

# OPENWAVE SYSTEMS INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 10/11/2005

Address	2100 SEAPORT BLVD. REDWOOD CITY, California 94063
Telephone	650-480-8000
CIK	0001082506
Industry	Software & Programming
Sector	Technology
Fiscal Year	06/30

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

**FORM S-8  
REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933**

**OPENWAVE SYSTEMS INC.**

(Exact Name of Registrant as Specified in its Charter)

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

**94-3219054**  
(I.R.S. Employer  
Identification Number)

**2100 Seaport Boulevard  
Redwood City, California 94063  
(650) 480-8000**  
(Address of Principal Executive Offices)

**Openwave Systems Inc. 1995 Stock Plan  
Openwave Systems Inc. 1996 Stock Plan**  
(Full Titles of the Plans)

**David Peterschmidt  
President and Chief Executive Officer  
Openwave Systems Inc.  
2100 Seaport Boulevard  
Redwood City, California 94063**

*Copy to:*

**Stephen Fackler, Esq.  
Gibson, Dunn & Crutcher LLP  
1881 Page Mill Road  
Palo Alto, California 94304  
(650) 849-5300**

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered (1)	Amount to be Registered (2)	Proposed Maximum Offering Price Per Share (3)	Proposed Maximum Aggregate Offering Price (3)	Amount of Registration Statement Fee
Openwave Systems Inc. 1995 Stock Plan, Common Stock, par value \$0.001 per share	3,266,732	\$16.60	\$54,227,751	\$6,382.61
Openwave Systems Inc. 1996 Stock Plan, Common Stock, par value \$0.001 per share	2,000,000	\$16.60	\$33,200,000	\$3,907.64

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- (1) In addition, this Registration Statement covers, in addition to the number of shares of Common Stock stated above, an indeterminate number of options and other rights to acquire Common Stock, to be granted pursuant to the employee benefit plans described herein.
  - (2) In addition, this Registration Statement shall also be deemed to cover the additional securities that may be offered or issued to prevent dilution resulting from any stock split, stock dividend or similar transaction.
  - (3) Estimated solely for the purposes of this offering under Rule 457. As to the aggregate of 5,266,732 shares of Common Stock being registered under the Openwave Systems Inc. 1995 Stock Plan and the Openwave Systems Inc. 1996 Stock Plan, the price is based on the average of the high and low price per share of the Registrant's Common Stock, as reported on the Nasdaq National Market on October 10, 2005.

The Registration Statement will become effective upon filing in accordance with Rule 462(a) under the Securities Act.

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## PART I

### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I will be sent or given to employees as specified by Rule 428(b)(1) of the Securities Act. Such documents are not being filed with the Securities and Exchange Commission (the "SEC") either as part of this Registration Statement or as prospectuses or prospectus supplements pursuant to Rule 424 of the Securities Act. Such documents and the documents incorporated by reference in this Registration Statement pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

## PART II

### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

#### Item 3. Incorporation of Documents by Reference

The SEC requires us to "incorporate by reference" certain of our publicly-filed documents into this Registration Statement, which means that information included in those documents is considered part of this Registration Statement. Information that we file with the SEC after the effective date of this Registration Statement will automatically update and supersede this information. We incorporate by reference the documents listed below and future filings made with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") until we terminate the effectiveness of this Registration Statement.

The following documents filed with the SEC are hereby incorporated by reference:

- (a) Our latest annual report on Form 10-K filed pursuant to Section 13(a) or 15(d) of the Exchange Act., which contains audited financial statements for our latest fiscal year ended June 30, 2005, as filed with the SEC on September 12, 2005.
- (b) Our quarterly reports on Form 10-Q filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report on Form 10-K referred to in (a) above.
- (c) Our Current Reports on Form 8-K filed since the end of the fiscal year covered by the annual report on Form 10-K referred to in (a) above.
- (d) The description of our Common Stock contained in our Registration Statement on Form 8-A12G filed with the SEC on April 1, 1999, as updated by our Registration Statement on Form 8-A12B filed with the SEC on August 17, 2000, our Registration Statement on Form 8-A12G filed with the SEC on December 8, 2003, and any subsequent amendment or report filed for the purposes of updating such description.
- (e) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report on Form 10-K referred to in (a) above.

#### Item 4. Description of the Securities

The class of securities to be offered is registered under Section 12 of the Exchange Act.

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**Item 5. Interests of Named Experts and Counsel**

Not applicable.

**Item 6. Indemnification of Directors and Officers**

Our certificate of incorporation includes provisions that eliminate the personal liability of our directors for monetary damages for breach of fiduciary duty as a director, except for liability:

- for any breach of the director's duty of loyalty to the Company or its stockholders;
- for acts or omissions not in good faith or that involved intentional misconduct or a knowing violation of law;
- under Section 174 of the Delaware General Corporation Law; or
- for any transaction from which the director derives an improper personal benefit.

