



SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

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**FORM 10-Q**

(Mark One)

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

For the quarterly period ended April 26, 2003

**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

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**BROCADE COMMUNICATIONS SYSTEMS, INC.**

(Exact name of Registrant as specified in its charter)

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

**77-0409517**  
(I.R.S. employer identification no.)

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**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)

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Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes  No

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Act).

Yes  No

The number of shares outstanding of the Registrant's Common Stock on May 24, 2003 was 255,755,638 shares.

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**BROCADE COMMUNICATIONS SYSTEMS, INC.**

**FORM 10-Q**

**QUARTER ENDED APRIL 26, 2003**

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## PART I – FINANCIAL INFORMATION

## Item 1. Financial Statements

## BROCADE COMMUNICATIONS SYSTEMS, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS  
(In thousands, except per share amounts)  
(Unaudited)

	Three Months Ended		Six Months Ended	
	April 26, 2003	April 27, 2002	April 26, 2003	April 27, 2002
Net revenues	\$ 130,946	\$ 134,950	\$ 254,062	\$ 258,028
Cost of revenues	60,262	53,673	117,285	102,651
Gross margin	70,684	81,277	136,777	155,377
Operating expenses:				
Research and development	36,548	33,012	68,418	62,314
Sales and marketing	31,962	26,794	62,723	52,384
General and administrative	5,304	4,840	10,266	9,383
Restructuring costs	10,888	—	21,006	—
Amortization of deferred stock compensation	212	242	281	484
In-process research and development	134,898	—	134,898	—
Total operating expenses	219,812	64,888	297,592	124,565
Income (loss) from operations	(149,128)	16,389	(160,815)	30,812
Interest and other income, net	5,097	6,661	10,430	9,996
Interest expense	(3,362)	(3,360)	(6,712)	(4,670)
Income (loss) before provision for income taxes	(147,393)	19,690	(157,097)	36,138
Income tax (benefit) provision	(1,376)	5,712	(4,190)	10,489
Net income (loss)	\$(146,017)	\$ 13,978	\$(152,907)	\$ 25,649
Net income (loss) per share – Basic	\$ (0.57)	\$ 0.06	\$ (0.62)	\$ 0.11
Net income (loss) per share – Diluted	\$ (0.57)	\$ 0.06	\$ (0.62)	\$ 0.10
Shares used in per share calculation – Basic	254,687	231,185	244,792	229,720
Shares used in per share calculation – Diluted	254,687	245,678	244,792	246,955

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

**BROCADE COMMUNICATIONS SYSTEMS, INC.**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**  
**(In thousands, except par value)**  
**(Unaudited)**

	April 26, 2003	October 26, 2002
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 415,946	\$ 516,535
Short-term investments	119,540	50,988
Total cash, cash equivalents and short-term investments	535,486	567,523
Marketable equity securities	868	226
Accounts receivable, net of allowances of \$3,057 and \$3,763, respectively	65,750	97,707
Inventories, net	5,064	5,402
Deferred tax assets, net	28,418	28,418
Prepaid expenses and other current assets	12,196	16,429
Total current assets	647,782	715,705
Long-term investments	369,158	320,865
Property and equipment, net	133,310	143,625
Deferred tax assets, net	221,033	221,878
Convertible subordinated debt issuance costs	9,041	10,274
Other assets	4,960	9,316
Total assets	\$1,385,284	\$1,421,663
<b>Liabilities and Stockholders' Equity</b>		
Current liabilities:		
Accounts payable	\$ 41,853	\$ 57,538
Accrued employee compensation	30,259	23,930
Deferred revenue	20,133	22,430
Current liabilities associated with lease losses	8,532	8,204
Other accrued liabilities	38,762	49,364
Total current liabilities	139,539	161,466
Non-current liabilities associated with lease losses	20,399	22,602
Convertible subordinated debt	550,000	550,000
Commitments and contingencies (Note 9)		
Stockholders' equity:		
Preferred stock, \$0.001 par value, 5,000 shares authorized:		
No shares issued and outstanding	—	—
Common stock, \$0.001 par value, 800,000 shares authorized:		
Issued and outstanding: 255,734 and 234,652 shares at April 26, 2003 and October 26, 2002, respectively	256	235
Additional paid-in capital	717,759	577,171
Deferred stock compensation	(1,465)	(69)
Accumulated other comprehensive income	7,523	6,078
Accumulated earnings (deficit)	(48,727)	104,180
Total stockholders' equity	675,346	687,595
Total liabilities and stockholders' equity	\$1,385,284	\$1,421,663

