assist Cisco in identifying alternative products or sources. Supplier shall continue to provide support pursuant to Section 15 for each Product that is the subject of an EOL notice.

**14. Software.** The parties acknowledge that no Software will be provided by Supplier pursuant to this Agreement.

**15. Failure Analysis and Support.** Supplier will make available the following services for a period of at least [\*\*\*\*] years from the date of last Product shipment by Supplier:

15.1 Failure Analysis. Supplier will provide failure analysis as set out in Exhibit F hereto; and

15.2 Technical Support. Upon request, Supplier will provide in electronic or other acceptable form, all bug notes or other documentation regarding verified Product problems, including accurate records of any known or suspected defects. This information is the Confidential Information of Supplier. Supplier will provide this information and any corrective action at no charge during the term of this Agreement; and

15.3 Emergency Replacement. Supplier shall ship Product within twenty-four (24) hours of any Cisco request for emergency replacement. If no replacement is available, Supplier will provide replacement Product as soon as reasonably practicable and will notify Cisco of the estimated delivery date. Emergency replacements may not be available for EOL'd Products.

## **16. Warranties.**

16.1 Product Warranty. The warranty period for each Product shall be three (3) years beginning on the date that Cisco or the Authorized Purchaser or the Hub receives the Product (the "Warranty Period") unless a longer period is agreed to in writing between the parties. Supplier represents and warrants that, when sold, all Products will be new and unused and, during the applicable Warranty Period (i) will comply in all respects with the Specifications, (ii) will be free from defects in materials, design and workmanship, and (iii) each Product, when delivered, shall have no less than [\*\*\*\*] remaining weeks of shelf-life. Cisco shall notify Supplier of any nonconformance during the Warranty Period, obtain a return materials authorization ("RMA") from Supplier, and return the nonconforming Product to Supplier's designated repair facility, with a statement describing the nonconformity. Warranty claims not made during the Warranty Period are waived. For valid warranty claims, Supplier will, at its expense, either provide a credit or refund to Cisco or repair or replace all Products not conforming to the requirements of this Section with repaired or new and unused Products shipped to a location designated by Cisco within [\*\*\*\*] or as soon as commercially practicable after receipt of the defective Product. Supplier may select the applicable warranty option; however, the parties acknowledge that replacement may not be a viable option for EOL'd Products, and that the decision to either provide a credit or refund will be mutually determined by the parties. Supplier reserves the right to charge additional fees for repairs or replacements performed outside the Warranty Period for the Product. The foregoing is the sole and exclusive remedy for breach of warranty by Supplier with respect to the Products.

16.2 Limitations on Warranty. The warranties set forth in section 16.1 shall not apply to any Product which has been, following receipt by Cisco and/or an Authorized Purchaser, (a) subjected to accident, abuse, misuse, neglect or operating or environmental conditions that deviate from the parameters established in the Specifications or (b) improperly installed, packaged, tested or altered by anyone other than Supplier.

16.3. Disclaimer of Warranties. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY SUPPLIER IN CONNECTION WITH THE PRODUCTS AND SUPPLIER DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THE THIRD PARTY RIGHTS UNDER THE UCC.**

## **17. Epidemic Failure.**

17.1 Definition and Process. In the event that, during the [\*\*\*\*] period after delivery of a Product, a substantially similar repetitive root cause, failure mode or defect occurs in such Product

indicating a common or systemic failure (an “Epidemic Failure”), the terms set forth in this Article 17 shall apply. The parties agree that no defect will constitute an Epidemic Failure unless, at a minimum, such defect would have been covered by Supplier’s Product warranty as set forth in Section 16.1 if it had occurred during the Warranty Period.

(i) The party that discovers the failure will notify the other promptly; provided, however, that in the event Supplier discovers a failure that creates a risk of injury or death, Supplier will immediately notify Cisco and will also provide Cisco with written notice within twelve (12) hours of any notification made by Supplier to any governmental body responsible for regulation of product safety;

(ii) Supplier shall provide to Cisco a preliminary plan for problem diagnosis within one (1) business day of the notification, which plan Supplier will revise on Cisco’s request;

(iii) Supplier and Cisco will use commercially reasonable efforts to diagnose the problem, plan an initial work-around and effect a permanent solution; and

(iv) Supplier and Cisco will mutually agree on a plan for customer notification, replacement scheduling and remediation, which may include field removal, return and reinstallation, work in process (“WIP”), inventory replacement, and repair, or retrofitting, regardless of location or status of WIP completion.

Notwithstanding the foregoing Cisco may undertake any and all action necessary independently of Supplier.

**17.2 Costs of Epidemic Failure.** Subject to the limitations set forth in Section 21.1, Supplier will compensate Cisco for all commercially reasonable, direct costs incurred by Cisco or its Authorized Purchasers in rectifying any Epidemic Failure. The parties acknowledge and agree that such commercially reasonable direct costs shall include: (a) the cost of replacement Products and repair materials, (b) the costs relating to communications to Cisco customers and channels of distribution regarding the Epidemic Failure, its effect and the corrective/remediation process; (c) the cost of returning affected Products, (d) labor and travel costs relating to removing or repairing the affected Products and installing replacement Products into the applicable Cisco products wherever located, but only where the parties agree that the Cisco customer should not remove the affected Product and install the replacement, (e) the cost of shipping replacement Products, and (f) costs incurred by Cisco and its Authorized Purchasers for retooling, remanufacturing, retesting or recalibration as a result of such Epidemic Failure. In addition, if any Epidemic Failure causes a subassembly which contains the Product to be rendered unusable, then Supplier will compensate Cisco for the costs in replacing, returning or repairing such subassembly, including any costs incurred in shipping a replacement subassembly. The parties agree that after the liability cap set forth in Section 21.1 has been reached for any Epidemic Failure, they will meet to negotiate in good faith an appropriate possible allocation for any costs in excess of such cap.

## **18. Indemnification.**

18.1 **Supplier’s Indemnification.** Supplier will defend each of Cisco and its officers, directors, employees, successors and assigns (collectively the “Indemnified Parties”) from and against all claims, suits, demands and actions brought or made by third parties against the Indemnified Parties or tendered to the Indemnified Parties for defense and/or indemnification (collectively “Claims”), and shall indemnify and hold harmless the Indemnified Parties from and against all damages, losses, costs, and liabilities including reasonable attorney and professional fees (collectively “Losses”) as incurred that result or arise from Claims, directly or indirectly that: (i) allege that one or more Products, or any part thereof, or their

manufacture, use, import, support, sale or distribution infringe, misappropriate, or violate any Intellectual Property rights of any third party; or (ii) allege that one or more Products, or any part thereof, have caused bodily injury (including death) or physical damage to tangible property. In addition, Supplier will pay all amounts agreed to in a monetary settlement of the Claims that are agreed to by Supplier in settlement.

18.2 Continued Use. Upon the assertion of a Claim under Section 18.1(i) deemed valid by Cisco in its sole discretion, such discretion exercised in good faith and following a good faith discussion with Supplier regarding the Claim, Cisco may request, and Supplier shall, at Supplier's sole expense use all diligent commercial efforts to either: (i) obtain a license that allows the continued use, manufacture, import, support, sale and distribution of the Products, or (ii) replace or modify the Products so as to be non-infringing. In the event that Supplier cannot achieve either (i) or (ii) above, or neither are commercially feasible after all diligent efforts have been expended by Supplier, Supplier shall refund to Cisco the price of any affected Products that are, or may reasonably be, subject to an injunction or other order prohibiting their continued use, manufacture, import, support, sale or distribution, and which are returned to Supplier, including the costs for such return. The obligations of Supplier under this Section 18.2 shall be in addition to its obligations of indemnity under this Section 18.

18.3 Notification and Control. Cisco will promptly notify Supplier, in writing, of any Claim for which Cisco seeks indemnification (provided that Cisco's failure to provide such notice will relieve Supplier of its obligations only to the extent that such failure prejudices Supplier's ability to defend the Claim). Supplier shall have sole control of the Claim, its defense and all negotiations for its settlement or compromise and shall exercise such control in good faith. Supplier shall use counsel reasonably acceptable to the Indemnified Parties. The Indemnified Parties may employ counsel at its own expense (provided that if counsel is employed due to a conflict of interest or because Supplier does not assume control, then Supplier will bear such expense). Supplier shall have no liability for any costs, losses or damages resulting from any settlement or compromise made by the Indemnified Parties without Supplier's prior written consent. Supplier shall not settle any Claim in a manner that admits fault or establishes liability on the part of the Indemnified Parties without the Indemnifying Party's prior written consent, which consent may be withheld for any reason. If the Claim is one of multiple claims in a lawsuit against an Indemnified Party or tendered to an Indemnified Party, some of which claims may not be subject to the indemnity obligation under this Section 18, then Supplier and the Indemnified Parties shall cooperate in good faith in determining the appropriate roles and responsibilities in the defense, settlement, adjustment or compromise of the claims; provided that Supplier shall not be relieved of its obligations hereunder with respect to any Losses (but not attorneys' fees related to those claims not subject to the indemnity obligations under this Section 18) and shall remain liable for its proportionate share of the Losses (less those attorneys' fees related to those claims not subject to the indemnity obligations under this Section 18) relating to the Claim(s).

18.4 Exceptions to Supplier's Indemnity. Supplier shall have no obligation under Section 18.1 to the extent any claim of infringement is caused by (i) use of the Product in combination with any other products not intended by or provided by Supplier if the infringement would not have occurred but for such combination (except to the extent (a) where the sale or use of the Product would constitute contributory infringement by Supplier; (b) the combination is pursuant to Supplier's information and instructions applicable to the Product, or (c) there is no commercially reasonable non-infringing use for the Product other than in such combination); (ii) any alteration or modification of the Product not undertaken or authorized by Supplier, if the infringement would not have occurred but for such alteration or modification (the parties agree that incorporation of the Product into a Cisco product shall not be an alteration or modification of the Product); (iii) Supplier's compliance with Cisco's unique written specifications if the infringement would not have occurred but for such unique written specifications



excepting any implementation thereof by Supplier; or (iv) Cisco's failure to comply with written instructions provided by Supplier identified by Supplier as necessary to render the Product non-infringing and which would have rendered the Product non-infringing, provided that a reasonable time period is given to Cisco to enable it to implement the written instructions and that Supplier remains obligated under Section 18.1 with respect to any infringement occurring up to the end of such time period.

