

CIRRUS LOGIC INC

FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 10/5/2001

Address	2901 VIA FORTUNA AUSTIN, Texas 78746
Telephone	512-851-4000
CIK	0000772406
Industry	Semiconductors
Sector	Technology
Fiscal Year	03/30

Generated by EDGAR Online Pro
<http://pro.edgar-online.com>



Contact EDGAR Online
Customer Service: 203-852-5666
Corporate Sales: 212-457-8200

Registration No.: 333-

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

CIRRUS LOGIC, INC.

(Exact name of Registrant as specified in its charter)

DELAWARE
(State or other jurisdiction of
incorporation or organization)

4210 SOUTH INDUSTRIAL DRIVE
AUSTIN, TX 78744
(Address of principal executive offices)

77-0024818
(I.R.S. Employer
Identification No.)

SHAREWAVE, INC. 1996 FLEXIBLE STOCK INCENTIVE PLAN
(Full Title of Plan)

STEVEN D. OVERLY, ESQ.
SENIOR VICE PRESIDENT, ADMINISTRATION, GENERAL COUNSEL AND SECRETARY
CIRRUS LOGIC, INC.
4210 SOUTH INDUSTRIAL DR.
AUSTIN, TX 78744
(512) 912-3234

(Name, address and telephone number,
including area code, of agent for service)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per share(1)	Proposed maximum aggregate offering price(1)	Amount of registration fee
ShareWave, Inc. 1996 Flexible Stock Incentive Plan	452,239	\$6.63	\$2,998,344.57	\$749.59

(1) Estimated solely for the purpose of calculating the registration fee in accordance with Rule 457(h) and 457(c) under the Securities Act of 1933, based upon the average of the bid and asked prices of the Common Stock as reported on the NASDAQ National Market System on October 2, 2001.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

The Company hereby incorporates by reference in this Prospectus the Company's Annual Report on Form 10-K for the year ended March 31, 2001, the Corporation's Quarterly Report on Form 10-Q for the quarter ended June 30, 2001, the Corporation's Current Reports on Form 8-K filed July 19, August 13 and October 4, 2001, and the description of the Common Stock contained in the Company's registration statement for its Common Stock filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including any amendment or report filed for the purpose of updating such description.

All documents subsequently filed by the Company pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained herein or in a document all or a portion of which is incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

The validity of the issuance of the shares of Common Stock offered hereby will be passed upon for the Registrant by Steven D. Overly, Senior Vice President, Administration, General Counsel and Secretary of the Registrant. Mr. Overly is an employee of the Registrant. As of September 30, 2001, Mr. Overly held 32,500 shares of Registrant's Common Stock and held options to purchase 153,000 shares of Common Stock (of which 37,167 shares are exercisable within the next 60 days).

ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The Company's Certificate of Incorporation limits the liability of directors to the maximum extent permitted by Delaware law. Section 145 of the General Corporation Law of the State of Delaware authorizes and empowers each Delaware corporation to indemnify its directors, officers, employees and agents against liabilities incurred in connection with, and related expenses resulting from, any claim, action or suit brought against any such person as a result of his or her relationship with the Company, provided that such persons acted in good faith and in a manner such person reasonably believed to be in, and not opposed to, the best interests of the Company in connection with the acts or events on which such claim, action or suit is based. The finding of either civil or criminal liability on the part of such person in connection with such acts or events is not necessarily determinative of the question of whether such person has met the required standard of conduct and is, accordingly, entitled to be indemnified. The foregoing statements are subject to the detailed provisions of Section 145 of the General Corporation Law of the State of Delaware.

The By-Laws of the Company provide that each person who at any time is or was a director or officer of the Company, or is or was serving as director or officer of another corporation, partnership, joint venture, trust or other enterprise at the request of the Company or was a director or officer of a corporation which was a predecessor corporation of the Company or of another enterprise at the request of such predecessor corporation shall be indemnified by the Company in accordance with and to the full extent permitted by the General Corporation Law of the State of Delaware. Article VI of the By-Laws of the Company facilitates enforcement of the right of directors and officers to be indemnified by establishing such right as a contract right pursuant to which the person entitled thereto may bring suit as if the indemnification provisions of the By-Laws were set forth in a separate written contract between the Company and the director or officer. Article VI of the By-Laws also permits the Company to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in such capacity, regardless of whether the Company would have the power to indemnify him or her against such liability.

under the General Corporation Law of Delaware. The Company currently has secured such insurance on behalf of its officers and directors.

The Company has entered into agreements to indemnify its directors and officers, in addition to indemnification provided for in the Company's By-Laws. Subject to certain conditions, these agreements, among other things, indemnify the Company's directors and officers for certain expenses (including attorney's fees), judgments, fines and settlement amounts incurred by any such person in any action or proceedings, including any action by or in the right of the Company, arising out of such person's services as a director or officer of the Company, any subsidiary of the Company or any other company or enterprise to which the person provides services at the request of the Company.

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

EXHIBIT NUMBER	DESCRIPTION OF DOCUMENTS
4.1	Certificate of Incorporation of the Company, as amended, filed with the Delaware Secretary of State on August 26, 1998 (incorporated by reference to Exhibit 3.1 of the Company's Annual Report on Form 10-K for the year ended March 31, 2001, File No. 0-17795).
4.2	Agreement and Plan of Merger, filed with the Delaware Secretary of State on February 17, 1999 (incorporated by reference to Exhibit 3.2 of the Company's Annual Report on Form 10-K for the year ended March 31, 2001, File No. 0-17795).
4.3	Bylaws of the Company, as amended (incorporated by reference to Exhibit 3.4 of the Company's Annual Report on Form 10-K for the year ended March 31, 2001, File No. 0-17795).
4.4	ShareWave, Inc. 1996 Flexible Stock Incentive Plan, as assumed by the Company.
5	Opinion of Steven D. Overly, Esq., Senior Vice President, Administration, General Counsel and Secretary of the Company, dated October 2, 2001, with respect to the legality of the Common Stock being registered.
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Steven D. Overly, Esq. (included in Exhibit 5 to the Registration Statement).
24	Power of Attorney of certain officers and directors (included in pages II-4 through II-5).

ITEM 9. UNDERTAKINGS.

The undersigned Registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment or prospectus supplement to this registration statement:

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar

value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

provided, however, that paragraphs (1)(i) and (1)(ii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement;

(2) that, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof;

(3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering; and

(4) that, for purposes of determining any liability under the Securities Act of 1933, each filing of Registrant's annual report pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

The undersigned Registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to whom the prospectus is sent or given, the latest annual report to security holders that is incorporated by reference in the prospectus and furnished pursuant to and meeting the requirements of Rule 14a-3 or Rule 14c-3 under the Securities Exchange Act of 1934; and, where interim financial information required to be presented by Article 3 of Regulation S-X is not set forth in the prospectus, to deliver, or cause to be delivered to each person to whom the prospectus is sent or given, the latest quarterly report that is specifically incorporated by reference in the prospectus to provide such interim financial information.

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933 the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Austin, State of Texas, on the 4th day of October, 2001.

CIRRUS LOGIC, INC.

