

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
Form 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the Quarterly Period Ended October 27, 2013
or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from to

Commission file number 000-27999

Finisar Corporation

(Exact name of Registrant as specified in its charter)

Delaware

*(State or other jurisdiction of
incorporation or organization)*

94-3038428

*(I.R.S. Employer
Identification No.)*

**1389 Moffett Park Drive
Sunnyvale, California**

(Address of principal executive offices)

94089

(Zip Code)

**Registrant's telephone number, including area code:
408-548-1000**

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

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

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

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

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

At November 29, 2013, there were 96,128,666 shares of the registrant's common stock, \$.001 par value, issued and outstanding.

INDEX TO QUARTERLY REPORT ON FORM 10-Q
For the Quarter Ended October 27, 2013

	<u>Page</u>
<u>PART I FINANCIAL INFORMATION</u>	
<u>Item 1. Financial Statements:</u>	
Condensed Consolidated Balance Sheets as of October 27, 2013 and April 28, 2013	4
Condensed Consolidated Statements of Operations for the three and six month periods ended October 27, 2013 and October 28, 2012	5
Condensed Consolidated Statements of Comprehensive Income (Loss) for the three and six month periods ended October 27, 2013 and October 28, 2012	6
Condensed Consolidated Statements of Cash Flows for the six month periods ended October 27, 2013 and October 28, 2012	7
Notes to Condensed Consolidated Financial Statements	8
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	17
Item 3. Quantitative and Qualitative Disclosure About Market Risk	22
Item 4. Controls and Procedures	22
<u>PART II OTHER INFORMATION</u>	
Item 1. Legal Proceedings	23
Item 1A. Risk Factors	23
Item 6. Exhibits	34
Signatures	35

FORWARD LOOKING STATEMENTS

This report contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We use words like “anticipates,” “believes,” “plans,” “expects,” “future,” “intends” and similar expressions to identify these forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events; however, our business and operations are subject to a variety of risks and uncertainties, and, consequently, actual results may materially differ from those projected by any forward-looking statements. As a result, you should not place undue reliance on these forward-looking statements since they may not occur.

Certain factors that could cause actual results to differ from those projected are discussed in “Part II. Other Information, Item 1A. Risk Factors.” We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information or future events.

PART I - FINANCIAL INFORMATION

Item 1. *Financial Statements*

FINISAR CORPORATION
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share data)

	October 27, 2013	April 28, 2013
	(Unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 316,488	\$ 289,076
Accounts receivable, net of allowance for doubtful accounts of \$872 at October 27, 2013 and \$958 at April 28, 2013	186,486	149,612
Accounts receivable, other	25,890	16,538
Inventories	231,235	200,670
Deferred tax assets	1,754	1,224
Prepaid expenses	19,149	17,178
Total current assets	781,002	674,298
Property, equipment and improvements, net	231,022	201,442
Purchased intangible assets, net	11,484	14,893
Other intangible assets, net	12,103	15,564
Goodwill	90,986	90,986
Minority investments	1,841	884
Other assets	16,946	9,780
Total assets	\$ 1,145,384	\$ 1,007,847
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 98,220	\$ 77,630
Accrued compensation	48,182	31,492
Other accrued liabilities	32,943	23,533
Deferred revenue	14,235	9,182
Short-term debt	4,700	—
Current portion of convertible debt	40,015	—
Total current liabilities	238,295	141,837
Long-term liabilities:		
Convertible debt, net of current portion	—	40,015
Other non-current liabilities	12,756	13,480
Total liabilities	251,051	195,332
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 5,000,000 shares authorized, no shares issued and outstanding at October 27, 2013 and April 28, 2013	—	—
Common stock, \$0.001 par value, 750,000,000 shares authorized, 96,111,318 shares and 93,778,620 shares issued and outstanding at October 27, 2013 and April 28, 2013, respectively	96	94
Additional paid-in capital	2,377,198	2,350,146
Accumulated other comprehensive income	27,316	28,525
Accumulated deficit	(1,515,984)	(1,571,960)
Finisar Corporation stockholders' equity	888,626	806,805
Non-controlling interest	5,707	5,710
Total stockholders' equity	894,333	812,515
Total liabilities and stockholders' equity	\$ 1,145,384	\$ 1,007,847

See accompanying notes.

FINISAR CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited, in thousands, except per share data)

	<u>Three Months Ended</u>		<u>Six Months Ended</u>	
	<u>October 27, 2013</u>	<u>October 28, 2012</u>	<u>October 27, 2013</u>	<u>October 28, 2012</u>
Revenues	\$ 290,722	\$ 232,041	\$ 556,790	\$ 452,567
Cost of revenues	186,168	166,167	359,270	327,624
Amortization of acquired developed technology	1,181	2,000	2,774	3,272
Gross profit	<u>103,373</u>	<u>63,874</u>	<u>194,746</u>	<u>121,671</u>
Operating expenses:				
Research and development	44,959	39,620	88,489	77,789
Sales and marketing	12,322	10,219	24,127	20,893
General and administrative	15,388	12,919	23,728	26,261
Amortization of purchased intangibles	595	1,062	1,190	1,871
Total operating expenses	<u>73,264</u>	<u>63,820</u>	<u>137,534</u>	<u>126,814</u>
Income (loss) from operations	30,109	54	57,212	(5,143)
Interest income	282	162	499	358
Interest expense	(367)	(750)	(919)	(1,397)
Other income (expense), net	495	(101)	983	(20)
Income (loss) before income taxes and non-controlling interest	30,519	(635)	57,775	(6,202)
Provision (benefit) for income taxes	568	(1,062)	1,989	(420)
Consolidated net income (loss)	29,951	427	55,786	(5,782)
Adjust for net (income) loss attributable to non-controlling interest	14	(156)	190	(144)
Net income (loss) attributable to Finisar Corporation	<u>\$ 29,965</u>	<u>\$ 271</u>	<u>\$ 55,976</u>	<u>\$ (5,926)</u>
Net income (loss) per share attributable to Finisar Corporation common stockholders:				
Basic	\$ 0.31	\$ —	\$ 0.59	\$ (0.06)
Diluted	\$ 0.29	\$ —	\$ 0.56	\$ (0.06)
Shares used in computing net income (loss) per share:				
Basic	95,941	92,780	95,275	92,386
Diluted	103,696	94,734	102,771	92,386

See accompanying notes.

FINISAR CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(Unaudited, in thousands)

	Three Months Ended		Six Months Ended	
	October 27, 2013	October 28, 2012	October 27, 2013	October 28, 2012
Consolidated net income (loss)	\$ 29,951	\$ 427	\$ 55,786	\$ (5,782)
Other comprehensive income (loss), net of tax:				
Change in cumulative foreign currency translation adjustment	4,919	3,990	(1,209)	(2,374)
Total other comprehensive income (loss), net of tax	4,919	3,990	(1,209)	(2,374)
Total consolidated comprehensive income (loss)	34,870	4,417	54,577	(8,156)
Adjust for comprehensive (income) loss attributable to non-controlling interest, net of tax	14	(156)	190	(144)
Comprehensive income (loss) attributable to Finisar Corporation	<u>\$ 34,884</u>	<u>\$ 4,261</u>	<u>\$ 54,767</u>	<u>\$ (8,300)</u>

See accompanying notes.

FINISAR CORPORATION
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited, in thousands)

	Six Months Ended	
	October 27, 2013	October 28, 2012
Operating activities		
Consolidated net income (loss)	\$ 55,786	\$ (5,782)
Adjustments to reconcile consolidated net income (loss) to net cash provided by operating activities:		
Depreciation	28,591	25,819
Amortization	4,152	5,616
Stock-based compensation expense	19,080	18,204
Gain on sale or retirement of assets and asset disposal group	(98)	(4)
Equity in earnings of equity method investment	(309)	—
Changes in operating assets and liabilities:		
Accounts receivable	(38,949)	15,114
Inventories	(34,308)	17,110
Other assets	(13,577)	284
Deferred income taxes	(530)	(536)
Accounts payable	21,711	(2,265)
Accrued compensation	14,984	(2,182)
Other accrued liabilities	9,729	408
Deferred revenue	4,067	(2,088)
Net cash provided by operating activities	<u>70,329</u>	<u>69,698</u>
Investing activities		
Additions to property, equipment and improvements	(57,649)	(33,331)
Sale of minority investment	—	10,495
Net proceeds from sale of property and equipment and asset disposal group	426	194
Acquisitions, net of cash acquired	—	(20,580)
Net cash used in investing activities	<u>(57,223)</u>	<u>(43,222)</u>
Financing activities		
Repayments of debt	—	(3,150)
Proceeds from a bank loan	4,700	—
Proceeds from the issuance of shares under equity plans and employee stock purchase plan	9,606	4,562
Net cash provided by financing activities	<u>14,306</u>	<u>1,412</u>
Net increase in cash and cash equivalents	27,412	27,888
Cash and cash equivalents at beginning of period	289,076	234,544
Cash and cash equivalents at end of period	<u>\$ 316,488</u>	<u>\$ 262,432</u>
Supplemental disclosure of cash flow information		
Cash paid for interest	\$ 1,000	\$ 1,011
Cash paid for taxes	\$ 1,066	\$ 1,315

See accompanying notes.

FINISAR CORPORATION
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements as of October 27, 2013 and for the three and six month periods ended October 27, 2013 and October 28, 2012 have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") for interim financial statements and pursuant to the rules and regulations of the Securities and Exchange Commission (the "SEC"), and include the accounts of Finisar Corporation and its controlled subsidiaries (collectively, "Finisar" or the "Company"). Non-controlling interest represents the minority shareholders' proportionate share of the net assets and results of operations of the Company's majority-owned subsidiary. Intercompany accounts and transactions have been eliminated in consolidation. Certain information and footnote disclosures normally included in annual financial statements prepared in accordance with U.S. GAAP and pursuant to the rules and regulations of the SEC have been condensed or omitted pursuant to such rules and regulations. In the opinion of management, the unaudited condensed consolidated financial statements reflect all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of the Company's financial position as of October 27, 2013, its operating results for the three and six month periods ended October 27, 2013 and October 28, 2012, and its cash flows for the six month periods ended October 27, 2013 and October 28, 2012. Operating results for the three and six month periods ended October 27, 2013 are not necessarily indicative of the results that may be expected for the fiscal year ending April 27, 2014. The condensed consolidated balance sheet as of April 28, 2013 has been derived from the audited consolidated financial statements as of that date but does not include all the footnotes required by U.S. GAAP for complete financial statements. These unaudited condensed consolidated financial statements should be read in conjunction with the Company's audited consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the fiscal year ended April 28, 2013.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from these estimates.

Segments

The Company has one reportable segment consisting of optical subsystems and components.

2. Summary of Significant Accounting Policies

For a description of significant accounting policies, see Note 2, Summary of Significant Accounting Policies to the consolidated financial statements included in the Company's annual report on Form 10-K for the fiscal year ended April 28, 2013. There have been no material changes to the Company's significant accounting policies since the filing of the annual report on Form 10-K.

Pending Adoption of New Accounting Standards

From time to time, new accounting pronouncements are issued by the Financial Accounting Standards Board ("FASB") or other standards setting bodies that are adopted by the Company as of the specified effective date. The Company believes the impact of recently issued standards that are not yet effective will not have a material impact on its consolidated financial position, results of operations and cash flows upon adoption.

3. Acquisition of Red-C Optical Networks, Inc.

During the first quarter of fiscal 2013, the Company completed the acquisition of Red-C Optical Networks, Inc., ("Red-C"), a Delaware corporation, with subsidiary operations in Tel Aviv, Israel, engaged in research, development and marketing of optical amplifiers and subsystems for the wavelength division multiplexing, or WDM, sector of the optical communication market. For additional information regarding this acquisition, see Note 4, Acquisitions, to the consolidated financial statements included in the Company's annual report on Form 10-K for the fiscal year ended April 28, 2013.

4. Net Income (Loss) per Share

Basic net income (loss) per share has been computed using the weighted-average number of shares of common stock outstanding during the period. Diluted net income (loss) per share has been computed using the weighted-average number of shares of common stock and dilutive potential common shares from stock options, restricted stock units and warrants (under the treasury stock method) and convertible notes (on an as-if-converted basis) outstanding during the period.

The following table presents the calculation of basic and diluted net income (loss) per share:

<i>(in thousands, except per share amounts)</i>	Three Months Ended		Six Months Ended	
	October 27, 2013	October 28, 2012	October 27, 2013	October 28, 2012
Numerator:				
Net income (loss) attributable to Finisar Corporation	\$ 29,965	\$ 271	\$ 55,976	\$ (5,926)
Numerator for basic net income (loss) per share	29,965	271	55,976	(5,926)
Effect of dilutive securities:				
Convertible debt interest expense	539	—	1,079	—
Numerator for diluted net income (loss) per share	\$ 30,504	\$ 271	\$ 57,055	\$ (5,926)
Denominator:				
Denominator for basic net income (loss) per share - weighted average shares	95,941	92,780	95,275	92,386
Effect of dilutive securities:				
Employee stock options and restricted stock units	4,007	1,919	3,748	—
Warrants	—	35	—	—
Convertible debt	3,748	—	3,748	—
Dilutive potential common shares	7,755	1,954	7,496	—
Denominator for diluted net income (loss) per share	103,696	94,734	102,771	92,386
Net income (loss) per share attributable to Finisar Corporation common stockholders:				
Basic	\$ 0.31	\$ —	\$ 0.59	\$ (0.06)
Diluted	\$ 0.29	\$ —	\$ 0.56	\$ (0.06)

The following table presents common shares related to potentially dilutive securities excluded from the calculation of diluted net income (loss) per share as their effect would have been anti-dilutive:

<i>(in thousands)</i>	Three Months Ended		Six Months Ended	
	October 27, 2013	October 28, 2012	October 27, 2013	October 28, 2012
Exercise of stock options and restricted stock units	722	2,083	1,060	4,449
Conversion of 5% convertible senior notes due 2029	—	3,748	—	3,748
Exercise of warrants	—	—	—	35
	722	5,831	1,060	8,232

[Table of Contents](#)

Estimated remaining amortization expense for the next five fiscal years and thereafter is as follows (in thousands):

Year	Amount
2014 (remainder of year)	\$ 3,587
2015	6,287
2016	6,092
2017	4,065
2018	2,149
2019 and beyond	1,407
Total	\$ 23,587

8. Debt

Korean Bank Loan

During the second quarter of fiscal 2014, the Company's Korean subsidiary entered into a loan agreement with a Korean bank. Under this agreement, the subsidiary borrowed a total of \$4.7 million at an interest rate of 4.17% per annum. The interest is payable monthly and the principal is payable in September 2014. The loan is secured by the subsidiary's fixed assets.

Convertible Debt

The terms of the Company's 5% Convertible Senior Notes due 2029 (the "2029 Notes") include a provision that allows the holders to require the Company to redeem, for cash, any of their notes on October 15, 2014 at a redemption price equal to 100% of the principal amount of the notes being redeemed, plus accrued and unpaid interest up to, but excluding, the redemption date. Accordingly, all \$40.0 million of the 2029 Notes principal amount outstanding as of October 27, 2013 was classified as a current liability as of that date.

9. Minority Investments

Included in minority investments at both October 27, 2013 and April 28, 2013 is \$884,000 representing the carrying value of the Company's minority investment in one privately held company accounted for under the cost method. Additionally, included in minority investments is \$957,000 and \$0 at October 27, 2013 and April 28, 2013, respectively, representing the carrying value of the Company's minority investment in one privately held company accounted for under the equity method. At October 27, 2013, the Company had a 19.9% ownership interest in this company. For the three and six months ended October 27, 2013, the Company recorded income of \$130,000 and \$309,000, respectively, representing its share of the net income of this minority investee, which was included in other income (expense), net in the accompanying condensed consolidated statements of operations.

10. Warranty

The Company generally offers a one-year limited warranty for its products. The specific terms and conditions of these warranties vary depending upon the product sold. The Company estimates the costs that may be incurred under its basic limited warranty and records a liability for the amount of such costs at the time revenue is recognized. Factors that affect the Company's warranty liability include the historical and anticipated rates of warranty claims and cost to repair. The Company periodically assesses the adequacy of its recorded warranty liabilities and adjusts the amounts as necessary.

Changes in the Company's warranty liability during the following period were as follows:

<i>(in thousands)</i>	Six Months Ended
	October 27, 2013
Beginning balance at April 28, 2013	\$ 4,155
Additions during the period based on product sold	3,230
Change in estimate	(1,137)
Settlements and expirations	(1,216)
Ending balance at October 27, 2013	\$ 5,032

11. Fair Value of Financial Instruments

The following disclosure of the estimated fair value of financial instruments presents amounts that have been determined using available market information and appropriate valuation methodologies. The estimated fair values of the Company's financial instruments as of October 27, 2013 and April 28, 2013 were as follows (in thousands):

<i>(in thousands)</i>	October 27, 2013					April 28, 2013				
	Carrying Amount	Level 1	Level 2	Level 3	Fair Value	Carrying Amount	Level 1	Level 2	Level 3	Fair Value
Financial assets:										
Cash equivalents	\$ 157	\$ 157	\$ —	\$ —	\$ 157	\$ 157	\$ 157	\$ —	\$ —	\$ 157
Total	\$ 157	\$ 157	\$ —	\$ —	\$ 157	\$ 157	\$ 157	\$ —	\$ —	\$ 157
Financial liabilities:										
Convertible debt	\$ 40,015	\$ 88,849	\$ —	\$ —	\$ 88,849	\$ 40,015	\$ 59,931	\$ —	\$ —	\$ 59,931
Short-term debt	4,700	—	4,700	—	4,700	—	—	—	—	—
Total	\$ 44,715	\$ 88,849	\$ 4,700	\$ —	\$ 93,549	\$ 40,015	\$ 59,931	\$ —	\$ —	\$ 59,931

Cash equivalents - Cash equivalents consist of the Company's investments in money market funds. These investments are measured and recorded at fair value on a recurring basis. The fair value of these cash equivalents approximates their carrying value.

Convertible debt - The fair value of the 5% Convertible Senior Notes due 2029 is based on the market price in the open market as of or close to the respective dates. The difference between the carrying value and the fair value is primarily due to the spread between the conversion price and the market value of the shares underlying the conversion.

Short-term debt - The fair value of short-term debt is determined by discounting the contractual cash flows at the current interest rates charged for similar debt instruments.

The Company has not estimated the fair value of its minority investments in two privately held companies as it is not practicable to estimate the fair value of these investments because of the lack of quoted market prices and the inability to estimate fair value without incurring excessive costs. As of October 27, 2013, the carrying value of the Company's minority investments in these privately held companies was \$1.8 million, which management believes is not impaired.

12. Stockholders' Equity

The Company's share-based compensation expense was recorded in the following cost and expense categories:

<i>(in thousands)</i>	Three Months Ended		Six Months Ended	
	October 27, 2013	October 28, 2012	October 27, 2013	October 28, 2012
Cost of revenues	\$ 2,176	\$ 1,747	\$ 4,023	\$ 3,066
Research and development	3,847	3,169	7,106	5,922
Sales and marketing	1,323	948	2,431	1,956
General and administrative	2,620	2,911	4,951	5,647
Total	\$ 9,966	\$ 8,775	\$ 18,511	\$ 16,591

The number of shares of common stock issued or becoming vested under the Company's stock compensation plans was as follows:

	Three Months Ended		Six Months Ended	
	October 27, 2013	October 28, 2012	October 27, 2013	October 28, 2012
Employee stock purchase plan	—	—	340,657	339,304
Exercises of stock options	312,230	57,370	524,744	112,544
Restricted stock units vesting	113,177	108,503	1,605,406	1,033,431

As of October 27, 2013, total compensation expense, net of estimated forfeitures, related to unvested stock options and unvested restricted stock units not yet recognized was approximately \$78.0 million, which is expected to be recognized in the Company's operating results over a weighted average period of 33 months.

The total share-based compensation capitalized as part of inventory as of October 27, 2013 was \$2.0 million.

13. Income Taxes

The Company recorded a provision and a benefit for income taxes of \$568,000 and \$1.1 million, respectively, for the three months ended October 27, 2013 and October 28, 2012 and a provision and a benefit for income taxes of \$2.0 million and \$420,000, respectively, for the six months ended October 27, 2013 and October 28, 2012. The income tax provisions for the three and six months ended October 27, 2013 include state taxes and foreign income taxes arising in certain foreign jurisdictions in which the Company conducts business. The income tax benefits recognized in the three and six months ended October 28, 2012 were primarily a result of the release of a valuation allowance in one of the foreign jurisdictions in which the Company conducts business.

The Company records a valuation allowance against its deferred tax assets for each period in which management concludes that it is more likely than not that the deferred tax assets will not be realized. Realization of the Company's net deferred tax assets is dependent upon future taxable income, the amount and timing of which are uncertain. Due to U.S. operating losses in previous years and continuing U.S. earnings volatility, management has established and maintained a full valuation allowance for the U.S. deferred tax assets, which comprise approximately 95% of total deferred tax assets as of October 27, 2013, which management does not believe are more likely than not to be realized in future periods.

Utilization of the Company's net operating loss and tax credit carryforwards may be subject to a substantial annual limitation due to the ownership change limitations set forth by Internal Revenue Code Sections 382 and 383 and similar state provisions. Such an annual limitation could result in the expiration of the net operating loss and tax credit carryforwards before full utilization.

14. Pending Litigation

The Company is a party to several pending legal proceedings described below. In each of these proceedings in which the Company is a defendant, the Company believes that it has strong defenses and intends to vigorously defend the action. As of the date of this report, the Company does not believe it is reasonably possible that losses related to any of these cases have been incurred in excess of the amounts, if any, that have been accrued as of October 27, 2013. However, the litigation process is inherently uncertain, and accordingly, the Company cannot predict the outcome of any of these matters with certainty. Future developments in one or more of these matters may cause the Company to revise its estimates and related accruals in future periods.

Class Action and Shareholder Derivative Litigation

March 8, 2011 Earnings Announcement Cases

Several securities class action lawsuits related to the Company's March 8, 2011 earnings announcement alleging claims under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 have been filed in the United States District Court for the Northern District of California on behalf of a purported class of persons who purchased stock between December 1 or 2, 2010 through March 8, 2011. The named defendants are the Company and its Chairman of the Board, Chief Executive Officer and Chief Financial Officer. To date, no specific amount of damages have been alleged. The cases were consolidated, lead plaintiffs were appointed and a consolidated complaint was filed. The Company filed a motion to dismiss the case. On January 16, 2013, the District Court granted the Company's motion to dismiss and granted the lead plaintiffs leave to amend the consolidated complaint. An amended consolidated complaint was filed on February 6, 2013. Thereafter, the Company filed a renewed motion to dismiss the case. On September 30, 2013, the District Court granted the Company's motion and dismissed the case with prejudice. On October 25, 2013, the lead plaintiffs filed a notice of appeal of the District Court's dismissal ruling.

In addition, two purported shareholder derivative lawsuits related to the Company's March 8, 2011 earnings announcement have been filed in the California Superior Court for the County of Santa Clara, and a third derivative lawsuit has been filed in the United States District Court for the Northern District of California. The complaints assert claims for alleged breach of fiduciary duty, unjust enrichment, and waste on behalf of the Company. Named as defendants are the members of the Company's board of directors, including the Company's Chairman of the Board and Chief Executive Officer, and its Chief Financial Officer. No specific amount of damages has been alleged and, by the derivative nature of the lawsuits, no damages will be alleged, against the Company. The state court cases have been consolidated and a lead plaintiff has been appointed to file a consolidated complaint. To date, the cases have been stayed pending a ruling in the class action case. Following the

[Table of Contents](#)

September 30 ruling dismissing the class action case referenced above, the parties in both the federal and state derivative cases are assessing whether and how to proceed.

Stock Option Cases

On November 30, 2006, the Company announced that it had undertaken a voluntary review of its historical stock option grant practices subsequent to its initial public offering in November 1999. The review was initiated by senior management, and preliminary results of the review were discussed with the Audit Committee of the Company's board of directors. Based on the preliminary results of the review, senior management concluded, and the Audit Committee agreed, that it was likely that the measurement dates for certain stock option grants differed from the recorded grant dates for such awards and that the Company would likely need to restate its historical financial statements to record non-cash charges for compensation expense relating to some past stock option grants. The Audit Committee thereafter conducted a further investigation and engaged independent legal counsel and financial advisors to assist in that investigation. The Audit Committee concluded that measurement dates for certain option grants differed from the recorded grant dates for such awards. The Company's management, in conjunction with the Audit Committee, conducted a further review to finalize revised measurement dates and determine the appropriate accounting adjustments to its historical financial statements. The announcement of the investigation resulted in delays in filing the Company's quarterly reports on Form 10-Q for the quarters ended October 29, 2006, January 28, 2007, and January 27, 2008, and the Company's annual report on Form 10-K for the fiscal year ended April 30, 2007. On December 4, 2007, the Company filed all four of these reports which included revised financial statements.

