

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

FORM 10-K

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934.

FOR THE FISCAL YEAR ENDED OCTOBER 28, 2000

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934.

FOR THE TRANSITION PERIOD FROM \_\_\_\_\_ TO \_\_\_\_\_ .

COMMISSION FILE NUMBER: 000-25601

BROCADE COMMUNICATIONS SYSTEMS, INC.  
(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

DELAWARE  
(STATE OR OTHER JURISDICTION OF  
INCORPORATION OR ORGANIZATION)

77-0409517  
(I.R.S. EMPLOYER  
IDENTIFICATION NO.)

1745 TECHNOLOGY DRIVE  
SAN JOSE, CA 95110  
(408) 487-8000

(ADDRESS, INCLUDING ZIP CODE, OF REGISTRANT'S PRINCIPAL EXECUTIVE OFFICES AND  
TELEPHONE NUMBER, INCLUDING AREA CODE)

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT: NONE  
SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT: COMMON STOCK, \$.001  
PAR VALUE

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item  
405 of Regulation S-K is not contained herein, and will not be contained, to the  
best of the Registrant's knowledge, in definitive proxy or information  
statements incorporated by reference to Part III of this Form 10-K or any  
amendment to this Form 10-K.

The aggregate market value of voting stock held by non-affiliates of the  
Registrant was approximately \$15,000,000,000 as of December 29, 2000, based upon  
the closing price on the Nasdaq National Market reported for such date. This  
calculation does not reflect a determination that certain persons are affiliates  
of the Registrant for any other purpose. The number of shares outstanding of the  
Registrant's Common Stock on December 29, 2000 was 223,937,640 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's Proxy Statement for its 2001 Annual Meeting of  
Stockholders (the "Proxy Statement"), to be filed with the Securities and  
Exchange Commission, are incorporated by reference to Part III of this Form 10-K  
Report.

## BROCADE COMMUNICATIONS SYSTEMS, INC.

## FORM 10-K

## INDEX

	PAGE
	----
PART I	
Item 1. Business.....	1
Item 2. Properties.....	15
Item 3. Legal Proceedings.....	16
Item 4. Submission of Matters to a Vote of Security Holders.....	16
PART II	
Item 5. Market For Registrant's Common Equity and Related Stockholder Matters.....	17
Item 6. Selected Financial Data.....	18
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.....	20
Item 7A. Quantitative and Qualitative Disclosure About Market Risk...	24
Item 8. Financial Statements and Supplementary Data.....	24
Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure.....	42
PART III	
Item 10. Directors and Executive Officers of the Registrant.....	42
Item 11. Executive Compensation.....	44
Item 12. Security Ownership of Certain Beneficial Owners and Management.....	44
Item 13. Certain Relationships and Related Transactions.....	44
PART IV	
Item 14. Exhibits, Financial Statement Schedules and Reports on Form 8-K.....	44
SIGNATURES.....	48

## PART I

## ITEM 1. BUSINESS

## GENERAL

In addition to historical information, this Annual Report on Form 10-K (Annual Report) contains forward-looking statements such as statements relating to the timing of new product releases and upgrades to existing products; the possibility of making additional strategic investments; the effect of pending legal claims and proceedings on Brocade; anticipated future revenues, gross margins, research and development expenses, sales and marketing expenses, general and administrative expenses, and income taxes; Brocade's liquidity and the sufficiency of existing cash and cash equivalents for near-term requirements; and the effect of recent accounting pronouncements on Brocade's financial condition or results of operations. In some cases, forward-looking statements can be identified by terminology such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "intend," "potential," "continue," or the negative of such terms, or other comparable terminology. These statements are only predictions. Actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth below in this section under the heading "Risk Factors." Risk factors may include but are not limited to Brocade's ability to effectively manage future expansion; Brocade's ability to develop new and enhanced products that achieve widespread market acceptance; and various factors that may cause Brocade's quarterly revenues and operating results to fluctuate, such as the timing of customer orders, changes in general and specific economic conditions in the computer, storage, and networking industries, and announcements and new product introductions by competitors. All forward-looking statements included in this document are based on information available to Brocade on the date hereof. Brocade assumes no obligation to update any such forward-looking statements.

Brocade Communications Systems, Inc. (Brocade) is the world's leading provider of storage area networking infrastructure solutions. The exponential growth rate of business information has resulted in a need for data storage environments that are highly scalable, continuously available, have a low cost of management, are secure, and can extend beyond the traditional data center across wide geographic distances. The Brocade family of hardware and software products provides the networking foundation for storage area networks (SANs), which bring a networking model to storage environments. Using Brocade Fibre Channel fabric switches and software, customers can connect servers with external storage devices through a SAN, creating a highly reliable and scalable environment for data-intensive storage applications. SANs are a strategic part of IT infrastructure -- an enterprise networking foundation that will scale to support exponential data growth and enable companies to unlock the power of one of their most strategic assets -- their information.

Brocade delivers and enables hardware and software products, education, and services that allow companies to implement large, heterogeneous, block-data networks supporting business-critical storage applications. Companies use Brocade SAN infrastructure to securely and reliably move blocks of data over distance at high performance, creating a networking platform to simplify the administration, management, and movement of data. Using Brocade solutions, companies can more easily keep pace with rapid growth in data storage requirements, reduce the total cost of ownership of data storage environments, improve computing network and application efficiency and performance, and simplify the implementation and management of SANs and SAN-based applications.

Brocade products are sold through Brocade OEM partners, systems integrators, and resellers. Brocade has OEM partnerships with the companies that supply the majority of the world's external storage -- these providers of server and storage systems use Brocade solutions as a networking foundation for their SAN solutions.

Brocade was incorporated on May 14, 1999 as a Delaware corporation and is the successor to operations originally begun on August 24, 1995. Brocade's headquarters are located in San Jose, California. The mailing address for Brocade's headquarters is 1745 Technology Drive, San Jose, California, 95110, telephone number: (408) 487-8000. Brocade can also be reached at its Web site at [www.brocade.com](http://www.brocade.com).

## STORAGE AREA NETWORKING INFRASTRUCTURE SOLUTIONS

The Brocade family of Fibre Channel fabric switches and software is designed to bring the benefits of networking to storage environments -- providing a network-based foundation that can scale from small departmental SANs to enterprise-wide networks to interconnect many servers, storage subsystems, and tape devices. Brocade-based SANs can help reduce overall storage costs by enabling companies to better utilize and manage their server and storage resources.

### Brocade Fibre Channel Fabric Switches

The Brocade family of Fibre Channel fabric switches interconnects servers and storage subsystems in a SAN, creating a highly reliable and scalable environment for storage applications. The Brocade Fibre Channel fabric switch family includes the 8-port SilkWorm 2000, 16-port SilkWorm 2200, 8-port SilkWorm 2400, and 16-port SilkWorm 2800 products. The products are available in multiple configurations to meet all SAN requirements from entry-level to midrange/departmental to enterprise.

Brocade products are fully networkable, enabling customers to create a high-performance SAN "fabric" that is highly reliable and scalable to support the interconnection of hundreds of server and storage devices. Brocade Fibre Channel fabric switches are based on the Brocade Fabric Operating System (Fabric OS(TM)), which is an intelligent distributed operating system for Brocade-based SANs. All Brocade Fibre Channel fabric switches are forward- and backward-compatible; are networkable; and are designed to support business-critical storage applications such as LAN-free backup, storage consolidation, remote-mirroring, and high-availability configurations.

In fiscal year 2000, Brocade announced the SilkWorm 6400, a 64-port integrated fabric solution expected to be generally available in the first quarter of calendar year 2001. Like all Brocade products, the SilkWorm 6400 is networkable, forward- and backward-compatible, and is based on the Brocade Fabric OS. The SilkWorm 6400 simplifies the deployment and management of SAN fabrics. It contains six switch modules that are integrated into a highly available fabric within a single enclosure.

In fiscal year 2000, Brocade also announced its product roadmap for extending the benefits of the Brocade networking model for storage to a networkable core fabric switch offering. In fiscal year 2001, Brocade expects to announce its 64- and 128-port networkable Core Fabric switches. With these products, Brocade's product family will range from entry-level to carrier-class based on a common architecture that utilizes the Brocade distributed fabric operating system. It is expected that these new products will be designed to be forward- and backward-compatible with the entire Brocade product line.

### Fabric Operating System Software

The Brocade family of Fibre Channel fabric switches is based on the Brocade Fabric OS. The Fabric OS provides a feature-rich platform for SAN-designed applications and offers advanced features for proactive SAN management and monitoring. This enables applications to dynamically discover physical components in a SAN and monitor SAN fabric resources. Brocade makes the value-added features of the Fabric OS available to strategic partners through the Brocade Fabric OS Access Layer (Fabric Access(TM)), the application programming interface (API) to Fabric OS. In addition, Brocade offers a suite of optional add-on products, based on Fabric OS, which provide additional management capabilities for Brocade-based SANs.

## MARKET DRIVERS

During the last decade, a multitude of changes in computing technology and the globalization of business via the Internet have created a tremendous growth in storage requirements -- requiring many organizations to reassess the way they view their storage environments. Storage capacity requirements have grown exponentially, and continuous access to data and the devices on which it is stored is now a crucial business requirement. As a result, the financial implications of data center downtime are now extreme and many organizations are searching for cost-effective ways to ensure high data availability and reliability and keep pace with increasing data storage requirements.

To remain successful in such a dynamic marketplace, organizations need reliable storage systems that can effectively manage and protect critical business information. These systems must be able to scale quickly to manage anticipated data growth -- a difficult problem for many traditional storage approaches. As a result, organizations are now accessing and managing the ever-increasing amount of enterprise data through SANs. SANs address some of the most challenging business requirements, including ensuring that all data is protected and accessible across the enterprise, improving efficiency of IT resource management, and maximizing system and data availability, among others. At the center of the SAN fabric are solutions such as Brocade SilkWorm Fibre Channel fabric switches, which provide the reliable high-performance data transfer that is critical to efficient SAN operations.

#### MARKET INITIATIVES

##### Interoperability and Standards

Brocade continues to invest in making SANs simpler to design, deploy, and manage, and in enabling end-to-end interoperability for heterogeneous, multivendor SANs.

- Standards: Brocade is very active in the development of SAN standards. Brocade is an active participant in the primary standards and industry groups for SANs, including the National Committee for Information Technology Standards (NCITS) T11 Technical Committee, the primary governing body for Fibre Channel-related standards; the Storage Networking Industry Association (SNIA); the Fibre Channel Industry Association (FCIA); the Infiniband Trade Association; the FibreAlliance; and others. Brocade has authored or contributed significantly to many of the Fibre Channel standards in existence today. Brocade's inter-switch routing protocol, Fabric Shortest Path First (FSPF), was recently accepted as the standard for routing data among multi-vendor Fibre Channel switches.
- Interoperability and testing labs: In fiscal 2000, Brocade invested extensively in interoperability and testing labs and expects to expand those investments in the future.
- Fabric Aware(TM) Program: The BROCADE Fabric Aware program is a comprehensive testing and configuration initiative designed to foster end-to-end SAN interoperability in a multivendor, heterogeneous environment. As part of the program, participating companies agree to specify, test, and jointly support pretested SAN configurations that include a heterogeneous mix of servers, storage subsystems, Fibre Channel switches, and other SAN technologies.
- SOLUTIONware(TM) Library: Brocade also offers a library of pretested, certified SAN configuration guides for popular SAN environment and application configurations. Each SOLUTIONware guide provides step-by-step instructions on how to integrate and configure a wide range of devices with Brocade Fibre Channel fabric switches in a discrete SAN solution for applications such as LAN-free and server-free backup, server and storage consolidation, high availability, and disaster tolerance. Brocade works closely with application, storage and system partners to ensure interoperability of solutions in these environments. Each certified Brocade SOLUTIONware configuration has been thoroughly tested and certified in Brocade and Brocade partner interoperability labs.

##### SAN-Designed Applications

The Brocade Fabric OS provides an intelligent operating system foundation that allows strategic application partners to unlock the power resident within the SAN. In addition, Brocade provides a developer program to enable developers of storage applications, hardware, and technologies to design and develop their own solutions to take optimal advantage of the Brocade SAN infrastructure. These companies are developing SAN-designed applications that take specific advantage of the underlying Brocade Fabric OS to simplify management of heterogeneous SANs while providing higher levels of storage application functionality. Brocade Fabric Access partners include companies such as VERITAS Software and BMC Software.

## SAN Internetworking

The rapid deployment of heterogeneous SANs on a large scale is creating demand to internetwork SANs over optical infrastructure through Dense Wave Division Multiplexing (DWDM) technologies and over IP-based networks. Today, Brocade-based SANs can be internetworked via DWDM solutions from companies such as Adva Optical Networking, Cisco Systems, Nortel Networks, and ONI Systems. This enables the extension of SAN applications such as high-speed remote data mirroring, wide area data replication, remote backup, digital content distribution, and storage outsourcing- over distances of up to 100 kilometers. In addition, SAN technology combined with the ability to move vast amounts of block data over distance has created a new market for providers of outsourced and managed applications and services. Using SANs as the storage environment foundation, storage service providers, second-generation application providers, application service providers, and Internet service providers, can deliver service offerings over extended distances without significant performance degradation.

## EDUCATION SERVICES

Brocade has established a worldwide education and training organization to deliver high-quality, technical training on SAN technologies and implementation to Brocade partners and their customers. To date, Brocade has trained more than 2,500 SAN technical professionals at its education facilities, providing hands-on technical training in SAN design, implementation, and operation. In fiscal 2000, Brocade opened training facilities in Atlanta, Denver, and Munich to complement its San Jose facilities, and partnered with StorageNetworks to expand training globally in Europe, the Middle East, and Africa (EMEA), and North America.

## SERVICE AND SUPPORT

To address the demand for comprehensive maintenance programs for SAN products, Brocade has created a service and support program that leverages the expertise and hands-on capabilities of all Brocade technical resources. Brocade offers five levels of maintenance contracts that can be purchased separately through Brocade's system integrators, resellers, and service providers. The contracts typically include returns and replacement as well as telephone support.

## SALES MODEL AND MARKETING

Brocade sells and markets its products through OEM partners, systems integrators, resellers, and service providers. Brocade solutions provide the networking foundation for SAN environments and are designed to meet entry-level, midrange, workgroup, enterprise, and carrier-class requirements. SANs are one of the key foundations of data centers and high-performance application environments in enterprises where data storage requirements are high and/or dynamic, and in which data availability and reliability are important business requirements. Typical storage applications supported by Brocade-based SANs include LAN-free and server-free backup, disaster recovery, high-speed remote data mirroring, data replication, centralized data backup, digital content distribution, systems and storage consolidation, and storage outsourcing. End customer profiles include enterprise SAN deployments that are internetworked across optical infrastructure, ATM, and IP-based networks; midrange SAN deployments that support departmental and workgroup storage and computing applications; and service providers offering managed and outsourced services based on SAN.

- Brocade OEM partners include the world's leading providers of servers and storage. These companies supply the majority of the world's external storage. OEM partners typically offer Brocade products for sale after completing extensive product qualification cycles. OEM partners offer either Brocade-branded or OEM-branded products, which are identical in functionality.
- Brocade Fabric Integrators are high-end systems integrators located worldwide who have invested significantly in SAN expertise and are trained and certified in Brocade product installation and support.

- Brocade Master Resellers are leading distributors that offer Brocade entry-level products to Brocade Fabric Resellers. Master Resellers are non-exclusive relationships and are designed to offer Brocade-based solutions to entry-level SAN customers needing pre-configured SAN solutions.
- Brocade Fabric Resellers are typically regionally focused systems integrators targeting small- to mid-sized businesses. These systems integrators, once qualified, are authorized to purchase entry-level Brocade Fibre Channel fabric switches from Master Resellers and sell them to their end-user SAN customers.
- Brocade service provider partners are part of Brocade's xSPartner program and offer Brocade-based outsourced storage services such as storage-on-demand to their end customers.

#### CUSTOMERS

Brocade's primary customers are OEMs and systems integrators and account for over 90 percent of Brocade's revenue. Currently, Brocade's major OEM customers include Amdahl, Compaq Computer, Dell Computer, EMC Corporation, Fujitsu Siemens Computers, Groupe Bull, Hewlett Packard, IBM, StorageTek, Sun Microsystems, and Unisys. Brocade's major system integrators include Advanced Digital Information Corporation, Datalink Corporation, Grass Valley Group, Hitachi Data Systems, Inc., Mount10, Inc., StorageApps, Inc., StorageNetworks, Tokyo Electron Limited, Worldstor, Inc., and XIOTech Corporation.

Brocade's revenues are derived primarily from sales of its SilkWorm family of products. In fiscal 2000, Compaq Computer and EMC Corporation each contributed over 10 percent of total revenues for a combined total of 49 percent of total revenues. In fiscal 1999, Compaq Computer, EMC Corporation, and Sequent Computer Systems each accounted for 10 percent or more of total revenues for a combined total of 70 percent of total revenues. In fiscal 1998, EMC Corporation and Sequent Computer Systems each contributed over 10 percent of total revenues for a combined total of 83 percent. The level of sales to any customer may vary from quarter to quarter and Brocade expects that significant customer concentration will continue for the foreseeable future. The loss of any one of these customers, or a decrease in the level of sales to any one of these customers, could have a material adverse impact on Brocade's financial condition or results of operations.

#### ACQUISITIONS AND INVESTMENTS

Brocade's strategy is to facilitate a rapid evolution of the SAN market to enable customers to deploy large SANs that are internetworked across optical infrastructures, IP-based networks, or other communications backbones. Brocade is committed to helping SAN customers optimize server, storage, and application investments and extend those benefits across the enterprise. Enabling end-to-end SAN interoperability and reducing the cost of storage management is important in the evolving market. Brocade's approach to acquisitions and investments is to help grow the SAN market and facilitate solutions that help SAN end-user customers get the most out of their server and storage investments. To date, Brocade has made no acquisitions. Brocade has made minority investments in companies that deliver solutions that simplify the deployment and management of SANs; that offer new types of outsourced and managed services, such as outsourced storage; that are helping to broaden the reach of education, consulting, and implementation services; and that are investing in new advancements in SAN technologies.

#### RESEARCH AND DEVELOPMENT

The industry in which Brocade competes is subject to rapid technological developments, evolving industry standards, changes in customer requirements, and new product introductions. As a result, Brocade's success, in part, depends on its ability to continue to enhance its existing solutions and to develop and introduce new solutions that improve performance and reduce total cost of ownership in the storage environment.

Brocade has invested heavily in research and development to support current and future product development. Brocade continues to enhance and extend its products to anticipate and meet customer requirements. Brocade continues to increase the speed and performance of its Fabric switching products, and

to deliver higher port density and more cost-optimized solutions. Brocade also continues to expand the capability of the Brocade Fabric OS by investing in delivering additional functionality of this distributed operating system and new value-added services and software to simplify the management and deployment of SANs. Brocade products are designed to support current industry standards and will continue to support emerging standards that are consistent with its product strategy. Brocade products have been designed around a core system architecture, which facilitates a relatively short product design and development cycle and reduces the time to market for new products and features. Brocade intends to continue to leverage this architecture to develop and introduce additional products and enhancements in the future.

During fiscal years 2000, 1999, and 1998, Brocade's research and development expenses totaled \$50.5 million, \$15.3 million and \$14.7 million, respectively. All expenditures for research and development costs have been expensed as incurred. Brocade expects to continue to maintain its high level of investment in research and development and to make strategic investments, and potentially, acquisitions, as appropriate.

#### COMPETITION

The current and potential market for SAN solutions and technologies is continually evolving, and subject to rapid technological change. New SAN solutions and products are continually being introduced by major server and storage providers, and existing products will be continually enhanced. Currently Brocade faces primary competition from other developers of Fibre Channel interconnection products including McDATA, InRange, Qlogic, Gadzoox Networks, Inc., and Vixel Corporation.

In addition, as the SAN market evolves, non-Fibre Channel based interconnection products may become commercially available that interconnect servers and storage. To the extent that these products provide the ability to network servers and storage and support high-performance, block-data storage applications, they may compete with Brocade's current and future products. Competitive products might include, but are not limited to, non-Fibre Channel based emerging products based on Gigabit Ethernet, 10 Gigabit Ethernet, and Infiniband. In addition, networking companies, manufacturers of networking equipment, or other companies may develop competitive products. Brocade OEM partners or other customers/partners could also develop and introduce products competitive with Brocade product offerings. Brocade believes the competitive factors in this market segment include product performance and features, product reliability, price, ability to meet delivery schedules, customer service, and technical support.

Some of Brocade's current and potential competitors have longer operating histories, significantly greater resources, and greater brand recognition than Brocade. As a result, these companies may have greater credibility with existing and potential Brocade customers and may be able to adopt more aggressive pricing policies and devote greater resources to the development, promotion, and sale of their products than Brocade. These advantages could allow them to respond more quickly than Brocade to new or emerging technologies and changes in customer requirements. In addition, some of Brocade's current and potential competitors have already established supplier or joint development relationships with current or potential customers. These competitors may be able to leverage their existing relationships to discourage these customers from purchasing additional Brocade products or persuade them to replace Brocade products with their products. Such increased competition may result in price reductions, lower gross margins, and reduction of market share. There can be no assurance that Brocade will have the financial resources, technical expertise or marketing, manufacturing, distribution, and support capabilities to compete successfully in the future. There can also be no assurance that Brocade will be able to compete successfully against current or future competitors or that current or future competitive pressures will not materially harm Brocade's business.

#### MANUFACTURING

Solectron Corporation, a third-party contract manufacturer, currently manufactures Brocade's switches. Solectron invoices Brocade based on prices and payment terms agreed to by both parties and set forth in purchase orders issued by Brocade. The pricing takes into account component costs, Solectron's manufacturing costs and margin requirements. Although Brocade purchase orders placed with Solectron are cancelable, the terms of the manufacturing agreement with Solectron would require Brocade to purchase from Solectron



all material inventory not returnable or usable for other customers. Although Brocade uses Solectron for final turnkey product assembly, Brocade maintains key component expertise internally. Brocade designs and develops the key components of its products, including Application Specific Integrated Circuits (ASICs) and software, as well as certain details in the fabrication and enclosure of its products. In addition, Brocade determines the components that are incorporated in its products and selects appropriate suppliers of those components.

Although Brocade uses standard parts and components for its products where possible, it currently purchases several key components used in the manufacture of its products from single or limited sources. Brocade's principal single-source components include ASICs and chassis, and its principal limited-source components include printed circuit boards, power supplies and gigabit interface converters (GBICs). In addition, Brocade licenses certain software from Wind River Systems, Inc. that is incorporated into the Brocade Fabric Operating System. If Brocade is unable to buy these components on a timely basis, it will not be able to deliver products to customers in a timely manner. Brocade uses a rolling six-month forecast based on anticipated product orders to determine component requirements. If Brocade overestimates component requirements, it may have excess inventory, which would increase costs. If Brocade underestimates component requirements, it may have inadequate inventory, which could interrupt manufacturing. In addition, lead times for ordered materials and components vary significantly and depend on factors such as the specific supplier, contract terms, and demand for a component at a given time. Brocade also may experience shortages of certain components from time to time, which also could delay manufacturing.

#### PATENTS, INTELLECTUAL PROPERTY, AND LICENSING

Brocade relies on a combination of patents, copyrights, trademarks, trade secrets, confidentiality agreements, and other contractual restrictions with employees and third parties to establish and protect its proprietary rights. Despite these precautions, there can be no assurance that the measures Brocade undertakes will prevent misappropriation or infringement of Brocade's proprietary technology or that these measures will preclude competitors from independently developing products with functionality or features similar to Brocade's products.

Brocade currently has a utility patent, two design patents, and seven pending patent applications in the United States with respect to its technology. It is possible that patents may not be issued for these applications. Furthermore, Brocade's issued patents may not adequately protect its technology from infringement or prevent others from claiming that Brocade's technology infringes on that of third parties. Failure to protect Brocade's intellectual property could materially harm its business. In addition, Brocade's competitors may independently develop similar or superior technology. It is possible that litigation may be necessary in the future to enforce Brocade's intellectual property rights, to protect its trade secrets, or to determine the validity and scope of the proprietary rights of others. Litigation could result in substantial costs and diversion of Brocade resources and could materially harm its business.

Some of Brocade's products are designed to include software or other intellectual property licensed from third parties. While it may be necessary in the future to seek or renew licenses relating to various aspects of Brocade's products, Brocade believes that such licenses generally could be obtained on commercially reasonable terms.

Brocade has received, and may receive in the future, notice of claims of infringement of other parties' proprietary rights. Infringement or other claims could be asserted or prosecuted against Brocade in the future, and it is possible that past or future assertions or prosecutions could harm Brocade's business. Any such claims, with or without merit, could be time-consuming, result in costly litigation and diversion of technical and management personnel, cause delays in the development and release of Brocade's products, or require Brocade to develop non-infringing technology or enter into royalty or licensing arrangements. Such royalty or licensing arrangements, if required, may not be available on terms acceptable to Brocade, or at all. For these reasons, infringement claims could materially harm Brocade's business.

## BACKLOG

Brocade's order backlog at October 28, 2000 was approximately \$110 million. Sales of Brocade products are generally made pursuant to standard purchase orders that are cancelable without significant penalties. In addition, purchase orders are subject to price renegotiations and to changes in quantities of products and delivery schedules in order to reflect changes in customers' requirements and manufacturing availability. As a result, a portion of backlog at any given time may never be realized by Brocade.

Brocade's business is characterized by short-lead-time orders and fast delivery schedules. In addition, actual shipments depend on the manufacturing capacity of suppliers and the availability of products from such suppliers. As a result of the foregoing factors, Brocade does not believe that backlog at any given time is a meaningful indicator of future sales.

## EMPLOYEES

As of October 28, 2000, Brocade had 606 employees. No employees are represented by a labor union. Brocade has not experienced any work stoppages and considers its relations with employees to be good. Employees are currently located in Brocade's U.S. headquarters in San Jose, California; its European headquarters in Geneva, Switzerland; and offices throughout North America, the United Kingdom, Germany, France, Spain, Canada, Japan, Singapore, and Australia. Competition for technical personnel in the computing industry continues to be significant. Brocade believes that its success depends in part on its ability to hire, assimilate, and retain qualified personnel. There is no assurance that Brocade will continue to be successful at hiring, assimilating, and retaining employees in the future.

## CERTAIN FINANCIAL INFORMATION

Financial information relating to foreign and domestic sales and operations for the three years ended October 28, 2000, and October 31, 1999 and 1998, is set forth in Note 8, "Segment Information," of the Notes to Financial Statements attached hereto. Financial information relating to revenues, income and total assets for the three years ended October 28, 2000, October 31, 1999 and 1998, can be found under "Selected Financial Data" and also in Brocade's Financial Statements attached hereto.

## RISK FACTORS

Set forth below and elsewhere in this Annual Report and in other documents Brocade files with the SEC are risks and uncertainties that could cause actual results to differ materially from the results contemplated by the forward-looking statements contained in this Annual Report.

### Failure to Manage Expansion Effectively Could Seriously Harm Brocade's Business, Financial Condition and Prospects

Brocade's ability to successfully implement its business plan, develop and offer products, and manage expansion in a rapidly evolving market requires a comprehensive and effective planning and management process. Brocade continues to increase the scope of its operations domestically and internationally, and has grown headcount substantially. In addition, Brocade plans to continue to hire a significant number of employees in the foreseeable future. The growth in business, headcount, and relationships with customers and other third parties has placed, and will continue to place, a significant strain on management systems and resources. Brocade's failure to continue to improve upon its operational, managerial, and financial controls, reporting systems, and procedures, and/or Brocade's failure to continue to expand, train, and manage its work force worldwide, could have a material adverse affect on its business and financial results.

**Brocade's Quarterly Revenues and Operating Results May Fluctuate in Future Periods for a Number of Reasons Which Could Adversely Affect the Trading Price of Its Stock**

Brocade's quarterly revenues and operating results may vary significantly in the future due to a number of factors, any of which may cause its stock price to fluctuate. The primary factors that may impact the predictability of quarterly results include the following:

- the timing of customer orders and product implementations, particularly large orders from and product implementations of our OEM customers;
- changes in general economic conditions and specific economic conditions in the computer, storage, and networking industries, such as a change in current business spending levels for information technology products;
- announcements and new product introductions by competitors;
- deferrals of customer orders in anticipation of new products, services or product enhancements introduced by Brocade or its competitors;
- Brocade's ability to obtain sufficient supplies of sole or limited sourced components, including ASICs, GBICs, and power supplies;
- increases in prices of components used in the manufacture of Brocade's products;
- Brocade's ability to attain and maintain production volumes and quality levels;
- variations in the mix of Brocade's switches sold and the mix of distribution channels through which they are sold;

Accordingly, the results of any prior periods should not be relied upon as an indication of future performance. It is likely that in some future period, Brocade's operating results may be below expectations of public market analysts or investors. If this occurs, Brocade's stock price may drop.

**Brocade's Success Depends on Its Ability to Develop New and Enhanced Products that Achieve Widespread Market Acceptance**

Brocade currently derives substantially all of its revenues from sales of its SilkWorm family of products. Brocade expects that revenue from this product family will continue to account for a substantial portion of revenues for the foreseeable future. Therefore, widespread market acceptance of these products is critical to Brocade's future success. Some of its products have been only recently introduced and therefore, the demand and market acceptance of these products is uncertain. Factors that may affect the market acceptance of Brocade's products include the performance, price and total cost of ownership of those products, the availability and price of competing products and technologies, and the success and development of Brocade's OEMs and system integrators. Many of these factors are beyond Brocade's control.

Brocade's future success depends upon its ability to address the rapidly changing needs of its customers by developing and introducing high-quality, cost-effective products, product enhancements and services on a timely basis and by keeping pace with technological developments and emerging industry standards. Brocade expects to launch new products and upgrades to its existing products during fiscal 2001, including a 64-port and 128-port Fibre Channel core fabric switch, and 2 Gigabit per second speed support across the SilkWorm product family. Brocade's future revenue growth will be dependent on the success of these new products. Brocade has in the past experienced delays in product development and such delays may occur in the future. In addition, as new or enhanced products are introduced, Brocade will have to successfully manage the transition from older products in order to minimize disruption in customers' ordering patterns, avoid excessive levels of older product inventories, and ensure that enough supplies of new products can be delivered to meet customers' demands. Brocade's failure to develop and successfully introduce new products and product enhancements could adversely affect its business and financial results.

**Failure to Adequately Anticipate Future End-User Product Needs and Failure to Forecast End-User Demand Could Negatively Impact the Demand for Brocade's Products and Reduce Its Revenues**

Brocade sells and markets its products through OEM partners, system integrators, resellers, and service providers. As a result, Brocade's direct contact with the end-users of its products is often limited. Although Brocade makes every effort to communicate with, understand, and anticipate the current and future needs of the end-users of its products, to a large extent Brocade relies on its OEM partners, system integrators, resellers, and service providers for visibility into those end-user requirements. Brocade's failure to adequately assess and anticipate future end-user needs could negatively impact the demand for its products and reduce its revenues.

Similarly, Brocade has limited ability to forecast the demand for its products. In preparing sales and demand forecasts, Brocade largely relies on input from its OEM partners, system integrators, resellers, and service providers. If Brocade fails to effectively communicate with its customers about end-user demand or other time sensitive information, sales and demand forecasts may not reflect the most accurate, up-to-date information. Because Brocade makes certain business decisions based on its sales and demand forecasts, should these forecasts not materialize, Brocade's business and financial results could be negatively impacted.

**Brocade Plans to Increase Its International Sales Activities Significantly, Which Will Subject It to Additional Business Risks**

Brocade plans to expand its international sales activities significantly. Expansion of international operations will involve inherent risks that Brocade may not be able to control, including:

- supporting multiple languages;
- recruiting sales and technical support personnel with the skills to support Brocade's products;
- increased complexity and costs of managing international operations;
- protectionist laws and business practices that favor local competition;
- dependence on local vendors;
- multiple, conflicting, and changing governmental laws and regulations;
- longer sales cycles;
- difficulties in collecting accounts receivable;
- reduced or limited protections of intellectual property rights; and
- political and economic instability.

To date, none of Brocade's international revenues and costs has been denominated in foreign currencies. As a result, an increase in the value of the U.S. dollar relative to foreign currencies could make Brocade's products more expensive and thus less competitive in foreign markets. A portion of Brocade's international revenues may be denominated in foreign currencies in the future, including the Euro, which will subject Brocade to risks associated with fluctuations in those foreign currencies. Additionally, Brocade receives significant tax benefits from sales to its international customers. These benefits are contingent upon existing tax regulations in both the United States and in the respective countries in which Brocade's international customers are located. Future changes in domestic or international tax regulations could affect the continued realizability of the tax benefits Brocade is currently receiving and expects to receive from sales to its international customers.

**Brocade Depends on OEM Customers and the Loss of Any of Them Could Significantly Reduce Revenues**

Although Brocade's customer base has increased substantially, Brocade still depends on large, recurring purchases from certain OEM customers. Brocade's agreements with its OEM customers are typically cancelable, non-exclusive, and have no minimum purchase requirements. For the year ended October 28,

2000, sales to two such customers accounted for a combined total of 49 percent of Brocade's total revenues. Brocade anticipates that its revenues and operating results will continue to depend on sales to a relatively small number of customers. Therefore, the loss of any of these customers, or a significant reduction in sales to these customers, could significantly reduce Brocade's revenues.

#### Failure to Expand Distribution Channels and Manage Distribution Relationships Could Significantly Reduce Brocade's Revenues

Brocade's success will depend on its continuing ability to develop and manage relationships with significant OEMs, system integrators and resellers, as well as on the sales efforts and success of these customers. Brocade's OEM customers may evaluate its products for up to a year before they begin to market and sell them and assisting these customers through the evaluation process may require significant sales, marketing, and management efforts on the part of Brocade, particularly if Brocade's products are being qualified with multiple customers at the same time. In addition, once Brocade's products have been qualified, Brocade's customer agreements have no minimum purchase commitments. Brocade cannot provide assurance that it will be able to maintain or expand its distribution channels, manage distribution relationships successfully or that its customers will market its products effectively. Brocade's failure to manage successfully its distribution relationships or the failure of its customers to sell its products would reduce Brocade's revenues.

#### The Loss of Solectron Corporation, Brocade's Sole Manufacturer, or the Failure to Forecast Accurately Demand for Brocade's Products or Manage Successfully Brocade's Relationship With Solectron, Would Negatively Impact Brocade's Ability to Manufacture and Sell Its Products

Brocade depends on Solectron, a third party manufacturer for numerous companies, to manufacture all of its products at Solectron's Milpitas, California facilities. If Brocade should fail to effectively manage its relationship with Solectron, or if Solectron experiences delays, disruptions, capacity constraints or quality control problems in its manufacturing operations, Brocade's ability to ship products to its customers could be delayed and its competitive position and reputation could be harmed. Qualifying a new contract manufacturer and commencing volume production is expensive and time consuming. If Brocade is required or chooses to change contract manufacturers, it may lose revenue and damage its customer relationships.

Brocade has entered into a manufacturing agreement with Solectron under which Brocade provides to Solectron a twelve-month product forecast and places purchase orders with Solectron sixty calendar days in advance of the scheduled delivery of products to Brocade customers. Although Brocade purchase orders placed with Solectron are cancelable, the terms of the agreement would require Brocade to purchase from Solectron all material inventory not returnable or usable by other Solectron customers. Accordingly, if Brocade inaccurately forecasts demand for its products, Brocade may be unable to obtain adequate manufacturing capacity from Solectron to meet customers' delivery requirements or Brocade may accumulate excess inventories.

Recently, California has been experiencing a shortage of electric power supply that has resulted in intermittent loss of power in the form of rolling blackouts. While Solectron has not experienced any power failures to date that have prevented their ability to manufacture Brocade's products, the continuance of blackouts may affect Solectron's ability to manufacture Brocade's products and meet scheduled delivery needs.

#### Brocade Is Dependent on Sole Source and Limited Source Suppliers for Certain Key Components Including ASICs and Power Supplies

With the current demand for electronic products, component shortages are possible and the predictability of the availability of such components is limited. Brocade currently purchases several key components from single or limited sources. Brocade purchases ASICs and chassis from a single source, and printed circuit boards, power supplies and GBICs from limited sources. In addition, Brocade licenses certain software that is incorporated into the Brocade Fabric Operating System from Wind River Systems, Inc. If Brocade is unable

to buy these components on a timely basis, it will not be able to deliver product to customers in a timely manner. Brocade uses a rolling six-month forecast based on anticipated product orders to determine component requirements. If component requirements are overestimated, Brocade may have excess inventory, which would increase costs. If component requirements are underestimated, Brocade may have inadequate inventory, which could interrupt the manufacturing process. In addition, lead times for materials and components vary significantly and depend on factors such as the specific supplier, contract terms, and demand for a component at a given time. Brocade also may experience shortages of certain components from time to time, which also could delay manufacturing.

#### Increased Market Competition May Lead to Reduced Sales of Brocade's Products, Reduced Profits and Reduced Market Share

The markets for Brocade's SAN switching products are competitive, and are likely to become even more competitive. Increased competition could result in pricing pressures, reduced sales, reduced margins, reduced profits, reduced market share or the failure of Brocade products to achieve or maintain market acceptance. Brocade products face competition from multiple sources and we may not be able to compete successfully against current and future competitors. Furthermore, as the SAN market evolves, non-Fibre Channel based products may become available to interconnect servers and storage. To the extent that these products provide the ability to network servers and storage and support high-performance, block-data storage applications, they may compete with current and future Brocade products. These products may include, but are not limited to, non-Fibre Channel based emerging products based on Gigabit Ethernet, 10-Gigabit Ethernet, and Infiniband.

#### The Prices of Brocade's Products May Decline Which Would Reduce Revenues and Gross Margins

To date Brocade has not experienced material reductions in its average unit selling prices, except for planned price reductions relating to the introductions of new product. The average unit prices of Brocade's products may decrease in the future in response to changes in product mix, competitive pricing pressures, increased sales discounts, new product introductions by Brocade or Brocade's competitors, or other factors. If Brocade is unable to offset these factors by increasing sales volumes, revenues will decline. In addition, to maintain its gross margins, Brocade must develop and introduce new products and product enhancements, and must continue to reduce the manufacturing cost of its products.

#### Undetected Software or Hardware Errors Could Increase Brocade's Costs and Reduce Revenues

Networking products frequently contain undetected software or hardware errors when first introduced or as new versions are released. Brocade products are complex and errors may be found from time to time in its new or enhanced products. In addition, Brocade's products are combined with products from other vendors. As a result, when problems occur, it may be difficult to identify the source of the problem. These problems may cause Brocade to incur significant warranty and repair costs, divert the attention of engineering personnel from Brocade product development efforts and cause significant customer relations problems. Moreover, the occurrence of hardware and software errors, whether caused by Brocade or another vendor's SAN products, could delay or prevent the development of the SAN market.

#### Brocade May Not be Able to Maintain Profitability

Although Brocade has been profitable since the third quarter of fiscal 1999, Brocade cannot be certain that it will be able to maintain profitability in the future. Brocade expects to incur significant costs and expenses for product development, sales and marketing, customer support, facilities expansion, and expansion of our corporate infrastructure. Brocade makes such investment decisions based upon anticipated revenues and margins. Failure of these anticipated revenues and margins to materialize could impact Brocade's ability to remain profitable. As a result, Brocade will need to grow its revenues and realize expected margins to maintain profitability.

In addition, Brocade has a limited operating history. Therefore, it is difficult to forecast future operating results based on historical results. Brocade plans its operating expenses based in part on future revenue

projections. Brocade's ability to accurately forecast quarterly revenue is limited for the reasons discussed above in "Brocade's Quarterly Revenues and Operating Results May Fluctuate in Future Periods for a Number of Reasons Which Could Adversely Affect the Trading Price of Its Stock." Moreover, most of Brocade's expenses are fixed in the short-term or incurred in advance of receipt of corresponding revenue. As a result, Brocade may not be able to decrease its spending to offset any unexpected shortfall in revenues. If this were to occur, Brocade could incur losses and its operating results would be below its expectations and those of investors and market analysts.

#### If Brocade Loses Key Personnel or is Unable to Hire Additional Qualified Personnel, Brocade May Not Continue to Be Successful

Brocade's success depends to a significant degree upon the continued contributions of key management, engineering, and sales and marketing personnel, many of whom would be difficult to replace. Brocade does not have employment contracts with, or key person life insurance on, any of its key personnel. Brocade also believes that its success depends to a significant extent on the ability of management to operate effectively, both individually and as a group.

Brocade believes its future success will also depend in large part upon its ability to attract and retain highly skilled managerial, engineering, sales and marketing, finance, and operations personnel. Competition for these personnel is intense, especially in the San Francisco Bay Area. In particular, Brocade has experienced difficulty in hiring qualified ASIC, software, system and test, and customer support engineers and there can be no assurance that future efforts will be successful in attracting and retaining these individuals. The loss of the services of any of Brocade's key employees, the inability to attract or retain qualified personnel in the future, or delays in hiring required personnel, particularly engineers and sales personnel, could delay the development and introduction of and negatively impact Brocade's ability to sell its products. In addition, companies in Brocade's industry whose employees accept positions with competitors frequently claim that their competitors have engaged in unfair hiring practices. Brocade cannot provide assurance that such claims will not be received in the future as Brocade seeks to hire qualified personnel, or that such claims will not result in material litigation. Brocade could incur substantial costs in defending against these claims, regardless of their merits.

#### Brocade May be Unable to Protect Its Intellectual Property Which Would Negatively Affect Its Ability to Compete

Brocade relies on a combination of patent, copyright, trademark, and trade secret laws and restrictions on disclosure to protect its intellectual property rights. Brocade also enters into confidentiality or license agreements with its employees, consultants, and corporate partners, and controls access to and distribution of its software, documentation, and other proprietary information. Despite Brocade's efforts to protect its proprietary rights, unauthorized parties may attempt to copy or otherwise obtain and use Brocade products or technology. Monitoring unauthorized use of Brocade's products is difficult and Brocade cannot be certain that the steps it takes to prevent unauthorized use of its technology, particularly in foreign countries where the laws may not protect proprietary rights as fully as in the United States, will be effective.

#### Others May Bring Infringement Claims Against Brocade Which Could be Time-Consuming and Expensive to Defend

In recent years, there has been significant litigation in the United States involving patents and other intellectual property rights. Brocade has previously been the subject of a lawsuit alleging infringement of intellectual property rights. Although this dispute was resolved and the lawsuit dismissed, and Brocade is not currently involved in any other intellectual property litigation, Brocade may be a party to litigation in the future to protect its intellectual property or as a result of an alleged infringement of others' intellectual property. These claims and any resulting lawsuit could subject Brocade to significant liability for damages and invalidation of proprietary rights. These lawsuits, regardless of their success, would likely be time-consuming

and expensive to resolve and would divert management time and attention. Any potential intellectual property litigation also could force Brocade to do one or more of the following:

- stop selling, incorporating or using products or services that use the challenged intellectual property;
- obtain from the owner of the infringed intellectual property right a license to make, use, sell, import and/or export the relevant technology, which license may not be available on reasonable terms, or at all; and
- redesign those products or services that use such technology.

If Brocade is forced to take any of the foregoing actions, Brocade may be unable to manufacture, use, sell, import and/or export its products, which would reduce revenues.

#### Brocade May Engage in Future Acquisitions That Dilute Its Stockholders and Cause Brocade to Incur Debt or Assume Contingent Liabilities

As part of its strategy, Brocade expects to review opportunities to buy other businesses or technologies that would complement its current products, expand the breadth of its markets or enhance its technical capabilities, or that may otherwise offer growth opportunities. While Brocade has no current agreements or negotiations underway, Brocade may buy businesses, products or technologies in the future. In the event of any future purchases, Brocade could:

- issue stock that would dilute Brocade's current stockholders' percentage ownership;
- incur debt; or
- assume liabilities.

These purchases also involve numerous risks, including:

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

Brocade cannot provide assurance that it will be able to successfully integrate any businesses, products, technologies or personnel that it might acquire in the future.

#### Brocade's Products Must Comply With Evolving Industry Standards and Government Regulations

Industry standards for SAN products are continuing to emerge, evolve, and achieve acceptance. To remain competitive, Brocade must continue to introduce new products and product enhancements that meet these industry standards. All components of the SAN must utilize the same standards in order to operate together. Brocade's products comprise only a part of the entire SAN and Brocade depends on the companies that provide other components of the SAN, many of whom are significantly larger than Brocade, to support the industry standards as they evolve. The failure of these providers to support these industry standards could adversely affect the market acceptance of Brocade's products. In addition, in the United States, Brocade's products must comply with various regulations and standards defined by the Federal Communications Commission and Underwriters Laboratories. Internationally, products that Brocade develops will also be required to comply with standards established by authorities in various countries. Failure to comply with existing or evolving industry standards or to obtain timely domestic or foreign regulatory approvals or certificates could materially harm Brocade's business.



Provisions in Brocade's Charter Documents, Customer Agreements and Delaware Law Could Prevent or Delay a Change in Control of Brocade and May Reduce the Market Price of Brocade's Common Stock

Provisions of Brocade's certificate of incorporation and bylaws may discourage, delay or prevent a merger or acquisition that a stockholder may consider favorable. These provisions include:

- authorizing the issuance of preferred stock without stockholder approval;
- providing for a classified board of directors with staggered, three-year terms;
- prohibiting cumulative voting in the election of directors;
- requiring super-majority voting to effect certain amendments to Brocade's certificate of incorporation and bylaws;
- limiting the persons who may call special meetings of stockholders; and
- prohibiting stockholder actions by written consent.

Certain provisions of Delaware law also may discourage, delay or prevent someone from acquiring or merging with Brocade. Further, Brocade's agreements with certain of its customers require Brocade to give prior notice of a change of control of Brocade and grant certain manufacturing rights following the change of control.

Brocade Expects to Experience Volatility in Its Stock Price Which Could Negatively Affect Your Investment

The market price of Brocade's common stock may fluctuate significantly in response to the following factors, some of which are beyond Brocade's control:

- actual or anticipated fluctuations in Brocade's operating results;
- changes in financial estimates by securities analysts;
- changes in market valuations of other technology companies;
- announcements by Brocade or Brocade's competitors of significant technical innovations, contracts, acquisitions, strategic partnerships, joint ventures or capital commitments;
- losses of major OEM customers;
- additions or departures of key personnel; and
- sales of common stock in the future.

In addition, the stock market has experienced extreme volatility that often has been unrelated to the performance of particular companies. These market fluctuations may cause Brocade's stock price to fall regardless of performance.

Brocade's Business May be Harmed by Class Action Litigation Due to Stock Price Volatility

In the past, securities class action litigation often has been brought against a company following periods of volatility in the market price of its securities. Brocade may in the future be the target of similar litigation. Securities litigation could result in substantial costs and divert management's attention and resources.

## ITEM 2. PROPERTIES

Brocade's principal administrative, sales and marketing, education, customer support, and research and development facilities are located in approximately 495,000 square feet of leased office space in San Jose, California. Of this amount, approximately 300,000 square feet is currently occupied by Brocade. The remaining 195,000 square feet of office space is currently under construction and Brocade intends to occupy this additional space in December 2001. The leases on these facilities will expire beginning August 2010. In addition to the San Jose facility, Brocade also leases sales and marketing offices in various locations

throughout the world. Brocade believes that its existing facilities are adequate for its present needs. However, should Brocade require additional space, Brocade believes that it will be able to secure such space on commercially reasonable terms without undue operational disruption.

#### ITEM 3. LEGAL PROCEEDINGS

Brocade is subject to various legal proceedings, claims, and litigation that arise in the normal course of business. While the outcome of these matters is currently not determinable, management does not expect these matters will have a material adverse effect on the financial position, results of operations or cash flows of Brocade.

#### ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

No matters were submitted to a vote of security holders during the fourth quarter of fiscal 2000.

## PART II

## ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS

Brocade's common stock has been quoted on the Nasdaq National Market under the symbol "BRCD" since its initial public offering on May 24, 1999. Prior to this time, there was no public market for the stock. See "Item 6. Selected Financial Data" for the high and low closing sales prices per share of Brocade's common stock as reported on the Nasdaq National Market, for the periods indicated.

Brocade currently expects to retain future earnings, if any, for use in the operation and expansion of its business and does not anticipate paying any cash dividends in the foreseeable future. According to records of Brocade's transfer agent, at October 28, 2000, there were approximately 480 stockholders of record of Brocade's common stock.

## ITEM 6. SELECTED FINANCIAL DATA

The following selected financial data should be read in conjunction with Brocade's financial statements and related notes, "Management's Discussion and Analysis of Financial Condition and Results of Operations," and other financial information appearing elsewhere in this Annual Report. The statement of operations data set forth below for each of the years in the three-year period ended October 28, 2000, the balance sheet data as of October 28, 2000, and October 31, 1999, are derived from, and qualified by reference to, the audited financial statements appearing elsewhere in this Annual Report. The statement of operations data for the years ended October 31, 1997 and 1996, and the balance sheet data as of October 31, 1998, 1997 and 1996, are derived from audited financial statements not included herein. All references to earnings per share and the number of common shares have been retroactively restated to reflect three two-for-one stock splits, effected on December 3, 1999, March 15, 2000, and December 22, 2000.

Note: Brocade changed its fiscal year end to the last Saturday in October, beginning with the fiscal year ended October 28, 2000. This change did not have a material impact on Brocade's financial statements.

	FISCAL YEAR ENDED				
	OCTOBER 28, 2000	OCTOBER 31, 1999	OCTOBER 31, 1998	OCTOBER 31, 1997	OCTOBER 31, 1996
	(IN THOUSANDS, EXCEPT PER SHARE DATA)				
STATEMENT OF OPERATIONS DATA:					
Net revenues	\$329,045	\$ 68,692	\$ 24,246	\$ 8,482	\$ --
Cost of revenues	137,456	33,497	15,759	6,682	--
Gross margin	191,589	35,195	8,487	1,800	--
Operating expenses:					
Research and development	50,505	15,267	14,744	7,666	3,091
Sales and marketing	46,524	13,288	5,154	2,112	152
General and administrative	10,506	3,849	3,813	1,464	575
Amortization of deferred compensation	1,120	1,937	7	--	--
Total operating expenses	108,655	34,341	23,718	11,242	3,818
Income (loss) from operations	82,934	854	(15,231)	(9,442)	(3,818)
Interest income (expense), net	5,382	1,737	120	(177)	(116)
Income (loss) before provision for income taxes	88,316	2,591	(15,111)	(9,619)	(3,934)
Provision for income taxes	20,385	106	--	--	--
Net income (loss)	\$ 67,931	\$ 2,485	\$(15,111)	\$ (9,619)	\$(3,934)
Net income (loss) per share -- Basic	\$ 0.33	\$ 0.02	\$ (0.56)	\$ (0.60)	\$ (1.19)
Net income (loss) per share -- Diluted	\$ 0.28	\$ 0.01	\$ (0.56)	\$ (0.60)	\$ (1.19)
Shares used in per share calculation -- Basic					
	207,454	104,376	27,200	15,976	3,312
Shares used in per share calculation -- Diluted					
	242,504	204,584	27,200	15,976	3,312
BALANCE SHEET DATA:					
Cash, cash equivalents and short-term investments	\$155,039	\$ 89,305	\$ 10,420	\$ 18,472	\$ 700
Working capital	219,053	79,253	5,276	15,334	104
Total assets	455,179	117,280	21,301	26,100	2,605
Long-term portion of debt and capital lease obligations	--	--	2,209	1,954	874
Redeemable convertible preferred stock	--	--	35,261	30,359	4,613
Total stockholders' equity (deficit)	390,877	84,206	(27,355)	(13,458)	(3,957)

	FIRST QUARTER	SECOND QUARTER	THIRD QUARTER	FOURTH QUARTER
	-----			
	(IN THOUSANDS, EXCEPT PER SHARE AND STOCK PRICE DATA)			
QUARTERLY DATA:				
FISCAL YEAR ENDED OCTOBER 28, 2000				
Net revenues	\$42,740	\$62,053	\$92,138	\$132,114
Gross margin	22,656	36,000	53,979	78,954
Income from operations	8,065	15,663	24,044	35,162
Net income	\$ 7,308	\$13,316	\$20,077	\$ 27,230
Per share amounts:				
Basic	\$ 0.04	\$ 0.06	\$ 0.10	\$ 0.13
Diluted	\$ 0.03	\$ 0.06	\$ 0.08	\$ 0.11
Shares used in computing per share amounts:				
Basic	202,080	205,982	209,208	212,546
Diluted	235,536	241,860	244,424	248,194
Stock prices:				
High	\$ 44.25	\$ 89.66	\$104.84	\$ 133.31
Low	\$ 30.25	\$ 40.50	\$ 47.50	\$ 81.97
FISCAL YEAR ENDED OCTOBER 31, 1999				
Net revenues	\$ 8,007	\$10,540	\$20,051	\$ 30,094
Gross margin	4,686	5,103	10,130	15,276
Income (loss) from operations	(1,846)	(877)	1,011	2,566
Net income (loss)	\$(1,839)	\$ (848)	\$ 1,611	\$ 3,561
Per share amounts:				
Basic	\$ (0.05)	\$ (0.02)	\$ 0.01	\$ 0.02
Diluted	\$ (0.05)	\$ (0.02)	\$ 0.01	\$ 0.02
Shares used in computing per share amounts:				
Basic	34,792	41,320	142,688	198,688
Diluted	34,792	41,320	220,056	233,128
Stock prices:				
High	N/A	N/A	\$ 16.13	\$ 35.63
Low	N/A	N/A	\$ 5.66	\$ 12.27

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Note: Brocade changed its fiscal year end to the last Saturday in October, beginning with the fiscal year ended October 28, 2000. This change did not have a material impact on Brocade's financial statements.

RESULTS OF OPERATIONS

The following table sets forth certain financial data for the periods indicated as a percentage of total net revenues:

	FISCAL YEAR ENDED		
	OCTOBER 28, 2000	OCTOBER 31, 1999	OCTOBER 31, 1998
Net revenues	100.0%	100.0%	100.0%
Cost of revenues	41.8	48.8	65.0
Gross margin	58.2	51.2	35.0
Operating expenses:			
Research and development	15.4	22.2	60.8
Sales and marketing	14.1	19.4	21.3
General and administrative	3.2	5.6	15.7
Amortization of deferred compensation	0.3	2.8	*
Total operating expenses	33.0	50.0	97.8
Income (loss) from operations	25.2	1.2	(62.8)
Interest income, net	1.6	2.5	0.5
Income (loss) before provision for income taxes	26.8	3.7	(62.3)
Provision for income taxes	6.2	0.1	--
Net income (loss)	20.6%	3.6%	(62.3)%

\* Not meaningful

Revenues. Brocade's revenues are derived primarily from sales of its SilkWorm family of products. For the year ended October 28, 2000, net revenues increased to \$329.0 million, an increase of 379 percent compared with fiscal 1999 revenues of \$68.7 million. Fiscal 1999 net revenues represented a 183 percent increase over fiscal 1998 net revenues of \$24.2 million. The increases in net revenues reflect growing demand for SAN switching products and are the result of increased unit sales to an expanding customer base along with increased sales to several significant OEMs and system integrator customers. The increase in net revenues from fiscal 1999 to fiscal 2000 was primarily due to increased sales of our SilkWorm 2000 family of products introduced in June 1999. The increase in net revenues from fiscal 1998 to fiscal 1999 was primarily due to increased sales of Brocade's SilkWorm 1000 family of products introduced in March 1997.

During the first quarter of fiscal 2000 Brocade began shipping a second generation of its SilkWorm family of products. Brocade priced these second generation products approximately 15 percent to 20 percent below the prices of its first generation products. Except for the planned price reduction noted above, Brocade has not experienced any material price erosion. The prices of Brocade's products could decline in future periods for any number of reasons including competitive pricing pressures, increased sales discounts, new product introductions by Brocade or Brocade's competitors, or other factors. A future reduction in the prices of Brocade's products could have a material impact on Brocade's results of operations and financial position.

Domestic and international revenues accounted for approximately 78 percent and 22 percent of total revenues, respectively, for the year ended October 28, 2000. International revenues primarily consisted of sales to countries in Western Europe and Asia. Domestic revenues include sales to certain OEM customers who then distribute to their international customers. For the years ended October 31, 1999 and 1998, substantially all revenues were domestic.

A significant portion of Brocade's revenues is concentrated among a relatively small number of customers. In fiscal 2000 two customers accounted for a combined total of 49 percent of total revenues. In fiscal years 1999 and 1998, three and two customers accounted for combined totals of 70 percent and 83 percent of total revenues, respectively. The level of sales to any single customer may vary and the loss of any one of these customers, or a decrease in the level of sales to any one of these customers, could have a material adverse impact on Brocade's financial condition and results of operations. Brocade expects that a significant portion of its future revenues will continue to come from sales of products to a relatively small number of customers.

Product revenue is generally recognized when persuasive evidence of an arrangement exists, delivery has occurred, fee is fixed or determinable, and collectibility is probable. Brocade's only post-sales obligations are limited to product warranties. Revenue recognition is deferred for shipments to new customers where significant support services are required to successfully launch the customer's product. These revenues are recognized when the customer has successfully integrated and launched its products and Brocade has met its support obligations. Warranty costs, sales returns, and other allowances are accrued based on experience at the time of shipment. Deferred revenues at October 28, 2000, and October 31, 1999, were approximately \$2.1 million and \$7.7 million, respectively. Brocade expects deferred revenue at October 28, 2000, will be recognized as revenue in the first and second quarters of fiscal 2001.

Gross margin. Gross margin increased to 58.2 percent of net revenues in fiscal 2000, compared with 51.2 percent in fiscal 1999, and 35.0 percent in fiscal 1998. The increases were primarily due to lower component and manufacturing costs, the allocation of fixed manufacturing costs over a greater revenue base, and an increase in the percentage of sales to higher margin customers. Fiscal 1998 gross margin was adversely affected by the write-off of obsolete inventory and certain other inventory and equipment related to a change in contract manufacturers. Brocade expects fiscal 2001 margins to be relatively consistent with fiscal 2000 margins.

Research and development expenses. Research and development expenses increased to \$50.5 million in fiscal 2000. In fiscal 1999 and 1998, research and development expenses were \$15.3 million and \$14.7 million, respectively. These expenses consist primarily of salaries and related personnel expenses, fees paid to consultants and outside service providers, nonrecurring engineering charges, prototyping expenses related to the design, development, testing and enhancements of Brocade's products, and IT and facilities costs. The increased expenses reflect Brocade's belief that continued investment in research and development is a critical factor in maintaining its competitive position. As such, Brocade will continue to aggressively invest in the development of new products and continue to enhance its existing products. Brocade currently anticipates that research and development expenses will continue to increase in absolute dollars, but will remain relatively constant as a percentage of total revenues.

Sales and marketing expenses. Sales and marketing expenses increased to \$46.5 million in fiscal 2000. In fiscal years 1999 and 1998, sales and marketing expenses were \$13.3 million and \$5.2 million, respectively. These expenses consist primarily of salaries, commissions and related expenses for personnel engaged in marketing and sales, costs associated with promotional and travel expenses, and IT and facilities costs. The increases were primarily due to the hiring of additional sales and marketing personnel and increased direct selling expenses associated with increased revenues, principally commissions. Brocade believes that continued investment in sales and marketing is critical to the success of its strategy to expand relationships with leading OEMs, to expand its presence in the system integration channel, and to maintaining its leadership position in the SAN market. In addition, Brocade is currently expanding international sales activities to various Europe, Middle East, Africa, and Asia Pacific countries. As such, Brocade currently anticipates sales and marketing expenses for fiscal 2001 will continue to increase in absolute dollars, but will remain relatively constant as a percentage of total revenues.

General and administrative expenses. General and administrative expenses increased to \$10.5 million in fiscal 2000. General and administrative expenses were \$3.8 million in both fiscal years 1999 and 1998. These expenses consist primarily of salaries and related expenses for executives, finance, human resources, and investor relations, as well as recruiting expenses, professional fees, other corporate expenses, and IT and

facilities costs. The increases were primarily due to additional headcount and other expenses necessary to manage and support increased levels of business activity. Brocade currently anticipates general and administrative expenses for fiscal 2001 will continue to increase in absolute dollars, but will decrease modestly as a percentage of total revenues.

Amortization of deferred compensation. During fiscal years 1999 and 1998, Brocade recorded deferred compensation of \$5.1 million and \$307,000, respectively, in connection with certain stock option grants. No deferred compensation was recorded in fiscal 2000. Deferred compensation is amortized over the vesting periods of the applicable options and resulted in amortization expense of \$1.1 million, \$1.9 million, and \$7,000 in fiscal years 2000, 1999, and 1998, respectively. At October 28, 2000, unamortized deferred stock compensation was approximately \$2.3 million.

Interest income, net. Net interest income increased to \$5.4 million in fiscal 2000. In fiscal years 1999 and 1998, net interest income was \$1.7 million and \$120,000, respectively. The increases were primarily the result of additional investment income on increased investment balances resulting from the proceeds of Brocade's initial public offering and cash generated from operations.

Provision for income taxes. Brocade's effective tax rate for fiscal 2000 was 23.1 percent compared with 4.0 percent for fiscal 1999. As of October 28, 2000, Brocade had federal net operating loss carryforwards of approximately \$275.2 million and state net operating loss carryforwards of approximately \$75.4 million available to offset future taxable income. Such net operating loss carryforwards expire at various dates beginning in fiscal 2003. Brocade currently expects an effective tax rate of approximately 32 percent for fiscal 2001.

#### LIQUIDITY AND CAPITAL RESOURCES

Cash, cash equivalents, and short-term investments were \$155.0 million at October 28, 2000, an increase of \$65.7 million over the prior year amount of \$89.3 million. The increase was primarily the result of \$113.9 million in cash generated from operating and financing activities partially offset by \$40.7 million invested in capital equipment and a net \$7.8 million invested in minority equity investments.

During fiscal 2000 Brocade generated \$69.7 million in cash from operating activities. Net cash generated from operations primarily resulted from net income and increases in accounts payable and accrued employee compensation, partially offset by an increase in accounts receivable. These increases resulted from the significant increase in business activity experienced in fiscal 2000. Days sales outstanding in receivables for the fourth quarter of fiscal 2000 decreased to 50 days compared with 52 days for the fourth quarter of fiscal 1999. Cash generated from operations also increased as a result of income tax benefits related to employee stock option transactions. These benefits were partially offset by an increase in deferred tax assets. At October 28, 2000, Brocade had \$130.3 million in deferred tax assets, which it believes will be realizable through profitable operations in future periods.

Net cash used in investing activities totaled \$112.2 million for the year ended October 28, 2000. Net cash used in investing activities resulted primarily from net purchases of short-term investments of \$63.7 million, \$40.7 million invested in capital equipment, and a net \$7.8 million invested in minority equity investments.

Net cash provided by financing activities totaled \$44.3 million for the year ended October 28, 2000. Net cash provided by financing activities resulted mainly from \$39.0 million in proceeds from the issuance of common stock related to participation in employee stock plans and \$5.7 million in payments received from loans to stockholders.

Brocade has entered into a manufacturing agreement with Solectron Corporation under which Brocade provides to Solectron a twelve-month product forecast and places purchase orders with Solectron sixty calendar days in advance of the scheduled delivery of products to Brocade customers. Although Brocade purchase orders placed with Solectron are cancelable, the terms of the agreement would require Brocade to purchase from Solectron all material inventory not returnable or usable by other Solectron customers. At October 28, 2000, Brocade's commitment to Solectron for such material inventory was approximately \$22.2 million, which Brocade expects to utilize during future normal ongoing operations.



Brocade purchases several key components used in the manufacture of its products. At October 28, 2000, Brocade had non-cancelable purchase commitments for various such components totaling approximately \$16.4 million, which Brocade expects to utilize during future normal ongoing operations.

During fiscal 2000, Brocade entered into various agreements to lease its headquarters facilities in San Jose, California. In connection with these lease agreements, and subsequent amendments, Brocade has signed unconditional, irrevocable letters of credit for \$8.3 million as security for the leases (see Note 4 to the Financial Statements).

In December 2000, Brocade entered into an agreement to lease approximately 195,000 additional square feet of office, laboratory, and administrative space in San Jose, California. The lease expires November 30, 2013, and represents a commitment of approximately \$11.6 million per year to Brocade. Brocade intends to occupy the space in December 2001 and sub-lease any excess space, if possible, to offset the rental expense. In connection with this lease agreement, Brocade signed an unconditional, irrevocable letter of credit for \$10.4 million as security for the lease.

Brocade believes that its existing cash, cash equivalents, short-term investments, and cash expected to be generated from future operations will be sufficient to meet capital requirements at least through the next 12 months, although Brocade could be required, or could elect, to seek additional funding prior to that time. Brocade's future capital requirements will depend on many factors, including the rate of revenue growth, the timing and extent of spending to support product development efforts and the expansion of sales and marketing, the timing of introductions of new products and enhancements to existing products, and market acceptance of its products. There can be no assurances that additional equity or debt financing, if required, will be available on acceptable terms or at all.

#### RECENT ACCOUNTING PRONOUNCEMENTS

In March 2000, the Financial Accounting Standards Board issued Financial Accounting Standards Board Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation -- an interpretation of APB Opinion 25," (Interpretation 44). Interpretation 44 was effective beginning in July 2000 and clarifies the application of APB Opinion 25 for certain matters, specifically (a) the definition of an employee for purposes of applying APB Opinion 25, (b) the criteria for determining whether a plan qualifies as a noncompensatory plan, (c) the accounting consequence of various modifications to the terms of a previously fixed stock option award, and (d) the accounting for an exchange of stock compensation awards in a business combination. The adoption of Interpretation 44 did not have a material impact on Brocade's financial condition or results of operations.

In December 1999, the Securities and Exchange Commission (SEC) issued Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements," (SAB 101), which provides guidance on the recognition, presentation, and disclosure of revenue in financial statements filed with the SEC. SAB 101 outlines the basic criteria that must be met to recognize revenue and provides guidance for disclosures related to revenue recognition policies. Management does not expect the adoption of SAB 101 to have a material impact on Brocade's financial position or results of operations.

In September 1999, the Financial Accounting Standards Board issued Emerging Issues Task Force Topic No. D-83, "Accounting for Payroll Taxes Associated with Stock Option Exercises" (EITF D-83). EITF D-83 requires that payroll taxes paid on the difference between the exercise price and the fair value of stock acquired in association with an employee's stock options be recorded as operating expenses. For the year ended October 28, 2000, Brocade expensed \$2.1 million in payroll taxes on stock option exercises.

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," (SFAS 133), which provides a comprehensive and consistent standard for the recognition and measurement of derivatives and hedging activities. The statement is effective for fiscal years commencing after June 15, 2000. Brocade does not believe that SFAS 133 will have a material impact on earnings or financial condition.

## ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK

Brocade is exposed to market risk related to changes in interest rates and equity security prices.

## INTEREST RATE RISK

Brocade's exposure to market risk due to changes in the general level of U.S. interest rates relates primarily to its cash equivalents and short-term investments portfolio. The primary objective of Brocade's investment activities is the preservation of principal while maximizing investment income and minimizing risk. As such, short-term investments consist of U.S. Treasury and Federal Agency debt securities with original maturity dates between three months and one year. Due to the nature of its short-term investments, Brocade believes that market risk due to changes in interest rates is not material.

The following table (in thousands) presents Brocade's cash equivalents and short-term investments subject to interest rate risk and their related weighted average interest rates at October 28, 2000. Carrying value approximates fair value.

	AMOUNT	AVERAGE INTEREST RATE
	-----	-----
Cash and cash equivalents	\$ 27,265	4.99%
Short-term investments	127,774	6.18%
	-----	
Total	\$155,039	5.97%
	=====	

## EQUITY SECURITY PRICE RISK

Brocade's exposure to market risk due to equity security price fluctuations primarily relates to investments in marketable equity securities. These investments are generally in companies in the volatile high-technology sector and Brocade does not attempt to reduce or eliminate the market exposure on these securities. A 20 percent adverse change in equity prices would result in a decrease of approximately \$9.9 million in the fair value of marketable equity securities at October 28, 2000.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

## BROCADE COMMUNICATIONS SYSTEMS, INC.

## INDEX TO FINANCIAL STATEMENTS

	PAGE
	----
Report of Independent Public Accountants.....	25
Statements of Operations.....	26
Balance Sheets.....	27
Statements of Stockholders' Equity.....	28
Statements of Cash Flows.....	29
Notes to Financial Statements.....	30

## REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Board of Directors and Stockholders  
of Brocade Communications Systems, Inc.:

We have audited the accompanying balance sheets of Brocade Communications Systems, Inc. (a Delaware corporation) as of October 28, 2000 and October 31, 1999 and the related statements of operations, stockholders' equity and cash flows for each of the three years ended October 28, 2000, and October 31, 1999 and 1998. These financial statements and the schedule referred to below are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedule based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Brocade Communications Systems, Inc. as of October 28, 2000 and October 31, 1999 and the results of its operations and its cash flows for each of the three years ended October 28, 2000, and October 31, 1999 and 1998, in conformity with generally accepted accounting principles.

Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The schedule listed in Item 14(a)(2) is presented for purposes of complying with the Securities and Exchange Commission rules and are not part of the basic financial statements. This schedule has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, fairly states in all material respects the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

ARTHUR ANDERSEN LLP

San Jose, California  
November 16, 2000

## BROCADE COMMUNICATIONS SYSTEMS, INC.

STATEMENTS OF OPERATIONS  
(IN THOUSANDS, EXCEPT PER SHARE DATA)

	FISCAL YEAR ENDED		
	OCTOBER 28, 2000	OCTOBER 31, 1999	OCTOBER 31, 1998
Net revenues	\$329,045	\$ 68,692	\$ 24,246
Cost of revenues	137,456	33,497	15,759
Gross margin	191,589	35,195	8,487
Operating expenses:			
Research and development	50,505	15,267	14,744
Sales and marketing	46,524	13,288	5,154
General and administrative	10,506	3,849	3,813
Amortization of deferred compensation	1,120	1,937	7
Total operating expenses	108,655	34,341	23,718
Income (loss) from operations	82,934	854	(15,231)
Interest income, net	5,382	1,737	120
Income (loss) before provision for income taxes	88,316	2,591	(15,111)
Provision for income taxes	20,385	106	--
Net income (loss)	\$ 67,931	\$ 2,485	\$(15,111)
Net income (loss) per share -- Basic	\$ 0.33	\$ 0.02	\$ (0.56)
Net income (loss) per share -- Diluted	\$ 0.28	\$ 0.01	\$ (0.56)
Shares used in per share calculation -- Basic	207,454	104,376	27,200
Shares used in per share calculation -- Diluted	242,504	204,584	27,200

The accompanying notes are an integral part of these financial statements.

## BROCADE COMMUNICATIONS SYSTEMS, INC.

BALANCE SHEETS  
(IN THOUSANDS, EXCEPT PAR VALUE)

## ASSETS

	OCTOBER 28, 2000	OCTOBER 31, 1999
	-----	-----
Current assets:		
Cash and cash equivalents	\$ 27,265	\$ 25,536
Short-term investments	127,774	63,769
	-----	-----
Total cash, cash equivalents and short-term investments	155,039	89,305
Marketable equity securities	49,251	--
Accounts receivable, net of allowances for doubtful accounts of \$2,970 and \$2,447, respectively	72,242	17,139
Inventories, net	1,361	3,686
Prepaid expenses and other current assets	5,462	2,197
	-----	-----
Total current assets	283,355	112,327
Property and equipment, net	38,769	4,947
Deferred tax assets	130,250	--
Other assets	2,805	6
	-----	-----
Total assets	\$455,179	\$117,280
	=====	=====
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 23,958	\$ 10,664
Accrued employee compensation	23,363	4,414
Deferred revenue	2,056	7,688
Other accrued liabilities	14,883	9,830
Current portion of capital lease obligations	42	478
	-----	-----
Total current liabilities	64,302	33,074
Commitments and contingencies (Note 4)		
Stockholders' equity:		
Preferred stock, \$0.001 par value 5,000 shares authorized, no shares outstanding	--	--
Common stock, \$0.001 par value, 400,000 shares authorized: Issued and outstanding: 222,559 and 214,080 shares at October 28, 2000 and October 31, 1999, respectively	223	214
Additional paid-in capital	306,868	119,486
Deferred stock compensation	(2,320)	(3,440)
Notes receivable from stockholders	--	(5,660)
Accumulated other comprehensive income (loss)	44,520	(49)
Accumulated earnings (deficit)	41,586	(26,345)
	-----	-----
Total stockholders' equity	390,877	84,206
	-----	-----
Total liabilities and stockholders' equity	\$455,179	\$117,280
	=====	=====

The accompanying notes are an integral part of these financial statements.

## BROCADE COMMUNICATIONS SYSTEMS, INC.

STATEMENTS OF STOCKHOLDERS' EQUITY  
(IN THOUSANDS)

	REDEEMABLE CONVERTIBLE PREFERRED STOCK			COMMON STOCK		ADDITIONAL PAID-IN CAPITAL	WARRANTS FOR COMMON STOCK	DEFERRED STOCK COMPENSATION
	SHARES	AMOUNT	WARRANTS	SHARES	AMOUNT			
Balances at October 31, 1997	8,370	\$ 30,359	\$ 648	39,304	\$ 39	\$ 385	\$ --	\$ (88)
Exercise of options	--	--	--	1,608	2	53	--	--
Compensation charges	--	--	--	--	--	1,067	--	88
Deferred compensation	--	--	--	--	--	307	--	(307)
Amortization of deferred compensation	--	--	--	--	--	--	--	7
Issuance of Series D Redeemable convertible preferred stock, net of issuance costs of \$98	865	4,902	--	--	--	--	--	--
Issuance of stock for notes receivable from stockholders	--	--	--	1,800	2	373	--	--
Stock in exchange for services	--	--	--	144	--	41	--	--
Repurchase of common stock	--	--	--	(1,296)	(1)	(43)	--	--
Net loss	--	--	--	--	--	--	--	--
Balances at October 31, 1998	9,235	35,261	648	41,560	42	2,183	--	(300)
Issuance of Series D Redeemable convertible preferred Stock, net	299	2,322	(326)	--	--	--	--	--
Conversion of Redeemable Convertible preferred Stock to common stock	(9,534)	(37,583)	(322)	117,000	117	37,466	322	--
Issuance of common stock	--	--	--	35,680	35	67,999	--	--
Issuance of stock for notes receivable from stockholders	--	--	--	18,816	19	6,393	--	--
Repayments on notes receivable from stockholders	--	--	--	--	--	--	--	--
Exercise of warrants for common stock	--	--	--	2,272	2	380	(322)	--
Compensation charges	--	--	--	--	--	80	--	--
Deferred compensation	--	--	--	--	--	5,077	--	(5,077)
Amortization of deferred compensation	--	--	--	--	--	--	--	1,937
Repurchase of common stock	--	--	--	(1,248)	(1)	(92)	--	--
Unrealized loss on marketable equity securities	--	--	--	--	--	--	--	--
Net income	--	--	--	--	--	--	--	--
Balances at October 31, 1999	--	--	--	214,080	214	119,486	--	(3,440)
Issuance of common stock	--	--	--	8,479	9	39,026	--	--
Repayments on notes receivable from stockholders	--	--	--	--	--	--	--	--
Tax benefits of employee stock transactions	--	--	--	--	--	148,356	--	--
Amortization of deferred compensation	--	--	--	--	--	--	--	1,120
Unrealized gain on marketable equity securities	--	--	--	--	--	--	--	--
Net income	--	--	--	--	--	--	--	--
Balances at October 28, 2000	--	\$ --	\$ --	222,559	\$223	\$306,868	\$ --	\$ (2,320)

	NOTES RECEIVABLE FROM STOCKHOLDERS	ACCUMULATED OTHER COMPREHENSIVE INCOME (LOSS)	ACCUMULATED EARNINGS (DEFICIT)	TOTAL STOCKHOLDERS' EQUITY (DEFICIT)	COMPREHENSIVE INCOME (LOSS)
Balances at October 31, 1997	\$ (75)	\$ --	\$(13,719)	\$(13,458)	\$ --
Exercise of options	--	--	--	55	--
Compensation charges	--	--	--	1,155	--
Deferred compensation	--	--	--	--	--
Amortization of deferred compensation	--	--	--	7	--
Issuance of Series D Redeemable convertible preferred stock, net of issuance costs of \$98	--	--	--	--	--
Issuance of stock for notes receivable from stockholders	(375)	--	--	--	--
Stock in exchange for services	--	--	--	41	--
Repurchase of common stock	--	--	--	(44)	--
Net loss	--	--	(15,111)	(15,111)	(15,111)
Balances at October 31, 1998	(450)	--	(28,830)	(27,355)	(15,111)
Issuance of Series D Redeemable convertible preferred Stock, net	--	--	--	--	--
Conversion of Redeemable Convertible preferred Stock to common stock	--	--	--	37,905	--
Issuance of common stock	--	--	--	68,034	--
Issuance of stock for notes receivable from stockholders	(6,412)	--	--	--	--

Repayments on notes receivable from stockholders	1,202	--	--	1,202	--
Exercise of warrants for common stock	--	--	--	60	--
Compensation charges	--	--	--	80	--
Deferred compensation	--	--	--	--	--
Amortization of deferred compensation	--	--	--	1,937	--
Repurchase of common stock	--	--	--	(93)	--
Unrealized loss on marketable equity securities	--	(49)	--	(49)	(49)
Net income	--	--	2,485	2,485	2,485
	-----	-----	-----	-----	-----
Balances at October 31, 1999	(5,660)	(49)	(26,345)	84,206	2,436
	=====	=====	=====	=====	=====
Issuance of common stock	--	--	--	39,035	--
Repayments on notes receivable from stockholders	5,660	--	--	5,660	--
Tax benefits of employee stock transactions	--	--	--	148,356	--
Amortization of deferred compensation	--	--	--	1,120	--
Unrealized gain on marketable equity securities	--	44,569	--	44,569	44,569
Net income	--	--	67,931	67,931	67,931
	-----	-----	-----	-----	-----
Balances at October 28, 2000	\$ --	\$44,520	\$ 41,586	\$390,877	\$112,500
	=====	=====	=====	=====	=====

The accompanying notes are an integral part of these financial statements.

## BROCADE COMMUNICATIONS SYSTEMS, INC.

STATEMENTS OF CASH FLOWS  
(IN THOUSANDS)

	FISCAL YEAR ENDED		
	OCTOBER 28, 2000	OCTOBER 31, 1999	OCTOBER 31, 1998
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net income (loss)	\$ 67,931	\$ 2,485	\$(15,111)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Tax benefits from employee stock option transactions	148,356	--	--
Deferred taxes	(130,250)	--	--
Depreciation, amortization and write-offs of property and equipment	6,876	3,693	2,374
Provision for doubtful accounts receivable	829	536	185
Noncash compensation expense	1,120	2,017	1,202
Changes in assets and liabilities:			
Accounts receivable	(55,932)	(14,245)	(969)
Inventories	2,325	(1,942)	(1,273)
Prepaid expenses and other assets	(3,265)	(1,819)	205
Accounts payable	13,294	7,417	(45)
Accrued employee compensation	18,949	3,786	154
Other accrued liabilities	5,053	7,397	1,682
Deferred revenue	(5,632)	7,145	9
Net cash provided by (used in) operating activities	69,654	16,470	(11,587)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Purchases of property and equipment	(40,698)	(3,317)	(3,775)
Purchases of short-term investments	(90,306)	(75,769)	--
Proceeds from disposition of short-term investments	26,619	12,000	15,920
Other investing activities	(7,799)	--	--
Net cash (used in) provided by investing activities	(112,184)	(67,086)	12,145
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from issuance of redeemable convertible preferred stock and warrants	--	1,996	4,902
Proceeds from issuance of common stock	39,035	67,952	12
Payments received from loans to stockholders	5,660	1,202	--
Line of credit borrowings	--	--	1,672
Line of credit repayments	--	(1,672)	(500)
Payments on capital lease obligations	(436)	(784)	(677)
Proceeds from notes payable	--	247	2,594
Repayments of notes payable	--	(3,209)	(693)
Net cash provided by financing activities	44,259	65,732	7,310
Net increase in cash and cash equivalents	1,729	15,116	7,868
Cash and cash equivalents, beginning of period	25,536	10,420	2,552
Cash and cash equivalents, end of period	\$ 27,265	\$ 25,536	\$ 10,420
Supplemental disclosure of cash flow information:			
Cash paid for interest	\$ 475	\$ 359	\$ 557
Cash paid for income taxes	\$ 26	\$ --	\$ --
Conversion of redeemable convertible preferred stock upon initial public offering	\$ --	\$ 37,905	\$ --
Issuance of stock for notes receivable from stockholders	\$ --	\$ 6,412	\$ 375

The accompanying notes are an integral part of these financial statements.