18.5 Application to Authorized Purchaser Purchases. The obligations of this Article 18 shall apply as between Cisco and Supplier irrespective of whether the Products at issue were purchased directly by Cisco or by a Cisco Authorized Purchaser as contemplated in Section 3.3 (Application of certain sections to Authorized Purchasers) above.

18.6 No Implied Indemnity. The foregoing states the entire liability of Supplier for patent, copyright, trademark or other intellectual property rights infringement by any Product furnished under this Agreement. There are no implied indemnities.

19. Confidentiality. The parties shall treat the terms and conditions of this Agreement as Confidential Information (as defined in the NDA referenced below) of Cisco and Supplier. Upon execution hereof, the parties shall comply with the provisions of the Master Mutual Non-Disclosure Agreement (with Supplements) executed by Supplier and Cisco Systems, Inc. on December 16, 2002 (the "NDA"). Notwithstanding the foregoing, Supplier authorizes Cisco to disclose Supplier's Confidential Information and this Agreement in confidence on a need to know basis to Cisco Authorized Purchasers and other third parties involved in the manufacture of Cisco's products.

## **20. Compliance With Laws; Social Responsibility; Use in Life Support Applications.**

20.1 General Compliance with Laws. Supplier represents and warrants that it has complied and shall comply with all applicable laws, regulations and other governmental requirements in effect at the time of manufacture of each of the Products. Supplier shall comply with Cisco's materials content requirements as provided to Supplier from time to time, and reviewed and agreed to by Supplier, and shall undertake testing sufficient to validate compliance with such requirements. Supplier agrees at all times to act consistently with Cisco's global anti-corruption policy posted at [http://www.cisco.com/legal/anti\\_corruption.html](http://www.cisco.com/legal/anti_corruption.html).

20.2 Compliance with Certain Environmental Laws. Supplier shall also adhere to the following:

(i) The Products and the processes used to produce and/or manufacture such Products shall comply with all applicable laws, regulations and ordinances which regulate use of Hazardous Materials or which impact, in whole or in part, a Product's sale or placement into commerce by or on behalf of Cisco or Cisco Authorized Purchasers. Such laws, regulations and ordinances include but are not limited to, the EU RoHS Directives, China RoHS, those regulations listed in the then-current JIG and similar laws, rules, statutes, treaties or orders; and

(ii) The Products shall not contain substances which are above the threshold levels established in Annex A of the then-current JIG; provided, however, that for Level A Substances, the mercury threshold shall be reduced to 1000 ppm. Use of materials containing any such substance in an amount exceeding the JIG Annex A threshold levels may be used only if and in the manner specified in advance written approval by Cisco.

20.3 Social Responsibility. To the extent applicable and commercially practicable and consistent with Supplier's business practices, Supplier shall diligently pursue effecting its operations and

performance hereunder in accordance with Cisco's Manufacturing Supplier Code of Conduct as published at Cisco.com and updated from time to time. Supplier shall promote Cisco's supplier diversity goals by including suppliers, where warranted, that qualify as diverse suppliers in any one or more of the categories identified on Cisco's Supplier Diversity Business Development Website [www.cisco.com/supplier/diversity](http://www.cisco.com/supplier/diversity) and as further defined at: <http://www.cisco.com/supplier/diversity/definitions.shtml>. Upon Cisco's request, Supplier shall provide to Cisco reports of Supplier's expenditures with such diverse suppliers.

20.4 **Life Support Applications.** The Products are not designed for use in life support appliances or devices implanted in the human body or other similar direct life support machines, commercial aviation, nuclear facilities or systems or any other applications where malfunctions of the Product can reasonably be expected to result directly in death or personal injury to human beings or catastrophic property damage or any other ultrahazardous use. Cisco or its customers using or selling the Products for use in life support and such other applications do so at their own risk.

## **21. LIMITATION OF LIABILITY.**

21.1 **Consequential Damages Waiver.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, EXCEPT FOR THOSE DAMAGES ENUMERATED IN SECTION 17 (EPIDEMIC FAILURE) AND FOR SUPPLIER'S OBLIGATIONS IN SECTION 18 (INDEMNIFICATION), AND FOR BREACH OF A PARTY'S OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 19, UNDER NO CIRCUMSTANCES WILL ANY PARTY, ITS EMPLOYEES, OFFICERS OR DIRECTORS, AGENTS, SUCCESSORS OR ASSIGNS BE LIABLE UNDER ANY CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL COSTS OR DAMAGES, ARISING OUT OF OR RELATING IN ANY WAY TO THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THIS SECTION DOES NOT LIMIT EITHER PARTY'S LIABILITY FOR BODILY INJURY (INCLUDING DEATH) OR PHYSICAL DAMAGE TO TANGIBLE PROPERTY.

21.2 **Cap on Liability.** Except for Supplier's obligations in Section 18 (Indemnification) and Section 17 (Epidemic Failure), and for a breach of a party's obligations of confidentiality under Section 19, the liability of either party hereunder, on a per occurrence basis, shall not exceed the greater of [\*\*\*\*] or [\*\*\*\*] percent of the sum of the amount Supplier has received in connection with this Agreement from Cisco and its Authorized Purchasers (for Product bought for inclusion in Cisco products) in the most recent twelve (12) full calendar months immediately prior to the event giving rise to the claim, notwithstanding any failures of the essential purpose of this Agreement or any limited remedy hereunder. Supplier's liability for Epidemic Failure under Section 17 of this Agreement, on a per Epidemic Failure occurrence or basis, and excluding Supplier's cost of providing replacement Products, shall not exceed [\*\*\*\*] per claim. This Section does not limit either party's liability for bodily injury (including death) or physical damage to tangible property where caused by Supplier's gross negligence or intentional misconduct, nor does it limit Cisco's express payment obligations.

22. **Insurance.** Supplier shall, at its own expense and at all times during the term of this Agreement and after its termination as required below, maintain in effect the insurance and minimum limits of coverage designated below, together with any other insurance required by law in any jurisdiction where Supplier provides Products and/or services under this Agreement, in insurance companies authorized to do business in such jurisdictions. These minimum requirements do not limit or reduce

Supplier's liability arising from its obligations under this Agreement.

22.1 General Liability Insurance. Supplier shall maintain general liability insurance covering all operations by or on behalf of Supplier arising out of or connected with this Agreement and providing coverage for bodily injury, property damage and products liability. Such insurance can be maintained in any combination of the following types of insurance: Commercial General Liability, Foreign General Liability, Public Liability, Products Liability, Umbrella Liability and/or Excess Liability, or equivalent insurance. Such insurance shall provide limits of not less than the equivalent of [\*\*\*\*] per occurrence or per claim. If such insurance is maintained on an "occurrence" basis, such insurance shall be maintained for at least one year after the expiration of this Agreement, and if such insurance is maintained on a "claims made" basis, such insurance shall be maintained for at least three years after the expiration of this Agreement.

22.2 Proof of Insurance. Certificates of Insurance or other evidence of the coverages required above shall be furnished by Supplier to Cisco when this Agreement is signed, or within a reasonable time thereafter, and within a reasonable time after such coverage is renewed or replaced. Cisco's receipt and/or acceptance of such proof shall not limit or relieve Supplier of the duties and responsibilities with respect to maintaining insurance required by this Agreement. Such proof shall be delivered to Global Risk Management Cisco Systems, Inc. 170 W. Tasman Drive, M/S SJC-11/3 San Jose, CA 95134.

22.3 Waiver of Subrogation. The insurance maintained by Supplier pursuant to Section 22.1 above shall provide that, except to the extent prohibited by law, Supplier and its insurer waive all rights of recovery or subrogation against Cisco, its officers, directors, employees, and agents, but only for injury, damage or loss that falls within Supplier's indemnity obligations under this Agreement.

22.4 Policies to be Primary. The insurance maintained by Supplier pursuant to this Agreement shall provide that Supplier's insurance is primary to and noncontributory with any and all other insurance maintained by or otherwise afforded to Cisco, its officers, directors, employees and agents, but only for injury, damage or loss that falls within Supplier's indemnity obligations under this Agreement.

22.5 Use of Subcontractors. Supplier shall ensure that any subcontractor that Supplier directly engages to manufacture the Products for Cisco hereunder will maintain substantially similar insurance as required by Supplier hereunder or is insured under Supplier's insurance.

### **23. Term and Termination.**

23.1 Term. Unless terminated earlier as provided herein, this Agreement will have a term of three (3) years commencing on the Effective Date and shall automatically renew for additional periods of one (1) year ("Term") unless either party provides the other written notice of non-renewal at least one hundred and twenty (120) days prior to the expiration of the then-current Term.

23.2 Termination. Cisco may terminate this Agreement and/or any Order in the event of Supplier's material breach that remains uncured thirty (30) days after Cisco has provided written notice thereof. Supplier may terminate this Agreement in the event of Cisco's material breach that remains uncured thirty (30) days after Supplier has provided written notice thereof and Section 9 shall apply to any Orders that may be cancelled as a result of Cisco's material breach.

23.3 Survival. Sections 1 (Definitions), 13.4 (Product End of Life), 14 (Software), 15 (Failure Analysis and Support), 16 (Warranties), 17 (Epidemic Failure), 18 (Indemnification), 19 (Confidentiality), 21 (Limitation of Liability), 22 (Insurance), 23.3 (Survival), 24 (Scrap and Supply Chain Visibility), 25 (Audit) and 27 (General) and all end user licenses shall survive termination of this Agreement. Neither party will be liable to the other for compensation, reimbursement, or damages for the loss of prospective profits, anticipated sales or goodwill, on account of any expenditures, investments or commitments made by either party, or for any other reason whatsoever, due to the termination of this Agreement in accordance with its terms.