Our certificate of incorporation and bylaws further provide for the indemnification of our directors and officers to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, including circumstances in which indemnification is otherwise discretionary. Indemnification for liabilities arising under the Securities Act may be permitted to our directors, officers and controlling persons under the foregoing provisions, or otherwise. We have been advised that, in the opinion of the SEC, indemnification for liabilities arising under the Securities Act may be against public policy as expressed in the Securities Act and may be unenforceable.

We have also entered into agreements to indemnify our directors and executive officers in addition to the indemnification provided for in our charter and bylaws. These agreements, among other things, provide for indemnification of our directors and executive officers for expenses, judgments, fines and settlement amounts incurred by any of these people in any action or proceeding arising out of his or her services as a director or executive officer or at our request. We believe that these provisions and agreements are necessary to attract and retain qualified people as directors and executive officers.

**Item 7. Exemption from Registration Claimed**

Not applicable.

**Item 8. Exhibits**

See Exhibit Index.

**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 to this Registration Statement:
  - (i) To include any prospectus required by section 10(a)(3) of the Securities Act;

(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 SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective Registration Statement.

(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 Registration Statement is on Form S-3, Form S-8 or Form F-3, and the information required to be included in a post-effective amendment by these paragraphs is contained in periodic reports filed with or furnished to the Commission by the undersigned Registrant pursuant to Section 13 or 15 (d) of the Exchange Act that are incorporated by reference in this Registration Statement.

2. That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered herein, 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.

4. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) 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.

5. Insofar as indemnification for liabilities arising under the Securities Act 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 SEC such indemnification is against public policy as expressed in the Securities Act 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 and will be governed by the final adjudication of such issue.

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**SIGNATURE**

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 Redwood City, State of California, on October 11, 2005.

By: /s/ David C. Peterschmidt

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David C. Peterschmidt  
President, Chief Executive Officer and Director

/s/ Hal Covert

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Hal Covert  
EVP & Chief Financial Officer

**SIGNATURES AND POWER OF ATTORNEY**

The officers and directors of Openwave Systems Inc. whose signatures appear below, hereby constitute and appoint David C. Peterschmidt and Hal Covert and each of them, their true and lawful attorneys and agents, with full power of substitution, each with power to act alone, to sign and execute on behalf of the undersigned any amendment or amendments to this Registration Statement on Form S-8, and each of the undersigned does hereby ratify and confirm all that each of said attorney and agent, or their, his or her substitutes, shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated on October 11, 2005.

Signature

Title

/s/ Bernard Puckett

Chairman of the Board

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Bernard Puckett

/s/ David C. Peterschmidt

President, Chief Executive Officer and Director  
(principal executive officer)

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David C. Peterschmidt

/s/ Harold L. Covert, Jr.

EVP & Chief Financial Officer  
(principal financial and accounting officer)

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Harold L. Covert, Jr.

/s/ Ken Denman

Director

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Ken Denman

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/s/ Bo Hedfors

Director

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Bo Hedfors

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/s/ Jerry Held

Director

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Jerry Held

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/s/ Masood Jabbar

Director

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Masood Jabbar

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## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Exhibit</u>
4.1	Certificate of Incorporation of the Company, as amended (incorporated by reference to Exhibit 3.1 to the Company's annual report on Form 10-Q dated November 13, 2001).
4.2	Certificate of Amendment of the Amended and Restated Certificate of Incorporation of the Company (incorporated by reference to Exhibit 3.1 to the Company's quarterly report on Form 10-Q dated November 14, 2003).
4.3	Amended and Restated Bylaws of the Company (incorporated by reference to Exhibit 3.1 to the Company's report on Form 8-K filed July 18, 2005).
4.4	Rights Agreement dated August 8, 2000, by and between the Company and U.S. Stock Transfer Corporation, as Rights Agent, including the form of Certificate of Designation, Preferences and Rights as Exhibit A, the form of Rights Certificates as Exhibit B, and the Summary of Rights as Exhibit C (incorporated by reference to Exhibit 1 to the Company's registration statement on Form 8-A(12)(B) filed on August 17, 2000).
4.5	Form of the Company's Common Stock Certificate (incorporated herein by reference to Exhibit 4.1 to the Company's annual report on Form 10-K filed August 28, 2003).
4.6	Form of 2 3/4% Convertible Subordinated Note due 2008 (incorporated herein by reference to Exhibit 99.2 to the Company's current report on Form 8-K filed September 10, 2003).
4.7	Indenture, dated as of September 9, 2003, among Openwave Systems Inc. and U.S. Bank National Association, as Trustee (incorporated herein by reference to Exhibit 99.2 to the Company's current report on Form 8-K filed September 10, 2003).
4.8	Registration Rights Agreement, dated as of September 9, 2003, among Openwave Systems Inc. and Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated (incorporated herein by reference to Exhibit 99.3 to the Company's current report on Form 8-K filed September 10, 2003).
5	Opinion re legality
23.1	Consent of Counsel (included in Exhibit 5 to this Registration Statement)
23.2	Consent of Independent Registered Public Accounting Firm
24	Power of Attorney (included in signature pages to this Registration Statement)
99.1	Openwave Systems Inc. 1995 Stock Plan (incorporated by reference to Exhibit 10.1 of the Company's quarterly report on Form 10-Q filed on May 15, 2001).
99.2	Openwave Systems Inc. 1996 Stock Plan (incorporated by reference to Exhibit 10.2 of the Company's quarterly report on Form 10-Q filed on May 15, 2001).

