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

Form 20-F

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

OR

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

For the fiscal year ended December 31, 2015

OR

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

OR

SHELL COMPANY REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number 000-30668

NOVA MEASURING INSTRUMENTS LTD.

(Exact name of Registrant as specified in its charter)

Nova Measuring Instruments Ltd.
(Translation of Registrant's name into English)

Israel
(Jurisdiction of incorporation or organization)

Weizmann Science Park, Einstein St., Building 22, 2nd Floor, Ness-Ziona, Israel
(Address of principal executive offices)

Dror David, +972-73-2295833, +972-8-9407776, P.O.B 266, Rehovot 7610201, Israel
(Name, Telephone, E-mail and/or Facsimile number and Address of the Registrant's Contact Person)

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

Title of each class
Ordinary Shares, nominal value NIS 0.01 per share

Name of each exchange on which registered
The NASDAQ Global Select Market

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

None

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

None

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report: 27,093,937 ordinary shares, NIS 0.01 nominal (par) value per share, as of December 31, 2015.

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

Yes No

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

Yes No

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

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

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

U.S. GAAP

International Financing Reporting Standards as issued by the International Accounting Standards Board

Other

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

Item 17

Item 18

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

Yes No

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Introduction

In this Annual Report, the “Company”, “Nova”, “we” or “our” refers to Nova Measuring Instruments Ltd. and its consolidated subsidiaries, when the context requires.

Our Functional Currency

Unless otherwise indicated, all amounts herein are expressed in United States dollars (“U.S. dollars”, “dollars”, “USD”, “US\$” or “\$”).

The currency of the primary economic environment in which we operate is the U.S. dollar, since substantially all our revenues to date have been denominated in U.S. dollars and over 50% of our expenses are in U.S. dollars or in New Israeli Shekels linked to the dollar. Transactions and balances denominated in dollars are presented at their original amounts. Non-dollar transactions and balances have been re-measured into dollars as required by the principles in ASC 830 Foreign Currency Matters. All exchange gains and losses from such re-measurement are included in the net financial income when they arise.

Cautionary Statement Regarding Forward-Looking Statements

Certain information contained herein, which does not relate to historical financial information, may be deemed to constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. The words or phrases “will likely result”, “are expected to”, “will continue”, “is anticipated”, “estimate”, “project”, “believe”, “plan”, or similar expressions identify “forward looking statements”. Such statements, including without limitation, statements relating to our anticipated sales, revenues and expenses in 2016, our expectations with respect to our business and operations and our ability to gain market share are subject to certain risks and uncertainties that could cause actual results to differ materially from historical results and those presently anticipated or projected. We wish to caution readers not to place undue reliance on any such forward-looking statements, which speak only as of the date made. We cannot guarantee future results, levels of activity, performance or achievements. We also undertake no obligation to release publicly any revisions to these forward-looking statements to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. Among the factors that could cause our actual results in the future to differ materially from any opinions or statements expressed with respect to future periods are competitive industry conditions and the ability to forecast the needs of the semiconductor industry with respect to the very cyclical nature of the industry and the very fast pace of technology evolutions and factors related to the conditions of the global markets and the global economy. Various other factors that could cause our actual results to differ materially are set forth in “Item 3D. Risk Factors” in this annual report on Form 20-F and elsewhere herein.

PART I

Item 1. Identity of Directors, Senior Management and Advisors

Not applicable.

Item 2. Offer Statistics and Expected Timetable

Not applicable.

Item 3. Key Information

3A. Selected Financial Data

The following selected consolidated financial data as of December 31, 2015 and 2014 and for the years ended December 31, 2015, 2014 and 2013 have been derived from our audited consolidated financial statements included elsewhere in this annual report. These financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("U.S. GAAP"), and audited by our independent registered public accounting firm. The consolidated selected financial data as of December 31, 2013, 2012 and 2011 and for the years ended December 31, 2012 and December 31, 2011 have been derived from other consolidated financial statements not included in this Form 20-F that were also prepared in accordance with U.S. GAAP and audited by our independent registered public accounting firm. The selected consolidated financial data set forth below should be read in conjunction with and are qualified by reference to "Item 5. Operating and Financial Review and Prospects" and the consolidated financial statements and notes thereto and other financial information included elsewhere in this annual report on Form 20-F.

Summary of Consolidated Financial Data

	Year ended December 31,				
	2011	2012	2013	2014	2015
	(in thousands, except per share data)				
Consolidated Statement of Operations Data:					
Revenues	\$ 102,828	\$ 96,168	\$ 111,509	\$ 120,618	\$ 148,514
Cost of revenues	44,832	45,014	52,438	57,005	71,434
Gross profit	57,996	51,154	59,071	63,613	77,080
Operating expenses:					
Research and development expenses, net	18,677	24,594	29,578	29,498	39,703
Sales and marketing expenses	11,373	11,998	11,963	12,747	15,967
General and administrative expenses	3,229	3,978	5,197	4,457	8,511
Amortization of intangible assets					1,318
Total operating expenses	33,279	40,570	46,738	46,702	65,499
Operating profit	24,717	10,584	12,333	16,911	11,581
Financing income, net	901	1,368	693	563	643
Income before income taxes	25,618	11,952	13,026	17,474	12,224
Income taxes expenses (benefit)	(2,500)	124	2,511	(1,178)	(3,501)
Net income for the year	\$ 28,118	\$ 11,828	\$ 10,515	\$ 18,652	\$ 15,725
Earnings per share:					
Basic	\$ 1.07	\$ 0.44	\$ 0.39	\$ 0.68	\$ 0.58
Diluted	\$ 1.04	\$ 0.43	\$ 0.38	\$ 0.67	\$ 0.57
Shares used in calculation of net earnings per share:					
Basic	26,232	26,619	27,091	27,447	27,185
Diluted	26,931	27,277	27,373	27,807	27,510

	2011	2012	December 31, 2013 (in thousands)	2014	2015
Consolidated Balance Data:					
Working capital	94,669	106,298	118,596	130,480	112,819
Total assets	122,947	142,044	162,277	173,279	207,269
Capital stock (including additional paid-in capital)	108,710	111,062	114,348	119,058	113,022
Shareholders' equity	99,906	114,771	128,664	143,582	161,060

3B. Capitalization and Indebtedness

Not applicable.

3C. Reasons for the Offer and Use of Proceeds

Not applicable.

3D. Risk Factors

Risks Related to Our Business and Our Industry

Because substantially most of our current sales are dependent on three specific product lines, factors that adversely affect the pricing and demand for these product lines could substantially reduce our sales.

We are currently dependent on three process control product lines. We expect revenues from these product lines to continue to account for a substantial portion of our revenues in the coming years. As a result, factors adversely affecting the pricing of, or demand for, these product lines, such as competition and technological change, could significantly reduce our sales.

We depend on a small number of large customers, and the loss of one or more of them could significantly lower our revenues.

Like our peers serving the semiconductor market, our customer base is highly concentrated among a limited number of large customers. We anticipate that our revenues will continue to depend on a limited number of major customers, although the companies considered to be our major customers and the percentage of our revenue represented by each major customer may vary from period to period. As a result of our customer concentration, our financial performance may fluctuate significantly from period to period based, among others, on exogenous circumstances related to our clients. For example, it is possible that any of our major customers could terminate its purchasing relationship with us or significantly reduce or delay the amount of our products that it orders, purchase products from our competitors, or develop its own products internally. The loss of any one of our major customers would adversely affect our revenues. Furthermore, if any of our customers become insolvent or have difficulties meeting their financial obligations to us for any reason, we may suffer losses. For more information regarding our sales by major customers as percentage of our total sales, see Note 11 to our consolidated financial statements contained elsewhere in this report.

The markets we target are cyclical and it is difficult to predict the length and strength of any downturn or expansion period.

The semiconductor capital equipment market and industries, which are cyclical, experienced a steep downturns and upturns between the years 2008 and 2011. Since 2012 we have seen a more stable overall capital investment patterns, yet we cannot predict the length and strength of potential future downturns or expansions.

Our inability to significantly reduce spending during a protracted slowdown in the semiconductor industry could reduce our prospects of achieving continued profitability.

Historically, we have derived all of our revenues, and we expect to continue to derive practically all of our revenues, from sales of our products and related services to the semiconductor industry. Our business depends in large part upon capital expenditures by semiconductor manufacturers, which in turn depend upon the current and anticipated demand for semiconductors. The semiconductor industry has experienced severe and protracted cyclical downturns and upturns. Specifically, during 2010, the semiconductor industry experienced a steep upturn of over 100%, which followed a severe downturn in 2008 and 2009. During cyclical downturns, as those we have experienced in the past and are likely to experience in the future, material reductions in the demand for the type of capital equipment and process technology that we offer may result in a decline in our sales. In addition, our ability to significantly reduce expenses in response to any downturn or slowdown in the rate of capital investment by manufacturers in these industries may be limited because of:

- our continuing need to invest in research and development;
- our continuing need to market our new products to new and existing customers; and
- our extensive ongoing customer service and support requirements worldwide.

As a result, we may have difficulty achieving continued profitability during a protracted slowdown.

If we do not respond effectively and on a timely basis to rapid technological change, our ability to attract and retain customers could be diminished, which would have an adverse effect on our sales and ability to remain competitive.

The semiconductor manufacturing industry is characterized by rapid technological change, new product introductions and enhancements and evolving industry standards. Our ability to remain competitive and generate sales revenue will depend in part upon our ability to develop new and enhanced systems at competitive prices in a timely and cost-effective manner and to accurately predict technology transitions. Because new product development commitments must be made well in advance of sales, new product decisions must anticipate the future demand for products. If we fail to correctly anticipate future demand for products, our sales and competitive position will suffer. In addition, the development of new measurement technologies, new product introductions or enhancements by our competitors could cause a decline in our sales or loss of market acceptance of our existing products.

We depend on Process Equipment Manufacturers (“PEMs”) for sales of our integrated metrology systems, and the loss of PEMs as business partners could harm our business.

We believe that sales of integrated metrology systems will continue to be an important source of our revenues. Sales of our integrated metrology systems depend upon the ability of PEMs to sell semiconductor equipment products that are able to integrate with our metrology systems. If our PEMs are unable to sell such products, if they choose to focus their attention on products that do not integrate our systems, or if they choose to develop their own metrology solutions, our business could suffer. If we were to lose our PEMs as business partners for any reason, our inability to realize sales from integrated metrology systems could significantly harm our business. In addition, we may not be able to develop or market new integrated metrology products, which could slow or prevent our growth.

Some of our commercial agreements with PEMs and customers may include exclusivity provisions. Such exclusivity obligations may prevent us from engaging in certain business relationships with third parties, and thus may affect our ability to introduce new products into relevant markets.

Some of our commercial agreements with PEMs and customers may include exclusivity provisions, which prevent us from engaging in certain business relationships with third parties. These exclusivity obligations are normally used as a tool to promote the development and the penetration of innovative new products, and are usually limited in terms of scope and length. When considering whether to enter into any such exclusivity arrangements, we usually take into the consideration the terms of the exclusivity (e.g., length and scope), the expected benefit to the Company, and the risks and limitations associated with such exclusivity undertakings. Exclusivity obligations relating to our technology and products may affect our ability to commercialize our products, engage in potentially beneficial business relationships with third parties, or introduce new products into relevant markets, which could slow or prevent our growth.

If any of our systems fail to meet or exceed our internal quality specifications, we cannot ship them until such time as they have met such specifications. If we experience significant delays or are unable to ship our products to our customers as a result of our internal processes or for any other reason, our business and reputation may be adversely affected.

Our products are complex and require technical expertise to design and manufacture. Various problems occasionally arise during the manufacturing process that may cause delays and/or impair product quality. We actively monitor our manufacturing processes to ensure that our products meet our internal quality specifications. Any significant delays stemming from the failure of our products to meet or exceed our internal quality specifications, or for any other reasons, would delay our shipments. Shipment delays could be harmful to our business, revenues and reputation in the industry.

We are exposed to cyber security risks that, if materialized, may affect our business and operations.

Our global operations are linked by information systems, including telecommunications, the internet, our corporate intranet, network communications, email and various computer hardware and software applications. Despite our implementation of network security measures, our tools and servers are vulnerable to computer viruses, break-ins and similar disruptions from unauthorized tampering with our computer systems and tools located at customer sites, or could be subject to system failures or malfunctions for other reasons. System failures or malfunctioning could disrupt our operations and our ability to timely and accurately process and report key components of our financial results.

We may incorporate open source technology in some of our software and products, which may expose us to liability and have a material impact on our product development and sales

Some of our software and products may utilize open source technologies. These technologies may be subject to certain open source licenses, including but not limited to the General Public License, which, when used or integrated in particular manners, impose certain requirements on the subsequent use of such technologies, and pose a potential risk to proprietary nature of products. In the event that we have or will in the future, use or integrate software that is subject to such open source licenses into or in connection with our products in such ways that will trigger certain requirements of these open source licenses, we may (i) be required to include certain notices and abide by other requirements in the absence of which we may be found in breach of the copyrights owned by the creators of such open source technologies; and/or (ii) be required to disclose our own source code or parts thereof to the public, which could enable our competitors to eliminate some or any technological advantage that our products may have over theirs. Any such requirement to disclose our source code or other confidential information related to our products, and the failure to abide by license requirement resulting in copyright infringement, could materially adversely affect our competitive position and impact our business results of operations and financial condition.

New product lines that we may introduce in the future may contain defects, which will require us to allocate time and financial resources to correct.

Our new product lines may contain defects when first introduced. If there are defects, we will need to divert the attention of our personnel from our ongoing product development efforts to address the detection and correction of the defects. In the past, no liability claims have been filed against us for damages related to product defects, and we have not experienced any material delays as a result of product defects. However, we cannot provide assurances that we will not incur these costs or liabilities or experience these lags or delays in the future. Moreover, the occurrence of such defects, whether caused by our products or the products of another vendor, may result in significant customer relations problems and adversely affect our reputation and may impair the market acceptance of our products.

We have historically generated losses and may incur future losses.

Since the year 2009, we have been able to demonstrate continued profitability, yet since our inception in 1993, we have had several years of losses and we may incur net losses in future years as well. We plan to increase our aggregate operating expenses in 2016 relative to 2015. However, our ability to generate profits is dependent mainly on our ability to generate sufficient sales. In the future, our sales may not be sufficient to cover the increase in our expenses and we may not be able to maintain profitability, mainly during a protracted slowdown.

Our dependence on a single manufacturing facility per product line magnifies the risk of an interruption in our production capabilities.

We have one manufacturing facility for our Optical CD product lines, which is located in Weizman Science Park, Ness-Ziona-Rehovot, Israel, and one manufacturing facility for our XPS product line, which is located in Santa Clara, CA, US (the "Manufacturing Facilities"). Although we adopted a disaster recovery plan, any event affecting any of our Manufacturing Facilities, including natural disaster, labor stoppages or armed conflict, may disrupt or indefinitely discontinue our manufacturing capabilities and could significantly impair our ability to fulfill orders and generate revenues, thus negatively impacting our business.

Our lease agreements for our Manufacturing Facilities include provisions that exempt the landlord and others from liability for damages to our Manufacturing Facilities.

Pursuant to our lease agreements for our Manufacturing Facilities (one of which is also our headquarters), the landlord and anyone on its behalf, and additional tenants are exempt from any liability for direct or consequential damages to our Manufacturing Facilities, except in the event of willful misconduct. While we have obtained insurance policies against certain damages, the aforementioned exemption of liability could compromise our ability to recover the full amount of such damages, and consequently we may incur substantial costs upon the occurrence of such damages.

Because shipment dates may be changed and some of our customers may cancel or delay orders with little or no penalty, and since we encounter difficulties in collecting cancellation fees from our customers, our backlog may not be a reliable indicator of actual sales and financial results.

We schedule production of our systems based upon order backlog and customer forecasts. We include in backlog only those orders to which the customer has assigned a purchase order number and for which delivery has been specified. In general, our ability to rely on our backlog for future forecasting and planning is limited because shipment dates may be changed, some customers may cancel or delay orders with little or no penalty, and our ability to collect cancellation fees from customers is not assured. Thus, our backlog may not be a reliable indicator of actual sales and financial results.

We experience quarterly fluctuations in our operating results, which may adversely impact our share price.

Our quarterly operating results within a specific year have fluctuated significantly in the past. We expect this trend to continue. A principal reason is that we derive a substantial portion of our revenue from the sale of a relatively small number of systems to a relatively small number of customers. As a result, our revenues and results of operations for any given quarter may decrease due to factors relating to the timing of orders, the timing of shipments of systems, and the timing of recognizing these revenues. Furthermore, our quarterly results are affected by the cyclical nature of the semiconductor capital equipment market and industries.

We also have a limited ability to predict revenues for future quarterly periods and, as a result, face risks of revenue shortfalls. If the number of systems we actually ship, and thus the amount of revenues we are able to record in any particular quarter, is below our expectations, the adverse effect may be magnified by our inability to adjust spending quickly enough to compensate for the revenue shortfall.

We operate in an extremely competitive market, and if we fail to compete effectively, our revenues and market share will decline.

Although the market for process control systems used in semiconductor manufacturing is currently concentrated and characterized by relatively few participants, the semiconductor capital equipment industry is intensely competitive. We compete mainly with Nanometrics Inc., KLA-Tencor Corp. (which recently announced its planned merger with Lam Research Inc., another competitor of ours) and Rudolph Technologies, Inc. which manufacture and sell integrated and/or stand-alone process control systems. In addition, we compete with PEMs, such as ASML Holdings N.V., Applied Materials Inc. and Lam Research Inc., which develop in-situ sensors and metrology products. Established companies, both domestic and foreign, compete with our product lines, and new competitors enter our market from time to time. Some of our competitors have greater financial, engineering, manufacturing and marketing resources than we do. If a particular customer selects a competitor's capital equipment, we expect to experience difficulty in selling to that customer for a significant period of time. A substantial investment is required by the customers to evaluate, test, select and integrate capital equipment into a production line. As a result, once a manufacturer has selected a particular vendor's capital equipment, we believe that the manufacturer generally relies upon that equipment for the specific production line application and frequently will attempt to consolidate its other capital equipment requirements with the same vendor. Accordingly, unless our systems offer performance or cost advantages that outweigh a customer's expense of switching to our systems, it will be difficult for us to achieve significant sales from that customer once it has selected another vendor's system for an application. We believe that our ability to compete successfully depends on a number of factors both within and outside of our control, including:

- the contribution of our equipment to the customers' productivity;

- our product quality and performance;
- our global technical service and support;
- the return on investment (ROI) of our equipment and its cost of ownership;
- the breadth of our product line;
- our success in developing and marketing new products; and
- the extendibility of our products.

If we fail to compete in a timely and cost-effective manner against current or future competitors, our revenues and market share will decline.

The ongoing consolidation in our industry may harm us if our competitors are able to offer a broader range of products and greater customer support than we can offer.

We believe that the semiconductor capital equipment market is undergoing consolidation. A number of process control suppliers have been acquired by larger equipment manufacturers. For example, in 2005 Rudolph Technologies, Inc. acquired August Technologies, Inc., in 2006 Nanometrics acquired Soluris, Inc. and Accent Technologies, Inc., in 2007 KLA-Tencor Corp. acquired Therma-Wave, Inc. and Nanometrics acquired Tevet Ltd., and in 2011 Nanometrics acquired Nanda Technologies. In addition, in the recent two years a major consolidation has occurred in the process equipment manufacturers segment, such as Applied Materials Inc. acquiring Varian Semiconductor Equipment Associates, Lam Research Corporation acquiring Novellus Systems Inc., and recently Lam Research Corporation announced its planned merger with KLA-Tencor Corp. We believe that similar acquisitions and business combinations involving our competitors, our customers and the PME's may occur in the future. These acquisitions could adversely impact our competitive position by enabling our competitors and potential competitors to expand their product offerings and customer services, which could provide them an advantage in meeting customers' needs, particularly with those customers that seek to consolidate their capital equipment requirements with a smaller number of vendors. The greater resources, including financial, marketing, intellectual property and support resources, of competitors involved in these acquisitions could allow them to accelerate the development and commercialization of new competitive products and the marketing of existing competitive products to their larger installed bases. Accordingly, such business combinations and acquisitions by competitors and/or customers could jeopardize our competitive position.

We may not be successful in our efforts to complete and integrate current and/or future acquisitions, which could disrupt our current business activities and adversely affect our results of operations or future growth.

Any acquisition may involve many risks, including the risks of:

- diverting management's attention and other resources from our ongoing business concerns;
- entering markets in which we have no direct prior experience;
- improperly evaluating new services, products and markets;
- being unable to maintain uniform standards, controls, procedures and policies;
- failing to comply with governmental requirements pertaining to acquisitions of local companies or assets by foreign entities;
- being unable to integrate new technologies or personnel;
- incurring the expenses of any undisclosed or potential liabilities; and
- the departure of key management and employees.

If we are unable to successfully complete future acquisitions or to effectively integrate our current acquisition of ReVera or future acquisitions, our ability to grow our business or to operate our business effectively could be reduced, and our business, financial condition and operating results could suffer. Even if we are successful in completing acquisitions, we cannot assure you that we will be able to integrate the operations of the acquired business without encountering difficulty regarding different business strategies with respect to marketing and integration of personnel with disparate business backgrounds and corporate cultures. The integration of ReVera operations is still an ongoing process and, as of the date of this annual report on Form 20-F, we cannot assure you that such process will be completed without encountering difficulties. Further, in certain cases, mergers and acquisitions require special approvals, or are subject to scrutiny by the local authorities, and failing to comply with such requirements or to receive such approvals, may prevent or limit our ability to complete the acquisitions as well as expose us to legal proceedings prior or following the consummation of such acquisitions. In some cases, such proceedings, if initiated, may conclude in a requirement to divest portions of the acquired business. As of the date of this annual report on Form 20-F, we are not aware of any pending proceedings as such in connection with the acquisition of ReVera.

Some of our contracts and arrangements potentially subject us to the risk of significant or non-limited liability.

We produce highly complex optical and electronic components and, accordingly, there is a risk that defects may occur in any of our products. Such defects can give rise to significant costs, including expenses relating to recalling products, replacing defective items, writing down defective inventory and loss of potential sales. In addition, the occurrence of such defects may give rise to product liability and warranty claims, including liability for damages caused by such defects.

In our commercial relationship with customers, we attempt to negotiate waivers of consequential damages arising from damages for loss of use, loss of product, loss of revenue and loss of profit caused by our products. Similarly, with respect to our commercial relationship with subcontractors and suppliers, we attempt to negotiate arrangements which do not include a limitation of liabilities and limitation of consequential damages. However, some contracts and arrangements we are bound by expose us to product liability claims resulting in personal injury or death, up to an unlimited amount, and the incurrance of the risk of material penalties for consequential or liquidated damages. Additionally, under such contracts and arrangements, we may be named in product liability claims even if there is no evidence that our products caused the damage in question, and such claims could result in significant costs and expenses relating to attorneys' fees and damages.

In addition, such contracts and arrangements may include non-limited liability provisions for infringement of a third party's intellectual property rights in connection with our products.

Although we have not incurred material penalties for consequential or liquidated damages during the past, we may incur such penalties in the future. Such penalties for consequential or liquidated damages may be significant and could negatively affect our financial condition or results of operations.

Because of our small size, we depend on a small number of employees who possess both executive and technical expertise, and the loss of any of these key employees would hurt our ability to implement our strategy and to compete effectively.

Because of our small size and our reliance on employees with both executive and advanced technical skills, our success depends significantly upon the continued contributions of our officers and key personnel. All of our key management and technical personnel have expertise, which is in high demand among our competitors, and the loss of any of these individuals could cause our business to suffer. We do not maintain life insurance policies for our officers and directors.

Our lengthy sales cycle increases our exposure to customer delays in orders, which may result in obsolete inventory and volatile quarterly revenues.

Sales of our systems depend, in significant part, upon our customers adding new manufacturing capacity or expanding existing manufacturing capacity, both of which involve a significant capital commitment. We may experience delays in finalizing sales following initial system qualification while a customer evaluates and approves an initial purchase of our systems. In general, for new customers or applications, our normal sales cycle takes between six (6) to twelve (12) months to complete. During this time, we may expend substantial funds and management effort, but fail to make any sales. Lengthy sales cycles subject us to a number of significant risks, including inventory obsolescence and fluctuations in operating results, over which we have limited control.

Because of the technical nature of our business, our intellectual property is extremely important to our business, and our inability to protect our intellectual property would harm our competitive position.

As of December 31, 2015, we have been granted more than 125 U.S. patents and have about 39 U.S. patent applications pending including US provisional patent applications. In addition, we have been granted about 65 non-U.S. patents and more than 69 non-U.S. patent applications pending.

We cannot assure that:

- pending patent applications will be approved;
- any patents will be broad enough to protect our technology, will provide us with competitive advantages or will not be challenged or invalidated by third parties; or
- the patents of others will not have an adverse effect on our ability to do business.

We also cannot assure that others will not independently develop similar products, duplicate our products or, if patents are issued to us, design around these patents. Furthermore, because patents may afford less protection under foreign law than is available under U.S. law, we cannot assure that any foreign patents issued to us will adequately protect our proprietary rights.

In addition to patent protection, we also rely upon trade secret protection, employee and third-party nondisclosure agreements and other intellectual property protection methods to protect our confidential and proprietary information. Despite these efforts, we cannot be certain that others will not otherwise gain access to our trade secrets or disclose our technology.

Additionally, as part of our long term technological collaboration, we are engaged with joint development activities with some of our strategic customers as well as with research institutes. These activities impose some limitations on the joint intellectual property developed as part of these programs.

Furthermore, we may be required to institute legal proceedings to protect our intellectual property. If such legal proceedings are resolved adversely to us, our competitive position and/or results of operations could be harmed. For additional information on our intellectual property, see "Item 4B – Intellectual Property" in this annual report on Form 20-F.

There has been significant litigation involving intellectual property rights in the semiconductor and related industries, and similar litigation involving Nova could force us to divert resources to defend against such litigation or deter our customers from purchasing our systems.

We have been, and may in the future be, notified of allegations that we may be infringing intellectual property rights possessed by others. In addition, we may be required to commence legal proceedings against third parties, which may be infringing our intellectual property, in order to defend our intellectual property. In the future, protracted litigation and expense may be incurred to defend ourselves against alleged infringement of third party rights or to defend our intellectual property against infringement by third parties. Adverse determinations in that type of litigation could:

- result in our loss of proprietary rights;
- subject us to significant liabilities, including triple damages in some instances;
- require us to seek licenses from third parties, which licenses may not be available on reasonable terms or at all; or
- prevent us from selling our products.

Any litigation of this type, even if we are ultimately successful, could result in substantial cost and diversion of time and effort by our management, which by itself could have a negative impact on our profit margin, available funds, competitive position and ability to develop and market new and existing products. For additional information on our intellectual property, see "Item 4B – Intellectual Property" in this annual report on Form 20-F.

We depend on a limited number of suppliers, and in some cases a sole supplier. Any disruption or termination of these supply channels may adversely affect our ability to manufacture our products and to deliver them to our customers.

We purchase components, subassemblies and services from a limited number of suppliers and occasionally from a single source. Disruption or termination of these sources could occur (due to several factors, including, but not limited to, work stoppages, acts of war, terrorism, fire, earthquake, energy shortages, flooding or other natural disasters), and these disruptions could have at least a temporary adverse effect on our operations. Although we generally maintain an inventory of critical components used in the manufacture and assembly of our systems, such supplies may not be sufficient to avoid potential delays that could have an adverse effect on our business.

To date, we have not experienced any material disruption or termination of our supply sources.

A prolonged inability on our part to obtain components included in our systems on a cost-effective basis could adversely impact our ability to deliver products on a timely basis, which could harm our sales and customer relationships.

The new disclosure rules regarding the use of conflict minerals may affect our relationships with suppliers and customers.

The Securities and Exchange Commission requires certain disclosure by companies that use conflict minerals in their products, with substantial supply chain verification requirements in the event that the materials come from, or could have come from, the Democratic Republic of the Congo or adjoining countries. These rules and verification requirements may impose additional costs on us and on our suppliers, and limit the sources or increase the prices of materials used in our products. Among other things, this rule could affect sourcing at competitive prices and availability in sufficient quantities of certain minerals used in the manufacture of components that are incorporated into our products. In addition, the number of suppliers who provide conflict-free minerals may be limited, and there may be material costs associated with complying with the disclosure requirements, such as costs related to the process of determining the source of certain minerals used in our products, as well as costs of possible changes to products, processes, or sources of supply as a consequence of such verification activities. We may not be able to sufficiently verify the origins of the relevant minerals used in components manufactured by third parties through the procedures that we implement, and we may encounter challenges to satisfy those customers who require that all of the components of our products be certified as conflict-free, which could place us at a competitive disadvantage if we are unable to do so. While we have created processes and procedures designed to enable compliance to these rules, if in the future we are unable to certify that our products are conflict free, we may face challenges with our customers, which could place us at a competitive disadvantage and harm our reputation. In addition, because Securities and Exchange Commission rules allow an issuer to delay reporting on an acquired company's products until the first calendar year that begins no sooner than eight months after the effective date of the acquisition, products of ReVera, which was acquired on April 2, 2015, would be included for the first time in the Form SD to be filed for calendar year 2016 (to be filed in 2017).

We are dependent on international sales, which expose us to foreign political and economic risks that could impede our plans for expansion and growth.

Our principal customers are located in Taiwan, South Korea, China, the United States and Germany, and we produce our products in Israel. International operations expose us to a variety of risks that could seriously impact our financial condition and impede our growth. For instance, trade restrictions, changes in tariffs and import and export license requirements could adversely affect our ability to sell our products in the countries adopting or changing those restrictions, tariffs or requirements. This could reduce our sales by a material amount.

We may be affected by instability in the global economy, including the European and Chinese economic and financial turmoil.

Instability in the global credit markets, including the European economic and financial turmoil related to sovereign debt issues in certain countries, the instability in the Chinese economy with its global effect, the instability in the geopolitical environment in many parts of the world and other disruptions, such as changes in energy costs, may continue to put pressure on global economic conditions. The world has recently experienced a global macroeconomic downturn, and if global economic and market conditions, or economic conditions in key markets, remain uncertain or deteriorate further, we may experience material impacts on our business, operating results, and financial condition.

Because we derive a significant portion of our revenues from sales in Asia, our sales could be hurt by the recent instability of Asian economies.

A number of Asian countries have experienced political and economic instability. For instance, Taiwan and China have had a number of disputes, as have North and South Korea, and Japan has for a number of years experienced significant economic instability. Additionally, the Asia-Pacific region is susceptible to the occurrence of natural disasters, such as earthquakes, cyclones, tsunamis and flooding. We have subsidiaries in Taiwan, Japan and South Korea and we have significant customers in Taiwan and South Korea as well as in China. An outbreak of hostilities or other political upheaval, economic downturns or the occurrence of a natural disaster in these or other Asian countries would likely harm the operations of our customers in these countries, causing our sales to suffer.

A large number of our ordinary shares continue to be owned by a relatively small number of shareholders, whose future sales of our shares, if substantial, may depress our share price.

If our principal shareholders sell substantial amounts of our ordinary shares, including shares issued upon the exercise of outstanding options or warrants, the market price of our ordinary shares may fall. For additional information on our major shareholders, see “Item 7A – Major Shareholders” in this annual report on Form 20-F.

Certain shareholders may control the outcome of matters submitted to a vote of our shareholders, including the election of directors.

To the best of our knowledge, approximately 45% of our outstanding ordinary shares are cumulatively held by six of our shareholders. As a result, and although we are currently not aware of any voting agreement between such shareholders, if these shareholders voted together or in the same manner, they would have the ability to control the outcome of corporate actions requiring an ordinary majority vote of shareholders as set in the Company’s Amended and Restated Articles of Association. Even if these shareholders do not vote together, each one of them may have the ability to influence the outcome of corporate actions requiring the vote of shareholders as set in the Company’s Amended and Restated Articles of Association. For additional information on our major shareholders, see “Item 7A – Major Shareholders” in this annual report on Form 20-F.

The market price of our ordinary shares may be affected by a limited trading volume and may fluctuate significantly.

In the past there has been a limited public market for our ordinary shares and there can be no assurance that an active trading market for our ordinary shares will continue. An absence of an active trading market could adversely affect our shareholders’ ability to sell our ordinary shares in short time periods. Our ordinary shares have experienced, and are likely to experience in the future, significant price and volume fluctuations, which could adversely affect the market price of our ordinary shares without regard to our operating performance.

We manage our available cash through various bank institutions and invest large portions of our cash reserves in bank deposits. A bankruptcy of one of the banks in which or through which we hold or invest our cash reserves, might prevent us to access that cash for an uncertain period of time.

We manage our available cash through various bank institutions and invest large portions of our cash reserves in bank deposits. As of December 31, 2015, more than 90% of our cash reserves were invested in bank institutions, and more than 40% was invested in one institution. A bankruptcy of one of the banks in which we hold our cash reserves or through which we invest our cash reserves, might prevent us to access that cash for an uncertain period of time.

We may fail to maintain effective internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act of 2002.

The Sarbanes-Oxley Act of 2002 imposes certain duties on us and our executives and directors. Our efforts to comply with the requirements of Section 404 (Assessment of Internal Control), which started in connection with our Annual Report on Form 20-F for the fiscal year ended December 31, 2007, have resulted in increased general and administrative expense and a diversion of management time and attention, and we expect these efforts to require the continued commitment of resources. Section 404 of the Sarbanes-Oxley Act of 2002 requires (i) management’s annual review and evaluation of our internal control over financial reporting and (ii) an attestation report issued by an independent registered public accounting firm on our internal control over financial reporting, in connection with the filing of our Annual Report on Form 20-F for each fiscal year. We have documented and tested our internal control systems and procedures in order for us to comply with the requirements of Section 404 (in accordance with the guidance issued by the Securities and Exchange Commission which permit companies to exclude acquisitions from their final assessment of internal control over financial reporting for the first fiscal year in which the acquisition occurred, our management’s evaluation of internal control over financial reporting excluded the internal control activities of ReVera, which we acquired in April 2015). While our assessment of our internal control over financial reporting resulted in our conclusion that as of December 31, 2015, our internal control over financial reporting was effective, we cannot predict the outcome of our testing in future periods. If we fail to maintain the adequacy of our internal controls, we may not be able to ensure that we can conclude on an ongoing basis that we have effective internal controls over financial reporting. Failure to maintain effective internal control over financial reporting could result in investigation or sanctions by regulatory authorities, and could have a material adverse effect on our operating results, investor confidence in our reported financial information, and the market price of our ordinary shares.

Risks Related to Operations in Israel

Potential political, economic and military instability in Israel may adversely affect our growth and revenues.

Our principal offices and manufacturing facilities and many of our suppliers are located in Israel. Although most of our sales are currently being made outside Israel, potential political, economic and military conditions in Israel directly affect our operations.

Since the establishment of the State of Israel in 1948, a number of armed conflicts have occurred between Israel and its Arab neighbors, including extensive hostilities along Israel's northern border with Lebanon in 2006 and continuous hostilities along Israel's border with the Gaza Strip. Some of these hostilities and armed conflicts resulted in artillery attacks on Israeli territories and civil facilities. In 2012 as well as during the summer of 2014, rocket attacks from Gaza Strip resulted in damages in areas which are close to our Manufacturing Facility. In addition, it is widely believed that Iran, which has previously threatened to attack Israel, has been stepping up its efforts to achieve nuclear capability. The tension between Israel and Iran may escalate in the future and turn violent, which could affect the Israeli economy generally and us in particular. Moreover, since December 2010, there has been a wave of protests and civil resistance demonstrations in several countries in the Middle East and North Africa, including Egypt and Syria, both of which share a border with Israel. This situation creates instability in the Middle East and the surrounding countries. The resumption of hostilities and on-going tension and instability in the region, may have a negative effect on our business and harm our growth and revenues.

Our operations may be disrupted by the obligation of key personnel to perform military service.

Some of our executive officers and employees in Israel are obligated to perform significant periods of military reserve service until the age of 40 for soldiers and until the age of 45 for officers. This time-period may also be extended by the Military Chief of the General Staff and the approval of the Minister of Defense or by a directive of the Minister of Defense in the event of a declared national emergency. Our operations could be disrupted by the absence for a significant period of one or more of our executive officers or key employees due to military service. To date, our operations have not been materially disrupted as a result of these military service obligations. Any disruption in our operations due to such obligations would adversely affect our ability to produce and market our existing products and to develop and market future products.

Provisions of our Amended and Restated Articles of Association and Israeli law may delay, prevent or make difficult an acquisition of Nova, which could prevent a change of control and negatively affect the price of our ordinary shares.

Israeli corporate law regulates mergers, requires tender offers for acquisitions of shares above specified thresholds, for special approvals for transactions involving directors, officers or significant shareholders and regulates other matters that may be relevant to these types of transactions. Furthermore, Israeli tax considerations may make potential transactions unappealing to us or to some of our shareholders. See Item 10.B, "Additional Information – Memorandum and Articles of Association". For a more detailed discussion regarding some anti-takeover effects of Israeli law.

These provisions of Israeli law may delay, prevent or make difficult an acquisition of Nova, which could prevent a change of control and therefore depress the price of our shares.

The rights and responsibilities of our shareholders are governed by Israeli law and differ in some respects from the rights and responsibilities of shareholders under U.S. law.

We are incorporated under Israeli law. The rights and responsibilities of holders of our ordinary shares are governed by our Amended and Restated Articles of Association and by the Israeli Companies Law, 1999 (the "Companies Law"). These rights and responsibilities differ in some respects from the rights and responsibilities of shareholders in typical U.S. corporations. In particular, pursuant to the Companies Law each shareholder of an Israeli company has to act in good faith in exercising his or her rights and fulfilling his or her obligations toward the company and other shareholders and to refrain from abusing his power in the company, including, among other things, in voting at the general meeting of shareholders and class meetings, on amendments to a company's articles of association, increases in a company's authorized share capital, mergers, and transactions requiring shareholders' approval under the Companies Law. In addition, a controlling shareholder of an Israeli company or a shareholder who knows that it possesses the power to determine the outcome of a shareholder vote or who has the power to appoint or prevent the appointment of a director or officer in the company, or has other powers toward the company has a duty of fairness toward the company. However, Israeli law does not define the substance of this duty of fairness. Because Israeli corporate law has undergone extensive revision in recent years, there is little case law available to assist in understanding the implications of these provisions that govern shareholder behavior.

Because most of our revenues are generated in U.S. dollars, but a significant portion of our expenses is incurred in currencies other than U.S. dollars, and mainly New Israeli Shekels, our profit margin may be seriously harmed by currency fluctuations.

We generate most of our revenues in U.S. dollars, but incur a significant portion of our expenses in currencies other than U.S. dollar, and mainly New Israeli Shekel, commonly referred to as NIS. As a result, we are exposed to risk of devaluation of the U.S. dollar in relation to the NIS and other currencies. In that event, the dollar cost of our operations in countries other than the U.S. will increase and our dollar measured results of operations will be adversely affected. During 2015, the U.S. dollar revaluated against the NIS by 0.3%, after revaluated by approximately 4.5% in the previous three years. We cannot predict the future trends in the rate of devaluation or revaluation of the U.S. dollar against the NIS, and our operations also could be adversely affected if we are unable to hedge against currency fluctuations in the future.

We participate in government programs under which we receive grants and tax benefits. These programs impose restrictions on our ability to use the technologies developed under these programs. In addition, the reduction or termination of these programs would increase our costs and/or our effective tax rate. We are also subject to certain limitations related to the repatriation of funds that benefited from the tax holiday under the Approved and Benefited Enterprises regimes. The distribution or deemed distribution of such funds may be subject to recapture provisions under which we will be subject to the corporate tax that we were initially exempt from.

Government Programs. We receive royalty-bearing grants from the Office of the Chief Scientist of the Israeli Ministry of Economy and Industry, or OCS, for the financing of certain of our research and development programs that meet specified criteria. In addition, we are currently participating in intellectual property consortiums in Europe, mainly in order to be able to support our customers in the transition to advance technology nodes in the coming years. These consortiums are joint programs with the OCS and the European Research Area. To maintain our eligibility for these programs, we must continue to meet certain conditions, including paying royalties related to grants received. Some of these programs also restrict our ability to manufacture particular products and transfer particular technology, which were developed as part of the OCS's programs outside of Israel. The restrictions associated with receiving such OCS's grants may require us to obtain approval of the research and development committee nominated by the OCS for certain actions and transactions and pay additional royalties to the OCS. Such approval may be given only if the recipient abides by all the provisions of the law and related regulations. Approval to manufacture products outside of Israel or consent to the transfer of technology, if requested, might not be granted. In addition, if we fail to comply with certain restrictions associated with receiving such OCS's grants, we may be subject to criminal charges.

Approved and Benefited Enterprises Regimes. In addition to the above mentioned grants, we are also eligible to receive tax benefits under Israeli law for capital investments that are designated as "approved enterprises". While we believe that we meet the statutory conditions to entitle us to such benefits there can be no assurance that the tax authorities in Israel will concur. Should it be determined that we have not, or do not meet such conditions, the benefits received could be cancelled. We could also be required to pay increased taxes or refund any benefits previously received, adjusted for inflation and interest. Moreover, as certain tax benefits for Approved Enterprises are granted for a period of between two (2) to ten (10) years, starting from the first year the company derives taxable income under the Approved Enterprise program. Any adjustment to our taxable income resulting from a tax audit for a certain tax year or several tax years, may change the periods in which benefits are granted for and may result in increasing our tax expenses. From time to time, we submit requests for expansion of our approved enterprise programs. These requests might not be approved.

It should be noted that the Israeli government may reduce or eliminate the above mentioned benefits in the future. The termination or reduction of these grants or tax benefits could harm our business, financial condition and results of operations. In addition, if we increase our activities outside Israel due to, for example, future acquisitions or outsourcing of manufacturing or development activities, these activities generally will not be eligible for inclusion in Israeli grants or tax benefit programs. Accordingly, our effective corporate tax rate could increase significantly in the future and our grants might be reduced.

Our effective tax rate could be materially affected by several factors including, among others, changes in the amount of income taxed by or allocated to the various jurisdictions in which we operate that have differing statutory tax rates, changing tax laws, regulations and interpretations of such tax laws in multiple jurisdictions.

We conduct business globally and file income tax returns in multiple jurisdictions. We report our results of operations based on our determination of the amount of taxes owed in the various jurisdictions in which we operate. We have transfer pricing arrangements among our subsidiaries in relation to various aspects of our business, including operations, marketing, sales and delivery functions. Any applicable transfer pricing rules, require that any international transaction involving associated enterprises be on arm's-length terms. We consider the transactions among our subsidiaries to be on arm's-length terms. The determination of our consolidated provision for income taxes and other tax liabilities requires estimation, judgment and calculations where the ultimate tax determination may not be certain. Our determination of tax liability is always subject to review or examination by authorities in various jurisdictions.

If a tax authority in any jurisdiction reviews any of our tax returns and proposes an adjustment, including as a result of a determination that the transfer prices and terms we have applied are not appropriate, such an adjustment could have a negative impact on our financial results.

Any shareholder with a cause of action against us as a result of buying, selling or holding our ordinary shares may have difficulty asserting a claim under U.S. securities laws or enforcing a U.S. judgment against us or our officers, directors or Israeli auditors.

We are organized under the laws of the State of Israel, and we maintain most of our operations in Israel. Most of our officers and directors as well as our Israeli auditors reside outside of the United States and a substantial portion of our assets and the assets of these persons are located outside the United States. Therefore, if you wish to enforce a judgment obtained in the United States against us, or our officers, directors and auditors, you will probably have to file a claim in an Israeli court. Additionally, you might not be able to bring civil actions under U.S. securities laws if you file a lawsuit in Israel. We have been advised by our Israeli counsel that Israeli courts generally enforce a final executory judgment of a U.S. court for liquidated amounts in civil matters after a hearing in Israel. If a foreign judgment is enforced by an Israeli court, it will be payable in Israeli currency. However, payment in the local currency of the country where the foreign judgment was given will be acceptable, subject to applicable foreign currency restrictions.

Our shares are listed for trade on more than one stock exchange, and this may result in price variations.

Our ordinary shares are listed for trading on The NASDAQ Global Select Market and on the Tel Aviv Stock Exchange Ltd., or TASE. This may result in price variations. Our ordinary shares are traded on these markets in different currencies, U.S. dollars on The NASDAQ Global Select Market and New Israeli Shekels on the TASE. These markets have different opening times and close on different days. Different trading times and differences in exchange rates, among other factors, may result in our shares being traded at a price differential on these two markets. In addition, market influences in one market may influence the price at which our shares are traded on the other.

We may be classified as a "passive foreign investment company" for U.S. income tax purposes, which could have significant and adverse tax consequences to U.S. shareholders.

Generally, if for any taxable year 75% or more of our gross income consists of specified types of passive income, or, on average, at least 50% of our assets are held for the production of, or produce, passive income, we may be characterized as a passive foreign investment company (a "PFIC") for U.S. federal income tax purposes. Classification of Nova as a PFIC could result in adverse U.S. tax consequences to our U.S. shareholders, including having gain realized on the sale or other disposition of our shares being treated as ordinary income as opposed to capital gain income, and computing tax liability on that gain, as well as on dividends and other distributions, as if the income had been earned ratably over each day in the U.S. holder's holding period for the shares. In addition, an interest charge will be imposed on the amount of the tax allocated to these taxable years. It may be possible for U.S. holders of common shares to mitigate certain of these consequences by making an election to treat us as a "qualified electing fund" under Section 1295 of the Internal Revenue Code of 1986, as amended (the "Code") or a "mark-to-market election" under Section 1296 of the Code. U.S. shareholders should consult with their own U.S. tax advisors with respect to the U.S. tax consequences of investing in our ordinary shares.

We believe that in 2015 we were not a PFIC. Nonetheless, because the determination of whether we are, or will be, a PFIC for a taxable year depends, in part, on the application of complex U.S. federal income tax rules, which are subject to various interpretations, there is a risk that we were a PFIC in 2015. Absent one of the elections described above, if we are a PFIC for any taxable year during which a U.S. holder holds our ordinary shares, we generally will continue to be treated as a PFIC regardless of whether we cease to meet the PFIC tests in one or more subsequent years. Currently we expect that we will not be a PFIC in 2016. However, PFIC status is determined based on our assets and income over the course of each taxable year, and is dependent on a number of factors, including the value of our assets, the trading price of our ordinary shares and the amount and type of our gross income. Therefore, there can be no assurances that we will not become a PFIC for the current fiscal year ending on December 31, 2016, or any future year, or that the Internal Revenue Service will not challenge any determination made by us concerning our PFIC status. For a discussion on how we might be characterized as a PFIC and related tax consequences, please see the section of this annual report entitled "U.S. Taxation – Passive Foreign Investment Companies."

Item 4. Information on the Company

4.A History and Development of the Company

Nova Measuring Instruments Ltd. was incorporated in May 1993 under the laws of the State of Israel. We commenced operations in October 1993 to design, develop and produce integrated process control systems for use in the manufacture of semiconductors, also known as integrated circuits or chips.

In April 2000, we conducted an initial public offering and our shares were listed for trading on NASDAQ.

In June 2002, we listed our shares on the TASE, pursuant to legislation which enables Israeli companies whose shares are traded on certain stock exchanges outside of Israel to be registered on the TASE, while reporting, in substance, in accordance with the provision of the relevant foreign securities law applicable to the Company.

During 2003, we began expanding our product offerings to include stand-alone systems. In recent years stand-alone metrology has started to account for a significant portion of our overall revenues.

Until 2008, most of our products were sold to process equipment manufacturers such as Applied Materials, Inc. and Ebara Corp., which later sold these products to semiconductor manufacturers. Since then, we have completely changed our business model, selling most of our products directly to semiconductor manufacturers. Through this process, which has also enabled us to introduce to these customers additional products and features, we have improved our products gross margins and net profitability. In parallel, we continue to work with the process equipment manufacturers as business partners for future products and process control solutions.

In February 2010, we successfully completed an underwritten public follow-on offering in which we received approximately \$17.0 million in net proceeds.

In March 2014, we announced a \$12 million share repurchase program, which we plan to execute by the first half of 2016.

In April 2015, we acquired ReVera Inc. or ReVera, a privately held company headquartered in Santa Clara, California, which develops, manufactures and sells stand-alone metrology tools for measurements of thin-films and composition applications in the semiconductor industry.

We currently have seven direct and indirect fully owned subsidiaries in the U.S., Japan, Taiwan, Korea, Germany and the Netherlands.

Our headquarter office is located in Israel at the Weizmann Science Park, Building 22, 2nd Floor, Ness-Ziona. Our telephone number at our main office is +1-972-73-229-5600.

4.B Business Overview

We deliver continuous innovation by providing advanced metrology solutions for the semiconductor manufacturing industry. Deployed with the world's largest integrated-circuit manufacturers, our products deliver state of the art, high performance metrology solutions for effective process control throughout the semiconductor fabrication lifecycle. Our holistic approach and complete suite of products, which combines high-precision hardware and cutting-edge software, support the development and production of the most advanced devices in today's high-end semiconductor market.

We offer in-line Optical and x-ray stand-alone metrology systems, as well as integrated optical metrology systems, which are attached directly to wafer fabrication process equipment. Our metrology product portfolio combined with Nova's modeling software, aim to deliver unique measurement solutions to measure the most advanced semiconductor technology nodes. Our suit of products are designed to deliver a holistic solution while demonstrating high performance and fast time to solution. Our metrology systems measure various film thickness and composition properties as well as critical-dimension (CD) variables during various front-end and back-end of line steps in the semiconductor wafer fabrication process, allowing semiconductor manufacturers to improve quality, productivity and yields, lower manufacturing costs and increase profitability. We supply our metrology solutions to major semiconductor manufacturers worldwide, and are recognized for excellence since our first system was installed in 1995.

The semiconductor manufacturing process starts with a flat silicon disc known as a silicon wafer upon which circuits are constructed. To construct the circuits, a series of layers of thin films that act as conductors, semiconductors or insulators are applied to the polished side of the wafer. During the manufacturing process, these film layers are subjected to processes which remove portions of the film, create circuit patterns and perform other functions. The semiconductor manufacturing process requires precise steps and strict control of equipment performance and process sequences. Tight control can be achieved through monitoring silicon wafers and measuring relevant parameters before or after each process step with metrology tools such as those we produce.

Prior to the introduction of our integrated metrology systems, process control was solely achieved through stand-alone measurement equipment. Stand-alone measurement equipment requires semiconductor manufacturers to interrupt the manufacturing process sequence, remove sample silicon wafers from the process equipment and place the silicon wafers on the stand-alone measuring or inspection tool. In contrast, our integrated metrology approach is based on patented measuring methods that enable us to produce optical measuring systems that are small enough to be integrated directly inside many types of semiconductor process equipment. We believe that in several instances during the manufacturing process, our integrated approach offers considerable advantages over the conventional stand-alone approach to metrology control, enabling manufacturers using our integrated equipment to reduce costs and to improve production efficiency, yield and quality.

We have always invested in our integrated metrology solutions as this continues to be an area where we have a leading position. In addition, in the past few years, we developed and started manufacturing stand-alone metrology systems, leveraging our technology, methods, metrology expertise and market position in the integrated metrology field to expand our offerings into the larger market for stand-alone metrology systems. Over the past several years we developed several generations of Stand-Alone metrology tools. Through a customer driven roadmap which aligns our development efforts with both R&D as well as high volume manufacturing needs of our customers, we have been able to build a differentiated product offering. The success of this endeavor has allowed us to grow this aspect of our business such that it now represents a significant part of our overall business. Today, both stand-alone and integrated metrology solutions have reached a level of maturity allowing semiconductor manufactures to choose how to use either technology and make decisions based on merit specific to the process step in question, always balancing between the amount of data attained and the use made of the data for capabilities such as automated process control. Our long-term strategy is focused on advanced metrology and process control solutions where our integrated process control products and stand-alone products are compatible or complementary and used in a customized way to meet specific customer needs.

In April 2015, through the acquisition of ReVera, we expanded our technology base. The foregoing technology added a unique capability to our product portfolio, allowing us to measure ultra-thin film thickness and composition for critical wafer fabrication steps. We believe that the combination of ReVera's XPS/XRF technology and Nova's dimensional Holistic FAB-Wide Solution, creates a compelling and unique portfolio for the measurement of film, composition, material properties and critical-dimension (CD) variables, which address today's growing challenges associated with the transition to advanced nodes in the semiconductor segments.

Demand for metrology systems is driven by capital equipment spending by semiconductor manufacturers, which in turn are driven by worldwide demand for semiconductor devices and technological transition processes, which are required from these devices for the most advanced high end applications. Industry data indicates that through the years worldwide demand for semiconductors has been growing. We believe that this growth in demand will continue to generate demand for process control equipment, including metrology systems, as semiconductor manufacturers invest in technology and capacity expansion. We also believe that demand for metrology systems will be driven by the increasing cost of semiconductor manufacturing and by the requirements of semiconductor manufacturers for better control of process equipment. Finally, demand for metrology is strongly driven by technology challenges. The growing investment in advanced technology nodes and device structures introduces growing complexity and new challenges. Scaling limits and technology progress are continuously pushed in order to improve cost and gain competitive advantage. These fundamental elements create favorable market conditions for metrology growth where more process steps are needed, new novel materials are introduced and innovative structures and packaging solutions are incorporated. We believe that all the above market conditions set favorable business environment for growth.

Our Market

Semiconductor Industry and the Metrology Market

The increased use of semiconductors has been accompanied by an increase in their complexity. Due to the creation of new applications and markets for semiconductors, suppliers and manufacturers are faced with an increasing demand for new products that provide greater functionality and higher performance at lower prices. As a result, many new complex materials, structures and processes are being introduced into semiconductor manufacturing ecosystem. Such materials include, among others, copper, low-k and high-k dielectrics, silicon-on-insulator, silicon-germanium, III-V, strained silicon and raised source/drain. Manufacturers have transitioned in the past years toward 300 mm silicon wafers (from 200 mm silicon wafers). While 300 mm wafers can yield up to twice as many integrated circuits than 200 mm wafers, they also create new manufacturing challenges. For example, because 300 mm wafers can bend or bow more than twice than the 200 mm wafers, they are more susceptible to damage. The larger area of 300 mm wafers also makes it more difficult to maintain film uniformity across the entire wafer. The phenomena is expected to become even more challenging as the semiconductor industry considers a move to 450 mm production in the future (currently on hold due to questions on cost effectiveness). Semiconductors also continue to move toward smaller feature sizes and more complex structures such as 3D FinFET transistors, GAA (Get All Around), 3D-NAND and emerging memory structures. The growing complexity of semiconductor devices increase the complexity and the costs of the semiconductor manufacturing process, which has also been a driver for the growing demand for metrology systems.

The ever-increasing level of complexity and the decrease in feature sizes has also significantly increased the cost and performance requirements of semiconductor fabrication equipment. The cost of wafer fabrication equipment has also increased due to the higher levels of automation being utilized by manufacturers. Thus, semiconductor manufacturers must increase their investment in capital equipment in order to sustain technological leadership, to expand manufacturing capacity and maintain profitability. According to published reports by an industry market research firm, the cost of building a state-of-the-art semiconductor manufacturing facility has grown from approximately \$200 million in 1983 and may reach up to \$5 billion in 2016 for building mega fab facilities capable of manufacturing 300 mm wafers. We believe that the process control equipment market, which includes the metrology segment, will grow in the future at a pace greater than the overall process equipment market since the challenges of meeting process design goals will become increasingly difficult such that process control equipment will consume a larger portion of the overall costs of semiconductor manufacturing equipment.

The Semiconductor Manufacturing Process

Semiconductors typically consist of transistors or other components connected by an intricate system of circuitry on silicon wafers. Integrated circuit manufacturing involves well over a dozen individual steps, some of which are repeated several times, through which numerous copies of an integrated circuit are formed on a single silicon wafer. Typically, up to 30 very thin patterned layers are created on each wafer during the manufacturing process. At the end of the manufacturing process, the wafer is cut into individual chips or dies. Because semiconductor specifications are extremely tight, and integrated circuits are becoming more complex, requiring ever more sophisticated manufacturing processes, the process steps are constantly monitored, and critical parameters are measured at each step using metrology equipment.

Many of the manufacturing steps involve the controlled application or removal of layers of materials to or from the wafer. The application of materials to the wafer, known as deposition, involves the layering of extremely thin films of electrically insulating, conducting or semi-conducting materials. These layers can range from one-thousandth to less than one-hundred-thousandth of a millimeter in thickness and create electrically active regions on the wafer and its surface. A wide range of materials and deposition processes are used to build up thin film layers on wafers to achieve specific performance characteristics. One of the principal methods of thin film layer deposition is chemical vapor deposition (CVD). In CVD, a chemical is introduced into the chamber where the wafer is being processed and is deposited using heat and a chemical reaction to form a layer of solid material on the surface of the silicon wafer. Although CVD equipment represents the largest equipment type, there are more segments in the thin-layer deposition equipment market as epitaxy, physical vapor deposition (PVD) and atomic layer deposition (ALD). Currently the ALD represents the fastest growing equipment category. Metrology systems monitor the thickness and uniformity of thin film layers during the deposition process.

Once the thin film has been deposited on the wafer to form a solid material, circuit patterns are created using a process known as photolithography. During this process, a light-sensitive coating called photoresist is applied to the wafer, which is then exposed to intense light through a patterned, opaque piece of glass. For the photolithography process to work properly, the thickness of the photoresist must be precise and uniform. In addition, to control the photolithography process, the film thickness, reflectivity, overlay registration and critical dimensions are all measured and verified. The exposed photoresist is developed when it is subjected to a chemical solution. The developed wafer is then exposed to another chemical solution, or plasma, that etches away any areas not covered by the photoresist to create the structure of the integrated circuit. Semiconductor manufacturers use metrology systems to verify the removal of material through the etch process and the critical dimensions of the structures created.

To meet the flatness challenges posed by ever smaller feature sizes and the critical need for ultra-flat foundation for high precision photolithography, manufacturers use process technology known as Chemical Mechanical Planarization, or CMP. CMP removes uneven film material deposited on the surface of the wafer from processes such as CVD and photolithography by carefully "polishing" the wafer with abrasives and chemicals, creating an extremely flat and even surface for the patterning of subsequent film layers. Metrology systems are used to control and verify the results of the CMP process by measuring the thin film layer to determine when the correct thickness has been achieved.

The processes described above are repeated in sequence until the last layer of structures on the wafer has been completed. Each integrated circuit on the wafer is then inspected and its functionality tested before shipment. Measurements taken by metrology systems during the manufacturing process help insure process uniformity and help semiconductor manufacturers avoid costly rework and misprocessing, thereby increasing efficiency and profitability.

Process Control Requirement

The steps used to create semiconductors are accurate processes that require strict control of equipment performance and process sequences for the resulting semiconductor devices to function properly. Tight control is achieved through monitoring of the in-process wafers and by measuring relevant parameters after each process step. These procedures are usually carried out on a small sample of the wafers though in some steps where process stability is difficult to achieve, the number of sampled wafers will increase. The monitoring may include measurement of several parameters, such as the thickness of the layers of thin film deposited, the sizes of the features that are patterned through the photolithography process, as well as the registration or alignment between two consecutive layers, known as overlay. Monitoring also includes inspection of the wafer for irregularities, defects or scratches. If parameters are out of specification or if defects or contamination are present, the manufacturer adjusts the process and measures another sample of wafers thereby allowing manufacturers to reduce costs and improve device performance.

The Need for Effective Process Control Tools

A number of technical and operational trends within the semiconductor manufacturing industry are strengthening the need for more effective process control solutions. These trends include:

- *Development of Smaller Semiconductor Features.* The development of smaller features, now as small as 16nm in production and 10nm in R&D, enables semiconductor manufacturers to produce larger numbers of circuits per wafer and to achieve higher circuit performance. As feature geometries decrease, manufacturing yields become increasingly sensitive to processing deviations and defects, as more integrated circuits are lost with every discarded wafer. In addition, the increased complexity and number of layers of the integrated circuits increase the chance of error during the manufacturing of the wafer.

- *Transition to 3D Device Structures.* Foundries are adopting 3D FinFET transistors starting at 14/16 nm technology nodes to get improved performance and use less power in 1x technology nodes. Memory makers will move to 3D NAND and vertical structures for next generation NAND technology. These trends will require process control with metrology solutions capable of measuring critical dimensions in these 3D structures that are currently supported only by optical metrology technology.
- *Transition to 3D Integration Technology.* Three-dimensional (3D) integration of active devices, directly connecting multiple IC chips, offers many benefits, including power efficiency, performance enhancements, significant product miniaturization, and cost reduction. It provides an additional way to extend Moore's law beyond spending ever-increasing efforts to shrink feature sizes. A critical element in enabling 3D integration is the Through-Silicon Via (TSV); TSV provides the high-bandwidth interconnection between stacked chips. The TSV process is beginning to enter production. In the case of TSV, since multiple chips are connected, the process has to achieve and maintain very high yield levels in order to be economically viable. TSV metrology solutions are required to closely monitor and measure depth, side-wall slope, top and bottom diameter (CD), and bottom curvature.
- *Shortening of Technology Life Cycles.* The technology life cycle of integrated circuits continues to shorten as semiconductor manufacturers strive to adopt new processes that allow a faster transition to smaller, faster and more complex devices. In the past, the technology life cycle was approximately three years; it is now only two years. The accelerating rate of obsolescence of technology makes early achievement of enhanced productivity and high manufacturing yields an even more critical component of a semiconductor manufacturer's profitability and metrology continues to play an even more critical role in achieving these demanding results.
- *New Materials.* Copper metal layers continue to be the key material for the back end of line for advanced integrated circuits in order to increase performance and reduce the cost of integrated circuits. The Industry is continuously searching directions to reduce the effective K of the low K materials and to reduce the barrier thickness and material types. These changes require new processing and metrology equipment and thus represents challenging developments for the semiconductor manufacturing industry. In addition, in order to overcome limitations in the continued shrink of transistor dimensions, leading edge integrated circuit manufacturers are introducing new materials in the transistor gate stack. The adoption of high-k dielectrics is a key element for gate control in the most advanced technology nodes of 28nm, 20nm and 14nm currently in production, while R&D work to implement the next gate control material being done with III-IV materials. These new materials, combined with metal layers, require new processing and metrology equipment in the atom level and thus represent a challenging development for the semiconductor manufacturing industry.
- *Increasing Use of Multi Patterning Lithography.* The continuous need for scaling to meet reduced transistor costs combined with delays in EUV lithography is pushing the industry to develop alternative lithography techniques such as multi patterning, DSA and E-Beam. These alternative technology are increasing the Etch and CMP process steps and thus increasing the process control and metrology steps in these areas accordingly.
- *Growing of Foundry Manufacturing.* As a result of the rising investment needed for semiconductor process development and production as well as the proliferation of different types of semiconductors, semiconductor manufacturing is increasingly being outsourced to large semiconductor contract manufacturers, or foundries. A foundry typically runs several different processes and makes hundreds to thousands of different semiconductor product types in one facility, making the maintenance of a constant high production yield and overall equipment efficiency more difficult to achieve. This trend of shifting to foundries for manufacturing needs has progressed even further during recent years. The challenges associated with foundry in the following years relate to aspects such as: shortening the time to market, reducing costs and monitoring process complexity.
- *Advanced Memory Manufacturing.* As a result of recent years progress, the NAND market is entering a critical transition phase as NAND technology shifts from traditional 2D planar structures to 3D structures where 2D NAND flash is reaching its practical limit for cost-per-bit reductions and thus major cost reductions in the future will come from the shifting to 3D NAND structures.

In order to address the increasing costs associated with these trends, we believe semiconductor manufacturers must enhance manufacturing productivity. One way to enhance productivity is through improvements in process control, with a greater emphasis on metrology as part of process control. As part of this emphasis on metrology, manufacturers are taking more measurements to characterize each step of the semiconductor manufacturing process, new and enhanced measurement techniques are being used to provide meaningful data and the data provided is being used in new ways to enhance the manufacturing process. We believe that the demand for advanced process control systems that address the evolving needs of semiconductor manufacturers will continue to drive the growth in the market for process control systems and that the demand for metrology will be even higher as a result of the short time cycle of each technology and the need to fast ramp from R&D to production.

We believe that in certain process steps, integrated metrology systems provide semiconductor manufacturers with the greatest opportunity to increase the productivity and yields of their equipment, thereby increasing their profitability. Therefore, we plan to continue to maintain a major focus on the integrated metrology market. However, recognizing that a significant number of process steps will continue to rely on stand-alone equipment, we intend to continue leveraging our market leading position in the integrated metrology market and our metrology expertise to deepen our penetration of the stand-alone metrology market. Furthermore, the technological and operational trends within the semiconductor manufacturing industry that are strengthening the need for more effective process control solutions can sometimes be addressed through the use of stand-alone metrology equipment or a combination of both stand-alone and integrated metrology.

The World Economy – Update

Gartner Inc. forecasts the world GDP to grow by 2.9% in 2016 compared to an estimated increase of 2.6% in 2015, and forecasts the U.S. GDP to grow by 2.9% in 2016.

Gartner Inc. forecasts semiconductor revenues to increase by 1.9% in 2016, compared to a decrease of 1.9% in 2015. In addition, Gartner Inc. forecasts WFE sales in 2016 to decrease by 2.5% following an estimated decrease of 0.1% in 2015.

According to research reports, future demand drivers for semiconductors include Smartphones, Solid State Drives (SSD), internet-of-things and other electronic equipment.

Expected Equipment Spending in 2016

We believe that over capital spending and Wafer-Fab-Equipment in 2016 is expected to be flat or to slight decline compared to 2015. By the main customer segments we expect that the key investment trends will be as follow:

1. Foundry spending is expected to be flat over 2016 with investment targeting 10nm pilot lines and production ramp starting in the second half of 2016, and potential moderate expansions in 28/16/14nm production lines.
2. NAND/Flash is expected to continue its growth driven by ramp of 3D-NAND.
3. DRAM investment is expected to decline as the market shifts to oversupply.

In the metrology segment we note some positive signs for investment growth, driven by an increase in complexity and overall process steps. We believe the growth is a result of the use of multi-patterning techniques in leading edge technologies, which increases the number of measurement steps, and requires advanced metrology solutions. We also believe this can generate growth opportunities for our optical CD integrated and stand-alone product lines as well as for our X-Ray products.

The Nova Approach

Optical CD Integrated Metrology

As development cycles are becoming shorter, fabrication processes are becoming less stable and call for tight process control schemes that is closer to the actual process step and produce wafer to wafer variation control. Nova's approach is to lead the industry with solutions that can enable effective and accurate measurements in non-ideal process conditions. Our integrated metrology systems provide semiconductor manufacturers with effective and efficient process control by measuring wafers and their properties immediately after the process, without removing the wafer from the process equipment. All our products use our patented measuring methods that enable us to produce optical measuring systems that are small enough to be incorporated directly inside many types of equipment used in semiconductor processing. Integrated systems measure the wafer within the actual process environment, reducing labor and wafer handling as well as the risk of contamination of or damage to the wafer. In addition, we believe that our systems deliver significant increases in overall equipment efficiency through advanced process control, along with improving wafer-to-wafer uniformity, all with minimal operator intervention.

We provide our customers with flexible integrated process control solutions by offering systems that meet thin film as well as Optical CD measurement needs in critical applications in the wafer fabrication process. Our integrated process control platform can be deployed in multiple processes and applications of semiconductor manufacturing cycle.

We believe that our integrated metrology systems can provide several important advantages to semiconductor manufacturers, enabling them to:

- utilize the process equipment wafer handling mechanism to allow measurement of the sample wafers while processing other wafers and avoid the need for the costly additional wafer handling required by stand-alone metrology systems;
- perform the measurements without removing the wafer from the process equipment, increasing the efficiency of the process and decreasing the risk of contamination;
- reduce manufacturing equipment processing variability through the use of wafer to wafer measurements and closed loop control based on automated feedback of process variability;
- reduce capital costs of the fabrication facility by increasing overall equipment efficiency and reducing labor costs and necessary clean room area;
- reduce the amount of time required to qualify process equipment that is usually idle during qualification steps, thus, minimizing costly equipment down-time;
- reduce the number of test wafers; and
- detect processing errors as early as possible.

We believe that as semiconductor manufacturers demand greater efficiency from their manufacturing equipment, process equipment manufacturers will increasingly seek to offer their customers integrated metrology in their tools to lower costs and increase overall efficiency. We believe the drive toward more efficient manufacturing operations in the face of increasing complexity and cost will continue the trend of adopting integrated metrology solutions such as those we offer to multiple processes.

In prior years, most of our integrated metrology products were sold through process equipment manufacturers (such as Applied Materials, Inc. and Ebara Corporation). These products were later sold by the process equipment manufacturers (PEMs) to the semiconductor manufacturers. In recent years, we completely changed this model and now we sell our integrated metrology products directly to semiconductor manufacturers. This resulted in more favorable commercial terms to end users, to PEMs and to our Company. It also enabled deeper technological cooperation with end users and expansion of our product offering through new, and previously unavailable, features and functionality.

Optical CD Stand-Alone Metrology

As stated above, we pioneered the area of integrated metrology and to-date revenues from that product continue to represent the larger portion of our overall revenues. With the adoption of our technology and the formation of long standing relationships with leading customers, we have come to realize that our technology can be extended beyond integrated metrology into areas such as stand-alone metrology. Accordingly, in the past few years we developed stand-alone metrology tools to perform measurements similar to those performed by our integrated metrology tools. The expression "stand-alone metrology" generically describes free standing metrology equipment which is located in line, i.e., next to the processing equipment and receives cassettes or FOUP of wafers to allow sampling of a few or several wafers from each cassette it receives. There are several types of stand-alone metrology tools each of which performs a distinct type of measurement, e.g., defect inspection, electrical performance, microscopic analysis, cross sections, etc. Our specific focus is in the area of optical CD measurement which is generally utilized in order to characterize critical dimensions on a wafer, their width, shape and profile. This technology is utilized today in several areas of the fab such as photolithography, etch, CMP, deposition, etc. The key advantage offered by this technique is that it provides visualization of the full cross-section-like profile of the structure, while remaining non-destructive and extremely fast with very high accuracy and repeatability. Adding stand-alone metrology to our product portfolio has allowed us to expand our reach into more areas of the fab.

We introduced this concept in 2006 and were successful in penetrating several major accounts since then, allowing us to see a significant increase in our overall customer base and revenues with the stand-alone products. With the introduction of stand-alone metrology, we have expanded our addressable markets and are now able to provide metrology solutions for four of the five critical manufacturing steps, as opposed to the one or two we were previously able to provide, when our product offering was limited to integrated tools only.

Modeling and Software Solutions

The integrated and stand-alone products are combined with the NovaMARS modeling engine to create Nova's metrology holistic solution. NovaMARS is our modeling and application development software that enables complex 2D, 3D and in-die measurements with high accuracy and fast time-to-solution. Over the past several years we have leveraged our advanced modeling know-how to create unique solutions that address industry growing process challenges. Furthermore, we are continuously exploring new methods to deliver superior process control solutions that leverage our advanced modeling engines. In addition to our modeling software solutions, we have introduced the fleet management software which is Nova solution for managing large fleets of metrology tools to deliver high productivity and operational efficiency in high volume production environment of foundry and memory customers. The fleet management solution offers an easy and intuitive platform for managing and improving the overall productivity of Nova's fleet of systems and is designed to address the needs and working methodologies of metrology and process engineers in the fab.

InSitu Measurement

Taking advantage of our extensive and unique experience in advanced modeling and real-time optical integrated measurements, we have introduced the NovaRPM solution – a real time profile monitoring system enabling in-situ process control. The NovaRPM system receives spectral information from an in-situ process tool sensor, interprets the spectra in real-time and extracts information such as depth, CD, and profile information that provides real-time data and trends on critical parameters. The profile changes are used by automated process control (APC) software to control the process. This unique capability to track target parameters in real-time enables reducing the process tool instability, incoming wafer variability and tool-to-tool variability.