By /s/ STEPHANIE LUCIE

Name: *Stephanie Lucie*
Title: *Vice President & Assistant Secretary*

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints each of Steven D. Overly and Stephanie Lucie his or her true and lawful attorney-in-fact and agent, with full power of substitution and revocation, in his or her name and on his or her behalf, to do any and all acts and things and to execute any and all instruments which said attorney-in-fact and agent may deem necessary or advisable to enable Cirrus Logic, Inc. (the "Company") to comply with the Securities Act of 1933, as amended (the "Act"), and any rules, regulations or requirements of the Securities and Exchange Commission in respect thereof, in connection with the registration under the Act of up to, and including, 452,239 shares of Common Stock of the Company to be issued from time to time pursuant to the ShareWave, Inc. 1996 Flexible Stock Incentive Plan, including power and authority to sign his or her name in any and all capacities (including his or her capacity as a Director and/or Officer of the Company) to a Registration Statement on Form S-8 or such other form as may be appropriate, and to any and all amendments, including post-effective amendments, to such Registration Statement, and to any and all instruments or documents filed as part of or in connection with such Registration Statement or any amendments thereto; and the undersigned hereby ratifies and confirms all that said attorney-in-fact and agent shall lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

SIGNATURE -----	TITLE -----	DATE ----
/s/ David D. French ----- David D. French	President, Chief Executive Officer and Director (Principal Executive Officer)	October 4, 2001
/s/ Robert W. Fay ----- Robert W. Fay	Vice President and Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	October 4, 2001
/s Michael L. Hackworth ----- Michael L. Hackworth	Chairman of the Board	October 4, 2001
/s/ Suhas S. Patil ----- Suhas S. Patil	Director	October 4, 2001
/s/ D. James Guzy ----- D. James Guzy	Director	October 4, 2001
/s/ Walden C. Rhines ----- Walden C. Rhines	Director	October 4, 2001
/s/ William D. Sherman ----- William D. Sherman	Director	October 4, 2001
/s/ Robert H. Smith ----- Robert H. Smith	Director	October 4, 2001

EXHIBIT INDEX

EXHIBIT NUMBER -----	DESCRIPTION -----
4.1	Certificate of Incorporation of the Company, as amended, filed with the Delaware Secretary of State on August 26, 1998 (incorporated by reference to Exhibit 3.1 of the Company's Annual Report on Form 10-K for the year ended March 31, 2001, File No. 0-17795).
4.2	Agreement and Plan of Merger, filed with the Delaware Secretary of State on February 17, 1999 (incorporated by reference to Exhibit 3.2 of the Company's Annual Report on Form 10-K for the year ended March 31, 2001, File No. 0-17795).
4.3	By-Laws of the Company, as amended (incorporated by reference to Exhibit 3.4 of the Company's Annual Report on Form 10-K for the year ended March 31, 2001, File No. 0-17795).
4.4	ShareWave, Inc. 1996 Flexible Stock Incentive Plan, as assumed by the Company.
5	Opinion of Steven D. Overly, Esq., Senior Vice President, Administration, General Counsel and Secretary, of the Company, dated October 2, 2001, with respect to the legality of the Common Stock being registered.
23.1	Consent of Ernst & Young LLP.
23.2	Consent of Steven D. Overly, Esq. (included in Exhibit 5 to the Registration Statement).
24	Power of Attorney of certain officers and directors (included in pages II-4 through II-5).

EXHIBIT 4.4

ShareWave, Inc.

1996 FLEXIBLE STOCK INCENTIVE PLAN

1. Establishment, Purpose, and Definitions.

(a) There is hereby adopted the 1996 Flexible Stock Incentive Plan (the "Plan") of ShareWave, Inc., a Delaware corporation (the "COMPANY").

(b) The purpose of the Plan is to provide a means whereby eligible individuals (as defined in Section 4, below) can acquire Common Stock of the Company (the "Stock"). The Plan provides employees (including officers and directors who are employees) of the Company and of its Affiliates (as defined below) an opportunity to purchase shares of Stock pursuant to options which may qualify as incentive stock options (referred to as "incentive stock options") under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), and employees, officers, directors, independent contractors, and consultants of the Company and of its Affiliates (as defined below) an opportunity to purchase shares of Stock pursuant to options which are not described in Sections 422 or 423 of the Code (referred to as "nonqualified stock options"). The Plan also provides for the sale or bonus of Stock to eligible individuals in connection with the performance of services for the Company or its Affiliates (as defined below).

(c) The term "Affiliates" as used in the Plan means parent or subsidiary corporations, as defined in Sections 424(e) and (f) of the Code (but substituting the "Company" for "employer corporation"), including parents or subsidiaries which become such after adoption of the Plan.

2. Administration of the Plan.

(a) The Plan shall be administered by the Board of Directors of the Company (the "Board"). The Board may delegate the responsibility for administering the Plan to a committee, under such terms and conditions as the Board shall determine (the "Committee"). References in this Plan to the "Committee" shall mean the Board if the Board has not delegated responsibility to a separate committee. Members of the Committee shall serve at the pleasure of the Board. The Committee shall select one of its members as chairman, and shall hold meetings at such times and places as it may determine. A majority of the Committee shall constitute a quorum and acts of the Committee at which a quorum is present, or acts reduced to or approved in writing by all the members of the Committee, shall be the valid acts of the Committee.

(b) In the event that the Company becomes subject to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), grants of awards under the Plan to directors or employees who are also officers or directors of the Company shall be granted and approved in such a manner as to permit such grants and related

transactions under the Plan to be exempt from Section 16(b) of the Exchange Act in accordance with Rule 16b-3 promulgated under the Exchange Act ("Rule 16b-3"). The limitations set forth in this Section 2(b) shall automatically incorporate any additional requirements that may in the future be necessary for the Plan to comply with Rule 16b-3.

(c) The Committee shall determine which eligible individuals (as defined in Section 4, below) shall be granted options under the Plan, the timing of such grants, the terms thereof (including any restrictions on the Stock), and the number of shares subject to such options.

(d) The Committee may amend the terms of any outstanding option granted under this Plan, but any amendment which would adversely affect the participant's rights under an outstanding option shall not be made without the participant's written consent. The Committee may, with the participant's written consent, cancel any outstanding stock option or accept any outstanding stock option in exchange for a new option.

(e) The Committee shall also determine which eligible individuals (as defined in Section 4, below) shall be issued Stock under the Plan, the timing of such grants, the terms thereof (including any restrictions), and the number of shares to be granted. The Stock shall be issued for such consideration (if any) as the Committee deems appropriate. Stock issued subject to restrictions shall be evidenced by a written agreement (the "Restricted Stock Purchase Agreement" or "Restricted Stock Bonus Agreement"). The Committee may amend any Restricted Stock Purchase Agreement or Restricted Stock Bonus Agreement, but any amendment which would adversely affect the stockholder's rights to the Stock shall not be made without his or her written consent.

(f) The Committee shall have the sole authority, in its absolute discretion to adopt, amend, and rescind such rules and regulations as, in its opinion, may be advisable for the administration of the Plan, to construe and interpret the Plan, the rules and the regulations, and the instruments evidencing options or Stock granted under the Plan and to make all other determinations deemed necessary or advisable for the administration of the Plan. All decisions, determinations, and interpretations of the Committee shall be binding on all participants.

(g) Without limitation of the foregoing, the Committee shall have the right, with the participant's consent, to accelerate the exercise date of any options issued pursuant to the Plan or terminate the restrictions applicable to any stock issued pursuant to the Plan.

3. Stock Subject to the Plan.

(a) An aggregate of not more than 582,500 shares of Stock shall be available for the grant of stock options or the issuance of Stock under the Plan. If an option is surrendered (except surrender for shares of Stock) or for any other reason ceases to be exercisable in whole or in part, the shares which were subject to such option but as to which the option had not been exercised shall continue to be available under the Plan. Any Stock which is

retained by the Company upon exercise of an option in order to satisfy the exercise price for such option or any withholding taxes due with respect to such option exercise shall be treated as issued to the participant and will thereafter not be available under the Plan.

(b) If there is any change in the Stock subject to the Plan, a Stock Option Agreement, a Restricted Stock Purchase Agreement, or a Restricted Stock Bonus Agreement through merger, consolidation, reorganization, recapitalization, reincorporation, stock split, stock dividend, or other change in the capital structure of the Company, appropriate adjustments shall be made by the Committee in order to preserve but not to increase the benefits to the individual, including adjustments to the aggregate number, kind and price per share of shares subject to the Plan, a Stock Option Agreement, a Restricted Stock Purchase Agreement or a Restricted Stock Bonus Agreement.