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- 99.3 Form of US Stock Option Agreement (incorporated by reference to Exhibit 10.3 to the Company's quarterly report on Form 10-Q filed on May 12, 2004).
- 99.4 Form of International Stock Option Agreement (incorporated by reference to Exhibit 10.4 to the Company's quarterly report on Form 10-Q filed on May 12, 2004).
- 99.5 Form of Restricted Stock Purchase Agreement with Performance Accelerated Vesting under the 1995 Stock Plan.
- 99.6 Form of Restricted Stock Purchase Agreement with Time-Based Vesting under the 1995 Stock Plan.

**Exhibit 5**

October 7, 2005

Openwave Systems Inc.  
2100 Seaport Boulevard  
Redwood City, California 94063

Re: *Registration of Shares of Openwave Systems Inc. Common Stock*

Ladies and Gentlemen:

We refer to an aggregate of 5,266,732 shares of common stock, par value \$0.001 per share (the "Shares"), of Openwave Systems Inc., a Delaware corporation (the "Company"), which are the subject of a registration statement on Form S-8 (the "Registration Statement") to be filed with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Act"). Of such Shares subject to the Registration Statement, 3,266,732 are to be issued under the Company's 1995 Stock Plan (the "1995 Plan") and 2,000,000 are to be issued under the Company's 1996 Stock Plan (the "1996 Plan" and, collectively with the 1995 Plan, the "Plans").

We have examined the Registration Statement, a form of the share certificate, and the Plans (which have been previously filed with the Commission as exhibits to the Company's periodic filings pursuant to the Securities Exchange Act of 1934, as amended). We also have examined the originals, or photostatic, certified or conformed copies or duplicates, of such records of the Company, certificates of officers of the Company and of public officials, and such other agreements, documents or other instruments as we have determined relevant and necessary or appropriate in connection with the rendering of the opinion set forth below, including but not limited to records of the corporate proceedings of the Company and certificates and assurances from public officials, officers and representatives of the Company. We have also made such other investigations as we have deemed relevant and necessary or appropriate in connection with the opinion hereinafter set forth.

In rendering the opinion expressed below, we have assumed:

(a) The genuineness of all signatures on, and the authenticity of, all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as duplicates or certified or conformed copies. With respect to agreements and instruments executed by natural persons, we have assumed the legal competency of such persons.

(b) There are no agreements or understandings between or among the Company and any participants in either Plan that would expand, modify or otherwise affect the terms of either Plan or the respective rights or obligations of the participants thereunder.

Based upon the foregoing, and subject to the qualifications, assumptions and limitations stated herein, we are of the opinion that (1) when the Board of Directors of the Company has taken all necessary corporate action to authorize and approve the issuance of the Shares, and (2) upon (a) the issuance of the Shares in accordance with the terms of the Plan under which the right to acquire the Shares is granted and (b) the payment of the consideration therefore pursuant to the terms of such Plan, the Shares will be validly issued, fully paid and nonassessable.

The opinions set forth herein are subject to the following assumptions, qualifications, limitations and exceptions:

A. Our opinions set forth herein are limited to the effect of the Delaware General Corporation Law (including the statutory provisions, all applicable provisions of the Delaware Constitution and to the present reported judicial interpretations thereof) and to the facts as they presently exist. Although we are not admitted to practice in the State of Delaware, we are familiar with the Delaware General Corporation Law and have made such investigation thereof as we deemed necessary or desirable for the purpose of rendering the opinion contained herein. We assume no obligation either to revise or supplement our opinions should the present laws, or the interpretation thereof, be changed or to revise or supplement our opinions in respect of any circumstances or events that occur subsequent to the date hereof.

B. Our opinions set forth herein are subject to (i) the effect of any bankruptcy, insolvency, reorganization, moratorium, arrangement or similar laws affecting the enforcement of creditors' rights generally (including, without limitation, the effect of statutory or other laws regarding fraudulent transfers or preferential transfers) and (ii) general principles of equity, regardless of whether a matter is considered in a proceeding in equity or at law, including, without limitation, concepts of materiality, reasonableness, good faith and fair dealing and the possible unavailability of specific performance, injunctive relief or other equitable remedies.