**24. Scrap and Supply Chain Visibility.** For Custom Products, or any Standard Products that include Cisco logos or other proprietary markings, Supplier shall comply with Cisco's Scrap Policy and Supply Chain Visibility Policy as communicated to Supplier from time to time.

**25. Audit.** Upon not less than thirty (30) days' notice and not more than once per year (unless a prior audit revealed a non-compliance with this Agreement), Cisco may verify Supplier's compliance with the terms and conditions of this Agreement by conducting an audit at any Supplier facility at which books and records related to the performance of this Agreement are kept or at which any Product is produced, stored or shipped. Any such audit shall be conducted during Supplier's normal hours of operation and in a manner that does not unreasonably interfere with Supplier's normal business activities and operations. Audits may only be conducted by an independent third party and Supplier shall not be required to disclose or share confidential information of its other customers. The auditors shall be selected by Cisco and must be acceptable to Supplier (not to be unreasonably withheld). An audit shall be subject to the auditor executing any standard Supplier confidentiality agreement that allows the auditor to produce a confidential report for Cisco which certifies whether Supplier is in material breach of this Agreement, but which otherwise requires the auditor to keep confidential all information of Supplier learned as a result of the audit. Supplier shall be entitled to receive a copy of the auditor's report. All audits shall be conducted at Cisco's expense, except that if any audit reveals a material breach of this Agreement, Supplier shall pay the reasonable fees and expenses of such audit.

## **26. Force Majeure**

26.1 General. Neither party shall be considered in default of performance under this Agreement to the extent that performance of such obligation is delayed or prevented by fire, flood, earthquake or similar natural disasters, riot, war, terrorism, civil strife, labor disputes or disturbances, governmental regulations, communication or utility failures, or casualties or any other similar event or circumstance that is beyond the reasonable control of such party (a "Force Majeure Event"). A party shall resume performance under this Agreement immediately after the delaying cause ceases and, as it pertains to Supplier, within any time to recover objective defined in the BCP Response, as described below. The parties may mutually agree to extend the then current term for a period equivalent to the length of time the excused delay endured.

26.2 Disaster Recovery. In the event Supplier experiences a Force Majeure Event that makes continuation of normal business impossible such that Supplier cannot deliver Product to Cisco for a period of time, Supplier shall use commercially reasonable efforts to comply with the requirements of its BCP Response to resume pre-disaster Product production levels within the time to recover objective stated in the BCP Response. The provisions of paragraph 26.1 above are inapplicable to the extent that Supplier does not use commercially reasonable efforts to continuously comply with the BCP Response.

## **27. General.**

27.1 Assignment. A party may not assign or transfer this Agreement or delegate its obligations hereunder, in whole or in part, without the prior written consent of the other party; provided, however, either party may assign or transfer this Agreement in connection with a merger, acquisition or sale of all or substantially all of its assets to which this Agreement relates (each, an "Acquisition Transaction") or to a Subsidiary of such party without prior written consent, so long as prior notice is provided to the other party and, in the case of an assignment in connection with an "Acquisition Transaction", the party to whom this Agreement will be transferred or assigned is not a competitor of the other party. Any attempt to assign or transfer or delegate without such consent is void.

27.2 Notices. All notices shall be in writing and delivered via express courier, via registered or certified mail, or via fax if confirmed by registered or certified mail, to the following addresses:

Cisco Systems International B.V. Haarlerbergpark, Haarlerbergweg 13-19, 1101 CH, Amsterdam The Netherlands Attn: Director, Finance	GSI Technology, Inc. 1213 Elko Dr. Sunnyvale, CA 94089 Attn: Cisco Account Manager
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with a copy to: Cisco Systems, Inc. 170 West Tasman Drive San Jose, CA 95134 Attn: Sr. V.P. and General Counsel Fax: (408) 526-8220	with a copy to: GSI Technology, Inc. 1213 Elko Dr. Sunnyvale, CA 94089 Attn: VP of Sales Fax: (408) 331-9795
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and a copy to:  
Cisco Systems, Inc.  
170 West Tasman Drive  
San Jose, CA 95134  
Attn: V.P. Customer Value Chain Management

27.3 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from this application to this Agreement.

27.4 Entire Agreement. This Agreement, together with its Exhibits and information and documents referenced herein, contain the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior written or oral agreements between the parties regarding the subject matter. In the event of a conflict between the terms of this Agreement and the terms of any Exhibit, the terms of the Exhibit shall govern.

27.5 Unenforceable Provisions. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

27.6 Construction. This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof shall not be construed for or against any party. The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement, which shall be considered as a whole. Except as otherwise set forth in Section 3.3, there are no third party beneficiaries to this Agreement.

27.7 Controlling Language. This Agreement, and the exhibits hereto, are prepared and executed in the English language only, which language shall be controlling in all respects. Any translations of this Agreement into any other language are for reference only and shall have no legal or other effect. All proceedings related to this Agreement shall be conducted in the English language.

27.8 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27.9 Export Control. In exercising its rights under this Agreement, Cisco agrees to comply with all export controls imposed on the Products, by any country or nations within whose jurisdiction Cisco operates or does business. Cisco agrees not to export or permit exportation of the Products, technical data or any Specifications, without complying with the export control laws in the relevant jurisdiction.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the Effective Date by persons duly authorized.

**Cisco Systems International B.V.**      **GSI Technology, Inc.**

**By:** \_\_\_\_\_ **By:** \_\_\_\_\_

**Title:** \_\_\_\_\_ **Title:** \_\_\_\_\_

## Exhibit A

### Designation of Authorized EMS Providers

The following entities are authorized contract manufacturers for purposes of this Agreement:

**1. Celestica Corporation and all its affiliates, including:**

Celestica International Inc., an Ontario corporation  
Celestica Corporation, a Delaware corporation  
Celestica Monterrey S.A. de C.V., a Mexican corporation  
Celestica (Thailand) Limited, a Thai corporation  
Celestica Holdings Pte. Limited, a Singapore corporation

**2. Jabil Circuit, Inc. and all its affiliates, including:**

Jabil Circuit, Inc.  
Jabil Circuit, Inc.  
Jabil Circuit, Sdn Bhd  
Jabil Circuit de Mexico S. de R.L. de C.V.  
Jabil Luxembourg Manufacturing Sarl  
Jabil Circuit (Shanghai) Co. Ltd.  
Jabil Circuit Hungary Contract Manufacturing Services Ltd.

**3. Solectron Corporation and all its affiliates, including:**

Solectron Corporation  
Solectron Technology Sdn Bhd  
Solectron USA, LLC

**4. Flextronics Telecom Systems Ltd. and all its affiliates, including:**

Flextronics Telecom Systems Ltd.  
Flextronics International USA, Inc.  
Flextronics Manufacturing (H.K.) Ltd.  
Flextronics Manufacturing (Zhuhai) Co., Ltd.  
Flextronics International SRO  
Flextronics Logistics USA Inc.  
Flextronics Marketing (L) Ltd.

**5. Hon Hai Precision Industry Co. Ltd. and all its affiliates, including:**

Hon Hai Precision Industry Co. Ltd.  
NSG Technology Inc.  
Foxconn CZ s.r.o  
Focus PC Enterprises Ltd.  
Hong Fu Jin Precision Ind. (Shenzhen) Co., Ltd.  
Foxconn Corporation (Houston)  
Foxconn India Private Limited

**6. Inventec Electronics (M) Sdn Bhd and all its affiliates, including:**

Inventec Electronics (M) Sdn Bhd., a Malaysian Corporation  
Inventec Electronics

**7. Quantacomp and all its affiliates, including:**

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QCH Nashville LLC Wyoming, Limited Liability Corporation

**8. Hewlett Packard Company and all its affiliates, including:**

Hewlett Packard Company Harris County, Houston, TX

**9. Amphenol TCS, a division of Amphenol Corporation**

**10. Sanmina-SCI Corporation**

**11. Smart Modular Technologies, Inc.**

**12. Teradyne Incorporated**

\*\*\*\* Indicates provision for which confidential treatment has been requested. CISCO CONFIDENTIAL



EXHIBIT B

Lean VMI Agreement for Cisco Global Hubs

This Lean VMI Agreement for Cisco Global Hubs (the "Agreement") is entered into by and between \_\_\_\_\_ [EMS Provider name], a \_\_\_\_\_ [jurisdiction] \_\_\_\_\_ [type of legal entity] with its principal place of business located at \_\_\_\_\_ [address] ("EMS Provider") and \_\_\_\_\_ [supplier name], a \_\_\_\_\_ [jurisdiction] \_\_\_\_\_ [type of legal entity] with its principal place of business located at \_\_\_\_\_ [address] ("Supplier") as of \_\_\_\_\_ [effective date] ("Effective Date").

**Whereas**

Cisco Systems, Inc. ("Cisco Inc.") and Cisco Systems International B.V. ("Cisco BV") (each, a "Cisco Entity") have entered into agreements with a third party provider of logistics and warehousing services ("Hub Operator") pursuant to which Hub Operator will establish warehouse facilities in close geographic proximity to certain EMS Provider facilities at which products are manufactured for Cisco Inc. and/or Cisco BV (each such warehouse, a "Hub") for the purpose of receiving, storing and forwarding the materials, components and assemblies used in the manufacture of, or bundled with, such products (each such material, component and assembly, a "Component"); and

EMS Provider and Supplier have previously established a set of terms (which may take the form of a written agreement, purchase order terms, course of dealing or other form) governing EMS Provider's purchases of Components to be incorporated into, or bundled with, Cisco Products (as defined below) (such terms, as EMS Provider and Supplier may alter them from time to time, the "Existing Purchase Terms"); and

EMS Provider and Supplier wish to document the terms under which, among other things, Supplier will deliver Components to one or more Hubs pursuant to instructions from EMS Provider, EMS Provider will request delivery of Components located in the Hubs as needed to produce Cisco Products, Supplier will invoice EMS Provider for such delivered Components and EMS Provider will pay such invoices.