4. Eligible Individuals. Individuals who shall be eligible to have granted to them the options, or Stock provided for by the Plan shall be such employees, officers, directors, independent contractors and consultants of the Company or an Affiliate as the Committee, in its discretion, shall designate from time to time. Notwithstanding the foregoing, only employees of the Company or an Affiliate (including officers and directors who are bona fide employees) shall be eligible to receive incentive stock options.

5. The Option Price. The exercise price of the Stock covered by each incentive stock option shall be not less than the per share fair market value of such Stock on the date the option is granted. The exercise price of the Stock covered by each nonqualified stock option shall be as determined by the Committee and shall be not less than 85% of the per share fair market value of such Stock on the date the option is granted. Notwithstanding the foregoing, in the case of an stock option granted to a person possessing more than 10% of the combined voting power of the Company or an Affiliate, the exercise price shall be not less than 110% of the fair market value of the Stock on the date the option is granted. The exercise price of an option shall be subject to adjustment to the extent provided in Section 3(b), above.

6. Terms and Conditions of Options.

(a) Each option granted pursuant to the Plan will be evidenced by a written stock option agreement (the "Stock Option Agreement") executed by the Company and the person to whom such option is granted.

(b) The Committee shall determine the term of each option granted under the Plan; provided, however, that the term of an incentive stock option shall not be for more than 10 years and that, in the case of an incentive stock option granted to a person possessing more than 10% of the combined voting power of the Company or an Affiliate, the term shall be for no more than five years.

(c) In the case of incentive stock options, the aggregate fair market value (determined as of the time such option is granted) of the Stock with respect to which incentive stock options are exercisable for the first time by an eligible employee in any calendar

year (under this Plan and any other plans of the Company or its Affiliates) shall not exceed \$100,000.

(d) The Stock Option Agreement may contain such other terms, provisions and conditions consistent with this Plan as may be determined by the Committee. If an option, or any part thereof is intended to qualify as an incentive stock option, the Stock Option Agreement shall contain those terms and conditions which are necessary to so qualify it. Notwithstanding the foregoing, no option granted under the Plan may vest at less than the rate required by California Department of Corporations rules as in effect on the date of grant.

7. Terms and Conditions of Stock Purchases and Bonuses.

(a) Each sale or grant of stock pursuant to the Plan will be evidenced by a written Restricted Stock Purchase Agreement or Restricted Stock Bonus Agreement executed by the Company and the person to whom such stock is sold or granted.

(b) The Restricted Stock Purchase Agreement or Restricted Stock Bonus Agreement may contain such other terms, provisions and conditions consistent with this Plan as may be determined by the Committee, including not by way of limitation, restrictions on transfer, forfeiture provisions, repurchase provisions and vesting provisions. Notwithstanding the foregoing, no restricted stock purchase or restricted stock bonus granted under the Plan may vest at less than the rate required by the California Department of Corporations rules as in effect on the date of grant.

(c) The purchase price of Stock sold hereunder pursuant to a Restricted Stock Purchase Agreement shall be the price determined by the Committee on the date the right to purchase Stock is granted; provided, however that (i) such price shall not be less than 85% of the per share fair market value of such Stock on the date the right to purchase Stock is granted and (ii) in the case of any person possessing more than 10% of the total combined voting power of all classes of stock of the Company or an Affiliate, such price shall be not less than 100% of the per share fair market value of such Stock at the time the right to purchase Stock is granted, or at the time the purchase is consummated.

8. Use of Proceeds. Cash proceeds realized from the sale of Stock under the Plan shall constitute general funds of the Company.

9. Amendment, Suspension, or Termination of the Plan.

(a) The Board may at any time amend, suspend or terminate the Plan as it deems advisable; provided that such amendment, suspension or termination complies with all applicable requirements of state and federal law, including any applicable requirement that the Plan or an amendment to the Plan be approved by the Company's stockholders, and provided further that, except as provided in Section 3(b), above, the Board shall in no event amend the Plan in the following respects without the consent of stockholders then sufficient to approve the Plan in the first instance:

(i) To increase the maximum number of shares subject to incentive stock options issued under the Plan; or

(ii) To change the designation or class of persons eligible to receive incentive stock options under the Plan.

(b) No option may be granted nor any Stock issued under the Plan during any suspension or after the termination of the Plan, and no amendment, suspension or termination of the Plan shall, without the affected individual's consent, alter or impair any rights or obligations under any option previously granted under the Plan. The Plan shall terminate on January 13, 2007 unless previously terminated by the Board pursuant to this Section 9.

10. Assignability. Each option granted pursuant to this Plan shall, during participant's lifetime, be exercisable only by participant, and neither the option nor any right hereunder shall be transferable by participant by operation of law or otherwise other than by will or the laws of descent and distribution. Stock subject to a Restricted Stock Purchase Agreement or a Restricted Stock Bonus Agreement shall be transferable only as provided in such Agreement.

11. Payment Upon Exercise of Options.

(a) Payment of the purchase price upon exercise of any option granted under this Plan shall be made in cash, certified check or wire transfer; provided, however, that the Committee, in its sole discretion, may permit a participant to pay the option price in whole or in part (i) with shares of Stock owned by the participant; (ii) by delivery on a form prescribed by the Committee of an irrevocable direction to a securities broker approved by the Committee to sell shares and deliver all or a portion of the proceeds to the Company in payment for the Stock; (iii) by delivery of the participant's promissory note with such recourse, interest, security, and redemption provisions as the Committee in its discretion determines appropriate; or (iv) in any combination of the foregoing. Any Stock used to exercise options shall be valued at its fair market value on the date of the exercise of the option. In addition, the Committee, in its sole discretion, may authorize the surrender by a participant of all or part of an unexercised option and authorize a payment in consideration thereof of an amount equal to the difference between the aggregate fair market value of the Stock subject to such option and the aggregate option price of such Stock. In the Committee's discretion, such payment may be made in cash, shares of Stock with a fair market value on the date of surrender equal to the payment amount, or some combination thereof.

(b) In the event that the exercise price is satisfied by the Committee retaining from the shares of Stock otherwise to be issued to participant shares of Stock having a value equal to the exercise price, the Committee may, in its sole discretion, issue participant an additional option, entitling participant to purchase additional Stock in an amount equal to the number of shares so retained.

12. Corporate Transactions.

(a) Definition. For purposes of this Section 12, a "Corporate Transaction" shall include any of the following stockholder-approved transactions to which the Company is a party:

(i) a merger or consolidation in which the Company is not the surviving entity, except for (1) a transaction the principal purpose of which is to change the state of the Company's incorporation, or (2) a transaction in which the Company's stockholders immediately prior to such merger or consolidation hold (by virtue of securities received in exchange for their shares in the Company) securities of the surviving entity representing more than fifty percent (50%) of the total voting power of such surviving entity immediately after such transaction;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company unless the Company's stockholders immediately prior to such sale, transfer or other disposition hold

(by virtue of securities received in exchange for their shares in the Company) securities of the purchaser or other transferee representing more than fifty percent (50%) of the total voting power of such entity immediately after such transaction; or

(iii) any merger in which the Company is the surviving entity but in which the Company's stockholders immediately prior to such merger do not hold (by virtue of their shares in the Company held immediately prior to such transaction) securities of the surviving entity (by virtue of their shares in the Company held immediately prior to such transaction) representing more than fifty percent (50%) of the total voting power of the surviving entity immediately after such transaction.