C. We express no opinion regarding (i) the effectiveness of any waiver (whether or not stated as such) contained in either of the Plans or elsewhere, (ii) the rights of any person, or any duties owing to such person, with respect to matters relating to either or both of the Plans that is broadly or vaguely stated or does not describe the right or duty with reasonable specificity, or (iii) any provision in either of the Plans or elsewhere relating to indemnification, exculpation or contribution with respect to matters relating to either or both Plans.

This opinion may be filed as an exhibit to the Registration Statement. Consent is also given to the reference to this firm under the caption "Legal Matters" in the prospectus contained in or incorporated by reference to the Registration Statement. Except as herein stated, this opinion letter may not be relied upon by you for any other purpose, or be relied upon by, or

furnished to, any other person, firm or corporation without our prior written consent. In giving this consent, we do not admit we are included in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Gibson, Dunn & Crutcher LLP

Gibson, Dunn & Crutcher LLP

**Exhibit 23.2**

**Consent of Independent Registered Public Accounting Firm**

The Board of Directors  
Openwave Systems Inc:

We consent to the incorporation by reference in the registration statement on Form S-8 to be filed on or about October 11, 2005 of Openwave Systems Inc. of our report dated September 12, 2005 with respect to the consolidated balance sheets of Openwave Systems Inc. and subsidiaries as of June 30, 2005 and 2004, and the related consolidated statements of operations, stockholders' equity and comprehensive loss, and cash flows for each of the years in the three-year period ended June 30, 2005, management's assessment of the effectiveness of internal control over financial reporting as of June 30, 2005, and the effectiveness of internal control over financial reporting as of June 30, 2005, which reports appear in the June 30, 2005, annual report on Form 10-K of Openwave Systems Inc.

Our report refers to a change in accounting for goodwill and other intangible assets effective July 1, 2002.

/s/ KPMG LLP

KPMG LLP

Mountain View, California  
October 10, 2005

**Exhibit 99.5**

**O PENWAVE S YSTEMS I NC .**  
**1995 S TOCK P LAN**  
**R Estricted S TOCK P URCHASE G RANT N OTICE**  
**( FOR RESTRICTED STOCK BONUS AWARDS – PERFORMANCE ACCELERATED VESTING )**

Openwave Systems Inc. (the "Company"), pursuant to its 1995 Stock Plan (the "Plan"), hereby grants to Participant the right to purchase the number of restricted shares of the Company's Common Stock set forth below ("Award"). This Award is subject to all of the terms and conditions as set forth herein and in the Restricted Stock Purchase Agreement, the Plan, the form of Assignment Separate from Certificate and the form of Joint Escrow Instructions, all of which are attached hereto and incorporated herein in their entirety.

Participant: \_\_\_\_\_

Grant Date: \_\_\_\_\_

Vesting Commencement Date: \_\_\_\_\_

Number of Restricted Shares: \_\_\_\_\_

Purchase Price (Per Share): \$0.001

Total Purchase Price: \_\_\_\_\_

Closing Date: \_\_\_\_\_

**Vesting Schedule:** [100% of the shares vest \_\_\_\_\_ years after the Vesting Commencement Date.  
However, in the event that the following performance criteria are achieved, vesting will be accelerated as follows: \_\_\_\_\_  
% of the shares shall vest upon \_\_\_\_\_ and \_\_\_\_\_% of the shares shall vest upon \_\_\_\_\_.]

**Performance**

**Criteria:** The performance criteria are as follows:

**Payment:** By one or a combination of the following items (described in the Restricted Stock Purchase Agreement):  
By cash or check

**Additional Terms/Acknowledgements:** The undersigned Participant acknowledges receipt of, and understands and agrees to, this Grant Notice, the Restricted Stock Purchase Agreement and the Plan. Participant further acknowledges that as of the Grant Date, this Grant Notice, the Restricted Stock Purchase Agreement and the Plan set forth the entire understanding between Participant and the Company regarding the

acquisition of stock in the Company under the Plan and supersede all prior oral and written agreements on that subject.

**O PENWAVE S YSTEMS INC .**

**P ARTICIPANT :**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**A TTACHMENTS :** Restricted Stock Purchase Agreement, 1995 Stock Plan, form of Assignment Separate from Certificate and form of Joint Escrow Instructions.

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**Attachment I**

**Restricted Stock Purchase Agreement**

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**OPENWAVE SYSTEMS INC.**  
**1995 STOCK PLAN**  
**RESTRICTED STOCK PURCHASE AGREEMENT**  
**(FOR RESTRICTED STOCK BONUS AWARDS – PERFORMANCE ACCELERATED VESTING)**

Openwave Systems Inc. (the “Company”) wishes to sell to you, and you wish to purchase, shares of Common Stock from the Company, pursuant to the provisions of the Company’s 1995 Stock Plan (the “Plan”).