Materials and TF Measurements

The growing usage of complex materials in advanced FinFET logic, DRAM and flash memory technology nodes has increased the demand for metrology solutions that can measure composition and film thickness with high precision and accuracy in recent years. ReVera, a Nova company, has pioneered the materials metrology segment with products that utilize x-ray photoelectron spectroscopy (XPS), a powerful technology that has been optimized to provide the automation, speed and reliability required in today's advanced semiconductor production environment. XPS is uniquely suited for the move to thinner films and smaller features, while improving the performance at each new technology node. ReVera's products are used by logic and memory device manufacturers worldwide to measure, monitor and control critical device layers in high-volume production and to enable rapid development and control of complex, new processes. ReVera products set the standard for High K – Metal Gate, tunnel oxide and capacitor film metrology.

Hybrid and Technology Synergies

As part of our holistic metrology approach that uses additional sources and channels of information to optimize the metrology performance, we have introduced hybrid metrology. Hybrid metrology combines measurements from multiple metrology toolset types in order to enable or improve the measurement of one or more critical parameters required for process control of advanced devices, materials and architectures. In the hybrid ecosystem, two or more toolsets measure the same or similar targets. The data from one toolset helps reducing the model degrees of freedom of the other toolset (typically Optical metrology) resulting in improved performance of the combined measurement in compare of that of any of the individual toolsets. Nova's hybrid metrology solution is implemented in production in advanced technology nodes and is available with multiple metrology toolsets including CD SEM and x-ray Photoelectron Spectroscopy (XPS) technologies.

Our Technology

We believe that our technological and engineering expertise and research and development capabilities allow us to develop and offer new products and technologies to meet the ever-changing demands of the semiconductor industry. We have applied our technological and engineering expertise to develop a wide range of integrated and stand-alone products for the dielectric CMP, copper CMP, Tungsten CMP, Etch and lithography processes as well as high end CVD deposited layers, Cu electroplating and sputtering of Cu barrier and seed materials. Because of our open architecture policy, our integrated metrology solutions can work with most models of CMP and Etch tools made by the major process equipment manufacturers, for both 200 mm and 300 mm applications.

Our scatterometry capabilities have enabled us to penetrate new customers with Stand-Alone Optical CD metrology systems. Our combined offering of advanced measurement hardware and advanced modeling software place us in a position to offer an advantageous solution to our customers.

In addition to the above applications, we have a stand-alone product for the emerging 3D-interconnect market. This internal development is based on an extension of our existing technologies.

Following the acquisition of ReVera in April 2015, we have expanded our capabilities beyond dimensional metrology in the measurement of material composition and areal density of films down to sub-atomic thickness. These stand-alone products address issues in transistor gate dielectrics, work function adjustment materials, DRAM capacitor dielectrics, and VNAND cell fabrication.

Our suite of technological capabilities includes:

- *Broadband Spectrophotometry.* Our broadband Spectrophotometry capabilities range from deep ultraviolet to infrared. This technology enables fast, accurate and small spot size film thickness measurement in a large range of applications on a very cost effective basis, both as an integrated system and as a stand-alone system.
- *Scatterometry.* Our Scatterometry systems are based on our broadband Spectrophotometry technology. These systems use a fully polarized deep ultraviolet to near-infrared spectral light source. This technology enables fast and cost effective system development. Scatterometry provides two and three dimensional characterization of very fine geometries on patterned product wafers. These profiling and critical dimension capabilities are key enablers of advanced process control, allowing almost real time metrology of the most advanced design rules, down to 7 nm and below. A key component in scatterometry technology is the modeling software which converts raw spectra coming from the measurement tool into useful information in terms of customer parameters. This segment of the technology is where we currently focus our attention and where we have also acquired specific advantages due to our unique solutions. Some of Nova's metrology solutions use multi-channel reflectometry to reduce the ambiguity, increase the sensitivity to critical parameters, and improve measurement accuracy. The measurements are gathered using different wave lengths, polarizations and directions in order to deliver highly-accurate results.
- *Dark Field Spectral Reflectometry* - In order to further increase the variety of independent channels, we implemented measurement schemes based on the notion of dark-field (DF) detection. In DF measurements, the optical system is designed so that light going through 'simple' reflection from the sample is blocked before detection. Dark field spectral reflectometry is currently implemented in Nova's V2600 for measurements of Through-Silicon-Via (TSV). In order to isolate and highlight the signal related to reflection from TSV side walls, we implemented a dark-field method by which all light specularly reflected from the wafer top surface is blocked, and only light that has entered the via is collected for analysis. This method is beneficial for the characterization of the TSV profile, allowing sensitivity to the via side walls and bottom characteristics. In addition, we have extended the usage of DSR measurement channels in the newly HelioSense™100 to enhance its ability to measure critical parameters for tighter process control in the most advanced node that use multi-patterning process techniques in Logic, Flash and DRAM.
- *Imaging and Image Processing.* One of Nova's key core technologies is high-end optical imaging. As part of this specialty, Nova has implemented advanced image processing algorithms, sophisticated navigational channels, and robust pattern recognition capabilities, in its tools.

- *Computational Modeling for Electromagnetic and Optical Systems.* Our MARS multi-channel metrology modeling suite is capable of providing modeling solutions for the most advanced 3D structures in semiconductor manufacturing. It is a complete modeling and application development solution designed to provide high accuracy in short time to solution and is coupled with Nova advanced computation hardware.
- *X-ray Photoelectron Spectroscopy.* Our XPS systems measure the material composition, bonding states, and thicknesses of thin (<10nm) film stacks. The primary application is monitoring of the transistor gates in integrated circuits. Through XRS we have also gained expertise in charged particle optics technologies
- *X-ray Fluorescence.* We have added XRF capability to our Veraflex III XPS tool. The combination of XPS and XRF allows measurement of composition and thickness at greater depths than provided by XPS alone. Compared to conventional XRF systems, our vacuum-based XRF system offers superior detection of elements of low atomic number, and smaller measurement areas.
- *Lab to Fab* - Nova now has the experience, capability and know-how to transform traditional analytical laboratory instrumentation into high volume, high productivity production tools.

The measurement techniques used in our metrology products are unique and protected by a number of patents.

Throughout our history, we have been a technological leader in the integrated metrology field. We were the first to offer integrated metrology solutions for semiconductor manufacturers and are the only provider of integrated metrology solutions that can measure wafers in water, which allows for more efficient and close-to-the-process metrology.

Through the acquisition of ReVera, Nova has gained market leadership in x-ray technologies, and is the sole provider of XPS technology to semiconductor high volume manufacturing customers.

Products

Our product portfolio includes a complete set of in-situ, integrated and stand-alone metrology platforms suited for dimensional, films and material metrology measurements for process control across multiple semiconductor manufacturing process steps including lithography, Etch, CMP and deposition. Our solutions utilize optical spectral reflectometry and x-ray technologies combined with advanced software modeling and unique algorithmic capabilities and address a broad range of metrology requirements of our end-user and process equipment manufacturer customers. Nova's fleet management platform addresses the need for high efficiency and productivity in the most advanced production lines of our customers, manages large fleets of metrology tools, and is designed to address the needs and working methodologies of metrology and process engineers in the fab. As part of our holistic view of metrology that extends to use more channels and sources of information available for optimizing the metrology solution performance, we also provide the hybrid metrology solution that combines data from different toolsets in the fab such as CD-SEM and x-ray together with Nova's optical metrology to provide improved performance above that of any individual toolset. Following is a summary of our main products:

Thin Film and Optical CD Process Control

- The NovaScan 2040 is the second generation of integrated thickness monitoring systems with enhanced spectral range, responding to the needs of the industry for emerging chemical mechanical polishing high-end applications of thin films and complex layer stacks. The 2040 model was introduced to the market at the end of 2000, and since then has replaced the NovaScan 840 and accounted for the majority of our sales for 200 mm production lines.
- The NovaScan 3090Next is a legacy system still sold into 300mm fabs as the latest and best of the NovaScan line. Targeted for 45 nm and 32 nm technology nodes with extendibility down to 20nm, this tool was released in 2006 and provided significant improvements in throughput, accuracy, tool to tool matching and spectral range over the older NovaScan 3090. It also improved overall tool reliability. The NovaScan 3090Next is available as integrated metrology and as stand-alone metrology systems for both thin film and Optical CD (scatterometry) applications.

- The new generation Nova i500 and i500 Plus integrated metrology feature the same metrology as the Nova T500, for complete stand-alone to integrated metrology compatibility. The Nova i500 features advanced metrology for technology nodes smaller than 20nm with high throughput. The Nova i500 Plus provides further technology enhancement to address the need for increased sampling in advanced nodes and to support next generation high performance polishers and was qualified at multiple customers for the most advanced nodes metrology needs.
- The Nova T500 stand-alone product family, targeted at technology nodes ranging from 32nm and smaller than 20nm. The Nova T500 features improved metrology performance, improving both accuracy and tool to tool matching, providing industry leading throughput of 250WPH using dual metrology units.
- The Nova T600 is the latest addition to the stand-alone product family, targeted at technology nodes of 2x and beyond. The Nova T600 features multi-channel reflectometry configuration that is optimized for best sensitivity on small features and critical device parameters, such as measurement of high-aspect-ratio structures. Nova T600 is designed to meet the challenging cost of ownership requirements of semiconductor customers, achieved through a combination of high throughput, Modular Metrology, and the flexibility to optimize optical configuration and tool type to best serve application needs. Nova T600 is aimed in assisting memory manufacturers in developing their next generation cutting edge technology in the 1Xnm tech node.
- The Nova V2600 TSV metrology system, announced in July 2012, enables chipmakers to accelerate the development and improve production yield of multi-chip integrations that rely on TSVs (Through Silicon Vias). The Nova V2600, developed in collaboration with device makers, allows accurate measurement of critical TSV features such as side-wall angle, bottom diameter, and bottom curvature. This process control solution delivers complete TSV dimensional metrology in a high-throughput production-ready system for the industry's transition to 3D integration in production. Nova V2600 collects a dark-field reflectometry spectrum that is highly sensitive to variations in TSV internal structure. This high-throughput platform is recognized for providing superior cost of ownership and operational flexibility.
- The HelioSense™100 platform is Nova's newest stand-alone OCD metrology tool. This platform brings all-new design, performance and capabilities. Designed to specifically meet the most stringent process challenges, this SA platform is intended to overcome tomorrow's process obstacles. The tool architecture is focused on innovative optics involving extended wavelength and 3 physical measurement channels capable of delivering high throughput for best productivity and cost-of-ownership. The HelioSense100™ supports the industry transition to multi-patterning small pitch manufacturing and 3D vertical devices by offering a wide range of metrology measurements that drive tighter process control for the most critical parameters in Logic, Flash and DRAM.
- NovaMars is an advanced scatterometry modeling and application development software tool enabling complex 2D, 3D and in-die measurements as well as Real Time Regression (RTR) capabilities. Process engineers can harness the power and flexibility of the tool to develop their own scatterometry applications by themselves thus keeping the details of their process within the fab. Its user interface and high level of automation provide easier and faster application development and eliminate discrepancies between different developers, enabling the best solution, independent of user proficiency. Combined with the NovaMARS innovative modeling software capabilities, Nova's Optical CD tools provide the metrology precision and accuracy as well as application development flexibility needed for the development of most advanced technology nodes. The NovaMars is an integral part in all Nova integrated and stand alone solutions.
- Nova Hybrid Metrology solution is part of our holistic metrology approach that utilizes different sources of information that can enhance the overall metrology performance. The Hybrid metrology solution combines data from different metrology toolsets in the fab together with Nova's optical metrology to provide improved performance above that of any individual toolset. Nova has been pioneering the hybrid concept in the past several years and has proven the value of the solution in multiple publications and technical papers. As of 2013, the Hybrid solution has been implemented in production at leading customers' fabs.
- Nova Fleet Management is Nova's newest solution for managing large fleets of metrology tools and is designed to address the needs and working methodologies of Metrology and Process Engineers in the fab. The solution offers an easy and intuitive platform for managing and improving the overall productivity of Nova systems. Comprised of a centralized server dedicated for databases and data storage, network-connected tools and servers, Nova Fleet Management serves as the back-end platform that enables Wafer-less Recipe Creation (WRC) for simple and intuitive recipe creation without interfering with tool operation. It also supports distribution of recipes from a central location to multiple tools over the fab network in efficient and secure mechanism. The centralized server contains an advanced report generator for the analysis of the metrology spectral data collected from the tools as well as tool performance and health monitoring to ensure that the tools are operating within specifications and enable tight monitoring of the fleet's performance trends.

- NovaHPC (High Power Computer) supports the NovaMars Application Development Tool and enables effective and timely calculations of attained spectra. Scalable and user configurable infrastructure with Nova's proprietary task management software addresses the growing needs of IC manufacturing metrology. NovaHPC is just one of the few solutions available for cost effectiveness and computation power growth flexibility.
- The VeraFlex II, introduced in 2010, is a unique production-proven platform to use x-ray photoelectron spectroscopy (XPS), a materials analysis technology that is proven essential to increase device yield. The VeraFlex II has characterized over 30 HKMG material systems for thickness and composition, and is addressing a growing number of thin film process control applications where traditional metrology approaches struggle to deliver viable solutions. The VeraFlex II is also used extensively by advanced node DRAM and Flash manufacturers to control tunnel oxides, capacitor films, silicides, and low doses of carbon. Manufacturers of alternative memory devices such as PRAM, ReRAM, and MRAM need VeraFlex II to characterize and control phase change materials and new electrode-oxide material systems.
- The VeraFlex III XF is the third generation of the globally adopted VeraFlex series of XPS production systems that delivers a major increase in performance and provides a broader applications coverage. It combines enhanced XPS capability with a unique low energy XRF (LE-XRF) channel to address the metrology challenges of 20nm nodes and beyond. With technology enhancements that improve performance on current inline logic and memory film applications, the VeraFlex III XF provides solutions for emerging applications in FinFET HKMG, interconnect processes, and advanced memories.
- QED is the Offline Advanced Data Analysis and Recipe Creation and Maintenance System that supports VeraFlex II and VeraFlex III XF. It brings the VeraFlex series engineering interface from the fab to the office. Built on PHI MultiPak's package of extensive XPS analysis function, QED brings all the tools necessary to manage the most effective film thickness and composition control recipes. QED functions include all aspects of film acquisition and analysis, a full suite of recipe creation and editing tools, and powerful signal analysis functions used to find and process the most critical elemental peaks.

Metrology is becoming a technology enabler that allows process equipment suppliers to tighten their specifications in order to meet customer's demand. Our strategy to offer holistic and diverse portfolio to enable the industry transitions, establishes the advantage and the value that innovative company like us brings to our customers and the market. With such a diversified portfolio, we now cover a variety of applications in both front end and back end of line that increases our served and available markets and footprint in all customer segments.

Research and Development

We have assembled a core team of experienced scientists and engineers who are highly skilled in their particular field or discipline. Our research and development core competencies, technologies and disciplines are in scatterometry, thin film metrology, XPS and material metrology and include measurement instruments, optical modeling, image acquisition, pattern recognition, X-Ray energy sources, electron optics and detection, vacuum systems and equipment integration. Our research and development staff consists of about 216 highly skilled members, over 43 of which hold Ph.D's. In addition, we rely on independent subcontractors and consultants in various fields. Since June 2003, our research and development operations in Israel are certified as ISO9001/2000 quality standard.

The metrology and process control market is characterized by continuous technological development and product innovations. We believe that the rapid and ongoing development of new products and enhancements to our existing product lines is critical to our success. Accordingly, we devote a significant portion of our technical, management and financial resources to developing new applications and emerging technologies. In 2013, 2014 and 2015, our research and development expenses, net of participation by the OCS, were \$29.6 million, \$29.5 million and \$39.7 million respectively, representing, 26.5%, 24.5% and 26.7% of our respective total revenues for those years. The significant increase of R&D expenditures during the years 2012-2015 (2015 includes ReVera results) represents our strategic plan to increase our market share in the growing Optical CD market as well as to develop new products beyond our existing fields. In the future, we plan to continue and expand our R&D investments in this area. Further, the significant R&D increase in 2015 includes nine (9) months of R&D costs associated with ReVera.

Our vision is to continue to be a market leader in the semiconductor process control market, increase our leadership in integrated metrology solutions, increase our leadership in in-line composition and thickness of ultra-thin layers and become the leader in the stand-alone Optical CD metrology market, and our research and development efforts and activities are designed to support this vision. Our research and development policy is based on a structured process of initiating new projects and on-going review of existing development projects. Project initiation is based on a detailed project plan, risk and market analysis. Each project is monitored throughout its life cycle in a structured process, including design reviews and project management reviews. In the frame of our research and development activities we consider from time to time entering into intellectual property consortium arrangements. In 2015 we entered into intellectual property consortiums in Europe, and also continued with intellectual property consortiums, which we entered during 2012 - 2014, mainly in order to be able to support our customers in the transition to advance technology nodes in the coming years. These consortiums are joint programs with the OCS and the European Research Area.

As part of our long term technological collaboration, we are also engaged with joint development activities with some of our strategic customers, as well as with research institutes. These activities impose some limitations on the joint intellectual property developed as part of these programs.

Intellectual Property

Our success depends in part upon our ability to protect our intellectual property. We therefore have an extensive program devoted to seeking patent protection for our inventions and discoveries that we believe will provide us with competitive advantages. As of December 31, 2015, our portfolio includes more than 125 U.S. patents and about 65 non-U.S. patents. The U.S. patents we hold have expiration dates ranging from 2015 to 2032. We also have about 39 U.S. patent applications pending and more than 69 applications pending in other countries including 18 PCT applications. Our patents and applications principally cover various aspects of optical measurement systems and methods, integrated process control implementation concepts, and optical, opto-mechanical and mechanical design. In addition our patents and applications principally cover various aspects of X-Ray (like XPS, XRD, XRS) based measurement systems and methods, including process control implementation concepts, X-Ray energy sources, electron optics and detection, vacuum systems and equipment integration. We have also registered 6 trademarks in the U.S. and have about 20 registered trademarks and 3 applications for trademarks' registration in countries other than the U.S.

To protect our proprietary rights, we also rely on a combination of copyrights, trademarks, trade secret laws, contractual provisions (e.g. confidentiality agreements) and licenses. Our copyrights include software copyrights. We constantly seek to control access to, and distribution of our proprietary information, such as our proprietary algorithms.

While we attempt to protect our intellectual property through patents, copyrights and non-disclosure and confidentiality agreements, we may not be able to adequately protect our technology. Competitors may be able to develop similar technology independently or design around our patents and, despite our efforts, our trade secrets may be disclosed to others. Furthermore, the laws of countries other than the U.S. may not protect our intellectual property to the same extent as the laws in the U.S. We also cannot assure that: (i) our pending patent applications will be approved; (ii) any patents granted will be broad enough to protect our technology or provide us with competitive advantages or will not be successfully challenged or invalidated by third parties; or (iii) that the patents of others will not have an adverse effect on our ability to do business. We may also have to commence legal proceedings against third parties to protect our intellectual property.

From time to time, we receive communications from others asserting that our products infringe or may infringe their intellectual property rights. Typically, our in-house patent counsel investigates these matters and, where appropriate, retains outside counsel to provide assistance. We are not presently involved in any material legal proceedings in which a third party has asserted that we have violated their intellectual property rights. If, however, we become involved in any such litigation and its outcome is adverse to us, it may result in a loss of proprietary rights, subject us to significant liabilities, including treble damages in some instances, require us to seek licenses from third parties which may not be available on reasonable terms or at all, or prevent us from selling our products. Furthermore, any litigation relating to intellectual property, even if we are ultimately successful, could result in substantial costs and diversion of time and effort by our management. This in and of itself could have a negative impact on us.

While we believe that we would be successful in any litigation seeking to enforce our patent rights, the ultimate outcome of any litigation or other legal proceedings cannot be predicted.

Our Customers, Sales and Marketing

Our sales and marketing strategy is based mostly on a direct approach where we engage with our customers from the early stages of process development, work in collaboration to address their challenges in the development phase and support the transition to high volume production. We seek to establish and maintain close and mutually beneficial relationships with our customers by consistently providing them with a high level of service, support and new capabilities. We have a global network of direct sales and marketing, customer service and applications support offices worldwide. We maintain sales, service and applications offices in Europe, Israel, Japan, Korea, Singapore, Taiwan, China and the U.S. These offices provide highly qualified application support specialists, training to end users and process equipment engineers, marketing, demonstrations and evaluations, spare parts hubs and sales and support engineers.

In additions, we have established sales and support activities with key process equipment manufacturers to ensure our products are combined into our partners' next generation equipment sets as those become available. As part of our integrated tools sales effort, we continuously add new process equipment manufacturers as partners as we introduce new integrated process control systems that can be integrated with different types of equipment.

We serve all sectors of the integrated circuit manufacturing industry including logic, ASIC, foundries and memory manufactures. Our end user and process equipment manufacturer customers are located in different countries, including Japan, Korea, Singapore, Taiwan, China the U.S., Germany, France and Italy.

The table below describes the distribution of our total revenues, from systems and services, according to the geographic location of the actual installation of our systems in end-user sites:

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Taiwan, R.O.C.	\$ 57,523	\$ 53,870	\$ 65,466
USA	16,680	31,078	21,533
Korea	7,166	12,865	27,526
Germany	13,139	9,317	9,834
Other	17,001	13,488	24,155
Total	<u>111,509</u>	<u>120,618</u>	<u>148,514</u>

The semiconductor industry is dominated by a small number of large companies. As a result, while our overall customer base is diverse, our sales are highly concentrated among a relatively small number of customers. The following table indicates the percentage of our total revenues derived from sales to our five largest customers and the range of these revenues from these customers for the periods indicated.

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Total revenues from five largest customers	72%	74%	76%
Range of revenues from five largest customers	4%-44%	4%-36%	9%-31%

We anticipate that our revenues will continue to depend on a limited number of major customers, although the companies considered to be our major customers and the percentage of our revenue represented by each major customer may vary from year to year. As our customer base is highly concentrated, if any of our customers becomes insolvent or has difficulties meeting its financial obligations to us, we may suffer losses that may be material in amount. A loss of any of our major customers may likewise cause us to suffer a material decrease in sales and revenue.

The highly competitive nature of the market for semiconductor capital equipment affects our ability to successfully implement our marketing and sales efforts. Competitive factors in the market for integrated process control systems include technological leadership, system performance, ease of use, reliability, cost of ownership, technical support and customer relationships. For integrated process control, an adequate business model, internal organization and unique process equipment manufacturer agreements and partnerships are also significant factors. We believe we compete favorably on the basis of these factors in the markets we serve.

Our current stand-alone metrology products compete with both Nanometrics and KLA-Tencor. In this area, we have gained market share both in CMP and Etch segments using our T600 platform combined with our advanced modeling and software capabilities. These solutions are being used for in line metrology at leading foundries and memory customers. The T600 was selected for several process steps due to its metrology capability and has a significant cost of ownership advantage with the dual measurement unit configuration. In the integrated metrology field, we primarily compete with products manufactured by Nanometrics. We have gained market share with the successful proliferation of NovaScan 3090 and i500 platform in key accounts, but we expect our integrated products to face intense competition in the coming years. We see an increasing demand to implement high end metrology solution – both software and hardware – for integrated metrology tools as customers start using these tools for advanced nodes. We also compete against companies manufacturing other types of equipment as a result of the disruptive nature of the technology we offer. These companies include Hitachi hi-tech and Applied Materials in the area of CD-SEM and Rudolph Technologies in the area of acoustic measurement of top metal copper lines.

Manufacturing

In order to leverage the relatively high volume of integrated and stand-alone systems we manufacture, and in order to decrease production costs, we continue to focus our internal manufacturing activities on processes that add significant value or require unique technology or specialized knowledge and outsource others. Our manufacturing operations in Israel received the ISO 9001 quality mark by an international certification institute in October 1999. Since then, we have upgraded our quality systems to conform to ISO 9001/2008 requirements. In 2010, we received the formal certification of ISO 14001:2004 and in 2014 we received the formal certification of ISO 18001:2007.

Our principal manufacturing activities include assembly, integration, final testing and calibration. Our production activities are conducted in our manufacturing and repair center facility in Israel and in Santa Clara. We rely and expect to continue to rely on subcontractors and turnkey suppliers to fabricate components, build subassemblies and perform other non-core activities in a cost-effective manner. While we use standard components and subassemblies wherever possible, most mechanical parts, metal fabrications, optical components and other critical components used in our products are engineered and manufactured to our specifications. A small portion of these components and subassemblies are obtained from a limited group of suppliers, and occasionally from a single source supplier.

We have our own manufacturing facilities, one manufacturing facility for our Optical CD product lines, which is located in Ness-Ziona, Israel, divided into two buildings, and one manufacturing facility for our x-ray product line, which is located in Santa Clara, CA, US.

Capital Expenditures

Our capital expenditures are primarily for network infrastructure, computer hardware and software, leasehold improvements of our facilities, expansion of clean room facilities and system demonstration and development tools. None of these assets are held as collateral or guarantee other obligations. For additional information on our capital expenditures, see “Item 5B. Liquidity and Capital Resources” in this annual report on Form 20-F.

Political and Economic Conditions in Israel

We are incorporated under the laws of the State of Israel, and our principal offices and manufacturing facilities are located in Israel. We are, therefore, directly influenced by the political, economic and military conditions affecting Israel. Any major hostilities involving Israel, the interruption or curtailment of trade between Israel and its trading partners or a significant downturn in the economic or financial condition of Israel could have a material adverse effect on our business, financial condition and results of operations. Additionally, many of our male employees in Israel are currently obligated to perform annual reserve duty in the Israel Defense Force and virtually all such employees are subject to being called to active duty at any time under emergency circumstances. While we have operated effectively under these requirements since we began our operations, no assessment can be made as to the full impact of such requirements on our workforce or business if conditions should change, and no prediction can be made as to the effect of the expansion or reduction of such obligations.

Government Regulation

For information relating to the impact of certain government regulations on our business, see “Item 5C –Grants from the Office of the Chief Scientist” on this annual report on Form 20-F.

4.C Organizational Structure

Our Subsidiaries

Our subsidiaries and the countries of their incorporation are as follows. All of our subsidiaries are wholly owned by the Company:

<u>Name of Subsidiary</u>	<u>Country of Incorporation</u>
Nova Measuring Instruments Inc.	Delaware, U.S.
ReVera Incorporated*	Delaware, U.S.
Nova Measuring Instruments K.K.	Japan
Nova Measuring Instruments Taiwan Ltd.	Taiwan
Nova Measuring Instruments Netherlands B.V. **	Netherlands
Nova Measuring Instruments Korea Ltd	Korea
Nova Measuring Instruments GmbH	Germany

* A wholly-owned subsidiary of Nova Measuring Instruments Inc.

** In a process of liquidation.

4.D Property, Plant and Equipment

Our main facilities, located in Ness-Ziona, Israel, occupy approximately 7,800 square meters, including: approximately 1,300 square meters of production facilities, approximately 4,500 square meters of research and development offices (including approximately 700 square meters of laboratories) and approximately 2,000 square meters of headquarters, sales and marketing, service and support and administration facilities. Our current lease agreement extends the leased period of the premises until January 31, 2026 (with a right, at Nova's sole desecration, to terminate the agreement on January 31, 2021, upon a 180 days prior notice) and contains an option to lease an additional space of approximately 1,122 square meters as an additional clean room space (the “Option”). The Option is contingent upon certain construction adjustments to the property (carried by our landlord) and subject to engineering tests carried by an external engineering company. As of the date of this annual report on Form F-20, we are not able to exercise the Option in light of non-satisfying test results. In 2016 we plan to examine different options to expand our facilities in Israel with an additional clean room space.

Our subsidiaries lease offices in various locations, for use as a service and pre-sale facility. Our U.S. subsidiary (Nova Measuring Instruments Inc.) leases approximately 380 square meters and ReVera leases approximately 1,885 square meters including approximately 450 square meters of production facilities, Our Japanese subsidiary leases approximately 50 square meters, our Taiwanese subsidiary leases approximately 800 square meters and our Korean subsidiary leases approximately 400 square meters. Our European subsidiaries leases approximately 100 square meters in Germany and France.

We believe that our facilities and equipment are in good operating condition and adequate for their present usage.

Item 4A. Unresolved Staff Comments

None.

Item 5. Operating and Financial Review and Prospects

Information in this Operating Review and Financial Prospects Section should be read in conjunction with our consolidated financial statements and notes thereto which are included elsewhere in this report.

Executive Overview

We are a worldwide leading designer, developer and producer of metrology systems for the semiconductor manufacturing industry. Our metrology systems are used to take precise measurements of semiconductors during the manufacturing process to control the manufacturing process and increase the productivity of manufacturing equipment. We market and sell our metrology systems mainly to semiconductor manufacturers, and in some cases to semiconductor process equipment manufacturers.

Our business is greatly affected by the level of spending on capital equipment by semiconductor manufacturers. Capital expenditures by semiconductor manufacturers tend to be cyclical in nature and depend on numerous factors, many of which are beyond our control. Such factors include, *inter alia*, general economic conditions throughout the world and the demand and perceived demand for semiconductors. In addition, demand for our products and services is affected by the timing of new product announcements and releases by us and our competitors, market acceptance of our new or enhanced products and changes or advances in semiconductor design or manufacturing processes.

In the recent five years (2010-2015), we were able to present positive Compound Annual Growth Rate (CAGR) of products revenues of approximately 9%, while Gartner Inc. estimates that the Wafer Fab Equipment ("WFE") segment have experience a CAGR of approximately 0.2%. We believe that our improved performance is attributed mainly to our continued penetration into the standalone metrology segment, including revenues of ReVera. Industry forecasts indicate increase in WFE spending in the next year, and we believe we are well positioned to continue to grow as we continue our focus on high growth segments within the industry.

We derive our revenues principally from sales of our metrology systems and services relating to our systems. In 2015, product sales accounted for approximately 75% of our total revenues. Services, which include software upgrade on existing installed base accounted for approximately 25%. Presently, we have no significant long-term debt, and during 2015 we decreased our overall cash reserves by \$25.9 million, mainly due to the acquisition of ReVera, which was partially offset by generating positive cash flow from operating activities. As of the end of 2015, we had overall cash reserves of \$97.8 million and working capital of \$112.8 million.

Our service organization is operated on a profit and loss basis and is measured as a cost center in each territory and on a global basis. The objectives of our service organization are defined and measured by: customer satisfaction; quality parameters, such as time to repair and mean time between failures; and by profit and loss criteria. The service organization provides support to all products we sell, during both the warranty period and the post warranty period.

When evaluating the performance of the Company, our management tends to focus on several financial metrics and qualitative areas, including market share, gross margins, operating margins, inventory turns and days sales outstanding. Blended gross margins in 2015 were approximately 52%, while product sales presented gross margins of approximately 54% and services presented gross margins of approximately 44%. In 2015, our inventory turns were approximately 3.3 and our daily sales outstanding were 43 days.

Significant Events in 2015 and Outlook for 2016

During 2015 Nova demonstrated few significant achievements:

- Continuous revenues growth, hitting record high of \$148.5 million.
- Service revenues hit record high of \$37.3 million.
- Acquisition of ReVera (which diversified the overall product portfolio).
- Diversified revenue mix, including increase in software and service revenues.
- Solid financial model and continued profitable growth.
- Stronger position in the foundry segment.
- Growth in the memory segment following continuous growth in DRAM and Flash revenues.

- Diversified customer base, with 5 major customers accounting for 10% or more of products revenues.
- Proven advanced fleet to support solutions in advance technology nodes of 1Xnm and below.
- Significant adoption of Nova's latest and advanced product portfolio for 3D devices evolution:
 - o Nova T600/ T500 Standalone tools
 - o Nova i500 Integrated metrology tools
 - o MARS modeling SW
 - o VF II/III platforms for Composition and Thin Film measurements
 - o Introduction of a new Optical Standalone metrology for advanced nodes – HelioSense 100
- Major portfolio diversification to include SW products.
 - o Fleet management.
 - o Hybrid metrology for Thin Film, complex structures and advanced tech nodes.
 - o RPM (Real Process Monitoring).
- Deep collaboration with multiple research institutes and customer technology development centers, utilizing a variety of Nova's products, leading to Nova's positioning as a partner for long term technology development.
- More than 65% of product revenues during 2015 resulted from 20nm and below technology nodes.
- Continued the previously announced \$12 million share repurchase program.

In 2016, Nova plans to focus on the following:

- Continue our sustainable growth through a stronger market position and technical leadership.
- Continue Nova's aggressive innovation and development plans for meeting future industry challenges.
- Becoming a significant part of both foundry and memory customers' ramp up during the year.
- Concentrating in strengthening further the position through excellent delivery to the ramp up of 10nm technology nodes at leading foundry customers.
- Establishing our leadership position in the coming 7nm and 5nm technology nodes at leading foundry customers.
- Increase market share in all optical metrology segments.
- Making significant inroads into memory customers with advanced metrology solutions for both DRAM and Flash, mainly with respect to the transition to 2X DRAM device and VNAND proliferation.
- Support our customers' transition to 3D device structures (both in memory and foundry sectors) to enable them to move to high volume manufacturing of advanced technology nodes.
- Continue leading the emerging metrology markets with innovative solutions.
- Continue the collaborations and joint research with leading semiconductor manufacturers and relevant leading research institutes.
- Continue our products innovation and diversification through several new product introductions to extend the company's market leadership.
- Continue the aggressive plans to generate revenues through SW products.

- Strengthening the partnership with our customers and build a “Customer Centric” approach to accommodate and deliver customers’ requirements along the semiconductor evolution.
- Build extensive roadmap for ReVera’s x-ray products, in order to enhance Nova’s existing product’s offering.
- Create synergy between Nova’s technology (Optical CD) and ReVera’s technology (X-ray) towards a combined offering for advanced applications, which require both dimensional and material metrology.

The challenges and risks we face in meeting our plans include:

- On time delivery of the required process control solutions to meet the current and future needs of our existing and new customers.
- Correctly understanding the market trends and competitive landscape to ensure our products retain proper differentiation to win customer confidence.
- Creating aggressive, innovative and competitive roadmap deliverables at reasonable costs in order to properly control expenses.
- Identifying the metrology evolution for future industry needs in order to meet process control requirements and lead the market.

In order to address these risks and challenges, we are working closely with leading customers’ process development groups and with the leading process equipment manufacturers as well as with leading technology research institutes. The purpose of working closely with these entities is to receive from them as early as possible information and feedback on their current and future metrology and process control needs and tune the roadmap to support such needs.

In 2015 we performed well with yearly growth in revenues. We were able to present record revenues for 3 consecutive years, demonstrating our growing position in the market.

It is our belief that we have been able to consistently win and grow as a result of a combination of factors:

- Optical metrology has become an enabler for the entire industry over the last few years, sometimes on the account of other metrology capabilities, which are not optical based.
- Nova’s optical metrology solutions provide the most advanced solution, combining the best innovative and technical metrology capabilities with the best cost of ownership and productivity.
- Our technical innovative solutions are well accepted by leading customers that allow us to gain more market share with additional process steps and new applications
- Our ability to closely team with our customers allows us to predict well the industry evolution and process control challenges and by that introduce innovative and advanced metrology solutions to solve industry needs.
- Our diversified portfolio, which is a result of continuous research and development, is well adopted by our customers.
- Widening our technology base to include Optical CD technology as well as X-ray technology.
- The acquisition of ReVera that contributed to our growth and the diversification of our product offering and customer base.
- Well controlled balance sheet and profitability elements to continue a sustainable growth.

Understanding the industry’s challenges for the next several years, it is our belief that we should continue growing going forward as the adoption of our solutions increases as a function of process complexity and industry development. We believe that our served addressable market is continuously expanding as we penetrate to more steps of the semiconductor manufacturing process and, as we continue innovating our portfolio for leading new emerging metrology opportunities. We also believe that going forward, as the semiconductor process is becoming much more complicated with variety of challenges, the necessity for our unique portfolio, combining multiple technologies for both materials, film and dimensional metrology, will grow in the next few years.

Critical Accounting Policies

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. We believe the following critical accounting policies, among others, affect our more significant judgments and estimates used in the preparation of our consolidated financial statements.

Use of Estimates – General

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

Revenue Recognition

We recognize revenues from the sale of products when all the following criteria have been met: a persuasive evidence of an arrangement exists, delivery has occurred, the price is fixed or determinable, collection of resulting receivables is probable and there are no remaining significant obligations.

For transactions containing multiple elements, revenue is recognized upon delivery of the separate elements, based on their relative fair value. The Company determines the selling price using vendor specific objective evidence (“VSOE”), if it exists, and otherwise uses estimated selling price (“ESP”). Third Party Evidence (“TPE”) is not typically used to determine selling prices as to limited availability of reliable competitor products’ selling prices. The ESP is established considering multiple factors including, but not limited to, gross margin objectives, pricing strategies, internal costs and other economic conditions. These factors are subjective in nature and any changes in these factors will affect the ESP and as a consequence revenues recognized.

Service contracts generally specify fixed payment amounts for periods longer than one month, and are recognized on a straight line basis over the term of the contract.

Inventories Write-Off

We carry our inventory at the lower of either the actual cost or the current estimated market value of the inventory. We regularly review inventory quantities on hand and record a provision for excess and obsolete inventory based primarily on our estimated forecast of product demand and production requirements for the next twenty four months. As demonstrated during 2008, demand for our products can fluctuate significantly. A significant increase in the demand for our products could result in a short-term increase in inventory purchases while a significant decrease in demand could result in an increase in the amount of excess inventory quantities on hand, which could lead to losses. In addition, our industry is characterized by rapid technological change, frequent new product developments, and rapid product obsolescence that could result in an increase in the amount of obsolete inventory quantities on hand. Additionally, our estimates of future product demand may prove to be inaccurate, in which case we may have understated or overstated the provision required for excess and obsolete inventory. In the future, if our inventory is determined to be overvalued, we would be required to recognize such costs in our cost of goods sold at the time of such determination. Likewise, if our inventory is determined to be undervalued, we may have over-reported our costs of goods sold in previous periods and would be required to recognize such additional operating income at the time of sale. Therefore, although we make every effort to ensure the accuracy of our forecasts of future product demand, any significant unanticipated changes in demand or technological developments could have a significant impact on the value of our inventory and our reported operating results.

Goodwill:

Goodwill and certain other purchased intangible assets have been recorded as a result of the acquisition of ReVera. Goodwill represents the excess of the purchase price in a business combination over the fair value of net tangible and intangible assets acquired. Goodwill is not amortized, but rather is subject to an impairment test.

The Company performs an annual impairment test during the fourth quarter of each fiscal year, or more frequently if impairment indicators are present. The Company operates in one operating segment, and this segment comprises its only reporting unit.

ASC 350, "Intangibles – Goodwill and Other", prescribes a two-phase process for impairment testing of goodwill. The first phase screens for impairment, while the second phase (if necessary) measures impairment. Goodwill impairment is deemed to exist if the net book value of a reporting unit exceeds its estimated fair value. In such case, the second phase is then performed, and the Company measures impairment by comparing the carrying amount of the reporting unit's goodwill to the implied fair value of that goodwill. An impairment loss is recognized in an amount equal to the excess. The Company has an option to perform a qualitative assessment to determine whether it is more-likely-than-not that the fair value of a reporting unit is less than its carrying amount prior to performing the two-step goodwill impairment test. If this is the case, the two-step goodwill impairment test is required. If it is more-likely-than-not that the fair value of a reporting unit is greater than its carrying amount, the two-step goodwill impairment test is not required.

For the period ended December 31, 2015, the Company performed an annual impairment analysis, using market capitalization, and no impairment losses have been identified.

Intangible assets

As a result of the acquisition in April 2015, our balance sheet included acquired intangible assets, in the aggregate amount of approximately \$17.9 million as of December 31, 2015.

We allocated the purchase price of the company we have acquired to the tangible and intangible assets acquired and liabilities assumed, based on their estimated fair values. These valuations require management to make significant estimations and assumptions, especially with respect to intangible assets. Critical estimates in valuing intangible assets include future expected cash flows from technology acquired, backlog and customer relationships. Management's estimates of fair value are based on assumptions believed to be reasonable, but which are inherently uncertain and unpredictable.

Intangible assets are comprised of acquired technology, customer relations, backlog and IPR&D.

During 2015 no impairment charges were identified.

For a discussion of other significant accounting policies used in the preparation of our financial statements and recent accounting pronouncements, see Note 2 to our consolidated financial statements contained elsewhere in this report.

5.A Operating Results

Overview

The table below describes the distribution of our total revenues, from systems and services, by geographic areas of our product installations at semiconductor manufacturing facilities. As our customers include semiconductor manufacturers as well as process equipment manufacturers, this distribution is different from the distribution of our revenues by customer location discussed in the immediately preceding paragraph.

	<u>2013</u>	<u>2014</u>	<u>2015</u>
Taiwan, R.O.C.	52%	45%	44%
USA	15%	26%	14%
Korea	6%	11%	19%
Germany	12%	8%	7%
Other	15%	10%	16%
Total	100%	100%	100%

Historically, a substantial portion of our revenues has come from a small number of customers, and we anticipate that our revenues will continue to depend on a limited number of major customers.

The sales cycle for our systems typically ranges from six (6) to twelve (12) months and depends upon the status of our system's integration with a particular manufacture and model of process equipment, the evaluation criteria of our customers, and the technology or application of the process. Additionally, the rate and timing of customer orders may vary significantly from month to month as a function of the specific timing of fab expansions. Accordingly, if sales of our products do not occur when we expect or we are unable to adjust our estimates on a timely basis, our expenses and inventory levels may fluctuate relative to revenues and total assets. In 2015, our inventory levels at the end of each quarter ranged from \$16.0 million to \$28.0 million partially due to the acquisition of ReVera. We schedule production of our systems based upon order backlog and customer forecasts. We include in backlog only those orders to which the customer has assigned a purchase order number and for which delivery has been specified.

Our revenues increased by 23% in 2015 following an increase of 8% in 2014, and an increase of 16% in 2013. The revenue increase in 2015 is attributed mainly to the acquisition of ReVera.

The following table shows the relationship, expressed as a percentage, of the listed items from our consolidated statements of operations to our total revenues for the periods indicated:

	Percentage of Total Revenues		
	Year ended December 31,		
	2013	2014	2015
Revenues from product sales	80.2%	76.4%	74.9%
Revenues from services	19.8%	23.6%	25.1%
Total revenues	100%	100%	100%
Cost of products sale	33.9%	33.0%	34.1%
Cost of services	13.2%	14.3%	14.0%
Total cost of revenues	47.0%	47.3%	48.1%
Gross profit	53.0%	52.7%	51.9%
Operating expenses:			
Research and development expenses, net	26.5%	24.5%	26.7%
Sales and marketing expenses	10.7%	10.5%	10.8%
General and administrative expenses	4.7%	3.7%	5.7%
Amortization of intangible assets			0.9%
Total operating expenses	41.9%	38.7%	44.1%
Operating profit	11.1%	14.0%	7.8%
Financing income, net	0.6%	0.5%	0.4%
Income before income taxes	11.7%	14.5%	8.2%
Income tax expenses (benefit)	2.3%	(1.0)%	(2.4)
Net income	9.4%	15.5%	10.6%

Comparison of Years Ended December 31, 2015 and 2014

Revenues. Our revenues in 2015 increased by \$27.9 million, or 23%, compared to 2014. Revenues attributable to product sales were \$111.2 million, an increase of \$19.0 million, or 21%, compared to 2014. Revenues attributable to services were \$37.3 million, an increase of \$8.9 million, or 31%, compared to 2014. The increase in product revenues in 2015 was mainly attributed to the consolidation of the revenues of ReVera starting April 2, 2015. The increase in services revenues is attributed mainly to the higher number of systems included in our installed base, including the installed base of systems of ReVera. This higher installed base generated higher service contracts as well as higher time and materials revenues.

Cost of Revenues and Gross Profit. Cost of revenues consists of labor, material and overhead costs of manufacturing our systems, royalties, and the costs associated with our worldwide service and support infrastructure. It is also consists of inventory write-offs and provisions for estimated future warranty costs for systems we have sold. In 2015, cost of revenues also included \$3.5 million of amortization of acquired intangibles related to the acquisition of ReVera. Our cost of revenues attributable to product sales in 2015 was \$50.7 million. Our gross margin attributable to product revenues in 2015 was 54%, compared to 57% in 2014. This decrease in products gross margins in 2015 is mainly related to the above mentioned \$3.5 million of amortization of acquired intangibles. Our cost of services in 2015 was \$20.7 million. Our gross margin attributable to service revenues in 2015 was 44%, compared to 39% in 2014. The increase in service gross margins in 2015 is mainly related to the significant increase of 31% in services revenues in this year, utilizing more efficiently existing infrastructure.

Research and Development Expenses, net. Consist primarily of salaries and related expenses and also include consulting fees, subcontracting costs, related materials and overhead expenses, after offsetting grants received or receivable from the Office of the Chief Scientist in Israel and the European Community. Our net research and development expenses in 2015 were \$39.7 million, an increase of \$10.2 million, or 35%, compared to 2014, after offsetting grants received or receivable of \$1.2 million in 2015 and \$3.5 million in 2014. The increase in research and development expenses in 2015 was mainly attributed to the consolidation of research and development expenses of ReVera, starting April 2, 2015. In 2015, net research and development expenses represented 27% of our revenues, compared to 25% of our revenues in 2014.

Sales and Marketing Expenses. Sales and marketing expenses are mainly comprised of salaries and related costs for sales and marketing personnel, travel related expenses, overhead and commissions to our representatives and sales personnel. Starting 2015, sales and marketing expenses also include amortization of intangibles related to customer relations. Our sales and marketing expenses in 2015 were \$16.0 million, an increase of \$3.2 million, or 25%, compared to 2014. The increase in sales and marketing expenses in 2015 was mainly attributed to the acquisition of ReVera. Sales and marketing expenses represented 11% our revenues in 2015 and 2014.

Amortization of Intangible Assets. As part of the acquisition of ReVera in 2015, the company acquired \$12.3 million of intangible asset related to technology. The company recorded \$1.3 million of amortization of intangible assets in 2015.

General and Administrative Expenses. General and administrative expenses are comprised of salaries and related expenses and other non-personnel related expenses such as legal expenses. In 2015, general and administration expenses also included \$2.7 million of expenses related to the acquisition and integration of ReVera. Our general and administrative expenses in 2015 were \$8.5 million, an increase of \$4.1 million, or 91%, compared to 2014. The increase in general and administrative expenses in 2015 was mainly attributed to the above mentioned \$2.7 million of expenses related to the acquisition and integration of ReVera, as well as to the consolidation of general and administration expenses of ReVera, starting April 2nd, 2015. In 2015, general and administration expenses represented 6% of our revenues, compared to 4% of our revenues in 2014. The increase in general and administrative expenses as percent of revenues in 2015 is attributed mainly to the above mentioned expenses related to the acquisition and integration of ReVera.

Income Tax Expenses. Income tax expenses are comprised of current tax expenses and deferred tax expenses/income. In 2015 we recorded \$3.5 million of income tax benefit, compared with \$1.2 million of income tax benefit in 2014. The increase in income tax benefit in 2015 is attributed to \$1.5 million increase in income tax benefits related to accumulating research and development credits in Israel and to \$1.9 million of income tax benefit related to amortization of intangibles as a result of the acquisition of ReVera. These amounts were offset by \$1.1 million increase in current tax expenses in 2015 relative to 2014.

Comparison of Years Ended December 31, 2014 and 2013

Revenues. Our revenues in 2014 increased by \$9.1 million, or 8%, compared to 2013, with revenues attributable to product sales accounting for \$92.2 million, an increase of \$2.8 million, or 3%, compared to 2013, and revenues attributable to services accounting for \$28.4 million, an increase of \$6.3 million, or 29%, compared to 2013. The increase in product revenues in 2014 was mainly attributed to increased adoption of our software products. The increase in services revenues is attributed to an increase in service contracts revenues as a result of higher number of systems included in our installed base, and to an increase in time and materials as a result of higher number of upgrades of existing 200mm installed base.

Cost of Revenues and Gross Profit. Cost of revenues consists of labor, material and overhead costs of manufacturing our systems, royalties, and the costs associated with our worldwide service and support infrastructure. It is also consists of inventory write-offs and provisions for estimated future warranty costs for systems we have sold. Our cost of revenues attributable to product sales in 2014 was \$39.8 million. Our gross margin attributable to product revenues in 2014 was 57%, compared to 58% in 2013. This decrease in products gross margins in 2014 is mainly related to penetration into new manufacturing process steps at existing customer sites, and increase in the amount of royalties paid to third parties. Our cost of services in 2014 was \$17.2 million, compared to \$14.7 million in 2013. Our gross margin attributable to service revenues in 2014 was 39%, compared to 34% in 2013. The increase in service gross margins in 2014 is mainly related to the significant increase of 29% in services revenues in this year, utilizing more efficiently existing infrastructure.

Research and Development Expenses, net. Consist primarily of salaries and related expenses and also include consulting fees, subcontracting costs, related materials and overhead expenses, after offsetting grants received or receivable from the Office of the Chief Scientist. Our net research and development expenses in 2014 were \$29.5 million, similar to 2013, after offsetting grants received or receivable from the Office of the Chief Scientist of \$3.5 million in 2014 and \$1.5 million in 2013. In 2014, net research and development expenses represented 25% of our revenues compared to 27% of our revenues in 2013.

Approximately 50% of our net research and development expenses in 2014 resulted from our research and development efforts relating to current products and product lines, and the rest were related to developing a technology infrastructure for next generation metrology tools and SW platforms.

Sales and Marketing. Sales and marketing expenses are mainly comprised of salaries and related costs for sales and marketing personnel, travel related expenses and overhead. They also include commissions to our representatives and sales personnel. Our sales and marketing expenses in 2014 were \$12.7 million compared to \$11.9 million in 2013. Sales and marketing expenses represented 11% our revenues in 2014 and 2013. The increase in sales and marketing expenses is related to the increase in headcount and related costs supporting the revenue growth.

General and Administrative. General and administrative expenses are comprised of salaries and related expenses and other non-personnel related expenses such as legal expenses. Our general and administrative expenses decreased by 14% to \$4.5 million in 2014, compared to \$5.2 million in 2013. This decrease is mainly attributed to decrease in employee related costs (including expenses related to retirement of a senior executive in 2013). General and administrative expenses represented 4% and 5% of our revenues in 2014 and 2013, respectively. The decrease as a percentage of revenue is mainly related to the decrease in expenses as described above, which was also combined with the increase in 2014 revenues.

Income Tax Expenses. Income tax expenses are comprised of current tax expenses and deferred tax expenses/income. We recorded \$1.2 million of tax income in 2014, compared with \$2.5 million tax expenses in 2013. This change is mainly attributed to the utilization of tax incentives in Israel which started in 2014, and to the creation of deferred tax assets in 2014 (related to potential future research and development tax credits in Israel).

5.B Liquidity and Capital Resources

As of December 31, 2015, we had working capital of approximately \$112.8 million compared to working capital of \$130.5 million as of December 31, 2014.

Cash and cash equivalents, short-term and long-term deposits as of December 31, 2015 were \$97.8 million compared to \$123.7 million as of December 31, 2014.

Trade accounts receivable increased from \$15.6 million as of December 31, 2014 to \$19.0 million as of December 31, 2015. Inventories increased from \$16.1 million as of December 31, 2014 to \$27.7 million as of December 31, 2015. The increase in accounts receivables is mainly related to the increase in the quarterly sales levels in 2015. The increase in inventories is mainly related to the consolidation of ReVera's assets following its acquisition.

Operating activities in 2015 generated positive cash flow of \$25.8 million compared to a positive cash flow of \$33.5 million in 2014.

The following table describes our investments in capital expenditures during the last three years:

	2013		2014		2015	
	Domestic	Abroad	Domestic	Abroad	Domestic	Abroad
	(in dollar thousands)					
Electronic equipment	4,514	42	3,884	84	2,925	32
Office furniture and equipment	10	5	29	5	37	90
Leasehold improvements	1,052	1	1,352	0	1,135	154
Total	5,576	48	5,265	89	4,097	276

*The balance represents the gross investment in capital expenditure, as there was a scrap of fully depreciated assets during 2015.

In 2015, the investment in capital expenditures was financed from our positive operating cash flow and cash reserves. Although we currently have no significant capital commitments, we expect to spend approximately \$7 million on capital expenditures in 2016, mainly for information systems improvements (software and hardware), electronic equipment used in our research and development labs and expansion of demonstration, manufacturing and development facilities.

Our principal liquidity requirement is expected to be for working capital and capital expenditures as well as additional acquisitions. We believe that our current cash reserves will be adequate to fund our planned activities for at least the next 12 months. Our long-term capital requirements will be affected by many factors, including the success of our current products, our ability to enhance our current products and our ability to develop and introduce new products that will be accepted by the semiconductor industry. We plan to finance our long-term capital needs with our cash reserves together with positive cash flow from operations, if any. If these funds are insufficient to finance our future business activities, which may include acquisitions, we will have to raise additional funds through the issuance of additional equity or debt securities, through borrowing or through other means. We cannot assure that additional financing will be available on acceptable terms.

Presently, we have no long-term debt, nor any readily available source of long-term debt financing such as a line of credit.

With regard to usage of hedging financial instruments and the impact of inflation and currency fluctuations, see "Item 11. Quantitative and Qualitative Disclosures about Market Risk" in this annual report on Form 20-F.

5.C Research and Development, Patents and Licenses, etc.

For information regarding our research and development activities, see "Item 4B – Research and Development" in this annual report on Form 20-F.

Grants from the Office of the Chief Scientist

Under the Law for the Encouragement of Industrial Research and Development, 1984, or the R&D Law, a qualifying research and development program is eligible for grants of up to 50% of the program's research and development expenses. The program must be approved by a committee of the OCS. The recipient of the grants is required to return the grants by the payment of royalties on the revenues generated from the sale of products (and related services) developed (in all or in part) according to, or as a result of, a research and development program funded by the OCS (at rates which are determined under the R&D Law up to the aggregate amount of the total grants received by the OCS, plus annual interest (as determined in the R&D Law). Royalties are paid in NIS linked to the dollar at the exchange rate in effect at the time of payment. Following the full payment of such royalties and interest, there is generally no further liability for royalty payment. Nonetheless, the restrictions under the R&D Law (as generally specified below) will continue to apply even after our company has repaid the full amount of royalty payable pursuant to the grants.

The pertinent obligations under the R&D Law are as follows:

- *Notices to the OCS.* Any change of control and any change of ownership of our ordinary shares that would make a non-Israeli citizen or resident an "interested party," as defined in the R&D Law, requires a prior written notice to the OCS (and in the later event, the non-Israeli citizen or resident will execute an undertaking towards to the OCS, in a form provided under the OCS guidelines).
- *Local Manufacturing Obligation.* The terms of the grants under the R&D Law require that we manufacture the products developed with these grants in Israel. Under the regulations promulgated under the R&D Law, the products may be manufactured outside Israel by us or by another entity only if prior approval is received from the OCS (such approval is not required for the transfer of less than 10% of the manufacturing capacity in the aggregate, in which case a notice should be provided to the OCS). This approval may be given only if we abide by all the provisions of the R&D Law and related regulations. Ordinarily, as a condition to obtaining approval to manufacture outside Israel, we would be required to pay increased royalties, as defined under the R&D Law. The total amount to be repaid to the OCS would also be adjusted in between 120% and 300% of the grants, depending on the manufacturing volume that is performed outside Israel. We note that a company also has the option of declaring in its OCS grant application an intention to exercise a portion of the manufacturing capacity abroad, thus avoiding the need to obtain additional approvals.

- *Know-How transfer limitation.* The R&D Law restricts the ability to transfer know-how funded by the OCS outside of Israel. Transfer of OCS funded know-how outside of Israel requires prior OCS approval and in certain circumstances is subject to certain payment to the OCS calculated according to formulae provided under the R&D Law. If we wish to transfer OCS funded know-how, the terms for approval will be determined according to the character of the transaction and the consideration paid to us for such transfer. The OCS approval to transfer know-how created, in whole or in part, in connection with an OCS-funded project to third party outside Israel where the transferring company remains an operating Israeli entity is subject to payment of a redemption fee to the OCS calculated according to a formula provided under the R&D Law that is based, in general, on the ratio between the aggregate OCS grants to the company's aggregate investments in the project that was funded by these OCS grants, multiplied by the transaction consideration. The transfer of such know-how to a party outside Israel where the transferring company ceases to exist as an Israeli entity is subject to a redemption fee formula that is based, in general, on the ratio between aggregate OCS grants received by the company and the company's aggregate R&D expenses, multiplied by the transaction consideration. The Regulations for the Encouragement of Research and Development in the Industry (the Maximum Payment for the Transfer of Know-How in Accordance with Section 19B(b)(1) and (2), 5777-2012 establish a maximum payment of the redemption fee paid to the OCS under the above mentioned formulas and differentiates between two situations: (i) in the event that the company sells its OCS funded know-how, in whole or in part, or is sold as part of an M&A transaction, and subsequently ceases to conduct business in Israel, the maximum redemption fee under the above mentioned formulas will be no more than six times the amount received (plus annual interest) for the applicable know-how being transferred, or the entire amount received, as applicable; (ii) in the event that following the transactions described above (i.e. asset sale of OCS funded know-how or transfer as part of an M&A transaction) the company continues to conduct its R&D activity in Israel (for at least three years following such transfer and maintain staff of least 75% of the number of R&D employees it had for the six months before the know-how was transferred), then the company is eligible for a reduced cap of the redemption fee of no more than three times the amounts received (plus annual interest) for the applicable know-how being transferred, or the entire amount received, as applicable.

Approval of the transfer of OCS funded technology to another Israeli company may be granted only if the recipient abides by all the provisions of the law and related regulations, including the restrictions on the transfer of know-how and manufacturing rights outside of Israel.

Approval to manufacture products outside of Israel or consent to the transfer of technology, if requested, might not be granted.

These restrictions may impair our ability to enter into agreements for those products or technologies without the approval of the OCS. We cannot be certain that any approval of the OCS will be obtained on terms that are acceptable to us, or at all. Furthermore, in the event that we undertake a transaction involving the transfer to a non-Israeli entity of technology developed with OCS funding pursuant to a merger or similar transaction, the consideration available to our shareholders may be reduced by the amounts we are required to pay to the OCS. Any approval, if given, will generally be subject to additional financial obligations. Failure to comply with the requirements under the R&D Law may subject us to mandatory repayment of grants received by us (together with interest and penalties), as well as may expose us to criminal proceedings. In addition, the Government of Israel may from time to time audit sales of products which it claims incorporate technology funded via OCS programs and this may lead to additional royalties being payable on additional products.

We are obligated to pay royalties of 5% (3%-3.5% in 2013 and 2014) of revenues derived from sales of products funded with these grants. As of December 31, 2015, our contingent liability to the OCS for grants received was approximately \$24 million. See also Note 8A to our consolidated financial statements contained elsewhere in this report. We have submitted a request to the OCS to change our status to "generic R&D", which may require us to pay some or all of our contingent liability to the OCS, but on the other hand will enable us to receive royalty free grants, and will no longer require us to pay royalties on previous grants.

It should be noted that the OCS is in the process of promulgating regulations which deals with granting of licenses to use know-how developed as a result of research financed by the OCS. Such regulations may have an effect on our company, in respect of the amount of payments to the OCS for the grant of sub-licenses to third parties. As of the date of filing of this report, we are unable to assess the effect, if any, of the promulgation of such regulations on our company.

On July 29, 2015, the R&D Law was amended ("Amendment Number 7"). Pursuant to Amendment Number 7, the National Authority for Technological Innovation, or NATI, a statutory corporation, will be established and will replace the OCS. Pursuant to Amendment Number 7, the current restrictions under the R&D Law will be replaced by new set of arrangements in connection with ownership obligations of know-how (including with respect to restrictions on transfer of know-how and manufacturing activities outside of Israel), as well as royalties obligations associated with approved programs, which will be promulgated by NATI. The commencement date of Amendment Number 7 was January 1, 2016, however, in the meantime until new arrangements are adopted by NATI, the R&D Law as existed prior to Amendment Number 7 continues to be in force and effect. NATI should be constituted no later than July 28, 2018, and the new arrangements should be adopted no later than one year thereafter. As of the date of filing of this report, we are unable to assess the effect, if any, of the promulgation of such arrangements on our company

In addition to royalty-bearing grants from the OCS, in 2010, we participated in a 'Magnet' program, IMG4, sponsored by the OCS. Under the terms of this program, we were cooperating with additional companies and research institutes in Israel, organized in a consortium, for the development of advanced techniques for improved tool control. No royalties from this funding are payable to the Israeli government, however, the provisions of the R&D Law and related regulations regarding, *inter alia*, the restrictions on the transfer of know-how outside of Israel do apply, *mutatis mutandis*. In general, any consortium member that develops technology as a result of its activities within and during the framework of the consortium project ("Foreground IP") remains the owner of such technology and any intellectual property rights related thereto. Specific mechanism applies with respect to joint Foreground developed by several members. In addition, the Foreground is subject to certain access rights as detailed in the consortium agreement. Further, there are certain limitations with respect to the transfer of the Foreground. Technology which was held by a consortium member prior to its entering into the consortium agreement or which was developed as a result of activities outside the framework of the consortium member ("Background IP") remains owned by the member who developed it. In certain circumstances, such Background is subject to certain access rights as detailed in the consortium agreement. The IMG4 program has ended during 2010.

In addition to royalty-bearing grants from the OCS, in 2015 and 2014, we participated in a 'Magnet' program, METRO 450, sponsored by the OCS. Under the terms of this program, we are cooperating with additional companies and research institutes in Israel, organized in a consortium for the development of pre-competitive elements of 450mm solutions that can also bring value even if the transition to 450mm is delayed. No royalties from this funding are payable to the Israeli government. Some of the abovementioned obligations (such as the restrictions under the R&D Law and obligation to grant certain access rights to the Company's technology and intellectual property rights) apply regarding this project as well.

In addition, we are also participating in European consortiums (such as, E450EDL, E450LMDAP, WAYTOGO FAST project and SeNaTe project), which are joint programs with the OCS and the European Research Area. Some of the abovementioned obligations and undertakings (such as the restrictions under the R&D Law and obligation to grant certain access rights to the Company's technology and intellectual property rights) (such as the restrictions under the R&D Law and obligations to grant certain access rights to the Company's technology and intellectual property rights) apply regarding these joint projects as well.

5.D Trend Information

For Information regarding most significant recent trends in our market, see "Item 4B – Our Market – The World Economy – Update" in this annual report on Form 20-F.

5.E Off-Balance Sheet Arrangements

We do not have and are not party to any off-balance sheet arrangements.

5.F Tabular Disclosure of Contractual Obligations

As of December 31, 2015 we had contractual obligations as described in the following table:

	Payment due by Period (in \$ thousands)				
	Total	Less than 1 year	1-3 years	3-5 years	More than 5 years
Operating Lease Obligations	7,263	2,149	2,716	2,398	-
Purchase Obligations	17,149	11,789	5,360	-	-
Other Long Term Liabilities	822	178	644	-	-
Total	25,234	14,116	8,720	2,398	-

Item 6. Directors, Senior Management and Employees

6.A Directors and Senior Management

The following is the list of senior management and directors as of February 3, 2016:

<u>Name</u>	<u>Age</u>	<u>Position</u>
Michael Brunstein	72	Chairman of the Board of Directors
Alon Dumanis	65	Director
Avi Cohen	62	Director
Raanan Cohen	60	Director
Zehava Simon	57	External Director
Dafna Gruber	50	External Director
Eitan Oppenheim	50	President and Chief Executive Officer
Dror David	46	Chief Financial Officer
Shay Wolfling	44	Chief Technology Officer
Glyn Davies	53	Corporate Executive Vice President and ReVera Inc. President
Gabi Sharon	53	Corporate Vice President Operations
Dov Farkash	56	Corporate Senior Vice President Strategic Software Business Unit
Michael Rybski	48	Corporate Vice President Product Development
Shiri Neder	40	Corporate Vice President Human Resources

Our directors (other than the external directors) serve as such until the next annual general meeting of our shareholders. Our external directors, in accordance with Israeli law, serve for a three-year term, which may be renewed for two additional three-year terms, subject to certain conditions, and thereafter for additional three-year terms, if both the audit committee and the board of directors confirm that in light of the expertise and contribution of the external director, the extension of such external director's term would be in the interest of the Company. Ms. Zehava Simon was elected in 2014 to serve for a three-year term. Ms. Simon replaced Mr. Dan Falk, who has served as an external director of the Company for three consecutive periods of three years each since 2005. Ms. Dafna Gruber was elected in 2015 to serve for a three-year term. Ms. Gruber replaced Ms. Naama Zeldis, who has served as an external director of the Company for three consecutive periods of three years each since 2006.

Our board of directors determined that Zehava Simon, Dafna Gruber, Avi Cohen and Raanan Cohen are independent directors under the Companies Law. In addition, our board of directors determined that Zehava Simon, Dafna Gruber, Avi Cohen, Michael Brunstein, Alon Dumanis and Raanan Cohen, qualify as "independent directors" as defined by The NASDAQ Stock Market.

Dr. Michael Brunstein was named chairman of our board of directors in June 2006, after serving as member of our board of directors from November 2003. During the years 1990 and 1999, Dr. Brunstein served as Managing Director of Applied Materials Israel Ltd. Prior to that, Dr. Brunstein served as President of Opal Inc., and as a Director of New Business Development in Optrotech Ltd. Dr. Brunstein is a member of the board of directors of IAI (Israel Aerospace Industries Ltd.). Dr. Brunstein holds a B.Sc. in Mathematics and Physics from The Hebrew University, Jerusalem, and a M.Sc. and a Ph.D. in Physics from Tel Aviv University, Israel.

Dr. Alon Dumanis has served as a director of Nova since 2002. Until December 31, 2015, Dr. Dumanis acted as the Chief Executive Officer of Crecor B.V, Docor International B.V, Docor Levi Lassen I BV, Docor Levi Lassen II BV and Docor International Management Ltd., all Dutch investment companies, subsidiaries of The Van-Leer Group Foundation, and currently Dr. Dumanis is a member of the management teams of the foregoing companies. Dr. Dumanis is currently a chairman of Aposense, a public company traded on TASE, Xsight System, Softlib, SPNano, Bondex, Clariton, DNR Imaging, and a member of the board of directors of Rada, a public company traded on TASE, and other Hi Tech companies in Docor's investment portfolio. Dr. Dumanis is a former member of the board of directors of Tadiran Communications (a public company traded on TASE), of El Al Israel Airlines (a public company traded on TASE), of Protalix Biotherapeutics (a public company traded on the New York Stock Exchange), and a former member of the board of directors of Inventech Investments Co. Ltd. (a public company traded on TASE), Spectronix (a public company traded on TASE) and Ice Cure (a public company traded on TASE). Previously, Dr. Dumanis was the Head of the Material Command in the Israel Air Force at the rank of Brigadier General. Dr. Dumanis currently serves as chairman and member of several national steering committees and is the author of many papers published in a number of subject areas, including technology and management. Dr. Dumanis holds a Ph.D. in Aerospace Engineering from Purdue University, West Lafayette, Indiana, USA.

Mr. Avi Cohen has served as a director of Nova since 2008. Mr. Cohen serves as the Chief Executive Officer of RR Media Ltd. (previously known as RRsat Global Communications Network Ltd.), a public company traded on NASDAQ. Prior to that, until March 2012, Mr. Cohen served as President and Chief Executive Officer of Orbit Technologies, a public company traded on the TASE. Prior to joining Orbit in December 2008, Mr. Cohen served as Chief Operating Officer and Deputy to the chief executive officer of ECI Telecom Ltd. a leading supplier of best-in-class networking infrastructure equipment for carrier and service provider networks worldwide. Prior to joining ECI in September 2006, Mr. Cohen served in a variety of management positions at KLA-Tencor. From 2003 he was a Group Vice President, Corporate Officer and Member of the Executive Management Committee based at the corporate headquarters in the U.S. During his tenure, he successfully led the creation of KLA-Tencor's global Metrology Group. From 1995 he was the President of KLA-Tencor Israel responsible for the Optical Metrology Division. Before joining KLA-Tencor, Mr. Cohen also spent three years as Managing Director of Octel Communications, Israel, after serving as Chief Executive Officer of Allegro Intelligent Systems, which he founded and which was acquired by Octel. Mr. Cohen holds B.Sc. and M.Sc. degrees in electrical engineering and applied physics from Case Western Reserve University, USA.

Mr. Raanan Cohen was appointed as a director of the Company by our board of directors in February 2014. Prior to that and until December 2012, Mr. Cohen has served as the President and Chief Executive Officer of Orbotech Ltd., a public company traded on NASDAQ. Mr. Cohen has also served in a range of other executive positions at Orbotech Ltd, including Co-President for Business and Strategy, EVP and President of the Printed Circuit Board (PCB) Division, Vice President for the PCB-AOI product line and President and chief executive officer of Orbotech, Inc. Prior to its merger with Orbotech in 1991, Mr. Cohen held various positions at Orbot, another manufacturer of AIO systems. Prior to joining Orbot in 1984, he worked at Telrad Networks Ltd. Mr. Cohen currently serves as the Chief Executive Officer of EyeWay Vision Ltd., as chairman of the board of directors of Datamate Ltd., as a member of the board of directors of Utilight Ltd., all private companies. Mr. Cohen holds a B.Sc. in Computer Science from the Hebrew University in Jerusalem, Israel.

Ms. Zehava Simon was elected as the Company's external director in accordance with the provisions of the Companies Law in June 2014. Ms. Simon served as a Vice President of BMC Software from 2000 until 2013 and in her last position (as of 2011) acted as Vice President of Corporate Development. From 2002 to 2011, Ms. Simon served as Vice President and General Manager of BMC Software in Israel. In this role, she was responsible for directing operations in Israel and India as well as offshore sites. Prior to that, Ms. Simon held various positions at Intel Israel., which she joined in 1982, including leading of Finance & Operations and Business Development for Intel in Israel. Ms. Simon is currently a board member of Audiocodes, a public company traded on NASDAQ, Nice Systems, a public company traded on NASDAQ and TASE, and Amiad water systems, a public company traded on London Stock Exchange. Ms. Simon is a former member of the board of directors of Insightec Ltd. (2005-2012), M-Systems Ltd., a NASDAQ listed company which was acquired in 2006 by SanDisk Corp., a public company traded on NASDAQ as well (2005-2006) and Tower Semiconductor Ltd., a public company traded on TASE and NASDAQ (1999-2004). Ms. Simon holds a B.A. in Social Sciences from the Hebrew University, Jerusalem, Israel, a law degree (LL.B.) from the Interdisciplinary Center in Herzlia and an M.A. in Business and Management from Boston University, USA.

Ms. Dafna Gruber was elected as the Company's external director in accordance with the provisions of the Companies Law in April 2015. Ms. Gruber has more than 20 years of broad experience, serving as chief financial officer and a senior executive management member in leading hi-tech companies traded on both NASDAQ and TASE. Ms. Gruber has served as the chief financial officer of Clal Industries Ltd., a private company, from October 2015. From April 2007 until April 2015, Ms. Gruber served as the chief financial officer of Nice Systems Ltd., a public company traded on NASDAQ and TASE. As a member of the senior management team, Ms. Gruber was a senior member of the strategy and M&A forum of the company. During her employment with Nice, Ms. Gruber was responsible, *inter alia*, for finance, operation, MIS and IT, legal and investor relations. From 1996 until May 2007, Ms. Gruber was part of Alvarion Ltd., a public company traded on NASDAQ and TASE, mostly as chief financial officer. Prior to that, from 1993 to 1996, Ms. Gruber was a controller at Lannet Data Communications Ltd., subsequently acquired by Lucent Technologies Inc. Ms. Gruber serves as an external director at TAT Technologies Ltd., a public company traded on NASDAQ and TASE, since November 2013. Ms. Gruber is a certified public accountant and holds a Bachelor's degree in Accounting and Economics from Tel Aviv University, Israel.