## BROCADE COMMUNICATIONS SYSTEMS, INC.

## NOTES TO FINANCIAL STATEMENTS

## 1. ORGANIZATION AND OPERATIONS OF BROCADE

Brocade Communications Systems, Inc. (Brocade) is the world's leading provider of storage area networking infrastructure solutions. The Brocade family of hardware and software products provides the networking foundation for storage area networks (SANs) and allows customers to connect servers with external storage devices through a SAN, creating a highly reliable and scalable environment for data-intensive storage applications. Brocade products are sold through OEM partners, system integrators, and resellers.

Brocade was incorporated on May 14, 1999 as a Delaware corporation and is the successor to operations originally begun on August 24, 1995. Brocade's headquarters are located in San Jose, California.

## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

## Fiscal Year

Brocade changed its fiscal year end to the last Saturday in October, beginning with the fiscal year ended October 28, 2000. This change did not have a material impact on Brocade's financial statements.

## Cash, Cash Equivalents and Short-term Investments

All highly liquid investment securities with original maturities of three months or less are considered cash equivalents, while investment securities with original maturities of more than three months but less than one year are considered short-term investments. Brocade's short-term investments consist of U.S. Treasuries and Federal Agency debt securities with original maturity dates between three months and one year. All cash equivalents and short-term investments are classified as available-for-sale. Unrealized holding gains and losses are included in Accumulated Other Comprehensive Income (Loss) in the accompanying balance sheets, net of any related tax effect. Realized gains and losses are included in interest income in the statement of operations and the cost of securities sold is based on the specific identification method.

## Marketable Equity Securities and Other Investments

Marketable equity securities consist of equity holdings in public companies and are classified as available-for-sale when there are no restrictions on Brocade's ability to immediately liquidate such securities. The fair value of marketable equity securities is determined using quoted market prices for those securities. Unrealized holding gains and losses are included in Accumulated Other Comprehensive Income (Loss) in the accompanying balance sheets, net of any related tax effect. Realized gains and losses are calculated based on the specific identification method and are included in interest income in the statement of operations.

Brocade also has certain other minority equity holdings in non-public companies. These investments are included in Other Assets and are carried at cost. Brocade monitors these investments for impairment and makes appropriate reductions in carrying values when necessary.

## Inventories, net

Inventories are stated at the lower of cost or market, using the first in, first out method. Inventory costs include material, labor and overhead. Deferred charges represent the product costs associated with product shipments that are recorded in deferred revenue. Inventories consisted of the following and are shown net of reserves for excess and obsolete inventory (in thousands):

	OCTOBER 28, 2000	OCTOBER 31, 1999
	-----	-----
Raw materials	\$ 352	\$ 878
Work-in-process	2	173
Finished goods, including deferred charges	1,007	2,635
	-----	-----
	<u>\$1,361</u>	<u>\$3,686</u>
	=====	=====

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

## Property and Equipment

Property and equipment are stated at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, generally three to four years. Leasehold improvements are amortized using the straight-line method over the shorter of the assets useful lives or the remaining term of the lease. Property and equipment consisted of the following (in thousands):

	OCTOBER 28, 2000	OCTOBER 31, 1999
	-----	-----
Computers and equipment	\$37,449	\$10,530
Furniture and fixtures	2,006	711
Leasehold improvements	8,517	--
Less: Accumulated depreciation and amortization	(9,203)	(6,294)
	-----	-----
	<u>\$38,769</u>	<u>\$ 4,947</u>
	=====	=====

Included in property and equipment at October 28, 2000, are assets acquired under capital lease obligations with a total cost and related accumulated amortization of approximately \$2.6 million each.

## Accrued Employee Compensation

Accrued employee compensation consists of accrued wages, commissions, bonuses, payroll taxes, vacation payable, payroll deductions for the employee stock purchase plan and other employee benefit payroll deductions.

## Other Accrued Liabilities

Other accrued liabilities consisted of the following (in thousands):

	OCTOBER 28, 2000	OCTOBER 31, 1999
	-----	-----
Accrued warranty	\$ 4,815	\$1,856
Purchase commitments reserve	1,572	3,629
Other	8,496	4,345
	-----	-----
	<u>\$14,883</u>	<u>\$9,830</u>
	=====	=====

## Concentrations

Financial instruments that potentially subject Brocade to concentrations of credit risk consist primarily of cash equivalents, short-term investments and accounts receivable. Brocade invests only in high credit quality, short-term debt instruments and limits the amount of credit exposure to any one entity. A majority of Brocade's trade receivable balance is derived from sales to original equipment manufacturers in the computer storage and server industry. At October 28, 2000, and October 31, 1999, approximately 70 percent and 74 percent of accounts receivable were concentrated with five and four customers, respectively. Brocade performs on going credit evaluations of its customers and generally does not require collateral on accounts receivable. Brocade has established reserves for credit losses and product sales returns.

In fiscal 2000, two customers accounted for a combined total of 49 percent of total revenues. In fiscal years 1999 and 1998, three and two customers accounted for combined totals of 70 percent and 83 percent of total revenues, respectively. The level of sales to any single customer may vary and the loss of any one of these customers, or a decrease in the level of sales to any one of these customers, could have a material adverse impact on Brocade's financial condition or results of operations.

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

Brocade currently relies on single and limited supply sources for several key components used in the manufacture of its products. Additionally, Brocade relies on a single third party manufacturer for the production of its products. The inability of Brocade's single and limited source suppliers or the inability of the third party manufacturer to fulfill supply and production requirements, respectively, could negatively impact future results.

Brocade's business is concentrated in the storage area networking industry. Accordingly, Brocade's future success depends upon the buying patterns of such customers and the continued demand by such customers for Brocade's products. Brocade's continued success will depend upon its ability to enhance its existing products and to develop and introduce, on a timely basis, new products and features that keep pace with technological developments and emerging industry standards.

#### Revenue Recognition

Product revenue is generally recognized when persuasive evidence of an arrangement exists, delivery has occurred, fee is fixed or determinable, and collectibility is probable. Brocade's only post-sales obligations are limited to product warranties. Revenue recognition is deferred for shipments to new customers where significant support services are required to successfully launch the customer's product. These revenues are recognized when the customer has successfully integrated and launched its products and Brocade has met its support obligations. Warranty costs, sales returns, and other allowances are accrued based on experience at the time of shipment. Deferred revenues at October 28, 2000, and October 31, 1999, were approximately \$2.1 million and \$7.7 million, respectively.

#### Warranty Expense

Brocade provides for estimated expenses for warranty obligations as revenue is recognized to the extent not covered by its third-party contract manufacturer.

#### Research and Development

Costs to develop Brocade's products are expensed as incurred in accordance with Statement of Financial Accounting Standards No. 2, "Accounting for Research and Development Costs." Costs related to internally developed software and software purchased for internal use are capitalized in accordance with Statement of Position 98-1, "Accounting for Costs of Computer Software Developed or Obtained for Internal Use." During fiscal 2000, Brocade implemented an enterprise-wide, integrated business information system. At October 28, 2000, approximately \$10.6 million in capitalized costs related to this system were included in property and equipment. These costs will be depreciated over a term of seven years.

#### Software Development Costs

In accordance with Statement of Financial Accounting Standards (SFAS) No. 86, "Accounting for the Costs of Computer Software to be Sold, Leased, or Otherwise Marketed," Brocade capitalizes eligible computer software development costs upon the establishment of technological feasibility, which it has defined as completion of designing, coding and testing activities. For the years ended October 28, 2000, and October 31, 1999 and 1998, the amount of costs eligible for capitalization, after consideration of factors such as realizable value, were not material and, accordingly, all software development costs have been charged to research and development expense in the accompanying statements of operations for all periods presented.

#### Impairment of Long-lived Assets

Long-lived assets to be held and used are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. Measurement of an

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

impairment loss for long-lived assets is based on the fair value of the asset and is reported at the lower of carrying amount or fair value less any costs to sell. During fiscal 2000, Brocade recognized impairments totaling \$6.5 million related to minority equity holdings in non-public companies which Brocade has accounted for under the cost method.

## Income Taxes

Income tax expense is based on pre-tax financial accounting income. Deferred tax assets and liabilities are recognized for the expected tax consequences of temporary differences between the tax bases of assets and liabilities and their reported amounts.

## Computation of Basic and Diluted Net Income (Loss) Per Share

Basic and diluted net income (loss) per common share are presented in conformity with Statement of Financial Accounting Standards No. 128, "Earnings Per Share," (SFAS 128), for all periods presented. Pursuant to Securities and Exchange Commission Staff Accounting Bulletin No. 98, common stock and convertible preferred stock issued or granted for nominal consideration prior to the anticipated effective date of an initial public offering must be included in the calculation of basic and diluted net income (loss) per common share as if such stock had been outstanding for all periods presented. To date, Brocade has not had any issuances or grants for nominal consideration.

In accordance with SFAS 128, basic net income (loss) per common share has been computed using the weighted average number of shares of common stock outstanding during the period, less shares subject to repurchase. Diluted net income (loss) per share is computed on the basis of the weighted average number of common shares and common equivalent shares outstanding during the period. Common equivalent shares result from the assumed exercise of outstanding stock options that have a dilutive effect when applying the treasury stock method. For the year ended October 31, 1998, Brocade excluded 156,050,504 shares from the calculation of diluted net loss per common share. These shares, which consisted of all convertible preferred stock, warrants for convertible preferred stock, outstanding stock options and shares subject to repurchase, were excluded because all such securities were antidilutive.

The following table presents the calculation of basic and diluted net income (loss) per common share (in thousands, except per share data).

	FISCAL YEAR ENDED		
	OCTOBER 28, 2000	OCTOBER 31, 1999	OCTOBER 31, 1998
Net income (loss)	\$ 67,931 =====	\$ 2,485 =====	\$(15,111) =====
Basic and diluted net income (loss) per share:			
Weighted average shares of common stock outstanding	218,368	121,056	41,392
Less: Weighted average shares subject to repurchase	(10,914)	(16,680)	(14,192)
Weighted average shares used in computing basic net income (loss) per share	207,454	104,376	27,200
Dilutive effect of common share equivalents	35,050	100,208	--
Weighted average shares used in computing diluted net income (loss) per share	242,504 =====	204,584 =====	27,200 =====
Basic net income (loss) per share	\$ 0.33 =====	\$ 0.02 =====	\$ (0.56) =====
Diluted net income (loss) per share	\$ 0.28 =====	\$ 0.01 =====	\$ (0.56) =====

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

## Stock-Based Compensation

Brocade accounts for its stock option plans and its Employee Stock Purchase Plan in accordance with the provisions of Accounting Principles Board Opinion 25, "Accounting for Stock Issued to Employees," (APB 25) whereby the difference between the exercise price and the fair value at the date of grant is recognized as compensation expense. In 1995, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation," (SFAS 123), which established a fair value based method of accounting for stock-based plans. Companies that elect to account for stock-based compensation plans in accordance with APB 25 are required to disclose the pro forma net income (loss) that would have resulted from the use of the fair value based method. Accordingly, pro forma disclosures required under SFAS 123 are included in Note 5.

## Stock Splits

On November 8, 1999, January 21, 2000, and November 29, 2000, Brocade's board of directors approved two-for-one splits of Brocade's Common Stock. The stock began trading on a split-adjusted basis on December 3, 1999, March 15, 2000, and December 22, 2000, respectively. All references in the accompanying financial statements and notes thereto to earnings per share and the number of common shares have been retroactively restated to reflect the common stock splits.

## Comprehensive Income (Loss)

Brocade's comprehensive income (loss) is comprised of net income (loss) and unrealized holding gains (losses) on marketable equity securities and short-term investments. Comprehensive income (loss) is reflected in the statement of stockholders' equity. Net unrealized holding gains on marketable equity securities and short-term investments were \$44.6 million for the year ended October 28, 2000. Accordingly, total comprehensive income for the year ended October 28, 2000, was \$112.5 million. Unrealized holding gains (losses) for all other periods presented are not material and accordingly, comprehensive income (loss) for all such periods approximates net income (loss).

## Use of Estimates in Preparation of Financial Statements

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting period. Such estimates relate to the useful lives of fixed assets, allowances for doubtful accounts and product returns, inventory and warranty reserves, accrued liabilities and other reserves. Actual results could differ materially from those estimates.

## Reclassifications

Certain information reported in previous years has been reclassified to conform to the current year presentation.

## Recent Accounting Pronouncements

In March 2000, the Financial Accounting Standards Board issued Financial Accounting Standards Board Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation -- an interpretation of APB Opinion 25," (Interpretation 44). Interpretation 44 was effective beginning in July 2000 and clarifies the application of APB Opinion 25 for certain matters, specifically (a) the definition of an employee for purposes of applying APB Opinion 25, (b) the criteria for determining whether a plan qualifies as a noncompensatory plan, (c) the accounting consequence of various modifications to the terms of a previously

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

fixed stock option award, and (d) the accounting for an exchange of stock compensation awards in a business combination. The adoption of Interpretation 44 did not have a material impact on Brocade's financial position or results of operations.

In December 1999, the Securities and Exchange Commission (SEC) issued Staff Accounting Bulletin No. 101, "Revenue Recognition in Financial Statements," (SAB 101), which provides guidance on the recognition, presentation, and disclosure of revenue in financial statements filed with the SEC. SAB 101 outlines the basic criteria that must be met to recognize revenue and provides guidance for disclosures related to revenue recognition policies. Management does not expect the adoption of SAB 101 to have a material impact on Brocade's financial position or results of operations.

In September 1999, the Financial Accounting Standards Board issued Emerging Issues Task Force Topic No. D-83, "Accounting for Payroll Taxes Associated with Stock Option Exercises" (EITF D-83). EITF D-83 requires that payroll taxes paid on the difference between the exercise price and the fair value of stock acquired in association with an employee's stock options be recorded as operating expenses. For the year ended October 28, 2000, Brocade expensed \$2.1 million in payroll taxes on stock option exercises.

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities," (SFAS 133), which provides a comprehensive and consistent standard for the recognition and measurement of derivatives and hedging activities. The statement is effective for fiscal years commencing after June 15, 2000. Brocade does not believe that SFAS 133 will have a material impact on earnings or financial condition.

## 3. FAIR VALUE OF FINANCIAL INSTRUMENTS

The cost and estimated fair value of Brocade's short-term investments, marketable equity securities, and other investments were as follows (in thousands):

	COST	UNREALIZED GAINS	UNREALIZED LOSSES	FAIR VALUE
	-----	-----	-----	-----
OCTOBER 28, 2000				
Short-term investments				
U.S. government obligations	\$127,456	\$ 355	\$37	\$127,774
Marketable equity securities	5,000	44,251	--	49,251
Other investments	2,805	--	--	2,805
	-----	-----	---	-----
Total	\$135,261	\$44,606	\$37	\$179,830
	=====	=====	===	=====
OCTOBER 31, 1999				
Short-term investments				
U.S. government obligations	\$ 63,818	\$ --	\$49	\$ 63,769
	=====	=====	===	=====

No gains or losses were realized on the sale of short-term investments or marketable equity securities during fiscal 2000 or fiscal 1999. Net unrealized holding gains of \$44.6 million for fiscal 2000, and net unrealized holding losses of \$49,000 for fiscal 1999, were included in Accumulated Other Comprehensive Income (Loss) in the accompanying balances sheets for the years ended October 28, 2000, and October 31, 1999, respectively.

## 4. COMMITMENTS AND CONTINGENCIES

Brocade leases its facilities under various operating lease agreements expiring through August 2010. In connection with these agreements Brocade has signed unconditional, irrevocable letters of credit for \$8.3 million as security for the leases. In addition to base rent, many of the operating lease agreements require that Brocade pay a proportional share of the respective facilities' operating expenses. Rent expense for the

## BROCADE COMMUNICATIONS SYSTEMS, INC.

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

years ended October 28, 2000, and October 31, 1999 and 1998, was \$4.1 million, \$1.3 million, and \$0.8 million, respectively.

Future minimum lease payments under all noncancelable operating leases at October 28, 2000 were as follows (in thousands):

FISCAL YEAR ENDED OCTOBER, -----	OPERATING LEASES -----
2001	\$ 12,555
2002	12,672
2003	12,981
2004	13,314
2005	13,658
Thereafter	62,201
	-----
Total minimum lease payments	\$127,381 =====

Brocade also leases various computers, office equipment and furniture under long-term lease agreements that are classified as capital leases. The leases expire through January 2001 and require a final buyout payment at the end of the lease term. At October 28, 2000, the total minimum lease payments under capital leases were \$42,000.

Brocade has entered into a manufacturing agreement with Solelectron Corporation under which Brocade provides to Solelectron a twelve-month product forecast and places purchase orders with Solelectron sixty calendar days in advance of the scheduled delivery of products to Brocade customers. Although Brocade purchase orders placed with Solelectron are cancelable, the terms of the agreement would require Brocade to purchase from Solelectron all material inventory not returnable or usable by other Solelectron customers. At October 28, 2000, Brocade's commitment to Solelectron for such material inventory was approximately \$22.2 million.

Brocade purchases several key components used in the manufacture of its products. At October 28, 2000, Brocade had non-cancelable purchase commitments for various such components totaling approximately \$16.4 million.

Brocade is subject to various legal proceedings, claims and litigation that arise in the normal course of business. While the outcome of these matters is currently not determinable, management does not expect these matters will have a material adverse effect on the financial position, results of operations or cash flows of Brocade.

#### 5. COMMON STOCK

##### Deferred Compensation

In connection with the grant of certain stock options to employees during the years ended October 31, 1999 and 1998, Brocade recorded deferred compensation of approximately \$5.1 million and \$307,000, respectively, representing the difference between the deemed value of the common stock for accounting purposes and the option exercise price of such options at the date of grant. Such amounts are presented as reductions of stockholders' equity and amortized ratably over the vesting period of the applicable options. Approximately \$1.1 million, \$1.9 million, and \$7,000 were expensed during the years ended October 28, 2000, October 31, 1999 and 1998, respectively. Deferred compensation expense is decreased in the period of forfeiture for any accrued but unvested compensation arising from the early termination of an option holder's services. No compensation expense related to any other periods presented has been recorded.

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

## 1999 Employee Stock Purchase Plan

In March 1999, the Board of Directors approved the adoption of Brocade's 1999 Employee Stock Purchase Plan (the "Purchase Plan"), and Brocade's shareholders approved the Purchase Plan in April 1999. The Purchase Plan permits eligible employees to purchase shares of Brocade's common stock through payroll deductions at 85 percent of the fair market value at certain plan-defined dates. The maximum number of shares of Brocade's common stock available for sale under the Purchase Plan is 1,600,000 shares, plus an annual increase to be added on the first day of Brocade's fiscal year, equal to the lesser of 20,000,000 shares, or 2.5 percent of the outstanding shares of common stock at such date. Accordingly, on October 29, 2000, 5,563,966 additional shares were made available for sale under the Purchase Plan. During fiscal 2000, 603,658 shares were issued under the Purchase Plan. No shares were issued during fiscal 1999. At October 28, 2000, 6,560,308 shares were available for future issuance under the Purchase Plan.

## 1999 Stock Plan

In March 1999, the Board of Directors approved Brocade's 1999 Stock Plan (the "1999 Plan") and Brocade's shareholders approved the 1999 Plan in April 1999. The 1999 Plan provides for the grant of incentive stock options and/or nonstatutory stock options to employees. Per the terms of the 1999 Plan, the maximum number of shares of Brocade's common stock available for sale under the 1999 Plan is 60,856,000 shares, plus an annual increase to be added on the first day of Brocade's fiscal year, equal to the lesser of 40,000,000 shares, or 5 percent of the outstanding shares of common stock at such date. Accordingly, on October 29, 2000, 11,127,934 additional shares were made available for sale under the 1999 Plan. At October 28, 2000, Brocade had reserved 36,660,404 shares of authorized but unissued shares of common stock for future issuance under the 1999 Plan. Of this amount, 25,246,514 shares were outstanding and 11,413,890 shares were available for future grants.

## 1999 Director Option Plan

In March 1999, the Board of Directors approved the 1999 Director Option Plan (the "Director Plan") and Brocade's shareholders approved the Director Plan in April 1999. The Director Plan provides for the grant of common stock to non-employee directors. At October 28, 2000, Brocade had reserved 1,600,000 shares of authorized but unissued shares of common stock for future issuance under the Director Plan. Of this amount, 160,000 shares were outstanding and 1,440,000 shares were available for future grants.

## 1999 Nonstatutory Stock Option Plan

In September 1999, the Board of Directors approved Brocade's 1999 Nonstatutory Stock Option Plan (the "NSO Plan"). The NSO Plan provides for the grant of nonstatutory stock options to employees and consultants. A total of 28,400,000 shares of common stock have been reserved for issuance under the NSO Plan. At October 28, 2000, Brocade had reserved 27,851,396 shares of authorized but unissued shares of common stock for future issuance under the NSO Plan. Of this amount, 19,464,192 shares were outstanding and 8,387,204 shares were available for future grants.

## Stock Options

Brocade, under the various stock option plans (the "Plans") discussed above, grants stock options for shares of common stock to employees, directors and consultants. In accordance with the Plans, the stated exercise price shall not be less than 85 percent of the estimated fair market value of common stock on the date of grant. Incentive Stock Options (ISOs) may not be granted at less than 100 percent of the estimated fair market value of the common stock and stock options granted to a person owning more than 10 percent of the combined voting power of all classes of stock of Brocade must be issued at 110 percent of the fair market value of the stock on the date of grant. The Plans provide that the options shall be exercisable over a period not to



## BROCADE COMMUNICATIONS SYSTEMS, INC.

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

exceed ten years and generally vest over a period of four years. At October 28, 2000, Brocade had reserved 66,111,800 shares of authorized but unissued shares of common stock for future issuance under all of the Plans. Of this amount, 44,870,706 shares were outstanding and 21,241,094 shares were available for future grants.

The following table summarizes stock option plan activity under all of the Plans:

	FISCAL YEAR ENDED OCTOBER 28, 2000		FISCAL YEAR ENDED OCTOBER 31, 1999		FISCAL YEAR ENDED OCTOBER 31, 1998	
	SHARES	WEIGHTED AVERAGE EXERCISE PRICE	SHARES	WEIGHTED AVERAGE EXERCISE PRICE	SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Outstanding at beginning of year	23,462,448	\$ 4.70	28,183,312	\$0.23	8,441,336	\$0.04
Granted	30,755,320	\$47.78	21,424,096	\$5.22	25,239,296	\$0.28
Exercised	(7,872,862)	\$ 4.60	(24,605,472)	\$0.32	(3,404,560)	\$0.13
Cancelled	(1,474,200)	\$32.30	(1,539,488)	\$0.24	(2,092,760)	\$0.13
Outstanding at end of year	44,870,706	\$33.24	23,462,448	\$4.70	28,183,312	\$0.23
Exercisable at end of year	3,417,698	\$ 7.50	1,799,016	\$0.22	3,726,456	\$0.19

The following table summarizes information about stock options outstanding and exercisable at October 28, 2000:

OPTIONS OUTSTANDING				OPTIONS EXERCISABLE	
OCTOBER 28, 2000 RANGE OF EXERCISE PRICES	NUMBER	WEIGHTED AVERAGE REMAINING YEARS	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER	WEIGHTED AVERAGE EXERCISE PRICE
\$ 0.03 - \$ 0.63	9,117,466	7.69	\$ 0.34	2,194,990	\$ 0.29
\$ 0.88 - \$ 30.72	9,204,554	8.80	\$16.71	988,738	\$16.77
\$32.13 - \$ 40.00	10,212,648	9.11	\$34.07	211,060	\$32.15
\$40.02 - \$ 55.50	9,130,608	9.39	\$45.20	5,336	\$44.42
\$58.38 - \$105.19	7,205,430	9.63	\$79.63	17,574	\$72.94
\$ 0.03 - \$105.19	44,870,706	8.90	\$33.24	3,417,698	\$ 7.50

At October 28, 2000, 8,894,988 shares issued upon exercise of stock options with a weighted-average exercise price of \$0.36 per share were subject to repurchase by Brocade.

SFAS 123 requires disclosure of pro forma information regarding option grants made to employees based on specified valuation techniques that produce estimated compensation expense. Had compensation expense been determined under the provisions of SFAS 123, net income (loss) would have decreased or increased, respectively, to the following pro forma amounts, (in thousands except per share data):

	FISCAL YEAR ENDED		
	OCTOBER 28, 2000	OCTOBER 31, 1999	OCTOBER 31, 1998
Net income (loss) as reported	\$ 67,931	\$ 2,485	\$(15,111)
Net income (loss) Pro Forma	\$(172,331)	\$(1,933)	\$(15,522)
Basic earnings (loss) per share			
As reported	\$ 0.33	\$ 0.02	\$ (0.56)
Pro Forma	\$ (0.83)	\$ (0.02)	\$ (0.57)
Diluted earnings (loss) per share			
As reported	\$ 0.28	\$ 0.01	\$ (0.56)
Pro Forma	\$ (0.83)	\$ (0.02)	\$ (0.57)

## BROCADE COMMUNICATIONS SYSTEMS, INC.

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

The fair value of each option grant is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions for each respective fiscal year ended:

	EMPLOYEE STOCK OPTION PLANS			EMPLOYEE STOCK PURCHASE PLANS		
	OCTOBER 28, 2000	OCTOBER 31, 1999	OCTOBER 31, 1998	OCTOBER 28, 2000	OCTOBER 31, 1999	OCTOBER 31, 1998
Expected dividend yield	0.0%	0.0%	0.0%	0.0%	*	*
Risk-free interest rate	5.4 - 5.9%	5.0 - 5.3%	5.6 - 5.9%	6.0%	*	*
Expected volatility	93.4%	60.0%	0.0001%	80.3%	*	*
Expected life from vest date (in years)	0.5	0.5	0.5	0.5	*	*

- - - - -  
\* Not applicable

The Black-Scholes option-pricing model was developed for use in estimating the fair value of traded options that have no vesting restrictions and are fully transferable. In addition, option-pricing models require the input of highly subjective assumptions, including the expected stock price volatility. Because Brocade's employee stock options have characteristics significantly different from those of traded options, and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable single measure of the fair value of Brocade's options. Based upon the above assumptions, the weighted-average fair value of employee stock options granted during fiscal years 2000, 1999, and 1998, were \$30.82, \$2.42, and \$0.04 per share, respectively.

## 6. INCOME TAXES

Brocade accounts for income taxes pursuant to Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes," (SFAS 109). The provision for (benefit from) income taxes consisted of the following (in thousands):

	FISCAL YEAR ENDED	
	OCTOBER 28, 2000	OCTOBER 31, 1999
Federal:		
Current	\$27,458	\$ 393
Deferred	(8,684)	(323)
	18,774	70
State:		
Current	8,098	1,516
Deferred	(6,487)	(1,480)
	1,611	36
Total provision for income taxes	\$20,385	\$ 106

## BROCADE COMMUNICATIONS SYSTEMS, INC.

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

The difference between the U.S. Federal statutory rate and Brocade's income tax provision for financial statement purposes consisted of the following:

	FISCAL YEAR ENDED	
	OCTOBER 28, 2000	OCTOBER 31, 1999
	-----	-----
Provision for income taxes at statutory rate	35.0%	35.0%
State taxes, net of federal benefit	6.2	5.7
Losses for which no tax benefit recognized	--	(73.8)
Stock compensation not deductible for tax	0.4	31.7
NOL and credit carryforwards	(6.9)	--
Release of valuation allowance	(10.8)	--
Other	(0.8)	5.4
	-----	-----
Provision for income taxes	23.1%	4.0%
	=====	=====

The components of net deferred tax assets are as follows (in thousands):

	OCTOBER 28, 2000	OCTOBER 31, 1999
	-----	-----
Net operating loss carryforwards	\$107,166	\$ 16,300
Tax credit carryforwards	7,914	2,000
Capitalized startup costs	390	200
Reserves and accruals	10,274	7,900
Capitalized research expenditures	4,506	1,400
	-----	-----
Total deferred tax assets	130,250	27,800
Less: Valuation allowance	--	(27,800)
	-----	-----
Net deferred tax assets	\$130,250	\$ --
	=====	=====

As of October 28, 2000, Brocade had federal net operating loss carryforwards of approximately \$275.2 million and state net operating loss carryforwards of approximately \$75.4 million. The federal net operating loss and other tax credit carryforwards expire on various dates between 2010 through 2029. The state net operating loss carryforwards will expire beginning in 2003. Under current tax law, net operating loss and credit carryforwards available to offset future income in any given year may be limited upon the occurrence of certain events, including significant changes in ownership interests.

Brocade's income taxes payable for federal, state, and foreign purposes have been reduced and the deferred tax assets increased by the tax benefits associated with employee stock options. The benefits were credited directly to stockholders' equity and amounted to \$148.4 million for fiscal 2000. Benefits reducing taxes payable amounted to \$33.3 million and benefits increasing gross deferred tax assets amounted to \$115.1 million in fiscal 2000.

#### 7. RELATED PARTY TRANSACTIONS

During fiscal years 1999 and 1998, Brocade sold 4.7 million and 450,000 shares, respectively, of its common stock to officers and a director of Brocade in consideration for full recourse promissory notes in the aggregate amount of \$6.8 million. Should the officers terminate employment, the shares are subject to a right of repurchase by Brocade that lapses over a four-year period. At October 28, 2000, all such promissory notes had been repaid in full and there were no outstanding balances.

During fiscal 2000, total revenues to companies in which Brocade holds minority investments were approximately \$13.1 million, and outstanding accounts receivable balances were approximately \$2.7 million at

## NOTES TO FINANCIAL STATEMENTS (CONTINUED)

October 28, 2000. Sales transactions with such companies were no more favorable than those with unrelated parties.

## 8. SEGMENT INFORMATION

Brocade is organized and operates as one operating segment; the design, development, manufacturing, marketing and selling of Fiber Channel switching solutions for SANs. Brocade's Chief Executive Officer is the Chief Operating Decision Maker (CODM), as defined by SFAS 131. The CODM allocates resources and assesses the performance of Brocade based on revenues and overall profitability. Revenues are attributed to geographic areas based on the location of the customer to which product is shipped. Domestic revenues include sales to certain OEM customers who then distribute to their international customers. To date, service revenues have not been significant.

In fiscal 2000, two customers accounted for 31 percent and 18 percent of total revenues, respectively. In fiscal 1999, three customers accounted for 34 percent, 26 percent, and 10 percent of total revenues, respectively, and in fiscal 1998, two customers accounted for 72 percent and 11 percent, respectively. The level of sales to any customer may vary from quarter to quarter and Brocade expects that significant customer concentration will continue for the foreseeable future. The loss of any one of these customers, or a decrease in the level of sales to any one of these customers, could have a material adverse impact on Brocade's financial condition or results of operations.

During fiscal 2000 Brocade expanded its international sales activities. Geographic information for the year ended October 28, 2000 is presented below (in thousands). For the years ended October 31, 1999, and 1998, international revenues were not material. Identifiable assets located in foreign countries were not material at October 28, 2000, and October 31, 1999, and 1998.

	FISCAL YEAR ENDED OCTOBER 28, 2000 NET REVENUES
	-----
North America (principally the United States)	\$257,690
EMEA	69,217
Asia Pacific	2,138
	-----
Total	\$329,045
	=====

## 9. SUBSEQUENT EVENTS (UNAUDITED)

In December 2000, Brocade entered into an agreement to lease approximately 195,000 additional square feet of office, laboratory, and administrative space in San Jose, California. The lease expires November 30, 2013, and represents an additional commitment of approximately \$11.6 million per year to Brocade. Brocade intends to occupy the space in December 2001 and sub-lease any excess space, if possible, to offset the rental expense. In connection with this lease agreement, Brocade signed an unconditional, irrevocable letter of credit for \$10.4 million as security for the lease.

Subsequent to October 28, 2000, the fair market value of Brocade's marketable equity securities declined. At January 24, 2001, the fair market value of Brocade's marketable equity securities was approximately \$29.2 million.

## ITEM 9.CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

## PART III

Certain information required by Part III is incorporated by reference from Brocade's definitive Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for Brocade's 2001 Annual Meeting of Stockholders to be held on April 4, 2001 (the "Proxy Statement").

## ITEM 10.DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT

Item 405 of Regulation S-K calls for disclosure of any known late filing or failure by an insider to file a report required by Section 16 of the Exchange Act. This disclosure is contained in the section entitled "Section 16(a) Beneficial Ownership Reporting Compliance" in the Proxy Statement and is incorporated by reference, herein.

## EXECUTIVE OFFICERS AND DIRECTORS

The following table sets forth certain information regarding our executive officers and directors as of December 31, 2000:

NAME ----	AGE ---	POSITION -----
Gregory L. Reyes	38	President, Chief Executive Officer and Director
Paul R. Bonderson, Jr.	48	Vice President, Engineering
Michael J. Byrd	40	Vice President and Chief Financial Officer
Victor M. Rinkle	48	Vice President, Operations
Charles W. Smith	39	Vice President, OEM Sales
David A. Smith	44	Vice President, Service, Support and SAN Integration
Jack Cuthbert	46	Vice President, Worldwide Sales, Marketing and Support
Seth D. Neiman(1)	46	Chairman of the Board
Neal Dempsey(1)(2)	59	Director
Mark Leslie(2)	56	Director
Larry W. Sonsini	59	Director

(1) Member of audit committee.

(2) Member of compensation committee.

Gregory L. Reyes has served as our President and Chief Executive Officer and a member of our board of directors since July 1998. From January 1995 to November 1997, Mr. Reyes served as Chairman of the board of directors, and from January 1995 to June 1998, served as President and Chief Executive Officer of Wireless Access, Inc., a wireless data communications products company. From January 1991 to January 1995, Mr. Reyes served as Divisional Vice President and general manager of Norand Data Systems, a data collection company. Mr. Reyes also serves as a director of Proxim, Inc., a wireless networking company. Mr. Reyes received a B.S. in Economics and Business Administration from Saint Mary's College in Moraga, California.

Paul R. Bonderson, Jr. co-founded Brocade in August 1995 and has served as Vice President, Engineering since August 1995. From March 1986 to August 1995, Mr. Bonderson held several engineering positions at Sun Microsystems, Inc., most recently as Director of Engineering. Mr. Bonderson received a B.S. in Electrical Engineering from California Polytechnic State University, San Luis Obispo.

Michael J. Byrd joined Brocade in April 1999 and became our Vice President, Finance and Chief Financial Officer effective May 3, 1999. From February 1994 to April 1999, Mr. Byrd served as Vice

President, Finance and Chief Financial Officer of Maxim Integrated Products, Inc., a designer, developer and manufacturer of linear and mixed-signal integrated circuits. From 1982 to 1994, Mr. Byrd held various positions at Ernst & Young, most recently as Partner. Mr. Byrd received a B.S. in Business Administration from California Polytechnic State University, San Luis Obispo.

Victor M. Rinkle has served as our Vice President, Operations since January 1998. From April 1989 to December 1997, Mr. Rinkle held several managerial positions at Apple Computer, Inc., most recently as Vice President, Global Supply Base Management. Mr. Rinkle received a B.B.A. in Marketing and Production Logistics from the University of Houston.

Charles W. Smith has served as our Vice President, OEM Sales since November 2000, and Vice President, Worldwide Sales since February 1997. From June 1996 to February 1997, Mr. Smith served as Director, Corporate Account Sales at IBM. From July 1990 to February 1996, Mr. Smith held various senior sales management positions at Conner Peripherals, Inc., a storage solutions company, most recently as Vice President, US Sales, Western Region. Mr. Smith received an A.S. in Aeronautics and Business from the College of San Mateo and a B.S. in Business Management from San Jose State University.

David A. Smith has served as our Vice President, Service, Support and SAN Integration since January 2000. From 1991 to January 2000, Mr. Smith held various positions at BMC Software, Inc., a provider of enterprise software solutions for applications and network management, most recently Vice President, Worldwide Support Services.

Jack Cuthbert has served as our Vice President, Worldwide Sales, Marketing and Support since November 2000, and Vice President, Worldwide Marketing since April 2000. He was Vice President North American Sales from October 1999 to April 2000, and was Director, Channel Sales from June 1998 to October 1999. From November 1996 to June 1998, Mr. Cuthbert served as Vice President, North American Sales at Macromedia, Inc., an Internet software development company. From July 1986 to July 1996, Mr. Cuthbert held various positions at SGI, a producer of visual computing systems, most recently Director, North American Channels. Mr. Cuthbert received a B.Sc. in Physics from the University of Waterloo in Canada and a M.S. in Engineering Physics from McMaster University in Canada.

Seth D. Neiman has served as Chairman of the board of directors of Brocade since August 1995. Mr. Neiman formerly served as our Chief Executive Officer from August 1995 to June 1996. Since August 1994, Mr. Neiman has held various positions at Crosspoint Venture Partners, a venture capital firm, and has been a partner of Crosspoint since January 1996. From September 1991 to July 1994, Mr. Neiman was Vice President of Engineering at Coactive Networks, a local area networks company. Mr. Neiman also serves on the boards of directors and compensation committees of numerous private companies. Mr. Neiman received a B.A. in Philosophy from Ohio State University.

Neal Dempsey has served as a director of Brocade since December 1996. Since May 1989, Mr. Dempsey has been a General Partner of Bay Partners, a venture capital firm. Mr. Dempsey also serves on the boards of directors and compensation committees of numerous private companies. Mr. Dempsey received a B.A. in Business from the University of Washington.

Mark Leslie has served as a director of Brocade since January 1999. Mr. Leslie currently serves as the Chairman of the board of directors of VERITAS Software Corporation, a storage management software company. From February 1990 to November 2000, Mr. Leslie served as Chief Executive Officer and a member of the board of directors of VERITAS Software Corporation. Mr. Leslie also serves on the board of directors and audit and compensation committees of Keynote Systems, Inc., as well as on the boards of directors of several private companies. Mr. Leslie received a B.A. in Physics and Mathematics from New York University.

Larry W. Sonsini has served as a director of Brocade since January 1999. Mr. Sonsini has been a partner of the law firm of Wilson Sonsini Goodrich & Rosati, P.C., since 1973 and is currently the Chairman and Chief Executive Officer of the firm. Mr. Sonsini serves on the boards of directors of Commerce One, Inc., Echelon Corporation, Lattice Semiconductor Corporation, LSI Logic, Inc., Novell, Inc., Pixar, and Tibco Software, Inc. as well as on the boards of directors of several private companies. Mr. Sonsini received an A.B.

from the University of California, Berkeley and an L.L.B. from Boalt Hall School of Law, University of California, Berkeley.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this section is incorporated by reference from the information in the section entitled "Executive Compensation and Other Matters" in the Proxy Statement.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The information required by this section is incorporated by reference from the information in the section entitled "Security Ownership of Certain Beneficial Owners and Management" in the Proxy Statement.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The information required by this section is incorporated by reference from the information in the section entitled "Certain Relationships and Related Transactions" in the Proxy Statement.

PART IV

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a) The following documents are filed as part of this Form 10-K

(1) FINANCIAL STATEMENTS:

Reference is made to the Index to Financial Statements of Brocade Communications Systems, Inc. under Item 8 in Part II of this Form 10-K.

(2) FINANCIAL STATEMENT SCHEDULES:

The following financial statement schedule of Brocade Communications Systems, Inc. for the years ended October 28, 2000, October 31, 1999, and October 31, 1998, is filed as part of this Annual Report and should be read in conjunction with the Financial Statements of Brocade Communications Systems, Inc.

Schedule II -- Valuation and Qualifying  
Accounts Page 47

(3) EXHIBITS:

The exhibits listed below are required by Item 601 of Regulation S-K. Each management contract or compensatory plan or arrangement required to be filed as an exhibit to this Form 10-K has been identified.

EXHIBIT NUMBER -----	DESCRIPTION OF DOCUMENT -----
3.1	Amended and Restated Certificate of Incorporation.
3.2(1)	Bylaws of the Registrant.
4.1(1)	Form of Registrant's Common Stock certificate.
10.1(1)	Form of Indemnification Agreement entered into between Brocade and each of its directors and executive officers.
10.2(1)*	1995 Equity Incentive Plan and forms of agreements thereunder.
10.3(1)*	1998 Equity Incentive Plan and forms of agreements thereunder.
10.4(1)*	1998 Executive Equity Incentive Plan and forms of agreements thereunder.
10.5(2)*	1999 Director Option Plan and form of agreement thereunder.
10.6(3)*	1999 Employee Stock Purchase Plan.
10.7(3)*	1999 Stock Plan and forms of agreements thereunder.
10.8(3)*	1999 Nonstatutory Stock Option Plan and forms of agreements thereunder.

EXHIBIT NUMBER -----	DESCRIPTION OF DOCUMENT -----
10.9(1)	Sublease between Symmetricom, Inc. and Brocade dated May 6, 1997.
10.10(1)	Master Equipment Lease Agreement between Venture Lending & Leasing, Inc. and Brocade dated September 5, 1996.
10.11(1)#	Master Purchase Agreement between Dell Products L.P. and Brocade dated November 1, 1998.
10.12(1)#	Purchase Agreement between Sequent Computer Systems, Inc. and Brocade.
10.13(1)#	Supplement No. 1 to Purchase Agreement between Sequent Computer Systems, Inc. and Brocade dated September 26, 1997.
10.14(1)#	OEM Agreement between Storage Technology Corporation and Brocade dated May 1, 1998.
10.15(1)#	Acknowledgement between Wind River Systems, Inc. and Brocade dated April 22, 1999.
10.16(1)*	Confidential Agreement and General Release of Claims between Bruce J. Bergman, The Bergman Family Trust and Brocade dated September 23, 1998.
10.17(1)*	Letter Agreement with Michael J. Byrd dated April 5, 1999.
10.18(1)#	OEM and License Agreement between McDATA Corporation and Brocade dated April 27, 1999.
10.19(4)#	Volume Pricing Agreement between Data General Corporation and Brocade dated October 1, 1998.
10.20(4)#	Manufacturing Agreement between Solelectron California Corporation and Brocade dated July 30, 1999.
10.21(4)	Master Lease Agreement between Spieker Properties and Brocade dated December 17, 1999.
10.22	First Amendment to Lease between Spieker Properties and Brocade dated February 16, 2000.
10.23	Second Amendment to Lease between Spieker Properties and Brocade dated August 11, 2000.
10.24(5)	Credit Agreement between Comerica Bank-California and Brocade dated January 5, 2000.
10.25	First Amendment to Credit Agreement between Comerica Bank-California and Brocade dated March 21, 2000.
10.26	Second Amendment to Credit Agreement between Comerica Bank-California and Brocade dated September 20, 2000.
10.27	Master Lease Agreement between Spieker Properties and Brocade dated July 26, 2000.
10.28#	Purchase Agreement between Compaq Computer Corporation and Brocade dated February 1, 2000.
10.29#	Purchase Agreement between EMC Corporation and Brocade dated January 25, 2000.
10.30*	Promissory Note between David A. Smith and Brocade dated April 27, 2000.
23.1	Consent of Arthur Andersen LLP, Independent Public Accountants.
24.1	Power of attorney (see signature page).



-----  
\* Indicates management contract or compensatory plan or arrangement required to be filed as an exhibit pursuant to Item 14(c) of Form 10-K.

# Confidential treatment requested as to certain portions, which portions are omitted and filed separately with the Securities and Exchange Commission.

- (1) Incorporated by reference from Brocade's Registration Statement on Form S-1 (Reg. No. 333-74711), as amended.
- (2) Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-85187) filed on August 13, 1999.
- (3) Incorporated by reference from Brocade's Registration Statement on Form S-8 (Reg. No. 333-95653) filed on January 28, 2000.
- (4) Incorporated by reference from Brocade's Annual Report on Form 10-K for the fiscal year ended October 31, 1999, as amended.
- (5) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended January 29, 2000.

(b) REPORTS ON FORM 8-K

None.

## SCHEDULE II

## VALUATION AND QUALIFYING ACCOUNTS

YEARS ENDED OCTOBER 28, 2000, OCTOBER 31, 1999 AND 1998  
(IN THOUSANDS)

DESCRIPTION -----	BALANCE AT BEGINNING OF PERIOD -----	ADDITIONS CHARGED TO COSTS AND EXPENSES -----	DEDUCTIONS -----	BALANCE AT END OF PERIOD -----
Allowance for doubtful accounts:				
2000	\$ 818	\$ 829	\$(294)	\$1,353
1999	278	596	(56)	818
1998	100	178	--	278
Sales returns and allowances:				
2000	\$1,629	\$ 268	\$(280)	\$1,617
1999	7	1,622	--	1,629
1998	--	7	--	7

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on January 26, 2001.

Brocade Communications Systems, Inc.

By: /s/ GREGORY L. REYES

-----  
 Gregory L. Reyes  
 President, Chief Executive Officer,  
 and Director  
 January 26, 2001

## POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Gregory L. Reyes and Michael J. Bird, and each of them, his true and lawful attorneys-in-fact, each with full power of substitution, for him in any and all capacities, to sign any amendments to this report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact or their substitute or substitutes may do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the date indicated:

SIGNATURE -----	TITLE -----	DATE ----
/s/ GREGORY L. REYES ----- Gregory L. Reyes	President, Chief Executive Officer, and Director (Principal Executive Officer)	January 26, 2001
/s/ MICHAEL J. BYRD ----- Michael J. Byrd	Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	January 26, 2001
/s/ SETH D. NEIMAN ----- Seth D. Neiman	Chairman of the Board	January 26, 2001
/s/ NEAL DEMPSEY ----- Neal Dempsey	Director	January 26, 2001
/s/ MARK LESLIE ----- Mark Leslie	Director	January 26, 2001
/s/ LARRY W. SONSINI ----- Larry W. Sonsini	Director	January 26, 2001

## EXHIBIT INDEX

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- (5) Incorporated by reference from Brocade's Quarterly Report on Form 10-Q for the fiscal quarter ended January 29, 2000.

## AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

BROCADE COMMUNICATIONS SYSTEMS, INC.

Brocade Communications Systems, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

A. The name of the corporation is Brocade Communications Systems, Inc. The corporation was originally incorporated under the same name and the original Certificate of Incorporation of the corporation was filed with the Secretary of State of the State of Delaware on February 11, 1999.

B. This Certificate of Incorporation has been duly adopted in accordance with the provisions of the General Corporation Law of the State of Delaware by the Board of Directors and the Stockholders of the corporation.

C. Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, this Certificate of Incorporation restates and integrates and further amends the provisions of the Certificate of Incorporation of this corporation.

D. The text of the Certificate of Incorporation is hereby amended and restated in its entirety to read as follows:

## ARTICLE I

The name of the corporation is Brocade Communications Systems, Inc. (the "Company")

## ARTICLE II

The address of the Company's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, Delaware 19801, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

## ARTICLE III

The nature of the business or purposes to be conducted or promoted by the Company is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

## ARTICLE IV

1. Authorized Capital. The Company is authorized to issue two classes of shares of stock to be designated, respectively, Common Stock, \$.001 par value and Preferred Stock, \$0.001 par value. The total number of shares that the Company is authorized to issue is 405,000,000. The number of shares of Common Stock authorized is 400,000,000. The number of shares of Preferred Stock authorized is 5,000,000. The Preferred Stock may be issued from time to time in one or more series pursuant to a resolution or resolutions providing for such issue duly adopted by the Board of Directors (authority to do so being hereby expressly vested in the Board). The Board of Directors is further authorized to determine or alter the rights, preferences, privileges and restrictions granted to or imposed upon any wholly unissued series of Preferred Stock and to fix the number of shares of any series of Preferred Stock and the designation of any such series of Preferred Stock. The Board of Directors, within the limits and restrictions stated in any resolution or resolutions of the Board of Directors originally fixing the number of shares constituting any series, may increase or decrease (but not below the number of shares in any such series then outstanding), the number of shares of any series subsequent to the issue of shares of that series.

## ARTICLE V

The Company is to have perpetual existence.

## ARTICLE VI

Elections of directors need not be by written ballot unless a stockholder demands election by written ballot at the meeting and before voting begins or unless the Bylaws of the Company shall so provide.

## ARTICLE VII

1. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which constitute the whole Board of Directors of the Company shall be designated in the Bylaws of the Company.

2. The Board of Directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors. At the first annual meeting of stockholders following the date hereof, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of

stockholders following the date hereof, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the date hereof, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

3. Notwithstanding the foregoing provisions of this Article, each director shall serve until his or her successor is duly elected and qualified or until his or her death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

4. Any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal, or other causes shall be filled by either (i) the affirmative vote of the holders of a majority of the voting power of the then-outstanding shares of voting stock of the corporation entitled to vote generally in the election of directors ("Voting Stock") voting together as a single class; or (ii) by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors. Newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such newly created directorship shall be filled by the stockholders, be filled only by the affirmative vote of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the class of directors in which the new directorship was created or the vacancy occurred and until such director's successor shall have been elected and qualified.

5. The affirmative vote of sixty-six and two-thirds percent (66-2/3%) of the voting power of the then outstanding shares of Voting Stock, voting together as a single class, shall be required for the adoption, amendment or repeal of the following sections of the Company's Bylaws by the stockholders of this corporation: 2.2 (Annual Meeting) and 2.3 (Special Meeting).

6. No action shall be taken by the stockholders of the Company except at an annual or special meeting of the stockholders called in accordance with the Bylaws.

7. Any director, or the entire Board of Directors, may be removed from office at any time (i) with cause by the affirmative vote of the holders of at least a majority of the voting power of all of the then-outstanding shares of the Voting Stock, voting together as a single class; or (ii) without cause by the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the Voting Stock.

#### ARTICLE VIII



Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Voting Stock required by law, this Certificate of Incorporation or any Preferred Stock Designation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the Voting Stock, voting together as a single class, shall be required to alter, amend or repeal ARTICLE VII or this ARTICLE VIII.

#### ARTICLE IX

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in ARTICLE VIII of this Certificate, and all rights conferred upon the stockholders herein are granted subject to this right.

#### ARTICLE X

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, alter, amend or repeal the Bylaws of the Company.

#### ARTICLE XI

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Company shall be indemnified by the Company or its stockholders for monetary damages for breach of fiduciary duty as a director.

2. The Company shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director, officer or employee of the Company or any predecessor of the Company or serves or served at any other enterprise as a director, officer or employee at the request of the Company or any predecessor to the Company.

3. Neither any amendment nor repeal of this Article XI, nor the adoption of any provision of this Company's Certificate of Incorporation inconsistent with this Article XI, shall eliminate or reduce the effect of this Article XI, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article XI, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

#### ARTICLE XII

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Company may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Company.

ARTICLE XIII

Advance notice of new business and stockholder nominations for the election of directors shall be given in the manner and to the extent provided in the Bylaws of the Company.

IN WITNESS WHEREOF, the Company has caused this Certificate of Incorporation to be signed by Gregory L. Reyes, its Chief Executive Officer, effective as of May 25, 2000.

BROCADE COMMUNICATIONS SYSTEMS, INC.

By:

-----  
Gregory L. Reyes  
President and Chief Executive Officer

## FIRST AMENDMENT TO LEASE

THIS FIRST AMENDMENT TO LEASE (this "FIRST AMENDMENT") is made this 16th day of February, 2000, by and between SPIEKER PROPERTIES, L.P., a California limited partnership, ("LANDLORD"), and BROCADE COMMUNICATIONS SYSTEMS, INC., a Delaware corporation ("TENANT").

WHEREAS, Landlord and Tenant entered into a Lease dated December 17, 1999, (as amended, the "LEASE"), for those certain premises located at 1745 Technology Drive, San Jose, California (the "PERMANENT PREMISES"), and at 2055 Gateway Place, San Jose, California (the "PHASE I TEMPORARY PREMISES"), and 1741 Technology Drive, San Jose, California (the "PHASE II TEMPORARY PREMISES"), each as more fully described in the Lease. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Lease; and

WHEREAS, Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, additional space in Phase I Temporary Premises Building on a temporary basis and under the terms and conditions as provided herein; and

WHEREAS, Landlord and Tenant desire to convert the Phase II Temporary Premises to become a portion of the Permanent Premises; and

WHEREAS, Landlord and Tenant desire to modify the Lease as provided herein.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereby mutually agree as follows:

1. The following shall be added to and made a part of the Lease as a new Paragraph 39.F:

"ADDITIONAL TEMPORARY PREMISES.

a. TERM; RENT. Landlord shall deliver to Tenant possession of the premises depicted on ATTACHMENT A attached hereto, which premises is comprised of approximately four thousand one hundred ninety-five (4,195) rentable square feet (the "PART A ADDITIONAL TEMPORARY PREMISES"), and the premises depicted on ATTACHMENT B attached hereto, which premises is comprised of approximately eight thousand two hundred ten (8,210) rentable square feet (the "PART B ADDITIONAL TEMPORARY PREMISES," the Part A Additional Temporary Premises and the Part B Additional Temporary Premises shall sometimes be referred to herein collectively as the "ADDITIONAL TEMPORARY PREMISES"), which total Additional Temporary Premises comprise in total approximately twelve thousand four hundred five (12,405) rentable square feet located in the Phase I Temporary Premises Building. The terms and conditions of this Lease shall apply to Tenant's possession and use of the Additional Temporary Premises; provided, however, that Rent due and payable commencing on each of the Part A Additional Temporary Premises Term Commencement Date and the Part B Additional Temporary Premises Term Commencement Date (each as defined herein) through the date Tenant surrenders possession of the entire Additional Temporary Premises to Landlord as provided herein shall be as follows: with respect to the Part A Additional Temporary Premises, an amount equal to Twelve Thousand Five Hundred Eighty-Five Dollars and No/100 (\$12,585.00) per month, and with respect to the Part B Additional Temporary Premises, an amount equal to Twenty-Four Thousand Six Hundred Thirty and No/100 (\$24,630.00) per month; The total amount Rent payable by Tenant on a monthly basis after the Part B Additional Temporary Premises shall be Thirty-Seven Thousand Two Hundred Fifteen Dollars and No/100 (\$37,215.00). If the obligation for payment of Rent for either of the Part A Additional Temporary Premises or the Part B Additional Temporary Premises commences on a day other than the first day of a month, then such Rent shall be prorated and the prorated installment shall be paid on the first day of the calendar month next succeeding the Part A Additional Temporary Premises Term Commencement Date or the Part B Additional Temporary Premises Term Commencement Date (each as defined herein), as the case may be. The term commencement date ("PART A ADDITIONAL TEMPORARY PREMISES TERM COMMENCEMENT DATE") with respect to the Part A Additional Temporary Premises shall be the date Landlord delivers possession of the Part A Additional Temporary Premises to Tenant. The term commencement date ("PART B ADDITIONAL TEMPORARY PREMISES TERM COMMENCEMENT DATE") with respect to the Part B Additional Temporary Premises shall be the date Landlord delivers possession of the Part B Additional Temporary Premises to Tenant.

b. TENANT IMPROVEMENTS.

(i) Landlord, at Landlord's sole cost and expense, hereby agrees to perform or cause to be performed the following improvements in the Additional Temporary Premises prior to the Part B Additional Temporary Premises Term Commencement Date: (1) restoration of the ceilings, lighting and HVAC systems to a condition consistent with the building

standards and located in the Part B Additional Temporary Premises, (2) shampoo of existing carpets within the Part A Additional Temporary Premises and replacing the carpeting with building standard carpeting within the Part B Additional Temporary Premises, and (3) repaint those walls located within the entire Additional Temporary Premises which are not currently covered with wallcoverings.

(ii) Tenant shall be liable for and shall contribute an amount equal to fifty percent (50%) of the total cost of the removal of the training and rear projection rooms currently located in the Part B Additional Temporary Premises. Within ten (10) days following the date of execution of this First Amendment, Tenant shall deliver to Landlord the amount equal to Sixteen Thousand Four Hundred Fifty-Six Dollars and 50/100 (\$16,456.50) ("TENANT'S ESTIMATED CONTRIBUTION AMOUNT"). In the event Tenant's Estimated Contribution Amount is less than fifty percent (50%) of the costs actually incurred in connection with the removal of the training and rear projection rooms, Landlord shall deliver to Tenant a written request with documentary evidence of the actual cost and Tenant shall, within ten (10) days after delivery of such notice, deliver to Landlord the remaining balance owed to Landlord above Tenant's Estimated Contribution Amount. In the event Tenant's Estimated Contribution Amount is more than fifty

percent (50%) of the costs actually incurred in connection with the removal of the training and rear projection rooms, Landlord shall reimburse Tenant such excess amount within ten (10) days after such actual costs is finally determined by Landlord and all lien releases and other items related to such removal have been received by Landlord.

- c. SURRENDER OF ADDITIONAL TEMPORARY PREMISES. Within thirty (30) days following substantial completion of the Tenant Improvements (as defined in EXHIBIT C hereto), Tenant shall surrender possession of the Additional Temporary Premises in accordance with Paragraph 36 hereof."

2. Delete Paragraph 39.D(2) in its entirety.
3. Delete Paragraph 39.A in its entirety and replace with the following:

"A. RENT.

Subject to the provisions of Paragraphs 2.B, Base Rent, net of Operating Expenses per Paragraph 7 of this Lease, for the Premises shall be as follows:

From the Term Commencement Date through the end of the twelfth (12th) month following the Term Commencement Date:	\$627,432.00 per month plus operating expenses per Paragraph 7 of this Lease. Operating Expenses for calendar year 2000 are estimated to be
Month 13 following the Term Commencement Date through Month 24:	\$217,256.00 per month.
Month 25 following the Term Commencement Date through Month 36:	\$646,254.00 per month plus operating expenses per Paragraph 7 of this Lease
Month 37 following the Term Commencement Date through Month 48:	\$665,642.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 49 following the Term Commencement Date through Month 60:	\$685,611.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 61 following the Term Commencement Date through Month 72:	\$706,179.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 73 following the Term Commencement Date through Month 84:	\$727,364.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 85 following the Term Commencement Date through Month 96:	\$749,185.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 97 following the Term Commencement Date through Month 108:	\$771,661.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 109 following the Term Commencement Date through Month 120:	\$794,811.00 per month plus operating expenses per Paragraph 7 of this Lease
	\$818,655.00 per month plus operating expenses per Paragraph 7 of this Lease."

4. Insert as a new Paragraph 39.F the following:

"F. EXPANSION PREMISES. Prior to delivery by Landlord to Tenant of the Premises, Landlord shall deliver to Tenant possession of the premises depicted on ATTACHMENT C, attached hereto (the "EXPANSION PREMISES"), which Expansion Premises comprise approximately thirty-nine thousand forty-three (39,043) rentable square feet and is in the building located at 1741 Technology Drive, San Jose, California. The terms and conditions of this Lease shall apply to Tenant's possession and use of the Expansion Premises; provided, however, that Base Rent due and payable commencing on the Expansion Premises Term Commencement Date (as defined herein) through the Term Commencement Date shall be an amount equal to One Hundred Eleven Thousand Two Hundred Seventy-Three Dollars and No/100 (\$111,273.00) per month. Tenant shall be liable for the payment of Operating Expenses with respect to the Expansion Premises as of the Expansion Premises Term Commencement Date (as defined below). If the obligation for payment of Base Rent for the Expansion Premises commences on a day other than the first day of a month, then such Base Rent shall be prorated and the prorated installment shall be paid on the first day of the calendar month next succeeding the Expansion Premises Term Commencement Date (as defined below). The term commencement date ("EXPANSION PREMISES TERM COMMENCEMENT DATE") with respect to the Expansion Premises shall be the date Landlord delivers possession of the

Expansion Premises with the improvements, if any, substantially complete in accordance with the terms of ATTACHMENT D, attached hereto. By taking possession of the Expansion Premises, Tenant accepts them "as is," as being in good order, condition and repair and the condition in which Landlord is obligated to deliver them and suitable for the Permitted Use (with respect to the Expansion Premises) and Tenant's intended operations in the Expansion Premises, whether or not any notice of acceptance is given. Landlord shall make commercially reasonable efforts to deliver possession of the Expansion Premises to Tenant on or before May 1, 2000. Tenant's taking of possession of the Expansion Premises or any part thereof shall constitute Tenant's confirmation of substantial completion thereof for all purposes hereof, whether or not substantial completion of the Expansion Premises Building or Project shall have occurred. If for any reason Landlord cannot deliver possession of the Expansion Premises to Tenant on the scheduled

Expansion Premises Term Commencement Date, Landlord shall not be subject to any liability therefor, nor shall Landlord be in default hereunder nor shall such failure affect the validity of this Lease, and unless the Expansion Premises have been delivered to Tenant, Tenant agrees to accept possession of the Expansion Premises at such time as such improvements have been substantially completed, which date shall then be deemed the Expansion Premises Term Commencement Date. In the event of any dispute as to substantial completion of work performed or required to be performed by Landlord with respect to the Expansion Premises, the certificate of Landlord's architect or general contractor shall be conclusive. Upon the Term Commencement Date, the Expansion Premises shall be a part of the Premises under this Lease and the terms and conditions of the Lease shall apply to the Expansion Premises as a part of the Premises, except as expressly stated herein."

5. The following shall be added to and made a part of the Lease as a new Paragraph 39.G:

"G. ADDITIONAL LETTER OF CREDIT.

- (1) DELIVERY OF ADDITIONAL LETTER OF CREDIT. In lieu of depositing a cash security deposit with Landlord and in addition to the LOC, Tenant shall, on execution of this Lease, deliver to Landlord and cause to be in effect during the Lease Term an unconditional, irrevocable letter of credit ("ADDITIONAL LOC") in the amount of One Million Three Hundred Thirty-Five Thousand Two Hundred Seventy-One and No/100 Dollars (\$1,335,271.00), as it may be increased as provided in this Lease (the "ADDITIONAL LOC AMOUNT") for an initial term of the Additional LOC of three (3) years and thereafter shall renew automatically from year to year through 30 days beyond the expiration date of this Lease or any extension thereto. The Additional LOC shall be in a form acceptable to Landlord and shall be issued by an "LOC bank" selected by Tenant and acceptable to Landlord. The Additional LOC shall survive the termination of this Lease. An "LOC bank" is a bank that accepts deposits, maintains accounts, has a local office that will negotiate a letter of credit, and the deposits of which are insured by the Federal Deposit Insurance Corporation. Tenant shall pay all expenses, points, or fees incurred by Tenant in obtaining the Additional LOC. The Additional LOC shall not be mortgaged, assigned or encumbered in any manner whatsoever by Tenant without the prior written consent of Landlord. Tenant acknowledges that Landlord has the right to transfer or mortgage its interest in the Project, the Building and in this Lease and Tenant agrees that in the event of any such transfer or mortgage, Landlord shall have the right to transfer or assign the Additional LOC and/or the Additional LOC Security Deposit (as defined below) to the transferee or mortgagee, and in the event of such transfer, Tenant shall look solely to such transferee or mortgagee for the return of the Additional LOC and/or the Additional LOC Security Deposit. The maximum amount of any transfer fee associated with such transfer shall not be in excess of reasonable transfer fees customarily required by issuing banks, which amount shall be expressly stated in the terms of the Additional LOC, and shall be payable by Landlord.
- (2) REPLACEMENT OF ADDITIONAL LETTER OF CREDIT. Tenant may, from time to time, replace any existing Additional LOC with a new Additional LOC if the new Additional LOC (a) becomes effective at least thirty (30) days before expiration of the Additional LOC that it replaces; (b) is in the required Additional LOC amount; (c) is issued by an LOC bank acceptable to Landlord; and (d) otherwise complies with the requirements of this Paragraph 39.G.
- (3) LANDLORD'S RIGHT TO DRAW ON ADDITIONAL LOC. Landlord shall hold the Additional LOC as security for the performance of Tenant's obligations under this Lease. If, after notice and failure to cure within any applicable period provided in this Lease, Tenant is in default pursuant to this Lease, Landlord may, without prejudice to any other remedy it has, draw on that portion of the Additional LOC necessary to (a) pay Rent or other sum in default; (b) pay or reimburse Landlord for any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under Paragraph 30 (Right of Landlord to Perform Tenant's Covenant); and/or (c) compensate Landlord for any expense, loss, or damage that Landlord may suffer because of Tenant's default. If Tenant fails to renew or replace the Additional LOC at least thirty (30) days before its expiration, Landlord may, without prejudice to any other remedy it has, draw on the entire amount of the Additional LOC.
- (4) ADDITIONAL LOC SECURITY DEPOSIT. Any amount of the Additional LOC that is drawn on by Landlord but not applied by Landlord shall be held by Landlord as a security deposit (the "ADDITIONAL LOC SECURITY DEPOSIT") in accordance with Paragraph 19 of this Lease.
- (5) RESTORATION OF ADDITIONAL LOC AND ADDITIONAL LOC SECURITY DEPOSIT. If Landlord draws on any portion of the Additional LOC and/or applies all or any portion of such draw, Tenant shall, within five (5) business days after demand by Landlord, either (a) deposit cash with Landlord in an amount that, when added to the amount remaining under the Additional LOC and the amount of

any Additional LOC Security Deposit, shall equal the Additional LOC Amount then required under this Paragraph 39.G; or (b) reinstate the Additional LOC to the full Additional LOC Amount.

- (6) REDUCTION OF ADDITIONAL LOC AMOUNT. At least fifteen (15) business days prior to the dates specified in each of clauses a. through d. below, Tenant shall deliver to Landlord for review Tenant's financial statements prepared in accordance with generally accepted accounting principles and audited by a nationally recognized public accounting firm acceptable to Landlord, and any other financial information requested by Landlord ("TENANT'S FINANCIAL INFORMATION") If: (i) Tenant has a tangible net worth, which "tangible net worth" shall be determined by Landlord in its sole discretion and shall mean assets less intangible assets and total liabilities, with intangible assets including nonmaterial benefits such as goodwill, patents, copyrights, and trademarks, in excess of One Hundred Seventy Five Million and No/100 Dollars (\$175,000,000.00) as reflected in Tenant's Financial Information, which amount shall be determined by Landlord to its satisfaction prior to any reduction in the Additional LOC Amount; and (ii) Tenant's Financial Information reflects four (4) consecutive calendar quarters of profitability, as determined by Landlord, during the time period immediately preceding Tenant's request for reduction in the Additional LOC Amount described in this subparagraph during the time period immediately preceding Tenant's request for reduction in the Additional LOC Amount, as such profitability is determined by Landlord, then the following reductions in the Additional LOC Amount may be made in accordance with the terms of this Paragraph 39.G(6):



- a. At any time after the end of the thirty-sixth (36th) month following the Term Commencement Date, the Additional LOC Amount may be reduced to an amount equal to One Million One Thousand Four Hundred Fifty-Three and No/100 Dollars (\$1,001,453.00);
- b. At any time after the end of the forty-eighth (48th) month following the Term Commencement Date, the Additional LOC Amount may be reduced to an amount equal to Six Hundred Sixty-Five Thousand Nine Hundred Sixty-Six and No/100 Dollars (\$665,966.00);
- c. At any time after the end of the sixtieth (60th) month following the Term Commencement Date, the Additional LOC Amount may be reduced to an amount equal to Three Hundred Thirty Thousand Nine Hundred Eighty-Five and No/100 Dollars (\$330,985.00); and
- d. At any time after the end of the seventy-second (72nd) month following the Term Commencement Date, the Additional LOC may be returned by Landlord to the issuing bank for cancellation provided that Tenant has, prior to such delivery by Landlord, delivered a cash security Deposit (to be held by Landlord in accordance with the terms of Paragraph 19 of this Lease) an amount equal to One Hundred Seventy-Nine Thousand Two Hundred Seven and No/100 Dollars (\$179,207.00).

In the event that any of the above described reductions to the Additional LOC Amount is made and, subsequently, Tenant fails to meet the corresponding profitability and tangible net worth condition precedent for a period of thirty (30) days following delivery by Landlord of written notice of any such failure, Tenant shall within two (2) business days, increase the face amount of the Additional LOC to an amount equal to the Additional LOC Amount existing prior to such reduction (including the reduction described in clause d. above). If Tenant fails to increase the Additional LOC Amount as provided above, such failure shall constitute a default hereunder (which default shall not be subject to any cure rights afforded anywhere in this Lease and Landlord shall be entitled to draw on the Additional LOC for the full Additional LOC Amount and hold such Additional LOC Amount as a Security Deposit in accordance with the terms of this Lease, and enforce all other rights available to Landlord pursuant to the terms of this Lease or under applicable law."

6. Paragraph 4.1 of Exhibit C attached to the Lease shall be modified as follows: Delete the reference to "One Hundred Eighty-Five and No/100 Dollars (\$185,000.00)" and insert therefor the following: "One Hundred Seventy Thousand and No/100 (\$170,000.00)".
7. The definition of Security Deposit in the Basic lease Information shall be deleted and replaced by the following:  
  
"Seven Million Five Hundred Twenty-Nine Thousand One Hundred Seventy-Five Dollars and No/100 (\$7,529,175.00) Letter of Credit delivered in accordance with the terms of Paragraph 39.E (subject to adjustment as provided in Paragraphs 39.E, 39.G (as applicable) and 19 hereof)."
8. "Tenant's Proportionate Share" with respect to the Expansion Premises in the Phase II Temporary Premises Building shall be 29.35%.
9. "Occupancy Density" with respect to the Expansion Premises in the Phase II Temporary Premises Building shall be 4.5 people per one thousand rentable square feet.
10. Provided Tenant is not, and has not been, in default of any terms and conditions of this Lease, during the initial Term of the Lease only, Tenant shall have a one-time right of first offer to lease space in the Phase II Temporary Premises Building at such time as such additional space is vacated by the prior tenant. Upon notification by Landlord in writing of the availability of space and the terms and conditions on which Landlord is willing to lease such additional space to Tenant, Tenant shall have five (5) days to notify Landlord in writing of Tenant's desire to exercise Tenant's right of first offer on the terms and conditions. In the event Tenant fails to give Landlord notice of Tenant's election to lease such additional space within such time period, or if Tenant elects not to lease such space, Tenant shall have no further right, title or interest in such additional space (except as expressly provided in this Lease) and this right of first offer shall terminate with respect to the portion of the available space so offered to Tenant. If, on the other hand, Tenant exercises its right of first offer in the manner prescribed, Tenant shall immediately deliver to Landlord payment for the first month's rent for such additional space (in the same manner as provided for in this Lease), and the lease for such additional space shall be consummated without delay in accordance with the terms and conditions set forth in Landlord's notice. Such additional space shall be leased to Tenant on an "as is" basis and Landlord shall have no obligation to improve such additional space or grant

Tenant any improvement allowance thereon. Notwithstanding anything to the contrary herein contained, Tenant's right to the expansion premises shall be conditioned upon the following: (i) at the time Tenant agrees to accept the expansion premises and at the time of the commencement of the term for the expansion premises, Tenant shall be in possession of and occupying the primary premises for the conduct of its business therein and the same shall not be occupied by any assignee, subtenant or licensee and, provided further, that the option for additional space shall be applicable hereunder only if the expansion premises will actually be occupied by Tenant and (ii) the agreement of acceptance shall constitute a representation by Tenant to Landlord, effective as of the date of the agreement of acceptance and as of the date of commencement of the lease for the expansion premises, that Tenant does not intend to assign the lease for the expansion premises, in whole or in part or sublet all or any portion of the Premises, the election to expand being for the purpose of utilizing the expansion premises for Tenant's purposes in the conduct of Tenant's business therein.

- 11. The following phrase from last sentence of Paragraph 7.C of the Lease shall be deleted: "up to an amount not to exceed Fifteen Thousand Dollars (\$15,000)".

Except as expressly modified above, all terms and conditions of the Lease remain in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have entered into this First Amendment as of the date first written above.

LANDLORD:  
Spieker Properties, L.P.,  
A California limited partnership

TENANT:  
Brocade Communications Systems, Inc.,  
a Delaware corporation

By: Spieker Properties, Inc.,  
a Maryland corporation  
its General Partner

By: -----  
Michael J. Byrd  
Its: Vice President, Finance  
Chief Financial Officer

By: -----  
Joseph D. Russell, Jr.  
Its: President,  
Silicon Valley Region

By: -----  
Victor Rinkle  
Its: Vice President, Operations

ATTACHMENT A

ATTACHMENT B

ATTACHMENT C

## ATTACHMENT D

## LEASE EXPANSION PREMISES IMPROVEMENT AGREEMENT

This Lease Expansion Premises Improvement Agreement ("EXPANSION PREMISES IMPROVEMENT AGREEMENT") sets forth the terms and conditions relating to construction of the initial Expansion Premises Tenant Improvements described in the Plans referred to below (the "EXPANSION PREMISES TENANT IMPROVEMENTS") in the Expansion Premises. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Lease (the "LEASE") to which this Expansion Premises Improvement Agreement is attached and forms a part.

1. Plans and Specifications.

1.1. Landlord shall construct the Expansion Premises Tenant Improvements in the Expansion Premises pursuant to the plans and drawings as provided to Landlord by Devcon (collectively, the "PLANS"). Tenant shall make no changes or modifications to the Plans or submit any change orders without the prior written approval of Landlord.

1.2. Notwithstanding Landlord's review and approval of the Plans, Landlord shall have no responsibility or liability whatsoever for any errors or omissions contained in the Plans, or to verify dimensions or conditions, or for the quality, design or compliance with applicable Regulations of any improvements described therein or constructed in the Expansion Premises. Landlord shall assign to Tenant all warranties and guarantees by the contractor who constructs the Expansion Premises Tenant Improvements relating to the Expansion Premises Tenant Improvements, and Tenant hereby waives all claims against Landlord relating to, or arising out of the construction of, the Expansion Premises Tenant Improvements.

2. Specifications for Standard Expansion Premises Tenant Improvements.

2.1. Specifications and quantities of standard building components which will comprise and be used in the construction of the Expansion Premises Tenant Improvements ("STANDARDS") are set forth in SCHEDULE 1 to this ATTACHMENT D. As used herein, "STANDARDS" or "BUILDING STANDARDS" shall mean the standards for a particular item selected from time to time by Landlord for the Building, including those set forth on SCHEDULE 1 of this ATTACHMENT D, or such other standards of equal or better quality as may be mutually agreed between Landlord and Tenant in writing.

2.2. No deviations from the Standards are permitted.

3. Construction of Expansion Premises Tenant Improvements.

3.1. Promptly upon the execution of this Expansion Premises Improvement Agreement, Landlord shall secure a building permit and commence construction of the Expansion Premises Tenant Improvements provided that Tenant shall cooperate with Landlord in executing permit applications and performing other actions reasonably necessary to enable Landlord to obtain any required permits or certificates of occupancy. Without limiting the provisions of Paragraph 35 of the Lease, Landlord shall not be liable for any direct or indirect damages suffered by Tenant as a result of delays in construction beyond Landlord's reasonable control, including, but not limited to, delays due to strikes or unavailability of materials or labor, or delays caused by Tenant (including delays by the contractor or anyone else performing services on behalf of Landlord or Tenant).

3.2. If any work is to be performed on the Expansion Premises by Tenant or Tenant's contractor or agents:

(a) Such work shall proceed upon Landlord's written approval of Tenant's contractor, public liability and property damage insurance carried by Tenant's contractor, and detailed plans and specifications for such work shall be at Tenant's sole cost and expense, and shall further be subject to the provisions of Paragraphs 12 and 27 of the Lease.

(b) All work shall be done in conformity with a valid building permit when required, a copy of which shall be furnished to Landlord before such work is commenced, and in any case, all such work shall be performed in accordance with all applicable Regulations. Notwithstanding any failure by Landlord to object to any such work, Landlord shall have no responsibility for Tenant's failure to comply with all applicable Regulations.

(c) If required by Landlord or any lender of Landlord, all work by Tenant or Tenant's contractor or agents shall be done with union labor in accordance with all union labor agreements applicable to the trades being employed.

(d) All work by Tenant or Tenant's contractor or agents shall be scheduled through Landlord.

(e) Tenant or Tenant's contractor or agents shall arrange for necessary utility, hoisting and elevator service with Landlord's contractor and shall pay such reasonable charges for such services as may be charged by Tenant's or Landlord's contractor.

(f) Tenant's entry to the Expansion Premises for any purpose, including, without limitation, inspection or performance of Tenant construction by Tenant's agents, prior to the date Tenant's obligation to pay rent commences shall be subject to all the terms and conditions of the Lease except the payment of Rent. Tenant's entry shall mean entry by Tenant, its officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors.

(g) Tenant shall promptly reimburse Landlord upon demand for any reasonable expense actually incurred by the Landlord by reason of faulty work done by Tenant or its contractors or by reason of any delays caused by such work, or by reason of inadequate clean-up.

4. Completion and Rental Commencement Date.

4.1. Tenant's obligation to pay Rent under the Lease shall commence on the applicable date described in Paragraph 2 of the Lease. However:

(a) If Tenant delays in approving any matter requiring Tenant's approval within the time limits specified herein; or



(b) If the construction period is extended because Tenant requests any changes in construction or modifies the Plans or if the same do not comply with applicable Regulations; or

(c) If Landlord is otherwise delayed in the construction of the Expansion Premises Tenant Improvements for any act or omission of or breach by Tenant or anyone performing services on behalf of Tenant or on account of any work performed on the Expansion Premises by Tenant or Tenant's contractors or agents, then the date described in Paragraph 2 of the Lease shall be deemed to be accelerated by the total number of days of Tenant delays described in (a) through (c) above (each, a "TENANT DELAY"), calculated in accordance with the provisions of Paragraph 4.2 below.

4.2. If the Term of the Lease has not already commenced pursuant to the provisions of Paragraph 2 of the Lease and substantial completion of the Expansion Premises Tenant Improvements has been delayed on account of any Tenant Delays, then upon actual substantial completion of the Expansion Premises Tenant Improvements (as defined in Paragraph 2 of the Lease), Landlord shall notify Tenant in writing of the date substantial completion of the Expansion Premises Tenant Improvements would have occurred but for such Tenant Delays, and such date shall thereafter be deemed to be the Term Commencement Date for all purposes under the Lease. Tenant shall pay to Landlord, within three (3) business days after receipt of such written notice (which notice shall include a summary of Tenant Delays), the per diem Base Rent times the number of days between the date the Term Commencement Date would have otherwise occurred but for the Tenant Delays (as determined by Landlord's contractor), and the date of actual substantial completion of the Expansion Premises Tenant Improvements.

4.3. Promptly after substantial completion of the Expansion Premises Tenant Improvements, Landlord shall give notice to Tenant and Tenant shall conduct an inspection of the Expansion Premises with a representative of Landlord and develop with such representative of Landlord a punchlist of items, if any, of the Expansion Premises Tenant Improvements that are not complete or that require correction. Upon receipt of such punchlist, Landlord shall proceed diligently to remedy such items at Landlord's cost and expense provided such items are part of the Expansion Premises Tenant Improvements to be constructed by Landlord hereunder and are otherwise consistent with Landlord's obligations under this Expansion Premises Improvement Agreement (with any dispute between Landlord and Tenant pertaining thereto to be resolved by Landlord's architect or general contractor). Substantial completion shall occur notwithstanding delivery of any such punchlist.

4.4. A default under this Expansion Premises Improvement Agreement shall constitute a default under the Lease, and the parties shall be entitled to all rights and remedies under the Lease in the event of a default hereunder by the other party (notwithstanding that the Term thereof has not commenced).

4.5. Without limiting the "as-is" provisions of the Lease, except for the Expansion Premises Tenant Improvements to be constructed by Landlord pursuant to this Expansion Premises Improvement Agreement, Tenant accepts the Expansion Premises in its "as-is" condition and acknowledges that it has had an opportunity to inspect the Expansion Premises prior to signing the Lease.

## 5. Expansion Premises Tenant Improvement Costs.

5.1. The cost of the Expansion Premises Tenant Improvements shall be paid for by Tenant (provided, however, that Landlord shall allocate the Expansion Premises Tenant Improvement Allowance (as herein defined) to such costs), including, without limitation, the cost of: Standards; space plans and studies; architectural and engineering fees; permits, approvals and other governmental fees; labor, material, equipment and supplies; construction fees and other amounts payable to contractors or subcontractors; taxes; off-site improvements; remediation and preparation of the Premises for construction of the Expansion Premises Tenant Improvements; taxes; filing and recording fees; premiums for insurance and bonds; attorneys' fees; financing costs; and all other costs expended or to be expended in the construction of the Expansion Premises Tenant Improvements, including those costs incurred for construction of elements of the Tenant Improvements in the Premises, which construction was performed by Landlord prior to the execution of the Lease or for materials comprising the Expansion Premises Tenant Improvements which were purchased by Landlord prior to the execution of the Lease; and an administration fee of three percent (3%) of the amount of the Expansion Premises Tenant Improvements.

5.2. Provided Tenant is not in default under the Lease, including this Expansion Premises Improvement Agreement, Landlord shall contribute a one-time tenant improvement allowance not to exceed Thirty and No/100 Dollars (\$30.00) per rentable square foot of the Expansion Premises ("EXPANSION PREMISES TENANT IMPROVEMENT ALLOWANCE") toward the cost of the initial Expansion Premises Tenant Improvements. If the cost of the Expansion Premises Tenant Improvements exceeds the Expansion Premises Tenant Improvement Allowance, Tenant shall pay Landlord such excess cost within ten (10) days after Landlord's notice to Tenant of such excess cost. No credit shall be given to Tenant if the cost of the Expansion Premises Tenant Improvements is less than the Expansion Premises Tenant Improvement Allowance.