Following the Company's announcement on November 30, 2006 that the Audit Committee of the board of directors had voluntarily commenced an investigation of the Company's historical stock option grant practices, the Company was named as a nominal defendant in several shareholder derivative cases. These cases have been consolidated into two proceedings pending in federal and state courts in California. The federal court cases have been consolidated in the United States District Court for the Northern District of California. The state court cases have been consolidated in the Superior Court of California for the County of Santa Clara. The plaintiffs in all cases have alleged that certain of the Company's current or former officers and directors caused the Company to grant stock options at less than fair market value, contrary to the Company's public statements (including its financial statements), and that, as a result, those officers and directors are liable to the Company. No specific amount of damages has been alleged, and by the nature of the lawsuits, no damages will be alleged against the Company. The state court action has been stayed pending resolution of the consolidated federal court action. On June 12, 2007, the plaintiffs in the federal court case filed an amended complaint to reflect the results of the stock option investigation announced by the Audit Committee in June 2007. On August 28, 2007, the Company and the individual defendants filed motions to dismiss the complaint. On January 11, 2008, the Court granted the motions to dismiss, with leave to amend. On May 12, 2008, the plaintiffs filed an amended complaint. The Company and the individual defendants filed motions to dismiss the amended complaint on July 1, 2008. The Court granted the motions to dismiss on September 22, 2009, and entered judgment in favor of the defendants. The plaintiffs appealed the judgment to the United States Court of Appeals for the Ninth Circuit. On April 26, 2011, a panel of the Ninth Circuit reversed the District Court ruling and remanded the case to the District Court for further proceedings. The individual defendants filed additional motions to dismiss the case in the District Court. On July 12, 2012, the District Court issued an order granting the motion as to certain claims and individual defendants, with leave to amend except as to certain defendants, and denying the motion as to other claims and individual defendants.

On June 27, 2013, the parties, through their respective counsel, executed a stipulation of settlement and related documents formalizing a settlement agreement that covers all of the above-referenced federal and state cases. The stipulation of settlement provided that, subject to approval by the District Court, the Company would be entitled to receive payments totaling \$12.5 million from its insurance carriers and \$250,000 from certain individual defendants and would be obligated to make a payment of \$6.3 million to plaintiffs' counsel. In addition, under the terms of the settlement, the insurers would release any rights to recoup approximately \$3.0 million previously advanced for defense costs. On August 9, 2013, the District Court issued an order preliminarily approving the proposed settlement and scheduling a hearing on October 18, 2013 for consideration of final approval. Following the District Court's preliminary approval, the Company assessed the likelihood of final approval as probable, and accordingly, recognized the recovery of previously incurred direct costs related to the litigation of \$12.75 million as an offset to general and administrative expenses and a charge of \$6.3 million for the payment to plaintiffs' counsel as general and administrative expense in the first quarter of fiscal 2014. On October 18, 2013, the District Court granted final approval of the settlement.

Cheetah Omni Litigation

Customer Texas Litigation

On July 29, 2011, Cheetah Omni LLC filed a complaint for patent infringement in the United States District Court for the Eastern District of Texas against Alcatel-Lucent USA Inc., Alcatel-Lucent Holdings, Inc., Ciena Corporation, Ciena Communications, Inc., Fujitsu Network Communications, Inc., Tellabs, Inc., Tellabs Operations, Inc., Tellabs North America,

[Table of Contents](#)

Inc., Nokia Siemens Networks US LLC, Huawei Technologies USA, Inc. and Huawei Device USA, Inc. Finisar was not named as a defendant in the lawsuit. However, the named defendants or entities affiliated with them are Finisar customers. The complaint alleges that certain ROADM products of the named defendants infringe one or more of seven Cheetah Omni patents. With respect to two of the seven patents, the Company understands Cheetah Omni to be asserting infringement by the customer defendants making, using, offering for sale, selling, and/or importing into the United States certain ROADM products that include a Finisar wavelength selective switch (WSS). Finisar has no specific information regarding whether the claims of infringement with respect to the remaining five asserted Cheetah Omni patents implicate any Finisar products.

Finisar has received a request for indemnification from all six customer defendants with respect to the two patents mentioned above. The Company is currently evaluating the requests for indemnification. On November 19, 2012, the United States District Court in the Finisar Michigan litigation described below issued an order enjoining Cheetah Omni from continuing to pursue its claims against Finisar customers in the Texas litigation with respect to the two patents asserted against products containing a Finisar WSS. As a result, these Texas claims have been stayed pending the outcome of the Michigan litigation. If such a stay is later lifted, the Company expects that the defendant customers will defend the lawsuit vigorously at least with respect to the claims that implicate any Finisar products. However, there can be no assurance that they will be successful in their defense and, if they are not successful with respect to the two patents mentioned above, Finisar may be liable to indemnify the accused customers for significant costs and damages. Even if the defense is successful, the Company may incur substantial legal fees and other costs in defending and/or aiding in the defense of the lawsuit with respect to the two patents mentioned above. Further, the lawsuit could divert the efforts and attention of the Company's management and technical personnel, which could harm its business.

Finisar Michigan Litigation

On December 23, 2011, the Company filed a declaratory judgment action in the United States District Court for the Eastern District of Michigan seeking a declaration of invalidity and non-infringement by Finisar and its customers of four Cheetah Omni patents, including the two patents implicating the Company's WSS that are asserted against Finisar customers in the case described above that is currently pending in the Eastern District of Texas. On February 27, 2012, Cheetah Omni filed its answer to the complaint in which it denied the allegations of invalidity with respect to the four patents at issue. However, in its initial answer Cheetah Omni did not deny any of the allegations of non-infringement in the Company's complaint. Cheetah Omni also did not include any counterclaims. Before Cheetah Omni's answer was filed, on February 24, 2012, the Company filed a motion seeking to enjoin Cheetah Omni's pending claims implicating the Company's WSS asserted against the Company's customers in the Eastern District of Texas case described above and for leave to file a motion for summary judgment of non-infringement. This motion with respect to the requested injunction was granted on November 19, 2012 as described above with respect to the customer Michigan litigation. The motion for leave to file a motion for summary judgment has been denied pending completion of claim construction. After Cheetah Omni's answer was filed, the Company filed a motion for judgment on the pleadings in favor of the Company, and Cheetah Omni filed a motion requesting permission to add counterclaims of infringement by the Company's WSS devices. The motion for judgment on the pleadings was denied. The motion for permission to add counterclaims of infringement was granted, and Cheetah Omni thereafter added claims accusing the Company's WSS devices of infringement of the two Cheetah Omni patents. The Company intends to defend the counterclaims vigorously. However, there can be no assurance that the defense will be successful and, if the defense is not successful, Finisar may be liable for substantial damages, including possible indemnification obligations to the Company's customers. Even if the defense is successful, the Company may incur substantial legal fees and other costs in defending the counterclaims. Further, the lawsuit could divert the efforts and attention of the Company's management and technical personnel, which could harm its business.

Thomas Swan Litigation

On February 26, 2013, Thomas Swan & Co. Ltd. filed a complaint for patent infringement in the United States District Court for the Eastern District of Texas against the Company. The complaint alleges that Finisar's WSS products, ROADM line cards containing a Finisar WSS, and Waveshaper products infringe four related Thomas Swan patents. The Company's customer, Fujitsu Network Communications, has been added as a co-defendant in this lawsuit. The Company has performed a review of the asserted patents and believes that the patent claims are not infringed and/or invalid. The Company intends to defend this lawsuit vigorously. However, there can be no assurance that the defense will be successful and, if the defense is not successful, Finisar may be liable for substantial damages, including possible indemnification obligations to the Company's customers. Even if the defense is successful, the Company may incur substantial legal fees and other costs in defending the counterclaims. Further, the lawsuit could divert the efforts and attention of the Company's management and technical personnel, which could harm its business. Trial in this case has been scheduled for February 2, 2015.

Mears Technologies Litigation

On May 6, 2013, Mears Technologies, Inc. filed a complaint for patent infringement in the United States District Court for the Eastern District of Texas against the Company. The complaint alleges that Finisar's WSS products, ROADM line cards containing a Finisar WSS, and Waveshaper products infringe a Mears Technologies patent. The Company has performed an initial review of the asserted patent and believes that the patent claims are not infringed and/or are invalid. The Company intends to defend this lawsuit vigorously. However, there can be no assurance that the defense will be successful and, if the defense is not successful, Finisar may be liable for substantial damages, including possible indemnification obligations to the Company's customers. Even if the defense is successful, the Company may incur substantial legal fees and other costs in defending the counterclaims. Further, the lawsuit could divert the efforts and attention of the Company's management and technical personnel, which could harm its business. Trial in this case has been scheduled for December 1, 2014.

Other

In the ordinary course of business, the Company is a party to litigation, claims and assessments in addition to those described above. Based on information currently available, management does not believe the impact of these other matters will have a material adverse effect on its business, financial condition, results of operations or cash flows of the Company.

15. Guarantees and Indemnifications

Upon issuance of a guarantee, the guarantor must recognize a liability for the fair value of the obligations it assumes under that guarantee. As permitted under Delaware law and in accordance with the Company's Bylaws, the Company indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at the Company's request in such capacity. The term of the indemnification period is for the officer's or director's lifetime. The Company may terminate the indemnification agreements with its officers and directors upon 90 days written notice, but termination will not affect claims for indemnification relating to events occurring prior to the effective date of termination. The maximum amount of potential future indemnification is unlimited; however, the Company has a director and officer liability insurance policy that may enable it to recover a portion of any future amounts paid.

The Company enters into indemnification obligations under its agreements with other companies in its ordinary course of business, including agreements with customers, business partners and insurers. Under these provisions the Company generally indemnifies and holds harmless the indemnified party for losses suffered or incurred by the indemnified party as a result of the Company's activities or the use of the Company's products. These indemnification provisions generally survive termination of the underlying agreement. In some cases, the maximum potential amount of future payments the Company could be required to make under these indemnification provisions is unlimited.

The Company believes the fair value of these indemnification obligations is immaterial. Accordingly, the Company has not recorded any liabilities for these agreements as of October 27, 2013. To date, the Company has not incurred material costs to defend lawsuits or settle claims related to these indemnification agreements.

16. Related Parties

During the three and six months ended October 27, 2013, the Company paid \$50,506 and \$106,078, respectively, in cash compensation to a company owned by Guy Gertel, the brother of the Chief Executive Officer of the Company, for sales and marketing services. In addition, during the first quarter of fiscal 2014, the Company granted to Mr. Gertel, for no additional consideration, 4,164 restricted stock units with a fair market value of \$66,957, which vest as follows: 25% on June 24, 2014 and an additional 25% on each of the next three anniversaries thereafter, to be fully vested on June 24, 2017, subject to him continuing to provide services to Finisar.

During the three and six months ended October 28, 2012, the Company paid \$51,649 and \$102,224, respectively, in cash compensation to Mr. Gertel's company. In addition, during the first quarter of fiscal 2013, the Company granted to Mr. Gertel, for no additional consideration, 3,814 restricted stock units with a fair market value of \$49,086, which vest as follows: 25% on June 14, 2013 and an additional 25% on each of the next three anniversaries thereafter, to be fully vested on June 14, 2016, subject to him continuing to provide services to Finisar.

Amounts paid to Mr. Gertel represented values considered by management to be fair and reasonable, reflective of an arm's length transaction.

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

Cautionary Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. We use words like “anticipates,” “believes,” “plans,” “expects,” “future,” “intends” and similar expressions to identify these forward-looking statements. We have based these forward-looking statements on our current expectations and projections about future events; however, our business and operations are subject to a variety of risks and uncertainties, and, consequently, actual results may materially differ from those projected by any forward-looking statements. As a result, you should not place undue reliance on these forward-looking statements since they may not occur.

Certain factors that could cause actual results to differ from those projected are discussed in “Part II. Other Information, Item 1 A. Risk Factors.” We undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of new information or future events.

The following discussion should be read together with our condensed consolidated financial statements and related notes thereto included elsewhere in this report.

Business Overview

We are a leading provider of optical subsystems and components that are used in data communication and telecommunication applications. Our optical subsystems consist primarily of transmitters, receivers, transceivers, transponders and active optical cables, which provide the fundamental optical-electrical or optoelectronic interface for interconnecting the electronic equipment used in building these networks, including the switches, routers and servers used in wireline networks as well as antennas and base stations for wireless networks. These products rely on the use of semiconductor lasers and photodetectors in conjunction with integrated circuits and novel optoelectronic packaging to provide a cost-effective means for transmitting and receiving digital signals over fiber optic cable at speeds ranging from less than 1 gigabit per second, or Gbps, to more than 100 Gbps, over distances of less than 10 meters to more than 2,000 kilometers using a wide range of network protocols and physical configurations. We supply optical transceivers and transponders that allow point-to-point communications on a fiber using a single specified wavelength or, bundled with multiplexing technologies, can be used to supply multi-Gbps bandwidth over several wavelengths on the same fiber.

We also provide products known as wavelength selective switches, or WSS. In long-haul and metro networks, each fiber may carry 50 to 100 different high-speed optical wavelengths. WSS are switches that are used to dynamically switch network traffic from one optical fiber to multiple other fibers without first converting to an electronic signal. The wavelength selective feature means that WSS enable any wavelength or combination of wavelengths to be switched from the input fiber to the output fibers. WSS products are sometimes combined with other components and sold as linecards that plug into a system chassis, referred to as reconfigurable optical add/drop multiplexers, or ROADMs.

Our line of optical components consists primarily of packaged lasers and photodetectors for data communication and telecommunication applications.

Demand for our products is largely driven by the continually growing need for additional network bandwidth created by the ongoing proliferation of data and video traffic driven by video downloads, Internet protocol TV, social networking, on-line gaming, file sharing, enterprise IP/Internet traffic, cloud computing, and data center virtualization that must be handled by both wireline and wireless networks. Mobile traffic is increasing as the result of proliferation of smart phones, tablet computers, and other mobile devices.

Our manufacturing operations are vertically integrated and we produce many of the key components used in making our products including lasers, photodetectors and integrated circuits, or ICs, designed by our internal IC engineering teams. We also have internal assembly and test capabilities that make use of internally designed equipment for the automated testing of our optical subsystems and components.

We sell our optical products primarily to original equipment manufacturers (“OEMs”) of storage systems, networking equipment and telecommunication equipment such as Alcatel-Lucent, Brocade, Ciena, Cisco Systems, EMC, Emulex, Ericsson, Fujitsu, Hewlett-Packard Company, Huawei, IBM, Juniper, Nokia-Siemens, Qlogic and Tellabs, and to their contract manufacturers. These customers, in turn, sell their systems to businesses and to wireline and wireless telecommunications service providers and cable TV operators, collectively referred to as carriers.

[Table of Contents](#)

Since October 2000, we have completed the acquisition of two publicly-held companies. We have also completed the acquisition of 11 privately-held companies and certain businesses and assets from six other companies in order to broaden our product offerings and provide new sources of revenue, production capabilities and access to advanced technologies that we believe will enable us to reduce our product costs and develop innovative and more highly integrated product platforms while accelerating the timeframe required to develop such products.

Critical Accounting Policies

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make judgments, estimates and assumptions in the preparation of our consolidated financial statements and accompanying notes. Actual results could differ from those estimates. We believe there have been no significant changes in our critical accounting policies from those described in our Annual Report on Form 10-K for the fiscal year ended April 28, 2013.

Results of Operations**Revenues**

The following table sets forth changes in revenues by market application:

<i>(in thousands, except percentages)</i>	Three Months Ended		Change	% Change
	October 27, 2013	October 28, 2012		
Datacom revenue	\$ 204,257	\$ 139,842	\$ 64,415	46.1 %
Telecom revenue	86,465	92,199	(5,734)	(6.2)%
Total revenues	\$ 290,722	\$ 232,041	\$ 58,681	25.3 %

<i>(in thousands, except percentages)</i>	Six Months Ended		Change	% Change
	October 27, 2013	October 28, 2012		
Datacom revenue	\$ 388,688	\$ 279,306	\$ 109,382	39.2 %
Telecom revenue	168,102	173,261	(5,159)	(3.0)%
Total revenues	\$ 556,790	\$ 452,567	\$ 104,223	23.0 %

The increases in datacom revenue in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to an increase in market demand for our 10 Gbps and higher Ethernet transceivers as enterprises upgraded their technology infrastructure driving demand for the products of our OEM system customers and thus higher demand for our datacom module products. The decreases in telecom revenue in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to a decline in market demand for our telecom products due to sluggish spending by telecom service providers worldwide.

Amortization of Acquired Developed Technology

<i>(in thousands, except percentages)</i>	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 1,181	\$ 2,000	\$ (819)	(41.0)%
Six months ended	\$ 2,774	\$ 3,272	\$ (498)	(15.2)%

The decreases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to acquired developed technology impairment recognized in the fourth quarter of fiscal 2013.

Gross Profit

<i>(in thousands, except percentages)</i>	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 103,373	\$ 63,874	\$ 39,499	61.8%
As a percentage of revenues	35.6%	27.5%		
Six months ended	\$ 194,746	\$ 121,671	\$ 73,075	60.1%
As a percentage of revenues	35.0%	26.9%		

[Table of Contents](#)

The increases in gross margin primarily reflected a more favorable product mix in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013.

Research and Development Expenses

<i>(in thousands, except percentages)</i>	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 44,959	\$ 39,620	\$ 5,339	13.5%
Six months ended	\$ 88,489	\$ 77,789	\$ 10,700	13.8%

The increases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to increases in employee compensation related expenses, primarily as the result of additional hiring related to new product development activities.

Sales and Marketing Expenses

<i>(in thousands, except percentages)</i>	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 12,322	\$ 10,219	\$ 2,103	20.6%
Six months ended	\$ 24,127	\$ 20,893	\$ 3,234	15.5%

The increases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to increases in employee compensation related expenses primarily as the result of additional activities required as we expand our product offering and customer base.

General and Administrative Expenses

<i>(in thousands, except percentages)</i>	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 15,388	\$ 12,919	\$ 2,469	19.1%
Six months ended	\$ 23,728	\$ 26,261	\$ (2,533)	(9.6)%

The increase in general and administrative expenses in the three months ended October 27, 2013 compared to the three months ended October 28, 2012 was primarily due to an increase in employee compensation related expenses. The decrease in general and administrative expenses in the six months ended October 27, 2013 compared to the six months ended October 28, 2012 was primarily due to a net benefit of \$5.1 million recognized during the quarter ended July 28, 2013 related to the settlement of stock option derivative litigation, partially offset by an increase in employee compensation related expenses.

Amortization of Purchased Intangibles

<i>(in thousands, except percentages)</i>	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 595	\$ 1,062	\$ (467)	(44.0)%
Six months ended	\$ 1,190	\$ 1,871	\$ (681)	(36.4)%

The decreases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to purchased intangible assets' impairment recognized in the fourth quarter of fiscal 2013.

Interest Income

<i>(in thousands, except percentages)</i>	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 282	\$ 162	\$ 120	74.1%
Six months ended	\$ 499	\$ 358	\$ 141	39.4%

The increases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to higher cash balances during the fiscal 2014 periods compared to the comparable periods in fiscal 2013.

[Table of Contents](#)**Interest Expense***(in thousands, except percentages)*

	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 367	\$ 750	\$ (383)	(51.1)%
Six months ended	\$ 919	\$ 1,397	\$ (478)	(34.2)%

The decreases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to lower debt balances as a result of repayments of loans during the first quarter of fiscal 2013.

Other Income (Expense), Net*(in thousands, except percentages)*

	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 495	\$ (101)	\$ 596	590.1%
Six months ended	\$ 983	\$ 983	\$ 1,003	5,015.0%

The increases in each of the fiscal 2014 periods relative to comparable periods in fiscal 2013 were primarily due to \$573,000 of accelerated amortization of debt issuance costs related to a revolving credit facility that was terminated during the second quarter of fiscal 2013 and \$664,000 recovered from an escrow during the first quarter of fiscal 2014 related to the sale of one of our minority investments in fiscal 2012.

Non-controlling Interest*(in thousands, except percentages)*

	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 14	\$ (156)	\$ 170	109.0%
Six months ended	\$ 190	\$ (144)	\$ 334	231.9%

Non-controlling interest for the three and six months ended October 27, 2013 and October 28, 2012 represents minority shareholders' proportionate share of the net income (loss) of our majority-owned subsidiary, Finisar Korea.

Provision for Income Taxes.*(in thousands, except percentages)*

	October 27, 2013	October 28, 2012	Change	% Change
Three months ended	\$ 568	\$ (1,062)	\$ 1,630	153.5%
Six months ended	\$ 1,989	\$ (420)	\$ 2,409	573.6%

The income tax provisions for the three and six months ended October 27, 2013 primarily represent current state and foreign income taxes arising in certain jurisdictions in which we conduct business. The income tax benefits recognized in the three and six months ended October 28, 2012 were primarily a result of the release of a valuation allowance in one of the foreign jurisdictions in which we conduct business.

Liquidity and Capital Resources

	Six Months Ended	
	October 27, 2013	October 28, 2012
<i>(in millions)</i>		
Net cash provided by operating activities	\$ 70.3	\$ 69.7
Net cash used in investing activities	\$ (57.2)	\$ (43.2)
Net cash provided by financing activities	\$ 14.3	\$ 1.4

Operating Cash Flows

Net cash provided by operating activities in the six months ended October 27, 2013 consisted of our net income, as adjusted to exclude depreciation, amortization and other non-cash items totaling \$51.4 million, and a \$36.9 million increase in working capital primarily related to increases in accounts receivable and inventory, offset by an increase in accounts payable. Accounts receivable increased by \$38.9 million primarily due to the increase in revenues during the year. Inventory increased by \$34.3 million primarily due to increased purchases to support the increased sales level. Net cash provided by operating activities in the six months ended October 28, 2012 consisted of our net loss, as adjusted to exclude depreciation, amortization and other

[Table of Contents](#)

non-cash items totaling \$49.6 million, and a \$25.8 million decrease in working capital primarily related to decreases in accounts receivable and inventory. Accounts receivable decreased by \$15.1 million primarily due to strong collections during the second quarter. Inventory decreased by \$17.1 million due to usage in the manufacturing process.

Investing Cash Flows

Net cash used in investing activities in the six months ended October 27, 2013 primarily consisted of \$57.6 million of expenditures for capital equipment. Net cash used in investing activities in the six months ended October 28, 2012 consisted of \$20.6 million related to the acquisition of Red-C and \$33.3 million of expenditures for capital equipment. The increase in expenditures for capital equipment related primarily to our new manufacturing facility in Wuxi, China.

Financing Cash Flows

Net cash provided by financing activities for the six months ended October 27, 2013 primarily reflected proceeds from the issuance of shares under our employee stock option and stock purchase plans totaling \$9.6 million and proceeds from a bank loan totaling \$4.7 million. Net cash provided by financing activities for the six months ended October 28, 2012 primarily consisted of proceeds from the issuance of shares under our employee stock option and stock purchase plans totaling \$4.6 million, partially offset by repayments of borrowings totaling \$3.2 million.

Contractual Obligations and Commercial Commitments

At October 27, 2013, we had contractual obligations of \$223.4 million as shown in the following table:

<i>(in thousands)</i>	Total	Payments Due by Period			
		Less than 1 Year	1-3 Years	4-5 Years	After 5 Years
Convertible debt	\$ 40,015	\$ 40,015	\$ —	\$ —	\$ —
Interest on debt (a)	2,181	2,181	—	—	—
Short-term debt	4,700	4,700	—	—	—
Operating leases (b)	58,308	10,877	18,052	16,375	13,004
Facility construction	5,193	5,193	—	—	—
Purchase obligations (c)	112,979	112,979	—	—	—
Total contractual obligations	\$ 223,376	\$ 175,945	\$ 18,052	\$ 16,375	\$ 13,004

- (a) Includes interest through October 2014 on our 5% Convertible Senior Notes due October 2029 as we have the right to redeem the notes in whole or in part at any time on or after October 22, 2014.
- (b) Includes operating lease obligations that have been accrued as restructuring charges.
- (c) Includes open purchase orders with terms that generally allow us the option to cancel or reschedule the order.

Convertible debt consists of a series of convertible senior notes in the aggregate principal amount of \$40 million due October 15, 2029. The notes are convertible by the holders at any time prior to maturity into shares of our common stock at specified conversion prices. The notes are redeemable by us, in whole or in part, at any time on or after October 22, 2014 if the last reported sale price per share of our common stock exceeds 130% of the conversion price for at least 20 trading days within a period of 30 consecutive trading days ending within five trading days of the date on which we provide the notice of redemption. These notes are also subject to redemption by the holders in October 2014, 2016, 2019 and 2024.

Interest on debt consists of the scheduled interest payments on our convertible debt and our short-term debt.

