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**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 ACTS OF 1934**

FOR THE QUARTERLY PERIOD ENDED SEPTEMBER 30, 1999

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 000-24487

MIPS Technologies, Inc.

(Exact name of registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
Incorporation or organization)

77-0322161
(I.R.S. Employer
Identification Number)

1225 CHARLESTON ROAD, MOUNTAIN VIEW, CA 94043-1353

(Address of principal executive offices)

Registrants' telephone number, including area code: **(650) 567-5000**

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

As of November 1, 1999, the number of outstanding shares of the Registrant's Class A common stock was 12,751,732. The number of outstanding shares of the Registrant's Class B common stock was 25,069,759, all of which are beneficially owned by Silicon Graphics, Inc.

PART I—FINANCIAL INFORMATION

	Page
Item 1. Financial Statements (Unaudited):	
Condensed Consolidated Balance Sheets	3
Condensed Consolidated Statements of Operations	4
Condensed Consolidated Statements of Cash Flows	5
Notes to Condensed Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Results of Operations and Financial Condition	9
Item 3. Quantitative and Qualitative Disclosures About Market Risk	18

PART II—OTHER INFORMATION

Item 1. Legal Proceedings	19
Item 6. Exhibits and Reports on Form 8-K	19
Signatures	20

PART I—FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS.

**MIPS TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands)**

	<u>September 30, 1999</u>	<u>June 30, 1999</u>
	(unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 53,753	\$ 49,916
Accounts receivable	5,550	425
Prepaid expenses and other current assets	1,981	2,989
	<u>61,284</u>	<u>53,330</u>
Total current assets	61,284	53,330
Equipment and furniture, net	5,148	5,123
Other assets	830	936
	<u>\$ 67,262</u>	<u>\$ 59,389</u>
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 10,682	\$ 10,028
Accrued liabilities	6,521	8,265
	<u>17,203</u>	<u>18,293</u>
Total current liabilities	17,203	18,293
Deferred revenue	375	375
Stockholders' equity:		
Common stock	38	37
Additional paid-in capital	142,736	138,880
Accumulated deficit	(93,090)	(98,196)
	<u>49,684</u>	<u>40,721</u>
Total stockholders' equity	49,684	40,721
	<u>\$ 67,262</u>	<u>\$ 59,389</u>

See accompanying notes.

MIPS TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (unaudited)
(In thousands, except per share data)

	Three Months Ended September 30,	
	1999	1998
Revenue:		
Royalties	\$ 11,830	\$ 11,611
Contract revenue	7,117	650
Total revenue	18,947	12,261
Costs and expenses:		
Cost of contract revenue	500	—
Research and development	6,109	4,552
Sales and marketing	2,286	1,289
General and administrative	2,167	1,135
Total costs and expenses	11,062	6,976
Operating income	7,885	5,285
Interest income, net	638	170
Income before income taxes	8,523	5,455
Provision for income taxes	3,409	2,182
Net income	\$ 5,114	\$ 3,273
Net income per basic share	\$ 0.14	\$ 0.09
Net income per diluted share	\$ 0.13	\$ 0.09
Shares used in computing basic net income per share	37,627	37,182
Shares used in computing diluted net income per share	39,448	37,942

See accompanying notes.

MIPS TECHNOLOGIES, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (unaudited)
(In thousands)

	Three Months Ended September 30,	
	1999	1998
Operating activities:		
Net income	\$ 5,114	\$ 3,273
Adjustments to reconcile net income to cash provided by operating activities:		
Depreciation	565	523
Other non-cash charges	71	42
Changes in operating assets and liabilities:		
Accounts receivable	(5,125)	(1,059)
Accounts payable	654	(4)
Other assets and liabilities, net	(676)	2,636
Net cash provided by operating activities	603	5,411
Investing activities—capital expenditures	(592)	(285)
Financing activities:		
Net proceeds from issuance of common stock	—	15,872
Net proceeds from issuance of common stock under stock plans	5,565	—
Other assets	(1,731)	—
Net cash provided by financing activities	3,834	15,872
Effect of exchange rate changes on cash	(8)	—
Net increase in cash and cash equivalents	3,837	20,998
Cash and cash equivalents, beginning of period	49,916	45
Cash and cash equivalents, end of period	\$ 53,753	\$ 21,043

See accompanying notes.

MIPS TECHNOLOGIES, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS—UNAUDITED

Note 1. Formation and Description of Business

Formation of MIPS Technologies, Inc. (the "Company"). MIPS Technologies' predecessor, MIPS Computer Systems, Inc., was founded in 1984 and was engaged in the design and development of RISC processors for the computer systems and embedded markets. Silicon Graphics, Inc. ("Silicon Graphics") adopted the MIPS architecture for its computer systems in 1988 and acquired MIPS Computer Systems, Inc. in 1992. Following the acquisition, Silicon Graphics continued the MIPS processor business through its MIPS Group (a division of Silicon Graphics), which focused primarily on the development of high-performance processors for Silicon Graphics' workstations and servers. Until the last few years, cost considerations limited the use of MIPS RISC processors in high volume digital consumer products. However, as the cost to manufacture processors based on the MIPS technology decreased, the MIPS Group sought to penetrate the consumer market, both through supporting and coordinating the efforts of the MIPS semiconductor licensees and most notably, by partnering with Nintendo in its design of the Nintendo 64 video game player and related cartridges. Revenues related to sales of Nintendo 64 game players and related cartridges currently account for the substantial majority of the Company's revenue. In order to increase the focus of the MIPS Group on the design and development of processor applications dedicated to the embedded market, in December 1997, Silicon Graphics initiated a plan to separate the business of the MIPS Group from its other operations.

In April 1998, the Board of Directors of the Company approved a transaction, pursuant to which, Silicon Graphics transferred to the Company the assets and liabilities related to the design and development of processor intellectual property for embedded market applications (the "Separation"). In connection with the Separation, the Company and Silicon Graphics entered into a Corporate Agreement that provides for certain pre-emptive rights of Silicon Graphics to purchase shares of the Company's capital stock, registration rights related to shares of the Company's capital stock owned by Silicon Graphics and covenants against certain actions by the Company for as long as Silicon Graphics owns a majority of the Company's outstanding common stock. Furthermore, the Company and Silicon Graphics entered into a Management Services Agreement pursuant to which Silicon Graphics provides certain services to the Company following the Separation on an interim or transitional basis.

Since the closing of the Company's initial public offering (the "Offering") on July 6, 1998, the Company has been a majority owned subsidiary of Silicon Graphics.

Basis of Presentation. The unaudited results of operations for the interim periods shown herein are not necessarily indicative of operating results for the entire fiscal year. In the opinion of management, the condensed consolidated financial statements include all adjustments (consisting only of normal recurring accruals) necessary to present fairly the financial position, results of operations and cash flows for each interim period shown.

The condensed consolidated financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission ("SEC") applicable to interim financial information. Certain information and footnote disclosures included in financial statements prepared in accordance with generally accepted accounting principles have been omitted in these interim statements pursuant to such SEC rules and regulations. The balance sheet at June 30, 1999 has been derived from audited financial statements, but does not include all disclosures required by generally accepted accounting principles. However, the Company believes that the disclosures are adequate to make the information presented not misleading. The unaudited condensed consolidated financial statements included in this Form 10-Q should be read in conjunction with the audited financial statements and notes thereto, for the fiscal year ended June 30, 1999, included in the Company's 1999 Annual Report on Form 10-K.

Note 2. Computation of Earnings Per Share

The following table sets forth the computation of basic and diluted earnings per share (in thousands, except per share amounts):

	Three months ended September 30,	
	1999	1998
Numerator:		
Net income available to common stockholders	\$ 5,114	\$ 3,273
Denominator:		
Weighted-average shares of common stock outstanding	37,642	37,197
Less: Weighted-average shares subject to repurchase	(15)	(15)
Shares used in computing basic net income per share	37,627	37,182
Effect of dilutive securities-employee stock options and shares subject to repurchase	1,821	760
Shares used in computing diluted net income per share	39,448	37,942
Basic net income per share	\$ 0.14	\$ 0.09
Diluted net income per share	\$ 0.13	\$ 0.09

Effect of 26,000 and 815 outstanding stock options have not been considered in computing diluted net income per share for the three months ended September 30, 1999 and 1998, since they are antidilutive.

Note 3. Comprehensive Income

There is no material difference between the Company's reported net income and the comprehensive net income for the periods presented.

Note 4. Contingencies

From time to time, the Company receives communications from third parties asserting patent or other rights covering the Company's products and technologies. Based upon the Company's evaluation, it may take no action or it may seek to obtain a license. There can be no assurance in any given case that a license will be available on terms the Company considers reasonable, or that litigation will not ensue.

Management is not aware of any pending disputes that would be likely to have a material adverse effect on the Company's business, results of operations or financial condition.

Note 5. Related Party Transactions

At September 30, 1999, accounts payable includes approximately \$185,000 payable to Silicon Graphics related to certain administrative and corporate support services provided by Silicon Graphics on behalf of the Company. At September 30, 1999 accounts payable also includes approximately \$8.0 million primarily related to fiscal year 1999 estimated net taxes payable to Silicon Graphics under a tax sharing agreement with Silicon Graphics. The tax sharing agreement provides that the Company and Silicon Graphics will make payments to each other such that, with respect to any period, the amount of taxes to be paid by the Company, subject to certain adjustments, will be determined as though the Company were to file separate federal, state and local income tax returns.

Note 6. Subsequent Events

On October 28, 1999, the Company filed suit against Lexra, Inc. in the United States District Court for the Northern District of California for infringement of two United States patents. The Company has also identified nine additional patents that it believes Lexra may be infringing and intends to assert claims under these patents as warranted based on the Company's continuing factual investigation.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF RESULTS OF OPERATIONS AND FINANCIAL CONDITION

You should read the following discussion and analysis together with the unaudited condensed consolidated financial statements and the notes to those statements included elsewhere in this report. Except for the historical information contained in this Quarterly Report on Form 10-Q, this discussion contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those indicated in these forward-looking statements as a result of certain factors, as more fully described under "Factors That May Affect Our Business", and other risks included from time to time in our other Securities and Exchange Commission ("SEC") reports, copies of which are available from us upon request. The forward-looking statements within this Quarterly Report on Form 10-Q are identified by words such as "believes," "anticipates," "expects," "intends," "may" and other similar expressions. However, these words are not the exclusive means of identifying such statements. We undertake no obligation to update any forward-looking statements included in this discussion.

Results of Operations

Revenue. Our revenue consists of royalties and contract revenue earned under contracts with our licensees. We generate royalties from the sale by semiconductor manufacturers of products incorporating our technology. We also receive royalties from Nintendo relating to sales of Nintendo 64 video game players and related cartridges. Royalties may be calculated as a percentage of the revenue received by the seller on sales of such products or on a per unit basis. Contract revenue includes technology license fees and engineering service fees earned primarily under contracts with our semiconductor manufacturing partners. We receive license fees for the use of technology that we have developed internally and, in some cases, that we have licensed from third parties. Fees related to engineering services, which are performed on a best efforts basis, are recognized as revenue when the defined milestones are achieved and collectibility of the milestone payment is probable. The technology we develop is licensed to multiple customers.

Total revenue for the first quarter of fiscal 2000 increased by \$6.6 million to \$18.9 million, compared with \$12.3 million for the comparable period in fiscal 1999. Royalties for the first quarter of fiscal 2000 increased slightly by \$200,000, to \$11.8 million, compared with \$11.6 million for the same period in fiscal 1999. The increase in royalties was due primarily to higher royalties derived from sales of non-Nintendo products. Contract revenue for the first quarter of fiscal 2000 increased by \$6.5 million compared with the same period in fiscal 2000. The increase was the result of fees generated from new agreements and engineering service fees earned upon our achievement of defined milestones.

Cost of Contract Revenue. Our cost of contract revenue consists of sublicense fees. We incur an obligation to pay these fees when we sublicense technology to our customers that we have licensed from third parties. Sublicense fees are recognized as cost of contract revenue when the obligation is incurred, which is typically the same period in which the related revenue is recognized.

Cost of contract revenue was \$500,000 for the first quarter of fiscal 2000 compared with zero for the same period in fiscal 1999. Cost of contract revenue in fiscal 2000 reflects sublicense fees paid by us. There was no such activity in the first quarter of fiscal 1999. We expect that future cost of contract revenue will be minimal.

Research and Development. Costs incurred with respect to internally developed technology and engineering services are included in research and development expense as they are incurred and are not directly related to any particular licensee, license agreement or license fee.

Research and development expenses for the first quarter of fiscal 2000 were \$6.1 million compared with research and development expenses of \$4.6 million for the comparable period in fiscal 1999. The \$1.5 million increase in the first quarter of fiscal 2000 compared with the same period in the prior year was

due to the addition of resources to support various project development activities and included the addition of 60 employees to the development team, which more than doubled the size of the team during the past twelve months. We expect research and development expenses to increase during the balance of fiscal 2000 as we continue to develop new designs for the digital consumer products market.

Sales and Marketing, General and Administrative. Sales and marketing and general and administrative expenses for the first quarter of fiscal 2000 increased by \$2.0 million to \$4.5 million compared to the same period in the prior year. The increase was due to additional resources hired to support our licensing activities and protect our intellectual property, along with the development of our administrative infrastructure to support our business as a stand-alone company. Year over year, we increased our sales and marketing and general and administrative staff to 41 persons from 29 persons to support this growth.

Interest Income. For the first quarter of fiscal 2000, interest income was \$638,000 compared to interest income of \$170,000 for the comparable period in fiscal 1999. The increase was primarily due to interest income earned from the investment of the net cash proceeds of approximately \$15.9 million from our July 1998 initial public offering and the approximately \$38.0 million in cash generated from our operating activities during fiscal 1999.

Income Taxes. We recorded a provision for income taxes of \$3.4 million for the first quarter of fiscal 2000 and \$2.2 million for the first quarter of fiscal 1999 based on the estimated federal and state combined statutory rate of 40% on income before taxes.