5.3. If the cost of the Expansion Premises Tenant Improvements increases after the Tenant's approval of the Plans due to the requirements of any governmental agency or applicable Regulation or any other reason, Tenant shall pay Landlord the amount of such increase within ten (10) days after notice from Landlord of such increase.

5.4. If Tenant requests any change(s) in the Plans after approval of the estimate of the cost of the Expansion Premises Tenant Improvements and any such requested changes are approved by Landlord in writing in Landlord's sole discretion, Landlord shall advise Tenant promptly of any cost increases and/or

delays such approved change(s) will cause in the construction of the Expansion Premises Tenant Improvements. Tenant shall approve or disapprove any or all such change(s) within three (3) business days after notice from Landlord of such cost increases and/or delays. To the extent Tenant disapproves any such cost increase and/or delay attributable thereto, Landlord shall have the right, in its sole discretion, to disapprove Tenant's request for any changes to the approved Plans. If the cost of the Expansion Premises Tenant Improvements increases due to any changes in the Plan(s) requested by Tenant, Tenant shall pay Landlord the amount of such increase within ten (10) days after notice from Landlord of such increase and Tenant's approval thereof in accordance with this Paragraph 5.4.

5.5. Notwithstanding anything to the contrary in this Expansion Premises Improvement Agreement, in the event that the cost of the Expansion Premises Tenant Improvements exceeds the Expansion Premises Tenant Improvement Allowance, upon Tenant's written request, Landlord shall provide an additional amount not to exceed Four Dollars (\$4.00) per rentable square foot (the "EXPANSION PREMISES BASE RENT INCREASE FACTOR") toward the excess cost of the Expansion Premises Tenant Improvements. Tenant must provide such written request to Landlord prior to the Expansion Premises Term

Commencement Date defined in the Lease. In the event Tenant fails to so provide such written notice to Landlord, Tenant shall be deemed to waive its right to receive the Expansion Premises Base Rent Increase Factor. The Expansion Premises Base Rent Increase Factor shall be amortized over the initial Term of the Lease commencing upon disbursement of monies, at an interest rate of ten percent (10%) per annum, payable in monthly installments as Base Rent, in accordance with the terms of the Lease. If the costs of the Expansion Premises Tenant Improvements does exceed the Expansion Premises Tenant Improvement Allowance, and Tenant elects to receive the Expansion Premises Base Increase Rent Factor pursuant to this Paragraph 5.3, Landlord and Tenant shall each execute a written amendment to the Lease, prepared by Landlord, to reflect the appropriate increase in the amount of Base Rent.

5.6. Within forty-five (45) days following Landlord's receipt of the approved Plans, Landlord shall provide to Tenant a cost estimate for the Expansion Premises Tenant Improvements which cost estimate shall be prepared in reasonable detail and in good faith. IN the event that the cost of the Expansion Premises Tenant Improvements is greater than the Expansion Premises Tenant Improvement Allowance, Tenant shall either (i) deliver such excess amounts to Landlord in accordance with this Expansion Premises Improvement Agreement, or (ii) for the excess amount equal to or less than Four Dollars (\$4.00) per rentable square foot, inform Landlord in writing whether Tenant elects to exercise its rights pursuant to Paragraph 5.5 above with respect to the Expansion Premises Base Rent Increase Factor. In the event that Tenant elects clause (ii) above and the excess amount is greater than the Expansion Premises Base Rent Increase Factor, Tenant shall pay such excess amount above the Expansion Premises Base Rent Increase Factor to Landlord in accordance with this Expansion Premises Improvement Agreement.

SCHEDULE 1  
TO ATTACHMENT D

BUILDING STANDARDS

The following constitutes the Building Standard Expansion Premises  
Tenant Improvements ("STANDARDS") in the quantities specified:

(to be provided)

## SECOND AMENDMENT TO LEASE

THIS SECOND AMENDMENT TO LEASE (this "SECOND AMENDMENT") is made this 11th day of August, 2000, by and between SPIEKER PROPERTIES, L.P., a California limited partnership ("LANDLORD"), and BROCADE COMMUNICATIONS SYSTEMS, INC., a Delaware corporation ("TENANT").

WHEREAS, Landlord and Tenant entered into a Lease dated December 17, 1999 (the "Original Lease"), as modified by that certain First Amendment to Lease dated as of February 16, 2000 (the "First Amendment"), for those certain premises located at 1745 Technology Drive (approximately 210,677 rentable square feet) and 1741 Technology Drive (approximately 39,043 rentable square feet), San Jose, California (the "ORIGINAL PREMISES"), each as more fully described in the Lease. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Lease; and

WHEREAS, Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, additional space at 1741 Technology Drive (approximately 21,667 rentable square feet) to become part of the Original Premises under the terms and conditions as provided herein; and

WHEREAS, Landlord and Tenant desire to modify the Lease as provided herein.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the parties hereby mutually agree as follows:

- The following shall be added to and made a part of the Lease as a new Paragraph 39.F:

"A. RENT. Subject to the provisions of Paragraphs 2.B of the Lease, Base Rent, net of Operating Expenses per Paragraph 7 of this Lease, for the Original Premises and the Second Expansion Premises shall be as follows:

RENTAL MONTHS	FIRST AMENDMENT (ORIGINAL PREMISES)	SECOND AMENDMENT (SECOND EXPANSION PREMISES)	NEW TOTAL BASE RENT FOR ORIGINAL PREMISES AND SECOND EXPANSION PREMISES
From the Term Commencement Date through December 31, 2000:	\$627,432.00 per month	\$0.00 per month	\$627,432.00 per month plus Operating Expenses per Paragraph 7 of this Lease. Operating Expenses for the calendar year 2000 are estimated to be \$217,256.00 per month.
January 1, 2001 through Month 12:	\$627,432.00 per month	\$104,002.00 per month	\$731,434.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 13 following the Term Commencement Date through Month 24:	\$646,254.00 per month	\$107,122.00 per month	\$753,376.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 25 following the Term Commencement Date through Month 36:	\$665,642.00 per month	\$110,335.00 per month	\$775,977.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 37 following the Term Commencement Date through Month 48:	\$685,611.00 per month	\$113,645.00 per month	\$799,256.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 49 following the Term Commencement Date through Month 60:	\$706,179.00 per month	\$117,055.00 per month	\$823,234.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 61 following the Term Commencement Date through Month 72:	\$727,364.00 per month	\$120,566.00 per month	\$847,930.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 73 following the Term Commencement Date through Month 84:	\$749,185.00 per month	\$124,183.00 per month	\$873,368.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 85 following the Term Commencement Date through Month 96:	\$771,661.00 per month	\$127,909.00 per month	\$899,570.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 97 following the Term Commencement Date through Month 108:	\$794,811.00 per month	\$131,746.00 per month	\$926,557.00 per month plus Operating Expenses per Paragraph 7 of this Lease.
Month 109 following the Term Commencement Date through Month 120:	\$818,655.00 per month	\$135,698.00 per month	\$954,353.00 per month plus Operating Expenses per Paragraph 7 of this Lease.

- Insert as a new Paragraph 39.G. the following:

"G. SECOND EXPANSION PREMISES. Landlord shall deliver to Tenant possession of the premises depicted on ATTACHMENT A, attached hereto (the "SECOND EXPANSION PREMISES"), which Second Expansion Premises comprise approximately twenty-one thousand six hundred sixty-seven (21,667) rentable square feet and is in

the building located at 1741 Technology Drive, San Jose, California. The terms and conditions of this Lease shall apply to Tenant's possession and use of the Second Expansion Premises. Tenant shall be liable for the payment of Base Rent and Operating Expenses with respect to the Second Expansion Premises as of the Second Expansion Premises Term Commencement Date (as defined below). The term commencement date ("SECOND EXPANSION PREMISES TERM COMMENCEMENT DATE") with respect to the Second Expansion Premises shall be January 1, 2001. By taking possession of the Second Expansion Premises, Tenant accepts them "as is", as being in good order, condition and repair and the condition in which Landlord is obligated to deliver them and suitable for the Permitted Use and Tenant's intended operations in the Second Expansion Premises, whether or not any notice of acceptance is given. Landlord shall make commercially reasonable efforts to deliver possession of the Second Expansion Premises to Tenant on January 1, 2001. If for any reason Landlord cannot deliver possession of the Second Expansion Premises to Tenant on the scheduled Second Expansion Premises Term Commencement Date, Landlord shall not be subject to any liability therefor, nor shall Landlord be in default hereunder nor shall such failure affect the validity of this Lease, and unless the Second Expansion Premises have been delivered to Tenant, Tenant agrees to accept possession of the Second Expansion Premises at such time that Landlord delivers possession, which date shall then be deemed the Second Expansion Premises Term Commencement Date. Upon the Second Expansion Premises Term Commencement Date, the Second Expansion Premises shall be a part of the Premises under this Lease and the terms and conditions of the Lease shall apply to the Second Expansion Premises as a part of the Premises, except as expressly stated herein."

3. "Tenant's Proportionate Share" with respect to the Original Premises at 1741 Technology Drive and the Second Expansion Premises (collectively) shall be 45.64%.

4. The effectiveness of this Second Amendment shall be contingent upon Landlord obtaining a fully executed and binding termination of the lease agreement with the current tenant of the Second Expansion Premises and such current tenant surrenders possession of the Second Expansion Premises to Landlord. In the event that Landlord fails to obtain such termination of lease agreement on or before the Second Expansion Premises Term Commencement Date, this Second Amendment shall be null and void and of no further force and effect.

5. Provided this Second Amendment is not rendered ineffective pursuant to Paragraph 4 above, Tenant's one-time right of first offer as provided in Paragraph 10 of the First Amendment shall be null and void with respect to the Second Expansion Premises.

6. Landlord and Tenant each represent and warrant to the other that they have had no other dealings with any real estate broker or agent in connection with the negotiation of this Second Amendment to Lease, excepting only Bailes & Associates, Inc. ("Broker") who represents Tenant, and that Landlord shall not pay any commissions or fees to Broker in connection with this Second Amendment to Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, occurring by, through, or under the indemnifying party.

Except as expressly modified above, all terms and conditions of the Lease remain in full force and effect and are hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties hereto have entered into this Second Amendment as of the date first written above.

LANDLORD:

Spieker Properties, L.P.,  
A California limited partnership

By: Spieker Properties, Inc.,  
a Maryland corporation  
its General Partner

TENANT:

Brocade Communications Systems, Inc.,  
a Delaware corporation

By: \_\_\_\_\_  
Michael J. Byrd  
Its: Vice President, Finance  
Chief Financial Officer

By: \_\_\_\_\_  
John W. Petersen  
Its: Senior Vice President

By: \_\_\_\_\_  
Victor Rinkle  
Its: Vice President, Operations

ATTACHMENT A

1741 TECHNOLOGY DRIVE, SUITE #300

FIRST AMENDMENT  
TO CREDIT AGREEMENT

This FIRST AMENDMENT TO CREDIT AGREEMENT is entered into as of March 21, 2000 (this "Amendment") by and between BROCADE COMMUNICATIONS, a California corporation, with its principal place of business at 1901 Guadalupe Parkway, San Jose, California 95131 ("Borrower"), and COMERICA BANK-CALIFORNIA ("Bank"), a California banking corporation, with its principal place of business at 333 West Santa Clara Street, San Jose, California 95113.

RECITALS

A. Borrower and Bank have previously entered into that certain Credit Agreement dated as of January 5, 2000 (the "Credit Agreement").

B. Pursuant to the terms of the Credit Agreement, Borrower wishes to obtain an additional standby letter of credit from Bank, and Bank desires to issue such standby letter of credit.

C. This Amendment sets forth the terms on which Bank will issue the additional standby letter of credit to Borrower.

AGREEMENT

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as set forth below.

1. Incorporation by Reference; Definitions. The foregoing Recitals and the Credit Agreement are incorporated herein by this reference as though set forth in full herein. Any terms not defined herein shall have the meanings given in the Credit Agreement. As used herein, and unless otherwise defined herein, the following terms shall have the following respective meanings except as the context shall otherwise require:

"Letter of Credit" means the standby letter of credit issued by Bank for the account of Borrower, and for the benefit of Spieker Properties in the amount of One Million Three Hundred Thirty Five Thousand Two Hundred Seventy One and 00/100 Dollars (\$1,335,271.00).

"Letter of Credit Agreement" means the Standby Letter of Credit Application and Agreement dated the date hereof by and between Borrower and Bank.



"Letter of Credit Documents" means this Amendment, the Letter of Credit, and the Letter of Credit Agreement.

"Maturity Date" means March 30, 2003.

2. Amendment to the Credit Agreement. The parties have agreed to the amendments to the Credit Agreement set forth in this Section 2.

2.1 Additional Letter of Credit. The Letter of Credit is issued as an additional letter of credit under the Credit Agreement and is subject to the terms and conditions of the Credit Agreement. The Letter of Credit Documents are incorporated herein by this reference.

2.2 Issuance of Letters of Credit. Subject to the terms and conditions of the Letter of Credit Documents and the Credit Agreement, Bank shall issue the Letter of Credit.

2.3 Letter of Credit Fees. Borrower shall pay to Bank fees upon the issuance of the Letter of Credit, and upon the payment by Bank of each draft under the Letter of Credit, in accordance with Bank's standard fees and charges in effect at the time the Letter of Credit is issued or amended or any draft is paid. In addition, Borrower shall prepay to Bank an annual fee with respect to the Letter of Credit in an amount equal to three quarters of one percent (0.75%) per annum of the original face amount of the Letter of Credit for the time period equal to the date of issuance of the Letter of Credit to and including the Maturity Date.

2.4 Reimbursement by Borrower. Borrower shall immediately reimburse Bank for all sums paid by Bank on account of the Letter of Credit in accordance with the Letter of Credit Agreement.

2.5 Indemnity. Borrower shall indemnify Bank as set forth in the Letter of Credit Agreement.

2.6 Payment of Drafts. Bank shall pay drafts as set forth in the Letter of Credit Agreement.

### 3. Conditions Precedent.

3.1 Issuance of the Letter of Credit. As conditions precedent to Bank's obligation to issue the Letter of Credit, Borrower shall deliver, or cause to be delivered, to Bank:

3.1.1 A duly executed copy of this Amendment;

3.1.2 A duly executed copy of the Letter of Credit Agreement;

3.1.3 All representations and warranties of Borrower to Bank set forth in the Letter of Credit Documents shall be accurate and complete in all respects; and

3.1.4 There shall not exist an Event of Default or an event which with the giving of notice of passage of time, or both, would be an Event of Default.

4. No Modification of Other Obligations. Except as is otherwise specifically set forth herein, the Credit Agreement shall remain unmodified and in full force and effect, and is hereby ratified and confirmed.

5. Conflicts. If a conflict exists between the provisions of the Credit Agreement and the provisions of this Amendment, the provisions of this Amendment shall control.

6. Further Assurances. Borrower agrees to make and execute such other documents as may be necessary or required to effectuate the terms and conditions of this Amendment.

7. Future Modifications. This Amendment does not entitle, or imply any consent or agreement to, any further or future modification of, amendment to, waiver of, or consent with respect to any provision of the Credit Agreement. Any amendments hereto shall be in writing and signed by the parties.

8. Integration. This Amendment is an integrated agreement, and supercedes all negotiations and agreement regarding the subject matter hereof, and taken together with the Credit Agreement, constitutes the final agreement of the parties with respect to the subject matter hereof and thereof.

9. Fees and Costs. Borrower shall pay Bank's attorneys' fees and costs incurred in the preparation of this Amendment.

10. Severability. In the event any one or more of the provisions contained in this Amendment is held to be invalid, illegal or unenforceable in any respect, then such provision shall be ineffective only to the extent of such prohibition or invalidity, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. Interpretation. This Amendment and all agreements relating to the subject matter hereof are the product of negotiation and preparation by and among each party and its respective attorneys, and shall be construed accordingly. The parties waive the provisions of California Civil Code Section 1654.

12. Counterparts. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same

instrument. Delivery of an executed counterpart of the signature page to this Amendment by telefacsimile shall be effective as delivery of a manually executed counterpart of this Amendment, and any party delivering such an executed counterpart of the signature page to this Amendment by telefacsimile to any other party shall thereafter also promptly deliver a manually executed counterpart of this Amendment to such other party, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Amendment.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the day and year first written above.

BROCADE COMMUNICATIONS

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

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

COMERICA BANK-CALIFORNIA

Mary Beth Suhr  
Vice President

SECOND AMENDMENT  
TO CREDIT AGREEMENT

This SECOND AMENDMENT TO CREDIT AGREEMENT is entered into as of September 20, 2000 (this "Amendment") by and between BROCADE COMMUNICATIONS SYSTEMS, INC., a Delaware corporation, with its principal place of business at 1901 Guadalupe Parkway, San Jose, California 95131 ("Borrower"), and COMERICA BANK-CALIFORNIA ("Bank"), a California banking corporation, with its principal place of business at 333 West Santa Clara Street, San Jose, California 95113.

RECITALS

A. Borrower and Bank have previously entered into that certain Credit Agreement dated as of January 5, 2000, as amended by the First Amendment to Credit Agreement dated March 21, 2000 (the "Credit Agreement").

B. Pursuant to the terms of the Credit Agreement, Borrower wishes to obtain an additional standby letter of credit from Bank, and Bank desires to issue such standby letter of credit.

C. This Amendment sets forth the terms on which Bank will issue the additional standby letter of credit to Borrower.

AGREEMENT

For good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as set forth below.

1. Incorporation by Reference; Definitions. The foregoing Recitals and the Credit Agreement are incorporated herein by this reference as though set forth in full herein. Any terms not defined herein shall have the meanings given in the Credit Agreement. As used herein, and unless otherwise defined herein, the following terms shall have the following respective meanings except as the context shall otherwise require:

"Letter of Credit" means the standby letter of credit issued by Bank for the account of Borrower, and for the benefit of Speiker Properties, L.P. in the amount of Eight Hundred Thirteen Thousand four Hundred Eighty Six and 00/100 Dollars (\$813,486.00).

"Letter of Credit Agreement" means the Standby Letter of Credit Application and Agreement dated the date hereof by and between Borrower and Bank.

"Letter of Credit Documents" means this Amendment, the Letter of Credit, and the Letter of Credit Agreement.

"Maturity Date" means January 31, 2004, provided however that the Letter of Credit may be renewed annually, subject to Bank approval, which annual renewals may be up to a final maturity date of September 30, 2010.

2. Amendment to the Credit Agreement. The parties have agreed to the amendments to the Credit Agreement set forth in this Section 2.

2.1 Additional Letter of Credit. The Letter of Credit is issued as an additional letter of credit under the Credit Agreement and is subject to the terms and conditions of the Credit Agreement. The Letter of Credit Documents are incorporated herein by this reference.

2.2 Issuance of Letters of Credit. Subject to the terms and conditions of the Letter of Credit Documents and the Credit Agreement, Bank shall issue the Letter of Credit.

2.3 Letter of Credit Fees. Borrower shall pay to Bank fees upon the issuance of the Letter of Credit, and upon the payment by Bank of each draft under the Letter of Credit, in accordance with Bank's standard fees and charges in effect at the time the Letter of Credit is issued or amended or any draft is paid. In addition, Borrower shall prepay to Bank an annual fee with respect to the Letter of Credit in an amount equal to three quarters of one percent (0.75%) per annum of the original face amount of the Letter of Credit for the time period equal to the date of issuance of the Letter of Credit to and including the Maturity Date.

2.4 Reimbursement by Borrower. Borrower shall immediately reimburse Bank for all sums paid by Bank on account of the Letter of Credit in accordance with the Letter of Credit Agreement.

2.5 Indemnity. Borrower shall indemnify Bank as set forth in the Letter of Credit Agreement.

2.6 Payment of Drafts. Bank shall pay drafts as set forth in the Letter of Credit Agreement.

### 3. Conditions Precedent.

3.1 Issuance of the Letter of Credit. As conditions precedent to Bank's obligation to issue the Letter of Credit, Borrower shall deliver, or cause to be delivered, to Bank:

3.1.1 A duly executed copy of this Amendment;

3.1.2 A duly executed copy of the Letter of Credit Agreement;

3.1.3 All representations and warranties of Borrower to Bank set forth in the Letter of Credit Documents shall be accurate and complete in all respects; and

3.1.4 There shall not exist an Event of Default or an event which with the giving of notice of passage of time, or both, would be an Event of Default.

4. No Modification of Other Obligations. Except as is otherwise specifically set forth herein, the Credit Agreement shall remain unmodified and in full force and effect, and is hereby ratified and confirmed.

5. Conflicts. If a conflict exists between the provisions of the Credit Agreement and the provisions of this Amendment, the provisions of this Amendment shall control.

6. Further Assurances. Borrower agrees to make and execute such other documents as may be necessary or required to effectuate the terms and conditions of this Amendment.

7. Future Modifications. This Amendment does not entitle, or imply any consent or agreement to, any further or future modification of, amendment to, waiver of, or consent with respect to any provision of the Credit Agreement. Any amendments hereto shall be in writing and signed by the parties.

8. Integration. This Amendment is an integrated agreement, and supercedes all negotiations and agreement regarding the subject matter hereof, and taken together with the Credit Agreement, constitutes the final agreement of the parties with respect to the subject matter hereof and thereof.

9. Fees and Costs. Borrower shall pay Bank's attorneys' fees and costs incurred in the preparation of this Amendment.

10. Severability. In the event any one or more of the provisions contained in this Amendment is held to be invalid, illegal or unenforceable in any respect, then such provision shall be ineffective only to the extent of such prohibition or invalidity, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11. Interpretation. This Amendment and all agreements relating to the subject matter hereof are the product of negotiation and preparation by and among each party and its respective attorneys, and shall be construed accordingly. The parties waive the provisions of California Civil Code Section 1654.

12. Counterparts. This Amendment may be signed in any number of counterparts, each of which shall be an original, with the same effect as if all signatures were upon the same instrument. Delivery of an executed counterpart of the signature page to this Amendment by telefacsimile shall be effective as delivery of a manually executed counterpart of this Amendment, and any party delivering such an executed counterpart of the signature page to this Amendment by telefacsimile to any other party shall thereafter also promptly deliver a manually executed counterpart of this Amendment to such other party, provided that the failure to deliver such manually executed counterpart shall not affect the validity, enforceability, or binding effect of this Amendment.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the day and year first written above.

BROCADE COMMUNICATIONS SYSTEMS, INC.

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

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

COMERICA BANK-CALIFORNIA

Sarah Lewis  
Vice President

BASIC LEASE INFORMATION  
OFFICE NET

LEASE DATE: July 26, 2000

TENANT: Brocade Communications Systems, Inc., a Delaware corporation

TENANT'S NOTICE ADDRESS: 1901 Guadalupe Parkway  
San Jose, California 95131

TENANT'S BILLING ADDRESS: 1901 Guadalupe Parkway  
San Jose, California 95131

TENANT CONTACT: Wendy Richardson PHONE NUMBER: 408/487-8100  
Facility Manager FAX NUMBER: 408/487-8101

LANDLORD: Spieker Properties, L.P., a California limited partnership

LANDLORD'S NOTICE ADDRESS: 151 Metro Drive  
San Jose, CA 95110

LANDLORD'S REMITTANCE ADDRESS: P.O. Box 45587 Dept. # 11531  
San Francisco, CA 94145-0587

PROJECT DESCRIPTION: That certain six-story, Class A, multi-tenant office building located at the southeast corner of Technology Drive and Metro Drive, situated in the County of Santa Clara, City of San Jose, State of California.

BUILDING DESCRIPTION: That certain real property commonly known as 1740 Technology Drive, located at 1740 Technology Drive, San Jose, California, and as depicted on EXHIBIT B attached hereto.

PREMISES: Approximately thirty-one thousand one hundred sixty-eight (31,168) rentable square feet, which consists of 15.95% of the Project and as depicted on EXHIBIT B attached hereto.

PERMITTED USE: General office and administrative, and up to twenty percent (20%) of the rentable area of the Premises may be used for communications laboratory purposes.

OCCUPANCY DENSITY: 4.5 per 1,000 rentable square feet of the Premises.

PARKING DENSITY: 4 spaces per 1,000 usable square feet of the Premises.

PARKING CHARGE: Initially at \$0 per space per month for nonreserved parking spaces during the initial Term of this Lease, thereafter subject to adjustment pursuant to Paragraph 37 hereof.

SCHEDULED TERM COMMENCEMENT DATE: December 1, 2000, subject to adjustment pursuant to the terms of this Lease.

SCHEDULED LENGTH OF TERM: One hundred seventeen (117) months following the Term Commencement Date.

SCHEDULED TERM EXPIRATION DATE: August 31, 2010, subject to adjustment pursuant to the terms of this Lease.

BASE RENT: With respect to the Premises, see Paragraph 39.A hereof.

SECURITY DEPOSIT: Eight Hundred Thirteen Thousand Four Hundred Eighty-six and No/100 Dollars (\$813,486.00) Letter of Credit delivered in accordance with the terms of Paragraph 39.D (subject to adjustment as provided in Paragraphs 39.D and 19 hereof).

TENANT'S NAICS CODE: 51121

TENANT'S PROPORTIONATE SHARE OF PROJECT: 15.95%

The foregoing Basic Lease Information is incorporated into and made a part of this Lease. Each reference in this Lease to any of the Basic Lease Information shall mean the respective information above and shall be construed to incorporate all of the terms



provided under the particular Lease paragraph pertaining to such information. In the event of any conflict between the Basic Lease Information and the Lease, the latter shall control.

LANDLORD

Spieker Properties, L.P.,  
a California limited partnership

By: Spieker Properties, Inc.,  
a Maryland corporation,  
its general partner

By:

-----  
John W. Petersen  
Its: Senior Vice President

TENANT

Brocade Communications Systems, Inc.,  
a Delaware corporation

By:

-----  
Michael J. Byrd  
Its: Vice President, Finance,  
Chief Financial Officer

By:

-----  
Victor Rinkle  
Its: Vice President, Operations

TABLE OF CONTENTS

	PAGE
	----
Basic Lease Information.....	1
Table of Contents.....	2
1. Premises.....	4
2. Possession and Lease Commencement.....	4
3. Term.....	4
4. Use.....	4
5. Rules and Regulations.....	6
6. Rent.....	6
7. Operating Expenses.....	6
8. Insurance and Indemnification.....	8
9. Waiver of Subrogation.....	9
10. Landlord's Repairs and Maintenance.....	9
11. Tenant's Repairs and Maintenance.....	9
12. Alterations.....	10
13. Signs.....	10
14. Inspection/Posting Notices.....	11
15. Services and Utilities.....	11
16. Subordination.....	12
17. Financial Statements.....	12
18. Estoppel Certificate.....	13
19. Security Deposit.....	13
20. Limitation of Tenant's Remedies.....	13
21. Assignment and Subletting.....	13
22. Authority of Tenant.....	14
23. Condemnation.....	14
24. Casualty Damage.....	15
25. Holding Over.....	16
26. Default.....	16
27. Liens.....	17
28. Substitution.....	17
29. Transfers by Landlord.....	17
30. Right of Landlord to Perform Tenant's Covenants.....	18
31. Waiver.....	18
32. Notices.....	18
33. Attorney's Fees.....	18
34. Successors and Assigns.....	18
35. Force Majeure.....	18
36. Surrender of Premises.....	18
37. Parking.....	19
38. Miscellaneous.....	19
39. Additional Provisions.....	20
40. Jury Trial Waiver.....	23
Signatures.....	23
Exhibits:	
Exhibit A.....	Rules and Regulations
Exhibit B.....	Site Plan, Property Description
Exhibit C.....	Lease Improvement Agreement

Additional Exhibits as Required

## LEASE

THIS LEASE is made as of the 26th day of July, 2000, by and between Spieker Properties, L.P., a California limited partnership (hereinafter called "LANDLORD"), and Brocade Communications Systems, Inc., a Delaware corporation (hereinafter called "TENANT").

## 1. PREMISES

Landlord leases to Tenant and Tenant leases from Landlord, upon the terms and conditions hereinafter set forth, those premises (the "PREMISES") outlined in red on EXHIBIT B and described in the Basic Lease Information. The Premises shall be all or part of a building (the "BUILDING") and of a project (the "PROJECT"), which may consist of more than one building and additional facilities, as described in the Basic Lease Information. The Building and Project are outlined in blue and green respectively on EXHIBIT B. Landlord and Tenant acknowledge that physical changes may occur from time to time in the Premises, Building or Project, and that the number of buildings and additional facilities which constitute the Project may change from time to time, which may result in an adjustment in Tenant's Proportionate Share, as defined in the Basic Lease Information, as provided in Paragraph 7.A.

## 2. POSSESSION AND LEASE COMMENCEMENT

EXISTING IMPROVEMENTS. If this Lease pertains to a Premises in which the interior improvements have already been constructed ("EXISTING IMPROVEMENTS"), the provisions of this Paragraph 2. shall apply and the term commencement date ("TERM COMMENCEMENT DATE") shall be the earlier of the date on which: (1) Tenant takes possession of some or all of the Premises; or (2) December 1, 2000. If for any reason Landlord cannot deliver possession of the Premises to Tenant on the scheduled Term Commencement Date, Landlord shall not be subject to any liability therefore, nor shall Landlord be in default hereunder nor shall such failure affect the validity of this Lease, and Tenant agrees to accept possession of the Premises at such time as Landlord is able to deliver the same, which date shall then be deemed the Term Commencement Date. Tenant shall not be liable for any Rent (defined below) for any period prior to the Term Commencement Date. Tenant acknowledges that Tenant has inspected and accepts the Premises in their present condition, "as is" AND IN GOOD REPAIR, and as suitable for the Permitted Use (as defined below), and for Tenant's intended operations in the Premises. Tenant agrees that the Premises and other improvements are in good and satisfactory condition as of when possession was taken. Tenant further acknowledges that no representations as to the condition or repair of the Premises nor promises to alter, remodel or improve the Premises have been made by Landlord or any agents of Landlord unless such are expressly set forth in this Lease. Upon Landlord's request, Tenant shall promptly execute and return to Landlord a "Start-Up Letter" in which Tenant shall agree, among other things, to acceptance of the Premises and to the determination of the Term Commencement Date, in accordance with the terms of this Lease, but Tenant's failure or refusal to do so shall not negate Tenant's acceptance of the Premises or affect determination of the Term Commencement Date. To the best of Landlord's knowledge, all elevators, HVAC and other building systems are in good working order.

A.

B.

## 3. TERM

The term of this Lease (the "TERM") shall commence on the Term Commencement Date and continue in full force and effect for the number of months specified as the Scheduled Length of Term in the Basic Lease Information or until this Lease is terminated as otherwise provided herein. If the Term Commencement Date is a date other than the first day of the calendar month, the Term shall be the number of months of the Length of Term in addition to the remainder of the calendar month following the Term Commencement Date.

## 4. USE

A. GENERAL. Tenant shall use the Premises for the permitted use specified in the Basic Lease Information ("PERMITTED USE") and for no other use or purpose. Tenant shall control Tenant's employees, agents, customers, visitors, invitees, licensees, contractors, assignees and subtenants (collectively, "TENANT'S PARTIES") in such a manner that Tenant and Tenant's Parties cumulatively do not exceed the occupant density (the "OCCUPANCY DENSITY") or the parking density (the "PARKING DENSITY") specified in the Basic Lease Information at any time. Tenant shall pay the Parking Charge specified in the Basic Lease Information as Additional Rent (as hereinafter defined) hereunder. So long as Tenant is occupying the Premises, Tenant and Tenant's Parties shall have the nonexclusive right to use, in common with other parties occupying the Building or Project, the parking areas, driveways and other common areas of the Building and Project, including at no cost to Tenant during the initial Term of this Lease, Landlord's fitness facility, subject to the terms of this Lease and such rules and regulations as Landlord may from time to time prescribe. Landlord reserves the right, without notice or liability to Tenant, and without the same constituting an actual or constructive eviction, to alter or modify the common areas from time to time, including the location and configuration thereof, and the amenities and facilities which Landlord may determine to provide from time to time, provided that any such alteration or modification shall not materially adversely affect Tenant's use of the Premises or the parking area as provided hereunder, and provided further that any such alteration or modification shall not detract from the first-class quality of the Building. In the event that any alteration or modification of the common area materially and adversely affects Tenant's use of the parking areas of the Project, Landlord may provide to Tenant

a reasonable alternate parking area for Tenant's and Tenant's Parties' use. During the Term hereof, provided that Tenant comply with the reasonable requirements of Landlord's security system, Tenant shall have the right to access the Premises via Landlord's security system, twenty-four (24) hours per day, three hundred sixty-five (365) days per calendar year, in accordance with the terms and conditions of this Lease, subject to Landlord's repair and maintenance obligations pursuant to this Lease which obligations may require the performance of after-hours repair or maintenance work by Landlord which work may temporarily prevent after-hours access to the Building. As of the date of this Lease, Landlord employs a roving security service covering the Project. Notwithstanding the foregoing, nothing in this Lease shall be deemed to require that Landlord provide security services to Tenant or any tenant of the Project at any time.

B. LIMITATIONS. Tenant shall not permit any odors, smoke, dust, gas, substances, noise or vibrations to emanate from the Premises or from any portion of the common areas as a result of Tenant's or any Tenant's Party's use thereof, nor take any action which would constitute a nuisance or would disturb, obstruct or endanger any other tenants or occupants of the Building or Project or elsewhere, or interfere with their use of their respective premises or common areas. Storage outside the Premises of materials, vehicles or any other items

is prohibited. Tenant shall not use or allow the Premises to be used for any immoral, improper or unlawful purpose, nor shall Tenant cause or maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer the commission of any waste in, on or about the Premises. Tenant shall not allow any sale by auction upon the Premises, or place any loads upon the floors, walls or ceilings which could endanger the structure, or place any harmful substances in the drainage system of the Building or Project. No waste, materials or refuse shall be dumped upon or permitted to remain outside the Premises. Landlord shall not be responsible to Tenant for the non-compliance by any other tenant or occupant of the Building or Project with any of the above-referenced rules or any other terms or provisions of such tenant's or occupant's lease or other contract.

C. COMPLIANCE WITH REGULATIONS. Subject to punchlist items, if any, provided by Tenant to Landlord in accordance with Paragraph 2.B above, when entering the Premises, Tenant accepts the Premises in the condition existing as of the date of such entry. Tenant shall at its sole cost and expense strictly comply with all existing or future applicable municipal, state and federal and other governmental statutes, rules, requirements, regulations, laws and ordinances, including zoning ordinances and regulations, and covenants, easements and restrictions of record (to the extent Tenant has actual or constructive knowledge of such restrictions of record) governing and relating to Tenant's Permitted Use or other specific use by Tenant or Tenant's Parties, occupancy or possession of the Premises, to Tenant's use of the common areas, or to the use, storage, generation or disposal of Hazardous Materials (hereinafter defined) by Tenant or Tenant's Parties (collectively "REGULATIONS"). Tenant shall at its sole cost and expense obtain any and all licenses or permits necessary for Tenant's use of the Premises. Tenant shall at its sole cost and expense promptly comply with the requirements of any board of fire underwriters or other similar body now or hereafter constituted. Tenant shall not do or permit anything to be done in, on, under or about the Project or bring or keep anything which will in any way increase the rate of any insurance upon the Premises, Building or Project or upon any contents therein or cause a cancellation of said insurance or otherwise affect said insurance in any manner. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord harmless from and against any loss, cost, expense, damage, attorneys' fees or liability arising out of the failure of Tenant to comply with any Regulation to the extent that such compliance is required of Tenant under this Lease. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or earlier termination of this Lease. Landlord represents that, on the date Landlord delivers possession of the Premises to Tenant, the Premises shall comply in all material respects with those Regulations applicable to real property located in Santa Clara County and pertaining to the Premises. Landlord shall be responsible for complying with Regulations (including ADA and Title 24 to the extent any such compliance requirement of Landlord is expressly stated herein) pertaining to the common areas of the Project prior to and except to the extent arising out of Tenant's occupancy or use of the Premises or common areas or construction of any Tenant Improvements or Alterations made by or on behalf of Tenant, whether by Landlord or otherwise and whether performed before or after the Term Commencement Date, or installation of any equipment, fixtures, furniture or other personal property in or about the Premises. Tenant shall have the sole responsibility for complying, at Tenant's cost, with any and all provisions of the Americans with Disabilities Act of 1990, as it has been and may later be amended ("ADA"), (i) with respect to the Premises; and (ii) with respect to the common areas of the Project where in the case of this clause (ii) such compliance has been brought about by: (A) any Tenant Improvements or Alterations to the Premises or to the common areas made by or on behalf of Tenant, whether by Landlord or otherwise, and performed after the Term Commencement Date; (B) requirements of Tenant's employees, or any changes to Tenant's use of the Premises; or (C) any architectural barriers caused by Tenant's installation of any equipment, fixtures, furniture, or other personal property in or about the Premises (items (i) and (ii) collectively, "TENANT'S ADA RESPONSIBILITIES"). Tenant shall indemnify, defend and hold Landlord, its agents and employees harmless from and against any and all claims, damages, or liabilities (including, without limitation, reasonable attorneys' fees and costs) arising directly or indirectly from Tenant's failure to satisfy any of Tenant's ADA Responsibilities. Landlord shall indemnify, defend and hold Tenant, its agents and employees harmless from and against any and all claims, damages or liabilities arising directly or indirectly from Landlord's failure to comply with any obligations of a landlord under the ADA, other than such claims, damages or liabilities arising from Tenant's failure to satisfy any of Tenant's ADA Responsibilities; provided, however, that Landlord may treat costs of ADA compliance with respect to the common areas of the Project to the extent incurred after the date Landlord delivers possession of the Premises to Tenant as an Operating Expense. Notwithstanding anything to the contrary contained in Paragraph 7.A of this Lease, costs of ADA and Title 24 compliance brought about by alterations to the common areas performed before the date Landlord delivers possession of the Premises to Tenant for Tenant's construction of the Tenant Improvements, or which are expressly made Landlord's responsibility under this Lease, will be borne solely by Landlord and shall neither be treated as an Operating Expense nor be the responsibility of Tenant, except to the extent provided herein. Landlord represents that, as of the date Landlord delivers possession of the Premises to Tenant, to the best of Landlord's actual knowledge, the Premises and the Building shall comply in all material respects with the ADA and Title 24 as the ADA and Title 24 have, as of the date Landlord delivers possession of the Premises to Tenant, been interpreted in Santa Clara County and pertain to the Premises and the Building. Notwithstanding anything to the contrary contained in this Lease, regardless of whether the cost of compliance with Regulations shall be borne by Tenant, or Tenant and other tenants of the Project as an Operating Expense (as defined herein), Landlord shall perform or cause to be performed any compliance with Regulations items as described in this Lease which items are located in the common area or are structural in nature; provided, however, that the costs of such compliance items shall be allocated in accordance herewith.

D. HAZARDOUS MATERIALS. As used in this Lease, "HAZARDOUS MATERIALS" shall include, but not be limited to, hazardous, toxic and radioactive materials and those substances defined as "hazardous substances," "hazardous materials," "hazardous wastes," "toxic substances," or other similar designations in any Regulation. Tenant shall not cause, or allow any of Tenant's Parties to cause, any Hazardous Materials to be handled, used, generated, stored, released or disposed of in, on, under or about the Premises, the Building or the Project or surrounding land or environment in violation of any Regulations. Tenant must obtain Landlord's written consent prior to the introduction of any Hazardous Materials onto the Project. Notwithstanding the foregoing, Tenant may handle, store, use and dispose of products containing small quantities of Hazardous Materials for "general office purposes" (such as toner for copiers) to the extent customary and necessary for the Permitted Use of the Premises; provided that Tenant shall always handle, store, use, and dispose of any such Hazardous Materials in a safe and lawful manner and never allow such Hazardous Materials to contaminate the Premises, Building, or Project or surrounding land or environment. Tenant shall immediately notify Landlord in writing of any Hazardous Materials' contamination of any portion of the Project of which Tenant becomes aware, whether or not caused by Tenant. Landlord shall have the right at all reasonable times and if Landlord determines in good faith that Tenant may not be in compliance with this Paragraph 4.D to inspect the Premises and to conduct tests and investigations to determine whether Tenant is in compliance with the foregoing provisions, the costs of all such inspections, tests and investigations to be borne by Tenant. Tenant shall indemnify, defend (by counsel reasonably acceptable to Landlord), protect and hold Landlord harmless from and against any and all claims, liabilities, losses, costs, loss of rents, liens, damages, injuries or expenses (including reasonable attorneys' and consultants' fees, and court costs), demands, causes of action, or judgments directly or indirectly arising out of or related to the use, generation, storage, release, or disposal of Hazardous Materials by Tenant or any of Tenant's Parties in, on, under or about the Premises, the Building or the Project or surrounding land or environment, which indemnity shall include, without limitation, damages for personal or bodily injury, property damage, damage to the environment or natural resources occurring on or off the Premises, losses attributable to diminution in value or adverse effects on marketability, the cost of any investigation, monitoring, government oversight, repair, removal, remediation, restoration, abatement, and disposal, and the preparation of any closure or other required plans, whether such action is required or necessary prior to or following the expiration or earlier termination of this Lease. Neither the consent by Landlord to the use, generation, storage, release or disposal of Hazardous Materials nor the strict compliance by Tenant with all laws pertaining to Hazardous Materials shall excuse Tenant from Tenant's obligation of indemnification pursuant to this Paragraph 4.D. Tenant's obligations pursuant to the foregoing indemnity shall survive the expiration or earlier termination of this Lease.

## 5. RULES AND REGULATIONS

Tenant shall faithfully observe and comply with the building rules and regulations attached hereto as EXHIBIT A and any other rules and regulations and any modifications or additions thereto which Landlord may from time to time prescribe in writing for the purpose of maintaining the proper care, cleanliness, safety, traffic flow and general order of the Premises or the Building or Project. Tenant shall cause Tenant's Parties to comply with such rules and regulations. Landlord shall not be responsible to Tenant for the non-compliance by any other tenant or occupant of the Building or Project with any of such rules and regulations, any other tenant's or occupant's lease or any Regulations.

## 6. RENT

A. **BASE RENT.** Tenant shall pay to Landlord and Landlord shall receive, without notice or demand throughout the Term, Base Rent as specified in the Basic Lease Information, payable in monthly installments in advance on or before the first day of each calendar month, in lawful money of the United States, without deduction or offset whatsoever, at the Remittance Address specified in the Basic Lease Information or to such other place as Landlord may from time to time designate in writing. Base Rent for the first full month of the Term for the Premises shall be paid by Tenant upon Tenant's execution of this Lease. Such payment of Base Rent for the first full month of the Term shall be applied to the first full month of the Term by Landlord upon its receipt thereof so that, upon such application by Landlord of such payment, no additional payment of Base Rent allocable to the first full month of the Term shall be due from Tenant. If the obligation for payment of Base Rent commences on a day other than the first day of a month, then Base Rent shall be prorated and the prorated installment shall be paid on the first day of the calendar month next succeeding the Term Commencement Date. The Base Rent payable by Tenant hereunder is subject to adjustment as provided elsewhere in this Lease, as applicable. As used herein, the term "Base Rent" shall mean the Base Rent specified in the Basic Lease Information as it may be so adjusted from time to time.

B. **ADDITIONAL RENT.** All monies other than Base Rent required to be paid by Tenant hereunder, including, but not limited to, Tenant's Proportionate Share of Operating Expenses, as specified in Paragraph 7 of this Lease, charges to be paid by Tenant under Paragraph 15, the interest and late charge described in Paragraphs 26.D. and E., and any monies spent by Landlord pursuant to Paragraph 30, shall be considered additional rent ("ADDITIONAL RENT"). "RENT" shall mean Base Rent and Additional Rent.

## 7. OPERATING EXPENSES

A. **OPERATING EXPENSES.** In addition to the Base Rent required to be paid hereunder, Tenant shall pay as Additional Rent, Tenant's Proportionate Share of the Building and/or Project (as applicable), as defined in the Basic Lease Information, of Operating Expenses (defined below) in the manner set forth below. Tenant shall pay the applicable Tenant's Proportionate Share of each such Operating Expenses. Landlord and Tenant acknowledge that if the number of buildings which constitute the Project increases or decreases, or if physical changes are made to the Premises, Building or Project or the configuration of any thereof, Landlord may reasonably adjust Tenant's Proportionate Share of the Building or Project to equitably and fairly reflect the change. Landlord's determination of Tenant's Proportionate Share of the Building and of the Project shall be conclusive so long as it is reasonably and consistently applied. "OPERATING EXPENSES" shall mean all expenses and costs of every kind and nature which Landlord shall pay or become obligated to pay, because of or in connection with the ownership, management, maintenance, repair, preservation, replacement and operation of the Building or Project and its supporting facilities and such additional facilities now and in subsequent years as may be determined by Landlord to be necessary or desirable to the Building and/or Project (as determined in a reasonable manner) other than those expenses and costs which are specifically attributable to Tenant or which are expressly made the financial responsibility of Landlord or specific tenants of the Building or Project pursuant to this Lease. Operating Expenses shall include, but are not limited to, the following:

(1) **TAXES.** All real property taxes and assessments, possessory interest taxes, sales taxes, personal property taxes, business or license taxes or fees, gross receipts taxes, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, transit charges, and other impositions, general and special, ordinary and extraordinary, unforeseen as well as foreseen, of any kind (including fees "in-lieu" of any such tax or assessment) which are now or hereafter assessed, levied, charged, confirmed, or imposed by any public authority upon the Building or Project, its operations or the Rent (or any portion or component thereof), or any tax, assessment or fee imposed in substitution, partially or totally, of any of the above. Operating Expenses shall also include any taxes, assessments, reassessments, or other fees or impositions with respect to the development, leasing, management, maintenance, alteration, repair, use or occupancy of the Premises, Building or Project or any portion thereof, including, without limitation, by or for Tenant, and all increases therein or reassessments thereof whether the increases or reassessments result from increased rate and/or valuation (whether upon a transfer of the Building or Project or any portion thereof or any interest therein or for any other reason). Operating Expenses shall not include inheritance or estate taxes imposed upon or assessed against the interest of any person in the Building or the Project, or taxes computed upon the basis of the net income of any owners of any interest in the Building or the Project. If it shall not be lawful for Tenant to reimburse Landlord for all or any part of such taxes, the monthly rental payable to Landlord under this Lease shall be revised to net Landlord the same net rental after imposition of any such taxes by Landlord as would have been payable to

Landlord prior to the payment of any such taxes.

(2) INSURANCE. All insurance premiums and costs, including, but not limited to, any deductible amounts, premiums and other costs of insurance incurred by Landlord, including for the insurance coverage set forth in Paragraph 8.A. herein.

(3) COMMON AREA MAINTENANCE.

(a) Repairs, replacements, and general maintenance of and for the Building and Project and public and common areas and facilities of and comprising the Building and Project, including, but not limited to, the roof and roof membrane, windows, elevators, restrooms, conference rooms, health club facilities, lobbies, mezzanines, balconies, mechanical rooms, building exteriors, alarm systems, pest extermination, landscaped areas, parking and service areas, driveways, sidewalks, loading areas, fire sprinkler systems, sanitary and storm sewer lines, utility services, heating/ventilation/air conditioning systems, electrical, mechanical or other systems, telephone equipment and wiring servicing, plumbing, lighting, and any other items or areas which affect the operation or appearance of the Building or Project, which determination shall be at Landlord's discretion, except for: those items to the extent paid for by the proceeds of insurance or paid by Tenant or other third parties; and those items attributable solely or jointly to specific tenants of the Building or Project.

(b) Repairs, replacements, and general maintenance shall include the cost of any improvements made to or assets acquired for the Project or Building that in Landlord's discretion may reduce any other Operating Expenses, including present or future repair work, are reasonably necessary for the health and safety of the occupants of the Building or Project, or for the operation of the Building systems, services and equipment, or are required to comply with any Regulation, such costs or allocable portions thereof to be amortized over such reasonable period as Landlord shall determine which period is substantially in accordance with generally accepted accounting principles, together with interest on the unamortized balance at the publicly announced "prime rate" charged by Wells Fargo Bank, N.A. (San Francisco) or its successor at the time such improvements or capital assets are constructed or acquired, plus two (2)



percentage points, or in the absence of such prime rate, then at the U.S. Treasury six-month market note (or bond, if so designated) rate as published by any national financial publication selected by Landlord, plus four (4) percentage points, but in no event more than the lesser of (i) ten percent (10%) or (ii) the maximum rate permitted by law, plus reasonable financing charges.

(c) Payment under or for any easement, license, permit, operating agreement, declaration, restrictive covenant or instrument relating to the Building or Project.

(d) All expenses and rental related to services and costs of supplies, materials and equipment used in operating, managing and maintaining the Premises, Building and Project, the equipment therein and the adjacent sidewalks, driveways, parking and service areas, including, without limitation, expenses related to service agreements regarding security, fire and other alarm systems, janitorial services, window cleaning, elevator maintenance, Building exterior maintenance, landscaping and expenses related to the administration, management and operation of the Project, including without limitation salaries, wages and benefits and management office rent.

(e) The cost of supplying any services and utilities which benefit all or a portion of the Premises, Building or Project, including without limitation services and utilities provided pursuant to Paragraph 15 hereof.

(f) Legal expenses and the cost of audits by certified public accountants; provided, however, that legal expenses chargeable as Operating Expenses shall not include the cost of negotiating leases, collecting rents, evicting tenants nor shall it include costs incurred in legal proceedings with or against any tenant or to enforce the provisions of any lease.

(g) A management and accounting cost recovery fee not to exceed four percent (4%) of the sum of the Project's revenues.

If the rentable area of the Building and/or Project is not fully occupied during any fiscal year of the Term as determined by Landlord, an adjustment shall be made in Landlord's discretion in computing the Operating Expenses for such year so that Tenant pays an equitable portion of all variable items (e.g., utilities, janitorial services and other component expenses that are affected by variations in occupancy levels) of Operating Expenses, as reasonably determined by Landlord; provided, however, that in no event shall Landlord be entitled to collect in excess of one hundred percent (100%) of the total Operating Expenses actually incurred by Landlord from all of the tenants in the Building or Project, as the case may be.

Operating Expenses shall not include the cost of providing tenant improvements or other specific costs incurred for the account of specific tenants of the Building or Project other than Tenant, the initial construction cost of the Building, or debt service on any mortgage or deed of trust recorded with respect to the Project other than pursuant to Paragraph 7.A(3)(b) above. Moreover, if Landlord does not provide janitorial service to the Premises, Operating Expenses with respect to the Premises shall not include the cost of janitorial service. In addition, notwithstanding anything in the definition of Operating Expenses in this Lease to the contrary, Operating Expenses shall not include the following, except to the extent specifically provided: costs of capital improvements, replacements or equipment and any depreciation or amortization expenses thereon, except to the extent included in Operating Expenses in Paragraph 7.A of this Lease; marketing costs, including leasing commissions, attorneys' fees in connection with the negotiation and preparation or enforcement of letters, deal memos, letters of intent, leases, subleases and/or assignments, space planning costs, and other costs and expenses incurred in connection with lease, sublease and/or assignment negotiations and transactions with present or prospective tenants or other occupants of the Building or the Project; except to the extent included in Operating Expenses in Paragraph 7.A(3) above, interest, principal, points and fees on debt or amortization payments on any mortgage or deed of trust or any other debt instrument encumbering the Building or Project or the land on which the Building or Project is situated; and advertising and promotional expenditures; Landlord's general corporate overhead and general administrative expenses not related to the operation of the Building or the Project (including executive salaries), except as specifically set forth in Paragraph 7.A of this Lease.

Notwithstanding anything herein to the contrary, in any instance wherein Landlord, in Landlord's reasonable discretion, deems Tenant to be responsible for any amounts greater than Tenant's Proportionate Share, Landlord shall have the right to allocate costs in any manner Landlord reasonably deems appropriate. Landlord shall not collect from the tenants of the Project an amount greater than 100% of the Operating Expenses incurred in the Project.

The above enumeration of services and facilities shall not be deemed to impose an obligation on Landlord to make available or provide such services or facilities except to the extent if any that Landlord has specifically agreed elsewhere in this Lease to make the same available or provide the same. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that it shall be responsible for providing adequate security for its use of the Premises, the Building and the Project and that Landlord shall have no obligation or liability with respect thereto, except to the extent if any that Landlord has specifically agreed elsewhere in this Lease to provide the same.

B. PAYMENT OF ESTIMATED OPERATING EXPENSES. "ESTIMATED OPERATING EXPENSES" for any particular year shall mean Landlord's estimate of the Operating Expenses for

such fiscal year made with respect to such fiscal year as hereinafter provided. Landlord shall have the right from time to time to revise its fiscal year and interim accounting periods so long as the periods as so revised are reconciled with prior periods in a reasonable manner. During the last month of each fiscal year during the Term, or as soon thereafter as practicable, Landlord shall give Tenant written notice of the Estimated Operating Expenses for the ensuing fiscal year. Tenant shall pay Tenant's Proportionate Share of the Estimated Operating Expenses with installments of Base Rent for the fiscal year to which the Estimated Operating Expenses applies in monthly installments on the first day of each calendar month during such year, in advance. Such payment shall be construed to be Additional Rent for all purposes hereunder. If at any time during the course of the fiscal year, Landlord reasonably determines that Operating Expenses are projected to vary from the then Estimated Operating Expenses by more than five percent (5%), Landlord may, by written notice to Tenant, revise the Estimated Operating Expenses for the balance of such fiscal year, and Tenant's monthly installments for the remainder of such year shall be adjusted so that by the end of such fiscal year Tenant has paid to Landlord Tenant's Proportionate Share of the revised Estimated Operating Expenses for such year, such revised installment amounts to be Additional Rent for all purposes hereunder.

C. COMPUTATION OF OPERATING EXPENSE ADJUSTMENT. "OPERATING EXPENSE ADJUSTMENT" shall mean the difference between Estimated Operating Expenses and actual Operating Expenses for any fiscal year determined as hereinafter provided. Within one hundred twenty (120) days after the end of each fiscal year, or as soon thereafter as practicable, Landlord shall deliver to Tenant a statement of actual Operating Expenses for the fiscal year just ended, accompanied by a computation of Operating Expense Adjustment. If such statement shows that Tenant's payment based upon Estimated Operating Expenses is less than Tenant's Proportionate Share of Operating Expenses, then Tenant shall pay to Landlord the difference within thirty (30) days after receipt of such statement, such payment to constitute Additional Rent for all purposes hereunder. If such statement shows that Tenant's payments of Estimated Operating Expenses exceed Tenant's Proportionate Share of Operating Expenses, then (provided that Tenant is not in default under this Lease) Landlord shall pay to Tenant the difference within thirty (30) days after delivery of such statement to Tenant. If this Lease has been terminated or the Term hereof has expired prior to the date of such statement, then the Operating Expense Adjustment shall be paid by the appropriate party within thirty (30) days after the date of delivery of the statement. Should this Lease commence or terminate at any time other than the first

day of the fiscal year, Tenant's Proportionate Share of the Operating Expense Adjustment shall be prorated based on a month of 30 days and the number of calendar months during such fiscal year that this Lease is in effect. Notwithstanding anything to the contrary contained in Paragraph 7.A or 7.B, Landlord's failure to provide any notices or statements within the time periods specified in those paragraphs shall in no way excuse Tenant from its obligation to pay Tenant's Proportionate Share of Operating Expenses.

D. NET LEASE. This shall be a triple net Lease and Base Rent shall be paid to Landlord absolutely net of all costs and expenses, except as specifically provided to the contrary in this Lease. The provisions for payment of Operating Expenses and the Operating Expense Adjustment are intended to pass on to Tenant and reimburse Landlord for all costs and expenses of the nature described in Paragraph 7.A. incurred in connection with the ownership, management, maintenance, repair, preservation, replacement and operation of the Building and/or Project and its supporting facilities and such additional facilities now and in subsequent years as may be determined by Landlord to be necessary or desirable to the Building and/or Project.

E. TENANT AUDIT. If Tenant shall dispute the amount set forth in any statement provided by Landlord under Paragraph 7.B. or 7.C. above, Tenant shall have the right, not later than thirty (30) days following receipt of such statement and upon the condition that Tenant shall first deposit with Landlord the full amount in dispute, to notify Landlord of such dispute and to request an audit in writing, and within sixty (60) days after Landlord's receipt of such written notice, to cause Landlord's books and records with respect to Operating Expenses for such fiscal year to be audited by certified public accountants selected by Tenant and subject to Landlord's reasonable right of approval. The Operating Expense Adjustment shall be appropriately adjusted on the basis of such audit. If such audit discloses a liability for a refund in excess of six percent (6%) of Tenant's Proportionate Share of the Operating Expenses previously reported, the cost of such audit shall be borne by Landlord; otherwise the cost of such audit shall be paid by Tenant. If Tenant shall not request an audit in accordance with the provisions of this Paragraph 7.E. within thirty (30) days after receipt of Landlord's statement provided pursuant to Paragraph 7.B. or 7.C., such statement shall be final and binding for all purposes hereof. Tenant acknowledges and agrees that any information revealed in the above described audit may contain proprietary and sensitive information and that significant damage could result to Landlord if such information were disclosed to any party other than Tenant's auditors, Tenant's executives and financial managers and Tenant's legal counsel, all of whom Tenant shall require to keep confidential any information discovered through such audit, which requirement of confidentiality shall survive the termination of this Lease. Except to the extent required by an order of a court with proper jurisdiction, Tenant shall not in any manner disclose, provide or make available any information revealed by the audit to any person or entity without Landlord's prior written consent, which consent may be withheld by Landlord in its sole and absolute discretion. The information disclosed by the audit will be used by Tenant solely for the purpose of evaluating Landlord's books and records in connection with this Paragraph 7.E.

## 8. INSURANCE AND INDEMNIFICATION

A. LANDLORD'S INSURANCE. All insurance maintained by Landlord shall be for the sole benefit of Landlord and under Landlord's sole control.

(1) PROPERTY INSURANCE. Landlord agrees to maintain property insurance insuring the Building against damage or destruction due to risk including fire, vandalism, and malicious mischief in an amount not less than the replacement cost thereof, in the form and with deductibles and endorsements as selected by Landlord. At its election, Landlord may instead (but shall have no obligation to) obtain "All Risk" coverage, and may also obtain earthquake, pollution, and/or flood insurance in amounts selected by Landlord.

(2) OPTIONAL INSURANCE. Landlord, at Landlord's option, may also (but shall have no obligation to) carry (i) insurance against loss of rent, in an amount equal to the amount of Base Rent and Additional Rent that Landlord could be required to abate to all Building tenants in the event of condemnation or casualty damage for a period of twelve (12) months; and (ii) liability insurance and such other insurance as Landlord may deem prudent or advisable, in such amounts and on such terms as Landlord shall determine. Landlord shall not be obligated to insure, and shall have no responsibility whatsoever for any damage to, any furniture, machinery, goods, inventory or supplies, or other personal property or fixtures which Tenant may keep or maintain in the Premises, or any leasehold improvements, additions or alterations within the Premises.

B. TENANT'S INSURANCE. Tenant shall procure at Tenant's sole cost and expense and keep in effect from the date of this Lease and at all times until the end of the Term the following:

(1) PROPERTY INSURANCE. Insurance on all personal property and fixtures of Tenant and all improvements, additions or alterations made by or for Tenant to the Premises on an "All Risk" basis, insuring such property for the full replacement value of such property.

(2) LIABILITY INSURANCE. Commercial General Liability insurance covering bodily injury and property damage liability occurring in or about the Premises or arising out of the use and occupancy of the Premises and the Project, and any part of either, and any areas adjacent thereto, and the business operated by Tenant or by any other occupant of the Premises. Such insurance shall include contractual liability insurance coverage insuring all of Tenant's indemnity obligations under this Lease. Such coverage shall have a minimum combined single limit of liability of at least Two Million Dollars (\$2,000,000.00), and a minimum general

aggregate limit of Three Million Dollars (\$3,000,000.00), with an "Additional Insured - Managers or Lessors of Premises Endorsement." All such policies shall be written to apply to all bodily injury (including death), property damage or loss, personal and advertising injury and other covered loss, however occasioned, occurring during the policy term, shall be endorsed to add Landlord and any party holding an interest to which this Lease may be subordinated as an additional insured, and shall provide that such coverage shall be "PRIMARY" and non-contributing with any insurance maintained by Landlord, which shall be excess insurance only. Such coverage shall also contain endorsements including employees as additional insureds if not covered by Tenant's Commercial General Liability Insurance. All such insurance shall provide for the severability of interests of insureds; and shall be written on an "OCCURRENCE" basis, which shall afford coverage for all claims based on acts, omissions, injury and damage, which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(3) WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE. Workers' Compensation Insurance as required by any Regulation, and Employers' Liability Insurance in amounts not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident; One Million Dollars (\$1,000,000) policy limit for bodily injury by disease; and One Million Dollars (\$1,000,000) each employee for bodily injury by disease.

(4) COMMERCIAL AUTO LIABILITY INSURANCE. Commercial auto liability insurance with a combined limit of not less than One Million Dollars (\$1,000,000) for bodily injury and property damage for each accident. Such insurance shall cover liability relating to any auto of Tenant (including owned, hired and non-owned autos, and automobiles used within the scope of employment under Tenant).

(5) ALTERATIONS REQUIREMENTS. In the event Tenant shall desire to perform any Alterations, Tenant shall deliver to Landlord, prior to commencing such Alterations (i) evidence reasonably satisfactory to Landlord that Tenant carries "Builder's

Risk" insurance covering construction of such Alterations in an amount and form approved by Landlord, (ii) such other insurance as Landlord shall nondiscriminatorily and reasonably require, and (iii) a lien and completion bond or other security in form and amount satisfactory to Landlord in Landlord's reasonable discretion (which amount of such bond or other security shall be approximately one hundred fifty percent (150%) of the total cost of completion of the portion of the Tenant Improvements for which Landlord requires such additional security). Landlord shall in no event be required to accept an instrument of security for purposes of the foregoing sentence which instrument of security is not customarily accepted by Landlord for such purposes in the ordinary course of Landlord's business operations.

(6) GENERAL INSURANCE REQUIREMENTS. All coverages described in this Paragraph 8.B. shall be endorsed to (i) provide Landlord with thirty (30) days' notice of cancellation or change in terms; and (ii) waive all rights of subrogation by the insurance carrier against Landlord. If at any time during the Term the amount or coverage of insurance which Tenant is required to carry under this Paragraph 8.B. is, in Landlord's reasonable judgment, materially less than the amount or type of insurance coverage typically carried by owners or tenants of properties located in the general area in which the Premises are located which are similar to and operated for similar purposes as the Premises or if Tenant's use of the Premises should change with or without Landlord's consent, Landlord shall have the right to require Tenant to increase the amount or change the types of insurance coverage required under this Paragraph 8.B. All insurance policies required to be carried by Tenant under this Lease shall be written by companies rated A X or better in "Best's Insurance Guide" and authorized to do business in the State of California. With respect to the Tenant named hereunder (Brocade Communications Systems, Inc.), in any event deductible amounts under all insurance policies required to be carried by Tenant under this Lease shall not exceed One Hundred Thousand Dollars (\$100,000.00) per occurrence, provided that Tenant maintains a tangible net worth of at least Fifty Million and No/100 Dollars (\$50,000,000.00) as reasonably determined by Landlord, or, if Tenant's net worth is less than Fifty Million and No/100 Dollars (\$50,000,000.00), such deductible amounts shall not exceed Twenty-Five Thousand and No/100 Dollars (\$25,000.00) per occurrence. With respect to any other party which becomes "Tenant" under this Lease, by assignment or operation of law, or otherwise, in any event deductible amounts under all insurance policies required to be carried by Tenant under this Lease shall not exceed Five Thousand Dollars (\$5,000.00) per occurrence. Tenant shall deliver to Landlord on or before the Term Commencement Date, and thereafter at least fifteen (15) days before the expiration dates of the expired policies, certified copies of Tenant's insurance policies, or a certificate evidencing the same issued by the insurer thereunder; and, if Tenant shall fail to procure such insurance, or to deliver such policies or certificates, Landlord may, at Landlord's option and in addition to Landlord's other remedies in the event of a default by Tenant hereunder, procure the same for the account of Tenant, and the cost thereof shall be paid to Landlord as Additional Rent.

C. INDEMNIFICATION. Tenant shall indemnify, defend by counsel reasonably acceptable to Landlord, protect and hold Landlord, Spieker Properties, Inc., and each of their respective directors, shareholders, partners, lenders, members, managers, contractors, affiliates and employees (collectively, "LANDLORD INDEMNITEES") harmless from and against any and all claims, liabilities, losses, costs, loss of rents, liens, damages, injuries or expenses, including reasonable attorneys' and consultants' fees and court costs, demands, causes of action, or judgments, directly or indirectly arising out of or related to: (1) claims of injury to or death of persons or damage to property or business loss occurring or resulting directly or indirectly from the use or occupancy of the Premises, Building or Project by Tenant or Tenant's Parties, or from activities or failures to act of Tenant or Tenant's Parties; (2) claims arising from work or labor performed, or for materials or supplies furnished to or at the request or for the account of Tenant in connection with performance of any work done for the account of Tenant within the Premises or Project; (3) claims arising from any breach or default on the part of Tenant in the performance of any covenant contained in this Lease; and (4) claims arising from the negligence or intentional acts or omissions of Tenant or Tenant's Parties. The foregoing indemnity by Tenant shall not be applicable to claims to the extent arising from the gross negligence or willful misconduct of Landlord or Landlord's agents, employees, or contractors or Landlord's breach of a material term of this Lease beyond any applicable cure periods. Landlord shall not be liable to Tenant and Tenant hereby waives all claims against Landlord for any injury to or death of, or damage to any person or property or business loss in or about the Premises, Building or Project by or from any cause whatsoever (other than Landlord's gross negligence or willful misconduct or Landlord's breach of a material term of this Lease beyond any applicable cure periods) and, without limiting the generality of the foregoing, whether caused by water leakage of any character from the roof, walls, basement or other portion of the Premises, Building or Project, or caused by gas, fire, oil or electricity in, on or about the Premises, Building or Project, acts of God or of third parties, or any matter outside of the reasonable control of Landlord. The provisions of this Paragraph shall survive the expiration or earlier termination of this Lease.

#### 9. WAIVER OF SUBROGATION

Landlord and Tenant each waives any claim, loss or cost it might have against the other for any injury to or death of any person or persons, or damage to or theft, destruction, loss, or loss of use of any property (a "LOSS"), to the extent the same is insured against (or is required to be insured against under the terms hereof) under any property damage insurance policy covering the Building, the Premises, Landlord's or Tenant's fixtures, personal property,

leasehold improvements, or business, regardless of whether the negligence of the other party caused such Loss.

#### 10. LANDLORD'S REPAIRS AND MAINTENANCE

Landlord shall maintain in good repair, reasonable wear and tear excepted, the structural soundness of the roof, foundations, and exterior walls of the Building. The term "exterior walls" as used herein shall not include windows, glass or plate glass, doors, special store fronts or office entries. Any damage caused by or repairs necessitated by any negligence or act of Tenant or Tenant's Parties may be repaired by Landlord at Landlord's option and Tenant's expense. Tenant shall promptly give Landlord written notice of any defect or need of repairs in such components of the Building for which Landlord is responsible upon Tenant's knowledge of the same, after which Landlord shall have a reasonable opportunity and the right to enter the Premises at all reasonable times to repair same. Landlord shall make commercially reasonable efforts to cause its agents, employees and contractors who enter the Premises to use commercially reasonable efforts not to unreasonably interfere with Tenant's Permitted Use of the Premises. Landlord's liability with respect to any defects, repairs, or maintenance for which Landlord is responsible under any of the provisions of this Lease shall be limited to the cost of such repairs or maintenance, and there shall be no abatement of rent and no liability of Landlord by reason of any injury to or interference with Tenant's business arising from the making of repairs, alterations or improvements in or to any portion of the Premises, the Building or the Project or to fixtures, appurtenances or equipment in the Building, except as provided in Paragraph 24. Subject to punchlist items described in Paragraph 2.B hereof, by taking possession of the Premises, Tenant accepts them "as is," as being in good order, condition and repair and the condition in which Landlord is obligated to deliver them and suitable for the Permitted Use and Tenant's intended operations in the Premises, whether or not any notice of acceptance is given. Landlord shall promptly commence the correction of the punchlist items described in Paragraph 2.B hereof, if any, following Landlord's receipt of any such punchlist items list in accordance with this Lease.

#### 11. TENANT'S REPAIRS AND MAINTENANCE

Tenant shall at all times during the Term at Tenant's expense maintain all parts of the Premises and such portions of the Building as are within the exclusive control of Tenant in a first-class, good, clean and secure condition and promptly make all necessary repairs and replacements, as reasonably determined by Landlord, with materials and workmanship of the same character, kind and quality as the original. Notwithstanding anything to the contrary contained herein, Tenant shall, at its expense, promptly repair any damage to the Premises or the Building or Project resulting from or caused by any negligence or act of Tenant or Tenant's Parties.

## 12. ALTERATIONS

A. Tenant shall not make, or allow to be made, any alterations, physical additions, improvements or partitions, including without limitation the attachment of any fixtures or equipment, in, about or to the Premises ("ALTERATIONS") without obtaining the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed with respect to proposed Alterations which: (a) comply with all applicable Regulations; (b) are, in Landlord's reasonable opinion, compatible with the Building or the Project and its mechanical, plumbing, electrical, heating/ventilation/air conditioning systems, and will not cause the Building or Project or such systems to be required to be modified to comply with any Regulations (including, without limitation, the Americans With Disabilities Act), unless Tenant in its sole discretion agrees in writing to pay for all costs and expenses associated with such compliance requirement (which agreement shall survive termination of this Lease); and (c) will not interfere with the use and occupancy of any other portion of the Building or Project by any other tenant or its invitees. Specifically, but without limiting the generality of the foregoing, Landlord shall have the right of written consent for all plans and specifications for the proposed Alterations, construction means and methods, all appropriate permits and licenses, any contractor or subcontractor to be employed on the work of Alterations, and the time for performance of such work, and may impose reasonable rules and regulations for contractors and subcontractors performing such work. Tenant shall also supply to Landlord any documents and information reasonably requested by Landlord in connection with Landlord's consideration of a request for approval hereunder. Notwithstanding the foregoing, Tenant shall have the right, without consent of, but upon at least ten (10) business days' prior written notice (as provided under Paragraph 12.B below) to, Landlord, to make non-structural, cosmetic Alterations within the interior of the Premises (and which are not visible from the outside of the Premises), which do not impair the value of the Building, and which cost, in the aggregate, less than Twenty-Five Thousand Dollars (\$25,000.00) in any twelve (12) month period during the Term of this Lease, provided that such Alterations shall nevertheless be subject to all of the remaining requirements of this Paragraph 12, including without limitation, subparagraphs (a) through (c) above, other than the requirement of Landlord's prior consent. In addition, all Alterations shall be performed by duly licensed contractors or subcontractors reasonably acceptable to Landlord, proof of insurance shall be submitted to Landlord as required under Paragraph 8.B above, and Landlord reserves the right to impose reasonable rules and regulations for contractors and subcontractors. Tenant shall, if requested by Landlord, promptly furnish Landlord with complete as-built plans and specifications for any Alterations performed by Tenant to the Premises, at Tenant's sole cost and expense. Tenant shall cause all Alterations to be accomplished in a first-class, good and workmanlike manner, and to comply with all applicable Regulations and Paragraph 27 hereof. Tenant shall at Tenant's sole expense, perform any additional work required under applicable Regulations due to the Alterations hereunder. No review or consent by Landlord of or to any proposed Alteration or additional work shall constitute a waiver of Tenant's obligations under this Paragraph 12, nor constitute any warranty or representation that the same complies with all applicable Regulations, for which Tenant shall at all times be solely responsible. Tenant shall reimburse Landlord for all costs which Landlord may incur in connection with granting approval to Tenant for any such Alterations, including any costs or expenses which Landlord may incur in electing to have outside architects and engineers review said plans and specifications, and shall pay Landlord an administration fee of five percent (5%) of the cost of the Alterations as Additional Rent hereunder. All such Alterations shall remain the property of Tenant until the expiration or earlier termination of this Lease, at which time they shall be and become the property of Landlord; provided, however, that Landlord may, at Landlord's option, require that Tenant, at Tenant's expense, remove any or all Alterations (excluding the initial Tenant Improvements) made by or on behalf of Tenant and restore the Premises by the expiration or earlier termination of this Lease, to their condition existing prior to the construction of any such Alterations, reasonable wear and tear excepted. All such removals and restoration shall be accomplished in a first-class and good and workmanlike manner so as not to cause any damage to the Premises or Project whatsoever. If Tenant fails to remove such Alterations or Tenant's trade fixtures or furniture or other personal property, Landlord may keep and use them or remove any of them and cause them to be stored or sold in accordance with applicable law, at Tenant's sole expense. In addition to and wholly apart from Tenant's obligation to pay Tenant's Proportionate Share of Operating Expenses, Tenant shall be responsible for and shall pay prior to delinquency any taxes or governmental service fees, possessory interest taxes, fees or charges in lieu of any such taxes, capital levies, or other charges imposed upon, levied with respect to or assessed against its fixtures or personal property, on the value of Alterations within the Premises, and on Tenant's interest pursuant to this Lease, or any increase in any of the foregoing based on such Alterations. To the extent that any such taxes are not separately assessed or billed to Tenant, Tenant shall pay the amount thereof as invoiced to Tenant by Landlord.

At Landlord's election and notwithstanding the foregoing, however, Tenant shall pay to Landlord the cost of removing any such Alterations and restoring the Premises to their original condition, such cost to include a reasonable charge for Landlord's overhead and profit as provided above at the time Landlord grants written consent to a requested Alteration; provided, however, that Landlord shall not require that Tenant pay to Landlord the cost of removing any such Alterations and restoring the Premises to their original condition as described in the foregoing sentence if the following conditions precedent are satisfied by Tenant: (i) Tenant (and not a sublessee or assignee of Tenant) shall be the party for which the Alterations are requested and Tenant is in possession of the portion of the Premises upon which the Alterations shall be made, and (ii) the removal costs of such Alterations described above are determined by Landlord in its reasonable discretion to be less than a cumulative total of one hundred thousand and no/100 dollars (\$100,000.00) with respect to all existing Alterations which Landlord may require to be removed pursuant to the terms of this Lease. Nothing in the foregoing sentence shall be interpreted to relieve

Tenant of its obligations described in this Lease to remove Alterations and restore the Premises at Tenant's cost in accordance with this Paragraph 12, Paragraph 36 and with other applicable terms and conditions of this Lease. In the event that Tenant does remove any such Alterations and restores the Premises in accordance with the terms of this Lease, Landlord shall return any monies delivered by Tenant to Landlord in accordance with the preceding sentence. In the event Tenant fails to remove Alterations and restore the Premises in accordance with the terms of this Lease, Landlord may perform the same on Tenant's behalf apply monies collected by Landlord for such purpose to the removal and restoration or, in the event Landlord does not require any such payment by Tenant, the amount due from Tenant may be deducted from the Security Deposit or any other sums or amounts held by Landlord under this Lease.

B. In compliance with Paragraph 27 hereof, at least ten (10) business days before beginning construction of any Alteration, Tenant shall give Landlord written notice of the expected commencement date of that construction to permit Landlord to post and record a notice of non-responsibility. Upon substantial completion of construction, if the law so provides, Tenant shall cause a timely notice of completion to be recorded in the office of the recorder of the county in which the Building is located.

C. Notwithstanding anything to the contrary contained in Paragraph 12.A, at the time Landlord gives its consent for any Alterations, Tenant shall also be notified whether or not Landlord will require that such Alterations be removed upon the expiration or earlier termination of this Lease. Landlord shall respond to Tenant's written request within fifteen (15) business days. In the event Landlord fails to respond to Tenant's written request within such fifteen (15) business day time period, Landlord shall not be in default hereof nor shall Tenant be deemed to have received consent to the requested Alterations; however Tenant is entitled to provide a second written request for consent to Landlord. Landlord shall respond to Tenant's second written request for consent described in this Paragraph 12.C within ten (10) business days after Landlord's receipt thereof. In the event Landlord fails to so respond to Tenant's second written request, Landlord shall be deemed to have consented to Tenant's request to make Alterations; provided, however, that if the total cost of any proposed Alterations by Tenant during the previous six (6) month period is equal to or more than One Hundred Thousand Dollars (\$100,000.00), Landlord shall be deemed to have rejected Tenant's second request to make such Alterations.

### 13. SIGNS

Tenant shall not place, install, affix, paint or maintain any signs, notices, graphics or banners whatsoever or any window decor which is visible in or from public view or corridors, the common areas or the exterior of the Premises or the Building, in or on any exterior window or window fronting upon any common areas or service area without Landlord's prior written approval which Landlord shall have the right



to withhold in its absolute and sole discretion; provided that Tenant's name shall be included in any Building-standard door and directory signage, if any, in accordance with Landlord's Building signage program, including without limitation, payment by Tenant of any fee charged by Landlord for maintaining such signage, which fee shall constitute Additional Rent hereunder. Any installation of signs, notices, graphics or banners on or about the Premises or Project approved by Landlord shall be subject to any Regulations and to any other requirements imposed by Landlord. Tenant shall remove all such signs or graphics by the expiration or any earlier termination of this Lease. Such installations and removals shall be made in such manner as to avoid injury to or defacement of the Premises, Building or Project and any other improvements contained therein, and Tenant shall repair any injury or defacement including without limitation discoloration caused by such installation or removal. Any signage rights granted by Landlord to Tenant shall be exclusive to Tenant and such rights shall not be assigned, subleased or otherwise conveyed without the prior written approval of Landlord of which Landlord shall have the right to withhold in its absolute and sole discretion. Tenant's signage rights under this Paragraph are personal to the original Tenant named in this Lease and shall not inure to the benefit of any assignees or subtenants. Notwithstanding anything contained in this Paragraph 13 to the contrary, Tenant shall be entitled to two (2) signs to be located as follows (a) one (1) sign on the monument facing Technology Drive, and (b) one (1) sign on the monument facing Metro Drive each in a location reasonably determined by Landlord. Such signage right is personal to Tenant and subject to the following terms and conditions:

1. Tenant shall submit plans and drawings for such signage to the City of San Jose and to any other public authorities having jurisdiction and shall obtain written approval from each such jurisdiction prior to installation, and shall fully comply with all applicable Regulations;
2. Tenant shall, at Tenant's sole cost and expense, design, construct and install such signage;
3. All signs shall be subject to Landlord's prior written approval, which Landlord shall have the right to withhold in its absolute and sole discretion;
4. Tenant shall maintain its signage in good condition and repair, and all costs of maintenance and repair shall be borne by Tenant. Maintenance shall include, without limitation, cleaning and, if such signage is illuminated, relamping at reasonable intervals. Tenant shall be responsible for any electrical energy used in connection with its signs;
5. At Landlord's option, Tenant's signage rights granted hereby may be revoked and terminated upon occurrence of any of the following events:
  - (a) Tenant shall be in material default, as defined in Paragraph 26 as determined by Landlord in its sole discretion, and shall not have cured said default for a period of ninety (90) days;
  - (b) Except with respect to Permitted Transfers described in Paragraph 21.A(3) hereof, Tenant shall assign this Lease or sublet any portion of the Premises without Landlord's prior written consent in accordance with Paragraph 21, or Tenant occupies less than fifty percent (50%) of the Premises;
  - (c) This Lease shall terminate or otherwise no longer be in effect.
6. Upon the expiration or earlier termination of this Lease if Tenant fails to remove its signage in accordance with this Paragraph 13, or at such other time that Tenant's signage rights are terminated pursuant to the terms hereof, Landlord shall cause Tenant's signage to be removed from the Building and the Building to be repaired and restored to the condition which existed prior to the installation of Tenant's signage (including, if necessary, the replacement of any precast concrete panels), all at the sole cost and expense of Tenant and otherwise in accordance with Paragraph 36 of this Lease, without further notice from Landlord notwithstanding anything to the contrary contained in this Lease. Tenant shall pay all costs and expenses for such removal and restoration within thirty (30) days following delivery of an invoice therefore.

#### 14. INSPECTION/POSTING NOTICES

After reasonable notice, except in emergencies where no such notice shall be required, Landlord and Landlord's agents and representatives, shall have the right to enter the Premises to inspect the same, to clean, to perform such work as may be permitted or required hereunder, to make repairs, improvements or alterations to the Premises, Building or Project or to other tenant spaces therein, to deal with emergencies, to post such notices as may be permitted or required by law to prevent the perfection of liens against Landlord's interest in the Project or to exhibit the Premises to prospective tenants, purchasers, encumbrancers or to others, or for any other purpose as Landlord may deem necessary or desirable; provided, however, that Landlord shall use reasonable efforts not to unreasonably interfere with Tenant's business operations. Tenant shall not be entitled to any abatement of Rent by reason of the exercise of any such right of entry. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy

or quiet enjoyment of the Premises, and any other loss occasioned thereby. Landlord shall at all times have and retain a key with which to unlock all of the doors in, upon and about the Premises, excluding Tenant's vaults and safes or special security areas (designated in advance), and Landlord shall have the right to use any and all means which Landlord may deem necessary or proper to open said doors in an emergency, in order to obtain entry to any portion of the Premises, and any entry to the Premises or portions thereof obtained by Landlord by any of said means, or otherwise, shall not be construed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an eviction, actual or constructive, of Tenant from the Premises or any portions thereof. At any time within six (6) months prior to the expiration of the Term or following any earlier termination of this Lease or agreement to terminate this Lease, Landlord shall have the right to erect on the Premises, Building and/or Project a suitable sign indicating that the Premises are available for lease.