Short-term debt consists of a bank loan to our Korean subsidiary. The loan bears interest at 4.17% per annum. Interest is payable monthly and principal is due in September 2014.

Operating lease obligations consist primarily of base rents for facilities we occupy at various locations.

Facility construction obligations consist primarily of our ongoing commitments related to construction of our manufacturing operations facility in Wuxi, China.

Purchase obligations represent all open purchase orders and contractual obligations in the ordinary course of business for which we have not received the goods or services. Although open purchase orders are considered enforceable and legally binding, their terms generally allow us the option to cancel, reschedule and adjust our requirements based on our business

[Table of Contents](#)

needs prior to the delivery of goods or performance of services. Our policy with respect to all non-cancelable purchase obligations is to record losses, if any, when they are probable and reasonably estimable.

Our subcontractors purchase materials based on forecasts provided by us. We record a liability for firm, non-cancelable and unconditional purchase commitments for quantities held by subcontractors on our behalf to fulfill the subcontractors' purchase order obligations at their facilities which are in excess of our future demand forecasts. As of October 27, 2013, the liability for these purchase commitments of \$1.8 million has been expensed and recorded on the condensed consolidated balance sheet as other accrued liabilities and is not included in the preceding table.

We believe we have made adequate provisions for potential exposure related to inventory purchases for orders that may not be utilized.

Sources of Liquidity and Capital Resource Requirements

At October 27, 2013, our principal sources of liquidity consisted of \$316.5 million of cash and cash equivalents, of which \$51.3 million was held by our foreign subsidiaries.

We believe that our existing balances of cash and cash equivalents, together with the cash expected to be generated from future operations, will be sufficient to meet our cash needs for working capital and capital expenditures for at least the next 12 months. We may, however, require additional financing to fund our operations in the future, to finance future acquisitions that we may propose to undertake or to repay or otherwise retire all of our outstanding 5% Convertible Senior Notes due 2029, in the aggregate principal amount of \$40.0 million, which are subject to redemption by the holders in October 2014, 2016, 2019 and 2024. A significant contraction in the capital markets, particularly in the technology sector, may make it difficult for us to raise additional capital if and when it is required, especially if we experience disappointing operating results. If adequate capital is not available to us as required, or is not available on favorable terms, our business, financial condition and results of operations will be adversely affected.

Off-Balance-Sheet Arrangements

At October 27, 2013 and April 28, 2013, we did not have any off-balance sheet arrangements or relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which are typically established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

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

For quantitative and qualitative disclosures about market risk affecting Finisar, see Item 7A: "Quantitative and Qualitative Disclosures about Market Risk" in our Annual Report on Form 10-K for the fiscal year ended April 28, 2013. Our exposure related to market risk has not changed materially since April 28, 2013.

Item 4. *Controls and Procedures*

Evaluation of Effectiveness of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chairman of the Board, our Chief Executive Officer and our Chief Financial Officer, we evaluated the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended. Based upon that evaluation, our Chairman of the Board, our Chief Executive Officer and our Chief Financial Officer concluded that our disclosure controls and procedures were effective as of the end of the period covered by this quarterly report.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended October 27, 2013 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II — OTHER INFORMATION

Item 1. *Legal Proceedings*

Reference is made to “Part I, Item 1, Financial Statements - Note 14. Pending Litigation” for a description of pending legal proceedings, including material developments in certain of those proceedings during the quarter ended October 27, 2013.

Item 1A. *Risk Factors*

OUR FUTURE PERFORMANCE IS SUBJECT TO A VARIETY OF RISKS, INCLUDING THOSE DESCRIBED BELOW. IF ANY OF THE FOLLOWING RISKS ACTUALLY OCCUR, OUR BUSINESS COULD BE HARMED AND THE TRADING PRICE OF OUR COMMON STOCK COULD DECLINE. YOU SHOULD ALSO REFER TO THE OTHER INFORMATION CONTAINED IN THIS REPORT, INCLUDING OUR CONDENSED CONSOLIDATED FINANCIAL STATEMENTS AND THE RELATED NOTES. THE RISK FACTORS DESCRIBED BELOW DO NOT CONTAIN ANY MATERIAL CHANGES FROM THOSE PREVIOUSLY DISCLOSED IN ITEM 1A OF OUR ANNUAL REPORT ON FORM 10-K FOR THE FISCAL YEAR ENDED APRIL 28, 2013.

Our quarterly revenues and operating results fluctuate due to a variety of factors, which may result in volatility or a decline in the price of our stock.

Our quarterly operating results have varied significantly due to a number of factors, including:

- fluctuation in demand for our products;
- the timing of new product introductions or enhancements by us and our competitors;
- the level of market acceptance of new and enhanced versions of our products;
- the timing of acquisitions that we have undertaken;
- the timing or cancellation of large customer orders;
- the length and variability of the sales cycle for our products;
- pricing policy changes by us and our competitors and suppliers;
- the availability of development funding and the timing of development revenue;
- changes in the mix of products sold;
- increased competition in product lines, and competitive pricing pressures; and
- the evolving and unpredictable nature of the markets for products incorporating our optical components and subsystems.

We expect that our operating results will continue to fluctuate in the future as a result of these factors and a variety of other factors, including:

- fluctuations in manufacturing yields;
- the emergence of new industry standards;
- failure to anticipate changing customer product requirements;
- the loss or gain of important customers;
- product obsolescence; and
- the amount of research and development expenses associated with new product introductions.

Our operating results could also be harmed by:

- the continuation or worsening of the current global economic slowdown or economic conditions in various geographic areas where we or our customers do business;
- acts of terrorism and international conflicts or domestic crises;
- other conditions affecting the timing of customer orders; or
- a downturn in the markets for our customers' products, particularly the data storage and networking and telecommunication components markets.

We may experience a delay in generating or recognizing revenues for a number of reasons. Orders at the beginning of each quarter are typically lower than expected revenues for that quarter and are generally cancelable with minimal notice. Accordingly, we depend on obtaining orders during each quarter for shipment in that quarter to achieve our revenue objectives. Failure to ship these products by the end of a quarter may adversely affect our operating results. Furthermore, our customer

[Table of Contents](#)

agreements typically provide that the customer may delay scheduled delivery dates and cancel orders within specified timeframes without significant penalty. Because we base our operating expenses on anticipated revenue trends and a high percentage of our expenses are fixed in the short term, any delay in generating or recognizing forecasted revenues could significantly harm our business. It is likely that in some future quarters our operating results will again decrease from the previous quarter or fall below the expectations of securities analysts and investors.

As a result of these factors, our operating results may vary significantly from quarter to quarter. Accordingly, we believe that period-to-period comparisons of our results of operations should not be relied upon as indications of future performance. Any shortfall in revenues or net income from the previous quarter or from levels expected by the investment community could cause a decline in the trading price of our stock.

We may lose sales if our suppliers or independent contract manufacturers fail to meet our needs or go out of business.

We currently purchase a number of key components used in the manufacture of our products from single or limited sources, and we rely on several independent contract manufacturers to supply us with certain key components and subassemblies, including lasers, modulators, and printed circuit boards. We depend on these sources to meet our production needs. Moreover, we depend on the quality of the components and subassemblies that they supply to us, over which we have limited control. Several of our suppliers are or may become financially unstable as the result of current global market conditions. In addition, from time to time we have encountered shortages and delays in obtaining components, and we may encounter additional shortages and delays in the future. If we cannot supply products due to a lack of components, or are unable to redesign products with other components in a timely manner, our business will be significantly harmed. We generally have no long-term contracts with any of our component suppliers or contract manufacturers. As a result, a supplier or contract manufacturer can discontinue supplying components or subassemblies to us without penalty. If a supplier were to discontinue supplying a key component or cease operations, the resulting product manufacturing and delivery delays could be lengthy, and our business could be substantially harmed. We are also subject to potential delays in the development by our suppliers of key components which may affect our ability to introduce new products. Similarly, disruptions in the operations of our key suppliers or in the services provided by our contract manufacturers, including disruptions due to natural disasters, or the transition to other suppliers of these key components or services could lead to supply chain problems or delays in the delivery of our products. These problems or delays could damage our relationships with our customers and adversely affect our business.

We use rolling forecasts based on anticipated product orders to determine our component and subassembly requirements. Lead times for materials and components that we order vary significantly and depend on factors such as specific supplier requirements, contract terms and current market demand for particular components. If we overestimate our component requirements, we may have excess inventory, which would increase our costs. If we underestimate our component requirements, we may have inadequate inventory, which could interrupt our manufacturing and delay delivery of our products to our customers. Any of these occurrences could significantly harm our business.

If we are unable to realize anticipated cost savings from the transfer of certain manufacturing operations to our overseas locations and increased use of internally-manufactured components our results of operations could be harmed.

As part of our ongoing initiatives to reduce the cost of revenues, we expect to realize significant cost savings through (i) the transfer of certain product manufacturing operations to lower cost off-shore locations and (ii) product engineering changes to enable the broader use of internally-manufactured components. The transfer of production to overseas locations may be more difficult and costly than we currently anticipate which could result in increased transfer costs and time delays. Further, following transfer, we may experience lower manufacturing yields than those historically achieved in our U.S. manufacturing locations. In addition, the engineering changes required for the use of internally-manufactured components may be more technically-challenging than we anticipate and customer acceptance of such changes could be delayed. If we fail to achieve the planned product manufacturing transfer and increase in internally-manufactured component use within our currently anticipated timeframe, or if our manufacturing yields decrease as a result, we may be unsuccessful in achieving cost savings or such savings will be less than anticipated, and our results of operations could be harmed.

Continued competition in our markets may lead to an accelerated reduction in our prices, revenues and market share.

The end markets for optical products have experienced significant industry consolidation during the past few years while the industry that supplies these customers has experienced less consolidation. As a result, the markets for optical subsystems and components are highly competitive. Our current competitors include a number of domestic and international companies, many of which have substantially greater financial, technical, marketing and distribution resources and brand name recognition than we have. Increased consolidation in our industry, should it occur, will reduce the number of our competitors but would be likely to further strengthen surviving industry participants. We may not be able to compete successfully against either current or

[Table of Contents](#)

future competitors. Companies competing with us may introduce products that are competitively priced, have increased performance or functionality, or incorporate technological advances and may be able to react quicker to changing customer requirements and expectations. There is also the risk that network systems vendors may re-enter the subsystem market and begin to manufacture the optical subsystems incorporated in their network systems. Increased competition could result in significant price erosion, reduced revenue, lower margins or loss of market share, any of which would significantly harm our business. Our principal competitors for data communication applications include Avago Technologies, JDS Uniphase and Opnext. Our principal competitors for telecommunication applications include JDS Uniphase, Oclaro, Opnext and Sumitomo. Our competitors continue to introduce improved products and we will have to do the same to remain competitive.

Decreases in average selling prices of our products may reduce our gross margins.

The market for optical subsystems is characterized by declining average selling prices resulting from factors such as increased competition, overcapacity, the introduction of new products and increased unit volumes as manufacturers continue to deploy network and storage systems. We have in the past experienced, and in the future may experience, substantial period-to-period fluctuations in operating results due to declining average selling prices. We anticipate that average selling prices will decrease in the future in response to product introductions by competitors or us, or by other factors, including pricing pressures from significant customers. In particular, we typically conduct pricing negotiations for our existing products with some of our largest telecommunication OEM customers in the last several months of the calendar year. Decreases in our average selling prices resulting from these negotiations typically become effective at the beginning of the next calendar year and generally have an adverse impact on our gross margins in future quarters. This impact is typically most pronounced in our fourth fiscal quarter ending in April, when the impact of the new pricing is first felt over a full quarter. In order to sustain profitable operations, we must continue to develop and introduce on a timely basis new products that incorporate features that can be sold at higher average selling prices. Failure to do so could cause our revenues and gross margins to decline, which would result in additional operating losses and significantly harm our business.

We may be unable to reduce the cost of our products sufficiently to enable us to compete with others. Our cost reduction efforts may not allow us to keep pace with competitive pricing pressures and could adversely affect our margins. In order to remain competitive, we must continually reduce the cost of manufacturing our products through design and engineering changes. We may not be successful in redesigning our products or delivering our products to market in a timely manner. We cannot assure you that any redesign will result in sufficient cost reductions to allow us to reduce the price of our products to remain competitive or improve our gross margins.

Shifts in our product mix may result in declines in gross margins.

Gross margins on individual products fluctuate over the product's life cycle. Our overall gross margins have fluctuated from period to period as a result of shifts in product mix, the introduction of new products, decreases in average selling prices for older products and our ability to reduce product costs, and these fluctuations are expected to continue in the future.

Failure to accurately forecast our revenues could result in additional charges for obsolete or excess inventories or non-cancelable purchase commitments.

We base many of our operating decisions, and enter into purchase commitments, on the basis of anticipated revenue trends which are highly unpredictable. Some of our purchase commitments are not cancelable, and in some cases we are required to recognize a charge representing the amount of material or capital equipment purchased or ordered which exceeds our actual requirements. In the past, we have periodically experienced significant growth followed by a significant decrease in customer demand such as occurred in fiscal 2001, when revenues increased by 181% followed by a decrease of 22% in fiscal 2002. Based on projected revenue trends during these periods, we acquired inventories and entered into purchase commitments in order to meet anticipated increases in demand for our products which did not materialize. As a result, we recorded significant charges for obsolete and excess inventories and non-cancelable purchase commitments which contributed to substantial operating losses in fiscal 2002. Should revenues in future periods again fall substantially below our expectations, or should we fail again to accurately forecast changes in demand mix, we could again be required to record substantial charges for obsolete or excess inventories or non-cancelable purchase commitments.

If we encounter sustained yield problems or other delays in the production or delivery of our internally-manufactured components or in the final assembly and test of our products, we may lose sales and damage our customer relationships.

Our manufacturing operations are highly vertically integrated. In order to reduce our manufacturing costs, we have acquired a number of companies, and business units of other companies that manufacture optical components incorporated in our optical subsystem products and have developed our own facilities for the final assembly and testing of our products. For example, we

[Table of Contents](#)

design and manufacture many critical components incorporated in transceivers used for data communication and telecommunication applications, including all of the short wavelength VCSEL lasers, at our wafer fabrication facility in Allen, Texas and manufacture a portion of our internal requirements for longer wavelength lasers at our wafer fabrication facility in Fremont, California. We assemble and test most of our transceiver products at our facility in Ipoh, Malaysia. As a result of this vertical integration, we have become increasingly dependent on our internal production capabilities. The manufacture of critical components, including the fabrication of wafers, and the assembly and testing of our products, involve highly complex processes. For example, minute levels of contaminants in the manufacturing environment, difficulties in the fabrication process or other factors can cause a substantial portion of the components on a wafer to be nonfunctional. These problems may be difficult to detect at an early stage of the manufacturing process and often are time-consuming and expensive to correct. From time to time, we have experienced problems achieving acceptable yields at our wafer fabrication facilities, resulting in delays in the availability of components. Moreover, an increase in the rejection rate of products during the quality control process before, during or after manufacture, results in lower yields and margins. In addition, changes in manufacturing processes required as a result of changes in product specifications, changing customer needs and the introduction of new product lines have historically significantly reduced our manufacturing yields, resulting in low or negative margins on those products. Poor manufacturing yields over a prolonged period of time could adversely affect our ability to deliver our subsystem products to our customers and could also affect our sale of components to customers in the merchant market. Our inability to supply components to meet our internal needs could harm our relationships with customers and have an adverse effect on our business.

The markets for our products are subject to rapid technological change, and to compete effectively we must continually introduce new products that achieve market acceptance.

The markets for our products are characterized by rapid technological change, frequent new product introductions, substantial capital investment, changes in customer requirements and evolving industry standards with respect to the protocols used in data communication and telecommunication networks. Our future performance will depend on the successful development, introduction and market acceptance of new and enhanced products that address these changes as well as current and potential customer requirements. For example, the market for optical subsystems is currently characterized by a trend toward the adoption of “pluggable” modules and subsystems that do not require customized interconnections and by the development of more complex and integrated optical subsystems. We expect that new technologies will emerge as competition and the need for higher and more cost-effective bandwidth increases. The introduction of new and enhanced products may cause our customers to defer or cancel orders for existing products. In addition, a slowdown in demand for existing products ahead of a new product introduction could result in a write-down in the value of inventory on hand related to existing products and/or a charge for the impairment of long-lived assets related to such products. We have in the past experienced a slowdown in demand for existing products and delays in new product development and such delays may occur in the future. To the extent customers defer or cancel orders for existing products due to a slowdown in demand or in the expectation of a new product release or if there is any delay in development or introduction of our new products or enhancements of our products, our operating results would suffer. We also may not be able to develop the underlying core technologies necessary to create new products and enhancements, or to license these technologies from third parties. Product development delays may result from numerous factors, including:

- changing product specifications and customer requirements;
- unanticipated engineering complexities;
- expense reduction measures we have implemented, and others we may implement, to conserve our cash and attempt to achieve and sustain profitability;
- difficulties in hiring and retaining necessary technical personnel;
- difficulties in reallocating engineering resources and overcoming resource limitations; and
- changing market or competitive product requirements.

The development of new, technologically advanced products is a complex and uncertain process requiring high levels of innovation and highly skilled engineering and development personnel, as well as the accurate anticipation of technological and market trends. The introduction of new products also requires significant investment to ramp up production capacity, for which benefit will not be realized if customer demand does not develop as expected. Ramping of production capacity also entails risks of delays which can limit our ability to realize the full benefit of the new product introduction. We cannot assure you that we will be able to identify, develop, manufacture, market or support new or enhanced products successfully, if at all, or on a timely basis. Further, we cannot assure you that our new products will gain market acceptance or that we will be able to respond effectively to product announcements by competitors, technological changes or emerging industry standards. Any failure to respond to technological change would significantly harm our business.

[Table of Contents](#)

Our future success ultimately depends on the continued growth of the communications industry and, in particular, the continued expansion of global information networks, particularly those directly or indirectly dependent upon a fiber optics infrastructure.

We are relying on increasing demand for voice, video and other data delivered over high-bandwidth network systems as well as commitments by network systems vendors to invest in the expansion of the global information network. As network usage and bandwidth demand increase, so does the need for advanced optical networks to provide the required bandwidth. Without network and bandwidth growth, the need for optical subsystems and components, and hence our future growth as a manufacturer of these products, will be jeopardized, and our business would be significantly harmed.

Many of these factors are beyond our control. In addition, in order to achieve widespread market acceptance, we must differentiate ourselves from our competition through product offerings and brand name recognition. We cannot assure you that we will be successful in making this differentiation or achieving widespread acceptance of our products. Failure of our existing or future products to maintain and achieve widespread levels of market acceptance will significantly impair our revenue growth.

We depend on large purchases from a few significant customers, and any loss, cancellation, reduction or delay in purchases by these customers could harm our business.

A small number of customers have consistently accounted for a significant portion of our revenues. Our success will depend on our continued ability to develop and manage relationships with our major customers. Although we are attempting to expand our customer base, we expect that significant customer concentration will continue for the foreseeable future. We may not be able to offset any decline in revenues from our existing major customers with revenues from new customers, and our quarterly results may be volatile because we are dependent on large orders from these customers that may be reduced or delayed.

The markets in which we have historically sold our optical subsystems and components products are dominated by a relatively small number of systems manufacturers, thereby limiting the number of our potential customers. Recent consolidation of portions of our customer base, including telecommunication systems manufacturers, and potential future consolidation, may have a material adverse impact on our business. Our dependence on large orders from a relatively small number of customers makes our relationship with each customer critically important to our business. We cannot assure you that we will be able to retain our largest customers, that we will be able to attract additional customers or that our customers will be successful in selling their products that incorporate our products. We have in the past experienced delays and reductions in orders from some of our major customers. In addition, our customers have in the past sought price concessions from us, and we expect that they will continue to do so in the future. Expense reduction measures that we have implemented over the past several years, and additional action we are taking to reduce costs, may adversely affect our ability to introduce new and improved products which may, in turn, adversely affect our relationships with some of our key customers. Further, some of our customers may in the future shift their purchases of products from us to our competitors or to joint ventures between these customers and our competitors. The loss of one or more of our largest customers, any reduction or delay in sales to these customers, our inability to successfully develop relationships with additional customers or future price concessions that we may make could significantly harm our business.

Because we do not have long-term contracts with our customers, our customers may cease purchasing our products at any time if we fail to meet our customers' needs.

Typically, we do not have long-term contracts with our customers. As a result, our agreements with our customers do not provide any assurance of future sales. Accordingly:

- our customers can stop purchasing our products at any time without penalty;
- our customers are free to purchase products from our competitors; and
- our customers are not required to make minimum purchases.

Sales are typically made pursuant to inventory hub arrangements under which customers may draw down inventory to satisfy their demand as needed or pursuant to individual purchase orders, often with extremely short lead times. If we are unable to fulfill these orders in a timely manner, it is likely that we will lose sales and customers. If our major customers stop purchasing our products for any reason, our business and results of operations would be harmed.

Our customers often evaluate our products for long and variable periods, which causes the timing of our revenues and results of operations to be unpredictable.

The period of time between our initial contact with a customer and the receipt of an actual purchase order typically spans over a year. During this time, customers may perform, or require us to perform, extensive and lengthy evaluation and testing of our products before purchasing and using the products in their equipment. These products often take substantial time to develop because of their complexity and because customer specifications sometimes change during the development cycle. Our customers do not typically share information on the duration or magnitude of these qualification procedures. The length of these qualification processes also may vary substantially by product and customer, and, thus, cause our results of operations to be unpredictable. While our potential customers are qualifying our products and before they place an order with us, we may incur substantial research and development and sales and marketing expenses and expend significant management effort. Even after incurring such costs we ultimately may not sell any products to such potential customers. In addition, these qualification processes often make it difficult to obtain new customers, as customers are reluctant to expend the resources necessary to qualify a new supplier if they have one or more existing qualified sources. Once our products have been qualified, the agreements that we enter into with our customers typically contain no minimum purchase commitments. Failure of our customers to incorporate our products into their systems would significantly harm our business.

We may not be able to obtain additional capital in the future, and failure to do so may harm our business.

We believe that our existing balances of cash and cash equivalents, together with the cash expected to be generated from future operations, will be sufficient to meet our cash needs for working capital and capital expenditures for at least the next 12 months. We may, however, require additional financing to fund our operations in the future, to finance future acquisitions that we may propose to undertake or to repay or otherwise retire our outstanding convertible debt in the aggregate principal amount of \$40 million, which is subject to redemption by the holders in October 2014, 2016, 2019 and 2024. Due to the unpredictable nature of the capital markets, particularly in the technology sector, we cannot assure you that we will be able to raise additional capital if and when it is required, especially if we experience disappointing operating results. If adequate capital is not available to us as required, or is not available on favorable terms, we could be required to significantly reduce or restructure our business operations. If we do raise additional funds through the issuance of equity or convertible debt securities, the percentage ownership of our existing stockholders could be significantly diluted, and these newly-issued securities may have rights, preferences or privileges senior to those of existing stockholders.

Our international business and operations expose us to additional risks.

Products shipped to customers located outside the United States account for a majority of our revenues. In addition, we have significant tangible assets located outside the United States. Our principal manufacturing facility is located in Malaysia. We currently operate smaller facilities in Australia, China, Israel, Korea and Sweden, and we are currently building an expanded manufacturing facility in China. We also rely on several contract manufacturers located in Asia for our supply of key subassemblies. Conducting business outside the United States subjects us to a number of additional risks and challenges, including:

- periodic changes in a specific country's or region's economic conditions, such as recession;
- compliance with a wide variety of domestic and foreign laws and regulations and unexpected changes in those laws and regulatory requirements, including uncertainties regarding taxes, tariffs, quotas, export controls, export licenses and other trade barriers;
- certification requirements;
- environmental regulations;
- fluctuations in foreign currency exchange rates;
- inadequate protection of intellectual property rights in some countries;
- potential political, legal and economic instability, foreign conflicts, and the impact of regional and global infectious illnesses in the countries in which we and our customers, suppliers and contract manufacturers are located;
- preferences of certain customers for locally produced products;
- difficulties and costs of staffing and managing international operations across different geographic areas and cultures, including assuring compliance with the U.S. Foreign Corrupt Practices Act and other U. S. and foreign anticorruption laws;
- seasonal reductions in business activities in certain countries or regions; and
- fluctuations in freight rates and transportation disruptions.

These factors, individually or in combination, could impair our ability to effectively operate one or more of our foreign facilities or deliver our products, result in unexpected and material expenses, or cause an unexpected decline in the demand for

[Table of Contents](#)

our products in certain countries or regions. Our failure to manage the risks and challenges associated with our international business and operations could have a material adverse effect on our business.

Our future operating results may be subject to volatility as a result of exposure to foreign exchange risks.