**Now Therefore**, in furtherance of the foregoing and upon due consideration, the adequacy and receipt of which is hereby acknowledged, the parties agree as follows:

**a. Scope**

1.1 Cisco Supply Chain Only. This Agreement relates solely to Components ordered by EMS Provider for incorporation into, or bundling with, Cisco Products. This Agreement shall have no application to any commodity or component ordered for any other customer of EMS Provider or for any other purpose.

1.2 Order of Precedence. Subject to Section 1.1 above, this Agreement supplements and is cumulative with the Existing Purchase Terms; provided that in the event of a conflict with the Existing Purchase Terms, the terms of this Agreement will prevail.

1.3 Components Covered. This Agreement shall apply to all Components specified in any Hub Order (as defined below) placed with Supplier by EMS Provider.

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## **b. Definitions**

“Cisco Product” means a product manufactured by or for Cisco Inc. or Cisco BV.

“Custom Component” means a Component that the Cisco Entities and Supplier have agreed to designate as ‘Liable’ in connection with the Component costing process (and any applicable purchase agreements between the Cisco Entities and Supplier), as documented in the Cisco Entities’ component attributes database. The parties acknowledge that a Component is generally designated ‘Liable’ when it contains intellectual property of a Cisco Entity or was designed or produced to meet specific requirements unique to a Cisco Product and when Supplier has no alternate redistribution channel.

“Cycle Time to Replenish” or “CT2R” means, with respect to a given Component and a given Hub, the period of time between Supplier’s receipt of a Hub Order for such Component and arrival of such Component at such Hub. CT2R consists solely of Supplier’s order processing time, process planning time, manufacturing cycle time and transit time to the Hub, and does not include lead time for raw materials or other Component inputs.

“EDI” means Electronic Data Interchange.

“Hub Order” or “Replenishment Signal” means an instruction to Supplier to ship Components to one or more Hubs, either on a single date or on multiple pre-scheduled dates. The instruction may take the form of a discrete or blanket purchase order (fax or electronic), EDI demand signal, or any other method agreed between EMS Provider and Supplier.

“MOQ” means minimum order quantity, as agreed between Supplier and EMS Provider or Supplier and the Cisco Entities, whichever is lower.

“MPQ” means minimum package quantity, as agreed between Supplier and EMS Provider or Supplier and the Cisco Entities, whichever is lower.

“Pull Signal” means an instruction from the EMS Provider to the Hub Operator to ship or deliver Components from a Hub to the EMS Provider.

“Standard Component” means any Component that is not a Custom Component. Standard Components are generally designated ‘Non-liable’ in the Cisco Entities’ component attributes database.

## **c. Forecast and Acknowledgment**

3.1 EMS Provider will use commercially reasonable efforts to provide Supplier with a weekly, non-binding, rolling forecast of its requirements for Components for the following fifty-two (52) week or greater period (a “Forecast”). EMS Provider will provide the Forecast electronically in a format agreed between EMS Provider and Supplier.

3.2 Supplier will use Forecasts solely for materials and capacity planning purposes. Forecasts do not create any materials liability or obligation to purchase on EMS Provider’s part.

## **d. Capacity and Material Planning**

Supplier will use commercially reasonable efforts to conduct capacity and materials planning and

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management sufficient to enable Supplier to meet EMS Provider's Forecast at then-current CT2Rs agreed between Supplier and EMS Provider, as reflected in EMS Provider's enterprise resource planning ("ERP") system ("Agreed CT2R").

#### **e. Hub Orders and Shipment to Hub**

5.1 Inventory Sizing. On a monthly or other periodic basis, EMS Provider will use the Cisco Lean methodology and algorithms to calculate (i) the optimal amount of each Component that should be on-hand and on-order in the supply chain (the "Supply Chain Target"); (ii) an optimal quantity below which the on-hand inventory of a given Component in a given Hub should not fall (the "Hub Min Target"); and (iii) an optimal quantity above which the on-hand inventory of a given Component in a given Hub should not rise (the "Hub Max Target").

#### 5.2 Hub Orders.

5.2.1 Eligible Components. EMS Provider will not include any Component on any Hub Order prior to the time such Component has been assigned an alphanumeric version code (e.g. 'A0') in the Cisco Entities' ERP system, indicating that the Cisco Entities have approved such Component for use in the manufacture for sale (as opposed to manufacture for test) of a Cisco Product.

5.2.2 Placement of Hub Orders. When inventory on-hand and on-order in the supply chain falls below the Supply Chain Target, EMS Provider will place a Hub Order with Supplier. A Hub Order shall not constitute an offer to purchase, or create an obligation to purchase (other than as set out in Sec. 9.2 hereof (Freshness) and Art. 8 (Reschedules, Cancellations and Returns)), irrespective of the form in which the Hub Order is transmitted (e.g. discrete P.O., the boilerplate terms of which purport to form an offer to purchase). Hub Orders and Supplier's fulfillment of Hub Orders shall comply with MOQ and MPQ.

5.3 Hub Order Confirmation. Following receipt of each Hub Order, Supplier will transmit a notice to EMS Provider confirming order receipt and committing to ship the quantity of Components specified on the order to the designated Hub(s) on the dates specified, or, if Supplier is unable to commit to such dates, alternate dates consistent with the Agreed CT2R for each Component (an "Alternate Date"); provided, however, that the aggregate quantity of each Component committed to be shipped shall always be the same as the aggregate quantity of such Component requested on the Hub Order. Supplier will use commercially reasonable efforts to transmit the notice to both EMS Provider and Hub Operator within one business day after receipt of the Hub Order.

#### 5.4 Shipment to Hub.

5.4.1 Supplier will ship the quantity of Components specified in each Hub Order to the Hub(s) designated on such order and will use commercially reasonable efforts to ensure that such shipment(s) are made (i) on the date or dates specified on such order; or (ii) any applicable Alternate Date; or (iii) if such order contains no dates, then on a timetable to allow delivery to the destination Hub within the Agreed CT2R. Supplier will not ship Components to any Hub except in response to, and in conformance with, a valid Hub Order.

5.4.2 Supplier will ship Components to the applicable Hub(s) using a carrier approved by the Cisco Entities. EMS Provider will provide a list of such carriers to Supplier and will update such list from time to time. Or, in the event the Cisco Entities determine to manage all shipping from Supplier to Hub, Supplier will coordinate with the Cisco Entities or their designated shipper with respect to all

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shipments.

5.4.3 Following any shipment of Components to any Hub, Supplier will transmit an advanced ship notice (“ASN”) to Hub Operator. Supplier shall transmit each ASN electronically (or, on an exception-only basis, e.g. when electronic means such as B2B have temporarily failed, by fax), no later than 24 hours prior to scheduled delivery for overseas shipments or 4 hours prior to scheduled delivery for local shipments.

5.4.4 Supplier will retain title and risk of loss for each Component shipped to a Hub until such time as title and risk of loss pass to EMS Provider as provided in Section 6.2 below.

5.5 Inventory Monitoring. Pursuant to Section 5.1 above, EMS Provider shall maintain the primary responsibility for monitoring inventory levels in the Hub. As a supplement to EMS Provider’s monitoring activities, Supplier shall monitor the inventory level of each of its Components in each applicable Hub. In the event the inventory level for any Component in any Hub falls substantially below the Hub Min Target and Supplier does not receive a Hub Order to replenish the inventory within a reasonable time, Supplier shall notify EMS Provider.

#### **f. Pull Process and Shipment to EMS Provider**

6.1 Pull Signal. In order to draw Component inventory from a Hub, EMS Provider will transmit a Pull Signal to Hub Operator specifying at least the following: Component (by Cisco part number, including version) and quantity to be delivered to EMS Provider. Each such quantity shall be (i) no smaller than the MPQ for the applicable Component; and (ii) if greater than such MPQ, shall be a multiple of such MPQ. Hub Operator will retrieve the applicable Components from the Hub and arrange for delivery to EMS Provider. Such Pull Signal must reference the purchase order number included in the original Hub Order or other applicable order number as generated by EMS Provider prior to the Pull Signal.

6.2 Shipment to EMS Provider. For each shipment, Hub Operator will transmit a numbered notice to Supplier (a “Delivery Notice”) and will transmit an ASN to EMS Provider. Title and risk of loss will transfer from Supplier to EMS Provider at the point when the Components have been loaded on the carrier’s means of transport at the Hub for delivery to EMS Provider. The parties anticipate that freight costs will be paid by the applicable Cisco Entity or Hub Operator, and accordingly, that neither EMS Provider nor Supplier will be required to pay such costs. In the event EMS Provider and Supplier have agreed to GRN-based Invoicing (as defined in Sec. 7.1 below), EMS Provider will transmit a numbered notice to Supplier and Hub Operator upon EMS Provider’s receipt of each shipment (a “Goods Received Notice” or “GRN”).

#### **g. Invoicing and Payment**

7.1 Invoicing. Supplier will invoice EMS Provider for Components once the Components have been shipped from the Hub, or, if Supplier and EMS Provider have so agreed in writing, Supplier will invoice EMS Provider for Components upon Supplier’s receipt of EMS Provider’s GRN (“GRN-based Invoicing”). Supplier will include the Delivery Notice number (or, if GRN-based Invoicing is in effect, the GRN number) and any purchase order number included in the original Hub Order or other applicable order number as agreed with EMS Provider.

7.2 Pricing. Supplier invoices will reflect Component prices in effect on the date of shipment to EMS Provider, as determined by the Existing Purchase Terms. For Components with respect to which

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Supplier paid freight and/or duties for transport to the Hub, Supplier's invoice will include the applicable amount of such costs. In the event Supplier has included in any Component price any amount intended to reimburse Supplier for the costs of a previous vendor managed inventory or other hubbing arrangement, Supplier shall reduce such price by such amount prior to including such price on any invoice.

7.3 Payment Terms. EMS Provider shall pay the amount of each invoice (or, in the event of a disputed invoice, the undisputed portion of such invoice) to Supplier within twenty (20) days after the date of such invoice; provided that Supplier shall not date any invoice prior to the date on which the relevant Component was shipped to EMS Provider.