Mr. Eitan Oppenheim has been serving as the President and Chief Executive Officer of the Company since July 31, 2013. He has previously served as the Executive Vice President Global Business Group, since November 2010. From 2009 until 2010, Mr. Oppenheim served as Vice President and Europe General Manager of Alvarion Ltd., a public company traded on NASDAQ. During the years 2007 through 2009, Mr. Oppenheim served as Vice President of sales and marketing of OptimalTest Ltd., a public company traded the New York Stock Exchange. Prior to that, from 2002 till 2006, Mr. Oppenheim served as Vice President – Business Manager of the Flat Panel Displays division of Orbotech Ltd., a public company traded on NASDAQ. From 2001 till 2002, Mr. Oppenheim served as Managing Director of Asia Pacific at TTI Telecom International, a leading provider of assurance, analytics and optimization solutions to communications service providers (CSP) worldwide. Prior to that, from 1994 till 2001, Mr. Oppenheim held several key executive positions at Comverse Network Systems Ltd., a public company traded on NASDAQ. Mr. Oppenheim holds a BA in Economics and Accounting from the Haifa University, Israel and an MBA from Ben-Gurion University, Beer-Sheva, Israel.

Mr. Dror David has served as the Chief Financial Officer since November 2005. Mr. David joined Nova in April 1998, as the Company's Controller, and since then served in various financial and operational positions, including the position of Vice President of Resources, in which he was responsible for the finance, operations, information systems and human resources functions of the Company. Mr. David was also a leading member in the Company's initial public offering on NASDAQ in 2000, the Company's private placement in 2007 and the Company's secondary offering in 2010. Prior to joining Nova, Mr. David spent five years in public accounting with Deloitte Touch in Tel Aviv, specializing in industrial high-tech companies. Mr. David is a shareholder and a board member of P2P Ltd., a privately held company. Mr. David is a Certified Public Accountant in Israel, holds a B.A. in Accounting and Economics from Bar Ilan University, and an M.B.A. from Derby University of Britain.

Dr. Shay Wolfling joined Nova in 2011, as Chief Technology Officer. Prior to joining Nova, Dr. Wolfling was an R&D manager at KLA-Tencor-Belgium (formerly ICOS Vision Systems, a public traded company acquired by KLA in 2008), where he led multidisciplinary metrology & inspection development projects. From 2000 until its technology acquisition by ICOS in 2005, Dr. Wolfling was a founder and Vice President of Research and Development of Nano-Or-Technologies, a start-up company with a proprietary technology for 3D optical measurements. Dr. Wolfling took Nano-Or from the idea stage to initial product sales. Prior to founding Nano-Or, Dr. Wolfling was a project manager in Y-Beam-Technologies, a start-up offering laser-based skin treatments. Dr. Wolfling has several patents under his name in the field of optical measurements. Dr. Wolfling holds a B.Sc. in physics and mathematics from the Hebrew University of Jerusalem, Israel, a second degree in physics from Tel-Aviv University, Israel and a Ph.D. in physics from the Hebrew University of Jerusalem, Israel.

Mr. Glyn Davies joined ReVera in 2010 as President, Chief Executive Officer and a member of ReVera's board of directors and has served as the Corporate Executive Vice President and ReVera's President since the acquisition of ReVera by Nova in April 2015. Prior to joining ReVera, Mr. Davies has held a variety of positions in executive management, business development, marketing and sales. From 2004 until 2009 Mr. Davies served as the President of Negevtech, Inc., a venture-backed semiconductor capital equipment start-up. Prior to Negevtech, from 2000 until 2004 Mr. Davies served as the Vice President of Corporate Marketing at Credence Systems, with a focus on strategic marketing and M&A. During his time at Credence, Mr. Davis led a series of strategic acquisitions, developed the company's product portfolio and increased served markets. Prior to Credence, Mr. Davies spent 11 years at KLA-Tencor, a multi-billion dollar wafer inspection and metrology equipment provider. Mr. Davis held senior management positions in business development and marketing, and was responsible for the formation and leadership of the yield management software group at Tencor before the merger with KLA. Prior to KLA-Tencor, from 1984 until 1989 Mr. Davis served in marketing and engineering positions at Cambridge Instruments and Nanometrics. Mr. Davies holds a BS in Electronic Computer and Systems Engineering from Loughborough University, England.

Mr. Gabi Sharon has served as Vice President of Operations since September 2006. Having joined Nova in 1995, Mr. Sharon served in several key positions in the Company including as Global Customer Support Manager from September 1995 to September 2004. From September 2004 until September 2006 Mr. Sharon managed the Product Development Division, and spearheaded the NovaScan 3090 product line and its successful market launch. For a period of two years, from 2004 to 2006, he also served as the Product Marketing Manager and led the initial penetration of the Copper CMP market. Prior to joining Nova Mr. Sharon served as Project Manager in ECI Israel. Mr. Sharon holds a B.Sc. in Computer Science from Northeastern University, Boston, Massachusetts, and a M.Sc. in Technology Management from Polytechnic University, New York.

Mr. Dov Farkash has served as our Senior Vice President Strategic Software since April 2014. Mr. Farkash joined Nova in 2000, and till 2005 he served in various key sales positions in Nova. From 2005 until 2009, Mr. Farkash has served as VP Sales of Nova. From 2009 until April 2014, Mr. Farkash served as our Vice President Business Development. Prior to joining Nova, Mr. Farkash served as worldwide Sales and Marketing Manager of AFCON Ltd., and AFCON Inc., USA. Prior to that, Mr. Farkash served in various managerial positions in software development in various Hi-tech companies. Mr. Farkash holds a B.Sc. in Computer Engineering and an MBA from the Technion – Israel Institute of Technology, Haifa, Israel.

Mr. Michael Rybski joined Nova in December 2010 and has served as Vice President Product Development since 2012. Mr. Rybski brings over 15 years of experience in development and management of complex solutions in the semiconductor industry. Mr. Rybski has successfully led the development of new products from concept to market launch. Prior to joining Nova, during 2010 Mr. Rybski served as a project manager in R&D at Hp-Scitex, a large format digital printing company. During 2009, Mr. Rybski served as a product line manager at Brightview Systems Ltd., a solar photovoltaic startup. Prior to that, from 2000 until 2008 Mr. Rybski served as HW platform manager, project manager and as director of product development, leading the development of new products at Negevtech Ltd. Previously Mr. Rybski held different management positions in the field of R&D at Applied Materials Israel, where he worked on a SEM based Automatic Review system. Mr. Rybski holds a B.Sc. and an M.Sc. in Mechanical Engineering from the Technion – Israel Institute of Technology, Haifa, Israel.

Ms. Shiri Neder joined Nova in July 2015, as Vice President Human Resources. Ms. Neder has a vast experience in the field of Human Resource management, including in connection with leading advanced human resource processes, post-merger integrations and organizational and individual development. Prior to joining Nova, Ms. Neder held several senior positions in global companies in field, regional, and corporate roles. From 2010 until July 2015, Ms. Neder served as the Vice President of Human Resources at Amdocs Ltd., a public company traded on NASDAQ. Prior to that from 2008 until 2010, Ms. Neder served as Regional Senior Human Resources Manager at Microsoft Corporation in England. From 2006 until 2008 Ms. Neder served as senior human resources manager at Microsoft Israel R&D Center. Prior to that, Ms. Neder held several Human Resources positions at Cellular companies in Israel – Pelephone Communications Ltd. and Partner Communications Ltd. Ms. Neder holds a BA in Social Sciences from Bar Ilan University, Israel, an MA in Organizational Sociology from Tel Aviv University, Israel, an MBA from the Academic College, Israel, and an MA in Law from Bar Ilan University, Israel.

Voting Agreement

We are not aware of any voting agreement currently in effect.

6.B Compensation

The aggregate direct remuneration paid or payable to all persons who served in the capacity of executive officer for 2015 (consisting of 12 persons) in terms of employer costs was approximately \$4.2 million (including \$0.41 million set aside for pension and retirement benefits and amounts expensed by the Company for automobiles made available to its executive officers).

Disclosure regarding the compensation of our senior executives on an individual basis will be disclosed in our proxy statement in connection with the 2016 annual general meeting of shareholders in accordance with Israeli regulations.

At the 2013 annual general meeting, our shareholders approved the employment terms of Mr. Eitan Oppenheim, the President and Chief Executive Officer of the Company, including: (i) a monthly base salary of NIS 87,000; (ii) an annual bonus of up to ten monthly base salaries (with up to two additional monthly base salaries in the case of over achievement), subject to objectives to be annually determined by the board of directors and its committees in accordance with our compensation policy. In the event of employment termination during a fiscal year (unless for termination for cause), Mr. Oppenheim will be entitled to a prorated bonus (subject to adjusted objectives to the relevant period of employment); (iii) a one-time grant of an option to purchase up to 80,000 ordinary shares of the Company with an exercise price per share equal to the closing price on NASDAQ Stock Market on September 12, 2013) and the option will vest in equal annual installments over four years commencing one year from the grant date (i.e., 25 % of the option vests on each anniversary of the grant date); (iv) a bonus of up to ten monthly base salaries for the completion of an acquisition of a non-affiliated company, subject to the limitation on a special bonus set forth in our compensation policy (the payment of such bonus is subject to the approval of the board of directors and its committees); (v) in connection with termination of employment, a three month advance notice and a six month adjustment period, during which Mr. Oppenheim will be entitled to all of his compensation elements, and to the continuation of vesting of his options; (vi) based on our policies and procedures and the applicable law, Mr. Oppenheim is entitled to customary social benefits such as pension fund or management insurance, education fund, vacation pay, sick leave and convalescence pay; (vii) based on our policies and procedures and the applicable law and subject to required approvals under applicable law, Mr. Oppenheim is entitled to be covered by a directors and officers insurance, including a "run-off" insurance policy; (viii) non-disclosure, non-compete and ownership of intellectual property undertakings; (ix) upon certain events of change of control, Mr. Oppenheim will be entitled to (A) advance notice and adjustment period as defined in Section (v) above, and (B) term and vesting extension of options of two years following termination of employment; (x) monthly travel expenses or a Company car, a Company's cellular phone, a land line phone, toll road expenses, a laptop computer and other expense reimbursements pursuant to our policies and procedures.

At the 2014 annual general meeting, our shareholders approved the following amendments to the employment terms of Mr. Oppenheim, the President and Chief Executive Officer of the Company: (i) an update of Mr. Oppenheim's monthly salary to NIS 96,000; (ii) that the maximum bonus for over achievement will be 150% of the target bonus which is ten (10) monthly base salaries (rather than two monthly base salaries); and (iii) that Mr. Oppenheim will be entitled to an annual grant of options to purchase up to 100,000 ordinary shares of the Company per each year of 2014, 2015 and 2016. The first grant of 100,000 options was made on August 1, 2014; the second and third grants of 100,000 options each will be made on the second and third anniversary of the initial grant, respectively, provided that Mr. Oppenheim is fully employed by the Company and continues with his duties as the president and chief executive officer of the Company at the respective grant date. The vesting schedule of the options is over a four (4) year period with a one fourth of such options vesting on each anniversary of the grant. The term of the options is of seven (7) years after each grant date, unless they have been exercised or cancelled in accordance with the terms of and conditions of the applicable incentive plan of the Company or the employment terms of Mr. Oppenheim. The exercise price is determined per the Company's equity-based compensation policy.

At the 2015 annual general meeting, our shareholders approved the following amendments to the employment terms of Mr. Oppenheim, the President and Chief Executive Officer of the Company: (i) an update of Mr. Oppenheim's monthly salary to NIS 101,000; and (ii) that Mr. Oppenheim will be entitled to an additional grant of options to purchase up to 50,000 ordinary Shares of the Company per each of the years 2015 and 2016. The first grant was made on August 1, 2015 and the second grant is scheduled to be made on August 1, 2016, provided that Mr. Oppenheim is fully employed by the Company and continues to act as the president and chief executive officer of the Company at the grant date. The vesting schedule of each grant is over a four (4) year period with a one fourth of such options vesting on each anniversary of the respective grant date. The term of the options is of seven (7) years after the grant date, unless they have been exercised or cancelled in accordance with the terms of and conditions of the applicable incentive plan of the Company or the employment terms of Mr. Oppenheim. The exercise price is determined per the Company's equity-based compensation policy. The grants are made in accordance with and subject to Section 102 of the Income Tax Ordinance of 1961 (New Version) (the "Ordinance"). In accordance with the Company's policy, Mr. Oppenheim is entitled to request that up to 2/3 of each grant will be made in RSUs (based on a 3:1 ratio, i.e., any option to purchase up to three (3) ordinary shares will be converted to one (1) RSU).

As of February 3, 2016, 1,059,333 options to purchase our ordinary shares and 82,192 RSU's were outstanding and held by certain current executive officers and directors (consisting of 14 persons), of which 504,201 options are currently exercisable or exercisable within 60 days of February 3, 2016, and 10,444 RSU's will vest within 60 days of February 3, 2016. See "Item 6E. Share Ownership" in this annual report on Form 20-F.

In accordance with our equity-based compensation policy, effective February 2016, the exercise price of granted options is equal to the average closing price of the Company's ordinary shares on NASDAQ during the 30-trading day period preceding the day of allocation.

The total amount paid or payable to the directors, including external directors, (consisting of seven persons in 2015, including one former external director of the Company) for 2015 was \$0.3 million.

The compensation arrangement of the Company's directors (excluding the chairman of the board of directors and, unless approved otherwise, any other director who is also an employee of the Company), as approved by our shareholders at the 2012 annual general meeting, includes:

1. An annual payment of US\$18,000 (or an equivalent amount in NIS calculated into NIS according to a NIS 4.00 = US\$1.00 exchange rate) but not less than the annual payment required under the Companies Regulations (Rules Regarding Compensation and Expenses to an External Director), 2000, and the Companies Regulations (Relief for Public Companies with Shares Listed for Trading on a Stock Market Outside of Israel), 2000 (collectively, the "Regulations").

2. Additionally, the following payments (subject to the minimal and maximal payment restrictions applicable to the Company under the Regulations): (i) for each meeting that the director or external director attends in person, an amount of US\$600 (in an equivalent amount in NIS according to a NIS 4.00 = US\$1.00 exchange rate, provided that such payment will not be lower than the applicable payment required under the Regulations to be paid to external directors); (ii) for each execution of a written consent in lieu of a meeting, an amount of US\$300 (in an equivalent amount in NIS according to a NIS 4.00 = US\$1.00 exchange rate, provided that such payment will not be lower than the applicable payment required under the Regulations to be paid to external directors); and (iii) for each meeting that the director or external director attends by teleconference, an amount of US\$360 (in an equivalent amount in NIS according to a NIS 4.00 = US\$1.00 exchange rate, provided that such payment will not be lower than the applicable payment required under the Regulations to be paid to external directors).

3. An annual award of an option to purchase up to 10,000 ordinary shares or options with fair market value of US\$80,000, the lower of the two, to be granted to each director or external director on the date of each annual general meeting at which such director or external director is elected or reelected (or if an external director is not standing for reelection, on the date of the annual general meeting, provided that such external director is serving on the board of directors at the time of the annual general meeting). The exercise price of each option will be determined pursuant to our equity based compensation policy.

In addition, the compensation arrangement of Dr. Michael Brunstein, the chairman of our board of directors, as approved by our shareholders at the 2006, 2008 and 2010 annual general meetings, includes: (i) a gross annual fee of \$110,000 payable monthly in NIS; (ii) an annual award of options to purchase up to 10,000 ordinary shares, to be granted to Dr. Brunstein on the date of each annual general meeting at which the chairman of the board of directors is elected or reelected, starting the 2008 annual general meeting, the exercise price of which will be determined pursuant to our equity based compensation policy and the other terms (i.e., the amount, exercise price and vesting schedule) will be identical to the terms of options granted to other directors on an annual; and (iii) a biennial award of an option to purchase up to 75,000 ordinary shares to Dr. Brunstein on the date of every other annual general meeting at which the chairman of the board of directors is elected or reelected, starting with the 2010 annual general meeting (and thereafter in 2012). The exercise price of such options is determined pursuant to our equity based compensation policy, and consistent with our compensation policy, the options will vest quarterly over a period of four years.

On September 12, 2013, our shareholders approved the Company's compensation policy. The full text of the compensation policy was included as Exhibit A to the proxy statement attached to the Company's report on Form 6-K furnished to the Securities and Exchange Commission on August 12, 2013.

6.C Board Practices

Board of Directors' Committees

The Company's board of directors has appointed the following committees:

The *Audit Committee* is comprised of Dafna Gruber, Zehava Simon and Avi Cohen. The audit committee is responsible to assist the board of directors in fulfilling its responsibility for oversight of the quality and integrity of accounting, auditing and financial reporting practices of the Company. According to the Companies Law, the audit committee must consist of at least three directors, must include all of the external directors and the majority of its members must be independent directors under the Companies Law. The following individuals may not be members of the audit committee: (i) the chairman of the board of directors; (ii) any director employed by the Company, its controlling shareholder or any entity under the control of the controlling shareholder; (iii) any director providing services on a regular basis to the Company, its controlling shareholder or any entity under the control of the controlling shareholder; (iv) any director whose main source of income comes from the Company's controlling shareholder; or (v) the Company's controlling shareholders or any of their relatives. The chairman of the audit committee must be an external director, who has not been serving as a chairman of the audit committee for more than nine years. Under the Companies Law, the audit committee is responsible, among others, for (i) identifying deficiencies in the administration of the Company, including by consulting with the internal auditor, and recommending remedial actions with respect to such deficiencies; (ii) reviewing and approving related party transactions, including, among others, determining whether or not such transactions are deemed material actions or extraordinary transactions; (iii) ensuring that a competitive process is conducted for related party transactions with a controlling shareholder (regardless of whether or not such transactions are deemed extraordinary transactions), optionally based on criteria which may be determined by the audit committee annually in advance; (iv) setting forth the approval process for transactions that are 'non-negligible' (i.e., transactions with a controlling shareholder that are classified by the audit committee as non-negligible, even though they are not deemed extraordinary transactions), as well as determining which types of transactions would require the approval of the audit committee, optionally based on criteria which may be determined annually in advance by the audit committee; (v) evaluating the Company's internal audit program and the performance of the Company's internal auditor and the resources at his/her disposal; (vi) reviewing the scope of work of the Company's external auditor and making recommendations regarding his/her salary; and (vii) creating procedures relating to the employees' complaints regarding deficiencies in the administration of the Company. The audit committee operates under a charter adopted by the board of directors. A recent amendment to the Companies Law enacted on February 17, 2016, or Amendment 27, allows a company whose audit committee's composition meets the requirements set for the composition of a compensation committee (as further detailed below) to have one committee acting as both audit and compensation committees.

The *Compensation Committee* is comprised of Zehava Simon, Dafna Gruber and Raanan Cohen. The function of the compensation committee is described in the approved charter of the committee, and includes assisting the board of directors in discharging its responsibilities relating to compensation of the Company's officers, directors and executives and the overall compensation programs and reviewing and approving, or if required by law, approving and recommending for approval by the board of directors, grants and awards under the Company's equity incentive plans. The primary objective of the committee is to oversee the development and implementation of the compensation policies and plans that are appropriate for the Company in light of all relevant circumstances and which provide incentives that further the Company's long-term strategic plans and are consistent with the culture of the Company and the overall goal of enhancing enduring shareholder value. Under the Companies Law the compensation committee must consist of at least three directors, must include all the external directors, the majority of its members must be external directors, and its chairman must be an external director. In addition, all members of the compensation committee must meet the requirements under the Companies Law for membership in the audit committee, as described above.

Under the Companies Law and our compensation committee charter, our compensation committee is responsible, among others, for (i) recommending to the board of directors regarding its approval of a compensation policy in accordance with the requirements of the Companies Law, and any other compensation policies, incentive-based compensation plans and equity-based plans; (ii) overseeing the development and implementation of such compensation plans and policies that are appropriate in light of all relevant circumstances and recommending to the board of directors regarding any amendments or modifications that the compensation committee deems appropriate; (iii) determining whether to approve transactions concerning the terms of engagement and employment of our officers and directors that require compensation committee approval under the Companies Law or our compensation plans and policies; and (iv) taking any further actions as the compensation committee is required or allowed to under the Companies Law or the compensation plans and policies.

The *Nominating and Corporate Governance Committee* is comprised of Alon Dumanis, Michael Brunstein and Zehava Simon. The function of the nominating committee is described in the approved charter of the committee, and includes responsibility for identifying individuals qualified to become board members and recommending that the board of directors consider the director nominees for election at the general meeting of shareholders. The nominating and corporate governance committee is also responsible for developing and recommending to the board of directors a set of corporate governance guidelines applicable to the Company, periodically reviewing such guidelines and recommending any changes thereto.

On September 7, 2010, our board of directors resolved to authorize the audit committee to fulfill the scope and act as the Company's investment committee.

All committees are acting according to written charters that were approved by our board of directors. In February 2012, we adopted an internal enforcement plan which was approved by our board of directors. The internal enforcement plan, as part of which we adopted and implementing procedures and policies in order to comply with the provisions of the Israeli Securities Law, 5728-1968 (the "Israeli Securities Law"), the Companies Law and the applicable guidelines issued by Israeli Securities Authority. The internal enforcement plan includes, among others, the board committees' charters, procedures with respect to related party transactions, insider trading, reporting and complaints, and a code of conduct.

Internal Auditor

Under the Companies Law, the board of directors must also appoint an internal auditor nominated by the audit committee. Our internal auditor is Ms. Dana Gottesman-Erich, CPA (Isr.) of BDO Ziv Haft, an independent registered accounting firm which is a part of the BDO international. Ms. Gottesman-Erich replaced Mr. Guy Sapir, C.P.A (Isr) of Kesselman & Kesselman PwC Israel as our internal auditor as of January 2016. The role of the internal auditor is to examine whether a company's actions comply with the law and proper business procedure. The internal auditor may not be an interested party or office holder, or a relative of any interested party or office holder, and may not be a member of the company's independent accounting firm or its representative. The Companies Law defines an interested party as a holder of 5% or more of the shares or voting rights of a company, any person or entity that has the right to nominate or appoint at least one director or the general manager of the company or any person who serves as a director or as the general manager of a company.

6.D Employees

Set forth below is a chart showing the number of people we employed at the times indicated:

	As of December 31,		
	2013 ^(*)	2014 ^(*)	2015 ^(*)
Total Personnel	383	404	496
Located in Israel	276	292	301
Located abroad	107	112	195
In operations	91	79	87
In research and development	120	146	180
In global business	149	154	195
In general and administration	23	25	34

(*) The numbers of employees set forth in this table do not include contractors and an insignificant number of temporary employees retained by the Company from time to time.

We were a member of the Industrialists Association in Israel, an employer's union until December 31, 2006. Under applicable Israeli law, we and our employees are subject to protective labor provisions such as restrictions on working hours, minimum wages, paid vacation, sick pay, severance pay and advance notice of termination of employment as well as equal opportunity and anti-discrimination laws. Orders issued by the Israeli Ministry of Economy and Industry make certain industry-wide collective bargaining agreements applicable to us. These agreements affect matters such as cost of living adjustments to salaries, length of working hours and week, recuperation and travel expenses. In Israel, Nova is subject to the instructions of the Extension Order in the Industrial Field for Extensive Pension Insurance 2006 according to the Israeli Collective Bargaining Agreements Law, 1957 (the "Extension Order"). The Extension Order ensures the pension insurance of most employees which fall under its criteria.

6.E Share Ownership

Based on information provided to us, our 14 directors and officers listed in Item 6A above, have had, as a group, sole voting and investment power for 534,450 shares beneficially owned by them as of February 3, 2016 (representing 1.97% of the 27,096,436 issued and outstanding ordinary shares of the Company as of such date). Such number includes 504,201 shares subject to options that are immediately exercisable or exercisable within 60 days of February 3, 2016 (expiration dates: 2018 - 2022; exercise prices (\$/share): 0.93 - 11.74) and 10,444 RSUs to be vested within 60 days of February 3, 2016. Each of such directors and executive officers beneficially owned less than 1% of the Company's shares as of such date.

Beneficial ownership of shares is determined in accordance with the rules of the SEC and generally includes any shares over which a person exercises sole or shared voting or investment power. Ordinary shares that are subject to warrants or options that are presently exercisable or exercisable within 60 days of the date of February 3, 2016 are deemed to be outstanding and beneficially owned by the person holding the options for the purpose of computing the percentage ownership of that person, but are not treated as outstanding for the purpose of computing the percentage of any other person.

Employee Benefit Plans

The share option plans active throughout 2015, are described below:

2007 Incentive Plan - The maximum number of ordinary shares to be issued under the plan, which was adopted by our shareholders on October 25, 2007, was 2,500,000, subject to future increases or decreases by the Company. On May 1, 2012, the board of directors resolved to increase the aggregate number of shares issuable under the 2007 Incentive Plan by one million shares, and amend the 2007 Incentive Plan to address a change in the clearing procedures of the TASE. On December 17, 2014, the board of directors resolved to increase the aggregate number of shares issuable under the 2007 Incentive Plan by two million shares, and to amend the 2007 Incentive Plan. Such amendment includes, among others, a change of the exercise period in the event of termination, and in case of death, disability or retirement of the optionee. In connection with the aforementioned increases, we have not obtained a shareholder approval as required under NASDAQ Listing Rules and followed in lieu home practice rules that do not require such approval. As of December 31, 2015, options to purchase 3,660,206 ordinary shares at an exercise prices which range from \$0.43 to \$12.45, the fair market value of Nova's stock based on the dates of grant, were granted under this plan of which, as of December 31, 2015, 1,444,805 options were exercised, 689,362 options were outstanding and exercisable, 458,231 options had been cancelled and 1,067,808 were outstanding and unvested. As of December 31, 2015, 644,094 RSU's had been issued, of which 376,623 had vested, 14,682 had been cancelled and 252,789 RSU's were outstanding.

On September 12, 2013, our shareholders (following an approval by or compensation committee and board of directors), approved the Company's compensation policy, which includes, among others, provisions relating to equity based compensation for Nova's executive officers. The compensation policy provides, among others, that: (i) such equity based compensation is intended to be in a form of share options and/or other equity based awards, such as RSUs, in accordance with the Company's equity incentive plan in place as may be updated from time to time; (ii) all equity-based incentives granted to executive officers will be subject to vesting periods in order to promote long-term retention of the awarded executive officers. Unless determined otherwise in a specific award agreement approved by the compensation committee and the board of directors, grants to executive officers (other than directors) will vest gradually over a period of between three to five years; and (iii) all other terms of the equity awards will be in accordance with Nova's incentive plans and other related practices and policies. The board of directors may, following approval by the compensation committee, extend the period of time for which an award is to remain exercisable and make provisions with respect to the acceleration of the vesting period of any executive officer's awards, including, without limitation, in connection with a corporate transaction involving a change of control, subject to any additional approval as may be required by the Companies Law. The compensation policy also provides that the equity based compensation will be granted from time to time and be individually determined and awarded according to the performance, educational background, prior business experience, qualifications, role and the personal responsibilities of the executive officer. The fair market value of the equity based compensation for the executive officers will be determined according to acceptable valuation practices at the time of grant.

Our equity based compensation policy, which was initially adopted in February 2007 and was most recently amended in February 2016, provides, among others, that the exercise price for each option will be equal to the average closing price of the Company's ordinary shares on NASDAQ during the 30-trading day period preceding the day of allocation.

For additional information regarding our employees' incentive plans, see Note 9 of our consolidated financial statements, contained elsewhere in this report.

Item 7. Major Shareholder and Related Party Transactions

A. Major Shareholders

The following table sets forth certain information regarding the beneficial ownership of our outstanding ordinary shares as of the dates indicated below for each person who we know beneficially owns five percent or more of the outstanding ordinary shares.

Beneficial ownership of shares is determined under rules of the SEC and generally includes any shares over which a person exercises sole or shared voting or investment power. Applicable percentages are based on 27,096,436 ordinary shares outstanding as of February 3, 2016.

<u>Name</u>	<u>Number of Ordinary Shares Beneficially Owned</u>	<u>Percentage of Ordinary Shares Beneficially Owned</u>
Itshak Sharon (Tshuva), Delek Group Ltd., The Phoenix Holdings Ltd. and Excellence Holdings Ltd. ⁽¹⁾	3,545,754	13%
Clal Insurance Enterprises Holdings Ltd. ⁽²⁾	2,040,835	7.5%
Migdal Insurance & Financial Holdings Ltd. ⁽³⁾	1,849,531	6.8%
Renaissance Technologies LLC and Renaissance Technologies Holdings Corporation ⁽⁴⁾	1,865,156	6.9%
Harel Insurance Investments & Financial Services Ltd. ⁽⁵⁾	1,395,800	5.1%
Yelin Lapidot Holdings Management Ltd. ⁽⁶⁾	1,470,988	5.4%

(1) Based upon information provided to the Company by Itshak Sharon (Tshuva), Delek Group Ltd., The Phoenix Holdings Ltd. and Excellence Holdings Ltd. on January 21, 2016 and consist of 273,849 shares held for their own account.

(2) The information is based upon Amendment No. 4 to Schedule 13G filed with the SEC by Clal Insurance Enterprises Holdings Ltd. and IDB Development Corporation Ltd. on February 16, 2016.

(3) The information is based upon Amendment to Schedule 13G filed with the SEC by Migdal Insurance & Financial Holdings Ltd. on February 10, 2016.

(4) The information is based upon Amendment No. 2 to Schedule 13G filed with the SEC by Renaissance Technologies LLC and Renaissance Technologies Holdings Corporation on February 11, 2016.

(5) The information is based upon Amendment No. 2 to Schedule 13G filed with the SEC by Harel Insurance Investments & Financial Services Ltd. on January 28, 2016.

(6) The information is based upon Amendment No. 1 to Schedule 13G filed with the SEC by Dov Yelin, Yair Lapidot and Yelin Lapidot Holdings Management Ltd. on February 2, 2016.

All the shareholders of the Company have the same voting rights.

To our knowledge, the significant changes in the percentage of ownership held by our major shareholders during the past three years have been: (i) the decrease in the percentage of ownership held by Clal Electronics Industries Ltd. and Clal Industries Ltd., following the sale of our ordinary shares in, 2013. As reported on Amendment No. 9 to Schedule 13D filed with the SEC on May 28, 2013, Clal Electronics Industries Ltd. and Clal Industries Ltd. beneficially owned 1,302,493 of our ordinary shares (then representing 4.87% of our issued and outstanding share capital); (ii) the increase in the percentage of ownership held by Clal Insurance Enterprises Holdings Ltd. above 5% in 2012, 2013, 2014 and 2015 and the decrease in the percentage of ownership in 2015; (iii) the increase in the percentage of ownership held as a group by Delek Group Ltd., The Phoenix Holdings Ltd. & Excellence Holdings Ltd. above 5% in 2012, 2013, 2014 and 2015 and the increase in the percentage of ownership in 2013 and 2014; (iv) the increase in 2013 and afterwards the decrease in 2014 in the percentage of ownership held by Invicta Capital Management, LLC. As reported on Amendment 8 to Schedule 13G filed with the SEC by Invicta Capital Management on February 14, 2014, Invicta Capital Management beneficially owned 1,157,376 of our ordinary shares (then representing 4.2% of our issued and outstanding share capital); (v) the decrease in the percentage of ownership held by Federated Investors, Inc., Voting Shares Irrevocable Trust, John F. Donahue and Rhodora J. Donahue (collectively, "Federated Investors"). As reported on Amendment 3 to Schedule 13G filed with the SEC by Federated Investors on June 7, 2013, Federated Investors beneficially owned 1,286,534 of our ordinary shares (then representing 4.82% of our issued and outstanding share capital); (vi) the increase in the percentage of ownership held by Migdal Insurance & Financial Holdings Ltd., above 5% in 2012, 2013, 2014 and 2015; (vii) the increase in the percentage of ownership held by Renaissance Technologies LLC and Renaissance Technologies Holdings Corporation above 5% in 2013, 2014 and 2015; (viii) the increase in the percentage of ownership held by Harel Insurance Investments & Financial Services Ltd., above 5% in 2014 and 2015; and (ix) the increase and then the decrease in the percentage of ownership held by Yelin Lapidot Holdings Management Ltd., above and then below 5% in 2014 and the increase in the percentage of ownership held by Yelin Lapidot Holdings Management Ltd., above 5% in 2015.

As of February 3, 2016, our ordinary shares were held by 15 registered holders (not including CEDE & Co.). Based on the information provided to us by our transfer agent, as of February 3, 2016, 13 registered holders were U.S. domicile holders and held approximately 0.16% of outstanding ordinary shares.

Control of Registrant

To the Company's knowledge, it is not owned or controlled by a foreign government. Except for the shareholders identified above owning more than five percent of the Company's ordinary shares, the Company has no knowledge of any corporation or other natural or legal person owning a controlling interest in the Company.

B. Related Party Transactions

In September 2013, our shareholders approved our compensation policy, which includes, among others, provisions relating to director's and officers' liability insurance. Pursuant to the compensation policy, we will provide "directors' and officers' liability insurance" for our directors and officers as follows: (i) the annual premium to be paid by us will not exceed 1.5% of the aggregate coverage of the insurance policy; (ii) the limit of liability of the insurer will not exceed the greater of \$40 million or 30% of our shareholders equity based on our most recent financial statements at the time of approval by the compensation committee; (iii) the insurance policy, as well as the limit of liability and the premium for each extension or renewal will be approved by the compensation committee (and, if required by law, by the board of directors) which will determine that the sums are reasonable considering our exposures, the scope of coverage and the market conditions and that the insurance policy reflects the current market conditions, and it will not materially affect our profitability, assets or liabilities. The compensation policy also provides that upon circumstances to be approved by the compensation committee (and, if required by law, by the board of directors), we will be entitled to enter into a "run off" insurance policy of up to seven years, with the same insurer or any other insurance, as follows: (i) the limit of liability of the insurer will not exceed the greater of \$40 million or 30% of our shareholders equity based on our most recent financial statements at the time of approval by the compensation committee; (ii) the annual premium will not exceed 300% of the last paid annual premium; (iii) the insurance policy, as well as the limit of liability and the premium for each extension or renewal will be approved by the compensation committee (and, if required by law, by the board of directors) which shall determine that the sums are reasonable considering our exposures covered under such policy, the scope of cover and the market conditions, and that the insurance policy reflects the current market conditions and that it will not materially affect our profitability, assets or liabilities. According to the compensation policy, we may extend the insurance policy in place to include cover for liability pursuant to a future public offering of securities as follows: (i) the additional premium for such extension of liability coverage will not exceed 50% of the last paid annual premium; and (ii) the insurance policy as well as the additional premium will be approved by the compensation committee (and if required by law, by the board of directors) which will determine that the sums are reasonable considering the exposures pursuant to such public offering of securities, the scope of cover and the market conditions and that the insurance policy reflects the current market conditions, and it does not materially affect our profitability, assets or liabilities. In November 2013, we obtained directors' and officers' liability insurance for our officers and directors with coverage in an aggregate amount of \$35,000,000 (including \$5,000,000 Side A DIC). This directors' and officers' liability insurances were presented and approved by the compensation committee and the board of directors. In February 2015, we obtained directors' and officers' liability insurance for our officers and directors with coverage in an aggregate amount of \$40,000,000 (including \$5,000,000 Side A DIC). This directors' and officers' liability insurance was presented and approved by our compensation committee.

In addition, we undertook to indemnify our officers and directors. On June 21, 2012, the shareholders at the annual general meeting approved an amended letter of indemnification to be given to our directors and officers. The amended letter of indemnification addresses recent amendments to the Companies Law and the Israeli Securities Law, and, among others, provides indemnification against monetary liability imposed in favor of injured parties in administrative procedures under the Israeli Securities Law and expenses related to such procedures, including reasonable litigation expenses and attorneys' fees. The aggregate indemnification amount that the Company can pay to all its officers and directors pursuant to these letters of indemnification will not exceed 25% of the Company's shareholders equity, according to the most recent consolidated financial statement prior to the date of indemnification payment. Prior to that, we undertook to indemnify our officers and directors up to an aggregate amount of \$10,000,000 or 25% of the Company's shareholders equity, the higher of the two. Pursuant to our compensation policy, which was approved by our shareholders in September 2013, we may indemnify our directors and officers to the fullest extent permitted by applicable law, for any liability and expense that may be imposed on the director or the officer, as provided in the indemnity agreement between us and such individuals, all subject to applicable law and our articles of association. Our compensation policy also provides that we may exempt our directors and officers in advance for all or any of their liability for damage in consequence of a breach of the duty of care vis-a-vis our company, to the fullest extent permitted by applicable law.

At our 2013 annual general meeting, our shareholders approved an extension to the exercise period of 326,662 options held by Mr. Gabi Seligsohn, our former President and Chief Executive Officer until the earlier of October 15, 2015 and the expiration date of any option according to its terms. This amendment is consistent with our compensation policy, which was approved by our shareholders at the same annual general meeting.

For information relating to options granted to officers and directors, see "Item 6E, Share Ownership" in this annual report on Form 20-F. For information regarding our compensation policy and compensation arrangements with our directors and executive officers (including our chairman and chief executive officer), please refer to Item 6B in this annual report on Form 20-F.

7.C Interest of Experts and Counsel

Not applicable.

Item 8. Financial Information

8.A Consolidated Statements and Other Financial Information

See "Item 17. Financial Statements" in this annual report on Form 20-F and pages F-1 through F-31.

Legal Proceedings

From time to time, we are a party to legal proceedings and claims in the ordinary course of business. We are not currently a party to any significant legal proceedings.

Dividend Policies

We anticipate that, for the foreseeable future, we will retain any earnings to support operations and to finance the growth and development of our business. Therefore, we do not expect to pay cash dividends for at least the next several years.

We obtained the status of "approved enterprise" under the Law for the Encouragement of Capital Investments, 1959, under which we may take advantage of certain tax exemptions. We may further obtain such status in the future. If we distribute a cash dividend from income which is tax exempt, we would generally have to pay corporate tax at a rate of up to 25% on the amount equal to the amount distributed and on the amount of corporate tax which would have been due in the absence of the tax exemption, in addition to withholding tax on such dividends paid. Such corporate tax liability may be reduced in certain circumstances under the Trapped Profits Law. For further description of the Trapped Profits Law and the conditions limiting our ability to declare and pay dividends see "Item 10E –Israeli Taxation" in this annual report on Form 20-F.

The distribution of dividends may also be limited by the Companies Law, which permits the distribution of dividends only out of retained earnings or earnings derived over the two most recent fiscal years, whichever is higher, provided that there is no reasonable concern that payment of a dividend will prevent a company from satisfying its existing and foreseeable obligations as they become due. Our Amended and Restated Articles of Association provide that dividends will be paid at the discretion of, and upon resolution by, our board of directors.

Export Sales

Substantially all of our products are sold to customers located outside Israel.

8.B Significant Changes

Not applicable.

Item 9. The Offer and Listing**9.A Offer and Listing Details**

The information presented in the table below presents, for the periods indicated, the reported high and low market prices on NASDAQ. The shares began trading on NASDAQ on April 11, 2000 at a price of \$18 per share. Our ordinary shares were registered for trading on the Tel Aviv Stock Exchange in 2002, and the table below presents, for the periods indicated, the reported high and low market prices on the Tel Aviv Stock Exchange.

NASDAQ

	Price per share (US\$)	
	High	Low
Yearly highs and lows		
2010	8.48	3.63
2011	11.79	5.11
2012	9.28	6.82
2013	10.31	7.68
2014	12.25	9.5
2015	13.34	9.43
Quarterly highs and lows		
2013		
First quarter	9.67	7.68
Second quarter	10.31	8.25
Third quarter	9.38	8.40
Fourth quarter	9.86	8.32
2014		
First quarter	12.25	9.82
Second quarter	12.13	9.63
Third quarter	12.19	9.77
Fourth quarter	10.83	9.5
2015		
First quarter	12.10	10.04
Second quarter	13.34	10.57
Third quarter	13.06	9.43
Fourth quarter	11.20	9.55
2016		
First quarter (until February 15, 2016)	10.11	8.57
Monthly highs and lows		
August 2015	12.44	10.13
September 2015	11.16	9.43
October 2015	10.6	9.55
November 2015	11.01	10.39
December 2015	11.20	9.74
January 2016	10.11	8.57
February 2016 (until February 15, 2016)	9.79	9.14

Tel Aviv Stock Exchange

	Price per share (NIS)	
	High	Low
Yearly highs and lows		
2010	30.50	14.50
2011	40.99	20.00
2012	36.58	26.04
2013	36.99	29.02
2014	42.55	33.99
2015	50.67	37.53
Quarterly highs and lows		
2013		
First quarter	35.70	29.02
Second quarter	36.99	31.01
Third quarter	34.39	30.05
Fourth quarter	34.15	29.70
2014		
First quarter	42.55	34.35
Second quarter	41.50	33.99
Third quarter	41.98	34.50
Fourth quarter	41.78	36.51
2015		
First quarter	48.50	39.77
Second quarter	50.67	40.93
Third quarter	48.96	37.66
Fourth quarter	43.89	37.53
2016		
First quarter (until February 15, 2016)	39.92	34.10
Monthly highs and lows		
August 2015	47.50	39.00
September 2015	43.26	37.66
October 2015	40.89	37.53
November 2015	43.89	40.00
December 2015	43.38	38.96
January 2016	39.92	34.10
February 2016 (until February 15, 2016)	38.47	35.00

9.B Plan of Distribution

Not applicable.

9.C Markets

Our ordinary shares are quoted on The NASDAQ Global Select Market under the symbol "NVMI" and on the Tel Aviv Stock Exchange.

9.D Selling Shareholders

Not applicable.

9.E Dilution

Not applicable.

9.F Expenses on the Issue

Not applicable.

Item 10. Additional Information

10.A Share Capital

Not applicable.

10.B Memorandum and Articles of Association

Set forth below is a summary of certain provisions of the Company's Amended and Restated Articles of Association, as adopted by the Company's shareholders on September 25, 2008, and Israeli law affecting shareholders of the Company. This summary does not purport to be complete and is qualified in its entirety by reference to our memorandum and Amended and Restated Articles of Association and such law. On September 25, 2008, our shareholders adopted the Amended and Restated Articles of Association of the Company, which were later amended on June 21, 2012 (for the purposes of this Item, the "Amended Articles").

Registration. The Company was incepted and registered with the Israeli Registrar of Companies on May 17, 1993, under registration number 51-181-246-3.

Purpose of the Company. The purposes of the Company, as provided by Article 4 of our Amended Articles, are (a) to invent, design, plan, develop, manufacture, market and trade in the field of measuring instruments in electronics, micro-electronics, medicine, chemistry, metallurgy, ceramics and any other field, (b) to initiate, participate, manage, execute, import and export any kind of project within the borders of the State of Israel and/or outside Israel, (c) to register patents, trademarks, trade names intellectual property rights marketing rights and any other right of any kind whatsoever, both in Israel and abroad and (d) to engage in any legal activity, both in Israel and abroad.

Approval of Related Party Transaction; Corporate Borrowings. The Companies Law requires that office holders of a company, including directors and executive officers, promptly disclose to the board of directors any personal interest they may have and all related material information known to them about any existing or proposed transaction with such company. The approval of the board of directors is required for 'non-extraordinary' transactions between a company and its office holders, or between a company and other persons in which an office holder has a personal interest, unless such company's articles of association provide otherwise. Under the Companies Law, a 'non-extraordinary' transaction between a company or between the company and a third party in which an office holder of a company has a personal interest, will require the approval of the board of directors or a committee authorized by the board of directors, unless such company's articles of association provide otherwise. Our Amended Articles do not provide otherwise, and therefore such transaction requires the approval of our board of directors. If a transaction is an "extraordinary transaction", it is subject to the approval of the audit committee prior to its approval by the board of directors. For information regarding the necessary approvals under the Companies Law for transactions with office holders and directors regarding their terms of engagement with the company, see "— Compensation of Officers and Directors" in this Item below.

In addition, an extraordinary transaction between a public company and a controlling shareholder (i.e. a shareholder who has the ability to direct the activities of a company, including a shareholder that owns 25% or more of the voting rights if no other shareholder owns more than 50% of the voting rights, but excluding a shareholder whose power derives solely from its position on the board of directors or any other position with the company), or in which a controlling shareholder has a personal interest, including a private placement in which the controlling shareholder has a personal interest, a transaction between a public company and a controlling shareholder, the controlling shareholders' relative, or entities under its control, directly or indirectly, with respect to services to be provided to the public company, and a transaction concerning the terms of compensation of the controlling shareholder or the controlling shareholder's relative, who is an office holder or an employee, requires the approval of the audit committee or, in some cases, the compensation committee (see "— Compensation of Officers and Directors" in this Item below), the board of directors and a majority of the shares voted by the shareholders of the company participating and voting on the matter in a shareholders' meeting. In addition, the shareholder approval must fulfill one of the following requirements: (i) the majority must include at least a majority of the shares of the voting shareholders who have no personal interest in the transaction (in counting the total votes of such shareholders, abstentions are not taken into account); or (ii) the total of opposition votes among the shareholders who have no personal interest in the transaction may not exceed 2% of the aggregate voting rights in the company. Any such transaction the term of which is more than three years, must be approved in the same manner every three years, unless the audit committee has determined that longer term is reasonable under the circumstances.

According to the Companies Law, if an extraordinary transaction is discussed by the board of directors or the audit committee, directors and office holders that have personal interest in the proposed transaction, may not participate in the discussion or vote. However, if the majority of the members of the audit committee or the board of directors (as applicable) have personal interest in the proposed transaction, then all directors (including those with personal interest) may participate in the discussion and vote, provided that in the event the majority of the members of the board of directors have personal interest in the transaction, said transaction will also be subject to the approval of the Company's shareholders meeting.

Under regulations promulgated under the Companies Law regarding payment of compensation to external directors, compensation of external directors is comprised of annual compensation and a per meeting payment ranging as stated in the regulations. These amounts are adjusted twice a year in accordance with the Israeli consumer price index. With regard to a company, which shares are traded in an exchange outside of Israel, and is subject to laws which impose upon the external directors duties which exceed the duties imposed upon them under Israeli law, the maximum amount payable to the external directors is approximately NIS 115,400 per annum and approximately NIS 3,470 per meeting, as adjusted for changes in the Israeli CPI twice a year. The approval of the shareholders of the company is required for such compensation, unless it is between the maximum and fixed amounts set forth in these regulations. If the shareholder's approval is required, it has to be done in the same manner as the approval of transactions with office holders and directors regarding their terms of engagement with the company (see "— Compensation of Officers and Directors" in this Item below). The compensation of external directors may also be linked to the compensation of other directors, subject to certain restrictions. Additionally, external directors may be entitled to compensation in stock (including by way of granting options to purchase the Company's stock), provided that such compensation is granted within the framework of a stock incentive plan applicable to all other directors and further provided the amount of stock granted or purchasable does not fall below the lowest amount granted to any other director and does not exceed the average amount of stock granted to all other directors. The regulations also allow an increased compensation to external directors that are considered "expert external directors" under the terms set forth in said regulations.

Share Capital. The Company currently has one class of ordinary shares, 0.01 NIS par value per share. The Amended Articles provide that the board of directors may decide on a distribution, subject to the provisions set forth under the Companies Law and the Amended Articles. Under the Companies Law, dividends may be paid out of net earnings, as calculated under that law, for the two years preceding the distribution of the dividend and retained earnings, provided that there is no reasonable concern that the dividend will prevent the company from satisfying its existing and foreseeable obligations as they become due. For more information, see the Company's balance sheet and the statement of shareholders' equity in the financial statements. Each ordinary share is entitled to one vote at all shareholders meetings.

Changes of Rights of Holders of the Shares. According to the Amended Articles, any change in the rights and privileges of the holders of any class of shares requires the approval of a class meeting of such class of shares by a simple majority (unless otherwise provided by the Companies Law or the regulations thereto or by the terms of issue of the shares of that class).

Shareholders Meetings. An annual meeting should be convened at least once every calendar year, and no later than 15 months after the preceding annual meeting, to review the Company's financial statements and to transact any other business required pursuant to the Amended Articles or to the Companies Law, and any other matter which the board of directors places on the agenda of the annual meeting, at a time and place that the board of directors will determine. A special meeting may be called by the board of directors and at the demand of any of the following: two directors or one-quarter of the directors then serving; one or more shareholders who hold at least five per cent of the issued and outstanding capital stock and at least one percent of the voting rights in the Company; or one or more shareholders who hold at least five percent of the voting rights in the Company.

According to the Amended Articles, the quorum required for an ordinary meeting of shareholders is at least two shareholders present in person or by proxy who together hold or represent in the aggregate more than one third (33.33%) of the voting power. A meeting adjourned for lack of a quorum is reconvened one day thereafter at the same time and place or to such other day, time and place as our board of directors may indicate in a notice to the shareholders. At the reconvened meeting, the required quorum consists of any number of members present in person or by proxy, regardless of the number of shares represented. The Companies Law and regulations determine that prior notice of no less than 21 days should be given to the company's shareholders, prior to convening a meeting. In the event that the issue to be resolved is an issue subject to the Israeli proxy rules, a notice of no less than 35 days should be given to the company's shareholders. In some cases a prior notice of not less than 14 days may be given to the company's shareholders.

Subject to anti-terror legislations, there are no limitations on the rights of non-resident or foreign owners to hold or vote ordinary shares imposed under Israeli law or under the Amended Articles.

Board of Directors. The Amended Articles provide that directors may be elected either at our annual general meeting or a special meeting of shareholders by a vote of the holders of more than 50% of the total number of votes represented at such meeting. In addition, our board of directors is authorized to appoint directors, at its discretion, provided that the total number of directors does not exceed the maximum number of directors permitted by the Amended Articles. Each of our directors (except our external directors) holds office until the next annual general meeting of shareholders. The Companies Law provides that a person, who is, directly or indirectly subordinated to the chief executive officer of a public company, may not serve as the chairman of its board of directors. In addition, neither the chief executive officer nor his relative is eligible to serve as chairman of the board of directors (and vice versa), unless such nomination was approved by a majority of the company's shareholders for a term not exceeding three years, and either: (i) such majority included the majority of the voting shareholders (shares held by abstaining shareholders are not considered) which are not controlling shareholders and have not personal interest regarding the decision; or (ii) the aggregate number of shares voting against the proposal did not exceed 2% of company voting shareholders. The term can be extended for additional three year terms, in the same manner.

The Companies Law provides that Israeli public companies must have at least two external directors, and following Amendment 27 any and all of such external directors are no longer required to be Israeli residents in case of a company listed on a foreign stock exchange (such as our Company). External directors may be elected at our annual general meeting or a special meeting of our shareholders in a number and manner stipulated by the Companies Law, i.e., for an initial term of three years, which may be extended for two additional three-year terms (provided that the re-election for additional term was presented by the external director whose tenure is about to end or by the board of directors or by one or more shareholders that own, in the aggregate, 1% or more of the Company's outstanding share capital), and thereafter for additional three-year terms, if both the audit committee and the board of directors confirm that in light of the expertise and contribution of the external director, the extension of such external director's term would be in the interest of the Company. The election and re-election of external directors, requires the affirmative vote of a majority of the shares and in addition either that (i) a majority of the shares held by shareholders who are not controlling shareholders or a have personal interest in the election (other than a personal interest unrelated to the controlling shareholders) attending in person or represented by proxy have voted in favor of the proposal (shares held by abstaining shareholders are not be considered) or (ii) the aggregate number of shares voting against the proposal held by such shareholders has not exceeded 2% of the company's voting shareholders. External directors may be removed from office only under the following circumstances: (i) an external director ceases to meet the legal requirements for appointment as an external director or breaches his or her fiduciary duty to the company and a resolution to remove such external director is made by the shareholders at a meeting at which such external director is granted a reasonable opportunity to express his position (such a resolution requires the same majority of votes that elected the external director); (ii) an external director ceases to meet the legal requirements for appointment as an external director or breaches his or her fiduciary duty to the Company and a court orders that such director be removed; or (iii) an external director is unable to perform his or her duties or is convicted of certain felonies and a court orders that such director be removed. An external director is qualified for nomination as an external director, only if he/she has either professional qualifications or accounting and financial expertise. At least one of the external directors must have accounting and financial expertise. However, a company whose shares are traded in certain exchanges outside of Israel, including The NASDAQ Global Select Market, such as our company, is not required to nominate at least one external director who has accounting and financial expertise, as long as another independent director for audit committee purposes who has such expertise serves on the board of directors pursuant to the applicable foreign securities laws. In such case all external directors will have professional qualification.

Regulations adopted under the Companies Law provide that a director with accounting and financial expertise is a director that due to his education, experience and skills has high expertise and understanding in business-accounting matters and financial statements in a way that enables him to deeply understand the financial statements of the company and to facilitate discussion with respect to the way the financial data should be presented. The assessment of the accounting and financial expertise of a director should be made by the board of directors, who has to take into consideration, *inter alia*, the education, experience and knowledge of the director in the following subjects:

- (1) Accounting matters and audit accounting matters, which are typical to the sector in which the company works and of companies with the same size and complexity as of the company;
- (2) The duties and obligations of the auditing accountant; and
- (3) Preparing of financial statements and their approval according to applicable law, including securities law.

The regulations also provide that a director with professional qualifications is a director who meets one of the following conditions:

- (1) A holder of an academic degree in one of the following: economics, business administration, accounting, law, or public administration;
- (2) A holder of another academic degree or is otherwise a graduate of higher education in a major field of business of the company or in other field which is relevant to the role; and
- (3) He has experience of at least five years in one of the following, or that he has cumulative experience of at least five years in two or more of the following:
 - (a) A senior position in the business management of a corporation which has a significant scope of business;
 - (b) A senior public position or in a senior role in the public service; or
 - (c) A senior position in the company's major fields of business.

According to the Companies Law, the board of directors of a public company must establish the minimum number of board members that are to have accounting and financial expertise while considering, *inter alia*, the nature of the company, its size, the scope and complexity of its operations and the number of directors stated in the Amended Articles.

In April 2006, our board of directors resolved that the minimum number of board members that need to have accounting and financial expertise, including the external director with accounting and financial expertise, is one (1).

Our board of directors determined that each of Ms. Dafna Gruber and Ms. Zehava Simon has accounting and financial expertise as described in the regulations promulgated pursuant to the Companies Law, and that, therefore, the requirements of the minimum number of board members that need to have accounting and financial expertise, as set by the board of directors, has been met.

Under the Companies Law, the majority of the members of the audit committee must be independent directors. A public company may classify a director as independent only if (i) the audit committee has determined that he or she is qualified to serve as an external director (with the exception that such director does not have to have professional qualifications or accounting and financial expertise in order to serve as an independent director), and (ii) he or she is not serving as a director in the company for more than consecutive nine years (only a period of two or more years, in which such person did not serve as a director in the company, will be deemed to discontinue the nine year sequence). A majority of our board members are independent, in accordance with NASDAQ Listing Rules and the Companies Law.

Compensation of Officers and Directors. Under the Companies Law, Israeli public companies are required to establish a compensation committee and adopt a policy regarding the compensation and terms of employment of their directors and officers. For information on the composition, roles and objectives of the compensation committee pursuant to the Companies Law and our compensation committee charter, see "Item 6C. Board Practices –Board of Directors' Committees – Compensation Committee" in this annual report on Form 20-F.

Pursuant to the Companies Law, the compensation policy must be approved by the company's board of directors after reviewing the recommendations of the compensation committee. The compensation policy also requires the approval of the general meeting of the shareholders, which approval must satisfy one of the following (the "Majority Requirement"): (i) the majority should include at least a majority of the shares of the voting shareholders who are non-controlling shareholders or do not have a personal interest in the approval of the compensation policy (in counting the total votes of such shareholders, abstentions are not be taken into account) or (ii) the total number of votes against the proposal among the shareholders mentioned in paragraph (i) does not exceed two percent of the aggregate voting power in the company. Under certain circumstances and subject to certain exceptions, the board of directors may approve the compensation policy despite the objection of the shareholders, provided that the compensation committee and the board of directors determines that it is for the benefit of the company, following an additional discussion and based on detailed arguments.

The Companies Law provides that the compensation policy must be re-approved every three years, in the manner described above. Moreover, the board of directors is responsible for reviewing from time to time the compensation policy and deciding whether or not there are any circumstances that require an adjustment to the company's compensation policy. When approving the compensation policy, the relevant organs must take into consideration the goals and objectives listed in the Companies Law, and include reference to specific issues listed in the Companies Law. Such issues include, among others (the "Compensation Policy Mandatory Criteria"): (i) the relevant person's education, qualifications, professional experience and achievements; (ii) such person's position within the company, the scope of his responsibilities and previous compensation arrangements with the company; (iii) the proportionality of the employer cost of such person in relation to the employer cost of other employees of the company, and in particular, the average and median pay of other employees in the company, including contract workers, and the impact of the differences between such person's compensation and the other employees' compensation on the labor relations in the company; (iv) the authority, at the board of director's sole discretion, to lower any variable compensation components or set a maximum limit (cap) on the actual value of the non-cash variable components, when paid; and (v) in the event that the terms of engagement include any termination payments - the term of employment of the departing person, the company's performance during that term, and the departing person's contribution to the performance of the company.

In addition, the Companies Law provides that the following matters must be included in the compensation policy (the "Compensation Policy Mandatory Provisions"): (i) the award of variable components must be based on long term and measurable performance criteria (other than non-material variable components, which may be based on non-measurable criteria taking into account the relevant person's contribution to the performance of the company); (ii) the company must set a ratio between fixed and variable pay, set a cap on the payment of any cash variable compensation components as of the payment of such components, and set a cap on the maximum cash value all non-cash variable components as of their grant date; (iii) the compensation policy must include a provision requiring the relevant person to return to the company any compensation that was awarded on the basis of financial figures that were subsequently restated; (iv) equity based variable compensation components should have an appropriate minimum vesting periods, which should be linked to long term performance objectives; and (v) the company must set a clear limit on termination payments.

Pursuant to the Companies Law, any transaction with an office holder (except directors and the chief executive officer of the company) with respect to such office holder's compensation arrangements and terms of engagement, requires the approval of the compensation committee and the board of directors. Such transaction must be consistent with the provisions of the company's compensation policy, provided that the compensation committee and the board of directors may, under special circumstances, approve such transaction that is not in accordance with the company's compensation policy, if both of the following conditions are met: (i) the compensation committee and the board of directors discussed the transaction in light of the roles and objectives of the compensation committee (see "Item 6C. Board Practices –Board of Directors' Committees – Compensation Committee" in this annual report on Form 20-F) and after taking into consideration the Compensation Policy Mandatory Criteria and including in such transaction the Compensation Policy Mandatory Provisions; and (ii) the company's shareholders approved the transaction, provided that in public companies the approval must satisfy the Majority Requirement. Notwithstanding the above, the compensation committee and the board of directors may, under special circumstances, approve such transaction even if the shareholders' meeting objected to its approval, provided that (i) both the compensation committee and the board of directors re-discussed the transactions and decided to approve it despite the shareholder's objection, based on detailed arguments, and (ii) the company is not a 'Public Pyramid Held Company'. For the purpose hereof, a "Public Pyramid Held Company" is a public company that is controlled by another public company (including companies that issued only debentures to the public), which is also controlled by another public company (including companies that issued only debentures to the public) that has a controlling shareholder.

Transactions between public companies (including companies that have issued only debentures to the public) and their chief executive officer, with respect to his or her compensation arrangement and terms of engagement, require the approval of the compensation committee, the board of directors and the shareholder's meeting, provided that the approval of the shareholders' meeting must satisfy the Majority Requirement. Notwithstanding the above, the compensation committee and the board of directors may, under special circumstances, approve such transaction with the chief executive officer even if the shareholders' meeting objected to its approval, provided that (i) both the compensation committee and the board of directors re-discussed the transactions and decided to approve it despite the shareholder's objection, based on detailed arguments, and (ii) the company is not a Public Pyramid Held Company. Such transaction with the chief executive officer must be consistent with the provisions of the company's compensation policy, provided that the compensation committee and the board of directors may, under special circumstances, approve such transaction that is not in accordance with the company's compensation policy, if both of the following conditions are met: (i) the compensation committee and the board of directors discussed the transaction in light of the roles and objectives of the compensation committee (see "Item 6C. Board Practices –Board of Directors' Committees – Compensation Committee" in this annual report on Form 20-F) and after taking into consideration the Compensation Policy Mandatory Criteria and including in such transaction the Compensation Policy Mandatory Provisions; and (ii) the company's shareholders approved the transaction, provided that in public companies the approval must satisfy the Majority Requirement. In addition, the compensation committee may determine that such transaction with the CEO does not have to be approved by the shareholders of the company, provided that: (i) the chief executive officer is independent based on criteria set forth in the Companies Law; (ii) the compensation committee determined, based on detailed arguments, that bringing the transaction to the approval of the shareholders may compromise the chances of entering into the transaction; and (iii) the terms of the transaction are consistent with the provisions of the company's compensation policy. Under the Companies Law, non-material amendments of transactions relating to the compensation arrangement or terms of engagement of office holders (including the chief executive officer), require only the approval of the compensation committee.

With respect to transactions relating to the compensation arrangement and terms of engagements of directors in public companies (including companies that have issued only debentures to the public), the Companies Law provides that such transaction is subject to the approval of the compensation committee, the board of directors and the shareholders' meeting. Such transaction must be consistent with the provisions of the company's compensation policy, provided that the compensation committee and the board of directors may, under special circumstances, approve such transaction that is not in accordance with the company's compensation policy, if both of the following conditions are met: (i) the compensation committee and the board of directors discussed the transaction in light of the roles and objectives of the compensation committee (see "Item 6C. Board Practices –Board of Directors' Committees – Compensation Committee" in this annual report on Form 20-F) and after taking into consideration the Compensation Policy Mandatory Criteria and including in such transaction the Compensation Policy Mandatory Provisions; and (ii) the company's shareholders approved the transaction, provided that in public companies the approval must satisfy the Majority Requirement.

On September 12, 2013 (at our 2013 annual general meeting), our shareholders approved the company's compensation policy. The full text of the compensation policy was included as Exhibit A to the proxy statement attached to the Company's report on Form 6-K furnished to the Securities and Exchange Commission on August 12, 2013.

On January 11, 2013, the SEC approved the amended NASDAQ listing standards on compensation committees and advisers. Among others, the amended NASDAQ listing standards include provisions relating to the establishment of a compensation committee, the compensation committee charter, compensation committee members' independence requirements, and arrangements relating to advisers retained by the compensation committee. Under the amended rules, the compensation committee adviser and compensation committee authority requirements become effective on July 1, 2013. However, NASDAQ listed companies will have until their first annual meeting after January 15, 2014, or, if earlier, October 31, 2014, to comply with other standards, including the compensation committee member independence standards and the requirement to have a compensation committee and charter (including any charter amendment to reflect the compensation committee authority requirements). NASDAQ listed companies must certify compliance with the listing standards within 30 days after the applicable implementation deadline. In addition, under the amended rules, foreign private issuers are exempt from compliance with the amended listing standards if home country practice is followed and the listed company discloses with the SEC the reasons why it does not have an independent compensation committee. Our compensation committee charter was updated in accordance with said amendments.

The Israeli parliament (the Knesset) has enacted the Promotion of Competition and Reduction of Centralization Law, 5774-2013 (the "Centralization Law"), which, among others, imposes new constraints and stricter corporate governance rules on pyramid conglomerates, and forces separation between equity holdings in significant non-financial corporate businesses and equity holdings in significant financial businesses. The Centralization Law has entered into force on December 11, 2013.

Changes in Capital. Our share capital may be increased or decreased by a vote of our shareholders in accordance with the Companies Law.

Acquisition of a Controlling Stake. According to the Companies Law, an acquisition pursuant to which a purchaser will hold a "controlling stake", that is defined as 25% or more of the voting rights if no other shareholder holds a controlling stake, or an acquisition pursuant to which such purchaser will hold more than 45% of the voting rights of the company if no other shareholder owns more than 45% of the voting rights, may not be performed by way of market accumulation, but only by way of a special tender offer (as defined in the Companies Law) made to all of the company's shareholders on a pro rata basis. A special tender offer may not be consummated unless a majority of the shareholders who announced their stand on such offer have accepted it (in counting the total votes of such shareholders, shares held by the controlling shareholders, shareholders who have personal interest in the offer, shareholders who own 25% or more of the voting rights in the company, relatives or representatives of any of the above or the bidder and corporations under their control, shall not be taken into account). A shareholder may be free to object to such an offer without such objection being deemed as a waiver of his right to sell its respective shares if the transaction is approved by a majority of the company's shareholders despite his objection. Shares purchased not in accordance with those provisions will become "dormant shares" and will not grant the purchaser any rights so long as they are held by the purchaser.

Acquisition. A person wishing to acquire shares or a class of shares of an Israeli public company and who would, as a result, own more than 90% of the target company's issued and outstanding share capital or of certain class of its shares, is required by the Companies Law to make a full tender offer (as defined in the Companies Law) to all of the company's shareholders for the purchase of all of the issued and outstanding shares of the company or class of shares. If either (i) the shareholders who do not accept the offer hold, in the aggregate, less than 5% of the issued and outstanding share capital of the company or of the applicable class, and more than half of the shareholders who do not have a personal interest in the offer accept the offer, or (ii) the shareholder who do not accept the offer hold less than 2% of the issued and outstanding share capital of the company or of the applicable class, then all of the shares that the acquirer offered to purchase will be transferred to the acquirer by operation of law. However, a shareholder that had its shares so transferred, whether or not it accepted the tender offer (unless otherwise provided in the offering memorandum), may, within six (6) months from the date of acceptance of the tender offer, petition the court to determine that the tender offer was for less than fair value and that the fair value should be paid as determined by the court. If the shareholders who did not accept the tender offer hold at least 5% of the issued and outstanding share capital of the company or of the applicable class of shares, the acquirer may not acquire shares of the company that will increase its holdings to more than 90% of the company's issued and outstanding share capital or of the applicable class from shareholders who accepted the tender offer.

The Companies Law provides that corporate mergers require the approval of both companies' boards of directors and shareholders. In the event, however, that shares of the target company are held by the acquiring company or by a person holding 25% or more of any type of controlling means of the acquiring company, the merger will not be approved if a majority of the shareholders of the target company attending and voting at the meeting at which the merger is considered (without taking into account, for that purpose, the shares held by the acquiring company or by a person holding 25% or more of any type of controlling means of the acquiring company) object to and do not vote in favor of the merger. If a person holds 25% or more of any type of controlling means of more than one merging company, the same provisions shall apply with regard to the shareholders' vote with respect to each such company. Upon the request of a creditor of either party to the proposed merger, the court may delay or prevent the merger if the court concludes that there exists a reasonable concern that as a result of the merger the surviving company will be unable to satisfy the target company's obligations. Furthermore, a merger may not close unless at least 30 days have passed from the time that the general meeting of each of the merging companies was held and at least 50 days have passed from the date on which the merger proposal was sent to the Israeli Registrar of Companies.

In addition, the Companies Law preserves provisions of its predecessor, the Companies Ordinance, dealing with arrangements between a company and its shareholders. These arrangements may be used to effect squeeze out transactions in which the target company becomes a wholly owned subsidiary of the acquirer. These provisions generally require that the merger be approved by at least 75% of the shares of participating shareholders and a majority of the shareholders voting at a shareholders meeting. In addition to shareholder approval, court approval of the transaction is required, which entails further delay.

A merger, the acquisition of a controlling stake or any transaction in which all or substantially all the assets of a company are de facto transferred to another company, may require the approval of the Israeli Commissioner of Restrictive Trade Practices, in the event that the aggregate annual sales volume in Israel of all the companies which are parties to such transaction in the year preceding the merger, exceeds NIS 150 million (approximately \$39.6 million), adjusted annually to the Israeli consumer price index, and the annual sales volume in Israel of at least two of the companies which are parties to such transaction exceeds NIS 10 million each (approximately \$2.64), and also if after the consummation of such transactions, the joint market, in Israel, or at any identified geographic part of Israel will be in excess of 50% with respect to such products and services.

Indemnification. On June 21, 2012, our shareholders approved amendments to the Company's Amended and Restated Articles of Association, addressing among others recent amendments to the Companies Law and the Israeli Securities Law, authorizing the grant by the Company of indemnification as well as against monetary liability imposed in favor of injured parties in an administrative procedures under the Israeli Securities Law and expenses related to such procedures, including reasonable litigation expenses and attorneys' fees.

10.C Material Contracts

In April 2015, we consummated the acquisition of 100% of the equity of ReVera Incorporated, a privately held company headquartered in Santa Clara, California for \$46.5 million in cash from existing funds, on a cash free, debt free basis. The Agreement and Plan of Merger dated March 11, 2015 by and among Nova Measuring Instruments Ltd., ReVera Incorporated, Neptune Acquisition Inc., and the Representative (named therein) is filed as exhibit to this annual report on Form 20-F.

10.D Exchange Controls

Israeli law and regulations do not impose any material foreign exchange restrictions on non-Israeli holders of our ordinary shares.

Dividends, if any, paid to holders of our ordinary shares, and any amounts payable upon our dissolution, liquidation or winding up, as well as the proceeds of any sale in Israel of our ordinary shares to an Israeli resident, may be paid in non-Israeli currency or, if paid in Israeli currency, may be converted into freely repatriable dollars at the rate of exchange prevailing at the time of conversion.

10.E Taxation

Israeli Taxation

The following is a summary of the material Israeli tax laws applicable to us, and some Israeli Government programs benefiting us. This section also contains a discussion of some Israeli tax consequences to persons owning our ordinary shares. This summary does not discuss all the aspects of Israeli tax law that may be relevant to a particular investor in light of his or her personal investment circumstances or to some types of investors subject to special treatment under Israeli law. Examples of this kind of investor include traders in securities or persons that own, directly or indirectly, 10% or more of our outstanding voting capital, all of whom are subject to special tax regimes not covered in this discussion. Some parts of this discussion are based on a new tax legislation which has not been subject to judicial or administrative interpretation. The discussion should not be construed as legal or professional tax advice and does not cover all possible tax considerations.

SHAREHOLDERS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE ISRAELI OR OTHER TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR ORDINARY SHARES, INCLUDING, IN PARTICULAR, THE EFFECT OF ANY FOREIGN, STATE OR LOCAL TAXES.

General Corporate Tax Structure in Israel

Israeli companies are generally subject to corporate tax on their taxable income at the rate of 25% for the 2016 tax year.

Income Tax Regulations (Rules on Bookkeeping by Foreign Invested Companies and Certain Partnerships and Determination of their Taxable Income), 1986

As a "foreign invested company" (as defined in the Israeli Law for the Encouragement of Capital Investments-1959), the Company's management has elected to apply Income Tax Regulations (Rules for Maintaining Accounting Records of Foreign Invested Companies and Certain Partnerships and Determining Their Taxable Income) - 1986. Accordingly, its taxable income or loss is calculated in US Dollars.

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

Tax benefits prior to the 2005 Amendment

The Law for the Encouragement of Capital Investments, 1959, generally referred to as the "Investments Law", provides that a capital investment in eligible facilities may, upon application to the Investment Center of the Ministry of Economy and Industry of the State of Israel the ("Investment Center"), be granted the status of an Approved Enterprise. Each certificate of approval for an Approved Enterprise relates to a specific investment program delineated both by its financial scope, including its capital sources, and by its physical characteristics, e.g., the equipment to be purchased and utilized pursuant to the program.

A company owning an Approved Enterprise is eligible for a combination of grants and tax benefits (the "Grant Track"). The tax benefits under the Grant Track include, among others, accelerated depreciation and amortization for tax purposes. The benefit period is ordinarily seven years commencing with the year in which the Approved Enterprise first generates taxable income. The benefit period is limited to 12 years from the earlier of the commencement of production by the Approved Enterprise or 14 years from the date of approval of the Approved Enterprise.

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

A company which qualifies as a foreign investment company (a "FIC") will be eligible for a three-year extension of tax benefits following the expiration of the seven-year period referenced above. In addition, in the event that the level of foreign ownership in an Approved Enterprise reaches 49% or higher, the corporate tax rate applicable to income earned from the Approved Enterprise is reduced as follows:

% of Foreign Ownership	Tax Rate
49% or more but less than 74%	20%
74% or more but less than 90%	15%
90% or more	10%

A company qualifies as a FIC if (i) it has received at least NIS 5 million in loans (for a minimum period of three years) or as investment in share capital from a foreign resident who is consequently entitled to at least 25% of the "rights" in the company (consisting of profit sharing rights, voting rights and appointment of directors), or (ii) if a foreign resident has purchased the company's shares from an existing shareholder, consequently entitling the foreign shareholder to at least 25% of such rights in the company provided that the company's outstanding and paid-up share capital exceeds NIS 5 million.