Financial Condition

At September 30, 1999, we had cash and cash equivalents of \$53.8 million and total working capital of \$44.1 million.

Our operating activities provided net cash of \$603,000 for the three months ended September 30, 1999 compared to \$5.4 million for the comparable period in 1998. In the three months ended September 30, 1999, net cash used in operating activities consisted mainly of an increase in accounts receivable, offset by net income. The increase in accounts receivable was due to amounts owed to us under new license agreements entered into during the period.

Net cash used in investing activities was \$592,000 and \$285,000 for the three months ended September 30, 1999 and 1998, respectively. Net cash used in investing activities in both periods presented consisted of equipment purchases and licensing of computer aided design tools used in development. Capital expenditures have been, and future expenditures are anticipated to be, primarily for facilities and equipment to support expansion of our operations and licensing of computer aided design tools used in development. We expect that our capital expenditures will increase as our employee base grows.

Net cash provided by financing activities was \$3.8 million for the three months ended September 30, 1999 compared to \$15.9 million for the comparable period in 1998. Net cash provided in the current period resulted primarily from the exercise of stock options. Financing activities for the three months ended September 30, 1998 consisted of \$15.9 million received in connection with the issuance of common stock through our initial public offering, which was completed in July 1998.

Our future liquidity and capital requirements are expected to vary greatly from quarter to quarter, depending on numerous factors, including, among others:

- the cost, timing and success of product development efforts;
- the cost and timing of sales and marketing activities;
- the extent to which our existing and new technologies gain market acceptance;
- the level and timing of contract revenues and royalties;

- competing technological and market developments; and
- the costs of maintaining and enforcing patent claims and other intellectual property rights.

We believe that cash generated by our operations, together with our current cash balance, will be sufficient to meet our projected operating and capital requirements for the foreseeable future. However, we may in the future be required to raise additional funds through public or private financing, strategic relationships or other arrangements. We cannot be certain that any such financing will be available on acceptable terms, or at all, and our failure to raise capital when needed could have a material adverse effect on our business, operating results and financial condition. Additional equity financing may be dilutive to holders of our common stock, and debt financing, if available, may involve restrictive covenants. Moreover, strategic relationships, if necessary to raise additional funds, may require that we relinquish our rights to certain technology. In the event that Silicon Graphics effects a tax-free distribution of its interest in us, our ability to issue shares of our common stock in connection with an acquisition or in a public or private offering during the 30 months following such distribution will be limited under the terms of a distribution tax indemnification agreement which we have entered into with Silicon Graphics.

Factors That May Affect Our Business

Factors negatively affecting sales of Nintendo 64 video game players and related cartridges could materially and adversely affect us. Contract revenue and royalties from Nintendo and NEC relating to Nintendo 64 video game players and related cartridges accounted for 49% of our total revenue for the three months ended September 30, 1999 compared to 79% for the comparable period in 1998. We anticipate that royalties related to sales of Nintendo 64 video game cartridges will continue to represent a substantial portion of our total revenue for the next few years. Accordingly, factors negatively affecting sales of Nintendo 64 video game cartridges could have a material adverse effect on our results of operations and financial condition. The market for home entertainment products is competitive and the introduction of new products or technologies, as well as shifting consumer preferences, could negatively impact the amount and timing of sales of Nintendo 64 video game players and related cartridges.

We expect that revenue we derive from the sale of Nintendo video game products will decline with the eventual introduction of the next generation Nintendo video game system. The eventual introduction of the next generation Nintendo video game system is likely to result in declining sales of Nintendo 64 video game players and related cartridges, although sales of video game cartridges, which account for a significant portion of our royalties, will continue, albeit at a declining rate, for a period of time after the introduction. We developed key elements of the Nintendo 64 system in conjunction with Silicon Graphics. These elements included certain software and graphics technologies which, as a result of our separation from Silicon Graphics and our shift in strategic direction in early 1998, we no longer offer. We understand that the next generation Nintendo video game system will not incorporate any of our technology. We value our relationship with Nintendo; however, there can be no assurance that this relationship will result in any revenues for us other than those generated by the sale of Nintendo 64 video game players and related cartridges.

We must diversify our sources of revenue to offset the eventual decline in revenue we derive from sales of Nintendo video game products. Our ability to diversify our sources of revenue is still uncertain and will depend on whether our processors and related designs are selected for design ("design wins") into a broader range of digital consumer products and business equipment. Our ability to achieve design wins is subject to several risks and uncertainties, including:

- the potentially limited opportunities for design wins with respect to certain digital consumer products, such as video game products, due to a limited number of product manufacturers and the length of product life cycles;

- the risk that the performance, functionality, price and power characteristics of our designs may not satisfy those that are critical to specific digital consumer product applications; and
- our limited research and development and sales and marketing experience in our target markets due to our previous focus on the development of high performance processors for Silicon Graphics' workstations and servers.

Even if our technology is incorporated into new products, we cannot be certain that any such products will ultimately be brought to market, achieve commercial acceptance or generate meaningful royalties for us.

Factors that negatively affect our semiconductor company licensees could adversely affect our business. A significant portion of our total revenue has been derived from a limited number of semiconductor companies. Accordingly, factors negatively affecting a particular licensee could adversely effect our results of operations and financial condition if such licensee accounts for a significant portion of our revenue at the time. We are subject to many risks beyond our control that influence the success of our licensees, including, for example, the highly competitive environment in which they operate, the market for their products, their engineering capabilities and their financial and other resources.

Revenue from our top two semiconductor company licensees represented an aggregate of 28% for the three months ended September 30, 1999 compared to 15% for the comparable period in fiscal 1999. We expect that this revenue concentration will continue in the future, although the identity of the particular licensees that will account for this revenue concentration may vary from period to period depending on the addition or expiration of contracts, the nature and timing of payments due under our contracts and the volumes and prices at which our licensees sell products incorporating our technology.

We depend on semiconductor companies and digital consumer product manufacturers to adopt our technology and use it in the products they sell. The adoption and continued use of our technology by semiconductor companies and digital consumer product manufacturers is important to our continued success. We face numerous risks in obtaining agreements with semiconductor companies and digital consumer product manufacturers on terms consistent with our business model, including:

- the lengthy and expensive process of building a relationship with a potential licensee;
- the fact that we may compete with the internal design teams of semiconductor companies and digital consumer product manufacturers;
- the potential difficulties in persuading large semiconductor companies and digital consumer product manufacturers to work with us, to rely on us for critical technology, and to disclose to us proprietary manufacturing technology; and
- the potential difficulties in persuading potential licensees to bear certain development costs associated with our technology and to produce embedded processors using our technology.

We cannot assure you that we will be able to maintain our current relationships or establish new relationships with additional licensees, and any failure by us to do so could have a material adverse effect on our business.

Moreover, we are subject to risks beyond our control that influence the success or failure of a particular semiconductor company or digital consumer product manufacturer, including:

- the competition it faces and the market acceptance of its products;
- its engineering, marketing and management capabilities and the technical challenges unrelated to our technology that it faces in developing its products; and
- its financial and other resources.

None of our current licensees are obligated to license new or future generations of our processor designs. In addition, because we do not control the business practices of our licensees, we do not influence the degree to which our licensees promote our technology or set the prices at which the products incorporating our technology are sold to digital consumer product manufacturers.

Our separation from Silicon Graphics may negatively affect certain of our existing licensee relationships, insofar as Silicon Graphics was a factor in establishing and maintaining the relationship or in negotiating the financial and other terms of our contracts with such licensees (due to, for example, Silicon Graphics' status as a customer of such licensees).

Our quarterly financial results are subject to significant fluctuations which could adversely affect our stock price. Our quarterly financial results may vary significantly due to a number of factors, many of which are outside of our control. In addition, our revenue components are difficult to predict and may fluctuate significantly from period to period. Because our expenses are largely independent of our revenue in any particular period, it is difficult to accurately forecast our operating results. Our operating expenses are based, in part, on anticipated future revenue and a high percentage of our expenses are fixed in the short term. As a result, if our revenue is below expectations in any quarter, the adverse effect may be magnified by our inability to adjust spending in a timely manner to compensate for the revenue shortfall.

In light of the foregoing, we believe that quarter-to-quarter comparisons of our revenue and operating results may not be a good indication of our future performance. In addition, it is possible that in some future periods our results of operations may be below the expectations of public market analysts and investors. In this event, the price of our Class A common stock may fall.

Factors that could cause our revenue and operating results to vary from quarter to quarter include:

- the demand for and average selling prices of semiconductor products that incorporate our technology;
- the financial terms of our contractual arrangements with our semiconductor licensees, which may provide for significant up-front payments or payments based on the achievement of certain milestones;
- the relative mix of contract revenue and royalties;
- competitive pressures resulting in lower contract revenue or royalty rates;
- our ability to develop, introduce and market new processor intellectual property;
- the establishment or loss of licensing relationships with semiconductor companies or digital consumer product manufacturers;
- the timing of new products and product enhancements by us and our competitors;
- changes in development schedules, research and development expenditure levels and product support by us and digital consumer product manufacturers;
- seasonal fluctuations; and
- general economic and market conditions.

We are dependent on the emerging market for digital consumer products and consumer acceptance of the products that incorporate our technology. The digital consumer products industry is presently the primary market for our processor, core and related designs. The market for digital consumer products is relatively new and emerging, and our success will depend largely on the level of consumer interest in digital consumer products, many of which have only recently been introduced to the market. In addition, the timing and amount of royalties we receive will depend on consumer acceptance of the products that

incorporate our technology. We cannot assure you that any products that incorporate our technology will achieve commercial acceptance or generate meaningful royalties for us.

Our dependence on the digital consumer products industry involves several risks and uncertainties, including:

- changes in consumer requirements and preferences;
- the introduction of products by our competitors embodying new technologies or features; and
- the current lack of open industry standards for hardware and software in the digital consumer products industry.

If we are unable to develop enhancements and new generations of our intellectual property, our ability to achieve design wins may be adversely affected. Our future success will depend on our ability to develop enhancements and new generations of our processors, cores and other intellectual property that satisfy the requirements of specific product applications and introduce these new technologies to the marketplace in a timely manner. If our development efforts are not successful or are significantly delayed, or if the characteristics of our processor and related designs are not compatible with the requirements of specific product applications, our ability to achieve design wins may be limited. Our failure to achieve a sufficient number of design wins could have a material adverse effect on our business, results of operations and financial condition.

Technical innovations of the type critical to our success are inherently complex and involve several risks, including:

- our ability to anticipate and timely respond to changes in the requirements of digital consumer product and business equipment manufacturers;
- our ability to anticipate and timely respond to changes in semiconductor manufacturing processes;
- changing consumer preferences in the digital consumer products market;
- the emergence of new standards in the semiconductor, digital consumer product or business equipment industries;
- the significant investment that is often required before commercial viability is determined; and
- the introduction by our competitors of products embodying new technologies or features.

Any failure by us to adequately address these risks could render our existing processor, core and related designs obsolete and could have a material adverse effect on our business, results of operations and financial condition. In addition, we cannot assure you that we will have the financial and other resources necessary to develop processor, core and related designs in the future, or that any enhancements or new generations of the technology that we develop will generate revenue in excess of the costs of development.

Our intellectual property may be misappropriated or subject to claims of infringement. We attempt to protect our intellectual property rights through a combination of patent, trademark, copyright and trade secret laws, as well as licensing agreements and employee and third-party nondisclosure and assignment agreements. Our failure to obtain or maintain adequate protection of our intellectual property rights for any reason could have a material adverse effect on our business, results of operations and financial condition.

Policing the unauthorized use of our intellectual property is difficult, and we cannot be certain that the steps we have taken will prevent the misappropriation or unauthorized use of our technologies, particularly in foreign countries where the laws may not protect our proprietary rights as fully as in the United States. In addition, we cannot be certain that we will be able to prevent other parties from designing and marketing unauthorized MIPS-based products or that others will not independently develop

or otherwise acquire the same or substantially equivalent technologies as ours. Moreover, our cross licensing arrangements, in which we license certain of our patents but do not generally transfer know-how or other proprietary information, may facilitate the ability of our cross-licensees, either alone or in conjunction with others, to develop competitive products and designs.

We cannot assure you that any of our patent applications will be approved or that any of the patents that we own will not be challenged, invalidated or circumvented by others or be of sufficient scope or strength to provide us with any meaningful protection or commercial advantage. Significant litigation regarding intellectual property rights exists in our industry. We cannot be certain that third parties will not make a claim of infringement against us or against our semiconductor company licensees or digital consumer product manufacturers in connection with their use of our technology. Any claims, even those without merit, could be time consuming to defend, result in costly litigation and/or require us to enter into royalty or licensing agreements. These royalty or licensing agreements, if required, may not be available to us on acceptable terms or at all. A successful claim of infringement against us or one of our semiconductor manufacturing licensees in connection with its use of our technology could adversely affect our business.

If we fail to compete effectively in the market for embedded processors, our business will be adversely affected. Competition in the market for embedded processors is intense. We believe that the principal competitive factors in our industry are performance, functionality, price, customizability and power consumption. We cannot assure you that we will be able to compete successfully or that competitive pressures will not materially and adversely affect our business, results of operations and financial condition. We compete with other designers and developers of processors and cores, as well as semiconductor manufacturers whose product lines include processors for embedded and non-embedded applications. In addition, we may face competition from the producers of unauthorized MIPS-based clones and non-RISC based technology designs.

To remain competitive, we must also differentiate our processors, cores and related designs from those available or under development by the internal design groups of semiconductor manufacturers, including some of our current and prospective manufacturing licensees. Many of these internal design groups have substantial programming and design resources and are part of larger organizations with substantial financial and marketing resources. These internal design groups may develop products that compete directly with ours or may actively seek to license their own technology to third-party semiconductor manufacturers.

Many of our existing competitors, as well as a number of potential new competitors, have longer operating histories, greater brand recognition, larger customer bases as well as greater financial and marketing resources than we do. This may allow them to respond more quickly than we can to new or emerging technologies and changes in customer requirements. It may also allow them to devote greater resources than we can to the development and promotion of their technologies and products. In addition, we may face competition from non-RISC based technology designs.

