OVERLAND STORAGE INC (OVRL)

10-K

Annual report pursuant to section 13 and 15(d) Filed on 09/14/2011 Filed Period 07/03/2011



UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, DC 20549

FORM 10-K

(Mark One)									
☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHAN	GE ACT OF 1934								
For the fiscal year ended: JULY 3, 2011									
OR									
$\hfill\Box$ TRANSITION REPORT PURSUANT TO SECTION 13 or 15(d) OF THE SECURITIES EXCH	ANGE ACT OF 1934								
For the transition period from to									
Commission File Number: 000-22071									
OVERLAND STORAGE, INC	•								
(Exact name of registrant as specified in its charter)									
California	95-3535285								
(State or other jurisdiction of	(IRS Employer								
incorporation or organization) 9112 Spectrum Center Boulevard,	Identification No.)								
San Diego, California	92123								
(Address of principal executive offices)	(Zip Code)								
(858) 571-5555									
(Registrant's telephone number, including area code)									
Securities registered pursuant to Section 12(b) of the Act	:								
	each exchange on which registered								
· •	ASDAQ Stock Market LLC								
Securities registered pursuant to Section 12(g) of the Act: N	one								
Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the	Securities Act. Yes □ No ⊠								
Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section	15(d) of the Act. Yes □ No ⊠								
Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports requirements for the past 90 days. Yes \square No \square									
Indicate by check mark whether the registrant has submitted electronically and posted on its corporate required to be submitted and posted pursuant to Rule 405 of Regulation S-T (Section 232.405 of this chapter) shorter period that the registrant was required to submit and post such files). Yes \Box No \Box									
Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (\S 229 will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements inco K or any amendment to this Form 10-K. \square									
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-acc See definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2									
Large accelerated filer □	Accelerated filer								
Non-accelerated filer	Smaller reporting company								
Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Act)	. Yes □ No ⊠								
The aggregate market value of the voting stock held by non-affiliates of the registrant as of December 3 second fiscal quarter, was approximately \$9,887,665 (based on the closing price reported on such date by the Common Stock). Shares of Common Stock held by officers and directors and holders of 10% or more of the from the calculation of this amount because such persons may be deemed to be affiliates. This determination determination for other purposes.	NASDAQ Global Market of the registrant's outstanding Common Stock have been excluded								
As of September 7, 2011, the number of outstanding shares of the registrant's Common Stock was 23,0	68,649.								

PART I

Item 1. Business.

This report contains certain forward-looking statements that involve risks, uncertainties and assumptions that are difficult to predict. Words and expressions reflecting optimism, satisfaction or disappointment with current prospects, as well as words such as "believes," "hopes," "intends," "estimates," "expects," "projects," "plans," "anticipates" and variations thereof, or the use of future tense, identify forward-looking statements, but their absence does not mean that a statement is not forward-looking. Such forward-looking statements are not guarantees of performance and our actual results could differ materially from those contained in such statements. In evaluating such statements we urge you to specifically consider various factors identified in this report, including the matters set forth under the heading "Risk Factors" in Part I, Item 1A of this report, any of which could cause actual results to differ materially from those indicated by such forward-looking statements. Forward-looking statements speak only as of the date of this report and we undertake no obligation to publicly update any forward-looking statements to reflect new information, events or circumstances after the date of this report.

Overview

We are a trusted global provider of unified data management and data protection solutions designed to enable small and medium enterprises ("SMEs"), corporate departments, and small and medium businesses ("SMBs") to anticipate and respond to change. Whether an organization's data is distributed around the corner or across continents, our solutions consolidate and categorize data for easy and cost-effective management of different tiers of information over time. We enable companies to expend fewer resources on information technology ("IT") allowing them to focus on being more responsive to the needs of their customers.

We develop and deliver a comprehensive solution set of award-winning products and services for moving and storing data throughout the organization and during the entire data lifecycle. Our Snap Server® product is a complete line of network attached storage ("NAS") and storage area network ("SAN") solutions designed to ensure primary and secondary data is accessible and protected regardless of its location. Our Snap Server® solutions are available with backup, replication and mirroring software in fixed capacity or highly scalable configurations. These solutions provide simplified disk-based data protection and maximum flexibility to protect mission critical data for both continuous local backup and remote disaster recovery. Our NEO SERIES® and REO SERIES® of virtual tape libraries, tape backup and archive systems are designed to meet the need for cost-effective, reliable data storage for long-term archiving and compliance requirements.

Our approach emphasizes long term investment protection for our customers and reduces the complexities and ongoing costs associated with storage management. Moreover, most of our products are designed with a scalable architecture which enables companies to purchase additional storage as needed, on a just-in-time basis, and make it available instantly without downtime.

End users of our products include SMEs, SMBs, distributed enterprise companies such as divisions and operating units of large multi-national corporations, governmental organizations, and educational institutions. Our products are used in a broad range of industries including financial services, video surveillance, healthcare, retail, manufacturing, telecommunications, broadcasting, research and development and many others.

We sell our solutions worldwide in the Americas, Europe, the Middle East and Africa ("EMEA") and the Asia Pacific ("APAC") region. We generate sales through:

- · our branded channel, which consists of commercial distributors direct market resellers and value-added resellers ("VARs"); and
- private label arrangements with an original equipment manufacturer ("OEM"), Hewlett-Packard Company ("HP"), which in the fourth quarter of
 fiscal 2011, we fulfilled all our obligations under the agreement for supply of tape libraries; however, we will continue to provide spares and
 services under the agreement.

We were incorporated in California in 1980 as Overland Data, Inc., and changed our name to Overland Storage, Inc. in 2002. Our headquarters is located at 9112 Spectrum Center Boulevard, San Diego, California 92123, and our telephone number is (858) 571-5555.

Our Direction and Strategy

In today's business environment, we believe that improving productivity and effectively managing your digital assets while controlling operating expenses has become one of the top priority for organizations worldwide. At the same time, we believe that the cost and complexity of managing vital information has risen exponentially. As a result of these opposing forces, we believe that many companies find themselves lacking the essential resources and expertise required to adequately manage information across their businesses and they continue to spend a significant portion of their time and money tying isolated islands of data together. Without an effective alternative to mitigate the cost and complexity of traditional approaches, their data simply cannot be effectively shared and sufficiently protected. We provide solutions designed to deliver enterprise features with the simplicity that allows organizations to reduce the cost of managing and protecting their information.

Our comprehensive data storage and protection solutions enable IT managers to easily and cost effectively share and preserve data across their organization and provide continuous access, automated data movement between multiple locations and reduced backup windows for improved business continuity.

We estimate that the cost of managing digital assets is four times the cost of acquiring storage devices. Furthermore, many SMEs and SMBs are seeking to implement tiered storage for primary and secondary data utilizing a combination of low cost Serial Advanced Technology Attachment ("SATA") drives and high performance Serial Attached SCSI ("SAS") drives. The International Data Corporation ("IDC") estimates that the total NAS market will grow at approximately 12.6% through 2014, and the growth rate for NAS storage systems in price bands up to \$15,000, where most of our Snap Server® solutions lie, is estimated to be 17.4%. According to IDC, tape storage still constitutes approximately 7.3% of the total storage revenue in the global storage market. Sales of tape automation appliances represented 37.7% and 46.6% of our revenue during fiscal 2011 and 2010, respectively.

Our Products and Services

Our data management and data protection solutions provide SMEs, SMBs, enterprise departments and branch offices with disk-based systems for primary or nearline storage, disk backup and recovery, and software for data management and protection. For long-term storage requirements, we offer automated tape solutions for tape backup and archive.

Data Management Software

Our GuardianOS storage-optimized platform OS is designed for Snap Server® NAS devices to deliver simplified data management and consolidation throughout distributed IT environments. Combining cross-platform file sharing with block-level data access on a single device, the GuardianOS platform provides a flexible solution for storage infrastructures. In addition to a unified storage architecture, the GuardianOS platform offers scalability through features such as Instant Capacity Expansion ("I.C.E."), centralized storage management and a comprehensive suite of data protection tools. The flexibility and scalability of GuardianOS reduces the total cost of ownership of storage infrastructures.

Our Snap Enterprise Data Replicator® ("Snap EDR") provides multi-directional, WAN-optimized replication for Snap Server® systems. With Snap EDR, administrators can automatically replicate data between multiple Snap Servers for data distribution, data consolidation, or data protection.

Our Protection OS^{\otimes} software provides virtualization, data protection, data management and connectivity features for REO^{\otimes} virtual tape library ("VTL") systems. With our Protection OS^{\otimes} software, administrators can

implement REO[®] appliances in a wide variety of storage and backup environments. The Protection OS[®] software is compatible with all major operating systems, popular backup software solutions and iSCSI networks and Fibre Channel networks.

SnapSAN Storage Area Network Solutions

Our SnapSAN products provide block-based primary storage for virtual server environments and low latency applications. Systems can be managed through intuitive management interfaces that employ guided wizards to facilitate easy installation and administration. Our SnapSAN products also offer a powerful set of features including auto provisioning, mirroring for high availability, replication and snapshots for data protection.

- The SnapSAN S1000 is a 2U with iSCSI, Fibre Channel, or SAS host connections, designed for providing non-stop services to the most demanding applications. The SnapSAN S1000 can be configured to utilize high capacity SATA II drives for up to 24 terabytes, or high performance SAS drives for up to 7.2 terabytes, with maximum scalability using Snap Server 1000 enclosures up to 120 terabytes.
- The SnapSAN S2000 is a 2U iSCSI SAN appliance designed for high performance and simple, straight-forward administration. The SnapSAN S2000 can be configured with up to 12 SATA II drives for 12 terabytes or 24 terabytes of storage capacity; or 12 high performance SAS drives for 3.6 terabytes or 7.2 terabytes of storage capacity. SATA and SAS drives can also be intermixed in the S2000 for increased flexibility. The SnapSAN S2000 can be scaled to 192 terabytes by adding up to seven Snap Server E2000 Expansion enclosures

Snap Server® Network-Attached Storage Solutions

Our Snap Server family is an ideal platform for primary or nearline storage. With a full range of appliances, from compact, portable desktop systems to highly scalable rackmount systems, the Snap Server line delivers proven stability and best-in-class integration with Windows, UNIX/Linux, and Macintosh environments. For virtual servers and database applications, the Snap Server family supports iSCSI block-level access with Microsoft VSS and VDS integration to simplify Windows management. For data protection, the Snap Server family offers replication, snapshots for point-in-time recovery and the ability to back up to disk, VTL, or tape.

Rackmount Systems

- The Snap Server[®] 410 and N2000 are rack-mountable systems intended for the server room or data center. The rackmount systems provide higher performance and capacity than desktop systems and are designed for data consolidation. The Snap Server[®] 410 is a 1U server configured with four SATA II drives for 4 terabytes or 8 terabytes of storage capacity and supports RAID levels 0, 1, 5, 6, and 10.
- The Snap Server® N2000 is a 2U server that can be configured with up to 12 SATAII drives for up to 24 terabytes of storage capacity or 12 high performance SAS drives for up to 7.2 terabytes of storage capacity. SATA and SAS drives can also be intermixed in the Snap Server® N2000 for increased flexibility. The Snap Server® N2000 can be scaled to 144 terabytes by adding up to five Snap Server® E2000 Expansion enclosures and supports RAID levels 0, 1, 5, 6, and 10.

Desktop System

The Snap Server[®] 210 is designed for easy set up and maintenance and is an ideal solution for branch and remote offices or departments that do not have dedicated IT personnel. These systems provide network accessible storage and cost effective data protection in a compact, portable, desktop storage unit. The Snap Server[®] 210 is configured with two SATA II drives for a total of 2 terabytes or 4 terabytes of storage capacity and supports RAID levels 0 and 1.

REO[®] Virtual Tape Library Solutions

Our REO SERIES® VTL solutions provide best-in-class disk-based backup and recovery. Systems can be configured as virtual tape libraries, standalone virtual tape drives, and/or disk volumes, or LUNs. Powered by our REO Protection OS® software, our REO® system includes a unique feature known as dynamic virtual tape which provides more efficient and cost-effective disk storage than other competitive products on the market. REO® solutions are compatible with all popular open systems or Windows-based backup software, physical tape drives or tape libraries and connect easily to iSCSI Ethernet networks for seamless integration into existing backup environments.

The REO[®] 4600 is a 2U rackmount VTL designed for high performance, scalable backup and recovery. The REO[®] 4600 can be configured with 12 SATA II drives for 12 terabytes or 24 terabytes of storage capacity. The REO[®] 4600 can be scaled to 120 terabytes by adding up to four Snap Server[®] E2000 Expansion enclosures and supports RAID levels 5 and 6.

Tape Based Backup and Long Term Archive Solutions

Our NEO[®] Series Tape Libraries and Autoloaders are designed for small and medium businesses looking for simple, cost-effective data protection or a complex enterprise environment with stringent performance and data availability requirements. We provide a complete range of high capacity, high performance, flexible tape-based solutions for data backup, recovery and archive. When combined with our Snap Server[®] systems, our NEO SERIES[®] products create a complete disk-to-disk-to-tape solution with a variety of storage capacity options. The NEO[®] tape solutions can accommodate up to 24 tape drives and 1,000 cartridges for maximum efficiency and data protection.

- The NEO® S Series provides affordable, expandable tape backup for small and medium-sized businesses. The NEO® S libraries incorporate the latest linear tape-open ("LTO") technologies, as well as SCSI, SAS and FC connectivity. The NEO® 200s is a 2U tape library that supports up to 24 cartridge slots and 2 tape drives. The NEO® 400s is a 4U tape library that supports up to 48 cartridge slots and 4 tape drives, with the option to expand to a total of 96 cartridges and 6 tape drives.
- The NEO® E Series provides scalable, high capacity, data-center class tape automation that is ideal for large businesses. The NEO® E systems incorporate the latest LTO technologies as well as redundant robotics, partitioning capability, mail slot access and SCSI, SAS and FC connectivity. The NEO® 2000e is a 5U tape library that supports up to 30 cartridge slots and 2 tape drives. The NEO® 4000e is a 10U tape library that supports up to 60 cartridge slots and 4 tape drives. The NEO® 2000e and NEO® 4000e modules can be combined to provide a maximum capacity of up to 240 cartridge slots and 16 tape drives. The NEO® 8000e is a 43U tape library that supports up to 500 cartridge slots and 12 tape drives in a single module, scalable to 1,000 cartridge slots and 24 tape drives.

Customers

Our solution-focused product offerings are designed specifically for SMEs, corporate departments, and SMBs. We sell all of our products through our worldwide distributor and reseller network.

All of our products and services are designed and manufactured to address enterprise customer requirements and reliability standards. The following provides additional detail on our channels:

• Distribution channel—Our primary distribution partners in North America include Synnex Corporation, Ingram Micro Inc. and Promark Technology. We have approximately 20 distribution partners throughout Europe and Asia. Typically, distributors sell our products to system integrators, VARs and direct marketing resellers ("DMRs"), who in turn sell to end users. We support these distributors through our dedicated field sales force and field engineers. No distributor accounted for more than 10% of net revenue for fiscal 2011 and 2010.

- Reseller channel—Our reseller channel includes systems integrators, VARs and DMRs. Our resellers frequently package our products as part of
 a complete data processing system or with other storage devices to deliver a complete storage subsystem. Our resellers sometimes recommend
 our products as replacement solutions when backup systems are upgraded or bundle our products with storage management software specific to
 the end user's system. We support the reseller channel through our dedicated field sales representatives, field engineers and technical support
 organizations.
- *OEM channel*—Our OEM channel was based upon our supply agreement with HP, which incorporated our NEO products into its tape backup offerings. During the fourth quarter of fiscal 2011, we fulfilled all our obligations under the agreement for supply of tape libraries; however, we will continue to provide spares and services under the agreement. HP product revenue, including spares, accounted for 10.3% and 18.3% of sales in fiscal 2011 and 2010, respectively. HP total revenue accounted for 18.8% and 22.5% of net revenues in fiscal 2011 and 2010, respectively.

We divide our worldwide sales into three geographical regions:

- the Americas, consisting of North America and South America;
- EMEA, consisting of Europe, the Middle East and Africa; and
- APAC, consisting of Asia Pacific countries.

We support our customers in the Americas primarily from our San Diego, California and San Jose, California locations. We support our EMEA customers through our wholly-owned subsidiaries located in Wokingham, England; Paris, France; and Munich, Germany. Each of these subsidiaries provides sales and technical support. Our subsidiary in England also provides repair services. We support our APAC customers from Singapore and South Korea. We grant our distributors the nonexclusive right to sell our products in a country or group of countries.

Sales to customers outside of the United States represent a significant portion of our sales and international sales are subject to various risks and uncertainties. See "Our international operations are important to our business and involve unique risks" under the heading "Risk Factors" in Part I, Item 1A of this report. Sales generated by our European channel generally show seasonal slowing during our first fiscal quarter (July through September), reflecting the summer holiday period in Europe.

The following table sets forth foreign revenue by geographic area (in thousands):

	 2011		2010
Foreign revenue:			
France	\$ 6,971	\$	7,484
Europe (other than United Kingdom, France, Germany and Netherlands)	6,009		4,906
United Kingdom	4,991		10,174
Germany	4,599		3,817
Netherlands	3,918		3,224
Singapore	2,924		4,110
Other foreign revenue	6,184		6,760
	\$ 35,596	\$	40,475
Foreign revenue as a percentage of net revenue	 50.7%		52.1%

We provide a full range of marketing materials for branded products, including product specification literature and application notes. We also offer lead generation opportunities and market development funds to key channel partners. Our sales management and engineering personnel provide support to the channel partners and visit potential customer sites to demonstrate the technical advantages of its products. We maintain press relations in the United States and Europe, and we participate in national and regional trade shows worldwide.

Customer Service and Support

Customer service and support are key elements of our strategy and critical components of our commitment to making enterprise-class support and services available to companies of all sizes. Our technical support staff is trained to assist our customers with deployment and compatibility for any combination of hardware platforms, operating systems and backup, data interchange and storage management software. Our application engineers assist with more complex customer issues. We maintain global toll-free service and support phone lines and we also provide self-service and support through our website support portal and email.

In November 2009, we introduced the OverlandCare program for select products, providing next business day advance delivery of customer replaceable parts and next business day onsite installation of non-customer replaceable parts. In July 2011, we introduced the enhanced OverlandCare service offering for our entire line of SnapServer® NAS, SnapSAN, NEO Series® tape products and REO Series® VTL solutions. OverlandCare offers new onsite service and installation options, round-the-clock phone access to solution experts, as well as proof of concept and architectural design offerings. The expanded OverlandCare program strengthens our ability to provide comprehensive technical assistance on a global scale.

The following details the warranties we currently offer on our major products:

- three-year advance replacement OverlandCare Level 1 limited warranty on our REO SERIES[®] and SnapSAN products;
- three-year return-to-factory limited warranty on our Snap Server[®] NAS products;
- one-year advance replacement OverlandCare Level 1 limited warranty on our NEO[®] 200s, NEO[®] 400s and NEO[®] 2000e products; and
- one-year on-site by next business day service OverlandCare Level 2 limited warranty on our NEO[®] 4000e and NEO[®] 8000e products.

Research and Development

We incurred company-sponsored research and development costs of \$7.7 million and \$5.8 million in fiscal 2011 and 2010, representing 10.9% and 7.5% of net revenue, respectively. In fiscal 2011, we continued to augment our product lines by expanding our hardware platforms and feature enhancements to our software. Noteworthy product releases for fiscal 2011 included the SnapSAN S1000, a 2U 12-bay iSCSI SAN appliance; and GOS 6.5, an important revision to our Snap Server operating system. Our plans for fiscal 2012 include a number of hardware and software enhancements across all of our products. Particular areas of focus are the introduction of the next generation enterprise storage software, performance, ease of use, and deeper integration between our product lines.

Manufacturing and Suppliers

We perform product assembly, integration and testing at our integrated factory in San Diego, California. We purchase servers, tape drives, chassis, printed circuit boards, integrated circuits, and all other major components from outside suppliers. We carefully select suppliers based on their ability to provide quality parts and components which meet technical specifications and volume requirements. We actively monitor these suppliers but we are subject to substantial risks associated with the performance of our suppliers. For certain components, we qualify only a single source, which magnifies the risk of shortages and decreases our ability to negotiate with that supplier. See "If our suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and negatively affect our operations" under the heading "Risk Factors" in Part I, Section 1A of this report. We had \$0.1 million and \$0.4 million of firm backlog orders at June 30, 2011 and 2010, respectively.

We occupied our current headquarters and manufacturing buildings in March 2002. On July 1, 2010, we modified our San Diego headquarters lease and reduced our facility by one building, or 67,285 square feet, which proportionally reduced our monthly base rent and share of facility expenses. The building is subject to a 12-year

lease with one five-year extension option. Currently we have the capacity to support unit production levels several times greater than the current rate of production. In order to accommodate normal business fluctuations and control staffing levels carefully to meet customer requirements at any time, we augment our direct labor force by employing temporary staff from time to time.

Competition

The worldwide storage market is highly competitive. Competitors vary in size from small start-ups to large multi-national corporations which may have substantially greater financial, research and development and marketing resources. In the tape automation market, we believe our primary competitors are International Business Machines Corporation ("IBM"), Dell Inc. and Quantum Corporation. Key competitive factors include product features, reliability, durability, scalability and price. Barriers to entry in tape automation are relatively high.

Our primary disk-based platform competitors are EMC Corporation (both branded EMC and Iomega division), NetGear, Inc., NetApp, Inc., HP, IBM, and Dell Inc. Key competitive factors in these markets include performance, functionality, scalability, availability, interoperability, connectivity, time to market enhancements and total value of ownership. Barriers to entry for disk-based backup products are low.

The markets for all of our products are characterized by significant price competition and we anticipate that our products will continue to face price pressure.

Proprietary Rights

General—We presently hold 30 United States patents and we have 10 United States patents pending. In general, these patents have a 20-year term from the first effective filing date for each patent. The patents that are material to our business will begin to expire in November 2015. We also hold a number of foreign patents and patent applications for certain of our products and technologies. These rights, however, may not prevent competitors from developing products substantially equivalent or superior to our products. In addition, our present and future patents may be challenged, invalidated or circumvented, reducing or eliminating our proprietary protection. We continue to be diligent about maintaining our patent portfolio and monitoring potential infringement of our patents.

 $VR^{2@}$ **Technology**—We have entered into various intellectual property licensing agreements relating to our $VR^{2@}$ technology. These agreements require the payment of royalty fees based on sales by licensees of products containing our $VR^{2@}$ technology.

Employees

As of June 30, 2011, we had 195 full-time employees and 2 part-time employees, including 78 in sales and marketing, 41 in research and development, 49 in manufacturing and operations and 29 in finance, information systems, human resources and other management. There are no collective bargaining contracts covering any of the employees and we believe that our relationship with our employees is good.

Financial Information about Segments and Geographic Areas

We operate our business in one reportable segment. For information about our revenues from external customers, measures of profits, losses and total assets, and our revenues from external customers and long-lived assets broken down by geographic area, see Note 1 (Operations and Summary of Significant Accounting Policies—"Segment Data" and "Information about Geographic Areas") to our consolidated financial statements.

Recent Developments

• In July 2011, we launched our OverlandCare service offerings for our line of Snap Server[®] NAS, SnapSAN, NEO Series[®] tape products and REO Series[®] VTL solutions.

- In August 2011, we terminated our Financing Agreement with Marquette Commercial Finance ("MCF") pursuant to its terms.
- In August 2011, we entered into a Loan and Security Agreement ("Credit Facility") that provides for an \$8.0 million secured revolving loan. The proceeds of the Credit Facility may be used to fund our working capital and to fund our general business requirements. The Credit Facility is scheduled to mature August 8, 2013.

Additional Information

Our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and amendments to reports filed or furnished pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), are available on our website at http://www.overlandstorage.com, free of charge, as soon as reasonably practicable after we electronically file such reports with, or furnish those reports to, the Securities and Exchange Commission. The contents of our website are not a part of this report.

Item 1A. Risk Factors.

An investment in our company involves a high degree of risk. In addition to the other information included or incorporated by reference in this report, you should carefully consider each of the following risk factors in evaluating our business and prospects as well as an investment in our company. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently consider immaterial may also impair our business operations. If any of the following risks actually occur, our business and financial results could be harmed. In that case the trading price of our common stock could decline.

Our cash and other sources of liquidity may not be adequate to fund our operations for the next 12 months. If we raise additional funding through sales of equity or equity-based securities, your shares will be diluted. If we need additional funding for operations and we are unable to raise it, we may be forced to liquidate assets and/or curtail or cease operations.

We have projected that cash on hand, combined with available borrowings under our Credit Facility, will be sufficient to allow us to continue operations for the next 12 months. Significant changes from our current forecast, including, but not limited to: (i) shortfalls from projected sales levels, (ii) unexpected increases in product costs, (iii) increases in operating costs and/or (iv) changes to the historical timing of collecting accounts receivable could have a material adverse impact on our ability to access the level of funding necessary to continue our operations at current levels. If any of these events occur or if we are not able to secure additional funding, we may be forced to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or suspend or curtail planned programs. Any of these actions could materially harm our business, results of operations and future prospects.

As a result of our recurring losses from operations and negative cash flows, the report from our independent registered public accounting firm regarding our consolidated financial statements for the fiscal year ended June 30, 2011 includes an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern.

We may seek debt, equity or equity-based financing (such as convertible debt) when market conditions permit. Such financing may not be available on favorable terms, or at all. If we need additional funding for operations and are unable to raise it through debt or equity financings, we may be forced to liquidate assets and/or curtail or cease operations. In addition, such financing may not be available on favorable terms, or at all. If we raise additional funds by selling additional shares of our capital stock, or securities convertible into shares of our capital stock, the ownership interest of our existing shareholders will be diluted. The amount of dilution could be increased by the issuance of warrants or securities with other dilutive characteristics, such as anti-dilution clauses or price resets.

We urge you to review the additional information about our liquidity and capital resources in the "Management's Discussion and Analysis of Financial Condition and Results of Operations" section of this report. If we cease to continue as a going concern due to lack of available capital or otherwise, you may lose your entire investment in our company.

We have a history of net losses. We expect to continue to incur net losses for some time and we may not achieve or maintain profitability.

We have incurred significant operating losses in our last six fiscal years and we anticipate continued losses during fiscal 2012. As of June 30, 2011, we had an accumulated deficit of \$96.6 million. To return to profitability we will need to maintain or increase revenue, increase gross profit margins and improve our operating model. We may also need to implement additional cost reduction efforts across our operations as discussed below.

Our financial condition and the "going concern" opinion from our independent registered public accounting firm may negatively impact our business.

As a result of our recurring losses from operations and negative cash flows, the report from our independent registered public accounting firm regarding our consolidated financial statements for the year ended June 30, 2011 includes an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern. Such report, and our financial condition and history of net losses, could cause current or potential customers to defer new orders with us or to select other suppliers, and may cause suppliers to require terms that are unfavorable to us.

We may need to implement additional cost reduction efforts across our operations.

During the second quarter of fiscal 2010, we reduced our worldwide workforce by 6.4%, or 15 employees, in connection with our realignment around core initiatives. During the fourth quarter of fiscal 2010, we further reduced our worldwide workforce by an additional 18.8%, or 42 employees, in connection with changes in our business model and a restructuring of our workforce. There can be no assurance that our cost reduction efforts will be successful and we may need to implement additional cost reduction initiatives, such as further reductions in the cost of our workforce and/or suspending or curtailing planned programs, either of which could materially harm our business, results of operations and future prospects.

We rely on indirect sales channels to market and sell our branded products. Therefore, the loss of, or deterioration in, our relationship with one or more of our distributors or resellers could negatively affect our operating results.

We sell all of our branded products through our network of distributors, VARs and DMRs, who in turn sell our products to end users. In fiscal 2011 and 2010, we had no distributors that accounted for more than 10% of our sales. The long-term success of any of our distributors or resellers is difficult to predict, and we have no purchase commitments or long-term orders from any of them to assure us of any baseline sales through these channels. Most of our distributors and resellers also carry competing product lines that they may promote over our products. A distributor or reseller might not continue to purchase our products or market them effectively, and each determines the type and amount of our products that it will purchase from us and the pricing of the products that it sells to end user customers. Our operating results could be adversely affected by a number of factors, including, but not limited to:

- · a change in competitive strategy that adversely affects a distributor's or reseller's willingness or ability to stock and distribute our products;
- the reduction, delay or cancellation of orders or the return of a significant amount of our products;
- · the loss of one or more of our distributors or resellers; and
- any financial difficulties of our distributors or resellers that result in their inability to pay amounts owed to us.

If our suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and negatively affect our operations.

Our products have a large number of components and subassemblies produced by outside suppliers. We depend greatly on these suppliers for items that are essential to the manufacture of our products, including tape drives, printed circuit boards and integrated circuits. We work closely with our regional, national and international suppliers, which are carefully selected based on their ability to provide quality parts and components that meet both our technical specifications and volume requirements. For certain items, we qualify only a single source, which magnifies the risk of shortages and decreases our ability to negotiate with that supplier on the basis of price. From time to time, we have been unable to obtain as many drives as we have needed due to drive shortages or quality issues from certain of our suppliers. If our suppliers fail to meet our manufacturing needs, it would delay our production and our product shipments to customers and negatively affect our operations.

We have granted security interests over certain of our assets in connection with various debt arrangements.

We have granted security interests over certain of our assets in connection with our Credit Facility and we may grant additional security interests to secure future borrowings. If we are unable to satisfy our obligations under these arrangements, we could be forced to sell certain assets that secure these loans, which could have a material adverse effect on our ability to operate our business. In the event we are unable to maintain compliance with covenants set forth in these arrangements or if these arrangements are otherwise terminated for any reason, it could have a material adverse affect on our ability to access the level of funding necessary to continue operations at current levels. If any of these events occur, management may be forced to make further reductions in spending, further extend payment terms with suppliers, liquidate assets where possible, and/or suspend or curtail planned programs. Any of these actions could materially harm our business, results of operations and future prospects.

Our success depends on our ability to anticipate rapid technological changes and develop new and enhanced products.

As an advanced technology company, we are subject to numerous risks and uncertainties characterized by rapid technological change and intense competition. Our future success will depend on our ability to anticipate changes in technology, and to develop, introduce, manufacture and achieve market acceptance of new and enhanced products on a timely and cost-effective basis.

Development schedules for technology products are inherently uncertain. We may not meet our product development schedules, and development costs could exceed budgeted amounts. Our business, results of operations, financial position and liquidity may be materially and adversely affected if the products or product enhancements that we develop are delayed or not delivered due to developmental problems, quality issues or component shortage problems, or if our products or product enhancements do not achieve market acceptance or are unreliable. We or our competitors will continue to introduce products embodying new technologies, such as new sequential or random access mass storage devices. In addition, new industry standards may emerge. Such events could render our existing products obsolete or not marketable, which would have a material adverse effect on our business, results of operations, financial position and liquidity.

Our disk-based products involve many significant risks and may fail to achieve or maintain market acceptance.

The success of our Snap Server[®] family of disk-based products is uncertain and subject to significant risks that could have a material adverse effect on our business, results of operations, financial position and liquidity. We must commit significant resources to sustain these products and will continuously need to update and upgrade them to stay competitive. Any delay in the commercial release of new or enhanced disk-based products could result in a significant loss of potential revenue and may adversely impact the market price of our common stock. Furthermore, if our disk-based products do not achieve market acceptance or success, then the association of our brand name with these products may adversely affect our reputation and sales of other products, diluting the value of our brand name.

Our business has been highly dependent on sales to our one OEM customer, and we are currently in a transition with our OEM customer.

HP has historically been our largest customer, accounting for 18.8% and 22.5% of sales in fiscal 2011 and 2010, respectively. No other customer accounted for more than 10% of sales in any year during the two-year period ended June 30, 2011. During the fourth quarter of fiscal 2011, we fulfilled all our obligations under the agreement for supply of tape libraries; however, we will continue to provide spares and services under the agreement.

We face intense competition and price pressure, and many of our competitors have substantially greater resources than we do.

The worldwide storage market is intensely competitive. A number of manufacturers of tape and disk-based storage solutions compete for a limited number of customers. In addition, barriers to entry are relatively low in these markets. Some of our competitors have substantially greater financial and other resources, larger research and development staffs, and more experience and capabilities in manufacturing, marketing and distributing products. Ongoing pricing pressure could result in significant price erosion, reduced profit margins and loss of market share, any of which could have a material adverse effect on our business, results of operations, financial position and liquidity.

Our business is highly dependent on the continued market acceptance and usage of tape-based systems for data backup and recovery.

We have historically derived a majority of our revenue from products that use magnetic tape drives for backup and recovery of digital data. Our tape-based storage solutions now compete directly with other storage technologies, such as hard disk drives, and may face competition in the future from other emerging technologies. The prices of hard disk drives continue to decrease as their capacity and performance increase. We expect our tape-based products to face increased competition from these alternative technologies and come under increasing pricing pressure. If our strategy to compete in disk-based markets does not succeed, it could have a material adverse effect on our business, results of operations, financial position and liquidity.

If our revenue base continues to decline, we may choose to discontinue or exit some or a substantial portion of our current operations.

Our management team continually reviews and evaluates our product portfolio, operating structure and markets to assess the future viability of our existing products and market positions. We may determine that the infrastructure and expenses necessary to sustain an existing product offering are greater than the potential contribution margin that we would realize. As a result, we may determine that it is in our interest to exit or divest one or more existing product offerings, which could result in costs incurred for exit or disposal activities and/or impairments of long-lived assets. Moreover, if we do not identify other opportunities to replace discontinued products or operations, our revenues would decline, which could lead to further net losses and adversely impact the market price of our common stock.

Our ability to compete depends in part on our ability to protect our intellectual property rights.

We rely on a combination of patent, copyright, trademark, trade secret and other intellectual property laws to protect our intellectual property rights. However, these rights may not prevent competitors from developing products that are substantially equivalent or superior to our products. To the extent that we have or obtain patents, such patents may not afford meaningful protection for our technology and products. Others may challenge our patents and, as a result, our patents could be narrowed, invalidated or declared unenforceable. The patents that are material to our business will begin to expire in November 2015. In addition, our current or future patent applications may not result in the issuance of patents in the United States or foreign countries. The laws of certain foreign countries may not protect our intellectual property to the same extent as U.S. laws. Furthermore, competitors may independently develop similar products, duplicate our products or, if patents are issued to us, design around these patents.

In order to protect or enforce our patent rights, we may initiate interference proceedings, oppositions, or patent litigation against third parties, such as infringement suits. Such enforcement efforts could be expensive and divert management's time and attention from other business concerns. The patent position of information technology firms in particular is highly uncertain, involves complex legal and factual questions, and continues to be the subject of much litigation. No consistent policy has emerged from the U.S. Patent and Trademark Office or the courts regarding the breadth of claims allowed or the degree of protection afforded under information technology patents.

In August 2010, we filed a patent infringement lawsuit in the United States District Court for the Southern District of California against BDT AG, BDT Products, Inc. and BDT-Solutions GmbH. In October 2010, we filed an amended complaint for patent infringement in that court naming the following defendants: BDT AG; BDT Products, Inc.; BDT-Solutions GmbH & Co. KG; BDT Automation Technology (Zhuhai FTZ) Co., Ltd.; BDT de México, S. de R.L. de C.V.; Dell; and IBM. Also in October 2010, we filed a complaint for patent infringement with the United States International Trade Commission against the same defendants. Both lawsuits claim infringement of two of our United States patents, Nos. 6,328,766 and 6,353,581. The complaints broadly claim infringement by BDT's products, and they specifically identify BDT's FlexStor® II product line as infringing our patents. The complaints also claim infringement by Dell and IBM products that are manufactured by BDT based on the FlexStor® II. The Southern District of California case has been stayed to allow the International Trade Commission case to move forward first. The International Trade Commission instituted the case on November 18, 2010 (Investigation No. 337-TA-746). The trial for such case began on August 29, 2011 and ended on September 7, 2011. The Initial Determination from the Administrative Law Judge is due on November 23, 2011.

We could incur charges for excess and obsolete inventory.

The value of our inventory may be adversely affected by factors that affect our ability to sell the products in our inventory. Such factors include changes in technology, introductions of new products by us or our competitors, the current or future economic downturns, or other actions by our competitors. If we do not effectively forecast and manage our inventory, we may need to write off inventory as excess or obsolete, which adversely affects cost of sales and gross profit. We have previously experienced, and may in the future experience, reductions in sales of older generation products as customers delay or defer purchases in anticipation of new products that we or our competitors may introduce. We have established reserves for slow moving or obsolete inventory. These reserves, however, may prove to be inadequate, which would result in additional charges for excess or obsolete inventory.

Our warranty reserves may not adequately cover our warranty obligations.

We have established reserves for the estimated liability associated with our product warranties. However, we could experience unforeseen circumstances where these or future reserves may not adequately cover our warranty obligations. For example, the failure or inadequate performance of product components that we purchase could increase our warranty obligations beyond these reserves.

The failure to attract, retain and motivate key personnel could have a significant adverse impact on our operations.

We have experienced significant changes in our senior management. In January 2010, our Board of Directors appointed Eric L. Kelly, who has served as our Chief Executive Officer since January 2009 and on our Board of Directors since November 13, 2007, as our President. In February 2010, we terminated the employment of Ravi Pendekanti, our former Vice President of Business Development and Solutions. In September 2009, Christopher Gopal joined us as our Vice President of Worldwide Operations; and in February 2010, Geoff Barrall joined us as our Chief Technology Officer and Vice President of Engineering. Mr. Gopal's employment with us ended in January 2011. These changes may be a distraction to other senior management, business operations, commercial partners and customers. Additionally, we have experienced a prolonged period of operating losses and declines in our stock price and cash position, which have affected and may continue to affect employee morale and retention. We reduced our workforce by 6.4% in October 2009 and by 18.8% in April 2010. Additional turnover, particularly among senior management, may also create distractions as we search for replacement personnel, which could result in significant recruiting, relocation, training and other costs, and can cause operational inefficiencies as replacement personnel become familiar with our business and operations. In addition, manpower in certain areas may be constrained, which could lead to disruptions over time. We cannot guarantee that we will successfully attract or retain the management we need, or be able to maintain an optimal

workforce size. Any inability to attract, retain or motivate such personnel or to address manpower constraints could materially adversely affect our results of operations, financial position or cash flows. We do not currently maintain any key-man insurance for any of our employees.

We face risks related to the continuing economic downturn.

The continuing economic downturn in the U.S. and global financial markets, and in the U.S. and global economies, has had, and may continue to have, a material and adverse impact on our business and our financial condition. Businesses may further reduce or postpone spending on IT infrastructure in response to tighter credit, negative financial news and declines in income or asset values. We believe that such reduction in, or postponement of, spending has had and may continue to have a material adverse effect on the demand for our products. We cannot predict the length or severity of the current economic downturn, or the timing or severity of future economic or industry downturns. The continuing uncertainty in the capital markets may also severely restrict our ability to access the capital markets, which would limit our ability to react to changing economic and business conditions. A prolonged recession or continued or further decline in the global economy would materially adversely affect our results of operations, financial position or cash flows.

Our financial results may fluctuate substantially for many reasons, and past results should not be relied on as indications of future performance.

The markets that we serve are volatile and subject to market shifts that we may be unable to anticipate. A slowdown in the demand for workstations, mid-range computer systems, networks and servers could have a significant adverse effect on the demand for our products in any given period. In the past, we have experienced delays in the receipt of purchase orders and, on occasion, anticipated purchase orders have been rescheduled or have not materialized due to changes in customer requirements. Our customers may cancel or delay purchase orders for a variety of reasons, including, but not limited to, the rescheduling of new product introductions, changes in our customers' inventory practices or forecasted demand, general economic conditions affecting our customers' markets, changes in our pricing or the pricing of our competitors, new product announcements by us or others, quality or reliability problems related to our products, or selection of competitive products as alternate sources of supply. In particular, our ability to forecast sales to distributors, VARs and DMRs is especially limited because these customers typically provide us with relatively short order lead times or are permitted to change orders on short notice.

Because a large portion of our sales is generated by our European channel, our first fiscal quarter (July through September) results of operations are often impacted by seasonally slow European orders, reflecting the summer holiday period in Europe. None of our customers is obligated to purchase a specific amount of our products.

Our financial results have fluctuated and will continue to fluctuate quarterly and annually based on, among others, the following factors:

- changes in customer mix (e.g., OEM vs. branded);
- changes in product mix;
- fluctuations in average selling prices;
- currency exchange fluctuations;
- increases in costs and expenses associated with the introduction of new products; and
- increases in the cost of or limitations on the availability of materials.

We therefore believe that our revenue and operating results will continue to fluctuate, and that period-to-period comparisons are not necessarily meaningful and should not be relied on as indications of future performance. Our revenue and operating results may fail to meet the expectations of public market analysts or investors, which could have a material adverse effect on the price of our common stock. In addition, portions of our expenses are fixed and difficult to reduce if our revenues do not meet our expectations. These fixed expenses magnify the adverse effect of any revenue shortfall.

We plan to replace our Enterprise Resource Planning ("ERP") System within the next several years. This will be expensive and may be disruptive to our business.

Our ERP system is 14 years old, and we plan to replace it within the next several years. Transitioning to a new ERP system will be expensive and time consuming, and our business and results of operations may be materially and adversely affected if problems occur during the transition. In addition, we have modified our current ERP system significantly during its term of use and it is possible that we will experience a significant system failure before we replace it. Any such failure may materially and adversely affect our business, liquidity, results of operations and financial position.

Our international operations are important to our business and involve unique risks.

Sales to customers outside of the United States represent a significant portion of our total sales and we expect them to continue to do so. Sales to customers outside the United States are subject to various risks, including, but not limited to:

- the imposition of governmental controls mandating compliance with various foreign and U.S. export laws;
- · currency exchange fluctuations;
- · weak economic conditions in foreign markets;
- political and economic instability;
- trade restrictions, tariffs and taxes;
- · longer payment cycles typically associated with international sales; and
- difficulties in staffing and managing international operations.

Furthermore, we may be unable to comply with changes in foreign laws, rules and regulations applicable to us in the future, which could have a material adverse effect on our business, results of operations, financial position and liquidity.

We are subject to exchange rate risk in connection with our international operations.

We do not currently engage in foreign currency hedging activities and, therefore, we are exposed to some level of currency risk. While essentially all of our sales in international markets are denominated in U.S. dollars, our wholly-owned subsidiaries in the United Kingdom, France and Germany incur costs that are denominated in local currencies. As exchange rates vary, these results when translated into U.S. dollars may vary from expectations and adversely impact overall expected results. A weaker U.S. dollar would result in an increase to revenue and expenses upon consolidation, and a stronger U.S. dollar would result in a decrease to revenue and expenses upon consolidation. Exchange rate transactions resulted in a net loss of \$0.5 million during fiscal 2011.

We have made a number of acquisitions in the past and we may make acquisitions in the future. The failure to successfully integrate acquisitions and successfully complete product development and launch of the related products could harm our business, financial condition and operating results.

We have in the past and may in the future make acquisitions of complementary businesses, products or technologies as we implement our business strategy. Mergers and acquisitions involve numerous risks, including liabilities that we may assume from the acquired company, difficulties in completion of in-process product development and assimilation of the operations and personnel of the acquired business, the diversion of management's attention from other business concerns, risks of entering markets in which we have no direct prior experience, and the potential loss of key employees of the acquired business.

Future mergers and acquisitions by us also may result in dilutive issuances of our equity securities and the incurrence of debt, amortization expense and potential impairment charges related to intangible assets. Any of these factors could adversely affect our business, liquidity, results of operations and financial position.

The market price of our common stock is volatile.

The market price of our common stock has experienced significant fluctuations since it commenced trading in February 1997, and may continue to fluctuate significantly in the future. Many factors could cause the market price of our common stock to fluctuate, including, but not limited to:

- our ability to meet our working capital needs;
- announcements concerning us, our competitors, our customers or our industry;
- · changes in earnings estimates by analysts;
- · purchasing decisions of HP and other significant customers;
- quarterly variations in operating results;
- the introduction of new technologies or products by us or our competitors;
- changes in product pricing policies by us or our competitors;
- the terms of any financing arrangements we enter into; and
- · changes in general economic conditions.

In addition, stock markets generally have experienced extreme price and volume volatility in recent years. This volatility has had a substantial effect on the market prices of securities of many smaller public companies for reasons frequently unrelated or disproportionate to the operating performance of the specific companies. These broad market fluctuations may adversely affect the market price of our common stock.

We may not be able to continue to meet the continued listing requirements for the NASDAQ Capital Market. If our common stock is delisted from the NASDAQ Capital Market, our business, financial condition, results of operations and stock price could be adversely affected, and the liquidity of our stock and our ability to obtain financing could be impaired.

On December 15, 2009, we received written notification from the NASDAQ Stock Market, LLC ("NASDAQ") that because we had not regained compliance with the minimum market value of publicly held shares of \$15 million requirement set forth in NASDAQ Listing Rule 5450(b)(1)(C) by the December 14, 2009 expiration of the 90-day compliance period for this requirement, our common stock would be delisted from the NASDAQ Global Market unless we requested an appeal of this determination to a NASDAQ Hearings Panel ("Panel"). We requested an appeal of the determination and met with the Panel on January 20, 2010. On March 3, 2010, we received written notification from the Panel that it would continue the listing of our common stock on the NASDAQ Global Market subject to our demonstrating compliance with all continued listing standards of the NASDAQ Global Market on or before June 14, 2010. Prior to June 14, 2010, our management determined to apply to NASDAQ to transfer the listing of our common stock from the NASDAQ Global Market to the NASDAQ Capital Market. On June 14, 2010, we were notified that NASDAQ approved our application to transfer the listing of our common stock to the NASDAQ Capital Market, effective at the opening of trading on June 16, 2010. We are currently in compliance with all of the listing standards for listing on the NASDAQ Capital Market, but we cannot provide any assurance that we will continue to be in compliance in the future.

In addition, on December 8, 2009, we effected a one-for-three reverse stock split of our common stock to regain compliance with the minimum bid price of \$1.00 per share requirement set forth in NASDAQ Listing Rule 5450(a)(1). Though the bid price of our common stock has remained above \$1.00 per share since the reverse split, we cannot guarantee that it will remain at or above \$1.00 per share. If the bid price drops below \$1.00 per share, our common stock could become subject to delisting again and we may seek shareholder

approval for an additional reverse split. A second reverse split could produce negative effects and we cannot provide any assurance that it would result in a long-term or permanent increase in the bid price of our common stock. For example, a second reverse split could make it more difficult for us to comply with other listing standards of NASDAQ, including requirements related to the minimum number of shares that must be in the public float, the minimum market value of publicly held shares and the minimum number of round lot holders. In addition, investors might consider the increased proportion of unissued authorized shares of common stock to issued shares of common stock to have an anti-takeover effect under certain circumstances by allowing for dilutive issuances which could prevent certain shareholders from changing the composition of our Board of Directors.

Although we are currently in compliance with the standards for listing on the NASDAQ Capital Market, we were not in compliance with all of such listing standards during portions of 2009 and 2010, and we may not be able to continue to meet the continued listing requirements for the NASDAQ Capital Market. Any delisting of our common stock from the NASDAQ Capital Market could adversely affect our ability to attract new investors, decrease the liquidity of our outstanding shares of common stock, reduce our flexibility to raise additional capital, reduce the price at which our common stock trades and increase the transaction costs inherent in trading such shares with overall negative effects for our shareholders. In addition, delisting of our common stock could deter broker-dealers from making a market in or otherwise seeking or generating interest in our common stock, and might deter certain institutions and persons from investing in our securities at all. For these reasons and others, delisting could adversely affect our business, financial condition and results of operations.

Item 1B. Unresolved Staff Comments.

We have no unresolved comments from the SEC.

Item 2. Properties.

We own no real property and we currently lease all facilities used in our business. Our headquarters is located in San Diego, California, where we leased a 158,585 square foot facility in a light industrial complex as of June 30, 2010. On July 1, 2010, we modified our San Diego headquarters lease and reduced our facility by one building, or 67,285 square feet, which proportionally reduced our monthly base rent and share of facility expenses. The lease expires in February 2014 and may be renewed for one additional five-year period. This San Diego facility houses manufacturing and administrative functions.