We are exposed to foreign exchange risks. Foreign currency fluctuations may affect both our revenues and our costs and expenses and significantly affect our operating results. Prices for our products are currently denominated in U.S. dollars for sales to our customers throughout the world. If there is a significant devaluation of the currency in a specific country relative to the dollar, the prices of our products will increase relative to that country's currency, our products may be less competitive in that country and our revenues may be adversely affected.

Although we price our products in U.S. dollars, portions of both our cost of revenues and operating expenses are incurred in foreign currencies, principally the Malaysian ringgit, the Chinese yuan, the Australian dollar, the Israeli shekel, the Swedish krona, and the Korean won. As a result, we bear the risk that the rate of inflation in one or more countries will exceed the rate of the devaluation of that country's currency in relation to the U.S. dollar, which would increase our costs as expressed in U.S. dollars. To date, we have not engaged in currency hedging transactions to decrease the risk of financial exposure from fluctuations in foreign exchange rates.

Our failure to protect our intellectual property may significantly harm our business.

Our success and ability to compete is dependent in part on our proprietary technology. We rely on a combination of patent, copyright, trademark and trade secret laws, as well as confidentiality agreements to establish and protect our proprietary rights. We license certain of our proprietary technology, including our digital diagnostics technology, to customers who include current and potential competitors, and we rely largely on provisions of our licensing agreements to protect our intellectual property rights in this technology. Although a number of patents have been issued to us, we have obtained a number of other patents as a result of our acquisitions, and we have filed applications for additional patents, we cannot assure you that any patents will issue as a result of pending patent applications or that our issued patents will be upheld. Additionally, significant technology used in our product lines is not the subject of any patent protection, and we may be unable to obtain patent protection on such technology in the future. Any infringement of our proprietary rights could result in significant litigation costs, and any failure to adequately protect our proprietary rights could result in our competitors offering similar products, potentially resulting in loss of a competitive advantage and decreased revenues.

Despite our efforts to protect our proprietary rights, existing patent, copyright, trademark and trade secret laws afford only limited protection. In addition, the laws of some foreign countries do not protect our proprietary rights to the same extent as do the laws of the United States. Attempts may be made to copy or reverse engineer aspects of our products or to obtain and use information that we regard as proprietary. Accordingly, we may not be able to prevent misappropriation of our technology or deter others from developing similar technology. Furthermore, policing the unauthorized use of our products is difficult and expensive. We are currently engaged in pending litigation to enforce certain of our patents, and additional litigation may be necessary in the future to enforce our intellectual property rights or to determine the validity and scope of the proprietary rights of others. In connection with the pending litigation, substantial management time has been, and will continue to be, expended. In addition, we have incurred, and we expect to continue to incur, substantial legal expenses in connection with these pending lawsuits. These costs and this diversion of resources could significantly harm our business.

Claims that we or any user of our products infringe third-party intellectual property rights could result in significant expenses or restrictions on our ability to sell our products.

The networking industry is characterized by the existence of a large number of patents and frequent litigation based on allegations of patent infringement. We are currently involved as a defendant in patent infringement litigation and have been involved in the past as a defendant in such lawsuits. In one such lawsuit involving two of our cable TV products, we were found liable for infringement, and the two products have subsequently been redesigned. In addition, in connection with a patent infringement lawsuit that we initiated in January 2010, the defendants raised counterclaims alleging patent infringement by us, and in a later case, the defendant also raised patent infringement counterclaims against us. In connection with our settlement of two of the cases, we received royalty free licenses to the patents involved. While, as a result of various procedural events in the 2010 lawsuit and a tolling agreement between the parties, certain patent counterclaims are not currently being asserted against us, such claims could be re-asserted against us in the future. From time to time, other parties may assert patent, copyright, trademark and other intellectual property rights to technologies and in various jurisdictions that are important to our business. Any claims asserting that our products infringe or may infringe proprietary rights of third parties, if determined adversely to us, could significantly harm our business. Further, claims against a user of our products in combination with other products that such use infringes proprietary rights of third parties could cause users to choose to not or be required to not utilize our products

[Table of Contents](#)

in such combination, which could harm our sales of such products. Any claims, against us or any use of our products, with or without merit, could be time-consuming, result in costly litigation, divert the efforts of our technical and management personnel, cause product shipment delays or require us to enter into royalty or licensing agreements, any of which could significantly harm our business. In addition, our agreements with our customers typically require us to indemnify our customers from any expense or liability resulting from claimed infringement of third party intellectual property rights. In the event a claim against us was successful and we could not obtain a license to the relevant technology on acceptable terms or license a substitute technology or redesign our products to avoid infringement, our business would be significantly harmed.

Numerous patents in our industry are held by others, including academic institutions and competitors. Optical subsystem suppliers may seek to gain a competitive advantage or other third parties may seek an economic return on their intellectual property portfolios by making infringement claims against us. In the future, we may need to obtain license rights to patents or other intellectual property held by others to the extent necessary for our business. Unless we are able to obtain those licenses on commercially reasonable terms, patents or other intellectual property held by others could inhibit our development of new products. Licenses granting us the right to use third party technology may not be available on commercially reasonable terms, if at all. Generally, a license, if granted, would include payments of up-front fees, ongoing royalties or both. These payments or other terms could have a significant adverse impact on our operating results.

Our products may contain defects that may cause us to incur significant costs, divert our attention from product development efforts and result in a loss of customers.

Our products are complex and defects may be found from time to time. Networking products frequently contain undetected software or hardware defects when first introduced or as new versions are released. In addition, our products are often embedded in or deployed in conjunction with our customers' products which incorporate a variety of components produced by third parties. As a result, when problems occur, it may be difficult to identify the source of the problem. These problems may cause us to incur significant damages or warranty and repair costs, divert the attention of our engineering personnel from our product development efforts and cause significant customer relation problems or loss of customers, all of which would harm our business.

If we are unable to retain our key management and technical personnel and attract and retain additional key personnel as required, our business could be significantly harmed.

Our future success is substantially dependent upon the continued contributions of the members of our senior management team, many of whom have years of management, engineering, sales, marketing and manufacturing experience that would be difficult to replace. We also believe our future success will depend in large part upon our ability to attract and retain additional highly skilled managerial, technical, sales and marketing, finance and manufacturing personnel. In particular, we will need to increase the number of our technical staff members with experience in high-speed networking applications as we further develop our product lines. Competition for these highly skilled employees in our industry is intense. In making employment decisions, particularly in the high-technology industries, job candidates often consider the value of the equity they are to receive in connection with their employment. Therefore, significant volatility in the price of our common stock may adversely affect our ability to attract or retain key management and technical personnel. The loss of service of any of our key management or technical employees, our inability to attract or retain qualified personnel in the future or delays in hiring key personnel, as required, could significantly harm our business. In addition, employees may leave our company and subsequently compete against us. Moreover, companies in our industry whose employees accept positions with competitors frequently claim that their competitors have engaged in unfair hiring practices. We have been subject to claims of this type and may be subject to such claims in the future as we seek to hire qualified personnel. Some of these claims may result in material litigation. We could incur substantial costs in defending ourselves against these claims, regardless of their merits.

Our business and future operating results are subject to a wide range of uncertainties arising out of the continuing threat of terrorist attacks and ongoing military actions in the Middle East.

Like other U.S. companies, our business and operating results are subject to uncertainties arising out of the continuing threat of terrorist attacks on the United States and ongoing military actions in the Middle East, including the economic consequences of the war in Afghanistan or additional terrorist activities and associated political instability, and the impact of heightened security concerns on domestic and international travel and commerce. In particular, due to these uncertainties we are subject to:

- increased risks related to the operations of our manufacturing facilities in Malaysia;
- greater risks of disruption in the operations of our China, Singapore and Israeli facilities and our Asian contract manufacturers, including contract manufacturers located in Thailand, and more frequent instances of shipping delays; and

[Table of Contents](#)

- the risk that future tightening of immigration controls may adversely affect the residence status of non-U.S. engineers and other key technical employees in our U.S. facilities or our ability to hire new non-U.S. employees in such facilities.

Future acquisitions could be difficult to integrate, disrupt our business, dilute stockholder value and harm our operating results.

In addition to our combination with Optium in August 2008 and our acquisitions of Ignis in May 2011 and Red-C in July 2012, we have completed the acquisition of ten privately-held companies and certain businesses and assets from six other companies since October 2000. We continue to review opportunities to acquire other businesses, product lines or technologies that would complement our current products, expand the breadth of our markets or enhance our technical capabilities, or that may otherwise offer growth opportunities, and we from time to time make proposals and offers, and take other steps, to acquire businesses, products and technologies.

The Optium merger and several of our other past acquisitions have been material, and acquisitions that we may complete in the future may be material. In 13 of our 19 acquisitions, we issued common stock or notes convertible into common stock as all or a portion of the consideration. The issuance of common stock or other equity securities by us in connection with any future acquisition would dilute our stockholders' percentage ownership.

Other risks associated with acquiring the operations of other companies include:

- problems assimilating the purchased operations, technologies or products;
- unanticipated costs associated with the acquisition;
- diversion of management's attention from our core business;
- adverse effects on existing business relationships with suppliers and customers;
- risks associated with entering markets in which we have no or limited prior experience; and
- potential loss of key employees of purchased organizations.

Not all of our past acquisitions have been successful. In the past, we have subsequently sold some of the assets acquired in prior acquisitions, discontinued product lines and closed acquired facilities. As a result of these activities, we incurred significant restructuring charges and charges for the write-down of assets associated with those acquisitions. Through fiscal 2013, we have written off all of the goodwill associated with our past acquisitions with the exception of the recently completed acquisitions of Ignis and Red-C. We cannot assure you that we will be successful in overcoming problems encountered in connection with the recent Ignis acquisition or potential future acquisitions, and our inability to do so could significantly harm our business. In addition, to the extent that the economic benefits associated with the Ignis acquisition or any of our future acquisitions diminish in the future, we may be required to record additional write downs of goodwill, intangible assets or other assets associated with such acquisitions, which would adversely affect our operating results.

We have made and may continue to make strategic investments which may not be successful, may result in the loss of all or part of our invested capital and may adversely affect our operating results.

Since inception we have made minority equity investments in a number of early-stage technology companies, totaling approximately \$61.9 million. Our investments in these early stage companies were primarily motivated by our desire to gain early access to new technology. We intend to review additional opportunities to make strategic equity investments in pre-public companies where we believe such investments will provide us with opportunities to gain access to important technologies or otherwise enhance important commercial relationships. We have little or no influence over the early-stage companies in which we have made or may make these strategic, minority equity investments. Each of these investments in pre-public companies involves a high degree of risk. We may not be successful in achieving the financial, technological or commercial advantage upon which any given investment is premised, and failure by the early-stage company to achieve its own business objectives or to raise capital needed on acceptable economic terms could result in a loss of all or part of our invested capital. Between fiscal 2003 and 2013, we wrote off an aggregate of \$26.2 million in seven investments which became impaired and reclassified \$4.2 million of another investment to goodwill as the investment was deemed to have no value. We may be required to write off all or a portion of the \$1.8 million in such equity investments remaining on our balance sheet as of October 27, 2013 in future periods.

Our ability to utilize certain net operating loss carryforwards and tax credit carryforwards may be limited under Sections 382 and 383 of the Internal Revenue Code.

As of April 28, 2013, we had net operating loss, or NOL, carryforward amounts of approximately \$467.3 million, \$160.4 million and \$75.7 million for U.S. federal, state and foreign income tax purposes, respectively, and tax credit carryforward amounts of approximately \$22.8 million and \$14.9 million for U.S. federal and state income tax purposes, respectively. The federal and state tax credit carryforwards will expire at various dates beginning in 2014 through 2032, and \$108,000 of such carryforwards will expire in the next five years. The federal and state NOL carryforwards will expire at various dates beginning in 2014 through 2029, and \$127.2 million of such carryforwards will expire in the next five years. Utilization of these NOL and tax credit carryforward amounts may be subject to a substantial annual limitation if the ownership change limitations under Sections 382 and 383 of the Internal Revenue Code and similar state provisions are triggered by changes in the ownership of our capital stock. Such an annual limitation could result in the expiration of the NOL and tax credit carryforward amounts before utilization.

We will lose sales if we are unable to obtain government authorization to export certain of our products, and we would be subject to legal and regulatory consequences if we do not comply with applicable export control laws and regulations.

Exports of certain of our products are subject to export controls imposed by the U.S. Government and administered by the United States Departments of State and Commerce. In certain instances, these regulations may require pre-shipment authorization from the administering department. For products subject to the Export Administration Regulations, or EAR, administered by the Department of Commerce's Bureau of Industry and Security, the requirement for a license is dependent on the type and end use of the product, the final destination, the identity of the end user and whether a license exception might apply. Virtually all exports of products subject to the International Traffic in Arms Regulations, or ITAR, administered by the Department of State's Directorate of Defense Trade Controls, require a license. Certain of our fiber optics products are subject to EAR and certain of our RF-over-fiber products, as well as certain products developed with government funding, are currently subject to ITAR. Products developed and manufactured in our foreign locations are subject to export controls of the applicable foreign nation.

Given the current global political climate, obtaining export licenses can be difficult and time-consuming. Failure to obtain export licenses for these shipments could significantly reduce our revenue and materially adversely affect our business, financial condition and results of operations. Compliance with U.S. Government regulations also subjects us to additional fees and costs. The absence of comparable restrictions on competitors in other countries may adversely affect our competitive position.

We have previously been the subject of inquiries from the Department of State and the Department of Justice regarding compliance with ITAR. Although these inquiries were closed with no action being taken, we expended significant time and resources to resolve them, and future inquiries of this type could also be costly to resolve.

We are subject to pending securities class action and shareholder derivative legal proceedings.

Several securities class action lawsuits were filed against us and our Chairman of the Board, Chief Executive Officer and Chief Financial Officer following our March 8, 2011 announcement of unaudited financial results for the third quarter of fiscal 2011 and our financial outlook for the fourth quarter of fiscal 2011. We also have been named as a nominal defendant in several shareholder derivative lawsuits filed in 2011 concerning our March 8, 2011 earnings announcement. No specific amounts of damages have been alleged in the class action lawsuits and, by the nature of the lawsuits, no damages will be alleged against Finisar in the derivative lawsuits.

We will continue to incur legal fees in connection with these pending cases, including expenses for the reimbursement of legal fees of present and former officers and directors under indemnification obligations. The expense of continuing to defend such litigation may be significant. We intend to defend these lawsuits vigorously, however there can be no assurance that we will be successful in any defense. If any of the lawsuits related to our earnings announcement are adversely decided, we may be liable for significant damages directly or under our indemnification obligations, which could adversely affect our business, results of operations and cash flows. Further, the amount of time that will be required to resolve these lawsuits is unpredictable and these actions may divert management's attention from the day-to-day operations of our business, which could adversely affect our business, results of operations and cash flows.

Our business and future operating results may be adversely affected by events outside our control.

Our business and operating results are vulnerable to events outside of our control, such as earthquakes, floods, fire, power loss, telecommunication failures and uncertainties arising out of terrorist attacks in the United States and overseas. Our corporate headquarters and a portion of our manufacturing operations are located in California, and our principal manufacturing operations and those of most of our key suppliers and contract manufacturers are located in Asia. These areas have been vulnerable to natural disasters, such as earthquakes, floods and fires, and other risks which at times have disrupted the local economy and posed physical risks to our property. We are also dependent on communications links with our overseas manufacturing locations and would be significantly harmed if these links were interrupted for any significant length of time. We presently do not have adequate redundant, multiple site capacity if any of these events were to occur, nor can we be certain that the insurance we maintain against these events would be adequate.

The conversion of our outstanding convertible subordinated notes would result in dilution to our current stockholders.

As of October 27, 2013, we had outstanding 5.0% Convertible Senior Notes due 2029 in the principal amount of \$40.0 million. These notes are convertible, at the option of the holder, at any time on or prior to maturity into shares of our common stock at a conversion price of \$10.68 per share. An aggregate of approximately 3,748,478 shares of common stock would be issued upon the conversion of all outstanding convertible notes at this conversion price, which would dilute the voting power and ownership percentage of our existing stockholders. We have previously entered into privately negotiated transactions with certain holders of our convertible notes for the repurchase of notes in exchange for a greater number of shares of our common stock than would have been issued had the principal amount of the notes been converted at the original conversion rate specified in the notes, thus resulting in more dilution. We may enter into similar transactions in the future and, if we do so, there will be additional dilution to the voting power and percentage ownership of our existing stockholders.

Delaware law, our charter documents and our stockholder rights plan contain provisions that could discourage or prevent a potential takeover, even if such a transaction would be beneficial to our stockholders.

Some provisions of our certificate of incorporation and bylaws, as well as provisions of Delaware law, may discourage, delay or prevent a merger or acquisition that a stockholder may consider favorable. These include provisions:

- authorizing the board of directors to issue additional preferred stock;
- prohibiting cumulative voting in the election of directors;
- limiting the persons who may call special meetings of stockholders;
- prohibiting stockholder actions by written consent;
- creating a classified board of directors pursuant to which our directors are elected for staggered three-year terms;
- permitting the board of directors to increase the size of the board and to fill vacancies;
- requiring a super-majority vote of our stockholders to amend our bylaws and certain provisions of our certificate of incorporation; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

We are subject to the provisions of Section 203 of the Delaware General Corporation Law which limit the right of a corporation to engage in a business combination with a holder of 15% or more of the corporation's outstanding voting securities, or certain affiliated persons.

Although we believe that these charter and bylaw provisions and provisions of Delaware law provide an opportunity for the board to assure that our stockholders realize full value for their investment, they could have the effect of delaying or preventing a change of control, even under circumstances that some stockholders may consider beneficial.

We do not currently intend to pay dividends on Finisar common stock and, consequently, a stockholder's ability to achieve a return on such stockholder's investment will depend on appreciation in the price of the common stock.

We have never declared or paid any cash dividends on Finisar common stock and we do not currently intend to do so for the foreseeable future. We currently intend to invest our future earnings, if any, to fund our growth. Therefore, a stockholder is not likely to receive any dividends on such stockholder's common stock for the foreseeable future.

[Table of Contents](#)

Our stock price has been and is likely to continue to be volatile.

The trading price of our common stock has been and is likely to continue to be subject to large fluctuations. Our stock price may increase or decrease in response to a number of events and factors, including:

- trends in our industry and the markets in which we operate;
- changes in the market price of the products we sell;
- changes in financial estimates and recommendations by securities analysts;
- acquisitions and financings;
- quarterly variations in our operating results;
- the operating and stock price performance of other companies that investors in our common stock may deem comparable; and
- purchases or sales of blocks of our common stock.

Part of this volatility is attributable to the current state of the stock market, in which wide price swings are common. This volatility may adversely affect the prices of our common stock regardless of our operating performance. If any of the foregoing occurs, our stock price could fall and we may be exposed to class action lawsuits that, even if unsuccessful, could be costly to defend and a distraction to management.

Item 6. Exhibits

Exhibit Number	Exhibit Description
10.1	Lease agreement, dated October 21, 2013, by and between NMBE Pty Ltd and Finisar Australia Pty Ltd for premises located at 19-21 Rosebery Avenue, Rosebery, NSW, Australia
31.1	Certification of Co-Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	Certification of Co-Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.3	Certification of Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	Certification of Chairman of the Board Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	Certification of Chief Executive Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.3	Certification of Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase
101.DEF*	XBRL Taxonomy Extension Definition Linkbase
101.LAB*	XBRL Taxonomy Extension Label Linkbase
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase

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

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.

FINISAR CORPORATION

By: /s/ JERRY S. RAWLS

Jerry S. Rawls

Chairman of the Board of Directors (Co-Principal Executive Officer)

By: /s/ EITAN GERTEL

Eitan Gertel

Chief Executive officer (Co-Principal Executive Officer)

By: /s/ KURT ADZEMA

Kurt Adzema

*Executive Vice President and Chief Financial Officer
(Principal Financial and Accounting Officer)*

Dated: December 5, 2013

LEASE
New South Wales
Real Property Act 1900

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY	Office of State Revenue use only		
(A) TORRENS TITLE	Property leased 658/7534 and 1/880733 as regards part being Suite 101 on level 1 and Suite 201 on level 2, and Warehouse 1, 19-21 Rosebery Avenue, Rosebery 2108		
(B) LODGED BY	Document Collection Box	Name, Address or DX, Telephone and Customer Account Number if any Reference: TC:130557	CODE L
(C) LESSOR	NMBE PTY LTD (ACN 002 269 374)		
	The lessor leases to the lessee the property referred to above.		
(D)	Encumbrances (if applicable):		
(E) LESSEE	FINISAR AUSTRALIA PTY LTD (ACN 098 184 582)		
(F)	TENANCY: CLICK AND PICK		
(G) 1.	TERM	SIX (6) YEARS AND THREE (3) MONTHS	
2.	COMMENCING DATE	1 November 2013	
3.	TERMINATING DATE	31 January 2020	
4.	With an OPTION TO RENEW for a period of	FOUR (4) years set out in clause 11 of ANNEXURE A	
5.	With an OPTION TO PURCHASE set out in clause	N.A. of	
6.	Together with and reserving the RIGHTS set out in clause	8.7 of ANNEXURE A	
7.	Incorporates the provisions or additional material set out in ANNEXURE(S) A hereto.		
8.	Incorporates the provisions set out in N.A. No. N.A.		
9.	The RENT is set out in item/clause	No. 4	of ANNEXURE A

DATE

- (H) Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Company: NMBE PTY LTD (ACN 002 269 374)

Authority:

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

Certified correct for the purposes of the Real Property Act 1900 by the company named below the common seal of which was affixed pursuant to the authority specified and in the presence of the authorised person(s) whose signature(s) appear(s) below.