We may not be able to recruit and retain the personnel to succeed. Our future success depends to a significant extent on the continued contributions of our key management, technical, sales and marketing personnel, many of whom are highly skilled and difficult to replace. We do not have employment agreements with any of our officers or key employees. We intend to hire additional highly skilled personnel, particularly technical personnel, for our anticipated research and development activities. Competition for qualified personnel, particularly those with significant experience in the semiconductor and processor design industries, is intense. The loss of the services of any of our key personnel or our inability to attract and retain qualified personnel in the future could have a material adverse effect on our business, results of operations and financial condition. In particular, our ability to hire and retain qualified engineering personnel is essential to meet our business goals.

We have potential conflicts of interest with Silicon Graphics, which could be resolved in a manner that adversely affects us. Conflicts of interest may arise between us and Silicon Graphics in a number of areas relating to our past and ongoing relationships, including:

- potential competitive business activities;
- indemnification arrangements, including with respect to the separation of our business from that of Silicon Graphics and the recapitalization;
- potential acquisitions or financing transactions;
- sales or other dispositions by Silicon Graphics of shares of our common stock, including through the exercise of its registration rights or in a tax-free distribution to its stockholders;
- the exercise by Silicon Graphics of its ability to control our management and affairs; and
- tax and intellectual property matters.

We cannot assure you that any conflicts that may arise between us and Silicon Graphics will be resolved in a manner that does not have a material adverse effect on us, even if such result is not intended by Silicon Graphics. In addition, certain of the agreements that we entered into with Silicon Graphics in connection with the separation of our business from that of Silicon Graphics contain specific procedures for resolving disputes between the two companies with respect to the subject matter of those agreements. We cannot assure you that more favorable results to us would not be obtained under different procedures.

Silicon Graphics does not currently engage in the design and development of processor intellectual property for embedded systems applications. However, our certificate of incorporation provides that Silicon Graphics has no duty to refrain from engaging in the same or similar activities or lines of business as us.

Ownership interests of our directors or officers in the common stock of Silicon Graphics or service as both a director of MIPS Technologies and an officer or employee of Silicon Graphics could create or appear to create potential conflicts of interest when directors and officers are faced with decisions that could have different implications for us and Silicon Graphics. Our certificate of incorporation includes provisions relating to the allocation of business opportunities that may be suitable for both us and Silicon Graphics based on the relationship to the companies of the individual to whom the opportunity is presented and the method by which it was presented.

In May 1998, we entered into a memorandum of understanding with Silicon Graphics, Nintendo Co. Ltd. and ArtX, Inc. in which Nintendo agreed that, in the absence of certain litigation we and Silicon Graphics initiated against ArtX, Inc., Nintendo would refrain from asserting any claims based on its belief that certain disclosures in the registration statement for our initial public offering constituted a breach of the confidentiality obligations contained in our contract with Nintendo. Although we and Silicon Graphics strongly disagree that any such breach has occurred, Nintendo may assert any claims it believes it has against us with respect to the disclosures in such registration statement if Silicon Graphics reasserts its claims against ArtX, Inc.

Our revenue is subject to fluctuations in currency exchange rates. A substantial portion of our revenue has been, and is expected to continue to be, derived from customers outside the United States, primarily in Japan. To date, substantially all of our revenue from international customers has been denominated in U.S. dollars. However, to the extent that the sales by our manufacturing licensees to their customers are denominated in foreign currencies, the royalties we receive on such sales could be subject to fluctuations in currency exchange rates. In addition, if the effective price of the technology we sell to our licensees were to increase due to fluctuations in foreign currency exchange rates, demand for our technology could fall which would, in turn, reduce our royalties. Because we cannot predict the amount of non-U.S. dollar denominated revenue earned by our licensees, we have not historically attempted to

mitigate the effect that currency fluctuations may have on our revenue, and we do not presently intend to do so in the future.

We have grown rapidly, and if we are unable to manage this growth, our business will be adversely affected. Our ability to continue to grow successfully requires an effective planning and management process. Since June 30, 1998, we have increased our headcount substantially, from 63 employees at that date to 144 employees at September 30, 1999. This increase includes the addition of 32 engineering employees in our new development center in Denmark, as well as additional employees in our engineering, sales and marketing staff.

Our growth has placed, and the recruitment and integration of additional employees will continue to place, a strain on our resources. Digital consumer product manufacturers and our semiconductor manufacturing licensees typically require significant engineering support in the design, testing and manufacture of products incorporating our technology. Accordingly, increases in the adoption of our technology can be expected to increase the strain on our personnel, particularly our engineers.

Our separation from Silicon Graphics may affect us in negotiating future licensing arrangements and resolving future intellectual property disputes. We have entered into licensing arrangements with Silicon Graphics with respect to certain of its intellectual property that we use in our business. As a result of the separation, however, we no longer have full access to Silicon Graphics' patents and other intellectual property. In the past, the MIPS Group benefited from its status as a division of Silicon Graphics in its access to the intellectual property of third parties through licensing arrangements or otherwise, and in the negotiation of the financial and other terms of such arrangements. The separation of our business from that of Silicon Graphics could adversely affect our ability to negotiate commercially attractive intellectual property licensing arrangements with third parties in the future. Moreover, in connection with future intellectual property infringement claims, we will not have the benefit of asserting counterclaims based on Silicon Graphics' intellectual property portfolio, nor will we be able to provide licenses to Silicon Graphics' intellectual property in order to resolve such claims.

Year 2000 problems with the products or internal systems of our critical suppliers or third parties whose products incorporate our technology could adversely affect our business. Many computer programs and embedded date-reliant systems use two digits rather than four to define the applicable year. Programs and systems that record only the last two digits of the calendar year may not be able to distinguish whether "00" means 1900 or 2000. If not corrected, date-related information and data could cause such programs or systems to fail or to generate erroneous information.

Although our processor and related designs have no inherent time or date function, we initiated a comprehensive assessment of our Year 2000 readiness in September 1998. We completed this assessment and implemented programs to make our information technology (IT) and related non-IT and processes Year 2000 compliant. In addition, we replaced our internal computer systems and operating and applications software within the past eighteen months. Each of the suppliers of these systems and software has indicated to us that it believes its products are Year 2000 compliant. We have completed changes to our critical systems and have completed all requirements for Year 2000 compliance worldwide as of the end of the third quarter of calendar year 1999. Total costs of approximately \$100,000, exclusive of ordinary costs to upgrade and maintain our equipment, were charged to expense as incurred.

We intend to cooperate with our licensees and others with whom we do business to coordinate Year 2000 compliance with operational processes and marketed products. However, we are unable to directly assess the Year 2000 compliance of products and technologies developed by others and incorporating our technology. To the extent that any such third-party product or technology is not Year 2000 compliant, we may be adversely affected due to our association with such product or technology. In addition, our revenue and operating results could become subject to unexpected fluctuations and could be adversely affected if our licensees or system original equipment manufacturers encounter year 2000 compliance problems that affect their ability to distribute products that incorporate our technology.

We are continuing our assessment of the readiness of our critical suppliers to determine whether the products and services they provide to us are Year 2000 compliant. We will develop contingency plans should the need arise. A delay or failure by our critical suppliers to be Year 2000 compliant could, in a worst case, interrupt our business and have an adverse effect on our business, financial condition and results of operations.

Year 2000 Information and Readiness Disclosure Act. The Year 2000 disclosure set forth above is intended to be a "year 2000 statement" as such term is defined in the Year 2000 Information and Readiness Disclosure Act of 1998 (the "Year 2000 Act") and, to the extent such disclosure relates to our year 2000 processing or to products or services offered by us, is also intended to be a "year 2000 readiness disclosure" as such term is defined in the Year 2000 Act.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

We are exposed to interest rate risk on investments of our excess cash. The primary objective of our investment activities is to preserve capital. To achieve this objective and minimize the exposure due to adverse shifts in interest rates, we invest in high quality short-term maturity commercial paper and money market funds operated by reputable financial institutions in the United States. Due to the nature of our investments, management has concluded that we do not have a material market risk exposure.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

From time to time, we receive communications from third parties asserting patent or other rights covering our products and technologies. Based upon our evaluation, we may take no action or we may seek to obtain a license. There can be no assurance in any given case that a license will be available on terms we consider reasonable, or that litigation will not ensue. In addition, from time to time, we evaluate possible patent infringement claims against third parties and may assert such claims, if appropriate.

On October 28, 1999, we filed suit against Lexra, Inc. in the United States District Court for the Northern District of California for infringement of two United States patents. We have also identified nine additional patents that we believe Lexra may be infringing and intend to assert claims under these patents as warranted based on our continuing factual investigation.

ITEM 6. EXHIBITS AND REPORTS ON FORM 8-K

(a) Exhibits

- 10.1 The Restated and Amended Separation Agreement between the Company and Silicon Graphics, Inc.
- 27.1 Financial Data Schedule.

(b) Reports on Form 8-K.

None.

ITEMS 2, 3, 4 AND 5 ARE NOT APPLICABLE AND HAVE BEEN OMITTED.

SIGNATURES

Pursuant to the requirements 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.

MIPS Technologies, Inc.
a Delaware corporation

By: /s/ KEVIN C. EICHLER

Kevin C. Eichler
Vice President and Chief Financial Officer
(Principal Financial
and Accounting Officer)

Dated: November 12, 1999

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**AMENDED AND RESTATED
SEPARATION AGREEMENT**

made to be effective as of June 1, 1998

between

Silicon Graphics, Inc.

and

MIPS Technologies, Inc.

TABLE OF CONTENTS

	<u>Page</u>	
ARTICLE I	DEFINITIONS	2
Section 1.1.	<i>Definitions</i>	2
ARTICLE II	TRANSFER OF ASSETS AND ASSUMPTION OF LIABILITIES	7
Section 2.1.	<i>Transfer of Assets</i>	7
Section 2.2.	<i>Assignment and Assumption of Liabilities. (a)</i>	9
Section 2.3.	<i>Transfers Not Effected On or Prior to the Closing Date</i>	10
Section 2.4.	<i>No Representations or Warranties; Consents</i>	11
Section 2.5.	<i>Documents Relating to Transfer of Assets and Assignment and Assumption of Liabilities</i>	12
Section 2.6.	<i>Termination of Agreements</i>	13
ARTICLE III	THE SEPARATION AND THE INITIAL PUBLIC OFFERING	13
Section 3.1.	<i>Cooperation Prior to the Separation</i>	13
Section 3.2.	<i>Conduct of Company Business Pending Separation</i>	14
Section 3.3.	<i>Silicon Graphics Board Action; Conditions Precedent to the Separation</i>	14
ARTICLE IV	INDEMNIFICATION	16
Section 4.1.	<i>Release of Claims</i>	16
Section 4.2.	<i>Indemnification by the Company</i>	18
Section 4.3.	<i>Indemnification by Silicon Graphics</i>	19
Section 4.4.	<i>Notice and Payment of Claims</i>	19
Section 4.5.	<i>Notice and Defense of Third-Party Claims</i>	20
Section 4.6.	<i>Insurance Proceeds</i>	21
Section 4.7.	<i>Contribution</i>	21
Section 4.8.	<i>Subrogation</i>	22
Section 4.9.	<i>No Third-Party Beneficiaries</i>	22
Section 4.10.	<i>Remedies Cumulative</i>	22
Section 4.11.	<i>Survival of Indemnities</i>	22
Section 4.12.	<i>After-Tax Indemnification Payments</i>	22
ARTICLE V	CERTAIN ADDITIONAL MATTERS	22
Section 5.1.	<i>Ancillary Agreements</i>	22
Section 5.2.	<i>Company Officers and Board of Directors</i>	22
Section 5.3.	<i>The Company Certificate of Incorporation and Bylaws</i>	23
Section 5.4	<i>Insurance Policies and Claims Administration</i>	23
ARTICLE VI	ACCESS TO INFORMATION	24
Section 6.1.	<i>Provision of Corporate Records</i>	24
Section 6.2.	<i>Access to Information</i>	24
Section 6.3.	<i>Litigation Cooperation</i>	24
Section 6.4.	<i>Reimbursement</i>	25
Section 6.5.	<i>Retention of Records</i>	25
Section 6.6.	<i>Confidentiality</i>	25
Section 6.7.	<i>Protective Arrangements</i>	25
Section 6.8.	<i>Mail</i>	26

ARTICLE VII	DISPUTE RESOLUTION	26
Section 7.1.	<i>Agreement to Mediate</i>	26
Section 7.2.	<i>Escalation</i>	26
Section 7.3.	<i>Demand for Mediation</i>	27
Section 7.4.	<i>Certain Additional Matters</i>	27
Section 7.5.	<i>Continuity of Service and Performance</i>	27
ARTICLE VIII	MISCELLANEOUS	28
Section 8.1.	<i>Termination</i>	28
Section 8.2.	<i>Expenses</i>	28
Section 8.3.	<i>Notices</i>	28
Section 8.4.	<i>Amendment and Waiver</i>	29
Section 8.5.	<i>Counterparts</i>	29
Section 8.6.	<i>Governing Law; Jurisdiction; Forum</i>	29
Section 8.7.	<i>Entire Agreement</i>	29
Section 8.8.	<i>Parties in Interest</i>	30
Section 8.9.	<i>Tax Sharing Agreement</i>	30
Section 8.10.	<i>Further Assurances and Consents</i>	30
Section 8.11.	<i>Exhibits and Schedules</i>	30
Section 8.12.	<i>Legal Enforceability</i>	30
Section 8.13.	<i>Titles and Headings</i>	30

Schedules:

- 1.1(a) - Company Contracts
- 1.1(b) - Company Contracts to SGI
- 2.1(a)(i) - Tangible Personal Property
- 2.1(a)(ii) - Inventory
- 2.1(a)(iii) - Receivables
- 2.1(a)(ix) - Sales and Promotional Material
- 2.1(a)(x) - Governmental Permits and Approvals
- 2.1(a)(xii) - Royalties
- 2.1(b)(i) - Excluded Assets
- 2.2(a)(iv) - Liabilities
- 2.2(b)(i) - Excluded Liabilities
- 2.3(b) - Joint Contracts
- 2.6(b) - Agreements that will not Terminate

AMENDED AND RESTATED SEPARATION AGREEMENT

This AMENDED AND RESTATED SEPARATION AGREEMENT ("Agreement") is made to be effective as of June 1, 1998 by and between Silicon Graphics, Inc., a Delaware corporation ("Silicon Graphics"), and MIPS Technologies, Inc., a Delaware corporation (the "Company").