Additionally, a company owning an Approved Enterprise on or after April 1, 1986, may elect to forgo its entitlements to grants and tax benefits under the Grant Track and apply for alternative package of tax benefits for a benefit period of between seven and ten years (the "Alternative Track"). Under the Alternative Track, a company's undistributed income derived from the Approved Enterprise will be exempt from corporate tax for a period of between two and ten years, starting from the first year the company derives taxable income under the Approved Enterprise program. The length of time of this exemption will depend on the geographic location of the Approved Enterprise within Israel and the type of the approved enterprise. After the exemption period lapses, the company subject to tax at a tax rate of 25% (or a lower rate in the case of a FIC) for the remainder of the benefit period.

The Company has elected to be taxed under the Alternative Track. A company that has elected the Alternative Track and subsequently pays a dividend out of income derived from the Approved Enterprise during the tax exemption period will be subject to corporate tax on the amount which is determined by the distributed amount grossed up with the effective corporate tax rate which would have been applied had the company not elected the Alternative Track, which is as referred above ranged between 10%-25%. Under the Investment Law, the transfer of funds from the Company to shareholders and other related parties may be deemed to be regarded as a dividend distribution for this purpose in certain circumstances. Dividends paid out of income derived from an Approved Enterprise are generally subject to withholding tax at source at the reduced rate of 15%, if the dividend is distributed during the tax exemption period or within 12 years thereafter. In the event, however, which the company qualifies as a FIC, there is no such time limitation.

Under the Alternative Track, dividends paid by a company are considered to be attributable to income received from the entire company and the company's effective tax rate is the result of a weighted average of the various applicable tax rates, excluding any tax-exempt income. Under the Investments Law, a company that has elected the Alternative Track is not obliged to distribute retained profits, and may generally decide from which year's profits to declare dividends

We currently intend to reinvest any income derived from our Approved Enterprise program and not to distribute such income as a dividend.

Tax benefits under the 2005 Amendment

An amendment to the Investments Law, which effective as of April 1, 2005, has changed certain provisions of the Investments Law. An eligible investment program under the Amendment qualifies for benefits as a "Benefited Enterprise" (rather than as an Approved Enterprise which status is still applicable for investment programs approved prior to December 31, 2004 and/or investment programs under the Grant Track). According to the amendment, only Approved Enterprises receiving cash grants require the prior approval of the Investment Center.

The duration of the tax benefits described herein is limited to the earlier of seven or ten years (depending on the geographic location of the Approved Enterprise within Israel) from the Commencement Year (as described below) or 12 years from the first day of the Year of Election. Commencement Year is defined as the later of the first tax year in which a company had derived liable income for tax purposes from the Benefited Enterprise, or the year of election which is the year in which a company requested to have the tax benefits apply to the Benefited Enterprise. The tax benefits granted to a Benefited Enterprise are determined, depending on the geographic location of the Benefited Enterprise within Israel, according to one of the following, which may be applicable to us:

(i) Similar to the currently available Alternative Track, exemption from corporate tax may be available on undistributed income for a period of two to ten years, depending on the geographic location of the Benefited Enterprise within Israel, and a reduced corporate tax rate of 10% to 25% for the remainder of the benefit period, depending on the level of foreign investment in each year. Benefits may be granted for a term of seven to ten years, depending on the level of foreign investment in the company. If the company pays a dividend out of income derived from the Benefited Enterprise during the tax exemption period, such income will be subject to deferred corporate tax with respect to the amount distributed (grossed up with the effective corporate tax rate which would have applied had the company not enjoyed the exemption) at the rate which would have applied had such company had the status of a Benefited Enterprise. The company is required to withhold tax on such distribution at a rate of 15%; or

(ii) A special track which enables companies owning facilities in certain geographical locations in Israel to pay corporate tax at a flat rate of 11.5% on income the Benefited Enterprise (the "Ireland Track"). The benefit period is for ten years. Upon payment of dividends, the company is required to withhold tax on such dividend at a rate of 15% for Israeli residents and at a rate of 4% for foreign residents.

Generally, a company that is Abundant in Foreign Investment (owned by at least 74% foreign shareholders and has undertaken to invest a minimum sum of \$20 million in the Benefited Enterprise) is entitled to an extension of the benefit period by an additional five years, depending on the rate of its income that is derived in foreign currency.

As a result of the amendment, tax-exempt income generated under the provisions of the Investments Law, as amended, will subject us to taxes upon distribution or liquidation and we may be required to record deferred tax liability with respect to such tax-exempt income.

Currently, we have three Approved Enterprise plans under the Investments Law, which entitle us to certain tax benefits. Each of these Approved Enterprises is under the Alternative Track, which allows us, inter alia, a two year period of exemption of taxes for undistributed income pertaining to these enterprises. Some of these plans have already expired (before their benefits were utilized). In 2011, based on Company investments in property and equipment in the years 2009 and 2008, the Company submitted a request to approve a new plan (fourth plan) as a Benefited Enterprise in accordance with the Amendment to the Investment Law. The commencing year was 2010. The expected expiration year is 2021.

Starting 2014, the Company has earnings attributable to Approved Enterprise programs, and it has begun utilizing the two years exemption of corporate tax, as discussed above.

Tax benefits under the 2011 Amendment

On December 29, 2010, the Israeli Parliament approved an amendment to the Investment Law (the "2011 Amendment"). The 2011 Amendment significantly revising the tax incentive regime in Israel, commencing on January, 1 2011.

The 2011 Amendment introduced a new status of "Preferred Enterprise", replacing the existed status of "Benefited Enterprise". Similarly to "Beneficiary Company", a Preferred Company is an industrial company meeting certain conditions (including a minimum threshold of 25% export). However, under the 2011 Amendment the requirement for a minimum investment in productive assets in order to be eligible for the benefits granted under the Investments Law as with respect to "Benefited Enterprise" was cancelled.

A Preferred Company is entitled to a reduced flat tax rate with respect to the income attributed to the Preferred Enterprise, at the following rates:

Tax Year	Development Region "A"	Other Areas within Israel
2011-2012	10%	15%
2013	7%	12.5%
2014 onwards ¹	9%	16%

In addition, the 2011 Amendment introduced a new status of "Special Preferred Company" which is an Industrial company meeting, in addition to the conditions prescribed for "Preferred Company" certain additional conditions (including that the total Preferred Enterprise income is at least NIS 1.5 billion in the given tax year). The tax rate applicable for a period of 10 years to income generated by such an enterprise will be reduced to 5%, if located in Development Region "A", or to 8%, if located in other area within the State of Israel.

Dividends distributed from income which is attributed to a "Preferred Enterprise" or a "Special Preferred Enterprise" will be subject to withholding tax at source at the following rates: (i) Israeli resident corporations – 0%, (ii) Israeli resident individuals – 20% (iii) non-Israeli residents - 20%, subject to a reduced tax rate under the provisions of an applicable double tax treaty.

The 2011 Amendment also revised the Grant Track to apply only to the approved programs located in Development Region "A" and shall provide not only cash grants (as prior to the Amendment) but also the granting of loans. The rates for grants and loans shall not be fixed but up to 20% of the amount of the approved investment (may be increased with additional 4%). In addition, a company owning a Preferred Enterprise under the Grant Track may be entitled also to the tax benefits which are prescribed for a Preferred Company.

The provisions of the 2011 Amendment do not apply to existing "Benefited Enterprises" or "Approved Enterprises", which will continue to be entitled to the tax benefits under the Investment Law, as has been in effect prior to the New Amendment, unless the company owning such enterprises had made an election to apply the provisions of the 2011 Amendment (such election cannot be later rescinded), which is to be filed with the Israeli Tax Authority, not later than the date prescribed for the filing of the company's annual tax return for the respective year,. A company owning a Benefited Enterprise or Approved Enterprise which made such election by July 30, 2015, will be entitled to distribute income generated by the Approved/Benefited Enterprise to its Israeli corporate shareholders tax free.

¹ In August 2013, the Israeli Parliament (the Knesset) approved an amendment to the Investments Law pursuant to which the previously scheduled gradual reduction in the tax rates applicable to Preferred Enterprises would be repealed as of 2014 to the tax rates reflected on the above table

Until the end of 2015, we did not utilize tax benefits related to Preferred Enterprises. Starting 2016, we expect to start utilizing such benefits, with a related tax rate of 16%.

Law for the Encouragement of Industry (Taxes), 1969

We believe that we qualify as an “Industrial Company” within the meaning of the Law for the Encouragement of Industry (Taxes), 1969, or the Industry Encouragement Law. The Industry Encouragement Law defines “Industrial Company” as an Israeli resident company, of which 90% or more of its income in any tax year (exclusive of income from certain defense loans), capital gains, interest and dividends is generated from an “Industrial Enterprise” that it owns. An “Industrial Enterprise” is defined as an enterprise whose principal activity in a given tax year is industrial manufacturing.

An Industrial Company is entitled to certain tax benefits, including: (i) a deduction of the cost of purchases of patents, know-how and certain other intangible property rights (other than goodwill) used for the development or promotion of the Industrial Enterprise over a period of eight years, beginning from the year in which such rights were first used, (ii) the right to elect to file consolidated tax returns with additional Israeli Industrial Companies controlled by it, and (iii) the right to deduct expenses related to public offerings in equal amounts over a period of three years beginning from the year of the offering.

Eligibility for benefits under the Encouragement of Industry Law is not contingent upon the approval of any governmental authority.

There is no assurance that we qualify or will continue to qualify as an Industrial Company or that the benefits described above will be available in the future.

Taxation of the Company Shareholders

Capital Gains

Capital gain tax is imposed on the disposal of capital assets by an Israeli resident, and on the disposal of such assets by a non- Israel resident if those assets are either (i) located in Israel; (ii) are shares or a right to a share in an Israeli resident corporation, or (iii) represent, directly or indirectly, rights to assets located in Israel. The Ordinance distinguishes between “Real Gain” and the “Inflationary Surplus”. Real Gain is the excess of the total capital gain over Inflationary Surplus computed generally on the basis of the increase in the Israeli CPI between the date of purchase and the date of disposal.

The capital gain accrued by individuals on the sale of our ordinary shares will be taxed at the rate of 25%. However, if the individual shareholder is a “Controlling Shareholder” (i.e., a person who holds, directly or indirectly, alone or together with another, 10% or more of one of the Israeli resident company’s means of control) at the time of sale or at any time during the preceding twelve (12) months period, such gain will be taxed at the rate of 30%.

The real capital gain derived by corporations will be generally subject to the ordinary corporate tax (25% in 2016).

Individual and corporate shareholder dealing in securities in Israel are taxed at the tax rates applicable to business income – 25% for corporations in 2016 and a marginal tax rate of up to 50% in 2016 for individuals, including a 2% excess tax for high earning individuals whose taxable income from Israeli sources exceeds a certain threshold (approximately NIS 811,000 in 2015). Notwithstanding the foregoing, capital gain derived from the sale of our ordinary shares by a non-Israeli shareholder may be exempt under the Ordinance from Israeli taxation provided that the following cumulative conditions are met: (i) the shares were purchased upon or after the registration of the securities on the stock exchange (this condition will not apply to shares purchased on or after January 1, 2009), (ii) the seller does not have a permanent establishment in Israel to which the derived capital gain is attributed, and (iii) if the seller is a corporation, less than 25% of its means of control are held, directly and indirectly, by Israeli resident shareholders. In addition, the sale of shares may be exempt from Israeli capital gain tax under the provisions of an applicable tax treaty. For example, the U.S.-Israel Double Tax Treaty exempts U.S. resident from Israeli capital gain tax in connection with such sale, provided (i) the U.S. resident owned, directly or indirectly, less than 10% of an Israeli resident company’s voting power at any time within the 12 month period preceding such sale; (ii) the seller, being an individual, is present in Israel for a period or periods of less than 183 days at the taxable year; and (iii) the capital gain from the sale was not derived through a permanent establishment of the U.S. resident in Israel.

Either the purchaser, the Israeli stockbrokers or financial institution through which the shares are held is obliged, subject to the above mentioned exemptions, to withhold tax upon the sale of securities from the real capital gain at the rate of 25% in respect of a corporation and/or an individual.

At the sale of securities traded on a stock exchange a detailed return, including a computation of the tax due, must be filed and an advanced payment must be paid on January 31 and June 30 of every tax year in respect of sales of securities made within the previous six months. However, if all tax due was withheld at source according to applicable provisions of the Ordinance and regulations promulgated thereunder the aforementioned return need not be filed and no advance payment must be paid. Capital gain is also reportable on the annual income tax return.

Dividends

As of January 1, 2014, any distribution of dividends from income attributed to a Preferred Enterprise is generally subject to a tax at a rate of 20%. However, if such dividends are distributed to an Israeli company, no tax is imposed. As of January 1, 2014, dividends distributed from income attributed to an Approved Enterprise and/or a Benefited Enterprise are subject to a tax rate of 20%. Notwithstanding the above, a reduced 15% tax rate will be applicable if the dividend was distributed out of income of: (i) Approved Enterprise activated prior to 2014; or (ii) Benefited Enterprise with a "Year of Election" prior to 2014. Those rates may be further reduced under the provisions of any applicable double tax treaty.

A distribution of dividends from income, which is not attributed to an Approved Enterprise/Benefited Enterprise/Preferred Enterprise to an Israeli resident individual, will generally be subject to income tax at a rate of 25%. However, a 30% tax rate will apply if the dividend recipient is a "Controlling Shareholder" (as defined above) at the time of distribution or at any time during the preceding 12 months period. If the recipient of the dividend is an Israeli resident corporation, such dividend will be exempt from income tax provided the income from which such dividend is distributed was derived or accrued within Israel.

The Ordinance generally provides that a non-Israeli resident (either individual or corporation) is subject to an Israeli income tax on the receipt of dividends at the rate of 25% (30% if the dividends recipient is a "Controlling Shareholder" (as defined above), at the time of distribution or at any time during the preceding 12 months period); those rates are subject to a reduced tax rate under the provisions of an applicable double tax treaty. Thus, under the U.S.-Israel Double Tax Treaty the following rates will apply in respect of dividends distributed by an Israeli resident company to a U.S. resident: (i) if the U.S. resident is a corporation which holds during that portion of the taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10% of the outstanding shares of the voting stock of the Israeli resident paying corporation and not more than 25% of the gross income of the Israeli resident paying corporation for such prior taxable year (if any) consists of certain type of interest or dividends – the tax rate is 12.5%, (ii) if both the conditions mentioned in section (i) above are met and the dividend is paid from an Israeli resident company's income which was entitled to a reduced tax rate applicable to an Approved Enterprise – the tax rate is 15%, and (iii) in all other cases, the tax rate is 25%, or the domestic rate (if such is lower). The aforementioned rates under the Israel U.S. Double Tax Treaty will not apply if the dividend income was derived through a permanent establishment of the U.S. resident in Israel.

Payors of dividends on our shares, including the Israeli stockbroker effectuating the transaction, or the financial institution through which the securities are held, are generally required, subject to any of the foregoing exemption, reduced tax rates and the demonstration of a shareholder of his, her or its foreign residency, to withhold taxes upon the distribution of dividends at a rate of 25%, provided that the shares are registered with a Nominee Company (for corporations and individuals).

Excess Tax

Individuals who are subject to tax in Israel are also subject to an additional tax at a rate of 2% on annual income exceeding a certain threshold (approximately NIS 811,000 for 2015, which amount is linked to the annual change in the Israeli consumer price index), including, but not limited to income derived from , dividends, interest and capital gains.

Foreign Exchange Regulations

Non-residents of Israel who hold our ordinary shares are able to receive any dividends, and any amounts payable upon the dissolution, liquidation and winding up of our affairs, repayable in non-Israeli currency at the rate of exchange prevailing at the time of conversion. However, Israeli income tax is generally required to have been paid or withheld on these amounts. In addition, the statutory framework for the potential imposition of currency exchange control has not been eliminated, and may be restored at any time by administrative action.

U.S. Taxation

The following discussion describes certain material United States (“U.S.”) federal income tax consequences of the purchase, ownership and disposition of our ordinary shares.

For purposes of this discussion, a “U.S. holder” is a beneficial owner of ordinary shares who or which is any of the following for U.S. federal income tax purposes:

- a citizen or resident of the U.S. or someone treated as a U.S. citizen or resident of the U.S.;
- a corporation (or another entity taxable as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the U.S., any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust, if (a) a U.S. court is able to exercise primary supervision over its administration and one or more U.S. persons have the authority to control all of its substantial decisions, or (b) the trust was in existence and treated as a U.S. person on August 20, 1996 and has a valid election in effect under applicable Treasury Regulations (as defined below) to be treated as a U.S. person.

This summary is for general information purposes only and does not purport to be a comprehensive description of all of the U.S. federal income tax considerations that may be relevant to a decision to purchase, hold or dispose of the Company’s ordinary shares. This summary generally considers only U.S. holders that will own the ordinary shares as capital assets and does not consider the U.S. tax consequences to a person that is not a U.S. holder or the tax treatment of persons who hold the ordinary shares through a partnership or other pass-through entity. In addition, the possible application of U.S. federal estate or gift taxes or any aspect of state, local or non-U.S. tax laws is not considered. This discussion is based on current provisions of the Internal Revenue Code of 1986, as amended (the “Code”), Treasury Regulations promulgated under the Code by the U.S. Treasury Department (including proposed and temporary regulations) (the “Treasury Regulations”), rulings, current administrative interpretations and official pronouncements by the Internal Revenue Service (the “IRS”), and judicial decisions, all as currently in effect and all of which are subject to differing interpretations or to change, with a retroactive effect. Such changes could materially and adversely affect the tax consequences described below. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below.

This discussion does not address all aspects of U.S. federal income taxation that may be relevant to any particular U.S. holder based on the holder’s particular circumstances, such as,

- persons who own, directly, indirectly or constructively, 10% or more (by voting power or value) of our outstanding voting shares;
- persons who hold the ordinary shares as part of a hedging, straddle or conversion transaction;
- persons whose functional currency is not the U.S. dollar;
- persons who acquire their ordinary shares in a compensatory transaction;
- broker-dealers;
- insurance companies;
- regulated investment companies;
- real estate investment companies;
- traders who elect to mark-to-market their securities;
- tax-exempt organizations;
- banks or other financial institutions;

- U.S. expatriates; and
- persons subject to the alternative minimum tax.

HOLDER RELIANCE ON TAX STATEMENTS

THIS SUMMARY OF MATERIAL UNITED STATES FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY AND IS NOT TAX ADVICE. EACH HOLDER SHOULD CONSULT ITS TAX ADVISOR WITH RESPECT TO THE PARTICULAR TAX CONSEQUENCES TO IT OF AN INVESTMENT IN THE ORDINARY SHARES, INCLUDING THE EFFECTS OF APPLICABLE UNITED STATES FEDERAL INCOME TAX LAWS AS WELL AS ANY TAX CONSEQUENCES ARISING UNDER THE UNITED STATES FEDERAL ESTATE OR GIFT TAX RULES OR UNDER THE LAWS OF ANY FOREIGN, STATE OR LOCAL JURISDICTION OR UNDER ANY APPLICABLE TAX TREATY.

Availability of Reduced Tax Rates

The maximum U.S. Federal income tax rate on certain long-term capital gains and on qualifying dividends is currently 20%. Long-term capital gains from the sale of our ordinary shares may be eligible for this rate, although the actual rates may be higher due to the phase out of certain tax deductions, exemptions and credits. Subject to the discussion below, dividends, if any, may also be eligible for this 20% maximum rate on long-term capital gains, provided that we do not constitute a passive foreign investment company (a "PFIC"). However, tax rates are subject to change, especially given the uncertain economic conditions in the United States and the size of the federal deficit. U.S. holders should consult their tax advisors.

Distributions on the Ordinary Shares

We currently do not intend to pay dividends for at least the next several years. However, if we make any distributions of cash or other property to a U.S. holder of our ordinary shares, the amount of the distribution for U.S. federal income tax purposes will equal the amount of cash and the fair market value of any property distributed and will also include the amount of Israeli taxes withheld, if any, as described above under "— Dividends". In general (and subject to the PFIC rules discussed below), any distribution paid by us on the ordinary shares to a U.S. holder will be treated as dividend income if the distribution does not exceed our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes. If holding period and other requirements are met, dividends paid to non-corporate U.S. holders should generally qualify for the reduced maximum tax rate of 20% as long as our common shares remain "readily tradable on an established securities market in the United States," provided that we are not considered a PFIC (as discussed below) in the taxable year in which the dividend is paid or in any preceding taxable year. The amount of any distribution which exceeds these earnings and profits will be treated first as a non-taxable return of capital, reducing the U.S. holder's tax basis in its ordinary shares to the extent thereof, and then as capital gain, and as long-term capital gain if the U.S. holder's holding period exceeds one year, from the deemed disposition of the ordinary shares (subject to the PFIC rules discussed below). Corporate holders generally will not be allowed a deduction for dividends received on the ordinary shares.

A dividend paid by us in NIS will be included in the income of U.S. holders at the U.S. dollar value of the dividend, based upon the spot rate of exchange in effect on the date of the distribution. U.S. holders will have a tax basis in NIS for U.S. federal income tax purposes equal to that U.S. dollar value. Any subsequent gain or loss resulting from exchange rate fluctuations between the day the dividend was included in the income of U.S. holders and the day the NIS are converted into U.S. dollars or are otherwise disposed of, will be taxable as ordinary income, gain or loss from U.S. sources.

Dividends paid by us generally will be foreign source "passive income" for U.S. foreign tax credit purposes or, in the case of a U.S. holder that is a financial services entity, "financial services income." U.S. holders may elect to claim as a foreign tax credit against their U.S. federal income tax liability the Israeli income tax withheld from dividends received on the ordinary shares. The Code provides limitations on the amount of foreign tax credits that a U.S. holder may claim. U.S. holders that do not elect to claim a foreign tax credit may instead claim a deduction for Israeli income tax withheld, but only for a year in which these U.S. holders elect to do so for all foreign income taxes. The rules relating to foreign tax credits are complex (and may also be impacted by the tax treaty between the United States and Israel), and you should consult your tax advisor to determine whether you would be entitled to this credit.

Sale or Exchange of the Ordinary Shares

Upon the sale or exchange of the ordinary shares (subject to the PFIC rules discussed below), a U.S. holder generally will recognize capital gain or loss in an amount equal to the difference between the amount realized on the sale or exchange and the U.S. holder's tax basis in the ordinary shares. The gain or loss recognized on the sale or exchange of the ordinary shares generally will be long-term capital gain or loss if the U.S. holder's holding period of the ordinary shares is more than one year at the time of the disposition.

Gain or loss recognized by a U.S. holder on a sale or exchange of ordinary shares generally will be treated as U.S. source income or loss for U.S. foreign tax credit purposes. Under the tax treaty between the United States and Israel, gain derived from the sale, exchange or other disposition of ordinary shares by a holder who is a resident of the U.S. for purposes of the treaty and who sells the ordinary shares within Israel may be treated as foreign source income for U.S. foreign tax credit purposes.

Passive Foreign Investment Companies

In general, a foreign (i.e., non-U.S.) corporation will be a PFIC for any taxable year in which, after applying the relevant look-through rules with respect to the income and assets of its subsidiaries, either (1) 75% or more of its gross income in the taxable year is "passive income," or (2) assets held for the production of, or that produce, passive income comprise 50% or more of the average of its total asset value in the taxable year. For purpose of the income test, passive income includes dividends, interest, royalties, rents, annuities and net gains from the disposition of assets, which produce passive income. For purposes of the assets test, assets held for the production of passive income includes assets held for the production of, or that produce dividends, interest, royalties, rents, annuities, and other income included in the income test. In determining whether we meet the assets test, cash is considered a passive asset and the total value of our assets generally will be treated as equal to the sum of the aggregate fair market value of our outstanding stock plus our liabilities. If we own at least 25% (by value) of the stock of another corporation, we will be treated, for purposes of the PFIC tests, as owning our proportionate share of the other corporation's assets and receiving our proportionate share of the other corporation's income. The income test is conducted at the taxable year-end. The asset test is conducted on a quarterly basis and the quarterly results are then averaged together.

If a corporation is treated as a PFIC for any year during a U.S. holder's holding period and the U.S. holder does not timely elect to treat the corporation as a "qualified electing fund" under Section 1295 of the Code or elect to mark its ordinary shares to market (both as described below), any gain on the disposition of the shares will be treated as ordinary income, rather than capital gain, and the holder will be required to compute its tax liability on that gain, as well as on dividends and other distributions, as if the income had been earned ratably over each day in the U.S. holder's holding period for the shares. The portion of the gain and distributions allocated to prior taxable years in which a corporation was a PFIC will be ineligible for any preferential tax rate otherwise applicable to any "qualified dividend income" or capital gains, and will be taxed at the highest ordinary income tax rate in effect for each taxable year to which this portion is allocated. An interest charge will be imposed on the amount of the tax allocated to these taxable years. A U.S. holder may elect to treat a corporation as a qualified electing fund only if the corporation complies with requirements imposed by the IRS to enable the shareholder and the IRS to determine the corporation's ordinary income and net capital gain. Additionally, if a corporation is a PFIC, a U.S. holder who acquires shares in the corporation from a decedent will be denied the normally available step-up in tax basis to fair market value for the shares at the date of death and instead will have a tax basis equal to the decedent's tax basis if lower than fair market value. These adverse tax consequences associated with PFIC status could result in a material increase in the amount of tax that a U.S. holder would owe and an imposition of tax earlier than would otherwise be imposed and additional tax form filing requirements. Unless otherwise provided by the IRS, if a corporation is classified as a PFIC, a U.S. person that is a direct or indirect holder will generally be required to file an informational return annually on IRS Form 8621 (or any applicable successor form hereto) to report its ownership interest in such entity.

Status of Nova as a PFIC. Under the income test, less than 75% of our gross income was passive income in 2015. For 2015, while we continued to have substantial amounts of cash and short-term deposits and the market value of our ordinary shares continued to be volatile, a determination of the value of our assets by reference to the average market value of our ordinary shares and our liabilities results in a conclusion that the average value of our passive assets did not exceed 50% of the average value of our gross assets in 2015. Nonetheless, there is a risk that we were a PFIC in 2015 or we will be a PFIC in 2016 or subsequent years because there are no definitive rules regarding the manner in which a company should value its assets for purposes of the PFIC asset test. For example, taking into account our existing cash balances, if the value of our stock were to decline materially, it is possible that we could become a PFIC in 2016 or a subsequent year. Additionally, due to the complexity of the PFIC provisions and the limited authority available to interpret such provisions, there can be no assurance that our determination regarding our PFIC status could not be successfully challenged by the IRS.

Available Elections. If we become a PFIC for any taxable year, U.S. holders should consider whether or not to elect to treat us as a “qualified electing fund” or to elect to “mark-to-market” their ordinary shares in order to mitigate the adverse tax consequences of PFIC status.

If a U.S. holder makes a qualified electing fund election (a “QEF election”) for its ordinary shares that is effective from the first taxable year that the U.S. holder holds our ordinary shares and during which we are a PFIC, the electing U.S. holder will avoid the adverse consequences of our being classified as a PFIC, but will instead be required to include in income a pro rata share of our net capital gain, if any, and other earnings and profits (“ordinary earnings”) as long-term capital gains and ordinary income, respectively, on a current basis, in each case whether or not distributed, in the taxable year of the U.S. holder in which or with which our taxable year ends. A subsequent distribution of amounts that were previously included in the gross income of U.S. holders should not be taxable as a dividend to those U.S. holders who made a QEF election. In the event we incur a net loss for a taxable year, such loss will not be available as a deduction to an electing U.S. holder, and may not be carried forward or back in computing our net capital gain or ordinary earnings in other taxable years. The tax basis of the shares of an electing U.S. holder generally will be increased by amounts that are included in income, and decreased by amounts distributed but not taxed as dividends, under the QEF rules described above. In order to make (or maintain) a QEF election, the U.S. holder must annually complete and file IRS Form 8621. In addition, we must make certain information regarding our net capital gains and ordinary earnings available to the U.S. holder and permit our books and records to be examined to verify such information. Therefore, we will monitor our PFIC status and make a disclosure to our shareholders if we determine that we have become a PFIC. If we determine that we are a PFIC for any year and you make a request to us in writing at the address on the cover of our latest Annual Report on Form 20-F, Attention Chief Financial Officer, for the information required to make a QEF election, we will promptly make the information available to you and comply with any other applicable requirements of the Code.

A QEF election, once made with respect to us, applies to the tax year for which it was made and to all subsequent tax years, unless the election is invalidated or the IRS consents to revocation of the election. If you make a QEF election and we cease to be classified as a PFIC in a subsequent tax year, the QEF election will remain in effect, although it will not be applicable during those tax years in which we are not classified as a PFIC. Therefore, if we – after ceasing to be classified as a PFIC – again are classified as a PFIC in a subsequent tax year, the QEF election will be effective and you will again be subject to the rules described above for U.S. holders making QEF elections in such tax year and any subsequent tax years in which we are classified as a PFIC. A QEF election also remains in effect even after you dispose of all of your direct and indirect interest in our ordinary shares. As a result, if you subsequently acquire any of our ordinary shares or an interest in any of our ordinary shares, you will again be subject to the rules described above for U.S. holders making a QEF election for each tax year in which we are classified as a PFIC.

Alternatively, if a U.S. holder elects to “mark-to-market” its ordinary shares, the U.S. holder will generally include in its income any excess of the fair market value of our ordinary shares at the close of each taxable year over the holder’s adjusted basis in such ordinary shares. If a U.S. holder makes a valid mark-to-market election with respect to our ordinary shares for the first taxable year of the U.S. holder in which the U.S. holder holds (or is deemed to hold) our ordinary shares and for which we are determined to be a PFIC, such holder generally will not be subject to the PFIC rules described above in respect to its common shares. A U.S. holder generally will be allowed an ordinary deduction for the excess, if any, of the adjusted tax basis of the ordinary shares over the fair market value of the ordinary shares as of the close of the taxable year, or the amount of any net mark-to-market gains recognized for prior taxable years, whichever is less. A U.S. holder’s adjusted tax basis in the ordinary shares will generally be adjusted to reflect the amounts included or deducted under the mark-to-market election. Additionally, any gain on the actual sale or other disposition of the ordinary shares generally will be treated as ordinary income. Ordinary loss treatment also will apply to any loss recognized on the actual sale or other disposition of ordinary shares to the extent that the amount of such loss does not exceed the net mark-to-market gains previously included with respect to such ordinary shares. A mark-to-market election applies to the tax year for which the election is made and to each subsequent year, unless our ordinary shares cease to be marketable, as specifically defined, or the IRS consents to revocation of the election. No view is expressed regarding whether our ordinary shares are marketable for these purposes or whether the election will be available.

If a U.S. holder makes either the QEF election or the mark-to-market election, distributions and gain will not be recognized ratably over the U.S. holder's holding period or be subject to an interest charge as described above. Further, the denial of basis step-up at death described above will not apply. If a U.S. holder elects to treat us as a "qualified electing fund," gain on the sale of the ordinary shares will be characterized as capital gain. However, U.S. holders making one of these two elections may experience current income recognition, even if we do not distribute any cash. The elections must be made with the U.S. holder's federal income tax return for the year of election, filed by the due date of the return (as it may be extended) or, under certain circumstances provided in applicable Treasury Regulations, subsequent to that date.

The foregoing discussion relating to the QEF election and mark-to-market elections assumes that a U.S. holder makes the applicable election with respect to the first year in which Nova qualifies as a PFIC. If the election is not made for the first year in which Nova qualifies as a PFIC, the procedures for making the election and the consequences of election will be different.

A NUMBER OF SPECIFIC RULES AND REQUIREMENTS APPLY TO BOTH THE QEF ELECTION AND THE MARK-TO-MARKET ELECTION, AND YOU ARE URGED TO CONSULT YOUR TAX ADVISOR CONCERNING OUR PFIC STATUS AND THE VARIOUS ELECTIONS YOU CAN MAKE.

Legislation regarding Medicare Tax

A U.S. holder that is an individual or estate, or a trust that does not fall into a special class of trusts that is exempt from such tax, will be subject to a 3.8% tax on the lesser of (1) the U.S. holder's "net investment income" for the relevant taxable year and (2) the excess of the U.S. Investor's modified adjusted gross income for the taxable year over a certain threshold (which, in the case of individuals, will be between \$125,000 and \$250,000 depending on the individual's circumstances). A U.S. holder's "net investment income" may generally include its dividend income and its net gains from the disposition of shares, unless such dividends or net gains are derived in the ordinary course of the conduct of a trade or business (other than a trade or business that consists of certain passive or trading activities). If you are a U.S. holder that is an individual, estate or trust, you are urged to consult your tax advisors regarding the applicability of the Medicare tax to your income and gains in respect of your investment in the shares.

Withholdable Payments to Foreign Financial Entities and Other Foreign Entities

The Hiring Incentives to Restore Employment Act of March 2010 (the "HIRE Act"), including the Foreign Account Tax Compliance Act ("FATCA") provisions promulgated thereunder, generally provides that (1) a 30% withholding tax may be imposed on certain payments of U.S. source income (such as dividends) to certain non-U.S. holders, and (2) beginning January 1, 2019, a 30% withholding tax may be imposed on the proceeds from the sale of property by certain non-U.S. holders that could give rise to certain types of U.S. source payments. Withholding is generally required unless such non-U.S. holders enter into an agreement with the IRS to disclose the name, address and taxpayer identification number of certain U.S. persons that own, directly or indirectly, interests in such non-U.S. holders, as well as certain other information relating to such interests. Non-U.S. holders should consult their own tax advisors regarding the possible implications and obligations of FATCA and the HIRE Act on the purchase, ownership and disposition of our common stock.

United States Information Reporting and Backup Withholding

In general, U.S. holders may be subject to certain information reporting requirements under the Code relating to their purchase and/or ownership of stock of a foreign corporation such as the Company. Failure to comply with these information reporting requirements may result in substantial penalties.

For example, certain individuals who are U.S. holders are generally required to file IRS Form 8938 to report the ownership of specified foreign financial assets on an annual basis if the total value of those assets exceeds an applicable threshold amount (subject to certain exceptions). For these purposes, a specified foreign financial asset includes not only a financial account (as defined by the Code and applicable Treasury Regulations for these purposes) maintained by a foreign financial institution, but also any stock or security issued by a non-U.S. person, any financial instrument or contract held for investment that has an issuer or counterparty other than a U.S. person and any interest in a foreign entity, provided that the asset is not held in an account maintained by a financial institution. The minimum applicable threshold amount is generally \$50,000 in the aggregate, but this threshold amount varies depending on whether the individual lives in the U.S., is married, files a joint income tax return with his or her spouse, etc. Certain domestic entities that are U.S. holders may also be required to file Form 8938 in the near future. U.S. holders are urged to consult with their tax advisors regarding their reporting obligations, including the requirement to file IRS Form 8938.

In addition and as discussed in the section of this annual report entitled “U.S. Taxation – Passive Foreign Investment Companies”, if a corporation is classified as a PFIC, a U.S. person that is a direct or indirect holder will generally be required to file an informational return annually on IRS Form 8621 (or any applicable successor form hereto) to report its ownership interest in such entity, unless otherwise provided by the IRS.

Dividend payments and proceeds from the sale or disposal of ordinary shares may be subject to information reporting to the IRS and possible U.S. federal backup withholding at the rate of 28%. Certain holders (including, among others, corporations) are generally not subject to information reporting and backup withholding. A U.S. holder generally will be subject to backup withholding if such holder is not otherwise exempt and such holder:

- fails to furnish its taxpayer identification number, or TIN, which, for an individual, is ordinarily his or her social security number,
- furnishes an incorrect TIN,
- is notified by the IRS that it is subject to backup withholding because it has previously failed to properly report payments of interest or dividends, or
- fails to certify, under penalties of perjury, that it has furnished a correct TIN and that the IRS has not notified the U.S. holder that it is subject to backup withholding.

Any U.S. holder who is required to establish exempt status generally must file IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”).

Amounts withheld as backup withholding may be credited against a U.S. holder’s federal income tax liability. A U.S. holder may obtain a refund of any excess amounts withheld under the backup withholding rules by filing the appropriate claim for refund with the IRS and furnishing any required information.

10.F Dividends and Paying Agents

Not applicable.

10.G Statements by Experts

Not applicable.

10.H Documents on Display

The documents referred to herein, including the Amended Articles, can be obtained from the Company at its registered office at Weizmann Science Park, Building 22, 2nd Floor, Ness-Ziona, Israel. In addition, the Company is subject to certain informational requirements of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder. In accordance therewith, the Company files reports with the Commission. Reports and other information provided to the Commission by the Company may be inspected and copied at the public reference facilities maintained by the Commission at Room 1024, 100 Fifth Street, N.E., Washington, D.C. 20549. Information on the operation of the public reference facilities may be obtained by calling the Commission at 1-800-SEC-0330. In addition, certain of the Company’s reports filed with the Commission are available on-line at www.sec.gov.

10.I Subsidiary Information

Not applicable.

Item 11. Quantitative and Qualitative Disclosures About Market Risk

Market Risk

Market risk represents the risk of loss that may impact the consolidated financial position, results of operations or cash flows of the Company. The Company is exposed to market risk in the area of foreign exchange rates, as described below.

The Company does not utilize financial instruments for trading purposes and holds no derivative financial instruments that could expose it to significant market risk.

Impact of Currency Fluctuation

Because our results are reported in Dollars, changes in the rate of exchange between the Dollar and local currencies in those countries in which we operate (primarily the NIS, the Euro and the Japanese Yen) will affect the results of our operations. The dollar cost of our operations in countries other than the U.S., is negatively influenced by revaluation of the U.S. dollar against other currencies. During 2015, the value of the U.S. dollar revaluated against the NIS by 0.3%, revaluated against the Yen by approximately 0.7% and revaluated against the Euro by approximately 21%. During the first six months of 2015 the value of the U.S. dollar devaluated against the NIS by approximately 3%, revaluated against the Yen by approximately 2.3% and revaluated against the Euro by 8.5%. During the last six months of 2015 the value of the U.S. dollar revaluated against the NIS by approximately devaluated against the Yen by approximately 1.6% and revaluated against the Euro by approximately 2.9%.

As of December 31, 2015, the majority of our net monetary assets were denominated in dollars and the remainder was denominated mainly in NIS. Net monetary assets that are not denominated in dollars or dollar-linked NIS were affected by the currency fluctuations in 2015, and are expected to continue to be affected by such currency fluctuations in 2016.

In 2013, we entered into currency-forward transactions and currency-put options (NIS/dollar) of approximately \$47 million with settlement dates through 2013-2014, designed to reduce cash-flow exposure to the impact of exchange-rate fluctuations on transactions of approximately \$47 million. In accordance with ASC 815-10, we recorded in 2013 an increase of approximately \$0.1 million in fair market value in "Other Comprehensive Income".

In 2014, we entered into currency-forward transactions and currency-put options (NIS/dollar) of approximately \$67 million with settlement dates through 2014-2015, designed to reduce cash-flow exposure to the impact of exchange-rate fluctuations on firm commitments of approximately \$67 million. In accordance with ASC 815-10, we recorded in 2014 a decrease of approximately \$1.7 million in fair market value in "Other Comprehensive Income". Short-term exposures to changing foreign exchange rates are primarily due to operating cash flows denominated in foreign currencies and transactions denominated in non-functional currencies. Our most significant foreign currency exposures are related to our operations in Israel. We have used foreign exchange forward contracts to partially cover known and anticipated exposures. We estimate that an instantaneous 10% depreciation in NIS from its level against the dollar as of December 31, 2014, with all other variables held constant, would decrease the fair value of our net assets denominated in foreign currency, held at December 31, 2014, by approximately \$0.6 million.

In 2015, we entered into currency-forward transactions and currency-put options (NIS/dollar) of approximately \$59 million with settlement dates through 2015-2016, designed to reduce cash-flow exposure to the impact of exchange-rate fluctuations on firm commitments of approximately \$59 million. In accordance with ASC 815-10, we recorded in 2015 an increase of approximately \$1.1 million in fair market value in "Other Comprehensive Income". Short-term exposures to changing foreign exchange rates are primarily due to operating cash flows denominated in foreign currencies and transactions denominated in non-functional currencies. Our most significant foreign currency exposures are related to our operations in Israel. We have used foreign exchange forward contracts to partially cover known and anticipated exposures. We estimate that an instantaneous 10% depreciation in NIS from its level against the dollar as of December 31, 2015, with all other variables held constant, would decrease the fair value of our net assets denominated in foreign currency, held at December 31, 2015, by approximately \$0.75 million.

Item 12. Description of Securities Other than Equity Securities

Not applicable.

PART II

Item 13. Defaults, Dividend Arrearages and Delinquencies

None.

Item 14. Material Modification to the Rights of Security Holders and Use of Proceeds

Not applicable.

Item 15. Controls and Procedures

(a) Our management, including our chief executive officer and chief financial officer, has evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2015. Based on such review, our chief executive officer and chief financial officer have concluded that we have in place effective controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934, as amended, is accumulated and communicated to our management, including our principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure, and is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms.

(b) Our management, under the supervision of our chief executive officer and chief financial officer, is responsible for establishing and maintaining adequate internal control over our financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) of the Securities Exchange Act of 1934, as amended. The Company's internal control over financial reporting is defined as a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. Internal control over financial reporting includes policies and procedures that:

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

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

In accordance with guidance issued by the Securities and Exchange Commission, companies are permitted to exclude acquisitions from their final assessment of internal control over financial reporting for the first fiscal year in which the acquisition occurred. Our management's evaluation of internal control over financial reporting excluded the internal control activities of ReVera Incorporated, which we acquired in April 2015. Total assets subject to ReVera's internal control over financial reporting represented approximately 14% of our consolidated total assets for the fiscal year ended December 31, 2015. Total operating income subject to ReVera's internal control over financial reporting represented approximately 20% of our consolidated total operating income for the fiscal year ended December 31, 2015.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we evaluated the effectiveness of our internal control over financial reporting as of December 31, 2015. In making this evaluation, we used the criteria established in Internal Control—Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on this evaluation, our management concluded that the Company's internal controls over financial reporting were effective as of December 31, 2015.

(c) Kost Forer Gabbay & Kasierer, an independent registered accounting firm and a member firm of Ernst & Young, has issued an attestation report on the effectiveness of our internal control over financial reporting, as stated in their report included herein. See "Report of Independent Registered Public Accounting Firm" on page F-3.

(d) There were no changes in our internal controls over financial reporting identified with the evaluation thereof that occurred during the period covered by this annual report that have materially affected, or are reasonable likely to materially affect our internal control over financial reporting.

Item 16A. Audit Committee Financial Expert

Our board of directors has determined that our audit committee includes one audit committee financial expert, as defined by Item 16A of Form 20-F. Ms. Dafna Gruber is an independent director as such term is defined by Rule 5605(a)(2) of The NASDAQ Stock Market.

Item 16B. Code of Ethics

The Company has adopted a written code of conduct that applies to all Company employees, including the Company's directors, principal executive officer, principal financial officer and principal accounting officer.

You may review our code of conduct on our website: <http://www.novameasuring.com>, under "Corporate/Corporate Governance".

Item 16C. Principal Accountant Fees and Services

Kost Forer Gabbay & Kasierer, an independent registered accounting firm and a member firm of Ernst & Young ("Kost Forer Gabbay & Kasierer") has acted as our registered public accounting firm and independent auditors as of fiscal year 2015. In fiscal year 2014, Brightman Almagor Zohar & Co., an independent registered accounting firm and a member firm of Deloitte Touche Tohmatsu ("Brightman Almagor Zohar & Co.") has acted as our registered public accounting firm and independent auditors.

Audit Fees

Kost Forer Gabbay & Kasierer audit fee for the fiscal year 2015 was approximately \$240,000, including fees associated with the annual audit and reviews of the Company's quarterly consolidated financial results submitted on Form 6-K, consultations on various accounting issues and performance of local statutory audits. The audit fee in 2015 include fees associated with the audit of management assessment of internal control over financial reporting, annual tax returns and audit of reports to OCS. Brightman Almagor Zohar & Co. audit fee for the fiscal year 2014 was approximately \$135,000, including fees associated with the annual audit and reviews of the Company's quarterly consolidated financial results submitted on Form 6-K, consultations on various accounting issues and performance of local statutory audits. The audit fees in 2014 include fees associated with the audit of management assessment of internal control over financial reporting, annual tax returns and audit of reports to OCS.

Audit-Related Fees

Neither Kost Forer Gabbay & Kasierer nor Brightman Almagor Zohar & Co. billed the company for any audit-related services in 2015 or 2014, respectively, except as included under the caption "Audit Fees".

Tax Fees

Neither Kost Forer Gabbay & Kasierer nor Brightman Almagor Zohar & Co. billed the company for any tax advice services in 2015 or 2014, respectively.

All Other Fees

Other than the audit fees described above, other fees of Kost Forer Gabbay & Kasierer were approximately \$28,000 for the fiscal year 2015, and included services related to SEC regulation consulting and OCS application support. Brightman Almagor Zohar & Co. other fees than the audit fees described above, were \$1,000 for fiscal year 2014, and included services related to information technology.

Pre-Approval Policies for Non-Audit Services

Prior to the engagement of our independent auditors each year, the engagement is approved by the audit committee of the board of directors. The Company's audit committee rules of procedure provide for a process with respect to the prior approval of all services, including non-audit services, to be performed by the independent auditors for the Company. The Company's audit committee approved all of the services provided by Kost Forer Gabbay & Kasierer in fiscal year 2015 and by Brightman Almagor Zohar & Co. in fiscal year 2014.

Item 16D. Exemptions from the Listing Standards for Audit Committees

The Company has not obtained any exemption from applicable audit committee listing standards.

Item 16E. Purchases of Equity Securities by the Issuer and Affiliates Purchasers

In March 2014, we announced a \$12 million repurchase program of the Company's ordinary shares. Through February 28, 2016, we spent an aggregate of \$11 million to repurchase 1,003,778 ordinary shares under our share repurchase program. The following table provides information regarding our repurchases of our ordinary shares for each month included in the period covered by this annual report on Form 20-F:

Period	(a) Total Number of Ordinary Shares Purchased	(b) Average Price Paid per Ordinary Share	(c) Total Number of Ordinary Shares Purchased as Part of Publicly Announced Plans or Programs	(d) Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (in thousands)
May, 2015	88,805	12.12	728,636	4,198
June, 2015	25,142	12.44	753,778	3,885
July, 2015	25,000	12.45	778,778	3,574
August, 2015	135,000	12.08	913,778	1,943
September, 2015	90,000	10.79	1,003,778	972

Item 16F. Change in Registrant's Certifying Accountant

Under the Companies Law and the Amended and Restated Articles of Association, the shareholders of the Company are authorized to appoint the Company's independent auditors. Under the Amended and Restated Articles of Association, the Board (or a committee, if it is so authorized by the Board) is authorized to determine the independent auditor's remuneration. In addition, the approval by the Company's audit committee of the independent auditor's appointment and remuneration is required under the corporate governance rules of the NASDAQ Stock Market.

Following a review selection process supervised by the audit committee, the Company proposed that Kost Forer Gabbay & Kasierer be appointed as its independent auditor. The appointment of Kost Forer Gabbay & Kasierer as independent auditor was approved by shareholders on April 28, 2015. Kost Forer Gabbay & Kasierer was appointed instead of Brightman Almagor Zohar & Co., a member of Deloitte Touche Tohamtsu ("Brightman Almagor Zohar & Co."), which previously acted as the independent auditors of the Company.

Brightman Almagor Zohar & Co.'s reports on the Company's consolidated financial statements for the years ended December 31, 2014 and 2013 contained no adverse opinion or disclaimer of opinion and were not qualified or modified as to uncertainty, audit scope or accounting principles.

During the Company's two most recent fiscal years and the subsequent interim period preceding the expiry of Brightman Almagor Zohar & Co.'s engagement as external auditor, there were: (i) no "disagreements" (within the meaning of Item 16F(a)(1)(iv) of Form 20-F and the related instructions to Item 16F of Form 20-F) with Brightman Almagor Zohar & Co. on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of Brightman Almagor Zohar & Co., would have caused it to make reference to the subject matter of the disagreements in its reports on the consolidated financial statements of the Company; and (ii) no "reportable events" (as such term is defined in Item 16F(a)(1)(v) of Form 20-F).

The Company has provided Brightman Almagor Zohar & Co. with a copy of this Item 16F prior to its filing with the U.S. Securities and Exchange Commission and requested Brightman Almagor Zohar & Co. to furnish to the Company a letter addressed to the SEC stating that it agrees with the statements made above. A copy of Brightman Almagor Zohar & Co.'s letter dated February 29, 2016, is attached as Exhibit 15.3 to this Form 20-F.

During the Company's two most recent fiscal years and the subsequent interim period preceding Kost Forer Gabbay & Kasierer's appointment as external auditor, neither the Company nor anyone on its behalf consulted Kost Forer Gabbay & Kasierer regarding either: (i) the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company's consolidated financial statements, and no written report or oral advice was provided to the Company that Kost Forer Gabbay & Kasierer concluded was an important factor considered by the Company in reaching a decision as to any accounting, auditing or financial reporting issue; or (ii) any matter that was the subject of a "disagreement" or "reportable event" (within the meaning of Item 16F of Form 20-F and Item 16F(a)(1)(v) of Form 20-F, respectively).

In approving the selection of Kost Forer Gabbay & Kasierer as the Company's independent certifying accountant, the Audit Committee considered all relevant factors, including any non-audit services previously provided by Kost Forer Gabbay & Kasierer to the Company. During the two most recent fiscal years prior to the date of their engagement, Kost Forer Gabbay & Kasierer provided non-audit related consultancy services to the Company in connection with OCS applications in the aggregate amount of approximately \$35,000 and tax related consulting fees in the aggregate amount of approximately \$5,000.

Item 16G. Corporate Governance

There are no significant ways in which the Company's corporate governance practices differ from those followed by domestic companies listed on The NASDAQ Global Select Market.

Item 16H. Mine Safety Disclosure

Not applicable.

PART III

Item 17. Financial Statements

Not applicable.

Item 18. Financial Statements

See pages F-1 through F-31.

Item 19. Exhibits

See Exhibit Index.

NOVA MEASURING INSTRUMENTS LTD.
CONSOLIDATED FINANCIAL STATEMENTS
AS OF DECEMBER 31, 2015

NOVA MEASURING INSTRUMENTS LTD.
CONSOLIDATED FINANCIAL STATEMENTS
AS OF DECEMBER 31, 2015

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of

NOVA MEASURING INSTRUMENTS LTD.

We have audited the accompanying consolidated balance sheet of Nova Measuring Instruments Ltd. and its subsidiaries (collectively, the "Company") as of December 31, 2015 and the related consolidated statements of operations, comprehensive income, changes in shareholders' equity and cash flows for the year ended December 31, 2015. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

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

In our opinion the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Nova Measuring Instruments Ltd. and its subsidiaries at December 31, 2015, and the consolidated results of their operations and their cash flows for the year ended December 31, 2015, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company's internal control over financial reporting as of December 31, 2015, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway (2013 framework), and our report dated February 29, 2016 expressed an unqualified opinion thereon.

Tel-Aviv, Israel
February 29, 2016

/s/ KOST FORER GABBAY & KASIERER
KOST FORER GABBAY & KASIERER
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**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM
ON INTERNAL CONTROL OVER FINANCIAL REPORTING**

To the Board of Directors and Shareholders of

NOVA MEASURING INSTRUMENTS LTD.

We have audited Nova Measuring Instruments Ltd.'s (the "Company") internal control over financial reporting as of December 31, 2015, based on criteria established in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

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

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

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

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2015, based on the COSO criteria.

As indicated in the accompanying Assessment of Internal Control, management's assessment of and conclusion on the effectiveness of internal control over financial reporting did not include the internal controls of Revera Inc., which is included in the 2015 consolidated financial statements of Nova Measuring Instruments Ltd (and subsidiaries) and constituted approximately 14% of total assets, as of December 31, 2015 and approximately 20% of operating income, for the year then ended. Our audit of internal control over financial reporting of Nova Measuring Instruments Ltd (and subsidiaries) also did not include an evaluation of the internal control over financial reporting of Revera Inc.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheet of the Company and subsidiaries as of December 31, 2015 and the related consolidated statements of operations, comprehensive income, shareholders' equity, and cash flows for the year ended December 31, 2015, and our report dated February 29, 2016 expressed an unqualified opinion thereon.

Tel-Aviv, Israel
February 29, 2016

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



REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of
Nova Measuring Instruments LTD.

We have audited the accompanying consolidated balance sheet of Nova Measuring Instruments LTD. and subsidiaries (the "Company") as of December 31, 2014 and the related consolidated statements of operations, comprehensive income, changes in shareholders' equity and cash flows for the two years ended December 31, 2014 and December 31, 2013, respectively. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Nova Measuring Instruments LTD. and subsidiaries as of December 31, 2014 and the results of their operations and their cash flows for the two years ended December 31, 2014 and December 31, 2013, respectively, in conformity with accounting principles generally accepted in the United States of America.

/s/ Brightman Almagor Zohar & Co.
Brightman Almagor Zohar & Co.
Certified Public Accountants
A member firm of Deloitte Touche Tohmatsu

Tel Aviv, Israel
February 25, 2015

NOVA MEASURING INSTRUMENTS LTD.
CONSOLIDATED BALANCE SHEETS
(U.S. dollars in thousands, except share data)

	As of December 31,	
	2015	2014
ASSETS		
Current assets		
Cash and cash equivalents	\$ 27,733	\$ 13,649
Short-term interest-bearing bank deposits	69,298	107,289
Held for trading securities	-	1,995
Trade accounts receivable, net of allowance for doubtful accounts of \$124 and \$179, respectively	19,046	15,566
Inventories (Note 4)	27,683	16,107
Deferred tax assets (Note 10)	3,540	142
Other current assets	2,677	2,928
Total current assets	149,977	157,676
Long-term assets		
Long-term interest-bearing bank deposits	750	750
Deferred tax assets (Note 10)	5,735	1,654
Other long-term assets	211	169
Severance pay funds (Note 7)	1,514	1,580
Property and equipment, net (Note 5)	11,062	11,450
Intangible assets, net (Note 3)	17,906	-
Goodwill (Note 3)	20,114	-
Total long-term assets	57,292	15,603
TOTAL ASSETS	\$ 207,269	\$ 173,279
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities		
Trade accounts payable	\$ 14,378	\$ 11,568
Deferred revenues	5,828	3,022
Deferred tax liabilities (Note 10)	956	-
Other current liabilities (Note 6)	15,996	12,606
Total current liabilities	37,158	27,196
Long-term liabilities		
Liability for employee severance pay (Note 7)	2,469	2,465
Deferred revenues	-	36
Deferred tax liabilities (Note 10)	5,760	-
Other long-term liability	822	-
Total long-term liabilities	9,051	2,501
Commitments and contingencies (Note 8)		
TOTAL LIABILITIES	46,209	29,697
SHAREHOLDERS' EQUITY (Note 9)		
Ordinary shares, NIS 0.01 par value - authorized 40,000,000 shares 27,093,937 shares issued and outstanding at December 31, 2015 and 27,137,051 shares issued and outstanding at December 31, 2014	73	73
Additional paid-in capital	123,977	118,985
Accumulated other comprehensive loss	(114)	(1,177)
Treasury shares	(11,028)	(6,726)
Retained earnings	48,152	32,427
Total shareholders' equity	161,060	143,582
Total liabilities and shareholders' equity	\$ 207,269	\$ 173,279

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

NOVA MEASURING INSTRUMENTS LTD.
CONSOLIDATED STATEMENTS OF OPERATIONS
(U.S. dollars in thousands, except per share data)

	Year ended December 31,		
	2015	2014	2013
Revenues:			
Products	\$ 111,178	\$ 92,208	\$ 89,410
Services	37,336	28,410	22,099
Total revenues	<u>148,514</u>	<u>120,618</u>	<u>111,509</u>
Cost of revenues:			
Products	50,691	39,784	37,765
Services	20,743	17,221	14,673
Total cost of revenues	<u>71,434</u>	<u>57,005</u>	<u>52,438</u>
Gross profit	<u>77,080</u>	<u>63,613</u>	<u>59,071</u>
Operating expenses:			
Research and development expenses, net (Note 20)	39,703	29,498	29,578
Sales and marketing expenses	15,967	12,747	11,963
General and administrative expenses	8,511	4,457	5,197
Amortization of intangible assets	1,318	-	-
Total operating expenses	<u>65,499</u>	<u>46,702</u>	<u>46,738</u>
Operating income	11,581	16,911	12,333
Financing income, net	643	563	693
Income before tax on income	12,224	17,474	13,026
Income tax expenses (benefit)	(3,501)	(1,178)	2,511
Net income for the year	<u>\$ 15,725</u>	<u>\$ 18,652</u>	<u>\$ 10,515</u>
Earnings per share:			
Basic	<u>\$ 0.58</u>	<u>\$ 0.68</u>	<u>\$ 0.39</u>
Diluted	<u>\$ 0.57</u>	<u>\$ 0.67</u>	<u>\$ 0.38</u>
Shares used in calculation of earnings per share:			
Basic	<u>27,185</u>	<u>27,447</u>	<u>27,091</u>
Diluted	<u>27,510</u>	<u>27,807</u>	<u>27,373</u>

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

NOVA MEASURING INSTRUMENTS LTD.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(U.S. dollars in thousands, except per share data)

	Year ended December 31,		
	2015	2014	2013
Net income for the year	\$ 15,725	\$ 18,652	\$ 10,515
Other comprehensive income (loss) ("OCI") related to:			
Gain (loss) recognized in OCI (Note 13)	(142)	(1,844)	1,273
Gain (loss) reclassified from OCI to income (Note 13)	1,205	126	(1,181)
Other comprehensive income (loss)	1,063	(1,718)	92
Total comprehensive income for the year	\$ 16,788	\$ 16,934	\$ 10,607

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

NOVA MEASURING INSTRUMENTS LTD.
CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY
(U.S. dollars in thousands, except share amounts which are reflected in thousands)

	Ordinary Shares		Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Treasury Shares	Retained Earnings	Total Shareholders' Equity
	Number	Amount					
Balance as of January 1, 2013	26,682	72	110,990	449	-	3,260	114,771
Issuance of shares in connection with employee share-based plans	514	(*)	1,191				1,191
Issuance of shares upon exercise of options	85	(*)					(*)
Stock based compensation			2,095	-		-	2,095
Other comprehensive income		-	-	92		-	92
Net income for the year						10,515	10,515
Balance as of December 31, 2013	<u>27,281</u>	<u>72</u>	<u>114,276</u>	<u>541</u>	<u>-</u>	<u>13,775</u>	<u>128,664</u>
Issuance of shares in connection with employee share-based plans	474	1	2,585				2,586
Issuance of shares upon exercise of options	22	(*)					(*)
Stock based compensation			2,124				2,124
Share repurchase	(640)				(6,726)		(6,726)
Other comprehensive income				(1,718)			(1,718)
Net income for the year						18,652	18,652
Balance as of December 31, 2014	<u>27,137</u>	<u>73</u>	<u>118,985</u>	<u>(1,177)</u>	<u>(6,726)</u>	<u>32,427</u>	<u>143,582</u>
Issuance of shares in connection with employee share-based plans	288	1	2,318				2,319
Issuance of shares upon exercise of options	33	(*)					(*)
Stock based compensation			2,674				2,674
Share repurchase	(364)	(1)			(4,302)		(4,303)
Other comprehensive income				1,063			1,063
Net income for the year						15,725	15,725
Balance as of December 31, 2015	<u>27,094</u>	<u>73</u>	<u>123,977</u>	<u>(114)</u>	<u>(11,028)</u>	<u>48,152</u>	<u>161,060</u>

(*) Less than \$1

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

NOVA MEASURING INSTRUMENTS LTD.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(U.S. dollars in thousands)

	Year ended December 31,		
	2015	2014	2013
Cash flows from operating activities:			
Net income for the year	\$ 15,725	\$ 18,652	\$ 10,515
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation	4,597	3,951	3,522
Amortization of acquired intangible assets	5,023	-	-
Loss related to equipment and inventory damage	-	-	148
Stock-based compensation	2,674	2,124	2,095
Loss (gain) on securities	(10)	175	-
Deferred tax assets, net	(5,046)	(1,626)	1,898
Increase (decrease) in liability for employee termination benefits, net	70	(71)	17
Decrease (increase) in trade accounts receivables	(1,959)	12,381	(10,585)
Decrease (increase) in inventories	(1,949)	2,226	(1,783)
Decrease (increase) in other current and long term assets	370	408	(1,234)
Increase (decrease) in trade accounts payables	1,604	(4,038)	4,517
Increase in other current liabilities and other long term liabilities	3,329	64	3,054
Increase (decrease) in short and long term deferred revenues	1,361	(703)	(1,173)
Net cash provided by operating activities	25,789	33,543	10,991
Cash flows from investment activities:			
Decrease (increase) in short-term interest-bearing bank deposits	37,991	(27,737)	(4,513)
Decrease in long-term interest-bearing bank deposits	-	-	(345)
Proceeds from (investments in) short-term available for sale securities	-	1,617	(1,845)
Proceeds from (investments in) short-term held for trading securities	2,005	(1,942)	-
Acquisition of subsidiary, net of acquired cash (Note 3)	(45,344)	-	-
Reimbursement from insurance claim	-	-	219
Additions to property and equipment	(4,373)	(5,234)	(4,119)
Net cash used in investing activities	(9,721)	(33,296)	(10,603)
Cash flows from financing activities:			
Purchases of treasury shares	(4,303)	(6,726)	-
Shares issued under employee share-based plans	2,319	2,586	1,191
Net cash provided by (used in) financing activities	(1,984)	(4,140)	1,191
Increase (decrease) in cash and cash equivalents	14,084	(3,893)	1,579
Cash and cash equivalents - beginning of year	13,649	17,542	15,963
Cash and cash equivalents - end of year	\$ 27,733	\$ 13,649	\$ 17,542

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

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 1 - GENERAL

A. Business Description:

Nova Measuring Instruments Ltd. (the "Company") was incorporated in May 1993 and commenced operations in October 1993 in the design, development and production of integrated process control systems, used in the manufacturing of semiconductors. In October 1995, the Company began manufacturing and marketing its systems. In recent years, the Company expanded its product offering to include stand-alone systems.

The Company continues research and development for the next generation of its products and additional applications for such products. The Company operates in one operating segment.

The Company has wholly owned subsidiaries in the United States of America (the "U.S."), Japan, The Netherlands, Taiwan, Korea and Germany. The subsidiaries (the "subsidiaries") are engaged in pre-sale activities and providing technical support to customers.

On April 2, 2015, the Company completed the acquisition of 100% shares of ReVera Inc. (hereinafter – ReVera) a privately-held U.S. company. For more details see Note 3.

The ordinary shares of the Company are traded on The NASDAQ Global Market since April, 2000 and on the Tel-Aviv Stock Exchange since June, 2002.

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES

The Company's consolidated financial statements have been prepared in accordance with generally accepted accounting principles ("GAAP") in the United States of America.

The following is a summary of the significant accounting policies, which were applied in the preparation of these financial statements, on a consistent basis:

A. Principles of Consolidation and Basis of Presentation:

The Company's consolidated financial statements include the financial statements of the Company and its wholly owned subsidiaries ("the Company"), after elimination of material intercompany transactions and balances.

B. Use of Estimates in the Preparation of Financial Statements:

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

C. Financial Statements in U.S. Dollars:

The currency of the primary economic environment in which the operations of the Company and its subsidiaries are conducted is the U.S. dollar (the "dollar"). Accordingly, the Company uses the dollar as its functional and reporting currency. Certain of the dollar amounts in the financial statements may represent the dollar equivalent of other currencies, including the New Israeli Shekel ("NIS").

Transactions and balances denominated in dollars are presented at their dollar amounts. Non-dollar transactions and balances are re-measured into dollars in accordance with the principles set forth in Accounting Standards Codification Topic No. 830 ("ASC 830"), "Foreign Currency Translation". All transaction gains and losses of the re-measured monetary balance sheet items are reflected in the statements of operations as financial income or expenses, as appropriate.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES (Cont.)

D. Cash and Cash Equivalents:

Cash and cash equivalents represent short-term highly liquid investments (mainly interest-bearing deposits) with maturity dates not exceeding three months from the date of deposit.

E. Short Term Bank Deposit:

Short term bank deposits consist of bank deposits with original maturities of more than three months and up to twelve months.

F. Allowance for Doubtful Accounts:

The allowance for doubtful accounts is computed on the specific identification basis.

G. Business Combination:

The company accounts for business combination in accordance with ASC No. 805, "Business Combination". ASC No. 805 requires recognition of assets acquired and liabilities assumed at the acquisition date, measured at their fair values as of that date. Any excess of the fair value of net assets acquired over purchased price and any subsequent changes in estimated contingencies are to be recorded in the consolidated statements of operations.

H. Held for trading Securities:

A financial asset is classified at fair value through profit or loss if it is classified as held for trading or is designated as such upon initial recognition. Attributable transaction costs are recognized in profit or loss as incurred. Financial assets at fair value through profit or loss are measured at fair value, and changes therein are recognized in profit or loss.

I. Inventories:

Inventories are presented at the lower of cost or market. Cost is determined as follows:

Raw materials-on the average cost basis.

Finished goods and work in process - on actual production cost basis (materials, labor and indirect manufacturing costs).

The Company writes down product inventory, based on slow moving items, and assumptions about future demands, market conditions.

J. Property and Equipment:

Property and equipment are presented at cost, net of accumulated depreciation. Annual depreciation is calculated based on the straight-line method over the shorter of the estimated useful lives of the related assets. Estimated useful life, in years, is as follows:

	Years
Electronic equipment	3-7
Office furniture and equipment	7-15
Leasehold improvements	Over the shorter of the term of the lease or the useful life of the asset

Depreciation methods, useful lives and residual values are reviewed at the end each reporting year and adjusted if appropriate.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES (Cont.)

K. Accrued Warranty Costs:

Accrued warranty costs are calculated in respect of the warranty period on the Company's products and are based on the Company's prior experience and in accordance with management's estimate. The estimated future warranty obligations are affected by the warranty periods, install base, labor and other related costs incurred in correcting a product failure.

L. Intangible Assets:

Intangible assets that are not considered to have an indefinite useful life are amortized using mainly the straight-line basis over their estimated useful lives, as noted below. Recoverability of these assets is measured by a comparison of the carrying amount of the asset to the undiscounted future cash flows expected to be generated by the assets. If the assets are considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired assets.

	Weighted Average Useful Life (Years)
Technology	7
Customer relationships	10
Backlog	Per occurrence
IPR&D	(*)

(*) Will be determined upon successful launch of the related product.

As of December 31, 2015 no impairment losses were identified.

M. Goodwill:

Goodwill and certain other purchased intangible assets have been recorded as a result of acquisitions of ReVera. Goodwill represents the excess of the purchase price in a business combination over the fair value of net tangible and intangible assets acquired. Goodwill is not amortized, but rather is subject to an impairment test. The Company performs an annual impairment test during the fourth quarter of each fiscal year, or more frequently if impairment indicators are present. The Company operates in one operating segment, and this segment comprises its only reporting unit.

ASC 350, "Intangibles – Goodwill and Other", prescribes a two-phase process for impairment testing of goodwill. The first phase screens for impairment, while the second phase (if necessary) measures impairment. Goodwill impairment is deemed to exist if the net book value of a reporting unit exceeds its estimated fair value. In such case, the second phase is then performed, and the Company measures impairment by comparing the carrying amount of the reporting unit's goodwill to the implied fair value of that goodwill. An impairment loss is recognized in an amount equal to the excess. The Company has an option to perform a qualitative assessment to determine whether it is more-likely-than-not that the fair value of a reporting unit is less than its carrying amount prior to performing the two-step goodwill impairment test. If this is the case, the two-step goodwill impairment test is required. If it is more-likely-than-not that the fair value of a reporting unit is greater than its carrying amount, the two-step goodwill impairment test is not required.

For the period ended December 31, 2015, the Company performed an annual impairment analysis and no impairment losses have been identified.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES (Cont.)

N. Revenue Recognition:

Revenues from the sale of products are recognized when all the following criteria have been met: a persuasive evidence of an arrangement exists, delivery has occurred, the price is fixed or determinable, collection of resulting receivables is probable and there are no remaining significant obligations.

Allocation of arrangement consideration among the separate units of accounting is based on their relative selling prices. The selling price for each unit of accounting is determined based on a selling price hierarchy using either vendor specific objective evidence ("VSOE") of selling price, third party evidence of selling price ("TPE") or the vendor's best estimate of estimated selling price ("ESP") for that deliverable. Use of the residual method is prohibited. The objective of ESP is to determine the price at which the Company would transact a sale if the product or service were sold on a stand-alone basis.

Revenues from Service contracts generally specify fixed payment amounts for periods longer than one month, and are recognized on a straight line basis over the term of the contract.

Revenues from sales which were not yet determined to be final sales due to acceptance provisions are deferred and included in deferred revenues. In cases where collectability is not probable, revenues are deferred and recognized upon collection.

Deferred revenues include amounts invoiced to customers for which revenue has not yet been recognized.

O. Research and Development:

Research and development costs are charged to operations as incurred. Amounts received or receivable from the Government of Israel through the Office of the Chief Scientist ("OCS") or from the European Community as participation in certain research and development programs are offset against research and development costs. The accrual for grants receivable is determined based on the terms of the programs, provided that the criteria for entitlement are expected to be met. Royalty expenses are determined based on actual revenues and presented in cost of revenues. Research and development grants recognized during the years ended December 31, 2015, 2014 and 2013 were \$1,237, \$3,490 and \$1,470, respectively.

P. Income Taxes:

The Company accounts for income taxes utilizing the asset and liability method in accordance with ASC 740, "Income Taxes". Current tax liabilities are recognized for the estimated taxes payable on tax returns for the current year. Deferred tax liabilities or assets are recognized for the estimated future tax effects attributable to temporary differences between the income tax bases of assets and liabilities and their reported amounts in the financial statements, and for tax loss carryforwards. Measurement of current and deferred tax liabilities and assets is based on provisions of enacted tax laws, and deferred tax assets are reduced, if necessary, by the amount of tax benefits, the realization of which is not considered more likely than not based on available evidence.

ASC 740-10 requires a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount which is more than 50% likely of being realized upon ultimate settlement.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES (Cont.)

Q. Share-Based Compensation:

The Company accounts for equity based compensation using ASC 718-10 "Share-Based Payment," which requires companies to recognize the cost of employee services received in exchange for awards of equity instruments based upon the grant-date fair value of those awards.

Stock Options

Under ASC 718, the fair market value of each option grant is estimated on the date of grant using the "Black-Scholes option pricing" method with the following weighted-average assumptions:

	<u>2015</u>	<u>2014</u>	<u>2013</u>
Risk-free interest rate	1.41%	1.61%	1.35%
Expected life of options	4.62 years	4.75 years	4.75 years
Expected volatility	35.67%	45.29%	68.13%
Expected dividend yield	0%	0%	0%

R. Earnings per Share:

Earnings per share are presented in accordance with ASC 260-10, "Earnings per Share". Pursuant to which, basic earnings per share excludes the dilutive effects of convertible securities and is computed by dividing income (loss) available to common shareholders by the weighted-average number of ordinary shares outstanding for the period, net of treasury shares. Diluted earnings per share reflect the potential dilutive effect of all convertible securities. The number of potentially dilutive securities excluded from diluted earnings per share due to the anti-dilutive effect amounted to 946,829 in 2015, 526,381 in 2014 and 939,366 in 2013.

Basic earnings per share in 2015, 2014 and 2013 were \$0.58, \$0.68 and \$0.39 respectively. Diluted earnings per share in 2015, 2014 and 2013 were \$0.57, \$0.67 and \$0.38 respectively.

S. Treasury Shares:

Treasury shares are recorded at cost and presented as a reduction of shareholders' equity.

T. Concentrations of Credit Risk:

Financial instruments that potentially subject the Company to concentrations of credit risk consist principally of cash and cash equivalents, bank deposits, trade receivables and foreign currency derivative contracts.

The majority of the Company's cash and cash equivalents and bank deposits are invested in dollar instruments with major banks in Israel. Management believes that the financial institutions that hold the Company's investments are corporations with high credit standing. Accordingly, management believes that low credit risk exists with respect to these financial investments.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES (Cont.)