Therefore, pursuant to the terms of the Restricted Stock Award Grant Notice (“Grant Notice”) and this Restricted Stock Purchase Agreement (“Agreement”) (collectively, the “Award”), the Company grants you the right to purchase the number of restricted shares of Common Stock indicated in the Grant Notice. Defined terms not explicitly defined in this Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your Award are as follows:

**1. AGREEMENT TO PURCHASE .** You hereby agree to purchase from the Company, and the Company hereby agrees to sell to you, the aggregate number of restricted shares of Common Stock (the “Restricted Shares”) specified in your Grant Notice at the specified Purchase Price per share. You may not purchase less than the aggregate number of Restricted Shares specified in the Grant Notice.

**2. CLOSING .** The purchase and sale of the Restricted Shares shall be consummated as follows:

**(a)** You may purchase the Restricted Shares by delivering the Total Purchase Price specified in your Grant Notice to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, no later than the Closing Date specified in the Grant Notice (or at such other time and place as you and the Company may mutually agree upon in writing) along with such additional documents as the Company may then require.

**(b)** You agree to execute three (3) copies of the Assignment Separate From Certificate (with date and number of shares blank) in the form attached to the Grant Notice as Attachment III and to execute Joint Escrow Instructions in the form attached to the Grant Notice as Attachment IV and to deliver the same to the Company on the Closing Date, along with the certificate or certificates evidencing the shares, for use by the Escrow Agent pursuant to the terms of the Joint Escrow Instructions.

**3. METHOD OF PAYMENT .** Payment of the Purchase Price may be made in cash or by check .

**4. VESTING .** Subject to the limitations contained herein, the shares you purchase will vest as provided in the Grant Notice, provided that vesting will cease upon the termination of your employment or service with the Company and its Subsidiaries and Affiliates (“Termination”). A Termination shall be deemed to occur if (i) you are a Consultant or non-Employee Director at the time of grant and subsequently become an Employee or (ii) you are an Employee at the time of grant and subsequently become a Consultant or non-Employee Director.

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**5. NUMBER OF SHARES AND PURCHASE PRICE .** The number of shares subject to your Award and your Purchase Price may be adjusted from time to time for changes in capitalization, as provided in the Plan.

**6. SECURITIES LAW COMPLIANCE .** You will not be issued any shares under your Award unless the shares are either (a) then registered under the Securities Act or (b) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Your Award must also comply with other applicable laws and regulations governing the Award, and you will not receive such shares if the Company determines that such receipt would not be in material compliance with such laws and regulations.

**7. COMPANY'S REPURCHASE RIGHT .**

(a) The Company shall, simultaneously with your voluntary or involuntary Termination for any reason (including death or Disability), automatically reacquire for your original Purchase Price as specified in the Grant Notice all of the Restricted Shares that have not yet vested in accordance with the Vesting Schedule on the Grant Notice (the "Repurchase Right").

(b) The Company shall pay for the reacquired unvested Restricted Shares in cash within ninety (90) days after your Termination.

(c) The shares issued under your Award shall be held in escrow pursuant to the terms of the Joint Escrow Instructions attached to the Grant Notice as Attachment IV.

(d) Subject to the provisions of your Award, you shall exercise all rights and privileges of a shareholder of the Company with respect to the shares deposited in escrow. You shall be deemed to be the holder of the shares for purposes of receiving any dividends that may be paid with respect to such shares and for purposes of exercising any voting rights relating to such shares, even if some or all of such shares have not yet vested and been released from the Company's Repurchase Right.

(e) If, from time to time, there is any stock dividend, stock split or other change in the character or amount of any of the outstanding stock of the corporation the stock of which is subject to the provisions of your Award, then in such event any and all new, substituted or additional securities to which you are entitled by reason of your ownership of the shares acquired under your Award shall be immediately subject to the Repurchase Right with the same force and effect as the shares subject to this Repurchase Right immediately before such event.

(f) If at any time during the term of the Repurchase Right, there occurs: (1) a dissolution or liquidation of the Company; (2) a merger or consolidation involving the Company in which the Company is not the surviving corporation; (3) a reverse merger in which the Company is the surviving corporation but the shares of the Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of other securities, cash or otherwise; or (4) any other capital reorganization in which at least fifty percent (50%) of the shares of the Company entitled to vote are exchanged, then: (i) if there will be no successor to the Company, the Company shall apply its Repurchase Right as to all or any portion of the shares then subject to the Repurchase Right set forth above to the same extent as if your Termination had occurred on the date preceding the date of consummation of said event or transaction, or (ii) if there will be a successor to the Company,

the Company shall assign its Repurchase Right to any successor of the Company, and the Repurchase Right shall apply in the event of your Termination with such successor on the same basis as set forth above in Section 7(a). In that case, references herein to the “Company” shall be deemed to refer to such successor. In addition, such successor may elect at the time of the assignment to purchase all, but not less than all, of the unvested Restricted Shares held by you in the manner described in Section 7(b) at the then current Fair Market Value of the Company’s Common Stock (or the security into which such Common Stock has been converted), and the Repurchase Right shall thereupon immediately lapse as to all such shares.