#### **h. Reschedules, Cancellations and Returns**

8.1 Reschedules. Rescheduling of Hub Orders prior to Supplier's shipment to a Hub will be governed by the Existing Purchase Terms. Following receipt of any reschedule request, Supplier will transmit a notice to EMS Provider and Hub Operator confirming receipt of the request and committing to new ship dates and/or Component quantities as per the reschedule request, to the extent consistent with the Existing Purchase Terms. Supplier will use commercially reasonable efforts to transmit the notice to both EMS Provider and Hub Operator within one business day after receipt of the reschedule request.

8.2 Cancellations and Returns. Cancellation of Hub Orders and return of Components will be governed by the Existing Purchase Terms. Unless otherwise directed by Supplier or agreed between Supplier and EMS Provider, EMS Provider will not ship Components for return to any Hub location.

#### **i. Inventory Aging, Freshness and Overstock**

##### 9.1 Inventory Aging.

a. Supplier will monitor and track aging of all Components in each Hub using information provided by the Hub Operator.

b. In the event any Component in any Hub ages beyond any Component or packaging effectiveness period recommended by Supplier (or, if shorter, any Component or packaging effectiveness period agreed between the applicable Cisco Entity and Supplier), Supplier will (i) notify EMS Provider and the Cisco Entities; and (ii) arrange with Hub Operator either to rebake, repackage or otherwise refresh such Component if applicable, or to remove such Component from the Hub and replace it with a newer Component. Supplier will undertake such activities at its own expense.

c. For purposes of Section 9.2 below (Freshness), if Supplier replaces an aged Component (an "Aged Component") with a new or refreshed Component (a "Replacement Component"), the Replacement Component will be deemed to have entered the Hub on the same date as the Aged Component; provided however that any period during which the Aged Component could not be used due to excessive aging shall not be applied towards satisfaction of the applicable Freshness Period.

9.2 Freshness. With respect to Custom Components, Supplier will notify EMS Provider and the Cisco Entities in the event any such Component has remained in any Hub for more than [\*\*\*\*] (the "Freshness Period"). Upon receipt of such notice, EMS Provider will, within two business days, issue a Pull Signal to Hub Operator with respect to such Component, subject to the following exceptions:

a. Components shipped to any Hub in excess of amounts specified in a valid Hub Order will be excluded; and;

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b. With respect to any Components that have been subject to any quality-related quarantine or hold while in the Hub, the Freshness Period will be extended by the duration of such quarantine or hold.

This Section 9.2 shall not apply to Standard Components.

9.3 Overstock. In the event that inventory of a given Component at a given Hub is greater than the Hub Max Level for such Component in such Hub, Supplier may instruct Hub Operator to remove the amount of inventory that is greater than the Hub Max Level from such Hub and to ship such inventory pursuant to Supplier's direction or to make such inventory available for pickup by Supplier or its authorized agent. Prior to instructing Hub Operator to remove any such inventory, Supplier shall so notify EMS Provider and the applicable Cisco Entity in writing.

#### **j. Component Changes**

10.1 Quality-related Changes. In the event Supplier implements a recall or other quality-related change to any Standard Component or Custom Component located in a Hub, Supplier will notify EMS Provider and the Cisco Entities of the change, including whether the Component can be reworked at the Hub and the date on which Supplier will have replacement or re-worked Components available at the Hub. Upon agreement between Supplier and EMS Provider to the changes proposed, Supplier will carry out such changes or replace such Component in the Hub. Supplier will undertake such activities at its own expense.

10.2 Other Changes. Engineering change orders ("ECOs") and other changes to Custom Components not governed by Section 10.1 above will be governed by the Existing Purchase Terms.

#### **k. Movement of Components Between Hubs**

In the event EMS Provider or Supplier wishes to move Components between Hubs, the party that wishes to move the Components will obtain the written approval of the other and of the applicable Cisco Entity prior to instructing the Hub Operator to move the Components, and such moves shall be reflected in the appropriate records. The party initiating the move will forward the approvals of the other party and of the applicable Cisco Entity to the Hub Operator contemporaneously with the move instructions. Costs of moving Components between Hubs will be borne by the party initiating the move, unless the parties agree otherwise in writing.

#### **l. Term and Termination**

This Agreement shall be effective from the Effective Date until one of the parties gives 90 days prior written notice of its intent to terminate. The party providing such notice shall provide copies to the Cisco Entities contemporaneously.

#### **m. Confidentiality**

The terms of this Agreement shall constitute confidential information pursuant to the Existing Purchase Terms or other existing confidentiality terms in place between EMS Provider and Supplier; provided however that either party may disclose the existence of this Agreement, and the terms of this Agreement in their entirety to Cisco Inc., Cisco BV and/or their authorized agents.

#### **n. General Provisions**

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14.1 Dispute Resolution. In the event of a dispute arising between the parties under this Agreement that remains unresolved following good faith commercial negotiations between the parties, the parties shall escalate such matter to their respective contacts at the Cisco Entities for assistance. In the event such dispute is not thereafter resolved within a reasonable time, the parties shall proceed to resolve such dispute in accordance with the Existing Purchase Terms.

14.2 Governing Law. The governing law and venue for this Agreement will be as specified in the Existing Purchase Terms.

14.3 Third Party Beneficiaries. The parties agree that each of Cisco Inc. and Cisco BV is an intended third party beneficiary of this Agreement, and is entitled to enforce its terms. There are no other third party beneficiaries. This agreement shall not be interpreted to alter any party's obligations to Cisco Inc. or Cisco B.V. under any existing or future agreement with Cisco Inc. or Cisco BV.

14.4 Entire Agreement. This Agreement, together with the Existing Purchase Terms, constitutes the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties relating to such transactions.

14.5 No Oral Waiver. No change, modification or waiver of any of the terms and conditions of this Agreement shall be binding upon the parties unless made in writing and signed by duly authorized representatives of the parties.

In witness whereof and intending to be bound hereby, each party has caused a duly authorized representative to execute this Agreement as of the Effective Date.

**Accepted and Agreed: Accepted and Agreed:**

[EMS Provider name] [Supplier name]

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: Name:

Title: Title:

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## EXHIBIT C

### AUTHORIZED PURCHASER REQUIRED SECTIONS

The following sections of this Agreement between Cisco and GSI Technology, Inc. are applicable to purchase or supply of Product by Supplier to Authorized Purchasers and/or the Hub Provider for inclusion in (or bundling with) Cisco product or providing Hub Services, respectively.

#### **1. Definitions.**

“Authorized Purchaser” means an EMS Provider or any other third party designated by Cisco in writing.

“China RoHS” means the regulations entitled “Management Methods for Controlling Pollution by Electronic Information Products” (Ministry of Information Industry Order #39).

“Custom Product” means a Product that Cisco and Supplier have agreed to designate as ‘Liable’ in connection with the price negotiation process and is documented as such in Cisco’s then-current commodity information/attributes database. The parties acknowledge that a Product is generally designated ‘Liable’ when (i) it contains intellectual property of Cisco or a Cisco subsidiary or was designed or produced to meet specific requirements unique to a Cisco product and (ii) Supplier has no alternate redistribution channel.

“Cycle Time to Replenish (“CT2R”)” means the period of time beginning with the receipt of an Order or request for Product(s) through the arrival of such Product(s) at a Hub or such other specified delivery site as Cisco may require. CT2R shall consist solely of: order processing time + process planning time + manufacturing cycle time + transit time to the applicable delivery site, and does not include lead time for raw materials or other Product inputs.

“EMS Provider” means one of Cisco’s authorized contract manufacturers. A current list of such manufacturers is attached hereto as Exhibit A. Cisco may revise such list from time to time upon written notice to Supplier.

“EU Directives” means, collectively, EU RoHS Directive 2002/95/EC and the EU WEEE Directive 2002/96/EC.

“Hazardous Materials” means materials which are radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment.

“Hub” means a Cisco Lean Hub which may include, but is not limited to, Cisco’s Global Hub and Cisco Memory Hub.

“Hub Order” means an instruction to the Supplier to ship Product to the Hub, either on a single date or multiple pre-scheduled dates. Such instruction shall originate from an EMS Provider or a Cisco Memory Hub Operator pursuant to a valid Lean VMI Agreement or a Lean VMI Agreement for Third Party Hubs (as both are defined below). The instruction may take one of the following forms: discrete zero dollar purchase orders (manual or electronic), electronic data interchange releases against blanket purchase orders, or any other method agreed to between EMS Provider and Supplier or the Cisco Memory Hub Provider and Supplier, as applicable.

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“Hub Provider” means any third party providing warehousing services in connection with a Cisco Lean Hub.

“Hub Pull Signal” means an instruction from the EMS Provider to the Hub Provider to ship or deliver Product from the Hub to the EMS Provider.

“JIG” means the Joint Industry Guide of the Electronic Industries Alliance.

“Lean Hub Plan” means Cisco’s Global Hub Plan and/or Cisco’s Memory Hub Plan.

“Non-Hub Order” means an instruction from Cisco or the Authorized Purchaser to the Supplier to ship Product directly to Cisco or the Authorized Purchaser. Such instruction may take one of the following forms: discrete purchase orders (manual or electronic), electronic data interchange releases against blanket purchase orders, or any other method agreed to between Authorized Purchaser and Supplier or Cisco and Supplier.

“Order” means a Hub Order and/or a Non-Hub Order.

“Product” means any product (including hardware and software, user documentation (if applicable) and Supplier’s standard packaging) set forth in a list provided by Supplier to Cisco on a quarterly basis which includes the current Products offered for sale by Supplier to Cisco and Authorized Purchasers, and any purchased from Supplier, or an authorized distributor of Supplier by Cisco or on Cisco’s behalf by an Authorized Purchaser.

“Product Price” means the most recent mutually agreed upon price that Cisco (and its Authorized Purchasers) shall pay for a Product, as established via any price negotiation process (including, without limitation, reverse auction, request for pricing, direct negotiation or other process) and contained in Cisco’s then-current commodity information database.