We lease a 20,777 square foot facility in San Jose, California. The lease expires in May 2017 and can be renewed for one additional five-year period. The San Jose facility houses research and development, sales and marketing, and administrative functions.

We lease a 17,000 square foot facility located in Wokingham, England, which houses sales, technical support and repair services, and administration functions. The lease expires in January 2018. We also maintain small sales offices located close to Paris, France; Munich, Germany; and in Singapore.

Item 3. Legal Proceedings.

We are from time to time involved in various lawsuits, legal proceedings or claims that arise in the ordinary course of business. We do not believe any such legal proceedings or claims will have, either individually or in the aggregate, a material adverse effect on our results of operations, financial position or cash flows. However, litigation is subject to inherent uncertainties, and an adverse result in these or other matters may arise from time to time that may harm our business.

In December 2009, Crossroads Systems, Incorporated ("Crossroads") filed a lawsuit against us and several other companies in the United States District Court for the Western District of Texas (the "Complaint"). The Complaint was served on us in December 2009, and alleged that our products infringe upon United States Patent

Nos. 6,425,035 and 7,051,147. The Court had scheduled a hearing on issues of claim construction for June 3, 2010. Although we were prepared to vigorously defend against Crossroads' lawsuit, in advance of the claim construction briefing, the parties reached a settlement of the lawsuit, and the Court entered an Order of Dismissal of the lawsuit on May 25, 2010.

In August 2010, we filed a patent infringement lawsuit in the United States District Court for the Southern District of California against BDT AG, BDT Products, Inc. and BDT-Solutions GmbH. In October 2010, we filed an amended complaint for patent infringement in that court naming the following defendants: BDT AG; BDT Products, Inc.; BDT-Solutions GmbH & Co. KG; BDT Automation Technology (Zhuhai FTZ) Co., Ltd.; BDT de México, S. de R.L. de C.V.; Dell; and IBM. Also in October 2010, we filed a complaint for patent infringement with the United States International Trade Commission against the same defendants. Both lawsuits claim infringement of two of our United States patents, Nos. 6,328,766 and 6,353,581. The complaints broadly claim infringement by BDT's products, and they specifically identify BDT's FlexStor® II product line as infringing our patents. The complaints also claim infringement by Dell and IBM products that are manufactured by BDT based on the FlexStor® II. The Southern District of California case has been stayed to allow the International Trade Commission case to move forward first. The International Trade Commission instituted the case on November 18, 2010 (Investigation No. 337-TA-746). The trial for such case began on August 29, 2011 and ended on September 7, 2011. The Initial Determination from the Administrative Law Judge is due on November 23, 2011.

Item 4. (Removed and Reserved).

PART II

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

Our common stock trades on the NASDAQ Capital Market under the symbol "OVRL." As of September 7, 2011, there were approximately 35 shareholders of record. On December 8, 2009, we effected a one-for-three reverse stock split of our outstanding shares of common stock. The following table sets forth the range of high and low bid prices for our common stock for the past two fiscal years as reported by NASDAQ. All amounts in the table have been adjusted to give effect to the reverse stock split.

	Sales Prices					
	H	igh		Low		
Fiscal Year 2011:						
Fourth quarter	\$	2.82	\$	1.99		
Third quarter	\$	2.50	\$	1.32		
Second quarter	\$	1.65	\$	1.13		
First quarter	\$	2.02	\$	1.37		
Fiscal Year 2010:						
Fourth quarter	\$	3.52	\$	1.79		
Third quarter	\$	2.50	\$	1.58		
Second quarter	\$	3.63	\$	1.73		
First quarter	\$	3.18	\$	1.20		

The above quotations reflect inter-dealer prices, without retail markup, markdown or commission and may not necessarily represent actual transactions. We have not paid any cash dividends on our common stock for our two most recent fiscal years and do not anticipate paying any cash dividends in the foreseeable future.

Item 6. (Removed and Reserved).

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

The following discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions that are difficult to predict. Words and expressions reflecting optimism, satisfaction or disappointment with current prospects, as well as words such as "believes," "hopes," "intends," "estimates," "expects," "projects," "plans," "anticipates" and variations thereof, or the use of future tense, identify forward-looking statements, but their absence does not mean that a statement is not forward-looking. Such forward-looking statements are not guarantees of performance and our actual results could differ materially from those contained in such statements. In evaluating such statements we urge you to specifically consider various factors identified in this report, including the matters set forth under the heading "Risk Factors" in Part I, Item IA of this report, any of which could cause actual results to differ materially from those indicated by such forward-looking statements. Forward-looking statements speak only as of the date of this report and we undertake no obligation to publicly update any forward-looking statements to reflect new information, events or circumstances after the date of this report. Per share amounts herein have been adjusted to give effect to the December 8, 2009 one-for-three reverse stock split.

We are a trusted global provider of unified data management and data protection solutions designed to enable SMEs, corporate departments and SMBs, to anticipate and respond to change. Whether an organization's data is distributed around the corner or across continents, our solutions consolidate and categorize data for easy and cost-effective management of different tiers of information over time. We enable companies to expend fewer resources on IT allowing them to focus on being more responsive to the needs of their customers.

We develop and deliver a comprehensive solution set of award-winning products and services for moving and storing data throughout the organization and during the entire data lifecycle. Our Snap Server[®] product is a complete line of network attached storage and storage area network solutions designed to ensure primary and secondary data is accessible and protected regardless of its location. Our Snap Server[®] solutions are available with backup, replication and mirroring software in fixed capacity or highly scalable configurations. These solutions provide simplified disk-based data protection and maximum flexibility to protect mission critical data for both continuous local backup and remote disaster recovery. Our NEO SERIES[®] and REO SERIES[®] of virtual tape libraries, tape backup and archive systems are designed to meet the need for cost-effective, reliable data storage for long-term archiving and compliance requirements.

Our approach emphasizes long term investment protection for our customers and reduces the complexities and ongoing costs associated with storage management. Moreover, most of our products are designed with a scalable architecture which enables companies to purchase additional storage as needed, on a just-in-time basis, and make it available instantly without downtime.

End users of our products include SMEs, SMBs, distributed enterprise companies such as divisions and operating units of large multi-national corporations, governmental organizations, and educational institutions. Our products are used in a broad range of industries including financial services, video surveillance, healthcare, retail, manufacturing, telecommunications, broadcasting, research and development and many others. See "Business" in Part I, Item 1 of this report for more information about our business, products and operations.

Overview

This overview discusses matters on which our management primarily focuses in evaluating our financial position and operating performance.

Generation of revenue. We generate the majority of our revenue from sales of our data protection products. The balance of our revenue is provided by selling maintenance contracts and rendering related services, selling spare parts, and earning royalties on our licensed technology. The majority of our sales are generated through our branded channel, which includes systems integrators and VARs, with the remainder from our private label arrangement with our OEM, HP. During fiscal 2011, we experienced decreased revenues related to our OEM channel while our branded channel remained relatively constant.

Business Transition. During the fourth quarter of fiscal 2011, we fulfilled all our obligations under the HP agreement for supply of tape libraries; however, we will continue to provide spares and services under the agreement. HP product revenue, including spares, accounted for 10.3% and 18.3% of sales in fiscal 2011 and 2010, respectively. HP total revenue accounted for 18.8% and 22.5% of net revenues in fiscal 2011 and 2010, respectively.

Due in large part to the overall decline in HP revenue, we reported net revenue of \$70.2 million for fiscal 2011, compared with \$77.7 million for fiscal 2010. The decline in net revenue resulted in a net loss of \$14.5 million, or \$0.94 per share, for fiscal 2011 compared with a net loss of \$13.0 million, or \$2.04 per share, for fiscal 2010.

Liquidity and capital resources. At June 30, 2011, we had a cash balance of \$10.2 million, compared to \$8.9 million at June 30, 2010. In fiscal 2011, we incurred a net loss of \$14.5 million. During the third quarter of fiscal 2011, we sold an aggregate of 8,653,045 shares of our common stock and warrants to purchase up to 3,807,331 shares of common stock in a private placement for a total issuance price of approximately \$15.3 million and net proceeds of approximately \$13.8 million. Cash management and preservation continue to be a top priority. We expect to incur negative operating cash flows during the remainder of calendar year 2011 as we continue to reshape our business model and further improve operational efficiencies.

Management has projected that cash on hand, combined with available borrowings under our Credit Facility, will be sufficient to allow us to continue operations for the next 12 months. Significant changes from our current forecast, including but not limited to: (i) shortfalls from projected sales levels, (ii) unexpected increases in product costs, (iii) increases in operating costs and/or (iv) changes in the historical timing of collecting accounts receivable could have a material adverse impact on our liquidity. This could force us to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or suspend or curtail planned programs. Any of these actions could materially harm our business, results of operations and future prospects.

As of June 30, 2011, we had working capital of \$8.7 million, reflecting decreases in current assets and current liabilities of \$2.4 million and \$8.7 million, respectively, during fiscal 2011. The decrease in current assets is primarily attributable to cash used in operating activities and reduced sales, resulting in lower inventory balances. The decrease in current liabilities is primarily attributable to a \$5.6 million decrease in accounts payable and accrued liabilities primarily related to operating activities, a \$4.4 million reduction in our current liabilities associated with our non-OEM accounts receivable financing arrangements and a \$0.7 million reduction in debt related to the repayment of our note payable to Anacomp Inc. ("Anacomp"). These decreases were offset by a \$2.0 million increase in accrued payroll and employee compensation related to a \$2.2 million liability recorded for an equity instrument modification in the fourth quarter of fiscal 2011 offset by a \$0.2 million decrease in accrued payroll related to timing of payment dates. See "Liquidity and Capital Resources" below for a description of these arrangements.

Industry trends. We estimate that the cost of managing digital assets is four times the cost of acquiring storage devices. Furthermore, many SMEs and SMBs are seeking to implement tiered storage for primary and secondary data utilizing a combination of low cost SATA (Serial ATA) drives and high performance SAS (Serial Attached SCSI) drives. IDC estimates that the total networked attached storage ("NAS") market will grow at approximately 12.6% through 2014, and the growth rate for NAS storage systems in price bands up to \$15,000, where most of our Snap Server® solutions lie, is estimated to be 17.4%. According to IDC, tape storage still constitutes approximately 7.3% of the total storage revenue in the global storage market. Sales of tape automation appliances represented 37.7% and 46.6% of our revenue during fiscal 2011 and 2010, respectively.

Recent Developments

• In July 2011, we launched our OverlandCare service offerings for our line of Snap Server[®] NAS, SnapSAN, NEO Series[®] tape products and REO Series[®] VTL solutions.

- In August 2011, we terminated our MCF Financing Agreement pursuant to its terms.
- In August 2011, we entered into the Credit Facility that provides for an \$8.0 million secured revolving loan. The proceeds of the Credit Facility
 may be used to fund our working capital and to fund our general business requirements. The Credit Facility is scheduled to mature August 8,
 2013

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial position 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. The preparation of consolidated financial statements requires that we make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, and related disclosure of contingent liabilities. On an on-going basis, we evaluate our estimates, including, but not limited to, those related to revenue recognition, share-based compensation, bad debts, inventories, intangible and other long-lived assets, warranty obligations and income taxes. We base our estimates on historical experience and on various assumptions that we believe to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Critical accounting policies are those policies that, in management's view, are most important in the portrayal of our financial condition and results of operations. The footnotes to our consolidated financial statements also include disclosure of significant accounting policies. The methods, estimates and judgments that we use in applying our accounting policies have a significant impact on the results that we report in our financial statements. These critical accounting policies require us to make difficult and subjective judgments, often as a result of the need to make estimates regarding matters that are inherently uncertain. Our critical accounting policies and estimates that require the most significant judgment are discussed further below.

Revenue Recognition

We recognize revenue from sales of products when persuasive evidence of an arrangement exists, the price is fixed or determinable, collectability is reasonably assured and delivery has occurred. Under this policy, revenue on direct product sales (excluding sales to distributors) is recognized upon shipment of products to our customers. These customers are not entitled to any specific right of return or price protection, except for any defective product that may be returned under our warranty policy. Generally, title and risk of loss transfer to the customer when the product leaves our dock. Product sales to distribution customers are subject to certain rights of return, stock rotation privileges and price protection. Because we are unable to estimate our exposure for returned product or price adjustments, revenue from shipments to these customers is not recognized until the related products are in turn sold to the ultimate customer by the distributor. For products in which software is more than an incidental component, we recognize revenue in accordance with current authoritative guidance for software revenue recognition.

In October 2009, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2009-13, *Multiple-Deliverable Revenue Arrangements* and ASU No. 2009-14, *Software: Certain Revenue Arrangements That Include Software Elements*. The new standards change the requirements for establishing separate units of accounting in multiple element arrangements and require the allocation of arrangement consideration to each deliverable to be based on the relative selling price. We adopted these standards effective the beginning of the first quarter of fiscal 2011. As a result of the adoption of these standards, sales of products which contain both hardware and software components, and for which we had previously concluded that the software was more than incidental are no longer within the scope of software revenue recognition guidance as the hardware and software components function together to deliver the product's essential functionality. For any multiple element agreement, we allocate the relative fair value to each component. If in an arrangement we have fair value for undelivered elements but not the delivered element in an

arrangement, we defer the fair value of the undelivered element(s) and the relative fair value is allocated to the delivered element(s). Undelivered elements typically include services. Revenue from extended warranty and product service contracts is initially deferred and recognized ratably over the contract period.

We have various royalty arrangements with independent service providers that sell our product and also sell and provide service on our product. These independent service providers pay a royalty fee for service contracts in place on our product. The royalty fee is calculated by us for the units covered in the quarter, and agreed to by the service provider, based upon the monthly fee for each unit covered by the independent service provider.

We have various licensing agreements relating to our Variable Rate Randomizer (" $VR^{2@}$ ") technology with third parties. The licensees pay us a royalty fee for sales of their products that incorporate our $VR2^{@}$ technology. The licensees provide us with periodic reports that include the quantity of units, subject to royalty, sold to their end users. We record the royalty when reported to us by the licensee, generally in the period during which the licensee ships the products containing $VR^{2@}$ technology.

Allowance for Doubtful Accounts

We estimate our allowance for doubtful accounts based on an assessment of the collectability of specific accounts and the overall condition of the accounts receivable portfolio. When evaluating the adequacy of the allowance for doubtful accounts, we analyze specific trade and other receivables, historical bad debts, customer credits, customer concentrations, customer credit-worthiness, current economic trends and changes in customers' payment terms and/or patterns. If the financial condition of our customers were to deteriorate, impairing their ability to make additional payments, then we may need to make additional allowances. Likewise, if we determine that we could realize more of our receivables in the future than previously estimated, we would adjust the allowance to increase income in the period we made the determination. We review the allowance for doubtful accounts on a quarterly basis and record adjustments as considered necessary. Generally, our allowance for doubtful accounts is based on specific identification. If we fail to identify an account as doubtful, or if we identify an account as uncollectible that is later collected, our results could vary.

Share-based Compensation

Share-based compensation expense can be significant to our results of operations, even though no cash is used for such expense. In determining period expense associated with unvested options, we estimate the fair value of each option at the date of grant. We use the Black-Scholes option pricing model to determine the fair value of the award. This model requires the input of highly subjective assumptions, including the expected volatility of our stock and the expected term the average employee will hold the option prior to the date of exercise. In addition, we estimate pre-vesting forfeitures for share-based awards that are not expected to vest. We primarily use historical data to determine the inputs and assumptions to be used in the Black-Scholes pricing model. Changes in these inputs and assumptions could occur and could materially affect the measure of estimated fair value and make it difficult to compare the results in future periods to our current results.

A 10% change in our share-based compensation for the year ended June 30, 2011 would have affected our net loss by \$0.3 million.

Inventory Valuation

We record inventories at the lower of cost or market. We assess the value of our inventories periodically based upon numerous factors including, among others, expected product or material demand, current market conditions, technological obsolescence, current cost and net realizable value. If necessary, we adjust our inventory for obsolete or unmarketable inventory by an amount equal to the difference between the cost of the inventory and the estimated market value. If actual market conditions are less favorable than we project, we may need to record additional inventory adjustments and adverse purchase commitments.

Impairment of Long-lived Assets

We test for recoverability of long-lived assets whenever events or changes in circumstances indicate the carrying value may not be recoverable. When the carrying value is not considered recoverable, an impairment loss is recognized for the amount by which the carrying value of a long-lived asset exceeds its fair value, with a corresponding reduction in the carrying value of the related assets. Such impairment charges may be material. Fair value is generally determined based on the estimated future discounted cash flows over the remaining useful life of the asset or asset group using a discount rate determined by management to be commensurate with the risk inherent in our current business model.

The assumptions supporting the cash flow analysis, including the discount rates, are determined using management's best estimates as of the date of the impairment review. If these estimates or their related assumptions change in the future, or if our future results are significantly different than forecasted, we may be required to further evaluate our long-lived assets for recoverability and record impairment charges for these assets, which could adversely affect our results of operations.

Warranty Obligations

We provide for estimated future costs of warranty obligations in accordance with current accounting rules. For return-to-factory and on-site warranties, we accrue for warranty costs at the time revenue is recognized based on contractual rights and on the historical rate of claims and costs to provide warranty services. If we experience an increase in warranty claims above historical experience or our costs to provide warranty services increase, we may be required to increase our warranty accrual. Any such unforeseen increases may have an adverse impact on our gross margins in the periods in which they occur. Similarly, if we experience a decrease in warranty claims or our costs to provide services decline, we may be required to decrease our warranty accrual, which may have a favorable impact on our gross margins in the periods in which they occur.

Results of Operations

The following table sets forth certain financial data as a percentage of net revenue:

	Fiscal Year	
	2011	2010
Net revenue	100.0%	100.0%
Cost of revenue	69.8	72.5
Gross profit	30.2	27.5
Operating expenses:		
Sales and marketing	23.4	23.2
Research and development	10.9	7.5
General and administrative	18.2	15.3
	52.5	46.0
Loss from operations	(22.3)	(18.5)
Other income (expense), net	1.9	(0.5)
Loss before income taxes	(20.4)	(19.0)
Provision for (benefit from) income taxes	0.4	(2.4)
Net loss	(20.8)%	(16.6)%

A summary of the sales mix by product follows:

	Fiscal Year	
	2011	2010
Tape-based products: NEO Series [®]		_
NEO Series®	37.6%	43.5%
ARCvault [®] family	0.1	3.1
	37.7	46.6
Disk-based products: REO Series®		
REO Series®	2.2	3.1
ULTAMUS [®]	_	0.7
Snap Server®	15.8	10.8
	18.0	14.6
Service	34.5	30.4
Spare parts and other VR ^{2®}	9.6	8.0
VR ^{2®}	0.2	0.4
	100.0%	100.0%

Fiscal 2011 Compared with Fiscal 2010

Net Revenue. Net revenue decreased to \$70.2 million during fiscal 2011 from \$77.7 million during fiscal 2010, a decrease of \$7.5 million, or 9.7%. The decline was primarily in our OEM revenue related to decreased revenue from HP, which represented approximately 18.8% of net revenue in fiscal 2011 compared with 22.5% of net revenue in fiscal 2010. In our branded channel, the decrease in net revenue was attributable to decreased volumes in our APAC and EMEA channels primarily due to the discontinuance of our ARCvault® and Ultamus® products offset by increases in units of Snap Server® products.

Product Revenue

Net product revenue decreased to \$45.7 million during fiscal 2011 from \$53.6 million during fiscal 2010, a decrease of \$7.9 million, or 14.7%.

Net product revenue from our OEM customer, HP, decreased to \$7.2 million during fiscal 2011 from \$14.2 million during fiscal 2010. The decrease of \$7.0 million, or 49.3%, was primarily associated with the fulfillment of our obligations under the product supply portion of the agreement and includes \$0.5 million of previously deferred revenue associated with obligations under the agreement. We will continue to provide spares and services under the existing agreement.

Net product revenue from Overland branded products, excluding service revenue, decreased to \$38.5 million during fiscal 2011 from \$39.4 million during fiscal 2010. The decrease of \$0.9 million, or 2.3%, was primarily associated with decreases of \$2.4 million from ARCvault products and \$0.5 million from Ultamus products due to the discontinuance of these two products, as well as a decrease of \$0.9 million from REO products. These decreases were partially offset by an increase of \$2.7 million from Snap Server products and \$0.2 million from NEO products. We began selling the NEO S product in the second quarter of fiscal 2010.

Service Revenue

Net service revenue was relatively constant at \$24.2 million during fiscal 2011 compared to \$23.6 million during fiscal 2010.

Royalty Fees

Net royalty fees decreased to \$0.3 million during fiscal 2011 from \$0.5 million during fiscal 2010. The decrease of \$0.2 million, or 40.0%, is primarily associated with lower VR^{2®} technology royalties. VR^{2®} technology royalties during fiscal 2011 totaled \$0.2 million compared with \$0.3 million during fiscal 2010

Gross Profit. Overall gross profit was relatively constant at \$21.2 million during fiscal 2011 compared to \$21.4 million during fiscal 2010. Gross margin increased to 30.2% during fiscal 2011 from 27.5% during fiscal 2010 primarily related to the increase in higher margin branded product revenue as a percentage of total revenue.

Product Revenue

Gross profit on product revenue during fiscal 2011 was \$7.5 million compared to \$8.3 million during fiscal 2010. The decrease of \$0.8 million, or 9.6%, was primarily due to the 14.7% decrease in net product revenue. Gross margin on product revenue at 16.5% for fiscal 2011 increased from 15.5% for fiscal 2010 primarily as a result of increased sales of higher margin products and an improved product mix.

Service Revenue

Gross profit on service revenue during fiscal 2011 was \$13.3 million compared to \$12.6 million during fiscal 2010. The increase of \$0.7 million, or 5.5%, was primarily due to our transition of a significant portion of service repair from a third party vendor to our own personnel, during the third quarter of fiscal 2011, which reduced our payments to third party vendors. Gross margin on service revenue at 55.0% for fiscal 2011 increased from 53.4% for fiscal 2010

Sales and Marketing Expense. Sales and marketing expense in fiscal 2011 decreased to \$16.4 million from \$18.0 million during fiscal 2010. The decrease of \$1.6 million, or 8.9%, was primarily a result of (i) a decrease of \$1.1 million in employee and related expenses, including travel costs, associated with a decrease in the average headcount by seven employees, primarily due to the streamlining of our sales force, (ii) a decrease of \$0.5 million in public relations and advertising expense, including contractor fees, due to restructuring and reductions in marketing programs and bringing previously outsourced projects in house and (iii) a decrease of \$0.3 million in severance costs associated with the fiscal 2010 restructurings. These decreases were slightly offset by a \$0.3 million increase in share-based compensation expense primarily associated with options granted to an executive officer in February 2010.

Research and Development Expense. Research and development expense in fiscal 2011 increased to \$7.7 million from \$5.8 million during fiscal 2010. The increase of \$1.9 million, or 32.8%, is primarily a result of (i) an increase of \$1.5 million in employee and related expenses, including travel costs, associated with an increase in average headcount by seven employees associated with the restructuring of our research and development department, including the addition of a chief technology officer, (ii) an increase of \$0.3 million in outside contractor fees and (iii) an increase of \$0.2 million in share-based compensation expense primarily associated with options granted to an executive officer in March 2010. These increases were offset by a \$0.1 million decrease in development expense associated with the timing of new product development.

General and Administrative Expense. General and administrative expense in fiscal 2011 increased to \$12.7 million from \$11.9 million during fiscal 2010. The increase of \$0.8 million, or 6.7%, is primarily a result of (i) an increase of \$1.1 million in share-based compensation expense primarily associated with options granted to executive officers in February 2010, (ii) an increase of \$0.7 million in executive bonuses, (iii) an increase of \$0.4 million in outside contractor expenses, principally for financial and accounting services, (iv) an increase of \$0.2 million in investor relation expenses and (v) an increase of \$0.1 million in fees associated with the termination of our Financing Agreement with Faunus Group International ("FGI"). These increases were partially offset by (i) a decrease of \$1.0 million in legal fees and (ii) a decrease of \$0.3 million in severance expense associated with a

former executive officer, (iii) a decrease of \$0.3 million in employee related expenses, including travel costs, associated with a decrease in average headcount by four employees and (iv) a decrease of \$0.1 million in audit, tax and consulting fees related to our transition to a new public accounting firm.

Interest Expense. We incurred interest expense of \$1.1 million and \$1.5 million during fiscal 2011 and 2010, respectively. In fiscal 2009, we entered into two non-OEM accounts receivable financing agreements. Under the non-OEM accounts receivable financing agreements we recorded interest expense of \$1.1 million, including \$0.1 million in amortization of debt issuance costs, compared to \$1.3 million, including \$0.1 million in amortization of debt issuance costs, in fiscal 2010. Interest expense associated with our note payable to Anacomp totaled \$3,000 during fiscal 2011 compared to interest expense associated with our notes payable to Anacomp and Adaptec, which totaled \$0.2 million during fiscal 2010. We are no longer a party to these financing agreements.

Other Income (expense), net. During fiscal 2011, we incurred other income (expense), net, of \$2.5 million of income compared with \$1.0 million of income during fiscal 2010. The increase of \$1.5 million, or 150.0%, was primarily due to the receipt of \$3.0 million from various institutional investors in consideration for a minority ownership interest in any amounts we receive from litigation awards or settlements arising from our patent infringement lawsuit against BDT, Dell and IBM and our complaint for patent infringement with the United States International Trade Commission against the same defendants. This increase was offset by (i) a decrease of approximately \$1.0 million in realized currency exchange gains due to foreign currency fluctuations and (ii) a decrease of \$0.5 million related to the prior year liquidation of our auction rate securities ("ARS").

Provision for (benefit from) Income Taxes. During fiscal 2011, we recognized income tax expense of \$0.3 million compared to a benefit from income taxes of \$1.8 million in fiscal 2010. The income tax expense in fiscal 2011 primarily related to earnings in our foreign operations. The net benefit in fiscal 2010 primarily related to our net operating loss carry back recognized pursuant to amended Internal Revenue Code Section 172(b)(1)(H).

Liquidity and Capital Resources

At June 30, 2011, we had a cash balance of \$10.2 million, compared to \$8.9 million at June 30, 2010. In fiscal 2011, we incurred a net loss of \$14.5 million. During the third quarter of fiscal 2011, we sold an aggregate of 8,653,045 shares of our common stock and warrants to purchase up to 3,807,331 shares of common stock in a private placement for a total issuance price of approximately \$15.3 million and net proceeds of approximately \$13.8 million. In August 2011, we entered into a credit facility that provides for an \$8.0 million secured revolving loan and may be used to fund our working capital and our general business requirements. Cash management and preservation continue to be a top priority. We expect to incur negative operating cash flows during the remainder of calendar 2011 as we continue to reshape our business model and further improve operational efficiencies.

As of June 30, 2011, we had working capital of \$8.7 million, reflecting decreases in current assets and current liabilities of \$2.4 million and \$8.7 million, respectively, during fiscal 2011. The decrease in current assets is primarily attributable to cash used in operating activities and reduced sales, resulting in lower inventory balances. The decrease in current liabilities is primarily attributable to a \$5.6 million decrease in accounts payable and accrued liabilities primarily related to operating activities, a \$4.4 million reduction in our current liabilities associated with our non-OEM accounts receivable financing arrangements and a \$0.7 million reduction in debt related to the repayment of our note payable to Anacomp. These decreases were offset by a \$2.0 million increase in accrued payroll and employee compensation related to a \$2.2 million liability recorded for the Stock Appreciation Rights ("SAR") awards in June 2011 offset by a \$0.2 million decrease in accrued payroll related to timing of payment dates.

Management has projected that cash on hand, combined with available borrowings under our Credit Facility, will be sufficient to allow us to continue operations for the next 12 months. Significant changes from

our current forecast, including but not limited to: (i) shortfalls from projected sales levels, (ii) unexpected increases in product costs, (iii) increases in operating costs and/or (iv) changes in the historical timing of collecting accounts receivable could have a material adverse impact on our liquidity. This could force us to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or suspend or curtail planned programs. Any of these actions could materially harm our business, results of operations and future prospects.

As a result of our recurring losses from operations and negative cash flows, the report from our independent registered public accounting firm regarding our consolidated financial statements for the year ended June 30, 2011 includes an explanatory paragraph expressing substantial doubt about our ability to continue as a going concern.

During fiscal 2011, we used cash in operating activities of \$10.9 million, compared to \$10.5 million in fiscal 2010. The use of cash during fiscal 2011 was primarily a result of our net loss of \$14.5 million offset by overall decreases in operating assets and liabilities. The decrease primarily consisted of (i) a decrease in inventory, (ii) a decrease in accounts payable and accrued liabilities, and (iii) a decrease in accounts receivable due to lower sales.

We used cash in investing activities of \$0.5 million during fiscal 2011, compared to \$1.7 million cash generated from investing activities in fiscal 2010. During fiscal 2011, we acquired intangible assets consisting of existing technology (acquired technology) for \$150,000. During fiscal 2011 and 2010, capital expenditures totaled \$0.3 million for each year. Such expenditures were associated with machinery and equipment to support new product introductions. During fiscal 2010, we liquidated our ARS for \$2.0 million.

We generated cash from our financing activities of \$12.7 million during fiscal 2011, compared to \$12.2 million during fiscal 2010. In November 2010, we sold 3,376,000 shares of our common stock to certain institutional investors at \$1.25 per share for gross proceeds of \$4.2 million and net proceeds of \$4.0 million. In March 2011, we sold an aggregate of 8,653,045 shares of our common stock and warrants to purchase up to 3,807,331 shares of common stock in a private placement for a total issuance price of approximately \$15.3 million and net proceeds of approximately \$13.8 million. During fiscal 2011, we made payments totaling \$0.7 million against the Anacomp note, and repayments of \$4.4 million for amounts funded under our non-OEM accounts receivable financing agreements. Cash generated from financing activities in fiscal 2010 primarily relates to the sale of 794,659 shares of Series A Convertible Preferred Stock and warrants for a total issuance price of \$11.9 million and net proceeds of approximately \$10.9 million, and the sale of 2,070,000 shares of our common stock through a public offering of common stock at \$2.10 per share resulting in gross proceeds of approximately \$4.3 million and net proceeds of approximately \$3.7 million, offset by payments under the notes payable to Anacomp and Adaptec, which totaled \$2.7 million during fiscal 2010. During fiscal 2010, \$0.3 million of cash generated by financing activities related to net funding activity from accounts receivable pledged to MCF and FGI.

Off-Balance Sheet Arrangements

We have no off-balance sheet arrangements or significant guarantees to third parties that are not fully recorded in our consolidated balance sheet or fully disclosed in the notes to our consolidated financial statements.

Contractual Obligations

The following schedule summarizes our contractual obligations to make future payments at June 30, 2011 (in thousands):

	Less than								1	After 5	
Contractual Obligations	Total			1 year		1-3 years		4-5 years		years	
Operating lease obligations(1)	\$	10,872	\$	2,847	\$	5,085	\$	1,842	\$	1,098	
Purchase obligations(2)		2,890		2,890							
Total contractual obligations(3)	\$	13,762	\$	5,737	\$	5,085	\$	1,842	\$	1,098	

- (1) Represents contractual lease obligations under non-cancellable operating leases on our San Diego, California; San Jose, California; Wokingham, England; and Paris, France facilities.
- (2) Represents purchase orders for inventory and non-inventory items entered into prior to June 30, 2011, with purchase dates extending beyond July 1, 2011. Some of these purchase obligations may be cancelled.
- (3) Liabilities associated with uncertain tax provisions, currently estimated at \$0.1 million (including interest) are not included in the table above as we cannot reasonably estimate when, if ever, an amount would be paid to a government agency. Ultimate settlement of these liabilities is dependent on factors outside of our control, such as examinations by each agency and expiration of statutes of limitation for assessment of additional taxes.

Inflation

Inflation has not had a significant impact on our operations during the periods presented. Historically, we have been able to pass on to our customers increases in raw material prices caused by inflation. If at any time we cannot pass on such increases, our margins could suffer.

Recently Issued Accounting Pronouncements

See Note 1 to our consolidated financial statements.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk.

Market risk represents the risk of loss that may impact our financial position, results of operations or cash flows due to adverse changes in financial and commodity market prices and rates. We are exposed to market risk from changes in foreign currency exchange rates as measured against the U.S. dollar. These exposures are directly related to our normal operating and funding activities. Historically, we have not used derivative instruments or engaged in hedging activities.

Foreign Currency Risk. We conduct business on a global basis and essentially all of our products sold in international markets are denominated in U.S. dollars. Historically, export sales have represented a significant portion of our sales and are expected to continue to represent a significant portion of sales. Our wholly-owned subsidiaries in the United Kingdom, France and Germany incur costs that are denominated in local currencies. As exchange rates vary, these results may vary from expectations when translated into U.S. dollars, which could adversely impact overall expected results. The effect of exchange rate fluctuations on our results of operations during fiscal 2011 and 2010 resulted in a loss of \$0.5 million for fiscal 2011 and a gain of \$0.5 million for fiscal 2010.

Item 8. Financial Statements and Supplementary Data.

Our consolidated financial statements and supplementary data required by this item are set forth at the pages indicated in Item 15(a)(1) and 15(a)(2), respectively.

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

Not applicable.

Item 9A. Controls and Procedures.

Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rules 13a-15(e) and 15d-15(e) under the Exchange Act. Based on this evaluation, our principal executive officer and our principal financial officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this annual report.

Internal Control Over Financial Reporting

Management's Report on Internal Control Over Financial Reporting

Management is responsible for establishing and maintaining adequate internal control over our financial reporting. In order to evaluate the effectiveness of internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act, management has conducted an assessment, including testing, using the criteria in Internal Control—Integrated Framework, issued by the Committee of Sponsoring Organizations of the Treadway Commission ("COSO"). Our system of internal control over financial reporting is 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.

Based on our evaluation under the framework in Internal Control—Integrated Framework, our Chief Executive Officer and Chief Financial Officer concluded that our internal control over financial reporting was effective as of June 30, 2011.

Because of 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 and that the degree of compliance with the policies or procedures may deteriorate.

This annual report does not include an attestation report of our independent registered public accounting firm regarding internal control over financial reporting. Management's report on internal control over financial reporting was not subject to attestation by our independent registered public accounting firm pursuant to rules of the SEC that permit us to provide only management's report in this annual report.

This report on internal control over financial reporting shall not be deemed to be filed for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities of that section, and is not incorporated by reference into any of our filings, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the fiscal year ended June 30, 2011 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Item 9B. Other Information.

Not applicable.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

The following table sets forth the name, age, and position of the directors of the Company. The table also sets forth the year in which each director was first elected to the Board. Directors are elected each year, and all directors serve one-year terms. As of September 7, 2011, directors are as follows:

Name of Director Nomine	e Age	Director Since	Position	Committee Membership
Robert A. Degan	72	2000	Independent Director	Audit (Chairman), Compensation and Nominating and
				Governance
Nora M. Denzel	49	2007	Independent Director	Audit and Compensation (Chairwoman)
Joseph A. De Perio	33	2011	Independent Director	None
Eric L. Kelly	53	2007	President and Chief	None
			Executive Officer	
Scott McClendon	72	1991	Executive Chairman of the Board (Independent	Nominating and Governance (Chairman)
			Director)	
Shmuel Shottan	59	2011	Independent Director	Audit and Nominating and Governance

Each of the above-listed committee members served for all of fiscal 2011, except Mr. Shottan and Mr. De Perio and who were appointed to the Board of Directors in February and April 2011, respectively.

During fiscal 2011, Michael Norkus served on the Audit Committee, the Compensation Committee and the Nominating and Governance Committee until his resignation from the Board of Directors and these committees in February 2011.

There are no family relationships between any of the directors or executive officers of our company, and there are no arrangements or understandings between any of the directors and any other person pursuant to which such director was or is selected as a director.

We have a standing audit committee as defined in Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended. The members of the Audit Committee are Robert A. Degan, Nora M. Denzel and Shmuel Shottan.

In addition to being independent under NASDAQ Marketplace Rule 5605(a)(2), all members of the Audit Committee must meet the additional independence standards for audit committee members set forth in Rule 10A-3(b)(1) of the Exchange Act and NASDAQ Marketplace Rule 5605(c)(2)(A). The Board of Directors has determined that each of Ms. Denzel and Mr. Degan qualifies as an audit committee financial expert as defined in Item 407(d)(5) of Regulation S-K under the Exchange Act.

Biographical Information of Directors

Robert A. Degan has been a private investor since January 2000. From November 1998 to December 1999, Mr. Degan served as General Manager of the Enhanced Services & Migration Business Unit (formerly, Summa Four, Inc.) of Cisco Systems, Inc., an Internet networking company. From July 1998 to November 1998, Mr. Degan was Chairman, President and Chief Executive Officer of Summa Four, Inc., and from January 1997 to July 1998, he served as its President and Chief Executive Officer and as a director. Mr. Degan retired from the board of directors of CaminoSoft Corp. in December 2007, FlexiInternational Software, Inc. in July 2006 and Gensym Corporation in May 2005. Mr. Degan was formerly on the research staff at Massachusetts Institute of

Technology. Mr. Degan's significant experience as a director and CEO of Summa Four, along with his experience from his career in related industries and as a board member of other public technology companies, provides the Board of Directors with financial and operational expertise and analytical skills relevant to the storage industry.

Nora M. Denzel has served as the Senior Vice President of payroll services at Intuit, Inc., a provider of business and financial management software, since February 2008. From February 2006 to January 2008, Ms. Denzel served as an independent consultant to technology companies. From August 2000 to February 2006, she held several executive level positions in technology with HP, a global manufacturer of computing, communications and measurement products and services, including: Senior Vice President/General Manager Software Global Business Unit (May 2002 to February 2006); Senior Vice President Adaptive Enterprise (June 2004 to May 2005); and Vice President Storage Organization (August 2000 to May 2002). Prior to HP, she served as Senior Vice President of Product Operations from February 1997 to August 2000 at Legato Systems, Inc. Her initial corporate experiences were at IBM, where she began her career as a software engineer and then served in several marketing, engineering, and executive level positions, including the business line manager of IBM's portfolio of storage management software products. Ms. Denzel also serves on the board and advisory boards of several privately-held organizations. Ms. Denzel's current experience at Intuit and prior experience at HP, together with her prior consulting work for technology companies, provides her with valuable knowledge of technology companies and of companies with a global presence. She is able to provide the Board of Directors with current working knowledge of business and economic trends that affect the storage industry.

Joseph A. De Perio has served as a Portfolio Manager, Activist Investments and Private Equity of Clinton Group, Inc. since October 2010. From December 2007 to September 2010, Mr. De Perio was a Vice President at Millennium Management, L.L.C. From June 2006 to December 2007, Mr. De Perio served as Vice President, Activist Investments and Long/Short Equity and Private Equity of the Clinton Group. Mr. De Perio was a Private Equity Associate at Trimaran Capital Partners from May 2004 to June 2006 and an analyst and associate in the mergers and acquisitions department at CIBC World Markets from July 2000 to May 2004. Mr. De Perio has been a board member of Viking Systems, Inc., a developer, manufacturer and marketer of visualization solutions for complex, minimally invasive surgery, since June 2011. Mr. De Perio was selected as a director of the Company pursuant to the terms of a Stock Purchase Agreement between the Company and Clinton Magnolia Master Fund, Ltd.

Eric L. Kelly has served as our Chief Executive Officer since January 2009, our President since January 2010 and a member of our Board of Directors since November 2007. From April 2007 to January 2009, Mr. Kelly served as President of Silicon Valley Management Partners Inc., a management consulting and M&A advisory firm, which he co-founded in April 2007. From July 2004 to August 2006, Mr. Kelly was Vice President and General Manager of storage systems solutions at Adaptec, Inc.. From August 2002 to July 2004, he served as President and CEO of Snap Appliance, Inc., which was acquired by Adaptec in July 2004. The Snap division of Adaptec was acquired by us in June 2008. From March 2000 to June 2002, Mr. Kelly served as President, Network Systems Division of Maxtor Corporation. Prior to Maxtor, he served as the Chief Operating Officer of Isyndicate, Inc. From July 1998 to January 2000 he was the Enterprise Vice President for Dell Computer Corporation. From 1980 to 1998 he served in executive or managerial roles with Netpower Incorporated, Diamond Multimedia Systems Incorporated, Conner Peripherals Incorporated, Marq Technologies Incorporated and IBM. Mr. Kelly's position as President and Chief Executive Officer of the Company provides the Board of Directors with unique insight and direct access to strategic and operational information about the Company. His significant experience in the storage industry, including his involvement in Snap Appliance, allows him to draw on experiences and knowledge from across the storage industry and enables him to identify best practices and strategic initiatives for the Company.

Scott McClendon has served as Executive Chairman of the Board since May 2011, and has served as Chairman of the Board since March 2001. From November 2006 to August 2007, Mr. McClendon served as our interim President and Chief Executive Officer and as our President and Chief Executive Officer from October 1991 to March 2001, when he was named our Chairman of the Board, and continued as an executive officer and employee until June 2001. Mr. McClendon has been a business consultant since June 2001. Mr. McClendon was

employed by HP for over 32 years in various positions in engineering, manufacturing, sales and marketing. He last served as the general manager of the San Diego Technical Graphics Division and site manager of HP in San Diego, California. Mr. McClendon is Chairman and a director of Procera Networks, Inc., a network equipment company. Mr. McClendon's significant experience with HP, his prior tenure as our President and Chief Executive Office and current experience as Chairman and director of Procera provide him with a unique set of managerial, operational and strategic skills, which provides the Board of Directors insights into the Company's challenges, opportunities and operations.

Shmuel Shottan has served as Chief Technology Officer of BlueArc Corporation, a supplier of enterprise NAS since September 2001 and Senior Vice President of Engineering of BlueArc from September 2001 to April 2006. Prior to BlueArc, Mr. Shottan was a General Partner of Quantum Technology Ventures, a \$100 million corporate venture fund. From 1995 to March 1999, Mr. Shottan served as Senior Vice President and Chief Technical Officer for Snap Appliance which was sold to Quantum Corporation in March 1999. From March 1999 to February 2000, Mr. Shottan served as Senior Vice President of Engineering and Chief Strategy Officer for the Snap Division of Quantum. Prior to Snap, Mr. Shottan served as Vice President of Engineering and Chief Technical Officer of Parallan Computer, Inc. from 1993 to 1995. Before joining Parallan, Mr. Shottan held engineering positions at various companies since 1980. Mr. Shottan's significant experience at BlueArc and other technology companies provides the Board of Directors with valuable insight directly related to technology developments in the storage industry. His engineering background and storage experience makes him particularly well suited to understanding our technology and allows him to provide valuable perspective to the Board of Directors on new product initiatives.

Executive Officers of the Registrant

The executive officers, their ages, positions held and biographical information as of September 7, 2011, are as follows:

Name	Age	Position Held
Eric L. Kelly	53	President and Chief Executive Officer
Geoff Barrall	43	Vice President, Engineering and Chief Technology Officer
Kurt L. Kalbfleisch	45	Vice President of Finance, Chief Financial Officer and Secretary
Jillian Mansolf	45	Vice President of Worldwide Sales and Marketing

Eric L. Kelly is our President and Chief Executive Officer and a director. See the description of his business experience above under Biographical Information of Directors.

Geoff Barrall, PhD, joined us as our Chief Technology Officer and Vice President of Engineering in February 2010. Prior to joining us, Dr. Barrall served as the Chief Executive Officer of Data Robotics, Inc. from April 2005 to December 2010, the maker of the world's first data storage robot and a company he founded in 2005. Dr. Barrall has founded five companies including BlueArc, a supplier of enterprise NAS, as well as several information technology and consulting services firms. Dr. Barrall is a current member of the board of directors of Nexsan Corporation, a provider of disk-based storage systems. In addition to his roles at Data Robotics and BlueArc, he also served on the board of directors of Tacit Networks, Inc. and was an executive consultant to the senior team at Brocade Communications Systems, Inc. His storage experience also includes sitting on the boards of advisors for Data Domain, Inc. and NeoPath Networks, Inc. As a designer, Dr. Barrall has more than a dozen data storage-related patents to his credit.

Kurt L. Kalbfleisch has served as our Chief Financial Officer since February 2008, as our Vice President of Finance since July 2007, and as our Secretary since October 2009. He served as our Interim Chief Financial Officer from August 2007 to February 2008. Mr. Kalbfleisch has been an employee of our company since December 1993 and has served in key management roles in our finance department during that time. Prior to joining our company, Mr. Kalbfleisch worked as a manufacturing budget analyst for McDonnell Douglas Corporation, a major aerospace manufacturer and defense contractor, from July 1989 to December 1993.

Jillian Mansolf has served as our Vice President of Worldwide Sales and Marketing since joining us in July 2009. From August 2007 to June 2009, Ms. Mansolf served as Senior Vice President of Worldwide Sales and Marketing for Data Robotics-The Makers of Drobo. From May 2006 to July 2007 she was Vice President of Worldwide Marketing & Product Management for Motion Computing, Inc., a creator of tablet personal computers. From November 2002 to July 2004, Ms. Mansolf was Vice President of Worldwide Sales and Channel Marketing for Snap Appliance, Inc., a designer and manufacturer of NAS and SAN software and hardware products through the acquisition by Adaptec in July 2004. She then served in such role at Adaptec until March 2005. From December 2001 to November 2002 she was Vice President of Worldwide Sales and Marketing for Maxtor Corporation, a manufacturer of hard, external and portable drives. Prior to that time, Ms. Mansolf held key positions for Dell from 1997 to 2001 serving first as a Director of Marketing for Workstation Products and Services from June 1997 to April 1998 and later as an Area Vice President for the Large Corporate Accounts Division from May 1998 to December 2001. Prior to her tenure with Dell, she held sales management positions with Netpower Incorporated and Tandon Computer Corporation.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors, executive officers and beneficial owners of more than 10% of our common stock to file reports of ownership and changes in ownership with the SEC. Based solely on copies of these reports provided to us and written representations that no other reports were required, we believe that these persons met all of the applicable Section 16(a) filing requirements during fiscal 2011, with the exception of one late Form 4 filing related to one transaction for each of Ms. Mansolf and Messrs. Kelly, Kalbfleisch and Barrall.

Code of Business Conduct and Ethics

We have adopted the Overland Storage, Inc. Code of Business Conduct and Ethics, which applies to our directors, executive officers and employees. A copy of the Code of Business Conduct and Ethics is publicly available on our website at www.overlandstorage.com. If we make any substantive amendments to the Code of Business Conduct and Ethics or grant any waiver from a provision of the code applying to our principal executive officer or our principal financial or accounting officer, we will disclose the nature of such amendment or waiver on our website or in a report on Form 8-K.

Item 11. Executive Compensation.

Summary Compensation Table for Fiscal Year 2011

The following table summarizes the total compensation paid to or earned by our principal executive officer and our two other most highly compensated executive officers (referred to as our "named executive officers") for the Company's 2011 and 2010 fiscal years.

				Stock	Option			
	Fiscal	Salary	Bonus	Awards	Awards	Incentive Plan Compensation	All Other Compensation	Total
Name and						_	_	
Principal Position	Year	(\$)	(\$)(1)	(\$)(2)	(\$)(2)	(\$)(3)	(\$)(4)	(\$)
Eric L. Kelly	2011	400,000		4,419,519		350,000	22,929	5,192,448
President and Chief Executive Officer	2010	400,000	_	_	2,293,766	_	19,430	2,713,196
Kurt L. Kalbfleisch	2011	243,500	10,000	1,767,859	_	109,875	25,096	2,156,330
Vice President of Finance, Chief Financial Officer and Secretary	2010	214,327	_	_	327,946	_	29,921	572,194
Jillian Mansolf	2011	334,095(5)	_	1,537,980	_	21,275	28,214	1,921,564
Vice President of Worldwide Sales and Marketing	2010	302,201(6)	9,000	<u> </u>	385,286	_	25,148	721,635

- (1) The amounts shown in the "Bonus" column represent discretionary bonuses awarded by the Compensation Committee for the fiscal year.
- (2) The amounts shown in these columns do not reflect compensation actually received by the named executive officer. These amounts represent the fair value on the grant date of the awards granted to these officers during fiscal 2011 and 2010. These values have been determined under the principles used to calculate the grant date fair value of equity awards for purposes of our financial statements. For a more detailed discussion on the valuation model and assumptions used to calculate the fair value of these awards in each fiscal year, see Note 8 to the consolidated financial statements included herein.
- (3) The amounts shown in the "Non-Equity Incentive Plan" column represent bonuses awarded for fiscal 2011 pursuant to the terms of the Company's Executive Bonus Plan and as established by the Compensation Committee for the fiscal year.
- (4) The amounts shown in this column for each named executive officer reflect premiums we paid on the officer's behalf for health insurance, term life insurance and certain out-of-pocket medical and wellness expenses we paid on the officer's behalf.
- (5) This amount includes sales commissions of \$94,490 earned in fiscal 2011.
- (6) This amount includes sales commissions of \$82,509 earned in fiscal 2010.