#### 15. SERVICES AND UTILITIES

A. Provided Tenant shall not be in default hereunder, and subject to the provisions elsewhere herein contained and to the rules and regulations of the Building, Landlord shall furnish to the Premises during ordinary business hours of generally recognized business days, to be reasonably determined by Landlord (but exclusive, in any event, of Saturdays, Sundays and legal holidays), water for lavatory and drinking purposes and electricity, heat and air conditioning as usually furnished or supplied for use of the Premises for reasonable and normal office use as of the date Tenant takes possession of the Premises as determined by Landlord (but not including above-standard or continuous cooling for excessive heat-generating machines, excess lighting or equipment), janitorial services during the times and in the manner that such services are, in Landlord's judgment, customarily furnished in comparable office buildings in the immediate market area, and elevator service, which shall mean service either by nonattended automatic elevators or elevators with attendants, or both, at the option of Landlord. Tenant acknowledges that Tenant has inspected and accepts the water, electricity, heat and air conditioning and other utilities and services being supplied or furnished to the Premises as of the date Tenant takes possession of the Premises, as being sufficient for use of the Premises for reasonable and normal office use in their present condition, "as is," and suitable for the Permitted Use, and for Tenant's intended operations in the Premises. Landlord shall have no obligation to provide additional or after-hours electricity, heating or air conditioning, but if Landlord elects to provide such services at Tenant's request, Tenant shall pay to Landlord, upon demand, a reasonable charge for such services as reasonably determined by Landlord. Tenant agrees to keep and cause to be kept closed all window covering

when necessary because of the sun's position, and Tenant also agrees at all times to cooperate fully with Landlord and to abide by all of the regulations and requirements which Landlord may reasonably prescribe for the proper functioning and protection of electrical, heating, ventilating and air conditioning systems. Wherever heat-generating machines, excess lighting or equipment are used in the Premises which affect the temperature otherwise maintained by the air conditioning system, Landlord reserves the right to install supplementary air conditioning units in the Premises and the cost thereof, including the cost of installation and the cost of operation and maintenance thereof, shall be paid by Tenant to Landlord upon demand by Landlord.

B. Tenant shall not without written consent of Landlord use any apparatus, equipment or device in the Premises, including without limitation, computers, electronic data processing machines, copying machines, and other machines, using excess lighting or using electric current, water, or any other resource in excess of or which will in any way increase the amount of electricity, water, or any other resource being furnished or supplied for the use of the Premises for reasonable and normal office use, and the Permitted Use, in each case as of the date Tenant takes possession of the Premises and as determined by Landlord, or which will require additions or alterations to or interfere with the Building power distribution systems; nor connect with electric current, except through existing electrical outlets in the Premises or water pipes, any apparatus, equipment or device for the purpose of using electrical current, water, or any other resource. If Tenant shall require water or electric current or any other resource in excess of that being furnished or supplied for the use of the Premises as of the date Tenant takes possession of the Premises as determined by Landlord, Tenant shall first procure the written consent of Landlord which Landlord may refuse, to the use thereof, and Landlord may cause a special meter to be installed in the Premises so as to measure the amount of water, electric current or other resource consumed for any such other use. Tenant shall pay directly to Landlord upon demand as an addition to and separate from payment of Operating Expenses the cost of all such additional resources, energy, utility service and meters (and of installation, maintenance and repair thereof and of any additional circuits or other equipment necessary to furnish such additional resources, energy, utility or service). Landlord may add to the separate or metered charge a recovery of additional expense incurred in keeping account of the excess water, electric current or other resource so consumed. Following receipt of Tenant's request to do so, Landlord shall use good faith efforts to restore any service specifically to be provided under Paragraph 15 that becomes unavailable and which is in Landlord's reasonable control to restore; provided, however, that Landlord shall in no case be liable for any damages directly or indirectly resulting from nor shall the Rent or any monies owed Landlord under this Lease herein reserved be abated by reason of: (a) the installation, use or interruption of use of any equipment used in connection with the furnishing of any such utilities or services, or any change in the character or means of supplying or providing any such utilities or services or any supplier thereof; (b) the failure to furnish or delay in furnishing any such utilities or services when such failure or delay is caused by acts of God or the elements, labor disturbances of any character, or otherwise or because of any interruption of service due to Tenant's use of water, electric current or other resource in excess of that being supplied or furnished for the use of the Premises as of the date Tenant takes possession of the Premises; (c) the inadequacy, limitation, curtailment, rationing or restriction on use of water, electricity, gas or any other form of energy or any other service or utility whatsoever serving the Premises or Project, whether by Regulation or otherwise; or (d) the partial or total unavailability of any such utilities or services to the Premises or the Building or the diminution in the quality or quantity thereof, whether by Regulation or otherwise; or (e) any interruption in Tenant's business operations as a result of any such occurrence; nor shall any such occurrence constitute an actual or constructive eviction of Tenant or a breach of an implied warranty by Landlord. Landlord shall further have no obligation to protect or preserve any apparatus, equipment or device installed by Tenant in the Premises, including without limitation by providing additional or after-hours heating or air conditioning. Landlord shall be entitled to cooperate voluntarily and in a reasonable manner with the efforts of national, state or local governmental agencies or utility suppliers in reducing energy or other resource consumption. The obligation to make services available hereunder shall be subject to the limitations of any such voluntary, reasonable program. In addition, Landlord reserves the right to change the supplier or provider of any such utility or service from time to time. Tenant shall have the right to directly contract with or otherwise obtain any electrical or janitorial service for or with respect to the Premises or Tenant's operations therein from any supplier or provider of any such service. Tenant shall cooperate with Landlord and any supplier or provider of such services designated by Landlord from time to time to facilitate the delivery of such services to Tenant at the Premises and to the Building and Project, including without limitation allowing Landlord and Landlord's suppliers or providers, and their respective agents and contractors, reasonable access to the Premises for the purpose of installing, maintaining, repairing, replacing or upgrading such service or any equipment or machinery associated therewith.

C. Tenant shall pay, upon demand, for all utilities furnished to the Premises, or if not separately billed to or metered to Tenant, Tenant's Proportionate Share of all charges jointly serving the Project in accordance with Paragraph 7. All sums payable under this Paragraph 15 shall constitute Additional Rent hereunder.

D. Tenant may contract separately with providers of telecommunications or cellular products, systems or services for the Premises. Even though such products, systems or services may be installed or provided by such providers in the Building, in consideration for Landlord's permitting such providers to provide such services to Tenant, Tenant agrees that Landlord and the Landlord Indemnitees shall in no event be liable to Tenant or any Tenant Party for any damages of any nature whatsoever arising out of or relating to the products, systems or services provided by such providers (or any failure, interruption, defect in or loss of the same) or any acts or omissions of such providers in

connection with the same or any interference in Tenant's business caused thereby. Tenant waives and releases all rights and remedies against Landlord and the Landlord Indemnitees that are inconsistent with the foregoing.

#### 16. SUBORDINATION

Without the necessity of any additional document being executed by Tenant for the purpose of effecting a subordination, this Lease shall be and is hereby declared to be subject and subordinate at all times to: (a) all ground leases or underlying leases which may now exist or hereafter be executed affecting the Premises and/or the land upon which the Premises and Project are situated, or both; and (b) any mortgage or deed of trust which may now exist or be placed upon the Building, the Project and/or the land upon which the Premises or the Project are situated, or said ground leases or underlying leases, or Landlord's interest or estate in any of said items which is specified as security. Notwithstanding the foregoing, Landlord shall have the right to subordinate or cause to be subordinated any such ground leases or underlying leases or any such liens to this Lease. If any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, Tenant shall, notwithstanding any subordination, attorn to and become the Tenant of the successor in interest to Landlord provided that Tenant shall not be disturbed in its possession under this Lease by such successor in interest so long as Tenant is not in default under this Lease. Within ten (10) days after request by Landlord, Tenant shall execute and deliver any additional documents evidencing Tenant's attornment or the subordination of this Lease with respect to any such ground leases or underlying leases or any such mortgage or deed of trust, in the form requested by Landlord or by any ground landlord, mortgagee, or beneficiary under a deed of trust, subject to such nondisturbance requirement. If requested in writing by Tenant, Landlord shall use commercially reasonable efforts to obtain a subordination, nondisturbance and attornment agreement for the benefit of Tenant reflecting the foregoing from any ground landlord, mortgagee or beneficiary, at Tenant's expense, subject to such other terms and conditions as the ground landlord, mortgagee or beneficiary may require.

#### 17. FINANCIAL STATEMENTS

At the request of Landlord from time to time, Tenant shall provide to Landlord Tenant's and any guarantor's current financial statements or other information discussing financial worth of Tenant and any guarantor, which Landlord shall use solely for purposes of this Lease and in connection with the ownership, management, financing and disposition of the Project. Landlord shall not disclose, provide or make available any confidential information revealed by Tenant's private financial information to any person or entity without Tenant's prior written consent.

## 18. ESTOPPEL CERTIFICATE

Tenant agrees from time to time, within ten (10) days after request of Landlord, to deliver to Landlord, or Landlord's designee, an estoppel certificate stating that this Lease is in full force and effect, that this Lease has not been modified (or stating all modifications, written or oral, to this Lease), the date to which Rent has been paid, the unexpired portion of this Lease, that there are no current defaults by Landlord or Tenant under this Lease (or specifying any such defaults), that the leasehold estate granted by this Lease is the sole interest of Tenant in the Premises and/or the land at which the Premises are situated, and such other matters pertaining to this Lease as may be reasonably requested by Landlord or any mortgagee, beneficiary, purchaser or prospective purchaser of the Building or Project or any interest therein. Failure by Tenant to execute and deliver such certificate shall constitute an acceptance of the Premises and acknowledgment by Tenant that the statements included are true and correct without exception. Tenant agrees that if Tenant fails to execute and deliver such certificate within such ten (10) day period, Landlord may execute and deliver such certificate on Tenant's behalf and that such certificate shall be binding on Tenant. Landlord and Tenant intend that any statement delivered pursuant to this Paragraph may be relied upon by any mortgagee, beneficiary, purchaser or prospective purchaser of the Building or Project or any interest therein. The parties agree that Tenant's obligation to furnish such estoppel certificates in a timely fashion is a material inducement for Landlord's execution of this Lease, and shall be an event of default (without any cure period that might be provided under Paragraph 26.A(3) of this Lease) if Tenant fails to fully comply or makes any material misstatement in any such certificate.

## 19. SECURITY DEPOSIT

Tenant agrees to deposit with Landlord upon execution of this Lease, a security deposit as stated in the Basic Lease Information (the "SECURITY DEPOSIT"), which sum shall be held and owned by Landlord, without obligation to pay interest, as security for the performance of Tenant's covenants and obligations under this Lease. The Security Deposit is not an advance rental deposit or a measure of damages incurred by Landlord in case of Tenant's default. Upon the occurrence of any event of default by Tenant, Landlord may from time to time, without prejudice to any other remedy provided herein or by law, use such fund as a credit to the extent necessary to credit against any arrears of Rent or other payments due to Landlord hereunder, and any other damage, injury, expense or liability caused by such event of default, and Tenant shall pay to Landlord, on demand, the amount so applied in order to restore the Security Deposit to its original amount. Although the Security Deposit shall be deemed the property of Landlord, any remaining balance of such deposit shall be promptly returned by Landlord to Tenant at such time after termination of this Lease that all of Tenant's obligations under this Lease have been fulfilled to Landlord's reasonable satisfaction, reduced by such amounts as may be required by Landlord (i) to remedy defaults on the part of Tenant in the payment of Rent or other obligations of Tenant under this Lease, (ii) to repair damage to the Premises, Building or Project caused by Tenant or any Tenant's Parties, and (iii) to clean the Premises to the extent Tenant fails to comply with Paragraph 36 hereof. Landlord may use and commingle the Security Deposit with other funds of Landlord. Tenant hereby waives the provisions of Section 1950.7 of the California Civil Code, and all other provisions of any Regulations, now or hereinafter in force, which restricts the amount or types of claim that a landlord may make upon a security deposit or imposes upon a landlord (or its successors) any obligation with respect to the handling or return of security deposits.

## 20. LIMITATION OF TENANT'S REMEDIES

The obligations and liability of Landlord to Tenant for any default by Landlord under the terms of this Lease are not personal obligations of Landlord or of the individual or other partners of Landlord or its or their partners, directors, officers, or shareholders, and Tenant agrees to look solely to Landlord's interest in the Project for the recovery of any amount from Landlord, and shall not look to other assets of Landlord nor seek recourse against the assets of the individual or other partners of Landlord or its or their partners, directors, officers or shareholders. Any lien obtained to enforce any such judgment and any levy of execution thereon shall be subject and subordinate to any lien, mortgage or deed of trust on the Project. Under no circumstances shall Tenant have the right to offset against or recoup Rent or other payments due and to become due to Landlord hereunder except as expressly provided in this Lease, which Rent and other payments shall be absolutely due and payable hereunder in accordance with the terms hereof. In no case shall Landlord be liable to Tenant for any lost profits, damage to business, or any form of special, indirect or consequential damage on account of any breach of this Lease or otherwise, notwithstanding anything to the contrary contained in this Lease.

## 21. ASSIGNMENT AND SUBLETTING

- A. (1) GENERAL. This Lease has been negotiated to be and is granted as an accommodation to Tenant. Accordingly, this Lease is personal to Tenant, and Tenant's rights granted hereunder do not include the right to assign this Lease or sublease the Premises, or to receive any excess, either in installments or lump sum, over the Rent which is expressly reserved by Landlord as hereinafter provided, except as otherwise expressly hereinafter provided. Tenant shall not assign or pledge this Lease or sublet the Premises or any part thereof, whether voluntarily or by operation of law, or permit the use or occupancy of the Premises or any part thereof by anyone other than Tenant, or suffer or permit any such assignment, pledge, subleasing or occupancy, without Landlord's prior written consent except as provided herein. If Tenant desires to assign this Lease or sublet any or all of the Premises in the case where Landlord's consent is required, Tenant shall give Landlord written

notice (the "TRANSFER NOTICE") at least thirty (30) days prior to the anticipated effective date of the proposed assignment or sublease, which shall contain all of the information reasonably requested by Landlord to address Landlord's decision criteria specified hereinafter. Landlord shall then have a period of ten (10) business days following receipt of the Transfer Notice to notify Tenant in writing that Landlord elects either: (i) to terminate this Lease as to the space so affected as of the date so requested by Tenant; or (ii) to consent to the proposed assignment or sublease, subject, however, to Landlord's prior written consent of the proposed assignee or subtenant and of any related documents or agreements associated with the assignment or sublease. If Landlord should fail to notify Tenant in writing of such election within said period, Landlord shall be deemed to have waived option (i) above, but written consent by Landlord of the proposed assignee or subtenant shall still be required. If Landlord does not exercise option (i) above, Landlord's consent to a proposed assignment or sublease shall not be unreasonably withheld. Consent to any assignment or subletting shall not constitute consent to any subsequent transaction to which this Paragraph 21 applies. Notwithstanding the foregoing, Landlord hereby waives its right to recapture a portion of the Premises, as such right is described in clause (i) above, in the following circumstance only: (X) The term of such proposed sublease shall be no more than forty-eight (48) months and no extension options shall be granted in such sublease. With respect to any sublease that occurs, the standard of "sound financial condition" described as a condition to Landlord's consent shall be based upon a determination by Landlord, in its reasonable discretion, that such proposed transferee shall have a tangible net worth, evidenced by audited financial statements delivered to Landlord pursuant to the terms of this Lease, that is reasonably sufficient, taking into account all expected obligations of the transferee with respect to the proposed transfer and all of its other contingent and noncontingent obligations, to service when due the obligations of the transferee with respect to the proposed transfer.

- (2) **CONDITIONS OF LANDLORD'S CONSENT.** Without limiting the other instances in which it may be reasonable for Landlord to withhold Landlord's consent to an assignment or subletting, Landlord and Tenant acknowledge that it shall be reasonable for Landlord to withhold Landlord's consent in the following instances: if the proposed assignee does not agree to be bound by and assume the obligations of Tenant under this Lease in form and substance reasonably satisfactory to Landlord; the use of the Premises by such proposed assignee or subtenant would not be a Permitted Use or would violate any exclusivity or other arrangement which Landlord has with any other tenant or occupant or any Regulation or would increase the Occupancy Density or Parking Density of the Building or Project, or would otherwise result in an undesirable tenant mix for the Project as

determined by Landlord; the proposed assignee or subtenant is not of sound financial condition as determined by Landlord in Landlord's sole discretion; the proposed assignee or subtenant is a governmental agency; the proposed assignee or subtenant does not have a good reputation as a tenant of property or a good business reputation; the proposed assignee or subtenant is a person with whom Landlord is negotiating to lease space in the Project or is a present tenant of the Project if Tenant's proposed sublease space competes with space Landlord has available for lease in the Project; the assignment or subletting would entail any Alterations which would lessen the value of the leasehold improvements in the Premises or use of any Hazardous Materials (except as expressly approved in this Lease) or other noxious use or use which may unreasonably disturb other tenants of the Project; or Tenant is in default of any obligation of Tenant under this Lease, or Tenant has defaulted under this Lease on three (3) or more occasions during any twelve (12) months preceding the date that Tenant shall request consent. Failure by or refusal of Landlord to consent to a proposed assignee or subtenant shall not cause a termination of this Lease. Upon a termination under Paragraph 21.A(1)(i), Landlord may lease the Premises to any party, including parties with whom Tenant has negotiated an assignment or sublease, without incurring any liability to Tenant. At the option of Landlord, a surrender and termination of this Lease shall operate as an assignment to Landlord of some or all subleases or subtenancies. Landlord shall exercise this option by giving notice of that assignment to such subtenants on or before the effective date of the surrender and termination. In connection with each request for assignment or subletting, Tenant shall pay to Landlord Landlord's standard fee (which amount shall not exceed \$1,500.00) for approving such requests, as well as all costs reasonably incurred by Landlord and all costs incurred by any mortgagee or ground lessor in approving each such request and effecting any such transfer, including, without limitation, reasonable attorneys' fees.

- (3) PERMITTED TRANSFERS. An "Affiliate" means any entity that (i) controls, is controlled by, or is under common control with Tenant (ii) results from the transfer of all or substantially all of Tenant's assets or stock, or (iii) results from the merger or consolidation of Tenant with another entity. "Control," as used in the previous sentence, means the direct or indirect ownership of more than fifty percent (50%) of the voting securities of an entity or possession of the right to vote more than fifty percent (50%) of the voting interest in the ordinary direction of the entity's affairs. Notwithstanding anything to the contrary contained in this Lease, Landlord's consent is not required for any assignment of this Lease or sublease of all or a portion of the Premises to an Affiliate so long as the following conditions are met: (a) at least five (5) days after any such assignment or sublease, Landlord receives written notice of such assignment or sublease (as well as any documents or information reasonably requested by Landlord regarding the transfer and the transferee in support of the requirements of this Paragraph 21.A(3)); (b) Tenant is not then in default under this Lease; (c) if the transfer is an assignment or any other transfer to an Affiliate other than a sublease, the intended assignee assumes in writing all of Tenant's obligations under this Lease relating to the Premises in form satisfactory to Landlord or, if the transfer is a sublease, the intended sublessee accepts the sublease in form satisfactory to Landlord; (d) the intended transferee has a tangible net worth, as evidenced by financial statements delivered to Landlord and certified by an independent certified public accountant in accordance with generally accepted accounting principles that are consistently applied, at least equal to Tenant as of the date of this Lease; (e) the Premises shall continue to be operated solely for the use specified in the Basic Lease Information; and (f) Tenant shall pay to Landlord Landlord's standard fee (which amount shall not exceed \$1,500.00) for approving assignments and subleases and all costs reasonably incurred by Landlord and all costs incurred by any mortgagee or ground lessor for such assignment or subletting, including, without limitation, reasonable attorneys' fees. No transfer to an Affiliate in accordance with this subparagraph shall relieve Tenant named herein of any obligation under this Lease or alter the liability of Tenant named herein for the payment of Rent or for the performance of any other obligation to be performed by Tenant, including the obligations contained in Paragraph 25 with respect to any Affiliate.

B. BONUS RENT. Any Rent or other consideration realized by Tenant under any such sublease or assignment in excess of the Rent payable hereunder, after amortization of a reasonable brokerage commission and reasonable attorneys' fees incurred by Tenant solely in connection with the sublease or assignment, reasonable, actual out of pocket costs of tenant improvements made solely in connection with the sublease or assignment and paid for by Tenant, and reasonable, out-of-pocket marketing costs, shall be divided and paid, forty percent (40%) to Tenant, sixty percent (60%) to Landlord. In any subletting or assignment undertaken by Tenant, Tenant shall diligently seek to obtain the then-fair market rental amount (as reasonably determined by Landlord and Tenant) available in the marketplace for comparable space available for leasing (using as a basis for such determination other Landlord-owned Buildings and Projects of the same stature and located in the same geographic area in which the Premises are located).

C. CORPORATION. If Tenant is a corporation, a transfer of corporate shares by sale, assignment, bequest, inheritance, operation of law or other disposition (including such a transfer to or by a receiver or trustee in federal or state bankruptcy, insolvency or other proceedings) resulting in a change in the present control of such corporation or any of its parent corporations by the person or persons owning a majority of said corporate shares, shall constitute an assignment for purposes of this Lease. Notwithstanding anything to the

contrary in this Lease, the transfer of outstanding capital stock or other listed equity interests, or the purchase of outstanding capital stock or other listed equity interests, or the purchase of equity interests issued in an initial public offering of stock, by persons or parties other than "insiders" within the meaning of the Securities Exchange Act of 1934, as amended, through the "over-the-counter" market or any recognized national or international securities exchange shall not be included in determining whether control has been transferred.

D. UNINCORPORATED ENTITY. If Tenant is a partnership, joint venture, unincorporated limited liability company or other unincorporated business form, a transfer of the interest of persons, firms or entities responsible for managerial control of Tenant by sale, assignment, bequest, inheritance, operation of law or other disposition, so as to result in a change in the present control of said entity and/or of the underlying beneficial interests of said entity and/or a change in the identity of the persons responsible for the general credit obligations of said entity shall constitute an assignment for all purposes of this Lease.

E. LIABILITY. No assignment or subletting by Tenant, permitted or otherwise, shall relieve Tenant of any obligation under this Lease or any guarantor of this Lease of any liability under its guaranty or alter the primary liability of the Tenant named herein for the payment of Rent or for the performance of any other obligations to be performed by Tenant, including obligations contained in Paragraph 25 with respect to any assignee or subtenant. Landlord may collect rent or other amounts or any portion thereof from any assignee, subtenant, or other occupant of the Premises, permitted or otherwise, and apply the net rent collected to the Rent payable hereunder, but no such collection shall be deemed to be a waiver of this Paragraph 21, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of the obligations of Tenant under this Lease or of any guarantor. Any assignment or subletting which conflicts with the provisions hereof shall be void.

#### 22. AUTHORITY

Landlord represents and warrants that it has full right and authority to enter into this Lease and to perform all of Landlord's obligations hereunder and that all persons signing this Lease on its behalf are authorized to do. Tenant and the person or persons, if any, signing on behalf of Tenant, jointly and severally represent and warrant that Tenant has full right and authority to enter into this Lease, and to perform all of Tenant's obligations hereunder, and that all persons signing this Lease on its behalf are authorized to do so.

#### 23. CONDEMNATION

A. CONDEMNATION RESULTING IN TERMINATION. If the whole or any substantial part of the Premises should be taken or condemned for any public use under any Regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking would



prevent or materially interfere with the Permitted Use of the Premises, either party shall have the right to terminate this Lease at its option. If any material portion of the Building or Project is taken or condemned for any public use under any Regulation, or by right of eminent domain, or by private purchase in lieu thereof, Landlord may terminate this Lease at its option. In either of such events, the Rent shall be abated during the unexpired portion of this Lease, effective when the physical taking of said Premises shall have occurred.

**B. CONDEMNATION NOT RESULTING IN TERMINATION.** If a portion of the Project of which the Premises are a part should be taken or condemned for any public use under any Regulation, or by right of eminent domain, or by private purchase in lieu thereof, and the taking prevents or materially interferes with the Permitted Use of the Premises, and this Lease is not terminated as provided in Paragraph 23.A. above, the Rent payable hereunder during the unexpired portion of this Lease shall be reduced, beginning on the date when the physical taking shall have occurred, to such amount as may be fair and reasonable under all of the circumstances, but only after giving Landlord credit for all sums received or to be received by Tenant by the condemning authority, subject to the last sentence of Paragraph 23.C of this Lease. Notwithstanding anything to the contrary contained in this Paragraph, if the temporary use or occupancy of any part of the Premises shall be taken or appropriated under power of eminent domain during the Term, this Lease shall be and remain unaffected by such taking or appropriation and Tenant shall continue to pay in full all Rent payable hereunder by Tenant during the Term; in the event of any such temporary appropriation or taking, Tenant shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the unexpired Term. In the event a portion or the whole of Tenant's Premises shall be taken or appropriated under the power of eminent domain or conveyed in lieu thereof and such restoration cannot be made, in Landlord's sole opinion, within one hundred eighty (180) days from the time of taking, Landlord shall notify Tenant within sixty (60) days of such taking and Tenant shall have the right to cancel this Lease by giving Landlord written notice of its intention to cancel within thirty (30) days of the date of Landlord's notice. If, however, within sixty (60) days after the date that the nature and extent of the taking are finally determined, Landlord notifies Tenant that Landlord at its cost will add on to the remaining Premises so that the area and the approximate layout of the Premises will be substantially the same after the date of taking as they were before the date of taking, and Landlord commences the restoration immediately and completes the restoration within one hundred eighty (180) days after Landlord so notifies Tenant, this Lease shall continue in full force and effect without any reduction in Rent, except the abatement made pursuant to this paragraph.

**C. AWARD.** Landlord shall be entitled to (and Tenant shall assign to Landlord) any and all payment, income, rent, award or any interest therein whatsoever which may be paid or made in connection with such taking or conveyance and Tenant shall have no claim against Landlord or otherwise for any sums paid by virtue of such proceedings, whether or not attributable to the value of any unexpired portion of this Lease, except as expressly provided in this Lease. Notwithstanding the foregoing, any compensation specifically and separately awarded Tenant for Tenant's personal property and moving costs, shall be and remain the property of Tenant.

**D. WAIVER OF CCP SECTION 1265.130.** Each party waives the provisions of California Civil Code Procedure Section 1265.130 allowing either party to petition the superior court to terminate this Lease as a result of a partial taking.

#### 24. CASUALTY DAMAGE

**A. GENERAL.** If the Premises or Building should be damaged or destroyed by fire, tornado, or other casualty (collectively, "CASUALTY"), Tenant shall give immediate written notice thereof to Landlord upon learning of the same. Within thirty (30) days after Landlord's receipt of such notice, Landlord shall notify Tenant whether in Landlord's good faith estimation material restoration of the Premises can reasonably be made within one hundred eighty (180) days from the date of such notice and receipt of required permits for such restoration. Landlord's determination shall be binding on Tenant.

**B. WITHIN 180 DAYS.** If the Premises or Building should be damaged by Casualty to such extent that material restoration can in Landlord's estimation be reasonably completed within one hundred eighty (180) days after the date of such notice and receipt of required permits for such restoration, this Lease shall not terminate. Provided that insurance proceeds are received by Landlord to fully repair the damage, Landlord shall proceed to rebuild and repair the Premises diligently and in the manner determined by Landlord, except that Landlord shall not be required to rebuild, repair or replace any part of any Alterations which may have been placed on or about the Premises or paid for by Tenant. If the Premises are untenable in whole or in part following such damage, the Rent payable hereunder during the period in which they are untenable shall be abated proportionately.

**C. GREATER THAN 180 DAYS.** If the Premises or Building should be damaged by Casualty to such extent that material restoration cannot in Landlord's estimation be reasonably completed within one hundred eighty (180) days after the date of such notice and receipt of required permits for such rebuilding or repair, and such damage materially and adversely interferes with the conduct of Tenant's business in the Premises, then either Party shall have the right to cancel this Lease by giving the other party written notice within ten (10) days from the date of Landlord's notice that material restoration cannot in Landlord's estimation be reasonably completed within such one hundred eighty (180) day period. Said cancellation shall be effective thirty (30) days from the first day that either party gives its notice to cancel. If neither party elects to so cancel this Lease, Landlord shall proceed to rebuild and repair the Premises diligently and in the manner determined by Landlord, except that

Landlord shall not be required to rebuild, repair or replace any part of any Alterations which may have been placed on or about the Premises by Tenant. If the Premises are untenable in whole or in part following such damage, the Rent payable hereunder during the period in which they are untenable shall be abated proportionately. Notwithstanding the above, Landlord shall not be required to rebuild, repair or replace any part of any Alterations which may have been placed, on or about the Premises or paid for by Tenant. If the Premises are untenable in whole or in part following such damage, the Rent payable hereunder during the period in which they are untenable shall be abated proportionately, but only to the extent of rental abatement insurance proceeds received by Landlord during the time and to the extent the Premises are unfit for occupancy.

D. TENANT'S FAULT. Notwithstanding anything herein to the contrary, if the Premises or any other portion of the Building are damaged by Casualty resulting from the fault, negligence, or breach of this Lease by Tenant or any of Tenant's Parties, Base Rent and Additional Rent shall not be diminished during the repair of such damage and Tenant shall be liable to Landlord for the cost and expense of the repair and restoration of the Building caused thereby to the extent such cost and expense is not covered by insurance proceeds; provided that Tenant shall not be liable for that portion of the repair costs for which Landlord was obligated under the terms of this Lease to carry insurance but failed to carry such insurance.

E. INSURANCE PROCEEDS. Notwithstanding anything herein to the contrary, if the Premises or Building are damaged or destroyed and are not fully covered by the insurance proceeds received by Landlord or if the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness, then, Landlord shall promptly notify Tenant of the same and, in either case, Landlord shall have the right to terminate this Lease by delivering written notice of termination to Tenant within thirty (30) days after the date of notice to Landlord that said damage or destruction is not fully covered by insurance or such requirement is made by any such holder, as the case may be, whereupon this Lease shall terminate thirty (30) days after Landlord delivers such notice. In the event that the Premises are damaged or destroyed and are not fully covered by the insurance proceeds received by Landlord or if the holder of any indebtedness secured by a mortgage or deed of trust covering the Premises requires that the insurance proceeds be applied to such indebtedness, and Landlord consequently determines not to repair or restore the Premises, Tenant may terminate this Lease by providing written notice of such termination to Landlord and such termination shall be effective fifteen (15) days following Landlord's receipt of such written notice from Tenant.

F. WAIVER. This Paragraph 24 shall be Tenant's sole and exclusive remedy in the event of damage or destruction to the Premises or the Building. As a material inducement to Landlord entering into this Lease, Tenant hereby waives any rights it may have under Sections 1932, 1933(4), 1941 or 1942 of the Civil Code of California with respect to any destruction of the Premises, Landlord's obligation for tenantability of the Premises and Tenant's right to make repairs and deduct the expenses of such repairs, or under any similar law, statute or ordinance now or hereafter in effect.

G. TENANT'S PERSONAL PROPERTY. In the event of any damage or destruction of the Premises or the Building, under no circumstances shall Landlord be required to repair any injury or damage to, or make any repairs to or replacements of, Tenant's personal property.

#### 25. HOLDING OVER

Unless Landlord expressly consents in writing to Tenant's holding over, Tenant shall be unlawfully and illegally in possession of the Premises, whether or not Landlord accepts any rent from Tenant or any other person while Tenant remains in possession of the Premises without Landlord's written consent. If Tenant shall retain possession of the Premises or any portion thereof without Landlord's consent following the expiration of this Lease or sooner termination for any reason, then Tenant shall pay to Landlord for each day of such retention the greater of the following: (i) one hundred seventy-five percent (175%) of the amount of daily rental as of the last month prior to the date of expiration or earlier termination, or (ii) the amount of the fair market rental as such amount is reasonably determined by Landlord (Landlord shall use as a basis for its determination other buildings and projects owned by Landlord, located in the same geographic area as the Premises, and of the same class and stature as the Building and Project). Tenant shall also indemnify, defend, protect and hold Landlord harmless from any loss, liability or cost, including consequential and incidental damages and reasonable attorneys' fees, incurred by Landlord resulting from delay by Tenant in surrendering the Premises, including, without limitation, any claims made by the succeeding tenant founded on such delay. Acceptance of Rent by Landlord following expiration or earlier termination of this Lease, or following demand by Landlord for possession of the Premises, shall not constitute a renewal of this Lease, and nothing contained in this Paragraph 25 shall waive Landlord's right of reentry or any other right. Additionally, if upon expiration or earlier termination of this Lease, or following demand by Landlord for possession of the Premises, Tenant has not fulfilled its obligation with respect to repairs and cleanup of the Premises or any other Tenant obligations as set forth in this Lease, then Landlord shall have the right to perform any such obligations as it deems necessary at Tenant's sole cost and expense, and any time required by Landlord to complete such obligations shall be considered a period of holding over and the terms of this Paragraph 25 shall apply. The provisions of this Paragraph 25 shall survive any expiration or earlier termination of this Lease.

#### 26. DEFAULT

A. EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an event of default on the part of Tenant:

(1) ABANDONMENT. Abandonment or vacation of the Premises for a continuous period in excess of five (5) days. Tenant waives any right to notice Tenant may have under Section 1951.3 of the Civil Code of the State of California, the terms of this Paragraph 26.A. being deemed such notice to Tenant as required by said Section 1951.3.

(2) NONPAYMENT OF RENT. Failure to pay any installment of Rent or any other amount due and payable hereunder when said payment is due, such failure continuing for three (3) days after written notice of such failure, as to which time is of the essence, provided that Landlord shall not be required to provide such notice more than once during the twelve (12) month period commencing with the date of such notice. The second failure to pay any such amount within three (3) days after said payment is due during such 12-month period shall be an event of default hereunder without notice. Such notice shall replace rather than supplement any statutory notice required under Code of Civil Procedure Section 1161 or any similar or successor statute.

(3) OTHER OBLIGATIONS. Failure to perform any obligation, agreement or covenant under this Lease other than those matters specified in subparagraphs (1) and (2) of this Paragraph 26.A., and in Paragraphs 8, 16, 18 and 25, such failure continuing for thirty (30) days after written notice of such failure, as to which time is of the essence; provided, however, that in the event that any such cure cannot reasonably be completed within such thirty (30) day period and provided further that Tenant has commenced and is diligently pursuing such cure, Tenant shall have an additional period of fifteen (15) days to complete such cure. Notwithstanding anything to the contrary contained in this Lease, the following shall constitute an event of default under this Paragraph 26.A(3) without any such notice or lapse of time: (i) failure to provide an estoppel certificate when and as required under Paragraph 18 hereof; (ii) failure to maintain insurance required under Paragraph 8 hereof; (iii) failure to vacate the Premises upon the expiration or earlier termination of this Lease; (iv) failure to comply with any obligation under this Lease pertaining to Hazardous Materials; (v) any other matter provided for in another subparagraph of this Paragraph 26.A or for which another time limit is provided elsewhere in this Lease, including without limitation, under Exhibit C to this Lease.

(4) GENERAL ASSIGNMENT. A general assignment by Tenant for the benefit of creditors.

(5) BANKRUPTCY. The filing of any voluntary petition in bankruptcy by Tenant, or the filing of an involuntary petition by Tenant's creditors, which involuntary petition remains undischarged for a period of thirty (30) days. If under applicable law, the trustee in bankruptcy or Tenant has the right to affirm this Lease and continue to perform the obligations of Tenant hereunder, such trustee or Tenant shall, in such time period as may be permitted by the bankruptcy court having jurisdiction, cure all defaults of Tenant hereunder outstanding as of the date of the affirmance of this Lease and provide to Landlord such adequate assurances as may be necessary to ensure Landlord of the continued performance of Tenant's obligations under this Lease.

(6) RECEIVERSHIP. The employment of a receiver to take possession of substantially all of Tenant's assets or Tenant's leasehold of the Premises, if such appointment remains undismisssed or undischarged for a period of fifteen (15) days after the order therefor.

(7) ATTACHMENT. The attachment, execution or other judicial seizure of all or substantially all of Tenant's assets or Tenant's leasehold of the Premises, if such attachment or other seizure remains undismisssed or undischarged for a period of fifteen (15) days after the levy thereof.

(8) INSOLVENCY. The admission by Tenant in writing of its inability to pay its debts as they become due.

B. REMEDIES UPON DEFAULT.

(1) TERMINATION. In the event of the occurrence of any event of default, Landlord shall have the right to give a written termination notice to Tenant, and on the date specified in such notice, Tenant's right to possession shall terminate, and this Lease shall terminate unless on or before such date all Rent in arrears and all costs and expenses incurred by or on behalf of Landlord hereunder shall have been paid by Tenant and all other events of default of this Lease by Tenant at the time existing shall have been fully remedied to the satisfaction of Landlord. At any time after such termination, Landlord may recover possession of the Premises or any part thereof and expel and remove therefrom Tenant and any other person occupying the same, including any

subtenant or subtenants notwithstanding Landlord's consent to any sublease, by any lawful means, and again repossess and enjoy the Premises without prejudice to any of the remedies that Landlord may have under this Lease, or at law or equity by any reason of Tenant's default or of such termination. Landlord hereby reserves the right, but shall not have the obligation, to recognize the continued possession of any subtenant. The delivery or surrender to Landlord by or on behalf of Tenant of keys, entry codes, or other means to bypass security at the Premises shall not terminate this Lease.

(2) CONTINUATION AFTER DEFAULT. Even though an event of default may have occurred, this Lease shall continue in effect for so long as Landlord does not terminate Tenant's right to possession under Paragraph 26.B(1) hereof. Landlord shall have the remedy described in California Civil Code Section 1951.4 ("Landlord may continue this Lease in effect after Tenant's breach and abandonment and recover Rent as it becomes due, if Tenant has the right to sublet or assign, subject only to reasonable limitations"), or any successor code section. Accordingly, if Landlord does not elect to terminate this Lease on account of any event of default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover Rent as it becomes due. Acts of maintenance, preservation or efforts to lease the Premises or the appointment of a receiver under application of Landlord to protect Landlord's interest under this Lease or other entry by Landlord upon the Premises shall not constitute an election to terminate Tenant's right to possession.

(3) INCREASED SECURITY DEPOSIT. If Tenant is in default under Paragraph 26.A(2) hereof and such default remains uncured for ten (10) days after such occurrence or such default occurs more than three times in any twelve (12) month period, Landlord may require that Tenant increase the Security Deposit to the amount of three times the current month's Rent at the time of the most recent default if the Security Deposit is less than the amount of three times the current month's Rent.

C. DAMAGES AFTER DEFAULT. Should Landlord terminate this Lease pursuant to the provisions of Paragraph 26.B(1) hereof, Landlord shall have the rights and remedies of a Landlord provided by Section 1951.2 of the Civil Code of the State of California, or any successor code sections. Upon such termination, in addition to any other rights and remedies to which Landlord may be entitled under applicable law or at equity, Landlord shall be entitled to recover from Tenant: (1) the worth at the time of award of the unpaid Rent and other amounts which had been earned at the time of termination, (2) the worth at the time of award of the amount by which the unpaid Rent and other amounts that would have been earned after the date of termination until the time of award exceeds the amount of such Rent loss that Tenant proves could have been reasonably avoided; (3) the worth at the time of award of the amount by which the unpaid Rent and other amounts for the balance of the Term after the time of award exceeds the amount of such Rent loss that the Tenant proves could be reasonably avoided; and (4) any other amount and court costs necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease or which, in the ordinary course of things, would be likely to result therefrom. The "worth at the time of award" as used in (1) and (2) above shall be computed at the Applicable Interest Rate (defined below). The "worth at the time of award" as used in (3) above shall be computed by discounting such amount at the Federal Discount Rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%). If this Lease provides for any periods during the Term during which Tenant is not required to pay Base Rent or if Tenant otherwise receives a Rent concession, then upon the occurrence of an event of default, Tenant shall owe to Landlord the full amount of such Base Rent or value of such Rent concession, plus interest at the Applicable Interest Rate, calculated from the date that such Base Rent or Rent concession would have been payable.

D. LATE CHARGE. In addition to its other remedies, Landlord shall have the right without notice or demand to add to the amount of any payment required to be made by Tenant hereunder, and which is not paid and received by Landlord on or before the first day of each calendar month, an amount equal to an amount equal to six percent (6%) of the delinquent amount, or \$150.00, whichever amount is greater, for each month or portion thereof that the delinquency remains outstanding to compensate Landlord for the loss of the use of the amount not paid and the administrative costs caused by the delinquency, the parties agreeing that Landlord's damage by virtue of such delinquencies would be extremely difficult and impracticable to compute and the amount stated herein represents a reasonable estimate thereof. Any waiver by Landlord of any late charges or failure to claim the same shall not constitute a waiver of other late charges or any other remedies available to Landlord.

E. INTEREST. Interest shall accrue on all sums not paid when due hereunder at the lesser of ten percent (10%) per annum or the maximum interest rate allowed by law ("APPLICABLE INTEREST RATE") from the due date until paid.

F. REMEDIES CUMULATIVE. All of Landlord's rights, privileges and elections or remedies are cumulative and not alternative, to the extent permitted by law and except as otherwise provided herein.

G. REPLACEMENT OF STATUTORY NOTICE REQUIREMENTS. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notice required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of a notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by this Paragraph 26 shall replace and satisfy the statutory service-of-notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

## 27. LIENS

Tenant shall at all times keep the Premises and the Project free from liens arising out of or related to work or services performed, materials or supplies furnished or obligations incurred by or on behalf of Tenant or in connection with work made, suffered or done by or on behalf of Tenant in or on the Premises or Project. If Tenant shall not, within ten (10) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a proper bond, Landlord shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as Landlord shall deem proper, including payment of the claim giving rise to such lien. All sums paid by Landlord on behalf of Tenant and all expenses incurred by Landlord in connection therewith shall be payable to Landlord by Tenant on demand with interest at the Applicable Interest Rate as Additional Rent. Landlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law, or which Landlord shall deem proper, for the protection of Landlord, the Premises, the Project and any other party having an interest therein, from mechanics' and materialmen's liens, and Tenant shall give Landlord not less than ten (10) business days prior written notice of the commencement of any work in the Premises or Project which could lawfully give rise to a claim for mechanics' or materialmen's liens to permit Landlord to post and record a timely notice of non-responsibility, as Landlord may elect to proceed or as the law may from time to time provide, for which purpose, if Landlord shall so determine, Landlord may enter the Premises. Tenant shall not remove any such notice posted by Landlord without Landlord's consent, and in any event not before completion of the work which could lawfully give rise to a claim for mechanics' or materialmen's liens.

## 28. INTENTIONALLY OMITTED

## 29. TRANSFERS BY LANDLORD

In the event of a sale or conveyance by Landlord of the Building or a foreclosure by any creditor of Landlord, the same shall operate to release Landlord from any liability upon any of the covenants or conditions, express or implied, herein contained in favor of Tenant, to the extent required to be performed after the passing of title to Landlord's successor-in-interest. In such event, Tenant agrees to look solely to the responsibility of the successor-in-interest of Landlord under this Lease with respect to the performance of the covenants and duties of

"Landlord" to be performed after the passing of title to Landlord's successor-in-interest. This Lease shall not be affected by any such sale and Tenant agrees to attorn to the purchaser or assignee. Landlord's successor(s)-in-interest shall not have liability to Tenant with respect to the failure to perform any of the obligations of "Landlord," to the extent required to be performed prior to the date such successor(s)-in-interest became the owner of the Building.

### 30. RIGHT OF LANDLORD TO PERFORM TENANT'S COVENANTS

All covenants and agreements to be performed by Tenant under any of the terms of this Lease shall be performed by Tenant at Tenant's sole cost and expense and without any abatement of Rent. If Tenant shall fail to pay any sum of money, other than Base Rent, required to be paid by Tenant hereunder or shall fail to perform any other act on Tenant's part to be performed hereunder, including Tenant's obligations under Paragraph 11 hereof, and such failure shall continue for fifteen (15) days after notice thereof by Landlord, in addition to the other rights and remedies of Landlord, Landlord may make any such payment and perform any such act on Tenant's part. In the case of an emergency, no prior notification by Landlord shall be required. Landlord may take such actions without any obligation and without releasing Tenant from any of Tenant's obligations. All sums so paid by Landlord and all incidental costs incurred by Landlord and interest thereon at the Applicable Interest Rate, from the date of payment by Landlord, shall be paid to Landlord on demand as Additional Rent.

### 31. WAIVER

If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, or constitute a course of dealing contrary to the expressed terms of this Lease. The acceptance of Rent by Landlord (including, without limitation, through any "lockbox") shall not constitute a waiver of any preceding breach by Tenant of any term, covenant or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such Rent. Failure by Landlord to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease the right of Landlord to insist thereafter upon strict performance by Tenant. Waiver by Landlord of any term, covenant or condition contained in this Lease may only be made by a written document signed by Landlord, based upon full knowledge of the circumstances.

### 32. NOTICES

Each provision of this Lease or of any applicable governmental laws, ordinances, regulations and other requirements with reference to sending, mailing, or delivery of any notice or the making of any payment by Landlord or Tenant to the other shall be deemed to be complied with when and if the following steps are taken:

A. RENT. All Rent and other payments required to be made by Tenant to Landlord hereunder shall be payable to Landlord at Landlord's Remittance Address set forth in the Basic Lease Information, or at such other address as Landlord may specify from time to time by written notice delivered in accordance herewith. Tenant's obligation to pay Rent and any other amounts to Landlord under the terms of this Lease shall not be deemed satisfied until such Rent and other amounts have been actually received by Landlord.

B. OTHER. All notices, demands, consents and approvals which may or are required to be given by either party to the other hereunder shall be in writing and either personally delivered, sent by commercial overnight courier, mailed, certified or registered, postage prepaid or sent by facsimile with confirmed receipt (and with an original sent by commercial overnight courier), and in each case addressed to the party to be notified at the Notice Address for such party as specified in the Basic Lease Information or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days notice to the notifying party. Notices shall be deemed served upon receipt or refusal to accept delivery. Tenant appoints as its agent to receive the service of all default notices and notice of commencement of unlawful detainer proceedings the person in charge of or apparently in charge of occupying the Premises at the time, and, if there is no such person, then such service may be made by attaching the same on the main entrance of the Premises.

C. REQUIRED NOTICES. Upon learning of the following circumstances, Tenant shall promptly notify Landlord in writing of any notice of a violation or a potential or alleged violation of any Regulation that relates to the Premises or the Project, or of any inquiry, investigation, enforcement or other action that is instituted or threatened by any governmental or regulatory agency against Tenant or any other occupant of the Premises, or any claim that is instituted or threatened by any third party that relates to the Premises or the Project.

### 33. ATTORNEYS' FEES

If Landlord places the enforcement of this Lease, or any part thereof, or the collection of any Rent due, or to become due hereunder, or recovery of possession of the Premises in the hands of an attorney, Tenant shall pay to Landlord, upon demand, Landlord's reasonable attorneys' fees and court costs, whether incurred without trial, at trial, appeal or review. In any action which Landlord or Tenant brings to enforce its respective rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party including reasonable attorneys' fees, to be fixed by the court, and said costs and attorneys' fees shall be a part of the judgment in said action.

### 34. SUCCESSORS AND ASSIGNS

This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assigns, and shall be binding upon and inure to the benefit of Tenant, its successors, and to the extent assignment is approved by Landlord as provided hereunder, Tenant's assigns.

#### 35. FORCE MAJEURE

If performance by a party of any portion of this Lease is made impossible by any prevention, delay, or stoppage caused by strikes, lockouts, labor disputes, acts of God, inability to obtain services, labor, or materials or reasonable substitutes for those items, government actions, civil commotions, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, performance by that party for a period equal to the period of that prevention, delay, or stoppage is excused. Tenant's obligation to pay Rent, however, is not excused by this Paragraph 35.

#### 36. SURRENDER OF PREMISES

Tenant shall, upon expiration or sooner termination of this Lease, surrender the Premises to Landlord in the same condition as existed on the date Tenant originally took possession thereof, reasonable wear and tear excepted, including, but not limited to, all interior walls cleaned, all holes in walls repaired and all floors cleaned, waxed, and free of any Tenant-introduced marking or painting, all to the reasonable satisfaction of Landlord. Tenant shall remove all of its debris from the Project. At or before the time of surrender, Tenant shall comply with the terms of Paragraph 12.A. hereof with respect to Alterations to the Premises and all other matters addressed in such Paragraph. If the Premises are not so surrendered at the expiration or sooner termination of this Lease, the provisions of Paragraph 25 hereof shall apply. All keys to the Premises or any part thereof shall be surrendered to Landlord upon expiration or sooner termination of the Term. Tenant shall give written notice to Landlord at least thirty (30) days prior to vacating the Premises and shall meet with Landlord for a joint inspection of the Premises at the time of vacating at a mutually agreeable time, but nothing contained herein shall be construed as an extension of the Term or as a consent by Landlord to any holding over by Tenant. In the event of Tenant's failure to participate in such joint inspection, Landlord's inspection at or after Tenant's vacating the Premises shall conclusively be deemed correct for purposes of



determining Tenant's responsibility for repairs and restoration. Any delay caused by Tenant's failure to carry out its obligations under this Paragraph 36 beyond the term hereof, shall constitute unlawful and illegal possession of Premises under Paragraph 25 hereof.

### 37. PARKING

So long as Tenant is occupying the Premises, Tenant and Tenant's Parties shall have the right to use up to the number of parking spaces specified in the Basic Lease Information on an unreserved, nonexclusive, first come, first served basis, for passenger-size automobiles, in the parking areas in the Project designated from time to time by Landlord for use in common by tenants of the Building. The parking rights granted under this Paragraph 37 are personal to Tenant and are not transferable except: (i) pursuant to the terms of a sublease or assignment which expressly transfers such parking rights and which has been approved in writing by Landlord in accordance with the terms of this Lease, (ii) a Permitted Transfer, provided that Tenant notify Landlord in writing of such transfer of parking privileges, or (iii) with the express written consent of Landlord which consent shall be granted in Landlord's sole discretion.

Tenant may request additional parking spaces from time to time and if Landlord in its sole discretion agrees to make such additional spaces available for use by Tenant, such spaces shall be provided on a month-to-month unreserved and nonexclusive basis (unless otherwise agreed in writing by Landlord), and subject to such parking charges as Landlord shall determine, and shall otherwise be subject to such terms and conditions as Landlord may require.

Tenant shall at all times comply and shall cause all Tenant's Parties and visitors to comply with all Regulations and any rules and regulations established from time to time by Landlord relating to parking at the Project, including any keycard, sticker or other identification or entrance system, and hours of operation, as applicable.

Landlord shall have no liability for any damage to property or other items located in the parking areas of the Project, nor for any personal injuries or death arising out of the use of parking areas in the Project by Tenant or any Tenant's Parties. Without limiting the foregoing, if Landlord arranges for the parking areas to be operated by an independent contractor not affiliated with Landlord, Tenant acknowledges that Landlord shall have no liability for claims arising through acts or omissions of such independent contractor. In all events, Tenant agrees to look first to its insurance carrier and to require that Tenant's Parties look first to their respective insurance carriers for payment of any losses sustained in connection with any use of the parking areas.

Landlord reserves the right to assign specific spaces, and to reserve spaces for visitors, small cars, disabled persons or for other tenants or guests, and Tenant shall not park and shall not allow Tenant's Parties to park in any such assigned or reserved spaces. Tenant may validate visitor parking by such method as Landlord may approve, at the validation rate from time to time generally applicable to visitor parking. Landlord also reserves the right to alter, modify, relocate or close all or any portion of the parking areas in order to make repairs or perform maintenance service, or to restripe or renovate the parking areas, or if required by casualty, condemnation (subject to Tenant's right of termination provided in Paragraph 23 hereof), act of God, Regulations or for any other reason deemed reasonable by Landlord.

After the initial Term hereof, Tenant shall pay to Landlord (or Landlord's parking contractor, if so directed in writing by Landlord), as Additional Rent hereunder, the monthly charges established from time to time by Landlord for parking in such parking areas (which shall initially be the charge specified in the Basic Lease Information, as applicable). Tenant shall pay to Landlord as Additional Rent hereunder, the monthly charge established by Landlord then in effect for any reserved parking spaces requested by Tenant and granted by Landlord, if any. Landlord shall have no obligation to provide such reserved parking to Tenant during the Term hereof or any extension hereto. Such parking charges shall be payable in advance with Tenant's payment of Basic Rent. No deductions from the monthly parking charge shall be made for days on which the Tenant does not use any of the parking spaces entitled to be used by Tenant.

### 38. MISCELLANEOUS

A. GENERAL. The term "Tenant" or any pronoun used in place thereof shall indicate and include the masculine or feminine, the singular or plural number, individuals, firms or corporations, and their respective successors, executors, administrators and permitted assigns, according to the context hereof.

B. TIME. Time is of the essence regarding this Lease and all of its provisions.

C. CHOICE OF LAW. This Lease shall in all respects be governed by the laws of the State of California.

D. ENTIRE AGREEMENT. This Lease, together with its Exhibits, addenda and attachments and the Basic Lease Information, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understandings made between the parties other than those set forth in this Lease and its Exhibits, addenda and attachments and the Basic Lease Information.

E. MODIFICATION. This Lease may not be modified except by a written instrument signed by the parties hereto. Tenant accepts the area of the Premises as specified in the Basic Lease Information as the approximate area of the Premises for all purposes under this Lease, and acknowledges and agrees that no other definition of the area (rentable, usable or otherwise) of the Premises shall apply. Tenant shall in no event be entitled to a recalculation of the square footage of the Premises, rentable, usable or otherwise, and no

recalculation, if made, irrespective of its purpose, shall reduce Tenant's obligations under this Lease in any manner, including without limitation the amount of Base Rent payable by Tenant or Tenant's Proportionate Share of the Building and of the Project.

F. SEVERABILITY. If, for any reason whatsoever, any of the provisions hereof shall be unenforceable or ineffective, all of the other provisions shall be and remain in full force and effect.

G. RECORDATION. Tenant shall not record this Lease or a short form memorandum hereof.

H. EXAMINATION OF LEASE. Submission of this Lease to Tenant does not constitute an option or offer to lease and this Lease is not effective otherwise until execution and delivery by both Landlord and Tenant.

I. ACCORD AND SATISFACTION. No payment by Tenant of a lesser amount than the total Rent due nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent, and Landlord may accept such payment without prejudice to Landlord's right to recover the balance of such Rent or to pursue other remedies. All offers by or on behalf of Tenant of accord and satisfaction are hereby rejected in advance.

J. EASEMENTS. Landlord may grant easements on the Project and dedicate for public use portions of the Project without Tenant's consent; provided that no such grant or dedication shall materially interfere with Tenant's Permitted Use of the Premises. Upon Landlord's request, Tenant shall execute, acknowledge and deliver to Landlord documents, instruments, maps and plats necessary to effectuate Tenant's covenants hereunder.

K. DRAFTING AND DETERMINATION PRESUMPTION. The parties acknowledge that this Lease has been agreed to by both the parties, that both Landlord and Tenant have consulted with attorneys with respect to the terms of this Lease and that no presumption shall be created

against Landlord because Landlord drafted this Lease. Except as otherwise specifically set forth in this Lease, with respect to any consent, determination or estimation of Landlord required or allowed in this Lease or requested of Landlord, Landlord's consent, determination or estimation shall be given or made solely by Landlord in Landlord's good faith opinion, whether or not objectively reasonable. If Landlord fails to respond to any request for its consent within the time period, if any, specified in this Lease, Landlord shall be deemed to have disapproved such request, except as otherwise expressly provided in this Lease.

L. EXHIBITS. The Basic Lease Information, and the Exhibits, addenda and attachments attached hereto are hereby incorporated herein by this reference and made a part of this Lease as though fully set forth herein.

M. NO LIGHT, AIR OR VIEW EASEMENT. Any diminution or shutting off of light, air or view by any structure which may be erected on lands adjacent to or in the vicinity of the Building shall in no way affect this Lease or impose any liability on Landlord.

N. NO THIRD PARTY BENEFIT. This Lease is a contract between Landlord and Tenant and nothing herein is intended to create any third party benefit.

O. QUIET ENJOYMENT. Upon payment by Tenant of the Rent, and upon the observance and performance of all of the other covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the term hereby demised without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under Landlord, subject, nevertheless, to all of the other terms and conditions of this Lease. Landlord shall not be liable for any hindrance, interruption, interference or disturbance by other tenants or third persons, nor shall Tenant be released from any obligations under this Lease because of such hindrance, interruption, interference or disturbance.

P. COUNTERPARTS. This Lease may be executed in any number of counterparts, each of which shall be deemed an original.

Q. MULTIPLE PARTIES. If more than one person or entity is named herein as Tenant, such multiple parties shall have joint and several responsibility to comply with the terms of this Lease.

R. PRORATIONS. Any Rent or other amounts payable to Landlord by Tenant hereunder for any fractional month shall be prorated based on a month of 30 days. As used herein, the term "fiscal year" shall mean the calendar year or such other fiscal year as Landlord may deem appropriate.

### 39. ADDITIONAL PROVISIONS

#### A. RENT.

Subject to the provisions of Paragraphs 2.B, Base Rent, net of Operating Expenses per Paragraph 7 of this Lease, for the Premises shall be as follows:

From the Term Commencement Date through the end of the twelfth (12th) month following the Term Commencement Date:	\$135,581.00 per month plus operating expenses per Paragraph 7 of this Lease. Operating Expenses for calendar year 2000 are estimated to be \$23,999.00 per month.
Month 13 following the Term Commencement Date through Month 24:	\$139,648.00 per month plus operating expenses per Paragraph 7 of this Lease
Month 25 following the Term Commencement Date through Month 36:	\$143,838.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 37 following the Term Commencement Date through Month 48:	\$148,153.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 49 following the Term Commencement Date through Month 60:	\$152,597.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 61 following the Term Commencement Date through Month 72:	\$157,175.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 73 following the Term Commencement Date through Month 84:	\$161,891.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 85 following the Term Commencement Date through Month 96:	\$166,747.00 per month plus operating expenses per Paragraph 7 of this Lease.
Month 97 following the Term Commencement Date through Month 108:	\$171,750.00 per month plus operating expenses per Paragraph 7 of this Lease
Month 109 following the Term Commencement Date through Month 117:	\$176,902.00 per month plus operating expenses per Paragraph 7 of this Lease.

B. EARLY ACCESS. Provided Landlord has terminated the lease with the existing tenant and is in possession of the Premises, Landlord shall provide access to Tenant to the Premises on October 1, 2000, during normal business hours after reasonable prior notice to Landlord for purposes of installing furniture, fixtures and equipment (including network cabling and telecommunications equipment to the extent such installation is approved by Landlord in writing) and to commence construction of the Tenant Improvements

therein in the Premises, with all terms and conditions of this Lease in full force and effect, excluding payment of Rent and Operating Expenses. Landlord and Tenant shall each reasonably cooperate with the other to attempt to reasonably coordinate their respective schedules to accommodate the early access by Tenant contemplated by this Paragraph 39.B. In the event Landlord does not provide access to Tenant to the Premises by October 1, 2000 for the purposes defined above, the Term Commencement Date shall be six-one (61) days from the date Landlord does provide access to Tenant to the Premises. Tenant may terminate this Lease by delivering written notice to Landlord on June 1, 2001 only if Landlord has not terminated the existing lease for the Premises and is not in possession of the Premises by May 31, 2001. In the event of such termination, Landlord shall return any Security Deposit to Tenant as well as any other sums paid hereunder by Tenant to Landlord. All obligations of Tenant and Landlord under this Lease shall thereafter terminate and no party shall have any further obligations under this Lease.

C. OPTION TO RENEW. Tenant shall, provided this Lease is in full force and effect and Tenant is not and has not been in default under any of the terms and conditions of this Lease, have two (2) successive options to renew this Lease for a term of five (5) years each, for the Premises in "as is" condition and on the same terms and conditions set forth in this Lease, except as modified by the terms, covenants and conditions set forth below:

- (1) If Tenant elects to exercise such option, then Tenant shall provide Landlord with written notice no earlier than the date which is Two Hundred Seventy (270) days prior to the expiration of the then current term of this Lease, but no later than 5:00 p.m. (Pacific Standard Time) on the date which is one hundred eighty (180) days prior to the expiration of the then current term of this Lease. If Tenant fails to provide such notice, Tenant shall have no further or additional right to extend or renew the term of this Lease.
- (2) The Base Rent in effect at the expiration of the then current term of this Lease shall be increased to reflect the current fair market rental for comparable space in the Building or Project and in other similar buildings in the same rental market as of the date the renewal term is to commence, taking into account the specific provisions of this Lease which will remain constant, and the Building amenities, location, identity, quality, age, conditions, term of lease, tenant improvements, services provided, and other pertinent items.
- (3) Landlord shall advise Tenant of the new Base Rent for the Premises for the applicable renewal term which will be based on Landlord's determination of fair market rental value no later than fifteen (15) days after receipt of notice of Tenant's exercise of its option to renew. Tenant shall have forty-five (45) days after receipt of such notification from Landlord to accept the new Base Rent. If Tenant does not accept Landlord's determination of the new Base Rent within such forty-five (45) day period, this option shall be null and void, and Landlord shall have no further obligation to Tenant and may enter into a lease for the Premises with a third party on such terms and conditions as Landlord may determine in its sole discretion.
- (4) Notwithstanding anything to the contrary contained in this Paragraph, in no event shall the Base Rent for any renewal term be less than the Base Rent in effect at the expiration of the previous term. In addition, Landlord shall have no obligation to provide or pay for any tenant improvements or brokerage commissions during any renewal term.
- (5) Tenant's right to exercise any options to renew under this Paragraph shall be conditioned upon Tenant occupying the entire Premises and the same not being occupied by any assignee, subtenant or licensee other than Tenant or its affiliate at the time of exercise of any option and commencement of the renewal term. Tenant's exercise of any option to renew shall constitute a representation by Tenant to Landlord that as of the date of exercise of the option and the commencement of the applicable renewal term, Tenant does not intend to seek to assign this Lease in whole or in part, or sublet all or any portion of the Premises.
- (6) Any exercise by Tenant of any option to renew under this Paragraph shall be irrevocable. If requested by Landlord, Tenant agrees to execute a lease amendment or, at Landlord's option, a new lease agreement on Landlord's then standard lease form for the Building reflecting the foregoing terms and conditions (which new lease form shall be reasonably acceptable to Tenant and shall provide to Tenant the benefit of its bargain contained herein), prior to the commencement of the renewal term. The options to renew granted under this Paragraph are not transferable; the parties hereto acknowledge and agree that they intend that each option to renew this Lease under this Paragraph shall be "personal" to the specific Tenant named in this Lease and that in no event will any assignee or sublessee have any rights to exercise such options to renew.
- (7) If more than one renewal option is provided above, the exercise of each renewal option shall be contingent upon Tenant exercising the prior renewal option. Only one renewal option may be exercised at a time. As each renewal option provided for above is exercised, the number of renewal options remaining to be exercised is reduced by one and upon exercise of the last remaining renewal option Tenant shall have no further right to extend the term of this Lease.

D. LETTER OF CREDIT.

- (1) DELIVERY OF LETTER OF CREDIT. In lieu of depositing a security deposit with Landlord, Tenant shall, on execution of this Lease, deliver to Landlord and cause to be in effect during the Lease Term an unconditional, irrevocable letter of credit ("LOC") in the amount specified for the Security Deposit in the Basic Lease Information, as it may be increased as provided in this Lease (the "LOC AMOUNT") for an initial term of the LOC of three (3) years and thereafter shall renew automatically from year to year through 30 days beyond the expiration date of this Lease or any extension thereto. The LOC shall be in a form acceptable to Landlord and shall be issued by an LOC bank selected by Tenant and acceptable to Landlord. The text of the LOC shall expressly state that the LOC shall survive the termination of this Lease. An LOC bank is a bank that accepts deposits, maintains accounts, has a local office that will negotiate a letter of credit, and the deposits of which are insured by the Federal Deposit Insurance Corporation. Tenant shall pay all expenses, points, or fees incurred by Tenant in obtaining the LOC. The LOC shall not

be mortgaged, assigned or encumbered in any manner whatsoever by Tenant without the prior written consent of Landlord. Tenant acknowledges that Landlord has the right to transfer or mortgage its interest in the Project, the Building and in this Lease and Tenant agrees that in the event of any such transfer or mortgage, Landlord shall have the right to transfer or assign the LOC and/or the LOC Security Deposit (as defined below) to the transferee or mortgagee, and in the event of such transfer, Tenant shall look solely to such transferee or mortgagee for the return of the LOC and/or the LOC Security Deposit. The maximum amount of any transfer fee associated with such transfer shall not be in excess of reasonable transfer fees customarily required by issuing banks, which amount shall be expressly stated in the terms of the LOC, and shall be payable by Landlord.

- (2) REPLACEMENT OF LETTER OF CREDIT. Tenant may, from time to time, replace any existing LOC with a new LOC if the new LOC (a) becomes effective at least thirty (30) days before expiration of the LOC that it replaces; (b) is in the required LOC amount; (c) is issued by an LOC bank acceptable to Landlord; and (d) otherwise complies with the requirements of this Paragraph 39.D.
- (3) LANDLORD'S RIGHT TO DRAW ON LETTER OF CREDIT. Landlord shall hold the LOC as security for the performance of Tenant's obligations under this Lease. If, after notice and failure to cure within any applicable period provided in this Lease, Tenant is in default pursuant to this Lease, Landlord may, without prejudice to any other remedy it has, draw on that portion of the LOC necessary to (a) pay Rent or other sum in default; (b) pay or reimburse Landlord for any amount that Landlord may spend or become obligated to spend in exercising Landlord's rights under Paragraph 30 (Right of Landlord to Perform Tenant's Covenant); and/or (c) compensate Landlord for any expense, loss, or damage that Landlord may suffer because of Tenant's default. If Tenant fails to renew or replace the LOC at least thirty (30) days before its expiration, Landlord may, without prejudice to any other remedy it has, draw on the entire amount of the LOC.
- (4) LOC SECURITY DEPOSIT. Any amount of the LOC that is drawn on by Landlord but not applied by Landlord shall be held by Landlord as a security deposit (the "LOC SECURITY DEPOSIT") in accordance with Paragraph 19 of this Lease.

- (5) RESTORATION OF LETTER OF CREDIT AND LOC SECURITY DEPOSIT. If Landlord draws on any portion of the LOC and/or applies all or any portion of such draw, Tenant shall, within five (5) business days after demand by Landlord, either (a) deposit cash with Landlord in an amount that, when added to the amount remaining under the LOC and the amount of any LOC Security Deposit, shall equal the LOC Amount then required under this Paragraph 39.D; or (b) reinstate the LOC to the full LOC Amount.
- (6) REDUCTION OF LETTER OF CREDIT. At least fifteen (15) business days prior to the dates specified in each of clauses a. through d. below, Tenant shall deliver to Landlord for review Tenant's financial statements prepared in accordance with generally accepted accounting principles and audited by a nationally recognized public accounting firm acceptable to Landlord, and any other financial information requested by Landlord ("TENANT'S FINANCIAL INFORMATION") If: (i) Tenant has a tangible net worth, which "tangible net worth" shall be determined by Landlord in its sole discretion and shall mean assets less intangible assets and total liabilities, with intangible assets including nonmaterial benefits such as goodwill, patents, copyrights, and trademarks, in excess of One Hundred Seventy five Million and No/100 Dollars (\$175,000,000.00) as reflected in Tenant's Financial Information, which amount shall be determined by Landlord to its satisfaction prior to any reduction in the LOC Amount; and (ii) Tenant's Financial Information reflects four (4) consecutive calendar quarters of profitability, as determined by Landlord, during the time period immediately preceding Tenant's request for reduction in the LOC Amount described in this subparagraph during the time period immediately preceding Tenant's request for reduction in the LOC Amount, as such profitability is determined by Landlord, then the following reductions in the LOC Amount may be made in accordance with the terms of this Paragraph 39.D(6):
- a. At any time after the end of the thirty-sixth (36th) month following the Term Commencement Date, the LOC Amount may be reduced to an amount equal to Seven Hundred Eleven Thousand Seven Hundred Fifty Six and No/100 Dollars (\$711,756.00);
  - b. At any time after the end of the forty-eighth (48th) month following the Term Commencement Date, the LOC Amount may be reduced to an amount equal to Six Hundred Ten Thousand Seventy Seven and No/100 Dollars (\$610,077.00);
  - c. At any time after the end of the sixtieth (60th) month following the Term Commencement Date, the LOC Amount may be reduced to an amount equal to Five Hundred Eight Thousand Three Hundred Ninety Seven and No/100 Dollars (\$508,397.00);
  - d. At any time after the end of the seventy-second (72nd) month following the Term Commencement Date, the LOC may be returned by Landlord to the issuing bank for cancellation provided that Tenant has, prior to such delivery by Landlord, delivered a cash security Deposit (to be held by Landlord in accordance with the terms of Paragraph 19 of this Lease) an amount equal to Four Hundred Six Thousand Seven Hundred Eighteen and No/100 Dollars (\$406,718.00).

In the event that any of the above described reductions to the LOC Amount is made and, subsequently, Tenant fails to meet the corresponding profitability and tangible net worth condition precedent for a period of thirty (30) days following delivery by Landlord of written notice of any such failure, Tenant shall within two (2) business days, increase the face amount of the LOC to an amount equal to the LOC Amount existing prior to such reduction (including the reduction described in clause d. above). If Tenant fails to increase the LOC Amount as provided above, such failure shall constitute a default hereunder (which default shall not be subject to any cure rights afforded anywhere in this Lease and Landlord shall be entitled to draw on the LOC for the full LOC Amount and hold such LOC Amount as a Security Deposit in accordance with the terms of this Lease, and enforce all other rights available to Landlord pursuant to the terms of this Lease or under applicable law.

E. CONTINGENCY. Tenant acknowledges that there is an existing lease on the Premises. This Lease Agreement is contingent upon Landlord's termination of the existing lease for the Premises and possession of the Premises. Upon termination of the existing lease for the Premises, Landlord shall provide to Tenant written notice of such termination.

F. BROKER. Landlord and Tenant each represent and warrant to the other that they have had no other dealings with any real estate broker or agent in connection with the negotiation of this Lease, excepting only Bailes & Associates, Inc. ("Broker") who represented Tenant, and that Landlord shall not pay any commissions or fees to Broker in connection with this Lease. Each party agrees to indemnify and defend the other party against and hold the other party harmless from any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses with respect to any leasing commission or equivalent compensation alleged to be owing on account of any dealings with any real estate broker or agent, including Broker, occurring by, through, or under the indemnifying party.





40. JURY TRIAL WAIVER

EACH PARTY HERETO (WHICH INCLUDES ANY ASSIGNEE, SUCCESSOR HEIR OR PERSONAL REPRESENTATIVE OF A PARTY) SHALL NOT SEEK A JURY TRIAL, HEREBY WAIVES TRIAL BY JURY, AND HEREBY FURTHER WAIVES ANY OBJECTION TO VENUE IN THE COUNTY IN WHICH THE BUILDING IS LOCATED, AND AGREES AND CONSENTS TO PERSONAL JURISDICTION OF THE COURTS OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IN ANY ACTION OR PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY STATUTE, EMERGENCY OR OTHERWISE, WHETHER ANY OF THE FOREGOING IS BASED ON THIS LEASE OR ON TORT LAW. EACH PARTY REPRESENTS THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL CONCERNING THE EFFECT OF THIS PARAGRAPH 40. THE PROVISIONS OF THIS PARAGRAPH 40 SHALL SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS LEASE.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and the year first above written.

LANDLORD

Spieker Properties, L.P.,  
a California limited partnership

By: Spieker Properties, Inc.,  
a Maryland corporation,  
its general partner

By: -----  
John W. Petersen  
Its: Senior Vice President

Date: July 26, 2000

TENANT

Brocade Communications Systems, Inc.,  
a Delaware corporation

By: -----  
Michael J. Byrd  
Its: Vice President, Finance,  
and Chief Financial Officer

Date: July 26, 2000

By: -----  
Mr. Victor Rinkle  
Its: Vice President, Operations

Date: July 26, 2000

EXHIBIT A  
RULES AND REGULATIONS

1. Driveways, sidewalks, halls, passages, exits, entrances, elevators, escalators and stairways shall not be obstructed by tenants or used by tenants for any purpose other than for ingress to and egress from their respective premises. The driveways, sidewalks, halls, passages, exits, entrances, elevators and stairways are not for the use of the general public and Landlord shall in all cases retain the right to control and prevent access thereto by all persons whose presence, in the judgment of Landlord, shall be prejudicial to the safety, character, reputation and interests of the Building, the Project and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom any tenant normally deals in the ordinary course of such tenant's business unless such persons are engaged in illegal activities. No tenant, and no employees or invitees of any tenant, shall go upon the roof of any Building, except as authorized by Landlord. No tenant, and no employees or invitees of any tenant shall move any common area furniture without Landlord's consent.
2. No sign, placard, banner, picture, name, advertisement or notice, visible from the exterior of the Premises or the Building or the common areas of the Building shall be inscribed, painted, affixed, installed or otherwise displayed by Tenant either on its Premises or any part of the Building or Project without the prior written consent of Landlord in Landlord's sole and absolute discretion. Landlord shall have the right to remove any such sign, placard, banner, picture, name, advertisement, or notice without notice to and at the expense of Tenant, which were installed or displayed in violation of this rule. If Landlord shall have given such consent to Tenant at any time, whether before or after the execution of Tenant's Lease, such consent shall in no way operate as a waiver or release of any of the provisions hereof or of the Lease, and shall be deemed to relate only to the particular sign, placard, banner, picture, name, advertisement or notice so consented to by Landlord and shall not be construed as dispensing with the necessity of obtaining the specific written consent of Landlord with respect to any other such sign, placard, banner, picture, name, advertisement or notice.

All approved signs or lettering on doors and walls shall be printed, painted, affixed or inscribed at the expense of Tenant by a person or vendor approved by Landlord and shall be removed by Tenant at the time of vacancy at Tenant's expense.

3. The directory of the Building or Project will be provided exclusively for the display of the name and location of tenants only and Landlord reserves the right to charge for the use thereof and to exclude any other names therefrom.
4. No curtains, draperies, blinds, shutters, shades, screens or other coverings, awnings, hangings or decorations shall be attached to, hung or placed in, or used in connection with, any window or door on the Premises without the prior written consent of Landlord. In any event with the prior written consent of Landlord, all such items shall be installed inboard of Landlord's standard window covering and shall in no way be visible from the exterior of the Building. All electrical ceiling fixtures hung in offices or spaces along the perimeter of the Building must be fluorescent or of a quality, type, design, and bulb color approved by Landlord. No articles shall be placed or kept on the window sills so as to be visible from the exterior of the Building. No articles shall be placed against glass partitions or doors which Landlord considers unsightly from outside Tenant's Premises.
5. Landlord reserves the right to exclude from the Building and the Project, between the hours of 6 p.m. and 8 a.m. and at all hours on Saturdays, Sundays and legal holidays, all persons who are not tenants or their accompanied guests in the Building. Each tenant shall be responsible for all persons for whom it allows to enter the Building or the Project and shall be liable to Landlord for all acts of such persons.  
  
Landlord and its agents shall not be liable for damages for any error concerning the admission to, or exclusion from, the Building or the Project of any person.  
  
During the continuance of any invasion, mob, riot, public excitement or other circumstance rendering such action advisable in Landlord's opinion, Landlord reserves the right (but shall not be obligated) to prevent access to the Building and the Project during the continuance of that event by any means it considers appropriate for the safety of tenants and protection of the Building, property in the Building and the Project.
6. All cleaning and janitorial services for the Building and the Premises shall be provided exclusively through Landlord. Except with the written consent of Landlord, no person or persons other than those approved by Landlord shall be permitted to enter the Building for the purpose of cleaning the same. Tenant shall not cause any unnecessary labor by reason of Tenant's carelessness or indifference in the preservation of good order and cleanliness of its Premises. Landlord shall in no way be responsible to Tenant for any loss of property on the Premises, however occurring, or for any damage done to Tenant's property by the janitor or any other employee or any other person.
7. Tenant shall see that all doors of its Premises are closed and securely locked and must observe strict care and caution that all water faucets

or water apparatus, coffee pots or other heat-generating devices are entirely shut off before Tenant or its employees leave the Premises, and that all utilities shall likewise be carefully shut off, so as to prevent waste or damage. Tenant shall be responsible for any damage or injuries sustained by other tenants or occupants of the Building or Project or by Landlord for noncompliance with this rule. On multiple-tenancy floors, all tenants shall keep the door or doors to the Building corridors closed at all times except for ingress and egress.

8. Tenant shall not use any method of heating or air-conditioning other than that supplied by Landlord. As more specifically provided in Tenant's lease of the Premises, Tenant shall not waste electricity, water or air-conditioning and agrees to cooperate fully with Landlord to assure the most effective operation of the Building's heating and air-conditioning, and shall refrain from attempting to adjust any controls other than room thermostats installed for Tenant's use.
9. Landlord will furnish Tenant free of charge with two keys to each door in the Premises. Landlord may make a reasonable charge for any additional keys, and Tenant shall not make or have made additional keys. Tenant shall not alter any lock or access device or install a new or additional lock or access device or bolt on any door of its Premises, without the prior written consent of Landlord. If Landlord shall give its consent, Tenant shall in each case furnish Landlord with a key for any such lock. Tenant, upon the termination of its tenancy, shall deliver to Landlord the keys for all doors which have been furnished to Tenant, and in the event of loss of any keys so furnished, shall pay Landlord therefor.
10. The restrooms, toilets, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed and no foreign substance of any kind whatsoever shall be thrown into them. The expense of any breakage, stoppage, or damage resulting from violation of this rule shall be borne by the tenant who, or whose employees or invitees, shall have caused the breakage, stoppage, or damage.
11. Tenant shall not use or keep in or on the Premises, the Building or the Project any kerosene, gasoline, or inflammable or combustible fluid or material.
12. Tenant shall not use, keep or permit to be used or kept in its Premises any foul or noxious gas or substance. Tenant shall not allow the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Building by reason of noise,

odors and/or vibrations or interfere in any way with other tenants or those having business therein, nor shall any animals or birds be brought or kept in or about the Premises, the Building, or the Project.

13. No cooking shall be done or permitted by any tenant on the Premises, except that use by the tenant of Underwriters' Laboratory (UL) approved equipment, refrigerators and microwave ovens may be used in the Premises for the preparation of coffee, tea, hot chocolate and similar beverages, storing and heating food for tenants and their employees shall be permitted. All uses must be in accordance with all applicable federal, state and city laws, codes, ordinances, rules and regulations and the Lease.
14. Except with the prior written consent of Landlord, Tenant shall not sell, or permit the sale, at retail, of newspapers, magazines, periodicals, theater tickets or any other goods or merchandise in or on the Premises, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, the business of stenography, typewriting or any similar business in or from the Premises for the service or accommodation of occupants of any other portion of the Building, nor shall the Premises be used for the storage of merchandise or for manufacturing of any kind, or the business of a public barber shop, beauty parlor, nor shall the Premises be used for any illegal, improper, immoral or objectionable purpose, or any business or activity other than that specifically provided for in such Tenant's Lease. Tenant shall not accept hairstyling, barbering, shoeshine, nail, massage or similar services in the Premises or common areas except as authorized by Landlord.
15. If Tenant requires telegraphic, telephonic, telecommunications, data processing, burglar alarm or similar services, it shall first obtain, and comply with, Landlord's instructions in their installation. The cost of purchasing, installation and maintenance of such services shall be borne solely by Tenant.
16. Landlord will direct electricians as to where and how telephone, telegraph and electrical wires are to be introduced or installed. No boring or cutting for wires will be allowed without the prior written consent of Landlord. The location of burglar alarms, telephones, call boxes and other office equipment affixed to the Premises shall be subject to the prior written approval of Landlord.
17. Tenant shall not install any radio or television antenna, satellite dish, loudspeaker or any other device on the exterior walls or the roof of the Building, without Landlord's consent. Tenant shall not interfere with radio or television broadcasting or reception from or in the Building, the Project or elsewhere.
18. Tenant shall not mark, or drive nails, screws or drill into the partitions, woodwork or drywall or in any way deface the Premises or any part thereof without Landlord's consent. Tenant may install nails and screws in areas of the Premises that have been identified for those purposes to Landlord by Tenant at the time those walls or partitions were installed in the Premises. Tenant shall not lay linoleum, tile, carpet or any other floor covering so that the same shall be affixed to the floor of its Premises in any manner except as approved in writing by Landlord. The expense of repairing any damage resulting from a violation of this rule or the removal of any floor covering shall be borne by the tenant by whom, or by whose contractors, employees or invitees, the damage shall have been caused.
19. No furniture, freight, equipment, materials, supplies, packages, merchandise or other property will be received in the Building or carried up or down the elevators except between such hours and in such elevators as shall be designated by Landlord.