RECITALS

WHEREAS, the Board of Directors of Silicon Graphics has determined that it is in the best interests of Silicon Graphics and its shareholders to separate the Company Business from Silicon Graphics' other operations;

WHEREAS, in furtherance of the foregoing, it is appropriate and desirable to transfer the Company Assets to the Company and to cause the Company to assume the Company Liabilities, all as more fully described in this Agreement and the Ancillary Agreements (such transfer of assets and assumption of liabilities are herein after referred to as the "Separation.");

WHEREAS, the Board of Directors of Silicon Graphics has further determined that it is appropriate and desirable, on the terms and conditions contemplated hereby, to cause the Company and Silicon Graphics to sell, in an initial public offering (the "Initial Public Offering"), up to such number of shares of the Common Stock which shall not exceed 20% of the Company's outstanding capital stock on a fully-diluted basis;

WHEREAS, it is appropriate and desirable to set forth the principal corporate transactions required to effect the Separation and the Initial Public Offering and certain other agreements that will govern certain matters relating to the Separation and the Initial Public Offering and the relationship of Silicon Graphics and the Company and their respective subsidiaries following the Initial Public Offering; and

WHEREAS, Silicon Graphics and Company entered into that certain Separation Agreement, as set forth in Amendment No. 2 to the Company's S-1 Registration Statement (the "Prior Separation Agreement"). Silicon Graphics and Company desire to amend the Prior Separation Agreement and to restate such agreement in its entirety and the parties agree that this Amended and Restated Separation Agreement shall supersede the Prior Separation Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements, provisions and covenants contained in this Agreement, the parties hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. *Definitions.* As used herein, the following terms have the following meanings:

"*Action*" means any claim, suit, arbitration, inquiry, proceeding or investigation by or before any court, any governmental, regulatory or administrative authority, agency or commission, or any other tribunal or arbitral body; or any other Governmental Authority.

"*Affiliate*" of any specified Person means any other Person that, directly or indirectly, controls, is controlled by or is under direct or indirect common control with such specified Person.

"*Agreement*" has the meaning specified in the Recitals.

"*Ancillary Agreements*" means the Corporate Agreement, the Management Services Agreement, the Tax Sharing Agreement, the Technology Agreement, the Trademark Agreement, the Interim Sublease Agreement and the Sublease Agreement.

"*Assigned Company Intellectual Property*" means any Intellectual Property owned by Silicon Graphics as of the Separation Date that is to be assigned by Silicon Graphics to the Company

pursuant to the Technology Agreement and the Trademark Agreement, as such agreements may be amended from time to time.

"*Closing Date*" means the first time at which any shares of Common Stock are sold to the Underwriters pursuant to the Initial Public Offering in accordance with the terms of the Underwriting Agreement, which occurred on July 6, 1998.

"*Code*" means the Internal Revenue Code of 1986, as amended.

"*Commission*" means the Securities and Exchange Commission.

"*Common Stock*" means the common stock, par value \$0.001 per share, of the Company.

"*Company Assets*" has the meaning set forth in Section 2.1(a).

"*Company Balance Sheet*" means the audited balance sheet of the Company, including the notes thereto, as of March 31, 1998.

"*Company Business*" means the business and operations of the various divisions and subsidiaries of Silicon Graphics engaged in the development and licensing of processor designs for the embedded market based on reduced-instruction-set-computing (RISC) architecture, consisting principally of Silicon Graphics' MIPS Group. Company Business excludes, without limitation, RISC/OS, compilers, tools and other commercial software products even if developed by or for Silicon Graphics' MIPS Group unless expressly transferred or licensed to Company pursuant to the Technology Agreement.

"*Company Bylaws*" means the bylaws of the Company in the form filed as an exhibit to the Registration Statement.

"*Company Certificate*" means the restated certificate of incorporation of the Company in the form filed as an exhibit to the Registration Statement.

"*Company Contracts*" means the following contracts and agreements to which Silicon Graphics or any of its Affiliates is a party or by which it or any of its Affiliates or and of their respective assets is bound, whether or not in writing, except for any such contract or agreement or portion thereof that is contemplated to be retained by Silicon Graphics or any of its Affiliates (other than the Company) pursuant to any provision of this Agreement or any Ancillary Agreement:

(a) all contracts or agreements or portion thereof listed or described on Schedule 1.1(a) (as such Schedule may be amended by mutual agreement of the parties heretofrom time to time;

(b) any contracts or agreements entered into in the name of, or expressly on behalf of, the Company, except for such agreements set forth on Schedule 1.1(b);

(c) any contract or agreement that relates primarily to the Company Business;

(d) any guarantee, indemnity, representation, warranty or other Liability of the Company or Silicon Graphics in respect of any other Company Contract, any Company Liability or the Company Business; and

(e) any contract or agreement that is otherwise expressly contemplated pursuant to this Agreement or any of the Ancillary Agreements to be assigned to the Company.

"*Company Liabilities*" has the meaning set forth in Section 2.2.

"*Consents*" means any consents, waivers or approvals from, or notification requirements to, any third parties.

"*Effective Initial Public Offering Date*" means the date on which the Registration Statement is declared effective by the Commission.

"Escalation Notice" has the meaning set forth in Section 7.2.

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

"Excluded Assets" has the meaning set forth in Section 2.1(b).

"Excluded Liabilities" has the meaning set forth in Section 2.2(b).

"Governmental Approvals" means any notices, reports or other filings to be made, or any consents, registrations, approvals, permits or authorizations to be obtained from, any Governmental Authority.

"Governmental Authority" means any federal, state, local, foreign or international court, government, department, commission, board, bureau, agency, official or other regulatory, administrative or governmental authority.

"Intellectual Property" means (a) inventions, whether or not patentable, whether or not reduced to practice or whether or not yet made the subject of a pending patent application or applications, (b) ideas and conceptions of potentially patentable subject matter, including, without limitation, any patent disclosures, whether or not reduced to practice and whether or not yet made the subject of a pending patent application or applications, (c) national (including the United States) and multinational statutory invention registrations, patents, patent registrations and patent applications (including all reissues, divisions, continuations, continuations-in-part, extensions and reexaminations) and all rights therein provided by multinational treaties or conventions and all improvements to the inventions disclosed in each such registration, patent or application, (d) trademarks, service marks, trade dress, logos, trade names and corporate names, whether or not registered, including all common law rights, and registrations and applications for registration thereof, including, but not limited to, all marks registered in the United States Patent and Trademark Office, the Trademark Offices of the States and Territories of the United States of America, and the Trademark offices of other nations throughout the world, and all rights therein provided by multinational treaties or conventions, (e) copyrights (registered or otherwise) and registrations and applications for registration thereof, and all rights therein provided by multinational treaties or conventions, (f) moral rights (including, without limitation, rights of paternity and integrity), and waivers of such rights by others, (g) computer software, including, without limitation, source code, operating systems and specifications, data, data bases, files, documentation and other materials related thereto, data and documentation, (h) trade secrets and confidential, technical or business information (including ideas, formulas, compositions, inventions, and conceptions of inventions whether patentable or unpatentable and whether or not reduced to practice), (i) whether or not confidential, technology (including know-how and show-how), manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, proposals, technical data, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, (j) copies and tangible embodiments of all the foregoing, in whatever form or medium, (k) all rights to obtain and rights to apply for patents, and to register trademarks and copyrights, and (l) all rights to sue and recover and retain damages and costs and attorneys' fees for present and past infringement of any of the Intellectual Property rights hereinabove set out.

"Interim Sublease Agreement" means the sublease agreement to be executed by Silicon Graphics and the Company on the Separation Date for the sublease by the Company from Silicon Graphics of certain premises located at 1600 Amphitheatre Parkway, Mountain View, California, consisting of approximately 20,000 square feet of space.

"Inventory" means all inventory owned, used or held by Silicon Graphics as of the Separation Date and related exclusively to the Company Business.

"Liabilities" means any and all losses, claims, charges, debts, demands, Actions, causes of Action, suits, damages, obligations, payments, costs and expenses, accounts, bonds, indemnities and similar obligations, covenants, contracts, agreements, promises, guarantees and other liabilities, including all contractual obligations, whether absolute or contingent, matured or not matured, liquidated or unliquidated, accrued or not accrued, known or unknown, whenever arising, and including those arising under any law, rule, regulation, Action, threatened or contemplated Action (including the costs and expenses of demands, assessments, judgments, settlements and compromises relating thereto and attorneys' fees and any and all costs and expenses (including allocated costs of in-house counsel and other personnel), whatsoever reasonably incurred in investigating, preparing or defending against any such Actions or threatened or contemplated Actions), order or consent decree of any Governmental Authority or any award of any arbitrator or mediator of any kind, and those arising under any contract, commitment or undertaking, including those arising under this Agreement or any Ancillary Agreement, in each case, whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of any Person.

"Licensed Company Intellectual Property" means all Intellectual Property which is licensed or sublicensed from a third party by Silicon Graphics as of the Separation Date that is to be licensed or sublicensed by Silicon Graphics to the Company pursuant to the Technology Agreement.

"Management Services Agreement" means the Management Services Agreement dated the date hereof between the Company and Silicon Graphics regarding the provision of certain services by the Company from Silicon Graphics, as such agreement may be amended from time to time.

"Mediation Demand Date" has the meaning set forth in Section 7.3.

"Mediation Demand Notice" has the meaning set forth in Section 7.3.

"Owned Intellectual Property" means all Intellectual Property in and to which Silicon Graphics or the Company holds, or has a right to hold, right, title and interest.

"Person" means an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

"Policy" has the meaning specified in Section 5.4(a).

"Prospectus" means each preliminary, final or supplemental prospectus forming a part of the Registration Statement.

"Receivables" means any and all accounts receivable, notes and other amounts receivable from third parties, including, without limitation, customers and employees, arising exclusively from the conduct of the Company Business before the Separation Date, whether or not in the ordinary course, together with any unpaid financing charges accrued thereon.

"Registration Statement" means the registration statement on Form S-1 filed by the Company with the Commission to effect the registration of the Common Stock pursuant to the Securities Act, as such registration statement may be amended from time to time.

"Securities Act" means the Securities Act of 1933, as amended.

"Separation" has the meaning specified in the second recital of this Agreement.

"Separation Date" means the date determined by the Board of Directors of Silicon Graphics as the date on which the Separation shall be effected, which is contemplated to occur on or about June 1, 1998.

"SGI Group" means Silicon Graphics and each Person (other than the Company and its subsidiaries) that is an Affiliate of Silicon Graphics immediately after the Separation Date.

"*Sublease Agreement*" means the sublease agreement to be executed by Silicon Graphics and the Company on the Separation Date for the sublease by the Company from Silicon Graphics of certain premises located at 1225 Charleston Road, Mountain View, California, consisting of approximately 30,000 square feet of space.

"*Tangible Personal Property*" means all machinery, equipment, tools, supplies, furniture, fixtures, personalty, vehicles and other tangible personal property used or held for use by Silicon Graphics or any member of the SGI Group in the conduct of the Company Business.

"*Tax*" or "*Taxes*" shall have the meaning given to such term in the Tax Sharing Agreement.

"*Tax Sharing Agreement*" means the Tax Sharing Agreement dated as of the date hereof between Silicon Graphics and the Company providing for certain tax related matters, as such agreement may be amended from time to time.

"*Technology Agreement*" means the Technology Agreement dated as of the Separation Date between Silicon Graphics and the Company providing for certain intellectual property matters, as such agreement may be amended from time to time.

"*Trademark Agreement*" means the Trademark Agreement dated as of the date hereof between Silicon Graphics and the Company providing for certain trademark matters, as such agreement may be amended from time to time.

Unless otherwise specified, any reference to any "subsidiary" or "subsidiaries" of Silicon Graphics shall not include the Company.

ARTICLE II TRANSFER OF ASSETS AND ASSUMPTION OF LIABILITIES

Section 2.1. *Transfer of Assets*. Subject to Section 2.3, (a) Silicon Graphics hereby assigns, transfers, conveys and delivers to the Company as of the Closing Date, and agrees to cause each of its subsidiaries to assign, transfer, convey and deliver to the Company as of the Closing Date, and the Company hereby accepts from Silicon Graphics and such subsidiaries as of the Closing Date, all of Silicon Graphics' and such subsidiaries' respective right, title and interest in or under the following (the "*Company Assets*"):

- (i) all Tangible Personal Property, including, without limitation, the Tangible Personal Property listed on Schedule 2.1(a)(i);
- (ii) all Inventory, including, without limitation, the Inventory listed on Schedule 2.1(a)(ii);
- (iii) all Receivables, including, without limitation, all Receivables listed on Schedule 2.1(a)(iii);
- (iv) all books of account, general, financial and tax records, invoices, shipping records, supplier lists, correspondence and other documents, records and files exclusively relating to the Company Business, and all personnel records of persons employed by Silicon Graphics that become employees of the Company as of the Separation Date or thereafter;
- (v) the goodwill of Silicon Graphics exclusively relating to the Company Business;
- (vi) all of the Assigned Company Intellectual Property and the Licensed Company Intellectual Property that is to be transferred pursuant to the Technology Agreement and the Trademark Agreement, in each case to the extent and subject to the conditions provided therein;
- (vii) all of the Company Contracts;
- (viii) all claims, causes of action, choses in action, rights of recovery and rights of set-off of any kind (including rights to insurance proceeds and rights under and pursuant to all warranties,

representations and guarantees made by suppliers of products, materials or equipment, or components thereof), pertaining to, arising out of, and enuring to the benefit of Silicon Graphics which relate exclusively to the Company Business;

(ix) all sales and promotional literature, customer lists and other sales-related materials owned, used, associated with or employed by Silicon Graphics relating exclusively to the Company Business, including, without limitation, the materials listed on Schedule 2.1(a)(ix);

(x) all municipal, state and federal franchises, permits, licenses, agreements, waivers, exemptions, approvals and authorizations held or used by Silicon Graphics in connection with, or required for, the Company Business, to the extent transferable, including, without limitation, the permits listed on Schedule 2.1(a)(x);

(xi) any assets reflected in the Company Balance Sheet as "Assets" of the Company, subject to any dispositions of such assets subsequent to the date of the Company Balance Sheet; and

(xii) all royalties listed on Schedule 2.1(a)(xii) which royalties shall not be amended by Silicon Graphics with any third party without Company's prior written consent; and

(xiii) any and all other assets, rights and claims of every kind and nature held immediately prior to the Closing Date by Silicon Graphics and used primarily in the Company Business. The intention of this clause (xii) is only to rectify any inadvertent omission of transfer or conveyance of any asset, right or claim that, had the parties hereto given specific consideration to such asset, right or claim as of the date hereof, would have otherwise been classified as a Company Asset. No asset, right or claim shall be deemed a Company Asset solely as a result of this clause (xii) if such asset, right or claim is within the category or type of asset, right or claim expressly covered by the subject matter of an Ancillary Agreement. In addition, no asset, right or claim shall be deemed a Company Asset solely as a result of this clause (xii) unless a claim with respect thereto is made by the Company on or prior to the first anniversary of the Closing Date.