**8. RESTRICTIVE LEGENDS .** The shares issued under your Award shall be endorsed with appropriate legends determined by the Company.

**9. TRANSFERABILITY .** The right to acquire the unvested Restricted Shares may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant without the prior written consent of the Company and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

**10. AWARD NOT A SERVICE CONTRACT .** Your Award is not an employment or service contract, and nothing in your Award shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or on the part of the Company or an Affiliate to continue your employment. In addition, nothing in your Award shall obligate the Company or an Affiliate, their respective shareholders, boards of directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

**11. TAX CONSEQUENCES .** Set forth below is a brief summary as of the Grant Date of certain United States federal income tax consequences of the award of Restricted Shares. THIS SUMMARY DOES NOT ADDRESS EMPLOYMENT, SPECIFIC STATE, LOCAL OR FOREIGN TAX CONSEQUENCES THAT MAY BE APPLICABLE TO YOU. YOU UNDERSTAND THAT THIS SUMMARY IS NECESSARILY INCOMPLETE, AND THAT THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE.

(a) Unless you make a Section 83(b) election as described below, you shall recognize ordinary income at the time or times the restrictions lapse with respect to the Restricted Shares that have been released from the Repurchase Right in an amount equal to the fair market value of such shares on each such date and the Company shall be required to collect all the applicable withholding taxes with respect to such income.

(b) At the time your Award is made, or at any time thereafter as requested by the Company, you hereby authorize, to the fullest extent not prohibited by applicable law, withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with your Award. However, no such withholding shall be made unless the net proceeds from the automatic sale of certain Restricted Shares as set forth in Section 11(d) below are not sufficient to satisfy such withholding obligations.

(c) Unless the tax withholding obligations of the Company and/or any Affiliate are satisfied, the Company shall have no obligation to issue a certificate for such shares or release such shares from any escrow provided for herein.

(d) In the event that (a) you are not subject to the requirements of Section 16 of the Securities Exchange Act of 1934, as amended, on a date that the Repurchase Right lapses with respect to some or all of the Restricted Shares (“Lapse Date”) and (b) you have not made a Section 83(b) Election or taken similar action under other applicable law such that you incur a tax liability on such Lapse Date, then the escrow agent determined under Section 7(c) above shall sell forty five percent (45%) of those shares of Restricted Shares with respect to which the Repurchase Right shall have lapsed on the Lapse Date and a Section 83(b) Election was not made or similar action was not taken. The net proceeds from such sale shall be remitted to the relevant tax authorities by the escrow agent for your benefit in the amounts directed by the Company and any remaining net proceeds, if any, shall be delivered to you.

**12. SECTION 83(b) ELECTION.** You hereby acknowledge that you have been informed that, with respect to the grant of Restricted Shares, you may file an election with the Internal Revenue Service, within 30 days of the Grant Date, electing pursuant to Section 83(b) of the Internal Revenue Code of 1986, as amended, to be taxed currently on the fair market value of the Restricted Shares on the Grant Date (“Section 83(b) Election”).

YOU ACKNOWLEDGE THAT IF YOU CHOOSE TO FILE AN ELECTION UNDER SECTION 83(b) OF THE CODE, IT IS YOUR SOLE RESPONSIBILITY AND NOT THE COMPANY’S TO FILE TIMELY SUCH SECTION 83(b) ELECTION, EVEN IF YOU REQUEST THE COMPANY OR ITS REPRESENTATIVE TO MAKE THIS FILING ON YOUR BEHALF.

BY SIGNING THIS AGREEMENT, YOU REPRESENT THAT YOU HAVE REVIEWED WITH YOUR OWN TAX ADVISORS THE FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THAT YOU ARE RELYING SOLELY ON SUCH ADVISORS AND NOT ON ANY STATEMENTS OR REPRESENTATIONS OF THE COMPANY OR ANY OF ITS AGENTS. YOU UNDERSTAND AND AGREE THAT YOU (AND NOT THE COMPANY) SHALL BE RESPONSIBLE FOR ANY TAX LIABILITY THAT MAY ARISE AS A RESULT OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

**13. NOTICES.** Any notices provided for in your Award or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

**14. MISCELLANEOUS.**

(a) The rights and obligations of the Company under your Award shall be transferable by the Company to any one or more persons or entities, and all covenants and agreements hereunder shall inure to the benefit of, and be enforceable by the Company’s successors and assigns.

(b) You agree upon request to execute any further documents or instruments necessary or desirable in the sole determination of the Company to carry out the purposes or intent of your Award.