Tenant shall not place a load upon any floor of its Premises which exceeds the load per square foot which such floor was designed to carry or which is allowed by law. Landlord shall have the right to prescribe the weight, size and position of all safes, furniture or other heavy equipment brought into the Building. Safes or other heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as determined by Landlord to be necessary to properly distribute the weight thereof. Landlord will not be responsible for loss of or damage to any such safe, equipment or property from any cause, and all damage done to the Building by moving or maintaining any such safe, equipment or other property shall be repaired at the expense of Tenant.

Business machines and mechanical equipment belonging to Tenant which cause noise or vibration that may be transmitted to the structure of the Building or to any space therein to such a degree as to be objectionable to Landlord or to any tenants in the Building shall be placed and maintained by Tenant, at Tenant's expense, on vibration eliminators or other devices sufficient to eliminate noise or vibration. The persons employed to move such equipment in or out of the Building must be acceptable to Landlord.

20. Tenant shall not install, maintain or operate upon its Premises any vending machine without the written consent of Landlord.
21. There shall not be used in any space, or in the public areas of the Project either by Tenant or others, any hand trucks except those equipped with rubber tires and side guards or such other material handling equipment as Landlord may approve. Tenants using hand trucks shall be required to use the freight elevator, or such elevator as Landlord shall designate. No other vehicles of any kind shall be brought

by Tenant into or kept in or about its Premises.

22. Each tenant shall store all its trash and garbage within the interior of the Premises. Tenant shall not place in the trash boxes or receptacles any personal trash or any material that may not or cannot be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the city, without violation of any law or ordinance governing such disposal. All trash, garbage and refuse disposal shall be made only through entry-ways and elevators provided for such purposes and at such times as Landlord shall designate. If the Building has implemented a building-wide recycling program for tenants, Tenant shall use good faith efforts to participate in said program.
23. Canvassing, soliciting, distribution of handbills or any other written material and peddling in the Building and the Project are prohibited and each tenant shall cooperate to prevent the same. No tenant shall make room-to-room solicitation of business from other tenants in the Building or the Project, without the written consent of Landlord.
24. Landlord shall have the right, exercisable without notice and without liability to any tenant, to change the name and address of the Building and the Project.
25. Landlord reserves the right to exclude or expel from the Project any person who, in Landlord's judgment, is under the influence of alcohol or drugs or who commits any act in violation of any of these Rules and Regulations.
26. Without the prior written consent of Landlord, Tenant shall not use the name of the Building or the Project or any photograph or other likeness of the Building or the Project in connection with, or in promoting or advertising, Tenant's business except that Tenant may include the Building's or Project's name in Tenant's address.
27. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any governmental agency.
28. Tenant assumes any and all responsibility for protecting its Premises from theft, robbery and pilferage, which includes keeping doors locked and other means of entry to the Premises closed.
29. The requirements of Tenant will be attended to only upon appropriate application at the office of the Building by an authorized individual. Employees of Landlord shall not perform any work or do anything outside of their regular duties unless under special instructions from

Landlord, and no employees of Landlord will admit any person (tenant or otherwise) to any office without specific instructions from Landlord.

30. Landlord reserves the right to designate the use of the parking spaces on the Project. Tenant or Tenant's guests shall park between designated parking lines only, and shall not occupy two parking spaces with one car. Parking spaces shall be for passenger vehicles only; no boats, trucks, trailers, recreational vehicles or other types of vehicles may be parked in the parking areas (except that trucks may be loaded and unloaded in designated loading areas). Vehicles in violation of the above shall be subject to tow-away, at vehicle owner's expense. Vehicles parked on the Project overnight without prior written consent of the Landlord shall be deemed abandoned and shall be subject to tow-away at vehicle owner's expense. No tenant of the Building shall park in visitor or reserved parking areas. Any tenant found parking in such designated visitor or reserved parking areas or unauthorized areas shall be subject to tow-away at vehicle owner's expense. The parking areas shall not be used to provide car wash, oil changes, detailing, automotive repair or other services unless otherwise approved or furnished by Landlord. Tenant will from time to time, upon the request of Landlord, supply Landlord with a list of license plate numbers of vehicles owned or operated by its employees or agents.
31. No smoking of any kind shall be permitted anywhere within the Building, including, without limitation, the Premises and those areas immediately adjacent to the entrances and exits to the Building, or any other area as Landlord elects. Smoking in the Project is only permitted in smoking areas identified by Landlord, which may be relocated from time to time.
32. If the Building furnishes common area conferences rooms for tenant usage, Landlord shall have the right to control each tenant's usage of the conference rooms, including limiting tenant usage so that the rooms are equally available to all tenants in the Building. Any common area amenities or facilities shall be provided from time to time at Landlord's discretion.
33. Tenant shall not swap or exchange building keys or cardkeys with other employees or tenants in the Building or the Project.
34. Tenant shall be responsible for the observance of all of the foregoing Rules and Regulations by Tenant's employees, agents, clients, customers, invitees and guests.
35. These Rules and Regulations are in addition to, and shall not be construed to in any way modify, alter or amend, in whole or in part, the terms, covenants, agreements and conditions of any lease of any premises in the Project.
36. Landlord may waive any one or more of these Rules and Regulations for the benefit of any particular tenant or tenants, but no such waiver by Landlord shall be construed as a waiver of such Rules and Regulations in favor of any other tenant or tenants, nor prevent Landlord from thereafter enforcing any such Rules and Regulations against any or all tenants of the Building.
37. Landlord reserves the right to make such other and reasonable rules and regulations as in its judgment may from time to time be needed for safety and security, for care and cleanliness of the Building and the Project and for the preservation of good order therein. Tenant agrees to abide by all such Rules and Regulations herein stated and any additional rules and regulations which are adopted.

## EXHIBIT B

## SITE PLAN, PROPERTY DESCRIPTION

LEGAL DESCRIPTION - All that certain real property situated in the City of San Jose, County of Santa Clara, State of California described as follows:

PARCEL A - Parcel No. 2 as shown on that certain Parcel Map filed in Book 443 of Maps at Pages 8 and 9, on June 7, 1979, Official Records of Santa Clara County.

PARCEL B - Portion of Parcel 5, as shown on that certain Parcel Map recorded June 7, 1979 in Book 443 of Maps, Pages 8 and 9, Records of Santa Clara County, California, and being more particularly described as follows:

Beginning at the most westerly corner of Parcel 5 as shown upon that certain Parcel Map recorded in Book 443 of Maps at Pages 8 and 9, Santa Clara County Records.

Thence, from said POINT OF BEGINNING North 59 16' 50" East along the northwest line of said Parcel 407.01 feet to the most northerly corner thereof; thence South 30 29' 35" East along the northeast line of said Parcel 75.00 feet, thence South 59 16' 35" West 407.01 feet to the southwest line of said Parcel; thence North 30 29' 35" West along said line 75.00 feet to the POINT OF BEGINNING.

## EXHIBIT C

## LEASE IMPROVEMENT AGREEMENT

This Lease Improvement Agreement ("IMPROVEMENT AGREEMENT") sets forth the terms and conditions relating to construction of the initial tenant improvements described in the Plans to be prepared and approved as provided below (the "TENANT IMPROVEMENTS") in the Premises. Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Lease (the "LEASE") to which this Improvement Agreement is attached and forms a part.

1. Base Building Work. The "Base Building Work" described on SCHEDULE 1 to this EXHIBIT C, IF ANY, has been or will be performed by Landlord at Landlord's sole cost and expense.

2. Plans and Specifications.

2.1 Tenant shall retain the services of DEVCON OR REEL GROBMAN AND ASSOCIATES or such other architectural firm as shall be approved by Landlord in writing (the "SPACE PLANNER") to prepare a detailed space plan (the "SPACE PLAN") mutually satisfactory to Landlord and Tenant for the construction of the Tenant Improvements in the Premises. Tenant shall submit the Space Plan and any proposed revisions thereto to Landlord for Landlord's approval.

2.2 Based on the approved Space Plan, Tenant shall cause the Space Planner to prepare detailed plans, specifications and working drawings mutually satisfactory to Landlord and Tenant for the construction of the Tenant Improvements (the "PLANS"). Landlord and Tenant shall diligently pursue the preparation of the Plans. Tenant shall submit the Plans and any proposed revisions thereto, including the estimated cost of the Tenant Improvements. All necessary revisions to the Space Plan and the Plans shall be made within two (2) business days after Landlord's response thereto. This procedure shall be repeated until Landlord ultimately approves the Space Plan and Plans.

2.3 Tenant shall be responsible for ensuring that the Plans are compatible with the design, construction and equipment of the Building, comply with applicable Regulations and the Standards (defined below), and contain all such information as may be required to show locations, types and requirements for all heat loads, people loads, floor loads, power and plumbing, regular and special HVAC needs, telephone communications, telephone and electrical outlets, lighting, light fixtures and related power, and electrical and telephone switches, B.T.U. calculations, electrical requirements and special receptacle requirements. The Plans shall also include mechanical, electrical, plumbing, structural and engineering drawings mutually satisfactory to Landlord and Tenant which shall be prepared by DEVCON OR MCCLARNEY CONSTRUCTION or such other contractor or contractors as shall be approved by Landlord in writing. Notwithstanding Landlord's preparation, review and approval of the Space Plan and the Plans and any revisions thereto, Landlord shall have no responsibility or liability whatsoever for any errors or omissions contained in the Space Plan or Plans or any revisions thereto, or to verify dimensions or conditions, or for the quality, design or compliance with applicable Regulations of any improvements described therein or constructed in accordance therewith. Tenant hereby waives all claims against Landlord relating to, or arising out of the design or construction of, the Tenant Improvements.

2.4 Landlord may approve or disapprove the Space Plan or Plans or any proposed revision thereto submitted to Landlord in Landlord's sole reasonable discretion. Landlord's criteria for approvals shall be based on reasonable criteria established from time to time by Landlord, but Landlord will be deemed to have acted reasonably if Landlord's disapproval is predicated upon (i) effect on the structural integrity of the Building, (ii) possible damage to the Building's mechanical, electrical, plumbing and HVAC systems, (iii) non-compliance with applicable laws, codes and regulations, (iv) incompatibility with the base building plans, (v) failure to use materials required by Schedule 2 pertaining to Standards, and (vi) effect on the exterior of the Building or any of the Building's common areas. Landlord shall not be deemed to have approved the Space Plan, the Plans, or any proposed revisions thereto, unless approved by Landlord in writing. Landlord shall approve or disapprove any Space Plan, Plans or proposed revisions thereto submitted to Landlord for Landlord's approval within three (3) business days after Landlord's receipt thereof. If Landlord has not approved in writing any Space Plan, Plans, or proposed revisions thereto submitted to Landlord within five (5) business days after Landlord's receipt thereof, Landlord shall be deemed to have disapproved the same.

3. Specifications for Standard Tenant Improvements.

3.1 Specifications and quantities of standard building components which will comprise and be used in the construction of the Tenant Improvements ("STANDARDS") are set forth in SCHEDULE 2 to this EXHIBIT C. As used herein, "STANDARDS" or "BUILDING STANDARDS" shall mean the standards for a particular item selected from time to time by Landlord for the Building, including those set forth on SCHEDULE 2 of this EXHIBIT C, or such other standards of equal or better quality as may be mutually agreed between Landlord and Tenant in writing.

3.2 No deviations from the Standards are permitted.

4. Tenant Improvement Cost.

4.1 The cost of the Tenant Improvements shall be paid for by Tenant, including, without limitation, the cost of: Standards; space plans and studies; architectural and engineering fees; permits, approvals and other governmental fees; labor, material, equipment and supplies; construction fees and other amounts payable to contractors or subcontractors; taxes; off-site improvements; remediation and preparation of the Premises for construction of the Tenant



Improvements; taxes; filing and recording fees; premiums for insurance and bonds; attorneys' fees; financing costs; and all other costs expended or to be expended in the construction of the Tenant Improvements, including those costs incurred for construction of elements of the Tenant Improvements in the Premises, which construction was performed by Landlord prior to the execution of the Lease or for materials comprising the Tenant Improvements which were purchased by Landlord prior to the execution of the Lease; and an administration fee of three percent (3%) of the total cost of the Tenant Improvements.

4.2 Provided Tenant is not in default under the Lease, including this Improvement Agreement, Landlord shall contribute a one-time tenant improvement allowance not to exceed \$218,000.00 ("TENANT IMPROVEMENT ALLOWANCE") toward the cost of the initial Tenant Improvements. Provided Tenant is not then in default under the Lease, including this Improvement Agreement, during the construction of the Tenant Improvements, Landlord shall make monthly disbursements of the Tenant Improvement Allowance for the benefit of Tenant and shall authorize the release of monies for the benefit of Tenant as follows:

- (a) Monthly Disbursements. On or before the twenty-first (21st) day of the calendar month, during the construction of the Tenant Improvements (or such other date as Landlord may designate in writing), Tenant shall deliver to Landlord: (i) a request for payment of Tenant's contractor, which request shall be approved by Tenant, showing the schedule, by trade, of percentage of completion of the Tenant Improvements, detailing the portion of the work completed and the portion not completed; (ii) invoices from any subcontractor, laborer, materialmen, supplier and any other party which performed work on Tenant's behalf pursuant to this Improvement Agreement,

including, but not limited to, labor rendered and materials delivered to the Premises; (iii) executed conditional mechanic's lien releases from all of the parties submitting invoices with respect to the work performed and for which payment is requested to be made, which releases shall comply with the appropriate provisions of California Civil Code 3262(d); (iv) executed unconditional mechanic's lien releases from all of the parties with respect to work performed and included on prior pay requests, which releases shall comply with the appropriate provisions of California Civil Code; and (v) all other information reasonably requested by Landlord. Tenant's request for payment shall be deemed Tenant's acceptance and approval of the specific work furnished and or the materials actually supplied as set forth in Tenant's payment request. Within ten (10) business days thereafter, Landlord shall deliver a check (or transfer funds electronically) to Tenant made jointly payable to Tenant's contractor and Tenant in payment of the lesser of (A) Landlord's proportionate share of the amount of such request for payment by Tenant's contractor, as set forth in this paragraph, less a ten percent (10%) retention (the aggregate amount of such retentions to be known as the "FINAL RETENTION"), and (B) the balance of any remaining available portion of the Tenant Improvement Allowance (not including the Final Retention), provided Landlord does not dispute any request for payment based upon noncompliance with the Plans and or Standards, or due to any substandard work, or for any other reasonable cause. For purposes of this Improvement Agreement, Landlord's proportionate share shall be the product of the following: (X) the amount of the Tenant Improvement Allowance over total cost of the Tenant Improvements, as such total cost may from time to time increase as provided herein, multiplied by (Y) the total amount approved by Landlord in Tenant's written request for payment as described above. Landlord's payment of such amounts shall not be deemed Landlord's approval or acceptance of the work furnished or materials supplied as set forth in Tenant's payment request.

- (b) Final Retention. Subject to the provisions of this Improvement Agreement, a check for the Final Retention payable jointly to Tenant's contractor and Tenant shall be delivered by Landlord to Tenant following the completion of the construction of the Tenant Improvements and expiration of the time for filing of any mechanics' liens claimed or which might be filed on account of any work ordered by Tenant or its contractor or any subcontractor; provided that (A) Tenant delivers to Landlord properly executed and unconditional mechanics lien releases in compliance with both California Civil Code Section 3262(d)(2) and with Section 3262(d)(3) or Section 3262(d)(4) (which mechanics' lien releases shall be executed by the subcontractors, labor suppliers and materialmen in addition to Tenant's contractor), and all appropriate bills and supporting documentation for the work ordered by Tenant or its contractor or any subcontractor, (B) Landlord has determined that no substantial work exists which adversely affects the mechanical, electrical, plumbing, heating, ventilating and air conditioning, life-safety or other systems of the Building or Project, the structure or exterior appearance of the Building or Project, and (C) Space Planner and Tenant's contractor deliver to Landlord a certificate of completion, in a form reasonably acceptable to Landlord certifying that the construction of the Tenant Improvements has been substantially completed.
- (c) Other Terms. Landlord shall only be obligated to make disbursements from the Tenant Improvement Allowance in accordance with the terms of this Agreement.

4.3 In the event the estimated cost of the design and construction of the Tenant Improvements exceeds the Tenant Improvement Allowance, Landlord's proportionate share pursuant to Paragraph 4.2.(a) above shall be adjusted accordingly. No credit shall be given to Tenant if the cost of the Tenant Improvements is less than the Tenant Improvement Allowance.

4.4 If the cost of the Tenant Improvements increases after the Tenant's approval of the Plans due to the requirements of any governmental agency or applicable Regulation, Landlord's proportionate share pursuant to Paragraph 4.2.(a) above shall be adjusted accordingly.

4.5 If Tenant requests any change(s) in the Plans after approval of the estimate of the cost of the Tenant Improvements and any such requested changes are approved by Landlord in writing in Landlord's sole discretion, and the cost of the Tenant Improvements increases as a result of such approved change(s). Landlord's proportionate share pursuant to Paragraph 4.2.(a) above shall be adjusted accordingly.

## 5. Construction of Tenant Improvements.

5.1 Within ten (10) days after Tenant's and Landlord's approval of the Plans including the estimate of the cost of the Tenant Improvements and Landlord's receipt of payment of any such estimated cost exceeding the amount of the Tenant Improvement Allowance, Tenant shall cause the contractor to proceed

to secure a building permit and commence construction of the Tenant Improvements provided that the Building has in Landlord's discretion reached the stage of construction where it is appropriate to commence construction of the Tenant Improvements in the Premises.

5.2 Tenant shall be responsible for obtaining all governmental approvals to the full extent necessary for the construction and installation of the Tenant Improvements and for Tenant's occupancy of the Premises, in compliance with all applicable Regulations. Tenant shall employ DEVCON OR MCCLARNEY CONSTRUCTION as the contractor or such other contractor or contractors as shall be approved by Landlord in writing to construct the Tenant Improvements in conformance with the approved Space Plan and Plans. The construction contracts between Tenant and the approved contractor shall be subject to Landlord's prior reasonable approval and shall provide for progress payments. The contractor(s) shall be duly licensed and Landlord's approval of the contractor(s) shall be conditioned, among other things, upon the contractor's reputation for quality of work, timeliness of performance, integrity and Landlord's prior experience with such contractor.

5.3 Without limiting the provisions of Paragraph 35 of the Lease, Landlord shall not be liable for any direct or indirect damages suffered by Tenant as a result of delays in construction beyond Landlord's reasonable control, including, but not limited to, delays due to strikes or unavailability of materials or labor, or delays caused by Tenant (including delays by the Space Planner, the contractor or anyone else performing services on behalf of Landlord or Tenant).

5.4 All work to be performed on the Premises by Tenant or Tenant's contractor or agents shall be subject to the following conditions:

(a) Such work shall proceed upon Landlord's written approval of Tenant's contractor, and public liability and property damage insurance carried by Tenant's contractor, and shall further be subject to the provisions of Paragraphs 12 and 27 of the Lease.

(b) All work shall be done in conformity with a valid building permit when required, a copy of which shall be furnished to Landlord before such work is commenced, and in any case, all such work shall be performed in a good and workmanlike and first-class manner, and in accordance with all applicable Regulations and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Premises pursuant to the Lease. Notwithstanding

any failure by Landlord to object to any such work, Landlord shall have no responsibility for Tenant's failure to comply with all applicable Regulations. Tenant shall be responsible for ensuring that construction and installation of the Tenant Improvements will not affect the structural integrity of the Building.

(c) If required by Landlord or any lender of Landlord, all work by Tenant or Tenant's contractor shall be done with union labor in accordance with all union labor agreements applicable to the trades being employed.

(d) Landlord or Landlord's agents shall have the right to inspect the construction of the Tenant Improvements by Tenant during the progress thereof. If Landlord shall give notice of faulty construction or any other deviation from the approved Space Plan or Plans, Tenant shall cause its contractor to make corrections promptly. However, neither the privilege herein granted to Landlord to make such inspections, nor the making of such inspections by Landlord, shall operate as a waiver of any right of Landlord to require good and workmanlike construction and improvements erected in accordance with the approved Space Plan or Plans.

(e) Tenant shall cause its contractor to complete the Tenant Improvements as soon as reasonably possible but in any event on or before the Scheduled Term Commencement Date.

(f) Tenant's construction of the Tenant Improvements shall comply with the following: (i) the Tenant Improvements shall be constructed in strict accordance with the approved Space Plan or Plans; (ii) Tenant's and its contractor shall submit schedules of all work relating to the Tenant Improvements to Landlord for Landlord's approval within two (2) business days following the selection of the contractor and the approval of the Plans. Landlord shall within five (5) business days after receipt thereof inform Tenant of any changes which are necessary and Tenant's contractor shall adhere to such corrected schedule; and (iii) Tenant shall abide by all rules made by Landlord with respect to the use of freight, loading dock, and service elevators, storage of materials, coordination of work with the contractors of other tenants, and any other matter in connection with this Improvement Agreement, including, without limitation, the construction of the Tenant Improvements.

(g) Tenant or Tenant's contractor or agents shall arrange for necessary utility, hoisting and elevator service with Landlord's contractor and shall pay such reasonable charges for such services as may be charged by Tenant's or Landlord's contractor.

(h) Tenant's entry to the Premises for any purpose, including, without limitation, inspection or performance of Tenant construction by Tenant's agents, prior to the date Tenant's obligation to pay rent commences shall be subject to all the terms and conditions of the Lease except the payment of Rent. Tenant's entry shall mean entry by Tenant, its officers, contractors, licensees, agents, servants, employees, guests, invitees, or visitors.

(i) Tenant shall promptly reimburse Landlord upon demand for any reasonable expense actually incurred by the Landlord by reason of faulty work done by Tenant or its contractors or by reason of any delays caused by such work, or by reason of inadequate clean-up.

(j) Tenant hereby indemnifies and holds Landlord harmless with respect to any and all costs, losses, damages, injuries and liabilities relating in any way to any act or omission of Tenant or Tenant's contractor or agents, or anyone directly or indirectly employed by any of them, in connection with the Tenant Improvements and any breach of Tenant's obligations under this Improvement Agreement, or in connection with Tenant's non-payment of any amount arising out of the Tenant Improvements. Such indemnity by Tenant, as set forth above, shall also apply with respect to any and all costs, losses, damages, injuries, and liabilities related in any way to Landlord's performance or any ministerial acts reasonably necessary (i) to permit Tenant to complete the Tenant Improvements, and (ii) to enable Tenant to obtain any building permit or certificate of occupancy for the Premises.

(k) Tenant's contractor and the subcontractors utilized by Tenant's contractor shall guarantee to Tenant and for the benefit of Landlord that the portion of the Tenant Improvements for which it is responsible shall be free from any defects in workmanship and materials for a period of not less than one (1) year from the date of completion thereof. Each of Tenant's contractor and the subcontractors utilized by Tenant's contractor shall be responsible for the replacement or repair, without additional charge, of all work done or furnished in accordance with its contract that shall become defective within one (1) year after the later to occur of (i) completion of the work performed by such contractor or subcontractors and (ii) the Term Commencement Date. The correction of such work shall include, without additional charge, all additional expenses and damages incurred in connection with such removal or replacement of all or any part of the Tenant Improvements, and/or the Building and/or common areas that may be damaged or disturbed thereby. All such warranties or guarantees as to materials or workmanship of or with respect to the Tenant Improvements shall be contained in the construction contract or subcontract and shall be written such that such guarantees or warranties shall inure to the benefit of both Landlord and Tenant, as their respective interests may appear, and can be directly enforced by either. Tenant covenants to give to Landlord any assignment or other assurances which may be necessary to effect such rights of direct enforcement.

## 6. Insurance Requirements.

6.1 All of Tenant's contractors shall carry worker's compensation insurance covering all of their respective employees, and shall also carry public liability insurance, including property damage, all with limits, in form and with companies as are required to be carried by Tenant as set forth in

6.2 Tenant shall carry "Builder's All Risk" insurance in an amount approved by Landlord covering the construction of the Tenant Improvements, and such other insurance as Landlord may require, it being understood and agreed that the Tenant Improvements shall be insured by Tenant pursuant to Paragraph 8 of the Lease immediately upon completion thereof. Such insurance shall be in amounts and shall include such extended coverage endorsements as may be reasonably required by Landlord including, but not limited to, the requirement that all of Tenant's contractors shall carry excess liability and Products and Completed Operation coverage insurance, each in amounts not less than \$500,000 per incident, \$1,000,000 in aggregate, and in form and with companies as are required to be carried by Tenant as set forth in Paragraph 8 of the Lease.

6.3 Certificates for all insurance carried pursuant to this Improvement Agreement must comply with the requirements of Paragraph 8 of the Lease and shall be delivered to Landlord before the commencement of construction of the Tenant Improvements and before the contractor's equipment is moved onto the site. In the event the Tenant Improvements are damaged by any cause during the course of the construction thereof, Tenant shall immediately repair the same at Tenant's sole cost and expense. Tenant's contractors shall maintain all of the foregoing insurance coverage in force until the Tenant Improvements are fully completed and accepted by Landlord, except for any Product and Completed Operation Coverage insurance required by Landlord, which is to be maintained for ten (10) years following completion of the work and acceptance by Landlord and Tenant. All policies carried under this Paragraph 6 shall insure Landlord and Tenant, as their interests may appear, as well as the contractors. All insurance maintained by Tenant's contractors shall preclude subrogation claims by the insurer against anyone insured thereunder. Such insurance shall

provide that it is primary insurance as respects the owner and that any other insurance maintained by owner is excess and noncontributing with the insurance required hereunder.

7. Completion and Rental Commencement Date.

7.1 Tenant's obligation to pay Rent under the Lease shall commence on the Scheduled Term Commencement Date and the Scheduled Term Commencement Date shall be the Term Commencement Date notwithstanding anything to the contrary contained in Paragraph 2 of the Lease. However, Landlord Delays (as defined below) shall extend the Term Commencement Date, but only in the event that substantial completion of the Tenant Improvements is delayed despite Tenant's reasonable efforts to adapt and compensate for such delays. In addition, no Landlord Delays shall be deemed to have occurred unless Tenant has provided notice, in compliance with the Lease, to Landlord specifying that a delay shall be deemed to have occurred because of actions, inactions or circumstances specified in the notice in reasonable detail. If such actions, inactions or circumstances are not cured by Landlord within one (1) business day after receipt of such notice ("COUNT DATE"), and if such actions, inaction or circumstances otherwise qualify as a Landlord Delay, then a Landlord Delay shall be deemed to have occurred commencing as of the Count Date. The Term Commencement Date shall be extended by one day for each day from the Count Date that a Landlord Delay has occurred, as calculated as provided above. The term "Landlord Delays," as such term may be used in this Improvement Agreement, shall mean any delays in the completion of the Tenant Improvements which are due to any act or omission of Landlord, its agents or contractors. Landlord Delays shall include, but shall not be limited to: (i) delays in the giving of authorizations or approvals by Landlord, (ii) delays due to the acts or failures to act, of Landlord, its agents or contractors, where such acts or failures to act delay the completion of the Tenant Improvements, provided that Tenant acts in a commercially reasonable manner to mitigate any such delay, (iii) delays due to the interference of Landlord, its agents or contractors with the completion of the Tenant Improvements or the failure or refusal of any party to permit Tenant, its agents and contractors, access to and use of the Building or any Building facilities or services, including elevators and loading docks, which access and use are necessary to complete the Tenant Improvements, and (iv) delays due to Landlord's failure to allow Tenant sufficient access to the Building and/or the Premises during Tenant's move into the Premises.

7.2 Within ten (10) days after completion of construction of the Tenant Improvements, Tenant shall cause a Notice of Completion to be recorded in the office of the Recorder of the county in which the Building is located in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, and shall furnish a copy thereof to Landlord upon such recordation. If Tenant fails to do so, Landlord may execute and file the same on behalf of Tenant as Tenant's agent for such purpose, at Tenant's sole cost and expense. At the conclusion of construction, (i) Tenant shall cause the Space Planner and the contractor (i) to update the approved working drawings as necessary to reflect all changes made to the approved working drawings during the course of construction, (ii) to certify to the best of their knowledge that the "record-set" of as-built drawings are true and correct, which certification shall survive the expiration or termination of the Lease, and (c) to deliver to Landlord two (2) sets of copies of such record set of drawings within ninety (90) days following issuance of a certificate of occupancy for the Premises, and (iii) Tenant shall deliver to Landlord a copy of all warranties, guarantees, and operating manuals and information relating to the improvements, equipment, and systems in the Premises.

7.3 A default under this Improvement Agreement shall constitute a default under the Lease, and the parties shall be entitled to all rights and remedies under the Lease in the event of a default hereunder by the other party (notwithstanding that the Term thereof has not commenced).

7.4 Without limiting the "as-is" provisions of the Lease, except for the Tenant Improvements, if any, to be constructed by Landlord pursuant to this Improvement Agreement, Tenant accepts the Premises in its "as-is" condition and acknowledges that it has had an opportunity to inspect the Premises prior to signing the Lease. To the best of Landlord's knowledge, all elevators, HVAC and other building systems are in good working order.

SCHEDULE 1 TO EXHIBIT C

BASE BUILDING WORK - 1740 TECHNOLOGY DRIVE, SAN JOSE, CA 95110

NONE.

Not applicable. 1740 TECHNOLOGY DRIVE, SAN JOSE, CA 95110. The following constitutes the Building Standard tenant improvements ("STANDARDS") in the quantities specified:

PARTITIONS

Interior:	2 1/2" Metal studs with 5/8" gypsum board on each side. Taped smooth and ready for finish.
Demising:	3 5/8" Metal studs with 5/8" gypsum board to building structure on one side and 6" above ceiling on other side, with sound batt insulation Provide minimum of two (2) 4'-0" x 4'-0" openings protected by security wire mesh fabric in each wall. Taped smooth and ready for finish.

Perimeter Wainscot: 5/8" layer of gypsum board, taped smooth ready for finish. Extruded aluminum sill to match exterior mullions.

Interior Columns 5/8" layer of gypsum board, taped smooth ready for finish.

Paint: One coat primer, two coats of interior latex paint in eggshell finish, on each side of partitions.

#### DOOR ASSEMBLIES

Doors: Doors will be 3'-0" x 9'-0" x 1 3/4" solid core construction Sapeli mahogany. Tenant entry doors to be 20-minute rated.

Door Frames: Door frames will be Sapeli mahogany. Frames to be 20-minute rated.

Door Hardware: Tenant entry doors shall receive a lockset, surface mounted closer, butt hinges, and door stop. Tenant interior doors shall receive a latchset, butt hinges and door stop. Door hardware to be Schlage, L-series #15 stainless steel with ASSA cylinder. Schlage tail piece required. Finish to be equal to ASSA bright chrome.

#### CEILING SYSTEM

Acoustic ceilings and suspended Acoustical suspended ceilings will be Armstrong, Cortega, Fire-rated Tegular tile #816A, with Donn DX 15/16" suspension system in #040 white.

## systems:

- Light Fixtures: 2' x 4' Light fixtures will have custom Optibrite optical reflector (2)-lamp, Motorola Rapid Start Electronic Ballast, part #M2RNT8ILL, 277-volt lamp model #GEF32T8SP35.
- 2' x 2' Light fixtures will have custom Optibrite reflector (3)-lamp, Motorola Rapid Start Electronic Ballast, part #M3RNT8ILL, 277-volt lamp model #GEF32T8SP35.
- Light Switch Assembly: Switches will be paired in double gang box to meet Title 24 requirements. Bryant #4901, Ivory finish.

## ELECTRICAL AND TELEPHONE

- Receptacles: Receptacles will be duplex 20 ampere, 125 volt a.c. with Bryant wall plate, smooth line, Ivory finish
- Telephone outlets: Outlets will be a standard telephone plate in manufacturer's standard colors, mounted vertically level with electrical receptacles, Color: ivory.
- Exit signage: Exit signs to be Lithonia Emergency Systems, Titan XS-series, housing color: white, panels: green, style: stencil, catalog #ELA XCKFSWR/G J6, 120-volt

## HEATING AND AIR CONDITIONING SYSTEM

- HVAC System: Interior and exterior zone cooling provided by Carrier Moduline Plus Air Terminals. Perimeter heating provided by five heating fan coil units located in ceiling plenum on each floor.

## FIRE PROTECTION

- Fire Sprinkler Heads: Sprinkler heads to be Central Model "A" recessed pendant automatic and quick response sprinklers. Escutcheons to be metal. Color to be white.

## FLOOR COVERING:

- Carpet: 38 oz. weight cut pile, Designweave, Sabre Classic, installed direct glue-down. All standard colors available.
- Tile: Armstrong, Standard Excelon vinyl composition tile. All standard colors available.
- Base: Burke, 4" rubber base, topset over VCT and straight cut over carpet. All standard colors available.

## WINDOW COVERING

- Blinds: 1" aluminum Hunter Douglas, Contract Celebrity mini blinds Color: #002-Alabaster. Sized to fit within aluminum mullion module.



SCHEDULE 3  
TO EXHIBIT C

CONTRACTOR RULES AND REGULATIONS

GENERAL REQUIREMENTS FOR BUILDING CONSTRUCTION WORK

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INTENT

The intent of these General Requirements is to communicate Spieker Properties general performance expectations and requirements of contractors performing work in our projects. While these requirements may not cover all specific project requirements, or may not apply to all projects, they are intended to communicate a basic overall methodology for doing construction work in Spieker Properties projects.

Preliminary

1. All work performed shall be performed by union signatory general contractor utilizing all union labor and must comply with all applicable rules, regulations, and codes of the building, city, state, and federal governmental agencies having jurisdiction. The General Contractor will file drawings and secure all required permits prior to beginning work, unless circumstances require earlier construction commencement, as directed by the Owner's architect. All construction within the leased premises shall conform to applicable sections of California Title 24 Standards and the American with Disabilities Act (ADA).
2. All work shall be performed during regular business hours (7:00 A.M. - 6:00 P.M.), Monday through Friday, with the exception of work types listed below. All building system operations will be maintained in normal operation, and will not be adversely impacted by construction work, unless specifically authorized by a Project Management representative. The contractor shall communicate requests to the Management Office 24 hours in advance of any required interruption of any building services.
 

EXCEPTIONS - The following work is required to be performed on an overtime or off-hours basis: core drilling, nailing of tackless carpet stripping, spray painting of any lacquer or other volatile or odor creating substances, and any type of concrete chipping. Any scheduling requests for these types of off-hours work must be approved and authorized by the Management Office prior to performance any of work.
3. All contractors must supply Certificate(s) of Insurance naming Spieker Properties, L.P. as additionally insured prior to the start of any construction. Insurance certificates and copies of permits, as required, must be provided to Project Management prior to the commencement of any work.
4. Contractors representative will meet with Project Management representative prior to beginning contracted work, to review the scope of construction work, construction methods, these general requirements, any additional project specific requirements, and any potential impact to the satisfactory on-going operation of building services.
5. The contractor will coordinate proper parking locations for construction personnel with Project Management prior to starting construction, to avoid impacting our tenants parking availability.

PROJECT AREA ACCESS

1. Access to project buildings, parking structures, suites, etc. will be coordinated in advance with Project Office. No installed access control or security system will be over ridden or bypassed for any reason, or at any time. All construction personnel will be limited to those areas for which they have been given specific access.
2. Access to all electrical closets, telephone closets, mechanical rooms, and suites must be coordinated in advance through the Project Office. Electrical, telephone, and other equipment rooms will be kept closed and locked when they are not physically occupied.

DURING WORK PERFORMANCE

1. Upon the start of construction, the contractor will provide walk-off mats at all entrances to the construction area(s) from stairwells (if used) and entrances to all elevators.
2. Contractors shall maintain cleanliness throughout; do not clutter or block hallways, exits, elevator lobby, electrical or telephone rooms. Building fire rated doors will not be propped open, removed, or their door closures disconnected. Nor will elevator doors be propped or jammed open to prevent the automatic function of it's timed door actuators. CONTRACTORS ARE REQUIRED TO UTILIZE THE FREIGHT ELEVATOR ONLY! Where a freight elevator is not available, Project Management will designate the appropriate elevator for contractor use. Where available, elevator protective pads will be used whenever moving materials or equipment in

the elevator. Contractors are responsible for all damage they cause and clean-up.

3. Building electrical closets will not, at any time, or for any reason, be utilized for the storage of any construction project materials or trash, as such storage constitutes a violation of prevailing fire codes.
4. All material deliveries, and debris removal, must be made as expeditiously as possible so as to not have these vehicles blocking accesses to/from the building. The contractor, at contractor expense must remove all construction debris from the building. Building trash dumpsters are not to be utilized for the disposal of construction project debris, as these are provided for tenant use. As may be required, Contractor will make arrangements for delivery of a debris box for his use. The Project Office will approve an appropriate location for the debris box while it is on the project. Delivery or removal of large amounts of material is to be done after normal business hours with 24-hr. prior approval of the Project Manager.
5. The contractor is responsible for taking the following precautions/ steps to protect the satisfactory on-going operation of all building systems and tenant operations:
  - Covering HVAC supply and return duct openings to protect from construction dirt/dust being spread to other areas of the building or into the HVAC equipment/system. This can be accomplished by sealing off, covering with filtering media, or other Project Management approved method.

- Coordinate with Project Manager prior to construction to have fire sprinkler systems isolated, smoke detectors disabled, or alarm systems de-activated for periods as may be necessary. Contractor will protect those smoke detectors or fire sprinkler heads left installed in the area, after disabling, by covering them with plastic bags during construction.
- Where electrical components or circuits are removed, contractor will ensure full compliance with OSHA required lockout/tagout procedures to prevent personal injuries or system outages.
- Develop the best isolation possible of the construction area to contain any dirt, dust, noise or other potential tenant impact which may be generated by demo, construction work and clean-up.

6. Any damage to any project area including but not limited to, parking areas, doors, freight elevators, and carpets will be reported to the Project Office and repaired by the contractor immediately. Spieker Properties reserves the right to remedy any damage at the Contractors expense if the damage is not repaired in a timely manner.
7. No powder-actuated guns are to be used without the specific prior authorization of the Project Management Office.
8. No foreign substances are to be poured down any restroom floor drains, or into other restroom fixtures.
9. All firewall and floor penetrations shall be sleeved and sealed in accordance with applicable fire code, using only approved, UL listed, fire stop materials. All firestop installations must be reviewed and approved by the Project Manager prior to closing the associated area of work.
10. All electrical panel and circuit breaker labeling will be performed in accordance with acceptable industry methods, or as may be directed by Project Management.
11. Contractor will notify the Management Office at least 48 hours in advance of construction completion. A walk-through and punch list will be developed for each job.
12. Smoking is prohibited in all buildings, and parking garages, at all times.
13. The Contractor is responsible for ensuring, on an on-going basis, that common areas, work space, and construction use restrooms are thoroughly cleaned upon completion of work, including trash and material disposal, removal of all noise and dust shielding materials installed at beginning of project, windows cleaned, etc.
14. THE PROJECT OFFICE IS TO BE NOTIFIED IMMEDIATELY SHOULD ANY EMERGENCY DEVELOP, ANY BUILDING SYSTEM OR OPERATION BE IMPACTED, OR ANY ASPECT OF THE CONSTRUCTION EFFORT IMPACT ANY TENANT.

#### SAFETY/COMPLIANCE

1. General Contractor is responsible for ensuring jobsite safety compliance. This includes the work force as well as anyone entering the construction area. Protective barricades will be placed as required to ensure general area safety. Material Safety Data Sheets (MSDS) for all materials to be used on the jobsite must be provided to the Project Manager for review prior to bringing the materials into the project. The contractor will further ensure that a copy of each MSDS is available at the jobsite whenever a specific material is in use.
2. No welding, burning, or cutting with an open flame will be performed without prior notification to the Project Office so that appropriate actions may be taken with fire alarm systems and fire sprinkler systems. Appropriate fire extinguishers will be immediately available at all times.
3. The contractor is responsible for ensuring that all of their sub-contractors are aware, and in compliance, with these general requirements.

#### MATERIALS

1. The contractor shall contact the Management Office at the start of construction for instructions on building keying, specific hardware and other standards, as may be applicable, unless this coordination is accomplished through hardware submittals. All permanent keying will be provided through the Management Office.
2. All HVAC, electrical, plumbing, fire alarm system, fire sprinkler, building control and lighting components installed will be of Building Standard manufacture, unless noted as otherwise on the approved plans and specifications. This includes but is not limited to thermostats, controls, diffusers, lighting fixtures, switches, lamps, relays, smoke detectors, fire sprinkler heads, sprinkler flow switches, manual pull stations, indicator horns/strobes, etc.

## Project Completion

1. Upon completion of project, contractor will perform a full air balance of any installed or modified HVAC systems, providing one copy of each air balance report to the Management Office.
2. Upon completion of project, a completed test report (witnessed by a Fire Department representative as required) will be provided to the Project Management Office for all fire sprinkler or fire alarm systems having been impacted by any aspect of the construction work.
3. Upon completion of construction, one (1) set of as-built prints, and one (1) set of as-built sepias, are to be provided to the Management Office.
4. Contractor will ensure that specific submittals, manufacturers operation and maintenance manuals, and applicable manufacturers cut sheets are delivered to the Project Office for all equipment or components installed in the course of their work. This includes, but is not limited to, mechanical equipment, fire alarm system components, fire sprinkler system components, HVAC system equipment or components, lighting system components, electrical distribution or control components, and any sensing or monitoring components.

5. Upon completion of construction clean inside of all perimeter windows and the interior of all lighting fixtures and louvers. Thoroughly clean all work areas, common areas where impacted, construction use restrooms, and freight elevators. Coordinate construction clean-up schedule with Management Office.

Building Contact List

Any questions or concerns should be directed to:

PROJECT DIRECTOR	-	JENNIFER FERRARI
BUILDING MANAGERS	-	SUSAN MCCAULEY
CUSTOMER SERV. REP.	-	_____ N/A _____
BUILDING ENGINEER	-	SHAWN DALY
MANAGEMENT OFFICE	-	(408) 453-3434
MANAGEMENT OFFICE FAX	-	(408) 452-0931

COMPAQ COMPUTER CORPORATION

CORPORATE

PURCHASE AGREEMENT

WITH

BROCADE COMMUNICATIONS SYSTEMS, INC.

## COMPAQ COMPUTER CORPORATION

## CORPORATE

## PURCHASE AGREEMENT

This purchase agreement and all attachments and Exhibits (called the "Agreement") is made and entered into as of the 1st day of February, 2000, by Compaq Computer Corporation, a Delaware Corporation and its subsidiaries and affiliates collectively referred to as ("Buyer"), and Brocade Communication Systems, Inc. ("Seller") a Delaware Corporation; herein referred to collectively as the ("Parties"). The terms and conditions herein exclusively govern the purchase and sale of the Products, Spares and/or Services more fully described in Exhibits A and B ("Product Part Numbers, Descriptions, Unit prices and Lead-Times") and ("Spare Part Numbers, Descriptions, Unit Prices and Lead-Times") and in applicable specifications, attached hereto and incorporated herein by reference.

Notwithstanding anything to the contrary in this Agreement, this Agreement is [\*] a [\*] and [\*] Buyer to [\*] of Products but only establishes the terms and conditions [\*] Buyer submits orders in accordance with this Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. DEFINITIONS

In addition to terms defined elsewhere in this Agreement, capitalized terms used herein shall have the meanings set forth below:

"AFFILIATE" means, with respect to Buyer, (a) any other legal entity controlling, controlled by, or under the common control with Buyer, and (b) any OEM subcontractor of Buyer (c) any subcontractor of Buyer. As used in this definition, the term "control" means the possession, directly or indirectly or the power to direct, or cause the direction of the management and policy of the controlled person.

"BUSINESS DAY" shall mean any day other than a Saturday, a Sunday, or holidays on which banks in the State of Texas are generally closed.

"BUYER FURNISHED ITEMS" - may include components, tools and services identified in the applicable Exhibit \_\_\_ ("Buyer Furnished Items") which Buyer provides to Seller.

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"BUYER PRODUCTS" - will mean those products manufactured, marketed, distributed and/or otherwise made available by Buyer to Buyer's customers, which include hardware and software proprietary to Buyer and/or Buyer's suppliers, including, without limitation, the Products acquired from Seller under this Agreement.

"CHANGE ORDER" - will mean any written document or Order, including but not limited to standard industry Electronic, internet prepared and properly authorized by Buyer and expressly accepted by Seller to identify changes to a Purchase Order previously accepted by Seller for Products, Spares and/or Services. A Change Order issued shall contain the Purchase Order No. affected, a Change Order Number, a Change Order date signifying the effective date of the change(s). The Change Order may include changes that affect, but are not necessarily limited to (i) rescheduling item(s) Delivery Date(s), (ii) adding [\*] item(s) in whole or in part, and/or (iii) changes to Buyer designated destination point(s).

"DEFAULT" shall mean:

(i) with respect to Buyer, (a) Buyer's failure to comply with any material provision of this Agreement or any Order issued hereunder, and, in the case of a breach which is capable of remedy, such failure continues unremedied for a period of [\*] days of written notification of said breach; provided, delays in delivery shall be deemed incurable and not subject to the [\*] day cure period herein; or (b) Buyer becomes insolvent, becomes subject to any bankruptcy proceeding, makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or a part of such party's assets and such condition is not cured within [\*] days; and

(ii) with respect to Seller, (a) Seller's failure to comply with any material provision of this Agreement or any accepted Order issued hereunder, and in the case of a breach which is capable of remedy, fails to remedy same within [\*] days of written notification of said breach; (b) Seller becomes insolvent, becomes subject to any bankruptcy proceeding or makes an assignment for the benefit of creditors, or a receiver or similar officer is appointed to take charge of all or a part of Seller's assets and such condition is not cured within thirty [\*]; (c) Seller assigns or attempts to assign, or subcontracts or attempts to subcontract, any or all of its rights or obligations under this Agreement or any Orders issued hereunder to a third party without Buyer's prior written approval, provided, however that Seller shall not be considered to be in Default in the event that Seller assigns, or subcontracts or attempts to subcontract, without consent from Buyer or notice to Buyer, any or all of its rights or obligations under this Agreement or any Orders issued hereunder to a successor-in-interest in connection with a merger, reorganization, acquisition, or sale of all or substantially all of Seller's assets.

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"DEFECTIVE Products" shall mean Products, Spares and/or Services that do not conform to the Specifications or that contain any defect in material, workmanship or design.

"DELIVERY DATE" - will mean; (i) the date stipulated on Buyer's Purchase Order for the delivery of the Products and/or Spares during normal business hours and days at the [\*]; and (ii) the date stipulated on Buyer's Purchase Order for the performance of Services to be completed by Seller as specified within Buyer's Purchase Order.

"ELECTRONIC INTERCHANGE" shall mean the transmission of data in an electronic format including but not limited to Electronic Data Interchange, ("EDI") Electronic Funds Transfer, ("EFT"), Facsimile, Electronic Mail (email), World Wide Web ("WWW") and Electronic File Exchange of any of the transaction sets listed in Exhibit L, (Electronic Commerce Agreement), electronic Orders, credit card Orders, and internet Orders transmitted via the internet between the parties.

"INFORMATION" shall mean confidential information, which might include but is not limited to business plans, forecasts, capacity, pricing and inventory levels.

"LEAD-TIME" shall mean the period of time extending from the date the Purchase Order is received by Seller to the Seller delivery date for Products, Spares and/or Services. The lead-times for the Products, Spares and/or Services shall be set forth in Exhibits A and B ("Product Part Numbers, Descriptions, Unit Prices and Lead-Times") and ("Spare Part Numbers, Descriptions, Unit Prices and Lead-Times") respectively, or as otherwise mutually agreed to in writing by the parties herein.

"ORDER(S)" shall mean collectively any written Purchase Order; or electronic Purchase Order employing industry standard Electronic Commerce techniques; and internet orders employing the Internet and industry standard Ecommerce techniques that are properly authorized and issued by Buyer and expressly accepted by Seller for the purchase of Products, Spares and/or Services.

"PROPRIETARY RIGHTS" - shall mean all current and future patents, mask works, copyrights, trade secrets, know-how and all other intellectual property rights, including all applications, continuations and registrations with respect thereto.

"PURCHASE ORDER" - will mean a written document prepared by Buyer and expressly accepted by Seller to identify Products, Spares and/or Services to be furnished by Seller under the terms and conditions of this Agreement. Such Purchase Order shall contain, at a minimum: (i) Purchase Order Number, (ii) Purchase Order date, (iii) Purchase Order Item No. for each item ordered, (iv) quantity of each Product, Spares or Service ordered, (v) Buyer and/or Seller part number, (vi) revision designator for each Product/Spare, (vii) unit price of each item, (viii) Delivery Date of each item, and (ix) Buyer's designated destination point for each item.

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"PRODUCTS" - will refer to goods that are either manufactured, distributed or otherwise made available from Seller to Buyer for acquisition by Buyer pursuant to the terms and conditions of this Agreement. The Products shall include the products described under Exhibit A ("Product Part Numbers, Descriptions, Unit Prices, and Lead-Times"), as may be amended from time to time.

"RMA" - will mean a Return Material Authorization number assigned by Seller for a shipment of Products and/or Spares being returned by Buyer to Seller unless otherwise defined herein.

"SERVICES" - will mean the services made available to Buyer by Seller, as described in Exhibit E attached hereto ("Services Addendum").

"SOFTWARE" - will mean (i) the software which is a component of, or bundled with, the Products and Spares (whether in firmware or on magnetic, optical or other media) and (ii) the end user documentation for such software, including all updates and enhancements to such software and documentation. "Updates" as used herein will mean non-feature improvements, workarounds, bug-fixes, media replacements and/or maintenance corrections to the Software or hardware components of a Product. Enhancements as used herein will mean feature improvements, new functionality, improved performance, and any increase in value, however caused or arising.

"SPARE(S)" - will mean any replacement parts/components, assemblies, or sub-assemblies for the Products. Such Spare Parts shall include, without limitation; the items described within the applicable Exhibit B ("Spare Part Numbers, Descriptions, Unit Prices and Lead-Times"), as may be amended from time to time.

"SPECIFICATIONS" - may include as applicable (i) the specifications for the specific Product, Spare and/or Service set forth in Exhibit F ("Product, Spares and Repairs Specifications"); (ii) the specifications with regard to the specific Products, Spares and/or Services generally published by Seller; (iii) the General Quality Requirements set forth under Exhibit D, ("Quality Assurance") and (iv) the Product Agency And Regulatory Compliance Requirements set forth under Exhibit J. Specifications also include, but are not limited to, physical or operational performance parameters, characterization and/or attributes of the Products and Spares as identified elsewhere within this Agreement.

## 2. PRODUCT PURCHASES

The terms and conditions contained in this Agreement shall govern the purchase and sale of Products, Spares and/or Services listed in a Products, Spares and/or Services Exhibit entered into from time to time by Buyer and Seller, which Exhibit shall be substantially in the form of Exhibits A and/or B ("Product Part Numbers, Descriptions, Unit prices and Lead-Times") and ("Spare Part Numbers, Descriptions, Unit Prices and Lead-Times") attached hereto.

## 3. PRODUCT FORECASTS

- 3.1 Buyer shall provide at a minimum, a monthly forecast of its intended purchases for a [\*] month period. Such forecasts are for Seller's convenience only, and Seller hereby expressly acknowledges that such forecasts shall not create any liability whatsoever for Buyer, including but not limited to an obligation to purchase Products, Spares, unique or industry standard material.
- 3.2 Seller agrees to review forecasts provided by Buyer and advise Buyer if Seller anticipates that Seller will be unable to achieve the requested volumes. Buyer volume forecasts will be provided to Seller in accordance with the terms and conditions of Exhibit C, ("Flexibility Agreement") contained herein. Seller may from time to time request Buyer to review Buyer's forecast and advise of any changes.

## 4. ORDERS

- 4.1 Orders shall set forth the following items: quantity, price, delivery date, part number, and revision level.
- 4.2 Seller shall accept any Order that materially conforms with the terms of this Agreement. Seller shall use commercially reasonable efforts to send written confirmation of such acceptance within [\*] days after Seller's receipt of a written Order from Buyer subject to Terms referenced in Exhibit C.
- 4.3 The parties hereby agree that prior to commencement of Electronic Commerce between the parties, Buyer and Seller shall execute an Electronic Commerce Trading Agreement listed in Exhibit L.

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- 4.4 If Buyer issues an electronic Order, Seller shall electronically "Verify" receipt of the electronic Order within [\*] of the electronic Order transmission by Buyer. "Verify" or "Verification", as used herein shall mean Seller's determination of successful receipt, from electronic mailbox, of all necessary Order information and requirements, (e.g. quantity, price, delivery date, part number, and revision level), and notification to Buyer of both the receipt of the electronic Order from Buyer any discrepancies relating to the readability of such electronic Order. Seller shall return an electronic Order acknowledgment ("Electronic Transmission Acknowledgment") to Buyer within [\*] following Verification. Seller shall be conclusively presumed to have accepted all electronic Orders issued by Buyer and verified received by Seller, unless Buyer is notified specifically, that Seller has not accepted a particular electronic Order. Such notification by Seller must take place within the said [\*] day period from Buyer's electronic Order transmission.
- 4.4.1 All electronic Orders, Verifications, and Electronic Transmission Acknowledgments and other related data electronically transmitted shall;
- 4.4.1.1 reference and be subject to the terms and conditions of this Agreement, and
- 4.4.1.2 contain information in a specified format in accordance with Buyer's policies, specifications and procedures regarding electronic data interchange information.
- 4.5 No additional or different or conflicting provisions proposed by Seller in any oral, electronic or written acceptance, confirmation or acknowledgment shall apply unless expressly agreed to in writing by Buyer. Buyer hereby gives notice of its objection to any additional or different terms. No additional or conflicting provisions proposed by Buyer in any Order, or in any oral, written or electronic data interchange, confirmation, verification or acknowledgment, shall be binding on Seller unless as expressly agreed to in writing by Seller. Seller hereby gives notice of its objection to any additional or different or conflicting terms.
- 4.6 Seller agrees that all of Buyer's Affiliates, wherever located, shall be entitled to make purchases under this Agreement. Seller agrees to sell to Buyer's Affiliates as notified to Seller in writing, and extend pricing, lead time and warranty terms from this agreement to such Affiliate upon credit approval.

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4.7 The parties agree: i) the provision of the Uniform Commercial Code Section 2-201 (Statute of Frauds) shall not apply to these Electronic Transmissions; ii) these Electronic Transmissions shall be deemed to satisfy any legal formalities requiring that agreements be in writing; iii) computer maintained records when produced in hard copy form shall constitute business records and shall be admissible to the same extent as other generally recognized business records.

4.8 BROCADE IS CURRENTLY UNABLE TO ACCEPT CREDIT CARD TRANSACTIONS]

#### 5. TERM OF AGREEMENT

The initial term ("Term") of this Agreement shall be [\*] years, commencing on the date of this Agreement (the "Effective Date"). This Agreement will be automatically renewed at the conclusion of the initial Term for a [\*] month period unless one of the parties notifies the other party not less than [\*] days prior to the end of such [\*] year period that it does not intend to renew this Agreement. Such automatic renewal provision shall apply at the end of each subsequent [\*] month period unless either party indicates, in accordance with the [\*] day notice provision described in the preceding sentence, that renewal is not intended. This Agreement may terminate prior to the aforementioned stated term under the circumstances set forth in Section 15. Notwithstanding the foregoing, this Agreement shall remain in full force and effect and shall be applicable to any Order issued by Buyer to Seller during the term of this Agreement until all obligations under such Order have been fulfilled.

#### 6. PRICING

6.1 The prices for the Products, Spares and/or Services shall be established from time to time by the parties executing and delivering a ("Pricing Schedule") in the form set forth in Exhibits A and/or B, ("Product Part Numbers, Descriptions, Unit Prices and Lead-Times") and ("Spare Part Numbers, Descriptions, Unit Prices and Lead-Times"). The Product prices (the "Prices") set forth in any Pricing Schedule shall be fixed for the period set forth therein.

6.2 The Prices shall include all direct, indirect and incidental charges relating to the sale and delivery of the Products, Spares and/or Services to Buyer including, without limitation, packaging pursuant to the attached specification, packing and crating, storage, forwarding agent and brokerage fees, insurance costs, freight shipping charges, and document fees.

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- 6.3 Notwithstanding the above, Seller agrees to sell the Products to Buyer at [\*] to the [\*] by Seller to a [\*] the Products under an agreement with [\*] and [\*] to those in this Agreement. The [\*] and [\*] are [\*] to, or [\*] those [\*] by Seller [\*]. If at any time during the term of this Agreement, Seller [\*] the Products to a [\*] at a [\*] that [\*] Buyer under an agreement with [\*] and [\*] to those in this Agreement, Seller shall promptly notify Buyer in writing and Buyer shall then have the [\*] to [\*] from Seller at the [\*] to such [\*].
- 6.4 Upon reasonable prior notice, Buyer shall have the right, exercisable not more than once every [\*] months, to appoint, at Buyer's expense, an [\*] firm reasonably acceptable to Seller to [\*], during Seller's normal business hours Seller's [\*] and [\*] to the [\*] of the [\*] and/or [\*], subject to such [\*] of a mutually agreeable confidentiality agreement. In the event Seller [\*] Products, Spares and/or Services in accordance with this Section 6, Buyer shall be entitled to (a) with respect to any Product, Spare and/or Service that Buyer has received, but has [\*], a [\*] in the [\*] and (b) with respect to any Product, Spare and/or Service [\*] an [\*].
- 6.5 Seller shall use [\*] efforts to maintain a [\*] program and to ensure that the [\*] are [\*] at all times. If Buyer does not consider the Prices aggressive and competitive, Buyer shall have the right, at any time and from time to time, to request an immediate meeting with Seller, and if a [\*] is mutually agreed upon by the parties, Seller shall use [\*] efforts to amend the Subject Terms to comply with this Section 6 by entering into a new [\*] Schedule.
- 6.6 Seller shall deliver Products to Buyer on the date (the "On-dock Date") and to the location (the "Specified Location") specified in the related Order. If Seller anticipates or becomes aware that it will not supply the Products on the due-on-dock delivery date acknowledged by Seller for any reason, Seller shall proactively notify Buyer immediately after Seller has knowledge of the situation. The notification may be communicated by facsimile, telephone, electronic mail, or any other method agreed to by the parties, provided that Seller shall obtain Buyer's actual acknowledgment of the notice of anticipated delay. Seller and Buyer will jointly develop alternatives to resolve any late delivery of the Products, including use of premium routing [\*]. Seller will develop recovery plans with new committed due-on-dock dates and communicate such plans to Buyer within [\*] business day of missed shipments.

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- 6.7 The terms governing all Products, Spares and/or Services received by Buyer will be interpreted in accordance with the International Chamber of Commerce Incoterms 1990 Edition. All N. American requirements for Products or Spares shall be shipped F.O.B. [\*] N. American location. Unless otherwise mutually agreed, all Product and Spares received by Buyer at any [\*] will be received as [\*], Incoterms 1990 Edition. Once minimum volume run-rates are realized, Seller will implement up to [\*] buffer stock in hub(s), and [\*] inventory at seller's location of choice. Unless otherwise expressly agreed to in writing by Seller, title and risk of loss of Products shall pass to Buyer upon receipt of goods by Buyer from [\*].
- 6.8 If Seller delivers Products, Spares and/or Services in more than [\*] Business Day advance of the On-dock Date therefor, Buyer may, at its option, either (i) return such Products, Spares and/or Services to Seller at Seller's risk and expense, including but not limited to any transportation, import, or export related expenses or duties, (in which case Seller, at its expense, shall redeliver such Products or Spares to Buyer on the correct On-dock Date therefor) or (ii) retain such Products or Spares and make [\*] on the date [\*] would have been [\*] based on the [\*] On-dock Date therefor.
- 6.9 Changes to delivery dates may only be made by Buyer's authorized purchasing representatives, as specified by Buyer. Buyer may, [\*], issue Change Orders for Products or Spares quantities and schedule dates in accordance with the flexibility agreement attached as an Exhibit C hereto (the "Flexibility Agreement"). All Change Orders must be provided in writing by confirmed facsimile or email.
- 6.10 In the event that Products or Spares scheduled for delivery are more than [\*] Business Day late, Buyer may (i) at its request, require Seller, [\*], to ship and deliver such Products or Spares via a different mode of transportation or (ii) pursue [\*] available to Buyer, [\*] or in [\*], consistent with the terms of this Agreement.

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6.11 Buyer may measure Seller's On Time Delivery performance against commitments for the purpose of establishing Seller's rate of On Time Delivery, Lead-Time and cycle time improvement against requirements of this Agreement. Unless otherwise agreed to by the parties, On Time Delivery shall mean delivery of scheduled Products no more than [\*] days early and [\*] days late. Lead-Times for all Products, Spares and/or Services ordered hereunder shall not exceed that listed in Exhibit A and/or B, ("Product Part Numbers, Descriptions, Unit prices and Lead-Times") and ("Spare Part Numbers, Descriptions, Unit Prices and Lead-Times") attached hereto.

7. PACKING, MARKING, AND SHIPPING INSTRUCTIONS

7.1 Seller shall prepare and pack all Products and Spares in accordance with the specifications identified in Exhibit K or as mutually agreed to in writing.

7.2 Seller shall mark, or cause to be marked, each shipping container to adequately show Buyer's Order number, part number, revision level, and quantity contained therein. Packing list may be placed outside the box

8. QUALITY

8.1 Seller shall ensure that all Products, Spares and/or Services conform to the Specifications, drawings, samples, revision levels and other descriptions designated in the Product Schedule for such Products, Spares and/or Services. The Specifications shall include any labeling requirements as detailed in the Project Schedule or in Exhibit I.

8.2 Seller shall establish and/or maintain a quality improvement plan acceptable to Buyer. Seller's initial Quality Plan is attached to this Agreement as an Exhibit D, Appendix 2 (the "Quality Plan") and shall not be amended without Buyer's prior written consent.

8.3 Upon reasonable notice, Buyer shall be entitled to visit and inspect Seller's facility sites during normal business hours and Seller shall cooperate to facilitate such visits. Seller authorizes and agrees to assist Buyer in performing sourcing inspection and quality assurance reviews and or certifications at Seller's manufacturing facilities and/or its subcontractors or authorized agents. Buyer's inspections shall in no way relieve Seller of its obligation to deliver conforming Products, Spares and/or Services or waive Buyer's right of inspection and acceptance at the time the Products and Spares are delivered, nor does said right of inspection waiver any rights under the warranty provisions.

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- 8.4 At Buyer's request, Seller shall provide Buyer with relevant inspection, quality, and reliability data.

9. CHANGES

- 9.1 Buyer may from time to time request a change in the Specifications for the Products, Spares and/or Services, and Seller shall commercially reasonable efforts to evaluate and respond in writing to such change request within [\*] business days. If Buyer's changes result in a material change in Seller's costs or in the time for performance, Seller and Buyer shall negotiate in good faith such adjustments as the parties deem appropriate to address such changes.
- 9.2 Except for Mandatory Engineering Changes (as defined below), no changes shall be made by Seller in the form, fit, or the function of the Product or Spares to be purchased hereunder without Buyer's prior written approval. Seller agrees to use commercially reasonable efforts to (i) provide [\*] days notice to Buyer of any changes to form, fit, function, [\*], or [\*] for the Products or Spares, and (ii) ensure that such changes do not compromise specifications, quality, or reliability of Products ordered by Buyer. Buyer shall review any proposed change within [\*] business days of such notice and provide Seller with written approval of such proposed change or request samples which incorporate the proposed change. In the event samples are requested, Buyer will have an additional [\*] business days to accept or reject in writing the proposed changes. In the event Buyer fails to respond in writing within the applicable period, the proposed change will be deemed accepted by Buyer.

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- 9.3 Seller shall provide notice to Buyer within [\*] business days of becoming aware of the need to make any Mandatory Engineering Changes to Buyer in "Mandatory Engineering Change" as used herein shall mean any mechanical, electrical firmware or other change which is necessary to (i) the Products or Spares previously furnished, (ii) Product(s) or Spares to be furnished to Buyer by Seller, to Products or Spares meet the specifications outlined in Exhibit F, reliability, safety, agreed to in Exhibit F and/or to insure continuity of supply. Seller shall promptly make the Mandatory Engineering Change at no charge to Buyer for Products and Spares not yet shipped to Buyer. If the Mandatory Engineering Change is applicable to previously delivered Products and Spares to conform to the applicable revised specifications, the change shall be supplied in the form of a mandatory field exchange kit ("Field Kit") at no charge to Buyer. Buyer may (i) exchange the Field Kit itself, and either [\*] for, or [\*], which will include Buyer's [\*] for doing so; (ii) return the affected Products and Spares to Seller, FOB [\*], and Seller will make the change at no cost to Buyer, or (iii) a combination of (i) or (ii) as stated within this Section.

#### 10. INSPECTION AND ACCEPTANCE

- 10.1 Products, Spares and/or Services purchased or to be purchased pursuant to this Agreement shall be subject to inspection and test by Buyer at all times (including during the period of manufacture or development) and places (including Seller's facilities or Seller's subcontractor facilities). Unless otherwise specified in the Order, final inspection and acceptance of Products, Spares and/or Services by Buyer shall be at Buyer's facilities. Buyer reserves the right to reject Defective Products discovered after [\*] days of the date of delivery. Products which have not been accepted or rejected in writing by Buyer within [\*] days of the date of [\*] will be deemed accepted by Buyer. The remedy for Defective Products discovered after [\*] days shall be as set forth under the terms of Section 11 "Warranty".
- 10.2 If Buyer returns Defective Products to Seller for correction, credit or replacement, Seller shall repair or replace same within [\*] business days of receipt thereof. Seller shall bear [\*] risk and [\*] associated with replacing or repairing verified Defective Products and [\*] Seller agrees to provide failure verification of Defective Products within [\*] business days after receipt thereof and failure analysis within an additional [\*] business days. Seller will also provide Buyer with a written corrective action report addressing the steps that will be taken to eliminate the recurrence of the problem, and will use commercially best efforts to implement the actions addressed in such report.

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- 10.3 Seller shall reimburse Buyer for the out-of-pocket costs for any special inspection measures deemed necessary by mutual agreement.

11. WARRANTY

- 11.1 Seller hereby warrants (a) that for [\*] months from the date of shipment of Products and/or Spares by Buyer that all Products and/or Spares shall conform to applicable specifications drawings, samples, and descriptions referred to in this Agreement. Seller further represents and warrants that Products and/or Spares purchased hereunder shall (i) vest in Buyer good and valid title to such Products or Spares free and clear of all liens, security interests, encumbrances, burdens and other claims, and (ii) that Products or Spares do not infringe any U.S. patent issued as of the Effective Date, copyright or trade secret of any third party. The warranty for replaced or repaired Products or Spares shall be the remainder of the original Products and Spares warranty or [\*] days, whichever is longer.
- 11.2 Upon discovery of a Defective Product during the warranty period, Buyer shall promptly notify Seller in writing of such Defective Product, including a detailed description of the applicable defect, and promptly return such Defective Product to Seller's facility. Seller will, at its option, repair or replace the Defective Product, or credit an amount equal to the [\*], whichever is lower, for such Defective Product. Seller shall bear all costs related to the replacement or repair of Defective Product, including the costs of the relevant turn-around shipment. Buyer shall use commercially reasonable efforts to ensure that all Products to be returned to Seller are verified to be defective. In the event that Product(s) returned to Seller as defective are determined to be No-Trouble-Found (NTF), Seller shall return the Product to Buyer. In the event that NTF's exceed [\*] of the total returns over a [\*] day period, Buyer may subject to the NTF charge as listed in Exhibit E. THE REMEDIES SET FORTH IN THIS SECTION 11.2 SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDIES IN THE EVENT OF A BREACH OF THE LIMITED WARRANTIES SET FORTH IN SECTION 11.1(A).
- 11.3 As further provided in Section 31.10, IN NO EVENT WILL [\*] BE RESPONSIBLE TO THE OTHER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS WARRANTY. HOWEVER, NOTHING HEREIN SHALL BE DEEMED AN ASSUMPTION BY EITHER PARTY OF LIABILITY THAT THE OTHER PARTY HAS IN CONTRACT OR AT LAW, WITH REGARD TO ANY THIRD-PARTY CLAIMS.

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- 11.4 Seller warrants that Seller has not previously or otherwise granted any rights to any third party which conflict with the rights granted herein; as of the Effective Date, to Seller's knowledge, there is no litigation, arbitration, or other pending proceeding, pending or threatened with regard to Seller before any court or any other governmental or administrative agency that would interfere with Seller's ability to provide the Products or Spares to Buyer under the terms of this Agreement; that, as of the Effective Date, no judgment, order, injunction or decree of any court or any other governmental or administrative agency regarding Products, Spares and/or Services have been entered against or served upon Seller; and that Seller has the full power and authority to enter into this Agreement, to carry out Seller's obligation, as set forth herein and grant the rights granted herein.
- 11.5 Seller represents and warrants that all Products, Spares and/or Services provided to Buyer under this Agreement including own operating and manufacturing systems ("Systems") used in support of providing Products, Spares and/or Services to Buyer will operate accurately in the manner in which they are intended as it relates to date related operations when given a valid date containing century, year, month and day, including, but not limited to, the following specific performance features: (i) the Products, Spares and Systems must accurately calculate and execute dates using a four digit year; (ii) the Products, Spares and Systems' functionality (on-line and batch), including but not limited to entry, inquiry, maintenance and update, must accurately support and execute four digit year processing; (iii) the Products, Spares and Systems' interfaces and reports must accurately support and execute four digit processing; (iv) the Products, Spares and Systems shall accurately execute the translations into the year 2000 with the correct system date (e.g., 1/1/2000) without human intervention; (v) the Products, Spares and Systems must accurately process with a four digit year after transition to and beyond the year 2000, including accurate calculations of leap year, without human interventions; and (vi) the Products, Spares and Systems must accurately provide results in forward and backward date calculation spanning century boundaries, and shall accurately convert years previously stored as two digits to four digits. The foregoing representations and warranties shall not apply to the extent that any such failure arises from any third party software and/or firmware. In the event of any breach by Seller of the foregoing representations and warranties, Seller shall, upon receipt of written notice from Buyer and at Seller's sole option, either: (i) use commercially

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reasonable efforts to promptly correct any such nonconformance in the affected Products, Spares and/or Systems; or (ii) [\*] by Buyer to Seller for such Products, Spares and/or Systems. THE FOREGOING REMEDIES SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 11.5.

- 11.6 Software Warranty/Maintenance Seller warrants the Product base Fabric OS and optional features (i.e. WebTools, Zoning, etc) for a period of [\*] days. Remedial fixes and [\*] are provided during this warranty period.

New functionality may be provided as a new optional feature to enhance the functionality provided by the Product (i.e. Remote Fabrics). Seller [\*] new license keys to enable these features (i.e. Webtools, Zoning, SES etc, users need to purchase a license key to enable new features.)

## 12. OUT OF WARRANTY REPAIRS AND SPARES AVAILABILITY

- 12.1 Seller agrees to refurbish to a mutually agreed "minimum acceptance level" any Products and Spares no longer covered by the express warranties set forth elsewhere in this Agreement (an "Out of Warranty Product") at the refurbishment prices and according to the terms set forth in Exhibit B ("Spare Part Numbers, Descriptions, Unit Prices and Lead-Times") attached hereto.
- 12.2 In addition, Seller shall make available for purchase by Buyer replacement and repair Spares for Products in accordance with the terms set forth in the applicable Exhibit B attached hereto.

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## 13. TERM OF AVAILABILITY

13.1 In consideration for Buyer's purchase of any Products or Spares hereunder, Seller grants to Buyer the option to purchase replacement Products and Spares at the last revision level purchased under this Agreement for the period [\*] after Seller's formal "End of Life" or "EOL" notification during the term of this Agreement (or the Agreement's termination, as applicable), or for as long as said Products or Spares is made available to any of Seller's other customers, whichever is the later. Buyer shall use commercially reasonable efforts to provide Seller with a forecast for Buyer's anticipated purchases of Products and related Spares for each Product within [\*] days of the date of "EOL" notification or the termination of this Agreement, as applicable, and Seller shall make commercially reasonable efforts, to provide Product or Spares in excess of such a forecast.

13.2 Thereafter, Seller may discontinue availability of Products or Spares by giving Buyer [\*] months prior written notice, provided that, at Buyer's option, Seller shall sell Buyer, pursuant to a last time Purchase Order for each Product placed by Buyer prior to the expiration of such [\*] month period

sufficient quantities of Products and/or Spares [\*] necessary. Such last time purchase order shall be a non-cancellable order and delivery must be scheduled to occur within the above [\*] month window. Seller shall use reasonable efforts to delay [\*] for the Products until Seller deems necessary to meet Buyer's requested deliveries. Should Buyer not require all of Product on such final order, Seller shall make commercially reasonable efforts to [\*] and [\*] for Buyer. Buyer shall pay all reasonable documented costs including, but not limited to material, labor, overhead as charged to Seller by Seller's subcontract manufacturer, and reasonable profit margin. Such cost liability shall be no more than the purchase price for the Products.

13.3 The parties shall negotiate in good faith the Terms and Conditions of the purchase set forth in Sections 13.1. and 13.2 above. However, in no event shall the [\*] for Products or Spares, or any other charges related to Buyer's exercise of its rights in Section 13.2 above, [\*] then [\*] to Seller's other customers for [\*] of Products or Spares.

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## 14. PAYMENT

- 14.1 Buyer shall make payment in full for the purchase price of all Products, Spares and/or Services purchased hereunder (other than items disputed by Buyer in good faith) and received by Buyer on or before the [\*] day after the date of Seller's invoice; provided, Seller's invoice shall not be dated earlier than the shipment date of Products covered thereby.
- 14.2 Unless otherwise specified in an Exhibit or otherwise agreed to in writing by the parties, payment shall be made in U.S. dollars.

## 15. TERMINATION

- 15.1 Either party (the "Non-Defaulting Party") may terminate this Agreement and/or any Order issued hereunder at any time by written notice to the other party (the "Defaulting Party") upon the occurrence of a Default by the Defaulting Party. This Agreement shall terminate on the date of such written notice (the "Termination Date").
- 15.2 Upon termination by Seller of this Agreement and/or any Order due to Buyer's Default or upon termination by Buyer for reasons other than Seller's Default, Buyer's liability shall be to purchase the Products and Spares in accordance with Exhibit C and any and all Products and Spares that Buyer has received and had not previously paid for. Notwithstanding the foregoing, Seller may exercise any other remedies available to Seller at law or in equity.
- 15.3 Upon termination by Buyer of this Agreement and/or any Order due to Seller's Default, Buyer may, at its option, (i) return Defective Products to Seller, [\*] , (ii) return Defective Products to Seller for Seller's correction or replacement or (iii) [\*] any [\*] as Buyer may have [\*] or [\*] that are consistent with the other provisions of this Agreement. Products or Spares required to be corrected or replaced shall be subject to the same inspection and acceptance provisions of this Agreement as Products or Spares originally delivered under any Order.

## 16. FORCE MAJEURE

- 16.1 Neither party shall be liable for its failure to perform any of its obligations hereunder during any period in which performance is delayed by fire, flood, war, embargo, riot or an unforeseeable intervention of any government authority that causes complete business interruption ("Force Majeure"), provided that the party suffering such delay immediately notifies the other party of the delay.

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16.2 If, however, either party's (the "Delayed Party") performance is delayed for reasons set forth above for a cumulative period of [\*] days or more, the other party, notwithstanding any other provision of this Agreement to the contrary, may terminate this Agreement and/or any Order issued hereunder by [\*] to the Delayed Party. In the event of such termination by either party, Buyer's [\*] hereunder shall be for the [\*] to Seller of [\*] and owing for Products or Spares previously delivered by Seller and accepted by Buyer or on order as of the date of termination pursuant to the Flexibility Model in Exhibit C. In the event the parties do not [\*] and/or [\*] due to a Force Majeure, the time for performance or cure will be extended for a period equal to the duration of the Force Majeure.

17. NOTICES

Any notice given under this Agreement shall be written or sent by telex or facsimile. Written notice shall be sent by registered mail or certified mail, postage prepaid, return receipt requested, or by any other overnight delivery service which delivers to the noticed destination, and provides proof of delivery to the sender. Any telex or facsimile notice must be followed within three (3) days by written notice. All notices shall be effective when first received at the following addresses:

If to Seller:

CFO  
 -----  
 Brocade Communications  
 -----  
 1901 Guadalupe Pkwy  
 -----  
 San Jose, CA 95131  
 -----

If to Buyer:

Corporate Commodity Manager  
 -----  
 Compaq Computer Systems  
 -----  
 20555 SH 249  
 -----  
 Houston, TX 77269-2000  
 -----

with copies to:

Compaq Sales Executive  
 -----  
 Brocade Communications Systems  
 -----  
 1901 Guadalupe Parkway  
 -----  
 San Jose, CA 95131  
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with copies to;

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## 18. COMPLIANCE WITH LAWS

- 18.1 All Products or Spares supplied and work performed under this Agreement shall comply with all applicable United States and foreign laws and regulations including, but not limited to, emission and safety standards, the Occupational Safety and Health Act (29 U.S.C. Sections 651 et seq.), the Fair Labor Standards Act of 1938 (29 U.S.C. Sections 201-219), the Toxic Substance Control Act of 1976 (15 U.S.C. Section 2601), all laws restraining the use of convict labor, and Worker's Compensation Laws. Upon request, Seller agrees to certify compliance with any applicable law or regulations. Seller's failure to comply with any of the requirements of this Section may result in a material breach of this Agreement.
- 18.2 The following provisions and clauses of the Federal Acquisition Regulation (FAR), 48 CFR Chapter 1, are hereby incorporated by reference, with the same force and effect as if they were given in full text and are hereby made binding upon the subcontractor or vendor, if applicable. Where the clauses or provisions say "Contractor", substitute "subcontractor or vendor."
- 1) Nonexempt Subcontracts and Purchase Orders over \$2,500: 52.222-36 Affirmative Action for Handicapped Workers (APR 1984)
- 2) Nonexempt Subcontracts and Purchase Orders over \$10,000 or subcontracts and Purchase Orders the aggregate value of which in any twelve month period exceeds or can be expected to exceed \$10,000: 52.222-26 Equal Opportunity (APR 1984)
- 3) Nonexempt Subcontracts and Purchase Orders over \$10,000: 55.222-21 Certification of Nonsegregated Facilities (APR 1984) 52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984)
- 18.3 This Agreement is subject to all applicable United States laws and regulations relating to exports and to all administrative acts of the U.S. Government pursuant to such laws and regulations.
- 18.4 The 1980 United Nations Convention on contracts for the international sale of goods shall not apply to this Agreement or any Order issued under this Agreement.
- 18.5 Seller agrees to comply with all terms and conditions of the Compaq Supplier Compliance Policy, attached as Exhibit G hereto.
- 18.6 In the event that Buyer licenses any Software to the U.S. Government, Buyer shall identify such Software to the Government as "commercial computer software" developed exclusively at private expense, and in accordance with FAR Section 12.212

or Defense FAR Supplement Section 227-7202, as applicable. Buyer shall license the Software to the Government in accordance with the terms of the Alliance Master Agreement dated April 16, 1999.