(b) Effect. In the event of any Corporate Transaction all outstanding unexercised options under the Plan to the extent they are not assumed by the successor corporation or its parent company shall terminate upon the effective date of the Corporate Transaction; provided, however, that if all outstanding unexercised options under the Plan are not assumed by the successor corporation or its parent company, all outstanding options shall vest in their entirety and become exercisable immediately prior to the specified effective date of the Corporate Transaction. For purposes of this Plan, options shall be deemed assumed in a Corporate Transaction if (i) the successor corporation or its parent company assumes the Company's obligations under the Plan and replaces outstanding options under the Plan with options providing substantially equal value and having substantially equivalent provisions as the options granted pursuant to this Plan; or (ii) the Company or its outstanding securities are acquired for cash consideration and the successor corporation or its parent company agrees to pay to each holder of outstanding options as such options would otherwise have become exercisable, the cash consideration per share for shares of the Company's Common Stock otherwise payable pursuant to such Corporate Transaction, less the exercise price per share of such options.

13. Withholding Taxes.

(a) No Stock shall be granted or sold under the Plan to any participant, until the participant has made arrangements acceptable to the Committee for the satisfaction of federal, state, and local income and social security tax withholding obligations, including without limitation obligations incident to the receipt of Stock under the Plan, the lapsing of restrictions applicable to such Stock, the failure to satisfy the conditions for treatment as incentive stock options under applicable tax law, or the receipt of cash payments. Upon exercise of a stock option or lapsing or restriction on Stock issued under the Plan, the Company may satisfy its withholding obligations by withholding from the participant or requiring the participant to surrender shares of the Company's Stock sufficient to satisfy federal, state, and local income and social security tax withholding obligations.

(b) In the event that such withholding is satisfied by the Company or the participant's employer retaining from the shares of Stock otherwise to be issued to participant shares of Stock having a value equal to such withholding tax, the Committee may, in its sole discretion, issue participant an additional option, entitling participant to purchase additional Stock in an amount equal to the number of shares so retained.

14. Restrictions on Transfer of Shares. The Stock acquired pursuant to the Plan shall be subject to such restrictions and agreements regarding sale, assignment, encumbrances or other transfer as are in effect among the stockholders of the Company at the time such Stock is acquired, as well as to such other restrictions as the Committee shall deem advisable.

15. Stockholder Approval. This Plan shall only become effective with regard to incentive stock options upon its approval by a majority of the stockholders within 12 months of the Board's adoption of the Plan. The Committee may grant incentive stock options under the Plan prior to such approval by the stockholders, but until stockholder approval of the Plan is obtained, no incentive stock option shall be exercisable. Any nonqualified stock option that is exercised before stockholder approval is obtained must be rescinded if stockholder approval is not obtained within 12 months before or after the Plan is adopted.

16. Information to Plan Participants. The Company shall provide, at least annually, to each Plan participant, during any period for which said participant has one or more options or shares acquired pursuant to the Plan outstanding, copies of financial statements of the Company issued during said period.

INCENTIVE STOCK OPTION AGREEMENT

This Agreement is made as of [Grant Date] between ShareWave, Inc., a Delaware corporation (the "Company") and [Employee Name] ("Optionee").

RECITALS:

WHEREAS, the Company has adopted the 1996 Flexible Stock Incentive Plan (the "Plan"), which Plan is incorporated in this Agreement by reference and made a part of it; and

WHEREAS, the Company regards Optionee as a valuable employee of the Company, and has determined that it would be to the advantage and in the interests of the Company and its stockholders to grant the options provided for in this Agreement to Optionee as an inducement to remain in the service of the Company (as defined in the Plan) and as an incentive for increased efforts during such service;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties to this Agreement hereby agree as follows:

1. Option Grant. The Company hereby grants to Optionee the right and option to purchase from the Company on the terms and conditions hereinafter set forth, all or any part of an aggregate of [Number Of Shares] shares of the Common Stock of the Company (the "Stock"). This option is intended to satisfy the requirements of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code") and qualify as an incentive stock option.
2. Option Price. The purchase price of the Stock subject to this option shall be [Price Per Share] per share, which price is not less than the per share fair market value of such Stock as of [Grant Date] (the "Grant Date") as determined by the Board of Directors of the Company or a committee designated by it (the "Committee"), or, if Optionee possesses more than ten percent of the combined voting power of the Company or any of its Affiliates, not less than 110 percent of the per share fair market value of the Stock as of the Grant Date as determined by the Committee. The term "Option Price" as used in this Agreement refers to the purchase price of the Stock subject to this option.
3. Option Period. This option shall be exercisable only during the Option Period, and during such Option Period, the exercisability of the option shall be subject to the limitations of Section 4 and the vesting provisions of Section 5. The Option Period shall commence on the Grant Date and except as provided in Section 4, shall terminate (the "Termination Date") ten years from the Grant Date; provided, however, that the Option Period for a person possessing more than ten percent of the combined voting power of the Company or an Affiliate shall terminate five years from the Grant Date.
4. Limits on Option Period. The Option Period may end before the Termination Date, as follows:
 - (a) Termination of Employment. If Optionee ceases to be a bona fide employee of the Company or an Affiliate for any reason other than disability (within the meaning of subsections (c) and (d)) or death during the Option Period, the Option Period shall terminate three months after the date of such cessation of employment or on the Termination Date, whichever shall first occur, and the option shall be exercisable only to the extent exercisable under Section 5 on the date of Optionee's cessation of employment.

(b) Death. If Optionee dies while in the employ of the Company or any of its Affiliates, the Option Period shall end one year after the date of death or on the Termination Date, whichever shall first occur, and Optionee's executor or administrator or the person or persons to whom Optionee's rights under this option shall pass by will or by the applicable laws of descent and distribution may exercise this option only to the extent exercisable under Section 5 on the date of Optionee's death.

(c) Disability. If Optionee's employment is terminated by reason of disability, the Option Period shall end one year after the date of Optionee's cessation of employment or on the Termination Date, whichever shall first occur, and the option shall be exercisable only to the extent exercisable under Section 5 on the date of Optionee's cessation of employment. **OPTIONEE UNDERSTANDS THAT EXERCISE OF THE OPTION, IF OPTIONEE'S EMPLOYMENT IS TERMINATED BY REASON OF DISABILITY THAT IS NOT DEEMED TOTAL AND PERMANENT DISABILITY WITHIN THE MEANING OF SECTION 22(e)(3) OF THE CODE, MORE THAN 90 DAYS AFTER TERMINATION WILL RESULT IN THE DISQUALIFICATION OF THIS OPTION AS AN INCENTIVE STOCK OPTION FOR TAX PURPOSES.**

(d) Leave of Absence. If Optionee is on a leave of absence from the Company or an Affiliate because of his disability, or for the purpose of serving the government of the country in which the principal place of employment of Optionee is located, either in a military or civilian capacity, or for such other purpose or reason as the Committee may approve, Optionee shall not be deemed during the period of such absence, by virtue of such absence alone, to have terminated employment with the Company or an Affiliate except as the Committee may otherwise expressly provide.

5. Vesting of Right to Exercise Options. Subject to other limitations contained in this Agreement, the Optionee shall have the right to exercise the option such that the options are fully exercisable four (4) years from [Vesting Date] as follows:

(i) As to 25% of the number of shares covered by this Agreement on [Quarterly Vesting Date];

(ii) As to 1/12th of the remaining number of shares covered by this Agreement quarterly, on the 1st day of each succeeding three month period thereafter until the option is fully exercisable.

Any portion of the option that is not exercised shall accumulate and may be exercised at any time during the Option Period prior to the Termination Date. No partial exercise of this option may be for less than 5 percent of the total number of shares then available under this option. In no event shall the Company be required to issue fractional shares. Notwithstanding the foregoing, the aggregate fair market value (determined as of the time such option is granted) of the Stock with respect to which incentive stock options are exercisable for the first time in any calendar year (under the Plan and any other incentive stock option plans of the Company or its Affiliates) shall not exceed \$100,000.