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

**BROCADE COMMUNICATIONS SYSTEMS, INC.**
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(In thousands)**  
**(Unaudited)**

	Six Months Ended	
	April 26, 2003	April 27, 2002
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$(152,907)	\$ 25,649
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Tax benefits from employee stock option transactions	—	26,200
Deferred taxes	—	(20,293)
Depreciation and amortization	23,074	14,485
Loss on disposal of property and equipment	2,619	395
Amortization of debt issuance costs	1,233	867
Net gains on investments and marketable equity securities	(530)	—
Amortization of deferred stock compensation	281	484
Provision for doubtful accounts receivable and sales returns	752	700
Non-cash restructuring charges	7,989	—
In-process research and development	134,898	—
Changes in operating assets and liabilities:		
Accounts receivable	31,205	(10,852)
Inventories	338	4,808
Prepaid expenses and other assets	5,464	(4,178)
Accounts payable	(16,458)	12,551
Accrued employee compensation	5,425	3,353
Deferred revenue	(2,485)	3,486
Other accrued liabilities	(16,348)	792
Liabilities associated with lease losses	(4,715)	(2,950)
Net cash provided by operating activities	19,835	55,497
<b>Cash flows from investing activities:</b>		
Purchases of short-term investments	(41,652)	—
Proceeds from sales and maturities of short-term investments	2,875	63,491
Purchases of long-term investments	(60,755)	(640,777)
Proceeds from sale of marketable equity securities	1,998	—
Purchases of property and equipment	(16,736)	(42,387)
Acquired cash and cash equivalents from acquisition of Rhapsody	2,453	—
Net cash used in investing activities	(111,817)	(619,673)
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock, net	3,798	41,724
Proceeds from issuance of convertible subordinated debt	—	537,625
Payments on assumed capital lease and debt obligations	(12,583)	—
Net cash provided by financing activities	(8,785)	579,349
Net effect of exchange rate fluctuations on cash and cash equivalents	178	—
Net increase (decrease) in cash and cash equivalents	(100,589)	15,173
Cash and cash equivalents, beginning of period	516,535	150,118
Cash and cash equivalents, end of period	\$ 415,946	\$ 165,291
<b>Supplemental disclosure of cash flow information:</b>		
Common stock issued for acquisition of Rhapsody, net of acquisition costs	\$ 137,134	\$ —
Net assets acquired from acquisition of Rhapsody	\$ 3,556	\$ —

The accompanying notes are an integral part of these Condensed Consolidated Financial Statements.

**BROCADE COMMUNICATIONS SYSTEMS, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
(Unaudited)

**1. Organization and Operations of Brocade**

Brocade Communications Systems, Inc. (Brocade or the Company) designs, develops, markets, sells, and supports data storage networking products and services, offering a line of storage networking products that enables companies to implement highly available, scalable, manageable, and secure environments for data storage applications. The Brocade SilkWorm® family of storage area networking switches is designed to help companies reduce the cost and complexity of managing business information within a data storage environment. Brocade products and services are marketed, sold, and supported worldwide to end-users through distribution partners, including original equipment manufacturers (OEMs), value-added distributors, systems integrators, and value-added resellers.

Brocade was incorporated on May 14, 1999 as a Delaware corporation, succeeding operations that began on August 24, 1995. The Company's headquarters is located in San Jose, California.

Brocade, SilkWorm, and the Brocade logo are trademarks or registered trademarks of Brocade Communications Systems, Inc. in the United States and/or in other countries. All other brands, products, or service names are or may be trademarks or service marks of, and are used to identify, products or services of their respective owners.

**2. Summary of Significant Accounting Policies**

*Basis of Presentation*

The accompanying financial data as of April 26, 2003, and for the three and six months ended April 26, 2003 and April 27, 2002, have been prepared by the Company, without audit, pursuant to the rules and regulations of the Securities and Exchange Commission (SEC). Certain information and footnote disclosures normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America have been condensed or omitted pursuant to such rules and regulations. The October 26, 2002 Condensed Consolidated Balance Sheet was derived from audited Consolidated Financial Statements, but does not include all disclosures required by generally accepted accounting principles in the United States of America. However, the Company believes that the disclosures are adequate to make the information presented not misleading. These Condensed Consolidated Financial Statements should be read in conjunction with the Consolidated Financial Statements and notes thereto included in the Company's Annual Report on Form 10-K for the fiscal year ended October 26, 2002.