#### 19. INDEMNITY AND REMEDIES

- 19.1 Seller shall indemnify, defend and hold harmless Buyer and its Affiliates and their respective directors, officers, shareholders, employees and agents ("Buyer Indemnified Parties") from and against any and all claims, demands, suits, actions, judgments, costs and liabilities (including attorneys' fees) (each, an "Indemnified Loss"), relating to or arising out of any allegation that Products or Spares furnished under this Agreement infringe or violate any U.S. patent issued as of the Effective Date, copyright or trade secret of any third party and shall pay all costs and damages awarded; provided, the foregoing indemnity shall not apply to the extent any such claim is attributable solely to design specifications furnished by Buyer to Seller. If an injunction or exclusion order preventing the use, sale, lease license, or other distribution of the Products or Spares of any part thereof of the Products or Spares results from such a claim (or, if Buyer [\*] such an injunction is [\*]) Seller shall, at its expense, and at Buyer's request, use commercially reasonable efforts to [\*] for Buyer the [\*] to [\*] the Products or Spares. In the event that Seller cannot [\*] for Buyer, Seller shall be deemed to have breached its warranty set forth in Section 11.1 and thereupon Seller shall [\*] all such Products and Spares from Buyer at the [\*]. The foregoing indemnity obligation shall not extend to any claims of infringement arising out of or related to (i) a modification of the Products and/or Spares by anyone other than Seller without Seller's prior written consent; (ii) a combination of the Products and/or Spares with any third party software or hardware where such combination is the cause of such infringement; (iii) the use of a version of Software other than the then-current version if infringement would have been avoided with the use of the then-current version; and (iv) any design specifications provided by Buyer to Seller. The foregoing sets forth Buyer's sole and exclusive remedy with respect to claims of infringement of third party intellectual property rights of any kind.
- 19.2 Seller shall defend, indemnify and hold Buyer, its officers, directors, agents and employees harmless from and against any and all claims, [\*], expenses (including reasonable attorney's fees), [\*], or judgments ("Claims") which are caused by Seller and result from or arise out of:
- 19.2.1 The [\*] of Seller's agents, employees or subcontractors (Personnel), or equipment [\*] of Buyer or its customers; or

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- 19.2.2 The [\*] by Seller or its Personnel of any [\*] for or on behalf of Buyer; or
- 19.2.3 The [\*] or [\*] of Seller or its Personnel; or
- 19.2.4 The use by Seller or its Personnel of [\*] or [\*] whether or not any [\*] are [\*] upon the [\*] of such [\*] or Buyer's, its agents', or employees' [\*] in permitting its use. Permission by Buyer to use any such [\*] shall be gratuitous.
- 19.2.5 The use of any [\*] and/or [\*].
- 19.3 Buyer shall defend, indemnify and hold Seller, its officers, directors, agents and employees harmless from and against any and all Claims which result from or arise out of any design specifications provided by Buyer to Seller.
- 19.4 In the event one party (the "Indemnifying Party") is obligated to indemnify the other party (the "Indemnified Party") under this Agreement, this obligation is contingent upon the Indemnified Party providing the Indemnifying Party with prompt written notice of any claim for which indemnification is required, tender the defense of any such claim to the Indemnifying Party, provide full cooperation for such defense at the Indemnifying Party's expense. The Indemnified Party shall not settle a claim without the Indemnifying Party's prior written approval. The Indemnified Party may participate in any such defense or settlement with counsel of its own choosing at its expense.
- 19.5 Except as otherwise provided in this Agreement, upon the occurrence of a Default by a party hereto the other party shall be entitled to exercise such rights and remedies as are available at law or in equity
- 19.6 [\*] SHALL BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS AND UNLIQUIDATED INVENTORY). INDIRECT, SPECIAL OR PUNITIVE DAMAGES EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES EXCEPT (I) IN CONNECTION WITH A BREACH OF THE [\*] SET FORTH IN THIS AGREEMENT AND (II) TO THE EXTENT ANY SUCH DAMAGES ARE A PART OF AN [\*] AGAINST WHICH BUYER IS ENTITLED TO BE [\*] PURSUANT TO THE OTHER PROVISIONS OF THIS SECTION 19.

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## 20. TRADEMARKS; LOGOS

Seller is authorized to use the Compaq logo and trademark only to the extent necessary to meet the required specification for the Products. No other rights with respect to Buyer's trademarks, trade names or brand names are conferred, either expressly or by implication, upon Seller.

## 21. GRATUITIES

Each party represents that it has not offered nor given and will not (i) offer nor give any employee, agent, or representative of the other party any gratuity, or (ii) influence such person's normal job responsibilities in any way with a view toward securing any business from the other party or influencing such person with respect to the business between the parties.

## 22. INSURANCE

22.1 Seller shall maintain such minimum insurance coverage as listed below.

22.2 Seller agrees to carry at all times and with financially reputable companies insurance of the kinds and in the amounts listed below:

- a. WORKER'S COMPENSATION Statutory limits in each state in which Supplier is required to provide Worker's Compensation coverage including "All States" and Voluntary Compensation" endorsement;
- b. EMPLOYER'S LIABILITY -- with limits not less than [\*] Bodily Injury Each Accident; [\*] Disease - Policy Limit, [\*] Disease - Each Employee;
- c. COMPREHENSIVE GENERAL LIABILITY for Bodily Injury and Property Damage - including Premises/Operations, Products/Completed Operations, Contractual Liability, Independent Contractor's Liability, Broad Form Property Damage, Personal/Advertising Injury with a limit of not less than [\*] per occurrence and [\*] in the annual aggregate;
- d. AUTOMOBILE LIABILITY For owned, non-owned, leased and hired vehicles with a combined single limit of not less than [\*] for Bodily Injury and Property Damage;

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- e. EXCESS/UMBRELLA LIABILITY [\*] following form over underlying liability coverages;
- f. Insuring loss of or damage to goods, tools, equipment owned by Compaq Computer Corporation, to the attention of the Corporate Risk Management Department, indicating that the insurance policies of the kind and limits listed above are in effect for the full term of the Agreement. Such Certificates of Insurance shall be kept current and on file with Corporate Risk Management until the conclusion of the term of this Agreement;
- g. LEGAL LIABILITY insuring loss or damage to goods, tools and equipment in Seller's care, custody and control with a limit of not less than [\*] per occurrence. Any claims that occur shall be deemed to be valued at full replacement cost (dealer sales cost).

23. CONFIDENTIAL INFORMATION

- 23.1 The parties hereto will keep the terms of this Agreement confidential and will not disclose such terms to any third party except: (i) with the prior written consent of the other party; (ii) as may be required by law or legal process, including to legal and financial advisors in their capacity of advising a party in such manners; (iii) in confidence to its legal counsel, accountants, banks and financing sources and their advisors solely in connection with complying with financial transactions; or (iv) to the extent disclosed in any mutually agreed press release.
- 23.2 "Confidential Information" means all non-public information that the party disclosing the information (the "Disclosing Party") designates at the time of disclosure as being confidential, or if disclosed orally or visually is identified as such prior to disclosure and summarized, in writing, by the Disclosing Party to the receiving party (the "Recipient") within [\*] days, or which, under the circumstances surrounding disclosure, the Recipient knows or has reason to know should be treated as confidential without the need to be marked as "confidential", including without limitation, the terms and conditions of this Agreement, and information regarding either party's financial condition, business opportunities, plans for development of future products or new versions of existing products, know-how, technology or customers.

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- 23.3 A party receiving Confidential Information agrees (a) that it shall use the same degree of care and means that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means, to prevent the unauthorized use or the disclosure of such confidential information to third parties, (b) not to disclose or use any of such Confidential Information for any purpose except as necessary and consistent with the terms of this Agreement, (c) to limit the use of and access to such Confidential Information to such employees and subcontractors who have a need to know such Confidential Information and have signed legally binding non-disclosure agreements, and (d) that it will promptly notify the other party in writing of any unauthorized disclosures and/or use thereof. The aforementioned notice shall include a detailed description of the circumstances of the unauthorized disclosure or use and the parties involved therewith.
- 23.4 Both parties agree that the party receiving Confidential Information will maintain such Information in confidence for a period of [\*] years from the date of disclosure of such Confidential Information.
- 23.5 Each party shall protect the other party's Confidential Information to the same extent that it protects its own confidential and proprietary information and shall take all reasonable precautions to prevent unauthorized disclosure to third parties.
- 23.6 The parties acknowledge that the unauthorized disclosure of such Confidential Information will cause irreparable harm. Accordingly, the parties agree that the injured party shall have the right to seek immediate injunctive relief enjoining such unauthorized disclosure.
- 23.7 The provisions of this Section 23 shall not apply to information (i) known to the receiving party at the time of receipt from the other party, (ii) generally known or available to the public through no act or failure to act by the receiving party, (iii) furnished to third parties by the disclosing party without restriction on disclosure, (iv) furnished to the receiving party by a third party as a matter of right and without restriction on disclosure or (v) furnished as required by court order or similar governmental authority or by the imminent likelihood thereof or by applicable law.

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23.8 Immediately upon termination of this Agreement or at the request of the other party, each of the parties shall promptly return all materials in its possession containing Confidential Information of the other party.

24. DOCUMENTATION, TRAINING AND TECHNICAL SUPPORT

24.1 During the Term, Seller shall supply the documentation, and technical support as listed in attached Exhibit H hereto (Documentation and Technical Support).

24.2 Seller hereby grants to Buyer a worldwide, nonexclusive, nontransferable right to use, reproduce (in whole or in part), have reproduced, [\*] of, and distribute the Seller's end user documentation and derivatives thereof through multiple tiers of distribution. Buyer agrees to defend, indemnify, hold Seller, its agents, officers and employees harmless from all claims, losses, damages, costs or liabilities arising from, resulting from or relating to the introduction of Buyer of any inaccuracies, misstatements or material omissions into such documentation or any derivatives thereof except that Seller shall have no liability for any errors or omissions introduced into the documentation by Buyer's modifications or derivative works.

24.2 Seller hereby grants to Buyer a worldwide, nonexclusive, nontransferable right to use internally all documentation supplied by Seller for purposes of implementation, maintenance and support of the Products and Spares and any development necessary to integrate the Products and Spares into Products.

25. COUNTRY OF ORIGIN, DUTY DRAWBACK

25.1 "Country of Origin" Marking: The Seller shall mark, in English, all Products - with the Country of Origin (manufacture), in compliance with Section 304 of the United States Tariff Act. Both the Products and its container must be conspicuously marked with the Country of Origin per Buyer's Labeling Specification in Exhibit I . If the Products itself cannot be marked legibly due to size, then its immediate container must be marked. signed certificate stating Country of Origin (manufacture) by quantity and part number (Buyer's and Seller's).

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## 26. BUYER OWNED PROPERTY

Any tools, drawings, specifications, or other materials furnished by Buyer for use by Seller in its performance under this Agreement or any Order issued hereunder shall be identified and shall remain the property of Buyer and shall be used by Seller only in its performance hereunder. Seller shall keep such material, tools, drawing, and specifications separate and identified as Buyer owned property. Such property shall be delivered, upon request, to a destination specified by Buyer in good condition, except for normal wear and tear.

## 27. SIMILAR PRODUCTS

Seller understands that Buyer designs, develops and acquires hardware and software for use with its own computer system products, and that existing or planned hardware and software independently developed or acquired by Buyer may contain ideas and concepts similar or [\*] to those contained in the Products and/or Spares. Seller agrees that entering this Agreement shall not preclude Buyer in any way, from using such ideas or concepts to develop or acquire similar hardware or software for any purpose, [\*], provided Buyer does not (i) copy for such use, in whole or in part, the Seller's Products and/or Spares.

## 28. RIGHTS IN DEVELOPMENTS REFERENCE ALLIANCE AGREEMENT

The rights in any custom development to the products developed by Seller pursuant to this Agreement shall be as specified in the Alliance Master Agreement # MA-99-105 entered into by the parties as of April 16, 1999.

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## 29. EMBEDDED SOFTWARE

Seller hereby grants to Buyer a non-exclusive, non-transferable, worldwide license to market and distribute, in object code form only, the Software (and to sublicense the Software, in object code form only, directly or through Buyer's channels of distribution) as a component of the relevant Products or Spares as part of or in conjunction with Buyer Products. Title to and ownership of the Software in the unmodified Products or Spares, Updates and Enhancements delivered by Seller will at all times remain the property of Seller or Seller's licensors unless otherwise agreed to in writing by the parties. Except as expressly set forth herein, Buyer agrees not to reproduce, copy, modify, translate, disassemble, reverse engineer or otherwise attempt, or permit others to attempt, to discover the source code of the Software, in whole or in part, except to the extent that such prohibition is restricted by applicable law. Upon mutual written agreement of the parties, [\*] all Proprietary Rights in all modifications, Enhancements and derivative works of the Products or Spares developed by [\*], subject to Seller's ownership of the Products and/or Spares.

## 30. [\*]

If there is a [\*] representing the [\*] of [\*] or more of the [\*] of Seller by one (1) of the [\*] set forth in Exhibit M (a [\*] ) and as a result of such [\*], Buyer's access to technology relating to the Products is [\*], Buyer may (i) [\*] the then-current Seller technology for a mutually [\*], or (ii) [\*] the then-current Products [\*] from Seller's third party [\*] (currently [\*]) for a period of up to [\*] years following such [\*] or until expiration of that certain Alliance Agreement between the parties dated April 16, 1999, whichever occurs first. Within [\*] days after the date of this Agreement with respect to [\*], and prior to contracting with any new or additional [\*] for Products, Seller shall enter into a written agreement with any such [\*] that will grant all rights to such [\*] necessary to effectuate the intent of this Section 30. In the event that Seller fails to do so, the parties expressly agree that Buyer may provide a copy of the relevant portion of this Agreement to any such [\*] (including [\*]) and such [\*] (including [\*]) shall be entitled to rely on this Section 30 as representing Seller's approval of the [\*] of Products [\*] to Buyer without the necessity of any further action or approval by Seller. This Section 30 is not exercisable as long as Seller is not subject to a [\*] involving one of the companies on Exhibit M

## 31. GENERAL

31.1 SECTIONS 5, 10, 11, 13, 14, 15, 16, 17, 18, 19, 23, 27, 28 AND 31 of this Agreement shall survive any such expiration or termination and remain in effect.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

- 31.2 If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 31.3 Any waiver of any kind by a party of a breach of this Agreement must be in writing, shall be effective only to the extent set forth in such writing and shall not operate or be construed as a waiver of any subsequent breach. Any delay or omission in exercising any right, power or remedy pursuant to a breach or Default by a party shall not impair any right, power or remedy which either party may have with respect to a future breach or Default.
- 31.4 Neither party shall export, re-export or otherwise disclose, directly or indirectly, technical data received from the other party or the product of such technical data to any person or destination when such export, re-export or disclosure is prohibited by the laws of the United States or regulations of a Department of the United States.
- 31.5 Neither Seller nor Buyer shall take [\*] against disputed amounts, or amounts not yet due and payable under this Agreement. In the event an undisputed amount is past due based upon the agreed terms, [\*].
- 31.6 To the extent the confidentiality provisions set forth in Section 23 conflict with confidentiality provisions set forth in any other confidentiality or non-disclosure agreement between the parties hereto, this Agreement represents the entire agreement with respect to the subject matter hereof and supersedes all prior discussions and agreements between the parties relating to the subject matter hereof. This Agreement can be modified only by a written amendment duly signed by persons authorized to sign agreements on behalf of both parties, and shall not be supplemented or modified by any course of dealing or trade usage. Variance from or addition to the terms and conditions of this Agreement in any Order, or other written notification from Seller will be of no effect. Seller, including its servants, agents and employees, is an independent contractor and not an agent or employee of Buyer. Without limiting the generality of the foregoing, Seller is not authorized to represent or make any commitments of behalf of Buyer, and Buyer expressly disclaims any liability therefore.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

- 31.7 THE CONSTRUCTION, VALIDITY, AND PERFORMANCE OF THIS AGREEMENT AND ANY ORDER ISSUED UNDER IT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF [\*] WITHOUT REGARD TO THAT BODY OF LAW CONTROLLING CONFLICTS OF LAW. THE PARTIES HEREBY WAIVE APPLICATION OF THE U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.
- 31.8 Neither party shall assign or transfer this Agreement or any rights and obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, no consent to or notice of assignment is required in the case of [\*] merger, reorganization, acquisition or sale of all or substantially all of its assets. This Agreement will bind and inure to the benefit of the parties and their respective successors and permitted assigns.
- 31.9 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, ANY AND ALL WARRANTIES (EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE) OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS ARE HEREBY DISCLAIMED IN THEIR ENTIRETY. NO PERSON IS AUTHORIZED TO MAKE ANY WARRANTY OR REPRESENTATION ON BEHALF OF SELLER CONCERNING THE PERFORMANCE OF THE PRODUCTS, SPARES OR SERVICES.
- 31.10 Upon the request of either party, the parties shall cooperate and use commercially reasonable efforts to implement as soon as practicable an electronic data interchange system to process the submission and acceptance of Orders, the payment of Products and such other matters as the parties may mutually agree upon having such terms and transmissions standards and formats as the parties may agree IN WITNESS, THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST WRITTEN ABOVE.
- 31.11 EXCEPT TO THE EXTENT ANY DAMAGES ARE A PART OF AN [\*] TO WHICH EITHER PARTY IS ENTITLED TO BE [\*] PURSUANT TO THE PROVISIONS OF [\*], IN NO EVENT SHALL SELLER'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE [\*] OF (I) [\*], or (ii) [\*] of the [\*] received by Seller from Buyer during the [\*] immediately preceding the imposition of liability.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

For the Buyer

For the Seller

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Signature  
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Name  
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Title  
-----  
Date

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-----  
Signature  
-----  
Name  
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Title  
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Date

EXHIBIT A

PRODUCT PART NUMBERS,  
DESCRIPTIONS, UNIT PRICES AND LEAD-TIMES

PRICING

Seller agrees that the price is firm for the period of [\*] and that price will be [\*] prior to the end of the firm pricing period. Seller agrees to furnish a non-binding price forecast for the following three calendar quarters. Seller further agrees to provide price in US\$.

Table 1

COMPAQ P/N BROCADE P/N	PROGRAM NAME	SITE	LEAD TIME	BASE UNIT PRICE	COST ADDERS	UNIT PRICE FOB	UNIT PRICE DDP	SHIP MODE	SHIPPING CONFIGURATION	HUB LOCATION
127552-B21 CQ-1630-0002	[*]	N.America	[*]	[*]	TBD	1 [*]	N/A	[*]	Pallet (16 unit)	[*]
127553-B21 CQ-1630-0001	[*]	N.America	[*]	[*]	TBD	1 [*]	N/A	[*]	Pallet (16 unit)	[*]
127552-B21 CQ-1630-0002	[*]	EMEA	[*]	[*]	NA	1 [*]	N/A	[*]	Pallet (16)	[*]
127553-B21 CQ-1630-0001	[*]	EMEA	[*]	[*]	NA	1 [*]	N/A	[*]	Pallet (16)	[*]

SPECIFICATION

Buyer's specification number [\*] is incorporated by reference.

THIS EXHIBIT IS AGREED TO AS OF THE DATE OF SIGNATURE BELOW, BY AND BETWEEN:

For the Buyer

For the Seller

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Signature  
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Name  
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Title  
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Date

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Signature  
-----  
Name  
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Title  
-----  
Date

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## EXHIBIT B

SPARE PART NUMBERS,  
DESCRIPTIONS, UNIT PRICES AND LEAD-TIMES

8 PORT SWITCH								
BROCADE			COMPAQ P/N's					
Order P/N	Mfr. P/N	2-5-2 part #	6-3 part #	Spare part #	Price	Lead Time	OOW Repair Price	
w/o GBIC	CQ-1630-0002	80-0000106-04	30-56042-01	127552-B21	127660-001	[*]	[*]	[*]
w/ GBIC								
FRU'S:								
Motherboard	XCQ-000001	60-0000005-01	29-34243-01	401930-001		[*]	[*]	[*]
CPU Board	XCQ-000002	60-0000006-01	29-34244-01	401931-001		[*]	[*]	[*]
G-Port Board	XCQ-000003	60-0000007-01	29-34245-01	401932-001		[*]	[*]	[*]
Power Supply	XCQ-000004	60-0000012-01	29-34246-01	401933-001		[*]	[*]	[*]
3" Fan with Tachometer	XCQ-000005	60-0000008-01	29-34249-01	401934-001		[*]	[*]	[*]
Front Panel subassembly	XCQ-000009	60-0000009-01	29-34468-01	128328-001		[*]	[*]	[*]
16 PORT SWITCH								
BROCADE			COMPAQ P/N's					
Order P/N	Mfr. P/N	2-5-2 part #	6-3 part #	Spare part #	Price	Lead Time	OOW Repair Price	
w/o GBIC	CQ-1630-0001	80-0000105-04	30-56042-02	127553-B21	127660-002	[*]	[*]	[*]
FRU'S:								
Motherboard	Same as 8-port					[*]	[*]	[*]
CPU Board						[*]	[*]	[*]
G-Port Board						[*]	[*]	[*]
Power Supply						[*]	[*]	[*]
3" Fan with Tachometer						[*]	[*]	[*]
Front Panel subassembly						[*]	[*]	[*]

Seller agrees that the [\*] is [\*] for the period of [\*] and that [\*] will be [\*] prior to the end of the [\*]. Seller agrees to furnish a non-binding price forecast for the following [\*].

Seller further agrees to provide price in US\$.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

SPECIFICATION

Buyer's specification number [\*] is incorporated by reference.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT C  
FLEXIBILITY AGREEMENT

I. Requirements

A. The following flexibility provisions apply to changes in purchase volume and/or delivery for existing orders and may be made [\*] or [\*] to [\*].

Table 1

Number of Weeks Prior to Scheduled On-Dock Dates -----	Percentage Increase -----	Percentage Decrease -----	Percentage Reschedule -----
12 weeks plus	[*]	[*]	[*]
8-12 weeks	[*]	[*]	[*]
4 to 8 weeks	[*]	[*]	[*]
< 4 weeks	[*]	[*]	[*]

Run Rate, Buffer Stock, and Replenishment

B. Buyer's expectation is that increase, decrease, and reschedule percentages may be executed by part number once per [\*] day planning cycle.

II. Liability

A. Buyer's liability in the event of notice of project discontinuance or cancellation without re-order shall be calculated based on using the [\*]. Both Buyer and Seller will review the current [\*] and past [\*] to determine liability. At no time is Compaq liable for any material positioned in excess of the average of the last [\*] or discrete P.O.s., governed in Table 1, above.

B. A Reclaim Value shall be calculated to value material. "Reclaim Value" shall mean the value of components that can be [\*] or [\*], less [\*], to original manufacture within [\*] days, once Buyer has provided notice of a volume decrease, and will be negotiated at the time required. Upon Buyer's approval, Seller shall use [\*] commercially reasonable efforts to obtain the maximum Reclaim Value available in the market.

C. The value of Finished Goods shall be calculated as follows: Number of units in Buffer [\*] as defined in III A. below) plus units in transit ([\*] utilizing ocean freight and [\*] utilizing air freight) times the unit price minus Reclaim Value.

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- D. The value of Work in Process (WIP) shall be calculated as follows: Number of parts in WIP to be assessed based on point in process when decision to stop build is issued (defined as maximum liability) minus Reclaim Value. The number of parts in WIP shall be no greater than [\*].
- E. The value of Raw Material shall be calculated as follows: Quantity of Buyer unique components [\*] the material cost of individual component [\*] the Reclaim Value.

III. Buffer Stock Provisions:

- A. Seller agrees to maintain [\*] of buffer stock in finished goods inventory for shipment at Buyer's request. The [\*] buffer stock requirement shall be calculated as the average [\*] demand calculated over the next [\*] of demand forecasted by the Buyer via the Electronic Commerce [\*] and the previous [\*] weeks of consumption.
- B. Buffer stock may not be used to meet the Buyer's flexibility requirements. Seller shall use commercially reasonable efforts to replenish within [\*] weeks of the Buyer's consumption.
- C. Buffer stocks must be maintained in current dates and revisions consistent with Buyer's specification(s).

THIS EXHIBIT IS AGREED TO AS OF THE DATE OF SIGNATURE BELOW, BY AND BETWEEN:

For the Buyer

For the Seller

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Signature

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Signature

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Name

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Name

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Title

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Title

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Date

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Date

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT D  
QUALITY ASSURANCE

TABLE OF CONTENTS

- 1.0 INTRODUCTION
- 2.0 QUALITY AND RELIABILITY ASSURANCE
  - 2.1 CONFORMANCE TO THE MATERIAL PURCHASE/ENGINEERING SPECIFICATION
  - 2.2 MATERIAL SAFETY COORDINATOR
  - 2.3 MATERIAL TRACEABILITY
  - 2.4 WORKMANSHIP
  - 2.5 DIAGNOSTICS, BIOS, AND SOFTWARE CONTROLS
  - 2.6 QUALITY SYSTEM PLAN
  - 2.7 MATERIAL ACCEPTANCE REQUIREMENTS
  - 2.8 RELIABILITY ACCEPTANCE REQUIREMENTS
  - 2.9 CONTINUOUS IMPROVEMENT PROCESS
  - 2.10 CORRECTIVE ACTION
  - 2.11 FAILURE ANALYSIS REPORTING
  - 2.12 [\*]
  - 2.13 ASSESSMENTS
  - 2.14 PROCESS OR FACILITY CHANGES

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

3.0 MATERIAL SPECIFIC REQUIREMENTS

3.1 QUALITY ACCEPTANCE REQUIREMENTS

3.1.1. MEASUREMENT OF MATERIAL PERFORMANCE AT SELLER'S FACILITY

3.1.2 MEASUREMENT OF MATERIAL PERFORMANCE AT BUYER'S FACILITY

3.2 RELIABILITY ACCEPTANCE REQUIREMENT

3.3 CONTINUOUS IMPROVEMENT

3.4 PERFORMANCE DATA REPORTING

3.5 SPARE MATERIAL DOCUMENTATION REQUIREMENTS

3.6 MATERIAL PACKAGING REQUIREMENTS

## 1.0 INTRODUCTION

This document sets forth and defines the standards for quality and reliability performance pertaining to the Material as defined in this Agreement to which this Exhibit is attached. Such Material shall be Material for use in Buyer's manufacturing operations, new spare Material, or repaired spare or refurbished Material used by the Buyer's field operations. Seller shall insure that all Material submitted to Buyer's manufacturing operations shall not be combined in any way with repaired spare or refurbished Material supplied to Buyer's field operations and that processes for treating such Material shall be separate and distinct.

Seller shall insure that the requirements stated herein are imposed by Seller upon any third party or subtier supplier which Seller might utilize in its performance under the Exhibit.

## 2.0 QUALITY AND RELIABILITY ASSURANCE

### 2.1 CONFORMANCE TO THE MATERIAL PURCHASE/ENGINEERING SPECIFICATION

Prior to production of the Material, Seller shall perform all necessary tests including, but not limited to, environmental, [\*], safety, and regulatory to assure conformance to the Buyer's Purchase/Engineering Specification. In addition, Seller shall work with Buyer's designated engineering representatives to assure conformance to any and all end-use (systems configuration) performance requirements. Seller shall, upon Buyer's request, provide any test results or agency reports that Buyer may require, for review and concurrence.

Seller shall acquire all materials and manufacture said materials in such a manner that all necessary agency certifications and ratings are maintained in the Material.

Seller shall provide Buyer copies of all regulatory and safety agency submittal reports and approvals, in order to facilitate Buyer's timely achievement of required end-use system-level agency submittals.

### 2.2 MATERIAL SAFETY COORDINATOR

Seller shall designate a representative within its organization to interface with Buyer's representative on Material product safety issues. The Seller shall establish a Safety Incident Reporting Procedure which shall insure that Buyer is notified within [\*] of Seller's gaining knowledge of real or potential safety problems or issues.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

### 2.3 MATERIAL TRACEABILITY

Seller shall assure that records are maintained for traceability of all regulatory controlled parts listed in agency reports. Regulatory controlled parts must be traceable to the source of manufacture by lot or date code, and must be traceable through the manufacturing process to their final destination via serialization of finished Material. Such information will be shared with Buyer upon request.

Finished Material shipped to Buyer shall be serialized in accordance with the requirements of Buyer's Purchase/Engineering Specification. The general format shall be SSYWxxxxx, where SS is the Seller's supplier code (assigned by the Buyer), Y is the last digit of the calendar year, WW is the calendar week, and xxxxx is a unique, sequential, 5-digit alpha-numeric sequence.

### 2.4 WORKMANSHIP

Seller shall assure that Material provided to Buyer meets all requirements of Seller's workmanship standards and practices. And that such standards and practices are sufficient to assure that the Material provided to Buyer meets all quality, reliability, safety and regulatory agency requirements.

Seller shall insure that all repaired, refurbished, upgraded, tested, or advanced exchange items submitted to Buyer shall meet the same workmanship criteria as above except when otherwise specified by Buyer. Seller shall provide the same level, or higher, of environmental, electrical, or mechanical test for spare parts and accessories as in the corresponding items in a finished or higher level assembly of Material except where, with Buyer's approval, sufficient statistical evidence validates reduction of such testing. Seller shall inform Buyer before any such process changes are instituted.

### 2.5 DIAGNOSTICS, BIOS, AND SOFTWARE CONTROLS:

Seller shall be required to demonstrate adequate controls over the distribution use of diagnostics, BIOS and the software shipping with the product.

A program for the regular maintenance of diagnostics shall be required by Seller to ensure that a virus is not present in the Material.

Revision controls for both the BIOS and the software shall be traceable to the serial number of the units. This information shall be maintained in the event of a change and conveyed to Buyer for field tracking purposes.

## 2.6 QUALITY SYSTEM PLAN

Seller shall submit to Buyer for review and concurrence a Quality Manual and a Quality Control Plan, no later than [\*] days prior to Seller's first scheduled production build. These documents shall define the Seller's overall Quality Assurance system elements, and detail inspection, test and audit points for manufacture of Buyer's Material. The Quality Manual shall demonstrate compliance to the applicable ISO 9000 Quality Systems series of standards, and shall identify any level of registration if achieved (ISO 9001, 9002, or 9003), by facility and location. Seller shall provide Buyer with a copy of any and all ISO 9000 certificates. The initial Supplier Quality Plan is included as Appendix 2 to this Exhibit.

## 2.7 MATERIAL ACCEPTANCE REQUIREMENTS

Seller shall insure that Material delivered to Buyer's receiving facility meets all the requirements of:

- o Buyer's Purchase/Engineering Specification and [\*] standards and requirements referenced therein.
- o Material marking per external agency requirements.
- o [\*]
- o Material specific performance levels.
- o Compliance to then current European Economic Community standards and application of "CE" mark to product marking, as applicable.
- o Material protection against damage and loss.

Seller shall make all Material acceptance data available to Buyer for review upon request. Seller shall, upon Buyer's request, hold initial shipments of Material until it is verified to be in compliance with Buyer's specifications.

Seller shall not begin production or repair and distribution of spare or refurbished Material in this Exhibit to Buyer until their process has been assessed to have produced Material that meets the requirements of this Exhibit and as specified in the Technical Statement of Work supplied, if appropriate, with the Request for Quote. This assessment, applicable to all contracted Material unless agreed otherwise by Buyer, shall be performed by the Buyer or Buyer's authorized representative. All results of this assessment shall be on file at the Seller's site and with the Buyer's authorized representative.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 2.8 RELIABILITY ACCEPTANCE REQUIREMENTS

All qualification and reliability testing of Material shall be conducted by Seller at Seller's site with Buyer's representatives present at [\*] option. Seller shall perform at Seller's site all regulatory testing requirements and support any regulatory agency testing of the Material. Buyer may elect to perform any testing at Buyer's sites for Material verification and compliance.

Buyer shall have full access to all reliability plans and test results data generated by Seller including, but not limited to, MTBF predictions and associated environmental parameters, acceleration factors, component derating factors, stress test parameters, test conditions, test failures, [\*], failure modes and symptoms, root cause failure analysis, and resultant corrective actions.

Reliability Testing shall be performed by Seller in three phases. These three phases will conform to the mutually agreed upon processes reviewed during the Supplier Audit and is documented in the Seller's Quality Plan:

- o Phase I shall assure that [\*] is [\*] of [\*] the [\*].
- o Phase II shall assure that the [\*] does [\*].
- o Phase III shall assure that the [\*] of the [\*] and the [\*] are [\*] during [\*]. It shall also serve as an [\*] with [\*].

Summary reports of results for each phase of reliability testing shall be published and provided to Buyer. The content, format, and frequency of reporting shall be mutually agreed.

Buyer reserves the right to review Seller's test plans for each phase of reliability testing, at least one month prior to the start of that phase. If such review is conducted, Seller shall resolve any of Buyer's concerns before the test phase shall commence. Seller's plans will include mutually agreed-upon statistical confidence limits for each phase of testing, where applicable.

Seller shall be solely responsible for assuring that the Material design, third party vendor components, and manufacturing processes employed in the production of the Material meet the Material reliability requirements as set forth in the Buyer's Purchase/Engineering Specification. Seller shall further assure that any changes to the Material design as a result of engineering change, vendor change, or process change do not adversely affect the reliability of the Material as delivered to Buyer.

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## 2.9 CONTINUOUS IMPROVEMENT PROCESS

Having achieved the requirements of the Buyer's Purchase/Engineering Specification, Seller shall implement a process to continuously improve the level of Material performance within the manufacturing process. Seller shall establish a performance baseline for Buyer's Material and shall establish with Buyer mutually acceptable goals for periodic Material and process improvement.

## 2.10 CORRECTIVE ACTION

If at any time data from either Seller's or Buyer's control and measurement systems indicates that Material quality and/or reliability has fallen below the minimum established levels identified in Table 1, corrective action shall commence immediately and will continue until the quality and/or reliability again meets or exceeds the minimum acceptable level. In such event, the following shall be [\*] of Seller, as a minimum:

- o Immediately notify Buyer of the problem, its manifestations, symptoms, and an initial assessment of the problem severity and impact, in the case Seller first identifies the problem.
- o Perform root cause failure analysis.
- o Communicate corrective action to Buyer within a mutually agreeable time frame.
- o Take whatever actions are deemed necessary, including additional inspections and tests, until Seller's manufacturing process is demonstrated to be under control.
- o Instruct Buyer in dispositioning Material if Material in Buyer's possession or at Buyer's customers' sites is affected or suspect.
- o If required, discontinue shipment to Buyer until the corrective action has been proven to be satisfactory to Buyer.

Buyer's personnel may become involved in problem evaluation activities at Seller's facility if Buyer determines that such involvement is necessary and appropriate, or if Seller requests such support. Any such involvement by Buyer however, shall not relieve Seller of its obligations hereunder. Seller's personnel may be requested to come to Buyer's facility to participate in problem evaluation activities to facilitate timely problem resolution.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.



Buyer may also issue SCAR (Supplier Corrective Action Requests) from time to time to address specific failures. Seller will be expected to respond to all such VCAR forms within [\*] of receipt at Seller's facility.

#### 2.11 FAILURE ANALYSIS REPORTING

From time to time, Material which does not meet Buyer's Purchasing/Engineering Specification shall be returned to Seller as set forth in the Agreement ("failed Material"). This section applies to all returned Material whether under warranty or not.

When failed Material is detected at Buyer's facilities or at Buyer's customer site(s), it will be returned to Seller for analysis and repair. Seller shall generate a Failure Analysis Report listing returned Material by model and serial number, detailing type of failure, verification testing process performed, and whether or not the failure mode could be verified or duplicated. If the failure mode was duplicated, the report should also list specific action taken to repair the Material and any action(s) taken within Seller's manufacturing process or the design of the Material to prevent recurrence of the problem. Such Failure Analysis Report shall be provided to Buyer within [\*] business days of receipt of failed Material at Seller's facility.

Seller further agrees to perform upon request an expedited root cause analysis on selected failed Material. Such expedited Failure Analysis Report shall be provided within [\*] business days as a goal.

Unverified Material failures shall be prominently identified in the report to allow Buyer's personnel to engage in further analysis activities when the returned Material is received at Buyer's manufacturing facility. Should Buyer determine after further testing that such returned Material continues to demonstrate the same failure modes, Buyer shall return such Material to Seller for further analysis and corrective action.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 2.12 [\*]: COMPAQ TO PROVIDE ADDITIONAL WORDING

"[\*]" shall mean a series of the same component [\*], which is attributable to Seller, based on at least a [\*] rate of the Material, Spares, or Repairs during a consecutive [\*] day period, or any violation of the Buyer safety standard requirements. Seller shall be notified in writing of the occurrence of an [\*] together with reasonable evidence thereof. Seller shall be responsible for providing full corrective action as outlined at Section 2.10 of this Exhibit, as well as the programs required to correct the fault at Seller's cost, either at Buyer's stocking location or potentially at customer sites. [\*] is defined as the yearly projection of the [\*] of a particular sample of Material based upon repair data, with a minimum established [\*] of [\*] per [\*] for a [\*].

Prior to Seller undertaking any corrective action process identified herein, Seller shall have the right to disassemble the Material, Spares, repairs, or examine test results obtained by Buyer. Such corrective action shall be completed within [\*] days of Buyer's original notification, or immediately in case of a safety related failure or defect. Seller shall be solely responsible for [\*] to repair or replace the defective or failed Material, Spares, and Repairs ([\*] associated with the shipment of defective or failed Material, Spares, or Repairs, as well [\*] associated with the shipment of repaired or replacement units of Material, Spares, or Repairs), in addition to bearing [\*] which are associated with the [\*].

## 2.13 ASSESSMENTS

Buyer reserves the right to engage in assessments of the Seller's facilities involved with the assembly, test, repair, or other activities associated with the contracted Material of the Agreement during the life of this Agreement. Buyer shall notify Seller at least seven (7) working days in advance of its desire to perform an assessment and shall identify areas to be covered by the assessment.

## 2.14 PROCESS OR FACILITY CHANGES:

Seller shall [\*] any [\*] to the process used to produce Material without notification to Buyer. Seller shall be responsible for any [\*] associated with non-conforming Material which is the result of an [\*] to the manufacturing process.

Seller may change the location of equipment, tooling, fixtures, and test equipment within the authorized facility [\*] providing Seller bears the responsibility for re-qualifying such equipment, tooling, fixtures and test equipment for the Material and process. Such changes shall not impact delivery schedules of Material to Buyer.

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Seller shall not change the currently approved location of the facility which produces or distributes the Material to another site [\*] which shall not be unreasonably withheld or delayed. Seller shall notify Buyer at least [\*] days before any such move. If Buyer does not approve or reject such relocation within [\*] days of the date of Seller's notice, such relocation shall be deemed approved by Buyer. In the event of a timely rejection, Seller and Buyer agree to promptly negotiate in good faith to reasonably resolve any concerns that Buyer may have. Material may not be accepted by Buyer without a full site certification approval performed in accordance with Buyer's Supplier System Assessment which shall be supplied prior to any certification assessment.

### 3.0 MATERIAL SPECIFIC REQUIREMENTS

#### 3.1 QUALITY ACCEPTANCE REQUIREMENTS

##### 3.1.1 MEASUREMENT OF OUTGOING MATERIAL PERFORMANCE AT SELLER'S FACILITY

Prior to shipment to Buyer, the quality of new Product, spare parts, and repaired and refurbished Material shall be measured by Seller. If the quality falls below the minimum acceptable level specified by mutual agreement and identified in Table 1 below, the corrective action process of Sec. 2.10 shall commence immediately.

##### 3.1.2 MEASUREMENT OF MATERIAL PERFORMANCE AT BUYER'S FACILITY

Buyer shall employ a standardized data collection and reporting system to measure the performance of Seller's Material in Buyer's processes. It is expected that the performance of Seller's Material as measured at Buyer's facility shall be substantially equivalent to the outgoing Material performance per section 3.1.1. If major differences in performance beyond the expectations stated in section 3.1.1 are experienced, then Seller shall immediately commence corrective action activity per section 2.9.

Specified Material quality failure rates, specified in [\*] are identified in Table 1 of this Exhibit.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

### 3.2 RELIABILITY ACCEPTANCE REQUIREMENTS

Seller shall assure that reliability performance is maintained during volume production. Phase III testing as specified in Section 2.7 shall begin with the first production shipment to Buyer and shall continue for the life of the Exhibit. Seller shall [\*] a comprehensive plan for Phase III testing that describes how the [\*] will be demonstrated and maintained.

Specified Material MTBFs and lower statistical confidence limits of Seller's test methods are identified in Table 1 below.

### 3.3 CONTINUOUS IMPROVEMENT

During the term of this Agreement, Seller shall establish plans and goals to continuously improve the outgoing Material performance. As continuous improvement is achieved, Material performance expectations shall be updated periodically.

### 3.4 PERFORMANCE DATA REPORTING

Data shall be reported to Buyer in a mutually acceptable format on a [\*] basis.

Seller shall submit to Buyer, or Buyer's designated representative, all spares repair activity data on Material as specified in Appendix 1 of this Exhibit on a [\*] basis. A Microsoft Excel format is preferred and a soft copy template shall be provided by Buyer.

Seller shall provide Buyer, or Buyer's authorized representative, all revision information necessary for Buyer to maintain a complete and accurate revision matrix for all Material supplied to Buyer.

### 3.5 SPARE MATERIAL DOCUMENTATION REQUIREMENTS

For any spare Material requiring alignment, adjustment, or switch or jumper configuration settings in the field, Seller shall include in the Material package a brief technical document describing the method of performing such alignment, adjustment, or configuration settings. This document shall be provided by Buyer with Buyer's authorization for Seller's reproduction. Seller shall include, at Buyer's request, any special temporary instructions issued during the assembly of the unit if such instructions affect the form, fit, or function of the Material.

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### 3.6 MATERIAL PACKAGING REQUIREMENTS

Seller shall meet the packaging, ESD, container, labeling, and marking requirements as defined in the applicable specification provided by Buyer.

For spare Material supplied to field operations, Seller shall provide the following information in addition to those packing slip requirements listed in Appendix 2, Paragraph 5.4. Seller's packing slip must contain: Seller's Name, Seller's part numbers, Seller's part descriptions, Seller's ship date, and the Buyer's specific ship-to address including Buyer's Stockroom Number if applicable.

TABLE I

While no defects are expected, the following limits in Table 1 depict the maximum allowable limit by product as specified and measured by Buyer.

PART NUMBER	MATERIAL [*] PERFORMANCE	SPECIFIED MATERIAL MTBF	LOWER CONFIDENCE LIMITS
-----	-----	-----	-----

(See Appendix 2, Attachment D (A)1.1)

OTHER CONSIDERATIONS:

1. QUALITY PERFORMANCE REQUIREMENTS:

Should the above limits be exceeded by [\*] for [\*] corrective action per para. 2.10 shall immediately commence to bring the levels below the limit requirements. Corrective action shall bring the level within limits within [\*].

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COMPAQ COMPUTER CORPORATION  
SUPPLIER QUALITY PLAN, DELIVERABLE WORKSHEETS  
and  
PROCESS MANAGEMENT PLAN

prepared for

BROCADE COMMUNICATIONS SYSTEMS, INC.

"[\*]"

APPROVALS

COMPAQ COMPUTER CORP.

BROCADE  
COMMUNICATIONS SYSTEMS, INC

On File  
-----  
[\*]  
Director, Corporate Procurement

On File  
-----  
[\*]  
Director of Quality

On File  
-----  
[\*]  
Commodity Manager

On File  
-----  
[\*]  
VP Operations

On File  
-----  
[\*]  
Procurement Engineer

On File  
-----  
[\*]  
Director Strategic Accounts

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## I. PURPOSE

This plan documents the specific system of process and product controls required to assure products and services provided by the Supplier, and his sub-suppliers meet the specifications, process requirements, and business goals of Compaq Computer Corporation.

## II. SCOPE

This document lists actions required to improve the working relationship between Compaq and the Supplier, event incidents of non-conforming product from entering the Compaq manufacturing processes, and improve the process to reduce overall costs. This document is a supplement to Compaq Computer Corporation's contractual requirements and engineering specifications. In any case of conflicting requirements Purchasing and Engineering documents shall take precedence. This plan identifies actions and goals necessary to assure conformance of:

1. [\*]
2. [\*]
3. [\*]
4. [\*]
5. [\*]
6. [\*]
7. [\*]
8. [\*]
9. [\*]
10. [\*]
11. [\*]
12. [\*]
13. [\*]

## III. REFERENCES

Applicable product specification: Rev. A or higher  
Supplier Development Process Reference (SDPR)

## IV. QUALITY SYSTEM SURVEY

A full Quality System Survey may be conducted at the discretion of Compaq. The intent of the survey is to allow Compaq the opportunity to evaluate the supplier's quality, engineering, manufacturing capacity, and manufacturing capabilities relative to critical parameter requirements. The survey is intended to identify areas which may require improvement to meet Compaq's requirements and establish a long-term business relationship. If deficiencies are found within the Supplier's operations, the supplier and Compaq will develop an improvement plan and schedule for action items and/or future activity.

## V. ENVIRONMENTAL SURVEY

An environmental survey will be conducted. Compaq's Environmental Survey is a tool that examines the environmental performance of a potential supplier. Failure to meet the requirements of the survey can impact Compaq's compliance with national and international labeling, certification and procurement requirements. The Environmental Survey is designed to identify areas of risk and develop improvement plans to bring the supplier to an acceptable standard.

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## VI. QUALITY PLANNING

## 1.0 Quality Planning Timeline

Compaq and the Supplier will develop a basic timeline to complete the actions that are identified within this document.

## 2.0 Critical Parameter Attachment A

A critical product parameter is a product feature, property, attribute, or performance that affects product performance if found to be beyond specification limits. Compaq and the Supplier will mutually identify and agree on the critical process and product parameters to be monitored by the supplier and note them in attachment A.

## 3.0 Print / Specification Review Attachment B

As a part of the product evaluation process, Compaq and the Supplier are responsible for reviewing the specification, requirements, information packages, etc. to assure:

1. All documentation is present and legible.
2. Requirements are understood
3. Critical product characteristics
4. Effect of tolerances on manufacturing and ability of the process to meet the tolerances.
5. Identification of special handling, transportation and storage during manufacturing.
6. Specified dimensions and does not conflict with other documentation.
7. Workmanship standards are understood

## 4.0 Capacity Risk / Analysis

A Capacity Risk Analysis will be provided by the Supplier in the Deliverable Worksheet. As a part of the process/product evaluation process, members of the Compaq/Supplier team may conduct a detailed review of the current manufacturing process and equipment to assure capacity is available to meet the Compaq requirements. At minimum, the Capacity Risk Analysis shall include the following:

1. [\*]
2. [\*]
3. [\*]
4. [\*]
5. [\*]
6. [\*]
7. [\*]
8. [\*]
9. [\*]

## 5.0 Material Risk / Analysis

A Material Risk Analysis will be provided by the Supplier in the Deliverable Worksheet. At a minimum the Material Risk Assessment shall include the following: [\*]

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#### 6.0 Process Management Plan (PMP)

A Process Management Plan shall be completed by the Supplier. The PMP must be implemented prior to volume shipments to Compaq. The PMP identifies parameters which require Statistical Process Control (SPC) monitoring during the manufacturing process. For critical parameters in the sub-tier supplier's process, a PMP will be developed between Compaq's supplier and his suppliers. The Process Management Plan at minimum will note the following :

1. [\*]
2. [\*]
3. [\*]
4. [\*]
5. [\*]
6. [\*]
7. [\*]
8. [\*]
9. [\*]
10. [\*]

#### 7.0 Product and Process Flow

The Supplier shall submit both a product and process flow diagram. The product and process flow diagrams will document the actual path of the material/assembly through the Supplier's manufacturing facilities. Information included in the diagram shall include

1. [\*]
2. [\*]
3. [\*]
4. [\*]
5. [\*]
6. [\*]
7. [\*]

#### 8.0 Field Failure Rates and Reliability Test

The Annual Field Return Rate (AFR) and the Annual Return Rate (ARR) will be referenced in the Compaq Product Specification. The supplier shall [\*] quality control and reliability testing to ensure that the Annual Field Return Rate (AFR) and Annual Return Rate (ARR) is not exceeded. If the ARR/AFR exceeds the specified requirement the supplier must inform Compaq within [\*] working days and a written corrective action plan [\*] must be submitted to Compaq. Compaq reserves the option to stop shipment until containment and/or corrective action is in place. The Supplier is responsible for conducting On-Going Reliability Testing (ORT) on product supplied to Compaq. The conditions and criteria for On-Going Reliability Testing shall be defined and agreed on by Compaq and the Supplier. Failures causing test to enter the failure zone will be reported to Compaq Procurement Engineering within 24 hours.

#### 9.0 Critical Process Data Review

#### 10.0 Preliminary Process Capability Studies

All processes directly affecting critical parameters may be evaluated to establish a preliminary [\*]. Critical parameters requiring process capabilities are listed in the Attachment A. Processes are considered capable if the [\*]. Any process resulting in [\*] will require an appropriate corrective action or an equivalent containment plan.

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### 11.0 Measurement Precision

Measurement Precision is the extent to which a repeated measurement gives the same result. Variations may arise from the inherent capabilities of the instrument, from variations of the operator's use of the instrument, or from changes in operating conditions. All instruments, gages and test equipment used to evaluate critical parameters shall be evaluated for Repeatability and Reproducibility as documented in the SDPR (Measurement System Analysis and Evaluation-Gauge R&R) and/or by means of similarly effective methods.

### 12.0 Supplier Corrective Action Process Attachment C

The supplier will use the [\*] format attachment C and adhere to the required response times to report internal problem issues including failure to meet agreed upon quality goals. In the event that Compaq encounters problems affecting late product shipment, product shortage, and receiving inspection failures, in-line manufacturing failures, material purges, etc., Compaq will notify the Supplier and generate a Supplier Corrective Action Request (SCAR) using the [\*] format.

The Supplier is required to acknowledge receipt of the Request for Corrective Action within [\*] supplier workday. The Supplier is required to define and implement an effective containment within [\*] working days of receipt of the SCAR. A long term, corrective action plan should be available within [\*] working days of root cause identification. The proposed timeframes should be considered general guidelines. Each SCAR should be assessed for its criticality and urgency and appropriate action taken. In the [\*] the Supplier is expected to respond with the following information:

ROOT CAUSE: [\*]

CONTAINMENT ACTION PLAN: [\*]

CORRECTIVE ACTION PLAN: [\*]

VERIFICATION PLAN: [\*]

### 13.0 Engineering / Process / Product Change Notification Guidelines

The Supplier must notify Compaq of any proposed change to the [\*] process, product, critical components, or suppliers of critical components that affect form, fit, or function prior to the implementation of the change. During the development phase all proposed ECN/PCNs should be sent to the appropriate Design Engineer. During the production phase all proposed ECN/PCNs should be forwarded to the appropriate Compaq Program Manager. The notification must be received at Compaq no later than [\*] days prior to the planned implementation date. At a minimum, the notification must contain the following information:

1. Title and date of implementation.
2. A list of part numbers and documents affected by the proposed change.
3. A complete description of the change, including affected portions of any process, material, and affected parameters. Any change to process monitors or controls should be specified.
4. Any information relating to urgency which must be considered.
5. Description as to why the change(s) were made.
6. Reliability data qualifying the change(s). Statistical data, including distribution and capability analysis [\*] supporting the proposed change(s).
7. Date codes or markings
8. [\*]
9. Availability of samples

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Final approval is granted by Compaq, based on successful product analysis and qualification ([\*] ) and is subject to audit by Compaq. The Supplier and all affected departments shall be notified in writing of the final status. Until formal, written approval is received, the Supplier is required to deliver standard product as required by Compaq Procurement and to maintain an adequate backup position in the event the change is rejected. Compaq will provide reasonable grounds for the rejection of any ECN. Exceptions to the above requirements will be made with issues that affect safety standards, data loss, failure to meet specifications, applicable laws, regulations or standards. Each ECN will be reviewed for criticality and urgency and appropriate action taken.

#### 14.0 Program Goals Attachment D

Attachment D notes goals which have been identified as significant to meeting the business objectives of Compaq Computer Corporation. These goals will be utilized to assess the supplier's performance and assist the Supplier in determining their impact on the process, products, and services provided to Compaq.

### V.II PRODUCTION QUALIFICATION AND VERIFICATION

#### 1.0 First Article Inspection

The Supplier is required to submit first article samples. These samples shall be representative of final production and are required to meet all applicable specifications. The samples will be inspected/tested as required to verify conformance specifications. The First Article results will be documented and reviewed with the Supplier. Unacceptable results will require the Supplier to initiate and implement corrective action, after which another sample will be submitted for evaluation and final approval. It is the responsibility of the Supplier to procure and approve first article samples from its sub-tier suppliers. Compaq may, at its option, require the Supplier to submit such parts and/or review associated documentation.

#### 2.0 Capability Studies

A preliminary process capability study will be performed on all critical parameters (Attachment A) prior to revenue production to ensure statistical control.

#### 3.0 Equipment verification

Gauge reproducibility and repeatability, along with equipment correlation studies, will be evaluated at this time

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## 4.0 Out of Box Audit-OBA

The supplier or the supplier's agent will perform an out-going product inspection to assure conformance to the specification and associated quality criteria. All failures will require an [\*] for closure. Compaq must be notified immediately (within [\*] ) of any failure. The results of the inspection will be used to determine product acceptability and to evaluate product problems during manufacturing. Inspection data will be reported to Compaq per the PMP. The report shall consist of, but not limited to, the following:

1. Lot quantity
2. Inspection sample size
3. Quantity rejected
4. P-chart
5. [\*]
6. Defect Pareto for all failures

At a minimum the inspection criteria will include the following:

Workmanship, Compaq cosmetic specification, Kiting, Documentation, Labels, Packaging, and Pallet sizes

## 5.0 Compaq System Test

(Compaq System Test will [\*] at this time)

## 6.0 Program/Product/Process Review

The primary goals of the program/product/process review are identification and elimination of potential trouble areas early in the business relationship and to establish a system which will assure all products and processes reflect continuous improvement and uniformity. Compaq and the Supplier will review all available information. Discrepancies will be identified and documented prior to production. Corrective action shall be established to reduce and/or eliminate any problems. Approval to initiate shipment to Compaq is signified by completion and approval by Compaq of the following:

1. Compaq Product Specification at Revision A or greater.
2. Certification to applicable National and International Standards
3. Meeting all Compaq product specification requirements
  - a) Electrical
  - b) Visual
  - c) Mechanical
  - d) Agency
  - e) Quality
  - f) Shock and Vibrations / Packaging

## 7.0 Environmental

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VII. MANUFACTURING PROCESS/SUPPLIER CERTIFICATION

The following minimum requirements must be fulfilled in order for a supplier to be approved as a Compaq Certified Participant

Process Capability: All critical parameters must maintain a process capability index [\*] or demonstrated equivalent capability.

Correlation: if required, the [\*] must maintain a minimum correlation coefficient [\*]

Measurement Precision / Correlation: Repeatability/reproducibility and correlation requirements as stated in the SDPR must be satisfied.

[\*] documented performance as a Compaq supplier measured from initiation of the certification process.

[\*] with an overall Supplier Rating of "Excellent" as measured by a documented supplier rating system. This criteria directly relates to the supplier's immediate past performance concerning support of corporate materials objectives.

The amount of business conducted with the supplier shall be judged and documented by the commodity group to be a significant proportion or of strategic importance.

The Supplier must be a [\*]

A Compaq Supplier Survey shall be on file at Compaq.

Objective evidence of supplier continuous improvement must be available.

ATTACHMENT A

CRITICAL PARAMETERS

PROCESS NAME -----	PARAMETER -----	[*] ---
[*]	[*]	[*]
[*]	[*]	[*]
[*]	[*]	[*]

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ATTACHMENT B

SPECIFICATION REVIEW

The supplier has reviewed the Compaq product specifications for the applicable part numbers and agrees to the product specifications or notes the following exceptions.

-----  
-----  
-----

-----  
NAME DATE



ATTACHMENT C  
[\*]  
Supplier Corrective Action Request

SCAR#	Open Date
CPN	Closed Date
CPN disc.:	Reference Doc.
Requester	Supplier
	Supplier Contact

Lot #  
Lot Qty  
Rej. Qty  
[\*]  
Defect

Discipline 1	[*]	[*]
Discipline 2	[*]	Date:
Discipline 3	[*]	Date
Discipline 4	[*]	Date
Discipline 5	[*]	Date
Discipline 6	[*]	Date
Discipline 7	[*]	Date
Discipline 8	[*]	Date

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ATTACHMENT D  
PROGRAM GOALS

In the event this product goes through a Compaq factory integration the [\*] goal for Supplier fault failures in the Compaq factory is [\*].

PROGRAM GOALS -

These goals are set [\*] year with [\*] - Brocade will reset these goals this [\*]. Brocade has consistently bettered these goals.

PROCESS  
-----

GOAL  
-----

[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

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## DELIVERABLE WORKSHEETS

## SUMMARY

Supplier: Brocade  
1901 Guadalupe Parkway  
San Jose, CA 95131

Manufacturer: [\*], San Jose, CA

Compaq P/N: 380591-B21 8-port fiber channel switch, rack mount kit  
380578-B21 16-port fiber channel switch, rack mount

Supplier Model #: BR1630 -0011, -0010

Purpose: Approve [\*] and Brocade as supplier for the fiber channel switch used in Storage Area Networks. The [\*] (Brocade silkworm) is a fibre channel switch for Storage Area Networks (SAN) which contains a gigabyte Interface Connector (GBIC) which is field serviceable. [\*] has been producing the product since [\*]. RMAs will go through Brocade and [\*] will perform repairs. FW is field up-gradable. The switch itself, the PCAs, and the GBICs are serialized. [\*] purchases components, builds, tests, and ships the units.

QUALITY SYSTEMS SURVEY: Rating [\*]

Supplier Self Survey: Performed at [\*] and Brocade by  
[\*]

Survey on file with Compaq Procurement engineering.

ENVIRONMENTAL SURVEY: Rating [\*]

Supplier Self-Survey: Performed at [\*] performed by [\*],  
Manager, Environmental Health and Safety on 2 Dec 98

Survey on file with Compaq Procurement engineering.

Business Survey: RATING = [\*]

Supplier Self survey: Performed by [\*]

Survey on file with Compaq Procurement engineering.

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CAPACITY: No capacity Issues

[\*] submitted capacity analysis states capacity as [\*] currently and increasing to [\*] in [\*] as [\*] adds a second manufacturing line. Current build plan is [\*] increasing to [\*] in [\*] . Compaq is currently forecasting [\*].

STEP 2

STEP 2 RISKS AND ISSUES: No open issues

STEP 3

2.12 Line Audit/Survey

Line audit performed by [\*] and [\*] on [\*].  
FAI Sample unit passed visual/cosmetic and final functional test.

2.13 Line Audit Findings

A trip report detailing the line audit and FAI is on file. [\*] and [\*] during the audit are listed in the following table:

DISCREPANCY -----	RESOLUTION -----	STATUS -----
[*]	1. [*] 2. [*]. This printout would accompany the switch to final QA. Due (4/7)	CLOSED
Provide OBA sample plan	Document and return to revision A sampling plan	CLOSED
[*]	[*]	CLOSED
[*]	[*] Any failures or defective materials are expeditiously sent to MRB.	CLOSED
[*]	[*]	CLOSED

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## YIELDS AT RELEASE

	MARCH (GENERIC) -----	MARCH (COMPAQ) -----
In-circuit (PCA)	[*]	
Functional (PCA)	[*]	
Burn-in	[*]	
Final Test	[*]	[*]
Final Inspection	[*]	[*]
[*]	[*]	[*]

STEP 3 RISKS AND ISSUES: No issues.

STEP 3 CONTINGENCY/DEVIATIONS/WAIVERS: None

## RECOMMENDATION:

Recommend Brocade and [\*] be approved to manufacture the [\*] Fibre channel switch.

## CAPACITY: ASSESSMENT

	MAR ---	APR ---	MAY ---	JUN ---	JUL ---
TOTAL CAPACITY	[*]	[*]	[*]	[*]	[*]
BUILD SCHEDULE	[*]	[*]	[*]	[*]	[*]
CPQ FORECAST 8 PORT		[*]	[*]	[*]	[*]
CPQ FORECAST 16 PORT		[*]	[*]	[*]	[*]

## CAPACITY: PLANS TO MEET UPSIDE REQUIREMENTS

UPSIDE -----	LEAD TIME REQ'D WEEKS -----
[*]	[*]
[*]	[*]
[*]	[*]
[*]	[*]

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## MATERIAL: ASSESSMENT:

Supplier	Component	Lead Time	Plans to meet upside
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

Burn-in oven would require [\*] time. All other commodities are [\*] lead time for [\*] flex. Silkworm production capacity is currently [\*] . Brocade reviews capacity requirements on a [\*] basis with our manufacturing partner and key component suppliers. Capacity is assessed and documented for each step in the manufacturing process, and capital requirements to support incremental increases in capacity are documented and modified monthly.

Brocade has developed partnerships with suppliers of strategic components (e.g., ASICs, optical modules, Brocade unique components) that involve ongoing communication of forecast information, technology roadmap exchanges, [\*] supplier performance reviews, executive forums, and supply chain optimization activities. Brocade and [\*] jointly manage Brocade's component supply base, with Brocade as the lead for strategic components and [\*] as the lead for standard components. [\*] provides turnkey inventory management.

## STEP 3

## DESCRIPTION OF TEST AND INSPECTION EQUIPMENT, TOOLS, PLANS, AND PROCESSES

[\*] The units next go to final test which is a [\*] a longer cable to check attenuation. Next all units go through final inspection for cosmetics and a shortened functional test. Units next proceed to packing, post packing inspection or OBA, and shipping. [\*] is pulled from packing to go to ORT.

## IN-CIRCUIT TEST

ICT is done on a [\*]. The test coverage is approximately [\*] on the [\*] boards. On the [\*] the test coverage is limited by number of test points available in the fixture - we are using all the approx. [\*] test points available. There are a large number of [\*] resistors on the board. The components that [\*] using [\*] that [\*] the [\*].

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### Functional test (PCA)

At functional test the [\*] is assembled into a [\*] for test. The test is done using the [\*] test. This test executes on [\*] ports. The ports [\*] configured such that certain [\*]. The processor transmits [\*] then enters a monitoring state during which it prints status information to the telnet session.

### Burn-In

In burn-in an assembled switch runs the dynamic Burn-in test to cycle test for [\*]. Temperature is elevated to [\*] for [\*] and then to [\*] for the remaining burn-in time. The tests run include [\*] Test, [\*] test, [\*] Test, [\*] test, [\*] Test and [\*] test. Automatic power cycling occurs [\*] and monitoring is performed.-

### Configuration

The switch is loaded with the port cards and GBICs according to customer requirements. The manufacturing FW is replaced with customer specific FW.

### Final Test / Inspection

The configured switch is tested using a telnet session running the Special System test that includes [\*], [\*], and [\*] tests. A cosmetic inspection and a final check of the configuration are done using appropriate customer checklist.

### Out Of Box Audit (OBA)

Units ready to be sealed are removed from their packaging and functionally tested and inspected as called out in the appropriate instructions.

### RELIABILITY TEST

From the packaging area [\*] is loaded into the ORT test bed until a [\*] units are under test. A new unit is placed in test and the oldest unit is removed [\*]. ORT consists of looping the [\*] for [\*]. The test environment remains at [\*] during this time. Brocade performed ORT from [\*]. From [\*] has been performing ORT. Copies of the Brocade ORT procedure and the [\*] instruction for ORT burn-in log record is on file. [\*] is currently performing the ORT testing. To date a total of [\*] switches accumulating [\*] with [\*] have been run. From [\*] switches were run and [\*] were accumulated with [\*] failures as follows:

1. [\*]
2. [\*]
3. [\*]

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## YIELD HISTORY (GENERIC)

STATION	OCT	NOV	DEC	JAN 99	FEB	MAR
ICT	[*]	[*]	[*]	[*]	[*]	[*]
FCT	[*]	[*]	[*]	[*]	[*]	[*]
Burn-in	[*]	[*]	[*]	[*]	[*]	[*]
Final test	[*]	[*]	[*]	[*]	[*]	[*]
Final Inspection	[*]	[*]	[*]	[*]	[*]	[*]
OBA				[*]	[*]	[*]
HASS				[*]	[*]	[*]

OBA  
Feb : [\*]

[\*]

Mar: [\*]

## ARR HISTORY

DATE	1Q98	2Q98	3Q98	4Q98	TOTAL	JAN 99	FEB	MAR
Install base	[*]	[*]	[*]	[*]	[*]	[*]	[*]	[*]
Returns	[*]	[*]	[*]	[*]	[*]	[*]	[*]	[*]
ARR	[*]	[*]	[*]	[*]	[*]	[*]	[*]	[*]
ARR Monthly						[*]	[*]	[*]

## FA OF RETURNS

JAN 99:

[\*]

4Q98:

(NDF and customer caused defects are included):

[\*]

[\*]

[\*]

[\*]

FA and corrective actions for returns are on file with procurement engineering.

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MTBF

Based on ARR calculation = [\*]

TOP DEFECT PARETOS AT RELEASE:

STATION -----	DEFECT AND PERCENT OF PARETO -----
Burn-in	[*]
Final test	[*]
OBA	[*]
[*]	[*]

CORRECTIVE ACTIONS AND IMPROVEMENT PLANS:

[\*]  
[\*]  
[\*]  
[\*]  
[\*]

PRODUCT CONFIGURATION

CPQ P/N -----	DESCRIPTION -----	UPC ---	JAN ---	SUPPLIER MODEL -----
380591-B21	8-port fiber channel switch, rack mount kit	741372751188	4948382083043	CQ-1630-0002
380578-B21	16-port fiber channel switch, rack mount kit	743172751171	4948382083036	CQ-1630-0001

## 1. Agency approvals:

COUNTRY -----	SAFETY -----	EMC ---
United States	UL 1950	FCC Part 15 Class A
Canada	CSA 22.2 No. 950	CSA 108.8 Class A
Japan	IEC 60950	VCCI (CISPR-22)
EC and EFTA countries	EN60950	EN 55022:1994/EN50082-1:1992 (CE MARK)
Australia New Zealand	AS/NZS 3260:1993	AS/NZ 3548 (C-Tick mark)
International	IEC 950	CNS 1348 (BCIQ logo)

## Labels:

Compaq P/N, Description, Count contained, UPC or JAN codes, [\*] [\*],  
Spares label, Compaq Logo tape

Jumpers / switch setting: Power Switch in OFF position

FW at release: [\*]

Bezel color: [\*]

Bezel marking: 'Compaq Storage works Fibre Channel Switch'

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## PROCESS MANAGEMENT PLAN

PROCESS	PARAMETER	SPECIFICATION	LOT SIZE SAMPLE PLAN	REPORT METHOD	REPORT FREQUENCY	STOP SHIP CRITERIA/ REACTION OUT OF CONTROL CONDITION
BURN-IN	YIELD	PASS/FAIL	[*]	YIELD CHART	[*]	1. [*] PRODUCTION OF PRODUCT. NOTIFY COMPAQ WITHIN 24 HOURS.
GENERIC PRODUCT	DIAGNOSTICS, POWER CYCLING					
SYSTEM - FINAL TEST - COMPAQ PRODUCT	YIELD  FUNCTIONAL TEST	PASS/FAIL	[*] WORK INSTRUCTION	YIELD CHART [*]	[*]	1. IF FAILURES EXCEED [*] DUE TO [*] FAILURES NOTIFY COMPAQ WITHIN [*]. OPEN [*]; DETERMINE ROOT CAUSE AND TAKE CORRECTIVE ACTION FOR ALL [*] FAILURES.
OUT OF BOX AUDIT (OBA)	YIELD  VISUAL- MECHANICAL- COSMETIC	COMPAQ BOM, DESIGN AND COSMETIC SPECS, PACKAGING, LABELS, AND PALLETIZATION	SAMPLE PER [*] POST PACKAGING INSPECTION PROCEDURE	YIELD/DPPM, [*]	[*]	1. ON [*] RELEVANT [*], 2. INSPECT/TEST ALL UNITS IN THE LOT 3. NOTIFY COMPAQ WITHIN [*] WORKING HOURS OF ANY [*] FAILURE OPEN [*]; DETERMINE ROOT CAUSE AND TAKE CORRECTIVE ACTIONS FOR ALL [*] FAILURES.
COMPAQ PRODUCT	INSPECTION, ACCESSORY KITS, PALLETS					
FINAL QUALITY AUDIT	YIELD	PASS/FAIL	[*]	YIELD CHART [*]	[*]	1. ON [*] FAILURE STOP SHIPMENT, 2. INSPECT/TEST ALL UNITS IN THE LOT 3. NOTIFY COMPAQ WITHIN [*] WORKING HOURS OF ANY [*] FAILURE 4. OPEN [*] DETERMINE ROOT CAUSE AND TAKE CORRECTIVE ACTIONS FOR ALL [*] FAILURES.
COMPAQ PRODUCT						

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## PROCESS MANAGEMENT PLAN

PROCESS	PARAMETER	SPECIFICATION	LOT SIZE SAMPLE PLAN	REPORT METHOD	REPORT FREQUENCY	STOP SHIP CRITERIA/ REACTION TO OUT OF CONTROL CONDITION
[*] SUMMARY	N/A	N/A	N/A	LIST	[*] REPORT DUE BY THE [*] OF THE [*] FOR THE PREVIOUS [*] DATA	SUMMARY OF ALL [*] BOTH CLOSED AND OPEN FOR THE MONTH
ECN / PCN LOG	ECNs / PCNs	ALL IMPLEMENTED AND PROPOSED ECN/PCNs WITHIN 90 DAY LEAD TIME	N/A	LIST	[*] REPORT DUE BY THE [*] OF THE [*] FOR THE PREVIOUS [*] DATA	SUMMARY OF ALL ECNs / PCNs IMPLEMENTED TO DATE AND ECNs / PCNs TO BE IMPLEMENTED WITHIN [*] DAYS
DEFECT PARETOS AND CORRECTIVE ACTIONS	DEFECT PARETO FOR TOP DEFECTS CAUSING [*] OF REJECTS AND CORRECTIVE ACTIONS	N/A	N/A	LIST	[*] REPORT DUE BY THE [*] OF THE [*] FOR THE PREVIOUS [*] DATA	SUMMARY OF TOP [*] FROM FINAL [*] TEST, [*], AND CORRECTIVE ACTIONS WITH IMPLEMENTATION DATES FOR EACH [*] [*].
ORT/HASS	PER BROCADE ORT TEST PROCEDURE	PER BROCADE ORT/HASS TEST PROCEDURE	[*] UNDER TEST PER BROCADE ORT/HASS PROCEDURE	NUMBER OF UNITS TESTING, FAILURES, DEFECT PARETO, CORRECTIVE ACTIONS, IMPROVEMENT PLAN	[*] REPORT DUE BY THE [*] OF THE [*] FOR THE PREVIOUS [*] DATA	NOTIFY COMPAQ WITHIN [*] WORKDAYS OF A [*] FAILURE IN ORT TESTING. SUBMIT CORRECTIVE ACTION AND IMPROVEMENT PLANS WITHIN [*] WORKDAYS. [*]
ARR	VERIFIED FIELD FAILURES AND TOTAL FIELD RETURNS	[*]	MONTHLY RETURNS	REPORT RETURNS BY MONTH COMPAQ ARR % INSTALLED BASE AND ALL OTHER ARR%	[*] REPORT DUE BY THE [*] OF THE [*] FOR THE PREVIOUS [*] DATA	IF ARR EXCEEDS LIMIT NOTIFY COMPAQ WITHIN [*] WORKDAYS. SUBMIT CORRECTIVE ACTION PLAN WITHIN [*] WORKDAYS. [*]

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EXHIBIT E  
SERVICES ADDENDUM

This Addendum to the Corporate Purchasing Agreement ("CPA") between Buyer and Seller ("Addendum") provides additional terms and conditions governing the procurement of Services and/or Spares designated in Exhibit 1, "Schedule of Spares" by Buyer. In the case of conflict between the CPA and this Addendum, this Addendum will take precedence. Terms not otherwise defined herein shall have the corresponding definitions ascribed to them in the CPA.

## A. SPARE PARTS AVAILABILITY

1. Seller shall make available for purchase by Buyer and/or Buyer's authorized third party, replacement Products in "new" and/or "like new" condition (collectively designated herein as "Spares") as set forth in the Schedule of Spares. Spares are considered either whole units (switches), or sub-assemblies (ex. [\*]), "Like new" is defined as Spares that have been refurbished to the latest mandatory revision to meet all applicable electrical, mechanical, firmware and cosmetic specifications and Engineering documentation, including the replacement of damaged or missing non-functioning parts.
2. Seller and Buyer agree that Spares will be owned and held by Buyer. Buyer reserves the right to purchase Spares on an "as needed" basis subject to lead time. Buyer will maintain stock on hand sufficient to service the anticipated needs of Buyer's installed base.

## B. PRICING

1. Pricing for Spares is set forth in the Schedule of Spares. Pricing shall remain fixed for the Contract Pricing Period as set forth herein of [\*] days. [\*] days prior to the end of the then current Contract Pricing Period, Buyer and Seller shall meet to review the pricing of Spares. The Schedule of Spares will be amended to reflect any adjustment in pricing the parties mutually agree will apply to the subsequent Contract Pricing Period.
2. If pricing for Spares referenced in the Schedule of Spares cannot be agreed upon for a subsequent Contract Pricing Period, those items of Spares for which pricing can not be agreed upon will be deleted from this Addendum. If pricing for [\*], Buyer shall have the [\*] to [\*] this [\*], upon written notice to Seller, as it [\*].

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3. In the event that No Trouble Found (NTF) returns exceed the terms outlined in section 11.2 of the Corporate Purchase Agreement, the following NTF charges may apply:

	BROCADE		COMPAQ P/'s			NTF Charge
	Order P/N	Mfr. P/N	2-5-2 part #	6-3 part #	Spare part #	
8-port switch	CQ-1630-0002	80-0000106-04	30-56042-01	127552-B21	127660-001	[*]
16-port switch	CQ-1630-0001	80-0000105-04	30-56042-02	127553-B21	127660-002	[*]
FRUS:						
Motherboard	XCQ-000001	60-0000005-01	29-34243-01	401930-001		[*]
CPU Board	XCQ-000002	60-0000006-01	29-34244-01	401931-001		[*]
G-Port Board	XCQ-000003	60-0000007-01	29-34245-01	401932-001		[*]
Power Supply	XCQ-000004	60-0000012-01	29-34246-01	401933-001		[*]
[*]	XCQ-000005	60-0000008-01	29-34249-01	401934-001		[*]
[*]	XCQ-000009	60-0000009-01	29-34468-01	128328-001		[*]

C. DELIVERY

1. Seller agrees to stock replacement inventory of Spares at a minimum of [\*] geographical location of [\*].
2. Seller shall utilize failure data or any other information available to Seller as manufacturer of the Spares, coupled with a non binding forecast supplied by Buyer, to establish proper stocking levels required for Seller to ship [\*] percent [\*] of orders received to the specified location within [\*] business day of order receipt. The [\*] percent [\*] metric applies to all orders transmitted to Seller between the hours of [\*]. on the same business day pst time. Seller shall immediately notify Buyer, in writing, if Seller has knowledge of any event which is reasonably likely to delay any specified delivery.
3. Seller further agrees that it will maintain a standard of [\*] percent [\*] for mistake free order processing and that less than [\*] of Spares delivered to Buyer or Buyer's customer will be [\*]. For purposes of this metric, [\*] is defined as an out of box Spare that is [\*] either due to wrong part shipped, under [\*], incomplete, damaged, or functional failure ([\*] within [\*] following installation). Seller will resolve any order processing errors, delivery issues or [\*], the [\*] after notification by Buyer.
4. Buyer will measure Seller's performance to delivery metrics set forth in C.2 based upon the date stated on Buyer's electronic order. In the event Seller fails to meet these metrics, Buyer may, at its option, (I) establish a new mutually agreed upon delivery schedule for the Spares whereby [\*] for premium transportation required to expedite delivery of such Spares, or (ii) [\*]. If Seller delivers Spares outside of the required delivery "window", Buyer reserves the right to refuse said shipment and return the shipment, freight collect, to the Seller. These [\*] and [\*] are in addition to any other [\*] and [\*] or elsewhere in this Addendum.

D. TIME IS OF THE ESSENCE

Buyer and Seller hereto acknowledge that TIME IS OF THE ESSENCE to this Agreement, and that Buyer will suffer substantial damage in the event Spares are not delivered on time.

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## E. QUALITY

Seller shall ensure that all Spares and/or Services delivered hereunder comply with the CPA "Quality Assurance" Addendum.

## F. RIGHTS AND ASSISTANCE TO [\*]

1. It is mutually agreed between Buyer and Seller that Seller [\*] or [\*] Products or Spares should Seller [\*] herein, and a reasonable cure period of at least [\*]. Should Seller be [\*], Seller will provide Buyer, at [\*], a list of [\*] and the list of [\*] for those [\*]. The [\*] that are not available to Buyer from [\*] other than Seller are to be listed. Those [\*] having generic industry [\*] and available to Buyer shall be [\*] to generic [\*]. Seller further [\*] Buyer with the [\*] for [\*] the [\*] and/or [\*] Products or Spares, along with [\*], etc, of the [\*] involved/required to perform such [\*]. Seller [\*] to the Buyer within [\*] days from Buyer's written request and from Seller's written notification of [\*].
2. Upon mutual agreement, Seller shall, [\*], and upon reasonable notice, provide technical assistance and any [\*] (subject to availability) necessary to [\*]. Seller shall provide this service within [\*] after mutual agreement for on-site support.
3. Upon mutual agreement Seller [\*] Buyer or Buyer's selected [\*] parties in any way with respect to the [\*]. This support will continue during the Term of Availability and for so long as such Products and/or Spares are made available to any of Seller's other customers; [\*].

## G. WARRANTY

1. Seller hereby warrants refurbished Spares for [\*] months from the date of shipment from Seller. Refurbished Spares will be date coded indicating date of repair, to include human readable characters, in English, in plain sight.
2. Seller shall use commercially reasonable efforts to provide Flow-Through Warranty for Spares that are sold to Buyer from Seller utilizing 3rd party suppliers. This warranty passed to Buyer from Seller shall be no less than the warranty provided by the Seller. Such Spares should be noted as such in the Schedule of Spares
3. Buyer may appoint an Authorized Service Agent to administer the warranty process. Seller will recognize said appointment and will assist Buyer's Authorized Service Agent, as required by Buyer, to maintain the warranty process described herein
4. Seller shall bear all warranty costs such as labor, material, and inspection. If Buyer or [\*] any such [\*] them [\*]. Buyer shall bear the cost of shipping Product to Seller's facility and Seller shall bear the cost of shipping Product back to Buyer's facility.

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## H. OUT-OF-WARRANTY SERVICE

1. Spares submitted by Buyer for repair once the warranty period has expired will be in reasonably good condition and repairable. In the event Spares submitted for repair have been damaged beyond repair as determined by Seller, Seller will not be obligated to refurbish such Spares. Seller agrees to notify Buyer's Service Organization within [\*] business days of receipt of discrepant or non-repairable Spares, as long as quantity returned at any one time does not exceed mutually agreed volumes.
2. Seller shall have [\*] business days from the date the Spares [\*] for repair and return to Buyer.
3. Seller hereby warrants Replacement Spares for [\*] months from the date of shipment.
4. Buyer will provide Seller with a non-binding estimated rolling twelve (12) month forecast on a monthly basis.
5. Delivery of repaired Spares by Seller shall be FOB origin. Buyer shall pay all transportation charges and bear all risk of loss or damage during transit

## I. ENGINEERING CHANGES

Seller agrees to provide Buyer's authorized representative all information necessary for Buyer to maintain a complete and accurate revision matrix for all parts supplied to Buyer. The revision matrix allows a Field Engineer to understand the functional relationship between the revision levels of parts in a unit and the revision level of the item being installed. This information allows Buyer to determine if a specific Engineering Change to any part affects the upward or downward compatibility of any part or subassembly in the whole option or device.

## J. ESCALATION

Seller agrees that during the term of this Addendum, it shall designate a Seller Representative who shall act as Buyer's primary contact for any service issues regarding parts procurement, exchange, repair or quality. Seller must prepare and present to Buyer an internal written escalation process and said Representative or designated backup(s) must be available to Buyer, at least by pager, Monday-Friday, 7:00am-7:00pm pst Seller shall provide technical support to Buyer for duration of this Addendum including the [\*] Term of Availability. Seller will resolve all issues deemed to be Priority 1 Product "bugs", correct any problems with production, and provide a service solution to Buyer for its customers. Seller shall acknowledge escalated cases within [\*] business day and both parties shall agree to provide a resolution within a mutually acceptable time to be decided on a case by case basis. At Buyer's request, and if available locally, on-site technical support by Seller shall be made available to Buyer or its authorized third (3rd) party. This will be determined on a case by case basis.

## K. DIRECT PROCUREMENT OF SPARES

EXHIBIT F, SCHEDULE OF SPARES, DATED: \_\_\_\_\_.