Outstanding Equity Awards at End of Fiscal Year 2011

The following table provides information about the holdings of stock and option awards by our named executive officers outstanding at the end of fiscal year 2011.

		-	Option Award	ls		Stock Av	wards
		Number of securities underlying unexercised options (#)	Number of securities underlying unexercised options (#)	Option exercise price	Option expiration	Number of units of stock that have not vested	Market value of units of stock that have not vested
Name	Grant Date(7)	exercisable	unexercisable	(\$)	date	(#)	(\$)(6)
Eric L. Kelly Kurt L. Kalbfleisch	11/13/2007 12/9/2008 1/27/2009 2/18/2010 10/8/2010 6/29/2011 8/8/2002 5/22/2006 1/27/2009	6,000 6,000 241,666 550,223(1) 833 333 33,333	58,333(2) 687,777(3)	5.31 0.75 0.78 2.49 9.16 4.09 0.78	11/13/2013 12/9/2014 1/27/2015 4/23/2016 8/8/2012 5/22/2016 1/27/2012	205,000(4) 1,573,385(5)	563,750 4,326,809
	2/18/2010 10/8/2010 6/29/2011	177,000(1)	_	2.49	4/23/2016	86,000(4) 627,160(5)	236,500 1,724,690
Jillian Mansolf	7/16/2009 2/18/2010 10/8/2010 6/29/2011	40,000 178,356(1)	_	1.65 2.49	7/16/2015 4/23/2016	86,000(4) 539,420(5)	236,500 1,483,405

- (1) This award was originally granted as a stock option and was amended and reissued on June 29, 2011 as a stock appreciation rights ("SAR") award. The purpose of the amendment and reissuance is to provide that, upon exercise, the SAR will be settled in cash or stock, at the discretion of the Company. No other terms of the award changed.
- (2) This option vests in equal monthly installments over a thirty-six month period following the grant date.

- (3) This SAR award vests in equal monthly installments over a thirty-six month period following the grant date.
- (4) This stock unit award vests in full on October 8, 2011.
- (5) This stock unit award vests in six equal installments, with the first installment vesting six months after July 15, 2011 and an additional installment vesting at the end of each six-month period thereafter.
- (6) Amounts listed represent the aggregate market value of the unvested restricted stock unit awards held by the named executive officers based on the closing price of a share of our common stock of \$2.75 on the last trading day of fiscal 2011.
- (7) Options granted before December 2009 are reported in the table above as adjusted to reflect our December 8, 2009 one-for-three reverse stock split.

Employment, Severance and Change in Control Agreements

Eric L. Kelly. We entered into an employment agreement with Mr. Kelly, our President and Chief Executive Officer, on June 24, 2009, which was amended and restated on June 29, 2011 (the "Kelly Agreement"). The Kelly Agreement provides for Mr. Kelly to earn a base salary of \$400,000, which has been his base salary since his appointment as Chief Executive Officer on January 27, 2009. Mr. Kelly is eligible to receive an annual bonus based upon the achievement of financial and management objectives reasonably established by the Board of Directors or an authorized committee of the Board of Directors. His annual bonus target is 100% of the greater of \$400,000 or his base salary as of the end of the applicable fiscal quarter or year in which the bonus is earned, and he has the opportunity to earn an annual bonus of up to 150% of the target bonus. If the Company terminates Mr. Kelly's employment without cause or he resigns for good reason, or if he dies or becomes disabled, before the end of a fiscal quarter or year, he will be eligible to receive a prorated amount of the target bonus for the fiscal quarter or year in which his employment terminates. For purposes of the Kelly Agreement, the terms "cause" and "good reason" are defined in the agreement, and a termination of employment by the Company without cause includes a termination by the Company at the end of the term then in effect. To the extent that any travel, lodging or auto expense reimbursements are taxable to Mr. Kelly, the Company will provide him with a tax restoration payment so that he will be put in the same after-tax position as if such reimbursements had not been subject to tax. The Kelly Agreement has a three-year term and automatically renews for additional one-year terms. The Company may unilaterally modify Mr. Kelly's cash compensation at any time, subject to Mr. Kelly's right to terminate his employment for good reason.

The Kelly Agreement also provides that if the Company terminates Mr. Kelly's employment without cause or if Mr. Kelly resigns from employment for good reason, then the Company will be obligated to pay him an aggregate severance payment equal to the sum of (i) 150% of the greater of his base salary then in effect or his original base salary, (ii) a portion of his target bonus prorated based on the number of days he was employed during the period on which the target bonus is based, (iii) an amount equal to the premiums he would be required to pay to continue health insurance coverage under the Company's insurance plans for himself and his eligible dependents under COBRA for 18 months following the date of his termination, and (iv) an amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 18 months following his termination (reduced by the amount of any reimbursement for COBRA premiums as described in clause (iii) above). The severance payment will be made in equal monthly installments over 18 months in accordance with the Company's regular payroll practices. In addition, Mr. Kelly will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards that would otherwise have vested during the 12-month period following his termination. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change in control. The severance benefits described above are contingent upon Mr. Kelly providing the Company with a general release of all claims.

Kurt L. Kalbfleisch. We entered into an employment and severance agreement with Mr. Kalbfleisch, our Vice President of Finance, Chief Financial Officer and Corporate Secretary on September 29, 2009, which was amended and restated on June 29, 2011 (the "Kalbfleisch Agreement"). The Kalbfleisch Agreement provides for

Mr. Kalbfleisch to earn a base salary of \$266,000 which was effective in May 2011. Prior to that time Mr. Kalbfleisch earned a base salary of \$240,000. Mr. Kalbfleisch is eligible to receive an annual bonus based upon the achievement of financial and management objectives reasonably established by the Board of Directors or an authorized committee of the Board of Directors.

If the Company terminates Mr. Kalbfleisch's employment without cause or he resigns his employment for good reason before the end of a fiscal quarter or year, he will be eligible to receive a prorated amount of the target bonus for the fiscal quarter or year in which his employment terminates. For purposes of the Kalbfleisch Agreement, the terms "cause" and "good reason" are defined in the agreement, and a termination of employment by the Company without cause includes a termination by the Company at the end of the term then in effect. The Kalbfleisch Agreement has a three-year term and automatically renews for additional one-year terms. The Company may unilaterally modify Mr. Kalbfleisch's cash compensation at any time, subject to Mr. Kalbfleisch's right to terminate his employment for good reason.

The Kalbfleisch Agreement provides that if the Company terminates Mr. Kalbfleisch's employment without cause or if Mr. Kalbfleisch resigns from employment for good reason, the Company will be obligated to pay him an aggregate severance payment equal to the sum of (i) the greater of his annual base salary then in effect or his original base salary of \$266,000, (ii) a portion of any target bonus prorated based on the number of days he was employed during the period on which the target bonus is based, (iii) an amount equal to the premiums he would be required to pay to continue health insurance coverage under the Company's insurance plans for himself and his eligible dependents under COBRA for 12 months following the date of his termination, and (iv) an amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 12 months following his termination (reduced by the amount of any reimbursement for COBRA premiums as described in clause (iii) above). The severance payment will be made in equal monthly installments over the 12 months following termination of employment. In addition, Mr. Kalbfleisch will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards that would otherwise have vested during the 12-month period following his termination. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change in control. If such a termination of employment occurs within two years following a change in control of the Company, then the severance benefits will generally be the same as described above except that the cash severance will paid in a single lump sum on the sixtieth day after termination of employment and Mr. Kalbfleisch will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards. The severance benefits described above are contingent upon Mr. Kalbfleisch providing the Company with a general release of all claims.

Jillian Mansolf. As our Vice President of Worldwide Sales and Marketing, Ms. Mansolf is an at-will employee and her employment may be terminated by us for any reason, with or without notice. Prior to May 2011, Ms. Mansolf earned an annual salary of \$238,000, was eligible for quarterly commission earnings of up to \$25,500 for a total compensation package equal up to \$340,000 annually. Ms. Mansolf currently earns an annual salary of \$250,000 and is eligible for quarterly commission earnings of \$25,500, for a total annual compensation package of up to \$352,000. Ms. Mansolf is also eligible to receive an annual bonus based upon the achievement of financial and management objectives reasonably established by the Board of Directors or an authorized committee of the Board of Directors. Ms. Mansolf's offer letter provides that if her employment is terminated by the Company without cause she is eligible to receive severance benefits consisting of six months of base salary plus earned commissions and twelve months of continued health benefits coverage.

Retention Agreements. The following describes the severance arrangements we have with our named executive officers in the case of a change of control. For these purposes, the terms "cause," "good reason" and "change in control" are defined in each executive's retention agreement.

Eric L. Kelly. On June 24, 2009, we entered into a retention agreement with Mr. Kelly, which provides that he will receive a lump sum severance payment if, within 60 days before or two years following a change of control of the Company, his employment is terminated by the Company without cause or he resigns for good reason. The severance payment will equal 150% of the sum of Mr. Kelly's base salary at the time of the consummation of the change of control or termination date or \$400,000, whichever is higher, plus any annual target bonus. The retention agreement provides that (i) if Mr. Kelly elects to continue insurance coverage as provided by COBRA, we will reimburse him for an amount equal to the premiums he would be required to pay to continue health insurance coverage under our company's insurance plans for himself and his eligible dependents under COBRA for 18 months following the date of his termination, and (ii) we will reimburse him for an amount necessary for him to continue life, accident, medical and dental insurance benefits for himself and his eligible dependents in amounts substantially similar to those which he received immediately prior to the date of his termination for a period of 18 months following his termination (reduced by the amount of any reimbursements for COBRA premiums as described in clause (i) above). We are required to reimburse Mr. Kelly for the estimated costs of these benefits in one lump sum payment on his termination date. In addition, Mr. Kelly will be entitled to accelerated vesting for any unvested portion of his then outstanding stock options and any other equity-based awards. In the case of vested stock options, he will be permitted to exercise such options in whole or in part at any time within one year of the date of his termination, subject to earlier termination upon the expiration of the maximum term of the applicable options under the applicable plan or upon a change of control. The consideration payable to Mr. Kelly under the retention agreement is contingent upon

The retention agreement provides limited protection to Mr. Kelly from the possible imposition of excise taxes under the Internal Revenue Code and any corresponding state tax provisions. If there is a change of control of our company on or before December 31, 2011, and if, as a result, Mr. Kelly becomes subject to a federal or state golden parachute excise tax, we are required to provide Mr. Kelly an excise tax restoration payment so that Mr. Kelly will be in the same after-tax position as if the excise tax was not imposed. The amount of the excise tax restoration payment may not exceed \$600,000 for a change of control that occurs in 2011. No excise tax payment will be owed to Mr. Kelly with respect to a change of control that occurs after December 31, 2011.

We agreed to the excise tax restoration provisions of Mr. Kelly's retention agreement in large part because Mr. Kelly's compensation for service as a director of our company prior to his service as our Chief Executive Officer is taken into account for computing the "base amount" for calculation of excess parachute payments. In general, Mr. Kelly will be subject to excise taxes for compensation contingent upon a change of control if the amount of such compensation, which includes amounts attributed to the acceleration of stock options, equals or exceeds three times his base amount. For any change of control of our company that occurs after 2009, Mr. Kelly's prior compensation as a director will be averaged with his compensation as our Chief Executive Officer, and such averaging would result in him having a base amount which is substantially less than his current compensation level. Our Compensation Committee determined that providing Mr. Kelly with the limited excise tax restoration benefit described above was essential to ensuring that the incentive compensation that Mr. Kelly may earn will fulfill its intended purpose.

Jillian Mansolf. We entered into a retention agreement with Ms. Mansolf effective July 13, 2009. This agreement generally provides that Ms. Mansolf will receive a lump sum severance payment if, within two years of the consummation of a change of control of our company, her employment is terminated without cause or she resigns with good reason. These severance payments are based on Ms. Mansolf's base salary and target commission at the time of the consummation of the change of control or the termination date, whichever is higher, plus her target bonus for the year before the consummation of the change of control. The agreement provides that, upon a qualifying termination in connection with a change of control, Ms. Mansolf is entitled to receive an amount equal to her annual base salary, target commissions plus target bonus. If any portion of any payment under the retention agreements would constitute an "excess parachute payment" within the meaning of Section 280G of the Internal Revenue Code, then that payment will be reduced to an amount that is one dollar less than the threshold for triggering the tax imposed by Section 4999 of the Internal Revenue Code. The

agreement also provides that if Ms. Mansolf elects to continue health insurance coverage as provided by COBRA, we would reimburse her for the amount of the premiums incurred by her for 12 months following the termination date.

Equity Awards Granted in Fiscal 2011

The "Stock Awards" column of the "Summary Compensation Table for Fiscal Year 2011" above reflects the grant-date fair value (as determined for accounting purposes) of restricted stock unit ("RSU") awards granted to the named executive officers during fiscal 2011. Each of these awards was granted under our 2009 Equity Incentive Plan ("2009 Plan"). The 2009 Plan is administered by the Compensation Committee, which has authority to interpret the plan provisions and make all required determinations under the plan. Awards granted under the 2009 Plan are generally only transferable to a beneficiary of a named executive officer upon his or her death. However, the Compensation Committee may establish procedures for the transfer of awards to other persons or entities, provided that such transfers comply with applicable securities laws and, with limited exceptions, are not made for value.

Each RSU represents a contractual right to receive one share of our common stock upon vesting of the unit. The number of RSUs subject to each award granted to the named executive officers during fiscal 2011 and the vesting schedules for these awards are reported in the "Outstanding Equity Awards at End of Fiscal Year 2011" table above. In each case, vesting of the RSUs is generally contingent on the executive's continued employment with the Company through the vesting date, subject to accelerated vesting on certain terminations of employment under the employment and retention agreements described above. The RSUs will vest in full in the event of the executive's death or disability. In addition, with respect to the RSUs granted to the named executive officers in June 2011, if the executive's employment is terminated by the Company without cause or by the executive for good reason, the RSUs subject to the award will vest pro-rata based on the number of months of the executive's employment through the date of termination. If, however, a change in control of the Company occurs and the executive's employment is terminated by the Company without cause or by the executive for good reason within 60 days before or two years after the change in control, the units will fully vest. The named executive officers do not have the right to vote or dispose of the RSUs.

Executive Bonus Plan

In September 2010, the Compensation Committee approved an Executive Bonus Plan ("Bonus Plan"), which provides bonus opportunities for selected employees of the Company, including each of the Company's executive officers. Each participant in the Bonus Plan is assigned a target bonus percentage that is expressed as a percentage of the participant's base salary for the applicable bonus period ("Bonus Period"). Bonuses are payable based upon the Company's attainment of one or more performance goal(s) for revenue, gross profit, operating income, operating expenses and/or earnings per share as approved by the Compensation Committee for the applicable Bonus Period. The Compensation Committee may establish minimum, target and/or maximum performance goals for one or more of these performance metrics. The Compensation Committee establishes target bonus amounts for each Bonus Period and also establishes the percentage of the total bonus that will be determined based on Company performance and the percentage of the total bonus that will be determined based on individual performance and, as applicable, the performance goals that will be used to determine a participant's individual performance for the Bonus Plan is effective for fiscal 2011 and future fiscal years unless and until otherwise determined by the Compensation Committee

For fiscal 2011, the Compensation Committee established performance goals for the Company's revenue growth, gross operating profit and net income for the first half of fiscal 2011, and for the Company's revenue growth and operating expenses for the second half of fiscal 2011. The named executive officers' target bonuses for fiscal 2011 (expressed as a percentage of the executive's annual base salary) were as follows: Mr. Kelly—100%; Mr. Kalbfleisch—50%; and Ms. Mansolf—10%. (Ms. Mansolf's participation in the Bonus Plan is in addition to her opportunity to be awarded sales commissions under her employment agreement as described above.) The bonuses awarded to each named executive officer under the Bonus Plan for fiscal 2011 are reported in the Non-Equity Incentive Plan Compensation column of the "Summary Compensation Table for Fiscal 2011" above.

401(k) Plan

In February 1994, we adopted our On-Track 401(k) Savings Plan that covers all of our eligible employees who are at least 21 years old. Our 401(k) plan is intended to qualify under Section 401 of the Internal Revenue Code so that employee contributions and income earned on such contributions are not taxable to employees until withdrawn. Employees may elect to defer up to 60% of their eligible compensation (not to exceed the statutorily prescribed annual limit) in the form of elective deferral contributions to our 401(k) plan. However, our named executive officers qualify as highly compensated employees and may only elect to defer up to 8.5% of their eligible compensation (not to exceed the statutorily prescribed annual limit) in the form of elective deferral contributions to our 401(k) plan. Our 401(k) plan also has a catch up contribution feature for employees aged 50 or older (including those who qualify as highly compensated employees) who can defer amounts over the statutory limit that applies to all other employees. In October 2008, we suspended the matching by the Company of contributions made by participants under the plan.

Director Compensation Table

The following table provides compensation information for each individual who served on our Board of Directors during fiscal 2011 and was not employed by us or one of our subsidiaries ("non-employee directors"). See "Summary Compensation Table for Fiscal 2011" above for information related to the compensation of Mr. Kelly who was a director in fiscal 2011 and who also served as an executive officer during the fiscal year.

Fees earned or

Name	pai	id in cash	 Stock awards(1)(2)	 Total
Joseph De Perio(3)	\$	9,780	\$ 50,000	\$ 59,780
Robert A. Degan	\$	40,000	\$ 50,000	\$ 90,000
Nora M. Denzel	\$	40,000	\$ 50,000	\$ 90,000
Scott McClendon	\$	50,000	\$ 2,508,000	\$ 2,558,000
Michael Norkus(5)	\$	24,286	\$ _	\$ 24,286
Shmuel Shottan(4)	\$	15,824	\$ 50,000	\$ 65,824

- (1) The amounts shown in this column do not reflect compensation actually received by the non-employee director. These amounts represent the fair value on the grant date of the awards granted to the directors during fiscal 2011. These values have been determined under the principles used to calculate the grant date fair value of equity awards for purposes of our financial statements. For a more detailed discussion on the valuation model and assumptions used to calculate the fair value of these awards, see Note 8 to the consolidated financial statements.
- (2) At fiscal 2011 end, the number of shares subject to outstanding option awards for each director were as follows: Mr. De Perio—0; Mr. Degan—63,088; Ms. Denzel—34,422; Mr. McClendon—70,421; Mr. Norkus—22,422; and Mr. Shottan—0. The number of shares subject to outstanding stock awards were as follows: Mr. De Perio—22,728; Mr. Degan—22,728; Ms. Denzel—22,728; Mr. McClendon—701,771; Mr. Norkus—0; and Mr. Shottan—22,728.
- (3) Mr. De Perio was appointed to the Board of Directors in April 2011.
- (4) Mr. Shottan was appointed to the Board of Directors in February 2011.
- (5) Mr. Norkus resigned from the Board of Directors in February 2011.

Overview of Non-Employee Director Compensation and Procedures

We compensate non-employee directors through cash and equity-based compensation. Each non-employee director receives an annual retainer of \$40,000 payable quarterly. The Executive Chairman of the Board of Directors receives an additional \$10,000 retainer annually. No additional fees are paid for attendance at meetings of the Board of Directors or committees. We also reimburse expenses incurred by non-employee directors to attend meetings.

In addition to the above fees, each non-employee director receives an annual grant of RSUs with a value of \$50,000 (based on the value of our common stock on the grant date). These RSU awards generally vest one year from the grant date and are payable upon vesting in shares of our common stock on a one-for-one basis. The annual RSU awards replace the annual grants of options to non-employee directors provided under the director compensation program implemented in January 2010.

In May 2011, Ms. Denzel and Messers. De Perio, Degan, McClendon, and Shottan each received an award of 22,728 RSUs which will vest in full on June 14, 2012.

In May 2011, Mr. McClendon was appointed Executive Chairman of the Board of Directors. Prior to May 2011, Mr. McClendon served as the Chairman of the Board. In June 2011, at the same time grants of RSUs were made to each of the named executive officers as described above, Mr. McClendon received an award of 679,043 RSUs in connection with his duties as Executive Chairman. The RSU award vests in six equal installments, with the first installment vesting six months after July 15, 2011 and an additional installment vesting at the end of each six-month period thereafter, and would vest in full in the event of a change in control of the Company or Mr. McClendon's death or disability. The RSUs may also vest on a pro-rata basis upon certain terminations of Mr. McClendon's service on the Board of Directors.

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

The following table sets forth certain information regarding the beneficial ownership of Common Stock of the Company as of September 7, 2011 (except as otherwise indicated) by each person who is known by us to own more than 5% of our shares of common stock, each named executive officer, each director and all of our directors and executive officers as a group.

Unless otherwise indicated in the footnotes to this table and subject to community property laws where applicable, we believe that each of the shareholders named in this table has sole voting and investment power with respect to the shares indicated as beneficially owned.

		Beneficial Ownership		
			Total shares of	Percent
	Shares of		common	of
	common stock	Shares acquirable	stock	
Beneficial Owner	currently owned	within 60 days(1)	owned	class(2)
5% shareholders				
Special Situations Fund 527 Madison Avenue, Suite 600 New York, NY 10022	3,190,399(3)	5,967,220	9,157,619	31.5%
Clinton Group, Inc. 9 West 57 th Street, 26 th Floor New York, NY 10019	2,832,861(4)	1,246,458(4)	4,079,319	16.8%
Marathon Capital Management, LLC 4 North Park Drive, Suite 106 Hunt Valley, MD 21030	3,007,836(5)	_	3,007,836	13.0%
Stephens Investment Management LLC One Ferry Building, Suite 255 San Francisco, CA 94111	1,185,778(6)	877,531(6)	2,063,309	8.6%
Columbus Capital Management, LLC 1 Market Street, Spear Tower San Francisco, CA 94105	1,540,300(12)	264,000(12)	1,804,300	7.7%

		Beneficial Ownership		
			Total shares of	Percent
	Shares of		common	of
	common stock	Shares acquirable	stock	
Beneficial Owner	currently owned	within 60 days(1)	owned	class(2)
Executive Officers and Directors+				
Eric Kelly	49,975(8)	1,271,040	1,321,015	5.4%
Jillian Mansolf	22,760(9)	346,477	369,237	1.6%
Kurt L. Kalbfleisch	_	297,499	297,499	1.3%
Scott McClendon	180,963(10)	105,520	286,483	1.2%
Robert A. Degan	666(7)	63,088	63,754	*
Nora M. Denzel	666	34,422	35,088	*
Joseph A. De Perio(11)	6,000	_	6,000	*
Shmuel Shottan	2,500	_	2,500	*
Current directors and executive officers as a group (9 persons)	263,530	2,422,402	2,685,932	10.5%

- * Less than 1%
- + Except as otherwise indicated, the address for each beneficial owner is 9112 Spectrum Center Boulevard, San Diego, CA, 92123.
- (1) With respect to 5% shareholders, includes shares of common stock which could be acquired upon exercise of outstanding warrants. See footnotes (3), (4), (6) and (12) for a description of shares which could be acquired upon exercise of outstanding warrants by each of Special Situations Fund, Clinton Group, Inc., Stephens Investment Management LLC and Columbus Capital Management, LLC, respectively. With respect to executive officers and directors, includes shares of common stock which could be acquired upon exercise of stock options which are either currently vested and exercisable or will vest and become exercisable within 60 days of September 7, 2011, with respect to Ms. Mansolf and Messrs. Kelly and McClendon, shares of common stock which could be acquired upon exercise of outstanding warrants within 60 days of September 7, 2011, and with respect to Ms. Mansolf and Messrs. Kelly and Kalbfleisch, shares of common stock which will be issued upon the vesting of stock units within 60 days of September 7, 2011.
- (2) Based on 23,068,649 shares of common stock outstanding on September 7, 2011 and calculated in accordance with Rule 13d-3 promulgated under the Exchange Act.
- (3) According to a Form 4 filed on July 14, 2011, the number of shares of common stock currently owned ("Shares") and the number of shares of common stock acquirable within 60 days pursuant to warrants ("Warrant Shares") includes 1,312,798 Shares and 2,457,092 Warrant Shares held directly by Special Situations Fund III Q.P., L.P., 938,752 Shares and 1,755,064 Warrant Shares held directly by Special Situations Private Equity Fund, L.P., 131,437 Shares and 245,708 Warrant Shares held directly by Special Situations Technology Fund, L.P. and 807,412 Shares and 1,509,356 Warrant Shares held directly by Special Situations Technology Fund II, L.P. MGP Advisors Limited ("MGP") is the general partner of the Special Situations Fund III, QP, L.P. AWM Investment Company, Inc. ("AWM") is the general partner of MGP and the investment adviser to the Special Situations Fund III, QP, L.P., the Special Situations Technology Fund II, L.P. and the Special Situations Private Equity Fund, L.P. Austin W. Marxe and David M. Greenhouse are the principal owners of MGP and AWM. Through their control of MGP and AWM, Messrs. Marxe and Greenhouse share voting and investment control over the portfolio securities of each of the funds listed above.
- (4) The number of Shares and the number of Warrant Shares include 2,832,861 Shares and 1,246,458 Warrant Shares held directly by Clinton Magnolia Master Fund, Ltd. ("CMAG") Clinton Group, Inc. ("CGI") is the investment manager of CMAG and consequently has voting control and investment discretion over securities held by CMAG. CGI and George Hall, as chief investment officer and president of CGI, may be deemed to beneficially own any securities owned by CGI and CMAG. Each of CGI and Mr. Hall disclaim beneficial ownership of these securities.
- (5) Based on the Schedule 13G filed with the SEC on April 7, 2011, Marathon Capital Management, LLC has sole voting power with respect to 328,000 shares and sole disposal power with respect to 3,007,836 shares.

- Based on the Schedule 13G filed with the SEC on February 11, 2011, the number of Shares include warrants for the purchase of 351,011 shares of common stock held directly by Orphan Fund, L.P. ("Orphan Fund") and warrants for the purchase of 526,520 shares of common stock held directly by Stephens Industry II, L.P. ("Industry Fund"). Stephens Investment Management, LLC ("SIM") serves as general partner and investment manager for Orphan Fund and Industry Fund. SIM and Paul Stephens, Brad Stephens and Bart Stephens, as managing members and owners of SIM, may be deemed to beneficially own the securities owned by Orphan Fund and Industry Fund, insofar as they may be deemed to have the power to direct the voting or disposition of such securities. Each of SIM and Messrs. Stephens disclaim beneficial ownership as to such securities, except to the extent of its or his pecuniary interest therein.
- Includes 333 shares of common stock held by Mr. Degan's wife.
- Includes 49,309 shares of common stock owned by Mr. Kelly through his family trust.
- Represents shares of common stock owned by Ms. Mansolf through her family trust.
- Represents 147,297 shares of common stock owned by Mr. McClendon through his family trust, 33,333 shares through his self-directed IRA and 333 shares held by his wife.
- Mr. De Perio was elected to our Board of Directors pursuant to the terms of a Stock Purchase Agreement between the Company and CMAG and is the nominee of, and is employed by, CGI. CGI is the investment manager of CMAG. Pursuant to the Purchase Agreement, CMAG acquired 2,832,861 shares of common stock and warrants exercisable to purchase 1,246,458 shares of common stock for total consideration of \$5.0 million.
- (12) Based on the Schedule 13G filed with the SEC on June 9, 2011, the number of shares beneficially held include 1,602,120 shares held by Columbus Capital Partners, L.P. ("CCP") and 202,180 shares held by Columbus Capital Offshore Fund, Ltd. ("CCOF"). These shares include warrants to purchase 235,620 shares held by CCP and warrants to purchase 28,380 shares held by CCOF. Columbus Capital Management, LLC ("CCM") is the general partner to CCP and the investment manager to CCOF. CCM has shared voting and dispositive power with Matthew Ockner, the managing member of CCM.

We are aware of no arrangements, including any pledge by any person of our common stock, the operation of which may at a subsequent date result in a change of control of our company.

Equity Compensation Plan Information

The following table provides information about our equity compensation plans as of the last day of fiscal 2011.

	(a)	(b)	(c) Number of common shares
	Number of common shares to be issued upon exercise of outstanding	Weighted- exercise j outstar	price of	remaining available for future issuance under equity compensation plans (excluding shares reflected
Plan Category	options and rights	options and	l rights(3)	in column(a))
Equity compensation plans approved by our shareholders(1)	6,183,695	\$	3.02	2,768,096
Equity compensation plans not approved by our shareholders(2)	501,810	\$	1.88	
Total	6,685,505	\$	2.73	2,768,096

Of the aggregate number of shares that remained available for future issuance reported in column (c), 2,013,034 were available under the 2009 Plan and 755,062 were available under the 2006 Employee Stock Purchase Plan. The 2009 Plan permits the granting of the following types of incentive awards: stock options, stock appreciation rights, restricted shares, and stock units. Subject to any accelerated vesting that may apply in the circumstances, the unvested portion of a named executive officer's outstanding awards will immediately terminate upon a termination of the named executive officer's employment.

- (2) These figures represent options to purchase 98 shares of our common stock granted under our 2001 Supplemental Stock Option Plan (the "2001 Plan") and options to purchase 501,712 shares of our common stock granted to certain employees (including Ms. Mansolf) as an inducement to their commencing employment with our company (the "Inducement Options"). The 2001 Plan is administered by the Compensation Committee and provides for grants of stock options to employees and consultants who are not officers or directors of our company. Our ability to grant new awards under the 2001 Plan terminated in November 2003. The Inducement Options were not granted under a plan and are administered by the Compensation Committee. The 2001 Plan options and the Inducement Options are generally subject to the same terms as options granted during fiscal 2011 under the 2009 Plan as described above under "Equity Awards Granted in Fiscal 2011." Each of the 2001 Plan options has a ten-year term and the Inducement Options have a six-year term and is subject to earlier termination on a termination of the optionee's employment or a change in control of our company. These options generally may not be transferred by the optionee.
- (3) The weighted-average exercise prices do not reflect shares subject to outstanding awards of restricted stock units.

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

Indemnification of Our Executive Officers and Directors

Our executive officers and directors are entitled to be indemnified under our articles of incorporation and bylaws to the fullest extent permitted under California law. We have also entered into indemnification agreements with each of our executive officers and directors.

Director Independence

The Board of Directors, upon the recommendation of the Nominating and Governance Committee, has affirmatively determined that Ms. Denzel and Messrs. Degan, McClendon, De Perio and Shottan are independent directors within the meaning of NASDAQ Marketplace Rule 5605(a)(2). Mr. Kelly does not meet the independence requirements under NASDAQ Marketplace Rule 5605(a)(2) because he is our President and Chief Executive Officer. In the course of determining whether Ms. Denzel and Messrs. Degan, McClendon, De Perio and Shottan were independent under NASDAQ Marketplace Rule 5605(a)(2), the Board of Directors considered the following transactions, relationships and arrangements not required to be disclosed in "Certain Relationships and Related Party Transactions":

- Although Mr. McClendon served as our Interim President and Chief Executive Officer from November 2006 through August 2007, he is not
 automatically disqualified from being an independent director under NASDAQ Marketplace Rule 5605(a)(2) because he served in these interim
 positions more than three years prior to our Board's determination of his independence and for less than one year.
- Although Mr. De Perio was elected to our Board of Directors pursuant to the terms of the Purchase Agreement and is the nominee of, and is employed by, one of our shareholders, he is not automatically disqualified from being an independent director under NASDAQ Marketplace Rule 5605(a)(2). In April 2011, the Board of Directors, upon the recommendation of the Nominating and Governance Committee, found that Mr. De Perio had no relationship with our company which, in the opinion of the Board of Directors, would interfere with his exercise of independent judgment in carrying out the responsibilities of a director. In making this determination, the Board of Directors found that ownership of our securities by Mr. De Perio's employer does not preclude a finding of independence.

Item 14. Principal Accounting Fees and Services.

The following table summarizes the aggregate fees billed to the Company by its independent registered public accounting firm, Moss Adams LLP (in thousands):

		Fiscal Year					
	2011	ĺ		2010			
Audit fees(1)	\$	426	\$	524			
Audit-related fees(2)		71		127			
Tax fees(3)		_		_			
All other fees(4)		_		_			
Total	\$	497	\$	651			

- (1) Audit fees consist of fees billed for professional services rendered in connection with the audit of our consolidated annual financial statements and review of the interim consolidated financial statements included in quarterly reports, which were provided by Moss Adams in connection with statutory and regulatory filings or engagements.
- (2) Audit-related fees consist of fees billed for assurance and related services that are reasonably related to the performance of the audit or review of our consolidated financial statements and are not reported under audit fees.
- (3) Tax fees consist of fees billed for professional services rendered for tax compliance, tax advice and tax planning (domestic and international). These services include assistance regarding federal, state and international tax compliance, acquisitions and international tax planning. There were no such services rendered to us by Moss Adams during fiscal years 2010 or 2011.
- (4) All other fees consist of fees for products and services other than the services reported above. There were no such services rendered to us by Moss Adams during fiscal years 2010 or 2011.

Pre-Approval Policies and Procedures

As a matter of policy, all audit and non-audit services provided by our independent registered public accounting firm are approved in advance by the Audit Committee, which considers whether the provision of non-audit services is compatible with maintaining such firm's independence. All services provided by Moss Adams during fiscal years 2010 and 2011 were pre-approved by the Audit Committee. The Audit Committee has considered the role of Moss Adams in providing services to us for fiscal year 2011 and has concluded that such services are compatible with their independence as our auditors.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a)(1) **Financial Statements.** The following consolidated financial statements of Overland Storage, Inc. and reports of independent registered public accounting firms are included in a separate section of this report:

Report of Independent Registered Public Accounting Firm	53
Consolidated Balance Sheets as of June 30, 2011 and 2010	54
Consolidated Statements of Operations for the Years Ended June 30, 2011 and 2010	55
Consolidated Statements of Shareholders' Equity and Comprehensive Loss for Years Ended June 30, 2011 and 2010	56
Consolidated Statements of Cash Flows for the Years Ended June 30, 2011 and 2010	57
Notes to Consolidated Financial Statements	58

(a)(2) Financial Statement Schedules.

Schedules not listed above have been omitted because they are not applicable or are not required or the information required to be set forth therein is included in the consolidated financial statements or notes thereto.

(a)(3) Exhibits

- 2.1 Asset Purchase Agreement dated June 27, 2008 between Overland and Adaptec, Inc. (incorporated by reference to the Company's Form 8-K filed July 3, 2008). ++
- 3.1 Amended and Restated Articles of Incorporation (incorporated by reference to the Company's Form 10-K filed September 27, 2002).
- 3.2 Certificate of Amendment of Articles of Incorporation dated November 15, 2005 (incorporated by reference to the Company's Form 10-Q filed February 10, 2006).
- 3.3 Certificate of Amendment of Articles of Incorporation dated December 12, 2008 (incorporated by reference to the Company's Form 10-Q filed February 11, 2009).
- 3.4 Certificate of Amendment to the Company's Amended and Restated Articles of Incorporation dated December 8, 2009 (incorporated by reference to the Company's Form 8-K filed December 8, 2009).
- 3.5 Certificate of Determination of Rights, Preferences, Privileges and Restrictions of Series A Convertible Preferred Stock dated February 19, 2010 (incorporated by reference to the Company's Form 8-K filed February 24, 2010).
- 3.6 Certificate of Amendment to the Company's Amended and Restated Articles of Incorporation dated April 28, 2010 (incorporated by reference to the Company's Form 8-K filed April 29, 2010).
- 3.7 Certificate of Amendment of Certificate of Determination of Rights, Preferences, Privileges and Restrictions of Series A Convertible Preferred Stock dated April 29, 2010 (incorporated by reference to the Company's Form 8-K filed May 5, 2010).
- 3.8 Certificate of Amendment to the Company's Amended and Restated Articles of Incorporation dated June 23, 2011.
- 3.9 Amended and Restated Bylaws (incorporated by reference to the Company's Form 8-K filed August 26, 2005).
- 3.10 Certificate of Amendment of Bylaws (incorporated by reference to the Company's Form 8-K filed April 30, 2007).
- Specimen stock certificate (incorporated by reference to the Company's Form 10-Q filed February 10, 2010).

- 4.2 Shareholder Rights Agreement dated August 22, 2005 between Overland and Wells Fargo Bank, N.A., as Transfer Agent (incorporated by reference to the Company's Form 8-K filed August 26, 2005).
- 4.3 Amendment No. 1 to Shareholder Rights Agreement dated March 21, 2011 (incorporated by reference to the Company's Form 8-K filed March 22, 2011).
- 4.4 Common Stock Purchase Warrant between Overland and Roth Capital Partners, LLC dated November 4, 2009 (incorporated by reference to the Company's Form 10-Q dated February 10, 2010).
- 4.5 Form of Common Stock Purchase Warrant dated February 18, 2010 (incorporated by reference to the Company's Form 8-K filed February 24, 2010).
- 4.6 Form of Registration Rights Agreement dated February 22, 2010 (incorporated by reference to the Company's Form 8-K filed February 24, 2010).
- 4.7 Form of Common Stock Purchase Warrant dated March 16, 2011 (incorporated by reference to the Company's Form 8-K filed March 22, 2011).
- 4.8 Form of Registration Rights Agreement dated March 21, 2011 (incorporated by reference to the Company's Form 8-K filed March 22, 2011).
- 10.1 San Diego Headquarters Facility Lease dated October 12, 2000 between Overland and LBA-VIF One, LLC (incorporated by reference to the Company's Form 10-Q filed February 14, 2001).
- First Amendment to Lease dated January 18, 2001 between Overland and LBA Overland, LLC, as successor-in-interest to LBA-VIF One, LLC (incorporated by reference to the Company's Form 10-K filed September 28, 2001).
- 10.3 Second Amendment to Lease dated March 8, 2001 between Overland and LBA Overland, LLC (incorporated by reference to the Company's Form 10-K filed September 28, 2001).
- Third Amendment to Lease dated June 30, 2010 between Overland and Overtape (CA) QRS 15-14, Inc. (successor-in-interest to LBA Overland, LLC, the successor-in-interest to LBA-VIF One, LLC). (incorporated by reference to the Company's Form 10-K filed September 24, 2010).
- Product Purchase Agreement No. 1585-042103 dated July 31, 2003 between Overland and Hewlett Packard Company (incorporated by reference to the Company's Form 10-Q filed February 10, 2004). +
- Addendum to Product Purchase Agreement No. 1585-042103 effective July 30, 2006 between Overland and Hewlett Packard Company (incorporated by reference to the Company's Form 10-K filed September 15, 2006).
- 10.7 Addendum to Product Purchase Agreement between Overland and Hewlett-Packard Company dated December 15, 2007 (incorporated by reference to the Company's Form 10-Q filed May 1, 2008). +
- 10.8 Addendum to Product Purchase Agreement between Overland and Hewlett-Packard Company dated October 29, 2008 (incorporated by reference to the Company's Form 10-K filed September 9, 2009).
- 10.9 Addendum to Product Purchase Agreement between Overland and Hewlett-Packard Company dated April 6, 2009 (incorporated by reference to the Company's Form 10-K filed September 9, 2009).
- 10.10 Account Transfer and Purchase Agreement dated November 26, 2008 between Overland and Marquette Commercial Finance, a division of Marquette Business Credit, Inc. (incorporated by reference to the Company's Form 8-K filed December 3, 2008).
- 10.11 Sale of Accounts and Security Agreement by and between Overland and Faunus Group International, Inc. dated March 18, 2009 (incorporated by reference to the Company's Form 8-K filed March 27, 2009).
- Multi-Party Agreement by and between Overland, Marquette Commercial Finance a division of Marquette Business Credit, Inc. and Faunus Group International, Inc. dated March 18, 2009 (incorporated by reference to the Company's Form 10-Q filed May 13, 2009).

- Secured Promissory Note by and between Overland and Anacomp, Inc. dated April 6, 2009 (incorporated by reference to the Company's Form 8-K filed April 10, 2009).
- 10.14 Amended and Restated Secured Promissory Note by and between Overland and Anacomp, Inc. dated as of April 6, 2009 (incorporated by reference to the Company's Form 8-K filed November 12, 2009).
- 10.15 Security Agreement by and between Overland and Anacomp, Inc. dated April 6, 2009 (incorporated by reference to the Company's Form 8-K filed April 10, 2009).
- 10.16 Intellectual Property Security Agreement by and between Overland and Anacomp, Inc. dated April 6, 2009 (incorporated by reference to the Company's Form 8-K filed April 10, 2009).
- 10.17 Promissory Note dated June 27, 2008 issued by Overland to Adaptec, Inc. (incorporated by reference to the Company's Form 8-K filed May 22, 2009).
- 10.18 Amendment No. 1 to Promissory Note entered into as of May 20, 2009 between Overland and Adaptec, Inc. (incorporated by reference to the Company's Form 8-K filed May 22, 2009).
- 10.19 Security Agreement dated June 27, 2008 between Overland and Adaptec, Inc. (incorporated by reference to the Company's Form 10-K filed September 9, 2009).
- 10.20 Amended and Restated Security Agreement dated November 28, 2008 between Overland and Adaptec, Inc. (incorporated by reference to the Company's Form 10-K filed September 9, 2009).
- 10.21* Form of Indemnification Agreement entered into between Overland and each of its directors and officers (incorporated by reference to the Company's Form 10-Q filed February 13, 2002).
- 10.22* Retention Agreement between Overland and Eric Kelly dated June 24, 2009 (incorporated by reference to the Company's Form 10-Q filed February 10, 2010).
- 10.23* Retention Agreement between Overland and Jillian Mansolf dated July 13, 2009 (incorporated by reference to the Company's Form 10-K filed September 9, 2009).
- 10.24* Employment letter between Overland and Jillian Mansolf dated June 23, 2009 (incorporated by reference to the Company's Form 10-K filed September 9, 2009).
- 10.25* Employment Agreement between Overland and Eric Kelly dated August 3, 2011 (incorporated by reference to the Company's Form 8-K filed August 4, 2011).
- 10.26* Employment and Severance Agreement between Overland and Kurt L. Kalbfleisch dated August 3, 2011 (incorporated by reference to the Company's Form 8-K filed August 4, 2011).
- 10.27* 2000 Stock Option Plan, as amended and restated (incorporated by reference to the Company's Form 10-K filed September 27, 2002).
- 10.28* Form of Notice of Stock Option Award and Stock Option Award Agreement for options granted under 2000 Stock Option Plan (incorporated by reference to the Company's Form 10-Q filed May 15, 2001).
- 10.29* 2001 Supplemental Stock Option Plan (incorporated by reference to the Company's Form S-8 Registration Statement No. (333-75060) filed December 13, 2001).
- 10.30* Form of Notice of Stock Option Award and Stock Option Award Agreement for options granted under 2001 Supplemental Stock Option Plan (incorporated by reference to the Company's Form 10-K filed September 27, 2002).
- 10.31* Amended and Restated 2003 Equity Incentive Plan (incorporated by reference to the Company's Form 8-K filed November 16, 2007).
- 10.32* Amendment to 2003 Equity Incentive Plan effective as of January 27, 2009 (incorporated by reference to the Company's Form 10-K filed September 9, 2009).
- 10.33* Form of Stock Option Agreement for options granted to senior officers under the 2003 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed February 10, 2004).

- 10.34* Form of Stock Option Agreement for options granted to outside directors under the 2003 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed February 10, 2004).
- 10.35* Form of Standard Stock Option Agreement for options granted under the 2003 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed February 10, 2004).
- 10.36* Form of Stock Option Agreement for Inducement Options granted to executive officers (incorporated by reference to the Company's Form 10-K filed September 9, 2009).
- 10.37* 2006 Employee Stock Purchase Plan, as amended.
- 10.38* 2009 Equity Incentive Plan, as amended.
- 10.39* Form of Notice of Stock Option Grant and Stock Option Agreement for options granted to senior officers under the 2009 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed February 2, 2010).
- 10.40* Form of Notice of Stock Option Grant and Stock Option Agreement for options granted to outside directors under the 2009 Equity Incentive Plan (incorporated by reference to the Company's Form 10-O filed February 2, 2010).
- 10.41* Form of Notice of Restricted Stock Award and Restricted Stock Agreement for restricted stock granted to senior officers or outside directors under the 2009 Equity Incentive Plan (incorporated by reference to the Company's Form 10-Q filed February 2, 2010).
- 10.42* Standard Form of Notice of Restricted Stock Unit Award and Restricted Stock Unit Agreement for restricted stock units granted under the 2009 Equity Incentive Plan.
- 10.43* Special Form of Notice of Restricted Stock Unit Award and Restricted Stock Unit Agreement for restricted stock units granted under the 2009 Equity Incentive Plan dated June 29, 2011.
- 10.44* Notice of Restricted Stock Unit Award and Restricted Stock Unit Agreement between Overland and Scott McClendon dated June 29, 2011.
- 10.45* Form of Stock Appreciation Rights Award Agreement dated June 29, 2011.
- 10.46* Executive Bonus Plan (incorporated by reference to the Company's Form 10-K filed September 24, 2010).
- 10.47 Form of Purchase Agreement dated February 18, 2010 (incorporated by reference to the Company's Form 8-K filed February 24, 2010).
- 10.48 Underwriting Agreement, dated October 30, 2009 between Overland and Roth Capital Partners, LLC. (incorporated by reference to the Company's Form 8-K filed November 4, 2009).
- 10.49 Form of Subscription Agreement dated November 12, 2010 (incorporated by reference to the Company's Form 8-K filed November 17, 2010).
- 10.50 Financial Advisory Agreement, dated November 12, 2010, between Overland and Roth Capital Partners, LLC. (incorporated by reference to the Company's Form 8-K filed November 17, 2010).
- 10.51 Form of Purchase Agreement dated March 16, 2011 (incorporated by reference to the Company's Form 8-K filed March 22, 2011).
- 10.52 Loan and Security Agreement between Overland and Silicon Valley Bank.
- 16.1 Letter of PricewaterhouseCoopers LLP dated October 14, 2009 (incorporated by reference to the Company's Form 8-K filed October 16, 2009).
- 21.1 Subsidiaries of the Company.
- 23.1 Consent of Moss Adams LLP, Independent Registered Public Accounting Firm.
- 24.1 Power of Attorney (included on signature page).

- 31.1 Certification of Eric L. Kelly, Chief Executive Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 31.2 Certification of Kurt L. Kalbfleisch, Vice President of Finance and Chief Financial Officer, pursuant to Rule 13a-14(a) or 15d-14(a) of the Exchange Act, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
- 32.1 Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, executed by Eric L. Kelly, Chief Executive Officer, and Kurt L. Kalbfleisch, Vice President of Finance and Chief Financial Officer.
- + Portions of this exhibit have been omitted pursuant to a request for confidential treatment and the non-public information has been filed separately with the SEC.
- ++ Certain schedules and similar attachments have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of the omitted schedules and similar attachments will be provided supplementally to the SEC upon request.
- * Management contract or compensation plan or arrangement.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

	OVERLAND STORA	AGE, INC.
Dated: September 13, 2011	By:	/s/ ERIC L. KELLY
	Ž	Eric L. Kelly
		Chief Executive Officer

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints Eric L. Kelly and Kurt L. Kalbfleisch, jointly and severally, as his attorney-in-fact, each with the power of substitution, for him in any and all capacities, to sign any amendments to this annual report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof. Pursuant to the requirements of the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/s/ ERIC L. KELLY	Chief Executive Officer and Director (Principal Executive Officer)	September 13, 2011
Eric L. Kelly /s/ KURT L. KALBFLEISCH	Vice President of Finance and Chief Financial Officer	September 13, 2011
Kurt L. Kalbfleisch	(Principal Financial and Accounting Officer)	
/s/ ROBERT A. DEGAN	Director	September 13, 2011
Robert A. Degan /s/ NORA DENZEL	Director	September 13, 2011
Nora Denzel		•
/s/ SCOTT McClendon	Executive Chairman of the Board	September 13, 2011
Scott McClendon /s/ SHMUEL SHOTTAN	Director	September 13, 2011
Shmuel Shottan		-
/s/ JOSEPH DE PERIO	Director	September 13, 2011
Joseph De Perio		-

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of Overland Storage, Inc.