In the opinion of management, all adjustments (which include only normal recurring adjustments, except as otherwise indicated) necessary to present a fair statement of financial position as of April 26, 2003, results of operations for the three and six months ended April 26, 2003 and April 27, 2002, and cash flows for the six months ended April 26, 2003 and April 27, 2002, have been made. The results of operations for the three and six months ended April 26, 2003 are not necessarily indicative of the operating results for the full fiscal year or any future periods.

*Cash and Cash Equivalents*

The Company considers all highly liquid investments with an original or remaining maturity of three months or less at the date of purchase to be cash equivalents. Cash and cash equivalents are primarily maintained at four major financial institutions.

*Investments and Marketable Equity Securities*

Investment securities with original or remaining maturities of more than three months but less than one year are considered short-term investments. Investment securities with original or remaining maturities of one year or more are considered long-term investments. Short-term and long-term investments consist primarily of debt securities issued by United States government agencies. Short-term and long-term investments are maintained at three major financial institutions, are



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classified as available-for-sale, and are recorded on the accompanying Condensed Consolidated Balance Sheets at fair value. Unrealized holding gains and losses are included as a separate component of accumulated other comprehensive income on the accompanying Condensed Consolidated 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 and other income, net on the Condensed Consolidated Statements of Operations.

Marketable equity securities consist of equity holdings in public companies and are classified as available-for-sale when there are no restrictions on the Company's ability to immediately liquidate such securities. Marketable equity securities are recorded on the accompanying Condensed Consolidated Balance Sheets at fair value. Fair value is determined using quoted market prices for those securities. Unrealized holding gains and losses are included as a separate component of accumulated other comprehensive income on the accompanying Condensed Consolidated 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 and other income, net on the Condensed Consolidated Statements of Operations.

From time to time the Company makes minority equity investments in non-publicly traded companies. These investments are included in other assets on the accompanying Condensed Consolidated Balance Sheets, and are accounted for under the cost method. The Company holds less than 20 percent of the voting equity of such companies, and neither has nor seeks control or significant influence over the respective company's operating and financial policies. The Company monitors its investments for impairment on a quarterly basis and makes appropriate reductions in carrying values when such impairments are determined to be other-than-temporary. Impairment charges are included in interest and other income, net on the Condensed Consolidated Statements of Operations. Factors used in determining an impairment include, but are not limited to, the current business environment including competition and uncertainty of financial condition; going concern considerations such as the rate at which the investee company utilizes cash to finance overhead, and the investee company's ability to obtain additional private financing to fulfill its stated business plan; the need for changes to the investee company's existing business model due to changing business environments and its ability to successfully implement necessary changes; and comparable valuations. If an investment is determined to be impaired, a determination is made as to whether such impairment is other-than-temporary. As of April 26, 2003 and October 26, 2002, the carrying values of the Company's minority equity investments in non-publicly traded companies were zero and \$2.2 million, respectively.

### *Notes Receivable from Non-Executive Employees*

The Company has historically provided loans to various non-executive employees principally related to the respective employees' relocation to the San Francisco Bay area. The loans are generally evidenced by secured promissory notes to the Company and bear interest at prevailing rates. Notes receivable from employees are included in prepaid expenses and other current assets, and other assets in the accompanying Condensed Consolidated Balance Sheets depending upon their remaining term. As of April 26, 2003 and October 26, 2002, the Company had outstanding loans to various employees totaling \$6.6 million and \$9.0 million, respectively.

### *Concentrations*

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash, cash equivalents, short-term and long-term investments, and accounts receivable. Cash, cash equivalents, and short-term and long-term investments are primarily maintained at five major financial institutions in the United States. Deposits held with banks may be redeemed upon demand and may exceed the amount of insurance provided on such deposits. The Company primarily invests in United States government agency debt securities and limits the amount of credit exposure to any one institution.

A majority of the Company's trade receivable balance is derived from sales to OEM partners in the computer storage and server industry. As of April 26, 2003, and October 26, 2002, 78 percent and 73 percent of accounts receivable were concentrated with five customers, respectively. The Company performs ongoing credit evaluations of its customers and generally does not require collateral on accounts receivable balances. The Company has established reserves for credit losses and sales returns and other allowances. The Company has not experienced material credit losses in any of the periods presented.