Notwithstanding the foregoing, the Company Assets shall not in any event include the Excluded Assets referred to in Section 2.1(b) below.

(b) For the purposes of this Agreement, "*Excluded Assets*" shall mean: (i) the assets, rights and claims listed or described on Schedule 2.1(b)(i); and (ii) any and all assets, rights and claims that are expressly contemplated by this Agreement or any Ancillary Agreement (or the Exhibits and Schedules hereto or thereto) as assets, rights or claim to be retained by Silicon Graphics. Subject to Section 2.3, the Company hereby assigns, transfers, conveys and delivers to Silicon Graphics the contracts and agreements listed on Schedule 1.1(b), including all assets and liabilities relating thereto.

Section 2.2. *Assignment and Assumption of Liabilities.* (a) Except as set forth in one or more of the Ancillary Agreements, from and after the Closing Date, the Company hereby assumes and agrees faithfully to pay, perform and fulfill all obligations under the following in accordance with their respective terms (the "*Company Liabilities*"):

(i) any and all Liabilities that are expressly contemplated by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed by the Company, and all agreements, obligations and Liabilities of the Company under this Agreement or any of the Ancillary Agreements;

(ii) all Liabilities (other than Taxes based on, or measured by reference to, net income), including any employee-related Liabilities, primarily relating to, arising out of or resulting from:

(A) the operation of the Company Business, as conducted at any time prior to, on or after the Separation Date, including, without limitation, (i) any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative

(whether or not such act or failure to act is or was within such Person's authority); (ii) any employee-related Liability, including, without limitation, any Liability related to accrued vacation, personal time-off, sales commissions, bonuses, severance, or employee-related Actions relating to any past or present employee of the Company or any past or present employee of Silicon Graphics who was engaged primarily in the Company Business prior to the Separation Date; and (iii) any Liability related to service, warranty, support and product liability in connection with the Company Business, including products and technologies;

(B) the operation of any business conducted by the Company or any of its subsidiaries at any time after the Closing Date including, without limitation, any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person's authority); and

(C) any Company Assets;

(iii) all Liabilities reflected as "Liabilities" or obligations of the Company in the Company Balance Sheet, subject to any discharge of such Liabilities subsequent to the date of the Company Balance Sheet; and

(iv) all Liabilities listed on Schedule 2.2(a)(iv).

Notwithstanding the foregoing, the Company Liabilities shall not in any event include the Excluded Liabilities referred to in Section 2.2(b) below.

(b) For the purposes of this Agreement, "*Excluded Liabilities*" shall mean (i) the Liabilities listed or described on Schedule 2.2(b)(i); (ii) any and all Liabilities that are expressly contemplated by this Agreement or any Ancillary Agreement (or Schedules hereto or thereto) as Liabilities to be retained or assumed by Silicon Graphics or any member of the SGI Group; and (iii) all agreements and obligations of any member of the SGI Group under this Agreement or any of the Ancillary Agreements.

(c) The Company shall be responsible for all Company Liabilities, regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the date hereof, regardless of where or against whom such Liabilities are asserted or determined (including any Company Liabilities arising out of claims made by Silicon Graphics' or the Company's respective directors, officers, employees, agents or Affiliates) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of law, fraud or misrepresentation by Silicon Graphics or the Company or any of their respective directors, officers, employees, agents or Affiliates.

Section 2.3. *Transfers Not Effected On or Prior to the Closing Date.* (a) To the extent any transfers contemplated by this Article II shall not have been fully effected on or prior to the Closing Date, Silicon Graphics and the Company shall cooperate to effect such transfers as promptly as possible following the Closing Date. Nothing herein shall be deemed to require the transfer of any assets or the assignment or assumption of any Liabilities that by their terms or by operation of law cannot be so transferred, assigned or assumed; *provided, however*, that any such asset shall be deemed a Company Asset for purposes of determining whether any Liability is a Company Liability; and *provided, further*, that Silicon Graphics and the Company and their respective Affiliates shall cooperate in seeking to obtain any necessary Consents for the transfer of all assets and the assignment or assumption of all Liabilities as contemplated by this Article II, subject to any conditions expressly set forth in the Schedules. In the event that any transfer of assets or assignment or assumption of Liabilities contemplated by this Article II has not been consummated effective as of the Closing Date, (i) the party retaining such assets shall thereafter hold such assets in trust for the use and benefit of the party entitled thereto (at the expense of the party entitled thereto); and (ii) the party retaining such Liabilities shall thereafter hold such Liabilities for the account of the party assuming such Liability or to whom such Liability is to be assigned pursuant hereto, and in each such case

shall take such other actions as may be reasonably required in order to place the parties, insofar as reasonably possible, in the same position as would have existed had such asset been transferred, or such Liability been assigned or assumed as contemplated hereby. As and when any such asset or Liability becomes transferable, assignable or assumable, as the case may be, such transfer, assignment or assumption, as the case may be, shall be effected forthwith. Silicon Graphics and the Company agree that, as of the Closing Date, each party hereto shall be deemed to have acquired complete and sole beneficial ownership over all of the assets, together with all of the rights, powers and privileges incidental thereto, that such party is entitled to acquire pursuant to the terms of this Agreement.

(b) Notwithstanding anything in this Agreement to the contrary, Silicon Graphics and the Company acknowledge that there are contracts between the Company and/or Silicon Graphics and third parties that relate to both the Company Business and Silicon Graphics' business subsequent to the Separation ("Joint Contracts") including, without limitation, the Joint Contracts listed on Schedule 2.3(b). Subject to Section 2.3(a) above, Silicon Graphics and the Company agree, as promptly as practicable after the Separation Date, to the extent necessary, to modify each Joint Contract (including, if necessary or appropriate, the cancellation of a Joint Contract and the creation of a new contract or contracts) or to seek Consents so that (i) the Company retains or is granted such rights thereunder as may be necessary for the Company to operate the Company Business (including research and development projects), and (ii) Silicon Graphics retains or is granted such rights thereunder as may be necessary for Silicon Graphics to operate its business subsequent to the Separation Date (including existing research and development projects). The parties agree to negotiate in good faith any necessary or appropriate modifications of such Joint Contracts including, without limitation, the fees or other payments that may be payable by each party as a result of any such modifications and the release (or partial release) of a party under any continuing Joint Contract retained by the other party. On the effective date of a modified Joint Contract or any new contract pursuant to this Section 2.3(b), such Joint Contract as modified and any new contract shall, without further act, be deemed for all purposes between Silicon Graphics and the Company to have been assigned to the Company or Silicon Graphics, as the case may be.

Section 2.4. *No Representations or Warranties; Consents.* (a) Each of the parties hereto understands and agrees that no party hereto is, in this Agreement, any Ancillary Agreement or any other agreement or document contemplated by this Agreement, any Ancillary Agreement or otherwise, representing or warranting in any way as to the value or freedom from encumbrance of, or any other matter concerning, any assets of such party, or as to the legal sufficiency to convey title to an asset transferred pursuant to this Agreement or any Ancillary Agreement, including, without limitation, any conveyancing or assumption instruments. It is also agreed and understood that there are no warranties whatsoever, express or implied, given by either party to this Agreement, as to the condition, quality, merchantability or fitness of any of the assets, businesses or other rights transferred or retained by the parties, as the case may be, and all such assets, businesses and other rights shall be "as is, where is" and "with all faults" (provided that the absence of warranties given by the parties shall not negate the allocation of Liabilities under this Agreement and shall have no effect on any manufacturers, sellers, or other third party warranties that are intended to be transferred with such assets), and the Company shall bear the economic and legal risks that any conveyance shall prove to be insufficient to vest in it good and marketable title, free and clear of any security interest, pledge, lien, charge, claim, option, right to acquire, covenant, condition, restriction on transfer or other encumbrance of any nature whatsoever.

(b) Each party hereto understands and agrees that no party hereto is, in this Agreement, any Ancillary Agreement or any other agreement or document contemplated by this Agreement, any Ancillary Agreement or otherwise, representing or warranting in any way that the obtaining of any Consents, the execution and delivery of any amendatory agreements and the taking of any filings or applications contemplated by this Agreement will satisfy the provisions of any or all applicable laws or judgments or other instruments or agreements relating to such assets.

Notwithstanding the foregoing and except as provided in any Ancillary Agreement or the Schedules hereto, the parties shall use their good faith efforts to obtain all Consents (including such Consents as may be required by any Governmental Authority), to enter into all reasonable amendatory agreements and to make all filings and applications contemplated by this Agreement, and shall take all such further actions as shall be deemed reasonably necessary to preserve for each of Silicon Graphics and the Company, to the greatest extent reasonably feasible, consistent with this Agreement, the economic and operational benefits of the allocation of assets and liabilities provided for in this Agreement. In case at any time after the Separation Date any further action is necessary or desirable to carry out the purposes of this Agreement, the proper officers and directors of each party to this Agreement shall take all such necessary or desirable action; *provided* that any financial cost shall be borne by the party receiving the benefit of the action.

Section 2.5. *Documents Relating to Transfer of Assets and Assignment and Assumption of Liabilities.* In connection with the transfer or the Company Assets pursuant to Section 2.1 of this Agreement and the assignment and assumption of the Company Liabilities pursuant to Section 2.2 of this Agreement, simultaneously with the execution and delivery hereof or as promptly as practicable thereafter, (i) Silicon Graphics shall execute and deliver such bills of sale, deeds, stock powers, certificates of title, assignments of contracts and other instruments or transfer, conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of Silicon Graphics' right, title and interest in and to the Company Assets to the Company and (ii) the Company shall execute and deliver to Silicon Graphics such bills of sale, certificates of title, assumptions of contracts and other instruments or assumption as may be necessary to evidence the valid and effective assumption of the Company Liabilities by the Company.

Section 2.6. *Termination of Agreements.* (a) Except as set forth in Section 2.6(b), in furtherance of the releases and other provisions of Section 4.1 hereof, the Company, on the one hand, and Silicon Graphics, on the other hand, hereby terminate, effective as of the Closing Date, any and all agreements, arrangements, commitments or understandings, whether or not in writing, between the Company and Silicon Graphics; *provided, however*, that to the extent any such agreement, arrangement, commitment or understanding is inconsistent with any Ancillary Agreement, such termination shall be effective as of the date of the effectiveness of the applicable Ancillary Agreement. No such terminated agreement, arrangement, commitment or understanding (including any provision thereof which purports to survive termination) shall be of any further force or effect after the Closing Date (or, to the extent contemplated by the proviso to the immediately preceding sentence, after the effective date of the applicable Ancillary Agreement). Each party shall, at the reasonable request of the other party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

(b) The provisions of Section 2.6(a) shall not apply to any of the following agreements, arrangements, commitments or understandings (or any of the provisions thereof): (i) this Agreement and the Ancillary Agreements (and each other agreement or instrument expressly contemplated by this Agreement or any Ancillary Agreement), (ii) any agreements, arrangements, commitments or understandings to which any Person other than the parties hereto or their respective Affiliates is a party, (iii) any intercompany accounts payable or accounts receivable accrued as of the Closing Date that are reflected in the books and records of the parties or otherwise documented in writing in accordance with past practices, (iv) any other agreements, arrangements, commitments or understandings that this Agreement or any Ancillary Agreement expressly contemplates will survive the Closing Date including, without limitation, those listed or described on Schedule 2.6(b), and (v) any agreement entered in to by and between the Company and Silicon Graphics after the Closing Date.

ARTICLE III THE SEPARATION AND THE INITIAL PUBLIC OFFERING

Section 3.1. *Cooperation Prior to the Separation.* (a) *Transactions prior to the Initial Public Offering.*

(i) Subject to the conditions specified in Section 3.3, Silicon Graphics and the Company shall use their reasonable best efforts to consummate the Initial Public Offering. Such actions shall include, but not necessarily be limited to, those specified in this Section 3.1.

(ii) The Company shall file the Registration Statement, and such amendments or supplements thereto, as may be necessary in order to cause the same to become and remain effective as required by law or by the Underwriters, including, but not limited to, filing such amendments to the Registration Statement as may be required by the Underwriting Agreement, the Commission or federal, state or foreign securities laws. Silicon Graphics and the Company shall also cooperate in preparing, filing with the Commission and causing to become effective a registration statement registering the Common Stock under the Exchange Act, and any registration statements or amendments thereof which are required to reflect the establishment of, or amendments to, any employee benefit and other plans necessary or appropriate in connection with the Initial Public Offering and the Separation or the other transactions contemplated by this Agreement and the Ancillary Agreements.