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AGREED TO AND ACCEPTED BY:

(SELLER)

COMPAQ COMPUTER CORPORATION (BUYER)

BY: -----

BY: -----

(AUTHORIZED SIGNATURE)

(AUTHORIZED SIGNATURE)

NAME: -----

NAME: -----

(TYPED OR PRINTED)

(TYPED OR PRINTED)

TITLE: -----

TITLE: -----

(TYPED OR PRINTED)

(TYPED OR PRINTED)

DATE: -----

DATE: -----

## EXHIBIT F

## PRODUCT, SPARES AND/OR SERVICES SPECIFICATIONS

## 8 PORT SWITCH

	BROCADE		COMPAQ P/"s					
	Order P/N	Mfr. P/N	2-5-2 part #	6-3 part #	Spare part #	UPC code	JAN code	Rev. Level
w/o GBIC	CQ-1630-0002	80-0000106-04	30-56042-01	127552-B21	127660-001	N/A	N/A	[*]
w/GBIC	CQ-1630-0004	80-0000108-04	N/A	N/A		N/A	N/A	
FR"S:								
Motherboard	XCQ-000001	60-0000005-01	29-34243-01	401930-001		N/A	N/A	
CPU Board	XCQ-000002	60-0000006-01	29-34244-01	401931-001		N/A	N/A	
G-Port Board	XCQ-000003	60-0000007-01	29-34245-01	401932-001		N/A	N/A	
Power Supply	XCQ-000004	60-0000012-01	29-34246-01	401933-001		N/A	N/A	
[*]	XCQ-000005	60-0000008-01	29-34249-01	401934-001		N/A	N/A	
[*]	XCQ-000009	60-0000009-01	29-34468-01	128328-001		N/A	N/A	

## 16 PORT SWITCH

	BROCADE		COMPAQ P/"s					
	Order P/N	Mfr. P/N	2-5-2 part #	6-3 part #	Spare part #	UPC code	JAN code	Rev Level
W/o GBIC	CQ-1630-0001	80-0000105-04	30-56042-02	127553-B21	127660-002	N/A	N/A	[*]
w/GBIC	CQ-1630-0003	80-0000107-04	N/A	N/A		N/A	N/A	
FR"S:								
Motherboard	Same as 8-port							
CPU Board	Same as 8-port							
G-Port Board	Same as 8-port							
Power Supply	Same as 8-port							
[*]	Same as 8-port							
[*]	Same as 8-port							

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## COMPAQ SUPPLIER COMPLIANCE POLICY

Compaq Computer Corporation is proud of its reputation for integrity and honesty in its business dealings. Our corporate culture of fairness and quality is one of our most valuable assets. Maintaining this reputation is an ongoing process, and Compaq considers it to be one of its most important jobs.

It is essential that the highest standards of conduct be observed by Compaq, as well as its suppliers. In fact, Compaq believes that its suppliers must operate at the same high level of integrity as Compaq. In this regard, Compaq has adopted a Supplier Compliance Policy. As part of this policy, Compaq suppliers must comply fully with the requirements set forth below. This policy requires that Compaq suppliers and their employees exercise the highest degree of honesty and integrity in conducting their business with Compaq, as well as other third parties.

- I. ETHICAL STANDARDS Compaq expects its suppliers to avoid conflicts of interest that create opportunities for abuses and allegations of commercial bribery.
  - A. Conflicts of Interest -- Suppliers are expected to avoid any action which may involve, or appears to involve, a conflict of interest with Compaq.
  - B. Business Courtesies -- Business should be won or lost on the merits of the products and services being offered by its suppliers. Therefore, supplier funds or personal funds of its employees should not be used to provide a business courtesy unless the gift is commemorative, ceremonial or customary in nature and has an insubstantial value. Under no circumstances should a kickback or bribe ever be offered to Compaq or its employees.
- II. ENVIRONMENTAL STANDARDS Compaq expects its suppliers to conduct their business in a manner that provides a safe, healthy and environmentally friendly workplace and meets or exceeds all applicable environment and work place legal requirements.
  - A. Hazardous Materials, Air Emissions & Waste Water Discharges -- Compaq requires that each of its suppliers comply with all applicable environmental laws and regulations regarding hazardous materials, air emissions and waste water discharges, including those regarding the manufacture, transportation, storage, disposal, and release to the environment of such materials.
  - B. Health & Safety -- Compaq expects its suppliers to maintain their facilities in a safe and healthy manner and in compliance with all applicable laws and regulations.
- III. EMPLOYMENT STANDARDS Compaq expects its suppliers to foster human dignity by treating their employees fairly and with respect. Compaq requires that its suppliers comply with all applicable national, state and local employment laws.

- A. Child Labor -- Compaq expect its suppliers to refrain from using child labor. Workers can be no less than 14 years of age and not younger than the compulsory age to be in school. Compaq supports the development of legitimate workplace apprenticeship programs for the educational benefit of young people.
- B. Prison Labor -- Compaq expects its suppliers to refrain from utilizing prison or forced labor within their work forces.
- C. Disciplinary Practices -- Compaq expects its suppliers to refrain from using corporal punishment or other forms of mental or physical coercion with their employees.
- D. Working Hours -- Compaq expects its suppliers to comply with all applicable laws regarding compensation for overtime work performed by their employees. Additionally, employees should be allowed at least one day off in seven.

IV. COMPETITIVE STANDARDS Compaq expects its suppliers to compete fairly and vigorously within the marketplace. Compaq discourages anti-competitive practices by its suppliers that inhibit the operation of a free-market economy. Compaq requires that its suppliers comply with all applicable competition laws.

- A. Price fixing -- Compaq expects its suppliers to refrain from collaborating with competitors to fix prices for its goods.
- B. Anti-competitive Practices -- Compaq will not tolerate anticompetitive practices by its suppliers, including efforts to allocate markets or customers among their competitors or to fix bids.

V. CONFIDENTIALITY Compaq requires that its suppliers enforce a policy that ensures the confidentiality of all proprietary or confidential information provided by Compaq.

- A. Non-disclosure Agreement -- Compaq requires that its suppliers comply with the terms of the Confidentiality and Non-disclosure Agreements that have been entered into with Compaq.
- B. Other Confidentiality Obligations -- Compaq requires its suppliers to refrain from making unauthorized disclosures to Compaq of third party confidential information.

VI. COMPLIANCE WITH GOVERNMENT LAWS AND REGULATIONS Compaq expects its suppliers to comply with all applicable laws and regulations governing their business relationships with Compaq. In addition, Compaq requires that its Suppliers agree to implement and maintain a Small, Woman-Owned, Minority Business Enterprise (SWMBE) program in accordance with Federal Acquisition Regulations (FAR) 52.219-0(d)(11)(iii). Upon request by Compaq, Suppliers agree to provide Compaq with written certification of its compliance with the SWMBE Federal Acquisition Regulations.

Compaq is dedicated to maintaining its reputation for fairness and integrity. In many ways the future success of both Compaq and its suppliers depends on our ability to build on these high standards.

The foregoing requirements are not intended to be all-inclusive, and Compaq expects its suppliers to exercise ethical judgment beyond strict compliance with the law, and to be responsive to the concerns of the communities in which they operate. Failure to comply with the above requirements may result in reduction of business with Compaq, or in some instances, termination of your relationship with Compaq. Understanding and complying with the above requirements will help to ensure that our mutual business activities are conducted in the highest ethical and professional manner.

## EXHIBIT H

## DOCUMENTATION, TRAINING AND TECHNICAL SUPPORT

## I. SERVICE AND SUPPORT REQUIREMENTS

Buyer will be responsible for working directly with the End Users, and Seller Support will work directly with Buyer to support Buyer personnel, as necessary. Buyer represents and warrants that it is experienced in, capable of, and staffed to provide, Level 1 and Level 2 support (as defined below). Seller offers training programs to assist in attaining this level of expertise on Seller Products. Seller Support will accept calls for technical assistance only from Level II engineers who have attended Seller instructed training Courses 1 through 3.

Seller will provide Level 3 support (as defined below).

## II. SUPPORT LEVEL DEFINITIONS

## 1.0 LEVEL 1 SUPPORT

Level 1 support is the first line, direct End User contact, most likely via a telephone call handling group provided by Buyer. Level One support includes:

- First contact, direct Buyer/End User interaction
- Information collection and analysis
- Identification of whether the problem is known and has a known solution
- Troubleshooting and problem reproduction
- Problem report administration and tracking

The parties agree that End Users shall not have the right to contact Seller directly for questions related to the Products.

## 2.0 LEVEL 2 SUPPORT

Level 2 support is "technical support" provided by Buyer personnel. Level 2 support is typically provided by experts in the applicable Product and who serve as the escalation point for Level 1. Level 2 support personnel are expected to resolve all known problems, installation and configuration issues, assist in firmware or driver updates at the End User site, search Seller posted Technical Notes and other technical information supplied that will assist in providing problem resolutions. All pertinent data shall be entered in Buyer's problem tracking database.

Should the Level 2 analyst be unable to resolve a problem, either because of lack of expertise, exhausted troubleshooting knowledge, or expiration of the allotted Level 2 resolution time, the Level 2 analyst may escalate the problem to Level 3 for resolution. Level 2 personnel of Buyer will continue to diligently work with Level 3 personnel of Seller to accomplish resolution. Level 2 personnel of Buyer will communicate all resolutions back to the End Users.

Escalations should be presented to Seller engineers in the form of a problem tracking data base record with all pertinent configuration detail and failure information or symptoms documented in detail.

In an effort to maintain an efficient support organization and crisp exchange of information, Buyer will limit the number of support personnel (Level 2) authorized to contact Seller (Level 3) to [\*] and ensure that these personnel have attended courses 1, 2, and 3 taught at the Seller training facility.

### 3.0 LEVEL 3 SUPPORT

Level 3 support is provided by Seller System Engineers (SE) and/or Technical Support Engineers (TSE). Level 3 is the first point of contact for technical issues between Seller and Buyer. Once a problem is accepted by Seller in its sole discretion for escalation to Level 3, Seller is responsible for resolution and will utilize commercially reasonable resources to resolve such problem.

Prior to escalating to Level 3, it is expected that Buyer shall provide the following information and documentation:

- Any error information from the device connected to the switch and from the switch.
- All names and revisions of hardware equipment.
- All firmware revisions of the drivers.
- Any log files from the devices connected to the switch.
- Any trace file from the devices connected to the switch.
- The configuration information of the equipment being used.
- Detailed definition of all steps taken to reproduce and resolve this situation prior to escalation to Level 3.

Assigned Level 3 support personnel (SE and/or TSE) can be contacted via direct dial, email to an established "support" alias, web site initiated input, and by calling Seller's [\*] support number. Direct access to Seller support personnel will be possible during normal Seller's business hours (8 AM to 5 PM PST, M-F). Emergency situations for [\*] problems are handled via [\*] at [\*].

### 4.0 SELLER'S SEVERITY

#### Definitions and Support Goals

The goal for initial response time to all telephone support requests is [\*] or less during normal Seller working hours. For after hours telephone requests, the goal is [\*] or less. The targeted response time for requests submitted by other means, such as email, or fax, is [\*].

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

Severity	Definition	Service Objective	Resolution Time
1	SELLER Product is completely non-functional, or deemed a safety hazard, situation has high impact on development or delivery efforts. Installation problems.	Respond to initial request within [*] during normal SELLER business hours, and [*] for non-business hours. Resources applied until a solution or acceptable work-around is found.	[*] using commercially reasonable efforts.
2	SELLER Product is functionally impaired, has substantially degraded performance but is not completely dysfunctional. There are no available work-arounds. Situation has medium impact on customer activity.	Respond to initial request within [*] during normal SELLER business hours. Resources applied continuously, during business hours, until a solution or work-around is found.	[*]
3	SELLER Product or advertised functionality may be slightly impaired but is operational, has low to no impact on customer activity, and there are work-arounds available.	Resources applied on a priority basis, until a solution or a work-around is found.	[*]
4	Generic questions, and enhancement requests.	Answer generic questions or provide path to answers within reasonable time frames. The SELLER web site will be the prime repository for this type of information. Enhancement requests will be reviewed and implemented in the next major release, where feasible, or to meet specific commitments made.	Commercially reasonable efforts for generic questions. Enhancement requests are processed on a case by case basis.

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TECHNICAL TRAINING PROGRAM  
TRAINING OUTLINE

COURSE	DAYS	COST
1.1 FC & SAN intro: Audience: Sales/Marketing/SE's	1	[*]
1.2 Switch intro & features: Audience: Sales/Marketing/SE's	3	[*]
1.3 Install/Config/Troubleshoot/Mgmt tools: Audience: SE's, Tech support	2	[*]
FULL COURSE	5	[*]

Note: Includes non-reproducible copy of all course materials for each person. Additional binders of training materials may be purchased from SELLER.

Courses will be offered at SELLER's offices in San Jose, CA or at such other facility notified to Buyer from time to time. A minimum of [\*] students will be required to attend, or the course in question may, at SELLER's sole option, be canceled. Buyer agrees that it shall pay any and all travel and lodging expenses related to such training. SELLER will make these courses available to End User customers, on terms to be negotiated at SELLER's then-current rates for end user training courses.

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## EXHIBIT I

## SILKWORM II LABEL MATRIX: COMPAQ

----- POSITIONING -----						
Label Name	Brocade P/N	Compaq Spec #	on Switch	on Carton	on Pallet or Single Shipping Container	Comments
-----						
[*]	56-0001488-01 Rev A	[*]	[*]			Approved (email) 2/25/98
[*]	47-0001351-01 Rev 1	[*]	[*]			Approved (email) 2/25/98
[*]	56-0001486-01 Rev A	[*]	[*]			Approved (email) 2/25/98
[*]	56-0000312-01 Rev 1	[*]	[*]			
[*]	56-0001484-01 Rev A	[*]			X	Approved (email) 4/29/98
[*]	56-0001485-01 Rev A	[*]		[*]		
[*]	55-0000969-01 Rev 1	[*]		[*]		
[*]	56-0000003-01 Rev A	[*]	[*]			
[*]	85-0000003-01					
-----						

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## EXHIBIT J

## PRODUCT AGENCY AND REGULATORY COMPLIANCE

## REQUIREMENTS

COUNTRY	SAFETY	EMC
United States	UL 1950	FCC Part 15 Class A
Canada	CSA 22.2 No. 950	CSA 108.8 Class A
Japan	IEC 60950	VCCI (CISPR-22)
EC and EFTA countries	EN60950	EN 55022:1994/EN50082-1:1992 (CE MARK)
Australia New Zealand International	AS/NZS 3260:1993 IEC 950	AS/NZ 3548 (C-Tick mark) CNS 1348 (BCIQ logo)

## EXHIBIT K

## PACKAGING SPECIFICATION

USE COMPAQ DRAWING NO. [\*] (LATEST REVISION)

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

ELECTRONIC COMMERCE AGREEMENT  
BETWEEN COMPAQ COMPUTER CORPORATION AND  
BROCADE COMMUNICATIONS

This Electronic Commerce Agreement ("Agreement") is made and entered into on \_\_\_\_\_ ("Effective Date"), by and between Compaq Computer Corporation ("Compaq"), a Delaware corporation with offices at 20555 SH 249, Houston, Texas 77070 and Brocade Communications \_\_\_\_\_ a corporation with offices at \_\_\_\_\_, herein collectively referred to as the "Parties".

WHEREAS the Parties desire to transmit and receive data electronically and

WHEREAS the Parties desire to ensure that such transmissions are legally valid and enforceable;

NOW THEREFORE, in consideration of the premises and of the covenants and conditions set forth herein, the Parties agree as follows:

TRANSMISSION REQUIREMENTS. (a) Each Party may electronically transmit to or receive from the other Party through any means of Electronic Commerce defined to include, but is not limited to, Electronic Data Interchange (EDI), Facsimile, Electronic Mail, Internet and World Wide Web, any of the transaction sets ("Electronic Interchanges") listed in Appendix A to this Agreement or such other sets as the Parties agree to in writing from time to time. Any transmission of data that does not conform to the applicable requirements as specified in Appendix A for the type of Electronic Interchange(s) between the Parties, is/are not an Electronic Interchange(s) and shall have no force or effect between the Parties.

(b) Each Party shall adopt as its signature an electronic identification number or code ("User ID") and shall use such signature in each Electronic Interchange with the other Party. The Parties agree that a User ID, when affixed to or contained in an Electronic Interchange, shall be legally sufficient to verify the identity of the transmitting Party and to authenticate the Electronic Interchange. (c) Electronic Interchanges shall not be deemed to have been properly received, and no Electronic Interchange shall give rise to any obligation, until accessible to the receiving Party. Upon proper receipt of any Electronic Interchange, the receiving Party shall promptly transmit a functional acknowledgment or alternate acknowledging Electronic Interchange agreed to by the Parties, which shall constitute conclusive evidence that a Electronic Interchange has been properly received) If acceptance of a Electronic Interchange is required by Appendix A, any such Electronic Interchange that has been properly received shall not give rise to any obligation unless and until the Party initially transmitting such Electronic Interchange has received a business response Electronic Interchange, as specified in Appendix A.

(e) Each Party shall establish reasonable controls to ensure the timely handling of all data transmissions and shall contact promptly the sending Party for corrective action in the event of a transmission error, such as an unintelligible or garbled transmission, or in the event electronic transmission operations are lost. VALIDITY AND ENFORCEABILITY. (a) This Agreement has been executed by the Parties to evidence their mutual intent to create binding obligations pursuant to the Electronic Interchange specifying certain of the applicable terms. Any Electronic Interchange properly transmitted pursuant to this Agreement shall be considered a "writing" or "in writing" and any such Electronic Interchange that contains or has a User ID affixed to it ("Signed Electronic Interchanges") shall be deemed for all purposes (i) to have been "signed" and (ii) to constitute an "original" when printed from electronic files or records established and maintained in the normal course of business.

(b) The Parties agree not to contest the validity or enforceability of Signed Electronic Interchanges under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the Party to be bound thereby. Signed Electronic Interchanges shall be admissible if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceeding to the same extent and under the same conditions as other business records originated and maintained in documentary form. Each Party agrees that it will not contest the admissibility of copies of Signed Electronic Interchanges under either the business records exception to the hearsay rule or the best evidence rule on the basis that such Signed Electronic interchanges were not originated or maintained in documentary form.

3. THIRD PARTY SERVICE PROVIDERS. (a) The Parties may transmit Electronic Interchanges either directly or through third party service providers or networks. Each Party shall be responsible for the costs of any third party service provider with which it contracts and any other costs it incurs in the electronic transmission or receipt of Electronic Interchanges under this Agreement. (b) Either Party may modify its election to use, not use, or change a third party service provider upon thirty (30) days prior written notice to the other Party.

4. OBLIGATION TO MAINTAIN RECORDS. Neither Party has an obligation to maintain the storage of data records or other files for the other Party.

5. GENERAL TERMS AND CONDITIONS FOR PURCHASES AND SALES. This Agreement does not express or imply any commitment to purchase or sell goods or services. Where the Parties mutually agree to engage in such transactions using Electronic Commerce, the general terms and conditions for such transactions shall be those contained in the applicable purchase contract.

6. SECURITY PROCEDURES AND CONFIDENTIALITY OF USER IDS. (a) Each Party shall adopt and use security procedures that are reasonably sufficient to ensure that all transmissions of Electronic Interchanges are authorized and to protect its business records.

and data from improper acc

(b) The Parties agree that User IDs are confidential and shall not disclose the other Party's User ID to any unauthorized par

7. TERM AND TERMINATION. This Agreement shall remain in effect until terminated by either Party with not less than [\*] days prior written notice; provided, however, that any termination shall not affect the respective obligations or rights of the Parties arising under any Electronic Interchanges or otherwise under this Agreement prior to the effective date of terminat

8. LIMITATION OF DAMAGES. Neither Party shall be liable to the other for any special, incidental, exemplary, or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any Electronic Interchanges pursuant to this Agreement, even if the other Party has been advised of the possibility of such dama

9. CONTINGENCIES BEYOND A PARTY'S CONTROL. Neither Party shall be liable for any failure to fulfill its obligations under this Agreement if such failure is caused by the occurrence of any contingency beyond its reasonable control, including but not limited to any mechanical, electronic, or communications failure, that prevents it from transmitting or receiving any Electronic Interchan

10. EXPIRATION OF CLAIMS. No action, regardless of form, arising out of this Agreement may be brought by either Party more than [\*] after the cause of action has arisen.

11. GOVERNING LAW. This Agreement is governed by the laws of the State [\*], U.S.A., excluding its conflict of law rules.

NON-ASSIGNABILITY. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Pa

13. ENTIRE AGREEMENT. The entire understanding between the Parties is incorporated herein and supersedes all prior discussions and agreements between the Parties relating to the subject matter hereto. This Agreement can be modified only by written amendment executed by the Parties, and shall not be supplemented or modified by any course of dealing or trade usa

14. TITLES AND CAPTIONS. All titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend, or describe the scope or intent of its provisi

15. INVALIDITY OF PROVISIONS. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, such provision shall be enforced to the fullest extent permitted by applicable law and the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

16. ADDRESSES AND NOTICES. Written notices required or permitted hereunder, shall be deemed given and received when properly posted by registered or certified mail, postage prepaid, first class, in an envelope properly addressed to the addresses set forth in an Appendix to this Agreement, or such other address, as a Party specifies in writing to the other Party.17. AUTHORITY TO SIGN. The individuals signing this Agreement hereby represent and warrant that they are empowered and authorized to sign on behalf of and bind the Party for whom they have signed.

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

BROCADE COMMUNICATIONS

- -----  
Name:

- -----  
Title:

- -----  
Date:

COMPAQ COMPUTER CORPORATION

- -----  
Name:

- -----  
Title:

- -----  
Date:



ELECTRONIC COMMERCE AGREEMENT  
BETWEEN COMPAQ COMPUTER CORPORATION AND  
BROCADE COMMUNICATIONS SYSTEMS

APPENDIX A

This appendix provides for the Electronic Interchange requirements for the specific means of Electronic Commerce as provided.

31.12 Electronic Data Interchange (EDI) Edifact Standard

The network Compaq will use is [\*] or [\*].

The Electronic Commerce business partners agree to notify each other when there are unforeseen disruptions in normal process or when changes are about to occur that have the potential of disrupting the use of Electronic Commerce for normal business communications.

A Trading Partner Profile shall be received by Compaq Electronic Commerce Services prior to establishing Seller as an Electronic Commerce Trading Partner.

31.12.1 Electronic Commerce Transaction Sets

Below are the transaction sets Compaq supports for Purchasing Activities.  
(Direction is from Compaq's perspective)

Planning Process:

Send [\*] - Planning Schedule(version [\*])

Receive [\*] - Commit signal (version [\*] )

Purchase Order Process

Send [\*] - Purchase Order (version [\*])

Receive [\*] - Purchase Order Acknowledgment (version [\*])

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## Closed Loop Process

Send [\*] - Shipping Schedule (version [\*])

Receive [\*] - Ship Notice (version [\*])

Send and Receive [\*] - Inventory Report (version [\*])

NOTE: Timeline of implementation of Compaq sending [\*] is still to be determined

## Return Material Process

Send/Receive [\*] - Return Material Notification/Authorization

NOTE: Timeline of implementation to be determined

## All Documents

For all documents, the 997 - Functional Acknowledgment will be used. It should be returned immediately and at the SET level.

## 31.13 Electronic Mail

All data transmitted in the form of a business or sales transaction as an obligation from either party through electronic mail must be digitally signed and encrypted using the S/MIME format prior to being transmitted.

## 31.14 Internet and World Wide Web

## 31.14.1 Data Security

All data transmitted in the form of a business or sales transaction as an obligation from either party via the Internet or World Wide Web between the parties shall be considered confidential information. Such information shall be transmitted using a secure internet protocol or be encrypted when it is electronically transmitted or stored as files, whether on a user's PC or a network file share and shall remain encrypted unless it is being accessed by the intended recipient.

If Seller does use Company-Sanctioned Encryption due to domestic or local laws, Seller must have direct dial-up lines over which to transmit the decrypted confidential information and shall be responsible for providing adequate protection for the Seller's confidential information.

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## Access to Seller's URL

Seller shall provide Buyer read access to Seller's URL. Seller shall ensure that Buyer has information and access to the most current URL.

## 31.14.1.1 CUSTOMS AND EXPORT COMPLIANCE

Encrypted communications between the Parties and affiliates in other countries or suppliers or customers in other countries, whether or not those customers or suppliers are subsidiaries or affiliates of United States firms, are subject to United States export licensing requirements.

## EXHIBIT M

## CHANGE OF CONTROL COMPANIES

[\*]

[\*]

[\*]

[\*]

[\*]

[\*]

[\*]

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

PURCHASE AGREEMENT  
FOR PRODUCT  
BETWEEN  
EMC CORPORATION AND  
BROCADE COMMUNICATIONS, INC.

CONTENTS -----	PAGE -----	
1.0	DEFINITIONS .....	2
2.0	SCOPE OF AGREEMENT .....	2
3.0	TERM AND TERMINATION .....	2
4.0	INTELLECTUAL PROPERTY RIGHTS.....	3
5.0	PRODUCT DOCUMENTATION .....	4
6.0	PRICE AND PAYMENT .....	4
7.0	PURCHASE ORDERS .....	5
8.0	SHIPPING, DELIVERY AND PACKAGING.....	5
9.0	INSPECTION AND ACCEPTANCE.....	7
10.0	WARRANTY .....	7
11.0	PRODUCT SUPPORT .....	8
12.0	EMC REQUESTED CHANGES .....	8
13.0	MANDATORY CHANGES .....	9
14.0	SUPPLIER REQUESTED CHANGES.....	9
15.0	PRODUCT WITHDRAWALS .....	10
16.0	CONTINUITY OF SUPPLY .....	10
17.0	PRODUCT QUALITY .....	10
18.0	REVIEW AND PLANNING MEETINGS.....	11
19.0	REPORTS .....	11
20.0	LIMITATION OF LIABILITY.....	11
21.0	CONFIDENTIAL INFORMATION & PUBLICITY.....	11
22.0	INFRINGEMENT .....	12
23.0	FIBRE ALLIANCE MEMBERSHIP.....	12
24.0	MISCELLANEOUS PROVISIONS.....	13
25.0	ENTIRE AGREEMENT .....	14
EXHIBITS		
A	PRODUCT AND REPAIR PRICING.....	
B	PRODUCT SPECIFICATION AND REQUIREMENTS .....	
C	QUALITY ASSURANCE, PRODUCT DEVELOPMENT LIFECYCLE, AND ESCALATION PROCEDURES.....	

D SCHEDULES AND PROGRAM COORDINATION.....  
ATTACHMENT [\*] STANDARD APPROVED  
BY STANDARDS COMMITTEE.....

E SUPPLIER QUALITY PLAN .....

F TECHNICAL SUPPORT .....

G RMA PROCEDURE .....

H PRODUCT REPAIR .....

I END-USER SOFTWARE LICENSE AGREEMENT.....

J DROP SHIP PROCESS .....

K INDEMNITY COUNTRY LIST.....

L ACT AGREEMENT.....

X REGULATORY COUNTRY LISTING.....

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## PURCHASE AGREEMENT

This Agreement, effective as of the date last signed ("Effective Date"), is entered into by and between EMC CORPORATION ("EMC"), a Massachusetts corporation, and BROCADE COMMUNICATIONS, Inc. ("SUPPLIER"), a Delaware corporation.

Now, therefore, the parties agree as follows:

## 1.0 DEFINITIONS

1.1 "Product(s)" means the items listed in Exhibit A, "Product and Repair Pricing". The parties may add other SUPPLIER products to this Agreement as mutually agreed upon in writing, and upon such agreement, these shall also become "Product(s)". In the event there is a conflict between or among any of the headings set forth in Exhibit A, the following rules of construction shall apply:

EMC's specification, which is referenced by EMC's part number and is attached hereto as Exhibit B and incorporated herein by this reference shall control in the event of conflict with SUPPLIER's part number or description. SUPPLIER's part number is referenced for SUPPLIER's convenience only.

1.2 "Product Support" means support that includes, but is not limited to testing, repair, upgrades, reporting, failure analysis, and closed loop corrective action for both hardware and software.

1.3 "Product Documentation" means SUPPLIER's Product specifications, user manual, diagnostic software documentation, and operations manual.

1.4 "End User" means EMC's customer as delivered through EMC's direct or indirect channel.

1.5 "Year 2000 Compliance" means that the Product shall be capable of creating, storing and processing records for the year 2000 and beyond; the Product shall be capable of managing data involving dates including single-century formulas and multi-century formulas; the Product will recognize the rollover to year 2000 and the fact that the year 2000 is a leap year; the Product will continue to function and operate in accordance with the software specifications including performance specifications and will provide the required output; and the Product will experience no interruptions and no abnormal endings and/or incorrect results caused by the use of said software in the year 2000 and thereafter.

1.6 Day shall mean "Business Day" unless otherwise detailed in this Agreement.

1.7 "EMC Logistics Partner" shall mean a business or company as listed in Exhibit A. The list set of entities set forth on Exhibit A may be amended from time to time upon the mutual written agreement of the parties.

## 2.0 SCOPE OF AGREEMENT

2.1 SUPPLIER agrees to sell Products and provide Product Support to EMC in accordance with the terms and conditions of this Agreement. This Agreement is non-exclusive and the parties may enter into similar agreements with other parties. EMC [\*] any Products or Product Support from SUPPLIER hereunder.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 3.0 TERM AND TERMINATION

3.1 Subject to the provisions of sub-Sections 3.2, 3.3, 3.4 and 3.5 below, the initial term of this Agreement shall be for a period of [\*] from the Effective Date. EMC shall have the option to extend this Agreement for successive periods of one (1) year each, subject to negotiated modification, if any, to this Agreement. EMC will give SUPPLIER written notice that it is exercising its option to extend this Agreement no less than [\*] days before the expiration of the then-current term; provided, however, that such renewal is subject to SUPPLIER's right to terminate this Agreement effective at the end of the then-current term by providing written notice of its intention to terminate at least [\*] days before the expiration of the then-current term.

3.2 EMC may terminate this Agreement at any time, without cause, by giving SUPPLIER at least [\*] days prior written notice. Termination of this Agreement will not relieve the parties of any obligations incurred prior to the date of termination.

3.3 In addition to the termination rights specified in sub-Section 3.2, above, either party may immediately terminate this Agreement upon written notice if the other party:

3.3.1 becomes insolvent or bankrupt, files or has filed against it a petition in bankruptcy, or undergoes a reorganization pursuant to a petition in bankruptcy filed with respect to it; provided that such proceeding is not vacated, dismissed or set aside within [\*] days after the date of commencement thereof; or

3.3.2 is dissolved or liquidated, or has a petition for dissolution or liquidation filed with respect to it; or

3.3.3 is subject to property attachment, court injunction, or court order which substantially and negatively affects its operations; or

3.3.4 makes an assignment for the benefit of creditors; or

3.3.5 ceases to function as a going concern or to conduct its operations in the normal course of business.

3.4 Either party may immediately terminate this Agreement upon written notice if the other party fails to perform any of the material obligations imposed upon it under the terms of this Agreement so as to be in default hereunder and fails to cure such default within [\*] days after receiving written notice thereof.

3.5 EMC will, in its sole discretion, have the right to terminate this Agreement and/or any license(s) granted to SUPPLIER by written notice to SUPPLIER, such termination to be effective immediately, if SUPPLIER [\*] or attempts to [\*] under this Agreement without EMC's prior written consent.

3.6 During the termination notice period, EMC may issue additional purchase orders with deliveries to be scheduled not later than [\*] days after the specified termination date.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.



## 4.0 INTELLECTUAL PROPERTY RIGHTS

4.1 Subject to Section 4.2, SUPPLIER grants EMC all appropriate rights and licenses worldwide, at no additional charge beyond its price for the Products under SUPPLIER's applicable patents, copyrights and other intellectual property rights, as necessary for EMC to use, market, promote, lease, sell and distribute both directly and through third parties, evaluate, test, demonstrate, support, maintain, repair and upgrade the Product as provided under this Agreement. Except as expressly herein stated, no other license is granted to EMC.

## 4.2 SOFTWARE LICENSE

4.2.1 SUPPLIER hereby grants to EMC a non-exclusive, worldwide, revocable (except as expressly provided in Section 4.3.4), royalty-free right and license, under all copyrights, patents, patent applications, trade secrets and other necessary intellectual property rights of SUPPLIER, to (i) use, execute, and display all device drivers, firmware and software of SUPPLIER used in the operation and support of the Product, including upgrades, updates, bug fixes or modified versions or backup copies of the same (collectively, the "Software"), in object code form, in conjunction with, or for use with Products, (ii) distribute or license the Software, in object code form, as part of, in conjunction with, or for use with Products sold or leased by EMC to End Users, and (iii) authorize, license and sublicense third parties to do any, some or all of the foregoing. EMC shall distribute the Software to End-Users pursuant to EMC's end user license agreement, attached hereto as Exhibit I, as updated by EMC from time to time.

4.2.2 EMC shall have no right to (i) modify or adapt the Software for other products or create derivative works of the Software, (ii) decompile, reverse engineer, or disassemble the Software for purposes of designing similar products, or (iii) use or distribute the Software other than in connection with the use or distribution of the Products.

4.2.3 EMC agrees that the foregoing licenses do not grant any title or other right of ownership to the Software and that SUPPLIER owns and shall continue to own all right, title and interest in and to the Software.

4.2.4 Upon any termination or expiration of this Agreement, EMC's rights set forth in this Section 4.2 shall terminate except as follows: (i) End Users shall be permitted continued use of the Software in conjunction with the operation of the Products so long as they are not in breach of an end user license agreement substantially similar to EMC's end user license agreement attached hereto as Exhibit I, and (ii) EMC shall retain a nonexclusive, worldwide license to use and execute the then-current version of the Software internally (in object code form only) for the sole purpose of assisting End Users with the maintenance of the Products purchased from EMC.

4.3 SUPPLIER will [\*] EMC [\*] units which [\*], to be functionally equivalent to [\*] units of each new hardware release of the Product(s), for evaluation, testing, demonstration, support and other non-production corporate purposes. SUPPLIER shall sell to EMC certain units of Product incorporating new software releases prior to the general production release date for such versions [\*] at the agreed volume pricing, with the understanding that SUPPLIER will upgrade/re-certify such Product for a mutually agreed upon charge to EMC. SUPPLIER will provide EMC with the opportunity to test each release of the Product before the Product is made widely available for customer distribution. EMC, at its sole discretion, will determine whether to utilize this test opportunity. EMC [\*] for any type of testing, certification or quality assurance for the Product.

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4.4 As between EMC and SUPPLIER, the rights in the Products are and will remain the sole and exclusive property of SUPPLIER and its vendors, if any, whether the Products are separate or combined with any other products. SUPPLIER's rights under this Section, will include, but not be limited to (i) all copies of the Software for the Products, in whole or in part; (ii) all intellectual property rights in the Products; and (iii) all modifications to, and derivative works based upon the Products. Notwithstanding the foregoing, nothing in this Agreement shall be construed to grant SUPPLIER any ownership rights in any "EMC Custom Features" incorporated into any version of any of the Products. EMC Custom Features means any functionality, APIs, source code or schematics which EMC wishes to incorporate into a version of the Products and which SUPPLIER agrees in writing to incorporate into the Products. Any agreed upon EMC Custom Features will be incorporated into this Agreement in Exhibit B or by a written amendment to Exhibit B or Exhibit C, as applicable. All EMC Custom Features shall be solely owned by EMC regardless of inventorship, and shall not be included in any SUPPLIER standard product other than the Product without EMC's prior written consent.

4.5 EMC hereby grants to SUPPLIER, and SUPPLIER hereby accepts a royalty-free, personal, worldwide, non-exclusive, non-transferable right and license to use those EMC marks designated by EMC solely on Product and collateral materials provided to EMC or on behalf of EMC. SUPPLIER shall use EMC, the EMC logo, EMC's brand name for the Product, and any other EMC mark only during the term of this Agreement, only in connection with its manufacture, distribution and support of the Product for EMC in accordance with the terms of this Agreement, and only in accordance with EMC's written guidelines for such usage. SUPPLIER shall not use any such EMC marks in connection with any business conducted by SUPPLIER other than dealings with the Products in accordance with the terms of this Agreement. SUPPLIER agrees that its use of the EMC marks shall not create in its favor any right, title or interest therein and acknowledges EMC's exclusive right, title and interest thereto. SUPPLIER agrees that it will not use, without EMC's prior written consent, any mark which is likely to be similar to or confused with any of EMC's trademarks.

#### 5.0 PRODUCT DOCUMENTATION

5.1 SUPPLIER shall provide EMC with one (1) electronic master copy and twenty (20) hardcopy sets of current documentation for each Product immediately following the execution of this Agreement solely for internal use and for the purpose of the qualification, sale, service, and support of Product under this Agreement. Each set of documentation shall include all similar documentation generally provided to SUPPLIER's OEM customers. Additional copies of Product Documentation and changes thereto may be ordered by EMC. SUPPLIER shall provide EMC with all updates and changes to such documentation, as they become available to SUPPLIER.

5.2 SUPPLIER hereby grants EMC a worldwide, non-exclusive, nontransferable right and license to prepare derivative works based on the Product Documentation for reproduction, publication, training, distribution and use solely in connection with Products purchased under this Agreement; provided, however, that EMC shall have no right to publish or distribute any Product Documentation which is marked as SUPPLIER Confidential Information except as allowed under Section 11.4. EMC shall preserve SUPPLIER's copyright and other notices, and shall not remove such notices from the Product Documentation. However, EMC shall have all right, title, and interest in that portion of the altered Product Documentation prepared by EMC. If EMC modifies and introduces errors into the Product Documentation, SUPPLIER has no liability for such errors.

## 6.0 PRICE AND PAYMENT

6.1 The prices to be paid by EMC for any Products ordered pursuant to this Agreement are set forth in Exhibit A. These prices are the [\*] during the term of this Agreement. SUPPLIER agrees to meet upon reasonable request from EMC to negotiate pricing from time-to-time to meet changing market conditions.

6.2 [\*].

6.3 All prices and fees described or contemplated under this Agreement are in U.S. dollars. Product pricing does not include federal, state, or local excise, sales, or use taxes, except those taxes that are based on SUPPLIER's income. If such taxes are applicable, they shall be set out as a separate line item on SUPPLIER's invoice. EMC agrees to pay, indemnify and hold SUPPLIER harmless from all applicable taxes (other than taxes based upon SUPPLIER's net income), unless EMC procures and provides to SUPPLIER an exemption certificate in a form reasonably acceptable to SUPPLIER and to the appropriate taxing authority.

6.4 Payment terms for all Products sold to EMC by SUPPLIER shall be net [\*] days from the date of [\*] provided that [\*] is issued on or after the day the applicable Product(s) is shipped from SUPPLIER to EMC. Payment of an invoice shall not constitute or imply acceptance of the Product or relieve SUPPLIER of any obligations assumed under this Agreement, nor prevent EMC from asserting any other rights it may have under this Agreement. All payments are to be made to the following lock box:

Brocade Communications, Inc.  
P.O. Box 49026  
San Jose, CA 95161-9026

6.5 Payments may also be made by wire transfer to the account listed below. If EMC elects to make payments by wire transfer, EMC will pay the wire transfer charges.

Comerica Bank-California  
333 West Santa Clara Street  
San Jose, CA 95113  
ABA #: [\*]  
Account Name: [\*]  
Account #: [\*]

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 7.0 PURCHASE ORDERS

7.1 EMC shall submit a written purchase order for all Products ordered from SUPPLIER. Purchase orders shall specify EMC's part numbers, Product model numbers, quantity ordered, shipping destination, carrier, and shipment dates. SUPPLIER shall acknowledge in writing to EMC its receipt and acceptance or rejection of such purchase order within [\*] days of SUPPLIER's receipt of each purchase order. SUPPLIER's acceptance shall neither change nor add to the provisions of this Agreement. For EMC purchase orders for quantities of Products within EMC's forecasts, SUPPLIER shall accept such purchase orders at lead-time, provided such purchase orders comply with the terms of this Agreement. If within [\*] days from SUPPLIER's receipt of a purchase order EMC does not receive written notice from SUPPLIER rejecting the purchase order and specifying the reasons for such rejection, the purchase order shall be deemed accepted by SUPPLIER. In the event of a conflict between the provisions of this Agreement and the terms and conditions of EMC's purchase order, the provisions of this Agreement shall prevail. Any additional terms contained in EMC's purchase orders or SUPPLIER's order acknowledgements shall not be binding unless accepted by the other party in writing.

7.2 Promptly after the Effective Date, EMC shall deliver to SUPPLIER a list of EMC's designated procurement agents and shall update such list from time to time as necessary to keep such list current. EMC's designated procurement agents shall be the only persons authorized to issue written or electronic purchase orders or changes to purchase orders. EMC Logistics Partners shall be authorized to buy Products from Supplier under the prices, payment terms, and shipment terms of this Agreement for the sole purpose of providing customer fulfillment for EMC; provided, however, that SUPPLIER shall be entitled to alter or terminate payment or credit terms with respect to an EMC Logistics Partner that does not make timely payments as specified pursuant to this Agreement.

7.3 EMC agrees to use commercially reasonable efforts to provide SUPPLIER with monthly rolling forecasts for six (6) months of EMC's estimated Product purchase requirements. These forecasts are good faith estimates only and EMC shall not be liable to SUPPLIER for failure to purchase any of the forecasted Product from SUPPLIER.

7.4 Product lead-time shall be no more than [\*] calendar days from receipt of EMC's purchase order until shipment by SUPPLIER to EMC.

## 7.5 RE-SCHEDULE

7.5.1 PUSH-OUT: EMC shall have the right and ability to reschedule any purchase order with no less than [\*] days notice, [\*]. All notices of changes will be communicated in writing or in some other communication acceptable to the parties

7.5.2 UPSIDE: EMC and SUPPLIER shall mutually agree on upside quantities and reasonable buffer stock amounts to be available for delivery to EMC at the end of each calendar quarter as part of the forecasting process.

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7.6 EMC shall have the right to cancel delivery for any purchase order [\*], provided however, that SUPPLIER must be notified in writing of the cancellation at least [\*] days prior to the scheduled ship date. In the event EMC cancels an order more than [\*] days prior to the scheduled ship date without re-booking a net new incremental order of the same or greater quantity for delivery within [\*] days of the originally scheduled delivery date; EMC shall be liable for the [\*] in SUPPLIER'S [\*] as required to support EMC's forecast and purchase orders. SUPPLIER shall use commercially reasonable efforts to mitigate EMC's liabilities for said [\*]. If EMC cancels an order inside [\*] days of the scheduled delivery date, EMC shall be liable for the full purchase price of the cancelled Product.

7.7 Purchase order numbers shall be referenced on all correspondence, invoicing, and packing slips relating to each order.

#### 8.0 SHIPPING, DELIVERY AND PACKAGING

8.1 Delivery shall be F.O.B. SUPPLIER'S United States point of manufacture freight collect. Title and risk of loss shall pass to EMC upon delivery to the carrier. EMC may modify its routing instructions from time to time and will provide SUPPLIER with an updated version of any such modified instructions.

8.2 EMC and SUPPLIER may mutually agree on a drop-ship program in the US which will be attached in Exhibit J. In cases when EMC directs SUPPLIER to ship Product to an End User, [\*], EMC shall provide the name and billing number of its preferred freight carrier. SUPPLIER shall be responsible for any freight charges incurred for Product shipped outside the routing instructions to include, but not be limited to, use of other than EMC preferred carriers. If there are any conflicts between the current version of routing instructions provided to SUPPLIER and the contents of this Section 8, the current routing instructions will prevail.

8.3 Time and rate of delivery are of the essence of this Agreement. The shipment dates shall be those specified in each purchase order issued under this Agreement. Shipments will be considered on time if they are made no more than [\*] business days earlier or no days later than the shipment date specified in the EMC purchase order. If EMC agrees to take partial shipments of any order, each such partial shipment shall be deemed a separate sale.

8.4 If SUPPLIER anticipates or becomes aware that it will not supply the Product on the shipment date acknowledged by SUPPLIER, for any reason to include but not be limited to material shortage, process changes, capacity limitations or causes due to common carriers, SUPPLIER shall notify EMC immediately after SUPPLIER has knowledge of the situation. The notification may be communicated by facsimile, telephone, electronic mail or any other method agreed to by the parties, provided that SUPPLIER shall use reasonable efforts to obtain EMC's actual acknowledgment of the notice of anticipated delay. SUPPLIER and EMC will jointly develop alternatives to resolve any late shipment of the Product, including use of [\*]. SUPPLIER will develop recovery plans with new committed shipment dates and communicate such plans to EMC within [\*] of missed shipments. If SUPPLIER is unable to ship the Product on the acknowledged ship date, through no fault of EMC, EMC may require SUPPLIER to [\*] and [\*] at SUPPLIER'S [\*]. In the event SUPPLIER has an [\*], SUPPLIER shall use an [\*] for [\*] than that of any [\*].

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8.5 All shipments shall be [\*] unless otherwise specified by EMC's designated procurement agents. Prepay and bill shipment shall be used only when specified by EMC's designated procurement agents. In the event that prepay and bill is used, SUPPLIER shall indicate the number of shipping containers, weight of each shipment and carrier name on the invoice. Risk of loss shall pass to EMC at the FOB point.

8.6 Each shipment of the Product by SUPPLIER shall include a packing slip which contains at a minimum, (i) SUPPLIER name, (ii) box number (e.g., 1 of 3, 2 of 3), (iii) receiving address, (iv) EMC's purchase order number, (v) EMC's part number, (vi) shipping quantity, (vii) date of shipment, and (viii) RMA number when applicable per Exhibit G.

8.7 All Product shall be packaged, marked and otherwise prepared in accordance with EMC's specifications attached as Exhibit B and provided to SUPPLIER, all applicable government regulations as attached in Exhibit X, which may be amended by mutual agreement from time to time, and if none are specified or required, with good commercial practices to obtain lowest transportation rates while maintaining the safety of the Product. All Product shall be private labeled in accordance with EMC branding instructions as outlined in Exhibit B. Packaging for export shipments from the United States may also be subject to specific instructions. SUPPLIER will notify EMC of any charges incurred by SUPPLIER for such export shipments prior to invoicing EMC for these charges.

8.8 SUPPLIER will provide the following information about its Product in writing within [\*] of receiving a written request from EMC: i) country of origin; ii) NAFTA preference criteria; iii) harmonized scheduled tariff classification number; and iv) export commerce control number ("ECCN"). Upon request by EMC and subject to EMC's reasonable assistance, SUPPLIER will prepare all international shipping documentation, including commercial invoice, NAFTA certificate, Shipper's Letter of Instruction, Shipper's Export Declaration and any other necessary documentation, for international shipments upon request from EMC.

#### 9.0 INSPECTION AND ACCEPTANCE

9.1 Inspection and acceptance or rejection of the Product by EMC will be made within [\*] days after shipment. Failure to inspect and accept or reject the Product shall not relieve SUPPLIER from warranty responsibility for the Product. Products not accepted or rejected in writing within [\*] days after shipment shall be deemed accepted by EMC. Products not fully complying with the requirements of this Agreement shall be disposed of by EMC, at EMC's option, by either (i) returning the Product(s) to SUPPLIER, at SUPPLIER's expense; (ii) holding the Product(s) at SUPPLIER's expense subject to SUPPLIER's reasonable disposition instructions; (iii) accepting the Product(s) at a mutually agreed upon [\*]; (iv) requiring that SUPPLIER promptly replace the Product(s); or (v) requiring that SUPPLIER provide on-site technical assistance at no charge to EMC. SUPPLIER shall refund any payments made for Product(s) not accepted under this Section [\*] of the returned Product from EMC to SUPPLIER.

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## 10.0 WARRANTY

10.1 SUPPLIER warrants that all Product shipped under this Agreement (except for [\*] or other units provided [\*]) will for a period of [\*] months from the date of shipment of the Product: (i) conform to and perform in accordance with EMC's and SUPPLIER's specifications and descriptions set forth in Exhibit B, SUPPLIER's samples and to any drawings agreed upon between the parties under normal use and operation; (ii) be free from defects in design, materials and workmanship; and (iii) be Year 2000 Compliant. Except with regard to repaired Products, SUPPLIER further warrants that only new materials will be used in the Products. All warranties made in this Agreement shall survive inspection, test, acceptance and payment.

10.2 Notwithstanding the foregoing, SUPPLIER's warranty in 10.1 does not apply with respect to the performance of the Gigabit Interface Converter ("GBIC") module that SUPPLIER may use in the manufacture of the Products, other than the GBIC modules have been tested in SUPPLIER's process as mutually agreed and meet the functional Product specifications in Exhibit B. With regard to GBIC modules, EMC agrees that it shall only be entitled to warranties, if any, as allowed by the manufacturers of such modules. Despite this disclaimer of warranty, SUPPLIER will provide replacement parts at no-charge as a service to EMC for verified GBIC failures that occur within [\*] months of the date of shipment to EMC. In addition, SUPPLIER will use diligent efforts to provide technical assistance and support in the event of any failure of the GBICs to conform to the applicable GBIC warranty including but not limited to providing failure verification and analysis down to the major sub-component level (i.e. laser diode or passive component, etc.).

10.3 Product repaired under this Agreement shall be warranted for the longer of [\*] months or the balance of the original Product warranty.

10.4 SUPPLIER further warrants that, upon payment of the purchase price therefore, EMC shall receive good title to each Product free and clear of all liens, encumbrance, and claims, and in performing under this Agreement, SUPPLIER shall, and each Product delivered under this Agreement shall, comply with all applicable federal, state and local, laws, statutes, ordinances, rules, regulations and codes as listed on Exhibit X and will support EMC's efforts to [\*] upon EMC's written request.

10.5 SUPPLIER further warrants that each Product has been, and will continue to be regulatory compliant as detailed in Exhibit B. Each Product shall bear appropriate labels indicating compliance with the requirements of this Exhibit B.

10.6 The above warranties shall not apply to Products which have been damaged as a result of misuse, neglect, accident; have been improperly wired, repaired, or altered by anyone other than SUPPLIER or an authorized repair agent; or have had their serial numbers removed, defaced or altered. SUPPLIER's sole obligation hereunder shall be, at SUPPLIER's expense(including all transportation expenses) and at SUPPLIER's option, to repair or replace Products covered in the above warranties.

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10.7 THE FOREGOING WARRANTIES SET FORTH IN THIS SECTION 10 ARE IN LIEU OF, AND SUPPLIER EXPRESSLY DISCLAIMS, ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

#### 11.0 PRODUCT SUPPORT

11.1 SUPPLIER will provide technical support to EMC for the Product as described in Exhibit F.

11.2 Upon determination that a Product is defective, EMC must contact SUPPLIER to obtain a Return Material Authorization ("RMA") in accordance with Exhibit G.

11.3 SUPPLIER will provide repair for the Product to EMC in accordance with Exhibit H.

11.4 SUPPLIER shall, provide [\*] instructor level training course for EMC's personnel each year during the term of this Agreement. [\*] Such training shall commence on the date specified by EMC provided that EMC gives SUPPLIER at least thirty (30) days prior written notice. The initial [\*] courses shall cover in detail, the software, the installation, adjustment, operation, test and maintenance of each Product. Subsequent to this initial training, SUPPLIER shall provide [\*] course focused on the software and functionality revisions between each of SUPPLIER's major operating system (OS) dot (.) releases (i.e. 2.2 vs. 2.3). Each class shall accommodate up to [\*] of EMC's employees and shall be conducted in either Massachusetts or California as determined by EMC. SUPPLIER shall provide hard copies of the course outline, training guides, and all other necessary materials for each Product to each trainee and [\*] to EMC. SUPPLIER shall also provide EMC with [\*] complete set of instructor training aids, [\*], used by SUPPLIER for each course during each class. EMC shall have the [\*] and distribute copies of all training materials and related documents and video taped training, under EMC's name, solely to internal trainees in training courses offered by EMC solely in conjunction with EMC's or EMC's authorized resellers' sale, service and support of the Product. Such training courses shall be offered on a no-fee basis. EMC shall not have the right to modify this material other than to change the name and logo. EMC shall provide a reasonable quantity of appropriate Products for use as training aids when classes are conducted at EMC's facility. If requested by EMC, SUPPLIER shall provide more than [\*] training courses pursuant to the provisions of this paragraph, however, EMC [\*] SUPPLIER's [\*] provided in any [\*] month period.

11.5 The initial release of the Product shall comply with [\*] as specified in Exhibit B. From time to time, during the term of this Agreement, the [\*] may update or introduce [\*] applicable to the Product. Whenever this happens, SUPPLIER shall update the Product to be current with these new standards on a mutually agreed schedule after adoption of the standard by the [\*]. In addition, SUPPLIER will use its commercially reasonable efforts to ensure that the Product will remain compatible with both the EMC specified operating system (Symmetrix microcode) and the operating system of the CPU upon which the Product operates. SUPPLIER will use its commercially reasonable efforts to ensure that the compatibility will occur within [\*] days of general availability of the operating system(s). SUPPLIER will use its commercially reasonable efforts to ensure that the Product will be updated to include any mutually agreed "[\*]" requested by EMC in accordance with the milestones set forth in Exhibits B and D.

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11.6 SUPPLIER agrees to offer to sell all generally available product features and functions to EMC as early as it does to any of its other customers. [\*]

11.7 EMC and SUPPLIER agree that SUPPLIER will participate in the EMC ACT Program, and will be provided with EMC loaner equipment for use in SUPPLIER's interoperability test labs under the terms and conditions attached as Exhibit L.

#### 12.0 EMC REQUESTED CHANGES

12.1 EMC may request, in writing, that SUPPLIER evaluate [\*] a change to the method of packing, packaging, or shipment, or evaluate an engineering change to the Product which is not a Mandatory Engineering Change (as defined in Section 13 below). Such request will include a description of the proposed change sufficient to permit SUPPLIER to evaluate its feasibility.

12.2 Acceptance of such proposed changes shall not be unreasonably withheld by SUPPLIER. If such proposed change is accepted by SUPPLIER, SUPPLIER shall notify EMC in writing within [\*] business days from date of request, of the terms and conditions under which it would make the change requested by EMC. SUPPLIER's written evaluation shall state the cost, if any, created by the changes and the date SUPPLIER will be able to implement such change. If the proposed change does result in a cost increase to EMC, EMC must provide prior written approval to SUPPLIER before the change is implemented. In the case of evaluating the effect such changes may have on regulatory agency certifications, the above referenced [\*] day period may be extended to take into account the time periods necessary for those regulatory agencies to carry out their evaluations.

#### 13.0 MANDATORY CHANGES

13.1 In the event that changes are required to make the Products conform to safety/regulatory agency requirements or provided for in Exhibits B and C, as amended from time to time ("Mandatory Engineering Changes"), SUPPLIER shall immediately implement the Mandatory Engineering Changes in new production of the Product without charge to EMC.

13.2 SUPPLIER and EMC shall discuss and mutually agree upon one or more of the following remedies for implementing Mandatory Engineering Changes on previously delivered Product. All such changes shall be [\*] to EMC. SUPPLIER shall use best efforts to immediately implement the selected remedies.

13.2.1 EMC may request an RMA number and return the affected Product to SUPPLIER or an authorized repair facility for repair or replacement. SUPPLIER shall pay the transportation costs of shipping affected Product to and from EMC, EMC customer's locations, or a location designated by EMC.

13.2.2 EMC may request and SUPPLIER will ship Mandatory Engineering Change kits for Products. SUPPLIER shall provide EMC with installation instructions necessary to implement the Mandatory Engineering Changes at EMC's or EMC's customer's locations.

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13.2.3 SUPPLIER may be asked to provide on-site technical assistance at the appropriate location to install the Mandatory Engineering Change.

13.2.4 EMC may request that a SUPPLIER-approved third party maintenance organization install the Mandatory Engineering Change kits for the affected Product.

13.3 SUPPLIER shall provide EMC with written notice of any Mandatory Engineering Changes as soon as possible after SUPPLIER knows of such change.

13.4 EMC shall have the option to cancel open purchase orders without penalty if the Mandatory Engineering Changes are incompatible with or adversely affect performance of Products purchased by EMC and such changes are not made compatible with the Products or EMC is not provided with an acceptable remedy within [\*] calendar days after SUPPLIER receives notification from EMC of its intent to cancel its open purchase orders.

#### 14.0 SUPPLIER REQUESTED CHANGES

14.1 Both parties recognize that there may be optional changes proposed by SUPPLIER affecting form, fit or function which are not Mandatory Engineering Changes ("Optional Engineering Changes"). Optional Engineering Changes may also include changes in processes or materials. SUPPLIER shall provide EMC copies of all Engineering Change Notices affecting Form, Fit, Function (as defined below), active components, or reliability. SUPPLIER will also provide copies of Process Change Notification forms related to mutually agreed upon EMC specific manufacturing or test processes that would affect the following:

14.1.1 Form: Defined as a change in the dimensions or the external appearance of the Product.

14.1.2 Fit: Defined as a change that affects the physical interchangeability of the Product or a field replaceable unit ("FRU") of the Product.

14.1.3 Function: Defined as a change that introduces a capability not available in previous connectivity interface, software, firmware, or operator interface or affects the interchangeability of the FRUs within the Product.

14.2 The notice required in sub-Section 14.1, above, shall include a written description of the proposed change, including the reason for the change and the expected effect of the change on the Product, including its price. SUPPLIER will send such change proposals to EMC's designated supplier engineer, via mail, Email, or fax, as agreed between the parties. SUPPLIER will evaluate whether the changes, if accepted by EMC, would be likely to require EMC to re-qualify the Product and will include a recommendation for or against re-qualification. In the event EMC does not acknowledge or respond to SUPPLIER's written notice within [\*] days, such change will be deemed to have been accepted.

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14.3 If the Optional Engineering Changes to Form, Fit or Function of the Product proposed by SUPPLIER in EMC's sole opinion necessitate evaluation by EMC of compatibility with EMC's systems and/or specifications, SUPPLIER upon EMC's reasonable request, shall provide EMC with up to [\*] sets of evaluation products, parts or designs which incorporate the proposed changes. EMC shall have the right to accept, reject or mutually agree to an alternate plan for SUPPLIER's proposed Optional Engineering Changes and will inform SUPPLIER of its approval or rejection of those changes in writing within [\*] days from receipt of the evaluation products, parts or designs provided to EMC, or within [\*] days of EMC's receipt of notice of such changes, whichever is later. Such approval shall not be unreasonably withheld.

14.4 If EMC rejects the Optional Engineering Changes, EMC may require SUPPLIER to continue supplying the unaltered Product or to provide EMC with opportunities for a last time buy of the unaltered Product.

14.5 SUPPLIER will phase-in changes as mutually agreed accepted by EMC into Product on EMC's open purchase orders and into Product going through SUPPLIER's repair process at no charge.

14.6 Unless EMC specifically rejects such changes, each version of the Product will possess at least the same features and functions, if not more, than are offered by SUPPLIER in the Product or similar product offered by SUPPLIER for the same server/host environment. SUPPLIER shall introduce all new non-exclusive features or functions for the Product as early as the introduction in any other similar SUPPLIER products for that environment.

14.7 Any changed Product resulting from application of these Sections 11, 12, 13 and 14 shall be considered added as Product to this Agreement, and subject to its terms and conditions.

#### 15.0 PRODUCT WITHDRAWALS

15.1 SUPPLIER will notify EMC in writing at least [\*] days prior to Product withdrawal. During the withdrawal notice period, EMC may issue purchase orders with normal lead-time up until the last time buy. Last-time-buy purchase orders must be non-cancelable for any Product requested to be delivered in the last [\*] days of the notice period. Product withdrawal shall not affect SUPPLIER's obligation to fill purchase orders previously issued hereunder.

15.2 SUPPLIER shall provide Product repair service for the Product to EMC at a reasonable price and lead time, until the end of [\*] years after Product withdrawal, pursuant to terms and conditions set forth in Exhibit H, Product Repair. The foregoing notwithstanding, EMC shall have no obligation to order any Product repair service from SUPPLIER.

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## 16.0 CONTINUITY OF SUPPLY

16.1 If SUPPLIER discontinues its manufacturing and selling activities in the field of Product for whatever reason; or EMC becomes entitled to terminate this Agreement because of the occurrence of any of the conditions, with respect to SUPPLIER, cited in Sections 3.3, 3.4, or 3.5:

Then SUPPLIER shall instruct its contract manufacturer to directly accept purchase orders from EMC at the then prevailing prices and terms for the [\*] of (i) [\*] days, or (ii) the remainder of the then-current term of this Agreement (or in the event of the termination of this Agreement under Section 3.4 by EMC for material breach by SUPPLIER, the remainder of the then-current term assuming no termination had occurred).

## 17.0 PRODUCT QUALITY

17.1 SUPPLIER shall participate in the supplier quality plan as required in Exhibit E and shall meet or exceed the quality and reliability requirements stated in Exhibit E.

## 18.0 REVIEW AND PLANNING MEETINGS

18.1 SUPPLIER hereby appoints its Director of Operations as its liaison to monitor SUPPLIER's performance and delivery of Product under this Agreement. EMC hereby appoints its designated Supplier Business Manager as its liaison to monitor SUPPLIER's performance and delivery of Product hereunder. These liaisons will also be responsible for coordinating meetings and discussions and reports provided for in this Agreement. The names, telephone and facsimile numbers of the liaisons will be provided by the parties to each other and the liaisons may be changed by written notice from one party to the other.

18.2 EMC's designated Supplier Business Manager will conduct quarterly supplier performance review and planning reviews with SUPPLIER's EMC account management team. EMC and SUPPLIER will determine the location and times for these meetings. The purpose of these meetings are listed below:

18.2.1 Review SUPPLIER's performance over the past quarter;

18.2.2 Review action items and resolution;

18.2.3 Identify opportunities and areas of improvement;

18.2.4 Agree on commitments, set target dates, and define "persons" responsible;

18.2.5 Review appropriate SUPPLIER reports; and

18.2.6 Review SUPPLIER quality and reliability improvement plans.

18.3 EMC will conduct Quarterly Marketing and Technical Reviews with the appropriate members of SUPPLIER's Technical and Marketing teams. The purpose of these meetings is defined in Exhibit B.1

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18.4 EMC shall use diligent efforts to coordinate the timing of and attempt to consolidate all three (3) meetings as listed in this Section 18 to minimize impact on SUPPLIER.

#### 19.0 REPORTS

19.1 Recurring reports to be provided by SUPPLIER and EMC under this Agreement are listed in Exhibit E, "Supplier Quality Plan," and Exhibit H, "Product Repair". All reports will be made available in electronic form or as otherwise mutually agreed. There shall be no charge to EMC for any reports required under this Agreement.

#### 20.0 LIABILITY FOR INJURY AND LIMITATION OF LIABILITY

20.1 SUPPLIER shall indemnify and hold EMC harmless against all claims asserted by End Users, EMC's resellers or other third parties as a result of SUPPLIER's breach of any of its warranties in Sections 10.4 and 10.5 herein, and SUPPLIER [\*] and [\*] EMC [\*] all claims, suits, losses, expenses and [\*] directly or indirectly caused by any Product or through the [\*] or any [\*], provided that, in either case (i) EMC has notified SUPPLIER promptly in writing of any such claims, (ii) SUPPLIER shall have sole control of the defense of such claims and all negotiations for its settlement and compromise, and (iii) EMC shall reasonably cooperate with SUPPLIER in the defense or settlement of such claims. SUPPLIER shall carry and maintain Workman's Compensation and general liability insurance coverage to satisfactorily cover SUPPLIER's obligations under this Section.

20.2 EXCEPT AS TO SUPPLIER'S OBLIGATIONS UNDER SECTION 20.1 (LIABILITY FOR INJURY) AND SECTION 22 (INFRINGEMENT) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF THIS AGREEMENT OR ANY PERFORMANCE HEREUNDER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20.3 EXCEPT AS TO BREACHES OF SECTION 21 (CONFIDENTIAL INFORMATION & PUBLICITY) AND SUPPLIER'S OBLIGATIONS UNDER SECTION 22 (INFRINGEMENT), IN NO EVENT SHALL SUPPLIER'S TOTAL LIABILITY PER OCCURRENCE UNDER THIS AGREEMENT EXCEED THE [\*] OF (i) [\*], OR (ii) [\*] OF THE TOTAL REVENUES RECEIVED BY SUPPLIER FROM EMC DURING THE [\*] IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE IMPOSITION OF LIABILITY.

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## 21.0 CONFIDENTIAL INFORMATION &amp; PUBLICITY

21.1 Either party may, in connection with this Agreement, disclose to the other party information considered confidential and proprietary information of the disclosing party ("Confidential Information"). Information shall be considered Confidential Information if identified as confidential in nature by the disclosing party at the time of disclosure, or which by its nature is normally and reasonably considered confidential, such as information related to past, present or future research, development, or business affairs, any proprietary products, materials or methodologies, or any other information which provides the disclosing party with a competitive advantage. The receiving party shall protect the disclosing party's Confidential Information with the same degree of care that it regularly uses to protect its own Confidential Information from unauthorized use or disclosure. No rights or licenses under patents, trademarks or copyrights are granted or implied by any disclosure of Confidential Information. Sections 21.1 and 21.2 shall survive the expiration or termination of this Agreement for a period of [\*] years.

21.2 The obligations of confidentiality imposed by this Agreement shall not apply to any Confidential Information that: (a) is rightfully received from a third party without accompanying markings or disclosure restrictions; (b) is independently developed by employees of the receiving party who have not had access to such Confidential Information; (c) is or becomes publicly available through no wrongful act of the receiving party; (d) is already known by the receiving party as evidenced by documentation bearing a date prior to the date of disclosure; or, (e) is approved for release in writing by an authorized representative of the disclosing party.

21.3 Neither party will originate, or authorize, assist or permit another party to produce, any written publicity, news release, marketing collateral or other publication or public announcement whether to the press, actual or potential customers, stockholders, or others, relating to this Agreement, to any amendment hereto or to performance hereunder or to the existence of an arrangement between the parties or shall in any manner disclose, advertise, or publish the fact that SUPPLIER has furnished or contracted to furnish the Products to EMC without the prior written consent of the other party. Notwithstanding anything in this Agreement to the contrary, i) EMC shall not unreasonably withhold approval of disclosure of the Agreement for the purpose of SUPPLIER complying with any SEC or legal regulations and ii) SUPPLIER shall allow EMC to propose the exact timing of the initial public release regarding the relationship provided that EMC provides no less than [\*] days written notice and opportunity to review and approve the release. The existence, terms and conditions of this Agreement are considered the Confidential Information of both parties.

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## 22.0 INFRINGEMENT

22.1 SUPPLIER warrants that neither any Product nor any part of any Product infringes any copyright or trade secret right of any person or entity and that, to SUPPLIER'S knowledge, neither the Product nor any part of the Product infringes [\*] patent or trademark issued in the [\*] set forth in Exhibit K. SUPPLIER shall indemnify and hold EMC harmless from and against any claims, demands, suits, actions or judgments brought against EMC (including reasonable attorney's fees and costs) to the extent such action is based upon a claim that any Product purchased hereunder infringes a patent issued in the [\*] set forth in Exhibit K, or any copyright or trade secret right of any third party, provided that EMC gives SUPPLIER prompt written notice of any infringement claim, available information, reasonable assistance, and sole authority and control to settle or defend the claim, at SUPPLIER's expense. SUPPLIER reserves the right to choose the attorneys who may pursue any action on its behalf, but EMC may be represented in any such action by its own attorneys at its own expense.

22.2 If any Product should become, or in SUPPLIER's opinion is likely to become, the subject of claim for infringement of a patent, copyright, or any intellectual property right of any third party, SUPPLIER shall, at SUPPLIER's expense and option either procure for EMC the right to continue using the Product, or replace or modify the Product so that its use and resale becomes non-infringing, provided that any replacement or modified Product meets substantially the same specifications as the original, maintains the same form, fit, function and quality, [\*]. If SUPPLIER is unable to accomplish either remedy set forth in this Section, then SUPPLIER shall grant EMC a credit for the then-current purchase price of a replacement Product and accept its return.

22.3 SUPPLIER shall have no liability to EMC to the extent that a claim of infringement is based upon: (i) compliance with specifications or designs provided by EMC; (ii) the combination of the Product with other product or devices not purchased hereunder where the Product itself would not be infringing; or (iii) modifications of the Product made by EMC where unmodified Product would not be infringing.

22.4 THE FOREGOING PROVISIONS OF THIS SECTION 22 STATE EMC'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED INFRINGEMENT BY THE PRODUCTS OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

## 23.0 FIBRE ALLIANCE MEMBERSHIP

23.1 During the term of this Agreement, each party will maintain a corporate voting membership in the Fibre Alliance or it's successor, and shall perform all obligations, including payment of dues and attendance at meetings, required to keep its membership in good standing. Each party agrees to cast a vote on all matters that come before the alliance, but each party will vote independently of the other party.

## 24.0 MISCELLANEOUS PROVISIONS

24.1 This Agreement shall be governed by and construed in accordance with the laws of the state of [\*] without regard to conflict of laws principles.

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24.2 The parties are and shall remain at all times, independent contractors in the performance of this Agreement and nothing herein shall be deemed to create a joint venture, partnership or agency relationship between the parties. Neither party shall have the right or authority to assume or to create any obligation or responsibility, express or implied, on behalf of the other except as may be expressly provided otherwise in this Agreement. Each party shall be solely responsible for the performance of its employees hereunder and for all costs and expenses of its employees, to include but not be limited to employee benefits.

24.3 The failure of either party to insist upon or enforce strict conformance by the other party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment of such party's right unless made in writing and shall not constitute any subsequent waiver or relinquishment.

24.4 To be valid, amendments or modifications to the Agreement must be in writing and signed by authorized representatives of both parties. Any verbal agreements, discussions, and understandings, expressed or implied, shall not constitute amendments to this Agreement.

24.5 If any provision of this Agreement is finally held by a court of competent jurisdiction to be illegal or unenforceable, the legality, validity, and enforceability of the remaining provisions of this Agreement shall not be affected or impaired.

24.6 The provisions of this Agreement which by their nature survive termination or expiration of the Agreement, including but not limited to the provisions of Section 1 (Definitions), Subsection 3.6 of Section 3 (Term and Termination), Section 4 (Intellectual Property Rights), Subsection 5.2 of Section 5 (Documentation), Subsection 6.2, 6.4, and 6.5 of Section 6 (Price and Payment), Section 9 (Inspection and Acceptance), Section 10 (Warranty), together with Exhibit X, Subsections 11.1, 11.2 and 11.3 of Section 11 (Product Support), Subsection 15.2 of Section 15 (Product Withdrawals), Section 16 (Continuity of Supply), Section 20 (Limitation of Liability), Section 21 (Confidential Information), Section 22 (Infringement), together with Exhibit X, Section 24 (Miscellaneous), Section 25 (Entire Agreement), Exhibit F (Technical Support), Exhibit G (RMA Procedure), Exhibit H (Product Repair), and Sections 9, 10, 11, 12, 13, 14 and 15 of Exhibit L (ACT Product Test Agreement) of this Agreement shall survive the termination or expiration of this Agreement. Outstanding purchase orders accepted by SUPPLIER shall survive the termination of this Agreement, unless EMC cancels the purchase orders.

24.7 Neither party shall be responsible for any delay in performing this Agreement to the extent that such delay is caused by fire, flood, hurricane, earthquake, explosion, war, strike, embargo, government law or regulation, action of civil or military authority, or act of God.

24.8 Neither party may assign any rights hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any assignment of rights shall not work as a novation of obligations hereunder without written agreement. Any attempt to assign any rights, duties or obligations hereunder without the other party's written consent will be void. Notwithstanding the above, either party may assign this Agreement to a surviving entity in connection with any merger, acquisition or consolidation of not less than a majority ownership in the merged, acquired or consolidated company by the surviving entity.

24.9 If either party commences litigation to enforce any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses of litigation, including fees and expenses of any appeal.



24.10 Unless otherwise expressly provided for, all notices, requests, demands, consents or other communications required or pertaining to this Agreement must be in writing and must be delivered personally or sent by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth below, or to any other address given by either party to the other party in writing:

SUPPLIER: Brocade Communications, Inc.  
1901 Guadalupe Parkway  
San Jose, CA 95131  
Attn: Chief Financial Officer

EMC: EMC Corporation  
171 South Street  
Hopkinton, MA 01738  
Attn: VP Supply Base Management Commercial  
CC: Chief Counsel

In case of mailing, the effective date of delivery of any notice, demand, or consent shall be considered to be 5 days after proper mailing.

24.11 Technical Contacts

With respect to all other communications between the parties, the principal contacts are noted below:

SUPPLIER: Brocade Communications, Inc.  
1901 Guadalupe Parkway  
San Jose, CA 95131  
Attn: EMC Program Manager

EMC: EMC Corporation  
171 South Street  
Hopkinton, MA 01738  
Attn: Brocade Program Manager - Supplier Base  
Technical  
Attn: Brocade Program Manager - Open Systems  
Engineering

This information may be changed by written notice between the parties and without the necessity of amending this Agreement.

24.12 The section and paragraph headings of this Agreement are intended as a convenience only, and shall not affect the interpretation of its provisions.

24.13 The parties agree that the terms and conditions of this Agreement shall prevail, notwithstanding the contrary or additional terms in any purchase order, sales acknowledgment, confirmation or any other document issued by either party effecting the purchase and/or sale of Products.

24.14 Neither party will export, re-export or resell any Product or technical data without first complying with all applicable export laws, orders and regulations and obtaining all necessary governmental permits, licenses and clearances.

24.15 Nothing in this Agreement shall be construed as preventing EMC from developing, acquiring, marketing, selling, supporting or maintaining products similar to or competitive with Product, or from entering into agreements with or providing specifications for competitors of SUPPLIER, provided that in so doing, EMC does not breach its obligations under Section 21.

25.0 ENTIRE AGREEMENT

25.1 The following exhibits are part of this agreement and are incorporated herein by this reference:

- A PRODUCT AND REPAIR PRICING.....
- B PRODUCT SPECIFICATION AND REQUIREMENTS .....
- C QUALITY ASSURANCE, PRODUCT DEVELOPMENT LIFECYCLE,  
AND ESCALATION PROCEDURES.....
- D SCHEDULES AND PROGRAM COORDINATION.....
- ATTACHMENT [\*] STANDARD APPROVED  
BY STANDARDS COMMITTEE.....
- E SUPPLIER QUALITY PLAN
- F TECHNICAL SUPPORT
- G RMA PROCEDURE
- H PRODUCT REPAIR
- I END-USER SOFTWARE LICENSE AGREEMENT.....
- J DROP SHIP PROCESS
- K INDEMNITY COUNTRY LIST.....
- L ACT AGREEMENT.....
- X REGULATORY COUNTRY LISTING.....

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

25.2 This Agreement, including all Exhibits, constitutes the entire Agreement between the parties and supersedes all prior or contemporaneous agreements, discussions, and understandings between the parties, either express or implied.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first above set forth.

SUPPLIER CORPORATION

EMC CORPORATION

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Please Print or Type)

Name: \_\_\_\_\_  
(Please Print or Type)

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

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

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

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

EXHIBIT A  
 PRODUCT AND REPAIR PRICING  
 EMC APPROVED LOGISTICS PARTNERS

PRICING Model # -----	Description -----	Unit Price -----
EM-2802-XXXX	16 Port Switch, [*]	
EM-2802-YYYY	16 Port Switch, [*]	
X1006	SWL GBIC* single	[*]
XBR-000023	LWL GBIC** single	[*]
XEM-000010	Power Supply FRU, EMC Color	[*]
XEM-000003	Fan Assembly	[*]
SW-20000X-XX	Extended Fabric License Upgrade Key 2.x	[*]

\* SUPPLIER to use [\*] SWL GBIC's as primary source, [\*] as secondary source. All GBIC's, integrated and FRU's, to be tested as specified in Exhibit C.

\*\*SUPPLIER to use [\*] LWL GBIC's as primary until [\*] is fully qualified. All GBIC's, integrated and FRU's, to be tested as specified in Exhibit C.

EMC APPROVED LOGISTICS PARTNERS

[\*]  
 EMC to provide details within 30 days of the Agreement execution.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT B:  
PRODUCT SPECIFICATION AND REQUIREMENTS

This Specification and Requirements document describes the progression of features required by EMC to form a departmental-level switch product. Section 1.0 describes the initial product EMC will OEM from SUPPLIER. Subsequent sections describe the follow-on actions necessary to fully develop the required product.

1.0 PHASE I REQUIREMENTS:

The following items to be available for EMC General Availability per the schedule defined in Exhibit D.

1.1 PRODUCT DESCRIPTION

EMC will initially OEM the model [ \* ], [ \* ]. This will be available as two different model numbers. [ \* ] and will be painted in EMC colors, as detailed by EMC specifications. All licensable software components will be licensed and enabled. The combination of hardware, firmware, and software revisions for Product will be under EMC control.

-----		
PACKAGING		
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	[ * ]	[ * ]
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	[ * ]	[ * ]
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	[ * ]	[ * ]
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	[ * ]	[ * ]
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DESIGN		
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POWER		
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	[ * ]	[ * ]
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REGULATORY COMPLIANCE		
-----		
	[ * ]	[ * ]
-----		

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 1.2 FIBRE ALLIANCE COMPATIBILITY

SUPPLIER shall implement all [\*], etc.) as defined in Attachment Y (included in exhibit D) and delivered as part of [\*].

## 1.3 EMC CUSTOM FEATURES:

## 1.3.1 [\*]

SUPPLIER shall cooperate with EMC to create [\*] capability and [\*] capability for maintenance of the Product. [\*] is the capability [\*] with the Product. [\*] is the capability [\*] configure, maintain, or diagnose issues. This functionality will be a combination of SUPPLIER software and EMC software. The SUPPLIER commits to work with EMC to design and implement such capability. It is agreed that only the specific EMC implementation of [\*] is an EMC Custom Feature. This functionality is required in Phase I release of the Product.

## 1.3.2 ADDITIONAL

Additional EMC Custom Features will be defined through the course of this project and be added to this Exhibit from time to time as an amendment to this Agreement.

## 2.0 PHASE II REQUIREMENTS

The following items are to be available for EMC General Availability per the schedule defined in Exhibit D.

## 2.1 GENERAL REQUIREMENTS:

2.1.1 [\*]: Product will support a minimum of [\*] each with at least [\*] to support maximum performance [\*]

[\*] will be available with the [\*]

2.1.2 [\*] support: [\*]

2.1.3 [\*]

2.1.4 [\*]

2.1.5 [\*]

2.1.6 [\*]

2.1.7 [\*]

2.1.8 [\*]

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 2.2 API REQUIREMENTS:

[\*] will be supplied at a minimum on the following [\*]. The implementation of these [\*] will not rely on [\*]. Additional [\*] will be supported in the future. All of the aforementioned is related to [\*]. [\*] shall be enabled at a future date when available [\*].

SUPPLIER will provide [\*] for Product that allows for control and monitoring of the features identified below.

[\*]

[\*] considers the deployment of the above [\*] to be separate and distinct from any [\*] for purposes of internal development of [\*] and [\*] which invoke [\*] on negotiated [\*], reasonably acceptable [\*]. Such [\*] will include a [\*] to distribute the [\*] of version of the [\*] solely as incorporated into the [\*] and as incorporated into a [\*] to be distributed to [\*] (provided that such [\*] may not be [\*]). Furthermore, [\*] will [\*] the [\*] on a [\*] to [\*] on negotiated [\*] to [\*]. [\*] shall not [\*] that [\*] recommends, provided that nothing herein shall be construed to obligate [\*] to [\*] if 1) [\*] that such [\*] would result in [\*] or [\*] protection of [\*] or 2) cause the [\*] to be disclosed to [\*].

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 3 PHASE III REQUIREMENTS

The following items to be available for EMC General Availability per the schedule defined in Exhibit D.

## 3.1 GENERAL REQUIREMENTS:

- 3.1.1 E-Port Compatibility Features:  
[\*]
- 3.1.2 Fibre Alliance:  
[\*]
- 3.1.3 EMC Custom Features:  
[\*]

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.



## 3.2 API REQUIREMENTS:

[\*]

Functions:  
 [\*]

## 4.0 PHASE IV REQUIREMENTS:

The following items are to be available for EMC General Availability per schedule defined in Exhibit D.

## 4.1 GENERAL REQUIREMENTS:

## 4.1.1 [\*]:

SUPPLIER shall implement [\*] on all [\*], [\*]. Specific design changes to be detailed at a design review to be held between the companies not later than [\*].

Software test and diagnostic support for this function shall be provided with Fabric OS [\*].

4.1.2 Fibre Alliance:  
[\*].4.1.3 Performance monitoring:  
[\*]4.1.4 [\*] support:  
[\*]

## 4.1.5 [\*]:

4.1.6 EMC Custom Features:  
[\*]

## 4.2 API REQUIREMENTS:

[\*]  
 FUNCTIONS:  
 - [\*]

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 5.0 SUPPLIER ENHANCEMENTS AND CHANGES TO PRODUCT

SUPPLIER will provide EMC information about the features, functions and products described in Section 11.6 of the Agreement. Information about these changes shall be provided in the form of a specification and in a timely manner to allow EMC to comment and react to the proposed enhancements and or changes.

SUPPLIER shall allow EMC, as early as exposure to others, to review and shall include EMC as a participant in any specification or presentation made to industry standard bodies or consortiums from SUPPLIER'S initiation of the initiative. Such initiatives as plug-fests, SNIA proposals, Focus-Group work, etc. shall be included.

EXHIBIT C:  
QUALITY ASSURANCE, PRODUCT DEVELOPMENT LIFECYCLE, AND  
ESCALATION PROCEDURES

1.0 QUALITY ASSURANCE

1.1 [\*] PROCESS

SUPPLIER shall perform a [\*] on [\*] whenever a [\*] is initiated. Any [\*] within the documented [\*] shall be identified and corrected [\*].  
SUPPLIER shall perform a mutually agreed upon [\*] whenever [\*] is initiated. Any failures shall be identified and corrected [\*].