For the three months ended April 26, 2003 and April 27, 2002, three and five customers each represented greater than ten percent of the Company's total revenues for combined totals of 72 percent and 69 percent of total revenues, respectively. For the six months ended April 26, 2003 and April 27, 2002, four customers each represented greater than ten percent of the Company's total revenues for combined totals of 79 percent and 62 percent of total revenues, respectively. The level of sales

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to any single customer may vary and the loss of any single customer, or a decrease in the level of sales to any single customer, could seriously harm the Company's financial condition and results of operations.

The Company currently relies on single and limited supply sources for several key components used in the manufacture of its products. Additionally, the Company relies on two contract manufacturers for the production of its products. The inability of any single and limited source suppliers or the inability of either contract manufacturer to fulfill supply and production requirements, respectively, could have a material adverse effect on the Company's future operating results.

The Company's business is concentrated in the storage area networking industry, which has been affected by unfavorable economic conditions and reduced information technology (IT) spending rates. Accordingly, the Company's future success depends upon the buying patterns of customers in the storage area networking industry, their response to current and future IT investment trends, and the continued demand by such customers for the Company's products. The Company's continued success will depend upon its ability to enhance its existing products and to develop and introduce, on a timely basis, new cost-effective products and features that keep pace with technological developments and emerging industry standards.

### *Revenue Recognition*

*Product revenue.* Product revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, the fee is fixed or determinable, and collection is probable. However, revenue recognition is deferred for shipments to new customers and for shipments to existing customers when significant support services are required to successfully integrate Brocade products into the customer's products. These revenues, and related costs, are deferred and recognized when the customer has successfully integrated Brocade products into its product offerings and Brocade has met any support obligations. In addition, revenue from sales to master resellers is recognized upon reported sell-through. The Company reduces revenue for estimated sales returns and other allowances at the time of shipment. Sales returns and other allowances are estimated based upon historical experience.

*Service revenue.* Service revenue consists of training, warranty, and maintenance arrangements, including post-contract customer support (PCS) services. PCS services are offered under renewable, annual fee-based contracts or as part of multiple element arrangements and typically include upgrades and enhancements to the Company's operating system software, and telephone support. For multiple element arrangements, the Company allocates revenue to each element based upon vendor-specific objective evidence (VSOE) of the fair value of the element or application of the residual method. VSOE of the fair value for an element is based upon the price charged when the element is sold separately. Service revenue, including revenue allocated to undelivered elements, is deferred and recognized ratably over the contractual period. Service contracts are typically one to three years in length. Training revenue is recognized upon completion of the training. Service revenue was not material in any of the periods presented.

*Warranty Expense.* The Company provides warranties on its products ranging from one to three years. Estimated future warranty costs are accrued at the time of shipment and charged to cost of revenues based upon historical experience.

### *Stock-Based Compensation.*

The Company has several stock-based compensation plans, which are described in the Company's Annual Report on Form 10-K for the fiscal year ended October 26, 2002, which was filed with the SEC on January 22, 2003. The Company accounts for stock-based awards using the intrinsic value method of accounting in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" (APB 25). Under the intrinsic value method of accounting, no compensation expense is recognized in the Company's Condensed Consolidated Statements of Operations because the exercise price of the Company's employee stock options equals the market price of the underlying common stock on the date of grant.

Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation," (SFAS 123), established a fair value based method of accounting for stock-based awards. Under the provisions of SFAS 123, companies that elect to account for stock-based awards in accordance with the provisions of 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 under SFAS 123.

Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure an Amendment of FASB Statement No. 123" (SFAS 148), amended the disclosure requirements of SFAS 123 to require more prominent disclosures in both annual and interim financial statements regarding the method of accounting for stock-based employee compensation and the effect of the method used on reported results. The pro forma information

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resulting from the use of the fair value based method under SFAS 123 is as follows (in thousands except per share amounts):

	Three Months Ended		Six Months Ended	
	April 26, 2003	April 27, 2002	April 26, 2003	April 27, 2002
Net income (loss) – as reported	\$(146,017)	\$ 13,978	\$(152,907)	\$ 25,649
Total stock-based compensation expense determined under fair value based method, net of tax	(34,393)	(117,990)	(43,315)	(262,070)
Pro forma net income (loss)	\$(180,410)	\$(104,012)	\$(196,222)	\$(236,421)
Basic earnings (loss) per share:				
As reported	\$ (0.57)	\$ 0.06	\$ (0.62)	\$ 0.11
Pro forma	\$ (0.71)	\$ (0.45)	\$ (0.80)	\$ (1.03)
Diluted earnings (loss) per share:				
As reported	\$ (0.57)	\$ 0.06	\$ (0.62)	\$ 0.10
Pro forma	\$ (0.71)	\$ (0.45)	\$ (0.80)	\$ (1.03)