U. Fair Value Measurements:

The fair values of the Company cash and cash equivalents, accounts receivable, and accounts payable approximate their carrying amounts due to their short-term nature. The estimated fair values of the derivative instruments are calculated based on market rates to settle the instruments. These values represent the estimated amounts the Company would receive upon sale or pay upon transfer, taking into consideration current market rates. The Company calculate derivative asset and liability amounts using a variety of valuation techniques, depending on the specific characteristics of the hedging instrument, taking into account credit risk. The fair value of the Company derivative contracts (including forwards and options) is determined using standard valuation models. The significant inputs used in these models are readily available in public markets or can be derived from observable market transactions and, therefore, the Company derivative contracts have been classified as Level 2. Inputs used in these standard valuation models include the applicable spot, forward, and discount rates. The standard valuation model for the Company option contracts also includes implied volatility, which is specific to individual options and is based on rates quoted from a widely used third-party resource.

V. Derivative Financial Instruments:

ASC 815 requires the presentation of all derivatives as either assets or liabilities on the balance sheet and the measurement of those instruments at fair value.

For derivative instruments that are designated and qualify as a cash flow hedge (i.e., hedging the exposure to variability in expected future cash flows that is attributable to a particular risk), the effective portion of the gain or loss on the derivative instrument is reported as a component of other comprehensive income and reclassified into earnings in the same period or periods during which the hedged transaction affects earnings. The remaining gain or loss on the derivative instrument in excess of the cumulative change in the present value of future cash flows of the hedged item, if any, is recognized in current earnings during the period of change. See Note 13 for disclosure of the derivative financial instruments in accordance with such pronouncements.

W. Impairment of Long-Lived Assets:

Long-lived assets, held and used by the Company are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the assets (or asset Company) may not be recoverable. In the event that the sum of the expected future cash flows (undiscounted and without interest charges) of the long-lived assets is less than the carrying amount of such assets, an impairment charge would be recognized, and the assets (or asset Company) would be written down to their estimated fair values.

The Company performed an impairment review and did not identify any indicators.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES (Cont.)

X. New Accounting Pronouncements:

In May 2014, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2014-09, Revenue from Contracts with Customers. The standard provides companies with a single model for accounting for revenue arising from contracts with customers and supersedes current revenue recognition guidance, including industry-specific revenue guidance. The core principle of the model is to recognize revenue when control of the goods or services transfers to the customer, as opposed to recognizing revenue when the risks and rewards transfer to the customer under the existing revenue guidance. The guidance permits companies to either apply the requirements retrospectively to all prior periods presented, or apply the requirements in the year of adoption, through a cumulative adjustment. In August 2015, the FASB issued ASU 2015-14, Deferral of the Effective date, which defers the required adoption date of ASU 2014-09 by one year. As a result of the deferred effective date, ASU 2014-09 will be effective for the Company in its first quarter of fiscal 2018. Early adoption is permitted but not before the original effective date of the new standard of the first quarter of fiscal 2017. The Company is currently evaluating the impact of the guidance on its consolidation financial statements.

In November 2015, the FASB issued ASU No. 2015-17, Balance Sheet Classification of Deferred Taxes, to simplify the presentation of deferred taxes. This amendment requires that all deferred tax assets and liabilities, along with any related valuation allowances, be classified as noncurrent on the balance sheet. ASU 2015-17 is effective for annual and interim reporting periods ending after December 15, 2017. Early adoption is permitted, and the new guidance may be applied either prospectively or retrospectively. The Company hasn't adopted this guidance as of December 31, 2015.

In July 2015, the FASB issued ASU No. 2015-11, "Inventory (Topic 330), Simplifying the Measurement of Inventory." This ASU is intended to simplify subsequent measurement of inventory. An entity should measure inventory within a scope of this ASU at the lower of cost and net realizable value. Net realizable value is the estimated selling price in the ordinary course of business, less reasonably predictable cost of completion, disposal, and transportation. The standard is effective for annual periods and interim periods within those annual periods beginning after December 15, 2016. The Company has not yet selected a transition method nor determined the impact of the new standard on its consolidated financial statements.

NOTE 3 - ACQUISITION OF REVERA INC.

On April 2, 2015 ("the Closing Date"), The Company completed the acquisition of ReVera Inc. ("ReVera") a privately held company headquartered in Santa Clara, California, which develops, manufactures, and sells stand-alone metrology tools for measurements of thin-films and composition applications in the semiconductor industry. The company paid \$46,500 in cash, of which \$2,475 were paid to ReVera noteholders prior to the acquisition.

The financial results of ReVera are included in the consolidated financial statements from the closing date.

Upon acquisition, ReVera became the Company's wholly-owned subsidiary. The acquisition was accounted for as a business combination. This method requires, among other things, that assets acquired and liabilities assumed in a business combination be recognized at their fair values as of the acquisition date.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 3 - ACQUISITION OF REVERA INC. (Cont.)

If new information is obtained within one year from the acquisition date about facts and circumstances that existed at the acquisition date, the Company will retrospectively adjust the relevant amounts that were recognized at the time of the acquisition.

The Company allocated the total consideration to ReVera's tangible and intangible assets and liabilities based on their estimated fair values as of the acquisition date and allocated the remaining amount to goodwill. The allocation is as follows:

Cash and cash equivalents	\$	1,158
Net assets excluding cash and cash equivalents		7,991
Deferred tax current assets		563
Deferred tax long-term assets		3,753
Intangible assets		22,929
Goodwill		20,114
Deferred revenues, net		(1,409)
Deferred tax current liabilities		(2,122)
Deferred tax long-term liabilities		(6,477)
Total purchases price	\$	<u>46,500</u>

The valuation of intangible assets as of December 31, 2015 were as follows:

	Original Amount	Accumulated Amortization	Net Carrying Amount
Technology	\$ 12,305	\$ 1,318	\$ 10,987
Customer relationships	5,191	199	4,992
Backlog	3,506	3,506	-
IPR&D	1,927	-	1,927
	<u>\$ 22,929</u>	<u>\$ 5,023</u>	<u>\$ 17,906</u>

Annual amortization expenses are expected as following:

Year ending December 31,		
2016	\$	2,545
2017		2,561
2018		2,614
2019		2,625
2020 and thereafter		7,561
	\$	<u>17,906</u>

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 3 - ACQUISITION OF REVERA INC. (Cont.)

Measurement of Fair Values

The fair value of technology is based on the discounted estimated royalty payments that have been avoided as a result of the technology being owned.

The fair value of customer relationships is determined using the multi-period excess earnings method, whereby the subject asset is valued after deducting a fair return on all other assets that are part of creating the related cash flows.

The fair value of Backlog has been calculated using the income approach. The backlog is considered a valuable intangible asset, which can be separately sold.

The fair value of IPR&D intangible assets represent the value assigned to acquired research and development projects that, as of the acquisition date had not established technological feasibility and had no alternative future use. The IPR&D intangible assets are capitalized and accounted for as indefinite-lived intangible assets and are subject to impairment testing until completion or abandonment of the projects. Upon successful completion of each project and launch of the product, the Company will make a separate determination of useful life of the IPR&D intangible assets and the related amortization will be recorded as an expense over the estimated useful life of the specific projects.

Goodwill generated from the ReVera acquisition is primarily attributable to expected synergies. All goodwill generated during this period is not deductible for tax purposes.

The Company incurred acquisition-related expenses of \$1,979. These expenses have been included in operating expenses in the statement of operation.

The following unaudited pro forma information presents the combined results of operations as if the acquisition had been completed on January 1, 2014, the beginning of the comparable prior annual reporting period.

The unaudited pro forma results do not reflect any cost saving synergies from operating efficiencies or the effect of the incremental costs incurred in integrating the two companies. Accordingly, these unaudited pro forma results are presented for informational purpose only and are not necessarily indicative of what the actual results of operations of the combined company would have been if the acquisition had occurred at the beginning of the period presented, nor are they indicative of future results of operations.

	<u>Year ended December 31,</u>	
	<u>2015</u>	<u>2014</u>
Revenues	\$ 155,842	\$ 151,350
Net income	\$ 19,328	\$ 21,898

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 4 - INVENTORIES

A. Composition:

	As of December 31,	
	2015	2014
Raw materials	\$ 6,649	\$ 3,148
Work in process	12,932	7,656
Finished goods	8,102	5,303
	\$ 27,683	\$ 16,107

B. In the years ended December 31, 2015, 2014 and 2013, the Company wrote-off inventories in a total amount of \$2,551, \$1,554 and \$1,824, respectively.

NOTE 5 - PROPERTY AND EQUIPMENT, NET

	As of December 31,	
	2015	2014
Cost:		
Electronic equipment	\$ 24,718	\$ 21,716
Office furniture and equipment	1,648	1,159
Leasehold improvements	6,303	4,555
	32,669	27,430
Accumulated depreciation:		
Electronic equipment	17,150	13,244
Office furniture and equipment	1,298	882
Leasehold improvements	3,159	1,854
	21,607	15,980
Net book value	\$ 11,062	\$ 11,450

NOTE 6 - OTHER CURRENT LIABILITIES

A. Consists of:

	As of December 31,	
	2015	2014
Accrued salaries and fringe benefits	\$ 8,056	\$ 6,905
Accrued warranty costs (See B below)	3,883	2,356
Governmental institutions	3,338	1,431
Other	719	1,914
	\$ 15,996	\$ 12,606

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 6 - OTHER CURRENT LIABILITIES (Cont.)

B. Accrued Warranty Costs:

The Company provides standard warranty coverage on its systems. Parts and labor are covered under the terms of the warranty agreement. The Company accounts for the estimated warranty cost as a charge to costs of revenues when revenue is recognized.

The following table provides the changes in the product warranty accrual for the fiscal years ended December 31, 2015 and 2014:

	As of December 31,	
	2015	2014
Balance as of beginning of year	\$ 2,356	\$ 2,402
Acquisition of ReVera	973	-
Services provided under warranty	(4,221)	(2,428)
Changes in provision	4,775	2,382
Balance as of end of year	\$ 3,883	\$ 2,356

NOTE 7 - LIABILITY FOR EMPLOYEE SEVERANCE PAY, NET

Israeli law and labor agreements determine the obligations of the Company to make severance payments to dismissed employees and to employees leaving employment under certain other circumstances. The obligation for severance pay benefits, as determined by Israeli law, is based upon length of service and the employee's most recent salary. The liability is partially covered through insurance policies purchased by the Company and deposits in a severance fund.

The deposited funds include profits accumulated up to the balance sheet date. The deposited funds may be withdrawn only upon the fulfillment of the obligation pursuant to Israel's Severance Pay Law, 1963 or labor agreements.

Since July 2008, the Company's agreements with new Israeli employees are under Section 14 of the Israeli Severance Pay Law, 1963. The Company's contributions for severance pay have replaced its severance obligation. Upon contribution of the full amount of the employee's monthly salary for each year of service, no additional calculations are conducted between the parties regarding the matter of severance pay and no additional payments are made by the Company to the employee.

Severance pay expenses for the years ended December 31, 2015, 2014 and 2013, amounted to \$94, \$6 and \$63, respectively (not including the company's contributions to severance pay under section 14).

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 8 - COMMITMENTS AND CONTINGENCIES

- A.** Under the research and development agreements of the Company with the OCS and pursuant to applicable laws, the Company has undertaken to pay royalties at the rate of 3.5%-5% (2015 onwards-5%) on sales of products developed with funds provided by the OCS, up to an amount equal to 100% of the OCS research and development grants received, linked to the dollar plus interest on the unpaid amount received based on the 12-month LIBOR rate (from the year the grant was approved) applicable to dollar deposits. Refund of the grants thereon is contingent on future sales and the Company has no obligation to refund grants if sufficient sales are not generated.

The place of manufacturing of a product that was developed with the support of the OCS, or based on know-how developed with the support of the OCS, shall be according to the supported Company's declaration in the application for support (including manufacturing abroad). In case the Company wishes to transfer its manufacturing activities abroad, in addition to their statement in the application for support, they will be required to receive approval from the OCS research committee. The committee is entitled to increase both the royalty liability and the rate of the royalty payments. The increased repayment is calculated according to the percentage of the manufacturing activities that are intended to be carried out outside Israel, and can reach up to 300% of the original sum. When the manufacturing of the product is being done outside of Israel, the Company subsidiaries shall be required to pay an increased royalty rate of an additional 1%.

As of December 31, 2015 the Company has received grants in the aggregate amount of \$24,341 (December 31, 2014: \$22,940) from the OCS.

As of December 31, 2015, the Company has paid or accrued royalties to the OCS in the amount of \$7,926 (December 31, 2014: \$6,670), which were recorded in cost of revenues.

Royalty expense amounted to \$1,255, \$1,019, and \$787 for the years 2015, 2014 and 2013, respectively. The balance of the contingent liability to the OCS as of December 31, 2015 was approximately \$23,959 (December 31, 2014: \$22,605).

- B.** The Company rents its facilities under various operating lease agreements, which expire on various dates, the latest of which is in 2020. The minimum rental payments are as follows:

Year		
2016	\$	1,725
2017		1,199
2018		1,199
2019		1,199
2020	\$	1,199

Rental expense for the facilities amounted to \$1,781, \$1,594 and \$1,344 for the year 2015, 2014 and 2013, respectively. In connection with the Company's facilities lease agreement in Israel, the lessor has a lien of approximately \$750 on certain bank deposits as of December 31, 2015. These deposits are included in long-term interest-bearing bank deposits.

- C.** The Company is obligated under certain agreements with its suppliers to purchase specified items of excess inventory which is expected to be utilized in 2016. As of December 31, 2015, non-cancelable purchase obligations were approximately \$9,588.

NOTE 9 - SHAREHOLDERS' EQUITY

- A. Rights of Shares:**

Holders of ordinary shares are entitled to participate equally in the payment of cash dividends and bonus shares (stock dividends) and, in the event of the liquidation of the Company, in the distribution of assets after satisfaction of liabilities to creditors. Each ordinary share is entitled to one vote on all matters to be voted on by shareholders.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 9 - SHAREHOLDERS' EQUITY (Cont.)

B. Share Repurchase:

On March 24, 2014, the Company announced a \$12 million share repurchase program, which was partially executed in 2014 and 2015.

Through December 31, 2015, the Company repurchased 1,003,778 ordinary shares for an aggregate amount of \$11,028.

C. Employee Incentive Plans:

The Company's Board of directors approves, from time to time, employee incentive plans, the last of which was approved in October 2007. Employee incentive plans include stock options, restricted stock units and restricted stock awards.

Stock Options

The following table summarizes the effects of stock-based compensation resulting from the application of ASC 718 included in the Statements of Operations as follows:

	Year ended December 31,		
	2015	2014	2013
Cost of Revenues:			
Products	\$ 373	\$ 375	\$ 310
Services	203	178	140
Research and Development expenses	1,085	870	881
Sales and Marketing expenses	744	446	576
General and Administration expenses	269	255	188
Total	\$ 2,674	\$ 2,124	\$ 2,095

Stock options vest over four years and their term may not exceed 10 years. The exercise price of each option is the market price of the underlying share at the date of each grant.

Through December 31, 2015, 11,360,926 share options have been issued under the plans, of which 5,109,607 options have been exercised, 4,494,149 options have been cancelled, and 689,369 options were exercisable as of December 31, 2015.

The weighted average fair value (in dollars) of the options granted during 2015, 2014 and 2013, according to Black-Scholes option-pricing model, amounted to \$3.76, \$4.31 and \$4.93 per option, respectively. Fair value was determined on the basis of the price of the Company's share.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 9 - SHAREHOLDERS' EQUITY (Cont.)

C. Employee Incentive Plans: (Cont.)

Summary of the status of the Company's share option plans as of December 31, 2015, 2014 and 2013, as well as changes during each of the years then ended, is presented below:

	<u>2 0 1 5</u>		<u>2 0 1 4</u>		<u>2 0 1 3</u>	
	<u>Share Options</u>	<u>Weighted Average Exercise Price</u>	<u>Share Options</u>	<u>Weighted Average Exercise Price</u>	<u>Share Options</u>	<u>Weighted Average Exercise Price</u>
Outstanding - beginning of year	1,534,642	8.90	1,707,702	7.48	1,844,347	5.75
Granted	625,959	11.67	392,879	10.77	383,537	8.87
Exercised	287,928	8.06	473,616	5.48	513,896	2.34
Cancelled	115,503	10.01	92,323	8.09	6,286	5.73
Outstanding - year end	<u>1,757,170</u>	<u>9.95</u>	<u>1,534,642</u>	<u>8.9</u>	<u>1,707,702</u>	<u>7.48</u>
Options exercisable at year-end	<u>689,369</u>	<u>8.66</u>	<u>644,685</u>	<u>8.11</u>	<u>738,915</u>	<u>6.35</u>

The aggregate intrinsic value represents the total intrinsic value (the difference between the Company's closing stock price on the last trading day of the fiscal year and the exercise price, multiplied by the number of in-the-money options) that would have been received by the option holders had all option holders exercised their options on the last trading day of the fiscal year. This amount changes based on the fair market value of the Company's shares.

The total intrinsic value of options outstanding as of December 31, 2015 and 2014 was \$1,259 and \$2,508, respectively. The total intrinsic value of options exercisable as of December 31, 2015 and 2014 was \$979 and \$1,508, respectively. The total intrinsic value of options exercised during the years 2015, 2014 and 2013 was \$505, \$2,328 and \$3,856, respectively.

The following table summarizes information about share options outstanding as of December 31, 2015:

<u>Range of Exercise Prices (US dollars)</u>	<u>Number Outstanding</u>	<u>Weighted Average Remaining Contractual Life (in years)</u>	<u>Weighted Average Exercise Price (US dollars)</u>	<u>Number Exercisable</u>	<u>Weighted Average Exercise Price (US dollars)</u>
0.93-1.25	17,806	3.34	1.23	17,806	1.23
4.20-6.70	62,319	3.59	5.91	62,319	5.91
7.40-7.91	164,677	3.58	7.82	107,221	7.82
8.38-8.89	437,380	4.11	8.66	293,066	8.60
9.04-9.58	54,417	4.15	9.07	26,329	9.08
10.08-10.93	357,930	5.26	10.28	123,878	10.47
11.39-12.46	662,641	6.02	11.84	58,750	11.66
	<u>1,757,170</u>			<u>689,369</u>	

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 9 - SHAREHOLDERS' EQUITY (Cont.)

C. Employee Incentive Plans: (Cont.)

Unrecognized Compensation Expense

As of December 31, 2015, there was \$2,106 of total unrecognized compensation cost related to non-vested employee options and \$1,801 of total unrecognized compensation cost related to non-vested employee RSUs. These costs are generally expected to be recognized over a period of four years.

Restricted Share Units

Restricted Share Units ("RSU") grants are rights to receive shares of the Company's common stock on a one-for-one basis and vest 25% on each of the first, second, third and fourth anniversaries of the grant date and are not entitled to dividends or voting rights, if any, until they are vested. The fair value of the RSU awards is being recognized on a straight-line basis over vesting period.

As of December 31, 2015, 644,094 RSU's had been issued, 376,623 RSU's had been vested, 14,682 had been cancelled. As of December 31, 2014, 451,647 RSU's had been issued, 343,718 RSU's had been vested, 9,609 had been cancelled. As of December 31, 2013, 406,940 RSU's had been issued, 320,973 RSU's had been vested, 5,442 had been cancelled.

The number of RSU's issued in 2015, 2014 and 2013 was 192,447, 44,707 and 60,321, respectively. The weighted average fair values at grant date of RSU's granted for the years ended December 31, 2015, 2014 and 2013 were \$11.51, \$10.08 and \$8.98, respectively. The total intrinsic value of RSU's vested during the years 2015, 2014 and 2013 was \$322, \$236 and \$833, respectively.

NOTE 10 - INCOME TAXES

A. Income Tax Regulations (Rules on Bookkeeping by Foreign Invested Companies and Certain Partnerships and Determination of their Taxable Income), 1986:

As a "Controller Foreign Cooperation" (as defined in the Israeli Law for the Encouragement of Capital Investments-1959), the Company's management has elected to apply Income Tax Regulations (Rules for Maintaining Accounting Records of Foreign Invested Companies and Certain Partnerships and Determining Their Taxable Income) - 1986. Accordingly, its taxable income or loss is calculated in US Dollars.

B. Law for the Encouragement of Capital Investments - 1959:

Part of the Company's investment in equipment has received approvals in accordance with the Law for the Encouragement of Capital Investments, 1959 ("Approved Enterprise" status) in three separate investment plans. The Company has chosen to receive its benefits through the "Alternative Benefits" track, and, as such, is eligible for various benefits. These benefits include accelerated depreciation of fixed assets used in the investment program, as well as a full tax exemption on undistributed income in relation to income derived from the first plan for a period of 4 years and for the second and third plans for a period of 2 years. Thereafter a reduced tax rate of 25% will be applicable for an additional period of up to 3 years for the first plan and 5 years for the second and third plans, commencing with the date on which taxable income is first earned but not later than certain dates. The benefit period of the second and third plan have commenced.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 10 - INCOME TAXES (Cont.)

B. Law for the Encouragement of Capital Investments - 1959: (Cont.)

On April 1, 2005, an amendment to the Investment Law came into effect ("the Amendment") and has significantly changed the provisions of the Investment Law. The Amendment limits the scope of enterprises which may be approved by the Investment Center by setting criteria for the approval of a facility as a Privileged Enterprise, such as provisions generally requiring that at least 25% of the Privileged Enterprise's Income will be derived from export. Additionally, the Amendment enacted major changes in the manner in which tax benefits are awarded under the Investment Law so that companies no longer require Investment Center approval in order to qualify for tax benefits. However, the Investment Law provides that terms and benefits included in any certificate of approval already granted will remain subject to the provisions of the law as they were on the date of such approval. Therefore, the Israeli companies with Approved Enterprise status will generally not be subject to the provisions of the Amendment.

The entitlement to the above benefits is conditional upon the Company fulfilling the conditions stipulated by the above law, regulations published thereunder and the instruments of approval for the specific investments in "Approved Enterprises". In the event of failure to comply with these conditions, the benefits may be canceled and the Company may be required to refund the amount of the benefits, in whole or in part, including interest.

In the event of distribution by the Company of a cash dividend out of retained earnings that were tax exempt due to its Approved Enterprise status, the Company would have to pay corporate tax of 10% - 25% on the income from which the dividend was distributed based on the extent to which non-Israeli shareholders hold Company's shares. A 15% withholding tax may be deducted from dividends distributed to the recipients.

The Company has not provided deferred taxes on future distributions of tax-exempt earnings, as the Company intends to reinvest any income derived from its Approved Enterprise program and not to distribute such income as a dividend. Accordingly, such earnings have been considered to be permanently reinvested.

In 2008, the Company submitted a request to approve a new plan (fourth plan) as a Privileged Enterprise in accordance with the Amendment to the Investment Law. The commencing year was 2010. The expected expiration year is 2021.

In 2011, new legislation amending to the Investment Law was adopted. Under this new legislation, a uniform corporate tax rate will apply to all qualifying income of certain Industrial Companies (Requirement of a minimum export of 25% of the company's total turnover), as opposed to the current law's incentives, which are limited to income from Approved Enterprises during their benefits period. Under the new law, the uniform tax rate will be 10% in areas in Israel designated as Development Zone A and 15% elsewhere in Israel during 2011-2012, 7% and 12.5%, respectively, in 2013-2014, and 6% and 12%, respectively thereafter. The profits of these Industrial Companies will be freely distributable as dividends, subject to a 15% withholding tax (or lower, under an applicable tax treaty).

Under the transition provisions of the new legislation, the Company may decide to irrevocably implement the new law while waiving benefits provided under the current law or to remain subject to the current law.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 10 - INCOME TAXES (Cont.)

B. Law for the Encouragement of Capital Investments - 1959: (Cont.)

In August 2013 "The Arrangements Law" (hereinafter - "the Law") was officially published. The following significant changes affecting taxation were approved:

1. The tax rate on a company in Development area A, effective January 1, 2014 is 9% (instead of 7% in 2014 and 6% in 2015 and thereafter), and the tax rate for companies in all other areas will be 16% (instead of 12.5% in 2014 and 12% in 2015 and thereafter).
2. The tax rate on dividend distributed, generated from "preferred income" or by a company that has an approved enterprise related to tourism increased effective January 1, 2014 from 15% to 20%.

In 2014 and 2015, most of the Company's taxable income in Israel is attributable to Approved Enterprise programs with zero tax.

C. Law for the Encouragement of Industry (Taxation), 1969:

The Company is an "Industrial Company" under the Law for the Encouragement of Industry (Taxation), 1969 and, therefore, is entitled to certain tax benefits, mainly accelerated rates of depreciation.

D. Deferred Taxes:

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company and its subsidiary deferred tax assets are as follows:

	<u>As of December 31,</u>	
	<u>2 0 1 5</u>	<u>2 0 1 4</u>
Net operating loss carry-forwards	\$ 4,781	\$ -
Temporary differences relating to reserve and allowances	9,658	1,796
Intangible assets	(6,715)	-
	7,724	1,796
Valuation Allowance	(5,165)	-
Deferred tax asset, net	<u>\$ 2,559</u>	<u>\$ 1,796</u>

The Company's U.S. subsidiaries have carry-forward tax losses of approximately \$8,808 to offset against future U.S. federal taxable income.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 10 - INCOME TAXES (Cont.)

D. Deferred Taxes: (Cont.)

Israel:

	As of December 31,	
	2015	2014
Short-term deferred tax assets	\$ 2,973	\$ 142
Long-term deferred tax assets	1,981	1,654
	\$ 4,954	\$ 1,796

International:

	As of December 31,	
	2015	2014
Short-term deferred tax assets	\$ 567	\$ -
Long-term deferred tax assets	3,754	-
Short-term deferred tax liabilities	(956)	-
Long-term deferred tax liabilities	(5,760)	-
	\$ (2,395)	\$ -

Under ASC 740-10, deferred tax assets are to be recognized for the anticipated tax benefits associated with net operating loss carry-forwards and deductible temporary differences; unless it is more-likely-than-not that some or all of the deferred tax assets will not be realized.

The adjustment is made by a valuation allowance.

E. Israel and International Components of Income before Taxes:

	Year ended December 31,		
	2015	2014	2013
Israel	\$ 15,377	\$ 16,648	\$ 11,788
International	(3,153)	826	1,238
	\$ 12,224	\$ 17,474	\$ 13,026

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 10 - INCOME TAXES (Cont.)

F. Tax Reconciliation:

The following is a reconciliation of the theoretical tax expense, assuming that all income is taxed at the ordinary statutory average corporate tax rate in Israel and the actual tax expense in the statement of operations, is as follows:

	Year ended December 31,		
	2015	2014	2013
Net income before taxes	\$ 12,224	\$ 17,474	\$ 13,026
Statutory tax expenses	3,239	4,631	3,256
Effect of Approved Enterprise status	(7,807)	(8,639)	-
Permanent differences, including difference between the basis of measurement of income reported for tax purposes and the basis of measurement of income for financial reporting purposes – net	1,377	776	218
Different tax rates of deferred taxes	-	1,839	(1,344)
Deferred taxes on carryforward tax losses for which valuation allowance was provided	-	(39)	-
Effect of foreign operations taxed at various rates	(530)	(31)	96
Adjustments for previous years tax	-	-	261
Change in valuation allowance	-	42	-
Other	220	243	24
	<u>(6,740)</u>	<u>(5,809)</u>	<u>(745)</u>
Actual tax expense (benefit)	<u>\$ (3,501)</u>	<u>\$ (1,178)</u>	<u>\$ 2,511</u>

G. Effective Tax Rates:

The Company's effective tax rates differ from the statutory rates applicable to the Company for tax year 2015 and 2014 due primarily to effect of Approved Enterprise status and for tax year 2013 due primarily to its tax losses carry-forward.

H. Tax Assessments:

The Company has either received final tax assessments or the applicable statute of limitations rules have become effective through tax year 2010. Two subsidiaries received final tax assessments through tax year 2012. The other subsidiaries did not receive final tax assessments since their incorporation.

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 10 - INCOME TAXES (Cont.)

I. Uncertain Tax Positions:

The taxation of the Company's business is subject to the application of multiple and sometimes conflicting tax laws and regulations as well as multinational tax conventions. The application of tax laws and regulations is subject to legal and factual interpretation, judgment and uncertainty.

Tax laws themselves are subject to change as a result of changes in fiscal policy, changes in legislation and the evolution of regulations and court rulings. Consequently, taxing authorities may impose tax assessments or judgments against the Company that could materially impact its tax liability and/or its effective income tax rate.

The Company believes that it has adequately provided for any reasonably foreseeable outcomes related to tax audits and settlement. The final tax outcome of its tax audits could be different from that which is reflected in the Company's income tax provisions and accruals. Such differences could have a material effect on the Company's income tax provision and net income in the period in which such determination is made.

The following table summarizes the changes in uncertain tax positions:

	As of December 31,	
	2015	2014
Balance at the beginning of the year	\$ 651	\$ 451
Decrease related to prior year tax positions, net	(241)	(36)
Increase related to current year tax positions	755	236
Balance at the end of the year	<u>\$ 1,165</u>	<u>\$ 651</u>

J. Income from Other Sources in Israel:

Income not eligible for benefits under the Approved Enterprise Law mentioned in A. above is taxed at the corporate tax rate of 26.5% in 2015 and 2014 and 25% in 2013. Effective January 1, 2016 the tax rate will be 25%.

NOTE 11 - GEOGRAPHIC AREAS AND MAJOR CUSTOMERS

A. Sales by Geographic Area (as Percentage of Total Sales):

	Year ended December 31,		
	2015	2014	2013
	%	%	%
Taiwan, R.O.C.	44	45	52
USA	14	26	15
Korea	19	11	6
Germany	7	8	12
Other	16	10	15
Total	<u>100</u>	<u>100</u>	<u>100</u>

NOVA MEASURING INSTRUMENTS LTD.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(U.S. dollars in thousands, except share and per share data)

NOTE 11 - GEOGRAPHIC AREAS AND MAJOR CUSTOMERS (Cont.)

B. Sales by Major Customers (as Percentage of Total Sales):

	Year ended December 31,		
	2015	2014	2013
	%	%	%
Customer A	31	36	44
Customer B	14	9	5
Customer C	13	21	14
Others	42	34	37
Total	100	100	100

C. Assets by Location:

Substantially all fixed assets are located in Israel.

NOTE 12 - TRANSACTIONS AND BALANCES WITH RELATED PARTIES

The total directors' fees (including the chairman of the Board) for the year 2015 amounted to \$266 (2014 - \$247, 2013 - \$208). The number of stock options granted to directors in 2015 amounted to 70,000.

NOTE 13 - FINANCIAL INSTRUMENTS

A. Hedging Activities:

The Company enters into forward contracts, and currency options to hedge its balance sheet exposure as well as certain future cash flows in connection with certain operating expenses (mainly payroll expense) and forecast transactions which are expected to be denominated in New Israeli Shekel ("NIS"). The Company is exposed to losses in the event of non-performance by counterparties to financial instruments; however, as the counterparties are major Israeli banks, credit risk is considered immaterial. The Company does not hold or issue derivatives for trading purposes. The notional amounts of the hedging instruments as of December 31, 2015 and December 31, 2014 were \$58,718, and \$59,475 respectively. The terms of all of these currency derivatives are less than one year.

B. Derivative Instruments

The fair value of derivative contracts as of December 31, 2015 and December 31, 2014 was as follows:

	Derivative Assets Reported in Other Current Assets December 31,		Derivative Liabilities Reported in Other Current Liabilities December 31,	
	2015	2014	2015	2014
	\$	\$	\$	\$
Derivatives designated as hedging instruments in cash flow hedge	-	-	114	1,177

The impact of derivative instrument on total operating expenses in the year ended December 31, 2015, 2014 and 2013 was:

	Year ended December 31,		
	2015	2014	2013
	\$	\$	\$
Gain (loss) on derivative instruments	(1,205)	(126)	1,181

SIGNATURES

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

NOVA MEASURING INSTRUMENTS LTD.

By: /s/ Eitan Oppenheim

Eitan Oppenheim

President and Chief Executive Officer

Date: February 29, 2016

EXHIBIT INDEX

<u>Number</u>	<u>Description</u>
1.1	Amended and Restated Articles of Association (incorporated by reference to Exhibit 3.1 to the Company's Registration Statement on Form S-8 filed with the Securities and Exchange Commission on October 25, 2012 (File No. 333-184585)).
4.2	2007 Incentive Plan, as amended (incorporated by reference to Exhibit 4.2 to the Company's Annual Report on Form 20-F filed with the Securities and Exchange Commission on February 25, 2015).
4.3	A form of amended Indemnification Letter Agreement between the Company and its present and future directors and officers (incorporated by reference to Appendix B to Exhibit 99.1 of the Company's Report on Form 6-K filed with the Securities and Exchange Commission on May 21, 2012).
4.4	Summary of lease agreements (incorporated by reference to Exhibit 4.7 of the Company's Annual Report on Form 20-F filed with the Securities and Exchange Commission on March 11, 2013).
4.5	Agreement and Plan of Merger dated March 11, 2015 by and among Nova Measuring Instruments Ltd., ReVera Incorporated, Neptune Acquisition Inc., and the Representative (named therein) (filed herewith).
8.1	List of Subsidiaries (filed herewith).
12.1	Certification required by Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended (filed herewith).
12.2	Certification required by Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended (filed herewith).
13.1	Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
13.2	Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (filed herewith).
15.1	Consent of Kost Forer Gabbay & Kasierer (filed herewith).
15.2	Consent of Brightman Almagor Zohar & Co. (filed herewith).
15.3	Letter from Brightman Almagor Zohar & Co. to the Securities and Exchange Commission dated February 29, 2016 (filed herewith).
101	Financial information from Nova Measuring Instruments Ltd.'s Annual Report on Form 20-F for the year ended December 31, 2015 formatted in XBRL (eXtensible Business Reporting Language).

AGREEMENT AND PLAN OF MERGER

dated as of March 11, 2015

by and among

Nova Measuring Instruments Ltd., as Parent

ReVera Incorporated, as the Company

Neptune Acquisition Inc., as Merger Sub

and

the Representative

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER, dated as of March 11, 2015 (this "**Agreement**"), is by and among Nova Measuring Instruments Ltd., an Israeli public company ("**Parent**"), ReVera Incorporated, a Delaware corporation (the "**Company**"), Neptune Acquisition Inc., a Delaware corporation and an indirect wholly owned subsidiary of Parent ("**Merger Sub**"), and Shareholder Representative Services LLC, a Colorado limited liability company solely in its capacity as the Representative. Certain capitalized terms used herein have the meanings assigned to them in Section 8.1.

BACKGROUND

The board of directors of each of Parent, Merger Sub and the Company have determined that the Merger would be fair to, advisable and in the best interests of their respective stockholders, and, subject to the terms and conditions set forth herein, and, in furtherance thereof, have unanimously approved this Agreement, the Merger and the other Transactions and the board of directors of the Company has unanimously resolved to recommend adoption and approval of this Agreement by the holders of Company Capital Stock in accordance with the Charter, Section 251 and Section 228 of the General Corporation Law of the State of Delaware ("**DGCL**") and, as applicable, Section 1201 and Section 603 of the General Corporation Law of the State of California ("**CGCL**").

Immediately after the execution and delivery of this Agreement, the Company will use its commercially reasonable efforts to obtain and deliver to Parent promptly following the execution and delivery of this Agreement (A) (i) an executed written consent in the form of **Exhibit A** (the "**Stockholders' Written Consent**") and (ii) an executed Agreement and General Release (Stockholders) in the form attached hereto as **Exhibit H**, in each case, of the holders of the Company Capital Stock necessary to effect the Required Vote for adopting this Agreement and approving the terms of the Merger and (B) an executed Agreement and General Release (Directors and Officers) in the form attached hereto as **Exhibit I** of the directors and officers of the Company.

Nova Measuring Instruments Inc. (a wholly owned subsidiary of Parent), as sole stockholder of Merger Sub, has adopted this Agreement and approved the terms of the Merger.

A portion of the Merger Consideration (i) will be placed in escrow by Parent, as partial security for the indemnification obligations of the Indemnifying Securityholders hereunder and (ii) at the direction of the Company pursuant to Section 7.9(f) will be placed in the Representative Expense Fund, to be used by the Representative for the purposes of paying directly, or reimbursing the Representative for, any third party expenses of the Representative acting on behalf of the Indemnifying Securityholders pursuant to this Agreement and the Escrow Agreement.

In order to induce Parent to enter into this Agreement, concurrently with the execution and delivery of this Agreement, (i) the holders of Company Capital Stock and/or Company Options to be exercised immediately prior to, and contingent on, Closing in accordance herewith identified on **Schedule 1-A** hereto are executing and delivering non-competition/non-solicitation agreements in the form attached hereto as **Exhibit B** (the "**Non-Competition Agreements**") and (ii) the Key Employees are executing and delivering employment offer letters (the "**Offer Letters**"), with Parent (or a Subsidiary of Parent), in each case effective at and subject to the occurrence of the Closing.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1

MERGER

Section 1.1 The Merger.

Upon the terms and subject to the conditions in this Agreement, and in accordance with the DGCL, Merger Sub shall be merged with and into the Company (the “**Merger**”), pursuant to the certificate of merger, substantially in the form of **Exhibit C** (the “**Certificate of Merger**”), to be filed with the Secretary of State of the State of Delaware (the “**Delaware Secretary**”), concurrently with or as soon as practicable following the Closing. The Merger shall become effective at the time of the filing of such Certificate of Merger with the Delaware Secretary (the “**Effective Time**”). The Company shall be the surviving corporation (sometimes referred to herein as the “**Surviving Corporation**”) in the Merger and shall succeed to and assume all the rights and obligations of Merger Sub in accordance with the DGCL.

Section 1.2 Closing.

The closing of the Merger (the “**Closing**”) shall take place two (2) Business Days after the satisfaction or waiver of each of the conditions set forth in Article 5 (except for such conditions that by their nature will be satisfied at Closing) or at such other time as the parties agree in writing. The Closing shall take place at the offices of DLA Piper LLP (US)

located at 4365 Executive Drive, Suite 1100, San Diego, California 92121, or at such other location as the parties agree. The date on which the Closing actually occurs is herein referred to as the “**Closing Date**.”

Section 1.3 Effects of the Merger.

(a) *General.* At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Certificate of Merger and the applicable provisions of the DGCL.

(b) *Certificate of Incorporation.* At the Effective Time, the certificate of incorporation of the Company shall be amended such that the certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation, until thereafter amended as provided by the DGCL and such certificate of incorporation.

(c) *Bylaws.* At the Effective Time, the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation until thereafter amended as provided by the DGCL, the certificate of incorporation of the Surviving Corporation or such bylaws.

(d) *Directors and Officers of Surviving Corporation.* At the Effective Time, the directors of Merger Sub and the officers of the Company, as constituted immediately prior to the Effective Time, shall be the directors and officers, respectively, of the Surviving Corporation, for so long as provided under the DGCL, the certificate of incorporation of the Surviving Corporation or the bylaws of the Surviving Corporation.

Section 1.4 Effects on Capital Stock.

As of the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, Parent or the Company, the following shall occur:

(a) Each share of Company Common Stock, Preferred Stock or other capital stock of the Company (the “**Company Capital Stock**”) that is owned by Parent, Merger Sub or the Company shall automatically be canceled and shall cease to exist, and no consideration shall be delivered or deliverable in exchange therefor.

(b) Each share of common stock of Merger Sub (the “**Merger Sub Common Stock**”) issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. Each certificate evidencing ownership of Merger Sub Common Stock shall evidence ownership of shares of common stock of the Surviving Corporation.

(c) Each issued and outstanding share of Company Capital Stock (other than shares to be canceled in accordance with Section 1.4(a) and Dissenting Shares) shall be converted into the right to receive a portion of the Merger Consideration, as specified and allocated in this Section 1.4(c). All such shares of Company Capital Stock shall no longer be outstanding, shall automatically be canceled and shall cease to exist, and each holder of a certificate formerly representing any such shares of Company Capital Stock (the “**Certificates**”) shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration as allocated in this Section 1.4(c) upon surrender of such Certificate in accordance with Section 1.5 or, with respect to Dissenting Shares, the right of appraisal in accordance with the DGCL or the right to dissent in accordance with the CGCL.

(i) Each share of Series A-1 Preferred Stock issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for the right to receive, subject to and in accordance with Section 1.5 and Section 1.9 (including the escrow, Representative Expense Fund and adjustment provisions described therein), the Per Share Series A-1 Preferred Liquidation Preference and the Per Share Common Consideration (as such terms are defined in Section 1.4(c)(vi) below), without interest.

(ii) Each share of Series A-2 Preferred Stock issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for the right to receive, subject to and in accordance with Section 1.5 and Section 1.9 (including the escrow, Representative Expense Fund and adjustment provisions described therein), the Per Share Series A-2 Preferred Liquidation Preference and the Per Share Common Consideration (as such terms are defined in Section 1.4(c)(vi) below), without interest.

(iii) Each share of Series B Preferred Stock issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for the right to receive, subject to and in accordance with Section 1.5 and Section 1.9 (including the escrow, Representative Expense Fund and adjustment provisions described therein), the Per Share Series B Preferred Liquidation Preference and the Per Share Common Consideration (as such terms are defined in Section 1.4(c)(vi) below), without interest.

(iv) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for the right to receive, subject to and in accordance with Section 1.5 and Section 1.9 (including the escrow, Representative Expense Fund and adjustment provisions described therein), the Per Share Common Consideration (as defined in Section 1.4(c)(vi) below), without interest and less applicable deductions and withholding at the time of payment.

(v) Notwithstanding anything to the contrary contained herein, the amount of cash each holder of Company Capital Stock is entitled to receive for shares of Company Capital Stock held by such holder shall be rounded to the nearest cent.

(vi) As used in this Section 1.4 and elsewhere in this Agreement, the following terms have the following meanings:

(A) “**Adjusted Merger Consideration**” means consideration equal to the Merger Consideration *minus* the Preferred Amount.

(B) “**Cash Consideration**” means forty six million five hundred thousand US Dollars (\$46,500,000) in cash.

(C) “**Fully Diluted Company Capital Stock**” means the sum, without duplication, of (1) the aggregate number of shares of Company Common Stock that are outstanding immediately prior to the Effective Time, (2) the aggregate number of shares of Company Common Stock into which all the outstanding Preferred Stock is convertible immediately prior to the Effective Time, (3) the aggregate number of shares of Company Common Stock into which all Preferred Stock underlying all Warrants is convertible immediately prior to the Effective Time, and (4) the aggregate number of shares of Company Common Stock underlying all Company Options that are exercisable for an exercise price less than the Per Share Common Consideration and, after taking into account any acceleration of vesting as a result of the Closing, are vested as of immediately prior to the Effective Time (any such Company Option, an “**In-the-Money Option**”).

(D) “**Merger Consideration**” means the Cash Consideration, *minus* any Third Party Expense not paid in full at or prior to the Closing (*i.e.*, other than Third Party Expenses paid by the Company at or prior to the Closing pursuant to Section 4.11(b)) (the “**Unpaid Third Party Expenses**”), *minus* any Unpaid Company Indebtedness not paid in full at or prior to the Closing (*i.e.*, other than Company Indebtedness repaid by the Company at or prior to the Closing pursuant to Section 4.12), and *minus* the Negative Net Working Capital Adjustment (if any).

(E) **“Per Share Common Consideration”** means consideration equal to the (1) Adjusted Merger Consideration plus the Exercise Price Cash *divided by* (2) the Fully Diluted Company Capital Stock.

(F) **“Per Share Series A-1 Preferred Liquidation Preference”** means an amount in cash equal to (1) \$0.50 *plus* (2) the per share amount of declared but unpaid dividends with respect to the Series A-1 Preferred Stock (which for further clarity shall not include the Closing Dividend).

(G) **“Per Share Series A-2 Preferred Liquidation Preference”** means an amount in cash equal to (1) \$0.575 *plus* (2) the per share amount of declared but unpaid dividends with respect to the Series A-2 Preferred Stock (which for further clarity shall not include the Closing Dividend).

(H) **“Per Share Series B Preferred Liquidation Preference”** means an amount in cash equal to (1) \$1.10 *plus* (2) the per share amount of declared but unpaid dividends with respect to the Series B Preferred Stock (which for further clarity shall not include the Closing Dividend).

(I) **“Preferred Amount”** means an amount equal to the sum of (z) the Per Share Series A-1 Preferred Liquidation Preference multiplied by the number of shares of Series A-1 Preferred Stock outstanding immediately prior to the Effective Time *plus* (y) the Per Share Series A-2 Preferred Liquidation Preference multiplied by the number of shares of Series A-2 Preferred Stock outstanding immediately prior to the Effective Time *plus* (z) the Per Share Series B Preferred Liquidation Preference multiplied by the number of shares of Series B Preferred Stock outstanding immediately prior to the Effective Time.

(J) **“Pro Rata Portion”** means, with respect to each Indemnifying Securityholder, (1) the portion of the Adjusted Merger Consideration payable to such Indemnifying Securityholder before any applicable Tax withholding, *divided by* (2) the Adjusted Merger Consideration payable to all Indemnifying Securityholders before any applicable Tax withholding.

(K) **“Exercise Price Cash”** means the total exercise price of all the outstanding In-the-Money Options and outstanding Warrants, if any, which have not been exercised or canceled as of immediately prior to the Closing.

(d) Parent shall cause a portion of the Merger Consideration equal to six million nine hundred and seventy five thousand US Dollars (\$6,975,000) in cash (the “**Closing Escrow Amount**”); and as such total amount may be increased or decreased from time to time pursuant to the Escrow Agreement, the “**Escrow Fund**”), to be deposited at the Closing with Wilmington Trust, National Association, as escrow agent (the “**Escrow Agent**”), on behalf of the Indemnifying Securityholders and in accordance with an Escrow Agreement, dated as of the Closing Date, substantially in the form of **Exhibit D** (the “**Escrow Agreement**”), by and among Parent, the Escrow Agent and the Representative. At the direction of the Company, Parent shall cause a portion of the Merger Consideration equal to the Representative Expense Fund, to be deposited at the Closing with the Representative on behalf of the Indemnifying Securityholders in accordance with Section 7.9 hereof. Parent shall cause the balance of the Merger Consideration (after deduction of the Closing Escrow Amount and the Representative Expense Fund) to be deposited with the Payment Agent with respect to payments to be made in accordance with Section 1.5(b) and Section 1.7(c) or the Surviving Corporation (or the Surviving Corporation’s payroll agent) with respect to payments to be made in accordance with Section 1.6(c), as applicable. The Escrow Fund will be held and distributed in accordance with the terms of the Escrow Agreement and Article 7. The Representative Expense Fund will be held by the Representative and distributed by the Representative in accordance with the terms of Section 7.9. The parties acknowledge and agree that (i) the payment of any portion of the Closing Escrow Amount to the holders of Company Options is subject to substantial limitations or restrictions such that such portion of the Closing Escrow Amount is not constructively received by such holders of Company Options for Tax purposes at the time of Closing and is not intended to be compensation or wages, or subject to withholding as such, until the distribution of the Closing Escrow Amount (if any) to such holders is determined; and (ii) the portion of the Closing Escrow Amount other than the portion described in clause (i) above shall be treated as deferred contingent purchase price eligible for installment sale treatment for purposes of Section 453 of the Code, and no party shall take any action or filing position inconsistent with such characterizations except to the extent required pursuant to a “determination” as defined in Section 1313(a) of the Code. All interest or other income earned from the investment of the Closing Escrow Amount or any portion thereof in any Tax year shall be reported by and allocated to Parent. On the date that is not later than thirty (30) days after the end of each calendar quarter, and upon termination of the Escrow Agreement, Escrow Agent shall make distributions from the Escrow Fund to Parent of forty percent (40%) of the interest and other income earned by the Escrow Fund with respect to such calendar quarter or portion thereof. Any portion of any payments or distributions to the Indemnifying Securityholders under the Escrow Fund that is treated as interest under Section 483 of Code or otherwise shall be treated as portfolio interest under Section 871(h) of the Code. To the extent permitted under applicable Law, this Agreement, and the Escrow Agreement are each intended by the parties to be a book entry system maintained by Parent in accordance with Section 163(f) of the Code for purposes of qualifying the Escrow Fund as an obligation in registered form of Parent under Section 871(h) of the Code.

(e) If there is a stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to shares of Company Capital Stock occurring after the date of this Agreement and before the Effective Time, all references in this Agreement to specified numbers of shares of any class or series of Company Capital Stock affected thereby, and all calculations provided for that are based upon numbers of shares of any such class or series (or liquidation preferences thereof) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

Section 1.5 Exchange of Certificates.

(a) *Closing Payment Fund.* At or prior to the Closing, Parent shall enter into an agreement with the Escrow Agent (or such other bank or trust company in the United States having net assets of not less than \$1,000,000,000, as may be designated by Parent, the “**Payment Agent**”), which shall provide that Parent shall make available at the Effective Time to the Payment Agent cash as necessary for the payment of the Merger Consideration as specified and allocated in Section 1.4.

(b) *Payment Procedures; Escrow Contribution.* Together with the delivery of the Information Statement pursuant to Section 4.6(b) below, the Company shall deliver or mail to each holder of record of a Certificate (1) a letter of transmittal substantially in the form of **Exhibit E** (including the attachments thereto (including IRS forms W-9 or W-8, as applicable), the “**Letter of Transmittal**”) and (2) instructions for use in surrendering Certificates to the Payment Agent in exchange for consideration as specified and allocated in Section 1.4. Upon submission to the Payment Agent of a Certificate for cancellation, with a duly executed Letter of Transmittal, the holder of such Certificate shall receive in exchange therefor, subject to the next sentence, the applicable portion of the Merger Consideration into which the shares formerly represented by such Certificate shall have been converted in accordance with Section 1.4, as set forth on the Spreadsheet, and the Certificate so surrendered shall be canceled. The amount of Merger Consideration to be received by any holder in accordance with the preceding sentence shall be reduced by such holder’s Escrow Contribution and such holder’s Representative Expense Fund Contribution. “**Escrow Contribution**”, for each holder of Company Capital Stock in such capacity, means an amount equal to (x) such holder’s Pro Rata Portion in such capacity *multiplied by* (y) the Closing Escrow Amount. “**Representative Expense Fund Contribution**”, for each holder of Company Capital Stock in such capacity, means an amount equal to (x) such holder’s Pro Rata Portion in such capacity *multiplied by* (y) the Representative Expense Fund. If any transfer of ownership of shares of Company Capital Stock has not been registered in the Company’s transfer records, payment may be made to a Person other than the Person in whose name the Certificate so surrendered is registered if such Certificate is properly endorsed or is otherwise in proper form reasonably acceptable to the Payment Agent for transfer, and the Person requesting such transfer or payment shall pay any transfer or other Tax required by reason of the payment to a Person other than the registered holder of such Certificate or establish to the satisfaction of Parent that such Tax has been paid or is not applicable. Other than interest earned on the cash that becomes part of the Escrow Fund, no interest shall be paid or will accrue on the cash payable to holders of Certificates in accordance with this Article 1.

(c) *No Further Ownership Rights in Company Capital Stock.* The cash amounts paid upon the surrender of Certificates in accordance with the terms of this Article 1 (including cash deposited into the Escrow Fund) shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Capital Stock represented by such Certificates, the stock transfer books of the Company shall be closed immediately upon the Effective Time and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation or the Payment Agent for any reason, they shall be canceled and exchanged for payment as provided in this Article 1, except as otherwise provided by applicable Law.

(d) *No Liability.* None of Parent, the Surviving Corporation or the Payment Agent shall be liable to any Person with respect to any cash or shares delivered to a public official in accordance with any applicable abandoned property, escheat or similar Law. If any amounts payable in accordance with this Article 1 would otherwise escheat to or become the property of any Governmental Authority, any such amounts, to the extent permitted by applicable Law, immediately prior to the date on which such amounts would otherwise escheat or become the property of any Governmental Authority, shall become the property of the Surviving Corporation, free and clear of all claims or interest of any Person previously entitled thereto.

(e) *Lost, Stolen or Destroyed Certificates.* If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the holder of Company Capital Stock represented by such Certificate claiming such Certificate to be lost, stolen or destroyed and, if required by Parent or the Payment Agent, the posting by such Person of a bond in such reasonable amount (but in no event in excess of two and a half percent (2.5%) of the cash payable in respect of such Certificate) as Parent or Payment Agent may direct as indemnity against any claim that may be made against Parent, the Surviving Corporation or the Payment Agent with respect to such Certificate, the Payment Agent shall issue in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration with respect thereto. Such affidavit shall provide for the indemnification by such holder of Parent, the Surviving Corporation and the Payment Agent against any claim that may be made against any of them with respect to such Certificate and otherwise be in form reasonably satisfactory to Parent.

(f) *Tax Withholding.* Parent, Merger Sub, the Surviving Corporation, the Payment Agent and the Escrow Agent shall be entitled to deduct and withhold from amounts otherwise payable in accordance with this Agreement to any holder as of immediately prior to the Effective Time of shares of Company Capital Stock or Company Options such amounts as Parent, the Surviving Corporation, the Payment Agent or Escrow Agent reasonably believes is required to be deducted and withheld with respect to the making of such payment under the Code, or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld and paid over to the appropriate Tax Authority by Parent, the Surviving Corporation, the Payment Agent or the Escrow Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of Company Capital Stock in respect of which such deduction and withholding was made by Parent, the Surviving Corporation, the Payment Agent or the Escrow Agent.

Section 1.6 *Company Options.* Not later than immediately before the Closing, the Company shall have taken all steps necessary to provide that:

(a) *Treatment of Company Options.*

(i) At the Effective Time, each then-outstanding option to purchase shares of Company Capital Stock (each, a “**Company Option**”) granted under any Company Stock Plan shall:

(A) in the case of any In-the-Money Option, be cancelled in exchange for the right to receive by the holder of such Company Option consideration equal to the excess of (1) the aggregate value of consideration that would be payable in accordance with Section 1.4(c) in respect of the shares issuable upon exercise of such Company Option had such Company Option been exercised in full prior to the Effective Time (without regard to any reduction of that amount on account of the escrow obligations as provided in Section 1.5 or on account of the Representative Expense Fund, but subject to Section 1.6(c)) over (2) the aggregate exercise price for such Company Option (such payment to be Net of Tax Withholdings); and

(B) in the case of all Company Options other than In-the-Money Options, be cancelled at the Effective Time without payment of any consideration.

(ii) Prior to the Effective Time, the Company shall take all action necessary to effect the treatment of Company Options provided for under this Section 1.6(a) in accordance with the Company Stock Plans, all Contracts governing the terms of all Company Options, and under any other plan or arrangement to which the Company is a party or by which the Company may be bound, including by giving any required notice and obtaining any required consent contemplated thereby. The Company shall not send any notices to any holders of Company Options, or solicit any consents or other approvals from the holders of any Company Options, unless and until Parent has reviewed and approved all notices and related documentation (including any email messages and notifications) to be sent to such holders of Company Options in connection therewith (which approval shall not be unreasonably withheld or delayed).

(b) *No Further Rights of Optionholders.* Each Company Option and all Company Stock Plans shall terminate as of the Effective Time, and, following the Effective Time, no holder of any Company Options or any participant in any Company Stock Plan shall have any right to acquire any equity securities of Parent or the Surviving Corporation as a result of such holder’s Company Options.

(c) *Payment.* Payment of the consideration, if any, for each In-the-Money Option pursuant to this Section 1.6 shall be made as follows:

(i) At the Effective Time, for each holder of an In-the-Money Option in such capacity, consideration (before any required Tax withholding) equal to (x) such holder’s Pro Rata Portion in such capacity *multiplied by* (y) the Closing Escrow Amount (such product for each holder of an In-the-Money Option being such holder’s “**Escrow Contribution**”) shall be included in the Escrow Fund as contemplated by Section 1.4(d);

(ii) At the Effective Time, for each holder of an In-the-Money Option in such capacity, consideration (before any required Tax withholding) equal to (x) such holder’s Pro Rata Portion in such capacity *multiplied by* (y) the Representative Expense Fund (such product for each holder of an In-the-Money Option being such holder’s “**Representative Expense Fund Contribution**”) shall be included in the Representative Expense Fund as contemplated by Section 7.9(f); and

(iii) As soon as reasonably practicable following the Closing Date, but in no event later than the later of (i) five (5) Business Days or (ii) the Surviving Corporation's next regularly scheduled payroll after the Closing Date, Parent shall, or shall cause the Payment Agent or the Surviving Corporation (or the payroll agent of the Surviving Corporation) to, deliver to the holder of each In-the-Money Option the remainder of such consideration payable pursuant to Section 1.6(a), Net of Tax Withholdings.

(d) *Payment of Optionholders.* The Company shall (i) obtain or have obtained, before the Closing, from the holders of not less than ninety nine percent (99%) of all Company Options, a consent in the form attached hereto as Schedule 1.6(d) (an "**Option Consent**"), to Article 7 (including the appointment of the Representative) and the application of Section 1.6 to all of such holder's Company Options, in full satisfaction of such holder's rights under such Company Options or any Company Stock Plan, as applicable, and (ii) take any other actions that are reasonably necessary or appropriate to effectuate the transactions contemplated by this Section 1.6.

Section 1.7 Warrants. Not later than immediately before the Closing, the Company shall have taken all steps necessary to provide that:

(a) *Treatment of Warrants.*

(i) At the Effective Time, each then-outstanding warrant of the Company to purchase any Company Capital Stock (each a "**Warrant**") other than the Buy-Out Warrant, including the Warrants to Purchase Shares of Preferred Stock of the Company, dated August 20, 2008, issued to Silicon Valley Bank and to Venture Lending & Leasing V, LLC, shall be cancelled in exchange for the right to receive, by the holder of such Warrant, consideration equal to the amount, if any, by which (A) the aggregate value of consideration that would be payable in accordance with Section 1.4(c) in respect of the shares issuable upon exercise of such Warrant had such Warrant been exercised in full prior to the Effective Time (without regard to any reduction of that amount on account of the escrow obligations as provided in Section 1.5 or on account of the Representative Expense Fund, but subject to Section 1.7(c)) exceeds (B) the aggregate exercise price for such Warrant (with such amount being deducted first from the Per Share Series B Preferred Liquidation Preference).

(ii) Prior to the Effective Time, the Company shall take all action necessary to effect the treatment of Warrants provided for under this Section 1.7(a) under all Contracts governing the terms of all Warrants, including by giving any required notice and obtaining any required consent contemplated thereby. The Company shall not send any notices to any holders of Warrants, or solicit any consents or other approvals from the holders of any Warrants, unless and until Parent has reviewed and approved all consents or other approvals or notices and related documentation (including any email messages and notifications) to be sent to such holders of Warrants in connection therewith (which approval shall not be unreasonably withheld or delayed).

(b) *No Further Rights of Warrantholders.* Each Warrant shall terminate as of the Effective Time, and, following the Effective Time, no holder of any Warrant shall have any right to acquire any equity securities of Parent or the Surviving Corporation as a result of such holder's Warrant.

(c) *Payment.* Payment of the consideration, if any, for each Warrant pursuant to this Section 1.7 shall be made as follows:

(i) At the Effective Time, for each holder of a Warrant in such capacity, consideration equal to (x) such holder's Pro Rata Portion in such capacity multiplied by (y) the Closing Escrow Amount (such product for each holder of a Warrant being such holder's "**Escrow Contribution**") shall be included in the Escrow Fund as contemplated by Section 1.4(d);

(ii) At the Effective Time, for each holder of a Warrant, consideration (before any required Tax withholding) equal to (x) such holder's Pro Rata Portion in such capacity multiplied by (y) the Representative Expense Fund (such product for each holder of Warrant being such holder's "**Representative Expense Fund Contribution**") shall be included in the Representative Expense Fund as contemplated by Section 7.9(f); and

(iii) As soon as reasonably practicable following the Closing Date, but in no event later than five (5) Business Days after the Closing Date, Parent shall, or shall cause the Payment Agent to, deliver to the holder of each Warrant the remainder of such consideration payable pursuant to Section 1.7(a), provided that Parent and the Paying Agent shall have received all documentation required by 1.7(d).

(d) *Payment of Warrantholders.* The Company shall (1) obtain or have obtained, before the Closing, from each holder of any Company Warrant such holder's consent, in the form attached hereto as Schedule 1.7(d) (a "**Warrant Consent**"), to Article 7 (including, without limitation, the appointment of the Representative) and the application of this Section 1.7 to all of such holder's Company Warrants, in full satisfaction of such holder's rights under such Company Warrants, and (2) take any other actions that are reasonably necessary or appropriate to effectuate the transactions contemplated by this Section 1.7.

Section 1.8 Dissenting Shares.

(a) Notwithstanding anything in this Agreement to the contrary and unless otherwise provided by the DGCL or the CGCL, shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and that are owned by stockholders who have properly perfected their appraisal rights in accordance with the Section 262 of the DGCL or their dissenters' rights in accordance with Chapter 13 of the CGCL ("**Dissenting Shares**") shall not be converted into the right to receive the Merger Consideration, unless and until such stockholders shall have failed to perfect or shall have effectively withdrawn or lost their right of payment under the DGCL and the CGCL. Such stockholders instead shall be entitled to payment of the fair value of such Dissenting Shares in accordance with the DGCL or the CGCL. If any such stockholder shall have failed to perfect or shall have effectively withdrawn or lost such appraisal or dissenters' rights, each share of Company Capital Stock held by such stockholder shall thereupon be deemed to have been converted into the right to receive and become exchangeable for, as of the Effective Time, the Merger Consideration specified and allocated in Section 1.4.

(b) The Company shall give Parent (i) prompt notice of any demands for appraisal or purchase received by the Company, withdrawals of such demands and any other instruments served in connection with such demands and received by the Company or its representatives and (ii) the opportunity to direct all negotiations and proceedings with respect to such demands consistent with the Company's obligations thereunder. The Company shall not, except with the prior written consent of Parent, (A) voluntarily make any payment, admission or statement against interest with respect to any such objection, (B) offer to settle or settle any such objection or (C) waive any failure by a former Company stockholder to timely deliver a written objection or to perform any other act perfecting appraisal rights in accordance with the DGCL or dissenters' rights in accordance with the CGCL.

Section 1.9 Net Working Capital, Closing Dividend and Adjustments.

(a) *Estimated Statement.* The parties hereto have contemplated that the Company will have net working capital as of the Closing (the "**Closing Net Working Capital**"), as calculated in accordance with this Agreement and in accordance with and as set forth on the Form Working Capital Statement attached hereto as Schedule 1.9 (the "**Form Working Capital Statement**") of seven million US Dollars (\$7,000,000) (the "**Net Working Capital Target**"). At least three (3) Business Days prior to the Closing, the Company shall deliver to Parent (i) a written statement (the "**Estimated Statement**") setting forth (A) the Company's good faith estimate of the amount of the Closing Net Working Capital (the "**Estimated Net Working Capital**"), (B) its cash position as of the Closing Date and (C) the amount of dividends to be paid out to the Company's stockholders immediately prior to the Closing (the "**Closing Dividend**"), and (ii) a final estimated unaudited consolidated balance sheet as of the Closing Date of the Company prepared in accordance with GAAP (except as related to deferred tax asset balances which shall be in a manner consistent with the Interim Balance Sheet) (the "**Closing Balance Sheet**"), together with such schedules and data with respect to the determination thereof as may be appropriate to support such Estimated Statement and the Closing Balance Sheet. The amount of the Closing Dividend shall be determined such that (A) the Estimated Net Working Capital shall not be lower than the Net Working Capital Target, and (B) the total amount of the Closing Dividend and the Aggregate Employee Transaction Bonus Amount shall in no event be greater than the lower of (i) the amount of cash at hand as of the Closing, or (ii) ten million US Dollars (\$10,000,000). The Estimated Statement and Closing Balance Sheet shall be signed by the Chief Executive Officer and the Chief Financial Officer of the Company. Following delivery of the Estimated Statement and the Closing Balance Sheet, the Company shall provide Parent and its representatives with reasonable access to the offices, books and records of the Company and the independent auditors of the Company, to verify the accuracy of such amounts in accordance with this Agreement, all to the extent deemed reasonably necessary by Parent. In the event that Parent does not agree with the Company's calculations of the Estimated Net Working Capital and the Closing Balance Sheet, the Company and Parent shall negotiate in good faith to mutually agree on acceptable estimates, and the Company shall consider in good faith any proposed comments or changes that Parent may reasonably suggest; *provided, however*, that the Company's failure to include any changes proposed by Parent, or the acceptance by Parent of the Estimated Statement, shall not limit or otherwise affect Parent's remedies under this Agreement, including Parent's right to include such changes or other changes in the Closing Statement, or constitute an acknowledgment by Parent of the accuracy of the Estimated Statement or Closing Balance Sheet. The "**Negative Net Working Capital Adjustment**" shall mean the amount by which Estimated Net Working Capital is less than the Net Working Capital Target. Schedule 1.9 to this Agreement contains hypothetical examples of the calculations of the Closing Net Working Capital and the Closing Dividend.

(b) *Closing Statement.* Within one hundred and twenty (120) days after the Closing Date, Parent will, at its option, prepare and deliver to the Representative, a calculation of the Closing Net Working Capital (the "**Closing Statement**") together with such schedules and data with respect to the determination thereof as may be appropriate to support such Closing Statement; *provided however*, that if Parent elects not to prepare a Closing Statement, then (i) Parent shall notify the Representative promptly of such election, and (ii) the Estimated Statement and Closing Balance Sheet shall be final, binding and complete for all purposes hereunder. Following delivery of the Closing Statement, Parent shall provide the Representative with reasonable access to the financial records of the Surviving Corporation, solely for the purpose of reviewing the Closing Statement in accordance with this Agreement, all to the extent deemed reasonably necessary by the Representative and in a manner not unreasonably disruptive to the Surviving Corporation's business; *provided*, that the Representative shall not, except with the prior written consent of Parent, contact any employee of Parent or the Surviving Corporation in their capacity as employees of Parent or of the Surviving Corporation; *provided further*, that the foregoing shall not in any way limit the Representative from communicating with any employee of Parent or the Surviving Corporation in their capacity as Indemnifying Securityholders under this Agreement. For purposes of this Agreement, Net Working Capital shall be calculated in accordance with this Agreement (including Schedule 1.9 to this Agreement and Section 1.9(e)) and with GAAP applied using the same accounting methods, policies, practices and procedures, with consistent classifications, judgments and estimation methodology, in each case to the extent consistent with GAAP, as used in the preparation of the Financial Statements.

(c) *Determination of Final Net Working Capital.*

(i) If the Representative disagrees in whole or in part with the Closing Statement, then, within thirty (30) days after its receipt of the Closing Statement, it shall notify Parent of such disagreement in writing (the "**Notice of Disagreement**"), setting forth in reasonable detail the particulars of any such disagreement. To be effective, any such Notice of Disagreement shall include a copy of the Closing Statement marked to indicate those specific line items that are in dispute (the "**Disputed Line Items**") and shall be accompanied by the Representative's calculation of each of the Disputed Line Items and the Representative's revised Closing Statement setting forth its determination of the Closing Net Working Capital. To the extent the Representative provides a Notice of Disagreement within such thirty (30) day period, all items that are not Disputed Line Items shall be final, binding and conclusive for all purposes hereunder unless the resolution of such Disputed Line Item affects an undisputed item, in which case such undisputed item shall remain open and be considered a Disputed Line Item by Parent. In the event that the Representative does not provide a Notice of Disagreement within such thirty (30) day period, the Representative shall be deemed to have accepted in full the Closing Statement as prepared by Parent, which shall be final, binding and conclusive for all purposes hereunder. In the event any Notice of Disagreement is timely provided and contains the proper information as aforesaid, Parent and the Representative shall use commercially reasonable efforts for a period of thirty (30) days (or such longer period as they may mutually agree in writing) to resolve any Disputed Line Items. During such 30 day period, Parent and the Representative shall each have access to the working papers, schedules and calculations of the other used in the preparation of the Closing Statement and the Notice of Disagreement and the determination of the Closing Net Working Capital and Disputed Line Items. If, at the end of such period, Parent and the Representative are unable to resolve such Disputed Line Items, then such Disputed Line Items shall be referred to a "Big 4" accounting firm selected by the mutual agreement of Parent and the Representative (provided that neither Parent nor the Representative shall propose any such firm that acts as the independent external auditor of the Parent) (the "**Settlement Accountant**"). Parent and the Representative will enter into reasonable and customary arrangements for the services to be rendered by the Settlement Accountant under this Section 1.9(c). The Settlement Accountant shall be directed to determine as promptly as practicable (and in any event within thirty (30) days from the date that the dispute is submitted to it), whether the Closing Statement was prepared in accordance with the standards set forth in this Section 1.9 and whether and to what extent (if any) the Closing Net Working Capital requires adjustment, limiting its review, however, only to the Disputed Line Items so submitted. The Settlement Accountant shall resolve each Disputed Line Item by calculating such Disputed Line Item in accordance with this Agreement (for each such Disputed Line Item, the amount so calculated is referred to as the "**SA Determined Amount**") and establishing as the final amount of such Disputed Line Item the applicable SA Determined Amount. Parent and the Representative shall each furnish to the Settlement Accountant such working papers, schedules, calculations and other documents and information relating to the disputed issues, and shall provide interviews and answer questions, as the Settlement Accountant may reasonably request. The determination of the Settlement Accountant shall be final, conclusive and binding on the parties hereto and on the Indemnifying Securityholders. The amounts determined to be the Closing Net Working Capital pursuant to this Section 1.9(c) shall constitute the "**Final Net Working Capital**".

(ii) The fees and expenses of the Settlement Accountant shall be allocated between Parent and the Representative (on behalf of the Indemnifying Securityholders) in such manner that the Representative shall be responsible for that portion of the fees and expenses equal to such fees and expenses multiplied by a fraction the numerator of which is the aggregate dollar value of Disputed Line Items submitted to the Settlement Accountant that are resolved in a manner further from the position submitted to the Settlement Accountant by the Representative and closer to the position submitted to the Settlement Accountant by Parent (as finally determined by the Settlement Accountant), and the denominator of which is the total aggregate dollar value of the Disputed Line Items so submitted, and Parent shall be responsible for the remainder of such fees and expenses.

(d) *Post Closing Adjustment Amount.* If the Final Net Working Capital is lower than the lower of the Estimated Net Working Capital and the Net Working Capital Target, then Parent shall be entitled to recover such deficit from the Indemnifying Securityholders in the manner set forth below. The recovery of such amount shall be (A) first, from the Escrow Fund and (B)(1) if the aggregate of all unresolved or unsatisfied Liability Claims set forth in all Claims Notices delivered to the Escrow Agent and the Representative prior to the Claim Period Expiration Time exceeds the then-existing Escrow Fund or (2) after the Claim Period Expiration Time, directly from each Indemnifying Securityholder according to its Pro Rata Portion of such deficit.

(e) *Calculations.* Except as otherwise expressly provided in this Agreement, including Schedule 1.9, the parties hereto covenant and agree that no amount shall be (or is intended to be) included, in whole or in part (either as an increase or a reduction), more than once in the calculation of (including any component of) the Final Net Working Capital or any other calculated amount pursuant to this Agreement if the effect of such additional inclusion (either as an increase or a reduction) would be to cause such amount to be over- or under-counted for purposes of such calculation. The parties hereto further covenant and agree that if any provision of this Agreement requires an amount or calculation to be “determined in accordance with this Agreement and GAAP” (or words of similar import), then to the extent that the terms of this Agreement (including Schedule 1.9) expressly conflict with, or are expressly inconsistent with, GAAP in connection with such determination, the terms of this Agreement (including Schedule 1.9) shall control.

Section 1.10 Employee Transaction Bonus Plan. Prior to the Closing, the Company may adopt an employee bonus plan relating to the Merger, providing for the payment of up to five million seven hundred fifty thousand US dollars (\$5,750,000) (such amount, in the aggregate, the “**Aggregate Employee Transaction Bonus Amount**”) to certain employees of the Company (each a “**Transaction Bonus Plan Participant**”) upon the Closing. The Company shall pay the Aggregate Employee Transaction Bonus Amount to all applicable Transaction Bonus Plan Participants (subject to all applicable deductions and withholding) at or immediately prior to the Closing, and the Aggregate Employee Transaction Bonus Amount shall be treated as a transaction expense covered by Section 4.11 herein, and the Company shall bear such expense in full.