We have audited the accompanying consolidated balance sheets of Overland Storage, Inc. (the "Company") as of July 3, 2011, and June 27, 2010, and the related consolidated statements of operations, shareholders' equity and comprehensive loss, and cash flows for the periods then ended. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audit included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated 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 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 Overland Storage, Inc. as of July 3, 2011 and June 27, 2010, and the results of their operations and their cash flows for the periods then ended, in conformity with accounting principles generally accepted in the United States of America.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in Note 1 to the consolidated financial statements, the Company's recurring losses and negative operating cash flows raise substantial doubt about the Company's ability to continue as a going concern. Management's plans concerning these matters are also described in Note 1. The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

/s/ Moss Adams LLP San Diego, California September 13, 2011

OVERLAND STORAGE, INC.

CONSOLIDATED BALANCE SHEETS

(in thousands)

	June	30,
	2011	2010
Assets		
Current assets:		
Cash and cash equivalents	\$ 10,168	\$ 8,852
Accounts receivable, less allowance for doubtful accounts of \$277 and \$411 as of June 30, 2011 and 2010, respectively	10,992	7,062
Accounts receivable pledged as collateral	_	6,195
Inventories	9,437	9,941
Other current assets	5,631	6,551
Total current assets	36,228	38,601
Property and equipment, net	659	804
Intangible assets, net	2,498	3,492
Other assets	1,540	1,428
Total assets	\$ 40,925	\$ 44,325
Liabilities and Shareholders' Equity		
Current liabilities:		
Accounts payable	\$ 8,328	\$ 9,789
Accrued liabilities	13,787	17,192
Accrued payroll and employee compensation	3,941	1,848
Income taxes payable	111	120
Accrued warranty	1,398	2,098
Debt		5,171
Total current liabilities	27,565	36,218
Other long-term liabilities	6,225	5,441
Total liabilities	33,790	41,659
Commitments and contingencies (Note 10)	Í	,
Shareholders' equity:		
Preferred stock, no par value, 1,000 shares authorized; no shares issued and outstanding as of June 30, 2011 and June 30, 2010	_	_
Common stock, no par value, 90,200 shares authorized; 22,993 and 10,886 shares issued and outstanding, as of June 30, 2011 and 2010, respectively	104,382	85,709
Accumulated other comprehensive loss	(685)	(980)
Accumulated deficit	(96,562)	(82,063)
Total shareholders' equity	7,135	2,666
Total liabilities and shareholders' equity	\$ 40,925	\$ 44,325

${\bf OVERLAND\ STORAGE, INC.}$

CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)

		Fiscal Year
	2011	2010
Net revenue:		
Product revenue	\$ 45	5,659 \$ 53,571
Service revenue	24	4,213 23,577
Royalty fees		325 514
	70	0,197 77,662
Cost of product revenue	38	8,119 45,282
Cost of service revenue	10	0,864 11,006
Gross profit	21	1,214 21,374
Operating expenses:		
Sales and marketing	16	6,419 17,987
Research and development	7	7,653 5,825
General and administrative	12	2,74111,920
	36	6,813 35,732
Loss from operations	(15	5,599) (14,358
Other income (expense):		
Interest income		— 61
Interest expense	(1	1,092) (1,530
Other income, net	2	2,4771,036
Loss before income taxes	(14	4,214) (14,791
Provision for (benefit from) income taxes		285 (1,829
Net loss	(14	4,499) (12,962
Deemed dividend on preferred stock		(144
Net loss applicable to common shareholders	\$ (14	4,499) \$ (13,106
Net loss per share:		
Basic and diluted	\$	(0.94) \$ (2.04)
Shares used in computing net loss per share:		
Basic and diluted	15	5,4526,419

OVERLAND STORAGE, INC.

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY AND COMPREHENSIVE LOSS

(in thousands)

	Preferred Stock Common Stock		Accumulated				
					Other		Total
					Comprehensive	Accumulated	Shareholders'
	Shares	Amount	Shares	Amount	Loss	Deficit	Equity (Deficit)
Balance at June 30, 2009	_	\$ —	4,259	\$ 69,178	\$ (336)	\$ (68,957)	\$ (115)
Issuance of common stock	_	_	2,070	3,707	_	_	3,707
Issuance of Series A Convertible Preferred Stock	795	6,400	_	4,481	_	_	10,881
Deemed dividend on preferred stock	_	144	_	_	_	(144)	_
Conversion of Series A Convertible Preferred Stock	(795)	(6,544)	4,472	6,544	_	_	_
Stock option and purchase plans	_	_	85	89	_	_	89
Share-based compensation	_	_	_	1,710	_	_	1,710
Comprehensive loss:							
Net loss	_	_	_	_	_	(12,962)	(12,962)
Foreign currency translation	_	_	_	_	(438)	_	(438)
Reclassification for gain on investments included in net loss	_	_	_	_	(206)	_	(206)
Total comprehensive loss							(13,606)
Balance at June 30, 2010	_	_	10,886	85,709	(980)	(82,063)	2,666
Issuance of common stock	_	_	12,078	17,795	_	_	17,795
Stock option and purchase plans	_	_	29	30	_	_	30
Share-based compensation	_	_	_	3,073	_	_	3,073
Stock appreciation rights	_	_	_	(2,225)	_	_	(2,225)
Comprehensive loss:							
Net loss	_	_	_	_	_	(14,499)	(14,499)
Foreign currency translation	_	_	_	_	295	_	295
Total comprehensive loss							(14,204)
Balance at June 30, 2011		<u>\$</u>	22,993	\$ 104,382	\$ (685)	\$ (96,562)	\$ 7,135

OVERLAND STORAGE, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

Operating activities: (1,409) \$ (1,409)		Fiscal	Year
Net loss \$(14,90) \$(12,902) Adjustments to reconcile net loss to cash used in operating activities: 1,538 1,671 Provision for losses on accounts receivable 1,33 1,71 Share-based compensation 3,073 1,710 Gain on liquidation of auction rate securities 87 188 Closs on disposal of property and equipment 46,055 1,84 Accounts receivable 46,055 1,84 Accounts receivable pledged as collateral 504 2,55 Accounts payable and accrued liabilities 5,60 2,52 Accrued interest expense on notes payable 5,00 2,52 Accrued apyroll and employee compensation 10,92 1,50 Other assets and liabilities, net 10,92 1,50 Recanh used in operating activities 1,92 1,00 Investing activities 2 2,00 Purchase of fixed assets 3 3 3 Object assets and liabilities, net 1 4 5 5 Purchase of fixed assets 1 5 6 5		2011	2010
Adjustments to reconcile net loss to cash used in operating activities: Depreciation and amortization 1,538 1,671 1,7795 1,779			
Depreciation and amortization		\$ (14,499)	\$ (12,962)
Provision for loses on accounts receivable 134 121 Share-based compensation 3,073 1,710 Gain on liquidation of auction rate securities			
Share-based compensation 3,073 1,710 Gain on liquidation of auction rate securities - (495) Loss on disposal of property and equipment 87 18 Changes in operating assets and liabilities: - (4,065) (1,544) Accounts receivable 6,195 856 Inventiories 5,640 (2,588) Accounts payable and accrued liabilities (5,640) (2,588) Accrued interest expense on notes payable (5,00) (113) Accrued payroll and employee compensation (203) 153 Other assets and liabilities, net 1,982 50 Net cash used in operating activities 1,982 50 Investing activities: 2 2,000 Purchase of fixed assets (30) (326) Proceeds from the sale of property and equipment 2 25 Purchase of intead assets (40) 4 Proceeds from the sale of property and equipment activities (470) 4 Proceeds from the sale of property and equipment activities (470) 4 Proceeds fro		1,538	,
Gain on liquidation of auction rate securities — (495) Loss on disposal of property and equipment 87 (88) Changes in operating assets and liabilities: (4065) (1,544) Accounts receivable (4,065) (1,544) Accounts receivable pledged as collateral 6,195 856 Inventories 504 2,551 Accounts payable and accrued liabilities (50) (113) Accrued payroll and employee compensation (203) 153 Other assets and liabilities, net (10,944) (10,194) Net cash used in operating activities (10,944) (10,194) Investing activities: - 2,000 Purchase of fixed assets (320) (320) Proceeds from the sale of property and equipment - 2,000 Purchase of inxed assets (150) - Proceeds from issual co of Series A Convertible Preferred Stock, net of issuance costs 1 1,99 Proceeds from issuance of Series A Convertible Preferred Stock, net of issuance costs 1 1,79 3,70 Proceeds from the exercise of stock options and the purchase of stock under the 200			
Loss on disposal of property and equipment 87 18 Changes in operating assets and liabilities: 4,065 1,544 Accounts receivable 6,195 856 Inventories 504 2,551 Accounts payable and accrued liabilities (5,640) (2,528) Accrued interest expense on notes payable (50) (113) Accrued payroll and employee compensation (203) 153 Other assets and liabilities, net 1,982 50 Net cash used in operating activities (10,944) (10,512) Investing activities: 2 2,000 Purchase of fixed assets (320) 3(250) Proceeds from the sale of property and equipment 2 25 Purchase of intangible assets (150) - Purchase of intangible assets (150) - Proceeds from the sale of property and equipment 2 5 Proceeds from issuance of Series A Convertible Preferred Stock, net of issuance costs 1,795 3,707 Proceeds from issuance of Series A Convertible Preferred Stock under the 2006 employee stock purchase plan 3,0		3,073	
Changes in operating assets and liabilities: 4,065 (1,544) Accounts receivable pledged as collateral (5,95 (1,544)) 6,195 (8,56 (1,544)) Accounts praceivable pledged as collateral (5,640) (2,551 (1,544)) 5,04 (2,558) Accounts payable and accrued liabilities (5,640) (2,528) (5,640) (2,528) Accrued interest expense on notes payable (5,00) (113) (203 (153) Accrued payroll and employee compensation (1,982) (5,000) (1,982) (5,000) Other assets and liabilities, net (1,982) (5,000) (1,982) (5,000) Net cash used in operating activities (1,982) (1,982) (1,982) (1,982) (1,982) Investing activities: - 2,000 Purchase of fixed assets (1,982) (1,982) (1,982) (1,982) (1,982) (3,200) (3,26) Proceeds from the sale of property and equipment (1,982) (1,982) (1,982) (1,982) (1,982) (3,200) (3,26) Proceeds from insuance of Series A Convertible Preferred Stock, net of issuance costs (1,982) (1,98			\ /
Accounts receivable (4,065) (1,544) Accounts receivable pledged as collateral 6,195 856 Inventories (5,640) 2,551 Accounts payable and accrued liabilities (5,640) 2,528 Accrued interest expense on notes payable (50) (113) Accrued payroll and employee compensation (203) 153 Other assets and liabilities, net 1,982 50 Net cash used in operating activities - 2,000 Investing activities: - 2,000 Purchase of fixed assets (320) (320) Proceeds from the sale of property and equipment - 2 Proceeds from the sale of property and equipment - 2 Proceeds from itsuagible assets (150) - Proceeds from itsuagible assets (150) - Proceeds from the sale of property and equipment - 2 Proceeds from itsuagible assets (150) - Proceeds from the sale of property and equipment activities - 10,881 Proceeds from the sale of property and equipment activi	Loss on disposal of property and equipment	87	18
Accounts receivable pledged as collateral 6,195 856 Inventories 504 2,551 Accounts payable and accrued liabilities (5,640) (2,528) Accrued interest expense on notes payable (50) (113) Accrued payroll and employee compensation (203) 153 Other assets and liabilities, net (10,944) (10,512) Investing activities - 2,000 Net cash used in operating activities - 2,000 Purchase of fixed assets (320) (320) Proceeds from the sale of property and equipment - 2,5 Purchase of intangible assets (320) (320) Proceeds from the sale of property and equipment - 1,699 Financing activities - 1,699 Proceeds from issuance of Series A Convertible Preferred Stock, net of issuance costs - 10,881 Proceeds from issuance of Series A Convertible Preferred Stock under the 2006 employee stock purchase plans 30 89 (Repayment of) proceeds from accounts receivable pledged as collateral, net (4,27) 308 (Repayment of) proceeds			
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Non-cash activities:			
	•	\$ 1,083	<u>φ 1,038</u>
Equity award modification reclassification to liability \$\\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\ \\			
	Equity award modification reclassification to liability	\$ 2,225	<u>\$</u>

OVERLAND STORAGE, INC. NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

NOTE 1—OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

General

Overland Storage, Inc. ("Overland" or the "Company") was incorporated on September 8, 1980 under the laws of the State of California. For more than 30 years, Overland has delivered data protection solutions designed for backup and recovery to ensure business continuity. Historically, the Company has focused on delivering a portfolio of tape automation solutions including loader and library systems designed for small and medium-sized business computing environments.

The Company operates and reports using a 52-53 week fiscal year with each quarter ending on the Sunday closest to the calendar quarter. For ease of presentation, the Company's fiscal years are considered to end on June 30. For example, references to fiscal 2011 and 2010 refer to the fiscal years ended July 3, 2011 and June 27, 2010, respectively. Fiscal 2011 and 2010 each contained 52 weeks.

The Company has incurred losses for its last six fiscal years and negative cash flows from operating activities for its last five fiscal years. As of June 30, 2011, the Company had an accumulated deficit of \$96.6 million. During fiscal 2011, the Company incurred a net loss of \$14.5 million. Through calendar 2011, the Company expects to incur a net loss as it continues to change its business model and improve operational efficiencies.

The Company's balance of cash increased by \$1.3 million to \$10.2 million compared with the balance at June 30, 2010. In November 2010, the Company sold to various institutional investors for \$3.0 million a minority ownership interest in any amounts it receives from litigation awards or settlements arising from its patent infringement lawsuit.

The Company has projected that cash on hand, combined with available borrowings under its credit facility, will be sufficient to allow the Company to continue operations for the next 12 months. Significant changes from the Company's current forecast, including but not limited to: (i) shortfalls from projected sales levels, (ii) unexpected increases in product costs, (iii) increases in operating costs and/or (iv) changes in the historical timing of collecting accounts receivable could have a material adverse impact on the Company's liquidity. This could force the Company to make further reductions in spending, extend payment terms with suppliers, liquidate assets where possible and/or suspend or curtail planned programs. Any of these actions could materially harm the Company's business, results of operations and future prospects.

The Company's recurring losses and negative cash flows from operations raise substantial doubt about its ability to continue as a going concern. The accompanying consolidated financial statements have been prepared on a going concern basis, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business.

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, Overland Storage (Europe) Ltd., Overland Storage SARL and Overland Storage GmbH. All significant intercompany accounts and transactions have been eliminated.

Management Estimates and Assumptions

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial

statements and reported amounts of revenue and expenses during the reporting period. Estimates have been prepared on the basis of the most current and best available information and actual results could differ from those estimates.

Revenue Recognition

Revenue from sales of products is recognized when persuasive evidence of an arrangement exists, the price is fixed or determinable, collectability is reasonably assured and delivery has occurred. Under this policy, revenue on direct product sales, excluding sales to distributors, is recognized upon shipment of products to customers. These customers are not entitled to any specific right of return or price protection, except for any defective product that may be returned under the Company's warranty policy. Title and risk of loss transfer to the customer when the product leaves the Company's dock. Product sales to distribution customers are subject to certain rights of return, stock rotation privileges and price protection. Because the Company is unable to estimate its exposure for returned product or price adjustments, revenue from shipments to these customers is not recognized until the related products are in turn sold to the ultimate customer by the distributor. For products for which software is more than an incidental component, the Company recognizes revenue in accordance with current authoritative guidance for software revenue recognition.

In October 2009, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2009-13, *Multiple-Deliverable Revenue Arrangements* and ASU No. 2009-14, *Software: Certain Revenue Arrangements That Include Software Elements*. The new standards change the requirements for establishing separate units of accounting in multiple element arrangements and require the allocation of arrangement consideration to each deliverable to be based on the relative selling price. The Company adopted these standards effective the beginning of the first quarter of fiscal 2011. As a result of the adoption of these standards, sales of products which contain both hardware and software components, and for which the Company had previously concluded that the software was more than incidental are no longer within the scope of software revenue recognition guidance as the hardware and software components function together to deliver the product's essential functionality. For any multiple element agreement, the Company allocates the relative fair value to each component. If the Company has fair value for undelivered elements but not the delivered element in an arrangement, the Company defers the fair value of the undelivered element(s) and the relative fair value is allocated to the delivered element(s). Undelivered elements typically include services. Revenue from extended warranty and product service contracts is initially deferred and recognized ratably over the contract period.

The Company has various royalty arrangements with independent service providers that sell its product and also sell and provide service on that product. These independent service providers pay a royalty fee for service contracts on the Company's product. The royalty fee is calculated by Overland for the units covered in the quarter, and agreed to by the service provider, based upon the monthly fee for each unit covered by the independent service provider.

The Company has various licensing agreements relating to its Variable Rate Randomizer $(VR2^{@})$ technology with third parties. The licensees pay a royalty fee for sales of their products that incorporate the $VR2^{@}$ technology. The licensees provide the Company with periodic reports that include the number of units, subject to royalty, sold to their end users. The Company records the royalty when reported to it by the licensee, generally in the period during which the licensee ships the products containing $VR2^{@}$ technology.

Warranty and Extended Warranty

The Company records a provision for estimated future warranty costs for both return-to-factory and on-site warranties. If future actual costs to repair were to differ significantly from estimates, the impact of these unforeseen costs or cost reductions would be recorded in subsequent periods.

Separately priced extended on-site warranties and service contracts are offered for sale to customers on all product lines. The Company contracts with third-party service providers to provide service relating to all on-site

warranties and service contracts. Extended warranty and service contract revenue and amounts paid in advance to outside service organizations are deferred and recognized as service revenue and cost of service, respectively, over the period of the service agreement.

Changes in the liability for product warranty and deferred revenue associated with extended warranties and service contracts were as follows (in thousands):

	Product			Deferred
	Warranty		Revenue	
Liability at June 30, 2009	\$	3,798	\$	15,989
Settlements made during the period		(1,719)		(18,511)
Change in liability for warranties issued during the period		1,207		16,810
Change in liability for preexisting warranties		(1,188)		(14)
Liability at June 30, 2010		2,098		14,274
Settlements made during the period		(894)		(17,379)
Change in liability for warranties issued during the period		733		15,881
Change in liability for preexisting warranties		(539)		
Liability at June 30, 2011	\$	1,398	\$	12,776

Shipping and Handling

Amounts billed to customers for shipping and handling are included in product sales and costs incurred related to shipping and handling are included in cost of revenue.

Advertising Costs

Advertising costs are expensed as incurred. Advertising expenses were \$0.6 million and \$0.5 million for fiscal years 2011 and 2010, respectively.

Research and Development Costs

Research and development costs are expensed as incurred. Software development costs are expensed until technological feasibility has been established, at which time any additional costs are capitalized. Because the Company believes its current process for developing software is essentially completed concurrently with the establishment of technological feasibility, which occurs upon the completion of a working model, no costs were capitalized during fiscal 2011 or 2010.

Segment Data

The Company reports segment data based on the management approach. The management approach designates the internal reporting that is used by management for making operating and investment decisions and evaluating performance as the source of the Company's reportable segments. The Company uses one measurement of profitability and does not disaggregate its business for internal reporting. The Company has determined that it operates in one segment providing data storage solutions for mid-range businesses and distributed enterprises. The Company discloses information about products and services, geographic areas and major customers.

Information about Products and Services

The following table summarizes net revenue by product (in thousands):

		Fiscal Year			
	2011		2010		
Tape-based products:		_			
NEO SERIES®	\$ 26,3	63 \$	33,810		
ARCvault [®] family		51	2,446		
	26,4	14	36,256		
Disk-based products: REO SERIES [®]					
REO SERIES®	1,5	29	2,434		
ULTAMUS [®]		10	521		
Snap Server®	11,1	28	8,382		
	12,6	67	11,337		
Service	24,2	13	23,577		
Spare parts and other VR ^{2®}	6,7	34	6,176		
VR ^{2®}	1	<u></u>	316		
	\$ 70,1	97 \$	77,662		

Information about Geographic Areas

The Company markets its products domestically and internationally, with its principal international market being Europe. Revenue is attributed to the location to which the product was shipped. Long-lived assets are based on location of domicile.

The following table summarizes net revenue and long-lived assets by geographic area (in thousands):

	Net Revenue		Long-lived Assets	
Fiscal 2011				
United States	\$ 34,601	\$	562	
France	6,971		13	
Europe (other than UK, France, Germany and Netherlands)	6,009		_	
United Kingdom	4,991		29	
Germany	4,599		55	
Netherlands	3,918		_	
Singapore	2,924		_	
Other foreign countries	 6,184			
	\$ 70,197	\$	659	
Fiscal 2010				
United States	\$ 37,187	\$	684	
France	7,484		_	
Europe (other than UK, France, Germany and Netherlands)	4,906		_	
United Kingdom	10,174		59	
Germany	3,817		61	
Netherlands	3,224		_	
Singapore	4,110		_	
Other foreign countries	6,760		_	
	\$ 77,662	\$	804	

Cash and Cash Equivalents

Highly liquid investments with insignificant interest rate risk and original maturities of three months or less, when purchased, are classified as cash equivalents. Cash equivalents are composed of money market funds. The carrying amounts approximate fair value due to the short maturities of these instruments.

Accounts Receivable and Allowance for Doubtful Accounts

The Company records accounts receivable at invoice amount and does not charge interest thereon. The Company estimates its allowance for doubtful accounts based on an assessment of the collectability of specific accounts and the overall condition of the accounts receivable portfolio. When evaluating the adequacy of the allowance for doubtful accounts, the Company analyzes specific trade and other receivables, historical bad debts, customer credits, customer concentrations, customer credit-worthiness, current economic trends and changes in customers' payment terms and/or patterns. The Company reviews the allowance for doubtful accounts on a quarterly basis and records adjustments as considered necessary. Customer accounts are written-off against the allowance for doubtful accounts when an account is considered uncollectible.

Inventories

Inventories are stated at the lower of cost or market using the first-in-first-out method. The Company assesses the value of its inventories periodically based upon numerous factors including, among others, expected product or material demand, current market conditions, technological obsolescence, current cost and net realizable value. If necessary, the Company adjusts its inventory for obsolete or unmarketable inventory by an amount equal to the difference between the cost of the inventory and the estimated market value.

Property and Equipment

Property and equipment are recorded at cost. The Company also capitalizes qualifying internal use software costs incurred during the application development stage. Depreciation expense is computed using the straight-line method. Leasehold improvements are depreciated over the shorter of the remaining estimated useful life of the asset or the term of the lease. Estimated useful lives are as follows:

Machinery and equipment3-5 yearsFurniture and fixtures5 yearsComputer equipment and software1-5 years

Expenditures for normal maintenance and repair are charged to expense as incurred, and improvements are capitalized. Upon the sale or retirement of property or equipment, the asset cost and related accumulated depreciation are removed from the respective accounts and any gain or loss is included in the results of operations.

Long-lived Assets

The Company evaluates the recoverability of long-lived assets, including property and equipment and certain identifiable intangible assets, in accordance with current accounting rules. The Company tests for recoverability whenever events or changes in circumstances indicate the carrying value may not be recoverable. The Company's consideration includes, but is not limited to, the following events or changes as potential indicators of non-recoverability:

- Significant underperformance relative to historical or projected future operating results.
- Significant changes in the manner of use of the assets or the strategy for the Company's overall business.
- Significant decrease in the market value of the assets.
- · Significant negative industry or economic trends.

When the carrying value is not considered recoverable, an impairment loss for the amount by which the carrying value of a long-lived asset exceeds its fair value is recognized, with an offsetting reduction in the carrying value of the related asset. If the Company's future results are significantly different than forecasted, the Company may be required to further evaluate its long-lived assets for recoverability and such analysis could result in an impairment charge in a future period. In fiscal 2011 and 2010, there were no impairments recognized.

Deferred Rent

Rent expense is recorded on a straight-line basis over the term of the lease. The difference between rent expense and amounts paid under the lease agreements is recorded in other liabilities in the accompanying consolidated balance sheet.

Foreign Currency Translation

The financial statements of foreign subsidiaries, for which the functional currency is the local currency, are translated into U.S. dollars using the exchange rate at the balance sheet date for assets and liabilities and a weighted-average exchange rate during the year for revenue, expenses, gains and losses. Translation adjustments are recorded as accumulated other comprehensive income within shareholders' equity. Gains or losses from foreign currency transactions are recognized currently in income. Such transactions resulted in a loss of \$0.5 million for fiscal 2011 and a gain of \$0.5 million for fiscal 2010.

Income Taxes

The Company provides for income taxes utilizing the asset and liability approach of accounting for income taxes. Under this approach, deferred taxes represent the future tax consequences expected to occur when the reported amounts of assets and liabilities are recovered or paid. The provision for income taxes generally represents income taxes paid or payable for the current year plus the change in deferred taxes during the year. Deferred taxes result from differences between the financial and tax bases of the Company's assets and liabilities and are adjusted for changes in tax rates and tax laws when changes are enacted. Valuation allowances are recorded to reduce deferred tax assets when a judgment is made that it is considered more likely than not that a tax benefit will not be realized. A decision to record a valuation allowance results in an increase in income tax expense or a decrease in income tax benefit. If the valuation allowance is released in a future period, income tax expense will be reduced accordingly.

The calculation of tax liabilities involves dealing with uncertainties in the application of complex global tax regulations. The impact of an uncertain income tax position is recognized at the largest amount that is "more likely than not" to be sustained upon audit by the relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained. If the estimate of tax liabilities proves to be less than the ultimate assessment, a further charge to expense would result.

Comprehensive Loss

Comprehensive loss and its components encompasses all changes in equity other than those with stockholders and includes net loss, foreign currency translation adjustments and unrealized gains on available-for-sale securities, and are disclosed as a separate component of stockholders' equity.

Concentration of Credit Risks

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of trade accounts receivable, which are generally not collateralized and accounts receivable pledged as collateral. To reduce credit risk, the Company performs ongoing credit evaluations of its customers and maintains allowances for potential credit losses and sales returns.

The following table summarizes certain financial data for the customer who accounted for 10% or more of sales. No other customer accounted for 10% or more of sales in any of the two years presented.

	Fiscal	Year
	2011	2010
Single largest customer		
Sales	18.8%	22.5%
Accounts receivable	13.5%	9.4%

Net Loss per Share

Basic net loss per share is computed by dividing net loss applicable to common shareholders by the weighted-average number of shares of common stock outstanding during the period. Diluted net loss per share is computed based on the weighted-average number of shares of common stock outstanding during the period increased by the weighted-average number of dilutive common stock equivalents outstanding during the period, using the treasury stock method. Dilutive common stock equivalents are comprised of options granted under the Company's stock option plans, employee stock purchase plan ("ESPP") share purchase rights and common stock purchase warrants. For all periods presented, there is no difference in the number of shares used to calculate basic and diluted shares outstanding due to the Company's net loss position.

Anti-dilutive common stock equivalents excluded from the computation of diluted net loss per share were as follows (in thousands):

	Fiscal Yea	ır
	2011	2010
Options outstanding and ESPP share purchase rights	3,176	1,864
Common stock purchase warrants	12,719	2,318

As discussed in Note 7, the Company recorded a beneficial conversion feature of \$144,000 for the February 2010 issuance of Series A Convertible Preferred Stock. This amount has been included as an increase to the net loss for common shareholders when computing loss per share for the fiscal year ended June 30, 2010.

Share-based Compensation

The Company accounts for stock option grants and similar equity instruments granted to employees and non-employee directors under the fair value method. Share-based compensation award types include stock options, restricted stock units, and Stock Appreciation Rights ("SAR") awards. The Company uses the Black-Scholes option pricing model to estimate the fair value of its options on the measurement date, which generally is the date of grant except for the liability-classified SAR awards. The cost is recognized over the requisite service period (usually the vesting period) for the estimated number of instruments for which service is expected to be rendered.

Compensation expense associated with option awards with graded vesting is recognized pursuant to an accelerated method. Compensation expense associated with restricted stock awards is recognized over the vesting period using the straight-line method.

The Company has not recognized, and does not expect to recognize in the near future, any tax benefit related to share-based compensation cost as a result of the full valuation allowance of the Company's net deferred tax assets and its net operating loss carryforwards.

The Company recorded the following compensation expense related to its share-based compensation awards (in thousands):

		Fiscal Year			
	20	11		2010	
Cost of product sales	\$	16	\$	226	
Sales and marketing		610		341	
Research and development		400		242	
General and administrative		2,047		901	
	\$	3,073	\$	1,710	

Fair Value of Financial Instruments

Financial instruments including cash and cash equivalents, accounts receivable (pledged and non-pledged), accounts payable, accrued liabilities and a note payable, are carried at cost, which management believes approximates fair value because of the short-term maturity of these instruments. The carrying amount of the Company's note payable in the prior fiscal year approximated its fair value as the interest rate of the note payable was substantially comparable to rates offered for similar debt instruments. The note payable was paid in full during the first quarter of fiscal 2011.

Recently Issued Accounting Pronouncements

In June 2011, the FASB issued ASU No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income.* ASU No. 2011-05 provides two options for presenting other comprehensive income ("OCI"), which previously has typically been placed near the statement of equity. The amendments require an OCI statement to be included with the income statement, which together will make a statement of total comprehensive income or separate from the income statement, but the two statements will have to appear consecutively within a financial report. The provisions of ASU No. 2011-05 are effective for fiscal quarters and years beginning on or after December 15, 2011. The Company will retroactively opt one of the two presentation options in its Quarterly Report filed on Form 10-Q for the quarterly period ended March 31, 2012.

From time to time, new accounting pronouncements are issued by the FASB that are adopted by the Company as of the specified effective date. Unless otherwise discussed, management believes that the impact of recently issued standards, which are not yet effective, will not have a material impact on the Company's consolidated financial statements upon adoption.

NOTE 2—COMPANY RESTRUCTURINGS

Restructurings

In fiscal October 2009, the Company reduced its worldwide workforce by 6.4%, or 15 employees, in accordance with the Company's realignment around core initiatives. Severance costs, including COBRA premiums, related to the terminated employees of \$422,000 were recorded in the first quarter of fiscal 2010. Severance charges are included in cost of goods sold, sales and marketing expense, research and development expense and general and administrative expense in the accompanying consolidated statement of operations.

In April 2010, the Company reduced its worldwide workforce by 18.8%, or 42 employees. Severance costs, including COBRA premiums, related to the terminated employees of \$220,000 were recorded in the fourth quarter of fiscal 2010. Severance charges are included in cost of goods sold, sales and marketing expense, research and development expense and general and administrative expense in the accompanying consolidated statement of operations.

The following table summarizes the activity and balances of accrued restructuring charges through fiscal 2011 (in thousands):

	Employee		
	Related	Facilities	Total
Balance at June 30, 2009	\$ 82	\$ 50	\$ 132
Accrued restructuring charges	642	_	642
Cash payments	(633)	(42)	(675)
Balance at June 30, 2010	91	8	99
Accrued restructuring charges	_	_	_
Cash payments	(91)	(8)	(99)
Balance at June 30, 2011	\$	\$	\$

NOTE 3—COMPOSITION OF CERTAIN FINANCIAL STATEMENT CAPTIONS

The following table summarizes inventories (in thousands):

	 June 30,			
	2011		2010	
Raw materials	\$ 3,834	\$	5,010	
Work in process	674		73	
Finished goods	 4,929		4,858	
	\$ 9,437	\$	9,941	

The following table summarizes other current assets (in thousands):

	 June 30,		
	2011		2010
Prepaid third-party service contracts	\$ 4,138	\$	5,121
Short-term deposits	536		489
Prepaid insurance and services	352		301
VAT receivable	268		298
Income tax receivable	_		46
Other	 337		296
	\$ 5,631	\$	6,551

The following table summarizes property and equipment (in thousands):

		June 30,		
	2	011		2010
Computer equipment	\$	1,110	\$	1,172
Machinery and equipment		422		468
Leasehold improvements		91		205
Furniture and fixtures		84		65
		1,707		1,910
Accumulated depreciation and amortization		(1,048)		(1,106)
	\$	659	\$	804

Depreciation and amortization expense for property and equipment was \$0.4 million and \$0.6 million in fiscal 2011 and 2010, respectively.

The following table summarizes other assets (in thousands):

	 June 30,				
	2011		2010		
Deferred service contracts	\$ 1,383	\$	1,275		
Other	 157		153		
	\$ 1,540	\$	1,428		

The following table summarizes accrued liabilities (in thousands):

	 June 30,				
	2011		2010		
Deferred revenue—Service contracts	\$ 9,163	\$	11,026		
Accrued expenses	2,103		2,791		
Third-party service contracts payable	1,989		1,889		
Deferred revenue—Distributors	532		942		
Accrued market development funds	 <u> </u>		544		
	\$ 13,787	\$	17,192		

The following table summarizes other long-term liabilities (in thousands):

		June	e 30,	
	:	2011		2010
Deferred revenue—Service contracts	\$	4,421	\$	3,684
Deferred rent		1,268		1,103
Third-party service contracts payable		415		455
Other		121		199
	\$	6,225	\$	5,441

As of the end of fiscal 2011, the balances of accounts receivable consist entirely of accounts receivable trade balances, net of allowance for doubtful accounts. As of the end of fiscal 2010, the balances of accounts receivable and accounts receivable pledged as collateral consist entirely of accounts receivable trade balances, net of allowance for doubtful accounts, including amounts due from MCF and FGI related to customer remittances that had not been remitted to the Company as of the balance sheet date. In August 2011, the Company terminated the MCF Financing Agreement pursuant to its terms. In April 2011, the Company terminated the FGI Financing Agreement pursuant to its terms.

The following table summarizes the changes in allowance for doubtful accounts (in thousands):

		Balance at	Additions	Write-offs,	Deductions]	Balance
	F	Beginning of	Charged to	Net of	Credited to		at End
Fiscal year		Year	 Income	 Recoveries	Income		of Year
2011	\$	411	\$ 133	\$ 267	\$ _	\$	277
2010	\$	532	\$ _	\$ 99	\$ (22)	\$	411

NOTE 4—INTANGIBLE ASSETS

Intangible assets consist of the following (in thousands):

		June	e 30,	
	20	011		2010
Acquired technology	\$	1,928	\$	1,778
Customer contracts and trade names		3,853		3,853
		5,781		5,631
Accumulated amortization		(3,283)		(2,139)
	\$	2,498	\$	3,492

Intangible assets, net, primarily consist of the intangible assets acquired in the June 2008 acquisition of Snap Server. The identifiable intangible assets acquired in the Snap Server acquisition consist of existing technology (acquired technology), which has been assigned an estimated useful life of four years, and customer contracts and trade names, which have been assigned an estimated useful life of six years. The intangible assets are being amortized on a straight-line basis over their estimated useful lives.

In the first quarter of fiscal 2011, the Company purchased intangible assets for \$150,000. The identifiable intangible assets acquired consist of existing technology (acquired technology), which has been assigned an estimated useful life of three years. The intangible assets are being amortized on a straight-line basis over their estimated useful lives.

Amortization expense of intangible assets was \$1.1 million during fiscal 2011 and 2010. Estimated amortization expense for intangible assets will be \$1.1 million in fiscal 2012 and \$0.7 million in each of fiscal 2013 and fiscal 2014.

NOTE 5—DEBT

The components of the Company's outstanding debt are as follows (in thousands):

		Jun	e 30,	
	2	011		2010
Obligation under Marquette Commercial Finance ("MCF") Financing Agreement	\$		\$	2,612
Obligation under Faunus Group International ("FGI") Financing Agreement		_		1,848
Note payable to Anacomp, including accrued interest				711
	\$		\$	5,171

MCF Financing Agreement

In November 2008, the Company entered into a domestic non-OEM accounts receivable financing agreement (the "MCF Financing Agreement") with Marquette Commercial Finance ("MCF"). Under the terms of the MCF Financing Agreement, the Company could offer to sell its accounts receivable to MCF each month during the term of the MCF Financing Agreement, up to a maximum amount outstanding at any time of \$9.0 million in gross receivables submitted, or \$6.3 million in net amounts funded based upon a 70.0% advance rate. The MCF Financing Agreement could be terminated by either party with 30 days written notice. The Company was not obligated to offer accounts in any month, and MCF had the right to decline to purchase any offered accounts (invoices). Net amounts funded by MCF as of June 30, 2011 and 2010, based upon a 70.0% advance rate, were \$0 and \$2.6 million, respectively.

The MCF Financing Agreement provided for the sale, on a revolving basis, of accounts receivable generated by specified debtors. The purchase price paid by MCF reflects a discount that is generally 2.5%, but could be increased in certain circumstances, including situations when the time elapsed between placement of the account with MCF and receipt of payment from the debtor exceeds certain thresholds. The Company continued to be responsible for the servicing and administration of the receivables purchased.

The Company accounted for the sale of receivables under the MCF Financing Agreement as a secured borrowing with a pledge of the subject receivables as collateral, in accordance with the authoritative guidance for accounting for transfers and servicing of financial assets and extinguishments of liabilities. The caption "Accounts receivable pledged as collateral" on the accompanying consolidated balance sheet in the amount of \$0 million and \$6.2 million as of June 30, 2011 and 2010, respectively, includes \$0 and \$3.7 million, respectively, of gross receivables that were designated as "sold" to MCF. Such receivable served as collateral for short-term debt in the amount of \$0 and \$2.6 million, excluding accrued interest, as of June 30, 2011 and 2010, respectively.

As of June 30, 2011, the Company was in compliance with the dilution covenant. In August 2011, the Company terminated the MCF Financing Agreement pursuant to its terms.

FGI Financing Agreement

In March 2009, the Company entered into a foreign non-OEM accounts receivable financing agreement (the "FGI Financing Agreement") with Faunus Group International ("FGI"). Under the terms of the FGI Financing Agreement, the Company could offer to sell its foreign non-OEM accounts receivable to FGI each month during the term of the FGI Financing Agreement, up to a maximum amount outstanding at any time of \$5.0 million in gross accounts receivable submitted, or \$3.75 million in net amounts funded based upon a 75.0% advance rate. FGI became responsible for the servicing and administration of the accounts receivable purchased. The Company would pay FGI a monthly collateral management fee equal to 1.09% of the average monthly balance of accounts purchased by FGI. In addition, FGI would charge the Company interest on the daily net funds employed at a rate equal to the greater of (i) 7.5% or (ii) 3.0% above FGI's prime rate. The Company was not obligated to offer accounts in any month and FGI has the right to decline to purchase any accounts. Net amounts funded by FGI as of June 30, 2011 and 2010, based upon a 75.0% advance rate, were \$0 and \$1.9 million, respectively.

The Company accounted for the sale of accounts receivable under the FGI Financing Agreement as a secured borrowing with a pledge of the subject receivables as collateral, in accordance with the authoritative guidance for accounting for transfers and servicing of financial assets and extinguishments of liabilities. The caption "Accounts receivable pledged as collateral" on the accompanying consolidated balance sheet in the amount of \$0 and \$6.2 million as of June 30, 2011 and 2010, respectively, included \$0 and \$2.5 million of gross accounts receivable that were designated as "sold" to FGI and that served as collateral for short-term debt in the amount of \$0 and \$1.9 million as of June 30, 2011 and 2010, respectively.

In April 2011, the Company terminated the FGI Financing Agreement pursuant to its terms and paid the \$100,000 termination fee to FGI pursuant to the terms of such agreement. FGI had a security interest in substantially all of the Company's assets during the term of such agreement.

Note Payable to Anacomp

In April 2009, the Company entered into a secured promissory note with Anacomp, Inc. ("Anacomp"), one of the Company's authorized service providers. The Anacomp note represented a conversion of accounts payable owed by the Company to Anacomp that accumulated primarily during the third quarter of fiscal 2009, during which time the Company was negotiating an extension and other terms under its agreement with Anacomp. The Anacomp note, as amended and restated to reflect the actual accounts payable due, was in the amount of \$2.3 million and accrued simple interest at 12.0% per annum. The Anacomp note was paid in full in the first quarter of fiscal 2011.

NOTE 6—INCOME TAXES

The Company recognizes the impact of an uncertain income tax position on its income tax return at the largest amount that is more-likely-than-not to be sustained upon audit by the relevant taxing authority. An uncertain income tax position will not be recognized if it has less than a 50% likelihood of being sustained.

The following is a summary of the changes in the amount of unrecognized tax benefits (in thousands):

		Fiscal	Year	
	2	011	2	010
Unrecognized tax benefits at the beginning of the period	\$	383	\$	333
Decrease in unrecognized tax benefit for lapse of statute of limitations		_		(44)
Increase related to prior periods		_		94
Unrecognized tax benefits	\$	383	\$	383

At June 30, 2011, \$0.1 million of the unrecognized tax benefits, excluding interest, are presented as a component of long-term liabilities in the accompanying consolidated balance sheet and \$0.3 million is presented as a reduction of the related deferred tax asset for which there is full valuation allowance. The entire amount of unrecognized tax benefits at June 30, 2011 will affect the effective tax rate if recognized. However, the portion that would be recognized as an increase to deferred tax assets may result in a corresponding increase in the valuation allowance at the time of recognition resulting in no net effect to the effective tax rate, depending upon the Company's assessment of the likelihood of realization of the tax benefits at the time they are recognized.

The Company believes it is reasonably possible that, within the next twelve months, the amount of unrecognized tax benefits may remain unchanged. The Company recognizes interest and penalties related to unrecognized tax benefits in its provision for income taxes. The Company had no material accrual for interest and penalties on its consolidated balance sheet at fiscal years ended June 30, 2011 and 2010 and recognized no interest and/or penalties in the consolidated statement of operations for the fiscal year ended June 30, 2011.

During fiscal 2011, the Company's liability for unrecognized tax benefits remained unchanged from the prior year due to the expiration of the statute of limitation for certain years. The full amount was recognized as a tax benefit in the Company's financial statements.

The Company is subject to federal and state taxation in the United States and also in certain foreign tax jurisdictions. Generally, the Company's tax returns for fiscal 2008 and forward are subject to examination by the U. S. federal tax authorities and fiscal 2007 and forward are subject to examination by state tax authorities.

In December 2009, Section 172(b)(1)(H) of the Internal Revenue Code (Section 172(b)(1)(H)) was amended to allow all taxpayers to elect to carry back an applicable net operating loss (NOL) for a period of three, four or five years. This election traditionally provided that an NOL for any taxable year could be carried back to each of the two years preceding the taxable year of the NOL. For the Company, the first applicable tax year available to carry back NOLs under Section 172(b)(1)(H) is its fiscal year ended June 30, 2008. The Company elected to carry back its fiscal 2008 NOL of \$20.2 million to the fifth, fourth and third preceding years as allowed under Section 172(b)(1)(H). As a result, the Company recognized a discrete tax benefit in the third quarter of fiscal 2010 of approximately \$2.0 million. No additional NOL carryback opportunity was available during fiscal 2011.

The Company's ability to use its net operating loss (NOL) and research and development (R&D) credit carryforwards may be substantially limited due to ownership change limitations that may have occurred or that could occur in the future, as required by Section 382 of the Internal Revenue Code of 1986, as amended (the Code), as well as similar state provisions. These ownership changes may limit the amount of NOL and R&D credit carryforwards that can be utilized annually to offset future taxable income and tax, respectively. In general, an "ownership change" as defined by Section 382 of the Code results from a transaction or series of transactions over a three-year period resulting in an ownership change of more than 50.0% of the outstanding stock of a company by certain stockholders or public groups.

The Company has not completed a study to assess whether an ownership change has occurred or whether there have been multiple ownership changes since the Company became a "loss corporation" under the definition of Section 382. If the Company has experienced an ownership change, utilization of the NOL or R&D credit carryforwards would be subject to an annual limitation under Section 382 of the Code, which is determined by first multiplying the value of the Company's stock at the time of the ownership change by the applicable long-term, tax-exempt rate, and then could be subject to additional adjustments, as required. Any limitation may result in expiration of a portion of the NOL or R&D credit carryforwards before utilization. Further, until a study is completed and any limitation known, no positions related to limitations are being considered as an uncertain tax position or disclosed as an unrecognized tax benefit. Any carryforwards that expire prior to utilization as a result of such limitations will be removed from deferred tax assets with a corresponding reduction of the valuation allowance. Due to the existence of the valuation allowance, it is not expected that any possible limitation will have an impact on the results of operations or financial position of the Company.

The components of loss before income taxes were as follows (in thousands):

		Fiscal Year						
	·	2011		2010				
Domestic	\$	(14,691)	\$	(15,293)				
Foreign		477		502				
	\$	(14,214)	\$	(14,791)				

The provision for income taxes includes the following (in thousands):

		Fiscal	Year	
	2011			2010
Current:				_
Federal	\$	108	\$	(2,047)
State		(49)		55
Foreign		226		163
Total current	\$	285	\$	(1,829)

A reconciliation of income taxes computed by applying the federal statutory income tax rate of 34.0% to loss before income taxes to the total income tax provision reported in the accompanying consolidated statements of operations is as follows (in thousands):

	 Fiscal	Year	
	2011		2010
U.S. federal income tax at statutory rate	\$ (4,833)	\$	(5,029)
State income taxes, net of federal benefit	(695)		(661)
Increase in valuation allowance	5,057		5,724
Share-based compensation expense	236		166
Net operating loss carryback	108		(2,047)
Foreign dividend	271		_
Federal R&D tax credit	_		(56)
Permanent differences	141		74
Total provision for (benefit from) income taxes	\$ 285	\$	(1,829)

Deferred income taxes reflect the net effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are shown below. A full valuation allowance has been recorded, as realization of such assets is uncertain. Deferred income taxes comprised (in thousands):

	June 30,	
	2011	2010
Deferred tax assets:		
Net operating loss carryforward	\$ 40,039	\$ 35,724
Warranty and extended warranty	1,676	2,289
Property and equipment	36	471
Capital loss carryforward	1,260	1,263
Tax credits	2,568	2,446
Inventory	1,799	1,898
Share-based compensation	1,260	569
Intangible assets	1,365	890
Vacation and deferred compensation	233	163
Allowance for doubtful accounts	104	155
Other	329	101
Gross deferred tax asset	50,669	45,969
Valuation allowance for deferred tax assets	(50,669)	(45,969)
Net deferred tax asset	<u> </u>	<u> </u>

At June 30, 2011, the Company has federal and state net operating loss carryforwards of \$106.9 million and \$73.9 million, respectively. These amounts include share-based compensation deductions of \$1.0 million that will be recorded to contributed capital when realized. The remaining federal net operating loss will begin expiring in 2023, unless previously utilized. State net operating loss carryforwards generally begin to expire in 2016, unless previously utilized.

At June 30, 2011, the Company had federal and California research and development tax credit carryforwards totaling \$0.6 million and \$2.2 million, respectively. The California research credit may be carried forward indefinitely. The federal research credit will begin expiring in 2025, unless previously utilized. In addition, the Company has foreign tax credit carryforwards totaling \$0.3 million, which will begin expiring in 2015, unless previously utilized. The Company has federal alternative minimum tax credit carryforwards totaling \$0.2 million which can be carried forward indefinitely.

NOTE 7—EQUITY

Sale of Common Stock

In March 2011, in a private placement transaction, the Company sold an aggregate of 8,653,045 shares of its common stock along with warrants to purchase up to 3,807,331 shares of common stock for a total issuance price of approximately \$15.3 million and net proceeds of approximately \$13.8 million. The purchase price for one share of common stock and a warrant to purchase 0.44 shares of common stock was \$1.765. Each warrant has an initial exercise price of \$1.71 per share of common stock. The warrants are immediately exercisable and have a five year term. In connection with the offering and as partial compensation for the placement agent's services, the Company issued to the placement agent a warrant initially exercisable to purchase up to 259,591 shares of common stock at an exercise price of \$1.71 per share of common stock and with other terms also substantially the same as the warrants issued to the purchasers. The Company has evaluated the warrants issued in the private placement transaction and has concluded that the equity classification is appropriate as all warrants are considered to be indexed to the Company's equity and there are no settlement provisions that would result in classification as a debt instrument.