Company: FINISAR AUSTRALIA PTY LTD (ACN 098 184 582)

Authority:

Signature of authorised person:

Signature of authorised person:

Name of authorised person: Simon Poole

Name of authorised person: EITAN GERTEL

Office held: Director

Office held: CEO

(I) **STATUTORY DECLARATION ***

I

solemnly and sincerely declare that -

1. The time for the exercise of option to in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at in the State of New South Wales on
in the presence of of

Justice of the Peace (J.P. Number:) Practising Solicitor

Other qualified witness *[specify]*

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1 I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
- 2 I have known the person for at least 12 months OR I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was a *[Omit ID No]*

Signature of witness:

Signature of applicant:

** As the services of a qualified witness cannot be provided at lodgement, the declaration should be signed and witnessed prior to lodgement. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.*

THIS IS ANNEXURE A TO THE LEASE

DATED THE _____ DAY OF _____ 20

1. REFERENCE DATA

ITEM 1		PARTIES
Lessor		NMBE Pty Limited (ACN 002 269 374)
Address for Notices		Locked Bag 5010, Alexandria NSW 2015
Lessee		Finisar Australia Pty Limited (ACN 098 184 582)
Address for Notices		244 Young Street, Waterloo NSW 2017
ITEM 2		TERM
Number of years		Six (6) years and three (3) months
Date of Commencement		1 November 2013
Termination Date		31 January 2020
ITEM 3		BUILDING
Address of Building		21 Rosebery Avenue, Rosebery NSW 2018
ITEM 4		RENT
(a)	Commencement date of rental payment:	1 November 2013
(b)	Rent:	
(i)	Annual Rent:	\$1,286,135.00 per annum (excluding GST)
(ii)	Monthly Rent:	\$107,177.91 (excluding GST) for the period commencing on the 1 st day of each month and ending on the last day of that month.
(c)	Rent due date:	the first day of each Month.
(d)	Interest on arrears:	At the Stipulated Rate as defined in Clause 15.5.
ITEM 5		REVIEW DATE/S
(a)	Market Review Date/s	N/A other than on the exercise of option
(b)	CPI Review Date/s	N/A
(c)	Percentage Review Date/s	On each anniversary of the Lease Commencement Date
ITEM 6		USE OF PREMISES
		Commercial Office and Warehouse
ITEM 7		PERCENTAGE OF OUTGOINGS
		58.4%
ITEM 8		INSURANCE REQUIREMENTS
		as set out in cl 12.1

ITEM 9		RIGHT OF RENEWAL
Term		One period of four (4) years
Commencement Date of Renewal Term		1 February 2020
ITEM 10		REVIEW DATES FOR RENEWAL TERM
(a)	Market Review Date/s	On commencement of the Renewal Term
(b)	CPI Review Date/s	
(c)	Percentage Review Date/s	On each anniversary of the Lease Commencement Date
ITEM 11		AMOUNT OF SECURITY DEPOSIT
		(a) Six (6) Month Bank Guarantee-equivalent of 6 months gross rent plus GST initially being \$812,308.37.
		(b) Additional Bank Guarantee - \$837,691.64
ITEM 12		GUARANTORS:
Name		Not Applicable.
Address		Not Applicable.
Name		Not Applicable.
Address		Not Applicable.
ITEM 13		CAR PARKS – 80 allocated car spaces in the underground car park
ITEM 14		SIGNAGE FEE - \$25,000.00 per annum excluding GST

TABLE OF CONTENTS

1.	REFERENCE DATA	3
2.	DEFINITIONS & INTERPRETATION	6
3.	RENT AND OUTGOINGS	11
	TERMINATION OR ABATEMENT ON DAMAGE	
4.	15
5.	RESUMPTIONS AND EASEMENTS	17
6.	USE OF PREMISES	18
7.	ASSIGNMENT	22
8.	MAINTENANCE, REPAIR, ALTERATIONS, ETC.	24
9.	AIR CONDITIONING, FIRE EQUIPMENT LIFTS, ETC.	28
10.	ELECTRICITY AND OTHER SERVICES	29
11.	OPTION FOR RENEWAL	30
12.	INSURANCE	30
13.	INDEMNITIES	31
14.	QUIET ENJOYMENT AND HOLDING OVER	32
15.	DEFAULT AND TERMINATION	33
16.	COMMON AREAS	37
17.	MISCELLANEOUS	39
18.	Deleted	41
19.	BANK GUARANTEE	41
20.	EFFECT OF EXECUTION AND REGISTRATION	42
21.	CONSENT OF MORTGAGEE	43
22.	TRUST WARRANTIES	43
23.	CAR PARKING	44
24.	EARLY ACCESS AND OCCUPATION	45
25.	OTHER AREA	46
26.1	SIGNAGE RIGHTS	46
	ANNEXURE B	49

2. DEFINITIONS & INTERPRETATION

2.1 Definitions

- (a) **“Air Conditioning Equipment”** includes all compressors, condensers, chiller sets, pumps, pipework, switchboards, wiring, thermostats, controls, cooling towers, air production and reticulation of chilled water and conditioned air in the Building which services that part of the Premises being the foyer and office area and excluding the warehouse.
- (b) **“Appurtenances”** includes all water closets, lavatories, grease traps, water apparatus, wash basins, bathrooms, gas fittings, electrical fittings and apparatus, and other services contained in or about the Premises or other parts of the Building as the context requires.
- (c) **“Authorisation”** means:
 - (i) any consent, authorisation, registration, agreement, relevant certificate, permission, licence, approval, authority or exemption from, by or with an Authority; or
 - (ii) any entitlement arising from the incapacity of a relevant Authority to prohibit or restrict anything in whole or in part because of the expiry of time within which it could legally intervene to do so.
- (d) **“Authority”** includes any public, governmental, semi-governmental, city, municipal, health, licensing or any other authority having jurisdiction or authority in respect of the Premises or the use of the Premises or the Permitted Use.
- (e) **“Building”** means the building or buildings erected upon the Land, of which the Premises form part and all substitutions, alterations or modifications to those buildings and includes the Common Areas and the Land upon which such buildings are erected and all lands and buildings adjacent to or in the vicinity of the buildings to be used in conjunction with the whole or part of the Building.
- (f) **“Claim”** includes all actions, claims, demands, notices, losses, damages, compensation, costs and expenses.
- (g) **“Common Areas”** means all those parts of the Building, if any, not demised or let to any lessee or occupant and intended for use by the lessees or occupants of the Building and in particular (but without limiting the generality of the foregoing) includes the common parking areas from time to time provided by the Lessor for the Building and the driveways and walkways giving access to and from the Building and the malls, corridors, passageways, vestibules, stairways, elevators, toilets and washrooms in the Building.
- (h) **“CPI Review Date”** means the dates nominated in **Item 5(b)** of the Reference Data.
- (i) **“Date of Commencement”** means the date described on the front page of this Lease and in **Item 2** of the Reference Data for the commencement of the Term.

- (j) **“Environmental Law”** means a law, ordinance, regulation or the like which relates to an aspect of the environment or health.
- (k) **“Fire Equipment”** includes all stop-cocks, hydrants, alarms, fire sprinkler systems or other fire detection and prevention equipment in the Building.
- (l) **“Further Term”** means a new lease of the Premises for a further term or terms as specified in **Item 9** of the Reference Data from the Terminating Date.
- (m) **“Land”** means the land described in the Certificate of Title referred to on the front page of this Lease.
- (n) **“Lessee”** means and includes the Lessee nominated in **Item 1** of the Reference Data, its successors and permitted assigns or, being a person, his executors, administrators, successors and permitted assigns and where not repugnant to the context the sublessees, invitees, contractors, servants, employees and agents of the Lessee. Where the Lease to which this Annexure applies is a Sub-lease, then “Lessee” shall mean “Sublessee” in its full context according to this clause.
- (o) **“Lessor”** means and includes the Lessor nominated in **Item 1** of the Reference Data, its successors and assigns or, being a person, his executors, administrators, successors and permitted assigns and where not repugnant to the context the invitees, contractors, servants, employees and agents of the Lessor. Where the Lease to which this Annexure applies is a Sub-lease, then “Lessor” shall mean “Sublessor” in its full context according to this clause.
- (p) **“Market Review Date”** means the dates nominated in **Item 5(a)** of the Reference Data.
- (q) **“Outgoings”** - Outgoings for any year during the Term means the total aggregate amount of all costs, charges and expenses charged upon the Land or payable by the Lessor arising by direct assessment or by virtue of any covenant in any head lease or for the payment of which the Lessor or Lessee may be or become liable to the extent to which an owner legally rateable or chargeable would have been liable to pay the same in respect of the Building, Land or the Premises including but not limited to:
- (i) all rates, taxes, charges and impositions payable to any Authority (with the exception of income tax and capital gains tax) including New South Wales land tax and any other tax assessed or charged against or to the Lessor by virtue of its ownership of the Land or its right to occupy the same whether by State or Federal Parliament or by any competent Authority, upon the basis of the rate as assessed to the Lessor with respect to the Land;
 - (ii) all rates and charges payable to any Authority in relation to any of the supply of water, sewerage and the removal of waste and other garbage from the Land, the Building or the Premises;
 - (iii) all amounts payable in respect of insurance relating to the Premises, the Building and the Common Areas (including stamp duties), for plate glass, public liability, worker’s compensation for all employees engaged in the cleaning, maintaining, lighting and repairing of the Common Areas, loss of rents, Lessor’s fixtures and fittings, damage

or destruction of the Building and Appurtenances for their full reinstatement value in relation to damage however occasioned and the cost of removal and disposal of debris and fire extinguishment costs and any other insurances effected by the Lessor (acting reasonably) in relation to any risk relating to the Lessor's ownership or interest in the Premises.

- (iv) all charges for gas, electricity, telephone, water (including for excess water) and public utilities servicing the Common Areas of the Building;
- (v) all costs of repairs, maintenance and painting of and to the Premises and the Building (excluding any work which amounts to a capital improvement or is of a structural nature other than that which arises from the negligence, acts or omissions of the Lessee or for which the Lessee is otherwise liable under the terms of this Lease);
- (vi) all costs of the detection, prevention and eradication of rodents, pests, insects and vermin for all Common Areas;
- (vii) the cost of cleaning and servicing the car parks, Common Areas, signs and the interior and exterior of the Building (excluding the interior of the Premises and the interior of other parts of the Building leased or intended to be leased to other occupants) including the cost of garbage removal and/or compacting service which is charged on account of the Building or the cost, interest charges and wages of operating any garbage removal and/or compacting service for the Building;
- (viii) all costs of management control and administration of the Building whether such management control and administration is performed at the Building or elsewhere and whether performed by the Lessor or by others;
- (ix) all costs and expenses of gardening, landscaping, and providing and maintaining decorative features in Common Areas, the Land and car parks;
- (x) all costs and expenses of caretaking and security;
- (xi) all costs and expenses associated with running, repairing, maintaining and servicing lifts, escalators, Fire Equipment, Air Conditioning Equipment and Appurtenances other than that for which the Lessee is otherwise liable under the terms of this Lease, including the supply of towels and other toilet requisites within the Building including the cost of personnel to operate such services; and
- (xii) all Owners Corporation charges (if any) and levies assessed in respect of the Premises and all contributions to an administrative or sinking fund struck in relation to the Building or the Land,

but excluding

- (i) costs reasonably paid by a tenant of the Land;
- (ii) any costs relating works of a capital or structural nature other than that which arises from the negligence, acts or omissions of the

Lessee or for which the Lessee is otherwise liable under the terms of this Lease;

- (iii) insurances for loss of rent arising out of vacancies in parts of the Building; and
- (iv) commissions payable to agents other than management fees for managing the Building.

PROVIDED THAT payments to be made under this clause shall be adjusted for any assessment year or period which is broken by the Date of Commencement or Terminating Date of this Lease or as held over but otherwise shall be payable for the whole period of the assessment and the Lessor shall refund to the Lessee the proper proportion of the said payments should this Lease during the period of the assessment expire or be determined not through the default or breach of the Lessee.

- (r) **“Percentage Increase Review Date”** means the dates nominated in **Item 5(c)** of the Reference Data.
- (s) **“Permitted Use”** means the use outlined in **Item 6** of the Reference Data.
- (t) **“Premises”** means the premises described on the front page of this Lease (being the areas hatched in the plans exhibited to this Lease) together with any modifications, extensions and alterations thereto from time to time and including the Lessor’s fixtures and fittings and doors, roller doors and windows in the Premises.
- (u) **“Reference Data”** means the reference data at the front of this Lease.
- (v) **“Rent”** means the rent specified in **Item 4** of the Reference Data as reviewed on the Review Dates in accordance with clause 3.2 and/or 11.
- (w) **“Review Dates”** means the dates (if any) specified in **Item 5** of the Reference Data.
- (x) **“Services”** means all services or systems of any nature from time to time provided to the Building and/or to the Land or available for use and includes the provision of any electronic medium, energy source, lighting, gas, fuel, power, water, sewerage, drainage, loading docks, plant rooms, storage areas, the Fire Equipment, the Air Conditioning Equipment, the lifts and escalators and the fittings, fixtures, appliances, plant and equipment utilised for any of these Services and any services or systems from time to time utilised for access to the Building.
- (y) **“Term”** means the term specified in **Item 2** of the Reference Data as demised to the Lessee by this Lease and includes any holding over period with the written consent of the Lessor.
- (z) **“Terminating Date”** means the date specified on the front page of this Lease and in **Item 2** of the Reference Data as the date upon which the Term of the Lease terminates.

2.2 Interpretation

(a) **Severability**

If any term, covenant or condition of the Lease or the application thereof to any person or circumstance shall be or become invalid or unenforceable, the remaining terms, covenants and conditions shall not be affected thereby and each term, covenant and condition of the Lease shall be valid and enforceable to the fullest extent permitted by law.

(b) **Bodies and Associations**

References to any Authority, association, society, club or body shall in the event of any such entities ceasing to exist or being reconstituted, renamed or replaced or the powers or functions of any of them being transferred to any other entity refer respectively to the entity established or constituted in lieu thereof or succeeding to the similar powers or functions.

(c) **Implied Covenants**

The covenants implied by law (statutory or otherwise) are not negated but shall be deemed to have been modified (where so permitted) to the extent of any inconsistency with the provisions of the Lease.

(d) **Plurals and Genders**

The singular shall include the plural and vice versa and words importing one gender shall include every gender.

(e) **Contra Proferentum**

In the interpretation of this Lease, no rules of construction shall apply to the disadvantage of one party on the basis that that party put forward the Lease or any part thereof.

(f) **Headings**

Headings have been inserted for guidance only and do not form any part of the context of this Lease.

(g) **Statutes**

Reference to a statute or ordinance includes all regulations under and amendments to that statute or ordinance whether by subsequent statute or otherwise and a statute or ordinance passed in substitution for the statute or ordinance referred to or incorporating any of its provisions.

(h) **Joint and Several Covenants**

Any covenant or agreement on the part of two or more persons shall bind them jointly and severally.

(i) **Persons**

A reference to person includes references to firms, a body corporate, an association or an Authority and includes a reference to the person's executors, administrators, successors and permitted assigns.

(j) **Lessee's Agents**

If this Lease prohibits the Lessee from doing a thing then the Lessee must do everything necessary to ensure that the Lessee's sublessees, invitees, contractors, servants, employees and agents do not do that thing and the Lessee may not allow or cause any person to do that thing. If this Lease requires the Lessee to do a thing then the Lessee must do everything necessary to ensure that the Lessee's sublessees, invitees, contractors, servants, employees and agents also do that thing.

(k) **Month**

A reference to month or monthly means respectively calendar month and calendar monthly.

3. RENT AND OUTGOINGS

3.1 Rent Payment

- (a) The Lessee shall during the Term pay to the Lessor without demand from the Lessor and without any deduction or set off the Rent in advance by regular and consecutive monthly payments each equal to one-twelfth (1/12) of the Rent on the first day of each month during the Term (except the first and last payments which if necessary will be proportionate) with the first payment being payable on the date specified in **Item 4(a)** of the Reference Data.
- (b) At the Lessor's discretion the Rent may be reviewed at each Review Date to an amount calculated in accordance with clause 3.2.
- (c) The acceptance from time to time and at any time by the Lessor of the Rent at a figure applicable to any period prior to the relevant Review Date will not relieve the Lessee from the liability to pay on demand the balance due in terms of clause 3.2.

3.2 Rent Review

(a) **Market Rental Review**

(i) **Ascertaining the Market Rent**

The Lessor must review and increase the Rent to an amount which the Lessor considers would at the time of such Market Review Date be the current market rent of the Premises as between a willing lessor and a willing lessee having regard to the Premises offered, the provision of parking facilities (if any), the terms other than rental and all matters then relevant to the determination of such rental including but without in any way limiting the generality of the foregoing the Lessee's obligations (if any) to contribute to the Outgoings and subject to the following provisions of this clause the amount so determined shall be the Rent payable by the Lessee from the relevant Market Review Date **PROVIDED THAT** nothing in this clause shall operate to reduce the Rent payable.

(ii) **Dispute of Proposed Market Rent**

The Lessor shall (no earlier than 6 months and no later than 3 months before a Market Review Date) notify the Lessee in writing of the Rent which the Lessor considers is the current market rent of the Premises and the Lessee shall have thirty (30) days from the date of receipt of such notice from the Lessor within which the Lessee may notify the Lessor in writing as to whether it disputes the current market rent determined by the Lessor. Should the Lessee not so notify the Lessor that it disputes the Lessor's assessment of the current market rent then the Lessee will be deemed to have accepted the Lessor's assessment of the current market rent and the Lessor's assessment of the current market rent shall be the Rent payable from the relevant Market Review Date.

(iii) **Determination by Valuer**

In the event that the Lessee disputes the Lessor's assessment of the current market rent, such current market rent shall be determined by a valuer of the Australian Property Institute Inc - New South Wales Division registered so to act with more than 10 years valuing experience and at least 5 years valuing experience of property in a similar location and of a similar nature as that of the Premises, agreed upon by the Lessor and by the Lessee and such appointment shall be made within twenty one (21) days of receipt of the notice by the Lessor from the Lessee that the Lessee disputes the Lessor's assessment of the current market rent.

(iv) **Valuer if no Agreement**

If the Lessor and the Lessee cannot agree on the appointment of a valuer in accordance with subclause 3.2(a)(iii) then a valuer appointed by the President of the Australian Property Institute Inc - New South Wales Division registered so to act with more than 10 years valuing experience and at least 5 years valuing experience of property in a similar location and of a similar nature as that of the Premises, shall be appointed and shall be instructed to make a determination as to Rent (including a statement as to how the determination was reached) within fourteen (14) days of his appointment and his decision shall be final and binding on the Lessor and Lessee. Any determination by the valuer shall be subject to the minimum increase of the Rent provided for in clause 3.2(viii) below.

(v) **Submissions to the Valuer**

The Lessor and the Lessee may make submissions to the valuer appointed under this clause which the valuer may or may not take into consideration in making the determination, in the valuer's absolute discretion. In making a determination, the valuer must take into account any lease incentives provided to tenants of premises during the 12 months immediately preceding the Market Review Date similar to the Premises.

(vi) **Valuer as an expert**

Any valuer appointed in accordance with subclause 3.2(a) shall be deemed to be acting as an expert and not as an arbitrator and accordingly the provisions of the *Commercial Arbitration Act, 1984* shall not apply.

(vii) **Costs**

All costs incurred in the determination of the Rent pursuant to this clause shall be borne in equal shares by the Lessor and the Lessee and shall be paid promptly.

(viii) **Minimum Increase of 2.5%**

Notwithstanding anything in this clause 3.2(a) in no circumstances shall the Rent determined under clause 3.2(a) be less than the Rent payable immediately prior to the Market Review Date increased by 2.5%. For the avoidance of doubt in calculating the Rent under clause 3.2(a), any lease incentives provided to the Lessee in relation to this Lease are not to be taken into account.

(b) **Deleted**

(c) **Percentage Increase Rental Review**

On each Percentage Increase Review Date the Rent shall be increased to an amount per annum equal to the amount represented by R in the formula:

$$R = A \times \frac{104}{100}$$

where:

R means the Rent payable for the period following the Percentage Increase Review Date.

A means the Rent payable for the period just ended at the relevant Percentage Increase Review Date.

3.3 **Outgoings Payment**

The Lessee shall pay during the Term the percentage specified in **Item 7** of the Reference Data of annual Outgoings.

3.4 **Lessor's Statement for Outgoings**

The Lessor may require payment for Outgoings, by the following methods:

(a) **Lump Sum**

- (i) As soon as practicable after 30th day of June in each year, the Lessor will furnish to the Lessee a statement (the "**Statement**") giving reasonable details of the Outgoings. Except in the case of manifest error notified by either party to the other within thirty (30) days of the service of the Statement on the Lessee, the Statement shall be conclusive evidence of the matters stated therein.
- (ii) Within twenty one(21) days of receipt by the Lessee from the Lessor of the Statement in writing of the amount of the Lessee's proportion of Outgoings or of any particular part thereof, the Lessee shall pay such amount to the Lessor and it is hereby agreed and declared:

(A)that subject to subclause 3.4(a)(ii)(B) the liability of the Lessee to pay the Lessee's proportion of Outgoings shall not be determined or otherwise prejudiced by the prior expiry of the Term of or other determination of this Lease; and

(B)that if Outgoings are payable for only part of an outgoings year the Outgoings shall be deemed to accrue from day to day and the Lessee's proportion shall be calculated accordingly.

(b) **Monthly Instalments**

The Lessor may from time to time notify the Lessee of the Lessor's reasonable estimate of the Lessee's proportion of Outgoings for any period not exceeding one (1) year in advance of the estimate and the Lessee will pay to the Lessor during such period the estimated proportion by equal monthly instalments in advance on the first day of each month.

3.5 Separate Payments

The Lessor may from time to time during the Term require the Lessee by notice in writing to pay additional Outgoings that directly relate to the Lessee's use of the Building and the Lessee must pay those Outgoings within 21 days of demand by the Lessor.

3.6 Terms of Payment of Outgoings

Payments for Outgoings in clause 3.4 are subject to the following terms:

- (a) Where Outgoings are paid throughout a financial year by estimate or on demand, then as soon as practicable after 30th June of that financial year, the Lessor will furnish to the Lessee a statement (the "Statement") giving reasonable details of the Outgoings. The Statement will be prima facie evidence of the matters stated therein and adjustments, whether by extra payment by the Lessee or refund by the Lessor, will be made between the amounts actually paid by the Lessee during the relevant financial year and the Lessee's actual liability pursuant to the Lease for that year;
- (b) Where the Lessee disputes any part of the Outgoings claimed by the Lessor, then the Lessee will pay that part not in dispute and the balance payable will be determined according to this Lease or by other agreement between the parties.

3.7 GST

(a) **GST Definitions**

For the purpose of this lease:

- (i) **"GST"** means GST within the meaning of the *GST Act*.
- (ii) **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (as amended)
- (iii) Expressions set out in italics in this clause bear the same meaning as those expressions in the *GST Act*.

(b) **Amounts otherwise payable do not include GST**

Except where express provision is made to the contrary, and subject to this clause, the consideration payable by any party under this Lease represents the value of any taxable supply for which payment is to be made.

(c) **Liability to pay any GST**

If a party makes a taxable supply in connection with this Lease for a consideration, which, under subclause 3.7(b), represents its value, then the party liable to pay for the taxable supply must also pay, at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

3.8 Method of Payment

All payments made under this Lease must be made by an electronic transfer from the Lessee's bank to the Lessor's bank account unless otherwise notified in writing by the Lessor to the Lessee from time to time.

3.9 Survey

The Lessor and the Lessee acknowledge that the Lessor may relocate the dividing wall between Suites 101 and 102 of the Building, and should that occur, the Lessor shall commission a survey and serve upon the Lessee a copy of the survey when produced. It is further agreed between the Lessor and the Lessee that the Rent will be reduced by \$230.00 per square metre for each square metre Suite 101 decreases from an area of 1,488 square metres and the percentage of outgoings for the Premises will be adjusted as a result of any decrease in the area of the Premises by reason of the relocation of the dividing wall between Suites 101 and 102.

4. TERMINATION OR ABATEMENT ON DAMAGE

4.1 Termination or Abatement on Damage

If the whole or any part of the Building shall be destroyed or damaged by fire, flood, lightning, storm, tempest, riot, explosion, aircraft or any other disabling cause without any neglect or default on the part of the Lessee so as to render the Premises during the Term unfit for the use or inaccessible so as to deprive the Lessee of use of the same, then:

(a) **Lessor's Notice to Rebuild**

- (i) The Lessor shall have the option within sixty (60) days after such destruction or damage by notice in writing to the Lessee either to terminate the Lease if it is impracticable or undesirable to restore or rebuild the Premises or to restore or rebuild the Building for a similar use and purpose to that at the Date of Commencement whether or not the Premises are affected or not by such disabling cause.
- (ii) If the Lessor elects to restore or rebuild the Premises or the Building so destroyed or damaged, it shall not be obliged to restore or rebuild the Premises or the Building according to the former specifications so long as, (subject to the requirements of any Authority);

(A)the net lettable area of the Premises is not less than the total net lettable area of the Premises immediately prior to the damage or destruction calculated in accordance with the method for measurement of properties similar to the Premises adopted by the Australian Property Institute Inc – NSW Division; and

(B)the location of the Premises as altered is in substantially the same position as that of the Premises immediately prior to the damage or destruction and with similar exposure and accessibility and the materials employed are not of inferior aesthetic appearance to the materials formerly used.

(b) **Lessee's Notice to Terminate**

In the event that the Lessor does not exercise its option within the sixty (60) day period, then the Lessee may by notice in writing to the Lessor terminate the Lease. No liability shall attach to the Lessor or to the Lessee by reason of a termination pursuant to this clause but such termination shall be without prejudice to the rights of either party in respect of any antecedent breach or non-observance of any covenant, condition or provision of this Lease.

(c) **Termination following Failure to Rebuild**

In the event that the Lessor elects to restore and rebuild the Premises or the Building and has not commenced and continued the rebuilding or restoration within six (6) months of the event of damage or destruction, then either the Lessor or the Lessee may by notice in writing to the other terminate this Lease and on the giving of such a notice this Lease shall be at an end. No liability shall attach to the Lessor or to the Lessee by reason of a termination pursuant to this clause but such termination shall be without prejudice to the rights of either party in respect of any antecedent breach or non-observance of any covenant, condition or provision of this Lease.

(d) **Continued Operation during Rebuilding**

The Lessee shall during any period of restoration or rebuilding of the Premises or of any part of the Building continue the operation of its business in the Premises so far as it may be reasonably practicable for the Lessee to do so having regard to the nature and extent of the Lessee's business and the nature and extent of the damage sustained.

(e) **Abatement of Rent**

Upon the happening of any such damage or destruction, the Rent and Outgoings (or a proportionate part according to the extent of damage sustained) for the period of reconstruction shall abate until the Premises shall have been reinstated or made fit for use and occupation provided that Rent and Outgoings shall not abate to the extent that the destruction or damage was caused or contributed to by the Lessee.

(f) **No Requirement to Rebuild**

Nothing in this part imposes any liability upon the Lessor to rebuild all or part of the Premises or the Building and no liability attaches to either the Lessor or the Lessee by reason of the termination of this Lease pursuant to this Part, but the termination

is without prejudice to the rights of either party in respect of any antecedent breach or non-observance of any provision of this Lease.

(g) **Disputes**

In the event of any dispute arising out of this clause, the same shall be referred to a valuer of the Australian Property Institute Inc - New South Wales Division registered so to act with more than 10 years valuing experience and at least 5 years valuing experience of property in a similar location and of a similar nature as that of the Premises, agreed upon by the Lessor and by the Lessee (but in the absence of any agreement by the President of that organisation), who must make a determination of the amount by which the Rent, Outgoings and Cleaning Service are to abate and the duration of the abatement. In making a determination, the valuer is deemed to be acting as an expert and not an arbitrator and the costs will be borne equally by the parties and paid promptly.