(c) You acknowledge and agree that you have reviewed your Award in its entirety, have had an opportunity to obtain the advice of counsel prior to executing and accepting your Award and fully understand all provisions of your Award.

**15. G OVERNING P LAN D OCUMENT .** Your Award is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your Award, and is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your Award and those of the Plan, the provisions of the Plan shall control.

**O PENWAVE S YSTEMS I NC .**  
**1995 S TOCK P LAN**  
**R Estricted S TOCK P urchase G RANT N OTICE**  
**( FOR RESTRICTED STOCK BONUS AWARDS – TIME - BASED VESTING )**

Openwave Systems Inc. (the "Company"), pursuant to its 1995 Stock Plan (the "Plan"), hereby grants to Participant the right to purchase the number of restricted shares of the Company's Common Stock set forth below ("Award"). This Award is subject to all of the terms and conditions as set forth herein and in the Restricted Stock Purchase Agreement, the Plan, the form of Assignment Separate from Certificate and the form of Joint Escrow Instructions, all of which are attached hereto and incorporated herein in their entirety.

Participant: \_\_\_\_\_  
Grant Date: \_\_\_\_\_  
Vesting Commencement Date: \_\_\_\_\_  
Number of Restricted Shares: \_\_\_\_\_  
Purchase Price (Per Share): \$0.001  
Total Purchase Price: \_\_\_\_\_  
Closing Date: \_\_\_\_\_

**Vesting Schedule:** [1/4<sup>th</sup> of the shares vest one year after the Vesting Commencement Date.  
1/48<sup>th</sup> of the shares vest monthly thereafter over the next three years.]

**Payment:** By one or a combination of the following items (described in the Restricted Stock Purchase Agreement):  
By cash or check

**Additional Terms/Acknowledgements:** The undersigned Participant acknowledges receipt of, and understands and agrees to, this Grant Notice, the Restricted Stock Purchase Agreement and the Plan. Participant further acknowledges that as of the Grant Date, this Grant Notice, the Restricted Stock Purchase Agreement and the Plan set forth the entire understanding between Participant and the Company regarding the acquisition of stock in the Company under the Plan and supersede all prior oral and written agreements on that subject.

**O PENWAVE S YSTEMS I NC .**

**P ARTICIPANT :**

By: \_\_\_\_\_  
Signature  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Signature  
Date: \_\_\_\_\_

**A TTACHMENTS :** Restricted Stock Purchase Agreement, 1995 Stock Plan, form of Assignment Separate from Certificate and form of Joint Escrow Instructions.

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**Attachment I**

**Restricted Stock Purchase Agreement**

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**OPENWAVE SYSTEMS INC.  
1995 STOCK PLAN  
RESTRICTED STOCK PURCHASE AGREEMENT  
(FOR RESTRICTED STOCK BONUS AWARDS – TIME-BASED VESTING)**

Openwave Systems Inc. (the “Company”) wishes to sell to you, and you wish to purchase, shares of Common Stock from the Company, pursuant to the provisions of the Company’s 1995 Stock Plan (the “Plan”).

Therefore, pursuant to the terms of the Restricted Stock Award Grant Notice (“Grant Notice”) and this Restricted Stock Purchase Agreement (“Agreement”) (collectively, the “Award”), the Company grants you the right to purchase the number of restricted shares of Common Stock indicated in the Grant Notice. Defined terms not explicitly defined in this Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your Award are as follows:

**1. AGREEMENT TO PURCHASE .** You hereby agree to purchase from the Company, and the Company hereby agrees to sell to you, the aggregate number of restricted shares of Common Stock (the “Restricted Shares”) specified in your Grant Notice at the specified Purchase Price per share. You may not purchase less than the aggregate number of Restricted Shares specified in the Grant Notice.

**2. CLOSING .** The purchase and sale of the Restricted Shares shall be consummated as follows:

**(a)** You may purchase the Restricted Shares by delivering the Total Purchase Price specified in your Grant Notice to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, no later than the Closing Date specified in the Grant Notice (or at such other time and place as you and the Company may mutually agree upon in writing) along with such additional documents as the Company may then require.

**(b)** You agree to execute three (3) copies of the Assignment Separate From Certificate (with date and number of shares blank) in the form attached to the Grant Notice as Attachment III and to execute Joint Escrow Instructions in the form attached to the Grant Notice as Attachment IV and to deliver the same to the Company on the Closing Date, along with the certificate or certificates evidencing the shares, for use by the Escrow Agent pursuant to the terms of the Joint Escrow Instructions.

**3. METHOD OF PAYMENT .** Payment of the Purchase Price may be made in cash or by check .

**4. VESTING .** Subject to the limitations contained herein, the shares you purchase will vest as provided in the Grant Notice, provided that vesting will cease upon the termination of your employment or service with the Company and its Subsidiaries and Affiliates (“Termination”). A Termination shall be deemed to occur if (i) you are a Consultant or non-Employee Director at the time of grant and subsequently become an Employee or (ii) you are an Employee at the time of grant and subsequently become a Consultant or non-Employee Director.