Section 1.11 Taking of Necessary Further Actions. Each of Parent, the Company and the Representative will take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger in accordance with this Agreement as promptly as possible. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Company immediately prior to the Effective Time are and will remain fully authorized in the name of the Surviving Corporation or otherwise to take, and shall take, upon reasonable request by Parent, all such lawful and necessary action.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures and other responses set forth in the Disclosure Schedule (which disclosures and responses will specify the section or subsection of this Article 2 to which they apply but will also qualify other sections or subsections in this Article 2 to the extent that it is reasonably apparent on the face of a disclosure or response that such disclosure or response is applicable to such other section or subsection), the Company represents and warrants to Parent and Merger Sub as of the date hereof and as of the Closing Date, as if such representations and warranties were made as of the Closing Date, as follows:

Section 2.1 Organization and Powers.

The Company (a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and (c) is qualified to do business and in good standing in the State of California and in every other jurisdiction where such qualification is required, except in any jurisdiction where the failure to be so qualified would not have a Material Adverse Effect on the Company's operations in such jurisdiction. The Company is not in violation of any of the provisions of its Charter Documents (as defined herein), and no changes thereto are pending. **Section 2.1** of the Disclosure Schedule lists as of the date hereof (x) the officers and directors of the Company and each of its Subsidiaries, (y) the jurisdictions in which the Company and each of its Subsidiaries is qualified to do business and (z) the jurisdictions in which the Company or any of its Subsidiaries has facilities, employs employees or conducts business. The Company has Made Available a true and correct copy of its certificate of incorporation, as amended to date (the "**Charter**") and bylaws, as amended to date, each in full force and effect on the date hereof (collectively, the "**Charter Documents**"), to Parent. The Board of Directors of the Company has not approved or proposed any amendment to any of the Charter Documents.

Section 2.2 Capitalization; Subsidiaries.

(a) The authorized capital stock of the Company consists of (1) 26,082,608 shares of Preferred Stock, par value \$0.001 per share, of which (a) 7,933,332 have been designated "**Series A-1 Convertible Preferred Stock**" (the "**Series A-1 Preferred Stock**"), all of which are issued and outstanding, (b) 3,449,276 have been designated "**Series A-2 Convertible Preferred Stock**" (the "**Series A-2 Preferred Stock**"), all of which are issued and outstanding, and (c) 14,700,000 have been designated "**Series B Convertible Preferred Stock**" (the "**Series B Preferred Stock**"), of which 11,890,321 shares are issued and outstanding and 419,613 shares are reserved for issuance upon exercise of outstanding warrants to purchase Series B Preferred Stock; and (2) 41,000,000 shares of Company Common Stock of which 5,439,820 shares are issued and outstanding and 7,545,158 shares are reserved for issuance upon exercise of outstanding warrants and other options to purchase shares of Common Stock. The Warrants to Purchase Shares of Preferred Stock of the Company, dated August 20, 2008, issued to Silicon Valley Bank and to Venture Lending & Leasing V, LLC, are each exercisable for 147,727 shares of Series B Preferred Stock, at an exercise price per share of \$1.10, and the Warrant to Purchase Stock dated April 27, 2010, issued to Silicon Valley Bank, is exercisable for 124,159 shares of Series B Preferred Stock at an exercise price per share of \$1.10. There are no outstanding adjustments made or required to be made to the conversion rates applicable to the Preferred Stock set forth in the Charter. Except for the Closing Dividend, there are no declared or accrued but unpaid dividends with respect to any shares of Common Stock or Preferred Stock. The declaration and payment of the Closing Dividend (if any) complies in all respects with the Charter and applicable Law, including Section 170 of the DGCL. Each share of Preferred Stock is convertible to Common Stock on a one-to-one basis. As of the date hereof, there are no other issued and outstanding shares of Company Capital Stock and, as of the Closing Date, no other shares of Company Capital Stock will be issued and outstanding, except for shares of Company Capital Stock issued upon the exercise of Company Options outstanding on the date hereof. **Section 2.2(a)** of the Disclosure Schedule sets forth, as of the date hereof, a true, correct and complete list of all of the Company's securityholders, their domicile addresses and the number of shares, options, warrants or other rights to acquire Company Capital Stock owned by each of them (including all holders of outstanding Company Options, whether or not granted under the Company Stock Plans). With respect to Company Options, **Section 2.2(a)** of the Disclosure Schedule further indicates whether, as of the date hereof, the holder is an employee of the Company or any of its Subsidiaries, the number of shares of Company Common Stock issuable upon the exercise of each such Company Option, the date of grant, the exercise price per share, the vesting schedule and expiration date thereof, including the extent to which any vesting has occurred as of the date hereof and the extent to which the vesting of such Company Option will be accelerated by the consummation of the Merger and the other Transactions or by the termination of employment or engagement or change in position of any holder thereof following or in connection with the consummation of the Merger, and whether each such Company Option qualifies as an incentive stock option, and any additional exercise, conversion or exchange rights relating thereto, if any. All issued and outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and are free of any Encumbrance, preemptive rights and put or call rights created by applicable Law, the Company's Charter Documents or any Contract to which the Company is a party or by which it is bound.

(b) The terms of the Company Stock Plans and the applicable agreements for each Company Option permit the treatment of Company Options as provided in this Agreement, without the consent or approval of the holders of such securities, the holders of Company Capital Stock or otherwise and, except for Company Options issued pursuant to the 2004 Stock Plan, without any acceleration of the exercise schedules or vesting provisions in effect for such Company Options. True and complete copies of all forms of agreements and instruments (including all amendments, modifications or supplements thereto) relating to or issued under the Company Stock Plans have been Made Available to Parent, and all agreements to amend, modify or supplement such agreements or instruments from the forms thereof have been Made Available to Parent. No holder of Company Options has the ability to early exercise any Company Options for shares of Company Unvested Common Stock nor is there a similar instrument under any Company Stock Plan or any other Contract relating to such Company Options.

(c) As of the date hereof, (i) all shares of Company Common Stock are fully vested, and (ii) no shares of Company Unvested Common Stock are outstanding.

(d) Except for options outstanding on the date hereof to purchase 7,545,158 shares of Company Common Stock under the Company Stock Plans, each such option having been issued under an agreement substantially in the form which has been Made Available to Parent, there are no Contracts to which the Company is a party, or by which it is bound, obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of any Company Capital Stock or Company Options, or obligating the Company to grant, extend, accelerate the vesting and/or waive any repurchase rights of, change the price of or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. There are no Contracts relating to purchase or sale of any Company Capital Stock (1) between or among the Company and any of its stockholders, other than (x) written contracts pursuant to which such stockholders purchased their shares of Company Capital Stock that have been Made Available to Parent, and (y) written contracts granting the Company the right to purchase unvested shares upon termination of employment or service, or (2) between or among any of the Company's stockholders. All Company Options and outstanding Company Capital Stock were issued in compliance in all material respects with all applicable federal and state securities Laws, and all shares of Company Capital Stock repurchased by the Company were repurchased in compliance in all material respects with all applicable federal and state securities Laws and all applicable rights of first refusal and other similar rights and limitations.

(e) There are no stockholder agreements, voting trusts or other agreements or understandings relating to the voting of any shares of Company Capital Stock, and there are no agreements between the Company or any of its Subsidiaries and any security holder or others, or among any holders of Company Capital Stock, relating to the registration, sale or transfer (including agreements relating to rights of first refusal, co-sale rights or “drag-along” rights) of any Company Capital Stock. As a result of the Merger, Parent will be the sole record and beneficial holder of all issued and outstanding Company Capital Stock and all rights to acquire or receive any shares of Company Capital Stock, whether or not such shares of Company Capital Stock are outstanding.

(f) Except for the Company’s 2003 Restricted Stock Plan (the “**2003 Stock Plan**”), Equity Incentive Plan (the “**2004 Stock Plan**”) and the 2014 Equity Incentive Plan (the “**2014 Stock Plan**,” together with the 2003 Stock Plan and the 2004 Stock Plan, the “**Company Stock Plans**”) neither the Company nor any of its Subsidiaries has ever adopted or maintained any stock option plan or other plan providing for equity compensation of any Person. The Company has reserved 9,821,078 shares of Company Common Stock for issuance to employees and directors of, and consultants to, the Company and its Subsidiaries, upon the exercise of options and other equity awards granted under the Company Stock Plans, of which 6,275,303 shares are issuable, as of the date hereof, upon the exercise or settlement of outstanding, unexercised, vested awards. Each Company Option has been properly approved by the requisite corporate authority. To the extent required under applicable Law, the Company’s stockholders have properly approved and the Company has properly reserved for issuance the shares of Company Common Stock issuable under the Company Stock Plans. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other equity awards with respect to the Company or any of its Subsidiaries.

(g) **Section 2.2(g)** of the Disclosure Schedule lists all plans and arrangements which are “nonqualified deferred compensation plans” (within the meaning of Section 409A of the Code). There is no agreement, plan, arrangement or other contract which provides for the gross-up of any taxes or interest imposed on any participant in any Employee Benefit Plan which is a “nonqualified deferred compensation plan” as a result of Section 409A of the Code. Each plan or arrangement that is a nonqualified deferred compensation plan (within the meaning of Section 409A of the Code) has been maintained in compliance with, or is exempt from, Section 409A of the Code and all applicable IRS and Treasury Department guidance issued thereunder in both operation and documentation. Each option outstanding under the Company Stock Plans was issued with an exercise price which was no less than the fair market value of the underlying stock on the date of grant or is otherwise exempt from Section 409A of the Code.

(h) No bonds, debentures, notes or other Company Indebtedness (i) having the right to vote on any matters on which stockholders may vote (or which is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is in any way based upon or derived from capital or voting stock of the Company, are issued or outstanding as of the date hereof.

(i) The allocation of the Merger Consideration set forth in Section 1.4 hereof is consistent with the Charter.

(j) The information contained in the Spreadsheet will be complete and correct as of the Closing Date.

(k) The Company is subject to the requirements of subdivision (b) of Section 2115 of the CGCL pursuant to the terms of such Section 2115.

(l) **Section 2.2(k)** of the Disclosure Schedule sets forth a true, correct and complete list, as of the date hereof, of each Subsidiary of the Company indicating its officers and directors, the record and beneficial owner of all of its issued and outstanding shares of capital stock or other equity interests and its jurisdiction of formation. Except for the Subsidiaries of the Company set forth in **Section 2.1** of the Disclosure Schedule, the Company does not own or control, and has never owned or controlled, directly or indirectly, any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, or have, or ever had, any commitment or obligation to invest in, purchase any securities or obligations of, fund, guarantee, contribute or maintain the capital of or otherwise financially support any corporation, partnership, joint venture or other business association or entity. Each Subsidiary of the Company (1) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (2) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (3) is wholly-owned by the Company and (4) is qualified to do business and in good standing in every jurisdiction where such qualification is required, except in any jurisdiction where the failure to be so qualified would not have a Material Adverse Effect on the Company's operations in such jurisdiction. No Subsidiary of the Company is in violation of any of the provisions of its organizational documents, and no changes thereto are pending. All the outstanding capital stock or other equity interest of each Subsidiary of the Company is, to the extent applicable, duly authorized, validly issued, fully paid and nonassessable. There are no Contracts to which any Subsidiary of the Company is a party or by which it is bound obligating any Subsidiary of the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, sold, repurchased or redeemed, any shares of the capital stock or equity interest of such Subsidiary or obligating such Subsidiary to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such Contract. There are no outstanding or authorized stock appreciation, phantom stock, profit participation or other similar rights with respect to any Subsidiary of the Company. Each entity that was a Subsidiary of the Company and is no longer in existence was dissolved, liquidated, merged or consolidated in accordance with its charter documents and the laws of the jurisdiction of its incorporation or organization in all material respects and there are no outstanding material liabilities or obligations (outstanding, contingent or otherwise), including Taxes, with respect to any such entity. A true and correct copy of the charter documents and bylaws of the Company's Subsidiaries, each as amended to date and in full force and effect on the date hereof, has been Made Available to Parent.

(a) The Company has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the Related Agreements to which it is a party and to consummate the Transactions. The execution, delivery and performance of this Agreement and the Related Agreements to which it is a party and the consummation of the Transactions by the Company have been duly authorized by all requisite action on the part of the Company and no further action is required on the part of the Company to authorize this Agreement and the Related Agreements to which it is a party, other than the approval of this Agreement and the Merger by the Company's stockholders by the Required Vote. This Agreement and the Related Agreements to which it is a party have been duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the other parties hereto, represents the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the effect of (a) applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws now and hereunder in effect relating to the rights of creditors generally and (b) rules of Law and equity governing specific performance, injunctive relief and other equitable remedies.

(b) The Company has notified (or will obtain valid written waivers from or will duly notify following the date hereof and prior to the Effective Time) the holders of Company Capital Stock of the Transactions as and to the extent required by the terms and conditions of the Charter Documents and the DGCL and as contemplated herein.

(c) The execution, delivery and performance of this Agreement and the Related Agreements to which the Company is a party and the consummation of the Transactions by the Company do not and will not (1) conflict with, result in or constitute any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, renegotiation, modification or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person in accordance with, any provision of the Charter Documents of the Company or any equivalent documents of its Subsidiaries, (2) result in the creation of an Encumbrance on any properties or assets of the Company or any of its Subsidiaries, or (3) except as set forth in Section 2.3(c) of the Disclosure Schedule, conflict with, result in or constitute a violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, renegotiation, modification or acceleration of any obligation or loss or modification of any benefit under, or require consent, approval or waiver from any Person in accordance with any Material Contract, any other material Contract or any Permit or Law applicable to the Company, any of its Subsidiaries or any of their respective properties or assets, (4) cause the Company, any of its Subsidiaries, the Surviving Corporation, Parent or Merger Sub to become subject to, or become liable for the payment of, Tax or (5) otherwise have an adverse effect upon the ability of the Company to consummate the Transactions.

(d) No Permit or Order of, or registration or filing with or declaration or notification to, any Governmental Authority is required by or with respect to the Company or any of its Subsidiaries in connection with the execution, delivery and performance of this Agreement or the Related Agreements or the consummation of the Transactions, except for the filing of the Certificate of Merger with the Delaware Secretary of State.

Section 2.4 of the Disclosure Schedule sets forth the Company's audited consolidated balance sheets as of December 31, 2014 and statements of operations and statements of cash flows for the years ended December 31, 2013 and December 31, 2014 and its unaudited monthly consolidated balance sheet as of February 28, 2015 and monthly statement of operations and statement of cash flows for the monthly period ended February 28, 2015 (collectively, the "**Financial Statements**"). The Financial Statements (a) have been prepared in accordance with United States generally accepted accounting principles ("**GAAP**") (except that the interim period financial statements do not have notes thereto and do not include an update of deferred tax assets) (b) have been prepared on a consistent basis throughout the periods indicated, (c) are true, complete and correct in all material respects, and (d) present fairly, in all material respects, the consolidated financial condition and results of operations and cash flows of the Company and its Subsidiaries as of the dates and for the periods indicated therein. There has been no change in the Company's accounting policies since December 31, 2014 (the "**Company Balance Sheet Date**"), except as described in the Financial Statements. The amount of each Company Indebtedness, and the holders of such Company Indebtedness, on the date hereof is set forth in **Section 2.4** of the Disclosure Schedule. All Company Indebtedness may be prepaid without penalty. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar Contract relating to any transaction or relationship between or among the Company or any of its Subsidiaries, on the one hand, and any unconsolidated affiliate, including any structured finance, special purpose or limited purpose Person on the other hand, or any "off-balance sheet arrangement" (as defined in Item 303(a) of Regulation S-K promulgated by the SEC). All reserves that are set forth in or reflected in the Interim Balance Sheet have been established in accordance with GAAP consistently applied and are adequate. The Company has in place systems and processes (including the maintenance of proper books and records) that are designed to effectively (1) provide reasonable assurances regarding the reliability of the Financial Statements and (2) accumulate and communicate to the Company's principal executive officer and principal financial officer, in a timely manner, the type of information that would be required to be disclosed in the Financial Statements (such systems and processes are herein referred to as the "**Financial Controls**"). Neither the Company or its Subsidiaries, nor their respective officers or, to the Knowledge of the Company, the Company's independent auditors, have identified or been made aware of any complaint, allegation, deficiency, assertion or claim, whether written or oral, regarding the Financial Controls or the Financial Statements that has not been resolved. To the Knowledge of the Company, there have been no instances of fraud by any officer or employee of the Company, whether or not material, that occurred during any period covered by the Financial Statements. There have been no instances of fraud by any officer or employee of the Company, whether or not material, that occurred during any period covered by the Financial Statements. The Company's Financial Statements reflect recognition of revenue consistent with GAAP.

Section 2.5 Absence of Certain Changes; Undisclosed Liabilities.

(a) Since the Company Balance Sheet Date, the Company and its Subsidiaries have conducted their business only in the ordinary course of business and no Material Adverse Effect on the Company has occurred or is reasonably likely to occur.

(b) Neither the Company nor any of its Subsidiaries has any Liabilities (whether or not required to be reflected in the Financial Statements in accordance with GAAP), except for those (1) reflected in, reserved against or shown on its unaudited consolidated balance sheet included in the Financial Statements as of February 28, 2015 (the "**Interim Balance Sheet**"), (2) that have arisen or were incurred after the date of the Interim Balance Sheet (the "**Interim Balance Sheet Date**") and prior to the date hereof in the ordinary course of business of the Company and do not exceed \$100,000 in the aggregate or (3) that have arisen since the date hereof in the ordinary course of business of the Company and do not arise from a violation of Section 4.2.

Section 2.6 Absence of Litigation. There is no Action pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries or any of their respective assets or properties, including any Company Intellectual Property, or any of their respective officers or directors in their capacities as such. There is no Order against the Company or any of its Subsidiaries or any of their respective assets or properties, or any of the Company's directors or officers in their respective capacities as such and, to the Knowledge of the Company, there is no reasonable Basis therefor. There is no Action pending or, to the Knowledge of the Company, threatened, against any Person who has a contractual right or a legal right pursuant to the Charter, DGCL, CGCL or other applicable Law to indemnification from the Company related to any reasonable Basis existing prior to the Effective Time, nor is there, to the Knowledge of the Company, any reasonable Basis that would give rise to such Action. There is no Action by the Company or any of its Subsidiaries pending, threatened or contemplated against any other Person.

Section 2.7 Scope of Business Activities; Restrictions on Business Activities.

(a) The Company's business is limited to the design, manufacturing, sale and servicing of metrology equipment for the measuring of film thickness and composition of semiconductor chips for the semiconductor industry. The Company does not design its metrology equipment to any military, defense or intelligence specifications and generally is not aware of the end-uses to which the semiconductor chips are put. The Company does not engage in research, development, production or sale of any good or services involving cryptography, data protection, Internet security, or network intrusion; nor to the Company's Knowledge does it conduct research on or develop, produce or possess any "critical technologies" as defined at 31 C.F.R. § 800.209.

(b) There is no Contract (including covenants not to compete) or Order binding upon the Company or any of its Subsidiaries that has or could reasonably be expected to have the effect of prohibiting or materially impairing any current or currently contemplated business practice of the Company or any of its Subsidiaries, any acquisition of property (tangible or intangible) by the Company or any of its Subsidiaries or the conduct of business by the Company or any of its Subsidiaries, in each case, as currently conducted, other than any Contract or Order that could not reasonably be expected to have, individually, or in the aggregate, a Material Adverse Effect on the Company. Without limiting the generality of the foregoing, neither the Company nor any of its Subsidiaries has entered into any customer or other similar Contract that limits the freedom of the Company or any of its Subsidiaries to engage or participate, or compete with any other Person, in any line of business, market or geographic area, or to make use of any Owned Company Intellectual Property, or any Contract under which the Company or any of its Subsidiaries grants most favored nation pricing, exclusive sales, distribution, marketing or other exclusive rights, rights of refusal or rights of first negotiation to any Person, or any Contract otherwise limiting the right of the Company or any of its Subsidiaries to research, develop, improve, sell, distribute or manufacture any products or services, to purchase or otherwise obtain any software, products or services or to hire or solicit potential employees, consultants or independent contractors.

Section 2.8 Intellectual Property.

(a) *Company Products.* **Section 2.8(a)** of the Disclosure Schedule contains a complete and accurate list (by name and version number) of all products and service offerings, including all Software, of the Company or any of its Subsidiaries that are currently being sold, licensed, distributed or otherwise disposed of, or used in connection with service offerings, as applicable (collectively, the “**Company Products**”), and identifies, for each such Company Product, whether the Company or any of its Subsidiaries provides support or maintenance for such Company Product.

(b) *Registered Company Intellectual Property.* **Section 2.8(b)** of the Disclosure Schedule contains a complete and accurate list of all Registered Company Intellectual Property, in each case listing, as applicable, (1) the name of the applicant/registrant and current owner; (2) the jurisdiction where the application/registration is located (or, for Domain Names, the applicable registrar); (3) the application or registration number; (4) the filing date, issuance/registration/grant date and expiration date; and (5) the prosecution status. Each item of the Registered Company Intellectual Property is valid, enforceable and subsisting. Except as set forth in **Section 2.8(b)** of the Disclosure Schedule: (A) all necessary registration, maintenance and renewal fees with respect to the Registered Company Intellectual Property have been paid, and all necessary affidavits, responses, certificates and other documents have been filed for the purposes of obtaining, maintaining, perfecting, preserving and renewing such Registered Company Intellectual Property; (B) there are no actions that must be taken within one hundred twenty (120) days following the Closing, including the payment of any registration, maintenance or renewal fees or the filing of any affidavits, responses, recordations, certificates or other documents, for the purposes of obtaining, maintaining, perfecting, preserving or renewing any Registered Company Intellectual Property; and (C) each item of Registered Company Intellectual Property has been prosecuted in compliance with all applicable rules, policies, and procedures of the applicable Governmental Entity. **Section 2.8(b)** of the Disclosure Schedule also contains a complete and accurate list of all Trademarks used or held for use by the Company that are not registered or the subject of Trademark registrations.

(c) *Validity of Registered IP.* There are no facts, circumstances or information that would or reasonably could be expected to (1) render any of the Owned Company Intellectual Property invalid or unenforceable (to the extent such concepts are applicable), or (2) adversely affect, limit, restrict, impair or impede the ability of the Surviving Corporation to use and practice the Company Intellectual Property upon the Closing in the same manner as currently used and practiced by the Company or any of its Subsidiaries. Without limiting the foregoing, there is no information, material, fact, or circumstance, including any information or fact that would constitute prior art, that would render any of the Registered Company Intellectual Property invalid or unenforceable, or would adversely affect any pending application for any Registered Company Intellectual Property. Neither the Company, any of its Subsidiaries, nor any agent or counsel of the Company or any of its Subsidiaries has knowingly misrepresented, or knowingly failed to disclose, and there is no misrepresentation or failure to disclose, any fact or circumstance in any application for any Registered Company Intellectual Property that would constitute fraud, a misrepresentation or a breach of the duties of candor and disclosure with respect to such application or that would otherwise effect the validity or enforceability of any such Registered Company Intellectual Property. None of the Owned Company Intellectual Property is involved in any inventorship challenge, interference, reexamination, cancellation, or opposition proceeding, or any other currently pending or threatened Action, including any Action regarding the ownership, use, validity, scope or enforceability of the Owned Company Intellectual Property. The Owned Company Intellectual Property has not lapsed, expired, been abandoned or passed into the public domain. No Patents included in the Owned Company Intellectual Property are subject to a terminal disclaimer.

(d) *Company IP Agreements.* **Section 2.8(d)** of the Disclosure Schedule contains a complete and accurate list of all Contracts to which the Company or any of its Subsidiaries is a party that relate to the Company Intellectual Property, including any Contracts (1) under which the Company or any of its Subsidiaries has granted or agreed to grant to any other Person any license, option, covenant, release, immunity or other right that applies to or reasonably could be expected to affect any Owned Company Intellectual Property or (2) except for licenses to COTS Software, under which any other Person has granted or agreed to grant to the Company or any of its Subsidiaries any license, option, covenant, release, immunity or other right with respect to Intellectual Property or Intellectual Property Rights (all such Contracts collectively, the “**Company Intellectual Property Agreements**”). All Company Intellectual Property Agreements are in full force and effect, and enforceable in accordance with their terms. Except as set forth in **Section 2.8(d)** of the Disclosure Schedule, the Company or its Subsidiary party thereto is in compliance with, and has not materially breached any term of, any such Company Intellectual Property Agreements, and, to the Knowledge of the Company, all other parties to such Company Intellectual Property Agreements are in compliance with, and have not materially breached any term of, such Company Intellectual Property Agreements. There are no pending disputes regarding such Company Intellectual Property Agreements, including disputes with respect to the scope thereof, performance thereunder, or payments made or received in connection therewith, nor, to the Knowledge of the Company, does there exist any reasonable Basis therefor.

(e) *No Conflicts.* Following the Closing Date, except as set forth in **Section 2.8(e)** of the Disclosure Schedule, the Surviving Corporation (or the Parent in the event that after Closing the Surviving Corporation is merged into Parent) will have and be permitted to exercise all rights under the Company Intellectual Property Agreements (and will have the same rights with respect to the Intellectual Property and Intellectual Property Rights of third Persons included in the Company Intellectual Property) to the same extent that the Company or its Subsidiary party thereto would have had, and been able to exercise, had this Agreement, the Related Agreements and such other agreements, documents and instruments to be executed and delivered after the date hereof not been entered into and the Merger (or the subsequent merger) not occurred, without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company or a Subsidiary of it would otherwise have been required to pay anyway. Neither the execution, delivery and performance of this Agreement, the Related Agreements and such other agreements, documents and instruments to be executed and delivered after the date hereof, nor the consummation of the Merger (or the subsequent merger), will cause or require (or purports to cause or require) Parent or any of its Affiliates or the Company or any of its Subsidiaries to (1) grant to any other Person any license, covenant not to sue, immunity or other right with respect to or under any of Parent's or its Affiliates' Intellectual Property or Intellectual Property Rights; (2) be obligated to pay any royalties or other amounts, or offer any discounts, to any other Person; or (3) become bound or subject to any non-compete or other material restrictions on the operations or scope of their respective businesses.

(f) *Exclusive Ownership of IP.* Except as set forth in **Section 2.8(f)** of the Disclosure Schedule, the Company or a Subsidiary of it solely and exclusively owns all right, title and interest in and to (including the sole right to enforce) the Owned Company Intellectual Property, free and clear of all Encumbrances except for Permitted Encumbrances, and has not (1) licensed any such Owned Company Intellectual Property, or any other Company Intellectual Property, to any Person, except pursuant to a Company Intellectual Property Agreement listed in **Section 2.8(d)** of the Disclosure Schedule or (2) exclusively licensed any such Owned Company Intellectual Property, or any other Company Intellectual Property, to any Person. The Company or a Subsidiary of it is listed in the records of the appropriate Governmental Authority as the sole owner of each item of Registered Company Intellectual Property. To the extent that Company Intellectual Property is not solely and exclusively owned by the Company or a Subsidiary of it, such Company Intellectual Property is duly and validly licensed to the Company or a Subsidiary of it pursuant to a Company Intellectual Property Agreement listed in **Section 2.8(d)** of the Disclosure Schedule for use in the manner in which it is currently used (or pursuant to a license to commercially available software not required to be listed thereon) (the "**Licensed Company Intellectual Property**"). The Intellectual Property and Intellectual Property Rights included in the Owned Company Intellectual Property and the Licensed Company Intellectual Property include all of the Intellectual Property and Intellectual Property Rights that are necessary to enable the Surviving Corporation (and the Parent, in the event that the Surviving Corporation is subsequently merged into the Parent) to conduct the business of the Company and its Subsidiaries in the same manner as currently conducted, and following the Closing, the Surviving Corporation (or Parent in the event of a subsequent merger of the Surviving Corporation into the Parent) and its Subsidiaries will own or have (pursuant to the Company Intellectual Property Agreements) the same rights that the Company and its Subsidiaries had immediately prior to the Closing with respect to such Intellectual Property and Intellectual Property Rights. Neither the Company nor any of its Subsidiaries have granted to any Person who has licensed Licensed Company Intellectual Property to the Company or its Subsidiaries any ownership rights or license rights to improvements, other amendments or developments made by the Company or any of its Subsidiaries in or with respect to such Licensed Company Intellectual Property.

(g) *Disclosure of Distributed IP.* **Section 2.8(g)** of the Disclosure Schedule sets forth a complete and accurate list and/or description of (i) all third party Software and systems) and (ii) proprietary Software and Systems, in each case that are incorporated into, integrated or bundled with, used in the development or compilation of, or otherwise used or distributed in or with any Company Products, other than COTS Software. For each item of such Software and Systems, **Section 2.8(g)** of the Disclosure Schedule sets forth the Company Product to which such Software and/or Systems relate.

(h) *Trade Secrets.* The Company and its Subsidiaries have taken steps consistent with generally accepted industry standards, and in any event no less than reasonable steps, to safeguard and maintain the secrecy and confidentiality of, and its proprietary rights in, all information and materials not generally known to the public that are included in the Company Intellectual Property (including any Trade Secrets provided by or to third Persons). Neither the Company nor any of its Subsidiaries has authorized the disclosure of any Trade Secret included in the Company Intellectual Property, nor to the Knowledge of the Company has any such Trade Secret been disclosed, other than pursuant to a valid and enforceable confidentiality agreement with respect thereto. To the Knowledge of the Company, there is no misappropriation or unauthorized disclosure of any Trade Secret included in the Company Intellectual Property (or claimed or understood to be so included), or breach of any obligations of confidentiality with respect to the Company, any of its Subsidiaries or the Company Intellectual Property.

(i) *IP Assignments.* Each current and former employee, officer, consultant and contractor of the Company or any of its Subsidiaries who is or has been involved in the development (alone or with others) of any Owned Company Intellectual Property included in the Company Intellectual Property, has executed and delivered to the Company or one its Subsidiaries sufficient employment, consulting or contractor agreements, non-disclosure agreements, and invention assignment agreements that (1) assign to the Company or one its Subsidiaries all right, title and interest in and to any Intellectual Property and Intellectual Property Rights arising from or developed or delivered to the Company or such Subsidiary in connection with such Person's work for or on behalf of the Company or such Subsidiary, (2) waive any right to receive any further compensation with respect to such assignment of Intellectual Property Rights and (3) provide reasonable protection for the Trade Secrets of the Company and its Subsidiaries. To the Knowledge of the Company, no current or former employee, officer, consultant or contractor of the Company or any of its Subsidiaries is in default or breach of any term of any employment, consulting or contractor agreement, non-disclosure agreement, assignment agreement, or similar agreement. No present or former employee, officer, consultant or contractor of the Company or any of its Subsidiaries has any ownership, license or other right, title or interest, directly or indirectly, in whole or in part, in any Company Intellectual Property. In each case in which the Company or one its Subsidiaries has acquired ownership (or claimed or purported to acquire ownership) of any Intellectual Property or Intellectual Property Rights from any Person (including any employee, officer, consultant or contractor of the Company), the Company or such Subsidiary has obtained a valid and enforceable assignment sufficient to irrevocably transfer ownership of and all rights with respect to such Intellectual Property or Intellectual Property Rights to the Company or such Subsidiary.

(j) *Non-Infringement.* The business of the Company as currently conducted, including the design, development, use, provision, import, branding, advertising, promotion, marketing, manufacture and sale of any Company Products, does not infringe, misappropriate, use or disclose without authorization, or otherwise violate (and, when conducted by the Surviving Corporation or Parent following the Closing in substantially the same manner, will not infringe, misappropriate, use or disclose without authorization, or otherwise violate) any Intellectual Property Rights of any third person. To the Knowledge of the Company, the future Company Products that are expected to be developed as part of the Company's or its Subsidiaries' current research and development projects, will not infringe, misappropriate, use or disclose without authorization, or otherwise violate, any current Intellectual Property Rights of any third person.

(k) *Notice of Infringement; Invitation to License.* Except as set forth in **Section 2.8(k)** of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has received any claim (or notice of any related Action) that the Company, any of its Subsidiaries, any Company Product or any Company Intellectual Property infringes, misappropriates, uses or discloses without authorization, or otherwise violates any Intellectual Property Rights of any Person or constitutes unfair competition or trade practices under the Laws of any jurisdiction (nor, to the Knowledge of the Company, are there any facts, circumstances or information that could reasonably be the Basis for such a claim). Without limiting the foregoing, within the past five (5) years, except as set forth in **Section 2.8(k)** of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has received any correspondence asking or inviting the Company or any of its Subsidiaries to enter into a Patent license or similar agreement, to pay for or obtain a release for Patent infringement, or otherwise to enter into other arrangements with respect to the Patents of any other Person. Neither the Company nor any of its Subsidiaries has obtained any non-infringement, freedom to operate, clearances or invalidity opinions from counsel (inside or outside counsel) regarding the Company's or its Subsidiaries' businesses or any Company Product.

(l) *Open Source.* **Section 2.8(l)** of the Disclosure Schedule (1) contains a complete and accurate list of all Open Source (as defined below) that is distributed by the Company or any of its Subsidiaries, including Open Source that is incorporated into, integrated or bundled with, linked with, used in the development or compilation of, any Company Product, (2) describes the manner in which each such Company Product incorporates, is integrated or bundled with, links to or relies on such Open Source, in which such Open Source has been used in the development or compilation of any such Company Product, and in which any such Company Product otherwise uses or distributes such Open Source, and (3) identifies the license applicable to each such item of Open Source. The Company and each of its Subsidiaries has used commercially reasonable efforts to (1) identify such Open Source and (2) regulate the use and distribution of Open Source in connection with its business and the Company Products, in compliance with the applicable Open Source licenses. No Software included in the Owned Company Intellectual Property is or has become subject to any Open Source license. Any written Open Source policies of the Company or its Subsidiaries are listed in **Section 2.8(l)** of the Disclosure Schedule, and complete and accurate copies thereof have been Made Available to Parent. To the Knowledge of the Company, there has been no material deviation from or violation of the Company's policies with respect to Open Source. "**Open Source**" means Software or similar subject matter that is distributed under an open source license such as (by way of example only) the GNU General Public License, GNU Lesser General Public License, Apache License, Mozilla Public License, BSD License, MIT License, Common Public License, the Artistic License, the Eclipse Public License, Netscape Public License, the Open Software License, the Sleepycat License, the Common Development and Distribution License, or any other license approved as an open source license by the Open Source Initiative or any variant or derivative of any of the foregoing licenses.

(m) *Infringement by Others.* To the Knowledge of the Company, no Person is infringing, misappropriating, using or disclosing without authorization, or otherwise violating any Owned Company Intellectual Property. Neither the Company nor any of its Subsidiaries has made any claims or initiated any Actions with respect to infringement of any Owned Company Intellectual Property against any Person, nor has the Company issued any written communication inviting any Person to take a license, authorization, covenant not to sue or the like with respect to any Owned Company Intellectual Property (other than in connection with licenses granted by the Company or any of its Subsidiaries in the ordinary course of business and not related to any infringement or other violation by the licensee or potential licensee), and there exists no reasonable Basis upon which the Company or any of its Subsidiaries could reasonably make any such claim, initiate such Action or issue such written communication.

(n) *Standards Bodies.* **Section 2.8(n)** of the Disclosure Schedule contains a complete and accurate list and description of all standard-setting organizations, industry bodies and other standards-related activities in which the Company or any of its Subsidiaries has directly or indirectly participated.

(o) *Source Code Release.* Neither the Company, any of its Subsidiaries, nor any Person acting on behalf of the Company or any of its Subsidiaries has disclosed or delivered to any third party, or permitted the disclosure or delivery to any escrow agent or other Person of, any Company Source Code (as defined below). No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, require the disclosure or delivery by the Company, any of its Subsidiaries or any other Person acting on behalf of the Company or any of its Subsidiaries to any third party of any Company Source Code. **Section 2.8(o)** of the Disclosure Schedule identifies each Contract under which the Company or any of its Subsidiaries has deposited, or is or may be required to deposit, with an escrow agent or other third party, any Company Source Code. Neither the execution of this Agreement nor the consummation of any of the Transactions, in and of itself, would reasonably be expected to result in the release of any Company Source Code from escrow or otherwise trigger any rights to any Company Source Code to be granted to any Person. “**Company Source Code**” means, collectively, any human readable Software source code, or any material portion or aspect of the Software source code, or any material proprietary information or algorithm contained, embedded or implemented in, in any manner, any Software source code, in each case for any Company Product.

(p) *False Advertising and Obscenity.* No (1) product, technology, service or publication of the Company or any of its Subsidiaries, (2) material published or distributed by the Company or any of its Subsidiaries, or (3) conduct or statement of the Company or any of its Subsidiaries constitutes obscene material, a defamatory statement or material, false advertising or otherwise violates any Law. The definition of false advertising excludes normal errors and omissions for which the Company or any of its Subsidiaries maintains review processes for correction.

(q) *Governmental or University Assistance.* Except as set forth in **Section 2.8(q)** of the Disclosure Schedule, none of the Company Intellectual Property was developed by or on behalf of, or using grants or any other subsidies of, any Governmental Authority or any university, and no government funding, facilities, faculty or students of a university, college, other educational institution or research center or funding from third parties was used in the development of the Owned Company Intellectual Property. No current or former employee, officer, consultant or contractor of the Company, who was involved in, or who contributed to, the creation or development of any Owned Company Intellectual Property or Software contained in any Company Product, has performed services for a government, university, college, or other educational institution or research center during a period of time during which such employee, officer, consultant or contractor was also performing services for the Company.

(r) *Warranties and Indemnities to Third Parties.* Except for the warranties and indemnities contained in those Contracts set forth in **Section 2.8(r)** of the Disclosure Schedule, customer contracts entered into in the ordinary course of business Made Available to Parent, and warranties implied by Law, neither the Company nor any of its Subsidiaries has given any warranties or indemnities relating to products or technology sold or services rendered by the Company or any of its Subsidiaries. Each Company Product conforms and complies with the terms and requirements of any applicable warranty, the agreement related to such Company Product and with all applicable Laws. No customer or other Person has asserted or threatened to assert any claim or Action against Company or any of its Subsidiaries (a) under or based upon any warranty provided by or on behalf of the Company or any of its Subsidiaries, or (b) under or based upon any other warranty relating to any Company Product (in each case other than routine customer requests for repair or replacement of parts pursuant to the applicable product warranty in customer contracts entered into the ordinary course of business).

(s) *Product Liability Claims.* There are no pending or, to the Knowledge of the Company, threatened claims or Actions for any product liability, backcharge, or other claims or Actions by any third party (whether based on contract or tort and whether relating to personal injury, including death, property damage or economic loss) arising from (1) services rendered by the Company or any of its Subsidiaries, (2) the sale, distribution, or installation of Software or other products by the Company or any of its Subsidiaries, or (3) the operation of the business of the Company or any of its Subsidiaries during the period through and including the Closing Date. The operation and use of the Company Products for their intended purposes complies with all applicable Laws.

(t) *Moral Rights.* All authors of any Works of Authorship in the Owned Company Intellectual Property have waived their moral rights and have agreed to a covenant not to assert their moral rights, in each case, to the extent permitted by applicable Law or such authors otherwise prepared such works in jurisdictions that do not recognize moral rights.

Section 2.9 Taxes.

(a) “**Tax**” means (1) any and all net income, corporate, capital gains, capital acquisitions, inheritance, gift, alternative minimum, add-on minimum, gross income, gross receipts, sales, use, ad valorem, value added, transfer, franchise, profits, license, withholding, estimated, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment or charge whatsoever, together with any interest and any penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the assessment, determination, collection or imposition of any such item (whether domestic or foreign) (each, a “**Tax Authority**”), (2) any liability for the payment of any amounts of the type described in clause (1) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group during any taxable period, and (3) any liability for the payment of any amounts of the type described in clause (1) or (2) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to indemnify (or otherwise assume or succeed to the liability of) any other Person. “**Tax Return**” means any and all returns, statements, reports or forms (including information returns and reports, claims for refund, amended returns or declarations of estimated Taxes) required to be filed with respect to Taxes.

(b) *Tax Returns Filed; Taxes Paid; Filing Extensions.* The Company and each of its Subsidiaries have timely filed with the appropriate taxing authorities all Tax Returns required to be filed by them. All such Tax Returns are true, complete and correct in all material respects. All Taxes due and payable by the Company or any of its Subsidiaries (whether or not shown to be due on such Tax Returns) have been timely paid in full, or are being contested in good faith through appropriate proceedings and adequately reserved for in accordance with GAAP, both on the Company's Financial Statements (for periods through and including the date of such Financial Statements) and on the Interim Balance Sheet for all periods through the date of the Interim Balance Sheet. Neither the Company nor any of its Subsidiaries has requested or obtained any extension of time within which to file any Tax Return, which Tax Return has not since been filed. **Section 2.9(b)** of the Disclosure Schedule lists all income, franchise and similar Tax Returns (U.S. federal, state, local, and other foreign jurisdiction) filed with respect to the Company or any of its Subsidiaries for taxable periods ended on or after January 1, 2006, indicates the most recent income, franchise or similar Tax Return for each relevant jurisdiction for which an audit has been completed or the statute of limitations has lapsed and indicates all Tax Returns that currently are the subject of audit.

(c) *Tax Accruals.* The amount of the liability of the Company or any of its Subsidiaries for unpaid Taxes for all taxable periods ending on or before the date of the Interim Balance Sheet does not, in the aggregate, exceed the amount of the current liability accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Interim Balance Sheet. The amount of the liability of the Company or any of its Subsidiaries for unpaid Taxes for all taxable periods (or portions thereof) ending on or before the Closing Date will not, in the aggregate, exceed the amount of the current liability accruals for Taxes (excluding reserves for deferred Taxes) reflected on the Interim Balance Sheet, as adjusted for operations and transactions in the ordinary course of their respective businesses since the date of the Interim Balance Sheet in accordance with past custom and practice.

(d) Neither the Company nor any of its Subsidiaries is obligated by Law, assumption, transferee or successor liability, or by any written or other contract, agreement or other arrangement, whether express or implied, to indemnify any other person (other than the Company and its Subsidiaries) with respect to Taxes. Neither the Company nor any of its Subsidiaries is a party to or bound by any written Tax allocation, indemnification, sharing of similar agreement (other than an agreement with the Company or its Subsidiaries as disclosed on **Section 2.9(I)** of the Disclosure Schedule). Neither the Company nor any of its Subsidiaries is liable under Treasury Regulation Section 1.1502-6 (or any similar provision of the Laws of any U.S. state, local, or other foreign jurisdiction) for any Taxes of any person other than the Company and its Subsidiaries.

(e) *Withholding Taxes.* Except as set forth in **Section 2.9(e)** of the Disclosure Schedule, the Company and its Subsidiaries have withheld and paid over (or set aside for payment when due) all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding requirements, in connection with amounts paid or owing to any employee, independent contractor, stockholder, creditor or other third party.

(f) *Liens.* There are no Liens for Taxes on any asset of the Company or any of its Subsidiaries, other than for (i) Taxes not yet due and payable or (ii) for Taxes being contested in good faith through appropriate proceedings and adequately reserved for in accordance with GAAP. Any Taxes described in clause (ii) above are disclosed on **Section 2.9(f)** of the Disclosure Schedule.

(g) *Tax Nexus.* No claim has ever been made in writing by a Tax Authority in a jurisdiction where the Company or its Subsidiaries does not file Tax Returns that the Company or such Subsidiary is required to pay Taxes or file Tax Returns in that jurisdiction.

(h) *Deficiencies and Proposed Adjustments.* All deficiencies and proposed adjustments with respect to Taxes for which the Company or any of its Subsidiaries is liable have been resolved.

(i) *Tax Audits and Proceedings.* No audits, examinations, investigations, claims, requests for information, ruling requests, or other proceedings with respect to Taxes or Tax Returns of the Company or any of its Subsidiaries are currently in process, pending or threatened in writing.

(j) *Statute of Limitations.* No waiver or extension of any statute of limitations with respect to Taxes or Tax Returns for which the Company or any of its Subsidiaries may be liable is currently in effect or has been requested. No power of attorney with respect to Taxes or Tax Returns on behalf of the Company or its Subsidiaries is currently in effect.

(k) *Section 481(a) Adjustments.* Neither the Company nor any of its Subsidiaries has agreed, or is required, to make any adjustment under Section 481(a) of the Code, or any similar provision of U.S. state, local or other foreign Tax Law, by reason of a change in accounting method or otherwise.

(l) *Consolidated Group Membership.* Neither the Company nor any of its Subsidiaries is a member of an affiliated group, within the meaning of Section 1504(a) of the Code, or any similar provision of U.S. state, local or other foreign Tax Law, filing consolidated Tax Returns and is not a member of any group filing combined or unitary Tax Returns.

(m) *FIRPTA*. Neither the Company nor any of its Subsidiaries is, nor has been during the applicable period specified in Section 897(c)(1)(A)(2) of the Code, a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code.

(n) *Section 355*. Neither the Company nor any of its Subsidiaries has been a “distributing corporation” or a “controlled corporation” (in each case within the meaning of Section 355(a)(1) of the Code) (1) within the two-year period ending as of the date of this Agreement or (2) in a distribution that could otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) that includes the Transactions.

(o) *Pass-Through Entities*. Neither the Company nor any of its Subsidiaries (i) is a party to any joint venture, partnership or other agreement or arrangement which is treated as a partnership for U.S. federal income Tax purposes, or (ii) has made a “check-the-box” election under Section 7701 of the Code.

(p) *Reportable Transactions*. Neither the Company nor any of its Subsidiaries is a party to any understanding or arrangement described in Section 6662(d)(2)(C)(ii) of the Code or has participated in any “reportable transaction” or “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4 or any other corresponding provision of state, local or foreign Laws. The Company and its Subsidiaries have complied with applicable information reporting and record maintenance requirements of Sections 6038, 6038A and 6038B of the Code and Treasury Regulations promulgated thereunder.

(q) *Closing Agreements*. Neither the Company nor any of its Subsidiaries will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Effective Time as a result of any “closing agreement” described in Section 7121 of the Code (or any corresponding or similar provision of U.S. state, local, other foreign Laws regarding Taxes) executed on or prior to the date of this Agreement.

(r) *Intercompany Transactions; Excess Loss Amounts*. Neither the Company nor any of its Subsidiaries will be required to include any item of income, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any intercompany transaction or excess loss account described in Treasury Regulation Section 1.1502 (or any corresponding or similar provision of U.S. state, local, other foreign income Tax Law). Neither the Company nor its Subsidiaries has ever been subject to a Code Section 482 adjustment or corresponding provision of state, local or foreign law. The Company and its Subsidiaries are in compliance with all transfer pricing requirements in all jurisdictions in which they do business. The Company and its Subsidiaries have prepared transfer pricing documentation in every jurisdiction in which they do business in accordance with applicable Law.

(s) *Tax Returns*. The Company has Made Available to Parent or its legal or accounting representative copies of all income and other material federal and state Tax Returns for the Company and each of its Subsidiaries filed for all periods including and after the period ended January 1, 2008.

(t) *No Boycotts.* Neither the Company nor any subsidiary of the Company has participated in an international boycott within the meaning of Section 999 of the Code

(u) The Company has disclosed to Parent any Tax exemption, Tax holiday or other Tax-sparing arrangement that the Company or any Subsidiary has in any jurisdiction. The Company and each of its Subsidiaries maintain any documentary support related to such Tax exemption, Tax holiday or other Tax-sparing arrangement. Neither the Company nor any of its Subsidiaries has ever had a permanent establishment in any foreign country.

(v) None of the Tax attributes (including net operating loss carryforwards and research and development tax credits) of the Company or any Company Subsidiary is limited by Section 382 or 383 of the Code for any period ending on or prior to the Closing Date.

Section 2.10 Employee Benefit Plans.

(a) **Section 2.10(a)** of the Disclosure Schedule sets forth a complete and accurate list of (1) all “employee benefit plans,” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 (“**ERISA**”), (2) all other severance pay, salary continuation, bonus, incentive, stock option, retirement, pension, profit sharing or deferred compensation plans, contracts, programs, funds or arrangements of any kind (excluding the Company Stock Plans and forms of agreement issued thereunder), and (3) all other employee benefit plans, contracts, programs, funds or arrangements (whether written or oral, qualified or nonqualified, funded or unfunded, foreign or domestic, currently effective or terminated) and any trust, escrow or similar agreement related thereto, whether or not funded, in respect of any present or former employees, directors, officers, stockholders, consultants, or independent contractors of the Company that are sponsored or maintained by the Company (or any trade or business (whether or not incorporated) (i) under common control within the meaning of Section 4001(b)(1) of ERISA with the Company or (ii) which together with the Company is treated as a single employer under Section 414(t) of the Code (the “**Controlled Group**”)) or with respect to which the Company (or the Controlled Group) has made or is required to make (whether directly or indirectly through a leasing agreement) payments, transfers, or contributions (all of the above being individually or collectively referred to as an “**Employee Benefit Plan**” or “**Employee Benefit Plans**,” respectively). Neither the Company nor any of its Subsidiaries has liability with respect to any plan of the type described in the preceding sentence other than the Employee Benefit Plans.

(b) True and complete copies of the following materials with respect to each Employee Benefit Plan have been Made Available to Parent, as applicable: (1) the current plan document or, in the case of an unwritten Employee Benefit Plan, a written description thereof, (2) the current determination, notification or advisory or opinion letter from the Internal Revenue Service (“**IRS**”), (3) the current summary plan description and all summaries of material modifications thereto and the past three annual reports and associated summary annual reports, (4) the current trust agreement, insurance contracts and other documents relating to the funding or payment of benefits under such Employee Benefit Plan, and (5) any other documents, forms or other instruments reasonably requested by Parent.

(c) Each Employee Benefit Plan has been maintained, operated and administered in compliance with its terms and any related documents or agreements and in compliance with all Laws. There have been no prohibited transactions or breaches of any of the duties imposed by ERISA on “fiduciaries” (within the meaning of Section 3(21) of ERISA) with respect to the Employee Benefit Plans that could result in any liability or excise tax under ERISA or the Code being imposed on the Company or any of its Subsidiaries.

(d) Each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code is so qualified and has heretofore been determined by the IRS to be so qualified, and each trust created thereunder has heretofore been determined by the IRS to be exempt from tax under the provisions of Section 501(a) of the Code, and nothing has occurred since the date of any such determination that could reasonably be expected to give the IRS grounds to revoke such determination.

(e) Neither the Company nor any of its Subsidiaries has or has had an obligation to contribute (whether directly or indirectly through a leasing agreement) to a “defined benefit plan” as defined in Section 3(35) of ERISA, a pension plan subject to the funding standards of Section 302 of ERISA or Section 412 of the Code, a “multiemployer plan” as defined in Section 3(37) of ERISA or Section 414(f) of the Code or a “multiple employer plan” within the meaning of Section 210(a) of ERISA or Section 413(c) of the Code.

(f) With respect to each group health plan benefiting any current or former employee of the Company or any member of the Controlled Group that is subject to Section 4980B of the Code, the Company and each member of the Controlled Group has complied with the continuation coverage requirements of Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA.

(g) With respect to each group health plan that is subject to Section 1862(b)(1) of the Social Security Act (42 U.S.C. Section 1395y(b)), the Company has complied with the secondary payer requirements of Section 1862(b)(1) of such Act.

(h) No Employee Benefit Plan is or at any time was funded through a “welfare benefit fund” as defined in Section 419(e) of the Code, and no benefits under any Employee Benefit Plan are or at any time have been provided through a voluntary employees’ beneficiary association (within the meaning of subsection 501(c)(9) of the Code) or a supplemental unemployment benefit plan (within the meaning of Section 501(c)(17) of the Code).

(i) All contributions, transfers and payments in respect of any Employee Benefit Plan maintained in the United States or otherwise subject to the Code, other than transfers incident to an incentive stock option plan within the meaning of Section 422 of the Code, have been or are fully deductible under the Code. All Options identified as “incentive stock options” are intended to qualify as incentive stock options under Section 422 of the Code.

(j) There is no pending or threatened Action in or by any court or Governmental Authority with respect to any Employee Benefit Plan (other than routine claims for benefits).

(k) All (1) insurance premiums required to be paid by the Company or any of its Subsidiaries with respect to, (2) benefits, expenses, and other amounts due and payable under, and (3) contributions, transfers, or payments required to be made to, any Employee Benefit Plan prior to the Closing Date will have been paid, made or accrued on or before the Closing Date.

(l) No Employee Benefit Plan provides benefits, including death or medical benefits, beyond termination of service or retirement other than (1) coverage mandated by Law or (2) death or retirement benefits under any Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(m) With respect to any insurance policy providing funding for benefits under any Employee Benefit Plan, (1) there is no liability of the Company or any of its Subsidiaries in the nature of a retroactive rate adjustment, loss sharing arrangement or other actual or contingent liability, nor would there be any such liability if such insurance policy was terminated at or after the Closing Date, and (2) to the Company's Knowledge, no insurance company issuing any such policy is in receivership, conservatorship, liquidation or similar proceeding.

(n) The Company or one its Subsidiaries has reserved all rights necessary to amend or terminate each of the Employee Benefit Plans without the consent of any other Person.

(o) All contributions required to be paid with respect to workers' compensation arrangements of the Company or any of its Subsidiaries have been made or accrued as a liability in the Financial Statements.

(p) The severance pay due to the employees of the Company and its Subsidiaries is fully funded or provided for in accordance with GAAP, all liabilities of the Company and its Subsidiaries in connection with its employees (excluding illness pay) were adequately accrued in the Financial Statements (in accordance with GAAP), and the Company is not aware of any circumstance whereby any employee might validly demand any claim for compensation upon termination of employment beyond the statutory severance pay or benefits to which such employee is entitled and which has been fully funded by the Company or its Subsidiaries.

(q) Neither the Company nor any of its Subsidiaries has agreed or committed to institute any plan, program, arrangement or agreement for the benefit of employees or former employees of the Company or any of its Subsidiaries, other than the Employee Benefit Plans, or to make any amendments to any of the Employee Benefit Plans.

(r) No Employee Benefit Plan provides benefits to any individual who is not either a current or former employee of the Company or any of its Subsidiaries, or the spouse, dependent, or other beneficiary of any such current or former employee.

(s) There is no trade or business (whether or not incorporated) (1) under common control within the meaning of Section 4001(b)(1) of ERISA with the Company or (2) which together with the Company is treated as a single employer under Section 414(t) of the Code.

(t) Neither the execution and delivery of this Agreement nor the consummation of the Transactions will, alone or in connection with any other event (including the termination of employment or service with Parent or the Company or one its Subsidiaries following the Merger), (1) result in any payment (including severance, unemployment compensation or golden parachute) becoming due under any Employee Benefit Plan or other arrangement in effect as of the date of this Agreement entered into by the Company or one of its Subsidiaries, (2) increase any benefits (including severance, deferred compensation and equity benefits) otherwise payable under any Employee Benefit Plan or other arrangement, (3) result in the acceleration of the time of payment or vesting of any such benefits to any extent, or (4) result in the forgiveness in whole or in part of any outstanding loans made by the Company to any Person. Neither the Company, nor any other entity treated as a single employer with the Company under Section 280G of the Code is a party to any Contract, arrangement or plan that has resulted or would result, separately or in the aggregate, in the payment of any "parachute payments" within the meaning of Section 280G of the Code. There is no agreement, plan, arrangement or other contract which provides for the gross-up of any taxes imposed on any person providing services to the Company or its Subsidiaries.

Section 2.11 Employment Matters

(a) There are no claims pending against the Company or any of its Subsidiaries under any workers' compensation plan or policy, for unemployment compensation benefits or for long term disability. There have been no claims (settled or unsettled) for injury or occupational health hazard against the Company or any of its Subsidiaries by any employee or subcontractor.

(b) No Liability has been incurred by the Company or any of its Subsidiaries for breach of employment Contracts or consulting Contracts to which the Company or any of its Subsidiaries is a party nor has any liability been incurred under Law or otherwise for severance, unemployment compensation, golden parachute, bonus or otherwise accruing from the termination of any employment Contracts and consulting Contracts.

(c) **Section 2.11(e)** of the Disclosure Schedule sets forth a true, correct and complete and accurate list of all severance Contracts, employment Contracts, independent contractor Contracts, staffing Contracts and consulting Contracts to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound, copies of which have been Made Available to Parent. Neither the Company nor any of its Subsidiaries is presently, nor has it been in the past, a party to or bound by any collective bargaining agreement or other labor union contract, no labor union contract or collective bargaining agreement is being negotiated by the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has any duty to bargain with any labor organization. To the Knowledge of the Company there have never been any activities or proceedings of any labor union to organize employees of the Company or any of its Subsidiaries. There is no labor dispute, strike, slowdown, concerted refusal to work overtime or work stoppage against the Company or any of its Subsidiaries pending now, that has occurred in the past, or, to the Knowledge of the Company, threatened. Neither the Company nor any of its Subsidiaries has or is engaged in any unfair labor practice.

(d) **Section 2.11(d)** of the Disclosure Schedule is a true, correct and complete list of all officers, directors, employees (regular, temporary, part-time or otherwise), consultants and independent contractors of the Company or any of its Subsidiaries (“**Workers**” or “**Worker**”), showing each such person’s name, position, date of commencement of employment, engagement or appointment to office, rates of compensation, status as exempt or non-exempt (to the extent applicable under Law), status as employee or contract worker, whether employee is presently on a leave of absence (including the basis for such leave and the anticipated return to work date), target bonuses and fringe benefits for the current fiscal year and the most recently completed fiscal year (including any accrued, but unused vacation), and severance or termination payment obligations payable in excess of that required by applicable Law.

(e) No Key Employee of the Company or any of its Subsidiaries has given notice to the Company or any of its Subsidiaries of such employee’s termination of employment with the Company or such Subsidiary. To the Knowledge of the Company, no such Key Employee intends to terminate his or her employment with the Company or any of its Subsidiaries. The employment of each of the employees of the Company and each of its Subsidiaries is “at-will,” and neither the Company nor any of its Subsidiaries has any obligation to provide any particular form or period of notice before terminating the employment of any of their respective employees, except as may be required under Law.

(f) The Company and its Subsidiaries have provided to Parent in **Section 2.11(f)** of the Disclosure Schedule true, correct and complete copies of each of the following: all forms of offer letters; all forms of employment agreements and severance agreements; all forms of services agreements and agreements with current and former consultants and/or advisory board members; all forms of confidentiality, non-competition or inventions agreements between current and former employees/consultants and the Company (and a true, correct and complete list of employees, consultants and/or others not subject thereto); the most current management organization chart(s); and all agreements and/or insurance policies providing for the indemnification of any officers or directors of the Company. There are no written personnel manuals or handbooks, nor are there any policies, rules or procedures, currently in effect applicable to any employee of the Company or any of its Subsidiaries, other than those set forth in **Section 2.11(f)** of the Disclosure Schedule, true and complete copies of which have been Made Available to Parent. There are no oral or implied contracts between the Company or its Subsidiaries and any current or former employee of the Company, or any unwritten policies, practices or customs, that could reasonably be expected to entitle any current or former employee to benefits in addition to what such employee is entitled by applicable legal requirements or under the terms of the written employment agreement of such employee.

(g) Neither the Company nor any of its Subsidiaries has any accrued unpaid liabilities relating to its employees, directors or officers other than for (1) salaries and fringe benefits since the last payroll period, (2) accrued but unused vacation and related payments, and (3) accrued but unpaid bonuses. Neither the Company nor any of its Subsidiaries has engaged any consultants, independent contractors, subcontractors or freelancers who would be entitled under law to the rights of an employee of the Company or any of its Subsidiaries, including rights to severance pay, vacation, sick pay and other employee-related statutory benefits.

(h) There are no claims, disputes, grievances, or controversies pending or, to the Knowledge of the Company, threatened or reasonably anticipated involving any Worker, group of Workers, or individual. There are no charges, investigations, administrative proceedings or formal complaints of discrimination (including but not limited to discrimination based upon sex, age, marital status, race, religion, national origin, sexual orientation, disability or veteran status) pending or, to the Knowledge of the Company, threatened before the Equal Employment Opportunity Commission, the National Labor Relations Board, the U.S. Department of Labor, the U.S. Occupational Health and Safety Administration, the Workers Compensation Appeals Board, or any other Governmental Authority against the Company pertaining to any Worker. Neither the Company nor its Subsidiaries is a party to a conciliation agreement, consent decree or other agreement or order with any federal, state or local agency of Governmental Authority with respect to employment practices.

(i) Company and its Subsidiaries are in compliance with the Immigration Reform and Control Act. **Section 2.11(i)** of the Disclosure Schedule lists all employees of the Company and its Subsidiaries in the United States who are not citizens or permanent residents of the United States, and indicates immigration status and the date work authorization is scheduled to expire. All other persons employed by the Company in the United States are citizens or permanent residents. Each Worker who is not a United States citizen is in compliance with all applicable visa and work permit requirements. No visa or work permit held by a Worker will expire during the six month period after the date hereof.

(j) The Company and each of its Subsidiaries is and has been at all times in compliance with all applicable U.S. federal, state and local Laws, rules and regulations, and is and has been at all times in compliance in all material respects with all applicable foreign Laws, respecting employment, employment practices, terms and conditions of employment, worker classification (including classification as exempt or nonexempt and classification as an employee or contractor), tax withholding, prohibited discrimination, equal employment, fair employment practices, disability accommodation, leave administration, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, and hours of work, and in each case, with respect to Workers: (i) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries, and other payments to Workers, (ii) is not liable for any arrears of wages, severance pay or any Taxes or any penalty or failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits for Workers (other than routine payments to be made in the normal course of business and consistent with past practice). Neither the Company nor any of its Subsidiaries has any liability with respect to any misclassification of: (a) any person as an independent contractor rather than as an employee, (b) any Worker leased from another employer, or (c) any Worker currently or formerly classified as exempt from overtime wages. No claims have been made for discrimination, sexual or other harassment, or retaliation nor, to the Knowledge of the Company, are any such claims threatened or pending nor is there any reasonable Basis for such a claim. There are no other current, pending, or, to the Knowledge of the Company, threatened claims related in any manner to the employment Laws, policies and practices described in this Section 2.11(j), nor, to the Knowledge of the Company, is there any reasonable Basis for any such claims.

(k) To the extent the Company or any of its Subsidiaries utilizes temporary or staffing agencies, or any other arrangement by which the Company or any of its Subsidiaries could be considered a "joint employer" of employees, contractors, consultants, or other Persons not directly employed by the Company or its Subsidiaries, there are no claims, disputes, grievances, or controversies pending or, to the Knowledge of the Company, threatened involving any such Person. To the Company's Knowledge, all such Persons have been employed in compliance with all applicable federal, state, local and foreign Laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, worker classification (including, but not limited to, classification as exempt or nonexempt and classification as an employee or contractor), tax withholding, prohibited discrimination, equal employment, fair employment practices, disability accommodation, leave administration, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation, and hours of work.

(l) The Company and each of its Subsidiaries is in compliance with the Worker Readjustment and Notification Act (the "WARN Act") (29 USC §2101) and any applicable state laws or other Laws regarding redundancies, reductions in force, mass layoffs, and plant closings, including all obligations to promptly and correctly furnish all notices required to be given thereunder in connection with any redundancy, reduction in force, mass layoff, or plant closing to affected employees, representatives, any state dislocated worker unit and local government officials, or any other governmental authority. Neither the Company nor any of its Subsidiaries has at any time taken any action that would constitute a "mass layoff" or "plant closing" within the meaning of the WARN Act or similar state or local law, issued any notification of a plant closing or mass layoff required by the WARN Act, or similar state or local law, or incurred any liability or obligation under WARN Act or any similar state or local law that remains unsatisfied.

(m) The Company and each of its Subsidiaries is in compliance with all Laws governing background checks, credit checks, consumer reports, investigative consumer reports, and all other background screening practices, including making all appropriate disclosures, obtaining valid consents, limiting the sources of information requested, and only requesting such information as permitted by applicable Law.

(n) To the Company's Knowledge, no Worker is in violation of any term of any employment contract, non-disclosure, confidentiality agreement, or consulting agreement with the Company or any of its Subsidiaries or non-competition agreement, non-solicitation agreement or any restrictive covenant with a former employer relating to the right of any such employee to be employed by or provide services to the Company or any of its Subsidiaries because of the nature of the business conducted or presently proposed to be conducted by it or to the use of trade secrets or proprietary information of others.

(o) Any Worker who has performed services for the Company or its Subsidiaries while classified as independent contractors (or any status other than an employee of the Company or its Subsidiaries) has satisfied the requirements of Law to be so classified, and the Company and its Subsidiaries have fully and accurately reported their compensation on IRS Forms 1099 or other applicable Tax forms for independent contractors when required to do so. All such independent contractors have entered into appropriate confidentiality and invention assignment agreements in favor of Company and its Subsidiaries.

Section 2.12 Related Party Transactions.

No officer or director or, to the Knowledge of the Company, any stockholder of the Company or any of its Subsidiaries (nor, to the Knowledge of the Company, any immediate family member of any of such Persons, or any trust, partnership or company in which any of such Persons has or has had an interest), has or has had, directly or indirectly, (a) any interest in any third party which furnished or sold, or furnishes or sells, services, products or technology that the Company or any of its Subsidiaries furnishes or sells, (b) any interest in any third party that purchases from or sells or furnishes to the Company or any of its Subsidiaries any goods or services or (c) any interest in any Contract to which the Company or any of its Subsidiaries is a party, other than (i) the employment, compensation and benefit arrangements for services as an officer or director of the Company or (ii) contracts pursuant to which such officers or directors purchased Company Capital Stock or were granted Company Options; *provided, however*, that ownership of no more than one percent of the outstanding voting stock of a publicly traded company shall not be deemed to be an **"interest in any entity"** for purposes of this Section 2.12.

Section 2.13 Insurance.

Section 2.13 of the Disclosure Schedule sets forth a complete and accurate list, as of the date hereof, of all policies of insurance and indemnity bonds issued at the request or for the benefit of the Company or any of its Subsidiaries, all of which are in full force and effect. Such list includes the type of policy, form of coverage, policy number and insurer, coverage dates, annual premiums, named insured and limit of liability. True and complete copies of insurance binders of each listed policy have been Made Available to Parent. There is no claim pending under any of such policies or bonds. The Company and each of its Subsidiaries benefiting therefrom is in compliance in all material respects with the terms of such policies and bonds. To the Knowledge of the Company, there is no threatened termination of, or premium increase (other than industry standard annual premium increases consistent with past practice) with respect to, any of such policies or bonds, nor is there any reasonable Basis for any such termination or premium increase. **Section 2.13** of the Disclosure Schedule sets forth a complete and accurate list, as of the date hereof, of all claims filed by the Company or any of its Subsidiaries under any such policies or bonds. The Company and each of its Subsidiaries comply with all insurance requirements under any applicable Law, and maintain in full force and effect all insurance policies required under any applicable Law.

Section 2.14 Compliance with Laws; Certain Business Practices.

(a) The Company and each of its Subsidiaries has complied in all material respects with, is not in violation of, and has not received, nor to the Knowledge of the Company is there any reasonable Basis for, any notices of suspected, potential or actual violation with respect to, any applicable Laws or Permits with respect to the conduct of its business, or the ownership or operation of its business. No event has occurred, and no condition or circumstance exists, that would (with or without notice or lapse of time or both) constitute, or result directly or indirectly in, a default under, a breach or violation of, or a failure to comply with, any applicable Laws or Permits with respect to the conduct of the business of the Company or any of its Subsidiaries or the ownership or operation of the Company or any of its Subsidiaries. The Company or a Subsidiary of it owns or possesses all material Permits that are necessary to conduct the business of the Company and its Subsidiaries as presently conducted.

(b) None of the Company, any of its Subsidiaries or any of their respective directors, officers, employees, distributors or agents or any other Person acting on behalf of any such Person has, with respect to the business of the Company or any of its Subsidiaries, directly or indirectly, (a) taken any action that would cause it to be in violation of the U.S. Foreign Corrupt Practices Act of 1977 or the OECD Convention on Combating Bribery of Foreign Public Officials in Business Transactions or any other Law applicable to the conduct of business with Governmental Authorities (collectively, the “FCPA”), (b) used any funds for unlawful contributions, gifts, entertainment or other unlawful payments relating to any political activity or (c) made, offered or authorized any unlawful payment to any government official or employee or any political party or campaign. The Company has established effective internal controls and procedures with respect to compliance with the FCPA and has Made Available to Parent documentation related to such controls and procedures.

(c) Neither the Company nor any of its Subsidiaries has applied for or received, is or will be entitled to or is or will be the beneficiary of, any grant, subsidy or financial assistance from any Governmental Authority.

(d) During the past five (5) years, the Company and each of its Subsidiaries have conducted their export transactions in accordance with all applicable U.S. export and re-export controls, including the Arms Export Control Act (22 U.S.C. Sec. 2778), the International Traffic in Arms Regulations (22 C.F.R. Sec. 120 et seq.) (“ITAR”), the Export Administration Regulations (15 C.F.R. Sec. 730 et seq.), U.S. economic sanctions regulations administered by the Office of Foreign Assets Control of the United States Department of the Treasury, and all other Laws and regulations related to export and re-export controls in any applicable jurisdiction in which the Company conducts business. None of the Company’s products, software or technology is controlled on the Commerce Control List in the Export Administration Regulations at a level higher than Anti-Terrorism (AT) controls or described on the U.S. Munitions List in the ITAR, and such products and technology are available from competitors of the Company both within and outside of the United States. Without limiting the foregoing:

(i) The Company and each of its Subsidiaries have obtained or acted in accordance with all export licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations, classifications and filings with any Governmental Entity required for (A) the export, import and re-export of products, services, software and technologies and (B) releases of technologies and software source code to foreign nationals located in the United States and abroad (“Export Approvals”).

(ii) The Company and each of its Subsidiaries are in compliance with the terms of all applicable Export Approvals.

(iii) There are no pending or, to the Knowledge of the Company, threatened claims against the Company or any Subsidiary with respect to such Export Approvals.

(iv) To the Knowledge of the Company, there are no actions, conditions or circumstances pertaining to the Company's or any Subsidiary's export transactions that may give rise to any future claims.

(v) No Export Approvals for the transfer of export licenses, if any, to Parent or the Surviving Corporation are required, or such Export Approvals can be obtained expeditiously without material cost.

(vi) **Section 2.14(d)** of the Disclosure Schedule sets forth the true, complete and accurate export control classifications applicable to the Company's products, services, software and technologies.

(e) Neither the Company nor any of its Subsidiaries appear on any U.S. Government restricted parties lists, including the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of Commerce's Entity List, Denied Persons List, and Unverified List, and the U.S. Department of State's Debarred List.

Section 2.15 Minute Books.

The minute books of the Company and its Subsidiaries Made Available to Parent contain a complete and accurate summary of all meetings of directors and stockholders or actions by written consent thereof since its time of incorporation and reflect all transactions referred to in such minutes accurately in all material respects.

Section 2.16 Brokers and Finders; Transaction Expenses.

(a) No Person has acted as a broker, finder or financial advisor for the Company or its Affiliates in connection with the negotiations relating to the Transactions, and no Person is entitled to any fee or commission or similar payment in respect thereof from the Company, Parent or any of their respective Affiliates based in any way on any agreement, arrangement or understanding made by or on behalf of the Company or its Affiliates. **Section 2.16** of the Disclosure Schedule sets forth the principal terms and conditions of any agreement, written or oral, with respect to such fees. **Section 2.16** of the Disclosure Schedule sets forth the Company's current reasonable estimate of all Third Party Expenses as of the date hereof. All Contracts with respect to Third Party Expenses have been Made Available to Parent.

(b) As of the Closing there are no Third Party Expenses which have not been listed in full on the Third Party Expenses Report.

Section 2.17 Customers.

(a) **Section 2.17(a)** of the Disclosure Schedule contains a complete and accurate list, as of the date hereof, of each customer of the Company that has (x) a continuing right to technical support or (y) a continuing right to Software updates, and sets forth by such customers which Company Product they have the right to continuing support or updates for, the type of remaining support they have rights for, the duration of such remaining support or updates and their rights with respect to purchases of extension of support beyond discontinuation. All contracts that contain support obligations are qualified by "commercially reasonable efforts" or some other similar standard of reasonableness with respect to customer support and response time obligations.