5. RESUMPTIONS AND EASEMENTS

5.1 Resumptions

In the event of the whole or any part of the Premises being resumed or otherwise being permanently taken for public purposes by a competent Authority with the effect that the Lessee's use of the Premises is adversely affected in a material manner, then the Lessee may by notice in writing to the Lessor terminate this Lease and on the giving of such a notice this Lease shall be at an end. No liability shall attach to the Lessor or to the Lessee by reason of a termination pursuant to this clause but such termination shall be without prejudice to the rights of either party in respect of any antecedent breaching or non-observance of any covenants, conditions or provision of this Lease and without prejudice to the right of the Lessee to claim compensation from the resuming Authority arising from the resumption.

5.2 Easements

(a) The Lessor is entitled for the purpose of:

- (i) the provision of support of structures hereafter erected on or from adjoining lands;
- (ii) the provisions of Services;
- (iii) the provision of public or private access to the Premises or the Building; or
- (iv) rectifying any encroachments,

to grant easements or enter into any arrangement or agreement with any of the owners, lessees, tenants or occupiers or others interested in any land adjacent or near to the Premises or with any Authority as the Lessor thinks fit and it may likewise for such purpose dedicate land or transfer grant or create any easement privilege or other right in favour of such parties or in favour of any such adjoining or neighbouring land or any Authority over or affecting the Premises and this Lease shall be deemed to be subject to any such agreement, arrangement, right, easement or privilege.

- (b) The Lessor shall not dedicate land or transfer, grant or create any easement privilege or other right to any other person which shall materially derogate from the enjoyment of rights conferred on the Lessee by this Lease.
- (c) The Lessee at the request and reasonable cost of the Lessor will sign all documents and provide all consents which are necessary for the grant and registration of such easements and the like.

6. USE OF PREMISES

6.1 Permitted Use

The Lessee shall not without the prior written consent of the Lessor, use the Premises for any purpose other than for the Permitted Use and will not use the Premises for any purpose or purposes which are prohibited by the zoning of the Land or which are not approved by the relevant local government Authority or is prohibited by any statute, ordinance, proclamation, order or regulation, present or future.

6.2 No Noxious Use

The Lessee will not permit any noxious, immoral, noisome, offensive or illegal act, trade, business, occupation or calling at any time during the Term to be exercised, carried on, permitted or suffered in the Premises and the Lessee will not permit any act, matter or thing whatsoever at any time during the Term to be done in the Premises which shall or may cause annoyance, nuisance, grievance, damage or disturbance to other persons and without limiting the generality of the foregoing, will not permit or suffer the escape of excessive pollution emissions of whatsoever nature in or from the Premises and will in this respect comply with all directions and requirements of the Lessor, and any responsible Authority.

6.3 Use of Appurtenances

The Lessee shall not use the Appurtenances for any purpose other than those for which they were constructed and shall not place therein any sweepings, rubbish, rags or other deleterious substances.

6.4 Drains and Wastes, gas and electricity

The Lessee shall not use any waste pipes, drains and conduits originating in or connected to the Premises, gas or electrical fittings other than for their intended purpose and shall keep such waste pipes, drains and conduits in a clean, clear and free flowing condition where there is a blockage to waste pipes, drains or conduits resulting by an act of the Lessee.

6.5 Interference with Services

The Lessee shall not interfere with any drains, water supply, gas, electrical, plumbing or other services in the Building or in the Premises except in relation to the approved fitout or the written consent of the Lessor acting reasonably.

6.6 Holing of Walls

The Lessee shall not cut, mark, deface, drill or damage the Appurtenances, walls, ceilings or floors of the Premises or the Building without the prior written consent of the Lessor, which consent shall not be unreasonably withheld provided that the Lessee will reinstate any such

Appurtenances, walls ceilings or floors at the end of the Term to their condition at the earlier of the Date of Commencement or the date of first occupation of the Premises by the Lessee.

6.7 Cleaning

- (a) The Lessee must appoint a cleaning contractor for that part of the Premises consisting of the laboratory and warehouse areas (including window cleaning and waste removal services from the Premises) at its cost and keep those parts of the Premises clean. The Lessor must provide and the Lessee must exclusively use, a cleaning (including window cleaning) and waste removal service for that part of the Premises consisting of the offices and foyer (the “**Cleaning Service**”) but the Lessor is not responsible to the Lessee for any loss or damage to the property or effects of the Lessee caused by the person engaged to carry out the Cleaning Service or any of the employees agents or workers of that person. The Lessee must permit reasonable access to allow that person and the employees, agents and workers of that person to perform the Cleaning Service.
- (b) The Lessee must pay to the Lessor in addition to the Rent and Outgoings the cost incurred by the Lessor in providing the Cleaning Service within seven (7) days of service of a written notification of that cost for any period during the Term.
- (c) The Lessor may from time to time provide the Lessee with the Lessor’s reasonable estimate of the cost of the Cleaning Service for any period in advance and the Lessee must then pay to the Lessor during that period the estimated costs of the Cleaning Service by equal monthly instalments in advance on the days on which Rent is to be paid under this Lease.

6.8 Location of Refuse

The Lessee shall not permit any garbage, refuse, rubbish, containers or other waste materials to be in any place where they may be visible from the Common Areas except that the Lessee may deposit rubbish and cardboard recycling skips at the rear of the Building in that area designated as Car Park 11 on the hardstand in the Plan exhibited to this Lease and initialled by the Lessor and the Lessee for emptying by appropriate contractors on the day after such rubbish and cardboard recycling skips are deposited. The Lessee must not throw any matter or thing out of the windows or doors or down any shafts, passages or skylights of the Building or anywhere into the Common Areas.

6.9 Removal of Refuse

The Lessee shall at its own cost cause to be removed from the Premises from time to time all packing materials, cartons, containers and other waste materials of every description including wet refuse which exceed the standard waste refuse requirements for the Permitted Use and must not allow any accumulation of refuse.

6.10 Overloading of Floors

The Lessee shall observe the maximum floor loading weights as determined by the Lessor and shall not permit the floors of the Premises to be broken, strained or damaged by overloading.

6.11 Installation of Machinery

The Lessee will not bring upon the Premises any heavy, noisy or vibrating machinery or other plant, fittings or equipment (including safes) without the prior written consent of the Lessor

and in no event shall the Lessee cause any structural or other damage to the floors or walls or any other parts of the Premises or the Common Areas and the Lessor may direct the routing, installation and location of all such machinery, plant, fittings and equipment and the Lessee shall observe and comply with all such directions.

6.12 Overloading of Electrical Equipment

The Lessee shall not install any electrical equipment in or about the Premises that overloads the cables or boards or sub-boards through which electricity is conveyed to the Premises.

6.13 Inflammable Substances

The Lessee shall not bring upon or store in the Premises any explosive or any inflammable, hazardous, or corrosive fluids or chemicals in contravention of the statutory provisions or of any Authority or of any policy of insurance relating to the Premises.

6.14 Light and Air

The Lessee shall not cover or obstruct any of the skylights, ventilators and windows reflecting or admitting light or air into the Building or the Premises.

6.15 Animals

The Lessee shall not keep any animals or birds in the Premises or the Building.

6.16 Special Services

If the Lessee requests the Lessor to incur any unusual costs charges and expenses including those connected with any alterations, repairs or maintenance to the Premises or providing such additional or unusual services for the exclusive use of the Lessee such as (but without limiting the generality of the foregoing) the removal, disposal or burning of rubbish and the cleaning and servicing of the Building or Common Areas, then the Lessee shall pay all such costs to the Lessor upon demand.

6.17 Fittings and Fixtures

The Lessee shall at its own expense fit out the Premises with any machinery it requires to carry out its Permitted Use, and all fittings and fixtures necessary for the business of the Lessee in a safe manner and will keep them in good repair and efficient working order and condition and properly stocked and attended to.

6.18 Glass and Signs

The Lessee shall promptly and at its own cost repair or replace all broken, cracked or damaged glass and signs in the Premises.

6.19 Doors, Keys and Windows

- (a) The Lessee shall ensure that the Premises are kept secure from intruders and make good any damage to the Premises including the front door of the Premises caused by any intruder on the Premises.
- (b) All keys to the Building or the Premises (which in this clause includes access cards or other methods of access to the Building) held, provided to or made or procured by the Lessee must be surrendered to the Lessor on the expiration or earlier termination of the Term and the Lessee must provide upon request from the Lessor

a list of the recipients of those keys. The Lessee must pay all costs and expenses for the replacement, or in connection with the loss, destruction of keys immediately upon demand by the Lessor.

6.20 Bulbs, Tubes and Illuminated Signs

The Lessee shall at its own cost promptly replace all broken or faulty light fittings, light bulbs, tubes and all associated fittings in the Premises.

6.21 Requirements of Public Authorities

The Lessee will insofar as it is possible for the Lessee, promptly comply with all statutes, ordinances, proclamations, orders and regulations present or future affecting or relating to the Premises or its use, and with all requirements notices or orders which may be given by any Authority, **PROVIDED THAT** this covenant shall not impose on the Lessee any obligation in respect of any structural or capital maintenance, replacement or repair except where rendered necessary by any wilful or negligent act, default or omission on the part of the Lessee or by the Lessee's particular use or occupancy of the Premises.

6.22 Pest Control

The Lessee will take all reasonable precautions to keep the Premises free of rodents, vermin, insects, pests, termites, birds and animals and in the event of failing so to do will if so reasonably required by the Lessor but at the cost of the Lessee employ from time to time or periodically pest exterminators approved of by the Lessor (such approval not to be unreasonably withheld).

6.23 Infectious Illness

The Lessee will in the event of it becoming aware of any infectious illness occurring in the Premises promptly notify the Lessor and the proper Authorities and at the expense of the Lessee will thoroughly fumigate and disinfect the Premises to the reasonable satisfaction of the Lessor and relevant Authorities and otherwise comply with their lawful requirements in regard to the same.

6.24 Notice of Defects

Upon it becoming aware of the same, the Lessee will give to the Lessor prompt notice in writing of any accident to or defect or want of repair in any services to the Premises or to the Air Conditioning Equipment, the Fire Equipment, the Appurtenances or the lifts and escalators and of any circumstances relative to the Premises likely to be or to cause any danger, risk or hazard to the same or to any person.

6.25 Exterior Signs

The Lessee will not without the prior approval in writing of the Lessor (such approval not to be unreasonably withheld) erect, display, affix or exhibit on or to the exterior or interior of the Building or any part of the Premises any signs, lights, embellishments, advertisements, television or wireless antenna or mast, awning or canopy, names or notices visible from outside the Premises and must have prior to any such erection display, affixing or exhibiting have obtained the proper consents of any relevant Authority. The Lessee shall make good all damage so caused and upon the termination of the Lease shall remove all such signs, advertisements and embellishments and make good any damage caused to the Premises and the Building.

6.26 Auctions

The Lessee shall not without the prior written consent of the Lessor which consent may be withheld at the absolute discretion of the Lessor use the Premises for any auction bankrupt or fire sale.

6.27 Pick Up and Delivery

- (a) The Lessee shall not permit trade vehicles while being used for delivery and pick up of merchandise to be parked or stopped at any place or time within the Building or on the Land except such place or places and at such time or times as the Lessor may specifically allow.
- (b) Where there is a goods entrance to the Building, the Lessee shall ensure that all of its contractors and deliverers who require the use of trolleys for that delivery use that goods entrance.

6.28 Smoking

- (a) Subject to subclause (b), the Lessee must not permit its employees, agents or invitees to smoke cigarettes or other tobacco products in any part of the Premises or the Building and if requested by the Lessor, must erect and maintain signs prohibiting such smoking. No person is permitted to smoke within twenty (20) metres of any entrance or exit to the Building and the Lessor will erect and maintain signage to this effect.
- (b) The Lessee may designate a smoking zone in that part of the Building mutually agreed between the Lessor and the Lessee.

7. ASSIGNMENT

7.1 Restrictions on Assignments

The Lessee will not during the continuance of this Lease assign, transfer, demise, sublet, part with or share the possession of, or grant any licence affecting or mortgage, charge or otherwise encumber or deal with the Lessee's interest in the Premises or by any act or deed procure any of the foregoing other than as set out below:

- (a) any assignment, transfer or subletting is not a breach of this clause if prior thereto:
 - (i) the Lessee either has not committed any default under this Lease or has committed a default under this Lease which has been waived or excused in writing or remedied;
 - (ii) the Lessee has proved to the reasonable satisfaction of the Lessor that the proposed assignee, transferee or sublessee (the "**Ingoing Lessee**") is a respectable responsible and solvent person of sound financial standing capable of paying the Rent and fully complying with the Lessee's obligations under this Lease (or the sublease as applicable) and capable of carrying on the Permitted Use on the Premises and, if required by law, has obtained the prior written approval of the relevant Authorities to its proposed use of the Premises;

- (iii) the Ingoing Lessee has entered into a covenant with the Lessor in the form reasonably required by the Lessor that it will duly perform and observe the Lessee's obligations in this Lease but in the case of a subletting or licence, such covenant is limited to the extent that the obligations relate to the use or occupation of the Premises or the Building by the sublessee or licensee;
 - (iv) in the case of a sublease or licence:
 - (A) the Ingoing Lessee and if required by the Lessor, the Lessee, have entered into a covenant with the Lessor in the form reasonably required by the Lessor providing that following default by the Lessee in payment of Rent under this Lease (of which default the Lessor's notice is conclusive evidence) the Lessor may require the sublessee or licensee to pay to the Lessor until otherwise directed by the Lessor, some or all of the rent or licence fee payable under the sublease or licence in satisfaction of its obligations to the Lessee to the extent of the payment, but without in any way creating a relationship of landlord and tenant between the Lessor and the sublessee or licensee; and
 - (B) if the Lessor so requires, the Lessee proves to the reasonable satisfaction of the Lessor that the rent or licence fee payable by the sublessee or licensee is the best rent or licence fee reasonably obtainable for the subleased or licensed premises or provides confirmation in writing to the Lessor that the rent or licence fee is below market rent;
 - (v) the Ingoing Lessee has furnished the Lessor with a bank guarantee of the performance of his obligations under this Lease as the Lessor reasonably requires;
 - (vi) in the case of an assignment the Lessee has entered into a deed in the form reasonably required by the Lessor under which the Lessee releases the Lessor from all Claims against the Lessor in respect of, or in any way arising from, this Lease and in which the Lessor releases the Lessee from all Claims against the Lessee in respect of, or in any way arising from, this Lease following the date of the assignment subject to the Lessee being responsible for all payments and claims pertaining to any time prior to the date of assignment; and
 - (vii) the Lessee has paid all reasonable fees and expenses incurred by the Lessor in connection with the investigation of the proposed Ingoing Lessee and all other reasonable expenses including legal fees relating to the proposed assignment, transfer or subletting.
- (b) For the purpose of this clause any change in the shareholding of the Lessee (if a company), or its holding company of 50% or more altering the effective control of the Lessee from that existing at the Date of Commencement or (in the case of an assignee) from that existing at the date of the assignment of this Lease to that Lessee shall be deemed an assignment of this Lease. This clause will not however apply while the Lessee under this Lease is Finisar Australia Pty Limited.
- (c) For the purposes of this clause any change in the ownership of a majority of the units in a trust (if any) of which the Lessee is the trustee from that existing at the Date of Commencement (or, in the case of an assignee from that existing at the

date of the assignment of this Lease to that Lessee) shall be deemed an assignment of this Lease.

8. MAINTENANCE, REPAIR, ALTERATIONS, ETC.

8.1 Repair of Premises

The Lessee shall at its own cost during the whole of the Term maintain, replace, repair and keep the whole of the Premises and Appurtenances and Fire Equipment and any existing furnishings in the Premises at the Date of Commencement in good and substantial repair, working order and condition, damage by explosion, earthquake, aircraft, riot, civil commotion, fire, flood, lightning, storm, tempest and fair wear and tear, Act of God and war damage excepted provided that these exceptions shall not apply if any insurance moneys are irrecoverable by the Lessor through the neglect, default or misconduct of the Lessee. The Lessee acknowledges that the Premises were in good repair and condition at the Date of Commencement.

8.2 Specific Repairs

The Lessee shall, without affecting the generality of clause 8.1, at the Lessee's expense:

- (a) prior to vacating the Premises paint the Premises in a proper and workmanlike manner those parts of the Premises which have at any time previously been painted with no less than two coats of paint;
- (b) keep the equipment of the Lessee and all doors and windows in the Premises maintained, clean and in good order and repair and keep in good condition all fittings, plant, furnishings and equipment of the Lessee;
- (c) make good any breakage, defect or damage to the Premises, the Appurtenances, the Fire Equipment, the Services, the Building or to any adjoining premises occasioned by want of care, misuse or abuse on the part of the Lessee or by any breach or default by the Lessee of this Lease; and
- (d) keep the standard carpets and floor coverings and blinds and curtains (if any) in the Premises as are supplied by the Lessor in good and tenable repair and condition, fair wear and tear excepted, provided that the Lessee must use castor mats under all chairs for the duration of the Term which the Lessee acknowledges is a condition of the warranty held by the Lessor for the new carpets.

8.3 Alterations

The Lessee shall not without the previous consent in writing of the Lessor, which will not be unreasonably withheld, make any alterations additions or other improvements to the Premises or its Appurtenances (including redecoration or painting) unless it has obtained the necessary permissions or consents of the relevant Authorities and delivered copies of these and copies of all the relevant plans and specifications to the Lessor provided that:

- (a) all alterations, additions or other improvements carried out under this clause will be at the cost and expense of the Lessee and in a proper and workmanlike manner and if so reasonably required by the Lessor under the supervision of the Lessor's architect whose reasonable fees shall be paid by the Lessee; and

(b) on completion of the alterations, additions or other improvements the Lessee must produce to the Lessor any certificates of compliance issued by or to any competent relevant Authority in relation to such works including fire regulations.

This clause 8.3 (to the extent it relates to payment of the fees of the Lessor's architect) will not apply to any fitout works approved by the Lessor prior to the Date of Commencement. The Lessor may reasonably withhold consent until the Rules and Regulations of the Building have been agreed to by the Lessee in writing. When the Lessor's consent has been granted, such consent remains subject to the Lessee continuing to comply with such Rules and Regulations for the Term and any extension thereof.

8.4 Partitioning

- (a) The Lessee shall use internal partitions within the Premises reasonably acceptable to the Lessor and the Lessee covenants not to make any additions or alterations to the partitions except with the prior approval in writing of the Lessor all such approvals not to be unreasonably withheld.
- (b) The Lessee shall pay the cost of internal partitions and their installation within the Premises including all doors, vents, glass and other items included in or incidental to the same and the cost of all additional lights, power, cabling and communications outlets, and the costs of all alterations and/or additions to the Air Conditioning Equipment and/or Fire Equipment which may be required by the Authorities and/or by reason of the position of any such partitions or the particular requirements of the Lessee together with all architect's and other consultant's fees incurred in connection with the installation or alteration of the partitions.
- (c) Such partitions shall be and remain the property of the Lessee who shall be responsible for all maintenance and insurance thereof.

8.5 Lessor May Enter to Repair

- (a) The Lessor shall have the right for itself and all those authorised by it upon reasonable notice (except in case of emergency when no notice shall be required) and at times agreed to between the parties provided consent by the Lessee shall not unreasonably withheld or delayed:
 - (i) enter upon and view the state of repair of the Premises and leave upon the Premises a notice in writing requiring the Lessee to carry out any repairs or maintenance which are the responsibility of the Lessee under the Lease and the Lessee shall repair any defects in accordance with the terms of the Lease;
 - (ii) carry out works or make any repairs, alterations or additions to, and to enter upon all or any part of the Premises, and to use the same for the purpose of effecting or carrying out any repairs, alterations or additions or other work which the Lessor may consider reasonably necessary or desirable to any part of the Building or any buildings adjacent thereto from time to time; and
 - (iii) enter the Premises with workmen and others and all necessary materials and appliances for the purpose of complying with the terms of any present

or future legislation affecting the Premises or the Building or of any notice by any Authority having jurisdiction or authority over or in respect of the Premises or the Building in respect of the destruction of insects, rodents or other pests or for the carrying out of any repairs, alterations or works (including the provision of air conditioning, sprinklers, lighting, power, telephone and other services to the Lessee and other lessees of the Building for which purpose the Lessor may from time to time require access to the service ducts, walls, floors and ceilings and the Premises) and also for the purpose of exercising the rights and powers of the Lessor in this Lease.

- (b) In exercising its rights under this clause, the Lessor shall ensure that as little disturbance as is reasonably practicable is caused to the Lessee in its use of the Premises.

8.6 Default in Repairing

In default of the Lessee repairing any defect according to reasonable notice including such notice under clause 6.21 and subclause 8.5(a) the Lessor may enter the Premises and execute at all reasonable times all or any of the required repairs as the Lessor may reasonably think fit, and in addition to the Lessor's other remedies, recover from the Lessee the reasonable cost of such repairs as the Lessee ought to have effected, including all directly related sums paid on account of any insurance, indemnities or compensation under the *Worker's Compensation Act*.

8.7 Lessor's Reservations

The Lessor reserves the right upon giving reasonable notice to the Lessee, to effect alterations, additions, renovations and refurbishment works to the Building both externally and internally and to any and all services in the Building and including the Common Areas and the façade of the Building and in doing so (but without in any way limiting the generality of the foregoing) may encroach upon common parking areas, employ or use the airspace above and surrounding any part of the Building including the erection of additional floors and additional floor space in the Building, interrupt the Services to the Premises and the Building and alter the vehicular or pedestrian access or ways to or within the Building and the Lessee will provide access to the Premises for this purpose and not make any objection or Claim in respect of any such works **PROVIDED ALWAYS** that the Lessor shall carry out such works in such a manner as will minimise so far as it may be practicable any inconvenience or interruption to the business of the Lessee and the Lessee's rights under this Lease are not materially diminished.

8.8 Liens on Premises

The Lessee shall pay or cause to be paid all costs of any work done by the Lessee or caused to be done by the Lessee on the Premises, and the Lessee will keep the Premises clear of all liens on account of work done for the Lessee or persons claiming under the Lessee. The Lessee agrees to and shall indemnify, defend and keep the Lessor free and harmless against any Claim, costs (including solicitor's costs) and all other expenses in the absence of any negligence on the part of the Lessor, on account of Claims of lien of labourers or material for any work performed or materials or supplies furnished for the Lessee or persons claiming under the Lessee.

8.9 Environmental Law

The Lessee shall:

- (a) not cause pollution, any environmental hazard or contamination that is prohibited by any Environmental Law;
- (b) maintain procedures which, in the reasonable opinion of the Lessor are adequate to monitor its compliance with Environmental Law and Authorisations;
- (c) where the Lessor reasonably suspects that the Lessee is not complying with subclause 8.9(b) above or with any Environmental Law or Authorisation:
 - (i) make reasonable endeavours to provide or do everything necessary to facilitate a site assessment of the procedures under subclause 8.9(b) above, and compliance with any Environmental Law or Authorisation by a consultant approved by the Lessor; and
 - (ii) maintain the confidentiality of those assessments;
- (d) permit the Lessor or any person authorised by the Lessor, to enter on the Premises at times agreed to between the parties, with the Lessee's Consent not to be unreasonably withheld or delayed, on not less than two day's notice (except in the case of emergency), to carry out environmental assessments; and
- (e) remedy any non compliance with an Environmental Law or Authorisation revealed by any site assessment, environmental assessment or procedure carried out or required under this clause.

8.10 Inspection Record

Prior to the Lessee's occupation of the Premises or any part, the Lessor may inspect the Premises any fittings, fixtures and Appurtenances in the Premises and make a record of their condition, signing such record and delivering two copies to the Lessee. The Lessee will check the record, noting any discrepancies and must sign and return one copy to the Lessor within fourteen (14) days of receipt of the record.

8.11 Structural or Capital Repairs

Notwithstanding anything in this Lease, the Lessee will not be required to make any structural or capital repair or alteration, the necessity for which was not caused or contributed by the Lessee's specific use of the Premises. The Lessor shall use reasonable endeavours to keep the Building in a structurally sound and watertight condition.

8.12 Lessor Works

The Lessor will use reasonable endeavours at its cost and to a trademanlike standard prior to the Date of Commencement, or in the event of reasonable delays no later than 1st January 2014:

- (a) replace the ceiling tiles and carpet in the office on level 1;
- (b) provide for a minimum of 400amps, 3 phase power to the warehouse component of the Premises; and

- (c) provide (separate from power in respect of air conditioning) for a minimum of 100 amps, 3 phase power to each office level of the Premises

9. AIR CONDITIONING, FIRE EQUIPMENT LIFTS, ETC.

9.1 Repair and Use

Where any Air Conditioning Equipment, Fire Equipment or lifts or escalators are provided or installed in the Building or the Premises by the Lessor:

- (a) the Lessor must use reasonable endeavours to keep the Air Conditioning Equipment, Fire Equipment, lifts and escalators working and reasonably available for the use of the Lessee (delays or stoppages due to repairs, maintenance, accidents, strikes or other unavoidable causes beyond the Lessor's control excepted);
- (b) the Lessee will at all times comply with and observe the reasonable requirements of the Lessor in relation to the Air Conditioning Equipment, Fire Equipment, lifts or escalators and will not do anything in relation to the same or otherwise in relation to the use or ventilation of the Premises which might interfere with or impair the efficient operation of the Air Conditioning Equipment, Fire Equipment, lifts or escalators in the Premises or the Building; and
- (c) the Lessee may use the Air Conditioning Equipment at all times when it is working and at all times when the Premises are open for business.