(iii) The Company shall enter into the Underwriting Agreement, in form and substance reasonably satisfactory to the Company and shall comply with its obligations thereunder.

(iv) Silicon Graphics and the Company shall consult with each other and the Underwriters regarding the timing, pricing and other material matters with respect to the Initial Public Offering.

(v) The Company shall use its reasonable best efforts to take all such action as may be necessary or appropriate under state securities and blue sky laws of the United States (and any comparable laws under any foreign jurisdictions) in connection with the Initial Public Offering.

(vi) The Company shall prepare, file and use reasonable best efforts to seek to make effective, a listing application for quotation of the Common Stock issued in the Initial Public Offering in the Nasdaq National Market, subject to official notice of issuance.

(vii) The Company shall participate in the preparation of materials and presentations as the Underwriters shall deem necessary or desirable.

(viii) Silicon Graphics and the Company shall pay the costs and expenses set forth in Section 8.2.

(b) *Proceeds of the Initial Public Offering.* The Initial Public Offering will include both a primary offering of Common Stock by the Company and a secondary offering of Common Stock by Silicon Graphics of its shares of Common Stock. The Company will retain the net proceeds of the primary offering and Silicon Graphics will retain the net proceeds of the secondary offering.

Section 3.2. *Conduct of Company Business Pending Separation.* Prior to the Separation Date, the Company Business shall be operated by Silicon Graphics and its subsidiaries and the Company for the sole benefit of Silicon Graphics.

Section 3.3. *Silicon Graphics Board Action; Conditions Precedent to the Separation.* Silicon Graphics' Board of Directors shall, in its discretion, establish any appropriate procedures in connection with the Separation. In no event shall the Separation occur unless the following conditions shall, unless waived by Silicon Graphics in its sole discretion, have been satisfied:

(a) All necessary regulatory approvals and Consents shall have been received;

(b) The Registration Statement shall have been filed and declared effective by the Commission, and there shall be no stop-order in effect with respect thereto;

(c) The actions and filings with regard to state securities and blue sky laws of the United States (and any comparable laws under any foreign jurisdictions) described in Section 3.1 shall have been taken and, where applicable, have become effective or been accepted;

(d) The Company's Board of Directors, as named in the Registration Statement, shall have been elected by Silicon Graphics, as sole stockholder of the Company, and the Company Certificate and Company Bylaws shall be in effect;

(e) The Company and Silicon Graphics shall have entered into the Underwriting Agreement and all conditions to the obligations of the Company and the Underwriters shall have been satisfied or waived;

(f) The Common Stock shall have been approved for quotation in the Nasdaq National Market, subject to official notice of issuance;

(g) Silicon Graphics' Board of Directors shall have formally approved the Separation and shall not have abandoned, deferred or modified the Separation at any time prior to the Closing Date;

(h) The Company's Board of Directors shall have formally approved the Separation, this Agreement and the Ancillary Agreements and the Initial Public Offering, and all transactions contemplated hereby and thereby;

(i) The transactions contemplated by Sections 2.1 and 2.2 and Article V shall have been consummated in all material respects and each of the Ancillary Agreements, in form and substance satisfactory to Silicon Graphics, shall have been executed by the parties thereto and each of the transactions contemplated by the Ancillary Agreements to be consummated on or prior to the Separation Date shall have been consummated;

(j) No preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a government, regulatory or administrative agency or commission, and no statute, rule, regulation or executive order promulgated or enacted by any Governmental Authority, shall be in effect preventing the consummation of the Separation or the Initial Public Offering or any of the other transactions contemplated by this Agreement or any Ancillary Agreement shall be in effect;

(k) Silicon Graphics shall have been released from any liabilities, guarantees or other obligations with respect to any indebtedness or otherwise of the Company or its subsidiaries; *provided*, that the satisfaction of such conditions shall not create any obligation on the part of Silicon Graphics to effect the Separation or in any way limit Silicon Graphics' power of termination set forth in Section 8.1 or alter the consequences of any such termination from those specified in such Section;

(l) Silicon Graphics shall be satisfied in its sole discretion that it will own at least 80.1% of the outstanding Common Stock following the Initial Public Offering on a fully diluted basis, after giving effect to the issuance of any shares of restricted stock or employee stock options to any employees and consultants of the Company, and all other conditions to permit any subsequent distribution of the Common Stock to Silicon Graphics' shareholders to qualify as a tax-free distribution to Silicon Graphics, the Company and Silicon Graphics' shareholders shall, to the extent applicable as of the time of the Initial Public Offering, be satisfied and there shall be no event or condition that is likely to cause any of such conditions not to be satisfied as of the time of the Separation or thereafter;

(m) Such other actions as the parties hereto may, based upon the advice of counsel, reasonably request to be taken prior to the Separation and the Initial Public Offering in order to assure the successful completion of the Separation and the Initial Public Offering and the other transactions contemplated by this Agreement shall have been taken; and

(n) This Agreement shall not have been terminated.

ARTICLE IV INDEMNIFICATION

Section 4.1. *Release of Claims.* (a) Except as provided in Section 4.1(c), effective as of the Closing Date, the Company does hereby, for itself and its Affiliates (other than any member of the SGI Group),

successors and assigns, and all Persons who at any time prior to the Closing Date have been shareholders, directors, officers, agents or employees of the Company and its Affiliates (other than any member of the SGI Group) (in each case, in their respective capacities as such), remise, release and forever discharge Silicon Graphics and each member of the SGI Group, their respective successors and assigns, and all Persons who at any time prior to the Closing Date have been shareholders, directors, officers, agents or employees of Silicon Graphics or any member of the SGI Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any facts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Closing Date, including in connection with the transactions and all other activities to implement the Separation and the Initial Public Offering.

(b) Except as provided in Section 4.1(c), effective as of the Closing Date, Silicon Graphics does hereby, for itself and each member of the SGI Group, successors and assigns, and all Persons who at any time prior to the Closing Date have been shareholders, directors, officers, agents or employees of Silicon Graphics or any member of the SGI Group (in each case, in their respective capacities as such), remise, release and forever discharge the Company and its subsidiaries, their respective successors and assigns, and all Persons who at any time prior to the Closing Date have been shareholders, directors, officers, agents or employees of the Company or any of its subsidiaries (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever, whether at law or in equity (including any right of contribution), whether arising under any contract or agreement, by operation of law or otherwise, existing or arising from any facts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Closing Date, including in connection with the transactions and all other activities to implement the Separation and the Initial Public Offering.

(c) Nothing contained in Section 4.1(a) or (b) shall impair any right of any Person to enforce this Agreement, any Ancillary Agreement or any agreements, arrangements, commitments or understandings that are specified in Section 2.6(b) or the applicable Schedules thereto not to terminate as of the Closing Date, in each case in accordance with its terms. Nothing contained in Section 4.1(a) and (b) shall release any Person from:

(i) any Liability provided in or resulting from the Agreement, any Ancillary Agreement and any other agreement between the Company and any member of the SGI Group that is specified in Section 2.6(b) or the applicable Schedules thereto as not to terminate as of the Closing Date, or any other Liability specified in Schedule 2.6(b) as not to terminate as of the Closing Date;

(ii) any Liability, contingent or otherwise, assumed, transferred or assigned to such Person in accordance with, or any other Liability of any Person under, this Agreement or any Ancillary Agreement;

(iii) any Liability for the sale, lease or receipt of goods, property or services purchased, obtained or used in the ordinary course of business by the Company from any member of the SGI Group or by any member of the SGI Group from the Company;

(iv) any Liability that the parties may have with respect to indemnification or contribution pursuant to this Agreement or any Ancillary Agreement for claims brought against the parties by third Persons, which Liability shall be governed by the provisions of this Article IV and, if applicable, the appropriate provisions of the Ancillary Agreements; or

(v) any Liability the release of which would result in the release of any Person other than a Person released pursuant to this Section 4.1; *provided* that the parties agree not to bring suit or permit any of their subsidiaries to bring suit against any Person with respect to any Liability to the extent that

such Person would be released with respect to such Liability by this Section 4.1 but for the provision of this clause (v).

(d) The Company shall not make, and shall not permit any of its subsidiaries to make, any claim or demand or commence any Action asserting any claim or demand, including any claim of contribution or indemnification, against Silicon Graphics or any member of the SGI Group or any other Person released pursuant to Section 4.1(a), with respect to any Liabilities released pursuant to Section 4.1(a). Silicon Graphics shall not make, and shall not permit any member of the SGI Group to make, any claim or demand or commence any Action asserting any claim or demand, including any claim of contribution or indemnification, against the Company or any of its subsidiaries or any other Person released pursuant to Section 4.1(b), with respect to any Liabilities released pursuant to Section 4.1(b).

(e) It is the intention of each of Silicon Graphics and the Company by virtue of the provisions of this Section 4.1 to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or failed to occur and all conditions existing or alleged to have existed on or before the Closing Date, between or among the Company or any of its subsidiaries, on the one hand, and Silicon Graphics or any member of the SGI Group, on the other hand (including any contractual agreements or arrangements existing or alleged to exist between or among such Persons on or before the Closing Date), except as expressly set forth in Section 4.1(c). At any time, at the request of any other party, each party shall execute and deliver, or shall cause such other appropriate Persons to execute and deliver, releases reflecting the provisions hereof. The foregoing release is intended as a general release of all such Liabilities, and each party hereby waives the provisions of California Civil Code section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected the settlement with the debtor."

Section 4.2. *Indemnification by the Company.* Except as provided in Section 4.5 and except as otherwise expressly provided in any of the Ancillary Agreements, from and after the Closing Date, the Company shall indemnify, defend and hold harmless Silicon Graphics, each member of the SGI Group and each of their respective directors, officers and employees and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "*SGI Indemnitees*") from and against any and all Liabilities of the SGI Indemnitees relating to, arising out of or resulting from any of the following items (without duplication):

(a) The failure of the Company or any other Person to pay, perform or otherwise promptly discharge any Company Liability or Company Contract in accordance with their respective terms, whether prior to or after the Closing Date or the date hereof;

(b) The Company Business, any Company Asset or Company Liability or any Company Contract;

(c) Any breach by the Company or any of its subsidiaries of this Agreement or any of the Ancillary Agreements; and

(d) Any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in the Registration Statement or Prospectus.

Section 4.3. *Indemnification by Silicon Graphics.* Except as provided in Section 4.5 and except as otherwise expressly provided in any of the Ancillary Agreements, from and after the Closing Date, Silicon Graphics shall indemnify, defend and hold harmless the Company and each of its subsidiaries and each of their respective directors, officers and employees and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "*Company Indemnitees*") from and against any and all Liabilities of

the Company Indemnitees relating to, arising out of or resulting from any of the following items (without duplication):

(a) The failure of Silicon Graphics or any other member of the SGI Group or any other Person to pay, perform or otherwise promptly discharge any Liability of the SGI Group other than the Company Liabilities in accordance with its terms, whether prior to or after the Closing Date or the date hereof;

(b) Any Liability of any member of the SGI Group other than the Company Liabilities; and

(c) Any breach by Silicon Graphics or any member of the SGI Group of this Agreement or any of the Ancillary Agreements.

Section 4.4. *Notice and Payment of Claims.* If any SGI Indemnitee or Company Indemnitee (the "*Indemnified Party*") determines that it is or may be entitled to indemnification under this Article IV (other than in connection with any Action subject to Section 4.5), the Indemnified Party shall deliver to the person from whom such indemnification is sought (the "*Indemnifying Party*"), a written notice specifying, to the extent reasonably practicable, the basis for its claim for indemnification and the amount for which the Indemnified Party reasonably believes it is entitled to be indemnified. After the Indemnifying Party shall have been notified of the amount for which the Indemnified Party seeks indemnification, the Indemnifying Party shall, within 30 days after receipt of such notice, either (i) pay the Indemnified Party such amount in cash or other immediately available funds (or reach agreement with the Indemnified Party as to a mutually agreeable alternative payment schedule) or (ii) object to the claim for indemnification or the amount thereof by giving the Indemnified Party written notice setting forth the grounds therefor. Any objection shall be resolved in accordance with Article VII. If the Indemnifying Party does not give such notice within such 30 day period, the Indemnifying Party shall be deemed to have acknowledged its liability for such claim and the Indemnified Party may exercise any and all of its rights under applicable law to collect such amount.

Section 4.5. *Notice and Defense of Third-Party Claims.* Promptly following the earlier of (A) receipt of written notice of the commencement by a third party of any Action against or otherwise involving any Indemnified Party or (B) receipt of written information from a third party alleging the existence of a claim against an Indemnified Party, in either case, with respect to which indemnification may be sought pursuant to this Agreement (a "*Third-Party Claim*"), the Indemnified Party shall give the Indemnifying Party prompt written notice thereof. Failure of the Indemnified Party to give notice as provided in this Section 4.5 shall not relieve the Indemnifying Party of its obligations under this Agreement, except to the extent that the Indemnifying Party is prejudiced by such failure to give notice. Such notice shall describe the Third-Party Claim in reasonable detail.

(a) Within 30 days after receipt of such notice, the Indemnifying Party may by giving written notice thereof to the Indemnified Party, (i) elect to assume the defense of such Third-Party Claim at its sole cost and expense or (ii) object to the claim of indemnification for such Third-Party Claim setting forth the grounds therefor. Any objection shall be resolved in accordance with Article VII. If the Indemnifying Party does not within such 30 day period give the Indemnified Party such notice, the Indemnifying Party shall be deemed to have acknowledged its liability for such Third-Party Claim.

(b) Any defense of a Third-Party Claim as to which the Indemnifying Party has elected to assume the defense shall be conducted by counsel employed by the Indemnifying Party and reasonably satisfactory to Silicon Graphics in the case of SGI Indemnitees and the Company in the case of Company Indemnitees. The Indemnified Party shall have the right to participate in such proceedings and to be represented by counsel of its own choosing at the Indemnified Party's sole cost and expense; *provided* that if the defendants or parties against which relief is sought in any such claim include both the Indemnifying Party and one or more Indemnified Parties and, in the reasonable judgment of Silicon Graphics in the case of SGI Indemnitees and the Company in the case of Company Indemnitees, a conflict of interest between such Indemnified Parties and such Indemnifying Party exists in respect of such claim, such Indemnified

Parties shall have the right to employ one firm of counsel selected by Silicon Graphics for SGI Indemnitees or the Company for Company Indemnitees and in that event the reasonable fees and expenses of such separate counsel (but not more than one separate counsel reasonably satisfactory to the Indemnifying Party) shall be paid by such Indemnifying Party.