As part of the March 2011 sale of common stock, the number of shares of common stock issuable upon exercise of the warrants issued in February 2010 was further adjusted from 7,307,186 shares to 8,368,135 shares and the per share strike price of such warrants was proportionately decreased from \$2.253 to \$1.967, each as a result of the weighted-average anti-dilution provisions in the warrants. The Company has concluded that these warrants should continue to be classified as a component of equity.

In November 2010, the Company sold an aggregate of 3,376,000 shares of its common stock to certain institutional investors at \$1.25 per share for gross proceeds of approximately \$4.2 million and net proceeds of approximately \$4.0 million. As part of this sale of common stock, the number of shares of common stock issuable upon exercise of the warrants issued in February 2010 was adjusted from 6,373,266 shares to 7,307,186 shares and the per share strike price of such warrants was proportionately decreased from \$2.583 to \$2.253, each as a result of the weighted-average anti-dilution provisions in the warrants. The Company has concluded that these warrants should continue to be classified as a component of equity.

Sale of Series A Convertible Preferred Stock and Issuance of Common Stock Warrants

In February 2010, the Company issued and sold an aggregate of 794,659 shares of Series A Convertible Preferred Stock (Series A Stock) and warrants to purchase up to 6,373,266 shares of common stock in a private placement for a total issuance price of \$11.9 million and net proceeds of approximately \$10.9 million. The Series A Stock was convertible into 4,521,616 shares of the Company's common stock with no par value per share, and each warrant has an exercise price of \$2.583 per share of common stock. In connection with this transaction, the Company issued a warrant to purchase up to 180,865 shares of common stock at an exercise price of \$2.952 per share to the placement agent in February 2010. The warrants are immediately exercisable, have a five year term and provide for weighted-average anti-dilution protection in the event that the Company issues additional securities at a price less than the then-effective exercise price of the warrants.

The proceeds from the February 2010 transaction have been allocated to the Series A Stock and the warrants based on their relative fair values. The Company concluded that each share of Series A Stock had an estimated fair value of \$9.54 at the time of issuance with a total fair value of approximately \$7.6 million, and that each warrant issued had an estimated fair value of approximately \$0.72 for each share exercisable under such warrant, or a total fair value of approximately \$4.6 million. Based on the total proceeds of \$11.9 million, the values recorded on the Company's balance sheet were reduced to approximately \$7.4 million for the Series A Stock and approximately \$4.5 million for the warrants. The total estimated fair value of the warrant issued to the placement agent was estimated to be approximately \$0.1 million, and was recorded as part of the financing costs associated with the transaction.

The Company has evaluated the warrants issued in the transaction and has concluded that equity classification is appropriate as all warrants are considered to be indexed to the Company's equity and there are no settlement provisions that would result in classification as a debt instrument.

The Company also determined that the valuation of the components of the February 2010 transaction results in a beneficial conversion feature of \$144,000 for the Series A Stock based on a comparison of the estimated fair value and allocated value. Based on the terms of the Series A Stock, the beneficial conversion feature has been recorded as an increase in value to the Series A Stock with an off-setting negative impact to accumulated deficit, and will increase the net loss attributable to common shareholders for the fiscal year ended June 30, 2010.

In April 2010, the shareholders approved the full conversion of the Series A Stock at a special shareholders' meeting, and the 794,659 shares of Series A Stock thereafter automatically converted into 4,521,616 shares of common stock. As a result of this conversion, the Company's consolidated balance sheet reflects a single class of stock ownership, and the net proceeds from the February 2010 transaction is reflected as common stock. As of June 30, 2010, there were 49,310 shares of common stock related to this conversion that were not issued, which subsequently were issued in fiscal 2011.

Sale of Common Stock and Issuance of Common Stock Warrant

In November 2009, the Company sold 2,070,000 shares of its common stock through a public offering of common stock at \$2.10 per share with gross proceeds of approximately \$4.3 million and net proceeds of approximately \$3.7 million. In addition, the Company issued a warrant for the purchase of 103,500 shares of the Company's common stock at \$2.625 per share to the underwriter of the offering. The warrant may be exercised at any time beginning on October 25, 2010 and ending on October 30, 2014. The warrant features a net exercise provision which enables the holder to choose to exercise the warrant without paying cash by surrendering shares subject to the warrant. This right is available only if a registration statement covering the shares subject to the warrant is not available at the time of exercise. The Company also agreed to grant a single demand registration right to the holder of the warrant under certain circumstances. The fair value of the warrant was estimated at \$1.70 per share, or \$176,000, utilizing a Black-Scholes model, and was recorded in equity as a financing cost.

The Company has evaluated the warrants issued in this transaction and has concluded that equity classification is appropriate as all warrants are considered to be indexed to the Company's equity and there are no settlement provisions that would result in classification as a debt instrument.

Reverse stock split

In December 2008, the Board of Directors and shareholders approved a reverse stock split of the Company's outstanding shares of common stock. On December 8, 2009, the Company filed a certificate of amendment to its amended and restated certificate of incorporation, as amended, with the Secretary of State of the State of California effecting a one-for-three reverse stock split of the outstanding shares of common stock. All share, per share and stock option data information in the consolidated financial statements and the notes thereto have been retroactively adjusted for all periods to give effect to the reverse stock split.

NOTE 8—SHARE-BASED COMPENSATION

Equity Compensation Plans

The Company has four active stock option plans administered by the Compensation Committee of the Board of Directors. In June 2011, the Board of Directors modified the Company's 2009 Equity Incentive Plan to authorize an additional 3.2 million shares available for issuance. As of June 30, 2011, the Company had reserved an aggregate of 8.2 million shares of common stock for issuance under its four active plans: 2000 Stock Option Plan, 2001 Supplemental Stock Option Plan (2001 Plan), 2003 Equity Incentive Plan (2003 Plan) and the 2009 Equity Incentive Plan (2009 Plan) (collectively, the Option Plans). The Option Plans provide for the granting of stock options. In addition, the 2003 Plan and the 2009 Plan provide for the granting of restricted stock, stock units, stock options and stock appreciation rights. The Option Plans were approved by the Company's shareholders with the exception of the 2001 Plan. Currently, the Company may grant new awards only under the 2009 Plan. The Compensation Committee may also grant options outside of the Option Plans as an inducement to an employee commencing employment with the Company (Inducement Options). As of June 30, 2011, the Company had reserved an aggregate of 0.5 million shares of common stock for the issuance of Inducement Options.

Options granted generally vest over a three-year period. Options generally expire after a period not to exceed six years, except in the event of termination, whereupon vested shares must be exercised generally within three months under the 2009 Plan and 2003 Plan and within 30 days under the other Option Plans, or upon death or disability, in which cases an extended six- or twelve-month exercise period is specified. As of June 30, 2011, approximately 6.7 million shares were reserved for issuance upon exercise of outstanding awards and options and approximately 2.0 million shares were available for grant under the Option Plans.

The fair value of each option is estimated on the date of grant using the Black-Scholes option pricing model, which uses the weighted-average assumptions noted in the following table.

_	Fiscal Year		
	2011	2010	
Expected volatility	69.8%	73.7%	
Risk-free interest rate	2.1%	2.9%	
Dividend yield	_	_	
Expected term (in years)	6.0	6.0	

Prior to the fourth quarter of fiscal 2010, the expected volatility utilized in the valuation of equity awards was solely based on the historical volatility of the Company's stock utilizing the daily closing prices. During the third quarter of fiscal 2010, the Company completed a Series A Convertible Preferred Stock financing, which included common stock warrants. The circumstances of this financing lead the Company to perform a valuation analysis and volatility study in order to properly ascribe the fair values of the proceeds of the financing to both the stock and the warrants. The Company then performed a similar volatility study for equity compensation and believes this approach is more sophisticated and a better indicator of expected volatility of its stock because it considers additional factors, such as the overall market conditions, the industry sector and the expected and realistic pricing of equity instruments in the marketplace and is generally reflective of both historical and implied volatility. Accordingly, the Company commenced using this new approach for estimating expected volatility for equity compensation beginning in the fourth quarter of fiscal 2010. The Company applies a forfeiture rate based upon historical pre-vesting option cancellations. The risk-free interest rate is determined based upon a constant maturity U.S. Treasury security with a contractual life approximating the expected term of the option. The expected term of options granted is estimated based on a number of factors, including but not limited to the vesting term of the award, historical employee exercise behavior (for both options that have run their course and outstanding options), the expected volatility of the Company's stock and an employee's average length of service.

Option activity is summarized below (shares and aggregate intrinsic value in thousands):

			Weighted-		
		Weighted-	Average		
		Average	Remaining	A	ggregate
		Exercise	Contractual]	Intrinsic
	Shares	Price	Term (years)		Value
Options outstanding at June 30, 2009	1,166	\$ 7.09			
Granted	2,634	2.36			
Exercised	(84)	1.05			
Canceled or forfeited	(379)	8.88			
Options outstanding at June 30, 2010	3,337	3.30			
Granted	843	1.73			
Exercised	(27)	1.00			
Canceled, forfeited or modified	(2,202)	3.24			
Options outstanding at June 30, 2011	1,951	\$ 2.73	4.63	\$	1,998
Exercisable outstanding at June 30, 2011	1,068	\$ 3.53	4.11	\$	1,113

The following table summarizes information about stock options (in thousands, except per share amounts):

	Fiscal	l Year
	2011	2010
Weighted-average grant date fair value per share of options granted with exercise prices:		
Less than fair value	\$ —	\$ 1.85
Equal to fair value	1.10	1.53
Greater than fair value	_	_
Intrinsic value of options exercised	25	134
Cash received upon exercise of stock options	27	88
Actual tax benefit realized for the tax deductions from option exercise	_	_
Total income tax benefit recognized in the statement of operations	_	

As of June 30, 2011, there was total unrecognized compensation expense related to unvested equity-based compensation arrangements under the Option Plans (including options, stock units and SAR awards) and the Inducement Options of \$12.4 million. This expense, associated with non-vested stock and options granted prior to June 30, 2011, is expected to be recognized over a weighted-average period of 1.9 years.

Restricted Stock Units

The fair value of each restricted stock unit ("RSU") is the market price of the Company's stock on the date of grant. RSUs are generally payable in an equal number of shares of the Company's common stock at the time of vesting of the units. RSUs typically vest over three years. There were no RSUs vested as of June 30, 2011.

The following table summarizes information about stock unit activity (in thousands, except per share amounts):

		Weighted-	
		Average	
	Number of	Grant Date	
	Shares	 Fair Value	
Outstanding:			
Restricted stock units—June 30, 2010	_	\$	_
Granted	4,735		2.49
Restricted stock units—June 30, 2011	4,735	\$	2.49

The grant-date fair value of the shares underlying the RSUs at the date of grant was \$11.8 million in fiscal 2011. This amount is being recognized to expense over the corresponding vesting period. For fiscal 2011, the Company recognized \$0.6 million in share-based compensation expense related to these awards. There were no RSUs outstanding in fiscal 2010.

Stock Appreciation Rights

In June 2011, the Company modified options which had been granted to three executives during fiscal 2010 to purchase 1.6 million shares of the Company's common stock and reissued the options as SAR awards. No other terms of the awards changed. The purpose of the amendment and reissuance is to provide that, upon exercise, the SAR will be settled in cash or stock, at the discretion of the Company. Based on the SAR settlement provisions, and the Company's intentions, this modification changed these awards from equity-based instruments to liability-based instruments. As such, the fair value of the SAR awards is recalculated at each subsequent reporting period until settlement. The Company uses a Black-Scholes valuation model to determine the fair value and has initially recorded a current liability of \$2.2 million related to this modification. This initial liability represents a reclassification from amounts previously recorded as additional paid-in capital.

Ongoing compensation expense will be recorded based on the grant-date fair value and the proportionate amount of the requisite service period that has been rendered to date. Changes in the fair value of the vested SAR awards will be recorded as an adjustment to the liability until settlement of the SAR awards.

As of June 30, 2011, there were 0.9 million of SAR awards vested with an exercise price of \$2.49, a remaining contractual term of 4.8 years and an aggregate intrinsic value of \$0.2 million. No SAR awards were exercised during fiscal 2011.

2006 Employee Stock Purchase Plans

In February 2007, the Company adopted the 2006 Employee Stock Purchase Plan (2006 ESPP). In June 2011, the Board of Directors modified the Company's 2006 ESPP to make an additional 600,000 shares available for issuance. As of June 30, 2011, 755,000 shares of common stock have been reserved under the 2006 ESPP for issuance and purchase by employees of the Company to assist them in acquiring a stock ownership interest in the Company and to encourage them to remain employees of the Company. The 2006 ESPP is qualified under Section 423 of the Code and permits eligible employees to purchase common stock at a discount through payroll deductions during specified six-month offering periods. No employee may purchase more than \$25,000 worth of stock in any calendar year or 2,500 shares in any one offering period.

During fiscal 2011 and 2010, the Company issued approximately 1,400 and 1,000 shares, respectively, under the 2006 ESPP for combined proceeds of \$2,600 and \$1,000, respectively.

NOTE 9—401(k) PLAN

The Company maintains an employee savings and retirement plan (the 401(k) Plan) covering all of the Company's employees. The 401(k) Plan permits but does not require matching contributions by the Company on behalf of participants. The Company does not make matching contributions.

NOTE 10—COMMITMENTS AND CONTINGENCIES

Leases

The Company leases its office, production and sales facilities under non-cancelable operating leases that expire in various years through fiscal year 2020. The leases provide for biennial or annual rent escalations intended to approximate increases in cost of living indices, and certain of the leases provide for rent abatement. The Company has a five-year option to renew its lease on its San Diego headquarters facility and a five-year option to renew its lease on its San Jose facility. In July 2010, the Company modified its San Diego headquarters lease and reduced the facility by one building, or 67,285 square feet, which proportionally reduced the monthly base rent and share of facility expenses. Future minimum lease payments under these arrangements are as follows (in thousands):

	Minimum	Minimum		
	Lease			
	Payments			
Fiscal 2012	\$	2,847		
Fiscal 2013		2,896		
Fiscal 2014		2,189		
Fiscal 2015		912		
Fiscal 2016		930		
Thereafter		1,098		
	\$	10,872		

. . .

Rental expense is recognized on a straight-line basis over the respective lease terms and was \$3.3 million and \$4.3 million in fiscal 2011 and 2010, respectively.

Litigation

From time to time, the Company may be involved in various lawsuits, legal proceedings or claims that arise in the ordinary course of business. Management does not believe any legal proceedings or claims pending at June 30, 2011 will have, individually or in the aggregate, a material adverse effect on its business, liquidity, financial position or results of operations. Litigation, however, is subject to inherent uncertainties, and an adverse result in these or other matters may arise from time to time that may harm the Company's business.

In December 2009, Crossroads Systems, Incorporated ("Crossroads") filed a lawsuit against the Company and several other companies in the United States District Court for the Western District of Texas (the "Complaint"). The Complaint was served on the Company in December 2009, and alleged that its products infringe upon United States Patent Nos. 6,425,035 and 7,051,147. The Court had scheduled a hearing on issues of claim construction for June 3, 2010. Although the Company was prepared to vigorously defend against Crossroads' lawsuit, in advance of the claim construction briefing, the parties reached a settlement of the lawsuit and the Court entered an Order of Dismissal of the lawsuit on May 25, 2010.

NOTE 11—SELECTED QUARTERLY FINANCIAL DATA (UNAUDITED)

The following tables present selected quarterly financial information (in thousands, except per share data) for the periods indicated. This information has been derived from the Company's unaudited quarterly consolidated condensed financial statements, which in the opinion of management include all adjustments, consisting only of normal recurring adjustments, necessary for a fair statement of such information. These operating results are not necessarily indicative of results for any future period.

]	Fiscal 2011		
	Q1	Q2		Q3	Q4	Total
Net revenue	\$ 17,573	\$ 17,930	\$	17,126	\$ 17,568	\$ 70,197
Gross profit	4,152	5,573		5,787	5,702	21,214
Loss from operations	(5,758)	(3,609)		(2,766)	(3,466)	(15,599)
Loss before income taxes	(6,480)	(832)		(3,257)	(3,645)	(14,214)
Net loss	(6,498)	(909)		(3,366)	(3,726)	(14,499)
Net loss per share:						
Basic and diluted(1)(2)	\$ (0.59)	\$ (0.07)	\$	(0.22)	\$ (0.16)	\$ (0.94)
]	Fiscal 2010		
	Q1	Q2		Q3	Q4	Total
Net revenue	\$ 19,313	\$ 20,432	\$	18,618	\$ 19,299	\$ 77,662
Gross profit	5,208	5,833		4,670	5,663	21,374
Loss from operations	(3,202)	(2,758)		(4,327)	(4,071)	(14,358)
Loss before income taxes	(3,620)	(2,504)		(4,408)	(4,259)	(14,791)
Net loss	(3,692)	(2,580)		(2,506)	(4,184)	(12,962)
Net loss applicable to common shareholders	(3,692)	(2,580)		(2,650)	(4,184)	(13,106)
Net loss per share:						
Basic and diluted(1)(2)	\$ (0.87)	\$ (0.47)	\$	(0.42)	\$ (0.44)	\$ (2.04)

⁽¹⁾ Net loss per share is computed independently for each quarter and the full year based upon respective weighted-average shares outstanding. Therefore, the sum of the quarterly earnings per share amounts may not equal the annual amounts reported.

⁽²⁾ Basic loss per share is computed by dividing net loss applicable to common shareholders by the weighted-average number of common shares assumed to be outstanding during the periods of computation.

NOTE 12—SUBSEQUENT EVENTS

Credit Facility

In August, 2011, the Company entered into a Loan and Security Agreement ("Credit Facility") that provides for an \$8.0 million secured revolving loan. The proceeds of the Credit Facility may be used to fund the Company's working capital and to fund its general business requirements. The Credit Facility is scheduled to mature August 8, 2013.

The obligations under the Credit Facility are secured by all assets of the Company. Borrowings under the Credit Facility will bear interest at the Prime Rate (as defined in the Credit Facility) plus a margin of either 1.00% or 1.25%, depending on the Company's liquidity coverage ratio. The Company is also obligated to pay other customary facility fees and arrangement fees for a credit facility of this size and type.

The Credit Facility requires the Company to comply with a liquidity coverage ratio and contains customary covenants, including covenants that limit or restrict the Company's and its subsidiaries' ability to incur liens and indebtedness, make certain types of payments, merge or consolidate and make dispositions of assets. The Credit Facility specifies customary events of default (some of which are subject to applicable grace or cure periods), including, among other things, non-payment defaults, covenant defaults to other material indebtedness, bankruptcy and insolvency defaults and material judgment defaults. Upon the occurrence of an event of default under the Credit Facility, the lender may cease making loans, terminate the Credit Facility and declare all amounts outstanding to be immediately due and payable.

CERTIFICATE OF AMENDMENT TO THE AMENDED AND RESTATED ARTICLES OF INCORPORATION OF OVERLAND STORAGE, INC.

Eric L. Kelly and Kurt L. Kalbfleisch certify that:

- 1. They are the President and Chief Executive Officer and the Chief Financial Officer and Secretary, respectively, of Overland Storage, Inc., a California corporation (the "Corporation").
 - 2. Article III of the Corporation's Articles of Incorporation (the "Articles") is hereby amended to read in its entirety as follows:

"The Corporation is authorized to issue two classes of shares to be designated Common Stock ("Common Stock") and Preferred Stock ("Preferred Stock"). The total number of shares of Common Stock that the Corporation is authorized to issue is ninety million, two hundred thousand (90,200,000). The total number of shares of Preferred Stock that the Corporation is authorized to issue is one million (1,000,000).

Authority is vested in the Board of Directors to divide any or all of the authorized shares of Preferred Stock into series and, within the limitations provided by law, to fix and determine the rights, preferences, privileges and restrictions of each such series, including but not limited to the right to fix and determine the designation of and the number of shares issuable in each such series and any and all such other provisions as may be fixed or determined by the Board of Directors of the Corporation pursuant to California law; provided that the holders of shares of Preferred Stock will not be entitled (A) to more than one vote per share, when voting as a class with the holders of shares of Common Stock, or (B) to vote on any matter separately as a class or series, except where expressly required by California law. The Board of Directors may increase or decrease the number of shares of any series of Preferred Stock subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series."

- 3. The foregoing amendment to the Articles has been duly approved by the Board of Directors of the Corporation.
- 4. The foregoing amendment to the Articles has been duly approved by the required vote of the shareholders of the Corporation in accordance with Sections 902 and 903 of the California Corporations Code. At the record date for the meeting of shareholders at which the vote occurred, 22,987,270 shares of Common Stock were issued and outstanding and no shares of Preferred Stock were issued or outstanding. The number of shares of Common Stock voting in favor of the foregoing amendment equaled or exceeded the vote required. The percentage vote required was more than 50% of the shares of Common Stock

The undersigned, Eric L. Kelly and Kurt L. Kalbfleisch, declare this 23rd day of June, 2011, at the City and County of San Diego, California, under penalty of perjury under the laws of the State of California that each has read the foregoing certificate and knows the contents hereof and that the same is true of his own knowledge.

/s/ Eric L. Kelly Eric L. Kelly

President and Chief Executive Officer

/s/ Kurt L. Kalbfliesch Kurt L. Kalbfleisch

Chief Financial Officer and Secretary

OVERLAND STORAGE, INC. 2006 EMPLOYEE STOCK PURCHASE PLAN

OF

OVERLAND STORAGE, INC.

(AS AMENED EFFECTIVE AUGUST 8, 2011)

(This plan document has been revised to account for the Company's 1 for 3 reverse stock split in December 2009)

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2006 EMPLOYEE STOCK PURCHASE PLAN OF OVERLAND STORAGE, INC.

1. PURPOSE.

The purpose of this Plan is to provide an opportunity for Employees of the Corporation and its Designated Subsidiaries, to purchase Common Stock of the Corporation and thereby to have an additional incentive to contribute to the prosperity of the Corporation. It is the intention of the Corporation that the Plan qualify as an "Employee Stock Purchase Plan" under Section 423 of the Code, although the Corporation makes no undertaking nor representation to maintain such qualification.

2. <u>DEFINITIONS.</u>

- (a) "Board" shall mean the Board of Directors of the Corporation.
- (b) "Base Compensation" shall mean, with respect to each Participant for each pay period, such Participant's Compensation, excluding (i) Bonus Compensation; (ii) any amounts contributed by the Corporation or a Designated Subsidiary to any pension plan, deferred compensation plan, or other similar plan; (iii) any automobile allowance (or reimbursement for such expenses); and (iv) any amounts paid as a starting bonus or finder's fee.
- (c) "Bonus Compensation" shall mean, with respect to each Participant for each period with respect to which a cash bonus is payable to such Employee, the amount of the cash bonus payable to such Participant for such period. Except as determined by the Committee, Bonus Compensation does not include: (i) any amounts contributed by the Corporation or a Designated Subsidiary to any pension plan, deferred compensation plan, or other similar plan; (ii) any automobile allowance (or reimbursement for such expenses); or (iii) any amounts paid as a starting bonus or finder's fee.
 - (d) "Code" shall mean the Internal Revenue Code of 1986, as amended.
 - (e) "Committee" shall mean the committee appointed by the Board in accordance with Section 12 of the Plan.
 - (f) "Common Stock" shall mean the common stock of the Corporation, or any stock into which such Common Stock may be converted.
- "Compensation" shall mean an Employee's wages or salary and other amounts payable to an Employee on account of personal services rendered by the Employee to the Corporation or a Designated Subsidiary and which are reportable as wages or other compensation on the Employee's Form W-2, plus pre-tax contributions of the Employee under a cash or deferred arrangement ("401(k) plan") or cafeteria plan maintained by the Corporation or a Designated Subsidiary, but excluding, however, (1) non-cash fringe benefits, (2) special payments as determined by the Committee (e.g., moving expenses, unused vacation, severance pay), (3) income from the exercise of stock options or other stock purchases and (4) any other items of Compensation as determined by the Committee.
 - (h) "Corporation" shall mean Overland Storage, Inc., a California corporation.
 - (i) "Designated Subsidiary" shall mean a Subsidiary that has been designated by the Board as eligible to participate in the Plan.
- (j) "Employee" shall mean an individual classified as an employee (within the meaning of Code Section 3401(c) and the regulations thereunder) by the Corporation or a Designated Subsidiary on the payroll records of the Corporation or Designated Subsidiary during the relevant participation period.
 - (k) "Entry Date" shall mean the first day of each Option Period.

- (l) "Exercise Date" shall mean the last business day of each Exercise Period.
- (m) "Exercise Period" shall mean a three-month, six-month or other period as determined by the Board. The first Exercise Period during an Option Period shall commence on the first day of such Option Period. Subsequent Exercise Periods, if any, shall run consecutively after the termination of the preceding Exercise Period. The last Exercise Period in an Option Period shall terminate on the last day of such Option Period.
 - (n) "Fair Market Value" shall mean the value of one (1) share of Common Stock on the relevant date, determined as follows:
- (1) If the shares are traded on any established securities exchange or national market system, the reported "closing price" on the last trading date immediately preceding the relevant date;
- (2) If the shares are not traded on an established securities exchange or national market system, the fair market value as determined by the Committee in good faith. Such determination shall be conclusive and binding on all persons.
- (o) "Maximum Percentage" shall mean the maximum percentage of (i) Base Compensation, or (ii) Base Compensation and Bonus Compensation, which a Participant may elect to have withheld from Compensation pursuant to Section 4. The Maximum Percentage will be fifteen percent (15%) unless a lower percentage amount is designated by the Committee with respect to an Option Period.
- (p) "Option Period" shall mean a period of up to twenty-seven (27) months as determined by the Committee. The Board may determine that the Option Period and the Exercise Period are the same.
- (q) "Parent" shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, as described in Code Section 424(e).
 - (r) "Participant" shall mean a participant in the Plan as described in Section 4 of the Plan.
 - (s) "Plan" shall mean this 2006 Employee Stock Purchase Plan of Overland Storage, Inc.
 - (t) "Shareholder" shall mean a record holder of shares entitled to vote shares of Common Stock under the Corporation's by-laws.
- (u) "Subsidiary" shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, as described in Code Section 424(f).

3. ELIGIBILITY.

Any Employee regularly employed on a full-time basis by the Corporation or by any Designated Subsidiary on an Entry Date shall be eligible to participate in the Plan with respect to the Option Period commencing on such Entry Date, provided that the Committee may establish administrative rules requiring that employment commence some minimum period (e.g., one pay period) prior to an Entry Date to be eligible to participate with respect to that Entry Date and provided further that (1) the Board may extend eligibility to part-time Employees pursuant to criteria and procedures established by the Committee and (2) the Board may impose an eligibility period on participation of up to two years with respect to participation on any prospective Entry Date. The Board may also determine that a designated group of highly compensated Employees (e.g., Employees subject to Section 16(b) of the Securities Exchange Act of 1934) is ineligible to participate in the Plan. An Employee shall be considered employed on a full-time basis unless his or her customary employment is less than 20 hours per week or five months per year. No Employee may participate in the Plan if immediately after an option is granted the Employee owns or is considered to own (within the meaning of Code Section 424(d)), shares of stock, including stock which the Employee may purchase by conversion of convertible securities or under outstanding options granted by the Corporation, possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Corporation or of any of its Parents or Subsidiaries. All Employees who participate in the Plan shall have the same

rights and privileges under the Plan except for differences which may be mandated by local law and which are consistent with Code Section 423(b)(5). The Board may impose restrictions on eligibility and participation of Employees who are officers and directors to facilitate compliance with federal or state securities laws or foreign laws.

4. PARTICIPATION.

- 4.1 An Employee who is eligible to participate in the Plan in accordance with Section 3 may become a Participant by filing, on a date prescribed by the Committee prior to an applicable Entry Date, a completed payroll deduction authorization and Plan enrollment form provided by the Corporation. An eligible Employee may authorize payroll deductions at the rate of any whole percentage (i.e., 1%, 2%, 3%, etc.), up to the Maximum Percentage, of either (i) the Employee's Base Compensation, or (ii) the Employee's Base Compensation and Bonus Compensation, as elected by the Employee in the payroll deduction authorization and Plan enrollment form. If an Employee has elected to participate in the Plan but has not made an election whether payroll deductions should be calculated and withheld from the Employee's Base Compensation, or from the Employee's Base Compensation and Bonus Compensation, then payroll deductions shall be calculated and withheld from such Employee's Base Compensation only. All payroll deductions may be held by the Corporation and commingled with its other corporate funds. No interest shall be paid or credited to the Participant with respect to such payroll deductions except where required by local law as determined by the Committee. A separate bookkeeping account for each Participant shall be maintained by the Corporation under the Plan and the amount of each Participant's payroll deductions shall be credited to such account. A Participant may not make any additional payments into such account.
- 4.2 Under procedures established by the Committee, a Participant may suspend or discontinue participation in the Plan at any time during an Exercise Period by completing and filing a new payroll deduction authorization and Plan enrollment form with the Corporation. A Participant may at any time increase or decrease his or her rate of payroll deductions, or change his or her election of the portion of Compensation (i.e., Base Compensation, or Base Compensation and Bonus Compensation) from which payroll deductions will be calculated and withheld, by filing a new payroll deduction authorization and Plan enrollment form. Changes in rate shall be effective as soon as reasonably practicable after the Corporation has received such form. Changes in the portion of Compensation from which payroll deductions will be calculated and withheld will be effective for the next commencing Exercise Period, subject to continuing eligibility of the Participant pursuant to Section 3. The Committee may establish rules limiting the frequency with which Participants may increase or decrease the rate of payroll deduction, or change the election of the portion of Compensation from which payroll deductions will be calculated and withheld, and may impose a waiting period on Participants wishing to increase the rate of payroll deductions after a decrease. If a new payroll deduction authorization and Plan enrollment form is not filed with the Corporation, the rate of payroll deductions and the portion of Compensation from which payroll deductions will be calculated and withheld shall continue as originally elected (i) throughout the Option Period and (ii) subject to continued eligibility as determined under Section 3, for succeeding Option Periods; unless in either case the Committee determines to change the Maximum Percentage.
- If a Participant suspends participation during an Exercise Period, his or her accumulated payroll deductions will remain in the Plan for purchase of shares as specified in Section 6 on the following Exercise Date, but the Participant will not again participate until he or she completes a new payroll deduction authorization and Plan enrollment form. The Committee may establish rules limiting the frequency with which Participants may suspend and resume payroll deductions under the Plan and may impose a waiting period on Participants wishing to resume suspended payroll deductions. If a Participant discontinues participation in the Plan, the amount credited to the Participant's individual account shall be paid to the Participant without interest (except where required by local law).
- 4.3 In the event any Participant terminates employment with the Corporation or any Subsidiary for any reason (including death) prior to the expiration of an Option Period, the Participant's participation in the Plan shall terminate and all amounts credited to the Participant's account shall be paid to the Participant or the Participant's estate without interest (except where required by local law). Whether a termination of employment has occurred shall be determined by the Committee. The Committee may also establish rules regarding when change of employment status (e.g., from full-time to part-time) will be considered to be a termination of employment, and the Committee may establish termination of employment procedures for this Plan which are independent of similar rules established under other benefit plans of the Corporation and its Subsidiaries. For purposes of the Plan, employment shall not be deemed to terminate when the Participant is on military leave, sick leave, or other bona fide leave of absence if the period of such

leave does not exceed three months, or if longer, so long as the Participant's right to reemployment with the Corporation or a Designated Subsidiary is provided either by statute or by contract. If the leave of absence exceeds three months and the Participant's right to reemployment is not provided either by statute or by contract, the employment relationship is deemed to terminate on the first day immediately following such three-month period.

In the event of a Participant's death, any accumulated payroll deductions will be paid, without interest, to the estate of the Participant.

5. OFFERING.

- 5.1 The maximum number of shares of Common Stock that may be issued pursuant to the Plan shall be 766,666 shares. The Board may designate any amount of available shares for offering for any Option Period determined pursuant to Section 5.2.
- 5.2 Each Option Period, Entry Date and Exercise Period shall be determined by the Board, provided that the first Option Period shall commence on February 5, 2007. The Board shall have the power to change the duration of future Option Periods or future Exercise Periods, and to determine whether to have overlapping Option Periods, with respect to any prospective offering, without Shareholder approval, and without regard to the expectations of any Participants.
- 5.3 With respect to each Option Period, each eligible Employee who has elected to participate as provided in Section 4.1 shall be granted an option to purchase that number of shares of Common Stock which may be purchased with the payroll deductions accumulated on behalf of such Employee during each Exercise Period within such Option Period at the purchase price specified in Section 5.4 below; provided, however, (1) in no event shall the Employee be entitled to accrue rights to purchase shares under the Plan (and all other employee stock purchase plans, as defined in Code Section 423, of the Corporation and its Parents and Subsidiaries) at a rate which exceeds \$25,000 of the Fair Market Value of such stock (determined at the time the option is granted) for any calendar year in which such option is outstanding at any time, and (2) the maximum number of shares that any one individual may acquire upon exercise of his or her option with respect to any one Option Period is 2,500 (provided that the Board or the Committee may amend the limit set forth in this clause (2), effective no earlier than the first Option Period commencing after the adoption of such amendment, without shareholder approval).
- 5.4 The option price under each option granted for an Option Period shall be 85% (the "Designated Percentage") of the <u>lower</u> of the Fair Market Value on the Entry Date for that Option Period and the Fair Market Value on the Exercise Date for that Option Period. Notwithstanding the foregoing, the Board or Committee may, in its discretion, do either or both of the following:
 - (a) Change the Designated Percentage with respect to any future Option Period, but not below 85%.
- (b) Determine the option price for any future Option Period as (i) the Designated Percentage of the Fair Market Value of the Common Stock on the Entry Date on which an option is granted, or (ii) the Designated Percentage of the Fair Market Value on the Exercise Date on which the Common Stock is purchased, or (iii) the lower of the amounts described in clause (i) or clause (ii).
- 5.5 If the total number of shares of Common Stock for which options granted under the Plan are exercisable exceeds the maximum number of shares offered on any Entry Date, the number of shares which may be purchased under options granted on the Entry Date shall be reduced on a pro rata basis in as nearly a uniform manner as shall be practicable and equitable. In this event, payroll deductions shall also be reduced or refunded accordingly. If an Employee's payroll deductions during any Exercise Period exceed the purchase price for the maximum number of shares permitted to be purchased under Section 5.3, the excess shall be refunded to the Participant without interest (except where otherwise required by local law).

5.6 If the option price is determined in accordance with Section 5.4(b), then in the event that the Fair Market Value of the Common Stock is lower on the first day of an Exercise Period within an Option Period (subsequent "Reassessment Date") than it was on the Entry Date for such Option Period, all Employees participating in the Plan on the Reassessment Date shall be deemed to have relinquished the unexercised portion of the option granted on the Entry Date and to have enrolled in and received a new option commencing on such Reassessment Date, unless the Board has determined not to permit overlapping Option Periods or to restrict such transfers to lower price Option Periods.

6. PURCHASE OF STOCK.

Upon the expiration of each Exercise Period, a Participant's option shall be exercised automatically for the purchase of that number of full shares of Common Stock which the accumulated payroll deductions credited to the Participant's account at that time shall purchase at the applicable price specified in Section 5.4. A Participant's option may be exercised, during the Participant's lifetime, only by the Participant.

7. PAYMENT AND DELIVERY.

Upon the exercise of an option, the Corporation shall deliver to the Participant the Common Stock purchased and the balance of any amount of payroll deductions credited to the Participant's account not used for the purchase. The Board may permit or require that shares be deposited directly with a broker designated by the Participant (or a broker selected by the Committee) or to a designated agent of the Corporation, and the Committee may utilize electronic or automated methods of share transfer. The Board may require that shares be retained with such broker or agent for a designated period (and may restrict dispositions during that period) and/or may establish other procedures to permit tracking of disqualifying dispositions of such shares or to restrict transfer of such shares. To the extent the unused cash balance represents a fractional share, the unused cash balance credited to the Participant's account shall be carried over to the next Exercise Period, if the Participant is also a Participant in the Plan at that time or refunded to the Participant, as determined by the Committee. The Corporation shall retain the amount of payroll deductions used to purchase Common Stock as full payment for the Common Stock and the Common Stock shall then be fully paid and non-assessable. No Participant shall have any voting, dividend, or other Shareholder rights with respect to shares subject to any option granted under the Plan until the option has been exercised and shares issued. Notwithstanding anything herein to the contrary, no shares of Common Stock shall be purchased or delivered under the Plan until the Shareholders have approved the adoption of the Plan.

8. RECAPITALIZATION.

If after the grant of an option, but prior to the purchase of Common Stock under the option, there is any increase or decrease in the number of outstanding shares of Common Stock because of a stock split, stock dividend, combination or recapitalization of shares subject to options, the number of shares to be purchased pursuant to an option, the share limit of Section 5.3 and the maximum number of shares specified in Section 5.1 shall be proportionately increased or decreased, the terms relating to the purchase price with respect to the option shall be appropriately adjusted by the Board, and the Board shall take any further actions which, in the exercise of its discretion, may be necessary or appropriate under the circumstances.

The Board also shall proportionally adjust the number of shares specified in Section 5.1, as well as the price per share of Common Stock covered by each outstanding option and the maximum number of shares subject to any individual option, in such manner as the Board deems appropriate and equitable, in the event the Corporation effects one or more reorganizations, recapitalizations, spin-offs, split-ups, rights offerings or reductions of shares of its outstanding Common Stock.

The Board's determinations under this Section 8 shall be conclusive and binding on all parties.

9. MERGER, LIQUIDATION, OTHER CORPORATION TRANSACTIONS.

In the event of the proposed liquidation or dissolution of the Corporation, the Option Period will terminate immediately prior to the consummation of such proposed transaction, unless otherwise provided by the Board in its sole discretion, and all outstanding options shall automatically terminate and the amounts of all payroll deductions will be refunded without interest to the Participants.

In the event of a proposed sale of all or substantially all of the assets of the Corporation, or the merger or consolidation of the Corporation with or into another corporation, then in the sole discretion of the Board, (1) each option shall be assumed or an equivalent option shall be substituted by the successor corporation or parent or subsidiary of such successor corporation, (2) a date established by the Board on or before the date of consummation of such merger, consolidation or sale shall be treated as an Exercise Date, and all outstanding options shall be deemed exercisable on such date or (3) all outstanding options shall terminate and the accumulated payroll deductions shall be returned to the Participants.

10. TRANSFERABILITY.

Options granted to Participants may not be voluntarily or involuntarily assigned, transferred, pledged, or otherwise disposed of in any way, and any attempted assignment, transfer, pledge, or other disposition shall be void and without effect. If a Participant in any manner attempts to transfer, assign or otherwise encumber his or her rights or interest under the Plan, other than as permitted by the Code, such act shall be treated as an election by the participant to discontinue participation in the Plan pursuant to Section 4.2.

11. AMENDMENT OR TERMINATION OF THE PLAN.

- 11.1 The Plan shall continue indefinitely unless terminated in accordance with Section 11.2.
- 11.2 The Board may, in its sole discretion, insofar as permitted by law, terminate or suspend the Plan, or revise or amend it in any respect whatsoever, except that, without approval of the Shareholders, no such revision or amendment shall:
 - (a) increase the number of shares subject to the Plan, other than an adjustment under Section 8 of the Plan;
 - (b) materially modify the requirements as to eligibility for participation in the Plan, except as otherwise specified in this Plan;
 - (c) materially increase the benefits accruing to Participants;
 - (d) reduce the purchase price specified in Section 5.4, except as specified in Section 8; or
 - (e) amend this Section 11.2 to defeat its purpose.

12. ADMINISTRATION.

The Board shall appoint a Committee consisting of at least two members who will serve for such period as the Board may specify and who may be removed by the Board at any time. The Committee will have the authority and responsibility for the day-to-day administration of the Plan, the authority and responsibility specifically provided in this Plan and any additional duties, responsibility and authority delegated to the Committee by the Board, which may include any of the functions assigned to the Board in this Plan. The Committee shall have full power and authority to promulgate any rules and regulations which it deems necessary for the proper administration of the Plan, to interpret the provisions and supervise the administration of the Plan, and to take all action in connection with administration of the Plan as it deems necessary or advisable, consistent with the delegation from the Board. Decisions of the Board and the Committee shall be final and binding upon all participants. Any decision reduced to writing and signed by a majority of the members of the Committee shall be fully effective as if it had been made at a meeting of the Committee duly held. The Corporation shall pay all expenses incurred in the administration of the Plan. No Board or Committee member shall be liable for any action or determination made in good faith with respect to the Plan or any option granted thereunder.

13. COMMITTEE RULES FOR FOREIGN JURISDICTIONS.

The Committee may adopt rules or procedures relating to the operation and administration of the Plan in non-United States jurisdictions to accommodate the specific requirements of local laws and procedures. Without limiting the generality of the foregoing, the Committee is specifically authorized to adopt rules and procedures regarding handling of payroll deductions, payment of interest, conversion of local currency, withholding procedures and handling of stock certificates which vary with local requirements.

14. SECURITIES LAWS REQUIREMENTS.

The Corporation shall not be under any obligation to issue Common Stock upon the exercise of any option unless and until the Corporation has determined that: (i) it and the Participant have taken all actions required to register the Common Stock under the Securities Act of 1933, or to perfect an exemption from the registration requirements thereof; (ii) any applicable listing requirement of any stock exchange on which the Common Stock is listed has been satisfied; and (iii) all other applicable provisions of state, federal and applicable foreign law have been satisfied.

15. GOVERNMENTAL REGULATIONS.

This Plan and the Corporation's obligation to sell and deliver shares of its stock under the Plan shall be subject to the approval of any governmental authority required in connection with the Plan or the authorization, issuance, sale, or delivery of stock hereunder.

16. NO ENLARGEMENT OF EMPLOYEE RIGHTS.

Nothing contained in this Plan shall be deemed to give any Employee the right to be retained in the employ of the Corporation or any Designated Subsidiary or to interfere with the right of the Corporation or Designated Subsidiary to discharge any Employee at any time.

17. GOVERNING LAW.

This Plan shall be governed by California law.

IN WITNESS WHEREOF, the Board has adopted this Plan on August 8, 2011, and the Corporation has caused its duly authorized officer to execute this document in the name of the Corporation.

OVERLAND STORA	AGE, INC.	
By:	/s/ Kurt L. Kalbfleisch	
Its:	VP, CFO & Secretary	

OVERLAND STORAGE, INC. 2009 EQUITY INCENTIVE PLAN (AS AMENDED EFFECTIVE AUGUST 8, 2011)

(All share numbers herein are presented after giving effect to the Company's December 2009 1-for-3 reverse stock split)

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Overland Storage, Inc.

2009 Equity Incentive Plan

ARTICLE 1 INTRODUCTION.

The Board adopted the Plan effective as of the Effective Date conditioned upon and subject to approval by the Company's shareholders on or before the first anniversary of the Effective Date. The purpose of the Plan is to promote the long-term success of the Company and the creation of shareholder value by (a) encouraging Employees, Outside Directors and Consultants to focus on critical long-range objectives, (b) encouraging the attraction and retention of Employees, Outside Directors and Consultants with exceptional qualifications and (c) linking Employees, Outside Directors and Consultants directly to shareholder interests through increased stock ownership. The Plan seeks to achieve this purpose by providing for Awards in the form of Restricted Shares, Stock Units, Options (which may constitute incentive stock options or nonstatutory stock options) or stock appreciation rights.

The Plan shall be governed by, and construed in accordance with, the laws of the State of California (except its choice-of-law

ARTICLE 2 ADMINISTRATION.

provisions).

- **2.1 Committee Composition**. The Committee shall administer the Plan. The Committee shall consist exclusively of two or more Directors of the Company, who shall be appointed by the Board. In addition, the composition of the Committee shall satisfy:
- (a) Such requirements as the Securities and Exchange Commission may establish for administrators acting under plans intended to qualify for exemption under Rule 16b-3 (or its successor) under the Exchange Act; and
- (b) Such requirements as the Internal Revenue Service may establish for outside directors acting under plans intended to qualify for exemption under section 162(m)(4)(C) of the Code.
- 2.2 Committee Authority. Subject to the specific provisions and limitations of the Plan, and Applicable Law, the Committee shall have the authority and power to (a) select the Employees, Outside Directors and Consultants who are to receive Awards under the Plan, (b) determine the type, number, vesting requirements, performance conditions (if any) and their degree of satisfaction, and other features and conditions of such Awards, (c) correct any defect, supply any omission, and reconcile any inconsistency in the Plan or any Award agreement, (d) accelerate the vesting, or extend the post-termination exercise term, or waive restrictions, of Awards at any time and under such terms and conditions as it deems appropriate, (e) interpret the Plan and any Award agreements, (f) adopt such plans or subplans as may be deemed necessary or appropriate to provide for the participation by non-U.S. employees of the Company and its Subsidiaries and Affiliates, which plans and/or subplans shall be attached hereto as appendices, and (g) make all other decisions relating to the operation of the Plan. The Committee may adopt such rules or guidelines as it deems appropriate to implement the Plan.
- 2.3 Committee for Non-Officer Grants. The Board may also appoint a secondary committee of the Board, which shall be composed of two or more Directors of the Company who need not satisfy the requirements of Sections 2.1(a) and 2.1(b). Such secondary committee may administer the Plan with respect to Employees and Consultants who are not Officers or Directors of the Company, may grant Awards under the Plan to such Employees and Consultants and may determine all features and conditions of such Awards. Within the limitations of this Section 2.3, any reference in the Plan to the Committee shall include such secondary committee.

- 2.4 Scope of Discretion. On all matters for which the Plan confers the authority, right or power on the Board, the Committee, or a secondary committee to make decisions, that body may make those decisions in its sole and absolute discretion. Those decisions will be final, binding and conclusive and shall be afforded the maximum deference under Applicable Law. In making its decisions, the Board, Committee or secondary committee need not treat all persons eligible to receive Awards, all Participants, or all Awards the same way. Notwithstanding anything herein to the contrary, and except as provided in Section 16.2, the discretion of the Board, Committee or secondary committee is subject to the specific provisions and specific limitations of the Plan, as well as all rights conferred on specific Participants by Award agreements and other agreements entered into pursuant to the Plan.
- 2.5 Rules of Interpretation. Any reference to a "Section" or "Article," without more, is to a Section or Article of the Plan. Captions and titles are used for convenience in the Plan and shall not, by themselves, determine the meaning of the Plan. Except when otherwise indicated by the context, the singular includes the plural and vice versa. Any reference to a statute is also a reference to the applicable rules and regulations adopted under that statute. Any reference to a statute, rule or regulation, is a reference to that statute, rule, regulation, or section as amended from time to time, both before and after the Effective Date and including any successor provisions.
- 2.6 Unfunded Plan. The Plan shall be unfunded. Although bookkeeping accounts may be established with respect to Participants, any such accounts will be used merely as a convenience. The Company shall not be required to segregate any assets on account of the Plan, the grant of Awards, or the issuance of Common Shares. The Company and the Committee shall not be deemed to be a trustee of stock or cash to be awarded under the Plan. Any obligations of the Company to any Participant shall be based solely upon contracts entered into under the Plan. No such obligations shall be deemed to be secured by any pledge or other encumbrance on any assets of the Company. Neither the Company nor the Committee shall be required to give any security or bond for the performance of any such obligations.
- 2.7 Limitation of Liability. The Company (or members of the Board, Committee or secondary committee) shall not be liable to a Participant or other persons as to: (i) the non-issuance or sale of Common Shares as to which the Company has been unable to obtain from any regulatory body having jurisdiction the authority deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Common Shares hereunder; and (ii) any unexpected or adverse tax consequence realized by any Participant or other person due to the grant, receipt, exercise or settlement of any Award granted hereunder.
- 2.8 Electronic Communications. Subject to compliance with Applicable Law and/or regulations, an Award agreement or other documentation or notices relating to the Plan and/or Awards may be communicated to Participants by electronic media.
- 2.9 Indemnification. To the maximum extent permitted by applicable law, each member of the Committee, or of the Board, or any persons (including without limitation Employees and Officers) who are delegated by the Board or Committee to perform administrative functions in connection with the Plan, shall be indemnified and held harmless by the Company against and from (i) any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan or any Award agreement, and (ii) from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such claim, action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Articles of Incorporation or Bylaws, by contract, as a matter of law, or otherwise, or under any power that the Company may have to indemnify them or hold them harmless.
- 2.10 Suspension or Termination of Awards. If at any time (including after a notice of exercise has been delivered) the Committee (or the Board), reasonably believes that a Participant has committed an act of Cause (which includes a failure to act), the Committee (or Board) may suspend the Participant's right to exercise any Option or SAR (or payment of a Cash Award or vesting of Restricted Stock Grants or Stock Units) pending a determination of whether there was in fact an act of Cause. If the Committee (or the Board) determines a Participant has committed an act of Cause, neither the Participant nor his or her estate shall be entitled to exercise

any outstanding Option or SAR whatsoever and all of Participant's outstanding Awards shall then terminate without consideration. Any determination by the Committee (or the Board) with respect to the foregoing shall be final, conclusive and binding on all interested parties.