6. Method of Exercise. Optionee may exercise the option with respect to all or any part of the shares of Stock then subject to such exercise as follows:

(a) Delivery of Written Notice and Option Price. By giving the Company written notice of such exercise, specifying the number of such shares as to which this option is exercised. Such notice shall be accompanied by an amount equal to the Option Price of such shares, in the form of any one or combination of the following: (i) cash, a certified check, or wire transfer payable to the order of the Company in lawful money of the United States; (ii) by delivery on a form prescribed by the Committee of an irrevocable direction to a securities broker approved by the Committee to sell shares and deliver all or a portion of the proceeds to the Company in payment for the Stock; (iii) shares of Stock valued on the date of exercise at fair market value; or (iv) if authorized for Optionee by the Committee, notes. The shares of

Stock shall be valued in accordance with procedures established by the Committee. Any note used to exercise this option shall be a full recourse, interest-bearing obligation containing such terms as the Committee shall determine. If a note is used, the Optionee agrees to execute such further documents as the Committee may deem necessary or appropriate in connection with issuing the note, perfecting a security interest in the Stock purchased with the note, and any related terms or conditions that the Committee may propose. Such further documents may include, not by way of limitation, a security agreement, an escrow agreement, a voting trust agreement and an assignment separate from certificate.

(b) Execution of Agreements. Optionee (and Optionee's spouse, if any) shall be required, as a condition precedent to acquiring Stock through exercise of the option, to execute one or more agreements relating to obligations in connection with ownership of the Stock or restrictions on transfer of the Stock no less restrictive than the obligations and restrictions to which the other stockholders of the Company are subject at the time of such exercise.

(c) Investment Representations. If required by the Committee, Optionee shall give the Company satisfactory assurance in writing, signed by Optionee or his legal representative, as the case may be, that such shares are being purchased for investment and not with a view to the distribution thereof, provided that such assurance shall be deemed inapplicable to (1) any sale of such shares by such Optionee made in accordance with the terms of a registration statement covering such sale, which may hereafter be filed and become effective under the Securities Act of 1933, as amended (the "Securities Act"), and with respect to which no stop order suspending the effectiveness thereof has been issued, and (2) any other sale of such shares with respect to which in the opinion of counsel for the Company, such assurance is not required to be given in order to comply with the provisions of the Securities Act.

(d) Delivery of Certificates. As soon as practicable after receipt of the notice required in Section 6(a) and satisfaction of the conditions set forth in Sections 6(b) and 6(c), the Company shall, without transfer or issue tax and without other incidental expense to Optionee, deliver to Optionee at the office of the Company, at 5175 Hillside Circle, El Dorado Hills, California 95762, or such other place as may be mutually acceptable to the Company and Optionee, a certificate or certificates of such shares of Stock; provided, however, that the time of such delivery may be postponed by the Company for such period as may be required for it with reasonable diligence to comply with applicable registration requirements under the Securities Act, the Securities Exchange Act of 1934, as amended, any applicable listing requirements of any national securities exchange, and requirements under any other law or regulation applicable to the issuance or transfer of such shares.

7. Corporate Transactions.

(a) Definition. For purposes of this Section 7, a "Corporate Transaction" shall include any of the following stockholder-approved transactions to which the Company is a party:

(i) a merger or consolidation in which the Company is not the surviving entity, except for (1) a transaction the principal purpose of which is to change the state of the Company's incorporation, or (2) a transaction in which the Company's stockholders immediately prior to such merger or consolidation hold (by virtue of securities received in exchange for their shares in the Company) securities of the surviving entity representing more than fifty percent (50%) of the total voting power of such surviving entity immediately after such transaction;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company unless the Company's stockholders immediately prior to such sale, transfer or other disposition hold (by virtue of securities received in exchange

for their shares in the Company) securities of the purchaser or other transferee representing more than fifty percent (50%) of the total voting power of such entity immediately after such transaction; or

(iii) any merger in which the Company is the surviving entity but in which the Company's stockholders immediately prior to such merger do not hold (by virtue of their shares in the Company held immediately prior to such transaction) securities of the surviving entity (by virtue of their shares in the Company held immediately prior to such transaction) representing more than fifty percent (50%) of the total voting power of the surviving entity immediately after such transaction.

(b) Effect. In the event of any Corporate Transaction all outstanding unexercised options under this Agreement to the extent they are not assumed by the successor corporation or its parent company shall terminate upon the effective date of the Corporate Transaction; provided, however, that if all outstanding unexercised options under the Plan are not assumed by the successor corporation or its parent company, all outstanding options under this Agreement shall vest in their entirety and become exercisable immediately prior to the specified effective date of the Corporate Transaction. For purposes of this Agreement, options shall be deemed assumed in a Corporate Transaction if (i) the successor corporation or its parent company assumes the Company's obligations under the Plan and replaces outstanding options under the Plan with options providing substantially equal value and having substantially equivalent provisions as the options granted pursuant to the Plan; or (ii) the Company or its outstanding securities are acquired for cash consideration and the successor corporation or its parent company agrees to pay to each holder of outstanding options as such options would otherwise have become exercisable, the cash consideration per share for shares of the Company's Common Stock otherwise payable pursuant to such Corporate Transaction, less the exercise price per share of such options.

8. Adjustments for Changes in Stock. If there should be any change in a class of Stock subject to this option, through merger, consolidation, reorganization, recapitalization, reincorporation, stock split, stock dividend or other change in the capital structure of the Company (except for a Corporate Transaction described in Section 7), the Company shall make appropriate adjustments in order to preserve, but not to increase, the benefits to Optionee, including adjustments in the number of shares of such Stock subject to this option and in the price per share. Any adjustment made pursuant to this Section 8 as a consequence of a change in the capital structure of the Company shall not entitle Optionee to acquire a number of shares of such Stock of the Company or shares of stock of any successor company greater than the number of shares Optionee would receive if, prior to such change, Optionee had actually held a number of shares of such Stock equal to the number of shares then subject to this option.

9. Limitations on Transfer of Option. This option shall, during Optionee's lifetime, be exercisable only by Optionee, and neither this option nor any right hereunder shall be transferable by Optionee by operation of law or otherwise other than by will or the laws of descent and distribution. In the event of any attempt by Optionee to alienate, assign, pledge, hypothecate, or otherwise dispose of this option or of any right hereunder, except as provided for in this Agreement, or in the event of the levy of any attachment, execution, or similar process upon the rights or interest hereby conferred, the Company at its election may terminate this option by notice to Optionee and this option shall thereupon become null and void.

10. No Stockholder Rights. Neither Optionee nor any person entitled to exercise Optionee's rights in the event of his death shall have any of the rights of a stockholder with respect to the shares of Stock subject to this option except to the extent the certificates for such shares shall have been issued upon the exercise of this option.

11. NO EFFECT ON TERMS OF EMPLOYMENT. SUBJECT TO THE TERMS OF ANY WRITTEN EMPLOYMENT CONTRACT TO THE CONTRARY, THE COMPANY (OR ITS AFFILIATE WHICH EMPLOYS OPTIONEE) SHALL HAVE THE RIGHT TO TERMINATE OR CHANGE THE TERMS OF EMPLOYMENT OF OPTIONEE AT ANY TIME AND FOR ANY REASON WHATSOEVER, WITH OR WITHOUT CAUSE.

12. Notice. Any notice required to be given under the terms of this Agreement shall be addressed to the Company in care of its Secretary at the Office of the Company at 5175 Hillside Circle, El Dorado Hills, California 95762, and any notice to be given to Optionee shall be addressed to him at the address given by him beneath his signature to this Agreement, or such other address as either party to this Agreement may hereafter designate in writing to the other. Any such notice shall be deemed to have been duly given when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, express or certified and deposited (postage or certification fee prepaid) in a post office or branch post office regularly maintained by the United States.