“Rolling Forecast” or “Forecast” means a non-binding estimate of Product forecast to be purchased by Cisco and its EMS Providers, as updated periodically.

“Software” means any computer code in object code or executable code format and whether embedded in or bundled with a Product in any manner, including as firmware, separately on disks or other media or by electronic transmission, together with all bug fixes, revisions and upgrades thereto.

“Specifications” means (i) the specifications identified in Supplier’s then-current Product data sheet and (ii) any additional specifications agreed to by the parties in writing.

“Standard Product” means a Product that is not a Custom Product.

**2. Cisco Lean Hub Participation.** Supplier shall participate in a Cisco Lean Hub Plan as set forth below.

2.1 Participation in a Cisco Lean Hub program shall include, but not be limited to, execution of and adherence to the terms of a Hub agreement between Supplier and one or more EMS Provider (a “Lean VMI Agreement”) in substantially the same form as set forth in Exhibit B (such Lean VMI Agreement attached hereto for purposes of reference only), or an agreement between Supplier and the Hub Operator of a Cisco Memory Hub (a “Lean VMI Agreement For Third Party Hubs”), as applicable.

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2.2 No Product Price shall be increased and no other cost shall be imposed upon Cisco or any EMS Provider arising from or related in any way to Supplier's participation in the Hubs.

2.3 Supplier shall (i) utilize Cisco approved transporters of all Products into and from any Hub, and (ii) establish with Cisco, at least quarterly, the applicable CT2R(s) for each Product and/or location to be shipped.

2.4 Supplier shall provide to Cisco and its EMS Providers visibility to inventory volumes, shipment information and location of Products en route to, within, and transferred from the Hubs whether via electronic data interchange or other Cisco-approved method.

2.5 Cisco shall have no liability for any Orders placed by the EMS Providers, including any Products placed in the Hub.

2.6 The terms of this Agreement that relate to Supplier's participation in a Cisco Lean Hub shall only become effective with respect to (i) those EMS Providers that have entered into a Lean VMI Agreement with the Supplier, and (ii) a Cisco Memory Hub Provider that has entered into a Lean VMI Agreement for Third Party Hubs with Supplier. Until such time as a Lean VMI Agreement or Lean VMI Agreement for Third Party Hubs, as applicable, has been executed, the other terms of this Agreement, without the Cisco Lean Hub terms, shall remain in full force and effect.

### **3. Sales to Authorized Purchasers.**

3.1 Supply of Product. Supplier agrees to supply Products pursuant to the terms and conditions of this Agreement. Supplier shall sell Product to Cisco or its Authorized Purchasers solely for purposes of allowing Cisco or its Authorized Purchasers to incorporate such Product into (or bundle such Product with) Cisco's products. Supplier shall manage all aspects of delivery and fulfillment of Products to Authorized Purchasers and/or to a Hub. Notwithstanding anything to the contrary in this Agreement, an Authorized Purchaser may not purchase Product from Supplier under this Agreement for any other customer of such Authorized Purchaser or for any other purpose.

4. Orders. Supplier shall accept and acknowledge in writing or electronically all Orders within one (1) business day after receipt thereof and identify a firm date for delivery of the Products at or within CT2R; provided, however, that Supplier shall not be liable for delays in transit time or delivery that are beyond the reasonable control of Supplier. Orders placed at the CT2R for a Product which are not acknowledged by Supplier within three (3) business days of receipt are deemed accepted; however, if during a particular Cisco fiscal calendar quarter, Supplier receives an Order for Product that was not part of a Cisco award of product during that quarter, Supplier reserves the right to discuss and, if necessary, modify the applicable CT2R for that Product. Cisco shall not be liable for any verbal commitments. If Supplier cannot meet the identified delivery date, and Cisco wishes to purchase the Products from one of Supplier's distributors, Supplier will make reasonable commercial efforts to extend to such distributor a price which would enable the distributor to sell Products to Cisco at the Product Price. All Orders placed with Supplier by Cisco directly shall be subject to the terms and conditions of this Agreement without specific reference hereto.

### **5. Product Pricing and Payment.**

5.1 Product Pricing. Supplier shall sell the Products to Cisco and the Authorized Purchasers at the Product Price for each respective Product. Product prices are in U.S. dollars. Supplier shall not increase the Product Price or impose any additional costs on Cisco or any Authorized Purchaser arising from or related in any way to Supplier's participation in the Cisco Lean Hub plan. Supplier shall consider

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in good faith Cisco's quarterly cost reduction targets. Supplier will extend to Cisco and its Authorized Purchasers all reductions in Product Price for any Orders placed but not yet shipped to Cisco or its Authorized Purchasers (including pursuant to a Hub Pull Signal) as of the effective date of the reduction. Supplier represents and warrants that the Product Prices are, and shall be throughout the Term, no higher than the lowest prices normally offered by Supplier to any similarly situated customer purchasing the same or lesser total aggregate dollar or unit volume of the same Product under similar terms and conditions, on a quarterly basis.

5.2 Payment by Cisco. For Non-Hub Orders, Supplier will invoice Cisco (or its Authorized Purchaser in the case of purchases by an Authorized Purchaser) for the Product Price of the Products on or after the applicable shipment date for the Products covered by such invoice. Each shipment will be invoiced and paid for when due without regard to other scheduled deliveries. All invoices for Products ordered pursuant to a Non-Hub Order will be due and payable no later than thirty (30) days after the date of the invoice.

5.3 Taxes. Each party shall bear any and all taxes it incurs as a direct or indirect result of entering into this Agreement, unless the parties have agreed otherwise. If sales/use tax, VAT, GST, or similar indirect tax (collectively the "Applicable Tax") is payable as a consequence of any supply made or deemed to be made in connection with this Agreement, Cisco or its Authorized Purchaser shall pay to Supplier the Applicable Tax amount upon receiving a tax invoice complying with any legislation under which the Applicable Tax is imposed. Any Applicable Tax shall appear as separate additional items on the invoice from Supplier.

## **6. Delivery and Acceptance**

6.1 Delivery. Supplier shall deliver the Products to the agreed ship-to location on the agreed delivery date using Cisco approved carriers.

For Non-Hub Orders, delivery terms shall be FCA Supplier's shipping point, freight collect, per Incoterms 2000. The carrier will be selected by Supplier in the absence of specific instructions by Cisco or the Authorized Purchaser.

For Hub Orders, Supplier shall retain title and risk of loss for the Products during transit to the Hub and while stored at the Hub and until the Products have been loaded on the carrier's means of transport at the Hub for delivery to the EMS Provider. Charges incurred prior to delivery of the Products to the carrier for shipment to the Hub will be paid by Supplier. Freight charges and customs clearance charges to deliver the Products to the Hub, will be paid by Cisco. Notwithstanding the fact that Supplier may not have responsibility to pay for these transit charges, Supplier shall retain the responsibility to maintain insurance on the Products during transit and while the Products remain in the Hub, consistent with Supplier's risk of loss for the Products.

6.2 Acceptance. Products ordered pursuant to a Non-Hub Order shall be deemed accepted by Cisco or its Authorized Purchaser, as applicable, unless notice of defect is received within ten (10) days of Cisco or Authorized Purchaser's receipt thereof and the Product is returned to Supplier within twenty (20) days of receipt. Only such Products that, upon receipt, are determined to be damaged or fail to conform to the Specifications ("DOAs") may be rejected. In the event of discovery of a DOA Product, Supplier's entire liability, and Cisco or its Authorized Purchaser's sole remedy shall be to exchange such Product for another of the same type. However, in no event shall this Section be construed as modifying or otherwise limiting Supplier's obligations under Sections 15, 16, 17, or 18.

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**7. Flexibility.** Supplier will ensure that it can increase or decrease production of Products in all market conditions, using the amount of any Product for week 10 of the previous fiscal quarter's Rolling Forecast as a baseline from which to increase or decrease production ("Baseline"), as follows:

- Increase or decrease of [\*\*\*\*] of Baseline if the increase or decrease is to be implemented within four (4) weeks;
- Increase or decrease of an additional [\*\*\*\*] of Baseline (i.e., [\*\*\*\*] in aggregate) if the increase or decrease is to be implemented between four (4) weeks and eight (8) weeks.

Supplier shall bear all reasonable costs incurred to meet Baseline increases or decreases, unless the parties otherwise agree in writing. Notwithstanding the above, this Section shall not apply to the extent Supplier is fully participating in a Cisco Lean Hub Plan pursuant to a valid Lean VMI Agreement or Lean VMI Agreement for Third Party Hubs, as applicable, and is shipping Product to such Hub. For example, Supplier shall only be relieved of the flexibility requirements for those Products and those Hubs that are operating under a valid Lean VMI or Lean VMI Agreement for Third Party Hubs, as applicable.

**8. Late Deliveries.** Supplier shall notify Cisco and any affected Cisco Authorized Purchasers promptly if Supplier reasonably anticipates that delivery consistent with CT2R may be delayed. In the event that delivery is delayed for more than [\*\*\*\*] business days for reasons caused in whole or in substantial part by Supplier and the parties cannot reasonably agree on a new delivery date, Cisco or its Authorized Purchaser may reschedule or cancel the affected Order(s) without penalty and Supplier shall not be liable to Cisco or any Authorized Purchaser for any monetary damages resulting from such delay, reschedule or cancellation, or assume any liability in connection with the shipment, nor shall the carrier be deemed an agent of Supplier.

**9. Reschedules, Reconfigurations and Cancellations.** At any time more than thirty (30) days prior to the originally scheduled delivery date, Cisco or its Authorized Purchaser may cancel, reschedule or reconfigure an Order in whole or in part provided that the Order had not previously been designated by the parties as NCNR, as defined below. To cancel, reschedule and/or reconfigure a shipment or a particular pending purchase, Cisco or its Authorized Purchaser shall provide written notification to Supplier at least [\*\*\*\*] days prior to the scheduled delivery date. If modified, the new delivery date shall be within [\*\*\*\*] days from the original scheduled delivery date. An order may only be re-configured or rescheduled once. No Order that has been mutually agreed by Cisco and Supplier in writing to be non-cancelable or non-returnable ("NCNR") may be cancelled, rescheduled, reconfigured or returned. Except for a cancellation related to a late delivery as set forth in Section 8, or related to Cisco's termination as a result of Supplier's material breach as set forth in Section 23.2, Cisco may not cancel, reschedule or reconfigure an order within [\*\*\*\*] days of a scheduled deliver date.