(b) Except as set forth on **Section 2.17(b)** of the Disclosure Schedule, as of the date hereof, there are no Contracts whereby Company or any of its Subsidiaries must guarantee resolution of submitted defects or support cases within predefined timeframes nor any Contracts containing associated penalties for failure to meet such resolution times.

(c) Except as set forth on **Section 2.17(c)** of the Disclosure Schedule, as of the date hereof, there are no Contracts whereby Company or any of its Subsidiaries is required to provide ongoing support and/or services beyond contract expiration or termination and/or is otherwise obligated to ongoing performance under the Contract past contract termination or expiration date.

(d) Except as set forth on **Section 2.17(d)** of the Disclosure Schedule, as of the date hereof, there are no Contracts which restrict Company's ability to provide end of life or end of support or end of commercial availability for the Software and/or related services.

(e) **Section 2.17(e)** of the Disclosure Schedule contains a complete and accurate list of all current third party resellers and distributors of Company Products, broken out by type of product resold and indicating the current term of their contract and the notice period for at-will termination by the Company or one its Subsidiaries. True, correct and complete copies of all agreements with current resellers and distributors set forth in **Section 2.17(e)** of the Disclosure Schedule have been Made Available to Parent. To the Company's Knowledge, there are no variations to support obligations for customers sold to by any reseller or distributor.

(f) **Section 2.17(f)** of the Disclosure Schedule contains a complete and accurate list of each customer of the Company accounting for five percent (5%) or more of the revenues of the Company (collectively, the "**Key Customers**") measured over the 12-month period prior to the date hereof. No Customer has threatened to cease or materially reduce its purchases. No customer of the Company or any of its Subsidiaries has a right to a refund of funds received by the Company or any of its Subsidiaries pursuant to any warranty or return policy.

(g) **Section 2.17(g)** of the Disclosure Schedule contains a complete and accurate list of each country where the Company has sold or licensed any Company Products.

(h) The Company does not provide any products or services, either directly or indirectly, as a prime contractor or as a subcontractor, to any Governmental Authority, nor, to the Company's Knowledge, is any Governmental Authority an end-user of any Company Products. The Company does not have access to any U.S. Government classified information.

Section 2.18 Material Contracts.

Except for Contracts listed in **Section 2.18** of the Disclosure Schedule, as of the date hereof, neither the Company nor any of its Subsidiaries is a party to or bound by any material Contract (each, together with each Contract required to be disclosed on the Disclosure Schedule pursuant to any of the representations and warranties in this Article 2, a "**Material Contract**"), including:

- (a) any advertising, agency, original equipment manufacturer, dealer, distributors, sales representative, joint marketing, joint development or joint venture Contract;
- (b) any Contract between the Company or any of its Subsidiaries and any Customer entered into within the last three (3) years;
- (c) any continuing Contract for the purchase of materials, supplies, equipment or services that involves the payment by the Company or one its Subsidiaries of more than \$50,000 over the life of the Contract;
- (d) any Contract pursuant to which the Company or one its Subsidiaries is obligated to provide services at a total price fixed before performance of such services (but excluding warranty and maintenance Contracts);
- (e) any warranty or maintenance Contract pursuant to which the Company or one its Subsidiaries is obligated to provide services at a total price fixed before performance of such services, for which the fully burdened cost of complete performance by the Company or such Subsidiary currently exceeds or is reasonably expected by the Company to exceed such price;
- (f) any Contract that expires (or may be renewed at the option of any Person other than the Company or one its Subsidiaries such that it would expire) more than one (1) year after the date of this Agreement and involves more than \$50,000 over the life of the Contract;
- (g) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, or any leasing transaction of the type required to be capitalized in accordance with GAAP;
- (h) any Contract wherein or whereby the Company or one of its Subsidiaries has agreed to, or assumed, any obligation or duty to indemnify, reimburse, hold harmless, guarantee or otherwise assume or incur any obligation or liability or provide a right of rescission with respect to the infringement or misappropriation by the Company, such Subsidiary or another Person of the Intellectual Property Rights of any Person other than the Company or such Subsidiary and under which the liability of the Company or such Subsidiary for such obligation is not capped at \$200,000;
- (i) any Contract for any capital expenditure in excess of \$50,000 individually or \$100,000 in the aggregate;
- (j) any Contract in accordance with which the Company or one its Subsidiaries is a lessor or lessee of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property and involving in the case of any such Contract more than \$50,000 over the life of the Contract;

(k) any Contract in accordance with which the Company or one its Subsidiaries is a lessor or lessee of any real property;

(l) any Contract providing for the development of any Software, content (including textual content and visual, photographic or graphics content), technology or Intellectual Property for the Company or one its Subsidiaries, or providing for the purchase by or license to (or for the benefit or use of) the Company or one its Subsidiaries of any Software, content (including textual content and visual, photographic or graphics content), technology or Intellectual Property, which Software, content, technology or Intellectual Property is incorporated in any product or technology of the Company or sold by the Company or any of its Subsidiaries;

(m) any Contract with any Person with whom the Company or any of its Subsidiaries does not deal at arms' length;

(n) any Contract relating to the disposition or acquisition of assets or any interest in any business enterprise (whether by merger, sale of stock, sale of assets or otherwise) and any Contract providing for an earnout, except for the sale of products or services in the ordinary course of business;

(o) any Contract with any Governmental Authority, other than any Customer Contract;

(p) any Contract under which the Company's entering into this Agreement or the consummation of the Transactions would give rise to, or trigger the application of, any material rights of any third party or any material obligations of the Company or any of its Subsidiaries that would come into effect upon the consummation of the Transactions;

(q) any Contract relating to settlement of any Action, *provided, however*, that any releases, immaterial in nature or amount, entered into with former employees or service providers of the Company or any of its Subsidiaries in the ordinary course of business in connection with the cessation of services to the Company are not considered settlement of an Action;

(r) any Contract that results in any Person holding a power of attorney from the Company or any of its Subsidiaries;

(s) any hedging, futures, financial options or other derivative Contract; or

(t) any Contract with any investment banker, broker, advisor or similar Person, or any accountant, legal counsel or other person retained by the Company or any of its Subsidiaries, in connection with this Agreement and the Transactions.

A true and complete copy of each Material Contract has been Made Available to Parent. All Material Contracts are in executed written form, and the Company or one its Subsidiaries has performed in all material respects all of the obligations required to be performed by it and is entitled to all material benefits under, and neither the Company nor any of its Subsidiaries is in default in any material respect of any provision in respect of, any Material Contract. Each of the Material Contracts is a valid and binding agreement of the Company or one its Subsidiaries and, to the Knowledge of the Company, the other parties thereto. Following the Closing Date, the Surviving Corporation will maintain its rights under the Material Contracts without the payment of any additional amounts of consideration other than ongoing fees, royalties or payments that the Company or such Subsidiary would otherwise be required to pay in accordance with the terms of such Material Contracts had the Transactions not occurred.

Section 2.19 Property.

(a) Neither the Company nor any of its Subsidiaries owns or has ever owned any real property.

(b) The Company or one its Subsidiaries has good and marketable title to, or, in the case of leased properties and assets, marketable leasehold interests in, all of its material tangible properties and assets, real, personal and mixed, used or held for use in its business, free and clear of any Encumbrances (other than any Permitted Encumbrances), and such properties and assets have been maintained in accordance with the ordinary course of business save for normal tear and wear, except (1) as reflected in the Interim Balance Sheet, and (2) liens for Taxes not yet due and payable. The Company has Made Available to Parent a true, correct and complete copy of each of its real property leases.

(c) The tangible assets and properties owned, leased or licensed by the Company or its Subsidiaries are in good condition and repair in all material respects (subject to normal wear and tear) and constitute all of the tangible properties necessary to conduct its business as currently conducted.

Section 2.20 Privacy and Data Security.

(a) The Company and each of its Subsidiaries has (a) complied in all respects with its published privacy policies and internal privacy policies and guidelines and all applicable Laws relating to data privacy, data protection and data security, including with respect to the collection, storage, transmission, transfer (including cross-border transfers), disclosure, destruction and use of Personally Identifiable Information and (b) taken commercially reasonable measures to ensure that personally identifiable information is protected against loss, damage, and unauthorized access, use, modification, or other misuse. "Personal Identifiable Information" means any information that specifically identifies any employee, contractor, and third parties who have provided information to the Company or one its Subsidiaries, whether a living or dead individual person, including (i) any personally-identifiable information or any information that could be associated with such individual, such as addresses, telephone numbers, health information, drivers' license numbers, and government issued identification numbers, and (ii) any nonpublic personally identifiable financial information, such as information relating to a relationship between an individual person and a financial institution, and/or related to a financial transaction by such individual person with a financial institution. There has been no loss, damage, or unauthorized access, use, modification, or other misuse of any such Personally Identifiable Information by the Company, any of its Subsidiaries or, to the Knowledge of the Company, any of their employees or contractors or any other Person. No Person (including any Governmental Authority) has provided any notice, made any claim, or commenced any Action with respect to loss, damage, or unauthorized access, use, modification, or other misuse of any such Personally Identifiable Information by the Company, any of its Subsidiaries or any of their employees or contractors and, to the Knowledge of the Company, there is no reasonable Basis for any such notice, claim, or Action. The (i) collection, storage, processing, transfer, and sharing of Personally Identifiable Information, and (ii) the execution, delivery and performance of this Agreement and the consummation of the Merger complies (and the disclosure to and use by Surviving Corporation and Parent and its Affiliates of such Personally Identifiable Information after the Effective Time will comply) in all material respects with the Company's applicable privacy policies described in Section 2.20 of the Disclosure Schedule and with all applicable Laws relating to privacy and data security (including any such Laws in the jurisdictions where the applicable information is collected). The Company and its Subsidiaries have at all times made all disclosures to, and obtained any necessary consents from, users, customers, employees, contractors and other applicable Persons required by applicable Laws related to privacy and data security and has filed any required registrations with the applicable data protection authority.

(b) With respect to transactions processed in any way (including any processing, storing or communication of transaction data, credit, and/or payment card data) by the Company and its Subsidiaries on behalf of any Person prior to the Closing Date, the Company and each of its Subsidiaries is in compliance with Level 4 of the Payment Card Industry Data Security Standard (“**PCI-DSS**”).

Section 2.21 IT Systems.

(a) The computer, information technology and data processing systems, facilities and services used by the Company or any of its Subsidiaries, including all Software, hardware, networks, communications facilities, platforms and related systems and services used by the Company or any of its Subsidiaries (collectively, the “**Systems**”), are reasonably sufficient for the existing needs of the Company and its Subsidiaries. The Systems are in good working condition to effectively perform all computing, information technology and data processing operations necessary for the operation of the business of the Company and its Subsidiaries. The Company and its Subsidiaries have taken commercially reasonable steps and implemented commercially reasonable safeguards to ensure that the Systems are substantially free from disabling codes of instructions, spyware, Trojan horses, worms, viruses or other software routines designed to cause unauthorized access to, or disruption, impairment, disablement, or destruction of, Software, data or other materials (“**Contaminants**”) and to the Knowledge of the Company, the Company Products and the Software used by the Company or any of its subsidiaries are free of Contaminants. All Systems, other than Software that is duly and validly licensed to the Company or one its Subsidiaries pursuant to a Company Intellectual Property Agreement listed or required to be listed in **Section 2.8(d)** of the Disclosure Schedule, are owned and operated by and are under the control of the Company or one its Subsidiaries and are not wholly or partly dependent on any systems, facilities or services which are not under the ownership, operation and control of the Company or one of its Subsidiaries. From and after the Closing, the Surviving Corporation will have and be permitted to exercise the same rights (whether ownership, license or otherwise) with respect to the Systems as the Company or one its Subsidiaries would have had and been able to exercise had this Agreement, the Related Agreements and such other agreements, documents and instruments to be executed and delivered after the date hereof not been entered into and the Merger not occurred, without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company or one its Subsidiaries would otherwise have been required to pay.

(b) In the 12-month period prior to the date hereof, there has been no failure, breakdown or continued substandard performance of any Systems that has caused a material disruption or interruption in or to any customer's use of the Systems or the operation of the business of the Company or its Subsidiaries. The Company and its Subsidiaries make back-up copies of data and information critical to the conduct of the business of the Company and its Subsidiaries consistent with industry standard and conduct periodic tests to ensure the effectiveness of such back-up systems. The Company and its Subsidiaries have in place industry standard (and, in any event, not less than commercially reasonable) disaster recovery and business continuity plans, procedures and facilities.

Section 2.22 Bank Accounts.

Section 2.22 of the Disclosure Schedule sets forth a complete and accurate list, as of the date hereof, showing (a) all banks in which the Company or any of its Subsidiaries maintains a bank account or safe deposit box (collectively, "**Bank Accounts**"), together with, as to each such Bank Account, the account number, the names of all signatories thereof and the authorized powers of each such signatory and, with respect to each such safe deposit box, the number thereof and the names of all persons having access thereto.

Section 2.23 Board Approval.

The Company's board of directors, by resolutions duly adopted (and not thereafter modified or rescinded) by unanimous vote (with no abstentions) at a meeting duly called and held or by unanimous written consent, has (a) approved this Agreement, the Related Agreements to which the Company is a party, the Merger and the other Transactions, (b) determined that this Agreement and the terms and conditions of the Merger and the Transactions are fair to, advisable and in the best interests of the Company and its stockholders, and (c) recommended that all of the stockholders of the Company adopt and approve this Agreement.

Section 2.24 Stockholder Approval.

The affirmative vote or action by written consent of (a) holders of eighty percent (80%) of the shares of Preferred Stock (voting as a single class on an as-converted basis), (b) holders of a majority of the Company Common Stock (including the holders of Preferred Stock voting on an as-converted basis) and (c) holders of a majority of the Company Common Stock (not including the holders of Preferred Stock) are the only votes (or consents) required of the Company's stockholders to adopt this Agreement under the DGCL, the CGCL, the Charter, the Company's bylaws or any Contract to which the Company is a party ((a) and (b) together, the "**Required Vote**").

Section 2.25 HSR Filing.

No notification or filing with any Governmental Authority has been made or needs to be made pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976 or other US or foreign antitrust, competition or premerger notification, or trade regulation law, regulation or order as a result of the execution, delivery and performance of this Agreement and the consummation of the Transactions by Parent and Merger Sub.

(a) The following terms, as used herein, have the following meanings: “**Environment**” means any and all environmental media, including ambient air, surface water, ground water, drinking water supply, land surface or subsurface, soil or strata, and also means any indoor location. “**Environmental Law**” means any and all federal, state, local, and foreign statutes, laws (including common or case law), regulations, ordinances, rules, judgments, judicial decisions, orders, decrees, codes, plans, injunctions, or governmental restrictions relating to the protection of human health or safety or the Environment or to emissions, discharges or Releases of any Hazardous Substance into the Environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Substance or the containment, removal or remediation thereof. “**Environmental Permits**” means any and all governmental permits, licenses, concessions, grants, franchises, agreements, authorizations, registrations or other governmental approvals or filings issued or required under any Environmental Law. “**Hazardous Substance**” means any and all pollutants and contaminants, and any and all toxic, caustic, radioactive or otherwise hazardous materials, substances or wastes that are regulated under any Environmental Law, and includes petroleum and its derivatives and by-products, and any other hydrocarbons. “**Release**” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the Environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance).

(b) Except as disclosed in **Section 2.26** of the Disclosure Schedule:

(i) The Company and its Subsidiaries have complied and are in compliance with all Environmental Laws and Environmental Permits, except where the failure to so comply could not, individually or in the aggregate, have a Material Adverse Effect on the Company.

(ii) The Company and its Subsidiaries have applied for and received all Environmental Permits required in connection with its business, except where the failure to apply for or hold such Environmental Permits could not, individually or in the aggregate, have a Material Adverse Effect on the Company. **Section 2.26** of the Disclosure Schedule sets forth a list of all such Environmental Permits held by the Company and its Subsidiaries, each of which is in full force and effect and will continue to be in full force and effect immediately following the Closing in accordance with the terms thereof as in effect immediately prior to the Closing. The consummation of the Merger will not require any filing, notice or compliance under any Environmental Law relating to the transfer of property and no transfer of any Environmental Permits will be required.

(iii) No written notice, notification, demand or request for information has been received by the Company or its Subsidiaries, and, no citation, summons or order has been issued, and to the Knowledge of the Company, no complaint has been filed, no penalty has been assessed and no investigation or review is pending or, to the Knowledge of the Company, threatened, by any Governmental Authority with respect to any (A) alleged violation by the Company or its Subsidiaries of any Environmental Law or Environmental Permit, or any liability thereunder, (B) alleged failure by the Company or any Subsidiary to have any Environmental Permit, or (C) use, generation, treatment, storage, handling, recycling, transportation or disposal of any Hazardous Substance by the Company or its Subsidiaries.

(iv) Neither the Company nor any Subsidiary has stored, handled or transported or Released any Hazardous Substance on any property now or previously owned or leased by the Company or its Subsidiaries in violation in any material respect of applicable Environmental Laws.

(v) There have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted by or for the Company or its Subsidiaries, or to the Company's Knowledge, relating to any property or facility now or previously owned or leased by the Company or its Subsidiaries that have not been Made Available to Parent.

(vi) Each of the Company and its Subsidiaries is, and has at all times been, in compliance with all Environmental and Safety Laws, and there are no liabilities of the Company or its Subsidiaries under any Environmental and Safety Law or any Hazardous Materials, and there is no condition, situation or set of circumstances that could reasonably be expected to result in or be the Basis for any such liability.

Section 2.27 Representations.

No representation or warranty of the Company in this Agreement, nor any certificate or any other of the Company's deliveries to Parent furnished or to be furnished by the Company to Parent pursuant hereto, nor the exhibits and schedules hereto, contains or, on the Closing Date, will contain any untrue statement of a material fact, or omits to state or, on the Closing Date, will omit to state, a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub represent and warrant to the Company as follows:

Section 3.1 Organization and Power.

Each of Parent and Merger Sub (a) is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization, (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted and as proposed to be conducted and (c) is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure so to qualify could not reasonably be expected to result in a Material Adverse Effect on Parent. Neither Parent nor Merger Sub is in violation of any provision of such entity's respective organizational documents and no changes thereto are pending.

Section 3.2 Authorization; Enforceability.

Parent and Merger Sub each has the power and authority to execute, deliver and perform its obligations under this Agreement and any Related Agreements to which such entity is a party and to consummate the Transactions. The execution, delivery and performance of this Agreement and any Related Agreements to which Parent or Merger Sub, as applicable, is a party and the consummation of the Transactions by each of Parent and Merger Sub of this Agreement and any Related Agreements to which such entity is a party have been duly authorized by all requisite corporate or comparable organizational action on the part of such entity and its stockholders, and no further action is required on the part of the Parent or Merger Sub to authorize this Agreement, any Related Agreements to which such entity is a party or the consummation of the Transactions. This Agreement and any Related Agreements to which Parent or Merger Sub, as applicable, is a party have been duly executed and delivered by Parent and Merger Sub and, assuming due authorization, execution and delivery by the other parties hereto, represent the legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with their respective terms, subject to the effect of (a) applicable bankruptcy, insolvency, reorganization, moratorium and other similar Laws now and hereunder in effect relating to the rights of creditors generally and (b) rules of law and equity governing specific performance, injunctive relief and other equitable remedies.

Section 3.3 Noncontravention.

(a) The execution, delivery and performance of this Agreement and the consummation of the Transactions by Parent and Merger Sub will not (i) conflict with, result in or constitute a material violation of or default under (with or without notice, lapse of time or both), give rise to a right of termination, cancellation, renegotiation, modification or acceleration of any obligation or loss of any benefit under or require consent, approval or waiver from any Person in accordance with any provision of the organizational documents of Parent or Merger Sub, (ii) conflict with, result in or constitute a material violation of or default under (with or without notice, lapse of time or both) any Contract, Permit or Law applicable to Parent or Merger Sub, or (ii) otherwise have an adverse effect upon the ability of Parent or Merger Sub to consummate the Transactions.

(b) No Permit or Order of, or registration or filing with or declaration or notification to, any Governmental Authority is required by or with respect to Parent or Merger Sub in connection with the execution, delivery and performance of this Agreement or the Related Agreements or the consummation of the Transactions, except for the filing of the Certificate of Merger.

Section 3.4 Merger Sub. Merger Sub is a wholly owned indirect subsidiary of Parent formed for the purposes of effecting the Merger. There is no agreement outstanding pursuant to which any Person has any existing or contingent right to acquire any stock of Merger Sub. Merger Sub owns no assets, has no Liabilities and has conducted no activities other than those related to the Merger.

Section 3.5 Financing. Parent has immediately available funds sufficient to consummate the Transactions as of the Closing and acknowledges and affirms that it is not a condition to Closing or to any of its other obligations under this Agreement or any Related Agreement that Parent obtain financing for or relating to any of the Transactions contemplated hereunder.

Section 3.6 Restricted Parties. Neither Parent nor Merger Sub appears on any U.S. Government restricted parties lists, including, the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of Commerce's Entity List, Denied Persons List, and Unverified List, and the U.S. Department of State's Debarred List.

ARTICLE 4

ADDITIONAL AGREEMENTS

Section 4.1 Conduct of Business of the Company. From the date hereof until the earlier of the termination of this Agreement and the Closing Date:

(a) The Company will, and will cause each of its Subsidiaries to, conduct its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted (except to the extent expressly provided otherwise in this Agreement or as consented to in writing by Parent);

(b) The Company will and will cause each of its Subsidiaries to, (1) pay all of its debts and Taxes when due, except to the extent such debts or Taxes are being contested in good faith by appropriate proceedings and for which adequate reserves according to GAAP have been established, (2) pay or perform its other obligations when due and use commercially reasonable efforts to pay all accounts payable of the Company and its Subsidiaries prior to Closing, (3) use commercially reasonable efforts consistent with past practice and policies to collect accounts receivable when due and not extend credit outside of the ordinary course of business; (4) sell products and services consistent with past practices as to license, service and maintenance terms and incentive programs; (5) recognize revenue consistent with past practice and policies and in accordance with GAAP, (6) pay any accrued bonuses or commissions payable after the date hereof and before the Effective Time in the ordinary course of business and (7) use commercially reasonable efforts consistent with past practice to (A) preserve intact its present business organizations, (B) retain the services of its present officers and other senior employees, and (C) preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, to the end that its goodwill and ongoing businesses will be unimpaired at the Closing Date;

(c) The Company will, and will cause each of its Subsidiaries to promptly notify Parent of any change, occurrence or event not in the ordinary course of business of the Company and its Subsidiaries, and of any change, occurrence or event which, individually or in the aggregate with any other changes, occurrences and events, has had or could reasonably be expected to have a Material Adverse Effect on the Company or which is reasonably likely to cause any of the conditions in Article 5 not to be satisfied; and

(d) The Company will use commercially reasonable efforts to, and will cause each of its Subsidiaries to use commercially reasonable efforts to, ensure that each of the Contracts entered into on or after the date hereof by it will not require the procurement of any consent, waiver or novation or provide for any material change in the obligations of any party in connection with, or terminate as a result of the consummation of, the Transactions.

Section 4.2 Restrictions on Conduct of Business of the Company.

Without limiting the generality or effect of Section 4.1, from the date hereof until the earlier of the termination of this Agreement and the Closing, the Company will not, and will cause each of its Subsidiaries not to, cause or permit any of the following (except to the extent expressly provided otherwise herein, as expressly consented to in writing by Parent or as required by applicable Law (in which case the Company will notify Parent before taking any such action)):

(a) Cause or permit any amendments to its charter documents;

(b) Declare, set aside or pay any dividends (except for the Closing Dividend) on or make any other distributions (whether in cash, stock or property) in respect of any of its issued capital stock, or split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or repurchase, redeem or otherwise acquire, directly or indirectly, any shares of its capital stock except from former employees, non-employee directors and consultants in accordance with agreements existing at the date hereof providing for the repurchase of shares in connection with any termination of service;

(c) Amend or change the period of exercisability or vesting of Company Options or rights granted under any Company Stock Plan (other than any acceleration thereof in connection with the Closing) or the vesting of the securities purchased or purchasable under such options or rights, amend or change any other terms, including the exercise price or base value, of such options or rights or authorize cash payments in exchange for any such options or rights or the securities purchased or purchasable under those options or rights or waive or amend the right of repurchase applicable to any Company Capital Stock;

(d) Except as permitted by Section 4.2(i), enter into, amend, violate, terminate or otherwise modify, change in any material respect the course of performance or payments thereunder, or waive any of the material terms of any Contract that (i) is a Material Contract (other than Contracts entered into in the usual, regular and ordinary course, provided that the amount of each such Contract is not exceeding \$100,000) or (ii) if entered into before the date hereof, would be required to be disclosed pursuant to Section 2.7; in each case other than any Contract, amendment, termination, modification or waiver related to payments of Company Indebtedness or Third Party Expenses;

(e) Terminate any Contract with any reseller, distributor or agent, where such termination would reasonably be expected to trigger any payment by the Company to such reseller, distributor, original equipment manufacturer or agent pursuant to such Contract or under applicable Law;

(f) Issue or grant any securities or agree to issue or grant any securities (except in respect of the exercise of any Company Option (provided that in the case of a net exercise of any Company Option, the then current market value of the Common Stock as implied by the Merger Consideration and the status of the Transactions must be used in the applicable net exercise calculation) or Warrant outstanding as of the date hereof);

(g) Hire or terminate the employment or engagement of any employees, consultants or independent contractors, except pursuant to offer letters or consulting Contracts entered into prior to the date hereof; enter into, or extend the term of, any employment or consulting Contract with any Person, except pursuant to commitments existing prior to the date hereof; or increase the salaries, wage rates or fees of any employees, consultants or independent contractors, except as may be required by applicable Law, pursuant to commitments existing prior to the date hereof;

(h) Make any loans or advances to, or any investments in or capital contributions to, any Person, or forgive or discharge in whole or in part any outstanding loans or advances, other than advances to employees and consultants for travel and other expenses in the ordinary course of business;

(i) Transfer or license to any Person (including through a reseller agreement) any rights to any Company Intellectual Property (other than in the ordinary course of business in connection with the license or sale of any of the Company Products or services to customers; *provided* that, notwithstanding past practice, in no event will the Company disclose, provide or license any Company Source Code to any third party or include in any such transfer or license any obligation, right or option to deposit the Company Source Code in escrow);

(j) Enter into, participate in, establish or join any new standards-setting organization, collaborative effort with a university or industry body or consortium, or other multi-party special interest group or activity;

(k) Enter into or amend any Contract (including any original equipment manufacturing or reseller Contract) in accordance with which any third party is granted marketing, resale or distribution rights of any type or scope with respect to any Company Product or Company Intellectual Property;

(l) Sell, lease, license or otherwise dispose of or create, extend, grant or issue any Encumbrance (other than any Permitted Encumbrance) over any of its properties or assets (other than in the ordinary course of business in connection with the license or sale of any Company Product; *provided* that, notwithstanding past practice, in no event will the Company disclose, provide or license any Company Source Code to any third party or include in any such transfer or license any obligation, right or option to deposit the Company Source Code in escrow);

(m) Incur any indebtedness for borrowed money or guarantee any such indebtedness or issue or sell any debt securities or guarantee any debt securities of others;

(n) Enter into any operating lease or lease, sublease or license of real property;

(o) Pay, discharge or satisfy, in an amount in excess of \$25,000 in any one case or \$100,000 in the aggregate, any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise arising other than in the ordinary course of business and not in violation of this Agreement), other than (i) payment, discharge or satisfaction of liabilities reflected or reserved against in the Financial Statements, (ii) payment of Company Indebtedness or Third Party Expenses, or (iii) payment of accounts payable of the Company and its Subsidiaries in the ordinary course of business consistent with past practice, in each case upon prior notice to Parent;

(p) Make any capital expenditures or commitments, capital additions or capital improvements or enter into any capital leases;

(q) Reduce the amount of any insurance coverage provided by existing insurance policies;

(r) Terminate or waive any right or claim in an amount in excess of \$100,000;

(s) Adopt or amend any employee or compensation benefit plan, including any share purchase, share issuance or stock option plan, or amend any compensation, benefit, entitlement, grant or award provided or made under any such plan (other than any acceleration of Company Options in connection with the Closing), except in each case as required by applicable Law or as necessary to maintain the qualified status of such plan under the Code, or pay any special bonus or special remuneration to any employee or non-employee director (other than payments that are triggered by the Transactions or that are disclosed in the Disclosure Schedule), increase the salaries or wages related to its employees (other than increases consistent with the compensation plan for the year of 2015 and budget Made Available to Parent prior to the date hereof, and approved by Parent), make any changes in, or deviate from, the compensation plan for the year of 2015 (as Made Available to Parent prior to the date hereof) or add any new members to the board of directors or similar governing body of the Company or any of its Subsidiaries;

(t) Grant any severance or termination pay to any Person or amend or modify any existing severance or termination agreement with any Person;

(u) Settle or commence any Action other than (i) for the routine collection of bills or (ii) in such cases where it in good faith determines that failure to commence an Action would result in the material impairment of a valuable aspect of its business, *provided* that it consults with Parent before the filing of such Action;

(v) Acquire or agree to acquire by merging or consolidating with, or by purchasing the assets of, or by any other manner, any business or any company, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to its business;

(w) Make or change any election in respect of Taxes, file any amendment to a Tax Return, enter into any closing agreement in respect of Taxes, settle any claim or assessment in respect of Taxes, consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes or take any other action, or omit to take any other action, that would have the effect of increasing the Tax liability or accrual of Tax liability under FASB Interpretation No. 48 or reducing any Tax asset or accrual of Tax under FASB Interpretation No. 48;

(x) Alter, or enter into any commitment to alter, its interest in any Subsidiary, corporation, association, joint venture, partnership or business entity in which the Company or any Subsidiary directly or indirectly holds any interest;

(y) Defer the payment by the Company of any accounts payable (other than any payment of Company Indebtedness or Third Party Expenses), or accelerate the payment of any accounts receivable, of the Company or any of its Subsidiaries, in each case where such payments exceed \$50,000 in the aggregate; or

(z) Take or agree in writing or otherwise to take, any of the actions described in the foregoing clauses of this Section 4.2, or any action which could reasonably be expected to (i) make any of the Company's representations or warranties contained in this Agreement untrue or incorrect, (ii) prevent the Company from performing or cause the Company not to perform in any material respect one or more covenants required hereunder to be performed by it, or (iii) delay the consummation of the Merger or the Transaction.

Section 4.3 Access to Information.

(a) Until the earlier of the termination of this Agreement and the Closing Date, (i) the Company will afford Parent and its accountants, counsel and other representatives reasonable access during normal business hours to (A) all of the properties, books, contracts, commitments and records of the Company and its Subsidiaries and (B) all other information concerning the business, intellectual property, properties and personnel of the Company and its Subsidiaries as Parent may reasonably request, and (ii) the Company will provide to Parent and its accountants, counsel and other representatives true, correct and complete copies of internal financial statements promptly upon request. At or before Closing, the Company will deliver a copy of all documents in the electronically accessible data room provided in connection with the Transactions (the "Data Room") to Parent electronically or on compact disc or DVD.

(b) Until the earlier of the termination of this Agreement and the Closing Date, the Company will cause the officers, counsel or other representatives of it and its Subsidiaries to promptly notify Parent of, and to discuss from time to time as requested by Parent with one or more representatives of Parent during ordinary business hours, any material changes or developments in the operational matters of the Company and its Subsidiaries and the general status of the ongoing business and operations of the Company and its Subsidiaries. To the extent Parent requests further information or investigation of the Basis of any potential violations of applicable Law the Company shall cooperate with such request and shall make available any personnel or experts engaged by the Company necessary to accommodate such request.

(c) No information or knowledge obtained in any investigation in accordance with this Section 4.3 will affect or be deemed to modify any representation or warranty contained herein, the conditions to the obligations of the parties hereto to consummate the Transactions or any party's rights hereunder (including rights under Article 7).

(d) The Company will (i) notify Parent in writing promptly after learning of any Action by any Governmental Entity or other third party initiated by or against the Company or any of its Subsidiaries, or known by the Company to be threatened, against the Company, any of its Subsidiaries or any of their respective directors, officers, employees or stockholders in their capacity as such (a “**New Litigation Claim**”); (ii) notify Parent of ongoing material developments in any New Litigation Claim; and (iii) consult in good faith with Parent regarding the conduct of the defense of any New Litigation Claim. The Company will, and will cause each of its Subsidiaries to, promptly notify Parent of any change, occurrence or event not in the ordinary course of business of the Company and its Subsidiaries, and of any change, occurrence or event which, individually or in the aggregate with any other changes, occurrences and events, could reasonably be expected to have a Material Adverse Effect on the Company or which is reasonably likely to cause any of the conditions in Article 5 not to be satisfied.

Section 4.4 Confidentiality. The parties acknowledge that Parent and the Company executed a non-disclosure agreement last dated January 14, 2015 (the “**Confidentiality Agreement**”), which Confidentiality Agreement will continue in full force and effect in accordance with its terms. The parties further acknowledge and agree that the existence of this Agreement, the Disclosure Schedule, the Related Agreements and the documents and instruments contemplated hereby and thereby, shall constitute “Proprietary Instruments” under and within the meaning of the Confidentiality Agreement. The parties acknowledge that in connection with the filing of its annual report with the SEC, Parent may be required to file the Agreement, the Related Agreements and the documents and instruments contemplated hereby and thereby. If Parent is required to file the Disclosure Schedule (which such term shall not include, for avoidance of doubt and for the purpose of this Section 4.4, the Company’s financial statements) with the SEC or any similar or equivalent Governmental Authority in any jurisdiction outside the United States, Parent shall use commercially reasonable efforts to obtain confidential treatment therefor. Furthermore, this Section 4.4 shall in no way be construed as to restrict or limit Parent in its compliance with its relevant obligations of disclosure under Tel Aviv Stock Exchange Ltd. and NASDAQ Stock Market rules, or any applicable securities laws.

Section 4.5 Public Announcements. The Company will not, and will cause its stockholders, officers, counsel, advisors, employees and any other representatives not to, issue or cause the publication of any press release or other disclosure with respect to this Agreement or the Transactions without prior approval of Parent, except (x) as required by applicable Law, including to the extent disclosure is required by the Company’s stockholders to their respective Tax, legal or financial advisors for purposes of complying with such stockholders’ Tax obligations or other reporting obligations under Law arising out of the Transactions and (y) to the extent disclosure is made by a Company stockholder that is a venture capital fund to its partners, subject to a duty of confidentiality, and is limited to the results of such stockholder’s investment in the Company and such other information as is required to be disclosed by such stockholder pursuant to its partnership agreement, limited liability company agreement or comparable organizational agreement. To the extent practicable, Parent shall consult with the Company prior to issuing or causing the publication of any press release or other disclosure prior to the Effective Time with respect to this Agreement or the Transactions and shall give the Company reasonable opportunity to review such press release or other disclosure, provided, however, that any such press release or other disclosure shall be made by Parent in its sole discretion.

Section 4.6 Consents; Cooperation; Information Statement to Stockholders.

(a) Parent, Merger Sub and the Company each will take commercially reasonable actions necessary to (i) comply promptly with all legal requirements which may be imposed on it with respect to the consummation of the Transactions, (ii) promptly cooperate with and furnish information to any party hereto necessary in connection with any such requirements imposed upon such other party in connection with the consummation of the Transactions, and (iii) obtain (and cooperate with the other parties hereto in obtaining) any consent, waiver, approval, Order or authorization of, or any registration, declaration or filing with, any Person, required to be obtained or made in connection with the Transactions, all of which are required to be listed in **Section 2.3(c)** of the Disclosure Schedule. The Company shall use its commercially reasonable efforts to cause any Contracts for which such consent, waiver, approval, Order, authorization, registration, declaration or filing was sought to remain in full force and effect, so as to preserve all rights of and benefits to the Company under such Contracts after the Effective Time. The Company shall provide to Parent evidence of any such consents, approvals, Orders, authorizations, registrations, declarations or filings that are obtained.

(b) As promptly as practicable after the date of this Agreement (and in no event more than four (4) days after the date of this Agreement) and in compliance with the DGCL, the Company shall prepare an information statement, which shall be subject to Parent's review and approval (which shall not be unreasonably withheld), providing notice to the Company's stockholders and including a description of the approval of this Agreement, the Merger and the Transactions by the Company's board of directors and the Company's stockholders, a description of the Company stockholders' appraisal, dissenters' or similar rights in regard to the Merger under the DGCL and the CGCL and a description of the payments (if any) that are subject to the 280G Stockholder Approval (the "**Information Statement**"). The Company shall: (i) cause the Information Statement to comply with the DGCL and the CGCL; (ii) include in the Information Statement all changes reasonably proposed by Parent; and (iii) cause the Information Statement together with the Letter of Transmittal to be mailed to the Company's stockholders of record as of the date of this Agreement as promptly as practicable following the date of this Agreement but no later than seven (7) days after the date hereof. Parent will cooperate with the Company in the preparation of the Information Statement and will provide all information reasonably required to be provided by it for inclusion in the Information Statement. The information furnished by the Company in any document mailed, delivered or otherwise furnished to the Company stockholders in connection with the solicitation of their consent to, and approval of, this Agreement and the Merger, including the Information Statement will not contain any untrue statement of a material fact and will not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. The information furnished by Parent for inclusion in the Information Statement will not contain any untrue statement of a material fact and will not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

Section 4.7 No Solicitation.

From the date hereof until the earlier of the termination of this Agreement pursuant to its terms and the Closing Date, the Company will not, and will cause the officers, directors, employees, financial advisors, representatives, agents and Affiliates of the Company not to, directly or indirectly, take any action to solicit, initiate, seek, entertain, encourage, support, assist, participate in any negotiations or communications regarding, or cooperate with any inquiry, proposal or offer from, or furnish any information to, any third party regarding any merger, recapitalization or consolidation with or involving the Company or any acquisition of stock or right to acquire stock (including any conversion right) or acquisition or exclusive license of any assets of the Company or any financing transaction (including the filing of a registration statement with the SEC) or any other similar transaction the consummation of which would interfere with the Company's ability to consummate the transactions contemplated hereby (an "**Acquisition Transaction**"). Upon execution of this Agreement, the Company will, and will cause the officers, directors, employees, financial advisors, representatives, agents and Affiliates of the Company to, immediately cease and cause to be terminated any existing direct or indirect discussions with any Person (other than Parent) that are in respect of an Acquisition Transaction. From the date hereof until the earlier of the termination of this Agreement pursuant to its terms and the Closing Date, the Company will, and will cause the officers, directors, employees, financial advisors, representatives, agents and Affiliates of the Company to, promptly (and in no event later than twenty four (24) hours after receipt thereof) notify Parent in writing of any proposal for, or inquiry respecting, any Acquisition Transaction or any request for nonpublic information in connection with such proposal or inquiry, or for access to the properties, books, or records of the Company by any person or entity that informs the Company that it is considering making, or has made, such a proposal or inquiry. Such notice shall indicate the identity of the person or entity making the proposal or inquiry and the terms and conditions of such proposal or inquiry in reasonable detail. The Company will keep Parent informed on a reasonably current basis (and, in any event, within twenty four (24) hours) of the status and details of any material modifications to any such proposal, offer or request.

Section 4.8 Merger Notification.

(a) To the extent applicable, as soon as may be reasonably practicable, the Company and Parent shall make all filings, notices, petitions, statements, registrations and submissions of information, application or submission of other documents required by any Governmental Authority in connection with the Merger and the other Transactions. Each of Parent and the Company shall cause all documents that it is responsible for filing with any Governmental Authority under this Section 4.8 to comply in all material respects with applicable Law.

(b) The Company and Parent each shall use commercially reasonable efforts to promptly (i) supply each other with any information which reasonably may be required in order to effectuate such filings and (ii) supply any additional information which reasonably may be required by the competition or merger control authorities of any other jurisdiction and which the parties may reasonably deem appropriate. Except where prohibited by applicable Law, the Company shall consult with Parent prior to taking a position with respect to any such filing, shall permit Parent to review and discuss in advance, and consider in good faith the views of Parent in connection with any analyses, appearances, presentations, memoranda, briefs, white papers, other materials, arguments, opinions and proposals before making or submitting any of the foregoing to any Governmental Authority in connection with any investigations or proceedings in connection with this Agreement or the Transactions, coordinate with Parent in preparing and providing such information and promptly provide Parent (and its counsel) copies of all filings, presentations and submissions (and a summary of oral presentations) made by the Company with any Governmental Authority in connection with this Agreement and the Transactions. Where applicable, Parent shall have principal control over the strategy for interacting with such Governmental Authorities in connection with the matters contained in this Section 4.8.

(c) Each party hereto shall notify the other promptly upon the receipt of (i) any comments from any officials of any Governmental Authority in connection with any filings made pursuant hereto and (ii) any request by any officials of any Governmental Authority for amendments or supplements to any filings made pursuant to, or information provided to comply in all materials respect with, applicable law. Whenever any event occurs that is required to be set forth in an amendment or supplement to any filing made pursuant to Section 4.8, each party will promptly inform the other parties hereto of such occurrence and Company will cooperate with Parent in filing with the applicable Governmental Authority such amendment or supplement.

(d) Notwithstanding anything to the contrary contained herein, Parent shall not be required to agree to any Action of Divestiture. Nothing herein shall require Parent to litigate with any Governmental Authority.

Section 4.9 Notification. From the date of this Agreement until the earlier of the Closing or the termination of this Agreement pursuant to Section 6.1, (a) the Company will, and will cause each of its Subsidiaries to, notify Parent promptly after becoming aware of any matter hereafter arising or any information obtained after the date hereof that, if existing, occurring or known at or before the date of this Agreement, would have been required to be set forth or described in the Disclosure Schedule or that is required to be disclosed in order that such schedule be complete and correct in all material respects, (b) Parent and the Company will each notify the other promptly of the occurrence or non-occurrence of any event whose occurrence or non-occurrence would be likely to cause (i) any representation or warranty made by it in this Agreement to be untrue or inaccurate in any material respect, (ii) any condition of the other party set forth herein to be unsatisfied in any material respect, or (iii) any material failure of such notifying party, any Affiliate of such notifying party or any of their respective representatives to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. No provision of, and no information provided under, this Section 4.9 will, or will be deemed to, limit, modify or otherwise affect any representation or warranty contained herein, the conditions to the obligations of the parties hereto to consummate the Transactions or any party's rights hereunder (including rights under Article 7).

Section 4.10 Spreadsheet. The Company will cause to be prepared and delivered to Parent, at least two (2) Business Days before the Closing, a spreadsheet, in a form reasonably acceptable to Parent and the Payment Agent (the "**Spreadsheet**"), dated and setting forth as of the Closing, the following information relating to the holders of Company Capital Stock, other securities convertible into Company Capital Stock and Company Options: (a) the names and addresses, to the extent practicable, of all such; (b) the number and type of Company Capital Stock or other securities held by, or subject to the Company Options held by, such Persons and, in the case of outstanding Company Capital Stock, the respective certificate numbers; (c) the exercise price per share in effect as of the Closing Date for each Company Option and Warrant; (d) the conversion price per share in effect as of the Closing Date for any securities that are convertible into Company Capital Stock and the type of Company Capital Stock into which the securities are convertible; (e) the tax status under Section 422 of the Code of each Company Option; (f) the cash amount payable to such holder in respect of the cancellation of such holder's Company Capital Stock, Company Options or other securities pursuant to Section 1.4 or Section 1.6; (g) the dollar amount contributed to the Closing Escrow Amount and the Pro Rata Portion thereof of each holder; (h) the dollar amount contributed to the Representative Expense Fund and the Pro Rata Portion thereof of each holder; (i) the amount of the applicable required Tax withholdings as of the date the Spreadsheet is provided attributable to each holder of Company Capital Stock and Company Options; (j) the following information with respect to each share of the Company Capital Stock acquired by stockholders for cash on or after January 1, 2011, for federal tax purposes: (A) the date such shares of Company Capital Stock were originally purchased (or the holding period otherwise started), (B) such stockholder's cost basis in such shares of the Company Capital Stock, and (C) the amount of gain or loss on the sale of such shares of Company Capital Stock pursuant to the Merger and whether such gain or loss is classified as short-term or long-term; and (k) the Per Share Series A-1 Liquidation Preference, the Per Share Series A-2 Liquidation Preference and the Per Share Series B Liquidation Preference.

Section 4.11 Expenses.

(a) Whether or not the Merger is consummated, each party shall be responsible for its own expenses and costs that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement. Without limiting or expanding the foregoing, the Company shall be responsible for all fees and expenses incurred by or on its or its Subsidiaries behalf in connection with the Merger, including:

(i) all legal, accounting, financial advisory, consulting, finders and all other fees and expenses of third parties incurred by the Company in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the Transactions or any Acquisition Transaction (including the preparation of the Estimated Statement, the Interim Balance Sheet and the Closing Balance Sheet);

(ii) other than accounting liabilities, not requiring cash settlement, associated with the acceleration of any Company Options, any severance, termination, release, bonus (including the Aggregate Employee Transaction Bonus Amount) or similar change-in-control payments to employees, consultants or other service providers payable by the Company or any of its Subsidiaries as a result of or otherwise in connection with the Closing, and the Company's share of the payroll and employment-related Taxes due in respect thereof;

(iii) all accrued vacation for Company's or any of its Subsidiaries' employees (including the employees of Woowon Technology Co., Ltd. employed solely for the benefit of the Company or any of its Subsidiaries) that is accrued as of the Closing Date and the Company's or any of its Subsidiaries' share of the payroll and employment-related Taxes due in respect thereof, other than up to forty (40) hours of accrued vacation per employee on an individual basis;

(iv) all premiums, fees and other expenses in connection with the D&O Insurance;

(v) the portion of all fees, commissions, bonuses or other payments payable (whether or not due) to any of the Company's or its Subsidiaries' contractors, outside service providers, agents, distributors or consultants, in connection with any Company Product sold by the Company or its Subsidiaries (whether directly, or indirectly through a distributor or a reseller), proportional to any cash payments actually received by the Company in respect of such Company Products;

(vi) (A) all fees, commissions, bonuses or other payments payable (whether or not due) in connection with any Company Product sold by the Company or its Subsidiaries prior to the Closing Date (whether directly, or indirectly through a distributor or a reseller), provided that such Company Product was partially or fully paid as of the Closing Date and (B) any and all amounts earned but not yet paid as bonuses earned by the employees of the Company or its Subsidiaries, with respect to the period between January 1, 2015 and the Closing Date, in each case to any of individuals set forth on Schedule 4.11(a)(vi); *provided* that if, as a result of the operation of this clause (vi), any such payments are made prior to the recording of the related expense in accordance with GAAP, then such payments shall be recorded as pre-paid expenses on the Closing Balance Sheet;

(vii) the Company's share of the payroll and employment-related Taxes due in respect of the payments made to holders of In-the-Money Options pursuant to Section 1.6(a)(i)(A); and

(viii) any payments in connection with any change in control obligations or any payment or consideration arising under any consents, waivers or approvals of any party under any Contract listed in item 7 of the Company's deliveries to Parent on **Exhibit G** (collectively with the fees, expenses and payments described in this Section 4.11(a), the "**Third Party Expenses**").

(b) At or prior to the Closing, the Company shall pay all outstanding Third Party Expenses whether any such Third Party Expense shall have become due as of the Closing or not. At least one (1) Business Day prior to the Closing, the Company shall deliver to Parent (i) a detailed report of all Third Party Expenses (the "**Third Party Expenses Report**"), setting forth the amount and date of payment and (ii) a release from each party to which such payment in the amount of \$50,000 or more was made, in a form reasonably acceptable to Parent, releasing the Company from any further liability with respect to any such Third Party Expense or any other indebtedness or liability to such party (each, a "**Third Party Expense Release**").

(c) Third Party Expenses shall not be incurred by the Company or on behalf of the Surviving Corporation after the Closing Date without the express prior written consent of Parent.

Section 4.12 Indebtedness.

(a) At or prior to the Closing, the Company shall pay all outstanding Company Indebtedness (including the Bridge Loan and any amounts owed under the Buy-Out Warrant) whether any such Company Indebtedness shall have become due as of the Closing or not. At least one (1) Business Day prior to the Closing, the Company shall deliver to Parent (i) a detailed report of all Company Indebtedness (the "**Company Indebtedness Report**"), setting forth the amount and date of payment for each such Company Indebtedness; and (ii) a release or payoff letter from each party to which such payment is made, in a form reasonably acceptable to Parent, releasing the Company from any further liability with respect to any such Company Indebtedness or any other indebtedness to such party and providing, if applicable, for the release of any Encumbrances associated with such Company Indebtedness and the termination of all other obligations associated therewith upon the payment of such outstanding amounts (each, a "**Company Indebtedness Release**").

(b) Notwithstanding Section 4.12(a) or anything else herein to the contrary, in the event that the Company's cash position at the Closing is not sufficient to pay in full the Aggregate Employee Transaction Bonus Amount, the Third Party Expenses and the Company Indebtedness (subject to the provisions of Section 1.9 above and the requirement to meet the Net Working Capital Target), the Company may choose, at its sole discretion, not to repay all or a portion of the outstanding Company Indebtedness in order to be able to pay the Aggregate Employee Transaction Bonus Amount. In such case, the Unpaid Company Indebtedness shall be deducted from the Merger Consideration pursuant to Section 1.4(c)(vi)(D).

Section 4.13 Section 280G Matters.

(a) The Company shall obtain and deliver to Parent, prior to the initiation of the procedure described in Section 4.13(b), a waiver, in substantially the form attached hereto as **Exhibit F**, from each Person who is, with respect to the Company or any other entity treated as a single employer with the Company under Section 280G of the Code, a "disqualified individual" (within the meaning of Section 280G of the Code) with respect to the Transactions and who would otherwise receive or have the right or entitlement to receive a "parachute payment" (as defined in Section 280G(b)(2) of the Code) from the Company or any of its Subsidiaries, or from Parent or any trade or business (whether or not incorporated) that is a member of a controlled group or which is under common control with Parent within the meaning of Section 414 of the Code, under Section 280G of the Code as a result of the Closing or the consummation of the Merger (including in connection with certain changes in any such Person's employment circumstances following the consummation of the Merger). By the execution of such waiver agreement, the Person executing the waiver shall agree to waive all of his or her right and entitlement to receive (or if already paid, his or her right and entitlement to keep) any portion of such "parachute payments" which would cause the Person executing the waiver to receive an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code), unless the Company's stockholders approve such waived payments in accordance with Section 280G(b)(5)(A)(ii) of the Code.

(b) The Company shall submit the payments which are waived pursuant to the waiver agreements described in Section 4.13(a) to its stockholders and the holders of the voting power of any entity stockholder for their approval in accordance with all applicable requirements of such Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder, including Q-7 of Section 1.280G-1 of such Treasury Regulations. Such approval shall, in accordance with such provisions, be a separate vote from any vote to approve this Agreement, the Merger or any of the other Transactions.

Section 4.14 Termination of Financing Statements. The Company shall cause (a) Form UCC3 financing statement amendments to be filed terminating any related Form UCC1 financing statement filed to perfect security interests in assets of the Company that have not yet expired and (b) all Encumbrances (other than Permitted Encumbrances) on assets of the Company to be released prior to or simultaneously with the Closing as evidenced in form(s) reasonably acceptable to Parent.

Section 4.15 Employees.

(a) Parent currently plans (but is not under any obligation) to retain all or most employees employed by the Company and its Subsidiaries as of the Closing Date; provided, however, that neither Parent nor Merger Sub (including the Surviving Corporation) shall have any obligation to retain or make an offer of continued employment to any employee of the Company or any of its Subsidiaries. Notwithstanding anything in this Agreement to the contrary, no continuing employee or other employee of the Company or any of its Subsidiaries shall be deemed in such capacity to be a third-party beneficiary of this Agreement.

Section 4.16 Tax Matters.

(a) *Tax Returns.* Parent shall prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns of the Company and its Subsidiaries for any Taxable period ending on or before the Closing Date and that portion of any Straddle Period ending on the Closing Date (each, a "**Pre-Closing Tax Period**") that are filed after the Closing Date. The Indemnifying Securityholders shall pay or cause to be paid to Parent the amount of Taxes shown as due on each such Tax Return that is attributable to a Pre-Closing Tax Period within twenty (20) days of the filing of the Tax Return reflecting such Taxes. Such Taxes shall be paid first from the Escrow Fund and thereafter from the Indemnifying Securityholders pursuant to Section 7.2(a)(iv) below. Except as otherwise required by applicable Law, such Tax Returns shall be prepared in accordance with the past custom and practice of the Company in preparing its Tax Returns. Parent shall permit the Representative to review and comment on each such Tax Returns at least twenty (20) days prior to filing and shall make such revisions to such Tax Returns as are reasonably requested by the Representative. Except as required by applicable Law, Parent shall not amend any previously-filed Tax Return of the Company or its Subsidiaries for any Pre-Closing Tax Period that would result in an increase in the Tax liability of the Company's securityholders or that would give rise to an indemnification claim pursuant to this Agreement without the written consent of the Representative, such consent not to be unreasonably withheld, conditioned or delayed.

(b) *Tax Claims.* If, subsequent to the Closing, Parent or any of the Company and its Subsidiaries receives notice of any inquiries, claims, assessments, audits or similar events with respect to Taxes relating to a Pre-Closing Tax Period for which any of the Indemnifying Securityholders may be liable under this Agreement (any such inquiry, claim, assessment, audit or similar event, a "**Tax Claim**"), then within fifteen (15) days after receipt of such notice, Parent or any of the Company and its Subsidiaries, as the case may be, shall give written notice of such Tax Claim to the Representative. Parent shall keep the Representative reasonably informed of all developments regarding any Tax Claim on a timely basis and Parent (or the Company or its Subsidiaries, as applicable) shall not enter into any settlement of or otherwise compromise any Tax Claim that may increase the Tax liability of the Indemnifying Securityholders or that would give rise to an indemnification claim pursuant to this Agreement without the Representative's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(c) *Transfer Taxes.* All transfer, documentary, sales, use, stamp, registration and other substantially similar Taxes and fees incurred in connection with this Agreement and the transactions contemplated hereby (collectively, "**Transfer Taxes**") shall be paid by the Indemnifying Securityholders when due, and the party responsible under applicable Law shall file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes.

(d) *FIRPTA Compliance.* The Company shall, as soon as practicable prior to Closing, deliver to Parent the following: (i) a certificate, in a form reasonably acceptable to Parent, to the effect that shares of Company Capital Stock are not "**U.S. real property interests**" within the meaning of Section 897 of the Code, and (ii) a notice to the IRS, in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2), dated as of the Closing Date and executed by the Company, together with written authorization for Parent to deliver such notice to the IRS on behalf of the Company after the Closing.

(e) *Termination of Tax Sharing Agreements.* All Tax sharing, allocation, indemnity or similar agreements with respect to or involving the Company and/or its Subsidiaries shall be terminated as of the Closing Date.

(f) *Termination of Powers of Attorney.* Any power of attorney with respect to Taxes or Tax Returns of the Company shall be terminated as of the Closing Date.

(g) *Cooperation.* Parent, Company and the Representative shall cooperate fully as and to the extent reasonably requested by the other party in connection with the preparation and filing of any Tax Return required of the Company, and the defense of any Tax Claim. Such cooperation shall include taking commercially reasonable actions to minimize the amount of any applicable Tax, including by obtaining and providing appropriate forms, providing records and information that are reasonably relevant to any such Tax Return of Tax Claim, and making employees available on a mutually convenient basis to provide additional information and explanation of any materials provided hereunder. Parent, Company and the Representative agree to abide by all record retention requirements of, or record retention agreements entered into with, any Tax Authority.

Section 4.17 Termination of Contracts. The Company shall cause (i) the Contracts listed in Schedule 4.17(a) to be terminated and be of no further effect as of the Closing Date, and (ii) each current and former employee, consultant or contractor of the Company listed in Schedule 4.17(b) to execute a confirmatory proprietary information and intellectual property assignment agreement, in each case in form and substance satisfactory to Parent.

(a) If the Merger is consummated, then until the sixth anniversary of the Effective Time, Parent will cause the Surviving Corporation to fulfill and honor in all respects the obligations of the Company to its present and former directors and officers (and, for further clarity, excluding any venture capital fund, fund, or other entity) (the “**Company Indemnified Parties**”) pursuant to indemnification agreements with the Company in effect on the Agreement Date and pursuant to the Company’s Charter Documents in effect on the date hereof (the “**Company Indemnification Provisions**”), with respect to claims arising out of acts or omissions occurring at or prior to the Effective Time which are asserted after the Effective Time. Any claims for indemnification made under this Section 4.18(a) on or prior to the sixth anniversary of the Effective Time shall survive such anniversary until the final resolution thereof. However, the foregoing covenants under this Section 4.18(a) shall not apply to any claim or matter that relates to (i) a willful or intentional breach of a representation, warranty or covenant in connection with this Agreement or the transactions contemplated hereby by such Company Indemnified Party, (ii) a willful or intentional breach of a representation, warranty or covenant made in connection with this Agreement or the transactions contemplated hereby by or on behalf of the Company, provided that, in the case of any Company Indemnified Party who is not a current officer of the Company, such Company Indemnified Party participated in or would reasonably be expected to have knowledge of such willful or intentional breach of a representation, warranty or covenant, or (iii) recovery from such Company Indemnified Party as an Indemnifying Securityholder in connection with a claim for indemnification made by an Indemnified Person under Article 7. For the avoidance of doubt, and notwithstanding any provision to the contrary contained in the Company Indemnification Provisions, no Company Indemnified Party shall be entitled to coverage under any Parent director and officer insurance policy or errors and omission policy unless such Company Indemnified Party is separately eligible for coverage under such policy pursuant to Parent’s policies and procedures and the terms of such insurance policy. Any recourse under this Section 4.18(a) shall first be against the D&O Insurance until it is exhausted before recovery against the Surviving Corporation shall take place and the aggregate liability of the Surviving Corporation under Section 4.18(a) to all Company Indemnified Parties shall in no event exceed the amount of stockholders’ equity shown on the Closing Balance Sheet.

(b) Prior to the Closing Date, the Company may purchase, at its sole expense, an insurance “tail” or “run-off” coverage on the existing policies of directors’ and officers’ liability insurance maintained by the Company as of the date of this Agreement (“**D&O Insurance**”), *provided, however*, that if the Company purchases such D&O Insurance: (i) in addition to any other named beneficiaries therein, the Company shall also be designated as a beneficiary in the D&O Insurance Policy and (ii) the Company shall provide Parent with a true and complete copy of the D&O Insurance policy at the Closing.

Section 4.19 Further Assurances. On the terms and subject to the conditions set forth in this Agreement, each of the parties hereto will use commercially reasonable efforts, and will cooperate with each other parties hereto, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, appropriate or desirable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other Transactions, including the satisfaction of the respective conditions set forth in Article 5. Without limiting the foregoing and subject to the terms of this Agreement, if an Order preventing the consummation of any of the Transactions will have been issued by a court of competent jurisdiction, each party hereto will use its commercially reasonable efforts to have such Order lifted; *provided, however*, that Parent shall not be required to agree to (x) any license, sale or other disposition or holding separate (through establishment of a trust or otherwise) of any shares of capital stock or of any business, assets or properties of Parent, its subsidiaries or affiliates or of the Company or its Subsidiaries, (y) the imposition of any limitation on the ability of Parent, its subsidiaries or affiliates or the Company or its Subsidiaries to conduct their respective businesses or own any capital stock or assets or to acquire, hold or exercise full rights of ownership of their respective businesses and, in the case of Parent, the businesses of the Company and its Subsidiaries, or (z) the imposition of any impediment on Parent, its subsidiaries or affiliates or the Company or its Subsidiaries under any Law or Order governing competition, monopolies or restrictive trade practices (any such action described in (x), (y) or (z), an “**Action of Divestiture**”). Each party hereto, at the reasonable request of the other parties hereto, will execute and deliver such documents and do and perform such other acts and things as may be necessary or reasonably desirable for effecting completely the consummation of the Transactions.

ARTICLE 5

CONDITIONS TO THE MERGER

Section 5.1 Conditions to Obligations of Each Party.

The respective obligations of each party to consummate the Transactions will be subject to the satisfaction at or before the Closing of each of the following conditions, which to the extent permitted by applicable Law may be waived in a written agreement of the Company and Parent (for itself and Merger Sub):

(a) *No Injunctions or Restraints; Illegality.* No Order or other legal or regulatory restraint or prohibition preventing the consummation of the Transactions will be in effect, and no Action will have been brought or be pending or threatened in writing by a Governmental Authority seeking any of the foregoing. No Action taken by any Governmental Authority and no statute, rule, regulation or Order will have been enacted, entered, enforced or deemed applicable to the Transactions, which makes the consummation of the Transactions illegal.

(b) *Governmental Approvals.* Parent and the Company will have obtained from each applicable Governmental Authority all approvals, waivers and consents, if any, necessary for consummation of, or in connection with, the Transactions.

Section 5.2 Additional Conditions to Obligations of the Company.

The obligations of the Company to consummate the Transactions will be subject to the satisfaction, or written waiver by the Company, at or before the Closing of each of the following conditions (each such condition being solely for the benefit of the Company and capable of being waived by the Company in its sole discretion without notice, liability or obligation to any Person):

(a) *Representations, Warranties and Covenants of Parent and Merger Sub.* Each of the representations and warranties made by Parent and Merger Sub in this Agreement that is qualified by reference to materiality or Material Adverse Effect will be true and correct, and each of the other representations and warranties made by Parent and Merger Sub in this Agreement will be true and correct in all material respects, as of the date of this Agreement and at and as of the Closing Date as if made on that date (except in any case that representations and warranties that expressly speak as of a specified date or time need only be true and correct or true and correct in all material respects, as applicable, as of such specified date or time). Each of Parent and Merger Sub will have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it at or before the Closing.

(b) *Receipt of Closing Deliveries.* The Company will have received each of the agreements, instruments and other documents required to have been delivered to it at or before the Closing as set forth in **Exhibit G**, and all such agreements, instruments and other documents will continue to be effective and will not have been revoked by the Persons executing the same.

Section 5.3 Additional Conditions to the Obligations of Parent and Merger Sub.

The obligations of Parent and Merger Sub to consummate the Transactions will be subject to the satisfaction, or written waiver by Parent, at or before the Closing of each of the following conditions (each such condition being solely for the benefit of Parent and Merger Sub and capable of being waived by Parent in its sole discretion without notice, liability or obligation to any Person):

(a) *Representations, Warranties and Covenants of the Company.* Each of the representations and warranties made by the Company in this Agreement that is qualified by reference to materiality or Material Adverse Effect will be true and correct, and each of the other representations and warranties made by the Company in this Agreement will be true and correct in all material respects, in each case as of the date of this Agreement and at and as of the Closing Date as if made on that date (except in any case that representations and warranties that expressly speak as of a specified date or time need only be true and correct or true and correct in all material respects, as applicable, as of such specified date or time); *provided, however*, that such materiality qualifier shall not apply to the representations and warranties contained in Section 2.1, Section 2.2, Section 2.3, Section 2.23 and Section 2.24, each of which individually shall have been true and correct in all respects as of the date of this Agreement and shall be true and correct in all respects on and as of the Closing Date (except in any case that representations and warranties that expressly speak as of a specified date or time need only be true and correct in all respects as of such specified date or time). The Company will have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by the Company at or before the Closing.

(b) *Receipt of Closing Deliveries.* Parent will have received each of the other agreements, instruments and other documents required to have been delivered to it at or before the Closing as set forth in **Exhibit G**, and all such agreements, instruments and other documents will continue to be effective and will not have been revoked by the Persons executing same.

(c) *Injunctions or Restraints on Conduct of Business.* No Order or other legal or regulatory provision limiting or restricting Parent's ownership, conduct or operation of the business of the Company following the Closing Date will be in effect, nor will any Action or request for additional information before any Governmental Authority seeking any of the foregoing, seeking to obtain from Parent or the Company or any of their respective Affiliates in connection with the Transactions any damages, or seeking any other relief that, following the Merger, could reasonably be expected to materially limit or restrict the ability of the Company or any of its Subsidiaries to own and conduct the assets and businesses owned and conducted by the Company or its Subsidiaries before the Merger, be pending or threatened.

(d) *No Material Adverse Effect.* There will not have occurred any event or condition of any character that has had or is reasonably likely to have a Material Adverse Effect on the Company since the date of this Agreement.

(e) *Section 280G Stockholder Approval.* Any agreements, contracts or arrangements that, before giving effect to any waiver described below, would result, separately or in the aggregate, in the payment of any amount or the provision of any benefit that would not be deductible by reason of Section 280G of the Code shall have been approved by such number of stockholders of the Company as is required by the terms of Section 280G of the Code in order for such payments and benefits not to be deemed parachute payments under Section 280G of the Code, with such approval to be obtained in a manner which satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder, including Q-7 of Section 1.280G-1 of such Treasury Regulations (the “**280G Stockholder Approval**”), or in the absence of the 280G Stockholder Approval, none of those payments or benefits shall be paid or provided, in accordance with the waiver of those payments and benefits to be executed by the affected individuals in accordance with Section 4.13.

(f) *Stockholder Approval.* The Required Vote shall have been obtained such that this Agreement and the Merger shall have been duly and validly adopted and approved, as required by the DGCL and the CGCL and the Charter Documents, each as in effect on the date of the Closing, pursuant to the Stockholders’ Written Consent executed and delivered to Parent by holders of at least ninety six percent (96%) of the outstanding shares of Company Capital Stock.

(g) *Waivers of Claims.* The holders of at least ninety six (96%) of the outstanding shares of Company Capital Stock (including, for further clarity, the persons set forth in Schedule 1-A) shall have entered into the Agreement and General Release (Stockholders) in the form attached hereto as **Exhibit H** and each such Agreement and General Release shall be in full force and effect at and as of the Effective Time. Each of the directors and officers of the Company as of the date hereof and as of the Closing shall have entered into the Agreement and General Release (Directors and Officers) in the form attached hereto as **Exhibit I** and each such Agreement and General Release shall be in full force and effect at and as of the Effective Time.

(h) *Third-Party Consents.* All Third Party Consents shall have been obtained.

(i) *Employee Matters.* As of the Closing Date, all of the Offer Letters with the individuals set forth in Schedule 5.3(i) (the “**Key Employees**”) entered into concurrently with the execution and delivery of this Agreement shall be in full force and effect, no Key Employee shall have terminated, rescinded, or repudiated his or her Offer Letter or notified Parent or the Company of his or her intention to leave the employ of Parent or any of its subsidiaries following the Effective Time; *provided, however*, that the condition set forth in this Section 5.3(i) shall be deemed satisfied with respect to any Key Employee who has died or suffered a permanent disability (as defined in Section 22(e)(3) of the Code). This Section 5.3(i) is not intended to confer upon any employees of the Company or any of its Subsidiaries any rights or remedies hereunder. Nothing herein shall be deemed to amend the terms of employment of such individuals, and as of the Closing all such employees will be at-will employees of the Surviving Corporation or its Subsidiaries and will not be guaranteed employment by the Surviving Corporation, Parent or any of their Affiliates for any fixed term.

(j) *Non-Competition Agreements.* As of the Closing Date, the Non-Competition Agreements executed and delivered concurrently with the execution of this Agreement shall be in full force and effect (subject to applicable Law and other than as a result of any termination by Parent).

(k) *Tax Filings.* The Company shall have filed all Tax Returns required to be filed by it in respect of the year ended December 31, 2013, including all Forms 3921 in respect of Company Stock Options that are incentive stock options that were or are exercised in 2013. All such Tax Returns shall have been approved prior to filing by Parent, provided that such approval shall not be unreasonably withheld, conditioned or delayed.

(l) *Warrant Consents; No Outstanding Warrants.* Parent shall have received from each holder of any Warrant such holder's duly executed Warrant Consent, and as of the Effective Time, no Warrants shall be outstanding and no holder of any Warrant shall have any claims in respect of any Warrant or any Company Capital Stock issuable upon exercise thereof or any compensation payable in lieu thereof or otherwise in connection thereof.

(m) *Third Party Expenses.* Concurrently with the Closing or prior thereto the Company shall have paid all outstanding Third Party Expenses including any such expenses that shall not have become due until a later date, and shall have delivered to Parent the Third Party Expenses Report and all Third Party Expense Releases required under this Agreement.

(n) *Company Indebtedness.* Concurrently with the Closing or prior thereto the Company shall have paid all outstanding Company Indebtedness (including the Bridge Loan) including any Company Indebtedness that shall not have become due until a later date, and shall have delivered to Parent the Company Indebtedness Report and all Company Indebtedness Releases required under this Agreement.

(o) *Option Consents.* Parent shall have received from the holders of at least ninety nine percent (99%) of the Company Options each such holder's duly executed Option Consent.

(p) *Exercise of Company Options.* Parent shall have received evidence reasonably satisfactory to Parent that each of the persons set forth in Schedule 1-A has, concurrent with and contingent upon the Closing, exercised all of such person's outstanding Company Options and is a holder of Company Common Stock, which evidence shall be (i) copies of the option exercise instruments required pursuant to the 2004 Stock Plan and 2014 Stock Plan, as applicable, for the exercises of such Company Options and (ii) one or more stock certificates issued in the name of such person evidencing the issuance of such Company Common Stock. Each of the persons set forth in Schedule 1-A shall have entered into the Agreement and General Release (Stockholders) in the form attached hereto as **Exhibit H** and each such Agreement and General Release shall be in full force and effect at and as of the Effective Time.

ARTICLE 6

TERMINATION, AMENDMENT AND WAIVER

Section 6.1 Termination.

At any time before the Effective Time, whether before or after approval of this Agreement by the Company's stockholders, this Agreement may be terminated as follows:

(a) by mutual written consent duly authorized by the respective boards of directors of Parent (or a committee thereof) and the Company;

(b) by either Parent or the Company, if the Effective Time shall not have occurred on or before June 11, 2015 (the "**Termination Date**"); *provided, however*, that the right to terminate this Agreement under this Section 6.1(b) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before the Termination Date, and such action or failure to act constitutes breach of this Agreement;

(c) by either Parent or the Company, if (i) there is a final non-appealable Order in effect preventing consummation of the Merger or any of the other Transactions or (ii) there is any statute, rule, regulation or Order enacted, promulgated or issued or deemed applicable to the Merger or the other Transactions by any Governmental Authority that would make consummation of the Merger or any of the other Transactions illegal;

(d) by Parent, if the Company has breached any representation, warranty or covenant contained herein and (i) such breach has not been cured within fifteen (15) days after Parent's written notice to the Company of such breach (*provided, however*, that no such cure period will be available or applicable to any such breach which by its nature cannot be cured) and (ii) if not cured at or before the Closing, such breach would result in the failure of any of the conditions set forth in Section 5.1, Section 5.3(a) or Section 5.3(d) to be satisfied (*provided, however*, that the termination right under this Section 6.1(d) will not be available to Parent if Parent is at that time in material breach of this Agreement);

(e) by the Company, if Parent or Merger Sub has breached any representation, warranty or covenant contained herein and (i) such breach has not been cured within fifteen (15) days after the Company's written notice to Parent of such breach (*provided, however*, that no such cure period will be available or applicable to any such breach which by its nature cannot be cured) and (ii) if not cured at or before the Closing, such breach would result in the failure of any of the conditions set forth in Section 5.1 or Section 5.2(a) to be satisfied (*provided, however*, that the right to terminate this Agreement under this Section 6.1(e) will not be available to the Company if the Company is at that time in material breach of this Agreement); or

(f) by Parent, if each of (A) a Stockholders' Written Consent and an executed Agreement and General Release (Stockholders) in the form attached hereto as **Exhibit H**, in each case, duly executed by holders of the Company Capital Stock necessary to effect the Required Vote for adopting this Agreement and approving the terms of the Merger, and (B) an Agreement and General Release (Directors and Officers) in the form attached hereto as **Exhibit I** duly executed by each of the directors and officers of the Company, is not delivered to Parent within twelve (12) hours following the execution of this Agreement by the parties hereto.

Any party desiring to terminate this Agreement pursuant to Section 6.1(b) through (f) must give notice of such termination to the other party.

Section 6.2 Effect of Termination.