13. Lock-Up Agreement.

(a) Agreement. Optionee, if requested by the Company and the lead underwriter of any public offering of the Common Stock or other securities of the Company (the "Lead Underwriter"), hereby irrevocably agrees not to sell, contract to sell, grant any option to purchase, transfer the economic risk of ownership in, make any short sale of, pledge or otherwise transfer or dispose of any interest in any Common Stock or any securities convertible into or exchangeable or exercisable for or any other rights to purchase or acquire Common Stock (except Common Stock included in such public offering or acquired on the public market after such offering) during the 180-day period following the effective date of a registration statement of the Company filed under the Securities Act, or such shorter period of time as the Lead Underwriter shall specify. Optionee further agrees to sign such documents as may be requested by the Lead Underwriter to effect the foregoing and agrees that the Company may impose stop-transfer instructions with respect to such Common Stock until the end of such period. The Company and Optionee acknowledge that each Lead Underwriter of a public offering of the Company's stock, during the period of such offering and for the 180-day period thereafter, is an intended beneficiary of this Section 13.

(b) Permitted Transfers. Notwithstanding the foregoing, Section 13(a) shall not prohibit Optionee from transferring any shares of Common Stock or securities convertible into or exchangeable or exercisable for the Company's Common Stock either during Optionee's lifetime or on death by will or intestacy to Optionee's immediate family or to a trust the beneficiaries of which are exclusively Optionee and/or a member or members of Optionee's immediate family; provided, however, that prior to any such transfer, each transferee shall execute an agreement pursuant to which each transferee shall agree to receive and hold such securities subject to the provisions of Section 13 hereof. For the purposes of this Section, the term "immediate family" shall mean spouse, lineal descendant, father, mother, brother or sister of the transferor.

(c) No Amendment Without Consent of Underwriter. During the period from identification as a Lead Underwriter in connection with any public offering of the Company's Common Stock until the earlier of (i) the expiration of the lock-up period specified in Section 13(a) in connection with such offering or (ii) the abandonment of such offering by the Company and the Lead Underwriter, the provisions of Section 13 may not be amended or waived except with the consent of the Lead Underwriter.

14. Committee Decisions Conclusive. All decisions of the Committee upon any question arising under the Plan or under this Agreement shall be conclusive.

15. Successors. This Agreement shall be binding upon and inure to the benefit of any successor or successors of the Company. Where the context permits, "Optionee" as used in this

Agreement shall include Optionee's executor, administrator or other legal representative or the person or persons to whom Optionee's rights pass by will or the applicable laws of descent and distribution.

16. Early Dispositions.

(a) Loss of ISO Treatment. OPTIONEE UNDERSTANDS THAT ANY DISPOSITION OF ANY SHARES ACQUIRED BY EXERCISE OF THIS OPTION OCCURRING WITHIN TWO (2) YEARS FROM THE GRANT DATE OR WITHIN ONE (1) YEAR FROM THE DATE OPTIONEE PURCHASED SUCH SHARES BY EXERCISE OF THIS OPTION MAY HAVE ADVERSE TAX CONSEQUENCES. UNDER SUCH CIRCUMSTANCES, OPTIONEE IS ADVISED TO CONSULT A TAX ADVISOR.

(b) Notification Requirement. Optionee agrees, as partial consideration for the designation of this option as an incentive stock option under Section 422 of the Code, to notify the Company in writing within thirty (30) days of any disposition of any shares acquired by exercise of this option if such disposition occurs within two (2) years from the Grant Date or within one (1) year from the date Optionee purchased such shares by exercise of this option. If the Company is required to withhold an amount for the purpose of income and employment taxes as a result of an early disposition, Optionee acknowledges that it will be required to satisfy the amount of such withholding in a manner that the Company prescribes.

17. Restrictive Legends. All certificates for shares of the Stock shall bear the following legends, in addition to any other legends required by applicable state securities law and securities commissioners:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR

INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED."

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE RESTRICTED BY THE TERMS OF,

AND ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE COMPANY, AS PROVIDED IN THE COMPANY'S BYLAWS, A COPY OF WHICH IS AVAILABLE FROM THE COMPANY."

"THE SHARES EVIDENCED BY THIS CERTIFICATE WERE ISSUED BY THE CORPORATION TO

THE REGISTERED HOLDER UPON EXERCISE OF AN INCENTIVE STOCK OPTION AS DEFINED IN SECTION 422 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. THE TRANSFER AGENT FOR THE SHARES EVIDENCED HEREBY SHALL NOTIFY THE CORPORATION IMMEDIATELY OF ANY TRANSFER OF THE SHARES BY THE REGISTERED HOLDER HEREOF. THE REGISTERED HOLDER SHALL HOLD ALL SHARES PURCHASED UNDER THE OPTION IN THE REGISTERED HOLDER'S NAME (AND NOT IN THE NAME OF ANY NOMINEE) PRIOR TO THIS DATE."

18. California Law. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California.

19. Copy of Plan. Optionee hereby acknowledges receipt of a copy of the Plan.

IN WITNESS WHEREOF, the Company and Optionee have executed this Agreement as of the day and year first above written.

ShareWave, Inc.

OPTIONEE

By _____

Its
-----[Employee Name]
[Field Code]

Address: _____

ATTACHMENT A

CONSENT OF SPOUSE

I, _____, spouse of [Employee Name], have read and approved the foregoing Agreement. In consideration of granting of the right of my spouse to purchase shares of ShareWave, Inc., as set forth in the Agreement, I hereby appoint my spouse as my attorney-in-fact with respect to the exercise of any rights of the Agreement insofar as I may have any rights under such community property laws of the State of California or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the foregoing Agreement.

Dated:

ShareWave, Inc.

NONQUALIFIED STOCK OPTION AGREEMENT

This Agreement is made as of _____, 1997 between ShareWave, Inc., a Delaware corporation (the "Company") and _____ ("Optionee").

RECITALS:

WHEREAS, the Company has adopted the 1996 Flexible Stock Incentive Plan (the "Plan"), which Plan is incorporated in this Agreement by reference and made a part of it; and

WHEREAS, the Company regards Optionee as a valuable employee of the Company, and has determined that it would be to the advantage and in the interests of the Company and its s to grant the options provided for in this Agreement to Optionee as an inducement to remain in the service of the Company (as defined in the Plan) and as an incentive for increased efforts during such service;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, the parties to this Agreement hereby agree as follows:

1. Option Grant. The Company hereby grants to Optionee the right and option to purchase from the Company on the terms and conditions hereinafter set forth, all or any part of an aggregate of _____ shares of the Common Stock of the Company (the "Stock"). This option is not intended to satisfy the requirements of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code") nor to qualify as an incentive stock option.

2. Option Price. The purchase price of the Stock subject to this option shall be \$_____ per share, which price is not less than eighty five percent of the per share fair market value of such Stock as of _____ (the "Grant Date") as determined by the Board of Directors of the Company or a committee designated by it (the "Committee"), or, if Optionee possesses more than ten percent of the combined voting power of the Company or any of its Affiliates, not less than 110 percent of the per share fair market value of the Stock as of the Grant Date as determined by the Committee. The term "Option Price" as used in this Agreement refers to the purchase price of the Stock subject to this option.

3. Option Period. This option shall be exercisable only during the Option Period, and during such Option Period, the exercisability of the option shall be subject to the limitations of Section 4 and the vesting provisions of Section 5. The Option Period shall commence on the Grant Date and except as provided in Section 4, shall terminate (the "Termination Date") ten years from the Grant Date.

4. Limits on Option Period. The Option Period may end before the Termination Date, as follows:

(a) Termination of Employment. If Optionee ceases to be a bona fide employee of the Company or an Affiliate for any reason other than disability (within the meaning of subsection (c)) or death during the Option Period, the Option Period shall terminate three months after the date of such cessation of employment or on the Termination Date, whichever shall first occur, and the option shall be exercisable only to the extent exercisable under Section 5 on the date of Optionee's cessation of employment.

(b) Death. If Optionee dies while in the employ of the Company or any of its Affiliates, the Option Period shall end one year after the date of death or on the Termination Date, whichever shall first occur, and Optionee's executor or administrator or the person or persons to whom Optionee's rights under this option shall pass by will or by the applicable laws of descent and distribution may exercise this option only to the extent exercisable under Section 5 on the date of Optionee's death.