The assumptions used for the three and six months ended April 26, 2003 and April 27, 2002, are as follows:

	Three Months Ended		Six Months Ended	
	April 26, 2003	April 27, 2002	April 26, 2003	April 27, 2002
<b>Stock Options</b>				
Expected dividend yield	0.0%	0.0%	0.0%	0.0%
Risk-free interest rate	1.1 – 3.5%	1.5 – 4.3%	1.1 – 3.5%	1.5 – 4.3%
Expected volatility	81.6%	97.1%	81.6%	97.1%
Expected life from vest date (in years)	0.5	0.5	0.5	0.5

	Three Months Ended		Six Months Ended	
	April 26, 2003	April 27, 2002	April 26, 2003	April 27, 2002
<b>Employee Stock Purchase Plan</b>				
Expected dividend yield	N/A	N/A	0.0%	0.0%
Risk-free interest rate	N/A	N/A	1.0%	1.4%
Expected volatility	N/A	N/A	60.7%	93.7%
Expected life from vest date (in years)	N/A	N/A	0.5	0.5

*Computation of Net Income (Loss) per Share*

Basic net income (loss) per share is computed using the weighted-average number of common shares outstanding during the period, less shares subject to repurchase. Diluted net income (loss) per share is computed using the weighted-average number of common shares and dilutive potential common shares outstanding during the period. Dilutive potential common shares result from the assumed exercise of outstanding stock options, by application of the treasury stock method, that have a dilutive effect on earnings per share, and from the assumed conversion of outstanding convertible debt if it has a dilutive effect on earnings per share.

*Comprehensive Income (Loss)*

The components of comprehensive income (loss), net of tax, are as follows (in thousands):

	Three Months Ended		Six Months Ended	
	April 26, 2003	April 27, 2002	April 26, 2003	April 27, 2002
Net income (loss)	\$ (146,017)	\$ 13,978	\$ (152,907)	\$ 25,649
Other comprehensive income (loss):				
Change in net unrealized gains (losses) on marketable equity securities and investments	(24)	769	1,267	372
Cumulative translation adjustments	18	—	178	—
Total comprehensive income (loss)	\$ (146,023)	\$ 14,747	\$ (151,462)	\$ 26,021

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### *Reclassifications*

Certain reclassifications have been made to prior period balances in order to conform to the current year presentation.

### *Recent Accounting Pronouncements*

In June 2002, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" (SFAS 146). SFAS 146 requires the recording of costs associated with exit or disposal activities at their fair values only when a liability has been incurred. Under previous guidance, certain exit costs were accrued upon management's commitment to an exit plan, which is generally before an actual liability has been incurred. The requirements of SFAS 146 were effective prospectively for exit or disposal activities initiated after December 31, 2002. The adoption of SFAS 146 did not have a material effect on the Company's financial position, results of operations, or cash flows.

In November 2002, the FASB issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others – an Interpretation of FASB Statements No. 5, 57, and 107 and Rescission of FASB Interpretation No. 34" (FIN 45). FIN 45 elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. It also requires a guarantor to recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. In general, FIN 45 applies to contracts or indemnification agreements that contingently require the guarantor to make payments to the guaranteed party based on changes in an underlying obligation that is related to an asset, liability or an equity security of the guaranteed party. The recognition provisions of FIN 45 are effective for guarantees issued or modified after December 31, 2002. The disclosure requirements of FIN 45 are effective for financial statements of interim or annual periods ending after December 15, 2002. The Company has determined that the requirements of FIN 45 apply to its accrued warranty and standard indemnification clauses contained within its various customer contracts (see Note 9).

In December 2002, the FASB issued Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure an Amendment of FASB Statement No. 123" (SFAS 148). SFAS 148 amends SFAS 123 "Accounting for Stock-Based Compensation," to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS 148 amends the disclosure requirements of SFAS 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. SFAS 148 is effective for fiscal years beginning after December 15, 2002. The interim disclosure provisions are effective for financial reports containing financial statements for interim periods beginning after December 15, 2002. The adoption of the interim disclosure provisions of SFAS 148 did not affect the Company's financial position, results of operations, or cash flows.