9.2 Interference with Equipment

The Lessee shall not interfere with the Air Conditioning Equipment or the Fire Equipment or the lifts or escalators, in any manner howsoever.

9.3 Disconnection of Faulty Equipment

If:

- (a) the Lessor is of the reasonable opinion that the Air Conditioning Equipment, Fire Equipment or lifts or escalators are not functioning correctly, the Lessor may without incurring any liability to the Lessee shut off or divert to other parts of the Building supplies of condenser water or conditioned air or the escalators or lifts until the fault (if any) is rectified; and/or
- (b) the Air Conditioning Equipment, Fire Equipment, lifts or escalators for the time being installed in the Building or the Premises fail to function for any reason; then
- (c) the Lessor must use reasonable endeavours to repair any faulty operation of the Air Conditioning Equipment, Fire Equipment, or the lifts and escalators to minimise inconvenience, damage or loss to the Lessee; and

subject to the Lessor's compliance with clause 9.3(c), the Lessor shall not be liable for any Claim to the Lessee for any inconvenience, damage or loss which the Lessee may suffer by reason of any shutting off, diversion, or faulty operation of the Air Conditioning Equipment, Fire Equipment, or the lifts and escalators nor will the Lessee by reason of any such shutting off, diversion, or faulty operation be entitled to terminate this Lease.

9.4 Access to Contractors

The Lessee shall at all reasonable times permit any authorised persons access to the Premises to inspect, service, maintain and repair the Air Conditioning Equipment, Fire Equipment, lifts or escalators.

9.5 Air Conditioning Maintenance and Equipment Utilisation Costs

The Lessor at its own cost shall separately meter each floor of the Premises for air conditioning usage. In the event that the Lessee uses air conditioning over sixty (60) hours per week for the Premises, then the Lessor shall be entitled to charge the Lessee for additional maintenance and equipment utilisation costs reasonably incurred resulting from the accelerated wear and tear.

9.6 Operating Hours of Building

The standard operating hours of the Building are 8am to 6.00pm Monday to Friday, excluding public holidays. The Lessor reserves the right to alter the standard operating hours of the Building in its discretion acting reasonably. The Lessee will (subject to other clauses in this Lease) have access and use to the Premises 24 hours a day 7 days a week.

10. ELECTRICITY AND OTHER SERVICES

10.1 Lessee to Arrange

The Lessee will make its own arrangements for the supply of electricity to and the installation of telephone, computer, telecommunications and like services in the Premises.

10.2 Lessee to Pay Charges

The Lessee will duly and punctually pay all charges for electricity, telephone, gas, excess water or water separately metered and supplied to the Premises provided that if the Lessee makes default in the payment of any such charges or accounts, then the Lessor may at its reasonable option pay the same and recover any amounts so paid as if the same were overdue Rent.

10.3 Supply Failure

- (a) The Lessor shall make reasonable endeavours to ensure that the electricity, telecommunications or supply or any other Services or facilities including the Appurtenances remain operational; and
- (b) Subject to the Lessor's compliance with clause 10.3(a), the Lessor will not be liable for any Claim sustained by the Lessee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telecommunications or water supply or any other services or facilities including the Appurtenances, enjoyed by the Lessee in conjunction with the Premises.

11. OPTION FOR RENEWAL

11.1 Exercise of Option

If the Lessee shall desire to take a new lease of the Premises for a further term or terms as specified in **Item 9** of the Reference Data (“**Further Term**”) from the Terminating Date and prior to the Terminating Date gives to the Lessor not less than nine (9) months’ notice in writing and has during the Term duly and punctually paid the Rent at the proper times and is not in material breach of the covenants and conditions and agreements on the part of the Lessee contained in this Lease at the time of giving notice, then the Lessor will at the reasonable cost of the Lessee grant to the Lessee a renewed lease of the Premises for the Further Term from the Terminating Date at the Rent stated in a revised Reference Schedule. The Lease for the Further Term shall otherwise contain the same terms and conditions with following changes made:

- (a) this present covenant for renewal shall be omitted;
- (b) the Reference Data shall be duly amended to incorporate the new Rent and Rent Review Dates, and amount of bank guarantee;
- (c) The Rent payable during the first and subsequent years of the renewed term shall be determined as referred to in **Item 10** of the Reference Data and calculated in accordance with clause 3.2;
- (d) the Lease for the Further Term shall be prepared by the Lessor’s solicitors and the reasonable costs including all costs of obtaining any relevant consent, duty and registration fees shall be borne by the Lessee; and
- (e) Clause 8.12 and Clause 19.1(b) shall be omitted.

12. INSURANCE

12.1 Lessee to Effect Insurances

The Lessee will:

- (a) at its own expense insure and keep insured its plant, fittings fixtures and stock-in-trade contained in or about the Premises to the full insurable value against loss or damage occasioned by fire, fire fighting activities, fusion, explosion, lightning, civil commotion, storm, tempest, earthquake, burglary and malicious damage and shall produce the certificate of currency and the receipted premium notices to the Lessor when requested by the Lessor;
- (b) at its own expense, effect and keep current at all times during the Term public risk insurance relating to the Premises in the amount of twenty million dollars (\$20,000,000.00) or for such greater amount from time to time as the Lessor may reasonably require;
- (c) effect and keep current during the Term, an unlimited worker’s compensation policy covering all persons employed by the Lessee including its servants, agents and invitees; and

- (d) at its own expense, insure and keep insured for its full insurable value all glass in the Premises against breakage.

12.2 General Insurance Provisions

In respect of the insurance policy referred to in clauses 12.1(b) and 12.1(d), this must be effected with the Lessor's interest noted on the policy with a reputable insurer and the Lessee shall punctually pay all premiums and duty necessary and whenever reasonably required will deliver to the Lessor the certificate of currency for insurance and the receipt for the last premium.

12.3 Heating and Energy

The Lessee will not use any method of heating or lighting or supply of any other form of energy in or about the Premises in contravention of any policy of insurance in respect of the Premises.

12.4 Insurance Not to be Voided

The Lessee will not at any time during the Term do, permit or omit to do any act, matter or thing upon the Premises or the bringing or keeping of anything in the Premises which may render any insurance policy relating to the Premises against damage by fire and other risks void or voidable or cause the rate of premium on any such insurance premiums to be liable to be increased.

12.5 Fire Regulations

The Lessee will at all times and at its own cost comply with all regulations or requirements of any Authority and the proper requirements of any interested insurer in respect of all fire regulations including regulations pertaining to sprinklers and other fire prevention equipment and installations (including alarms) in the Premises but is not required to undertake any structural or capital works except to the extent these are required due to the specific use of the Premises by the Lessee. At all times, the Lessee must comply with the fire and emergency procedures of the Building which include, but are not limited to, participation in emergency planning, evacuation and emergency exercises, and the appointment and compliance with the requirements of designated wardens.

12.6 Payment of Additional Premiums

The Lessee will from time to time as and when required by notice in writing from the Lessor promptly pay all extra excess premiums of insurance on the improvements erected in the Premises and/or the contents of such improvements if any such extra excess premiums be required on account of extra risk exclusively caused by the Lessee's use of the Premises.

13. INDEMNITIES

13.1 Occupancy at Risk of Lessee

The Lessee agrees to occupy and use the Premises at the risk of the Lessee and releases to the full extent permitted by law the Lessor from all Claims resulting from any accident, damage, death or injury occurring in or about the Premises, the Building or the Land except where caused by the act, negligence or default of the Lessor.

13.2 Lessee's Indemnities

Without prejudice to the generality of the foregoing provisions, to the extent that any moneys paid to the Lessor out of insurances effected by the Lessor and/or Lessee do not fully indemnify the Lessor from and against all Claims (including solicitor and client costs and costs as between party and party) to which the Lessor shall or may be or become liable in respect of all or any of the matters referred to in this clause, the Lessee indemnifies the Lessor from and against all Claims to which the Lessor shall or may be or become liable in respect of all or any of the following:

- (a) any loss or damage to property, or death or injury sustained, upon any portion of the Premises or the Building whether in the occupation or control of the Lessor or of the Lessee or of any other person caused or to the extent contributed to by the use or occupation of the Premises by the Lessee, or caused or contributed to by any act, omission, neglect, breach or default of the Lessee, provided any liability under this sub-clause shall be reduced to the extent that a claim is caused or contributed to by any act, omission neglect, breach or default of the Lessor;
- (b) resulting from any act, neglect, default or omission by the Lessee whether the same arises through any act, neglect, default or omission of the Lessee or any trespassers;
- (c) resulting from any Claim to pay, do or perform any act, matter or thing to be paid, done or performed by the Lessee under this Lease except to the extent that the Lessor shall be obliged under the provisions of this Lease to pay for or contribute to the cost of the same;
- (d) the negligent use, misuse, or abuse by the Lessee of the electricity, water and other Services and facilities and Appurtenances of the Premises and the Building; and
- (e) overflow or leakage of water (including rain water) and other fluids in, into or from the Premises having origin on or within the Premises or caused or contributed to by any act or omission on the part of the Lessee. Any liability under this sub-clause shall be reduced to the extent that the overflow or leakage of such fluids is caused or contributed by any act or omission on the part of the Lessor.

13.3 Continuing After Determination of Lease

The obligations of the Lessee under this Part shall continue after the expiration or other determination of the Lease in respect of any act, deed, matter or thing happening before such expiration or determination.

14. QUIET ENJOYMENT AND HOLDING OVER

14.1 Quiet Enjoyment

The Lessee paying the Rent and duly and punctually observing and performing the covenants, obligations and provisions in this Lease on the part of the Lessee to be observed and performed shall and may peaceably possess and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by, from or under the Lessor.

14.2 Holding Over

In the event of the Lessee holding over after the Terminating Date or sooner determination of the Term with the consent in writing of the Lessor, the Lessee shall become a monthly

lessee only of the Lessor at a rental payable monthly in advance, the first of such payments to be made on the day following the Terminating Date or sooner date of termination and each of such payments to be at the Rent payable immediately prior to the Terminating Date or sooner date of termination increased by ten percent (10%) per annum. Such tenancy shall be determinable at any time by either party by giving one (1) month's notice in writing to the other party but otherwise shall be subject to the same covenants and conditions as this Lease or implied as are not inconsistent with a monthly tenancy and no holding over by the Lessee beyond the Terminating Date shall be construed as creating a tenancy from year to year.

15. DEFAULT AND TERMINATION

15.1 Re-entry or Surrender

In the event that:

- (a) any Rent or any other moneys payable under this Lease remain unpaid for seven (7) days after the date appointed for payment of the same and provided that the Lessor shall have given written notice of such breach, default or non-observance and allowed the Lessee a reasonable time to rectify such breach (and the parties agree that 7 days is a reasonable time) and the breach, default or non-observance is not remedied within that notice period; or
- (b) the Lessee fails to perform or observe any one or more of the essential covenants or provisions on the part of the Lessee expressed or implied in this Lease and provided that the Lessor shall have given written notice of such breach, default or non-observance and allowed the Lessee a reasonable time to rectify such breach (and the parties agree that 14 days is a reasonable time) and the breach, default or non-observance is not remedied within that notice period or unless their non-performance or non-observance has been waived or excused by the Lessor in writing; or
- (c) the Lessee being a corporation, any event occurring in relation to that corporation of the kind set out under the definition of "externally-administered body corporate" in Section 9 of the *Corporations Act 2001*; or
- (d) the Lessee being a corporation shall enter into liquidation voluntary or otherwise except for the purpose or reconstruction; or
- (e) the Lessee being declared bankrupt; or
- (f) an assignment is made of the property of the Lessee for the benefit of creditors; or
- (g) the Term or the interest of the Lessee in this Lease or in the Premises shall be attached or taken in execution or upon any legal process; or
- (h) the Lessee ceases to carry on business; or
- (i) the Lessee repudiates this Lease; or
- (j) the Lessee fails to perform or observe any one or more of the covenants or provisions on the part of the Lessee expressed or implied in this Lease other than those referred to in subclauses 15.1(a) or 15.1(b), and provided that the Lessor shall have given written notice of such breach, default or non-observance and allowed the Lessee a reasonable time to rectify such breach (and the parties agree

that 14 days is a reasonable time) and the breach, default or non-observance is not remedied within that notice period

THEN, in any one or more of such events the Lessor at any time thereafter but without prejudice to any other rights of the Lessor including but not limited to any Claim which the Lessor may have against the Lessee in respect of any breach by the Lessee of the covenants and provisions in this Lease may:

- (k)
 - (i) without any prior demand or notice (other than that referred to in subclause 15.1 above) re enter into and take possession of the Premises or any part (by force if necessary) and eject the Lessee and all other persons whereupon the Lease shall be terminated; or
 - (ii) terminate the Lease by notice in writing to the Lessee; and/or
- (l) sue the Lessee for damages suffered by the Lessor for the entire Term and compensate the Lessor for any loss and damage suffered notwithstanding that:
 - (i) the Lessee may have abandoned or vacated the Premises; and/or
 - (ii) the Lessor may have accepted the Lessee's repudiation; and/or
 - (iii) the Lessor may have elected to re-enter or to terminate the Lease; and/or
 - (iv) the parties' conduct may constitute a surrender by operation of law; and/or
- (m) declare that the Rent provided for in the Lease for the then unexpired portion of the Term is immediately due and payable and (if necessary) sue for and recover from the Lessee that Rent subject to the obligation on the part of the Lessor to:
 - (i) refund to the Lessee from the amount due and received any amount received from any other tenant of the Premises during that unexpired portion of the Term and any amount received from the Lessee by way of damages in respect of that default; and
 - (ii) take reasonable steps to mitigate the Lessor's damages and to use reasonable endeavours to lease the Premises at a reasonable rent and on reasonable terms,such that the Lessor's entitlement to damages shall be assessed on the basis that the Lessor should have observed the obligation to mitigate damages contained in this clause provided that the Lessor's conduct taken in pursuance of the duty to mitigate damages shall not by itself constitute acceptance of the Lessee's breach or repudiation or a surrender by operation of law; and/or
- (n) where the Lessee has obtained any kind of incentive to enter into this Lease by way of rent reduction or a rent free period or the payment of fitout expenses by the Lessor ("**Incentive**"), declare that the pro-rated value of that Incentive becomes due and payable immediately to the Lessor and the Lessor may collect that amount as Rent in arrears.

15.2 Essential Terms

Without prejudice to any other right or remedy of the Lessor contained or implied in this Lease, it is expressly agreed and declared that the covenants, terms and conditions by the Lessee contained or implied in:

- (a) Clause 3 relating to payment of Rent and Outgoings and GST and subclause 3.2(a)(vii) relating to payment of costs of a valuer;
- (b) Clause 6.1 relating to the use of the Premises;
- (c) Clause 7 relating to Assignment, Sub-letting and Mortgages etc;
- (d) Clause 8 relating to Maintenance, Alterations, Repairs;
- (e) Clause 14.2 relating to Holding Over; and
- (f) Clauses 15.6, and 15.8 relating to Yielding Up,

are essential and/or fundamental terms of this Lease the breach, non-observance or non-performance of any one or more of such covenants, terms or conditions shall be deemed to be a fundamental breach of the provisions of this Lease on the part of the Lessee **PROVIDED THAT** the presence of this clause in the Lease shall not mean or be construed as meaning that there are no other fundamental and/or essential terms in this Lease.

15.3 Acceptance of Rent

Demand or acceptance of Rent by the Lessor after default by the Lessee under this Lease shall be without prejudice to the exercise by the Lessor of the powers conferred upon it by clause 15.1 or any other right, power or privilege of the Lessor under this Lease and shall not operate as an election by the Lessor either to exercise or not to exercise any of such rights, powers or privileges.

15.4 Lessor's Remedy of Lessee's Defaults

If the Lessee omits to pay any money or to do or effect anything which the Lessee has in this Lease covenanted to pay, do or effect then on each and every such occasion the Lessor may at the cost of the Lessee and without prejudice to any rights or powers arising from such default, pay such money or to do or effect such thing by itself as if it were the Lessee and for that purpose the Lessor may enter upon the Premises and there remain for the purpose of doing or effecting any such thing.

15.5 Interest

Without prejudice to the rights, powers and remedies of the Lessor otherwise under this Lease the Lessee will pay to the Lessor interest on any moneys due by the Lessee to the Lessor on any account whatsoever pursuant to this Lease but unpaid for fourteen (14) days such interest to be computed from the due date for the payment of the moneys in respect of which the interest is chargeable until payment of such moneys in full and be recoverable in like manner as Rent in arrears. The rate of interest applicable shall be two (2) percent above the rate as recorded from time to time by the Westpac Banking Corporation Limited for overdrafts of \$100,000.00 or if there be no such rate then the rate of ten per centum (10%) per annum and such interest shall accrue and be calculated on a daily basis.

15.6 Yielding Up

- (a) The Lessee will forthwith upon the expiration of the Term or sooner determination of this Lease (unless otherwise directed by the Lessor in writing) peaceably surrender and yield up to the Lessor the Premises in such repair, order and condition as required by Clause 8 and clean and free from rubbish and (except where the Term was terminated under clause 4.1(a)) in good and substantial repair and condition, including
- (i) Removing all the Lessee's fit out, fixtures and fittings and making good any damages caused by its installation or removal;
 - (ii) Reinstating the tenancy to base building standard and layout, including the mechanical and electrical services, and repair of the ceiling plus restoring any structural changes made by the Lessee back to how they received the premises at the beginning of the Lease;
 - (iii) Returning all existing mechanical, electrical and fire & ventilation services to original configuration and provide certification of compliance for all essential services for the Premises;
 - (iv) Ensuring all roller shutter doors are in good working order;
 - (v) Making good the Premises including repainting and recarpeting the office to the Lessor's reasonable satisfaction; and
 - (vi) Carrying out all works described in Annexure B.
- (b) The Lessee must remove all its fixtures and fittings, plant and equipment and other articles, and if so required by the Lessor must remove all alterations, additions, partitions and other improvements (including all cabling and telecommunications equipment) in the Premises whether they were installed by the Lessee, the Lessor on behalf of the Lessee.
- (c) At the Lessee's expense the Lessee must make good the Premises (including any damage to ceilings) to return them to a clean floor plate with the Air Conditioning Equipment, the Fire Equipment and the lighting configured for an open plan Premises provided that where there are carpets in the Premises, the carpets must be replaced with a carpet to the reasonable specification of the Lessor and all parts of the Premises previously painted must be painted in a proper and workmanlike manner to the reasonable satisfaction of the Lessor and without limitation, carry out the works generally described in the Make Good Schedule.
- (d) If the carpet or any part of the carpet installed in the Premises becomes damaged or stained or discoloured or exceptionally worn so as, in the reasonable opinion of the Lessor, to render the same unacceptable to the Lessor or to tenants generally, or the Lessee has not complied with subclause 15.6(a), then on or before vacation of the Premises, the Lessee must, in a good and workmanlike manner and at the Lessee's expense replace the same or so much thereof as, in the Lessor's reasonable opinion, are necessary or desirable to make the carpet reasonably attractive and suitable to the Lessor or tenants generally.
- (e) Prior to the commencement of the make good required under subclauses 15.6(c) and 15.6(d) the Lessee must provide to the Lessor in writing a scope of works intended to be carried out in accordance with subclauses 15.6(c) and 15.6(d),

including but not limited to a list of contractors to be used, for the written approval by the Lessor, which approval must not be unreasonably withheld or delayed. The Lessor may reasonably withhold consent until the Rules and Regulations of the Building have been acknowledged and agreed to by the Lessee in writing. When the Lessor's consent has been granted, such consent remains subject to the Lessee continuing to comply with such Rules and Regulations during the undertaking of the make good obligations.

- (f) The Lessor must provide to the Lessee a list of approved contractors for all air conditioning and electrical works to the Premises to be undertaken by the Lessee as part of its requirements in this clause, but the Lessor is not responsible to the Lessee for any loss or damage to the Premises or to any property or effects of the Lessee caused by the person engaged to carry out any works in this clause or any of its agents or employees. It is acknowledged by the Lessor and the Lessee that the Lessee is under no obligation to use a contractor under the approved contractors list provided by the Lessor however upon completion of any work, the Lessee is obligated to provide to the Lessor a certificate of compliance evidencing that the works have been carried out by a licensed contractor to the relevant Australian standard.

15.7 Lessee's Fixtures Not Removed

If the Lessee does not remove and carry away any of its alterations, additions, partitions or other improvements or its fixtures, fittings, plant, equipment and other articles or items (including any signs affixed to the Building) at or immediately prior to the determination of this Lease (or within such further reasonable time as the Lessor may allow), the Lessor may at the expense of the Lessee remove and dispose of the same and any of such alterations, additions, partitions or other improvements fixtures, fittings, plant, equipment and other articles or items not removed by the Lessee. The Lessor may at the expense of the Lessee make good any damage to the Premises (to the standard as required by clause 15.6) caused as a result of such removal and disposal.

15.8 Payment of Rent upon Default

If the Lessee has not complied with clause 15.6 then the Lessee will continue to pay Rent and Outgoings until it has complied with clause 15.6.

15.9 Make Good Exclusion

Notwithstanding anything in this Clause 15, in the event that the Lessee, with written approval from the Lessor, makes a capital improvement to the Premises or the Building on the basis that the Lessee does not have to make good such capital improvement and has written approval from the Lessor specifically excluding the capital improvement from make good, then the Lessee shall not be required to remove the capital improvement under clause 15.5 above.

16. COMMON AREAS

16.1 Obstruction of Common Areas

The Lessee is prohibited and shall prohibit its employees, servants, suppliers and others over whom it may have control from obstructing in any manner howsoever the Common Areas and in particular the entrances, exits and driveways (if any) in and to the Building.

16.2 Use of Common Areas

Subject to the limitations and restrictions in the Lease the Lessor shall during the Term permit the Lessee and all persons lawfully authorised by it in common with others having the like rights to exercise and enjoy the right to pass and repass whilst on foot over and along the Common Areas and to pass and repass with approved vehicles over those parts of the Common Areas as the Lessor in its absolute discretion allows in writing from time to time.

16.3 Exclusion of persons

The Lessor may at any time exclude and restrain any person or persons from entering upon any part of the Building other than bona fide clients, customers, patrons, employees, delivery men or service suppliers of the Lessee or of other tenants of the Building. Without in any way limiting the meaning of "bona fide", any person who breaches the Lessor's Rules and Regulations shall be deemed to be not bona fide.

16.4 Maintenance of Common Areas

The Lessor shall keep and maintain the Common Areas in good order and repair and in clean and tidy condition.

16.5 Rules and Regulations

The Lessor may from time to time proclaim rules and regulations not inconsistent with or in derogation of the rights of the Lessee under the Lease relating to the use safety, care and cleanliness of the Common Areas and the preservation of good order and the comfort of persons therein, the location and storage of garbage and refuse in Common Areas pending its removal and the external appearance of the Building or any other matter it believes is reasonable having regard to the interests of the Building as a whole and for the rights or interests of other tenants, occupiers or other persons lawfully therein (the "**Rules and Regulations**"). Prior to being granted access to the Building the Lessee must acknowledge and agree in writing to be bound by the Rules and Regulations of the Building. The Lessee will abide by and comply with the Rules and Regulations of the Building and any additions, variations or amendments to the Rules and Regulations from time to time.

16.6 Control of Common Areas

The Common Areas shall at all times be subject to the control of the Lessor who shall have the right having regard to the interests of the Lessor in the Building as a whole and/or the rights or interests of other tenants, occupiers or persons lawfully therein from time to time and to enforce the Rules and Regulations and without limiting the generality of the foregoing the Lessor expressly reserves the right at any time and from time to time to:

- (a) construct, maintain and operate lighting facilities;
- (b) police the Common Areas;
- (c) change the area, level, location and arrangement of the Common Areas, parking areas and other facilities, except where it is inconsistent with or in derogation of the rights of the Lessee under the Lease;
- (d) restrict parking by Lessees, their agents and employees to such parking areas as the Lessor may from time to time designate, except where it is inconsistent with or in derogation of the rights of the Lessee under the Lease;

- (e) close all or any portion of the Common Areas to such extent as may in the reasonable opinion of the Lessor be legally sufficient to prevent a dedication thereof or the accrual of any rights to any person or the public therein;
- (f) close temporarily all or any portion of the Common Areas, parking areas or facilities for the purpose of building reconstruction repairs or like purposes provided that any disturbance to the Lessee is minimised;
- (g) subject to clause 23, impose and charge fees against users of parking areas; and
- (h) subject to clause 23, limit the length of time during which persons are permitted to park in the parking areas and procure the policing thereof.