(c) If the Indemnifying Party assumes the defense of a Third-Party Claim, the Indemnifying Party may settle or compromise the claim without the prior written consent of the Indemnified Party; *provided* that without the prior written consent of Silicon Graphics in the case of SGI Indemnitees and the Company in the case of Company Indemnitees, the Indemnifying Party may not agree to any such settlement unless as a condition to such settlement the Indemnified Party receives a written release from any and all liability relating to such Third-Party Claim and such settlement or compromise does not include any remedy or relief to be applied to or against the Indemnified Party, other than monetary damages for which the Indemnifying Party shall be responsible hereunder.

(d) If the Indemnifying Party does not assume the defense of a Third-Party Claim for which it has acknowledged liability for indemnification under this Article IV, Silicon Graphics in the case of SGI Indemnitees and the Company in the case of Company Indemnitees may pursue the defense of such Third-Party Claim and choose one firm of counsel in connection therewith. The Indemnifying Party is required to reimburse Silicon Graphics or the Company, as the case may be, on a current basis for its reasonable expenses of investigation, reasonable attorney's fees and reasonable out-of-pocket expenses incurred by Silicon Graphics in the case of SGI Indemnitees and the Company in the case of Company Indemnitees in defending against such Third-Party Claim and the Indemnifying Party shall be bound by the result obtained with respect thereto, *provided* that the Indemnifying Party shall not be liable for any settlement effected without the consent of the Indemnifying Party, which consent shall not be unreasonably withheld.

(e) The Indemnifying Party shall pay to the Indemnified Party in cash the amount for which the Indemnified Party is entitled to be indemnified (if any) no later than the later of (i) the date on which the Indemnified Party makes any payment in satisfaction (partial or otherwise) of the Third-Party Claim or (ii) the date on which such Indemnifying Party's objection, if any, to its responsibility for indemnification under this Article IV has been resolved pursuant to Article VII or by settlement or compromise or the final nonappealable judgment of a court of competent jurisdiction.

Section 4.6. *Insurance Proceeds.* The amount that any Indemnifying Party is or may be required to pay to any Indemnified Party pursuant to this Article IV shall be reduced (including, without limitation, retroactively) by any insurance proceeds or other amounts actually recovered by or on behalf of such Indemnified Parties in reduction of the related Liability. If an Indemnified Party shall have received the payment required by this Agreement from an Indemnifying Party in respect of a Liability and shall subsequently actually receive insurance proceeds, or other amounts in respect of such Liability as specified above, then such Indemnified Party shall pay to such Indemnifying Party a sum equal to the amount of such insurance proceeds or other amounts actually received after deducting therefrom all of the Indemnifying Party's costs and expenses associated with such Liability.

Section 4.7. *Contribution.* If the indemnification provided for in this Article IV is unavailable to an Indemnified Party in respect of any Liability arising out of or related to information contained in or omitted from the Registration Statement, then the Company Indemnitees, or SGI Indemnitees, as the case may be, in lieu of indemnifying the SGI Indemnitees or Company Indemnitees, as the case may be, shall contribute to the amount paid or payable by the SGI Indemnitees or the Company Indemnitees, as the case may be, as a result of such Liability in such proportion as is appropriate to reflect the relative fault of the Company, on the one hand, and Silicon Graphics, on the other hand, in connection with the statements or omissions which resulted in such Liability. The relative fault of the Company Indemnitees on the one hand and of the SGI Indemnitees on the other hand shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged

omission to state a material fact relates to information concerning the Company on the one hand or Silicon Graphics on the other hand.

Section 4.8. *Subrogation*. In the event of payment by an Indemnifying Party to any Indemnified Party in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the first place of such Indemnified Party as to any events or circumstances in respect of which such Indemnified Party may have any right or claim relating to such Third-Party Claim. Such Indemnified Party shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right or claim.

Section 4.9. *No Third-Party Beneficiaries*. This Article IV shall inure to the benefit of, and be enforceable by Silicon Graphics, the SGI Indemnitees, the Company and the Company Indemnitees and their respective successors and permitted assigns. The indemnification provided for by this Article IV shall not inure to the benefit of any other third party or parties and shall not relieve any insurer who would otherwise be obligated to pay any claim of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, provide any subrogation rights with respect thereto and each party agrees to waive such rights against the other to the fullest extent permitted.

Section 4.10. *Remedies Cumulative*. The remedies provided in this Article IV shall be cumulative and shall not preclude assertion by any Indemnified Party of any other rights or the seeking of any and all other remedies against an Indemnifying Party. The procedures set forth in this Article IV, however, shall be the exclusive procedures governing any indemnity action brought under this Article IV or otherwise relating to Liabilities.

Section 4.11. *Survival of Indemnities*. The rights and obligations of each of Silicon Graphics and the Company and their respective Indemnitees under this Article IV shall survive the sale or other transfer by it of any assets or businesses or the assignment by it of any Liabilities.

Section 4.12. *After-Tax Indemnification Payments*. Except as otherwise expressly provided herein or in an Ancillary Agreement, indemnification payments made by either party under this Article shall give effect to, and be reduced by the value of, any and all applicable deductions, losses, credits, offsets or other items for Federal, state or other tax purposes attributable to the payment of the indemnified liability by the Indemnified Party.

ARTICLE V CERTAIN ADDITIONAL MATTERS

Section 5.1. *Ancillary Agreements*. On or prior to the Closing Date, Silicon Graphics and the Company shall execute and deliver the Ancillary Agreements.

Section 5.2. *Company Officers and Board of Directors*. On or prior to the Closing Date, Silicon Graphics shall take and shall cause the Company to take all actions necessary to appoint as officers and directors of the Company those persons named in the Registration Statement to constitute the officers and directors of the Company on the Closing Date.

Section 5.3. *The Company Certificate of Incorporation and Bylaws*. Prior to the Closing Date, Silicon Graphics shall take all action necessary to cause the Company Certificate and Company Bylaws to be amended and restated substantially in the form attached to the Registration Statement as exhibits thereto.

Section 5.4. *Insurance Policies and Claims Administration*. (a) *Maintenance of Insurance Coverage Following the Closing Date*. Silicon Graphics shall use reasonable efforts to maintain in full force and effect at all times during the period in which Silicon Graphics owns in excess of fifty percent (50%) of the outstanding voting stock of the Company, for the benefit of the Company, (i) as "excess" coverage, general liability, workers' compensation, property, and electronic errors and omissions policies of insurance, and (ii) as "primary" coverage, directors and officer's liability policies of insurance (collectively, the "*Policies*")

and individually, a "Policy"); *provided, however*, Silicon Graphics shall have the right, in its sole discretion, to modify any such Policy or Policies (including, without limitation, with respect to coverage limits, covered locations, co-insurance, deductibles and exclusions), cancel or replace any such Policy or Policies at any time and from time to time; and *provided, further, however*, that nothing contained herein shall be construed to require Silicon Graphics to pay any additional premium or other charges in respect to, or waive or otherwise limit any of its rights, benefits or privileges under, any such Policy or Policies.

(b) *Company Responsible for Establishing Insurance Coverage.* (i) If, as a result of any modification, cancellation or replacement of any Policy or Policies the Company's insurance coverage is insufficient in any respect, and (ii) from and after such time as Silicon Graphics ceases to own in excess of fifty percent (50%) of the outstanding voting stock of the Company, the Company shall be responsible for establishing and maintaining its own separate insurance policies (including, without limitation, primary and excess general liability, automobile, workers' compensation, property, director and officer liability, fire, crime, surety, electronics errors and omissions and other similar insurance policies). Notwithstanding any other agreement or understanding to the contrary, neither Silicon Graphics nor any of its subsidiaries shall have any liability or obligation to the Company or its subsidiaries with regard to matters now or hereafter covered under any Policy or Policies for any period, whether arising prior to, on or after the Closing Date. For so long as Silicon Graphics owns greater than fifty percent (50%) of the Company, the Company shall name Silicon Graphics as an additional insured on all primary and excess general liability and automobile liability insurance policies and provide Silicon Graphics with a certificate of insurance evidencing such coverages and additional insured status.

(c) *Administration and Procedure.* Silicon Graphics shall have the right to administer any claims made under any Policy. The Company shall notify Silicon Graphics of any claim relating to the Company or a subsidiary thereof under one or more of the Policies, and the Company agrees to cooperate and coordinate with Silicon Graphics concerning any strategy Silicon Graphics may elect to pursue to secure coverage and payment for such claim by the appropriate insurance carrier. Notwithstanding anything contained herein, in any other agreement or applicable Policy or any understanding to the contrary, the Company assumes responsibility for, and shall pay to the appropriate insurance carriers or otherwise, any premiums, retrospectively-rated premiums, defense costs, indemnity payments, deductibles, retentions or other charges, as appropriate (collectively, "*Insurance Charges*"), whenever arising, which shall become due and payable under the terms and conditions of any applicable Policy in respect of any liabilities, losses, claims, actions or occurrences, whenever arising or becoming known, involving or relating to any of the assets, businesses, operations or liabilities of the Company or any of its subsidiaries. To the extent that the terms of any applicable Policy provide that Silicon Graphics or a subsidiary thereof, as appropriate, shall have an obligation to pay or guarantee the payment of any Insurance Charges, Silicon Graphics or such subsidiary shall be entitled to demand that the Company or a subsidiary thereof make such payment directly to the person or entity entitled thereto. In connection with any such demand, Silicon Graphics shall submit to the Company or a subsidiary thereof a copy of any invoice received by Silicon Graphics or a subsidiary pertaining to such Insurance Charges, together with appropriate supporting documentation, if available. In the event that the Company or its subsidiary fails to pay any Insurance Charges when due and payable, whether at the request of the party entitled to payment or upon demand by Silicon Graphics or a subsidiary of Silicon Graphics, Silicon Graphics or a subsidiary of Silicon Graphics may (but shall not be required to) pay such Insurance Charges for and on behalf of the Company or its subsidiary and, thereafter, the Company or its subsidiary shall forthwith reimburse Silicon Graphics or such subsidiary of Silicon Graphics for such payment.

ARTICLE VI ACCESS TO INFORMATION

Section 6.1. *Provision of Corporate Records.* Each of Silicon Graphics and the Company shall arrange as soon as practicable following the Closing Date for the provision to the other of existing corporate

governance documents (e.g. minute books, stock registers, stock certificates, documents of title, etc.) in its possession relating to the other or to its business and affairs.

Section 6.2. *Access to Information.* From and after the Closing Date, each of Silicon Graphics and the Company shall afford the other, including its accountants, counsel and other designated representatives, reasonable access (including using reasonable efforts to give access to persons or firms possessing information) and duplicating rights during normal business hours to all records, books, contracts, instruments, computer data and other data and information in such party's possession relating to the business and affairs of the other (other than data and information subject to an attorney/client or other privilege), insofar as such access is reasonably required by the other party including, without limitation, for audit, accounting and litigation purposes, as well as for purposes of fulfilling disclosure and reporting obligations.

Section 6.3. *Litigation Cooperation.* Each of Silicon Graphics and the Company shall use reasonable efforts to make available to the other, upon written request, its officers, directors, employees and agents as witnesses to the extent that such persons may reasonably be required in connection with any legal, administrative or other proceedings arising out of the business of the other prior to the Closing Date in which the requesting party may from time to time be involved.

Section 6.4. *Reimbursement.* Each party providing witnesses under Section 6.3 to the other shall be entitled to receive from the party for whom the witness is provided, upon the presentation of invoices therefor, payment for all out-of-pocket costs and expenses as may be reasonably incurred in providing such witnesses.

Section 6.5. *Retention of Records.* Except as otherwise required by law or agreed to in writing, each party shall, and shall cause each of its respective subsidiaries to, retain all information relating to the other party's business in accordance with such party's written record retention policy or, if no such policy exists, the past practice of such party. Notwithstanding the foregoing and except as provided in any Ancillary Agreement, any party may destroy or otherwise dispose of any such information at any time upon not less than ten (10) days prior written notice to the other party, specifying the information proposed to be destroyed or disposed of; *provided, however,* that if the recipient of such notice shall request in writing prior to the scheduled date for such destruction or disposal that any of the information proposed to be destroyed or disposed of be delivered to such requesting party, the party proposing the destruction or disposal shall promptly arrange for the delivery of such of the information as was requested at the expense of the requesting party. Except as provided in the Tax Sharing Agreement or otherwise required by law or agreed to in writing, either party shall have the right to destroy or otherwise dispose of any such information at any time after the second anniversary of this Agreement.

Section 6.6. *Confidentiality.* Subject to Section 6.7, each party and each of its subsidiaries shall hold and shall cause its respective directors, officers, employees, agents, consultants and advisors to hold, in strict confidence, unless compelled to disclose by judicial or administrative process or, in the opinion of its counsel, by other requirements of law, all confidential, trade secret or proprietary information concerning the other party, except to the extent that such information can be shown to have been (i) in the public domain through no fault of such party, (ii) later lawfully acquired on a non-confidential basis from other sources by the party to which it was furnished, (iii) independently generated without reference to any proprietary or confidential information of the other party, or (iv) information that may be disclosed pursuant to any Ancillary Agreement. Neither party shall release or disclose any such information to any other person, except its auditors, attorneys, financial advisors, bankers and other consultants and advisors who shall be advised of and agree to comply with the provisions of this Section 6.6.