**10. Shipping Documents, Packaging and Markings.** Supplier will ship Product with accurate shipping documents including (i) commercial invoice, packing list and applicable export and transportation documents and declarations; (ii) an itemized packing list bearing the purchase order number, the description, part number and quantity of each Product shipped, the number of shipping containers in the delivery and the waybill or bill of lading number, and (iii) external packaging labeling conforming to such labeling specifications as Cisco may provide from time to time. Supplier will package Products in accordance with good commercial practice, and in a manner acceptable to common carriers for shipment and adequate to ensure undamaged arrival of the Products. Supplier will mark all containers with necessary information (i.e. lifting, handling and shipping information, country of origin, purchase order numbers, date of shipment and the names of the consignee and consignor, etc.) and any

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other markings that may be required by applicable law.

### **11. Disaster Recovery and Allocation during Shortages.**

11.2 Allocation of Product during Shortages. In the event of a shortage of any Product included on the Rolling Forecast, Supplier shall notify Cisco and shall provide Cisco and its Authorized Purchasers an allocation of such Product during such shortage that is no less favorable than that provided to any other similarly situated customer, whether internal or external.

**12. Quality and Testing.** Supplier shall adhere to such quality and qualification requirements as may be specified by Cisco in writing from time to time and agreed to by Supplier. Supplier shall test Product prior to shipment to ensure Product is in compliance with Specifications.

### **13. Product Changes and Discontinuation.**

13.1 Product Change Notices. Supplier shall not change any Specification, process characteristic, or the form, fit or function of any Product except in accordance with the Product Change Notification (“PCN”) terms set out and referenced in Exhibit D.

13.2 Minimum Manufacturing Period. Except for those Products identified in Exhibit E, Supplier shall manufacture each Product for a minimum of [\*\*\*\*] from Cisco’s first customer ship (“FCS”) of a product containing such Product (the “Minimum Manufacturing Period”), unless (i) Cisco terminates this Agreement under Section 23; (ii) Supplier terminates this Agreement under Section 23; (iii) there has been no demand by Cisco for a particular Product for [\*\*\*\*], at which time Supplier may provide notice to Cisco of the discontinuance of the Products as called for in Section 13.4.1. It is understood that Supplier is able to meet this requirement through the use of die revisions.

13.3 Failure to Meet Minimum Manufacturing Period. If Supplier fails to meet its obligations under Section 13.2, Supplier shall, at Cisco’s option, either (i) compensate Cisco for all reasonable direct costs Cisco incurs in the transition to an alternate manufacturer/seller or replacement product or (ii) buffer and manage, at Supplier’s expense, an amount of Product to be forecasted by Cisco for the remainder of the Minimum Manufacturing Period. If any buffered Product built per (ii) above remain at the expiration of the Minimum Manufacturing Period, the parties shall mutually determine how such Product will be disposed of, including Cisco’s payment therefor.

#### 13.4 Product End of Life

13.4.1. EOL Notice and EOL Purchases. If Supplier determines to cease the manufacture or sale of any Product (an “End of Life” or “EOL”), Supplier shall provide at least [\*\*\*\*] prior written notice (the “EOL Notice Period”) in accordance with Cisco’s PCN process set forth in Exhibit D. Cisco may place Orders during the EOL Notice Period and Supplier will use best efforts to accept them, subject to Supplier’s manufacturing and supply constraints. Cisco shall take delivery on a date no later than [\*\*\*\*] after the end of the EOL Notice Period. If Supplier accepts a purchase order from a third party after the EOL Notice Period has run, it shall notify Cisco and offer the same opportunity for Product purchase to Cisco as set forth in such purchase order.

13.4.2. Alternative Source; EOL Support. If requested, Supplier shall assist Cisco in identifying alternative products or sources. Supplier shall continue to provide support pursuant to Section 15 for each Product that is the subject of an EOL notice.

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**14. Software.** The parties acknowledge that no Software will be provided by Supplier pursuant to this Agreement.

**15. Failure Analysis and Support.** Supplier will make available the following services for a period of at least [\*\*\*\*] years from the date of last Product shipment by Supplier:

15.1 Failure Analysis. Supplier will provide failure analysis as set out in Exhibit F hereto; and

15.2 Technical Support. Upon request, Supplier will provide in electronic or other acceptable form, all bug notes or other documentation regarding verified Product problems, including accurate records of any known or suspected defects. This information is the Confidential Information of Supplier. Supplier will provide this information and any corrective action at no charge during the term of this Agreement; and

15.3 Emergency Replacement. Supplier shall ship Product within twenty-four (24) hours of any Cisco request for emergency replacement. If no replacement is available, Supplier will provide replacement Product as soon as reasonably practicable and will notify Cisco of the estimated delivery date. Emergency replacements may not be available for EOL'd Products.

**16. Warranties.**

16.1 Product Warranty. The warranty period for each Product shall be three (3) years beginning on the date that Cisco or the Authorized Purchaser or the Hub receives the Product (the "Warranty Period") unless a longer period is agreed to in writing between the parties. Supplier represents and warrants that, when sold, all Products will be new and unused and, during the applicable Warranty Period (i) will comply in all respects with the Specifications, (ii) will be free from defects in materials, design and workmanship, and (iii) each Product, when delivered, shall have no less than [\*\*\*\*] remaining weeks of shelf-life. Cisco shall notify Supplier of any nonconformance during the Warranty Period, obtain a return materials authorization ("RMA") from Supplier, and return the nonconforming Product to Supplier's designated repair facility, with a statement describing the nonconformity. Warranty claims not made during the Warranty Period are waived. For valid warranty claims, Supplier will, at its expense, either provide a credit or refund to Cisco or repair or replace all Products not conforming to the requirements of this Section with repaired or new and unused Products shipped to a location designated by Cisco within [\*\*\*\*] or as soon as commercially practicable after receipt of the defective Product. Supplier may select the applicable warranty option; however, the parties acknowledge that replacement may not be a viable option for EOL'd Products, and that the decision to either provide a credit or refund will be mutually determined by the parties. Supplier reserves the right to charge additional fees for repairs or replacements performed outside the Warranty Period for the Product. The foregoing is the sole and exclusive remedy for breach of warranty by Supplier with respect to the Products.

16.2 Limitations on Warranty. The warranties set forth in section 16.1 shall not apply to any Product which has been, following receipt by Cisco and/or an Authorized Purchaser, (a) subjected to accident, abuse, misuse, neglect or operating or environmental conditions that deviate from the parameters established in the Specifications or (b) improperly installed, packaged, tested or altered by anyone other than Supplier.

16.3. Disclaimer of Warranties. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES, EXPRESS OR IMPLIED, GIVEN BY SUPPLIER IN CONNECTION WITH THE PRODUCTS AND SUPPLIER DISCLAIMS AND EXCLUDES ALL OTHER**

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**WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THE THIRD PARTY RIGHTS UNDER THE UCC.**

**20. Compliance With Laws; Social Responsibility; Use in Life Support Applications.**

20.1 General Compliance with Laws. Supplier represents and warrants that it has complied and shall comply with all applicable laws, regulations and other governmental requirements in effect at the time of manufacture of each of the Products. Supplier shall comply with Cisco's materials content requirements as provided to Supplier from time to time, and reviewed and agreed to by Supplier, and shall undertake testing sufficient to validate compliance with such requirements. Supplier agrees at all times to act consistently with Cisco's global anti-corruption policy posted at [http://www.cisco.com/legal/anti\\_corruption.html](http://www.cisco.com/legal/anti_corruption.html).

20.2 Compliance with Certain Environmental Laws. Supplier shall also adhere to the following:

(iii) The Products and the processes used to produce and/or manufacture such Products shall comply with all applicable laws, regulations and ordinances which regulate use of Hazardous Materials or which impact, in whole or in part, a Product's sale or placement into commerce by or on behalf of Cisco or Cisco Authorized Purchasers. Such laws, regulations and ordinances include but are not limited to, the EU RoHS Directives, China RoHS, those regulations listed in the then-current JIG and similar laws, rules, statutes, treaties or orders; and

(iv) The Products shall not contain substances which are above the threshold levels established in Annex A of the then-current JIG; provided, however, that for Level A Substances, the mercury threshold shall be reduced to 1000 ppm. Use of materials containing any such substance in an amount exceeding the JIG Annex A threshold levels may be used only if and in the manner specified in advance written approval by Cisco.

20.3 Social Responsibility. To the extent applicable and commercially practicable and consistent with Supplier's business practices, Supplier shall diligently pursue effecting its operations and performance hereunder in accordance with Cisco's Manufacturing Supplier Code of Conduct as published at Cisco.com and updated from time to time. Supplier shall promote Cisco's supplier diversity goals by including suppliers, where warranted, that qualify as diverse suppliers in any one or more of the categories identified on Cisco's Supplier Diversity Business Development Website [www.cisco.com/supplier/diversity](http://www.cisco.com/supplier/diversity) and as further defined at: <http://www.cisco.com/supplier/diversity/definitions.shtml>. Upon Cisco's request, Supplier shall provide to Cisco reports of Supplier's expenditures with such diverse suppliers.

20.4 Life Support Applications. The Products are not designed for use in life support appliances or devices implanted in the human body or other similar direct life support machines, commercial aviation, nuclear facilities or systems or any other applications where malfunctions of the Product can reasonably be expected to result directly in death or personal injury to human beings or catastrophic property damage or any other ultrahazardous use. Cisco or its customers using or selling the Products for use in life support and such other applications do so at their own risk.

**24. Scrap and Supply Chain Visibility.** For Custom Products, or any Standard Products that

\*\*\*\* Indicates provision for which confidential treatment has been requested. CISCO CONFIDENTIAL

include Cisco logos or other proprietary markings, Supplier shall comply with Cisco's Scrap Policy and Supply Chain Visibility Policy as communicated to Supplier from time to time.