2.11 Clawback Policy. The Company may (i) cause the cancellation of any Award, (ii) require reimbursement of any Award by a Participant and (iii) effect any other right of recoupment of equity or other compensation provided under this Plan or otherwise in accordance with Company policies and/or applicable law (each, a "Clawback Policy"). In addition, a Participant may be required to repay to the Company certain previously paid compensation, whether provided under this Plan or an Award Agreement or otherwise, in accordance with the Clawback Policy.

ARTICLE 3 SHARES AVAILABLE FOR GRANTS.

- 3.1 Basic Limitation. Common Shares issued pursuant to the Plan shall be authorized but unissued or reacquired shares. The maximum aggregate number of Common Shares reserved for issuance under the Plan is equal to the sum of: (i) 6,892,815 Common Shares plus (ii) any Common Shares subject to any outstanding awards under the Prior Plans that on or after the Shareholder Approval Date are either forfeited or are repurchased at original cost by the Company plus any Common Shares that are not issued to the award holder as a result of a Prior Plan outstanding award being exercised or settled on or after the Shareholder Approval Date for less than the full number of Common Shares that are subject to such exercise or settlement, subject to maximum of 1,404,769 Common Shares for this clause (ii). The aggregate number of Common Shares that may be issued under the Plan through ISOs is 8,297,584 Common Shares. The limitations of this Section 3.1 shall be subject to adjustment pursuant to Article 10.
- 3.2 Dividend Equivalents. Any dividend equivalents paid or credited under the Plan shall not be applied against the number of Common Shares available for Awards.
- 3.3 Share Utilization. If Common Shares issued upon the exercise of Options are forfeited, then such Common Shares shall again become available for Awards under the Plan. If Restricted Shares are forfeited, then such Common Shares shall again become available for Awards under the Plan. If Options or SARs are forfeited or terminate for any other reason before being exercised, then the corresponding Common Shares shall again become available for Awards under the Plan. Subject to Article 12, if Stock Units are forfeited or terminate for any other reason before being settled, then the corresponding Common Shares shall again become available for Awards under the Plan. Subject to Article 12, if Stock Units are settled, then only the number of Common Shares (if any) actually issued in settlement of such Stock Units shall reduce the number of Common Shares available under Section 3.1 and the balance shall again become available for Awards under the Plan. If SARs are exercised, then only the number of Common Shares (if any) actually issued in settlement of such SARs shall reduce the number of Common Shares available under Section 3.1 and the balance shall again become available for Awards under the Plan. The provisions of this Section 3.3 shall be subject to adjustment pursuant to Article 10.

ARTICLE 4 ELIGIBILITY.

- **4.1 Incentive Stock Options**. Only Employees who are common-law employees of the Company, a Parent or a Subsidiary shall be eligible for the grant of ISOs.
- **4.2 Other Grants**. Employees, Outside Directors and Consultants, including prospective Employees, Directors and Consultants conditioned on the beginning of their Service, shall be eligible for the grant of Restricted Shares, Stock Units, NSOs or SARs.

4.3 Section 162(m) Limitation.

(a) **Options And SARs**. For so long as the Company is a "publicly held corporation" within the meaning of Section 162(m) of the Code and with respect to grants of Options or SARs that are intended to qualify as performance-based compensation under Code Section 162(m), no Employee may be granted one or more SARs and Options within any Fiscal Year under the Plan to purchase more than 1,300,000

Common Shares under Options or to receive compensation calculated with reference to more than that number of Common Shares under SARs, with such limit subject to adjustment pursuant to Article 10. If an Option or SAR is cancelled without being exercised, that cancelled Option or SAR shall continue to be counted against the limit on Options and SARs that may be granted to any individual under this Section 4.3(a).

(b) Cash Awards And Stock Awards. Any Award intended as "qualified performance-based compensation" within the meaning of section 162(m) of the Code must vest or become exercisable contingent on the achievement of one or more Objectively Determinable Performance Conditions. The Committee shall have the discretion to determine the time and manner of compliance with section 162(m) of the Code.

ARTICLE 5 OPTIONS.

- 5.1 Stock Option Agreement. Each grant of an Option under the Plan shall be evidenced by a Stock Option Agreement between the Optionee and the Company. Such Option shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The Stock Option Agreement shall specify whether the Option is an ISO or an NSO. The provisions of the various Stock Option Agreements entered into under the Plan need not be identical. Options may be granted in consideration of a reduction in the Optionee's other compensation.
- **5.2 Number of Shares**. Each Stock Option Agreement shall specify the number of Common Shares subject to the Option and shall provide for the adjustment of such number in accordance with Article 10.
- **5.3 Exercise Price**. Each Stock Option Agreement shall specify the Exercise Price; provided that the Exercise Price under an Option shall in no event be less than 100% of the Fair Market Value of a Common Share on the date of grant (and shall not be less than 110% of the Fair Market Value for an ISO granted to a Ten Percent Shareholder).
- 5.4 Exercisability and Term. Each Stock Option Agreement shall specify the date or event when all or any installment of the Option is to become exercisable. The Stock Option Agreement shall also specify the term of the Option; provided that the term of an Option shall in no event exceed 10 years from the date of grant (and shall not exceed 5 years from the date of an ISO grant for a Ten Percent Shareholder). If an Optionee changes status from an Employee to a Consultant or Outside Director, that Optionee's ISOs will become NSOs if not exercised within the three-month period beginning with the Optionee's termination of Service as an Employee for any reason other than the Optionee's death or Disability. An ISO shall be treated as an NSO if it remains exercisable after, and is not exercised within, the three-month period described above. If an Optionee's Service terminates due to Disability, any ISO held by such Optionee shall be treated as an NSO if it remains exercisable after, and is not exercised within, one year after termination of the Optionee's Service. A Stock Option Agreement may provide for accelerated exercisability in the event of the Optionee's death, Disability or retirement or other events and may provide for expiration prior to the end of its term in the event of the termination of the Optionee's Service. Options may be awarded in combination with SARs, and such an Award may provide that the Options will not be exercisable unless the related SARs are forfeited. No Option granted to an individual who is subject to the overtime pay provisions of the Fair Labor Standards Act may be exercised before the expiration of six months after the Grant Date.
- 5.5 Effect of Change in Control. The Committee may determine, at the time of granting an Option or thereafter, that such Option shall become exercisable as to all or part of the Common Shares subject to such Option in the event that a Change in Control occurs with respect to the Company or in the event that the Optionee is subject to an Involuntary Termination after a Change in Control. In addition, acceleration of exercisability may be required under Section 10.3.
- 5.6 Nonassignability of Options. Except as determined by the Committee, no Option shall be assignable or otherwise transferable by the Participant except by will or by the laws of descent and distribution. However, Options may be transferred and exercised in accordance with a Domestic Relations Order and may be exercised by a guardian or conservator appointed to act for the Participant. No rights under an ISO may be transferred by the Participant, other than to a trust where under section 671 of the Code and other Applicable Law

the Participant is considered the sole beneficial owner of the Option while it is held in trust, or by will or the laws of descent and distribution. The Company's compliance with a Domestic Relations Order, or the exercise of an ISO by a guardian or conservator appointed to act for the Participant, shall not violate this Section 5.6.

- 5.7 Substitute Options. The Board may cause the Company to grant Substitute Options in connection with the acquisition by the Company or a Parent, Subsidiary or Affiliate of equity securities of any entity (including by merger, tender offer, or other similar transaction) or of all or a portion of the assets of any entity. Any such substitution shall be effective on the effective date of the acquisition. Substitute Options may be NSOs or ISOs. Unless and to the extent specified otherwise by the Board, Substitute Options shall have the same terms and conditions as the options they replace, except that (subject to the provisions of Article 10) Substitute Options shall be Options to purchase Common Shares rather than equity securities of the granting entity and shall have an Exercise Price adjusted appropriately, as determined by the Board.
- 5.8 Limitation on ISOs. Options intended to be ISOs that are granted to any single Optionee under all incentive stock option plans of the Company and its Parents or Subsidiaries, including ISOs granted under the Plan, may not first become exercisable for more than \$100,000 in Fair Market Value of stock (measured on the grant dates of the Options) during any calendar year.

ARTICLE 6 PAYMENT FOR OPTION SHARES.

- **6.1 General Rule**. The entire Exercise Price of Common Shares issued upon exercise of Options shall be payable in cash or cash equivalents denominated in U.S. dollars (except as specified by the Committee for non-U.S. Employees or non-U.S. sub-plans) at the time when such Common Shares are purchased, except as follows:
- (a) In the case of an ISO granted under the Plan, payment shall be made only pursuant to the express provisions of the applicable Stock Option Agreement. The Stock Option Agreement may specify that payment may be made in any form(s) described in this Article 6.
- (b) In the case of an NSO granted under the Plan, the Committee may at any time permit payment to be made in any form(s) described in this Article 6.
- **6.2 Exercise/Sale.** To the extent that this Section 6.2 is made applicable to an Option by the Committee, all or any part of the Exercise Price and any withholding taxes may be paid by delivering (on a form prescribed by the Company) an irrevocable direction to a securities broker approved by the Company to sell all or part of the Common Shares being purchased under the Plan and to deliver all or part of the sales proceeds to the Company; provided that to the extent the Company would be deemed to extend or arrange for the extension of credit in the form of a personal loan to an Optionee under the foregoing procedure, no Officer or Director may use the foregoing procedure to pay the Exercise Price.
- **6.3 Other Forms of Payment.** To the extent that this Section 6.3 is made applicable to an Option by the Committee, all or any part of the Exercise Price and any withholding taxes may be paid in any other form that is consistent with Applicable Law, regulations and rules.

ARTICLE 7 STOCK APPRECIATION RIGHTS.

- 7.1 SAR Agreement. Each grant of a SAR under the Plan shall be evidenced by a SAR Agreement between the Optionee and the Company. Such SAR shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various SAR Agreements entered into under the Plan need not be identical. SARs may be granted in consideration of a reduction in the Optionee's other compensation.
- 7.2 Number of Shares. Each SAR Agreement shall specify the number of Common Shares to which the SAR pertains and shall provide for the adjustment of such number in accordance with Article 10.

- 7.3 Exercise Price. Each SAR Agreement shall specify the Exercise Price provided that the Exercise Price under a SAR shall in no event be less than 100% of the Fair Market Value of a Common Share on the date of grant. A SAR Agreement may specify an Exercise Price that varies in accordance with a predetermined formula while the SAR is outstanding.
- 7.4 Exercisability and Term. Each SAR Agreement shall specify the date when all or any installment of the SAR is to become exercisable. The SAR Agreement shall also specify the term of the SAR provided that the term of a SAR shall in no event exceed 10 years from the date of grant. The grant or vesting of a SAR may be made contingent on the achievement of performance conditions. A SAR Agreement may provide for accelerated exercisability in the event of the Optionee's death, Disability or retirement or other events and may provide for expiration prior to the end of its term in the event of the termination of the Optionee's Service. SARs may be awarded in combination with Options, and such an Award may provide that the SARs will not be exercisable unless the related Options are forfeited. A SAR may be included in an ISO only at the time of grant but may be included in an NSO at the time of grant or thereafter. A SAR granted under the Plan may provide that it will be exercisable only in the event of a Change in Control.
- 7.5 Effect of Change in Control. The Committee may determine, at the time of granting a SAR or thereafter, that such SAR shall become fully exercisable as to all Common Shares subject to such SAR in the event that the Company is subject to a Change in Control or in the event that the Optionee is subject to an Involuntary Termination after a Change in Control. In addition, acceleration of exercisability may be required under Section 10.3.
- 7.6 Exercise of SARs. Upon exercise of a SAR, the Optionee (or any person having the right to exercise the SAR after his or her death) shall receive from the Company (a) Common Shares, (b) cash or (c) a combination of Common Shares and cash, as the Committee shall determine, over the period or periods set forth in the SAR Agreement. A SAR Agreement may place limits on the amount that may be paid over any specified period or periods upon the exercise of a SAR, on an aggregate basis or as to any Participant. The amount of cash and/or the Fair Market Value of Common Shares received upon exercise of SARs shall, in the aggregate, be equal to the amount by which the Fair Market Value (on the date of surrender) of the Common Shares subject to the SARs exceeds the Exercise Price. If, on the date when a SAR expires, the Exercise Price under such SAR is less than the Fair Market Value on such date but any portion of such SAR has not been exercised or surrendered, then such SAR shall automatically be deemed to be exercised as of such date with respect to such portion.
- 7.7 Nonassignability of SARs. Except as determined by the Committee, no SAR shall be assignable or otherwise transferable by the Participant except by will or by the laws of descent and distribution. However, SARs may be transferred and exercised in accordance with a Domestic Relations Order and may be exercised by a guardian or conservator appointed to act for the Participant.
- 7.8 Substitute SARs. The Board may cause the Company to grant Substitute SARs in connection with the acquisition by the Company or a Parent, Subsidiary or Affiliate of equity securities of any entity (including by merger, tender offer, or other similar transaction) or of all or a portion of the assets of any entity. Any such substitution shall be effective on the effective date of the acquisition. Unless and to the extent specified otherwise by the Board, Substitute SARs shall have the same terms and conditions as the SARs they replace, except that (subject to the provisions of Article 10) Substitute SARs shall be exercisable with respect to the Fair Market Value of Common Shares rather than equity securities of the granting entity and shall be on terms that, as determined by the Board in its sole and absolute discretion, properly reflect that substitution.

ARTICLE 8 RESTRICTED SHARES.

8.1 Restricted Stock Agreement. Each grant of Restricted Shares under the Plan shall be evidenced by a Restricted Stock Agreement between the recipient and the Company. Such Restricted Shares shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Restricted Stock Agreements entered into under the Plan need not be identical.

- 8.2 Payment for Awards. Subject to the following sentence, Restricted Shares may be sold or awarded under the Plan for such consideration as the Committee may determine, including (without limitation) cash, cash equivalents, labor done, services actually rendered to the Company or for its benefit or in its reorganization, debts or securities cancelled, tangible or intangible property actually received either by the Company or a wholly-owned subsidiary, and promissory notes (provided the recipient is an Employee who is not a Director or Officer at the time of grant). All cash and cash equivalents shall be dominated in U.S. dollars except as specified by the Committee for non-U.S. Employees or non-U.S. sub-plans.
- 8.3 Vesting Conditions. Each Award of Restricted Shares may or may not be subject to vesting. Vesting shall occur, in full or in installments, upon satisfaction of the conditions specified in the Restricted Stock Agreement. The Committee may include among such conditions the achievement of Objectively Determinable Performance Conditions A Restricted Stock Agreement may provide for accelerated vesting in the event of the Participant's death, Disability or retirement or other events. The Committee may determine, at the time of granting Restricted Shares or thereafter, that all or part of such Restricted Shares shall become vested in the event that a Change in Control occurs with respect to the Company or in the event that the Participant is subject to an Involuntary Termination after a Change in Control.
- 8.4 Voting and Dividend Rights. The holders of Restricted Shares awarded under the Plan shall have the same voting, dividend and other rights as the Company's other shareholders. A Restricted Stock Agreement, however, may require that the holders of Restricted Shares invest any cash dividends received in additional Restricted Shares. Such additional Restricted Shares shall be subject to the same conditions and restrictions as the Award with respect to which the dividends were paid. Notwithstanding the foregoing, dividends awarded with respect to Restricted Shares subject to unsatisfied performance-based conditions shall accumulate until all applicable performance-based conditions have been satisfied and will be paid, if at all, as soon as reasonably practicable following the satisfaction of the applicable performance-based conditions.
- 8.5 Nonassignability of Restricted Shares. Except as determined by the Committee, no Restricted Shares shall be assignable or otherwise transferable by the Participant except by will or by the laws of descent and distribution until such time as the Restricted Shares have vested. Notwithstanding anything to the contrary herein, Restricted Shares may be transferred and exercised in accordance with a Domestic Relations Order.
- 8.6 Substitute Restricted Shares. The Board may cause the Company to grant Substitute Restricted Shares in connection with the acquisition by the Company or a Parent, Subsidiary or Affiliate of equity securities of any entity (including by merger) or all or a portion of the assets of any entity. Unless and to the extent specified otherwise by the Board, Substitute Restricted Shares shall have the same terms and conditions as the restricted shares they replace, except that (subject to the provisions of Article 10) Substitute Restricted Shares shall be Common Shares rather than equity securities of the granting entity and shall be on terms that, as determined by the Board in its sole and absolute discretion, properly reflect the substitution. Any such Substituted Restricted Shares shall be granted effective on the effective date of the acquisition.
- 8.7 Section 162(m) Limitation. For so long as the Company is a "publicly held corporation" within the meaning of Section 162(m) of the Code and with respect to grants of Restricted Shares that are intended to qualify as performance-based compensation under Code Section 162(m), no Employee may be granted within any Fiscal Year under the Plan more than 33,333 Restricted Shares which are subject to the achievement of Objectively Determinable Performance Conditions, with such limit subject to adjustment pursuant to Article 10.

ARTICLE 9 STOCK UNITS.

- 9.1 Stock Unit Agreement. Each grant of Stock Units under the Plan shall be evidenced by a Stock Unit Agreement between the recipient and the Company. Such Stock Units shall be subject to all applicable terms of the Plan and may be subject to any other terms that are not inconsistent with the Plan. The provisions of the various Stock Unit Agreements entered into under the Plan need not be identical. Stock Units may be granted in consideration of a reduction in the recipient's other compensation.
- **9.2 Payment for Awards**. To the extent that an Award is granted in the form of Stock Units, no cash consideration shall be required of the Award recipients.

- 9.3 Vesting Conditions. Each Award of Stock Units may or may not be subject to vesting. Vesting shall occur, in full or in installments, upon satisfaction of the conditions specified in the Stock Unit Agreement. The Committee may include among such conditions the achievement of Objectively Determinable Performance Conditions. A Stock Unit Agreement may provide for accelerated vesting in the event of the Participant's death, Disability or retirement or other events. The Committee may determine, at the time of granting Stock Units or thereafter, that all or part of such Stock Units shall become vested in the event that the Company is subject to a Change in Control or in the event that the Participant is subject to an Involuntary Termination after a Change in Control. In addition, acceleration of vesting may be required under Section 10.3.
- 9.4 Voting and Dividend Rights. The holders of Stock Units shall have no voting rights. Prior to settlement or forfeiture, any Stock Unit awarded under the Plan may, at the Committee's discretion, carry with it a right to dividend equivalents. Such right entitles the holder to be credited with an amount equal to all cash dividends paid on one Common Share while the Stock Unit is outstanding. Dividend equivalents may be converted into additional Stock Units. Settlement of dividend equivalents may be made in the form of cash, in the form of Common Shares, or in a combination of both, as determined by the Committee. Prior to distribution, any dividend equivalents that are not paid shall be subject to the same conditions and restrictions as the Stock Units to which they attach. Notwithstanding the foregoing, dividend equivalents awarded with respect to Stock Units subject to unsatisfied performance-based conditions shall accumulate until all applicable performance-based conditions have been satisfied and will be paid, if at all, as soon as reasonably practicable following the satisfaction of the applicable performance-based conditions.
- 9.5 Form and Time of Settlement of Stock Units. Settlement of vested Stock Units may be made in the form of (a) cash, (b) Common Shares or (c) any combination of both, as determined by the Committee, over the period or periods established by the Committee. A Stock Units Award may place limits on the amount that may be paid over any specified period or periods, on an aggregate basis or as to any Participant. The actual number of Stock Units eligible for settlement may be larger or smaller than the number included in the original Award, based on performance criteria. Methods of converting Stock Units into cash may include (without limitation) a method based on the average Fair Market Value of Common Shares over a series of trading days. Distribution on settlement may occur or commence when all vesting conditions applicable to the Stock Units have been satisfied or have lapsed, or it may be deferred to any later date. The amount of a deferred distribution may be increased by an interest factor or by dividend equivalents. Until an Award of Stock Units is settled, the number of such Stock Units shall be subject to adjustment pursuant to Article 10.
- 9.6 Death of Recipient. Any Stock Units Award that becomes payable after the recipient's death shall be distributed to the recipient's beneficiary or beneficiaries. Each recipient of a Stock Units Award under the Plan shall designate one or more beneficiaries for this purpose by filing the prescribed form with the Company. A beneficiary designation may be changed by filing the prescribed form with the Company at any time before the Award recipient's death. If no beneficiary was designated or if no designated beneficiary survives the Award recipient, then any Stock Units Award that becomes payable after the recipient's death shall be distributed to the recipient's estate.
- 9.7 Creditors' Rights. A holder of Stock Units shall have no rights other than those of a general creditor of the Company. Stock Units represent an unfunded and unsecured obligation of the Company, subject to the terms and conditions of the applicable Stock Unit Agreement.
- 9.8 Nonassignability of Stock Units. Except as determined by the Committee, no Stock Units Award shall be assignable or otherwise transferable by the Participant except by will or by the laws of descent and distribution. Notwithstanding anything to the contrary herein, Stock Units Awards may be transferred and exercised in accordance with a Domestic Relations Order.
- 9.9 Substitute Stock Units. The Board may cause the Company to grant Substitute Stock Units in connection with the acquisition by the Company or a Parent, Subsidiary or Affiliate of equity securities of any entity (including by merger) or all or a portion of the assets of any entity. Unless and to the extent specified otherwise by the Board, Substitute Stock Units shall have the same terms and conditions as the stock units they replace, except that (subject to the provisions of Article 10) Substitute Stock Units shall be settled with respect to the Fair Market Value of the Common Shares rather than equity securities of the granting entity and shall be on terms that, as determined by the Board in its sole and absolute discretion, properly reflect the substitution.

9.10 Section 162(m) Limitation. For so long as the Company is a "publicly held corporation" within the meaning of Section 162(m) of the Code and with respect to grants of Stock Units that are intended to qualify as performance-based compensation under Code Section 162(m), no Employee may be granted within any Fiscal Year under the Plan more than 33,333 Stock Units which are subject to the achievement of Objectively Determinable Performance Condition, with such limit subject to adjustment pursuant to Article 10.

ARTICLE 10 PROTECTION AGAINST DILUTION.

- 10.1 Adjustments. In the event of a subdivision of the outstanding Common Shares, a declaration of a dividend payable in Common Shares, a declaration of a dividend payable in a form other than Common Shares in an amount that has a material effect on the price of Common Shares, a combination or consolidation of the outstanding Common Shares (by reclassification or otherwise) into a lesser number of Shares, a stock split, a reverse stock split, a reclassification or other distribution of the Common Shares without the receipt of consideration by the Company, of or on the Common Stock, a recapitalization, a combination, a spin-off or a similar occurrence, the Committee shall make equitable and proportionate adjustments to:
- (a) the maximum aggregate number of Common Shares reserved for issuance under the Plan as specified in Section 3.1 and to be issued as ISOs as set forth under Section 3.1 and the number of Common Shares under the Prior Plans that may become available for award under this Plan pursuant to Section 3.1(ii);
 - (b) the number and kind of securities available for Awards (and which can be issued as ISOs) under Section 3.1;
 - (c) the limitations set forth in Sections 4.3(a), 8.7 and 9.10;
 - (d) the number and kind of securities covered by each outstanding Award;
 - (e) the Exercise Price under each outstanding Option and SAR; or
 - (f) the number and kind of outstanding securities issued under the Plan.

In the event of a declaration of an extraordinary dividend payable in a form other than Common Shares in an amount that has a material effect on the price of Common Shares, a recapitalization, a spin-off or a similar occurrence, the Committee shall make such proportionate adjustments as it, in its sole discretion, deems appropriate in one or more of the foregoing. Except as provided in this Article 10, a Participant shall have no rights by reason of any issuance by the Company of stock of any class or securities convertible into stock of any class, any subdivision or consolidation of shares of stock of any class, the payment of any stock dividend or any other increase or decrease in the number of shares of stock of any class. Any adjustment of Common Shares pursuant to this Section 10.1 shall be rounded down to the nearest whole number of Common Shares. Under no circumstances shall the Company be required to authorize or issue fractional shares and no consideration shall be provided as a result of any fractional shares not being issued or authorized.

- **10.2 Dissolution or Liquidation**. To the extent not previously exercised or settled, Options, SARs, unvested Restricted Shares and Stock Units shall terminate immediately prior to the dissolution or liquidation of the Company and be forfeited to the Company.
- 10.3 Reorganizations. In the event that the Company is a party to a merger or other reorganization, outstanding Awards shall be subject to the agreement of merger or reorganization. Such agreement may provide, without limitation, for (a) the continuation of the outstanding Awards by the Company, if the Company is a surviving corporation, (b) the assumption of the outstanding Awards by the surviving entity or its parent or subsidiary, (c) the substitution by the surviving entity or its parent or subsidiary of its own awards for the

outstanding Awards, (d) full exercisability or vesting and accelerated expiration of the outstanding Awards, (e) settlement of the full value of the outstanding Awards in cash or cash equivalents followed by cancellation of such Awards (with the "full value" of Options and SARs to be determined based on the spread of the Award at the time of the transaction), and in all cases without needing consent of any Participant. In the event of a Divestiture, the Board may, but need not, direct that one or more of the foregoing actions be taken with respect to Awards held by, for example, Employees, Outside Directors or Consultants for whom the transaction or event resulted in a termination of Service. The Board need not adopt the same rules for each Award or Participant.

ARTICLE 11 DEFERRAL OF AWARDS.

The Committee (in its sole discretion) may permit or require a Participant to:

- (a) Have cash that otherwise would be paid to such Participant as a result of the exercise of a SAR or the settlement of Stock Units credited to a deferred compensation account established for such Participant by the Committee as an entry on the Company's books;
- (b) Have Common Shares that otherwise would be delivered to such Participant as a result of the exercise of an Option or SAR converted into an equal number of Stock Units; or
- (c) Have Common Shares that otherwise would be delivered to such Participant as a result of the exercise of an Option or SAR or the settlement of Stock Units converted into amounts credited to a deferred compensation account established for such Participant by the Committee as an entry on the Company's books. Such amounts shall be determined by reference to the Fair Market Value of such Common Shares as of the date when they otherwise would have been delivered to such Participant.

A deferred compensation account established under this Article 11 may be credited with interest or other forms of investment return, as determined by the Committee. A Participant for whom such an account is established shall have no rights other than those of a general creditor of the Company. Such an account shall represent an unfunded and unsecured obligation of the Company and shall be subject to the terms and conditions of the applicable agreement between such Participant and the Company. If the deferral or conversion of Awards is permitted or required, the Committee (in its sole discretion) may establish rules, procedures and forms pertaining to such Awards, including (without limitation) the settlement of deferred compensation accounts established under this Article 11.

Any and all arrangements under this Article 11 must comply with the rules and requirements of Section 409A of the Code including, without limitation, the requirements for the timing of deferral elections and the Delay In Payments to Specified Employees.

ARTICLE 12 AWARDS UNDER OTHER PLANS.

The Company may grant awards under other plans or programs. Such awards may be settled in the form of Common Shares issued under the Plan. Such Common Shares shall be treated for all purposes under the Plan like Common Shares issued in settlement of Stock Units and shall, when issued, reduce the number of Common Shares available under Article 3. Notwithstanding the foregoing, each Common Share issued pursuant to this Article 12 shall be counted against the Plan reserve in Section 3.1 as one (1) Common Share to the extent such shares are issued in respect of awards under other plans or programs that have substantially similar terms and conditions to Options or SARs granted under the Plan, including, with respect to stock options or equivalent securities, an exercise price at least equal to the fair market value of the securities for which the stock option or equivalent security is exercisable, measured at the date of grant.

ARTICLE 13 PAYMENT OF DIRECTORS' FEES IN SECURITIES.

13.1 Effective Date. No provision of this Article 13 shall be effective unless and until the Board has determined to implement such provision.

- 13.2 Elections to Receive NSOs, Restricted Shares or Stock Units. An Outside Director may elect to receive his or her annual retainer payments and/or meeting fees from the Company in the form of cash, NSOs, Restricted Shares or Stock Units, or a combination thereof, as determined by the Board. Such NSOs, Restricted Shares and Stock Units shall be issued under the Plan. An election under this Article 13 must be timely filed with the Company on the prescribed form.
- 13.3 Number and Terms of NSOs, Restricted Shares or Stock Units. The number of NSOs, Restricted Shares or Stock Units to be granted to Outside Directors in lieu of annual retainers and meeting fees that would otherwise be paid in cash shall be calculated in a manner determined by the Board. The Board shall also determine the terms of such NSOs, Restricted Shares or Stock Units.

ARTICLE 14 LIMITATION ON RIGHTS.

- 14.1 Retention Rights. Neither the Plan nor any Award granted under the Plan shall be deemed to give any individual a right to remain an Employee, Outside Director or Consultant. The Company and its Parents, Subsidiaries and Affiliates reserve the right to terminate the Service of any Employee, Outside Director or Consultant at any time, with or without cause, subject to Applicable Law, the Company's articles of incorporation and bylaws and a written employment agreement (if any).
- 14.2 Shareholders' Rights. A Participant shall have no dividend rights, voting rights or other rights as a shareholder with respect to any Common Shares covered by his or her Award prior to the time when a stock certificate for such Common Shares is issued or, if applicable, the time when he or she becomes entitled to receive such Common Shares by satisfying all requirements for exercise at a time when the Company is obligated to deliver such Common Shares under the terms of the Award agreement and this Plan. No adjustment shall be made for cash dividends or other rights for which the record date is prior to such time, except as expressly provided in the Plan.
- 14.3 Regulatory Requirements. Any other provision of the Plan notwithstanding, the obligation of the Company to issue Common Shares under the Plan shall be subject to all Applicable Law. The Company reserves the right to restrict, in whole or in part, the delivery of Common Shares pursuant to any Award prior to the satisfaction of all Applicable Law relating to the issuance of such Common Shares, to their registration, qualification or listing or to an exemption from registration, qualification or listing.
- 14.4 Code Section 409A. Notwithstanding anything in the Plan to the contrary, the Plan and Awards granted hereunder are intended to comply with the requirements of Code Section 409A and shall be interpreted in a manner consistent with such intention.

ARTICLE 15 WITHHOLDING TAXES.

- 15.1 General. To the extent required by Applicable Law, a Participant or his or her successor shall make arrangements satisfactory to the Company for the satisfaction of any withholding tax obligations that arise in connection with the Plan. The Company shall not be required to issue any Common Shares or make any cash payment under the Plan until such obligations are satisfied.
- 15.2 Share Withholding. To the extent that Applicable Law subjects a Participant to tax withholding obligations, the Committee may establish procedures that may permit such Participant to satisfy all or part of such obligations by having the Company withhold all or a portion of any Common Shares that otherwise would be issued to him or her or by surrendering all or a portion of any Common Shares that he or she previously acquired. Such Common Shares shall be valued at their Fair Market Value on the date when they are withheld or surrendered.

ARTICLE 16 FUTURE OF THE PLAN.

16.1 Term of the Plan. The Plan was effective on the Effective Date. The Plan, as may be amended or restated from time to time, shall remain in effect until the tenth anniversary of the Effective Date or until such earlier date as provided under Section 16.2. Except as provided in Section 3.1, this Plan will not in any way affect outstanding awards that were issued under the Prior Plans or other Company equity compensation plans. No further awards may be granted under the Prior Plans as of the date of approval of this Plan by the Company's shareholders.

16.2 Amendment or Termination. The Board may, at any time and for any reason, amend or terminate the Plan. An amendment of the Plan shall be subject to the approval of the Company's shareholders only to the extent required by Applicable Law. No Awards shall be granted under the Plan after the termination thereof. The termination of the Plan, or any amendment thereof, shall not impair the rights of any Participant under any Award previously granted under the Plan unless the Participant consents to such amendment. The Board or the Committee may amend the terms of any existing Award, prospectively or retroactively, but no such amendment shall impair the rights of any Participant unless the Participant consents to such amendment. The Board or the Committee may not amend the terms of any Option or SAR to reduce the Exercise Price (except pursuant to Article 10), or cancel any Option or SAR and grant a new Option or SAR with a lower Exercise Price such that the effect would be the same as reducing the Exercise Price, without the approval of the Company's shareholders. Notwithstanding anything herein to the contrary, no consent of a Participant shall be required if the Board determines, in its sole and absolute discretion, that the amendment, suspension, termination, or modification: (a) is required or advisable in order for the Company, the Plan or the Award to satisfy Applicable Law, to meet the requirements of any accounting standard or to avoid any adverse accounting treatment, or (b) in connection with any transaction or event described in Article 10, is in the best interests of the Company or its shareholders. The Board may, but need not, take the tax or accounting consequences to affected Participants into consideration in acting under the preceding sentence. Those decisions shall be final, binding and conclusive. Termination of the Plan shall not affect the Committee's ability to exercise the powers granted to it under the Plan with respect to Awards granted before the termination notwithstanding that Awards b

ARTICLE 17 DEFINITIONS.

- 17.1 "Affiliate" means any entity other than a Subsidiary, if the Company and/or one or more Subsidiaries own not less than 50% of such entity.
- 17.2 "Applicable Law" means any and all laws of whatever jurisdiction, within or without the United States, and the rules of any stock exchange or quotation system on which Common Shares are listed or quoted, applicable to the taking or refraining from taking of any action under the Plan, including the administration of the Plan and the issuance or transfer of Awards.
 - 17.3 "Award" means any award of an Option, a SAR, a Restricted Share or a Stock Unit under the Plan.
 - **17.4** "Board" means the Company's Board of Directors, as constituted from time to time.
- 17.5 "Cause" means, except as may otherwise be provided in an applicable Award agreement, (a) acts or omissions constituting gross negligence, recklessness or willful misconduct with respect to the Participant's obligations or otherwise relating to the business of the Company; (b) the Participant's material breach of a written agreement between the Participant and the Company (or a Parent, Subsidiary or Affiliate); (c) conviction or entry of a plea of nolo contendere for fraud, misappropriation or embezzlement, or any felony or crime of moral turpitude; (d) dishonesty or involvement in any conduct that adversely affects the Company's name or public image or is otherwise detrimental to the Company's business interests; (e) willful neglect of duties; or (f) unauthorized use or disclosure of the confidential information or trade secrets of the Company, which use or disclosure causes material harm to the Company. The foregoing, however, shall not be deemed an exclusive list of all acts or omissions that the Company (or the Parent, Subsidiary or Affiliate employing the Participant) may consider as grounds for the discharge of the Participant without Cause. The Committee shall be entitled to determine "Cause" based on the Committee's good faith belief.

- 17.6 "Change in Control" means, except as may otherwise be provided in an applicable Award agreement:
- (a) The consummation of a merger or consolidation of the Company with or into another entity or any other corporate reorganization, if persons who were not shareholders of the Company immediately prior to such merger, consolidation or other reorganization own immediately after such merger, consolidation or other reorganization 50% or more of the voting power of the outstanding securities of each of (i) the continuing or surviving entity and (ii) any direct or indirect parent corporation of such continuing or surviving entity;
 - (b) The sale, transfer or other disposition of all or substantially all of the Company's assets;
- (c) A change in the composition of the Board over a period of thirty-six (36) months or less such that a majority of the Board members (rounded up to the next whole number) ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who are Continuing Directors;
- (d) Any transaction as a result of which the direct or indirect acquisition by any person or related group of persons (other than an acquisition from or by the Company or by a Company-sponsored employee benefit plan or by a person that directly or indirectly controls, is controlled by, or is under common control with, the Company) of beneficial ownership (within the meaning of Rule 13d-3 of the Exchange Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's shareholders which a majority of the Continuing Directors who are not affiliated with the offeror do not recommend such shareholders accept; or
- (e) A Divestiture; provided that a Divestiture shall be a Change in Control only to the extent that the Board determines that such Divestiture constitutes a Change in Control, and then only for those Participants for whom the Board has expressly resolved that such Divestiture constitutes a Change in Control for such Participants. In making such determination, the Board need not adopt the same rules for each Award or Participant.

A transaction shall not constitute a Change in Control if its sole purpose is to change the state of the Company's incorporation or to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction. The Committee shall determine whether an event shall be treated as a Change in Control.

- 17.7 "Code" means the Internal Revenue Code of 1986, as amended.
- 17.8 "Committee" means a committee of the Board, as described in Article 2.
- **17.9** "Common Share" means one share of the common stock of the Company.
- **17.10** "Company" means Overland Storage, Inc., a California corporation.
- 17.11 "Consultant" means a consultant or adviser who provides bona fide services to the Company, a Parent, a Subsidiary or an Affiliate as an independent contractor.
- 17.12 "Continuing Directors" means members of the Board who either (i) have been Board members continuously for a period of at least thirty-six (36) months or (ii) have been Board members for less than thirty-six (36) months and were elected or nominated for election as Board members by at least a majority of the Board members described in clause (i) who were still in office at the time such election or nomination was approved by the Board.
- 17.13 "Delay In Payments to Specified Employees" means if a Participant is a "specified employee" (as defined under Code Section 409A) on separation from Service, to the extent any Award or arrangement needs to comply with Code Section 409A, then certain payments may be delayed and not be paid during the first six months following the separation from Service but will instead be paid on the earlier of the first business day of the 7th month following the separation from Service, or ten (10) days after the Company receives written confirmation of the Participant's death. Any such delayed payments shall be made without interest.

- 17.14 "Director" means a member of the Board of Directors of the Company.
- 17.15 "Disability" means that the Participant is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve (12) months. The Disability of a Participant shall be determined solely by the Committee on the basis of such medical evidence as the Committee deems warranted under the circumstances.
- 17.16 "Divestiture" means a transaction or event where the Company or a Parent, Subsidiary or Affiliate sells or otherwise transfers its equity securities to a person or entity other than the Company or a Parent, Subsidiary or Affiliate, or leases, exchanges or transfers all or any portion of its assets to such a person or entity, where the Board specifies that such transaction or event constitutes a "Divestiture."
- 17.17 "Domestic Relations Order" means a "domestic relations order" as defined in, and otherwise meeting the requirements of, section 414(p) of the Code, except that reference to a "plan" in that definition shall be to the Plan.
 - 17.18 "Effective Date" means November 14, 2009 which was the date on which the Plan was adopted by the Board.
- 17.19 "Employee" means a common law employee of the Company, a Parent, a Subsidiary or an Affiliate. Notwithstanding the foregoing, individuals who are classified by the Company or a Parent, Subsidiary or Affiliate as (i) leased from or otherwise employed by a third party, (ii) independent contractors, or (iii) intermittent or temporary workers, shall not be deemed Employees. The Company's or a Parent's, Subsidiary's or Affiliate's classification of an individual as an "Employee" (or as not an "Employee") for purposes of the Plan shall not be altered retroactively even if that classification is changed retroactively for another purpose as a result of an audit, litigation or otherwise. A Participant shall not cease to be an Employee due to transfers between locations of the Company, or among the Company and a Parent, Subsidiary or Affiliate, or to any successor to the Company or a Parent, Subsidiary or Affiliate that assumes an Optionee's Options under Section 10.3. Neither service as a Director nor receipt of a director's fee shall be sufficient to make a Director an "Employee."
 - **17.20** "Exchange Act" means the Securities Exchange Act of 1934, as amended.
- 17.21 "Exercise Price," in the case of an Option, means the amount for which one Common Share may be purchased upon exercise of such Option, as specified in the applicable Stock Option Agreement. "Exercise Price," in the case of a SAR, means an amount, as specified in the applicable SAR Agreement, which is subtracted from the Fair Market Value of one Common Share in determining the amount payable upon exercise of such SAR.
 - 17.22 "Fair Market Value" means the market price of a Common Share determined by the Committee as follows:
 - (i) If the Common Shares were traded on a stock exchange (such as the New York Stock Exchange, NYSE Amex, the NASDAQ Global Market or NASDAQ Capital Market) at the time of determination, then the Fair Market Value shall be equal to the regular session closing price for such stock as reported by such exchange (or the exchange or market with the greatest volume of trading in the Common Shares) on the date of determination, or if there were no sales on such date, on the last date preceding such date on which a closing price was reported;

- (ii) If the Common Shares were traded on the OTC Bulletin Board at the time of determination, then the Fair Market Value shall be equal to the last-sale price reported by the OTC Bulletin Board for such date of determination, or if there were no sales on such date, on the last date preceding such date on which a sale was reported; and
- (iii) If neither of the foregoing provisions is applicable, then the Fair Market Value shall be determined by the Committee in good faith using a reasonable application of a reasonable valuation method as the Committee deems appropriate.

Whenever possible, the determination of Fair Market Value by the Committee shall be based on the prices reported by the applicable exchange or the OTC Bulletin Board, as applicable, or a nationally recognized publisher of stock prices or quotations (including an electronic on-line publication). Such determination shall be conclusive and binding on all persons.

- 17.23 "Fiscal Year" means the Company's fiscal year.
- 17.24 "Involuntary Termination" means the termination of the Participant's Service by reason of:
- (a) The involuntary discharge of the Participant by the Company (or the Parent, Subsidiary or Affiliate employing him or her) for reasons other than Cause; or
- (b) The voluntary resignation of the Participant following (i) a material adverse change in his or her title, stature, authority or responsibilities with the Company (or the Parent, Subsidiary or Affiliate employing him or her), (ii) a material reduction in his or her base salary or (iii) receipt of notice that his or her principal workplace will be relocated by more than 90 miles.
 - 17.25 "ISO" means an incentive stock option described in section 422(b) of the Code.
 - 17.26 "NSO" means a stock option not described in sections 422 or 423 of the Code.
- "Objectively Determinable Performance Condition" shall mean a performance condition (i) that is established (A) at the 17.27 time an Award is granted or (B) no later than the earlier of (1) 90 days after the beginning of the period of Service to which it relates, or (2) before 25% of the period of Service to which it relates has elapsed, (ii) that is substantially uncertain of achievement at the time it is established, and (iii) the achievement of which would be determinable by a third party with knowledge of the relevant facts. Examples of measures that may be used in Objectively Determinable Performance Conditions include net order dollars, net profit dollars, net profit growth, net revenue dollars, profit/loss or profit margin, operating profit, net operating profit, operating margin, working capital, sales or revenue, revenue growth, gross margin, cost of goods sold, individual performance, cash, accounts receivables, writeoffs, cash flow, liquidity, income, net income, operating income, net operating income, earnings, earnings before interest, taxes, depreciation and/or amortization, earnings per share, growth in earnings per share, price/earnings ratio, debt or debt-to-equity, economic value added, assets, return on assets, return on equity, stock price, shareholders' equity, total shareholder return, including stand-alone or relative to a stock market or peer group index, return on capital, return on assets or net assets, return on investment, return on operating revenue, any other financial objectives, objective customer satisfaction indicators and efficiency measures, operations, research or related milestones, intellectual property (e.g., patents), product development, site, plant or building development, internal controls, policies and procedures, information technology, human resources, corporate governance, business development, market share, strategic alliances, licensing and partnering, contract awards or backlog, expenses, overhead or other expense reduction, compliance programs, legal matters, accounting and reporting, credit rating, strategic plan development and implementation, mergers and acquisitions and divestitures, financings, management, improvement in workforce diversity, or any similar criteria, each with respect to the Company and/or a Parent, Subsidiary or Affiliate, and/or an individual business unit.
 - 17.28 "Officer" means an officer of the Company as defined in Rule 16a-1 adopted under the Exchange Act.

- 17.29 "Option" means an ISO or NSO granted under the Plan and entitling the holder to purchase Common Shares.
- 17.30 "Optionee" means an individual or estate who holds an Option or SAR.
- **17.31** "Outside Director" means a member of the Board who is not an Employee.
- 17.32 "Parent" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company, if each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Parent on a date after the adoption of the Plan shall be considered a Parent commencing as of such date.
- 17.33 "Participant" means (i) a person to whom an Award has been granted, including a holder of a Substitute Award; or (ii) a person to whom an Award has been transferred in accordance with the applicable requirements of Sections 5.6, 7.7, 8.5, or 9.8
 - 17.34 "Plan" means this Overland Storage, Inc. 2009 Equity Incentive Plan, as amended from time to time.
- 17.35 "Prior Plans" means the Company's 1995 Stock Option Plan, 1997 Executive Stock Option Plan, 2000 Stock Option Plan, 2001 Supplemental Stock Option Plan, and 2003 Equity Incentive Plan, each as in effect on the Effective Date.
 - 17.36 "Restricted Share" means a Common Share awarded pursuant to Article 8 of the Plan.
- 17.37 "Restricted Stock Agreement" means the agreement between the Company and the recipient of a Restricted Share that contains the terms, conditions and restrictions pertaining to such Restricted Share.
 - 17.38 "SAR" means a stock appreciation right granted under the Plan.
- 17.39 "SAR Agreement" means the agreement between the Company and an Optionee that contains the terms, conditions and restrictions pertaining to his or her SAR.
- 17.40 "Service" means service as an Employee, Outside Director or Consultant. Unless otherwise determined by the Committee or otherwise provided in the Plan or Award agreement, Service shall continue notwithstanding a change in status from an Employee, Consultant or Outside Director to another such status. An event that causes a Parent, Subsidiary or Affiliate to cease having status as a Parent, Subsidiary or Affiliate shall be deemed to discontinue the Service of that entity's Employees, Outside Directors and Consultants unless such persons retain the status of Employee, Outside Director or Consultant of the Company or a remaining Parent, Subsidiary or Affiliate.
- 17.41 "Shareholder Approval Date" means January 5, 2010 which was the date on which the adoption of the Plan was approved by the Company's shareholders.
- 17.42 "Stock Option Agreement" means the agreement between the Company and an Optionee that contains the terms, conditions and restrictions pertaining to his or her Option.
 - 17.43 "Stock Unit" means a bookkeeping entry representing the equivalent of one Common Share, as awarded under the Plan.
- 17.44 "Stock Unit Agreement" means the agreement between the Company and the recipient of Stock Units that contains the terms, conditions and restrictions pertaining to such Stock Units.

- 17.45 "Subsidiary" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.
- 17.46 "Substitute Award" means a Substitute Option, Substitute SAR, Substitute Restricted Share or Substitute Stock Unit granted in accordance with the terms of the Plan.
- 17.47 "Substitute Option" means an Option granted in substitution for, or upon the conversion of, an option granted by another entity to purchase equity securities in the granting entity.
- 17.48 "Substitute SAR" means a SAR granted in substitution for, or upon the conversion of, a stock appreciation right granted by another entity with respect to equity securities in the granting entity.
- 17.49 "Substitute Restricted Share" means a Restricted Share granted in substitution for a restricted share granted by another entity with respect to equity securities in the granting entity.
- 17.50 "Substitute Stock Unit" means a Stock Unit granted in substitution for, or upon the conversion of, a stock unit granted by another entity with respect to equity securities in the granting entity.
- 17.51 "Ten Percent Shareholder" means any person who, directly or by attribution under Section 424(d) of the Code, owns stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Parent or Subsidiary on the date of Option grant.