Section 6.7. *Protective Arrangements.* In the event that any party hereto (or any of its subsidiaries) either determines on the advice of its counsel that it is required to disclose any information pursuant to applicable law or receives any demand under lawful process or from any Governmental Authority to disclose or provide information of any other party hereto (or any of its subsidiaries) that is subject to the confidentiality provisions hereof, such party shall notify the other party prior to disclosing or providing

such information and shall cooperate at the expense of the requesting party in seeking any reasonable protective arrangements requested by such other party. Subject to the foregoing, the Person that received such request may thereafter disclose or provide information to the extent required by such law (as so advised by counsel) or by lawful process or such Governmental Authority.

Section 6.8. *Mail.* After the Closing Date, each of Silicon Graphics and the Company may receive mail, telegrams, packages and other communications property belonging to the other. Accordingly, at all times after the Closing Date, each of Silicon Graphics and the Company authorizes the other to receive and open all mail, telegrams, packages and other communications received by it and not unambiguously intended for the other party or any of the other party's officers or directors specifically in their capacities as such, and to retain the same to the extent that they relate to the business of the receiving party or, to the extent that they do not relate to the business of the receiving party and do relate to the business of the other party, or to the extent that they relate to both businesses, the receiving party shall promptly contact the other party by telephone for delivery instructions and such mail, telegrams, packages or other communications (or, in case the same relate to both businesses, copies thereof) shall promptly be forwarded to the other party in accordance with its delivery instructions. The foregoing provisions of this Section 6.8 shall constitute full authorization to the postal authorities, all telegraph and courier companies and all other persons to make deliveries to Silicon Graphics or the Company, as the case may be, addressed to either of them or to any of their officers or directors specifically in their capacities as such. The provisions of this Section 6.8 are not intended to and shall not be deemed to constitute an authorization by either Silicon Graphics or the Company to permit the other to accept service of process on its behalf, and neither party is or shall be deemed to be the agent of the other for service of process purposes or for any other purpose.

ARTICLE VII DISPUTE RESOLUTION

Section 7.1. *Agreement to Mediate.* Except as otherwise specifically provided in any Ancillary Agreement, the procedures for discussion, negotiation and mediation set forth in this Article VII shall apply to all disputes, controversies or claims (whether sounding in contract, tort or otherwise) that may arise out of or relate to, or arise under or in connection with this Agreement or any Ancillary Agreement, or the transactions contemplated hereby or thereby (including all actions taken in furtherance of the transactions contemplated hereby or thereby on or prior to the date hereof), or the commercial or economic relationship of the parties relating hereto or thereto, between Silicon Graphics and its subsidiaries and the Company and its subsidiaries.

Section 7.2. *Escalation.* It is the intent of the parties to use their respective reasonable best efforts to resolve expeditiously any dispute, controversy or claim between or among them with respect to the matters covered hereby that may arise from time to time on a mutually acceptable negotiated basis. In furtherance of the foregoing, any party involved in a dispute, controversy or claim may deliver a notice (an "*Escalation Notice*") demanding an in person meeting involving representatives of the parties at a senior level of management of the parties (or if the parties agree, of the appropriate strategic business unit or division within such entity). A copy of any such Escalation Notice shall be given to the General Counsel, or like officer or official, of each party involved in the dispute, controversy or claim (which copy shall state that it is an Escalation Notice pursuant to this Agreement). Any agenda, location or procedures for such discussions or negotiations between the parties may be established by the parties from time to time; *provided, however*, that the parties shall use their reasonable best efforts to meet within 30 days of the Escalation Notice.

Section 7.3. *Demand for Mediation.* At any time after the first to occur of (i) the date of the meeting actually held pursuant to the applicable Escalation Notice or (ii) 90 days after the delivery of an Escalation Notice (as applicable, the "*Mediation Demand Date*"), any party involved in the dispute, controversy or claim (regardless of whether such party delivered the Escalation Notice) may make a written demand (the

"*Mediation Demand Notice*") that the dispute be submitted to mediation. Any opinion expressed by the mediator shall not be binding on the parties, nor shall any opinion expressed by the mediator be admissible in any subsequent proceedings. The mediator may be chosen from a list of mediators previously selected by the parties or by other agreement of the parties. Costs of the mediation shall be borne equally by the parties involved in the matter, except that each party shall be responsible for its own attorney's fees and other costs and expenses. The site of the mediation shall be Mountain View, California, unless otherwise agreed by the parties. No party may assert that the failure to resolve any matter during any discussions or negotiations, the course of conduct during the discussions or negotiations or the failure to agree on a mutually acceptable time, agenda, location or procedures for the meeting, in each case, as contemplated by Section 7.2, is a prerequisite to a demand for meditation under Section this 7.3.

Section 7.4. *Certain Additional Matters.* (a) Either party may apply to any court having jurisdiction and seek injunctive relief so as to maintain the status quo until such time as the mediation is concluded or the controversy is otherwise resolved.

(b) Except as required by law, the parties shall hold, and shall cause their respective officers, directors, employees, agents and other representatives to hold, the existence, content and result of mediation in confidence in accordance with the provisions of Article VI. Each of the parties shall request that any mediator comply with such confidentiality requirement.

(c) Notwithstanding anything herein to the contrary, in the event that any party determines in good faith that the amount in controversy in any dispute, controversy or claim (or any series of related disputes, controversies or claims) under this Agreement or any Ancillary Agreement is, or is reasonably likely to be, in excess of \$30 million, the provisions of Section 7.3 shall not apply and any party may elect, in lieu of mediation, to commence an Action with respect to such dispute, controversy or claim (or such series of related disputes, controversies or claims) in any court of competent jurisdiction.

Section 7.5. *Continuity of Service and Performance.* Unless otherwise agreed in writing, the parties will continue to provide service and honor all other commitments under this Agreement and each Ancillary Agreement during the course of dispute resolution pursuant to the provisions of this Article VII with respect to all matters not subject to such dispute, controversy or claim.

ARTICLE VIII MISCELLANEOUS

Section 8.1. *Termination.* This Agreement may be terminated and the Separation and/or the Initial Public Offering may be deferred, modified or abandoned at any time prior to the Closing Date by and in the sole discretion of the Board of Directors of Silicon Graphics without the approval of the Company. In the event of such termination, no party hereto (or any of its respective directors or officers) shall have any liability to any other party pursuant to this Agreement.

Section 8.2. *Expenses.* (a) Except as specifically provided in this Agreement or in an Ancillary Agreement, all costs and expenses incurred in connection with the interpretation, execution, delivery and implementation of this Agreement and with the consummation of the transactions contemplated by this Agreement shall be paid by the party incurring the expense. The determination of who has incurred an expense shall be made by the Chief Financial Officer of Silicon Graphics, which determination shall be binding and final upon each of the parties hereto and not subject to further review.

(b) Underwriting commissions and discounts attributable to the shares of Common Stock sold by each of the parties hereto in the Initial Public Offering shall be paid by the party selling such shares.

(c) It is understood and agreed that the Company and Silicon Graphics shall pay the legal, filing, accounting, printing and other out-of-pocket expenditures in connection with (i) the preparation, printing and filing of the Registration Statement and (ii) sale of the shares of Common Stock in the Initial Public Offering, including, without limitation, third-party costs, fees and expenses relating to the Initial Public

Offering, all of the reimbursable expenses of the Underwriters pursuant to the Underwriting Agreement, and all of the costs of producing, printing, mailing and otherwise distributing the Prospectus, in the same proportion as the number of shares of Common Stock sold by each of them in the Initial Public Offering bears to the total number of shares sold in the Initial Public Offering (in each case exclusive of any over-allotment option of the Underwriters under the Underwriting Agreement).

Section 8.3. *Notices.* All notices and communications under this Agreement shall be in writing and any communication or delivery hereunder shall be deemed to have been duly given when received addressed as follows:

If to Silicon Graphics, to:

1600 Amphitheatre Parkway
Mountain View, California 94043
Attn: General Counsel
Facsimile Number: (650) 932-0652

If to the Company, to:

1225 Charleston Road
Mountain View, California 94043-1389
Attn: General Counsel
Facsimile Number: (650) 567-5154

Any party may, by written notice so delivered to the other party, change the address to which delivery of any notice shall thereafter be made.

Section 8.4. *Amendment and Waiver.* This Agreement may not be altered or amended, nor may rights hereunder be waived, except by an instrument in writing executed by the party or parties to be charged with such amendment or waiver. No waiver of any terms, provision or condition of or failure to exercise or delay in exercising any rights or remedies under this Agreement, in any one or more instances shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision, condition, right or remedy or as a waiver of any other term, provision or condition of this Agreement.

Section 8.5. *Counterparts.* This Agreement may be executed in one or more counterparts each of which shall be deemed an original instrument, but all of which together shall constitute but one and the same Agreement.

Section 8.6. *Governing Law; Jurisdiction; Forum.* This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, without regard to the conflicts of law rules of such state. Each party hereto expressly submits and consents in advance to the non-exclusive jurisdiction of the State and Federal courts sitting in the City of San Francisco, State of California, in any Action between the parties arising under this Agreement or under any Ancillary Agreement, and hereby waives any claim that any such state or federal court is an inconvenient or improper forum.

Section 8.7. *Entire Agreement.* This Agreement including the schedules hereto, together with the Ancillary Agreements, constitute the entire understanding of the parties hereto with respect to the subject matter hereof, superseding all negotiations, prior discussions and prior agreements (including without limitation, the Prior Separation Agreement) and understandings relating to such subject matter. To the extent that the provisions of this Agreement are inconsistent with the provisions of any Ancillary Agreement, the provisions of such Ancillary Agreement shall prevail.

Section 8.8. *Parties in Interest.* Neither of the parties hereto may assign its rights or delegate any of its duties under this Agreement without the prior written consent of each other party. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns. Nothing contained in this Agreement, express or implied, is intended to confer any

benefits, rights or remedies upon any person or entity other than Silicon Graphics and the Company, and Silicon Graphics Indemnitees and Company Indemnitees under Article IV hereof.

Section 8.9. *Tax Sharing Agreement.* Notwithstanding any other provision of this Agreement to the contrary, any and all matters relating to Taxes shall be exclusively governed by the Tax Sharing Agreement.

Section 8.10. *Further Assurances and Consents.* In addition to the actions specifically provided for elsewhere in this Agreement, each of the parties hereto will use its reasonable efforts to (i) execute and deliver such further instruments and documents and take such other actions as any other party may reasonably request in order to effectuate the purposes of this Agreement and to carry out the terms hereof and (ii) take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable laws, regulations and agreements or otherwise to consummate and make effective the transactions contemplated by this Agreement, including, without limitation, using its reasonable efforts to obtain any Consents and to make any filings and applications necessary or desirable in order to consummate the transactions contemplated by this Agreement; *provided* that no party hereto shall be obligated to pay any consideration therefor (except for filing fees and other similar charges) to any third party from whom such Consents and amendments are requested or to take any action or omit to take any action if the taking of or the omission to take such action would be unreasonably burdensome to the party or its business.

Section 8.11. *Exhibits and Schedules.* The Exhibits and Schedules shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein.

Section 8.12. *Legal Enforceability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without prejudice to any rights or remedies otherwise available to any party hereto, each party hereto acknowledges that damages would be an inadequate remedy for any breach of the provisions of this Agreement and agrees that the obligations of the parties hereunder shall be specifically enforceable.

Section 8.13. *Titles and Headings.* Titles and headings to Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement on the day and year first above written.

SILICON GRAPHICS, INC.

By: _____

Name: William M. Kelly
Title: Sr. V.P., Corporate Operations &
Secretary

MIPS TECHNOLOGIES, INC.

By: _____

Name: John E. Bourgoin
Title: Chief Executive Officer and
President

Schedule 1.1(a)
Company Contracts

The detailed list of Company Contracts, including the appropriate contracts with NEC Corporation, Toshiba Corporation, LSI Logic Corporation, Philips Electronics N.V., Integrated Device Technology, NKK Corporation and Quantum Effect Design, Inc., is included in this Schedule and is effective as of the Closing Date.

Schedule 1.1(b)
Company Contracts to SGI

The detailed list of Company Contracts to SGI is included in this Schedule and is effective as of the Closing Date.

Schedule 2.1(a)(i)
Tangible Personal Property

The detailed list of Tangible Personal Property is included in this Schedule and is effective as of the Closing Date.

Schedule 2.1(a)(ii)
Inventory

The detailed list of Inventory is included in this Schedule and is effective as of the Closing Date.

Schedule 2.1(a)(iii)
Receivables

The detailed list of Receivables is included in this Schedule and is effective as of the Closing Date.

Schedule 2.1(a)(ix)
Sales and Promotional Material

The detailed list of Sales and Promotional Material is included in this Schedule and is effective as of the Closing Date.

Schedule 2.1(a)(x)
Governmental Permits and Approvals

The detailed list of Governmental Permits and Approvals is included in this Schedule and is effective as of the Closing Date.

Schedule 2.1(a)(xii)
Royalties

The detailed list of Royalties is included in this Schedule and is effective as of the Closing Date.

Schedule 2.1(b)(i)
Excluded Assets

The detailed list of Excluded Assets is included in this Schedule and is effective as of the Closing Date.

Schedule 2.2(a)(iv)
Liabilities

The detailed list of Liabilities is included in this Schedule and is effective as of the Closing Date. [That certain Action described as MIPS TECHNOLOGIES, INC. v. LEXRA, INC.]

Schedule 2.2(b)(i)
Excluded Liabilities

The detailed list of Excluded Liabilities is included in this Schedule and is effective as of the Closing Date.

Schedule 2.6(b)
Agreements not to Terminate

The detailed list of Agreements not to Terminate is included in this Schedule and is effective as of the Closing Date.

Schedule 2.3(b)
Joint Contracts

The detailed list of Joint Contracts is included in this Schedule and is effective as of the Closing Date.

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THIS SCHEDULE CONTAINS SUMMARY FINANCIAL INFORMATION EXTRACTED FROM THE BALANCE SHEET, STATEMENT OF OPERATIONS AND STATEMENT OF CASH FLOWS INCLUDED IN THE COMPANY'S FORM 10-Q FOR THE PERIOD ENDING SEPTEMBER 30, 1999 AND IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO SUCH FINANCIAL STATEMENTS.

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