17. MISCELLANEOUS

17.1 Exclusion of Warranties

The Lessee acknowledges and declares that no promise, representation warranty or undertaking has been given by or on behalf of the Lessor in respect to the suitability or adequacy of the Premises for any purpose of the Lessee including but without limiting the generality thereof for the Permitted Use and to the full extent permitted by law all promises, representations, warranties or undertakings as to suitability and as to adequacy which may be implied by law are expressly negated. The provisions of this Lease comprise the entire agreement between the parties.

17.2 Waiver

No waiver by the Lessor of one breach by the Lessee of any obligation on its part contained in this Lease shall operate as a waiver of another breach of the same or of any other obligation contained in this Lease.

17.3 No Premium

Save as provided in this Lease, no other consideration has been or is to be paid to the Lessor by the Lessee or any other person.

17.4 Notices

All demands, requisitions, consents, elections or notices must be in writing and must be given to or served upon the Lessee or Lessor by being left at their respective registered office or principal place of business in New South Wales, or (in the case of the Lessee) at the Premises or by being posted in a prepaid and certified letter addressed to the Lessor or Lessee at such office or principal place of business or (in the case of the Lessee) at the Premises. Any demand, requisition, consent, election or notice may be signed by the Lessor or Lessee or on its behalf by the Solicitor, the Secretary or other authorised officer for the time being of the Lessor or Lessee respectively. Any notice posted will be taken to have been received two business days after posting. If a party notifies the other of a facsimile number, notices may be given by facsimile to that number and the notice is deemed to have been received upon a confirmation notice from the notice provider's facsimile machine indicating that the facsimile has been received by the recipient, provided that if such a notice is received by the recipient after 5.00 p.m., the notice is deemed to have been received on the next business day.

17.5 Non-Merger

None of the terms or conditions of this Lease nor any act, matter or thing done under or by virtue of or in connection with this Lease or any other agreement between the parties shall operate as a merger of any of the rights and remedies of the parties in or under this Lease or in or under any such other agreement all of which shall continue in full force and effect.

17.6 Moratorium

Unless application is mandatory by law, no statute, ordinance, proclamation, order, regulation or moratorium present or future shall apply to this Lease so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to either the Lessor or the Lessee.

17.7 Consents

In any case where pursuant to this Lease the doing or execution of any act, matter or thing by the Lessee is dependent upon the consent or approval of the Lessor, such consent or approval may be given conditionally or unconditionally or withheld by the Lessor in its absolute, uncontrolled discretion unless otherwise herein provided.

17.8 Benefit of Covenants

In the event of a person other than the Lessor becoming entitled to receive the Rent either by operation of law or otherwise, the Lessee agrees that such person shall have the benefit of all covenants and agreements on the part of the Lessee under this Lease and the Lessee at the cost of the Lessor will enter into a covenant with such other person in that regard as the Lessor may reasonably require.

17.9 Release of Lessor

If the Lessor's interest is assigned or transferred in any way (other than by way of security only) the Lessor named herein (and in any case of any subsequent assignments or transfers other than by way of security only the then assignor or transferor) shall from the date of such assignment or transfer be automatically freed and discharged from all personal liability for the performance of any covenant or obligation on the part of the Lessor under this Lease.

17.10 Costs

The Lessee shall pay the registration fees and costs of obtaining mortgagee consent (if any) to this Lease and the Lessor's reasonable legal costs in respect of negotiation of the Lease (after the first round of negotiation) only where there are 2 or more rounds of negotiation of this Lease. It is further agreed between the Lessor and the Lessee that all costs, charges and expenses including solicitor/client costs for which the Lessor shall become liable in consequence of or in connection with any breach or default by the Lessee in performance or observance of any of the terms, covenants and conditions of this Lease or any renewal thereof or otherwise in connection with the Lessee's occupation of the Premises.

17.11 To Let Notices

At all times during the last nine (9) calendar months of the Term unless the Lessee has properly exercised its option to renew contained in clause 11, the Lessee will allow the Lessor to display on or in the Premises a notice advising that the Premises will be available for leasing and will not permit the removal, damage or defacing of that notice and will allow the Lessor to conduct prospective future lessees through the Premises at times agreed to between the parties provided consent of the Lessee shall not be unreasonably withheld or delayed, to enable them to view the same provided that in exercising its right hereunder the Lessor shall cause as little interference as possible to the conduct of the Lessee's business.

17.12 Building Access Cards

The Lessor shall provide to the Lessee twenty (20) access cards at no cost and the Lessee acknowledges that the charge for any additional or replacement access cards will be \$55.00 per card plus GST, such costs being subject to review by the Lessor from time to time to allow for actual costs increases.

18. Deleted

19. BANK GUARANTEE

19.1 Provision of Deposit

On the execution of this Lease the Lessee will:

- (a) provide to the Lessor an unconditional guarantee without a terminating date from a bank licensed to carry on business in Australia and having an office in Sydney and approved by the Lessor (acting reasonably) which entitles the Lessor to make a claim on the guarantee without recourse to the Lessee which entitles the Lessor to apply any amount under the guarantee to any amount payable by the Lessee to the Lessor under this Lease as the Lessor determines for an amount being the sum of as specified in Item 11(a) of the Reference Data ("Six (6) Month Bank Guarantee"); and
- (b) provide to the Lessor an unconditional guarantee with a terminating date of any date after 1 May 2015 ("Additional Bank Guarantee") from a bank licensed to carry on business in Australia and having an office in Sydney and approved by the Lessor (acting reasonably) which entitles the Lessor to make a claim on the guarantee without recourse to the Lessee which entitles the Lessor to apply any amount under the guarantee to any amount payable by the Lessee to the Lessor under this Lease as the Lessor determines for an amount being the sum as specified in **Item 11 (b)** of the Reference Data.

19.2 The Additional Bank Guarantee and Six (6) Month Bank Guarantee referred to in 19.1 above shall here and after be referred to as the "Deposits" and are to be used as security for the performance of all the obligations on the Lessee's part contained in this Lease or any other agreement between the Lessee and Lessor.

19.3 Increase in Deposit

Upon exercising the option to renew pursuant to clause 11, the Lessee will provide to the Lessor either an increased Six (6) month Bank Guarantee, or a replacement Six (6) month Bank Guarantee which represents the increased sum arising from the review of the Rent.

19.4 Appropriation of Deposit

- (a) If at any time the Lessee fails to duly and punctually observe and perform the terms of this Lease, then the Lessor may in its discretion at any time appropriate and apply so much of or the whole of the Deposits as may be necessary in the opinion of the Lessor to compensate the Lessor for loss or damage sustained or suffered by the Lessor by reason of such breach by the Lessee.
- (b) Any such appropriation by the Lessor shall not be deemed to and shall not operate to waive the Lessee's breach and shall not prejudice any other right of the Lessor arising from such breach.
- (c) If the Lessor appropriates all or part of the Deposits, then the Lessee will within five (5) days of demand by the Lessor provide to the Lessor in the form of the original Deposits the amount of the sum so appropriated in order to reinstate the Deposits.
- (d) If the Lessee complies with all the terms of the Lease, the Deposits less any sums appropriated by the Lessor in accordance with this clause and not reinstated shall be refunded to the Lessee as soon as reasonably practicable after the expiration of the Term or of any holding over period or upon the sooner termination of this Lease.
- (e) If a rent free period has been provided by the Lessor to the Lessee under this Lease or any other Agreement and as a consequence of a breach of the Lease any part of the Rent that later becomes payable by the Lessee to the Lessor the Deposits may be applied against all or part of the Rent then due and payable by the Lessee to the Lessor.

19.5 Assignment of Deposit

If the Lessor assigns or transfers its interest in the Premises it may either:

- (a) assign the Deposits less any sums properly appropriated by the Lessor and not reinstated to any assignee or transferee; or
- (b) request and the Lessee must at the Lessor's reasonable costs promptly provide, replacement Deposits in favour of the new lessor in exchange for the original Deposits,

and thereupon the Lessor is discharged from all liability to the Lessee or any other person with respect to the Deposits.

19.6 Variation to meaning of Deposits.

For the purpose of this clause 19, after the 1 May 2015 the reference to the Deposits shall only apply to the Six (6) Month Bank Guarantee.

20. EFFECT OF EXECUTION AND REGISTRATION

20.1 This Lease shall be binding upon each person who has executed it notwithstanding:

- (a) the failure of any other person named as a party to execute it;
- (b) the avoidance or unenforceability of any part of this Lease; or

- (c) the avoidance or unenforceability of this Lease or any part of this Lease against any signatory or intended signatory.
- (d) The covenants and conditions of this Lease shall be deemed to bind the parties in the same manner as if this document were registered notwithstanding it may be held that no estate passed hereunder.

21. CONSENT OF MORTGAGEE

21.1 This Lease is subject to and conditional upon the approval of the mortgagee of the Lessor to the Lease. The Lessor will without delay after the execution of the Lease by the Lessee make application to its mortgagee for its approval. In the event that such approval is not given in writing (despite the Lessor using its reasonable endeavours to obtain such approval) the Lessor may by notice in writing to the Lessee terminate this Lease whereupon this Lease shall be at an end from such date of service of such notice and the Lessee shall not be entitled to make any claim for compensation, loss or damages in respect of such termination of the Lease.

22. TRUST WARRANTIES

22.1 Trustee Power

Where the Lessee or the Guarantor or both of them is or are acting or in the future may act as Trustee of any Trust the Lessee and Guarantor jointly and severally covenant with and warrant to the Lessor that the Lessee or the Guarantor or both of them (as the case may be) has or have or will have full powers pursuant to its Deed of Trust (hereinafter call the "Trust") under which it purports to act as Lessee or Guarantor.

22.2 Covenants

The Lessee and the Guarantor further jointly and severally covenant that:

- (a) the trust is lawfully and validly constituted and all Deeds and other instruments in respect thereof have been properly executed;
- (b) the Trust is and throughout the term of the Lease will remain unrevoked and not varied;
- (c) the assets of the Trust as well as the assets of the Lessee and the Guarantor will at all times be available to satisfy the obligations of the Lessee under this Lease;
- (d) the consents or approvals of all parties necessary to execute this Lease so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
- (e) that no-one has taken or threatened nor is the Guarantor or the Lessee aware of anyone who is likely to take action to have the Trust wound up or otherwise administered by action brought in any Court of competent jurisdiction or to charge the Lessee or the Guarantor or any person at any time connected with the Lessee or the Guarantor or acting on behalf of or purportedly on behalf of the Lessee or the Guarantor with any breach of trust or misappropriation of trust moneys in connection with the Trust; and

- (f) that no facts are known to the Lessee or to the Guarantor whereby the Trust might be wound up voluntarily or otherwise or the Trustee thereof changed or the assets of the Trust vested in any other person or that the Trust may cease to operate or be deprived of funds prior to expiration of the Term.

23. CAR PARKING

- 23.1** The Lessor agrees to provide the Lessee during the Term and any period of holding over a licence to use the number of car parking spaces specified in **Item 13** of the Reference Data within that part of the Land from time to time designated by the Lessor acting reasonably to be used for the parking of motor vehicles (the "Parking Area"). The Lessor acknowledges that the Rent payable under this Lease includes the rights granted under this clause 23.
- 23.2** The spaces shall be undercover and allocated in such positions as the Lessor shall reasonably allot from time to time having regard to the availability of parking spaces within the Parking Area prior to the Date of Commencement and the requirements of the Lessee and other occupants of the Building generally and the Lessee agrees as follows:
- (a) the Lessee has the right to park only in the allotted spaces and no other spaces on the Land;
 - (b) the Lessee will park in the allotted spaces at its own risk and the Lessor is not liable or responsible in any way for and each is hereby released from and indemnified against any responsibility for any loss, damage injury or death which may be sustained or suffered by the Lessee in or arising out of the exercise of the rights contained in this clause and the Lessor shall not in any way whatsoever be liable or responsible for and is hereby released from and indemnified against any responsibility for any loss of or damage or injury sustained by any car parked pursuant to these rights or for any loss of any chattel or thing therein or missing therefrom unless such loss is the immediate result of the negligence of the Lessor
 - (c) the Lessee has the right of access to and from the Parking Area by the driveways and entrance ways and exits from time to time located on the Land in common with all other persons authorised by the Lessor;
 - (d) all of the Lessee's covenants contained in this Lease extend to the Lessee's use of the Parking Area to the extent that such covenants are applicable to that use;
 - (e) the Lessee must use the Parking Area for the purpose of car parking only and shall not clean, grease, oil or repair any motor vehicle in the Parking Area;
 - (f) the Lessee must pay or reimburse to the Lessor all levies and charges and all GST payable on them, which are imposed by any Authority in relation to the car parking spaces; and
 - (g) the rights conferred by this clause attach to and are inseparable from this Lease but otherwise shall not create or confer upon the Lessee any tenancy or any estate or interest whatsoever in or over the Parking Area or any part thereof.

24. EARLY ACCESS AND OCCUPATION

24.1 Lessor to Grant Access and Licence

Upon receipt of:

- (a) this Lease, duly executed by the Lessee;
- (b) Certificates of Currency for all insurances required to be effected by the Lessee;
- (c) cheques for fees payable in relation to this Lease; and
- (d) the 6 month Bank Guarantee and the Additional Bank Guarantee,

the Lessor agrees to grant the Lessee a licence to access and occupy the Premises from the date the Lessor receives the items listed above until the Commencement Date for the purpose of the Lessee completing its fitout of the Premises. For the avoidance of doubt, no Rent, Outgoings or cleaning charges are payable during this period.

24.2 Application of Provisions in Lease

Notwithstanding the Commencement Date the following clauses or Parts apply to the Lessee's licence for early access granted under this clause 24:

- (a) clause 3.7 (GST);
- (b) clause 6 (Use of Premises);
- (c) clause 8 (Maintenance, Repair, Alterations, etc);
- (d) clause 9 (Air Conditioning, Fire Equipment, Lifts, etc);
- (e) clause 10 (Electricity, and Other Services);
- (f) clause 12 (Insurance);
- (g) clause 13 (Indemnities);
- (h) clause 15 (Default and Termination);
- (i) clause 16 (Common Areas);
- (j) clause 17 (Miscellaneous); and
- (k) clause 19 (Bank Guarantee / Security Deposit).

For the avoidance of doubt, all of the Lessee's covenants contained in the Lease extend to the Lessee's licence for early access insofar as such covenant is applicable.

24.3 Acknowledgement

The Lessee acknowledges that any licence granted in accordance with this clause 24.3 exists purely in contract and does not convey any interest, tenancy, or estate whatsoever in or over the Premises and that the licence is incapable of transfer, assignment, novation, sublicensing, encumbering or any other dealing.

24.4 The Lessee and its contractors must comply with the reasonable directions of the Lessor at all times while on the Building pursuant to the licence granted by this clause 24.1 (including directions as to the hours during which work may be carried out).

24.5 If the Lessee or its contractors commit a breach of any of the provisions of this clause which is not remedied within a reasonable time after written notice from the Lessor, the Lessor may terminate the licence to enter granted by this clause 24.

24.6 If the Lessee or any contractor or workman employed by the Lessee breaches any of the provisions of this clause 24, the Lessor may acting reasonably revoke the licence to enter granted by this clause 24 or at its option make the licence conditional upon the Lessee prohibiting entry onto the Premises of any particular person who may in the reasonable opinion of the Lessee have acted in breach of any of the provisions of this clause.

25. OTHER AREA

- 25.1 The Lessor agrees to provide the Lessee during the Term and any period of holding over the licence to use part of the warehouse yard shown in the Plan exhibited to this Lease and initialled by the Lessor and the Lessee provided always that in no circumstances shall the validity of the licence provided under this clause operate to make this Lease invalid or illegal or grant to the Lessee any right to terminate this Lease. The Lessee shall paint, in consultation with the Lessor, a line on the northern border of the licensed area referred to in this sub-clause.
- 25.2 Subject to clause 25.1, all of the Lessee's covenants contained in this Lease extend to the Lessee's use of the licensed area under this clause to the extent that such covenants are applicable to that use.
- 25.3 The rights conferred by this clause shall not create or confer upon the Lessee any tenancy or any estate or interest whatsoever in or over the part of the warehouse yard referred to in clause 25.1 above.
- 25.4 During the Term, the Lessor shall not grant to any third party a licence of the warehouse yard referred to in clause 25.1 above and will take all reasonable steps to ensure the Lessee receives the benefit of the licence granted under this clause 25.
- 25.5 Subject to compliance with statutory requirements, the Lessor consents to the Lessee installing Air Conditioning Equipment and gas storage in the warehouse yard referred to in clause 25.1. The Lessee agrees that at the expiration of the Term, it shall remove all such Air Conditioning Equipment and gas storage from the warehouse yard and make good any damage caused to the warehouse yard or Premises.
- 25.6 The licence fee for the licence granted under this clause 25 is \$1.00 per annum.
- 25.7 The Lessor agrees that the Lessee has the exclusive right (at no cost) to use the balcony on level 2 of the Building on the basis that the Lessee's covenants contained in this lease extend to the use of the balcony area to the extent that such covenants are otherwise applicable to that use and the Lessee shall be responsible for the maintenance and upkeep of the plants and furniture situated on the said balcony at the Commencement Date.

26.1 SIGNAGE RIGHTS

- (a) In consideration for the Lessee entering into this Lease and subject to clause 26(b), the Lessee will have during the term the exclusive right to exhibit the name of the Lessee or such other name approved by the Lessor ("the Approved Name") on:
- (i) the face of the black awning over the front entrance;
 - (ii) any other area agreed to between the Lessor and the Lessee;

all areas together known as the Signage.

- (b) For the avoidance of doubt, the Signage Fee in Item 14 of the Reference Data will only become payable annually in advance from the earlier of the date the Lessee provides notice to the Lessor that it shall exhibit the Signage during the Term and the date the Lessee erects the Signage pursuant to the conditions set out in this clause 26.
- (c) Before erecting the Signage, the Lessee must submit to the Lessor for its approval:
 - (i) Details of each sign proposed to be erected by the Lessee including, without limitation, particulars as to:
 - (A) the design, colour and size;
 - (B) its proposed location;
 - (C) the means by which the sign will be affixed to the building, including all steel support framework, bracing and proposed power supply.
 - (ii) Detailed drawings, including structural engineers report, indicating the method and position of affixation.
- (d) The exclusive right in respect to the Signage provided for in this clause 26 shall lapse in the event that the Lessee does not give written notice to the Lessor on or before 1 November 2014 (time being of the essence), that is shall during the Term exhibit the Signage.
- (e) Should the Lessee change its name during the Term, it may, at its own cost alter the Approved Name, to reflect such change of name.

26.2 The Lessor:

- (a) May decline to approve any sign which, in the Lessor's reasonable opinion, would detract from the appearance of the building (whether internally or externally) or the erection of which may cause damage to the building. Despite this the Lessor must not unreasonably withhold or delay its consent; and
- (b) Must, within 14 days of receipt by the Lessor of every application for approval, notify the Lessee in writing whether or not that approval is granted or if not, the reason for not granting the approval, such approval not to be unreasonably withheld or delayed.
- (c) The Lessee must, at its own cost:
 - (i) Procure all consents, approvals or permits as may be required to be procured from any Authority for the erection of the Signage;
 - (ii) Erect (including the erection of a steel support framework and bracing), maintain and operate the Signage;
 - (iii) Observe and comply with all Laws from time to time regulating the erection and operation of the Signage;
 - (iv) Comply at all times with all requirements of any Authority (including the payment of any permit fees) in relation to the erection or maintenance of the Signage;

- (v) Keep and maintain the Signage in Good Repair as if and to the extent that the Signage formed part of the Premises; and
 - (vi) As and when necessary or when reasonably required by the Lessor, clean, polish and paint the signs so as to preserve the good appearance of the Signage.
 - (vii) Upon the termination of the Lease remove all signs, advertisements and embellishments installed by the Lessee under this Lease and make good any damage caused to the Premises and the Building.
- (d) If any sign is an illuminated sign, the cost of all power consumed in respect of the operation of the sign must be paid by the Lessee.
- (e) Acknowledges that the Lessee, at its costs and subject to the Lessor's reasonable direction, may erect the following signs without payment of the Signage Fee or otherwise being required to comply with this clause 25:
- (i) Lessee's corporate sign/logo in the entrance lobby (with instruction to proceed to level 1 or 2);
 - (ii) Lessee's corporate sign/logo on the door to enter level 1 of the Building;
 - (iii) Lessee's corporate sign/logo on the fence facing Primrose Avenue at the rear of the Building to guide deliveries; and
 - (iv) Lessee's signs anywhere within the Premises.

ANNEXURE B

MAKE GOOD SCHEDULE

Airconditioning:

- Clean induction units
- Clean air register and return air grills (213 only)
- Relocate outlets
- Remove additional outlets
- Rebalance
- Relocate thermostats
- Test
- Service to be reinstated to typical open floor plan
- Supplementary units to be tested and removed if not working.

Fire Services:

- Relocate sprinklers/thermals
- Service to be reinstated to typical open floor plan

Electrical (power)

- Remove redundant wiring from ceiling space
- Remove redundant wiring from skirting duct
- Remove all additional outlets
- Replace damaged skirting duct
- Test

Electrical (lights)

- Remove all additional light fittings and switches
- Remove all redundant wiring
- Relocate light fittings, clean and retube
- Replace all damaged diffusers
- Service to be reinstated to typical open floor plan

Electrical (exit lights and emergency lights)

- Remove all additional exit lights
- Remove all redundant wiring
- Test
- Service to be reinstated to typical open floor plan

Electrical – E.W.I.S

- Remove all additional speakers
- Remove all redundant wiring
- Test
- Service to be reinstated to typical open floor plan

Telecommunications

- Remove additional outlets
- Remove all redundant wiring from ceiling space
- Remove all redundant wiring from skirting duct
- Replace any damaged skirting duct
- Test
- Service to be reinstated to typical open floor plan

Ceiling

- Replace all damaged ceiling tiles
- Replace damaged grid and angle trim
- Ceiling to be reinstated to typical open floor plan

Walls

- Remove all fixtures eg. Conduits, brackets, wallpaper.
- Prepare existing surface and paint
- Prepare existing service doors and paint
- Finishes to be reinstated as per the Lessor's reasonable requirements

General

- Replace any damaged window sills
- Replace any damaged skirting
- Allow for final cleaning completion
- Replace or steam clean carpets
- Supply keys and codes for all internal and external doors to Lessor

EXECUTED AS A DEED

EXECUTED by and on behalf of **NMBE Pty Limited**)
(ACN 002 269 374) in accordance with Section 127 of)
the Corporations Act:)
)

.....
Director/Secretary

.....
Name (please print)

.....
Director/Secretary

.....
Name (please print)

EXECUTED by and on behalf of **Finisar Australia Pty**)
Limited (ACN 098 184 582) in accordance with Section)
127 of the Corporations Act:)
)

.....
Director/Secretary

Simon Poole

.....
Name (please print)

.....
Director/Secretary

EITAN GERTEL

.....
Name (please print)

\

**CERTIFICATION OF CO-PRINCIPAL EXECUTIVE OFFICER PURSUANT
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Jerry S. Rawls, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Finisar Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - (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.

Dated: December 5, 2013

/s/ Jerry S. Rawls

Jerry S. Rawls
Chairman of the Board of Directors
Co-Principal Executive Officer

**CERTIFICATION OF CO-PRINCIPAL EXECUTIVE OFFICER PURSUANT
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Eitan Gertel, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Finisar Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - (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.

Dated: December 5, 2013

/s/ Eitan Gertel

Eitan Gertel
Chief Executive Officer
Co-Principal Executive Officer

**CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT
TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kurt Adzema, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Finisar Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:
 - (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.

Dated: December 5, 2013

/s/ Kurt Adzema

Kurt Adzema
Executive Vice President, Finance and
Chief Financial Officer

CERTIFICATION OF CHAIRMAN OF THE BOARD PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Jerry S. Rawls, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Finisar Corporation (the "Company") on Form 10-Q for the three months ended October 27, 2013 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: December 5, 2013

/s/ Jerry S. Rawls

Jerry S. Rawls
Chairman of the Board of Directors
Co-Principal Executive Officer

CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Eitan Gertel, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Finisar Corporation (the “Company”) on Form 10-Q for the three months ended October 27, 2013 (the “Report”) fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: December 5, 2013

/s/ Eitan Gertel

Eitan Gertel
Chief Executive Officer
Co-Principal Executive Officer

CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT
TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Kurt Adzema, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Finisar Corporation (the "Company") on Form 10-Q for the three months ended October 27, 2013 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: December 5, 2013

/s/ Kurt Adzema

Kurt Adzema
Executive Vice President, Finance and
Chief Financial Officer