Overland Storage, Inc. 2009 Equity Incentive Plan

Notice of Stock Unit Award

You have been granted units representing shares of Common Stock of Overland Storage, Inc. (the "Company") on the following terms:

Name of Recipient: Total Number of Units Granted: Date of Grant: Vesting Commencement Date: Vesting Schedule:

You and the Company agree that these units are granted under and governed by the terms and conditions of the Overland Storage, Inc. 2009 Equity Incentive Plan (the "Plan") and the Stock Unit Agreement, both of which are attached to and made a part of this document.

You further agree that the Company may deliver by email all documents relating to the Plan or this award (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email.

Participant:	Overland Storage, Inc. By:	
	0 15 15 1	
	Quality Review Initials	

Overland Storage, Inc. 2009 Equity Incentive Plan

Stock Unit Agreement

Payment for Units Vesting

No payment is required for the units that you are receiving.

The units vest in installments, as shown in the Notice of Stock Unit Award. In addition, the units vest in full if your Service terminates because of your "Disability" (as defined in the Plan), or death. The units are also subject to any rights to accelerated vesting you may have under any employment, severance, retention or similar agreement with the Company in effect on the Date of Grant.

Except as described above, if your Service terminates for any reason, then your units will be forfeited to the extent that they have not vested before the termination date and do not vest as a result of the termination. This means that the units will immediately be cancelled. You receive no payment for units that are forfeited.

The Company determines when your Service terminates for this purpose.

Leaves of Absence and Part-Time Work

For purposes of this award, your Service does not terminate when you go on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company in writing and if continued crediting of Service is required by applicable law, the Company's leave of absence policy or the terms of your leave. But your Service terminates when the approved leave ends, unless you immediately return to active work.

If you go on a leave of absence, then the vesting schedule specified in the Notice of Stock Unit Award may be adjusted in accordance with the Company's leave of absence policy or the terms of your leave. If you commence working on a part-time basis, then the vesting schedule specified in the Notice of Stock Unit Award may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between you and the Company pertaining to your part-time schedule.

Your units are mere bookkeeping entries. They represent only the Company's unfunded and unsecured promise to issue shares of Common Stock on a future date. As a holder of units,

you have no rights other than the rights of a general creditor of the Company.

Nature of Units

No Voting Rights or Dividends

Your units carry neither voting rights nor rights to cash dividends. You have no rights as a shareholder of the Company unless and until your units are settled by issuing shares of the Company's Common Stock.

Units Nontransferable

You may not sell, transfer, assign, pledge or otherwise dispose of any units, except pursuant to a Domestic Relations Order. For instance, you may not use your units as security for a loan.

Settlement of Units

Each of your units will be settled when it vests (and in all events not later than two and one-half months after the vesting date).

Withholding Taxes

At the time of settlement, you will receive one share of the Company's Common Stock for each vested unit. But the Company, at its sole discretion, may substitute an equivalent amount of cash. The amount of cash will be determined on the basis of the market value of the Company's Common Stock at the time of settlement.

Restrictions on Resale

No stock certificates will be distributed to you unless you have made acceptable arrangements to pay any withholding taxes that may be due as a result of the settlement of this award. Subject to Applicable Law, upon any distribution of shares of Common Stock in respect of the units, the Company will automatically reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of whole shares, valued at their then Fair Market Value, to satisfy any withholding obligations of the Company or its Subsidiaries with respect to such distribution of shares at the minimum applicable withholding rates. In the event that the Company cannot legally satisfy such withholding obligations by such reduction of shares, or any other withholding event in respect of the units, the Company (or a Subsidiary) shall be entitled to require a cash payment by you or on your behalf and/or to deduct from other compensation payable to you any sums required by federal, state or local tax law to be withheld with respect to such distribution or payment. You agree not to sell any shares at a time when Applicable Law, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.

No Retention RightsYour award or this Agreement does not give you the right to be retained by the Company or

a subsidiary of the Company in any capacity. The Company and its subsidiaries reserve the

right to terminate your Service at any time, with or without cause.

Adjustments In the event of a stock split, a stock dividend or a similar change in Company stock, the

number of your units will be adjusted accordingly, pursuant to the Plan.

Beneficiary Designation You may dispose of your units in a written beneficiary designation. A beneficiary

designation must be filed with the Company on the proper form. It will be recognized only if

it has been received at the Company's headquarters before your death. If you file no beneficiary designation or if none of your designated beneficiaries survives you, then your

estate will receive any vested units that you hold at the time of your death.

This Agreement will be interpreted and enforced under the laws of the State of California

(without regard to its choice-of-law provisions).

The Plan and Other Agreements

Governing Law

The text of the Plan is incorporated in this Agreement by reference. Capitalized terms not otherwise defined herein have the meanings given to them in the Plan document. This Agreement and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another

written agreement between the parties.

By signing the cover sheet of this Agreement, you agree to all of the terms and conditions described above and in the Plan

Overland Storage, Inc. 2009 Equity Incentive Plan

Notice of Stock Unit Award

You have been granted units representing shares of Common Stock of Overland Storage, Inc. (the "Company") on the following terms:

Name of Recipient: Total Number of Units Granted:	
Date of Grant: Vesting Commencement Date:	June 29, 2011 July 15, 2011
Vesting Schedule:	The units subject to this award will vest in six (6) equal installments, with the first installment vesting six (6) months after the Vesting Commencement Date and an additional installment vesting at the end of each six-month period thereafter, subject in each case to your continued "Service" (as defined in the Plan) through the applicable vesting date. Each date on which an installment of this award vests is referred to as a "Vesting Date."
Vesting Installments:	shares on January 15, 2012shares on July 15, 2012shares on January 15, 2013shares on July 15, 2013shares on January 15, 2014shares on July 15, 2014
You and the Company agree that these Storage, Inc. 2009 Equity Incentive Pl a part of this document.	e units are granted under and governed by the terms and conditions of the Overland an (the "Plan") and the Stock Unit Agreement, both of which are attached to and made
without limitation, prospectuses require Company is required to deliver to its s You also agree that the Company may	hay deliver by email all documents relating to the Plan or this award (including, red by the Securities and Exchange Commission) and all other documents that the ecurity holders (including, without limitation, annual reports and proxy statements). deliver these documents by posting them on a web site maintained by the Company or e Company. If the Company posts these documents on a web site, it will notify you by
Participant:	Overland Storage, Inc. By:
	Quality Review Initials

Overland Storage, Inc. 2009 Equity Incentive Plan

Stock Unit Agreement

Payment for Units Vesting

No payment is required for the units that you are receiving.

The units vest in installments, as shown in the Notice of Stock Unit Award.

To the extent then outstanding and unvested, the units will vest in full (i) if your Service terminates because of your Disability or death, or (ii) if a Change in Control occurs and, at any time within sixty (60) days before or two (2) years after the Change in Control, your Service is terminated by the Company without Cause (as defined below) or by you for Good Reason (as defined below).

In the event that your Service is terminated by the Company without Cause or by you for Good Reason and you are not entitled to full vesting as provided above, (a) this award will vest on the date of termination of your Service (the "Termination Date") with respect to a number of units determined by multiplying (x) the number of then-outstanding and unvested units that would have otherwise vested on the next Vesting Date (if any) following your Termination Date (had your employment not terminated), by (y) a fraction, the numerator of which will be the number of whole months that have elapsed between the Vesting Date that immediately preceded your Termination Date (or, in the case of a termination prior to the initial Vesting Date, the Vesting Commencement Date) and your Termination Date, and the denominator of which will be six (6); and (b) any units subject to this award that are not vested after giving effect to the foregoing clause (a) shall terminate.

The units are also subject to any rights to accelerated vesting you may have under any employment, severance, retention or similar agreement with the Company in effect on the Date of Grant (with any such acceleration rights to be applied, in the case of a termination of your Service other than in connection with a Change in Control, after giving effect to the prorated vesting described above).

Except as described above, if your Service terminates for any reason, then your units will be forfeited to the extent that they have not vested before the termination date and do not vest as a result of the termination. This means that the units will immediately be cancelled. You receive no payment for units that are forfeited.

Forfeiture

Leaves of Absence and Part-Time Work

Nature of Units

No Voting Rights or Dividends

Units Nontransferable

Settlement of Units

The Company determines when your Service terminates for this purpose.

For purposes of this award, your Service does not terminate when you go on a military leave, a sick leave or another *bona fide* leave of absence, if the leave was approved by the Company in writing and if continued crediting of Service is required by applicable law, the Company's leave of absence policy or the terms of your leave. But your Service terminates when the approved leave ends, unless you immediately return to active work.

If you go on a leave of absence, then the vesting schedule specified in the Notice of Stock Unit Award may be adjusted in accordance with the Company's leave of absence policy or the terms of your leave. If you commence working on a part-time basis, then the vesting schedule specified in the Notice of Stock Unit Award may be adjusted in accordance with the Company's part-time work policy or the terms of an agreement between you and the Company pertaining to your part-time schedule.

Your units are mere bookkeeping entries. They represent only the Company's unfunded and unsecured promise, subject to vesting and the other terms and conditions of this Agreement, to issue shares of Common Stock on a future date. As a holder of units, you have no rights other than the rights of a general creditor of the Company.

Your units carry neither voting rights nor rights to cash dividends. You have no rights as a shareholder of the Company unless and until your units are settled by issuing shares of the Company's Common Stock.

You may not sell, transfer, assign, pledge or otherwise dispose of any units, except pursuant to a Domestic Relations Order. For instance, you may not use your units as security for a loan.

Your units that become vested in accordance with the terms of this Agreement will be settled in shares of the Company's Common Stock on a one-for-one basis. Each unit that becomes vested on a Vesting Date will be settled on the earlier to occur of (x) the date that is two (2) trading days after the Company's next earnings release that follows the applicable Vesting Date, and (y) the date that is seventy (70) days following the Vesting Date; provided, however, that in the event you have (prior to the applicable Vesting Date) entered into an irrevocable arrangement (on terms reasonably acceptable to the Company) with a third-party broker to use the proceeds of a sale of shares on the market to provide for tax withholding in connection with such vesting event and

provided the terms of such arrangement to the Company (a "Broker Arrangement"), you and the Company agree that, unless and until otherwise provided by the Company, at the time of settlement of the vested units, the Company will (a) deliver to your designated broker a number of whole shares, valued at their then Fair Market Value, with a value equal to the withholding obligations of the Company or its Subsidiaries with respect to the portion of the award that vested on the related Vesting Date at the minimum applicable withholding rates (the "Minimum Withholding Obligations"), (b) retain a number of whole shares, valued at their then Fair Market Value, with a value equal to the Minimum Withholding Obligations (the "Retained Shares"), and (c) deliver to you the balance of the shares otherwise payable in respect of the vested units. In the case of a Broker Arrangement, the Company will deliver the Retained Shares to you promptly upon the Company's receipt of payment of the Minimum Withholding Obligations.

In the event that any of your units vest in connection with your death or Disability or a termination of your Service, in each case as provided under "Vesting" above, such vested units will be settled upon or promptly following (and in all events not later than two and one-half months following) the date of such vesting event (or, in the event that you are entitled to additional vesting of your units as a result of a Change in Control as provided above, the date of the Change in Control event as to any additional units vesting on that event).

No payment of the units will be made to you unless you have made acceptable arrangements to pay any withholding taxes that may be due as a result of such payment. With the Company's consent and subject to all applicable laws and Company policies (including insider-trading policies), these arrangements may include (a) withholding shares of Company stock that otherwise would be issued to you when the units are settled, (b) surrendering shares that you previously acquired or (c) a Broker Arrangement (as defined above). In the case of clauses (a) and (b) above, the Fair Market Value of these shares, determined as of the date when taxes otherwise would have been withheld in cash, will be applied to the withholding taxes.

The award is intended as a "short-term deferral" under Section 409A of the Code and this Agreement shall be interpreted consistent with that intent. Except for the Company's withholding right set forth in the preceding paragraph, you will be responsible for any and all taxes that arise with respect to your award.

Restrictions on Resale

No Retention Rights

Adjustments

Beneficiary Designation

Definition of Cause

You agree not to sell any shares at a time when Applicable Law, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.

Your award or this Agreement does not give you the right to be retained by the Company or a subsidiary of the Company in any capacity. The Company and its subsidiaries reserve the right to terminate your Service at any time, with or without cause.

In the event of a stock split, a stock dividend or a similar change in Company stock, the number of your units will be adjusted accordingly, as the Company may determine pursuant to the Plan.

You may dispose of your units in a written beneficiary designation. A beneficiary designation must be filed with the Company on the proper form. It will be recognized only if it has been received at the Company's headquarters before your death. If you file no beneficiary designation or if none of your designated beneficiaries survives you, then your estate will receive any vested units that you hold at the time of your death. For purposes of this Agreement, "Cause" has the meaning given to such term in any employment agreement between you and the Company as in effect on the Date of Grant or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean: (a) acts or omissions constituting reckless or willful misconduct on your part

employment agreement between you and the Company as in effect on the Date of Grant or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean: (a) acts or omissions constituting reckless or willful misconduct on your part with respect to your obligations or otherwise relating to the business of the Company that causes material harm to the Company or its reputation; (b) your material breach of any agreement between you and the Company, which breach you fail to cure within 30 days after receiving written notice from the Board that specifies the specific conduct giving rise to the alleged breach; (c) your conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) your willful neglect of duties as reasonably determined by the Board of Directors of the Company, which you fail to cure within 30 days after receiving written notice from the Board that specifies the specific duties that you have failed to perform.

Definition of Good Reason

Governing Law

The Plan and Other Agreements

For purposes of this Agreement, "Good Reason" has the meaning given to such term in any employment agreement between you and the Company as in effect on the Date of Grant or, if there is no such agreement (or such agreement does not include a definition of such term), shall mean a voluntary termination by you of your employment with the Company within one year after the initial occurrence of one or more of the following: (a) the Company reduces your base compensation (including commissions) by more than ten percent (10%), (b) your authority, responsibilities and/or duties are materially reduced so that your duties are no longer consistent with your position as of the Date of Grant and you no longer report directly to the President or Chief Executive Officer of the Company; (c) a material breach by the Company of any agreement between you and the Company; or (d) the Company relocates your principal place of work to a location more than fifty (50) miles from the Company's current office location as of the Date of Grant without your prior written approval; provided, however, that such a termination by you shall not be a termination for Good Reason unless you notify the Company in writing within 60 days following the initial existence of one of the circumstances constituting "Good Reason", the Company is given 30 days from the receipt of such notice in which the Company may remedy or cure such condition, and the Company fails to remedy or cure the condition set forth in your notice within 30 days of receipt of such notice. For purposes of the foregoing, if you do not timely provide notice to the Company, then you are deemed to have waived this right. This Agreement will be interpreted and enforced under the laws of the State of California (without regard to its choice-of-law provisions).

The text of the Plan is incorporated in this Agreement by reference. Capitalized terms not otherwise defined herein have the meanings given to them in the Plan document. This Agreement and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another written agreement between the parties.

By signing the cover sheet of this Agreement, you agree to all of the terms and conditions described above and in the Plan.

Overland Storage, Inc. 2009 Equity Incentive Plan **Notice of Director Stock Unit Award**

You have been granted units representing shares of Common Stock of Overland Storage, Inc. (the "Company") on the following terms:

Scott McClendon Name of Recipient: 679,043

Total Number of Units

Granted:

Date of Grant: Vesting Commencement

Date:

Vesting Schedule:

July 15, 2011

The units subject to this award will vest in six (6) equal installments, with the first installment vesting six (6) months after the Vesting Commencement Date and an additional installment vesting at the end of each six-month period thereafter, subject in each case to your continued "Service" (as defined in the Plan) through the applicable vesting date. Each

date on which an installment of this award vests is referred to as a "Vesting Date."

Vesting Installments: 113,174 shares on January 15, 2012

June 29, 2011

113,174 shares on July 15, 2012 113,174 shares on January 15, 2013 113,174 shares on July 15, 2013 113,174 shares on January 15, 2014 113,173 shares on July 15, 2014

You and the Company agree that these units are granted under and governed by the terms and conditions of the Overland Storage, Inc. 2009 Equity Incentive Plan (the "Plan") and the Stock Unit Agreement, both of which are attached to and made a part of this document.

You further agree that the Company may deliver by email all documents relating to the Plan or this award (including, without limitation, prospectuses required by the Securities and Exchange Commission) and all other documents that the Company is required to deliver to its security holders (including, without limitation, annual reports and proxy statements). You also agree that the Company may deliver these documents by posting them on a web site maintained by the Company or by a third party under contract with the Company. If the Company posts these documents on a web site, it will notify you by email.

Participant:	Overland	d Storage, Inc.
/s/ Scott McClendon	By:	/s/ Kurt L. Kalbfleisch
Scott McClendon		Kurt L. Kalbfleisch, VP & CFO
	Quality Review Initials	

Overland Storage, Inc. 2009 Equity Incentive Plan

Director Stock Unit Agreement

Payment for Units Vesting

No payment is required for the units that you are receiving. The units vest in installments, as shown in the Notice of Stock Unit Award. To the extent then outstanding and unvested, the units will vest in full (i) if your Service terminates because of your Disability or death, or (ii) if a Change in Control occurs. In the event that your Service as a member of the Board terminates due to (i) your removal from the Board by the Company for reasons other than for Cause (as defined below), or (ii) the expiration of your Board term at a meeting of the Company's shareholders and you either (x) had been nominated by the Board for re-election at such meeting but were not so reelected or (y) were not nominated by the Board for re-election at such meeting for reasons other than Cause, and in each case you were otherwise willing and qualified to continue to serve on the Board at the time your Service terminated, (a) this award will vest on the date of termination of your Service as a Board member (the "Termination Date") with respect to a number of units determined by multiplying (I) the number of then-outstanding and unvested units that would have otherwise vested on the next Vesting Date (if any) following your Termination Date (had your Service not terminated), by (II) a fraction, the numerator of which will be the number of whole months that have elapsed between the Vesting Date that immediately preceded your Termination Date (or, in the case of a termination prior to the initial Vesting Date, the Vesting Commencement Date) and your Termination Date, and the

Except as described above, if your Service terminates for any reason, then your units will be forfeited to the extent that they have not vested before the termination date and do not vest as a result of the termination. This means that the units will immediately be cancelled. You receive no payment for units that are forfeited.

denominator of which will be six (6); and (b) any units subject to this award that are not

The Company determines when your Service terminates for this purpose.

vested after giving effect to the foregoing clause (a) shall terminate.

Forfeiture

Nature of Units

No Voting Rights or Dividends

Units Nontransferable

Settlement of Units

Withholding; Taxes

Your units are mere bookkeeping entries. They represent only the Company's unfunded and unsecured promise, subject to vesting and the other terms and conditions of this Agreement, to issue shares of Common Stock on a future date. As a holder of units, you have no rights other than the rights of a general creditor of the Company.

Your units carry neither voting rights nor rights to cash dividends. You have no rights as a shareholder of the Company unless and until your units are settled by issuing shares of the Company's Common Stock.

You may not sell, transfer, assign, pledge or otherwise dispose of any units, except pursuant to a Domestic Relations Order. For instance, you may not use your units as security for a loan.

Your units that become vested in accordance with the terms of this Agreement will be settled in shares of the Company's Common Stock on a one-for-one basis. Each unit that becomes vested on a Vesting Date will be settled on the earlier to occur of (x) the date that is two (2) trading days after the Company's next earnings release that follows the applicable Vesting Date, and (y) the date that is seventy (70) days following the Vesting Date.

In the event that any of your units vest in connection with your death or Disability, a Change in Control or a termination of your Service, in each case as provided under "Vesting" above, such vested units will be settled upon or promptly following (and in all events not later than two and one-half months following) the date of such vesting event.

No payment of the units will be made to you unless you have made acceptable arrangements to pay any withholding taxes that may be due as a result of such payment. With the Company's consent and subject to all applicable laws and Company policies (including insider-trading policies), these arrangements may include (a) withholding shares of Company stock that otherwise would be issued to you when the units are settled, (b) surrendering shares that you previously acquired or (c) an arrangement with a third-party broker to use the proceeds of a sale of shares on the market to provide for tax withholding. In the case of clauses (a) and (b) above, the Fair Market Value of these shares, determined as of the date when taxes otherwise would have been withheld in cash, will be applied to the withholding taxes.

The award is intended as a "short-term deferral" under Section 409A of the Code and this Agreement shall be interpreted consistent with that intent. Except for the Company's withholding right set forth in the preceding paragraph, you will be responsible for any and all taxes that arise with respect to your award.

Restrictions on Resale

You agree not to sell any shares at a time when Applicable Law, Company policies or an agreement between the Company and its underwriters prohibit a sale. This restriction will apply as long as your Service continues and for such period of time after the termination of your Service as the Company may specify.

No Retention Rights

Your award or this Agreement does not give you the right to be retained by the Company or a subsidiary of the Company in any capacity. The Company and its subsidiaries reserve the right to terminate your Service at any time, with or without cause.

Adjustments

In the event of a stock split, a stock dividend or a similar change in Company stock, the number of your units will be adjusted accordingly, as the Company may determine pursuant to the Plan.

Beneficiary Designation

You may dispose of your units in a written beneficiary designation. A beneficiary designation must be filed with the Company on the proper form. It will be recognized only if it has been received at the Company's headquarters before your death. If you file no beneficiary designation or if none of your designated beneficiaries survives you, then your estate will receive any vested units that you hold at the time of your death.

Definition of Cause

For purposes of this Agreement, "Cause" shall mean: (a) acts or omissions constituting reckless or willful misconduct on your part with respect to your obligations or otherwise relating to the business of the Company that causes material harm to the Company or its reputation; (b) your material breach of any agreement between you and the Company, which breach you fail to cure within 30 days after receiving written notice from the Board that specifies the specific conduct giving rise to the alleged breach; (c) your conviction or entry of a plea of nolo contendere for fraud, theft or embezzlement, or any felony or crime of moral turpitude; or (d) your willful neglect of duties as reasonably determined by the Board, which you fail to cure within 30 days after receiving written notice from the Board that specifies the specific duties that you have failed to perform.

Governing Law

This Agreement will be interpreted and enforced under the laws of the State of California (without regard to its choice-of-law provisions).

The Plan and Other Agreements

The text of the Plan is incorporated in this Agreement by reference. Capitalized terms not otherwise defined herein have the meanings given to them in the Plan document.

This Agreement and the Plan constitute the entire understanding between you and the Company regarding this award. Any prior agreements, commitments or negotiations concerning this award are superseded. This Agreement may be amended only by another written agreement between the parties.

By signing the cover sheet of this Agreement, you agree to all of the terms and conditions described above and in the Plan.

OVERLAND STORAGE, INC. 2009 EQUITY INCENTIVE PLAN STOCK APPRECIATION RIGHTS AWARD AGREEMENT

THIS STOCK APPRECIATION RIGHTS AWARD AGREEMENT (this "Award Agreement") dated June 29, 2011 by and between Overland Storage, Inc, a California corporation (the "Company"), and _____(the "Grantee") evidences the award (the "Award") granted by the Company to the Grantee of the number of stock appreciation rights (the "SARs") first set forth below.

Number of SARs: ¹	Award Date:
Exercise Price per SAR:1	Expiration Date: 1,2
Vesting ^{1,2}	
Terms and Conditions of Stock A by this reference) and to the Plan form of compensation otherwise	er the Overland Storage, Inc. 2009 Equity Incentive Plan (the "Plan") and subject to the appreciation Rights (the "Terms") attached to this Award Agreement (incorporated herein. The Award has been granted to the Grantee in addition to, and not in lieu of, any other payable or to be paid to the Grantee. Capitalized terms are defined in the Plan if not defined terms of the Award set forth herein. The Grantee acknowledges receipt of a copy of the us for the Plan.
and Option Agreements each data Agreements"). The purpose of the cash or Common Stock in the Conference accordance with and subject to it of Common Stock, as the Compa payment upon exercise, the other of SARs, Exercise Price per SAR	nent collectively amends and restates in their entirety the Notices of Grant of Stock Options and as of, between the Grantee and the Company (collectively, the "Option his amendment and restatement is to provide that, upon exercise, the Award will be settled in mpany's discretion. The Grantee expressly acknowledges and agrees that (1) this Award sets the Option Agreements in their entirety, (2) if and when the Award is exercised in a sterms and conditions, the Grantee will have the right to receive a cash payment or shares ny may determine at that time, and (3) except for such provision for a possible cash substantive terms of the Award set forth in this Award Agreement (including the Number L, Award Date, Expiration Date and Vesting schedule set forth above) correspond to the seements.
and Option Agreements each data Agreements"). The purpose of the cash or Common Stock in the Conference accordance with and subject to it of Common Stock, as the Compa payment upon exercise, the other	ed as of, between the Grantee and the Company (collectively, the "Option his amendment and restatement is to provide that, upon exercise, the Award will be settled in mpany's discretion. The Grantee expressly acknowledges and agrees that (1) this Award ees the Option Agreements in their entirety, (2) if and when the Award is exercised in a terms and conditions, the Grantee will have the right to receive a cash payment or shares ny may determine at that time, and (3) except for such provision for a possible cash substantive terms of the Award set forth in this Award Agreement (including the Number A, Award Date, Expiration Date and Vesting schedule set forth above) correspond to the
and Option Agreements each data Agreements"). The purpose of the cash or Common Stock in the Conference accordance with and subject to it of Common Stock, as the Compa payment upon exercise, the other of SARs, Exercise Price per SAR terms of the original Option Agreement agreement Company of the Option Agreement Comp	ed as of, between the Grantee and the Company (collectively, the "Option his amendment and restatement is to provide that, upon exercise, the Award will be settled in impany's discretion. The Grantee expressly acknowledges and agrees that (1) this Award less the Option Agreements in their entirety, (2) if and when the Award is exercised in sterms and conditions, the Grantee will have the right to receive a cash payment or shares my may determine at that time, and (3) except for such provision for a possible cash substantive terms of the Award set forth in this Award Agreement (including the Number L, Award Date, Expiration Date and Vesting schedule set forth above) correspond to the sements. OVERLAND STORAGE, INC.
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Subject to adjustment under Section 10.1 of the Plan.

² Subject to early termination under Section 4 of the Terms and Section 10.2 and 10.3 of the Plan.

TERMS AND CONDITIONS OF STOCK APPRECIATION RIGHTS

1. Vesting; Limits on Exercise.

The Award shall vest and become exercisable in percentage installments of the aggregate number of SARs subject to the Award as set forth on the cover page of this Award Agreement. The SARs may be exercised only to the extent the SARs are vested and exercisable.

- <u>Cumulative Exercisability</u>. To the extent that the SARs are vested and exercisable, the Grantee has the right to exercise the SARs (to the extent not previously exercised), and such right shall continue, until the expiration or earlier termination of the SARs.
- <u>No Fractional SARs</u>. Fractional SARs shall be disregarded, but may be cumulated.
- <u>Minimum Exercise</u>. No fewer than 100 SARs (subject to adjustment under Section 10.1 of the Plan) may be exercised at any one time, unless the number exercised is the total number at the time exercisable under the Award.

2. Continuance of Employment/Service Required; No Employment/Service Commitment.

The vesting schedule requires continued employment or service through each applicable vesting date as a condition to the vesting of the applicable installment of the Award and the rights and benefits under this Award Agreement. Employment or service for only a portion of the vesting period, even if a substantial portion, will not entitle the Grantee to any proportionate vesting or avoid or mitigate a termination of rights and benefits upon or following a termination of employment or services as provided in Section 4 below or under the Plan.

Nothing contained in this Award Agreement or the Plan constitutes a continued employment or service commitment by the Company or any of its Subsidiaries, affects the Grantee's status, if he or she is an employee, as an employee at will who is subject to termination without cause, confers upon the Grantee any right to remain employed by or in service to the Company or any Subsidiary, interferes in any way with the right of the Company or any Subsidiary at any time to terminate such employment or service, or affects the right of the Company or any Subsidiary to increase or decrease the Grantee's other compensation.

3. Exercise and Payment of SARs.

3.1 Method of Exercise. The SARs shall be exercisable by the delivery to the Secretary of the Company (or such other person as the Committee may require pursuant to such administrative exercise procedures as the Committee may implement from time to time) of a written notice stating the number of SARs to be exercised pursuant to the Award or by the completion of such other administrative exercise procedures as the Committee may require from time to time.

3.2 Payment of SARs.

- (A) Amount. Upon the exercise of the SARs and the attendant surrender of an exercisable portion of the Award, the Grantee will be entitled to receive payment of an amount (subject to the tax withholding provisions of Section 3.3) determined by multiplying:
 - the difference (but not less than zero) obtained by subtracting the Exercise Price of the SARs being exercised from the per-share Fair Market Value of the Common Stock of the Company as of the date of exercise (the "Exercise Date"), by
 - the number of SARs being exercised.
- (B) Form of Payment. The amount determined under Section 3.2(A) will be paid to the Grantee in cash on or as soon as administratively practicable after the Exercise Date; provided, however, that the Committee may, in its sole discretion, provide that all or any part of such payment will be made by delivery to the Grantee of a number of shares of Common Stock equal to (i) the amount of the payment determined under Section 3.2(A) being paid in stock, divided by (ii) the fair market value of a share of Common Stock as of the Exercise Date. The Company's obligation to make payment with respect to the SARs is subject to compliance with all Applicable Law as provided in Section 14.3 of the Plan. The Grantee shall have no further rights with respect to any SARs that are paid or that terminate pursuant to Section 4.
- (C) <u>SARs Not Funded</u>. SARs payable under this Award Agreement will be paid from the general assets of the Company, and no special or separate reserve, fund or deposit will be made to assure payment of the SARs. Neither this Award Agreement nor any action taken pursuant to the provisions of this Award Agreement will create, or be construed to create, a trust of any kind or a fiduciary relationship between the Company and Grantee (or any other person). To the extent that Grantee (or any permitted transferee) acquires a right to receive payment pursuant to any SAR hereunder, such right will be no greater than the right of any unsecured general creditor of the Company.
- 3.3 Tax Withholding. Upon payment of any SAR, the Company (or the Subsidiary last employing the Grantee) shall have the right at its option to (a) require the Grantee to pay or provide for payment in cash of the amount of any taxes that the Company or the Subsidiary may be required to withhold with respect to such payment and/or distribution, or (b) deduct from any amount payable to the Grantee (in respect of the Award or otherwise) the amount of any taxes which the Company or the Subsidiary may be required to withhold with respect to such payment and/or distribution; provided, however, that in any case where a tax is required to be withheld in connection with the delivery of shares of Common Stock under this Award Agreement, the Committee or the Grantee may elect, subject to Applicable Law, to have the Company or Subsidiary reduce the number of shares to be delivered by (or otherwise reacquire) the appropriate number of whole shares, valued at their then Fair Market Value, to satisfy such withholding obligation at the minimum applicable withholding rates.

4. Early Termination of Award.

- **4.1 Possible Termination of Award upon Certain Transactions.** The Award is subject to termination in connection with a merger or certain other corporate transactions as provided in Sections 10.2 and 10.3 of the Plan.
- 4.2 Termination of Award upon a Termination of Grantee's Employment or Services. Subject to earlier termination on the Expiration Date of the Award or pursuant to Section 4.1 above, if the Grantee ceases to be employed by or ceases to provide services to the Company or a Subsidiary, the following rules shall apply (the last day that the Grantee is employed by or provides services to the Company or a Subsidiary is referred to as the Grantee's "Severance Date"):
 - other than as expressly provided below in this Section 4.2, (a) the Grantee will have until the date that is 3 months after his or her Severance Date to exercise the Award (or portion thereof) to the extent that it was vested on the Severance Date, (b) the Award, to the extent not vested on the Severance Date, shall terminate on the Severance Date, and (c) the Award, to the extent exercisable for the 3-month period following the Severance Date and not exercised during such period, shall terminate at the close of business on the last day of the 3-month period;
 - if the termination of the Grantee's employment or services is the result of the Grantee's death or Disability, (a) the Award, to the extent then outstanding and unvested, will become fully vested and exercisable as of the date of such termination, (b) the Grantee (or his beneficiary or personal representative, as the case may be) will have until the date that is 12 months after the Grantee's Severance Date to exercise the Award, and (c) the Award, to the extent exercisable for the 12-month period following the Severance Date and not exercised during such period, shall terminate at the close of business on the last day of the 12-month period;
 - if the Grantee's employment or services are terminated by the Company or a Subsidiary for Cause, the Award (whether vested or not) shall terminate on the Severance Date.

In all events the Award is subject to earlier termination on the Expiration Date of the Award or as contemplated by Section 4.1. The Committee shall be the sole judge of whether the Grantee continues to render employment or services for purposes of this Award Agreement.

Nothing in this Award Agreement is intended to affect any rights with respect to the Award that the Grantee may have in the circumstances under any employment, retention or similar agreement with the Company or a Subsidiary in effect at the time of such termination (including, without limitation, any rights to accelerated vesting of the Award and/or any extension of the period following termination to exercise the Award). The foregoing provisions of this Section 4.2 shall apply after giving effect to any such rights with respect to the Award.

5. <u>Non-Transferability</u>.

The Award and any other rights of the Grantee under this Award Agreement or the Plan are nontransferable and exercisable only by the Grantee, except as set forth in Section 7.7 of the Plan.

6. Notices.

Any notice to be given under the terms of this Award Agreement shall be in writing and addressed to the Company at its principal office to the attention of the Secretary, and to the Grantee at the address last reflected on the Company's payroll records, or at such other address as either party may hereafter designate in writing to the other. Any such notice shall be delivered in person or shall be enclosed in a properly sealed envelope addressed as aforesaid, registered or certified, and deposited (postage and registry or certification fee prepaid) in a post office or branch post office regularly maintained by the United States Government. Any such notice shall be given only when received, but if the Grantee is no longer employed by the Company or a Subsidiary, shall be deemed to have been duly given five business days after the date mailed in accordance with the foregoing provisions of this Section 6.

7. Plan.

The Award and all rights of the Grantee under this Award Agreement are subject to the terms and conditions of the Plan, incorporated herein by this reference. The Grantee agrees to be bound by the terms of the Plan and this Award Agreement (including these Terms). The Grantee acknowledges having read and understanding the Plan, the Prospectus for the Plan, and this Award Agreement. Unless otherwise expressly provided in other sections of this Award Agreement, provisions of the Plan that confer discretionary authority on the Board or the Committee do not and shall not be deemed to create any rights in the Grantee unless such rights are expressly set forth herein or are otherwise in the sole discretion of the Board or the Committee under the Plan after the date hereof.

8. Entire Agreement.

This Award Agreement (including these Terms) and the Plan together constitute the entire agreement and supersede all prior understandings and agreements, written or oral, of the parties hereto with respect to the subject matter hereof. The Plan and this Award Agreement may be amended pursuant to Section 16.2 of the Plan. Such amendment must be in writing and signed by the Company. The Company may, however, unilaterally waive any provision hereof in writing to the extent such waiver does not adversely affect the interests of the Grantee hereunder, but no such waiver shall operate as or be construed to be a subsequent waiver of the same provision or a waiver of any other provision hereof.

9. Governing Law.

This Award Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California without regard to conflict of law principles thereunder.

10. Effect of this Agreement.

Subject to the Company's right to terminate the Award pursuant to Section 10 of the Plan, this Award Agreement shall be assumed by, be binding upon and inure to the benefit of any successor or successors to the Company.

11. Counterparts.

This Award Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

12. Section Headings.

The section headings of this Award Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision hereof.

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") dated as of August 9, 2011 (the "Effective Date") between SILICON VALLEY BANK, a California corporation ("Bank"), and OVERLAND STORAGE, INC., a California corporation ("Borrower"), provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein.

2 LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

2.1.1 Revolving Advances.

- (a) Availability. Subject to the terms and conditions of this Agreement and to deduction of Reserves against the Borrowing Base, when applicable, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed hereunder may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.
- (b) <u>Termination; Repayment</u>. The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the accrued and unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

2.1.2 of Credit Sublimit.

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- (a) As part of the Revolving Line, Bank shall issue or have issued Letters of Credit denominated in Dollars or a Foreign Currency for Borrower's account. The aggregate Dollar Equivalent amount utilized for the issuance of Letters of Credit shall at all times reduce the amount otherwise available for Advances under the Revolving Line. The aggregate Dollar Equivalent of the face amount of outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve) may not exceed the lesser of:
- (1) Two Million Five Hundred Thousand Dollars (\$2,500,000.00), minus (i) the sum of all amounts used for Cash Management Services, and minus (ii) the FX Reduction Amount,
- (2) the lesser of the Revolving Line or the Non-Formula Amount, minus (i) the sum of all outstanding principal amounts of any Advances (including any amounts used for Cash Management Services), and minus (ii) the FX Reduction Amount, or
- (3) if a Ratio Event has occurred and is continuing, the lesser of the Revolving Line or the Borrowing Base, minus (i) the sum of all outstanding principal amounts of any Advances (including any amounts used for Cash Management Services), and minus (ii) the FX Reduction Amount.
- (b) If, on the Revolving Line Maturity Date (or the effective date of any termination of this Agreement), there are any outstanding Letters of Credit, then on such date Borrower shall provide to Bank cash collateral in an amount equal to (i) 105% if the letter of credit is denominated in U.S. Dollars or (ii) 110% of the Dollar Equivalent if the letter of credit is denominated in a Foreign Currency, of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment), to secure all of the Obligations relating to such Letters of Credit. All Letters of Credit shall be in form and substance acceptable to Bank in its reasonable discretion and shall be subject to the terms and conditions of Bank's standard Application and Letter of Credit Agreement (the "Letter of Credit

Application"). Borrower agrees to execute any further documentation in connection with the Letters of Credit as Bank may reasonably request. Borrower further agrees to be bound by the regulations and interpretations of the issuer of any Letters of Credit guaranteed by Bank and opened for Borrower's account or by Bank's interpretations of any Letter of Credit issued by Bank for Borrower's account, and Borrower understands and agrees that Bank shall not be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower's instructions or those contained in the Letters of Credit or any modifications, amendments, or supplements thereto.

- (c) The obligation of Borrower to immediately reimburse Bank for drawings made under Letters of Credit shall be absolute, unconditional, and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, such Letters of Credit, and the Letter of Credit Application.
- (d) Borrower may request that Bank issue a Letter of Credit payable in a Foreign Currency. If a demand for payment is made under any such Letter of Credit, Bank shall treat such demand as an Advance to Borrower of the Dollar Equivalent of the amount thereof (plus fees and charges in connection therewith such as wire, cable, SWIFT or similar charges.
- (e) To guard against fluctuations in currency exchange rates, upon the issuance of any Letter of Credit payable in a Foreign Currency, Bank shall create a reserve (the "Letter of Credit Reserve") under the Revolving Line in an amount equal to ten percent (10%) of the face amount of such Letter of Credit. The amount of the Letter of Credit Reserve may be adjusted by Bank from time to time in its good faith business judgments to account for fluctuations in the exchange rate. The availability of funds under the Revolving Line shall be reduced by the amount of such Letter of Credit Reserve for as long as such Letter of Credit remains outstanding.
- **2.1.3 Foreign Exchange Sublimit**. As part of the Revolving Line, Borrower may enter into foreign exchange contracts with Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency (each, a "**FX Forward Contract**") on a specified date (the "**Settlement Date**"). FX Forward Contracts shall have a Settlement Date of at least one (1) FX Business Day after the contract date and shall be subject to a reserve of ten percent (10%) of each outstanding FX Forward Contract (the "**FX Reserve**").
 - (a) The aggregate amount of FX Forward Contracts at any one time may not exceed ten (10) times the lesser of:
- (1) Two Million Five Hundred Thousand Dollars (\$2,500,000.00), minus (i) the sum of all amounts used for Cash Management Services, and minus (ii) the Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve),
- (2) the lesser of Revolving Line or the Non-Formula Amount, minus (i) the sum of all outstanding principal amounts of any Advances (including any amounts used for Cash Management Services), and minus (ii) the Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), or
- (3) if a Ratio Event has occurred and is continuing, the lesser of the Revolving Line or the Borrowing Base, minus (i) the sum of all outstanding principal amounts of any Advances (including any amounts used for Cash Management Services), and minus (ii) the Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve).
- (b) The amount otherwise available for Credit Extensions under the Revolving Line shall be reduced by an amount equal to ten percent (10%) of each outstanding FX Forward Contract (the "FX Reduction Amount"). Any amounts needed to fully reimburse Bank for any amounts not paid by Borrower in connection with FX Forward Contracts will be treated as Advances under the Revolving Line and will accrue interest at the interest rate applicable to Advances.

2.1.4 Cash Management Services Sublimit.

(a) Borrower may use the Revolving Line for Bank's cash management services, which may include merchant services, direct deposit of payroll, business credit card, and check cashing services identified in Bank's various cash management services agreements (collectively, the "Cash Management Services"), in an aggregate amount not to exceed the lesser of:

- (1) Two Million Five Hundred Thousand Dollars (\$2,500,000.00), minus (i) the Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), and minus (ii) the FX Reduction Amount.
- (2) the lesser of Revolving Line or the Non-Formula Amount, minus (i) the sum of all outstanding principal amounts of any Advances, minus the Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), and minus (iii) the FX Reduction Amount, or
- (3) if a Ratio Event has occurred and is continuing, the lesser of Revolving Line or the Borrowing Base, minus (i) the sum of all outstanding principal amounts of any Advances, minus the Dollar Equivalent of the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), and minus (iii) the FX Reduction Amount.
- (b) Any amounts Bank pays on behalf of Borrower for any Cash Management Services will be treated as Advances under the Revolving Line and will accrue interest at the interest rate applicable to Advances.
- **2.2 Overadvances.** If, at any time, the sum of (a) the outstanding principal amount of any Advances (including any amounts used for Cash Management Services), plus (b) the face amount of any outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit and any Letter of Credit Reserve), plus (c) the FX Reduction Amount exceeds the lesser of (i) the Revolving Line or (ii) (1) the Non-Formula Amount or (2) if a Ratio Event has occurred and is continuing, the Borrowing Base (such excess being an "**Overadvance**"), Borrower shall immediately pay to Bank in cash such Overadvance. Without limiting Borrower's obligation to repay Bank any amount of the Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at the Default Rate.

2.3 Payment of Interest on the Credit Extensions.

- (a) Advances. Subject to Section 2.3(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to the Prime Rate plus the Prime Rate Margin, which interest shall be payable monthly in accordance with Section 2.3(f) below.
- (b) <u>Default Rate</u>. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is two percentage points (2.00%) above the rate that is otherwise applicable thereto (the "**Default Rate**") unless Bank otherwise elects from time to time in its sole discretion to impose a smaller increase. Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.
- (c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.
- (d) <u>Debit of Accounts.</u> Bank may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.
 - (e) <u>Reserved</u>.
- (f) <u>Payment; Interest Computation; Float Charge</u>. Interest is payable monthly on the last calendar day of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all Payments received after 12:00 p.m. Pacific time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; *provided*, *however*, that if any Credit

Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension. In addition, Bank shall be entitled to charge Borrower a "float" charge in an amount equal to two (2) Business Days interest, at the interest rate applicable to the Advances whether or not any Advances are outstanding, on all Payments received by Bank. The float charge for each month shall be payable on the last day of the month. Bank shall not, however, be required to credit Borrower's account for the amount of any item of payment which is unsatisfactory to Bank in its good faith business judgment, and Bank may charge Borrower's Designated Deposit Account for the amount of any item of payment which is returned to Bank unpaid.

2.4 Fees. Borrower shall pay to Bank:

- (a) Commitment Fee. A fully earned, non-refundable commitment fee of \$18,750.00, on the Effective Date, and on each anniversary of the Effective Date;
- (b) <u>Letter of Credit Fee</u>. Bank's customary fees and expenses for the issuance or renewal of Letters of Credit, upon the issuance of such Letter of Credit, each anniversary of the issuance during the term of such Letter of Credit, and upon the renewal of such Letter of Credit by Bank;
- (c) <u>Unused Revolving Line Facility Fee.</u> A fee (the "**Unused Revolving Line Facility Fee**"), payable monthly, in arrears, on a calendar year basis, in an amount equal to one quarter of one percent (0.25%) per annum of the average unused portion of the Revolving Line, as determined by Bank in its reasonable good faith business judgment. The unused portion of the Revolving Line, for the purposes of this calculation, shall include amounts reserved for products provided in connection with Cash Management Services and FX Forward Contracts, in accordance with Sections 2.1.3 and 2.1.4. Borrower shall not be entitled to any credit, rebate or repayment of any Unused Revolving Line Facility Fee previously earned by Bank pursuant to this Section notwithstanding any termination of the Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder;
- (d) <u>Bank Expenses</u>. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

2.5 Payments; Application of Payments.

- (a) All payments (including prepayments) to be made by Borrower under any Loan Document shall be made in immediately available funds in U.S. Dollars, without setoff or counterclaim, before 12:00 p.m. Pacific time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Pacific time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.
- (b) All payments with respect to the Obligations may be applied in such order and manner as Bank shall determine in its sole discretion. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

3 CONDITIONS OF LOANS

- 3.1 Conditions Precedent to Initial Credit Extension. Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:
 - (a) duly executed original signatures to the Loan Documents;
 - (b) duly executed original signatures to the Control Agreement with Comerica Bank;

- (c) Borrower's Operating Documents and a good standing certificate of Borrower certified by the Secretary of State of the State of California as of a date no earlier than thirty (30) days prior to the Effective Date;
 - (d) duly executed original signatures to the completed Borrowing Resolutions for Borrower;
 - (e) duly executed original signature to a payoff letter from Marquette Commercial Finance;
- (f) evidence that (i) the Liens securing Indebtedness owed by Borrower to (1) Marquette Commercial Finance, (2) Faunus Group International, and (3) Bridge Bank will be terminated and (ii) the documents and/or filings evidencing the perfection of such Liens, including without limitation any financing statements and/or control agreements, have or will, concurrently with the initial Credit Extension, be terminated;
- (g) certified copies, dated as of a recent date, of financing statement searches, as Bank shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
 - (h) the Perfection Certificate of Borrower, together with the duly executed original signature thereto;
- (i) evidence satisfactory to Bank that the insurance policies required by Section 6.7 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses and cancellation notice to Bank (or endorsements reflecting the same) in favor of Bank;
 - (j) the completion of the Initial Audit with results satisfactory to Bank in its sole and absolute discretion; and
 - (k) payment of the fees and Bank Expenses then due as specified in Section 2.4 hereof.
- 3.2 Conditions Precedent to all Credit Extensions. Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:
 - (a) to the extent required to be delivered pursuant to Section 3.5, timely receipt of an executed Transaction Report;
- (b) the representations and warranties in Section 5 shall be true, accurate, and complete in all material respects on the date of the Transaction Report and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. The receipt of each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; and
 - (c) in Bank's sole discretion, there has not been a Material Adverse Change.

3.3 Post-Closing Conditions.

(a) Within fifteen (15) days after the Effective date, Bank shall have received duly executed original signatures to the Control Agreement with Oppenheimer;

- (b) Within thirty (30) days after the Effective Date, Bank shall have received stock certificate(s) evidencing 100% of the outstanding voting stock of Zetta Systems, Inc., together with a duly executed assignment in blank;
- (c) Within forty-five (45) days after the Effective Date, Bank shall have received, in form and substance satisfactory to Bank, a landlord's consent in favor of Bank for each of 9112 Spectrum Center Boulevard, San Diego, California 92123 and 125 S. Market Street, San Jose, California 92113 by the respective landlord thereof, together with the duly executed original signatures thereto; and
- (d) Within ninety (90) days after the Effective Date, Bank shall have received, in form and substance satisfactory to Bank, evidence of termination of any lockbox accounts and all operating accounts at Comerica Bank; provided that during such 90 day period, the balance of such accounts shall at no time exceed Seven Hundred and Fifty Thousand Dollars (\$750,000.00).

3.4 Covenant to Deliver.

Except as otherwise provided in Section 3.3, Borrower agrees to deliver to Bank each item required to be delivered to Bank in accordance with Sections 3.1 and 3.2 as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

3.5 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of an Advance set forth in this Agreement, to obtain an Advance (other than Advances under Sections 2.1.2, 2.1.3 or 2.1.4), Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 p.m. Pacific time on the Funding Date of the Advance. Together with such notification Borrower must promptly deliver to Bank, by electronic mail or facsimile, one of the following executed by a Responsible Officer or his or her designee: (a) if a Ratio Event has occurred and is continuing, a completed Transaction Report, and (b) if a Ratio Event does not exist, a Non-Formula Advance Request Form in the form of Exhibit D attached hereto. Bank shall credit Advances to the Designated Deposit Account. Bank may make Advances under this Agreement based on instructions from a Responsible Officer or his or her designee or without instructions if the Advances are necessary to meet Obligations which have become due. Bank may rely on any telephone notice given by a person whom Bank believes is a Responsible Officer or designee.