If this Agreement is terminated in accordance with Section 6.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, Merger Sub or the Company or their respective officers, directors, stockholders or Affiliates; *provided, however*, that each party hereto shall remain liable for any breaches of this Agreement that occurred prior to its termination, and, *provided further*, that Section 4.4 (Confidentiality), Section 4.5 (Public Announcements), Section 4.11 (Expenses), Section 6.3 (Effect of Termination), Section 7.9(c) (Representative Indemnification) and Article 8 (General Provisions) shall remain in full force and effect and survive any termination of this Agreement.

Section 6.3 Amendment.

Subject to applicable Law, the parties hereto may amend this Agreement at any time prior to the Closing in accordance with an instrument in writing signed on behalf of each of the parties hereto; *provided, however*, that an amendment made subsequent to approval of this Agreement by the stockholders of the Company shall not (a) alter or change the amount or kind of consideration to be received on conversion of Company Capital Stock or (b) alter or change any of the terms or conditions of this Agreement if such alteration or change would materially and adversely affect the holders of Company Capital Stock. Subject to applicable Law, Parent and the Representative (on behalf of all of the stockholders of the Company immediately prior to the Effective Time) may cause this Agreement to be amended at any time after the Effective Time by execution of an instrument in writing signed on behalf of Parent and the Representative (on behalf of all of the stockholders of the Company immediately prior to the Effective Time); *provided, however*, that any amendment made in accordance with this sentence shall not (1) alter or change the amount or kind of consideration to be received on conversion of Company Capital Stock or (2) alter or change any of the terms or conditions of this Agreement if such alteration or change would materially and adversely affect the stockholders of the Company immediately prior to the Effective Time.

Section 6.4 Extension; Waiver.

Any party hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other parties, (b) waive any inaccuracies in the representations and warranties made to such party herein or in any document delivered pursuant hereto, and (c) waive compliance with any of the agreements or conditions for the benefit of such party contained herein. At any time after the Effective Time, the Representative (on behalf of all the Indemnifying Securityholders) and Parent may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations or other acts of the other, (ii) waive any inaccuracies in the representations and warranties made to Parent (in the case of a waiver by Parent) or made to the Company (in the case of a waiver by the Representative) herein or in any document delivered pursuant hereto and (iii) waive compliance with any of the agreements or conditions for the benefit of Parent (in the case of a waiver by Parent) or for the benefit of the Company (in the case of a waiver by the Representative). Any agreement on the part of a party hereto to any such extension or waiver will be valid only if set forth in an instrument in writing signed on behalf of such party. Without limiting the generality or effect of the preceding sentence, no delay in exercising any right under this Agreement will constitute a waiver of such right, and no waiver of any breach or default will be deemed a waiver of any other breach or default of the same or any other provision in this Agreement.

ARTICLE 7

ESCROW FUND AND INDEMNIFICATION

Section 7.1 Escrow Fund. From and after the Effective Time, the Escrow Fund will be available to compensate Parent and the Surviving Corporation (on behalf of themselves or any other Indemnified Person) in cash for Losses and to satisfy any obligation with respect to the calculation of the Final Net Working Capital under Section 1.9.

Section 7.2 Indemnification.

(a) From and after the Effective Time, subject to this Article 7, the Company's stockholders and holders of In-the-Money Options and Warrants (other than the Buy-Out Warrant) immediately before the Effective Time (the "**Indemnifying Securityholders**") will, by virtue of the merger, severally but not jointly, indemnify and hold harmless Parent, the Surviving Corporation, the subsidiaries of Parent and the Surviving Corporation and their respective officers, directors, agents, attorneys and employees, and each Person who Controls or may Control Parent or the Surviving Corporation (each of the foregoing, an "**Indemnified Person**") from and against any and all losses, liabilities, damages, claims, suits, settlements, royalties, costs and expenses, including costs of investigation, settlement, mitigation, defense, legal and consulting fees and alternative dispute resolution and court costs, and any interest costs or penalties (collectively, "**Losses**"), arising out of, related to or resulting from any of the following:

(i) any failure of any representation, warranty or certification made by the Company in this Agreement, the Disclosure Schedule, any Related Agreement, any exhibit or schedule to this Agreement or any certificate or other document required to be delivered to Parent or Merger Sub in accordance with this Agreement to be true and correct on the date hereof and on the Closing Date as if made on such date (except in any case that representations and warranties that expressly speak as of a specified date or time need only be true and correct as of such specified date or time); *provided* that solely for purposes of determining the amount of Losses arising out of, related to or resulting from the failure of any such representation, warranty or certification that is qualified by "material," "in all material respects" or "Material Adverse Effect" or any similar term or limitation will be made as if "material," "in all material respects," "Material Adverse Effect" or similar terms were not included in any such representation, warranty or certification.

(ii) any breach of or default in connection with any of the covenants or agreements made by the Company or any other Person other than Parent or Merger Sub in this Agreement, any Related Agreement or any certificate or other document required to be delivered to Parent or Merger Sub in accordance with this Agreement;

(iii) any amount payable in respect of a claim of dissenter's rights, claim of appraisal or similar action with respect to shares of Company Capital Stock (*provided, however, that Losses arising under this Section 7.2(a)(iii) shall equal the excess of (A) any consideration awarded in any such claim or action over (B) the value of the Merger Consideration allocable to the former Company stockholders whose shares of Company Capital Stock were the subject of such appraisal action*) and the related Action;

(iv) any Taxes attributable to any period or portion thereof ending on or before the Closing Date, imposed (A) on the Company or any of its Subsidiaries, (B) on any member of an affiliated, consolidated, combined or unitary group of which the Company (or any predecessor of the Company) was or is a member on or prior to the Closing Date, or (C) on the Company as a transferee or successor, by contract or pursuant to applicable Law; provided, however, that in the case of clauses (A), (B) and (C) above, only to the extent that such Taxes exceed the amount of accrued liabilities for Taxes taken into account in the calculation of Final Net Working Capital (the "**Pre-Closing Tax Liabilities**");

(v) any Unpaid Third Party Expense;

(vi) any Company Indebtedness (including the Bridge Loan) not paid in full at or prior to the Closing (collectively, the "**Unpaid Company Indebtedness**");

(vii) any absolute amount by which the Final Net Working Capital is lower than the lower of the Net Working Capital Target and the Estimated Net Working Capital;

(viii) any claim or action by Persons who are or were securityholders or current or former director or officer of the Company, in their capacities as such, arising out of facts or circumstances existing on or prior to the Closing (including: (i) claims or actions arising out of the authorization, execution and delivery of this Agreement, the performance by the Company of its obligations hereunder or the consummation of the Transactions; (ii) the declaration, payment or allocation of the Closing Dividend; and (iii) adoption and approval of the Employee Transaction Bonus Plan and the payment of amounts thereunder to Employee Transaction Bonus Plan Participants).

(ix) any claim by an Indemnifying Securityholder with respect to the actions or omissions of the Representative, including any claim for fraud or misrepresentation, breach or non-fulfillment of any representation, warranty, covenant or agreement made by the Representative in this Agreement or in the Escrow Agreement,

(x) fraud, willful misconduct or intentional misrepresentation by the Company or any of its Affiliates,

(xi) any claim with respect to any inaccuracy of the Spreadsheet or any allocation of the Merger Consideration, Adjusted Merger Consideration, the Escrow Contribution, the Representative Expense Fund Contribution or the Representative Expenses or the determination of Pro Rata Portion; or

(xii) any claim by any Person related to, or any amount payable in respect of, any of the indemnifiable matters set forth on Schedule 7.2(a)(xii) attached hereto.

(b) In the case of any taxable period that includes but does not end on the Closing Date (a “**Straddle Period**”), the amount of Pre-Closing Tax Liabilities based on or measured by income or receipts or relating to any sales or use Tax will be determined based on an interim closing of the books as of the close of business on the Closing Date, and the amount of any Pre-Closing Tax Liabilities not based on or measured by income or receipts or relating to any sales or use Tax for a Straddle Period will be deemed to be the amount of such Tax for the entire period multiplied by a fraction, the numerator of which is the number of days in the portion of the Straddle Period ending at the end of the day that is the Closing Date and the denominator of which is the number of days in such Straddle Period.

Section 7.3 Limitations on Indemnification; Exclusive Remedy.

(a) Subject to the following sentence, the Indemnified Persons may not recover Losses from the Escrow Fund or the Indemnifying Securityholders in respect of any claim for indemnification under Section 7.2(a)(i) or Section 7.2(a)(ii) unless and until Losses in respect of any claim(s) under this Agreement have been incurred, paid or properly accrued in an aggregate amount greater than \$232,500 (the “**Indemnification Threshold**”). Notwithstanding the foregoing sentence, the Indemnified Persons will be entitled to recover for, and the Indemnification Threshold will not apply to, any Losses with respect to any breach of or inaccuracy in any representation or warranty made in Section 2.1 (Organization and Powers), Section 2.2 (Capitalization; Subsidiaries), Section 2.3(a) (Authority; Noncontravention), Section 2.9 (Taxes), Section 2.23 (Board Approval) or Section 2.24 (Stockholder Approval) (the “**Uncapped Company Representations**”) or in respect of any claim arising out of, related to or resulting from fraud, willful misconduct or intentional misrepresentation by the Company or any of its Affiliates. Once the Indemnification Threshold has been exceeded, the Indemnified Persons will be entitled to recover for the full amount of all such Losses (*i.e.*, from the first dollar), subject to this Article 7.

(b) Recovery by Indemnified Persons of their Losses in respect of any claim for indemnification under Section 7.2(a) shall be made as follows:

(i) With respect to breaches of or inaccuracies in any representation or warranty of the Company under Section 7.2(a)(i) (other than the Uncapped Company Representations) and any claim for indemnification under Section 7.2(a)(xii): (A) first from the Escrow Fund, and (B) if the aggregate of all unresolved or unsatisfied Liability Claims set forth in all Claims Notices delivered to the Escrow Agent and the Representative prior to the Claim Period Expiration Time exceeds the then-existing Escrow Fund, directly from each Indemnifying Securityholder according to its Pro Rata Portion of such Losses, in an additional amount of up to the *aggregate of* (1) the Unpaid Third Party Expenses (if any), (2) the Unpaid Company Indebtedness (if any), and (3) the Negative Net Working Capital Adjustment (if any), in each case to the extent such amounts were previously paid out of the Escrow Fund.

(ii) With respect to breaches of or inaccuracies in the Uncapped Company Representations or any claim for indemnification under Section 7.2(a)(ii) through Section 7.2(a)(xi) (collectively, “**Uncapped Liabilities**”): (A) first from the Escrow Fund, and (B)(1) if the aggregate of all unresolved or unsatisfied Liability Claims set forth in all Claims Notices delivered to the Escrow Agent and the Representative prior to the Claim Period Expiration Time exceeds the then-existing Escrow Fund or (2) after the Claim Period Expiration Time, directly from each Indemnifying Securityholder; *provided, however*, that an Indemnifying Securityholder’s liability for all Losses shall in no event exceed the Merger Consideration actually received by such Indemnifying Securityholder.

(c) The parties shall treat any indemnification payments made hereunder as an adjustment to the Merger Consideration for accounting and Tax purposes unless otherwise required by applicable Law.

(d) No Indemnifying Securityholder will have any right of contribution, right of indemnity or other right or remedy against Parent or the Surviving Corporation in connection with any indemnification obligation or any other liability to which such Indemnifying Securityholder may become subject under or in connection with this Agreement.

(e) No Indemnified Person’s rights under this Article 7 will be adversely affected by any investigation conducted, or any knowledge acquired or capable of being acquired, by such Indemnified Person at any time, whether before or after the execution or delivery of this Agreement or the Closing, or by the waiver of any condition to Closing. No Indemnified Person shall be required to show reliance on any representation, warranty, certificate or other agreement in order for such Indemnified Person to be entitled to indemnification hereunder.

(f) Following the Closing, in the absence of a showing of fraud, willful misconduct or intentional misrepresentation by or on behalf of a party from whom such indemnification could be sought, the indemnification provided under Section 7.2 shall be the sole and exclusive remedy of the parties and any parties claiming by or through any party (including the Indemnified Persons) with respect to any misrepresentation or inaccuracy in, or breach of, any representations or warranties made under this Agreement, and each party hereby waives, to the fullest extent that it may do so, any other rights or remedies that may arise under any applicable Law. In the absence of a showing of fraud, willful misconduct or intentional misrepresentation by or on behalf of the Company, any of its Subsidiaries or the Representative and except as otherwise explicitly set forth herein, the aggregate indemnification for any claims under this Agreement and the Related Agreements shall in no event exceed the aggregate Merger Consideration actually received by the Indemnifying Securityholders. For the avoidance of doubt, the foregoing shall not limit the Representative’s indemnity provided in Section 7.9(c).

(g) Notwithstanding anything to the contrary contained in this Agreement, nothing herein will prevent any Indemnified Person from bringing an Action for fraud, willful misconduct or intentional misrepresentation against any Person, including any Indemnifying Securityholder, whose fraud, willful misconduct or intentional misrepresentation has caused such Indemnified Person to incur Losses or has limited the Losses recoverable by such Indemnified Person in such Action. Nothing in this Agreement will limit the liability of the Company for any misrepresentation or breach of any representation, warranty, covenant or agreement if the Merger is not consummated.

Section 7.4 Escrow Claim Period. The period during which claims for indemnification from the Escrow Fund may be initiated (the “**Claim Period**”) will commence on the Closing Date and terminate at 11:59 p.m. California time on the date that is eighteen (18) months after the Closing Date (the “**Claim Period Expiration Time**”). Notwithstanding anything contained in this Agreement or the Escrow Agreement to the contrary, (a) on the Claim Period Expiration Time such portion of the Escrow Fund as Parent in good faith estimates or anticipates may be necessary to satisfy any unresolved or unsatisfied Liability Claims specified in any Claims Notice delivered to the Escrow Agent prior to the Claim Period Expiration Time will remain in the Escrow Fund until such Liability Claims have been resolved or satisfied and the Escrow Fund may be continued pursuant to a court order or other dispute resolution mechanism and (b) all remaining amounts shall be distributed to the Indemnifying Securityholders as set forth in the Escrow Agreement in proportion to their Pro Rata Portion. For the removal of doubt, it is clarified that any claim for indemnification for Uncapped Liabilities may be initiated prior to the applicable termination date of the survival period as set forth in Section 8.3.

Section 7.5 Claims for Indemnification. At any time that an Indemnified Person desires to claim a Loss (a “**Liability Claim**”) that it believes is or may be indemnifiable under Section 7.2, Parent will deliver a notice of such Liability Claim (a “**Claims Notice**”) to the Representative. With respect to a Liability Claim under Section 7.2(a) against the Escrow Fund, at the same time Parent delivers a Claims Notice to the Representative, Parent will deliver a Claims Notice to the Escrow Agent (if an Indemnified Person seeks recovery from the Escrow Fund). A Claims Notice will (A) be signed by an officer of Parent, (B) describe the Liability Claim in reasonable detail and (C) indicate the amount of the Loss that has been or may be paid, suffered, sustained or accrued by the Indemnified Persons. To the extent that the amount of a Loss is not determinable as of the date of delivery of a Claims Notice, Parent may deliver a Claims Notice stating the maximum amount of Loss that Parent in good faith estimates or anticipates that an Indemnified Person may pay or suffer; *provided, however*, that Parent’s provision of an estimated or anticipated amount of Loss will not limit the Loss recoverable or recovered by an Indemnified Person. No delay in or failure to give a Claims Notice by Parent to the Representative (or in the case of a Liability Claim seeking recovery from the Escrow Fund, the Escrow Agent) pursuant to this Section 7.5 will adversely affect any of the other rights or remedies that Parent has under this Agreement or alter or relieve any parties to this Agreement of their obligations to indemnify the Indemnified Persons pursuant to this Article 7, except and to the extent that such delay or failure has materially prejudiced such parties.

Section 7.6 Objections to and Payment of Claims.

(a) The Representative may object to any Liability Claim set forth in such Claims Notice by delivering written notice to Parent (with a copy to the Escrow Agent if a Claims Notice was delivered to the Escrow Agent) of the Representative's objection (an "**Objection Notice**"). Such Objection Notice must describe the grounds for such objection in reasonable detail.

(b) If an Objection Notice is not delivered by the Representative to Parent (with a copy of the Escrow Agent if a Claims Notice was delivered to the Escrow Agent) within thirty (30) days after delivery by Parent of the Claims Notice, such failure to so object will be an irrevocable acknowledgment by each party to this Agreement (including the Representative) that the Indemnified Persons are entitled to indemnification under Section 7.2 for the Losses set forth in such Claims Notice in accordance with this Article 7.

(c) If the Claims Notice was delivered to the Escrow Agent and no Objection Notice was delivered to the Escrow Agent within thirty (30) days of the delivery of the Claims Notice, or an Objection Notice was delivered to the Escrow Agent within thirty (30) days of the delivery of the Claims Notice, but such Objection Notice was only with respect to a portion of the Losses claimed in the Claims Notice, the Escrow Agent will deliver to Parent as soon as practicable cash from the Escrow Fund having a value equal to (i) the amount of the Losses set forth in such Claims Notice, if no Objection Notice was delivered to the Escrow Agent, or (ii) the amount of the portion of the Losses set forth in such Claims Notice to which no objection was made, if an Objection Notice was delivered to the Escrow Agent with respect to a portion of the Losses claimed in the Claims Notice only; *provided, however*, that, to the extent that the amount of the Losses set forth in the Claims Notice (or portion thereof) is an estimate, Parent (on behalf of itself or any other Indemnified Person) will not be so entitled to receive, and the Escrow Agent will not deliver, funds in respect of such portions of such estimated Losses unless and until the amount of such estimated Losses is finally determined; and *provided further, however*, that if the entire amount then in the Escrow Fund is insufficient to cover such Losses, and recovery directly from one or more Indemnifying Securityholders is available hereunder, each Indemnifying Securityholder shall within ten (10) Business Days after receipt of written notice of the determination of such Losses, wire transfer to Parent (on behalf of itself and any other Indemnified Parties) its Pro Rata Portion of any such shortfall.

(d) Notwithstanding anything to the contrary in this Agreement, the Indemnifying Securityholders do not have any individual right to object to any claim made in a Claims Notice under this Article 7, and, except as aforesaid, any and all claims made in a Claims Notice on behalf of the Indemnified Persons may be objected to only by the Representative.

Section 7.7 Resolution of Objections to Claims.

(a) If the Representative objects in writing to any Liability Claim made in any Claims Notice within thirty (30) days after delivery of such Claims Notice, the Representative and Parent will attempt in good faith to agree upon the rights of the respective parties with respect to each such claim. If the Representative and Parent should so agree, a memorandum setting forth such agreement will be prepared and signed by both parties and, except as set forth in the next sentence, within ten (10) Business Days after receipt of written notice of Representative and Parent's entry into such memorandum, each Indemnifying Securityholder will wire transfer to Parent immediately available funds equal to its Pro Rata Portion of the amount of cash agreed to be delivered to Parent in the memorandum. To the extent that a Liability Claim was made against the Escrow Fund, a copy of the memorandum setting forth the agreement will be delivered to the Escrow Agent. The Escrow Agent will be entitled to rely on any such memorandum and will distribute cash as soon as practicable from the Escrow Fund in accordance with the terms thereof.

(b) If no such agreement can be reached after good-faith negotiation and after thirty (30) days after delivery of an Objection Notice, either Parent or the Representative on behalf of the Indemnifying Securityholders may bring an action against the other to resolve the dispute. To the extent that an Indemnified Person is permitted under this Article 7, and so elects, to seek recovery directly against one or more Indemnifying Securityholders, then each such Indemnifying Securityholder will promptly, and in no event later than ten (10) Business Days after the final resolution of any dispute in accordance with this Section 7.7, wire transfer to Parent immediately available funds equal to its Pro Rata Portion of the amount of Losses determined in accordance with this Section 7.7. If the amount of the Losses so determined is an estimate, then the applicable Indemnifying Securityholder will be required to make such payment within ten (10) Business Days of the date that the amount of such Losses is finally determined.

Section 7.8 Third-Party Claims

If Parent receives written notice of a third-party claim that Parent believes may result in a claim by or on behalf of an Indemnified Person, Parent will notify the Representative of such third-party claim and provide the Representative the opportunity to participate at the Representative's own cost in, but not direct or conduct, any defense of such claim. The Representative's participation will be subject to Section 7.9(d). Parent will have the right in its sole discretion to settle any such claim; *provided, however*, that, without the consent of the Representative, no settlement of any such claim with third-party claimants will be determinative of the amount of Losses relating to such matter. If the Representative consents to any such settlement, neither the Representative nor any Indemnifying Securityholder will have any power or authority to object to the amount or validity of any claim by or on behalf of any Indemnified Person for indemnity with respect to such settlement. Notwithstanding any other provision of this Agreement, any costs and expenses of defense and investigation, including court costs and reasonable attorneys' fees incurred or suffered by the Indemnified Persons in connection with the defense of any third-party claim alleging matters that would constitute a breach or inaccuracy of a representation or warranty or any other Loss specified in Section 7.2, whether or not it is ultimately determined that there was such a breach or inaccuracy or other Loss, will constitute Losses subject to indemnification under Section 7.2, *provided, however*, that so long as the aggregate costs and expenses for all such third-party claims are less than or equal to one million US Dollars (\$1,000,000), only fifty percent (50%) of such costs and expenses shall constitute Losses (for the removal of doubt, in the event that the total amount of all such costs and expenses for all such third-party claims exceed \$1,000,000, the entire portion of such costs and expenses that exceeds \$1,000,000, shall constitute Losses).

(a) At the Effective Time, Shareholder Representative Services LLC shall be constituted and appointed as the Representative, and the Representative hereby accepts such appointment. Each Indemnifying Securityholder, by virtue of its adoption of this Agreement and approval of the Merger, shall be deemed to have appointed and constituted the Representative as their agent and true and lawful attorney-in-fact with the powers and authority as set forth in this Agreement. The Representative shall be the exclusive agent for and on behalf of the Indemnifying Securityholders to (1) enter into the Escrow Agreement, (2) give and receive notices and communications to or from Parent (on behalf of itself or any other Indemnified Person) and/or the Escrow Agent relating to this Agreement, the Escrow Agreement or any of the other Transactions; (3) authorize deliveries to Parent of cash or other property from the Escrow Fund and legally bind each Indemnifying Securityholder to pay cash directly to Parent in satisfaction of claims asserted by Parent (on behalf of itself or any other Indemnified Person, including by not objecting to such claims); (4) object to claims in accordance with Section 1.9 and Section 7.6; (5) consent or agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with Orders with respect to, such claims; (6) take all actions necessary or appropriate in the judgment of the Representative for the accomplishment of the foregoing, in each case without having to seek or obtain the consent of any Person under any circumstance, and (7) subject to Section 6.4, execute for and on behalf of each Indemnifying Securityholder any amendment to this Agreement, the Escrow Agreement or any exhibit, annex or schedule hereto or thereto (including for the purpose of amending addresses or sharing percentages). The Representative shall be the sole and exclusive means of asserting or addressing any of the above, and no Indemnifying Securityholder shall have any right to act on its own behalf with respect to any such matters, other than any claim or dispute against the Representative. This appointment of agency and this power of attorney is coupled with an interest and will be irrevocable and will not be terminated by any Indemnifying Securityholder or by operation of Law, whether by the death or incapacity of any Indemnifying Securityholder or the occurrence of any other event, and any action taken by the Representative will be as valid as if such death, incapacity or other event had not occurred, regardless of whether or not any Indemnifying Securityholder or the Representative will have received any notice thereof. No bond will be required of the Representative. After the Closing, notices or communications to or from the Representative shall constitute notice to or from each of the Indemnifying Securityholders.

(b) The Person serving as the Representative may resign at any time and may be replaced from time to time, by the holders of a majority in interest of the Company Capital Stock outstanding immediately prior to the Effective Time upon not less than ten (10) days' prior written notice to Parent. The agency of the Representative may be changed only when the Person serving as the Representative is replaced pursuant to the preceding sentence. A vacancy in the position of Representative may be filled by the holders of a majority in interest of the Company Capital Stock outstanding immediately prior to the Effective Time. If the Representative refuses or is no longer capable of serving as the Representative hereunder, then the Indemnifying Securityholders will promptly, within ten (10) days after such resignation or removal, appoint a successor Representative who will thereafter be a successor Representative hereunder. If there is not a Representative at any time, any obligation to provide notice to the Representative will be deemed satisfied if such notice is delivered to each of the Indemnifying Securityholders at their addresses last known to Parent, which will be the address set forth in the Spreadsheet unless the Representative provides notice to Parent of a different address in the manner described in Section 8.4.

(c) The Representative shall not be liable to any Indemnifying Securityholder for any act done or omitted hereunder as the Representative while acting in good faith and any act done or omitted in accordance with the advice of counsel or other expert shall be conclusive evidence of such good faith. The Indemnifying Securityholders shall jointly and severally indemnify and defend the Representative and hold the Representative harmless against any loss, liability, damage, claim, penalty, fine, forfeitures, action, fee, cost or expense including the fees and expenses of counsel and experts and their staffs and all expenses of document location duplication and shipment) (collectively, "**Representative Expenses**") arising out of or in connection with the acceptance or administration of the Representative's duties hereunder, and under the Escrow Agreement, in each case as such Representative Expense is suffered or incurred; *provided*, that in the event that any such Representative Expense is finally adjudicated to have been directly caused by the gross negligence, fraud or bad faith of the Representative, the Representative will reimburse the Indemnifying Securityholders the amount of such indemnified Representative Expense to the extent attributable to such gross negligence, fraud or bad faith. If not paid directly to the Representative by the Indemnifying Securityholders, any such Representative Expenses may be recovered by the Representative (i) from the funds in the Representative Expense Fund and (ii) following the termination of the Escrow Period, the resolution of all Liability Claims and the satisfaction of all claims made by Indemnified Parties for Losses, from the amounts in the Escrow Fund prior to any distribution to the Stockholders; *provided*, that while this section allows the Representative to be paid from the Representative Expense Fund and the Escrow Fund, this does not relieve the Indemnifying Securityholders from their obligation to promptly pay such Representative Expenses as they are suffered or incurred, nor does it prevent the Representative from seeking any remedies available to it at law or otherwise. In no event will the Representative be required to advance its own funds on behalf of the Indemnifying Securityholders or otherwise. The Indemnifying Securityholders acknowledge and agree that the foregoing indemnities will survive the resignation or removal of the Representative or the termination of this Agreement.

(d) The Representative shall have reasonable access to information about the Surviving Corporation and the reasonable assistance of the Company's former officers and employees for purposes of performing its duties and exercising its rights hereunder; *provided* that the Representative shall treat confidentially and not use or disclose the terms of this Agreement or any nonpublic information from or about Parent, Surviving Corporation, or any Indemnified Person to anyone (except as required by Law or to the Indemnifying Securityholders or the Representative's employees, attorneys, accountants, financial advisors or authorized representatives on a need to know basis, in each case who agree to treat such information confidentially), *provided, however*, that neither Parent nor the Surviving Corporation shall be obligated to provide such access or information if it determines, in its reasonable judgment, that doing so would violate applicable Law or any Contract to which Parent, the Surviving Corporation or any of their Affiliates is a Party or obligation of confidentiality owed by Parent, the Surviving Corporation or any of their Affiliates to a third party, jeopardize the protection of attorney-client privilege or expose Parent or the Surviving Corporation to risk of liability for disclosure of sensitive or personally identifiable information. Notwithstanding anything in this Agreement to the contrary, following the Closing and the public announcement (if any) of the Merger, the Representative shall be permitted to publicly announce that it has been engaged to serve as the Representative in connection with the Merger as long as such announcement does not disclose any of the terms of the Merger or the other transactions contemplated herein or hereby.

(e) By its signature to this Agreement, the initial Representative hereby accepts the appointment contained in this Agreement, as confirmed and extended by this Agreement, and agrees to act as the Representative and to discharge the duties and responsibilities of the Representative pursuant to the terms of this Agreement.

(f) Upon the Closing, the Company will wire, or will cause to be wired, one hundred thousand US Dollars (\$100,000) (the “**Representative Expense Fund**”) to the Representative, which will be used for the purposes of paying directly, or reimbursing the Representative for, any third party expenses of the Representative pursuant to this Agreement and the Escrow Agreement. The Indemnifying Securityholders will not receive any interest or earnings on the Representative Expense Fund and irrevocably transfer and assign to the Representative any ownership right that they may otherwise have had in any such interest or earnings. The Representative will not be liable for any loss of principal of the Representative Expense Fund other than as a result of its gross negligence, willful misconduct, bad faith or fraud. The Representative will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. Contemporaneous with or as soon as practicable following the completion of the Representative’s duties, the Representative will deliver the balance of the Representative Expense Fund to the Payment Agent (or the Surviving Corporation’s payroll agent, as applicable) for further distribution to the Indemnifying Securityholders. For tax purposes, the Representative Expense Fund will be treated as having been received and voluntarily set aside by the Indemnifying Securityholders at the time of Closing.

Section 7.10 Actions of the Representative. After the Closing, any notice or communication given or received by, and any decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, the Representative that is within the scope of the Representative’s authority under Section 7.9(a) shall constitute a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of all Indemnifying Securityholders and shall be final, binding and conclusive upon each such stockholder. Each Indemnified Person and the Escrow Agent shall be entitled to rely upon any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction as being a notice or communication to or by, or a decision, action, failure to act within a designated period of time, agreement, consent, settlement, resolution or instruction of, each and every such Indemnifying Securityholder. Each Indemnified Person and the Escrow Agent are unconditionally and irrevocably relieved from any liability to any person for any acts done by them in accordance with any such notice, communication, decision, action, failure to act within a designated period of time, agreement, consent or instruction of the Representative.

Section 7.11 Calculation of Losses. The amount of any Loss subject to indemnification under Section 7.2 or of any claim therefor shall be calculated net of any insurance proceeds or other indemnification or contribution payments (net of direct collection expenses) actually received by the applicable Indemnified Person or the Surviving Corporation on account of such Loss. In the event that insurance proceeds or other indemnification or contribution payments are actually received by an Indemnified Person or the Surviving Corporation with respect to any Loss for which any such Indemnified Person has been indemnified hereunder, then a refund equal to the lesser of (i) the aggregate amount of the recovery (net of all direct collection expenses) actually received by such Indemnified Person and (ii) the amount of the Loss for which such Indemnified Person has been indemnified hereunder shall be made promptly to the Escrow Agent to be deposited into the Escrow Fund. Parent shall, and shall cause the Surviving Corporation to, use its commercially reasonable efforts to seek recovery under the D&O Insurance for Claims pertaining to matters that have a reasonable basis for being covered by such D&O Insurance; *provided* that neither Parent nor the Surviving Corporation shall be required to (a) institute any action against any applicable insurance carrier in connection with such efforts nor (b) incur any material out-of-pocket expenditures, costs or other liabilities in connection with such efforts.

ARTICLE 8

GENERAL PROVISIONS

Section 8.1 Certain Defined Terms. As used in this Agreement, the following terms have the following meanings:

“**2003 Stock Plan**” has the meaning set forth in Section 2.2(f).

“**2004 Stock Plan**” has the meaning set forth in Section 2.2(f).

“**2014 Stock Plan**” has the meaning set forth in Section 2.2(f).

“**280G Stockholder Approval**” has the meaning set forth in Section 5.3(e).

“**Acquisition Transaction**” has the meaning set forth in Section 4.7.

“**Action**” means any action, audit, charge, claim, complaint, demand, hearing, inquiry, investigation, litigation, mediation, proceeding, subpoena or suit, whether civil, criminal, administrative, judicial, arbitral or investigative, whether public or private, commenced, brought, conducted or heard by or before or otherwise involving, any Governmental Authority or private arbitrator or mediator.

“**Action of Divestiture**” has the meaning set forth in Section 4.19.

“**Adjusted Merger Consideration**” has the meaning set forth in Section 1.4(c)(vi)(A).

“**Affiliate**,” when used with reference to any Person, means another Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such first Person.

“**Agreement**” has the meaning set forth in the Preamble.

“**Aggregate Employee Transaction Bonus Amount**” has the meaning set forth in Section 1.10.

“**Bank Accounts**” has the meaning set forth in Section 2.22.

“**Basis**” means any past or present fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction that could form the basis for any specific consequence.

“**Bridge Loan**” means that certain Secured Note Purchase Agreement dated as of April 27, 2010 (as amended) by and between the Company and the lenders set forth therein.

“**Business Day**” means any day that is not a Friday, Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in San Francisco, California or Tel-Aviv, Israel.

“**Buy-Out Warrant**” means that certain Warrant to Purchase Stock dated April 27, 2010, issued to Silicon Valley Bank, if Silicon Valley Bank elects to receive a fixed cash payment pursuant to the terms thereof in lieu of such warrant’s cancellation and exchange pursuant to Section 1.7 hereof.

“**Cash**” shall mean cash, cash equivalents and marketable securities, in each case determined in accordance with GAAP, but excluding (a) restricted cash, issued but uncleared checks and drafts and securities that cannot be readily converted into cash and (b) auction rate or similar illiquid securities or securities involved or potentially involved in a Securities Investors Protection Act action or claim.

“**Cash Consideration**” has the meaning set forth in Section 1.4(c)(vi)(B).

“**Certificate of Merger**” has the meaning set forth in Section 1.1.

“**Certificates**” has the meaning set forth in Section 1.4(c).

“**CGCL**” has the meaning set forth in the Recitals.

“**Charter**” has the meaning set forth in Section 2.1.

“**Charter Documents**” has the meaning set forth in Section 2.1.

“**Claim Period**” has the meaning set forth in Section 7.4.

“**Claim Period Expiration Time**” has the meaning set forth in Section 7.4.

“**Claims Notice**” has the meaning set forth in Section 7.5.

“**Closing**” has the meaning set forth in Section 1.2.

“**Closing Balance Sheet**” has the meaning set forth in Section 1.9(a)

“**Closing Date**” has the meaning set forth in Section 1.2.

“**Closing Dividend**” has the meaning set forth in Section 1.9(a).

“**Closing Escrow Amount**” has the meaning set forth in Section 1.4(d).

“**Closing Net Working Capital**” has the meaning set forth in Section 1.9(a).

“**Closing Statement**” has the meaning set forth in Section 1.9(b).

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Company**” has the meaning set forth in the Preamble.

“**Company Balance Sheet Date**” has the meaning set forth in Section 2.4.

“**Company Capital Stock**” has the meaning set forth in Section 1.4(a).

“**Company Common Stock**” means the common stock of the Company, par value of \$0.001.

“**Company Indebtedness**” means, without duplication, the following: (1) any Liability of the Company or any of its Subsidiaries (A) for borrowed money (including the current portion thereof), whether or not contingent, or issued or incurred in substitution or exchange for any such Liability for borrowed money, (B) under any reimbursement obligation relating to a letter of credit, bankers’ acceptance, note purchase or similar facility, (C) evidenced by a bond, note, debenture or similar instrument or debt security (including a purchase money obligation or any Encumbrance (other than any Permitted Encumbrance) to secure all or part of the purchase price of the property subject to such Encumbrance, and any obligation for the deferred purchase price of property or services), (D) created or arising under any conditional sale or other title retention agreement with respect to property acquired by of the Company or any of its Subsidiaries (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (E) as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases in respect of which the Company or any of its Subsidiaries is liable as a lessee; (F) to purchase, redeem, retire, defease or otherwise acquire for value any ownership interests or capital stock of the Company or any of its Subsidiaries or any rights to acquire any ownership interests or capital stock of the Company or any of its Subsidiaries, valued, in the case of redeemable ownership interests or capital stock, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (G) any obligations secured by an Encumbrance (other than any Permitted Encumbrance) on property owned by the Company or any of its Subsidiaries, and (H) any obligations under any interest rate, foreign exchange, currency, commodity, credit or equity swap, cap, collar, floor, financial option, forward, cross right or other hedging agreement or derivative contract, net of any obligations to the Company or any of its Subsidiaries thereunder; (2) any Liability described in clause (1) of other Persons that is guaranteed directly or indirectly in any manner by the Company or any of its Subsidiaries, or which the Company or any of its Subsidiaries has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a creditor against loss; or (3) any Liability described in clause (1) of other Persons that is secured by (or for which the holder of such Liability has an existing right, contingent or otherwise, to be secured by) any Encumbrance (other than any Permitted Encumbrance) on property (including accounts and contract rights) owned by the Company or any of its Subsidiaries, even though the Company or any such Subsidiary has not assumed or become liable for the payment of such Liability. For purposes of this Agreement, Company Indebtedness includes (1) any and all accrued interest, fees, change of control payments, prepayment premiums, make whole premiums or penalties and fees or expenses actually incurred (including attorney’s fees) associated with the prepayment of any Company Indebtedness, and (2) any and all amounts of the nature described in clauses (1)(A) through (H) owed by the Company or any of its Subsidiaries to any of its Affiliates including any of its stockholders.

“**Company Indebtedness Release**” has the meaning set forth in Section 4.12.

“**Company Indebtedness Report**” has the meaning set forth in Section 4.12.

“**Company Indemnified Parties**” has the meaning set forth in Section 4.18(a).

“**Company Indemnification Provisions**” has the meaning set forth in Section 4.18(a).

“**Company Intellectual Property**” means any Intellectual Property and Intellectual Property Rights owned by or licensed to the Company or any of its Subsidiaries, or otherwise used or held for use in connection with the operation of the business of the Company or its Subsidiaries, including Owned Company Intellectual Property and Licensed Company Intellectual Property.

“**Company Intellectual Property Agreements**” has the meaning set forth in Section 2.8(d).

“**Company Option**” has the meaning set forth in Section 1.6(a)(i).

“**Company Products**” has the meaning set forth in Section 2.8(a).

“**Company Source Code**” has the meaning set forth in Section 2.8(o).

“**Company Stock Plan**” has the meaning set forth in Section 2.2(f).

“**Company Unvested Common Stock**” shall mean any shares of Company Common Stock issued and outstanding immediately prior to the Effective Time that are unvested. For purposes of this Agreement, a share of Company Common Stock shall be deemed “unvested” if such share is not vested or is subject to a repurchase option, risk of forfeiture or other similar condition under any applicable stock restriction agreement or other agreement with the Company.

“**Confidentiality Agreement**” has the meaning set forth in Section 4.4.

“**Contaminants**” has the meaning set forth in Section 2.21(a).

“**Contract**” means any contract, agreement, indenture, note, bond, loan, instrument, license, lease (including real and personal property leases), conditional sale contract, purchase or sales orders, mortgage, undertaking, commitment, understanding, undertaking, option, warrant, calls, rights or other enforceable arrangement or agreement, whether written or oral.

“**Control**” means, as to any Person, the possession of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. The verb “**Control**” and the term “**Controlled**” have the correlative meanings.

“**Controlled Group**” has the meaning set forth in Section 2.10(a).

“**COTS Software**” means any license for “shrink-wrap,” “click-through” or other “off-the-shelf” Software that is commercially available to the public generally with annual license fees of less than \$10,000 per year.

“**D&O Insurance**” has the meaning set forth in Section 4.18(b).

“**Data Room**” has the meaning set forth in Section 4.3(a).

“**Delaware Secretary**” has the meaning set forth in Section 1.1.

“**DGCL**” has the meaning set forth in the Recitals.

“**Disclosure Schedule**” means the disclosure schedule dated as of the date hereof and delivered by the Company to Parent and Merger Sub.

“**Disputed Line Items**” has the meaning set forth in Section 1.9(c)(i).

“**Dissenting Shares**” has the meaning set forth in Section 1.8(a).

“**DOJ**” means the United States Department of Justice.

“**Effective Time**” has the meaning set forth in Section 1.1.

“**Employee Benefit Plan**” has the meaning set forth in Section 2.10(a).

“**Employee Transaction Bonus Plan**” has the meaning set forth in Section 1.10.

“**Employee Transaction Bonus Plan Participant**” has the meaning set forth in Section 1.10.

“**Encumbrance**” means any mortgage, pledge, hypothecation, adverse claim, security interest, encumbrance, title defect, title retention agreement, third party right, option, lien, charge, right of first refusal, right of preemption or right to acquire, or other restriction or limitation, including any restriction on the right to vote, sell or otherwise dispose of the subject property, other than any restriction or limitation imposed by this Agreement.

“**Environment**” has the meaning set forth in Section 2.26(a).

“**Environmental Law**” has the meaning set forth in Section 2.26(a).

“**Environmental Permits**” has the meaning set forth in Section 2.26(a).

“**ERISA**” has the meaning set forth in Section 2.10(a).

“**Escrow Agent**” has the meaning set forth in Section 1.4(d).

“**Escrow Agreement**” has the meaning set forth in Section 1.4(d).

“**Escrow Contribution**” for each holder of record of a Certificate in respect of such Certificate has the meaning set forth in Section 1.5(b); for each holder of a Company Option in respect of such Company Option the meaning set forth in Section 1.6(c); and for each holder of a Warrant in respect of such Warrant the meaning set forth in Section 1.7(c)(i).

“**Escrow Fund**” has the meaning set forth in Section 1.4(d).

“**Estimated Net Working Capital**” has the meaning set forth in Section 1.9(a).

“**Estimated Statement**” has the meaning set forth in Section 1.9(a).

“**Exercise Price Cash**” has the meaning set forth in Section 1.4(c)(vi)(K).

“**Export Approvals**” has the meaning set forth in Section 2.14(d)(i).

“**FCPA**” has the meaning set forth in Section 2.14(b).

“**Final Net Working Capital**” has the meaning set forth in Section 1.9(c)(i).

“**Financial Controls**” has the meaning set forth in Section 2.4.

“**Form Working Capital Statement**” has the meaning set forth in Section 1.9(a).

“**Financial Statements**” has the meaning set forth in Section 2.4.

“**FTC**” means the United States Federal Trade Commission.

“**Fully Diluted Company Capital Stock**” has the meaning set forth in Section 1.4(c)(vi)(C).

“**GAAP**” has the meaning set forth in Section 2.4.

“**Governmental Authority**” means any governmental, regulatory or administrative authority, agency, body, commission or other entity, whether international, multinational, national, regional, state, provincial or of a political subdivision; any court, judicial body, arbitration board or arbitrator; any tribunal of a self-regulatory organization; or any instrumentality of any of the foregoing.

“**Hazardous Substance**” has the meaning set forth in Section 2.26(a).

“**In-the-Money Option**” has the meaning set forth in Section 1.4(c)(vi)(C).

“**Indemnification Threshold**” has the meaning set forth in Section 7.3(a).

“**Indemnified Person**” has the meaning set forth in Section 7.2(a).

“**Indemnifying Securityholders**” has the meaning set forth in Section 7.2(a).

“**Information Statement**” has the meaning set forth in Section 4.6(b).

“**Intellectual Property**” means any and all (1) technology, formulae, algorithms, procedures, processes, methods, techniques, know-how, ideas, creations, inventions, discoveries, and improvements (whether patentable or unpatentable and whether or not reduced to practice); (2) technical, engineering, manufacturing, product, marketing, servicing, financial, supplier, personnel and other information and materials; (3) customer lists, customer contact and registration information, customer correspondence and customer purchasing histories; (4) specifications, designs, models, devices, prototypes, schematics and development tools; (5) Software, websites, content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses, writings, and other works of authorship and copyrightable subject matter (“**Works of Authorship**”); (6) databases and other compilations and collections of data or information (“**Databases**”); (7) trademarks, service marks, logos and design marks, trade dress, trade names, fictitious and other business names, and brand names, together with all goodwill associated with any of the foregoing (“**Trademarks**”); (8) domain names, uniform resource locators and other names and locators associated with the Internet (“**Domain Names**”); and (9) information and materials not generally known to the public, including trade secrets and other confidential and proprietary information (“**Trade Secrets**”).

“**Intellectual Property Rights**” means any and all rights (anywhere in the world, whether statutory, common law or otherwise and regardless of formal name) relating to, arising from, or associated with Intellectual Property, including (1) patents and patent applications, utility models and applications for utility models, inventor’s certificates and applications for inventor’s certificates, and invention disclosure statements, including without limitation, all non-provisional and provisional patent applications, substitutions, continuations, continuations-in-part, divisions, renewals, revivals, reissues, re-examinations and extensions thereof (collectively, all such patents and patent application are referred to herein as “**Patents**”); (2) copyrights and all other rights with respect to Works of Authorship and all registrations thereof and applications therefor (including moral and economic rights, however denominated) (“**Copyrights**”); (3) other rights with respect to Software, including registrations thereof and applications therefor; (4) industrial design rights and registrations thereof and applications therefor; (5) rights with respect to Trademarks, and all registrations thereof and applications therefor; (6) rights with respect to Domain Names, including registrations thereof and applications therefor; (7) rights with respect to Trade Secrets, including rights to limit the use or disclosure thereof by any Person; (8) rights with respect to Databases, including registrations thereof and applications therefor; (9) publicity and privacy rights, including all rights with respect to use of a person’s name, signature, likeness, image, photograph, voice, identity, personality, and biographical and personal information and materials; and (10) any rights equivalent or similar to any of the foregoing.

“**Interim Balance Sheet**” has the meaning set forth in Section 2.5(b).

“**Interim Balance Sheet Date**” has the meaning set forth in Section 2.5(b).

“**IRS**” has the meaning set forth in Section 2.10(b).

“**Key Customers**” has the meaning set forth in Section 2.17(f).

“**Key Employee**” has the meaning set forth in Section 5.3(i).

“**Knowledge of the Company**” means the actual knowledge of Glyn Davies, Timothy Welch, David Reed, C. Thomas Larson and Emile James Pouquette, and the knowledge that each such individual would reasonably be expected to have after making due inquiry of the personnel responsible for the relevant subject matters who directly report to such individuals and the Company’s outside advisors.

“**Law**” means the law of any jurisdiction, whether international, multilateral, multinational, national, federal, state, provincial, local or common law, an Order or act, statute, ordinance, regulation, rule, collective bargaining agreement, extension order or code promulgated by a Governmental Authority.

“**Letter of Transmittal**” has the meaning set forth in Section 1.5(b).

“**Liabilities**” means any and all debts, liabilities and obligations of any kind, whether accrued or fixed, absolute or contingent, matured or unmatured, on- or off-balance sheet, including those arising under any Law, Action or Order and those arising under any Contract or otherwise.

“**Liability Claim**” has the meaning set forth in Section 7.5.

“**Licensed Company Intellectual Property**” has the meaning set forth in Section 2.8(f).

“**Losses**” has the meaning set forth in Section 7.2(a).

Documents or other information and materials shall be deemed to have been “**Made Available**” by the Company if and only if the Company has posted such documents and information and other materials to the Data Room or otherwise delivered such documents or other information to Parent or its counsel in hard copy or electronic format at least twenty four (24) hours prior to the execution and delivery of this Agreement by the parties hereto.

Any reference to an event, change, condition or effect being “**material**” with respect to any Person means any event, change, condition or effect that is material in relation to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations or results of operations of such Person and its Subsidiaries, taken as a whole.

“Material Adverse Effect” with respect to any Person means any effect that either alone or in combination with any other effect is materially adverse in relation to the condition (financial or otherwise), properties, assets, liabilities, business, operations or results of operations of such Person and its Subsidiaries, taken as a whole, or the ability of such Person to perform its obligations hereunder or to consummate the Transactions; *provided, however*, that in determining whether a Material Adverse Effect has occurred, is reasonably likely to occur, could reasonably be expected to occur, or could occur, there shall be excluded any effect to the extent directly resulting from, or directly arising in connection with, any of the following (either alone or in combination):

(a) changes in general economic or business conditions or the financial or securities markets generally that do not disproportionately impact the Company and its Subsidiaries, taken as a whole, in a disproportionate manner relative to other similarly situated participants in the industries in which the Company and its Subsidiaries operate;

(b) changes in the industries in which the Company and its Subsidiaries operate, to the extent such changes do not adversely affect the Company and its Subsidiaries, taken as a whole, in a disproportionate manner relative to other similarly situated participants in the industries in which the Company and its Subsidiaries operate;

(c) changes in GAAP or international accounting standards generally applicable to corporations in the same industry of the Company;

(d) changes in Laws, rules and regulations of general applicability by any Governmental Authority;

(e) acts of war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, sabotage or terrorism or other international or national calamity or any material worsening of such conditions threatened or existing as of the date of this Agreement, to the extent such changes do not adversely affect the Company and its Subsidiaries, taken as a whole, in a disproportionate manner relative to other similarly situated participants in the industries in which the Company and its Subsidiaries operate and in the same geographic area;

(f) any written notice by any of the Company’s or its Subsidiaries’ customers, distributors or suppliers terminating such customer, distributor or supplier’s commercial relationship with the Company or its Subsidiaries, to the extent that such written notice explicitly sets forth that such termination is as a result of the Transactions; and

(g) (i) the failure by the Company or any of its Subsidiaries to take any action expressly prohibited by the terms of this Agreement or (ii) any actions taken by the Company or any of its Subsidiaries as expressly required by the terms of this Agreement or with the consent of Parent or Merger Sub (other than operation by the Company and its Subsidiaries of their business in the ordinary course of business).

“Material Contract” has the meaning set forth in Section 2.18.

“Merger” has the meaning set forth in Section 1.1.

“**Merger Consideration**” has the meaning set forth in Section 1.4(c)(vi)(D).

“**Merger Sub**” has the meaning set forth in the Preamble.

“**Merger Sub Common Stock**” has the meaning set forth in Section 1.4(b).

“**Negative Net Working Capital Adjustment**” has the meaning set forth in Section 1.9(a).

“**Net of Tax Withholdings**” in respect of any amount means net of such Tax withholdings as Parent, the Surviving Corporation, the Payment Agent or the Escrow Agent reasonably believes is required to cause to be deducted and withheld under the Code, or any provision of U.S. state, local or non-U.S. Tax Law, Parent’s good faith estimate of which shall be provided to the Company for inclusion in the Spreadsheet.

“**New Litigation Claim**” has the meaning set forth in Section 4.3(d).

“**Net Working Capital Target**” has the meaning set forth in Section 1.9(a).

“**Non-Competition Agreements**” has the meaning set forth in the Recitals.

“**Notice of Disagreement**” has the meaning set forth in Section 1.9(c)(i).

“**Objection Notice**” has the meaning set forth in Section 7.6(a).

“**Offer Letters**” has the meaning set forth in the Recitals.

“**Open Source**” has the meaning set forth in Section 2.8(l).

“**Option Consent**” has the meaning set forth in Section 1.6(d).

“**Order**” means any decision, ruling, charge, order, writ, judgment, injunction, decree, stipulation, determination, award or binding agreement issued, promulgated or entered by or with any Governmental Authority.

“**Owned Company Intellectual Property**” means any and all Intellectual Property Rights and Technology that are owned in whole or in part by the Company or any of its Subsidiaries (or that the Company or any of its Subsidiaries claims or purports to own in whole or in part), including, but not limited to, the Registered Company Intellectual Property.

“**Parent**” has the meaning set forth in the preamble.

“**Payment Agent**” has the meaning set forth in Section 1.5(a).

“**PCI-DSS**” has the meaning set forth in Section 2.20(b).

“**Permit**” means any approval, authorization, consent, franchise, license, permit or certificate by any Governmental Authority.

“**Permitted Encumbrance**” means (i) statutory liens for Taxes not yet due and payable, (ii) statutory liens in favor of mechanics, materialmen, warehousemen, carriers, repairers and other similar liens to secure claims for labor, materials or supplies that are not yet due and payable, (iii) zoning, entitlement, building and other land use regulations imposed by Governmental Authorities having jurisdiction over the leased real property which are not violated in any material respect by the current use and operation of the leased real property and do not detract from or limit the use by the Company of any such leased real property in any material respect, (iv) covenants, conditions, restrictions, easements and other similar matters of record affecting title to the leased real property which do not impair in any material respect the occupancy or use of the leased real property for the purposes for which it is currently used in connection with the Company or any of its Subsidiaries’ businesses, (v) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements, (vi) deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or similar programs mandated by applicable Law and (vii) non-exclusive licenses and associated restrictions set forth in the Company’s standard terms and conditions for such non-exclusive license granted by the Company or a Subsidiary to Company Intellectual Property in the ordinary course of its business.

“**Person**” means any natural person, general or limited partnership, corporation, limited liability company, joint venture, trust, firm, association or other legal or governmental entity.

“**Personal Identifiable Information**” has the meaning set forth in Section 2.20.

“**Per Share Common Consideration**” has the meaning set forth in Section 1.4(c)(vi)(E).

“**Per Share Series A-1 Preferred Liquidation Preference**” has the meaning set forth in Section 1.4(c)(vi)(F).

“**Per Share Series A-2 Preferred Liquidation Preference**” has the meaning set forth in Section 1.4(c)(vi)(G).

“**Per Share Series B Preferred Liquidation Preference**” has the meaning set forth in Section 1.4(c)(vi)(H).

“**Pre-Closing Tax Liabilities**” has the meaning set forth in Section 7.2(a)(iv).

“**Preferred Amount**” has the meaning set forth in Section 1.4(c)(vi)(I).

“**Preferred Stock**” means the Series A-1 Preferred Stock, the Series A-2 Preferred Stock, and the Series B Preferred Stock.

“**Pro Rata Portion**” has the meaning set forth in Section 1.4(c)(vi)(J).

“**Registered Company Intellectual Property**” means (1) all Patents, registered Trademarks, applications to register Trademarks, registered Copyrights, applications to register Copyrights, and Domain Names included in the Company Intellectual Property that are registered, recorded or filed by, for, or under authorization from (or in the name of) the Company or any of its Subsidiaries, and (2) any other applications, registrations, recordings and filings by the Company or any of its Subsidiaries (or otherwise authorized by or in the name of the Company or any of its Subsidiaries) with respect to any Company Intellectual Property.

“**Related Agreements**” means the Escrow Agreement and any and all agreements and instruments to be executed and delivered by the Company at the Closing and set forth in Exhibit G.

“**Release**” has the meaning set forth in Section 2.26(a).

“**Representative**” means Shareholder Representative Services LLC as of the date hereof and any successor appointed pursuant to Section 7.9(a).

“**Representative Expense Fund**” has the meaning set forth in Section 7.9(f).

“**Representative Expense Fund Contribution**” for each holder of record of a Certificate in respect of such Certificate has the meaning set forth in Section 1.5(b); for each holder of a Company Option in respect of such Company Option the meaning set forth in Section 1.6(c)(ii); and for each holder of a Warrant in respect of such Warrant the meaning set forth in Section 1.7(c)(i)(ii).

“**Representative Expenses**” has the meaning set forth in Section 7.9(c).

“**Required Vote**” has the meaning set forth in Section 2.24.

“**SA Determined Amount**” has the meaning set forth in Section 1.9(c)(i).

“**SEC**” means the U.S. Securities and Exchange Commission and any Governmental Authority that is a successor thereto.

“**Series A-1 Preferred Stock**” has the meaning set forth in Section 2.2(a).

“**Series A-2 Preferred Stock**” has the meaning set forth in Section 2.2(a).

“**Series B Preferred Stock**” has the meaning set forth in Section 2.2(a).

“**Settlement Accountant**” has the meaning set forth in Section 1.9(c)(i).

“**Software**” means all (1) computer programs and other software, including software implementations of algorithms, models, and methodologies, whether in source code, object code or other form, including libraries, subroutines and other components thereof; (2) computerized databases and other computerized compilations and collections of data or information, including all data and information included in such databases, compilations or collections; (3) screens, user interfaces, command structures, report formats, templates, menus, buttons and icons; (4) descriptions, flow-charts, architectures, development tools, and other materials used to design, plan, organize and develop any of the foregoing; and (5) all documentation, including development, diagnostic, support, user and training documentation related to any of the foregoing.

“**Spreadsheet**” has the meaning set forth in Section 4.10.

“**Stockholders’ Written Consent**” has the meaning set forth in the Recitals.

“**Straddle Period**” has the meaning set forth in Section 7.2(b).

“**Subsidiary**” of any Person means any other Person (1) of which the first Person owns directly or indirectly fifty percent (50%) or more of the equity interest in the other Person or (2) of which (or in which) an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body (or, if there are no such voting interests, more than fifty percent (50%) of the equity interests of which) is directly or indirectly owned or Controlled by the first Person, by such Person with one or more of its Subsidiaries or by one or more of such Person’s other Subsidiaries or (3) in which the first Person has the contractual or other power to designate a majority of the board of directors or other governing body.

“**Surviving Corporation**” has the meaning set forth in Section 1.1.

“**Systems**” has the meaning set forth in Section 2.21(a).

“**Tax**” has the meaning set forth in Section 2.9(a).

“**Tax Authority**” has the meaning set forth in Section 2.9(a).

“**Tax Returns**” has the meaning set forth in Section 2.9(a).

“**Termination Date**” has the meaning set forth in Section 6.1(b).

“**Third Party Consents**” means the consents set forth on Schedule 5.3(h).

“**Third Party Expenses**” has the meaning set forth in Section 4.11(a)(viii).

“**Third Party Expense Release**” has the meaning set forth in Section 4.11(b).

“**Third Party Expenses Report**” has the meaning set forth in Section 4.11(b).

“**Transactions**” means the Merger and the other transactions contemplated by this Agreement and the Related Agreements.

“**Uncapped Company Representations**” has the meaning set forth in Section 7.3(a).

“**Uncapped Liabilities**” has the meaning set forth in Section 7.3(b).

“**Unpaid Company Indebtedness**” has the meaning set forth in Section 7.2(a)(vi).

“**Unpaid Third Party Expenses**” has the meaning set forth in Section 1.4(c)(vi)(D).

“**Warrant**” has the meaning set forth in Section 1.7(a).

“**WARN Act**” has the meaning set forth in Section 2.11(k).

“**Worker**” has the meaning set forth in Section 2.11(d).

Section 8.2 Terms Generally; Interpretation.

Except to the extent that the context otherwise requires:

- (a) when a reference is made in this Agreement to an Article, Section, Subsection, Exhibit, Schedule or Recitals, such reference is to an Article, Section or Subsection of, an Exhibit or Schedule or the Recitals to, this Agreement unless otherwise indicated;
- (b) the table of contents and headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement;
- (c) the words “include,” “includes” or “including” (or similar terms) are deemed to be followed by the words “without limitation”;
- (d) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (e) any gender-specific reference in this Agreement include all genders;
- (f) the definitions contained in this Agreement are applicable to the other grammatical forms of such terms;
- (g) a reference to any legislation or to any provision of any legislation will include any modification, amendment or re-enactment thereof, any legislative provision substituted therefore and all rules, regulations and statutory instruments issued or related to such legislation.
- (h) if any action is to be taken by any party hereto pursuant to this Agreement on a day that is not a Business Day, such action will be taken on the next Business Day following such day;
- (i) references to a Person are also to its permitted successors and assigns;
- (j) unless indicated otherwise, mathematical calculations contemplated hereby will be made to the fifth decimal place, but payments will be rounded to the nearest whole cent, after aggregating all payments to such party;
- (k) “ordinary course of business” (or similar terms) will be deemed followed by “consistent with past practice”;
- (l) the parties have participated jointly in the negotiation and drafting hereof; if any ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision hereof; no prior draft of this Agreement nor any course of performance or course of dealing will be used in the interpretation or construction hereof;

(m) the contents of the Disclosure Schedule and the other Schedules form an integral part of this Agreement and any reference to “this Agreement” shall be deemed to include the Schedules;

(n) although the same or similar subject matters may be addressed in different provisions of this Agreement, the parties intend that, except as reasonably apparent on the face of the Agreement or as expressly provided in this Agreement, each such provision will be read separately, be given independent significance and not be construed as limiting any other provision of this Agreement (whether or not more general or more specific in scope, substance or content); and

(o) the doctrine of election of remedies will not apply in constructing or interpreting the remedies provisions of this Agreement or the equitable power of a court considering this Agreement or the Transactions.

Section 8.3 Survival.

The representations and warranties of the Company contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this agreement will survive in full force and effect until the date that is eighteen (18) months after the Closing Date; *provided, however*, that the Uncapped Company Representations will survive in perpetuity (subject to the applicable statute of limitations). The representations and warranties of Parent and Merger Sub contained in or made pursuant to this Agreement or in any certificate delivered pursuant to this Agreement will survive in full force until the Effective Time. Except as otherwise expressly provided in this Agreement, each covenant hereunder will survive the Effective Time in accordance with its terms. For the removal of doubt, the Indemnifying Securityholders’ liability in connection with any claim under Uncapped Liabilities shall survive in perpetuity (subject to the applicable statute of limitations). Without limiting any other provisions contained in this Agreement, the Indemnifying Securityholders shall not be liable for any claim for indemnification pursuant to Article 7 unless a Claims Notice pursuant to Section 7.5 is delivered to the Representative prior to the applicable termination date of the survival period as set forth in this Section 8.3. It is the express intent of the parties that, if an applicable survival period as contemplated by this Section 8.3 is shorter than the statute of limitations that would otherwise apply, then, by contract, the applicable statute of limitations shall be reduced to the survival period contemplated hereby. The parties further acknowledge that the time periods set forth in this Section 8.3 for the assertion of claims under this Agreement are the result of arms’-length negotiation among the parties and that they intend for the time periods to be enforced as agreed by the parties.

Section 8.4 Notices.

All notices, deliveries and other communications pursuant to this Agreement will be in writing and will be deemed given if delivered personally, telecopied or delivered by globally recognized express delivery service to the parties at the addresses or facsimile numbers set forth below or to such other address or facsimile number as the party to whom notice is to be given may have furnished to the other parties hereto in writing in accordance herewith. Any such notice, delivery or communication will be deemed to have been delivered and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of telecopy, on the Business Day after the day that the party giving notice receives electronic confirmation of sending from the sending telecopy machine, and (c) in the case of a globally recognized express delivery service, on the Business Day that receipt by the addressee is confirmed pursuant to the service’s systems.

(a) if to Parent or Merger Sub:

Nova Measuring Instruments Ltd.
Weizmann Science Park, Einstein St.
Building 22, 2nd Floor
Ness-Ziona, Israel
Attention: Dror David
Facsimile: +972-8-9407776
Email: Dror-D@novameasuring.com

with a copy (which will not constitute notice) to:

Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co. Law Offices
One Azrieli Center, Tel Aviv 67021, Israel
Attention: Dr. Shachar Hadar, Adv; and Ran Madjar, Adv
Facsimile: +972-3-6074566
Email: shacharh@gkh-law.com; ranm@gkh-law.com

(b) if to the Company before the Effective Time to:

ReVera Incorporated
3090 Oakmead Village Dr.
Santa Clara, CA 95051
Attention: Glyn Davies
Facsimile: 1-408-510-7457
Email: gdavies@revera.com

with a copy (which will not constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
1200 Seaport Boulevard
Redwood City, California 94063, USA
Attention: Marcia A. Hatch, Esq.
Facsimile: 1-650-321-2800
Email: mhatch@gunder.com

(c) if to the Representative:

Shareholder Representative Services LLC
1614 15th Street, Suite 200
Denver, CO 80202
Attention: Managing Director
Facsimile: 1-303-623-0294
Email: deals@srsacuio.com

with a copy (which will not constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
1200 Seaport Boulevard
Redwood City, California 94063, USA
Attention: Marcia A. Hatch, Esq.
Facsimile: 1-650-321-2800
Email: mhatch@gunder.com

Section 8.5 Severability.

If any term or provision of this Agreement or the application of any such term or provision to any Person or circumstance is held by final judgment of a court of competent jurisdiction or arbiter to be invalid, illegal or unenforceable in any situation in any jurisdiction, all other conditions and provisions of this Agreement will nevertheless remain in full force and effect. If the final judgment of such court or arbitrator declares that any term or provision hereof is invalid, void or unenforceable, the parties agree to, as applicable, (a) reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or (b) replace any invalid, illegal or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the original intention of the invalid, illegal or unenforceable term or provision.

Section 8.6 Entire Agreement.

This Agreement, the Confidentiality Agreement, the Related Agreements and the documents, instruments and other agreements specifically referred to herein or therein or delivered pursuant hereto or thereto, including all exhibits and schedules hereto and thereto, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements, term sheets, letters of interest, correspondence (including e-mail) and undertakings, both written and oral, between the Company, on the one hand, and Parent, on the other hand, with respect to the subject matter hereof, except for the Confidentiality Agreement, which will continue in full force and effect, and will survive any termination of this Agreement, in accordance with its terms.

Section 8.7 Assignment.

Neither this Agreement nor any right, interest or obligation under this Agreement may be assigned or delegated by any party to this Agreement by operation of Law or otherwise without the prior written consent of the other parties to this Agreement and any attempt to do so will be void, except that (a) Parent may assign and delegate any or all of its rights, interests and obligations under this Agreement (1) before or after the Closing, to any of its Affiliates and (2) after the Closing, to any Person, as long as any such Affiliate or Person agrees in writing to be bound by all of the terms, conditions and provisions contained in this Agreement, but no such assignment or delegation will relieve Parent of its obligations under this Agreement if such assignee does not perform such obligations and (b) the obligations of the Representative may be delegated pursuant to Section 7.9(a).

Section 8.8 No Third-Party Beneficiaries.

Except as provided in Section 4.18 (with respect to Company Indemnified Parties) and Article 7 or unless otherwise expressly provided herein, this Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.9 Dispute Resolution, Venue, and Governing Law.

Except to the extent a provision of Article 1 of this Agreement is required by Law to be governed by Delaware Law, this Agreement shall be governed by and construed in accordance with the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of law. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of the United States District Court for the Southern District of New York sitting in New York County, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of California for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process. Except as may be required under Delaware Law with respect to those provisions of Article 1 that are required to be governed by Delaware Law, each party agrees not to commence any legal proceedings related hereto except in such courts.

Section 8.10 Counterparts.

This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed will be deemed to be an original but all of which taken together will constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or by electronic delivery in Adobe Portable Document Format or other electronic format based on common standards will be effective as delivery of a manually executed counterpart of this Agreement.

Section 8.11 Privileged Communications; Conflicts. Communications between the Company and Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP (“**Gunderson**”) or Hogan Lovells US LLP (“**Hogan**”), in its capacity as special counsel in connection with foreign investment in the United States and export control matters, as applicable, with respect to this Agreement or the transactions contemplated hereby will become the property of the Representative and the securityholders of the Company following the Closing and will not be disclosed by Gunderson or Hogan, as applicable, to Parent or the Company (following the Closing) in any Action relating to a claim between Parent or the Company (following the Closing), on one hand, and the Representative and the securityholders of the Company, on the other hand, without the consent of the Representative; *provided* that, in the event of any dispute between Parent, the Company (following the Closing) or any of their respective Subsidiaries, on the one hand, and a third party (other than a party to this Agreement), on the other hand, after the Closing, the Company and its Affiliates may assert the attorney-client privilege to prevent disclosure of confidential communications by Gunderson, Hogan, the Representative or any securityholder of the Company to such third party.

Section 8.12 Conflict Waiver. Notwithstanding that the Company has been represented by Gunderson and Hogan in the preparation, negotiation and execution of this Agreement and the transactions contemplated hereby, the Company agrees that after the Closing Gunderson and Hogan may represent the Representative, the Indemnifying Securityholders and/or their affiliates in matters related to this Agreement and the transactions contemplated hereby, including in respect of any indemnification claims pursuant to this Agreement and the transactions contemplated hereby. The Company hereby acknowledges, on behalf of itself and its Affiliates, that it has had an opportunity to ask for and has obtained information relevant to such representation, including disclosure of the reasonably foreseeable adverse consequences of such representation, and it hereby waives any conflict arising out of such future representation.

[Signature page follows]

IN WITNESS WHEREOF, Parent, Merger Sub and the Company have caused this Agreement to be executed by their respective officers thereunto duly authorized, and Representative has executed this Agreement, in each case as of the date first written above.

NOVA MEASURING INSTRUMENTS LTD.

By: /s/ Eitan Oppenheim
Name: Eitan Oppenheim
Title: Chief Executive Officer

By: /s/ Dror David
Name: David Dror
Title: Chief Financial Officer

NEPTUNE ACQUISITION INC.

By: /s/ Eitan Oppenheim
Name: Eitan Oppenheim
Title: Director

By: /s/ Dror David
Name: David Dror
Title: Director

REVERA INCORPORATED

By: /s/ Glyn Davies
Name: Glyn Davies
Title: Chief Executive Officer

SHAREHOLDER REPRESENTATIVE SERVICES LLC,
solely in its capacity as the Representative

By: /s/ W. Paul Koenig
Name: W. Paul Koenig
Title: Managing Director

[Signature page to Agreement and Plan of Merger]

LIST OF SUBSIDIARIES

Name of Subsidiary	Country of Incorporation
Nova Measuring Instruments Inc.	Delaware, U.S.
Nova Measuring Instruments K.K.	Japan
Nova Measuring Instruments Taiwan Ltd.	Taiwan
Nova Measuring Instruments Netherlands B.V.*	Netherlands
Nova Measuring Instruments Korea Ltd.	Korea
Nova Measuring Instruments GmbH	Germany
ReVera Incorporated**	Delaware, U.S.

* In a process of liquidation.

** A wholly-owned subsidiary of Nova Measuring Instruments Inc.

CERTIFICATION

I, Eitan Oppenheim, certify that:

1. I have reviewed this annual report on Form 20-F of Nova Measuring Instruments Ltd.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company'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 company 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 company, 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 company'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 company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of company's board of directors (or persons performing the equivalent function):
 - (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 company'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 company's internal control over financial reporting.

Date: February 29, 2016

/s/ Eitan Oppenheim
Eitan Oppenheim
President and Chief Executive Officer

CERTIFICATION

I, Dror David, certify that:

1. I have reviewed this annual report on Form 20-F of Nova Measuring Instruments Ltd.
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the company as of, and for, the periods presented in this report;
4. The company'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 company 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 company, 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 company'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 company's internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the company's internal control over financial reporting; and
5. The company's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the company's auditors and the audit committee of company's board of directors (or persons performing the equivalent function):
 - (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 company'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 company's internal control over financial reporting.

Date: February 29, 2016

/s/ Dror David

Dror David

Chief Financial Officer

CERTIFICATION PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

I, Eitan Oppenheim, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

1. This Annual Report on Form 20-F of Nova Measuring Instruments Ltd. (the "Company") for the period ended December 31, 2015 (the "Report") fully complies with the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 29, 2016

/s/ Eitan Oppenheim
Eitan Oppenheim
President and Chief Executive Officer

CERTIFICATION PURSUANT TO SECTION 906
OF THE SARBANES-OXLEY ACT OF 2002

I, Dror David, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge, that:

1. This Annual Report on Form 20-F of Nova Measuring Instruments Ltd. (the "Company") for the period ended December 31, 2015 (the "Report") fully complies with the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 29, 2016

/s/ Dror David
Dror David
Chief Financial Officer

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-147140, 333-184585 and 333-202550 on Form S-8 of our reports dated February 29, 2016, relating to the financial statements of Nova Measuring Instruments Ltd. (the "Company"), and the effectiveness of Company's internal control over financial reporting, appearing in this Annual Report on Form 20-F of the Company for the year ended December 31, 2015.

/s/ Kost Forer Gabbay & Kasierer
Kost Forer Gabbay & Kasierer
Certified Public Accountants
A member of Ernst & Young

Tel Aviv, Israel
February 29, 2016

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-147140, 333-184585 and 333-202550 on Form S-8 of our report dated February 25, 2015 relating to the financial statements of Nova Measuring Instruments Ltd. (the "Company") for the two years ended December 31, 2014, appearing in this Annual Report on Form 20-F of the Company for the year ended December 31, 2015.

/s/ Brightman Almagor Zohar & Co.
Brightman Almagor Zohar & Co.
Certified Public Accountants
A member of Deloitte Touche Tohmatsu

Tel Aviv, Israel
February 29, 2016

Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Dear Sir or Madam:

Our firm was engaged as principal accountants to audit the consolidated financial statements of Nova Measuring Instruments Ltd. (the "Registrant") until the fiscal year ended December 31, 2014. We have read the statements set forth in Item 16F of the annual report on Form 20-F of the Registrant for the year ended December 31, 2015, and are in agreement with the statements made by the Registrant contained therein as it pertains to our firm.

We have no basis to agree or disagree with any other statements of the Registrant contained in Item 16F.

Very truly yours,

s/Brigman Almagor Zohar & Co.
Brightman Almagor Zohar & Co.
A Member of Deloitte Touche Tohmatsu

Tel Aviv, Israel
February 29, 2016