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**Exhibit D**  
**Product Change Notification**

1. Product Change Notification Required. Supplier shall provide to Cisco prior written notice, in the manner required by this Exhibit (a “Product Change Notice” or “PCN”), for all changes to any Product or any process characteristic which could potentially result in non-compliance with Cisco’s physical, mechanical, optical and/or electrical requirements (“Covered Changes”). Such PCN, at a minimum, shall be provided to Cisco when the following Covered Changes are contemplated:

- a) Form, fit or function change\*
- b) EOL/Product Discontinuation
- c) Manufacturing Process & Procedure change (e.g. wafer fab, assembly or test)
- d) Die shrinks or revision\*
- e) Material change (e.g. plating, Underbump Metallization (UBM), Resin, base metal, dopants, die attach materials, molding compounds)
- f) Manufacturing site (Wafer fab/assembly/test facility change)
- g) Part numbering convention\*
- h) Design changes\*
- i) Layout changes\*
- j) Changes to dimensions of any layer
- k) Manufacturing process and reliability screen for optical Products
- l) Change in internal sub-component design, manufacturer(s), manufacturing location(s), part number or sourcing
- m) Product from new, “identical” equipment with known impact to reliability (i.e. Epitaxial systems, deposition/ etching/deposition tools, burn-in systems and so forth, etc.)
- n) Changes to burn-in or reliability screen processes for component and constituent sub-components
- o) Changes that impact safety for components/assemblies that require safety agency approval
- p) Change to lead-free plating\*
- q) Change to make the Product compliant with hazardous materials directives such as the European Union’s RoHS Directive (Requires EOL PCN also) \*

\* Cisco requires Supplier to assign new ordering part numbers

2. Notice of Proposed Changes. PCNs must be provided a minimum of [\*\*\*\*] prior to the delivery of any Product affected by a Covered Change, with the exception of EOL PCNs which must be provided a minimum of [\*\*\*\*] in advance of such EOL.

3. Samples; Qualification by Cisco. Samples of any such affected Product must be provided a minimum of [\*\*\*\*] following such PCN (and in no event less than [\*\*\*\*] prior to proposed shipment of a changed Product), unless otherwise agreed by the parties in writing. If the initial PCN was in the form of a Horizon Report, Supplier shall submit a formal written PCN with the samples of the proposed changed Product. A proposed changed Product shall be deemed “qualified” by Cisco only upon written confirmation to Supplier of such qualification. Samples of changed Products furnished to Cisco must be accompanied by a completed sample information form. Supplier may contact Cisco component engineering at component-pcn@cisco.com for a sample information template. Supplier must keep a log of all samples furnished to Cisco and provide a copy of the log to component engineering upon request.

Supplier shall send all PCNs to component-pcn@cisco.com, and all change notices must be approved by Cisco’s Component Engineering department.

4. Relevant Change Data. Supporting data and qualification data for each proposed changed Product

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for which Supplier has given Cisco a PCN shall be forwarded to Cisco for evaluation with the proposed sample of the new Product.

Such data must include, at a minimum, the following information:

- a) Description of change
- b) Reason for change
- c) Affected Product part numbers (Supplier and Cisco as available)
- d) Specification, errata or datasheet update, as needed
- e) Proposed date of shipment of changed Products
- f) Traceability information for changed Products
- g) Supplier PCN tracking number
- h) Last time buy date of the unchanged Product
- i) Additional data pursuant to Cisco manufacturing 1st and 2nd level component qualification requirements
- j) Sample availability data

5. Additional Changes. If Supplier implements any change other than that in the PCN which results in a Cisco-qualified changed Product, Cisco shall be entitled to: (i) terminate without penalty any previously accepted purchase order for any affected Products remaining undelivered; (ii) place a last time order to purchase the unchanged Products pursuant to Section 13.3 of this Agreement; or (iii) return any changed Products if Cisco has found that the changed Product does not perform for Cisco's intended purpose, whether or not it meets the Specification.

6. Engineering Change Requested by Cisco. In the event that Cisco desires an engineering change in any of the Products, Cisco shall suggest such proposed engineering change to Supplier. Supplier and Cisco agree to work with each other in good faith to determine what such change will involve and the cost and timing implications of implementing such change. Upon Cisco's determination that it wishes to proceed with such change(s), the parties will coordinate their efforts to effect such implementation.

7. Costs of Engineering Changes Requested By Cisco. If a change agreed upon pursuant to Section 6 of this Exhibit, but not yet implemented, may result in scrap costs, Supplier agrees to stop WIP and/or orders for materials within [\*\*\*\*] of notice by Cisco, which notice may be in electronic form. If materials-on-order ("MOO") or WIP becomes obsolete as a result of a Cisco' engineering change, Supplier shall make every reasonable effort to cancel and/or use such MOO or WIP for a period of at least [\*\*\*\*] after change implementation. In the event Supplier provides satisfactory evidence to Cisco establishing that such MOO or WIP cannot be so cancelled or re-used by Supplier, Cisco shall issue to Supplier a purchase order and pay the corollary invoice for the same.

8. Engineering Changes Due to Defect. Notwithstanding Section 7 of this Exhibit, all engineering changes resulting from defects in or nonconformity of the Products shall be implemented at the sole expense of Supplier, unless the defect or nonconformity arises from defective specifications for Products which specifications were provided in writing to Supplier by Cisco.

9. Lead-free Material Changes. Supplier must adhere to the following requirements for changes to lead-free materials:

- a) Lead-free BGAs ("Ball Grid Arrays") will not be accepted by Cisco, unless specifically requested and approved in writing by Cisco Component Engineering or Commodity Management.
- b) All non-BGA Products should not transition to lead-free until they are qualified pursuant to the

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standard Cisco PCN process.

- c) Supplier shall continue to provide a SnPb (tin-lead) supply of all Products until the equivalent lead-free version is qualified by Cisco.
- d) Suppliers must understand and are required to adhere to Cisco's Pb-free Specification EDCS-281405, the "Cisco Pb-free Qualification Specification" for component qualification.

10. Support of Unchanged Product. Supplier shall continue to support the unchanged Product pursuant to Section 15 of this Agreement.

11. Update of Process. From time to time, this PCN process may be updated by Cisco as set forth in Cisco's Electronic Document Control System ("EDCS") document number [\*\*\*\*]. In the event of a conflict between this Exhibit and the updated PCN process set forth in the EDCS document, and so long as the parties have not mutually agreed to continue under the previously adopted EDCS document, the EDCS document shall prevail. Supplier has access to the EDCS via the following:

External Partners SOP  
<https://mco.cisco.com/>

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**Exhibit E**  
**Legacy Products Minimum Manufacturing Periods**

The parties will review and update this Exhibit E on an annual basis, or such earlier time frame as mutually agreed by the parties.

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**Exhibit F**  
**Failure Analysis Procedure**

With respect to any Product returned to Supplier, in the event that (i) Cisco requests a failure analysis; or (ii) Supplier suspects such returned Product is defective, Supplier shall, without charge to Cisco, perform an analysis sufficient to fully determine the root cause of any failure and to identify corrective actions sufficient to prevent reoccurrence (a “Failure Analysis”). The results of the Failure Analysis, root cause and corrective actions shall be reported to Cisco in conformance with “8D corrective action” format and disciplines.

Cisco will classify Failure Analysis requests into two categories – urgent and normal. Urgent requests are made when the component failure impacts Cisco’s ability to ship products or when the failure impacts the performance of Cisco products/equipment installed at a customer location. All other requests shall be within the normal category.

From time to time, this Failure Analysis process may be updated by Cisco as set forth in Cisco’s Electronic Document Control System (“EDCS”) document number [\*\*\*\*]. In the event of a conflict between this Exhibit and the updated Failure Analysis process set forth in the EDCS document, the EDCS document shall prevail, unless otherwise modified by written agreement of the parties. Supplier has access to the EDCS via the following:

External Partners SOP

<https://mco.cisco.com/mcoapps/portal/mymco/instanceId/150078/path/0>

Supplier will use its best efforts to complete any Failure Analysis and implement correction in a timely manner. Supplier’s responsiveness will be measured using the following criteria:

Failure Analysis type	Normal	Urgent	Deliverables
Initial response	[****]	[****]	Functional status If fail, outline of analysis steps and timeline If pass, return parts to Cisco via overnight carrier
Preliminary failure analysis	[****]	[****]	Preliminary identification of root cause Recommendations for containment of problem
Completed failure analysis	[****]	[****]	Completed failure analysis summary If appropriate, corrective action plan and timeline
Update schedule	[****]	[****]	Progress report on work completed Projection on next actions Updated timelines

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**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT  
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Lee-Lean Shu, certify that:

1. I have reviewed this quarterly report on Form 10-Q of GSI Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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.

November 4, 2011

/s/ LEE-LEAN SHU

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Lee-Lean Shu

*President and Chief Executive Officer*

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT  
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Douglas M. Schirle, certify that:

1. I have reviewed this quarterly report on Form 10-Q of GSI Technology, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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.

November 4, 2011

/s/ DOUGLAS M. SCHIRLE

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Douglas M. Schirle

*Chief Financial Officer*

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of GSI Technology, Inc. (the "Company") on Form 10-Q for the quarter ended September 30, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Lee-Lean Shu, President and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 4, 2011

/s/ LEE-LEAN SHU

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Lee-Lean Shu

*President and Chief Executive Officer*

*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 the Registrant and will be retained by the Registrant and furnished to the Securities and Exchange Commission or its staff upon request.*



**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of GSI Technology, Inc. (the "Company") on Form 10-Q for the quarter ended September 30, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Douglas M. Schirle, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

November 4, 2011

/s/ DOUGLAS M. SCHIRLE

\_\_\_\_\_  
Douglas M. Schirle  
Chief Financial Officer

*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 the Registrant and will be retained by the Registrant and furnished to the Securities and Exchange Commission or its staff upon request.*