(c) Disability. If Optionee's employment is terminated by reason of disability, the Option Period shall end one year after the date of Optionee's cessation of employment or on the Termination Date, whichever shall first occur, and the option shall be exercisable only to the extent exercisable under Section 5 on the date of Optionee's cessation of employment.

(d) Leave of Absence. If Optionee is on a leave of absence from the Company or an Affiliate because of his disability, or for the purpose of serving the government of the country in which the principal place of employment of Optionee is located, either in a military or civilian capacity, or for such other purpose or reason as the Committee may approve, Optionee shall not be deemed during the period of such absence, by virtue of such absence alone, to have terminated employment with the Company or an Affiliate except as the Committee may otherwise expressly provide.

5. Vesting of Right to Exercise Options. Subject to other limitations contained in this Agreement, the Optionee shall have the right to exercise the option such that the options are fully exercisable four (4) years from the _____, as follows:

(i) As to 25% of the number of shares covered by this Agreement on _____, (one year from _____ [DATE OF HIRE, GRANT DATE, OR OTHER EARLIER DATE]);

(ii) As to 1/12th of the remaining number of shares covered by this Agreement quarterly, on the ____ day of each succeeding three month period thereafter until the option is fully exercisable.

Any portion of the option that is not exercised shall accumulate and may be exercised at any time during the Option Period prior to the Termination Date. No partial exercise of this option may be for less than 5 percent of the total number of shares then available under this option. In no event shall the Company be required to issue fractional shares. Notwithstanding the foregoing, the aggregate fair market value (determined as of the time such option is granted) of the Stock with respect to which incentive stock options are exercisable for the first time in any calendar year (under the Plan and any other incentive stock option plans of the Company or its Affiliates) shall not exceed \$100,000.

6. Method of Exercise. Optionee may exercise the option with respect to all or any part of the shares of Stock then subject to such exercise as follows:

(a) Delivery of Written Notice and Option Price. By giving the Company written notice of such exercise, specifying the number of such shares as to which this option is exercised. Such notice shall be accompanied by an amount equal to the Option Price of such shares, in the form of any one or combination of the following: (i) cash, a certified check, or wire transfer payable to the order of the Company in lawful money of the United States; (ii) by delivery on a form prescribed by the Committee of an irrevocable direction to a securities broker approved by the Committee to sell shares and deliver all or a portion of the proceeds to the Company in payment for the Stock; (iii) shares of Stock valued on the date of exercise at fair market value; or (iv) if authorized for Optionee by the Committee, notes. The shares of Stock shall be valued in accordance with procedures established by the Committee. Any note used to exercise this option shall be a full recourse, interest-bearing obligation containing such terms as the Committee shall determine. If a note is used, the Optionee agrees to execute such further documents as the Committee may deem necessary or appropriate in connection with issuing the note, perfecting a security interest in the Stock purchased with the note, and any related terms or conditions that the Committee may propose. Such further documents may include, not by way of limitation, a security agreement, an escrow agreement, a voting trust agreement and an assignment separate from certificate.

(b) Execution of Agreements. Optionee (and Optionee's spouse, if any) shall be required, as a condition precedent to acquiring Stock through exercise of the option, to execute one or more agreements relating to obligations in connection with ownership of the Stock or restrictions on transfer of the Stock no less restrictive than the obligations and restrictions to which the other s of the Company are subject at the time of such exercise.

(c) Investment Representations. If required by the Committee, Optionee shall give the Company satisfactory assurance in writing, signed by Optionee or his legal representative, as the case may be, that such shares are being purchased for investment and not with a view to the distribution thereof, provided that such assurance shall be deemed inapplicable to (1) any sale of such shares by such Optionee made in accordance with the terms of a registration statement covering such sale, which may hereafter be filed and become effective under the Securities Act of 1933, as amended (the

"Securities Act"), and with respect to which no stop order suspending the effectiveness thereof has been issued, and (2) any other sale of such shares with respect to which in the opinion of counsel for the Company, such assurance is not required to be given in order to comply with the provisions of the Securities Act.

(d) Delivery of Certificates. As soon as practicable after receipt of the notice required in Section 6(a) and satisfaction of the conditions set forth in Sections 6(b) and 6(c), the Company shall, without transfer or issue tax and without other incidental expense to Optionee, deliver to Optionee at the office of the Company, at 5175 Hillsdale Circle, El Dorado Hills, California 95762, or such other place as may be mutually acceptable to the Company and Optionee, a certificate or certificates of such shares of Stock; provided, however, that the time of such delivery may be postponed by the Company for such period as may be required for it with reasonable diligence to comply with applicable registration requirements under the Securities Act, the Securities Exchange Act of 1934, as amended, any applicable listing requirements of any national securities exchange, and requirements under any other law or regulation applicable to the issuance or transfer of such shares.

7. Corporate Transactions.

(a) Definition. For purposes of this Section 7, a "Corporate Transaction" shall include any of the following -approved transactions to which the Company is a party:

(i) a merger or consolidation in which the Company is not the surviving entity, except for (1) a transaction the principal purpose of which is to change the state of the Company's incorporation, or (2) a transaction in which the Company's s immediately prior to such merger or consolidation hold (by virtue of securities received in exchange for their shares in the Company) securities of the surviving entity representing more than fifty percent (50%) of the total voting power of such surviving entity immediately after such transaction;

(ii) the sale, transfer or other disposition of all or substantially all of the assets of the Company unless the Company's s immediately prior to such sale, transfer or other disposition hold (by virtue of securities received in exchange for their shares in the Company) securities of the purchaser or other transferee representing more than fifty percent (50%) of the total voting power of such entity immediately after such transaction; or

(iii) any merger in which the Company is the surviving entity but in which the Company's s immediately prior to such merger do not hold (by virtue of their shares in the Company held immediately prior to such transaction) securities of the surviving entity (by virtue of their shares in the Company held immediately prior to such transaction) representing more than fifty percent (50%) of the total voting power of the surviving entity immediately after such transaction.

(b) Effect. In the event of any Corporate Transaction all outstanding unexercised options under this Agreement to the extent they are not assumed by the successor corporation or its parent company shall terminate upon the effective date of the Corporate Transaction; provided, however, that if all outstanding unexercised options under the Plan are not assumed by the successor corporation or its parent company, all outstanding options under this Agreement shall vest in their entirety and become exercisable immediately prior to the specified effective date of the Corporate Transaction. For purposes of this Agreement, options shall be deemed assumed in a Corporate Transaction if (i) the successor corporation or its parent company assumes the Company's obligations under the Plan and replaces outstanding options under the Plan with options providing substantially equal value and having substantially equivalent provisions as the options granted pursuant to the Plan; or (ii) the Company or its outstanding securities are acquired for cash consideration and the successor corporation or its parent company agrees to pay to each holder of outstanding options as such options would otherwise have become exercisable, the cash consideration per share for shares of the Company's Common Stock otherwise payable pursuant to such Corporate Transaction, less the exercise price per share of such options.

8. Adjustments for Changes in Stock. If there should be any change in a class of Stock subject to this option, through merger, consolidation, reorganization, recapitalization, reincorporation, stock split, stock dividend or other change in the capital structure of the Company (except for a Corporate Transaction described in Section 7), the Company shall make appropriate adjustments in order to preserve, but not to increase, the benefits to Optionee, including adjustments in the number of shares of such Stock subject to this option and in the price per share. Any adjustment made pursuant to this Section 8 as a consequence of a change in the capital structure of the Company shall not entitle Optionee to acquire a number of shares of such Stock of the Company or shares of stock of any successor company greater than the number of shares Optionee would receive if, prior to such change, Optionee had actually held a number of shares of such Stock equal to the number of shares then subject to this option.