4 CREATION OF SECURITY INTEREST

- **4.1 Grant of Security Interest**. Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. The Collateral shall include all proceeds of all Intellectual Property (whether acquired upon the sale, lease, license, exchange or other disposition of such Intellectual Property) and all other rights arising out of Intellectual Property.
- 4.2 Priority of Security Interest. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that may have superior priority to Bank's Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at Borrower's sole cost and expense, release its Liens in the Collateral and all rights therein shall revert to Borrower.

Upon the sale or other disposition of any Collateral to any Person that is permitted by this Agreement, for which Borrower desires to obtain a security interest release, Bank shall, at Borrower's expense, execute and deliver such releases of its security interest in such Collateral on Bank's standard forms.

4.3 Authorization to File Financing Statements. Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank's discretion.

5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization, Authorization; Power and Authority. Borrower is duly existing and in good standing as a Registered Organization in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower, entitled "Perfection Certificate". Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement).

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect) or (v) constitute an event of default under any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

5.2 Collateral. Borrower has good title to, has rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no deposit accounts other than (i) the deposit accounts with Bank, (ii) the deposit accounts, if any, described in the Perfection Certificate delivered to Bank in connection herewith, or (iii) of which Borrower has given Bank notice in accordance with Section 6.8(b), and of which Borrower (a) has taken such actions as are necessary to give Bank a perfected security interest therein or (b) is not required to deliver a Control Agreement in accordance with 6.8(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is stated in Borrower's financial statements at the lower of costs or market, which, in all material respects indicates its marketable quality and value.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, (c) material Intellectual Property licensed to Borrower and noted on the

Perfection Certificate, and (d) as otherwise permitted hereunder. Each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

5.3 Accounts Receivable.

- (a) After the occurrence of a Ratio Event that is continuing, for each Account with respect to which Advances are requested, on the date each Advance is requested and made, such Account shall be an Eligible Account.
- (b) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Eligible Accounts are and shall be true and correct and all such invoices, instruments and other documents, and all of Borrower's Books are genuine and in all respects what they purport to be. Whether or not an Event of Default has occurred and is continuing, Bank may (with concurrent written notice to Borrower) notify any Account Debtor owing Borrower money of Bank's security interest in such funds and verify the amount of such Eligible Account. All sales and other transactions underlying or giving rise to each Eligible Account shall comply in all material respects with all applicable laws and governmental rules and regulations. Borrower has no knowledge of any actual or imminent Insolvency Proceeding of any Account Debtor whose accounts are Eligible Accounts in any Transaction Report. To the best of Borrower's knowledge, all signatures and endorsements on all documents, instruments, and agreements relating to all Eligible Accounts are genuine, and all such documents, instruments and agreements are legally enforceable in accordance with their terms.
- **5.4 Litigation**. There are no actions or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries involving more than One Million Dollars (\$1,000,000.00), individually or in the aggregate, other than as described in the Perfection Certificate.
- 5.5 Financial Statements; Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.
 - **5.6 Solvency.** Borrower is able to pay its debts (including trade debts) as they mature.
- **5.7 Regulatory Compliance**. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower has complied in all material respects with the Federal Fair Labor Standards Act. Borrower has not violated any laws, ordinances or rules, the violation of which could reasonably be expected to have a material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue their respective businesses as currently conducted.
 - 5.8 Subsidiaries; Investments. Borrower does not own any stock, partnership interest or other equity securities except for Permitted Investments.
- **5.9 Tax Returns and Payments; Pension Contributions.** Borrower has timely (subject to permitted extensions) filed all required tax returns and reports, and Borrower has timely (subject to permitted extensions) paid all foreign, federal, state and material local taxes, assessments, deposits and contributions owed by Borrower. Borrower may defer payment of any contested taxes, provided that Borrower (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Bank in writing of the commencement of, and any material development in, the proceedings, (c) posts bonds or takes any

other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien". Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could reasonably be expected to result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

- **5.10 Use of Proceeds.** Borrower shall use the proceeds of the Credit Extensions solely as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.
- **5.11 Full Disclosure**. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).
- **5.12 Definition of "Knowledge."** For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance.

- (a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, with all laws, ordinances and regulations to which it is subject, noncompliance with which could have a material adverse effect on Borrower's business.
- (b) Obtain all of the Governmental Approvals necessary for the performance by Borrower of its obligations under the Loan Documents to which it is a party and the grant of a security interest to Bank in all of its property. Borrower shall promptly provide copies of any such obtained Governmental Approvals to Bank.

6.2 Financial Statements, Reports, Certificates. Provide Bank with the following:

- (a) monthly, except for weekly after and during the continuance of a Ratio Event, a Transaction Report (and any schedules related thereto);
- (b) within fifteen (15) days after the end of each month, except for within five (5) days after the end of each week after and during the continuance of a Ratio Event, (A) monthly accounts receivable agings, aged by invoice date, (B) monthly accounts payable agings, aged by invoice date, and outstanding or held check registers, if any, and (C) monthly reconciliations of accounts receivable agings (aged by invoice date), transaction reports and general ledger;
- (c) as soon as available, but no later than thirty (30) days after the last day of each month, a company prepared consolidated balance sheet and income statement covering Borrower's and each of its Subsidiary's operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the "Monthly Financial Statements");

- (d) within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and setting forth calculations showing compliance with the financial covenants set forth in this Agreement and such other information as Bank shall reasonably request, including, without limitation, a statement that at the end of such month there were no held checks;
- (e) within thirty (30) days after the end of each quarter a cash holding report, detailing all cash and Cash Equivalents by investment type and including the amount, maturity date (if applicable), and account such cash and Cash Equivalents are held;
- (f) within fifty (50) days after the end of each quarter of the Borrower (or, if earlier, five (5) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)), the Borrower's Report on Form 10-Q or the unaudited consolidated balance sheet of the Borrower as at the end of such quarter and the related unaudited consolidated statements of income and of cash flows for such quarter and the portion of the fiscal year through the end of such quarter, setting forth in each case in comparative form the figures for the previous year (the "Quarterly Financial Statements");
- (g) within fifty (50) days after the end of each quarter (or with the delivery of Borrower's Quarterly Financial Statements) a Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such quarter, Borrower was in full compliance with all of the terms and conditions of this Agreement, and such other information as Bank shall reasonably request, including, without limitation, a statement that at the end of such quarter there were no held checks;
- (h) within fifty (50) days after the end of each fiscal year of Borrower, (A) annual operating budgets (including income statements, balance sheets and cash flow statements, by quarter) for the upcoming fiscal year of Borrower, and (B) annual financial projections for the following fiscal year (on a quarterly basis) as approved by Borrower's board of directors, together with any related business forecasts used in the preparation of such annual financial projections;
- (i) within ninety (90) days after the end of each fiscal year of the Borrower (or, if earlier, five (5) days after the date required to be filed with the SEC (without giving effect to any extension permitted by the SEC)), the Borrower's Report on Form 10-K or the audited consolidated balance sheet of the Borrower as at the end of such fiscal year and the related unaudited consolidated statements of income and of cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous year (the "Annual Financial Statements");
- (j) within ninety (90) days after the end of each fiscal year (or with the delivery of Borrower's Annual Financial Statements) a Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such fiscal year, Borrower was in full compliance with all of the terms and conditions of this Agreement, and such other information as Bank shall reasonably request, including, without limitation, a statement that at the end of such fiscal year there were no held checks;
- (k) within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at Borrower's website address;
- (l) prompt written notice of (i) any material change in the composition of the Intellectual Property, (ii) the registration of any copyright, including any subsequent ownership right of Borrower in or to any copyright, patent or trademark not previously disclosed in writing to Bank, and (iii) Borrower's knowledge of an event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

- (m) prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, One Million Dollars (\$1,000,000.00) or more; and
 - (n) other financial information reasonably requested by Bank.

6.3 Accounts Receivable.

- (a) Schedules and Documents Relating to Accounts. Borrower shall deliver to Bank transaction reports and schedules of collections, as provided in Section 6.2, on Bank's standard forms; provided, however, that Borrower's failure to execute and deliver the same shall not affect or limit Bank's Lien and other rights in all of Borrower's Accounts, nor shall Bank's failure to advance or lend against a specific Account affect or limit Bank's Lien and other rights therein. If requested by Bank, Borrower shall furnish Bank with copies (or, at Bank's request, originals) of all contracts, orders, invoices, and other similar documents, and all shipping instructions, delivery receipts, bills of lading, and other evidence of delivery, for any goods the sale or disposition of which gave rise to such Accounts. In addition, Borrower shall deliver to Bank, on its request, the originals of all instruments, chattel paper, security agreements, guarantees and other documents and property evidencing or securing any Accounts, in the same form as received, with all necessary indorsements, and copies of all credit memos.
- (b) <u>Disputes</u>. Borrower shall promptly notify Bank of all disputes or claims relating to Accounts in excess of One Hundred Thousand Dollars (\$100,000.00). Borrower may forgive (completely or partially), compromise, or settle any Account for less than payment in full, or agree to do any of the foregoing so long as (i) Borrower does so in good faith, in a commercially reasonable manner, in the ordinary course of business, in arm's-length transactions, and reports the same to Bank in the regular reports provided to Bank; (ii) no Event of Default has occurred and is continuing; and (iii) after taking into account all such discounts, settlements and forgiveness, there shall not be an Overadvance.
- (c) <u>Collection of Accounts</u>. All proceeds of Accounts shall be deposited by Borrower into a lockbox account, or such other "blocked account" as specified by Bank, pursuant to a blocked account agreement in such form as Bank may specify in its good faith business judgment. Prior to a Ratio Event that has occurred and is continuing, all proceeds of Accounts shall be paid to Borrower by credit to the Designated Deposit Account. After the occurrence and during the continuance of a Ratio Event, all proceeds of Accounts shall be payments, applied pursuant to the terms of Section 2.5(b) hereof, to reduce the Obligations and any surplus shall be paid to Borrower by credit to the Designated Deposit Account. After the occurrence and during the continuance of an Event of Default, all proceeds of Accounts shall be payments, applied pursuant to the terms of Section 9.4 hereof.
- (d) <u>Verification.</u> Bank may, from time to time upon concurrent written notice to Borrower, verify directly with the respective Account Debtors the validity, amount and other matters relating to the Accounts, either in the name of Borrower or Bank or such other name as Bank may choose; provided that after the occurrence and during the continuance of an Event of Default, no notice to Borrower shall be required.
- (e) No Liability. Bank shall not be responsible or liable for any shortage or discrepancy in, damage to, or loss or destruction of, any goods, the sale or other disposition of which gives rise to an Account, or for any error, act, omission, or delay of any kind occurring in the settlement, failure to settle, collection or failure to collect any Account, or for settling any Account in good faith for less than the full amount thereof, nor shall Bank be deemed to be responsible for any of Borrower's obligations under any contract or agreement giving rise to an Account. Nothing herein shall, however, relieve Bank from liability for its own gross negligence or willful misconduct.
- **Remittance of Proceeds.** Except as otherwise provided in Section 6.3(c) or 7.1, deliver, in kind, all proceeds arising from the disposition of any Collateral to Bank in the original form in which received by Borrower not later than the following Business Day after receipt by Borrower, to be applied to the Obligations (1) prior to an Event of Default, pursuant to the terms of Section 2.5(b) hereof, and (2) after the occurrence and during the continuance of an Event of Default, pursuant to the terms of Section 9.4 hereof; provided that, if no Event of Default has occurred and is continuing, Borrower shall not be obligated to remit to Bank the proceeds of the sale of surplus, worn out or obsolete Equipment or of non-revenue Inventory disposed of by Borrower in good faith in an arm's length transaction for an aggregate purchase price of Two Hundred and Fifty Thousand Dollars (\$250,000.00)

or less (for all such transactions in any fiscal year). Except as otherwise provided in Section 6.3(c) and 6.8(a), Borrower agrees that it will maintain all proceeds of Collateral in an account maintained with Bank. Nothing in this Section limits the restrictions on disposition of Collateral set forth elsewhere in this Agreement.

6.5 Taxes; Pensions; Withholding. Timely file, and require each of its Subsidiaries to timely file (in each case subject to permitted extensions), all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay (in each case subject to permitted extensions), all foreign, federal, state and material local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.9 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.6 Reserved.

6.7 Insurance. Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Bank. As of Effective Date, Bank agrees that the insurance policies of Borrower are in forms, with companies, and in amounts that are reasonably satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as a lender loss payee and waive subrogation against Bank. All liability policies shall show, or have endorsements showing, Bank as an additional insured. All policies (or their respective endorsements) shall provide that the insurer shall give Bank at least thirty (30) days notice before canceling, amending, or declining to renew its policy. At Bank's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Proceeds payable under any policy shall, at Bank's option, be payable to Bank on account of the Obligations. Notwithstanding the foregoing, (a) so long as no Event of Default, Borrower shall have the option of applying the proceeds of any casualty policy up to One Hundred and Fifty Thousand Dollars (\$150,000,00) with respect to any loss and not exceeding Two Hundred and Fifty Thousand Dollars (\$250,000.00) in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Bank has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Bank, be payable to Bank on account of the Obligations. If Borrower fails to obtain insurance as required under this Section 6.7 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may upon concurrent notice to Borrower make all or part of such payment or obtain such insurance policies required in this Section 6.7, and take any action under the policies Bank deems prudent.

6.8 Operating Accounts.

- (a) Maintain its and its Domestic Subsidiaries' primary operating and other deposit accounts and securities accounts with Bank and Bank's Affiliates which accounts shall represent at least 85% of the dollar value of Borrower's and such Domestic Subsidiaries accounts at all financial institutions in the United States.
- (b) Provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower or Domestic Subsidiary at any time maintains in the United States, Borrower or Domestic Subsidiary shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's or Domestic Subsidiary's employees and identified to Bank by Borrower as such.

6.9 Financial Covenants.

Maintain at all times, to be tested as of the last day of each month, unless otherwise noted, on a consolidated basis with respect to Borrower and its Subsidiaries:

(a) <u>Liquidity Coverage Ratio.</u> A ratio of (A) unrestricted cash and Cash Equivalents with Bank or Bank's Affiliates plus net Eligible Accounts to (B) the aggregate of (i) the Dollar Equivalent amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) plus an amount equal to the Letter of Credit Reserve, plus (b) the FX Reduction Amount, plus (c) any amounts used for Cash Management Services, and plus (d) the outstanding principal balance of any Advances of not less than 1.75:1.00.

6.10 Protection and Registration of Intellectual Property Rights.

- (a) (i) Use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property material to its business; (ii) promptly advise Bank in writing of material infringements of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.
- (b) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public).
- **6.11 Litigation Cooperation.** From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

6.12 Reserved.

Access to Collateral; Books and Records. Allow Bank, or its agents, at reasonable times, on one (1) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), to inspect the Collateral and audit and copy Borrower's Books. Such inspections or audits shall be conducted no more often than once every six (6) months unless an Event of Default has occurred and is continuing. The foregoing inspections and audits shall be at Borrower's expense, and the charge therefor shall be \$850 per person per day (or such higher amount as shall represent Bank's thencurrent standard charge for the same), plus reasonable out-of-pocket expenses. In the event Borrower and Bank schedule an audit more than ten (10) days in advance, and Borrower cancels or seeks to reschedule the audit with less than ten (10) days written notice to Bank, then (without limiting any of Bank's rights or remedies), Borrower shall pay Bank a fee of \$1,000 plus any out-of-pocket expenses incurred by Bank to compensate Bank for the anticipated costs and expenses of the cancellation or rescheduling.

6.14 Reserved.

6.15 Formation or Acquisition of Subsidiaries.

- (a) At the time that Borrower forms any direct or indirect Domestic Subsidiary or acquires any direct or indirect Domestic Subsidiary after the Effective Date, Borrower shall (i) cause such new Domestic Subsidiary to provide to Bank a joinder to the Loan Agreement to cause such Domestic Subsidiary to become a co-borrower or Guarantor hereunder, together with such appropriate financing statements and/or Control Agreements (to the extent such Control Agreements are required in accordance with Section 6.8(b)), all in form and substance reasonably satisfactory to Bank (including being sufficient to grant Bank a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Domestic Subsidiary), (ii) provide to Bank appropriate certificates and powers and financing statements, pledging all of the direct or beneficial ownership interest in such new Domestic Subsidiary, in form and substance satisfactory to Bank, and (iii) to the extent requested by Bank, provide to Bank all other documentation in form and substance reasonably satisfactory to Bank, including one or more opinions of counsel reasonably satisfactory to Bank, which in its opinion is customary with respect to the execution and delivery of the applicable documentation referred to above. Any document, agreement, or instrument executed or issued pursuant to this Section 6.15 shall be a Loan Document.
- (b) At the time that Borrower forms any direct or indirect Foreign Subsidiary or acquires any direct or indirect Foreign Subsidiary after the Effective Date, Borrower shall provide to Bank certificates and powers and financing statements, pledging 65% of the direct or beneficial ownership interest in such new Foreign Subsidiary, in form and substance satisfactory to Bank.

6.16 Further Assurances. Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement. Deliver to Bank, within five (5) days after the same are sent or received, copies of all correspondence, reports, documents and other filings with any Governmental Authority regarding compliance with or maintenance of Governmental Approvals or Requirements of Law or that could reasonably be expected to have a material effect on any of the Governmental Approvals or otherwise on the operations of Borrower or any of its Subsidiaries.

7 <u>COVENANTS</u>

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Borrower shall not do any of the following without Bank's prior written consent:

- **7.1 Dispositions.** Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments, and any dividends or distributions permitted in accordance with Section 7.7; (d) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business, (e) involving exclusive licenses of Intellectual Property in exchange for fair value as reasonably determined by the Borrower's Board of Directors; (f) of Intellectual Property not material to the business of Borrower either alone or in the aggregate in exchange for fair value as reasonably determined by the Borrower's Board of Directors; (g) cash or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; (h) permitted in accordance with Section 7.3; (i) leases of real or personal property in the ordinary course of business; and (j) of other property sold at fair market value not to exceed Five Hundred Thousand Dollars (\$500,000.00) in the aggregate in any fiscal year of Borrower.
- 7.2 Changes in Business, Management, Control, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; or (c) permit or suffer any Change in Control.

Borrower shall not, without at least thirty (30) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Five Hundred Thousand Dollars (\$500,000.00) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Five Hundred Thousand Dollars (\$500,000.00) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Five Hundred Thousand Dollars (\$500,000.00) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank in its sole discretion.

- **7.3 Mergers or Acquisitions**. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person except (a) where (i) total consideration including cash and the value of any non-cash consideration for such transaction does not exceed Two Million Dollars (\$2,000,000.00) in the aggregate in any fiscal year of Borrower, (ii) no Event of Default has occurred and is continuing or would exist immediately after giving effect to any such transaction, and (iii) in the case of a merger, Borrower or such Subsidiary, as the case may be, is the surviving legal entity; and (b) a Subsidiary may merge or consolidate into another Subsidiary or into Borrower.
 - 7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.
- **7.5 Encumbrance**. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person

which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except in connection with (a) Transfers permitted in accordance with Section 7.1, (b) Permitted Liens, (c) agreements that are customary restrictions on subleases, leases, licenses, or permits so long as such restrictions relate to the property subject thereto and are entered into in the ordinary course of business, (d) agreements that are customary provisions restricting subletting or assignment of any lease governing a leasehold interest entered into in the ordinary course of business, and (f) agreements that are customary provisions restricting assignment or transfer of any contract entered into in the ordinary course of business.

- 7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.8(b) hereof.
- 7.7 **Distributions; Investments.** (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock provided that (i) Borrower may convert any of its convertible securities into other securities pursuant to the terms of such convertible securities or otherwise in exchange thereof, (ii) Borrower may pay dividends solely in common stock; (iii) Borrower may repurchase the stock of former employees, directors, or consultants pursuant to stock repurchase agreements or upon death, disability, retirement, severance, or termination of such former employees, directors, officers, or consultants so long as an Event of Default does not exist at the time of such repurchase and would not exist after giving effect to such repurchase, provided such repurchase does not exceed in the aggregate of Fifty Thousand Dollars (\$50,000.00) per fiscal year; and (iv) Borrower may (but shall not be required) to pay proceeds (whether received in cash, in exchange for license rights or the Transfer of Intellectual Property, or otherwise), if any, of the litigation described in Section 7(b) of the Perfection Certificate to its shareholders in the form of dividends or distributions so long as (1) no Event of Default has occurred and is continuing or would exist immediately after giving effect to any such transaction, and (2) unrestricted cash and Cash Equivalents with Bank or Bank's Affiliates plus the Availability Amount is not less than Ten Million Dollars (\$10,000,000.000) immediately after giving effect to any such payment; or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.
- **7.8 Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for (a) transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person, (b) reasonable and customary director, officer, employee and consultant compensation (including bonuses) and other benefits (including retirement, health, stock option and other benefit plans not prohibited by the Loan Documents), (c) sales of equity securities, (d) issuance of Permitted Indebtedness, and (e) distributions and Investments permitted in accordance with Section 7.7.
- **7.9 Subordinated Debt.** (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to Bank.
- 7.10 Compliance. Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; fail to meet the minimum funding requirements of ERISA, permit a Reportable Event or Prohibited Transaction, as defined in ERISA, to occur; fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation, if the violation could reasonably be expected to have a material adverse effect on Borrower's business, or permit any of its Subsidiaries to do so; withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

8 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "Event of Default") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Line Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (a) or (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

- (a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.5, 6.7, 6.8, 6.9, 6.13 or violates any covenant in Section 7; or
- (b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Cure periods provided under this section shall not apply, among other things, to financial covenants or any other covenants set forth in clause (a) above;
 - 8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

- (a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary) on deposit or otherwise maintained with Bank or any Bank Affiliate, or (ii) a notice of lien or levy is filed against any of Borrower's assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or
- (b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting any material part of its business;
- **8.5 Insolvency**. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and not dismissed or stayed within thirty (30) days (but no Credit Extensions shall be made while of any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);
- **8.6** Other Agreements. There is, under any agreement to which Borrower or any Guarantor is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Five Hundred Thousand Dollars (\$500,000.00); or (b) any default by Borrower or Guarantor, the result of which could have a material adverse effect on Borrower's or any Guarantor's business: provided, however, that the Event of Default under this Section 8.6 caused by the occurrence of a default under such other agreement shall be cured or waived for purposes of this Agreement upon Bank receiving written notice from the party asserting such default of such cure or waiver of the default under such other agreement, if at the time of such cure or waiver under such other agreement (x) Bank has not declared an Event of Default under this Agreement and/or exercised any rights with respect thereto; (y) any such cure or waiver does not result in an Event of Default under any other provision of this Agreement or any Loan Document; and (z) in connection with any such cure or waiver under such other agreement, the terms of any agreement with such third party are not modified or amended in any manner which could in the good faith judgment of Bank be materially less advantageous to Borrower or any Guarantor;

- **8.7 Judgments**. One or more final judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least One Million Dollars (\$1,000,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower and the same are not, within ten (10) days after the entry thereof, discharged or execution thereof stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the discharge, stay, or bonding of such judgment, order, or decree);
- **8.8 Misrepresentations.** Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made; and
- **8.9 Subordinated Debt.** Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement.
 - 8.10 Reserved.
 - 8.11 Reserved.
 - 9 BANK'S RIGHTS AND REMEDIES
 - 9.1 Rights and Remedies. While an Event of Default occurs and continues Bank may, without notice or demand, do any or all of the following:
- (a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);
- (b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;
- (c) demand that Borrower (i) deposit cash with Bank in an amount equal to (a) 105% if the letter of credit is denominated in U.S. Dollars or (b) 110% of the Dollar Equivalent if the letter of credit is denominated in Foreign Currency, of the face amount of all such Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;
 - (d) terminate any FX Forward Contracts;
- (e) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, notify any Person owing Borrower money of Bank's security interest in such funds, and verify the amount of such account;
- (f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;
- (g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) any amount held by Bank owing to or for the credit or the account of Borrower.

- (h) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;
- (i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;
 - (j) demand and receive possession of Borrower's Books; and
- (k) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).
- **Power of Attorney**. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Bank determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Bank is under no further obligation to make Credit Extensions hereunder. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions terminates.
- 9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.7 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.
- **9.4 Application of Payments and Proceeds.** If an Event of Default has occurred and is continuing, Bank may apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations in such order as Bank shall determine in its sole discretion. Any surplus shall be paid to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, in its good faith business judgment, directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.
- **9.5 Bank's Liability for Collateral.** So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

- 9.6 No Waiver; Remedies Cumulative. Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.
- 9.7 **Demand Waiver**. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

10 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: Overland Storage, Inc.

9112 Spectrum Center Boulevard San Diego, California 92123 Attn: Kurt Kalbfleisch Fax: (858) 495-4267

Email: kkalbfleisch@overlandstorage.com

If to Bank: Silicon Valley Bank

2400 Hanover Street
Palo Alto, California 94304
Attn: Jean Lee

Fax: (650) 494-1377 Email: jlee@svb.com

11 CHOICE OF LAW, VENUE, JURY TRIAL WAIVER AND JUDICIAL REFERENCE

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Santa Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12 GENERAL PROVISIONS

- 12.1 Termination Prior to Revolving Line Maturity Date. This Agreement may be terminated prior to the Revolving Line Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Notwithstanding any such termination, Bank's lien and security interest in the Collateral shall continue until Borrower fully satisfies its Obligations.
- 12.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents.
- 12.3 Indemnification. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "Indemnified Person") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "Claims") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (b) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower contemplated by the Loan Documents (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.
 - 12.4 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

- **12.5 Severability of Provisions**. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.
- 12.6 Correction of Loan Documents. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties upon three (3) Business Days prior written notice to Borrower; provided that if Borrower objects to such proposed action within such period, Bank and Borrower shall promptly proceed in good faith to negotiate a mutually acceptable amendment to the Loan Documents to resolve such perceived error; provided further that if Borrower fails to object to such proposed action within such period, Borrower will be deemed to have consented to such proposed action.
- 12.7 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.
- 12.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.
- 12.9 Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.3 to indemnify Bank shall survive until the statute of limitations with respect to such claim or cause of action shall have run.
- 12.10 Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "Bank Entities") who are obligated to exercise a similar degree of care as Bank in handling confidential information; (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use its best efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain after disclosure to Bank; or (ii) disclosed to Bank by a third party if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use the confidential information for reporting purposes and the development and distribution of databases and market analyses so long as such confidential information is aggregated and anonymized prior to distribution unless otherwise expressly prohibited by Borrower. The provisions of the immediately preceding sentence shall survive the termination of this Agreement.

- 12.11 Attorneys' Fees, Costs and Expenses. In any action or proceeding between Borrower and Bank arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.
- 12.12 Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

- 12.13 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 12.14 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.
- 12.15 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.
- 12.16 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

13 DEFINITIONS

- **13.1 Definitions.** As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:
- "Account" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.
 - "Account Debtor" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.
 - "Advance" or "Advances" means an advance (or advances) under the Revolving Line.
- "Affiliate" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.
 - "Agreement" is defined in the preamble hereof.
- "Availability Amount" is (a) the lesser of (i) the Revolving Line or (ii) (1) the Non-Formula Amount or (2) the Borrowing Base, if a Ratio Event has occurred and is continuing, minus (b) the Dollar Equivalent amount of all outstanding Letters of Credit (including drawn but unreimbursed Letters of Credit) plus an amount equal to the Letter of Credit Reserve, minus (c) the FX Reduction Amount, minus (d) any amounts used for Cash Management Services, and minus (e) the outstanding principal balance of any Advances.
 - "Bank" is defined in the preamble hereof.
- "Bank Expenses" are all reasonable audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.
 - "Borrower" is defined in the preamble hereof

"Borrower's Books" are all Borrower's books and records including ledgers, federal and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"Borrowing Base" is 80% of Eligible Accounts, as determined by Bank from Borrower's most recent Transaction Report; provided, however, that Bank may decrease the foregoing percentages in its good faith business judgment based on events, conditions, contingencies, or risks which, as determined by Bank, may adversely affect all Accounts.

"Borrowing Resolutions" are, with respect to any Person, those resolutions adopted by such Person's Board of Directors and delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby, together with a certificate executed by its Secretary on behalf of such Person certifying that (a) such Person has the authority to execute, deliver, and perform its obligations under each of the Loan Documents to which it is a party, (b) that attached as Exhibit A to such certificate is a true, correct, and complete copy of the resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Person of the Loan Documents to which it is a party, (c) the name(s) of the Person(s) authorized to execute the Loan Documents on behalf of such Person, together with a sample of the true signature(s) of such Person(s), and (d) that Bank may conclusively rely on such certificate unless and until such Person shall have delivered to Bank a further certificate canceling or amending such prior certificate.

"Business Day" is any day that is not a Saturday, Sunday or a day on which Bank is closed.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (c) Bank's certificates of deposit issued maturing no more than one (1) year after issue; and (d) money market funds at least ninety-five percent (95%) of the assets of which constitute Cash Equivalents of the kinds described in clauses (a) through (c) of this definition.

"Cash Management Services" is defined in Section 2.1.4.

"Change in Control" means any event, transaction, or occurrence as a result of which (a) any "person" (as such term is defined in Sections 3(a)(9) and 13(d)(3) of the Exchange Act), other than a trustee or other fiduciary holding securities under an employee benefit plan of Borrower, is or becomes a beneficial owner (within the meaning Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of Borrower, representing fifty percent (50%) or more of the combined voting power of Borrower's then outstanding securities; or (b) during any period of twelve consecutive calendar months, individuals who at the beginning of such period constituted the Board of Directors of Borrower (together with any new directors whose election by the Board of Directors of Borrower was approved by a vote of not less than two-thirds of the directors then still in office who either were directions at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason other than death or disability to constitute a majority of the directors then in office.

"Claims" as defined in Section 12.3.

"Code" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"Collateral" is any and all properties, rights and assets of Borrower described on Exhibit A.

"Collateral Account" is any Deposit Account, Securities Account, or Commodity Account.

"Committed Availability" means, as the date of determination, an amount equal to the Availability Amount minus all outstanding Credit Extensions.

"Commodity Account" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"Compliance Certificate" is that certain certificate in the form attached hereto as Exhibit B.

"Contingent Obligation" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"Control Agreement" is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Credit Extension" is any Advance, Letter of Credit, FX Forward Contract, amount utilized for Cash Management Services, or any other extension of credit by Bank for Borrower's benefit.

"**Default Rate**" is defined in Section 2.3(b).

"Deferred Revenue" is all amounts received or invoiced in advance of performance under contracts and not yet recognized as revenue.

"Deposit Account" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"Designated Deposit Account" is Borrower's deposit account, account number 3300815014, maintained with Bank.

"Dollars," "dollars" or use of the sign "\$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "\$" sign to denote its currency or may be readily converted into lawful money of the United States.

"Dollar Equivalent" is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

"Domestic Subsidiary" means a Subsidiary organized under the laws of the United States or any state or territory thereof or the District of Columbia.

"Effective Date" is defined in the preamble hereof.

"Eligible Accounts" means Accounts which arise in the ordinary course of Borrower's business that meet all Borrower's representations and warranties in Section 5.3. Bank reserves the right at any time after the Effective Date to adjust any of the criteria set forth below and to establish new criteria in its good faith business judgment. Unless Bank otherwise agrees in writing, Eligible Accounts shall not include:

- (a) Accounts for which the Account Debtor is Borrower's Affiliate, officer, employee, or agent;
- (b) Accounts that the Account Debtor has not paid within ninety (90) days of invoice date regardless of invoice payment period terms;
- (c) Accounts with credit balances over ninety (90) days from invoice date;
- (d) Accounts owing from an Account Debtor, in which fifty percent (50%) or more of the Accounts have not been paid within ninety (90) days of invoice date;
- (e) Accounts owing from an Account Debtor which does not have its principal place of business in the United States unless (A) such Accounts are otherwise Eligible Accounts and (i) covered in full by credit insurance satisfactory to Bank, less any deductible, (ii) supported by letter(s) of credit acceptable to Bank, (iii) supported by a guaranty from the Export-Import Bank of the United States, or (iv) that Bank otherwise approves of in writing, and (B) such Accounts in the aggregate do not exceed Three Million Dollars (\$3,000,000.00);
 - (f) Accounts billed and/or payable outside of the United States (sometimes called foreign invoiced accounts);
- (g) Accounts owing from an Account Debtor to the extent that Borrower is indebted or obligated in any manner to the Account Debtor (as creditor, lessor, supplier or otherwise sometimes called "contra" accounts, accounts payable, customer deposits or credit accounts).
- (h) Accounts owing from an Account Debtor, whose total obligations to Borrower exceed thirty percent (30%) of all Accounts, for the amounts that exceed that percentage, unless Bank approves in writing;
- (i) Accounts owing from an Account Debtor which is a United States government entity or any department, agency, or instrumentality thereof unless Borrower has assigned its payment rights to Bank and the assignment has been acknowledged under the Federal Assignment of Claims Act of 1940, as amended:
- (j) Accounts for demonstration or promotional equipment, or in which goods are consigned, or sold on a "sale guaranteed", "sale or return", "sale on approval", or other terms if Account Debtor's payment may be conditional;
- (k) Accounts owing from an Account Debtor that has not been invoiced or where goods or services have not yet been rendered to the Account Debtor (sometimes called memo billings or pre-billings);
- (l) Accounts subject to contractual arrangements between Borrower and an Account Debtor where payments shall be scheduled or due according to completion or fulfillment requirements where the Account Debtor has a right of offset for damages suffered as a result of Borrower's failure to perform in accordance with the contract (sometimes called contracts accounts receivable, progress billings, milestone billings, or fulfillment contracts);
- (m) Accounts owing from an Account Debtor the amount of which may be subject to withholding based on the Account Debtor's satisfaction of Borrower's complete performance (but only to the extent of the amount withheld; sometimes called retainage billings);
 - (n) Accounts subject to trust provisions, subrogation rights of a bonding company, or a statutory trust;
- (o) Accounts owing from an Account Debtor that has been invoiced for goods that have not been shipped to the Account Debtor unless Bank, Borrower, and the Account Debtor have entered into an agreement acceptable to Bank in its sole discretion wherein the Account Debtor acknowledges that (i) it has title to and has ownership of the goods wherever located, (ii) a bona fide sale of the goods has occurred, and (iii) it owes payment for such goods in accordance with invoices from Borrower (sometimes called "bill and hold" accounts);

- (p) Accounts for which the Account Debtor has not been invoiced;
- (q) Accounts that represent non-trade receivables or that are derived by means other than in the ordinary course of Borrower's business;
- (r) Accounts for which Borrower has permitted Account Debtor's payment to extend beyond 90 days;
- (s) Accounts arising from chargebacks, debit memos or others payment deductions taken by an Account Debtor (but only to the extent the chargeback is determined invalid and subsequently collected by Borrower);
 - (t) Accounts arising from product returns and/or exchanges (sometimes called "warranty" or "RMA" accounts);
- (u) Accounts in which the Account Debtor disputes liability or makes any claim (but only up to the disputed or claimed amount), or if the Account Debtor is subject to an Insolvency Proceeding, or becomes insolvent, or goes out of business; and
- (v) Accounts for which Bank in its good faith business judgment determines collection to be doubtful, including, without limitation, accounts represented by "refreshed" or "recycled" invoices.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"ERISA" is the Employee Retirement Income Security Act of 1974, and its regulations.

"Event of Default" is defined in Section 8.

"Exchange Act" is the Securities Exchange Act of 1934, as amended.

"Foreign Currency" means lawful money of a country other than the United States.

"Foreign Subsidiary" means any Subsidiary which is not a Domestic Subsidiary.

"Funding Date" is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

"FX Business Day" is any day when (a) Bank's Foreign Exchange Department is conducting its normal business and (b) the Foreign Currency being purchased or sold by Borrower is available to Bank from the entity from which Bank shall buy or sell such Foreign Currency.

"FX Forward Contract" is defined in Section 2.1.3.

"FX Reduction Amount" is defined in Section 2.1.3.

"FX Reserve" is defined in Section 2.1.3.

"GAAP" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

"General Intangibles" is all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"Governmental Approval" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Guarantor" is any present or future guarantor of the Obligations.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"Indemnified Person" is defined in Section 12.3.

"Initial Audit" is Bank's inspection of Borrower's Accounts with results satisfactory to Bank in its sole and absolute discretion.

"Insolvency Proceeding" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property" means all of Borrower's right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;
- (b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;
- (c) any and all source code;
- (d) any and all design rights which may be available to a Borrower;
- (e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and
 - (f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Inventory" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Investment" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

"Letter of Credit" means a standby letter of credit issued by Bank or another institution based upon an application, guarantee, indemnity or similar agreement on the part of Bank as set forth in Section 2.1.2.

"Letter of Credit Application" is defined in Section 2.1.2(b).

"Letter of Credit Reserve" is defined in Section 2.1.2(e).

"Lien" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"Liquidity Coverage Ratio" is defined in Section 6.9(a).

"Loan Documents" are, collectively, this Agreement, the Perfection Certificate, any note, or notes or guaranties executed by Borrower or any Guarantor, and any other present or future agreement between Borrower any Guarantor and/or for the benefit of Bank in connection with this Agreement, all as amended, restated, or otherwise modified.

"Material Adverse Change" is (a) a material impairment in the perfection or priority of Bank's Lien in the Collateral or in the value of such Collateral (subject to Permitted Liens); (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"Monthly Financial Statements" is defined in Section 6.2(c).

"Net Income" means, as calculated on a consolidated basis for Borrower and its Subsidiaries for any period as at any date of determination, the net income, after provision for taxes, of Borrower and its Subsidiaries for such period taken as a single accounting period, determined in accordance with GAAP.

"Non-Formula Amount" is Eight Million Dollars (\$8,000,000.00).

"Obligations" are Borrower's obligations to pay when due any debts, principal, interest, Bank Expenses and other amounts Borrower owes Bank now or later, whether under this Agreement, the Loan Documents, or otherwise, including, without limitation, all obligations relating to letters of credit (including reimbursement obligations for drawn and undrawn letters of credit), cash management services, and foreign exchange contracts, if any, and including interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower's duties under the Loan Documents.

"Operating Documents" are, for any Person, such Person's formation documents, as certified with the Secretary of State of such Person's state of formation on a date that is no earlier than 30 days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"Overadvance" is defined in Section 2.2.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Payment" means all checks, wire transfers and other items of payment received by Bank (including proceeds of Accounts and payment of the Obligations in full) for credit to Borrower's outstanding Credit Extensions or, if the balance of the Credit Extensions has been reduced to zero, for credit to its deposit accounts.

"Perfection Certificate" is defined in Section 5.1.

"Permitted Indebtedness" is:

- (a) Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (e) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (f) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder;
- (g) Indebtedness of Borrower to any Subsidiary that is a co-borrower or Guarantor of the Obligations;
- (h) Permitted Investments constituting Indebtedness;
- (i) Indebtedness of any Person that is acquired or merged with or into or consolidated with Borrower or any of its Subsidiaries to the extent permitted hereunder (and not created in anticipation or contemplation thereof) and existing on the date of such acquisition, merger or consolidation, provided that such Indebtedness shall not exceed in the aggregate Two Hundred Thousand Dollars (\$200,000.00) at any time outstanding;
- (j) Indebtedness owing to sureties arising from bid, performance or surety bonds or letters of credit supporting such bid, performance or surety obligations issued on behalf of Borrower as support for, among other things, contracts with customers;
 - (k) Indebtedness of Foreign Subsidiaries in an aggregate principal amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000.00);
- (l) Indebtedness of Borrower and any of its Domestic Subsidiaries in an aggregate principal amount not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00); and
- (i) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (l) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"Permitted Investments" are:

- (a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date and shown on the Perfection Certificate;
- (b) (i) Investments consisting of cash and Cash Equivalents, and (ii) any Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy (and any such amendment thereto) has been approved in writing by Bank;
- (c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;
 - (d) Investments consisting of deposit accounts in which Bank has a perfected security interest;
 - (e) Investments accepted in connection with Transfers permitted by Section 7.1;
- (f) Investments (i) by Borrower in Subsidiaries that are Guarantors, (ii) by Borrower in Subsidiaries that are not Guarantors not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) in the aggregate in any fiscal year, (iii) by Subsidiaries in other Subsidiaries that are Guarantors, and (iv) by Subsidiaries in other Subsidiaries that are not Guarantors not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) in the aggregate in any fiscal year or in Borrower;

- (g) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors;
- (h) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;
- (i) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (i) shall not apply to Investments of Borrower in any Subsidiary;
- (j) joint ventures or strategic alliances in the ordinary course of Borrower's business consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support, provided that any cash investments by Borrower do not exceed Two Hundred and Fifty Thousand Dollars (\$250,000.00) in the aggregate in any fiscal year;
 - (k) Investments consisting of lease, utility and other similar deposits in the ordinary course of business;
 - (l) Investments resulting from mergers and acquisitions permitted under Section 7.3; and
- (m) other Investments not otherwise permitted by Section 7.7 not exceeding Two Hundred and Fifty Thousand Dollars (\$250,000.00) in the aggregate outstanding at any time.

"Permitted Liens" are:

- (a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;
- (b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, <u>provided</u> that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;
- (c) purchase money Liens (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than One Hundred Thousand (\$100,000.00) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment;
- (d) Liens of carriers, warehousemen, suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens attach only to Inventory, securing liabilities in the aggregate amount not to exceed One Hundred Thousand Dollars (\$100,000.00) and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;
- (e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);
- (f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

- (g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Bank a security interest therein;
- (h) (i) non-exclusive licenses of Intellectual Property granted to third parties in the ordinary course of business, and (ii) exclusive licenses of Intellectual Property in exchange for fair value as reasonably determined by the Borrower's Board of Directors;
 - (i) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under Sections 8.4 and 8.7;
- (j) Liens in favor of other financial institutions arising in connection with Borrower's deposit and/or securities accounts held at such institutions, provided that Bank has a perfected security interest in the amounts held in such deposit and/or securities accounts; and
- (k) deposits to secure the performance of bids, tenders, trade contracts (other than for borrowed money), leases, government contracts, statutory obligations, surety, stay, customs and appeal bonds, performance and return of money bonds and other obligations of a like nature incurred in the ordinary course of business;
- (l) easements, rights-of-way, restrictions (including zoning restrictions), covenants, licenses, encroachments, protrusions and other similar charges or encumbrances or minor title deficiencies incurred in the ordinary course of business that, in the aggregate, are not substantial in amount and that do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary course of business;
- (m) any interest or title of a lessor under any operating lease entered into by Borrower or any of its Subsidiaries in the ordinary course of its business and covering only the assets so leased;
 - (n) deposits made in the ordinary course of business to secure liability for premiums to insurance carriers;
- (o) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties in connection with the importation of goods;
- (p) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business;
 - (q) Liens on assets of Foreign Subsidiaries securing Indebtedness otherwise permitted under Section 7.4(k);
 - (r) the filing of UCC financing statements solely as a precautionary measure in connection with operating leases or consignment of goods; and
- (s) Liens not otherwise permitted by Section 7.5 so long as neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate fair market value (determined as of the date such Lien is incurred) of the assets subject thereto exceeds Two Hundred Thousand Dollars (\$200,000) at any one time.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"Prime Rate" the rate of interest per annum from time to time published in the money rates section of the Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of the Wall Street Journal, becomes unavailable for any reason as determined by the Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

"Prime Rate Margin" is the basis points set forth below applicable to Borrower as determined by Borrower's Liquidity Coverage Ratio:

Liquidity Coverage Ratio
Equal to or Greater than 2.00 to 1.00
Less than 2.00 to 1.00`

Loan Margin 100 basis points 125 basis points

"Ratio Event" means at any time that Borrower's Liquidity Coverage Ratio is less than 2.00 to 1.00.

"Registered Organization" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made

"Requirement of Law" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Reserves" means, as of any date of determination, such amounts as Bank may from time to time establish and revise in its good faith business judgment, reducing the amount of Advances and other financial accommodations which would otherwise be available to Borrower (a) to reflect events, conditions, contingencies or risks which, as determined by Bank in its good faith business judgment, do or may adversely affect (i) the Collateral or any other property which is security for the Obligations or its value (including without limitation any increase in delinquencies of Accounts), (ii) the assets, business or prospects of Borrower or any Guarantor, or (iii) the security interests and other rights of Bank in the Collateral (including the enforceability, perfection and priority thereof); or (b) to reflect Bank's good faith belief that any collateral report or financial information furnished by or on behalf of Borrower or any Guarantor to Bank is or may have been incomplete, inaccurate or misleading in any material respect; or (c) in respect of any state of facts which Bank determines in good faith constitutes an Event of Default or may, with notice or passage of time or both, constitute an Event of Default.

"Responsible Officer" is any of the Chief Executive Officer, President, Chief Financial Officer and Controller of Borrower.

"Restricted License" is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with the Bank's right to sell any Collateral.

"Revolving Line" is an Advance or Advances in an amount equal to Eight Million Dollars (\$8,000,000.00).

"Revolving Line Maturity Date" is August 8, 2013.

"SEC" shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

"Securities Account" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"Settlement Date" is defined in Section 2.1.3.

"Subordinated Debt" is indebtedness incurred by Borrower subordinated to all of Borrower's now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

"Subsidiary" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

"Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"Transaction Report" is that certain report of transactions and schedule of collections in the form attached hereto as Exhibit C.

"Transfer" is defined in Section 7.1.

"Unused Revolving Line Facility Fee" is defined in Section 2.4(d).

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

OVERLAND STORAGE, INC.

Name: /s/ Kurt L. Kalbfleisch
Kurt L. Kalbfleisch

Title: Vice President, Finance and CFO

BANK:

SILICON VALLEY BANK

By /s/ Jean Lee Name: Jean Lee

Title: Deal Team Lender

Signature Page to Loan and Security Agreement

SUBSIDIARIES OF THE COMPANY

Name of Subsidiary	Place of Incorporation
Overland Storage (Europe) Ltd.	United Kingdom
Overland Storage SARL	France
Overland Storage GmbH	Germany

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Form S-3 (No. 333-105414, No. 333-111270, No. 333-161881, No. 333-165661 and No. 333-173542) and Form S-8 (No. 333-22217, No. 333-41754, No. 333-53380, No. 333-75060, No. 333-111275, No. 333-121375, No. 333-139064, No. 333-148458, No. 333-164846 and No. 333-173544) of Overland Storage, Inc. of our report dated September 13, 2011 relating to the consolidated financial statements, which appears in this Form 10–K.

/s/ Moss Adams LLP

San Diego, California September 13, 2011

Certifications

I, Eric L. Kelly, certify that:

- 1. I have reviewed this annual report on Form 10-K of Overland Storage, Inc.;
- 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 13, 2011

s/ Eric L. Kelly

Eric L. Kelly, Chief Executive Officer (Principal Executive Officer)

Certifications

I, Kurt L. Kalbfleisch, certify that:

- 1. I have reviewed this annual report on Form 10-K of Overland Storage, Inc.;
- 2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation;
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 13, 2011

/s/ KURT L. KALBFLEISCH

Kurt L. Kalbfleisch, Vice President and Chief Financial Officer (Principal Financial Officer)

CERTIFICATION REQUIRED BY SECTION 1350 OF TITLE 18 OF THE UNITED STATES CODE

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, each of the undersigned hereby certifies in his capacity as an officer of Overland Storage, Inc. (the Company), that, to the best of his knowledge, the Annual Report of the Company on Form 10-K for the fiscal year ended July 3, 2011 fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934, and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods presented in the financial statements included in such report.

Dated: September 13, 2011

_	/s/ ERIC L. KELLY
Name:	Eric L. Kelly
Title:	Chief Executive Officer
Dated: September	13, 2011
_	/s/ Kurt L. Kalbfleisch
Name:	Kurt L. Kalbfleisch
Title:	Vice President and
	Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Overland Storage, Inc. and will be retained by Overland Storage, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.