1.2 MANUFACTURING PRODUCTION TEST PROCESS

1.2.1 SUPPLIER [\*].

1.2.2 SUPPLIER [\*].

1.2.3 SUPPLIER [\*].

1.2.4 SUPPLIER [\*].

1.3 SPARE PARTS

Supplier shall test spare parts in [\*].

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 2.0 OVERVIEW OF PRODUCT DEVELOPMENT LIFE CYCLE

Each of the product phases for PRODUCT will go through design, development, and delivery phases. These design, development, and delivery phases are outlined for the purpose of determining EMC and SUPPLIER responsibilities.

### 2.0.1 CONCEPT EXPLORATION PHASE

This phase is used to scope the interdependencies of various pieces of Product and complete the initial design and specification work for the development of Product. It will result in requirements.

### 2.0.2 REQUIREMENTS PHASE

This phase is used to define and document Detailed Requirements (Functional Specifications) for SUPPLIER's Product.

### 2.0.3 DESIGN PHASE

This phase is used to complete the design effort and produce final versions of detailed requirements documents and test plan.

### 2.0.4 IMPLEMENTATION PHASE (ALPHA)

This phase is used to develop and test of individual components. Combine and test components as a functionally complete product. The Product delivered at the end of this phase is considered 'Alpha'.

### 2.0.5 INTEGRATION AND VERIFICATION PHASE

This phase is used to integrate SUPPLIER's Product with EMC hardware and software, including performance analysis and tuning of SUPPLIER's Product and target operating system. Verification testing to ensure that SUPPLIER's Product meets their stated requirements. The Product delivered at the end of this phase is considered 'Beta'.

### 2.0.6 BETA PHASE

The Beta Phase starts upon delivery by SUPPLIER of the Beta version of SUPPLIER's Product and ends with the final acceptance of SUPPLIER's Product by EMC. The Beta Phase will be performed under responsibility of EMC. EMC will provide technical support for EMC software and hardware. SUPPLIER will provide technical support for Product.

### 2.0.7 GENERAL AVAILABILITY (GA)

Complete and close the Beta Phase. SUPPLIER will provide EMC with Product for EMC first article acceptance testing.

## 2.1 PROGRAM MONITORING

The appropriate Phase for each SUPPLIER's Product will contain a more detailed description of the SUPPLIER's Product "Product Definition", identify project coordination contacts and specify project deliverables of SUPPLIER and EMC and their completion dates. The appropriate Product Definition for each release of SUPPLIER's Product, together with the body of this document, will be the basis and guide for conducting the Program Monitoring.

An initial version of the appropriate Product Definition will be created before the start of each release. An updated version will be created upon completion of the Concept Exploration phase. Further detailing and refinement will take place during the project as needed, in mutual agreement between EMC and SUPPLIER.

## 2.2 PROJECT DELIVERABLES AND ACCEPTANCE CRITERIA

This section gives an overview of the deliverables of the various project phases and the acceptance criteria that will be applied to these deliverables. A more detailed specification of deliverables will take place as part of the project planning and scheduling process.

### 2.2.1 CONCEPT EXPLORATION AND REQUIREMENTS PHASES

#### SUPPLIER deliverables

Requirements (Functional Specifications): This document will formulate the requirements for each of the features. In addition, requirements in the following areas may be included:

Description of each SUPPLIER component specific utility, including command line syntax gui descriptions, general functional description, and diagnostic strategy.

Description of the fault limiting and error recovery policies.

Revisions of the Requirements will be issued during the project as needed. Both EMC and SUPPLIER shall agree upon revisions.

#### EMC deliverables

The Product Specification document is written by EMC to provide SUPPLIER with input covering at least the following subjects:

Target Platform Identification.: What hardware and software platforms and configurations must be supported.

Performance Requirements: Expected performance of the Product and how performance shall be measured.

Applicable Standards: What industry standards are applicable for this product and how conformance shall be determined.

Enumeration and description of product features deemed essential by EMC.

Product packaging and installation requirements.

Acceptance Criteria: A specification of detailed acceptance criteria for Product, not covered by this document (if any).

#### Pass Criteria of Phase

Detailed Requirements documents has been delivered from SUPPLIER to EMC and EMC provides written approval of Requirements document.

The other deliverables described above have been delivered and meet the definition of content as given above.

### 2.2.2 DESIGN PHASE

#### SUPPLIER deliverables

A detailed Engineering Specification shall further breakdown the requirements document from the Concept Phase. The document will provide reasonable evidence that the defined requirements will be met. The format of the documents is left to the discretion of the responsible designer.

#### EMC deliverables

Review and approve design document and provide feedback.

#### Pass Criteria of Phase

The deliverables mentioned above have been delivered with EMC requested changes made and meet the definition of content as given above.

### 2.3.4 IMPLEMENTATION PHASE (ALPHA)

#### SUPPLIER Deliverables

The Test Plan will describe the manner in which the Integration and Verification Test of SUPPLIER's Product is performed and formulate the pass criteria for these test activities. It will cover functional conformance tests, load/stress tests, performance tests and white-box tests (Targeted Tests). It will not contain a detailed description of individual test cases. Revisions of the Test Plan will be issued as needed. Both EMC and SUPPLIER shall agree upon revisions.

#### Test Tools

Alpha version of Product: This will be a functionally complete, but neither fully tested nor performance tuned version of SUPPLIER's Product. It will include preliminary machine readable documentation (installation guidelines, online help, end-user documentation) and test report. The test report will include, all known bugs of the Alpha Version and pass or fail status against test plan as well as why failures occurred.

#### EMC Deliverables

There are no new EMC deliverables in this phase, but previously supplied deliverables may have to be updated.

#### Pass Criteria of Phase

Test plan and Test report delivered.

SUPPLIER Alpha Version of Product has been delivered and successfully passes the Alpha test suite.

Concurrence between EMC and SUPPLIER that any exceptions noted in the Test Report or outstanding Incident Reports are reasonable.

Concurrence between EMC and SUPPLIER that the Test Plan objectives have been met.

The other deliverables described above have been delivered and meet the definition of content as given above.

## 2.2.4 BETA PHASE

## Beta Objectives

Validate customer requirements

Validate new function in different real-world applications/environments

Generate customer success stories and references

Review documentation set

Validate support process

Validate training

Validate any escalation process between companies

## Beta Program Entrance Criteria

## EMC

1. Internal Sales Order generated
2. EMC agreement on level of function and platform support
3. Signed Beta/ACT/Non-Disclosure Agreement from Customers

## SUPPLIER

1. Engineering Quality Assurance underway, with all acceptance tests executed.
2. Documented List of Known Defects
3. Draft Install Document
4. Draft User Document
5. Draft Release Notes
6. No Severity 1 defects  
SUPPLIER deliverables

User Guide (DRAFT).

Updated Test Report.

Updated requirements (Functional Specification)

Beta Version of Product, including documentation: Verification Test Suite and Test Reports as described above will be delivered as part of the Beta Version. It will also include Machine Readable Documentation (release notes with build and installation guidelines, online help, end-user documentation - versions from which SUPPLIER's Product are derived, and a description of software specific deviations).

The Beta Phase starts upon delivery by SUPPLIER of the Beta Version of software and/or hardware. The Beta Phase will be performed under responsibility of EMC and end upon final acceptance of SUPPLIER's Product by EMC. SUPPLIER will provide technical support and will modify SUPPLIER's Product to resolve any exceptions uncovered during this phase.

EMC deliverables

Beta Agreements signed by customers.

Pass Criteria of Phase

Beta Program Exit Criteria as defined by EMC

SUPPLIER

All Documentation revised with updates

Written Known Defect List

Beta Site Summary Reports

No Sev 1 or Sev 2 Defects(unless exception) - Systems Outage or System Degradation

No Data Corruption

No Application Failures

SUPPLIER start initiation of general availability

items above have been delivered and meet the definition of content as given above.

2.2.5 GENERAL AVAILABILITY

SUPPLIER deliverables

Updated Test Report.

Final version of SUPPLIER's Products ready for general availability.

EMC deliverables

Written approval to SUPPLIER that all obligations for Phase have been met.

Pass Criteria of Phase

Items above have been delivered and meet the definition of content as given above.

2.3 OVERALL RESPONSIBILITIES

This section will cover the deliverables of both companies required to develop SUPPLIER's Products. It will also outline the phases leading to the development of the final products.



## SUPPLIER responsibilities

SUPPLIER will develop the SUPPLIER software/firmware and hardware components and ensure compatibility with the EMC hardware and EMC software and Fibre Alliance.

The SUPPLIER's Product will be developed at the SUPPLIER facilities, using development and test systems provided by SUPPLIER.

SUPPLIER will provide, test plans, definition of test environment and maintenance documentation to EMC.

SUPPLIER will test and validate the SUPPLIER's Product and provide EMC with test reports.

SUPPLIER shall implement all current and future Fibre Alliance content in accordance with this Agreement.

## EMC responsibilities

EMC will review and provide input to SUPPLIER requirements document.

EMC will provide SUPPLIER employees with relevant technical information on the EMC hardware and software needed to perform the development of the SUPPLIER's Product, and contribute to the technical design and decision process by participating in technical meetings.

EMC will also perform reviews and acceptance testing (after the delivery of the Alpha code) on an ongoing basis throughout the entire process of the development of SUPPLIER's Product by SUPPLIER. EMC testing will not replace any testing done by SUPPLIER.

The Beta Test will be performed and arranged by EMC.

In order to fulfill these tasks in an efficient manner and to enable transfer of software related technology, EMC employees may work with SUPPLIER employees at SUPPLIER facilities and/or EMC facilities during the project. Detailed agreements will be reflected in the appropriate Product Definition for each phase of the project.

3.0 PROBLEM ESCALATION AND REPORTING

3.1 PROBLEM SEVERITY LEVELS AND RESPONSE TIME

- 3.1.1 SUPPLIER will provide support to EMC [\*].
- 3.1.2 SUPPLIER will respond and engage within [\*] of EMC contacting SUPPLIER in regard to a defect.
- 3.1.3 The incident priority scheme described below will be used.

Severity Level 1: [\*].

Severity Level 2: [\*].

Severity Level 3: [\*].

Severity Level 4: [\*].

SUPPLIER will use its best efforts to fix Priority 1 incidents and commercially reasonable efforts for Priority 2, 3, and 4 incidents reported by EMC engineering within the times listed below:

Severity	Time to fix
1	[*]
2	[*]
3	[*]
4	* [*]

\* will be [\*]

3.2 CUSTOMER SERVICE ESCALATION PROCEDURE

- 3.2.1 EMC Customer Escalation requirements are defined in Exhibit F, Technical Support

3.3 ENGINEERING ESCALATION PROCEDURE

3.3.1 Contacts:

SUPPLIER will identify hardware and software engineering resources to work with EMC on engineering issues. At least [\*] and [\*] shall be [\*] to SUPPLIER's engineering contact.

3.3.2 [\*] resources:

[\*]

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT D:

SCHEDULES AND PROGRAM COORDINATION

1.0 SCHEDULE

The following schedule framework will define the delivery dates for the development and delivery phases as defined in Exhibits B and C. Within these phases, additional specifications and technical requirements are expected to be needed beyond the high-level requirements defined in Exhibit B. These specifications and requirements will be provided by EMC along the course of the project and will become part of the product requirements.

	Fabric OS -----	SUPPLIER Code Freeze -----	Beta Start -----	GA date* -----
Phase I	[*]	[*]	[*]	[*]
Phase II	[*]	[*]	[*]	[*]
Phase III	[*]	[*]	[*]	[*]
Phase IV	[*]	[*]	[*]	[*]

\* [\*]

Within the above schedule framework, detailed schedules of deliverables (specifications and other program materials) as defined in Exhibits B and C, shall be agreed upon within [\*] of [\*]. SUPPLIER has agreed that the [\*], as per this agreement, shall be [\*] and [\*] as [\*] prior to any additional [\*] from SUPPLIER. SUPPLIER has agreed that the [\*], as per this agreement, shall be [\*] and [\*] as [\*], prior to any additional [\*] from SUPPLIER. SUPPLIER has further [\*] that the [\*], as per this agreement, shall be included in the [\*] of SUPPLIER's [\*] and the [\*] of [\*]. SUPPLIER shall incorporate these features in SUPPLIER's [\*] and will [\*] for their [\*].

Additional schedules, product deliverables, and content beyond those defined in the Exhibits of this Agreement will be mutually agreed upon between the companies and will be provided as amendments to this Agreement.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

2.0 PROJECT COORDINATION CONTACTS

Within [\*] days of signing this Agreement, each party will designate a number of project coordination contacts, as follows:

Product Business Manager: responsible for all interactions on product requirements and public communications.

Engineering Technical Manager: to oversee the development and quality of SUPPLIER's Product.

Engineering Program Manager: to expedite critical issues.

These contacts or their designees will participate, as necessary, in project meetings and status reviews to discuss project status and address any project related concerns. Contact persons for sales coordination will be specified seperately.

	SUPPLIER	EMC
Product Business Manager	[*]	[*]
Engineering Technical Manager	[*]r	[*]
Engineering Program Manager	[*]	[*]

SUPPLIER shall assign a dedicated Engineering Program Manger to handle EMC business.

3.0 PROGRAM COORDINATION FORUMS

SUPPLIER and EMC will hold a [\*] conference call to monitor program status, open issues, design issues, bugs, schedules, and any other item relevant to the program. Based on the program status, additional meetings may be needed and shall be mutually agreed upon by SUPPLIER and EMC.

A [\*] program meeting will be held between the companies. Technical representatives for SUPPLIER and EMC will be present in person. This forum will be used as a high-level tracking and monitoring tool for the program. In addition to program reviews, parties will review product roadmap, technology roadmap, and planning activities. SUPPLIER shall respond to EMC's technology recommendations within [\*] of the meeting. SUPPLIER shall provide EMC with an update within [\*]of major changes in product direction.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## ATTACHMENT Y

```
FCMGMT-MIB  
DEFINITIONS ::= BEGIN  
IMPORTS
```

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[*]
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EXHIBIT E  
SUPPLIER QUALITY PLAN

1.0 INTRODUCTION

1.1 This document is the Quality Plan for SUPPLIER and defines the quality systems SUPPLIER will use to ensure that they meet the quality and on-time-delivery expectations of EMC.

1.2 With reasonable notice, EMC shall have the right to inspect and audit any SUPPLIER manufacturing or administrative site that supplies goods or services. EMC shall have the right to review relevant documents pertaining to quality information, procedures, certificates of conformance, etc. affecting materials received, at EMC's request.

2.0 DEFINITIONS

2.1 DOA (Dead-On-Arrival): Those [\*] EMC customers within [\*].

2.2 IQ (Installation Quality process): Any [\*] in the first [\*] initiates an IQ process to start. [\*].

2.3 CLCA (Closed Loop Corrective Action process): Any failure within the [\*], initiates a CLCA process. [\*].

2.4 Quality Failure: Any failure that occurs during the [\*] is considered in the calculation for the parts-per-million ("ppm") failure rate. This includes any and all functional and non-functional failures [\*] that do not meet EMC's specifications. [\*].

2.5 Reliability Failure: Any failure that occurs after the [\*] of [\*] after [\*].

2.6 Serious Failures. Serious failures are defined [\*].

2.7 Critical Failures: Critical Failures are defined [\*].

2.8 Purge: [\*].

2.9 ORT: (Ongoing Reliability Testing):

2.10 Routine Questions and Issues: Those questions and issues that do not address Quality Failures, Purges, or Quality Issues.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

3.0 PERFORMANCE REQUIREMENTS

3.1 The [\*] stated in this section are requirements but the [\*] are goals. SUPPLIER will work with EMC to define and work toward these goals and requirements. EMC will measure SUPPLIER during the [\*] supplier performance reviews using these quality numbers.

3.2 The [\*] remedial action [\*] in the form of [\*] a [\*]

	MTBF	QTY	TOTAL FITS
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]
[*]	[*]	[*]	[*]

Supplier agrees to [\*] for the Product [\*]. Supplier and EMC will jointly work together to increase the [\*] during the [\*] toward a goal of [\*].

QUARTER	1Q2000	2Q2000	3Q2000	4Q2000
[*]	[*]	[*]	[*]	[*]
GOAL				

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3.3 [\*] Inspection Audit -- Supplier will perform an [\*] on [\*] of product until EMC and supplier agree to move to a [\*] approach. The [\*] inspection audit will include, but not limited to, the following:

- 3.3.1 [\*]
- 3.3.2 [\*]
- 3.3.3 [\*]
- 3.3.4 [\*]
- 3.3.5 [\*]

4.0 TECHNICAL RESPONSIVENESS/SUPPORT

4.1 Routine Questions and Issues: SUPPLIER will provide [\*] acknowledgment, by electronic mail ("email"), facsimile ("fax") or other method of communication agreed to by the parties, of all EMC requests for assistance with Routine Questions and Issues, including but not limited to questions regarding Product service and support. EMC shall have access to SUPPLIER's order fulfillment personnel, quality and/or technical personnel to assist EMC. SUPPLIER shall use [\*] efforts to respond to EMC's requests for assistance within [\*] of receipt of the request.

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4.2 Failure Analysis: [\*] shall perform failure analysis on all failed Products [\*]. Failure analysis will be a [\*]. Failure analysis [\*] must be completed within [\*]. At EMC's request, the parties will meet to review [\*] provided under this sub-Section.

4.3 Quality Issues: Quality issues must be responded to by SUPPLIER within [\*] that such an issue exists. SUPPLIER will use [\*] to completely close the [\*] with [\*] that will [\*]. This is expected to occur within [\*] to [\*], depending on the nature of the issue.

4.4 Critical Failures: Critical Failures shall be considered to be highest priority [\*].

4.5 EMC requires that communications be in writing or electronic mail, if requested.

#### 5.0 GENERAL PARTNERSHIP REQUIREMENTS

5.1 SUPPLIER will:

5.1.1 Provide EMC with regular updates to Product futures/roadmaps.

5.1.2 Participate in Concurrent Engineering design reviews.

5.1.3 Participate in quarterly performance reviews and annual on-site audits.

5.1.4 Have [\*] quality and reliability improvement plans and share those periodically with EMC. 5.1.5 Have pro-active problem notification and resolution with potential to adversely effect delivery, quality or price. This includes any [\*] or [\*] that could impact shipments or quality.

5.2 EMC and SUPPLIER will each provide the other with the names and telephone numbers of direct contacts. These lists will be updated as necessary.

#### 6.0 KEY PROCESSES

6.1 SUPPLIER must comply with the SUPPLIER's ESD Policy.

6.2 SUPPLIER must utilize [\*] techniques in maintaining [\*].

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.



7.0 QUALITY DATA PROVIDED

Each party shall provide the other with the information summarized in the table below. SUPPLIER will email the required information to EMC Quality personnel.

Field Metrics	Owner	Available
[*]	EMC Quality Rep	[*]
[*]	EMC Quality Rep	[*]
[*]		[*]
[*]	SUPPLIER Quality Rep	[*]
[*]	SUPPLIER Quality Rep	[*]
[*]	SUPPLIER Quality Rep	[*]

8.0 CORRECTIVE ACTION PROCESS

8.1 All [\*] and [\*] shall be resolved to root cause. These issues will be tracked by the EMC Supplier Engineer and communicated back to SUPPLIER.

8.2 [\*]

8.3 Upon determining the [\*] failure, [\*] a corrective action plan, [\*].

8.4 If SUPPLIER encounters a [\*] on a Product sent from EMC, they will arrange for the Product to be sent back for [\*].

8.5 When Product under warranty is sent to SUPPLIER, SUPPLIER [\*] and thus 'own' the defective Product. If SUPPLIER returns the Product to EMC for further analysis under sub-Section 8.4, above, SUPPLIER will [\*].

9.0 REPAIR PROCESS

[\*] test and inspection [\*] shall be performed [\*] on field return Product prior to its return to EMC.

10.0 RELIABILITY ASSURANCE

SUPPLIER shall implement a method used to monitor the reliability of the Product. SUPPLIER will provide EMC [\*].

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EXHIBIT F  
TECHNICAL SUPPORT

## 1.0 SUPPORT LEVEL

1.1 EMC will provide all first-call technical support to its customers. SUPPLIER's technical support group will provide no services directly to EMC's customers, except as described herein. All technical support, as described in Sections 1 through 6 of this Exhibit, and Product Support under this Agreement will be provided at no charge to EMC, unless specified otherwise.

1.2 EMC shall ensure that its field personnel are trained in the installation, setup, and operational issues involving the Product. The SUPPLIER technical support group will provide technical support to EMC's trained engineering staff as needed to resolve installation, setup and operational issues involving the Product.

1.3 SUPPLIER will provide engineering level support to EMC's engineering staff as needed to isolate problem cause, make bug fixes to SUPPLIER supplied code, and produce the object code required by EMC to support and update the Products.

1.4 SUPPLIER technical support will be available via telephone during normal working days between the hours of 8:00 AM and 5:00 PM, Pacific Time. Support between [\*], is available via answering service, [\*]. Calls placed via the answering service will receive response from a SUPPLIER technical support representative within [\*].

1.5 Technical information [\*] will be made available as developed [\*].

1.6 In the course of its investigations, SUPPLIER's technical support group may require that EMC's personnel be able to obtain [\*]. EMC will ensure that its support staff has the equipment and the training necessary to obtain this information as follows:

[\*]

Fibre Channel Products:

Any fibre analyzer trace, [\*].

Equipment List

1.7 In those cases where SUPPLIER personnel are required to make direct phone or field contact with a customer of EMC to obtain problem information, EMC will designate EMC's representative to be present for the duration of the customer contact.

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## 2.0 PROBLEM ESCALATION

2.1 When the SUPPLIER technical support group determines that it is unable to resolve the problem with its own resources, it will escalate the problem.

2.2 In those cases where [\*], SUPPLIER will provide [\*], for that purpose. If it is determined that [\*].

2.3 If the SUPPLIER technical support group determines that the problem may be due to a defect in the SUPPLIER supplied Product, the problem will be escalated to SUPPLIER engineering via the normal SUPPLIER System Problem Report ("SPR") process. Priorities are in accordance with those defined in Exhibit C Section 3.0.

## 3.0 TECHNICAL CONTACTS

3.1 SUPPLIER and EMC will establish contacts to report problems, track status, exchange technical information, track build requirements, make bug fixes and coordinate the transfer of software files to and from a customer account on the SUPPLIER Support website.3.2 SUPPLIER

3.2.1 Technical Support Administrator. SUPPLIER will establish the Technical Support Administrator as the central contact point for receiving written problem reports and sending problem resolution status via Email or FAX. All verbal contacts with Technical Support should be made via supplied telephone numbers.

3.2.2 Development Engineering. SUPPLIER will [\*] and provide engineering level support to EMC's engineering staff.

## 3.3 EMC

3.3.1 Problem Administrator. EMC will establish [\*] as the counterpart to the SUPPLIER Technical Support Administrator to send problem reports and receive problem status.

3.3.2 Engineering. EMC will designate specific members of their engineering staff who are authorized to have engineering level contact with the designated SUPPLIER Engineer. However, EMC specified contacts are required to send problem reports and receive problem status via the Technical Administrator Support.

## 4.0 PROBLEM AND STATUS REPORTING

4.1 All problem reports will be submitted in a standard format using the sample form below. All reports will be submitted to the SUPPLIER Technical Support Administrator via Email or FAX.

### PROBLEM REPORT SAMPLE FORM

[\*]

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

4.2 The SUPPLIER Technical Support Administrator will [\*]; and, if the [\*] from the [\*].

4.3 In the event a [\*], the [\*] will [\*].

4.4 SUPPLIER will use its [\*] to record and track the status of all EMC reported problems.

#### 5.0 SOFTWARE MAINTENANCE RELEASES

5.1 As part of the support program, SUPPLIER will provide production quality software maintenance releases as mutually agreed [\*] to EMC. Maintenance releases will contain [\*] and [\*]. At a minimum, SUPPLIER will provide maintenance releases in accordance with the schedule set forth in Exhibit B [\*].

5.2 Maintenance releases will be derived by [\*].

5.3 The standard versions on which maintenance releases are based [\*]. SUPPLIER will give EMC at least [\*] days advance notice of upcoming standard releases, as well as offer EMC beta versions of all SUPPLIER standard releases should they be available.

5.4 Maintenance releases will typically be delivered to EMC for quality assurance ("QA") testing at about the time the SUPPLIER standard version is production released, but no less than [\*] after EMC's request. Maintenance releases will be available for access by EMC in a secured account on the SUPPLIER web Server.

5.5 SUPPLIER will provide basic unit test of all code supplied to EMC, however, [\*].

5.6 During the [\*] is made [\*]. In addition, [\*].

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 6.0 [\*] RELEASES

6.1 [\*].

6.2 [\*].

6.3 [\*]:

6.4 [\*].

## 7.0 MAINTENANCE AIDS

7.1 Subject to the terms and conditions of this Agreement, SUPPLIER grants to EMC a personal, non-exclusive, world-wide, no-cost, royalty-free and non-transferable right to use the Maintenance Aids listed in this Exhibit in connection with Products covered by an EMC warranty or Service Agreement during the term of that warranty or Service Agreement for the sole purpose of assisting EMC in providing warranty and maintenance services on the Products for Customers under the applicable warranty or Service Agreement. "Maintenance Aids" are hardware, software and other aids owned by SUPPLIER and used by SUPPLIER in furnishing maintenance services.

7.2 No title to or ownership of the Maintenance Aids is transferred to EMC, and any references to "sale" or "purchase" of the Maintenance Aids shall be deemed to mean "license on the terms contained in this Agreement." EMC shall reproduce and include SUPPLIER's copyright and other proprietary notices on and in any copies, including but not limited to physical and electronic copies of the Maintenance Aids. Neither EMC or any of its agents, independent contractors or consultants shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce the Software to human readable form without SUPPLIER's prior written consent.

7.3 In the event that new releases of the Maintenance Aids or additional Maintenance Aids are developed by SUPPLIER during the term of the Agreement, SUPPLIER will promptly notify EMC of the availability of such Maintenance Aids. At EMC's request, such additional Maintenance Aids will also be licensed to EMC on the terms herein and shall automatically be included as Maintenance Aids under this Exhibit.

7.4 SUPPLIER shall provide EMC with copies of Maintenance Aids documentation in English and as available, other language text and numeric forms, as are available from SUPPLIER. EMC acknowledges that there may not be documentation available for all Maintenance Aids. Except as provided herein, EMC shall have no right to copy the documentation for the Maintenance Aids.

7.5 SUPPLIER will use reasonable efforts to notify EMC of a planned discontinuance of the Maintenance Aids at least [\*] days in advance of such discontinuance by SUPPLIER.

7.6 Upon termination or expiration of the continuing support period under this Agreement, EMC will immediately discontinue use of the Maintenance Aids and return, the all copies of the Maintenance Aids to SUPPLIER, within [\*] days of such expiration or termination.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## EXHIBIT G

## RMA PROCEDURE

- 1.0 When defective Product must be returned to SUPPLIER for repair or replacement, EMC shall contact SUPPLIER to obtain an RMA number. EMC shall submit the information required on SUPPLIER's return material authorization ("RMA") form and return the unit for repair or replacement.
  - 2.0 Upon [\*] of the completed [\*] of each item noted. If [\*] SUPPLIER will [\*] will be returned [\*]. Upon [\*] of the [\*] SUPPLIER will [\*].
  - 3.0 Upon [\*] of the [\*] the [\*] and [\*] it to [\*]. All [\*] will be [\*]. SUPPLIER will [\*] or with [\*] and [\*] will be [\*].
  - 4.0 If the returned Product is under warranty, SUPPLIER shall provide the repairs or a replacement unit to EMC at no charge.
  - 5.0 If the returned product is not under warranty and is determined by SUPPLIER, in its sole judgment, not to be repairable, the following applies:
  - 6.0 If the [\*] is [\*] but SUPPLIER [\*] that [\*] will be [\*] of such and given the [\*] to have the [\*] at the [\*]. If SUPPLIER [\*] that the [\*] will be notified and [\*] to have the Product [\*].
  - 7.0 SUPPLIER shall return to EMC or to a location designated by EMC, freight prepaid by SUPPLIER, the [\*] within [\*] days from the date the Product is received at SUPPLIER.
  - 8.0 EMC agrees to verify all failures prior to [\*] and to supply details about the failure conditions and attributes as requested by SUPPLIER. In the event there is [\*] with more than [\*] of [\*] to [\*] for [\*] over any [\*] period, EMC and SUPPLIER agree to meet at either party's request to establish a corrective [\*].
- \* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## EXHIBIT H

## PRODUCT REPAIR

This Exhibit sets forth the terms and conditions which govern the repair of the Products. Notwithstanding anything that may be construed to the contrary, EMC shall not have an obligation to purchase any Product repair from SUPPLIER under the Agreement. SUPPLIER may ship a repaired unit against an EMC open Purchase Order for new product or against a specific purchase order as requested by EMC.

## 1.0 REPAIR CYCLE TIME

SUPPLIER shall provide a maximum of [\*] day standard cycle time on repair Product.

## 2.0 PRODUCT SUPPORT AND PRODUCT SUPPORT DURATION

2.1 At EMC's request, SUPPLIER shall provide the Product support described in sub-Section 2.2, below. SUPPLIER shall provide Product support during the term of the Agreement and for a period of not less than [\*] years following withdrawal of a Product as described in Section 15.0 of this Agreement. Charges for out of warranty Product repair are provided in Exhibit A to this Agreement.

2.2 Product support shall include, but not be limited to Product: (i) testing; (ii) repair; (iii) upgrades where practical or mandatory; (iv) SUPPLIER's standard reporting; (v) failure analysis, and (vi) closed loop corrective action.

## 3.0 SCRAP

3.1 SUPPLIER shall make [\*] efforts to repair all Product per EMC's specifications in Exhibit C.

3.2 Once a Product has been returned [\*] SUPPLIER shall submit a scrap request to EMC's Supplier Engineer for review and authorization. SUPPLIER's requests for scrap authorization shall include the following information:

- 3.2.1 [\*].
- 3.2.2 [\*].
- 3.23 [\*].

3.3 EMC shall provide a timely response to SUPPLIER's scrap requests.

3.4 SUPPLIER may be [\*] to [\*] and [\*]. EMC shall notify SUPPLIER of this requirement [\*].

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

[EMC2 LOGO]

Agreement Number: \_\_\_\_\_

CUSTOMER AGREEMENT  
EMC Corporation  
171 South Street  
Hopkinton, MA 01748-9103

Bill To: \_\_\_\_\_ Designated Site: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Customer Contact: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Hardware Install Contact: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Support Contact: \_\_\_\_\_ Phone Number: \_\_\_\_\_  
Support Contact: \_\_\_\_\_ Phone Number: \_\_\_\_\_

EMC's goal is to provide our customers with the best enterprise storage solutions in the industry. To this end, everyone in EMC's organization is dedicated to providing the highest quality Equipment, Software and Services.

This master Agreement establishes a simplified yet comprehensive way of doing business with EMC. First, this single Agreement covers all of EMC's Products -- not only the sale of Equipment, but also the licensing of Software and the provisioning of Product Maintenance and Professional and Training Services. Second, this Agreement eliminates the need for a separate agreement each time an EMC Product is needed. All that is required is an Order which must reference the Agreement Number.

Any Affiliate identified by Customer may also place an Order under this Agreement. Customer agrees to be responsible for the actions and obligations of such Affiliate.

Customer hereby acknowledges that Customer has read and understands this Agreement and agrees to the terms and conditions stated herein. This Agreement may only be amended by an addendum that is duly signed by both parties. Such an addendum would only apply to a single order unless it clearly states otherwise.

EMC CORPORATION

CUSTOMER

EMC SIGNATURE BLOCK

CUSTOMER SIGNATURE BLOCK



## 1. DEFINITIONS

**AFFILIATE:** Affiliate shall mean any entity that directly or indirectly controls, is controlled by, or is under common control with Customer. Control means control of more than fifty percent (50%) of outstanding shares or securities or an equivalent ownership interest.

**AGREEMENT NUMBER:** The number provided on the front page of this Agreement.

**CORE SOFTWARE:** EMC microcode and firmware that enable a Designated EMC System to perform its basic functions. Core Software does not include any Enterprise Storage Software.

**DESIGNATED EMC SYSTEM:** Equipment which is delivered to Customer at the Designated Site pursuant to this Agreement and is identified by the serial number set forth on the cabinet.

**DESIGNATED SITE:** Customer's facility where the Host CPU or Designated EMC System is located.

**ENTERPRISE STORAGE SOFTWARE:** Software licensed by EMC other than Core Software and Maintenance Aids, which consists of:

I. **HOST-BASED SOFTWARE:** Software that is licensed for use on one or more Host CPUs, as designated by EMC and,

II. **SYMMETRIX-BASED SOFTWARE:** Software that is licensed for use on the Designated EMC System and, if applicable, one or more Host CPUs, as designated by EMC.

**EQUIPMENT:** Items of hardware sold by EMC hereunder. The Equipment may be newly manufactured or remanufactured.

**EQUIPMENT AND CORE SOFTWARE PRODUCT MAINTENANCE:** A level of support for Equipment and Core Software provided by EMC as described below.

**ENTERPRISE STORAGE SOFTWARE PRODUCT MAINTENANCE:** A level of support for Enterprise Storage Software provided by EMC as described below.

**HOST CPU:** A central processing unit designated by Customer for operation with the Designated EMC System.

**MAINTENANCE AIDS:** Hardware, software and other aids used by EMC in furnishing Product Maintenance.

**ORDER:** An EMC generated order form or a customer order that references the Agreement Number.

**PRODUCT MAINTENANCE:** Equipment and Core Software Product Maintenance and Enterprise Storage Software Product Maintenance.

**PRODUCTS:** Equipment, Software and Services provided by EMC.

**PROFESSIONAL SERVICES:** Professional consulting services provided by EMC to Customer as described below.

**SERVICES:** Product Maintenance, Professional Services and Training Services and any other services provided under this Agreement.

**SOFTWARE:** Core Software, Enterprise Storage Software and any other software licensed by EMC to Customer. Software does not include Maintenance Aids.

**SOFTWARE RELEASE:** New revisions by EMC consisting of:

I. **MAINTENANCE RELEASE:** A new revision of Software that includes corrections, updates and minor modifications to existing features.

II. **NEW RELEASE:** A new revision of Software that expands or extends currently existing features, functions or capabilities.

III. **NEW VERSION:** A new revision of Software that includes substantial new features, functions or capabilities.

**TRAINING SERVICES:** Training services provided by EMC to Customer as described below.

## 2. EQUIPMENT AND CORE SOFTWARE

A. **LICENSE:** Each Designated EMC System purchased under this Agreement shall include a fully paid up license to use the associated Core Software.

B. **INSTALLATION:** EMC will initially install Equipment and/or Core Software ordered by Customer at the Designated Site at no additional charge if (a) the Designated Site is within the service area of one of EMC's service

locations, (b) Customer promptly notifies EMC of receipt of the Equipment and/or the Core Software and permits EMC access to the Equipment and/or Core Software at the Designated Site during EMC's normal business hours, and (c) the Equipment or Core Software have not been modified without EMC's written consent and/or subject to unusual physical or environmental stress, accident, neglect, misuse or other damage not caused by EMC.

C. SUPPORT:

(1). Continuous Support: Equipment and Core Software Product Maintenance shall be subject to the terms of this Agreement and shall include (a) EMC keeping the Equipment and Core Software in good operating condition in conformance with applicable specifications, which includes remedial maintenance and the installation of engineering changes deemed necessary by EMC; (b) 24-hour English-language help line service, seven days per week, via telephone or other electronic media; (c) Maintenance Releases and New Releases; (d) documentation updates, as they become available; and (e) replacement of the Core Software at no charge if the media becomes destroyed or damaged so that such Core Software becomes unusable.

(2). Non-continuous Support: In the event Customer was not under warranty or Product Maintenance for the Equipment and Core Software, Equipment and Core Software Product Maintenance will commence upon EMC's certification that such Product is in good operating condition. Certification services shall be at EMC's then-current rates. Customer may receive the current release of the Equipment and Core Software by paying the omitted past maintenance fees for such Equipment and Core Software.

3. ENTERPRISE STORAGE SOFTWARE

A. LICENSE: Customer shall be licensed to use the Enterprise Storage Software so long as Customer complies with the terms of this Agreement.

B. SUPPORT: Enterprise Storage Software Product Maintenance shall be subject to the terms of this Agreement and shall include the following: (a) 24-hour English-language help line service, seven days per week, via telephone or other electronic media; (b) Software Release; (c) documentation updates, as they become available; and (d) replacement of the Enterprise Storage Software at no charge if the media becomes destroyed or damaged so that such Enterprise Storage Software becomes unusable.

4. PROFESSIONAL SERVICES

A. SCOPE: Each Order for Professional Services shall be referred to as a "Statement of Work" and shall be signed by (and may only be modified in writing and signed by) an authorized representative of Customer and EMC. Professional Services shall be provided by EMC in accordance with the agreed Statement of Work. Both parties anticipate that the Professional Services will be performed in several phases, where the results of a preliminary phase will likely impact the scope of services provided during a subsequent phase.

B. STAFF RESPONSIBILITY AND REPLACEMENT: EMC shall assume sole responsibility for the supervision of its consultants assigned to perform the Professional Services. If one of EMC's consultants resigns or is unable to complete his or her assigned portion of the Professional Services for any reason, EMC shall replace such consultant with a consultant of substantially equivalent qualifications under the same terms and conditions as are set forth in the Statement of Work.

C. ADJUSTMENTS TO MILESTONE COMPLETION DATES: If Customer is unable to provide information, support or assistance reasonably requested by EMC to perform the Professional Services in a timely manner as described in the applicable Statement of Work, then the completion date(s) for milestones identified in such Statement of Work shall be extended by the amount of time equal to the delay in Customer's response, as reasonably determined by EMC. Similarly, if Customer requests in writing the replacement of one of EMC's consultants, then the completion date(s) for milestones identified in such Statement of Work shall be extended by the amount of time required by EMC to replace that consultant (not to exceed 30 days) and the amount of time required to acclimate the replacement consultant to the Professional Services to be performed pursuant to that Statement of Work, as reasonably determined by EMC.

#### D. PROPRIETARY RIGHTS TO WORK PRODUCT

(1). Proprietary Rights and Work Product: All patents, copyrights, trade secrets, methodology, ideas, inventions, concepts, know-how, techniques or other intellectual property developed, provided or used by EMC during the course of this Agreement are and remain the property of EMC ("Proprietary Rights"). All written reports, analyses and other working papers delivered by EMC to Customer in the performance of EMC's obligations under any Statement of Work ("Work Product") belong to Customer. Nothing in this Agreement shall preclude EMC from developing, using or marketing services or materials which are similar or related to Work Product developed or performed pursuant to this Agreement.

(2). Customer Property: Any tangible materials furnished by Customer for use by EMC in connection with the Professional Services shall remain Customer's sole property. All such materials shall be returned to Customer upon receipt by EMC of final payment for all Professional Services.

(3). Customer License: Upon payment in full by Customer to EMC in accordance with the payment provision contained in the Statement of Work applicable to any particular Work Product, Customer, to the extent that Proprietary Rights are contained in the Work Product, is licensed to use Proprietary Rights on a non-exclusive, non transferable, royalty-free, worldwide basis for its own internal use. Customer shall not sublicense or otherwise transfer to any third party any rights to use Proprietary Rights.

#### 5. TRAINING SERVICES

A. COURSES: EMC courses are listed in EMC's catalogs for Training Services and on EMC's website. These courses can be ordered by following the directions in the catalog or the website. Customized Training Services can be ordered as Professional Services.

B. REFUNDS: For Training Services courses offered through the catalog, refunds upon cancellation shall be as follows: (a) EMC will provide a full refund if written notice of cancellation is received two (2) weeks or more prior to the scheduled beginning of the selected catalog course; and (b) EMC will provide a 50% refund if written notice of cancellation is received less than two (2) weeks prior to the scheduled beginning of the selected catalog course.

C. SATISFACTION: If Customer is not reasonably satisfied with a catalog course, EMC will issue Customer a full credit toward another standard catalog course, upon written notice of such dissatisfaction.

#### 6. GENERAL TERMS

A. ORDERS: Any Order must refer to the Agreement Number and must include information necessary to complete the associated transaction.

##### B. SOFTWARE:

(1). EMC grants to Customer a non-exclusive, non-transferable license to use the Software solely in conjunction with the Designated EMC System or Host CPU, as applicable, for which the Software was licensed.

(2). Customer shall not, without EMC's prior written consent, provide, disclose or otherwise make available Software in any form to any person other than Customer's employees, independent contractors or consultants, who shall use the Software solely for Customer's internal business purposes in a manner consistent with this Agreement. Customer shall be fully responsible to EMC for the actions of its employees, independent contractors and consultants.

(3). Customer may make one copy of the Software for back-up and archival purposes for use only in the case of a malfunction of Software, EMC Designated System or Host CPU, as applicable.

(4). Customer may, only after written notice to EMC, change the location of a Designated EMC System or Host CPU upon which the licensed Software is used to a replacement location. If Customer moves the Software to another Designated EMC System or Host CPU which has a different model number than the originally Designated EMC System or Host CPU, Customer agrees to pay, if applicable, an upgrade fee based on EMC's then-current

price and upgrade policy and, at the next support anniversary date, agrees to pay applicable fees based upon the replacement model number.

(5). If Customer is granted a license to use Software in conjunction with a Statement of Work (a "Project License"), Customer shall have a non-transferable right to use the Software only for the purpose of conducting a specific project under such Statement of Work. The Project License term shall be for one (1) year or the completion of the project, whichever occurs first.

(6). Customer shall not use the Software on any device other than the Designated EMC System or Host CPU, as applicable, except that the Enterprise Storage Software may be temporarily transferred to a replacement Designated EMC System or Host CPU, as applicable (and deleted from the original Designated EMC System or Host CPU) if the Designated EMC System or Host CPU is inoperable due to malfunction or initiation of a disaster recovery program or is otherwise not able to use the Enterprise Storage Software.

(7). Ownership: No title to, or ownership of, the Software is transferred to Customer, and any references to "sale" or "purchase" of the Products, with respect to the Software, shall be deemed to mean "license on the terms contained in this Agreement." Customer shall reproduce and include EMC's copyright and other proprietary notices on and in any copies, including but not limited to partial, physical or electronic copies of the Software. Neither Customer nor any of its agents, independent contractors or consultants shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce to human readable form the Software without EMC's prior written consent. If Customer requires access to the source code of the Software in order to achieve interoperability of the Software with other software in the European Union or Norway, Customer shall provide EMC with written notice. EMC can then decide either: (i) to perform the work in order to achieve such interoperability and charge EMC's then-current rates for such work to Customer; or (ii) to permit Customer to reverse engineer parts of the Software in order to obtain such source code, but only to the extent necessary to achieve such interoperability. Customer shall promptly report to EMC any violation of this clause and shall take such further steps as may be reasonably requested by EMC to remedy any such violation and to prevent future violations.

(8). Secondary Purchaser: Customer's right to use the Software may not be assigned, sublicensed or otherwise transferred; provided however, that if Customer sells or transfers the Designated EMC System, EMC shall offer to license the Core Software and to render Equipment and Core Software Product Maintenance to any bona fide end user (hereinafter "Secondary Purchaser") to whom Customer has transferred the Designated EMC System pursuant to EMC's then-current standard terms and conditions, so long as such Secondary Purchaser is not deemed, in EMC's reasonable discretion, to be a competitor of EMC's. Whenever the Core Software is licensed to a Secondary Purchaser in accordance with this Paragraph, EMC shall offer to provide de-installation services for Customer and re-installation and certification for Equipment and Core Software Product Maintenance for the Secondary Purchaser at EMC's then-current applicable fees.

#### C. PRODUCT MAINTENANCE

(1). Warranty Period: Product Maintenance shall be provided at no additional cost during the respective warranty periods for (i) purchased Equipment which shall include Core Software and (ii) licensed Enterprise Storage Software.

(2). Continued Support: Prior to the end of the warranty period or after any subsequent continued support period, Customer shall be invoiced for continued Product Maintenance for Equipment, Core Software and/or Enterprise Storage Software; provided Customer may decline any subsequent invoicing in writing sixty (60) days prior to the end of the applicable warranty or continued support period.

(3). Support Procedures: Customer shall designate in writing a reasonable number of authorized contacts, as determined by Customer and EMC ("Support Contacts"), who shall initially report problems and receive support from EMC hereunder. A change to the authorized Support Contacts by Customer must be submitted in writing to EMC by one of Customer's duly authorized representatives.

(4). Software Releases: EMC shall provide Software Releases as part of Product Maintenance. A Software Release does not include new Products. A Software Release is treated as Software and is covered by the license to the original Software.

(5). Alterations and Attachments: EMC does not restrict Customer from making alterations or installing other products in or with the Equipment at Customer's expense, but Customer will be responsible for any inspection fees and/or additional charges resulting from such activities; if the alterations or attachments prevent or hinder EMC's performance of Product Maintenance, Customer will, upon EMC's request, take appropriate action to facilitate EMC's performance of Product Maintenance.

(6). Maintenance Aids: Maintenance Aids (including diagnostic tools) for aiding the provision of Product Maintenance are owned by EMC and provided at Customer's site for use by EMC's personnel. Customer agrees to use its best efforts to prevent the unauthorized use or disclosure of Maintenance Aids. Customer will not allow copies to be made of any Maintenance Aids. Customer further agrees to allow EMC, upon reasonable notice, to enter the Designated Site(s) to remove Maintenance Aids. Nothing hereunder grants to Customer a license to make use of Maintenance Aids in any way.

(7). Replacement Parts: All Equipment and Software (or parts thereof) that are replaced under Product Maintenance shall be owned by EMC. Customer shall return what has been replaced upon EMC's request.

D. CUSTOMER'S RESPONSIBILITIES: Customer shall promptly fulfill the following responsibilities at no charge to EMC.

(1). Customer agrees to (i) promptly notify EMC when Products fail; (ii) allow EMC access to any Product needed to perform Services or implement the terms of this Agreement; (iii) furnish necessary facilities (suitable work space, computers, power, light, phone, software and equipment reasonably required by EMC); and (iv) maintain site environment consistent with Product specifications. Customer shall ensure that EMC is licensed or otherwise permitted to use any software which Customer makes available for EMC's use.

(2). Customer agrees to notify EMC of any movement of the Product when such movement is by anyone other than EMC and agrees to allow EMC to inspect the Product at the new location at EMC's then-current rate for such inspections.

(3). Customer shall appoint representatives to provide EMC assistance and information in connection with EMC's performance of Product Maintenance and Professional Services. Each Customer representative shall be familiar with Customer's requirements and shall have the expertise and capabilities necessary to permit EMC to undertake and complete such Services.

#### E. PAYMENT TERMS

(1). Products: Customer shall pay EMC's invoiced amount for the Products.

(2). Equipment and Core Software Product Maintenance: EMC shall invoice an additional amount to Customer for (i) service calls outside of EMC's service area; (ii) service for causes not attributable to normal usage or wear; and (iii) refurbishment services.

(3). Enterprise Storage Software: Customer shall pay a one-time license fee for Enterprise Storage Software. Unless Customer has prepaid for Enterprise Storage Software Product Maintenance, EMC shall invoice Customer for such Enterprise Storage Software Product Maintenance prior to the end of the warranty period at EMC's then-current price.

(4). Professional Services: Customer shall pay EMC the agreed amounts in the Statement of Work upon invoice.

(5). General: Subject to credit approval by EMC, payment for Products is due net thirty (30) days from the date of EMC's invoice. If payment is delayed, EMC may charge Customer interest at a rate equal to the lesser of 1.5% per month or the maximum lawful interest rate under applicable law from the due date until payment is received by EMC. All payments shall be in US dollars. Notwithstanding the foregoing, payment for Training Services for courses offered through EMC's course catalog shall be made prior to the start of the course.

(6). Security Interest: Customer hereby grants to EMC a purchase money security interest in Equipment and Software purchased or licensed by Customer and all proceeds thereof for the full amount of the purchase price and any costs and charges incurred by EMC in connection therewith. At EMC's request, Customer shall sign any documents, including one or more financing statements, and take any other action required by law to perfect the security interests that may be granted hereunder. Upon full payment by Customer, such security interests and/or security filings shall be released.

F. DELIVERY: Delivery of Equipment and Software will be F.O.B. common carrier at EMC's plants. Unless Customer instructs EMC to use a particular common carrier, EMC will select a common carrier and arrange for shipment and insurance at Customer's expense. At EMC's option, Software may be delivered via the internet or by similar means.

G. ACCEPTANCE: Acceptance will occur for Equipment and/or Software to be installed by EMC: (a) upon successful completion of EMC's standard acceptance procedures to be performed by EMC during installation; or (b) thirty (30) days after shipment by EMC if EMC is unable to install because of Customer's acts or omissions to act. Acceptance for other Equipment and/or Software not to be installed by EMC shall occur seven (7) days after shipment by EMC of such Equipment and/or Software.

H. PRODUCT CHANGES: EMC reserves the right, at its expense, to make changes to the Products: (a) upon reasonable notice to Customer, when such changes do not adversely affect interchangeability or performance of the Products; (b) when EMC believes changes are required for purposes of safety or reliability; or (c) when EMC is required by law to do so. Customer shall give EMC reasonable access to the Products for such purpose; failure to permit EMC to effect these changes shall allow EMC to terminate Product Maintenance for all affected Products without liability and without refunding to Customer any fees already paid for such Product Maintenance.

I. DOCUMENTATION: EMC will provide Customer with one (1) then-current end-user manual set with each article of Equipment and Software shipped under this Agreement. Additional manuals or updates may be obtained from EMC. Customer shall have a non-exclusive, non-transferable right to use such documentation only at the Designated Site for its own internal use. Customer shall have no right (i) to permit any third party to access or use such documentation, or (ii) to copy or create derivative works of such documentation, whether for Customer's internal use or otherwise.

#### J. PATENT AND COPYRIGHT

(1). If Customer notifies EMC promptly in writing of any action (and all prior related claims) brought against Customer alleging that Customer's sale, use or other disposition of any Equipment, Customer's use of any Software or its receipt of any Service infringes a valid United States patent or copyright, EMC will defend that action at its expense and will pay the costs and damages awarded against Customer in the action, provided (i) that EMC shall have sole control of the defense of any such action and all negotiations for its settlement or compromise and (ii) Customer provides all reasonable assistance requested by EMC. If a permanent injunction is obtained in such action against Customer's use or receipt of such Product or if in EMC's opinion such Product is likely to become the subject of a permanent injunction, EMC will at its option and expense either procure for Customer the right to continue using or receiving such Product, replace or modify such Product so that it becomes non-infringing or pay Customer a refund based on a straight line depreciation of the price of such Equipment and/or Software over five (5) years upon return of the Equipment and/or Software to EMC or refund the unused amounts paid to EMC for discontinued Product Maintenance, as the case may be.

(2). EMC shall have no liability to Customer if the alleged infringement is based on (i) use, sale or receipt of any of the Products in combination with other equipment, software or services not provided by EMC; (ii) use of any of the Products in a manner or for a purpose for which they were not designed; (iii) use of the Software, when use of a Software Release which EMC has made commercially available would have avoided such infringement; (iv) any modification to any of the Products not made by EMC, or any modifications to any of the Products made by EMC pursuant to Customer's specific instructions; or (v) any intellectual property right owned or licensed by Customer or any of its Affiliates.

(3). THIS PATENT AND COPYRIGHT SECTION STATES EMC'S ENTIRE LIABILITY WITH RESPECT TO ALLEGED INFRINGEMENTS OF PATENTS, COPYRIGHTS AND OTHER INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS OR ANY PART OF THEM OR BY THEIR OPERATION, USE OR RECEIPT.

#### K. WARRANTY

(1). Warranty for Equipment and Software

(a). EMC warrants that the Equipment and the Core Software shall be free from material defects in materials and workmanship and that the Equipment and the Core Software shall perform substantially in accordance with EMC's written specifications for such Equipment and Core Software for two (2) years from Acceptance, under normal use

and regular recommended service. Notwithstanding the above, Equipment known as EDM products is only warranted for one (1) year from Acceptance.

(b). EMC warrants that the Enterprise Storage Software shall, under normal use, perform substantially in accordance with EMC's written specifications for such Enterprise Storage Software. The warranty period for Enterprise Storage Software shall be for a period of ninety (90) days from Acceptance.

(c). EMC's entire liability and Customer's exclusive remedy under the above two warranties described in the two preceding paragraphs shall be for EMC to use reasonable efforts to remedy material defects covered by these warranties within a reasonable period of time or, at EMC's option, either to replace the non-conforming Equipment or Software or to refund the amount paid by Customer for such Equipment or Software, as depreciated on a straight line basis over a five (5) year period upon return of such Equipment or Software to EMC. EMC does not warrant that the operation of the Software will be uninterrupted or error free, or that all Software defects can be corrected. All Equipment and Software that is replaced pursuant to this paragraph shall be owned by EMC. Customer shall return the replaced Equipment and Software to EMC upon EMC's request.

(2). Warranty for Services: EMC shall perform Services in a workmanlike manner and in accordance with each Statement of Work, if applicable.

(3). Disclaimer of Warranties: EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY SECTION, EMC MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, BY OPERATION OF LAW OR OTHERWISE, OF ANY PRODUCTS FURNISHED UNDER OR IN CONNECTION WITH THIS AGREEMENT. EMC DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, OR NON-INFRINGEMENT AND THOSE WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

#### L. LIMITATIONS ON PRODUCT MAINTENANCE AND WARRANTIES:

(1). EMC shall not be required to support any releases of any Software other than the current release and the immediately prior release of such Software. Enterprise Storage Software Product Maintenance does not include Equipment upgrades. Product Maintenance for a Software Release other than the current or immediately prior release will be provided on an as available basis at EMC's standard time and material fees. In the event that Customer was not under warranty or Product Maintenance for such Software, Customer may receive the current release of such Software by paying (x) a one-time reinstatement fee and (y) omitted past maintenance fees for such Software.

(2). Product Maintenance and the warranties described above do not include services required or efforts to remedy, repair or replace Products as a result of: (i) accident or neglect; (ii) problems relating to or residing in other hardware, software or services with which the Products are used; (iii) installation of the Products not in accordance with EMC's instructions or their specifications; (iv) use of the Products in an environment, in a manner or for a purpose for which they were not designed; and (v) installation, modification, alteration or repair of the Equipment or the Software by anyone other than EMC or its authorized representatives. EMC will have no service or warranty obligations whatsoever with respect to Equipment that has been moved without EMC's consent, Software which is installed on hardware other than Equipment or Host CPU, or Equipment or Software on which the original identification marks have been removed or altered.

## M. DISCLAIMER AND LIMITATIONS OF LIABILITY

(1). EXCEPT AS IS PROVIDED IN THE ABOVE PATENT AND COPYRIGHT SECTION, EMC'S LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SALE OF EQUIPMENT, THE LICENSE OF SOFTWARE, THE PROVISION OF SERVICES AND THE USE, PERFORMANCE, RECEIPT OR DISPOSITION OF SUCH EQUIPMENT, SOFTWARE OR SERVICES, WHETHER BASED UPON WARRANTY, CONTRACT, TORT OR OTHERWISE, SHALL NOT EXCEED THE LESSER OF THE [\*] PAID BY CUSTOMER (OTHER THAN REIMBURSEMENT OF EMC'S EXPENSES) FOR SUCH EQUIPMENT, SOFTWARE AND/OR SERVICES DURING THE IMMEDIATELY PRECEDING [\*] OR[\*]. EMC'S LIABILITY FOR DAMAGES SHALL BE LIMITED TO DAMAGES CAUSED BY EMC'S SOLE NEGLIGENCE, AND IS FURTHER LIMITED BY THE WARRANTY SECTION OF THESE GENERAL TERMS AND CONDITIONS. CUSTOMER WAIVES THE RIGHT TO BRING ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT MORE THAN EIGHTEEN MONTHS AFTER THE CAUSE OF ACTION UPON WHICH THE CLAIM IS BASED.

(2). IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON OR ENTITY FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE SALE OF EQUIPMENT, THE LICENSE OF SOFTWARE, THE PROVISION OF SERVICES, AND THE USE, PERFORMANCE, RECEIPT OR DISPOSITION OF SUCH EQUIPMENT, SOFTWARE OR SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

## N. TERMINATION

(1). Equipment and Core Software Product Maintenance: Customer may terminate Equipment and Core Software Product Maintenance for a Product by giving sixty (60) days prior written notice. No refunds for Equipment and Core Software Maintenance shall be made upon such termination. In addition, either party may terminate Equipment and Core Software Product Maintenance for failure of the other party to comply with the terms of this Agreement provided that the terminating party has given thirty (30) days written notice specifying the failure and the other party has not remedied such failure within such time. EMC reserves the right to change the scope of Product Maintenance, provided that Customer receives at least ninety (90) days prior written notice of such changes.

(2). Software Licenses:

EMC shall have the right to terminate without liability any of Customer's licenses to the Software granted pursuant to this Agreement if Customer fails to comply with the terms and conditions of this Agreement and then fails to cure such failure within thirty (30) days after receiving written notice thereof from EMC. Upon notice of termination, Customer shall immediately cease to use all copies of the terminated Software, and shall return or destroy the terminated Software and all portions and copies thereof.

(3). Termination of Professional Services and Training Services:

(a). Suspension of Services: EMC may suspend without liability its performance of the Professional Services and Training Services if Customer is in arrears of any financial obligation to EMC.

(b). Termination Rights: If a party materially breaches the terms of this Agreement in relation to a Statement of Work, the other party shall give the breaching party written notice of such breach. If the breaching party fails to cure such breach within thirty (30) days after notice thereof, then the non-breaching party may terminate all Statements of Work. However, termination of a Statement of Work does not terminate this Agreement. In addition, either party may terminate all Statements of Work upon written notice if the other party shall become insolvent or bankrupt or makes an arrangement with its creditors or go into liquidation.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.



(c). Payments Upon Termination: If Customer elects to discontinue any of the Professional Services prior to the completion of the next milestone to be achieved under a Statement of Work, Customer shall pay to EMC the next outstanding milestone payment (and all prior milestone payments) on such Statement of Work.

(4). Survival of Terms: Termination of this Agreement shall not prejudice any rights or relieve any obligations of either party that have arisen on or before the date of termination. EMC and Customer agree that Sections 3A, 4D, 6 B, C(4) and (6), E, H, I, J, K, L, M, N (2) and O shall survive the termination of this Agreement.

#### O. MISCELLANEOUS

(1). ASSIGNMENT: Customer shall not assign this Agreement or any of its rights or obligations hereunder without EMC's prior written consent. EMC may assign this Agreement and its rights hereunder without Customer's prior consent: (i) to any individual or business entity controlling, controlled by or under common control with EMC; or (ii) to the purchaser of all or substantially all of EMC's assets or stock, through merger, consolidation or otherwise. Notwithstanding anything contained in this provision to the contrary, no later than ten (10) days after shipment of Equipment, Customer may notify EMC in writing of its designation of a leasing company to finance any Equipment through a conventional equipment financing lease. In connection therewith, EMC, Customer and the leasing company must sign a mutually agreeable assignment agreement. If the foregoing notice is not received by EMC within the specified ten-day period or such assignment agreement is not executed within ten (10) days after such Customer's notice, then Customer shall pay the purchase price and all applicable taxes on the due date stated in the original invoice.

(2). ENTIRE AGREEMENT: This Agreement is the complete statement of the contract between Customer and EMC with respect to the Products. No modification or amendment of this Agreement shall be binding unless it is in writing and signed by authorized representatives of Customer and EMC. In the event of any conflict or inconsistency between the terms of this Agreement and any Order, the terms of this Agreement shall control and prevail.

(3). GOVERNING LAW: This Agreement shall be governed, interpreted and construed in accordance with, and any arbitration hereunder shall apply, the laws of the Commonwealth of Massachusetts, USA, excluding: (i) its conflict of laws rules and (ii) the United Nations Convention on Contract for the International Sales of Goods.

(4). ARBITRATION: Any dispute, controversy or claim arising out of or relating to this Agreement or to a breach hereof, including its interpretation, performance or termination, shall be finally resolved by arbitration. The arbitration shall be conducted by one (1) arbitrator appointed jointly by EMC and Customer or, if they cannot agree, by the President of the American Arbitration Association ("AAA"). The arbitration shall be conducted in English in accordance with the commercial arbitration rules of the AAA. The arbitration, including the rendering of the award, shall take place in Boston, Massachusetts, USA and shall be the exclusive forum for resolving such dispute, controversy or claim. The decision of the arbitrator shall be binding upon the parties hereto, and the expense of the arbitration (including without limitation the award of reasonable attorney's fees to the prevailing party) shall be allocated as determined by the arbitrator. The decision of the arbitrator shall be executory, and judgment thereon may be entered by any court of competent jurisdiction. Notwithstanding anything contained in this provision to the contrary, EMC shall have the right to institute judicial proceedings against the other party or anyone acting by, through or under such other party, in order to enforce the EMC's rights hereunder through reformation of contract, specific performance, injunction or similar equitable relief.

(5). APPLICABLE TAXES: In addition to the charges due under this Agreement, Customer is responsible and shall pay or reimburse EMC for all sales, use, excise, withholding, VAT, personal property and other similar taxes, duties or tariffs resulting from this Agreement, except for taxes based on EMC's net income.

(6). USE OF NAME: EMC may use Customer's name in lists of EMC's customers.

(7). SEVERABILITY: If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable because it is invalid or in conflict with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected.

(8). EXPORT: Customer agrees to comply with all applicable United States export control laws and regulations, and will obtain any export and/or re-export authorization required under the Export Administration

Regulations of the US Department of Commerce and other relevant regulations controlling the export of the Products or related technical data.

(9). US GOVERNMENT DATA RIGHTS: The Software is "commercial computer software" or "commercial computer software documentation." If Customer is a unit or agency of the United States Government, then the United States Government's rights with respect to the Software are limited by the terms of this Agreement, pursuant to FAR Section 12.212(a) and/or DFARS Section 227.7202-1(a), as applicable.

(10). NOTICES: All notices to EMC shall be in writing, directed to EMC at EMC's address indicated on the first page of this Agreement, to the attention of EMC's Office of the General Counsel. All notices to Customer shall be in writing, directed to the address and individual indicated on the first page of this Agreement. Notwithstanding the foregoing, if a contact person is designated, such as is the case with Professional Services, notices shall be sent to such designated contact persons in addition to notices to be sent as stated above.

EXHIBIT J  
DROP SHIP PROGRAM

Drop ship program to be developed and inserted in this exhibit within 30 days of Agreement execution.

## EXHIBIT K

## INDEMNITY [\*] LIST

[\*]

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT L

EMC CORPORATION

ADVANCED CUSTOMER TESTING

PRODUCT TEST EXHIBIT

BETWEEN

EMC CORPORATION ("EMC")  
AND

BROCADE COMMUNICATIONS INC. (SUPPLIER)  
-----  
("SUPPLIER")

1901 GUADALUPE PARKWAY  
-----  
ADDRESS

SAN JOSE, CA 95131  
-----  
CITY, STATE, ZIP

SUPPLIER and EMC hereby agree that from time to time SUPPLIER may perform testing of EMC Products. EMC Products subject to such testing as shall be identified in a Schedule to this Exhibit L in the form of Schedule A hereto. Testing shall be conducted in accordance with this Product Test Exhibit L and the applicable Schedule (collectively the "Exhibit L").

The following terms and conditions shall apply to this Exhibit L:

1. DEFINITIONS

1.1 PRODUCT TEST SITE ("PTS"): SUPPLIER's facility listed on the Schedule.

1.2 DESIGNATED EMC SYSTEM(s): The storage system(s) delivered by EMC to the PTS pursuant to this Exhibit L or pursuant to a previous Exhibit L between SUPPLIER and EMC and identified by the serial number set forth on the storage system cabinet.

1.3 EQUIPMENT: The items of hardware furnished by EMC under this Exhibit L and listed on the Schedule. The Equipment may be newly manufactured, re-manufactured and/or provided by a third party.

1.4 HOST CPU: A SUPPLIER-designated central processing unit that is permitted to use the Enterprise Storage Software for operation with the Designated EMC System at the PTS.

1.5 CORE SOFTWARE: Those programs, microcode and firmware provided by EMC to SUPPLIER which enable the Designated EMC System to perform its basic storage functions. Core Software does not include any Enterprise Storage Software.

1.6 ENTERPRISE STORAGE SOFTWARE: The separately identified programs listed on the Schedule.

1.6.1 SYMMETRIX-BASED SOFTWARE: Enterprise Storage Software which operates on the Designated EMC System.

1.6.2 HOST-BASED SOFTWARE: Enterprise Storage Software which operates on the Host CPU.

1.7 SOFTWARE: The Core Software and the Enterprise Storage Software.

1.8 EMC PRODUCTS: The Equipment and/or Software provided under this Exhibit L including those items listed on the Schedule hereto.

## 2. PRODUCT TEST PURPOSE

EMC's product tests are conducted to analyze the functionality, performance, compatibility and reliability of the EMC Product(s). All tests are conducted jointly between EMC and SUPPLIER and may require frequent interaction between EMC personnel and a technical representative from SUPPLIER's data center operation. SUPPLIER will be given specific test plan(s) and objectives of individual product test(s). Additionally, SUPPLIER will provide EMC the opportunity to correct any failure related to the EMC Products, at a mutually convenient time and within a reasonable timeframe, in order to continue product testing.

## 3. PRODUCT TEST PLAN

3.1 UPON SUPPLIER'S AGREEMENT TO CONDUCT A PRODUCT TEST, EMC WILL PROVIDE A PRODUCT TEST PLAN (PTP). THE PTP WILL CONTAIN SPECIFIC INFORMATION REGARDING PRODUCT TEST DYNAMICS INCLUDING BUT NOT LIMITED TO OBJECTIVES, HARDWARE AND/OR SOFTWARE REQUIREMENTS, INSTALLATION PROCEDURES, TEST OPERATIONS, TEST DATA AND REPORTING REQUIREMENTS, DELIVERABLES, AND POINTS OF CONTACT. PRIOR TO PRODUCT TEST COMMENCEMENT, SUPPLIER WILL BE EXPECTED TO REVIEW THE PTP AND PROVIDE CHANGES AND/OR RECOMMENDATIONS TO THE PRODUCT TEST, IF NECESSARY, BASED ON KNOWLEDGE OF SUPPLIER'S RESOURCES, OPERATING ENVIRONMENT AND SCHEDULES.

3.2 EMC SHALL, AT NO COST TO SUPPLIER, DELIVER THE APPLICABLE PRODUCTS TO SUPPLIER AND, AS NECESSARY, HELP SUPPLIER INSTALL SUCH PRODUCTS. EMC SHALL PROVIDE SUPPLIER WITH NECESSARY DOCUMENTATION TO ENABLE SUPPLIER TO TEST THE PRODUCTS.

## 4. PRODUCT TEST TIMELINE

Upon finalization of the PTP, a technical representative(s) from SUPPLIER's data center operation and EMC representative(s) will establish a product test Timeline. This requirement will establish a mutually agreed duration to the time-critical product test(s) to be conducted.

## 5. PRODUCT TEST SUSPENSION

SUPPLIER has the right to temporarily suspend the EMC Product tests should the EMC Products create conditions that negatively impact the SUPPLIER's test environment. If it is necessary to de-install the EMC

Products in order to correct the problem, only EMC is authorized to de-install the EMC Products, with the exception of Host Software, which SUPPLIER is authorized to de-install upon request by EMC. Should SUPPLIER de-install the EMC Products, EMC reserves the right to terminate this Exhibit L and demand return of the EMC Products.

6. INAPPROPRIATE USE OF EMC PRODUCT(S)

SUPPLIER shall not directly or indirectly use any of the EMC Products for any other purpose, except for those purposes expressly stated in this Exhibit L, or mutually agreed to in writing by both the SUPPLIER and EMC. EMC is not liable whatsoever for any SUPPLIER losses, either equipment, data and/or monetary, resulting from such use.

7. EMC PRODUCT TEST RESULTS REPORTING

7.1 In order to determine and/or confirm performance capabilities of the EMC Products in SUPPLIER's specific hardware and software environment, SUPPLIER agrees to provide EMC with data relating to the use of the EMC Products including but not limited to: (1) data relating to the use of the Products in an interoperability test environment; and (2) data resulting from tests performed according to the PTP defined under section 3 of this Exhibit L.

7.2 Any and all test data will be considered Confidential Information as that term is defined herein and is subject to the provisions of section 21 of this Agreement. On occasion, select EMC prospects will receive information related to the testing of the EMC Products without the mention of SUPPLIER's name. Use and publication of test data is at the sole discretion and control of EMC.

7.3 Prior to the disclosure of information specifically related to SUPPLIER, EMC will obtain prior written approval from SUPPLIER.

8. POINTS OF CONTACT

The exclusive points of contact with respect to the transmission and control of test data under this Exhibit L are designated by the respective parties as follows:

EMC:	SUPPLIER:
[*]	[*]
-----	-----
(Name)	(Name)
ACT Manager	Vice President, Interoperability
-----	-----
(Title)	(Title)
171 South Street	1901 Guadalupe Parkway
-----	-----
(Address)	(Address)
Hopkinton, MA 01738	San Jose, CA 95131
-----	-----

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

## 9. OWNERSHIP OF RIGHTS

9.1 All applicable rights in patents, copyrights and trade secrets in the EMC Products shall remain in EMC, exclusively.

## 10. SOFTWARE LICENSE

10.1 EMC grants to SUPPLIER a non-exclusive, non-transferable license (without the right to sublicense) to use the Software included with Equipment during the term of this Exhibit L, solely in conjunction with such Equipment, and only for SUPPLIER's own internal purposes. If no Equipment is furnished by EMC hereunder, EMC grants to SUPPLIER a non-exclusive, non-transferable license (without the right to sublicense) to use the Software furnished under this Exhibit L, solely in conjunction with a Designated EMC System, and only for SUPPLIER's own internal purposes. No right is granted to use the Software on more than one Designated EMC System, as applicable, at any one time.

10.2 EMC grants to SUPPLIER a non-exclusive, non-transferable license (without the right to sublicense) to use Host Software provided by EMC under this Exhibit L on the applicable Host CPU during the term of this Exhibit L, solely in conjunction with a Designated EMC System, and only for SUPPLIER's own internal purposes. No right is granted to use the Software on more than one Host CPU, as applicable, at any one time

10.3 SUPPLIER shall not provide, disclose or otherwise make available Software or any information contained therein, in any form, to any person other than SUPPLIER's employees or independent contractors without EMC's prior written consent. SUPPLIER agrees to take appropriate action by instruction, Exhibit L or otherwise with SUPPLIER's employees and by Exhibit L with independent contractors with respect to use, disclosure, protection and security of the Software. This Subsection 10.3 shall survive any termination of this Exhibit L or of the licenses hereunder.

10.4 SUPPLIER may make one copy of the Software for back-up and archival purposes for use only in an emergency.

10.5 No title to, or ownership of, the Software or the information it contains is transferred to SUPPLIER, and any references to "sale" or "purchase" of the EMC Products, with respect to the Software, shall be deemed to mean "license on the terms contained in this Agreement." EMC considers the information contained in the Software owned or created by EMC to be trade secrets of EMC.

10.6 SUPPLIER shall reproduce and include EMC's copyright, trade secret, and other proprietary notices on and in any copies, including, but not limited to, partial, physical or electronic copies of the Software. Neither SUPPLIER nor any of SUPPLIER's employees shall reverse assemble, reverse compile, reverse engineer or otherwise translate the Software in whole or in part.

10.7 Neither SUPPLIER nor any of SUPPLIER's agents or third party contractors shall modify, enhance, supplement, create derivative works from, reverse assemble, reverse engineer, reverse compile or otherwise reduce the Software to human readable form without the prior written consent of EMC. SUPPLIER shall promptly report to EMC any violation of this clause and shall take such further steps as may be reasonably requested by EMC to remedy any such violation and to prevent future violations.



## 11. WARRANTY

All EMC Products furnished under this Exhibit L are provided on an "AS IS", "WHERE IS" basis. EMC DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE. No representation or other affirmation of fact, including but not limited to statements regarding capacity, suitability for use or performance of EMC Products, whether made by EMC employees or otherwise, shall be deemed to be a warranty by EMC for any purpose or give rise to any liability of EMC whatsoever unless contained in this Exhibit L.

## 12. PATENTS AND COPYRIGHTS

12.1 EMC shall have no liability to SUPPLIER for any action (and all prior related claims) brought against SUPPLIER alleging that SUPPLIER's sale, use or other disposition of any EMC Products infringes a valid United States patent or copyright. In the event of such an action, EMC retains the right to terminate this Exhibit L and re-take possession of the EMC Products.

12.2 THIS SECTION 12 STATES THE ENTIRE LIABILITY OF EMC WITH RESPECT TO ALLEGED INFRINGEMENTS OF PATENTS AND COPYRIGHTS BY THE EMC PRODUCTS OR ANY PART OF THEM OR BY THEIR OPERATION.

## 13. EXPORT CONTROL

Regardless of any disclosure made by SUPPLIER to EMC of an ultimate destination of the EMC Products, SUPPLIER will not export, either directly or indirectly, any EMC Products without first obtaining a license, as required, from the U.S. Department of Commerce or any other applicable agency or department of the United States Government.

## 14. LIMITATIONS OF LIABILITY

EMC'S LIABILITY FOR DAMAGE TO PROPERTY SHALL BE LIMITED TO [\*] DIRECTLY CAUSED BY THE [\*] OF EMC. EMC'S LIABILITY TO SUPPLIER SHALL IN NO EVENT EXCEED [\*]. SUPPLIER SHALL NOT BRING ANY CLAIM ARISING UNDER THIS AGREEMENT MORE THAN [\*] MONTHS AFTER SUCH CLAIM HAS ACCRUED.

## 15. TERMINATION

15.1 This Exhibit L may be terminated by either party for any reason by giving thirty (30) days prior written notice to the other party.

15.2 No later than [\*] days after completion of this Exhibit L, or immediately upon termination of this Exhibit L or the Agreement by SUPPLIER or EMC, SUPPLIER will either make EMC Products available to EMC for return, or return the EMC Products to EMC (F.O.B. destination prepaid), with reasonable expenses reimbursed by EMC, wherever EMC may direct, in the same condition as delivered by EMC except for normal wear and tear.

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

15.3 Upon termination of this Exhibit L, SUPPLIER shall destroy all non-original copies of Software and certify such destruction to EMC in writing.

16. MISCELLANEOUS PROVISIONS

16.1 All notices required to be given hereunder shall be in writing and shall be deemed to have been given and sufficient in all respects when (i) delivered by the Postal Service of the United States, by certified or registered mail, return receipt requested, postage prepaid, or (ii) delivered by overnight courier, postage prepaid, to the parties at their respective addresses set forth below or at such other address as the intended SUPPLIER may specify in a notice pursuant to this paragraph.

If to EMC, to:  
[\*]  
EMC Corporation  
42 South Street  
Hopkinton, MA 01748

If to SUPPLIER, to:  
[\*]  
Brocade Communications, Inc.  
1901 Guadalupe Parkway  
San Jose, CA 95131

\* Certain information on this page has been omitted and filed separately with the Commission. Confidential treatment has been requested with respect to the omitted portions.

SCHEDULE A  
 PRODUCT SCHEDULE

TO

ADVANCED CUSTOMER TESTING ("ACT") EXHIBIT L  
 BETWEEN

EMC Corporation  
 171 South Street  
 Hopkinton, MA 01748-9103  
 ("EMC")

AND

Brocade Communications, Inc.  
 1901 Guadalupe Parkway  
 San Jose, CA 95131

("SUPPLIER")

ITEM                      MODEL                      QUANTITY

\*\*To be completed by both parties within 15 days of the signing of this Exhibit L.\*\*

Designated Site:

Host CPU:

EXHIBIT X  
 FIBRE CHANNEL SWITCH EMC REGULATORY AND PRODUCT SAFETY REQUIREMENTS  
 BROCADE SILKWORM 2800

COUNTRY / MARK	Markings which apply	COMMENTS
FCC	EMC	Complete.
CE	EMC/Safety	\Declaration of conformity and EMC/Safety reports complete. EMC must create CE Declaration of Conformity for EMC specific part number.
VCCI	EMC	Letter of Conformity to VCCI: Complete for Brocade part number. Must obtain multiple listing for EMC part number.
UL	Safety Agency	Complete for Brocade part number. Must obtain multiple listing for EMC part number.
CSA	Safety Agency	Complete for Brocade part number. Must obtain multiple listing for EMC part number.
TUV	Safety Agency	Complete for Brocade part number. Must obtain multiple listing for EMC part number.
NEMKO	Safety Agency	Complete for Brocade part number.

		Must obtain multiple listing for EMC part number.
CB REPORT		Separate reports available for the switch and power supply under Brocade part numbers. Must obtain new report for EMC part numbers.
NORTH AMERICA		
United States	UL, FCC	Complete for Brocade part number. Must obtain UL multiple listing for EMC part number.
Canada	CSA, ICES	Complete for Brocade part number. Must obtain CSA multiple listing for EMC part number.
WESTERN EUROPE		
United Kingdom/Ireland	CE	Complete
Benelux	CE	Complete
France	CE	Complete
Germany	TUV-GS, CE	Complete Must obtain TUV multiple listing for EMC part number
Austria	CE	Complete
Spain/ Portugal/ Italy	CE	Complete
SCANDINAVIAN COUNTRIES		
Switzerland/Austria	CE	Complete
Sweden	NEMKO, Safety Agency	Complete Must obtain NEMKO multiple listing for EMC part number
Norway	NEMKO/Nemko CB report	Complete MUST OBTAIN NEMKO MULTIPLE LISTING FOR EMC PART NUMBER
Finland	NEMKO, Safety Agency	Complete Must obtain NEMKO multiple listing for EMC part number
Denmark	NEMKO, Safety Agency	Complete Must obtain NEMKO multiple listing for EMC part number
EASTERN EUROPE		
Russia	GOST, Safety Agency requires EMC	EMC and Safety reports available for submittal to GOST (not yet done by a GOST approved lab)
ASIA PACIFIC		
Japan	VCCI	Complete for Brocade part number. Must obtain multiple listing for EMC part number
Australia	C-Tick, EMC	Brocade has no legal entity in Australia. Needs to be submitted for certification by OEM. Brocade will provide all the necessary data.
New Zealand	C-Tick, EMC	Brocade has no legal entity in New Zealand. Needs to be submitted for certification by OEM. Brocade will provide all the necessary data. CLARiION has reports
SOUTH EAST ASIA		
Taiwan	BSMI, EMC	Must create report with EMC part number and submit to BSMI. Brocade will provide all the necessary data.
Korea	RRL, EMC	Needs to be submitted for certification by OEM. Brocade will provide all the necessary data
Singapore	PSB, Safety Agency	Approval not mandatory. Reports available if OEM wants to obtain certification
Indonesia	No Known Requirements	No certification effort planned by Brocade currently

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INDIAN CONTINENT  
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India	No Known Requirements	No certification effort planned by Brocade currently
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Malaysia	No Known Requirements	No certification effort planned by Brocade currently
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Thailand	No Known Requirements	No certification effort planned by Brocade currently
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AFRICA  
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South Africa	SABS	Declaration of conformity available Product Marking not required. Currently, Brocade does not plan to have SABS marking on Standard Brocade label.
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NOTE

\$1,000,000.00

San Jose, California

April 27, 2000

FOR VALUE RECEIVED, David Smith ("Employee") promises to pay to Brocade Communications, Inc., a Delaware corporation (the "Company"), or order, the principal sum of one-million dollars (\$1,000,000.00), without interest. Employee acknowledges that the interest free nature of this loan may result in imputed interest which is taxable to Employee as ordinary income and reportable by the Company on the Employee's form W-2.

Subject to the paragraph below, principal shall be due and payable on April 27, 2004 (the "Due Date"). Payment of loan shall be made in lawful money of the United States of America.

If for any reason, Employee ceases employment with the Company before April 27, 2004, the principal balance at the time of termination shall become due and payable (on a pro-rata basis) on the first day of each calendar quarter, commencing with the first calendar quarter following the date of such termination and ending on July 1, 2004.

Employee may at any time prepay all or any portion of the principal owing hereunder.

This Note is subject to the terms of Employee's offer letter dated January 6, 2000, and the Employee's Relocation Bonus Letter dated April 27, 2000.

The holder of this Note shall have full recourse against the undersigned.

Should any action be instituted for the collection of this Note, the reasonable costs and attorneys' fees therein of the holder shall be paid by the Optionee.

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## CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS

As independent public accountants, we hereby consent to the incorporation of our report dated November 16, 2000 included in the form 10-K, into the Company's previously filed Registration Statements (File No.'s 333-85187 and 333-95653) on Form S-8.

Arthur Andersen LLP

San Jose, California  
January 24, 2001