9. Limitations on Transfer of Option. This option shall, during Optionee's lifetime, be exercisable only by Optionee, and neither this option nor any right hereunder shall be transferable by Optionee by operation of law or otherwise other than by will or the laws of descent and distribution. In the event of any attempt by Optionee to alienate, assign, pledge, hypothecate, or otherwise dispose of this option or of any right hereunder, except as provided for in this Agreement, or in the event of the levy of any attachment, execution, or similar process upon the rights or interest hereby conferred, the Company at its election may terminate this option by notice to Optionee and this option shall thereupon become null and void.

10. No Stockholder Rights. Neither Optionee nor any person entitled to exercise Optionee's rights in the event of his death shall have any of the rights of a

with respect to the shares of Stock subject to this option except to the extent the certificates for such shares shall have been issued upon the exercise of this option.

11. NO EFFECT ON TERMS OF EMPLOYMENT. SUBJECT TO THE TERMS OF ANY WRITTEN EMPLOYMENT CONTRACT TO THE CONTRARY, THE COMPANY (OR ITS AFFILIATE WHICH EMPLOYS OPTIONEE) SHALL HAVE THE RIGHT TO TERMINATE OR CHANGE THE TERMS OF EMPLOYMENT OF OPTIONEE AT ANY TIME AND FOR ANY REASON WHATSOEVER, WITH OR WITHOUT CAUSE.

12. Notice. Any notice required to be given under the terms of this Agreement shall be addressed to the Company in care of its Secretary at the Office of the Company at 5175 Hillsdale Drive, El Dorado Hills, California 95762, and any notice to be given to Optionee shall be addressed to him at the address given by him beneath his signature to this Agreement, or such other address as either party to this Agreement may hereafter designate in writing to the other. Any such notice shall be deemed to have been duly given when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, express or certified and deposited (postage or certification fee prepaid) in a post office or branch post office regularly maintained by the United States.

13. Lock-Up Agreement.

(a) Agreement. Optionee, if requested by the Company and the lead underwriter of any public offering of the Common Stock or other securities of the Company (the "Lead Underwriter"), hereby irrevocably agrees not to sell, contract to sell, grant any option to purchase, transfer the economic risk of ownership in, make any short sale of, pledge or otherwise transfer or dispose of any interest in any Common Stock or any securities convertible into or exchangeable or exercisable for or any other rights to purchase or acquire Common Stock (except Common Stock included in such public offering or acquired on the public market after such offering) during the 180-day period following the effective date of a registration statement of the Company filed under the Securities Act, or such shorter period of time as the Lead Underwriter shall specify. Optionee further agrees to sign such documents as may be requested by the Lead Underwriter to effect the foregoing and agrees that the Company may impose stop-transfer instructions with respect to such Common Stock until the end of such period. The Company and Optionee acknowledge that each Lead Underwriter of a public offering of the Company's stock, during the period of such offering and for the 180-day period thereafter, is an intended beneficiary of this Section 13.

(b) Permitted Transfers. Notwithstanding the foregoing,

Section 13(a) shall not prohibit Optionee from transferring any shares of Common Stock or securities convertible into or exchangeable or exercisable for the Company's Common Stock either during Optionee's lifetime or on death by will or intestacy to Optionee's immediate family or to a trust the beneficiaries of which are exclusively Optionee and/or a member or members of Optionee's immediate family; provided, however, that prior to

any such transfer, each transferee shall execute an agreement pursuant to which each transferee shall agree to receive and hold such securities subject to the provisions of Section 13 hereof. For the purposes of this Section, the term "immediate family" shall mean spouse, lineal descendant, father, mother, brother or sister of the transferor.

(c) No Amendment Without Consent of Underwriter. During the period from identification as a Lead Underwriter in connection with any public offering of the Company's Common Stock until the earlier of (i) the expiration of the lock-up period specified in Section 13(a) in connection with such offering or (ii) the abandonment of such offering by the Company and the Lead Underwriter, the provisions of Section 13 may not be amended or waived except with the consent of the Lead Underwriter.

14. Committee Decisions Conclusive. All decisions of the Committee upon any question arising under the Plan or under this Agreement shall be conclusive.

15. Successors. This Agreement shall be binding upon and inure to the benefit of any successor or successors of the Company. Where the context permits, "Optionee" as used in this Agreement shall include Optionee's executor, administrator or other legal representative or the person or persons to whom Optionee's rights pass by will or the applicable laws of descent and distribution.

16. Restrictive Legends. All certificates for shares of the Stock shall bear the following legends, in addition to any other legends required by applicable state securities law and securities commissioners:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR

INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED."

"THE SHARES REPRESENTED BY THIS CERTIFICATE ARE RESTRICTED BY THE TERMS OF,

AND ARE SUBJECT TO A RIGHT OF FIRST REFUSAL OPTION IN FAVOR OF THE COMPANY, AS PROVIDED IN THE COMPANY'S BYLAWS, A COPY OF WHICH IS AVAILABLE FROM THE COMPANY."

17. California Law. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of California.

18. Copy of Plan. Optionee hereby acknowledges receipt of a copy of the Plan.

IN WITNESS WHEREOF, the Company and Optionee have executed this Agreement as of the day and year first above written.

ShareWave, Inc.

OPTIONEE

By _____

Its _____

Address: _____

ATTACHMENT A

CONSENT OF SPOUSE

I, _____, spouse of _____, have read and approved the foregoing Agreement. In consideration of granting of the right of my spouse to purchase shares of ShareWave, Inc., set forth in the Agreement, I hereby appoint my spouse as my attorney-in-fact with respect to the exercise of any rights of the Agreement insofar as I may have any rights under such community property laws of the State of California or similar laws relating to marital property in effect in the state of our residence as of the date of the signing of the foregoing Agreement.

Dated: By:

EXHIBIT 5

October 2, 2001

Cirrus Logic, Inc.
4210 South Industrial Drive
Austin, TX 78744

Re: ShareWave, Inc. 1996 Flexible Stock Incentive Plan

Ladies and Gentlemen:

This opinion is being rendered to you in connection with the actions taken and proposed to be taken by Cirrus Logic, Inc., a Delaware corporation (the "Company"), in connection with the registration pursuant to the Registration Statement on Form S-8 (the "Registration Statement") filed by the Company with the Securities and Exchange Commission under the Securities Act of 1933, as amended, of 452,239 shares of its Common Stock, \$0.001 par value (the "Common Stock"), issuable pursuant to the ShareWave, Inc. 1996 Flexible Stock Incentive Plan (the "Plan") assumed by the Company.

I have examined such documents, certificates, records, authorizations and proceedings and have made such investigations as I have deemed necessary or appropriate in order to give the opinion expressed herein. In such examination I have assumed the genuineness of all signatures and the authenticity of all documents submitted to us as copies. In addition, I have relied, to the extent I deem such reliance proper, upon such certificates of public officials and officers of the Company with respect to the accuracy of material factual matters contained therein which were not independently established.

Based on the foregoing, it is my opinion that the Common Stock referred to above have been duly authorized by the Company and, when issued and, in the case of shares to be issued upon exercise of stock options granted under the Plan, the option price therefor paid as described in the Plan, will be validly issued, fully paid and nonassessable shares of Common Stock of the Company.

I hereby consent to the filing of this opinion as an exhibit to the above-referenced Registration Statement.

Cirrus Logic, Inc.
October 2, 2001

Page 2

Very truly yours,

/s/ STEVEN D. OVERLY

Steven D. Overly
Senior Vice President, Administration, and General Counsel

EXHIBIT 23.1

CONSENT OF INDEPENDENT AUDITORS

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the ShareWave, Inc. 1996 Flexible Stock Incentive Plan, of our report dated April 30, 2001, with respect to the consolidated financial statements of Cirrus Logic, Inc. included in its Annual Report (Form 10-K) for the year ended March 31, 2001, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

*Austin, Texas
October 3, 2001*

End of Filing

Powered By  EDGAR[®]
Online

© 2005 | EDGAR Online, Inc.