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**5. NUMBER OF SHARES AND PURCHASE PRICE.** The number of shares subject to your Award and your Purchase Price may be adjusted from time to time for changes in capitalization, as provided in the Plan.

**6. SECURITIES LAW COMPLIANCE.** You will not be issued any shares under your Award unless the shares are either (a) then registered under the Securities Act or (b) the Company has determined that such issuance would be exempt from the registration requirements of the Securities Act. Your Award must also comply with other applicable laws and regulations governing the Award, and you will not receive such shares if the Company determines that such receipt would not be in material compliance with such laws and regulations.

**7. COMPANY'S REPURCHASE RIGHT.**

(a) The Company shall, simultaneously with your voluntary or involuntary Termination for any reason (including death or Disability), automatically reacquire for your original Purchase Price as specified in the Grant Notice all of the Restricted Shares that have not yet vested in accordance with the Vesting Schedule on the Grant Notice (the "Repurchase Right").

(b) The Company shall pay for the reacquired unvested Restricted Shares in cash within ninety (90) days after your Termination.

(c) The shares issued under your Award shall be held in escrow pursuant to the terms of the Joint Escrow Instructions attached to the Grant Notice as Attachment IV.

(d) Subject to the provisions of your Award, you shall exercise all rights and privileges of a shareholder of the Company with respect to the shares deposited in escrow. You shall be deemed to be the holder of the shares for purposes of receiving any dividends that may be paid with respect to such shares and for purposes of exercising any voting rights relating to such shares, even if some or all of such shares have not yet vested and been released from the Company's Repurchase Right.

(e) If, from time to time, there is any stock dividend, stock split or other change in the character or amount of any of the outstanding stock of the corporation the stock of which is subject to the provisions of your Award, then in such event any and all new, substituted or additional securities to which you are entitled by reason of your ownership of the shares acquired under your Award shall be immediately subject to the Repurchase Right with the same force and effect as the shares subject to this Repurchase Right immediately before such event.

(f) If at any time during the term of the Repurchase Right, there occurs: (1) a dissolution or liquidation of the Company; (2) a merger or consolidation involving the Company in which the Company is not the surviving corporation; (3) a reverse merger in which the Company is the surviving corporation but the shares of the Common Stock outstanding immediately preceding the merger are converted by virtue of the merger into other property, whether in the form of other securities, cash or otherwise; or (4) any other capital reorganization in which at least fifty percent (50%) of the shares of the Company entitled to vote are exchanged, then: (i) if there will be no successor to the Company, the Company shall apply its Repurchase Right as to all or any portion of the shares then subject to the Repurchase Right set forth above to the same extent as if your Termination had occurred on the date preceding the date of consummation of said event or transaction, or (ii) if there will be a successor to the Company,

the Company shall assign its Repurchase Right to any successor of the Company, and the Repurchase Right shall apply in the event of your Termination with such successor on the same basis as set forth above in Section 7(a). In that case, references herein to the “Company” shall be deemed to refer to such successor. In addition, such successor may elect at the time of the assignment to purchase all, but not less than all, of the unvested Restricted Shares held by you in the manner described in Section 7(b) at the then current Fair Market Value of the Company’s Common Stock (or the security into which such Common Stock has been converted), and the Repurchase Right shall thereupon immediately lapse as to all such shares.

**8. RESTRICTIVE LEGENDS .** The shares issued under your Award shall be endorsed with appropriate legends determined by the Company.

**9. TRANSFERABILITY .** The right to acquire the unvested Restricted Shares may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Participant without the prior written consent of the Company and any such purported assignment, alienation, pledge, attachment, sale, transfer or encumbrance shall be void and unenforceable against the Company or any Affiliate; provided that the designation of a beneficiary shall not constitute an assignment, alienation, pledge, attachment, sale, transfer or encumbrance.

**10. AWARD NOT A SERVICE CONTRACT .** Your Award is not an employment or service contract, and nothing in your Award shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or on the part of the Company or an Affiliate to continue your employment. In addition, nothing in your Award shall obligate the Company or an Affiliate, their respective shareholders, boards of directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

**11. TAX CONSEQUENCES .** Set forth below is a brief summary as of the Grant Date of certain United States federal income tax consequences of the award of Restricted Shares. THIS SUMMARY DOES NOT ADDRESS EMPLOYMENT, SPECIFIC STATE, LOCAL OR FOREIGN TAX CONSEQUENCES THAT MAY BE APPLICABLE TO YOU. YOU UNDERSTAND THAT THIS SUMMARY IS NECESSARILY INCOMPLETE, AND THAT THE TAX LAWS AND REGULATIONS ARE SUBJECT TO CHANGE.

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**End of Filing**

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