In January 2003, the FASB issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46). FIN 46 requires that if an entity has a controlling financial interest in a variable interest entity, the assets, liabilities and results of activities of the variable interest entity should be included in the consolidated financial statements of the entity. For arrangements entered into after January 31, 2003, FIN 46 was effective immediately. For arrangements entered into prior to January 31, 2003, FIN 46 is effective for the first interim or annual period beginning after June 15, 2003. The Company does not have any variable interest entities.

**3. Acquisition of Rhapsody Networks, Inc.**

On January 27, 2003, the Company completed its acquisition of Rhapsody Networks, Inc. (Rhapsody), a provider of next-generation intelligent switching platforms. In exchange for all of the outstanding securities of Rhapsody, the Company issued 20.5 million shares of its common stock, including assumed warrants to purchase 0.4 million shares of Brocade common stock, and assumed options to purchase 0.3 million shares of Brocade common stock. In addition, the Company will issue up to an additional 2.9 million shares of its common stock if the Rhapsody business successfully completes specified product milestones by November 30, 2003. The additional shares, if issued, will represent additional purchase price and will be accounted for in the same manner as described below.

The total purchase price was \$138.5 million, consisting of Brocade common stock valued at \$129.3 million; restricted common stock, assumed warrants, and assumed options valued at \$7.9 million, reduced by the intrinsic value of unvested restricted stock and stock options of \$1.7 million; and direct acquisition costs of \$3.0 million. The value of the common stock issued was determined based on the average of the five-day trading period ended November 7, 2002, or \$6.95 per share. The fair value of the restricted common stock, assumed warrants, and assumed options was determined using the Black-Scholes options pricing model. The deferred stock compensation of \$1.7 million will be amortized over the remaining service period on a straight-line basis.

As of the acquisition date, Rhapsody was a development stage company with no recognized revenue and a core technology that had not yet reached technological feasibility. Technological feasibility is established when an enterprise has completed all planning, designing, coding, and testing activities necessary to establish that the technology can be utilized to meet design specifications, including functions, features, and technical performance requirements. Substantial additional resources are still required to bring the Rhapsody core technology to technological feasibility. To date, the Company has incurred \$6.1 million in expenses related to bringing the Rhapsody core technology to technological feasibility, and the Company expects to incur additional quarterly expenses of approximately \$8.0 million to \$8.5 million. The Company currently believes that revenues related to this technology will commence during fiscal year 2004. Based upon the factors noted above the Company concluded that, for accounting purposes, it was not purchasing a business with an existing revenue stream, but rather a group of assets centered on a core technology that the Company believes will ultimately be developed into a saleable product. As a result, the acquisition of Rhapsody was accounted for as an asset purchase.

The purchase price was allocated to the assets acquired, liabilities assumed, and acquired in-process research and development (in-process R&D) based on their respective fair values. The excess of purchase price over the fair value of net assets received was allocated to acquired in-process R&D and acquired non-monetary assets on a pro-rata basis.

The following table summarizes the allocation of purchase price for the acquisition of Rhapsody (in thousands):

	Fair Value of Assets and Liabilities	Allocation of Excess Purchase Price	Allocated Fair Value of Assets and Liabilities
Current assets	\$ 20,766	\$ —	\$ 20,766
Property and equipment	1,764	822	2,586
Other assets	240	—	240
<b>Total assets acquired</b>	<b>22,770</b>	<b>822</b>	<b>23,592</b>
Current liabilities	(4,613)	—	(4,613)
Capital lease and debt obligations	(12,583)	—	(12,583)
Liabilities associated with facility lease loss	(2,840)	—	(2,840)
<b>Total liabilities assumed</b>	<b>(20,036)</b>	<b>—</b>	<b>(20,036)</b>
Acquired in-process R&D	92,015	42,883	134,898
Excess purchase price	43,705	(43,705)	—
<b>Total purchase price</b>	<b>\$138,454</b>	<b>\$ —</b>	<b>\$138,454</b>

The value assigned to acquired in-process R&D was based on a valuation prepared by an independent third-party appraiser. The value was estimated based on the income approach using discount rates ranging from 35 percent to 45 percent. The income approach estimates the present value of the anticipated cash flows attributable to the respective assets under development once they have reached technological feasibility. The anticipated cash flows were based upon estimated prospective financial information, which was determined by the third-party appraiser to be reasonable and appropriate for use in reaching the value assigned to acquired in-process R&D. No intangible assets were identified. The amount allocated to in-process R&D was expensed in the period of acquisition since the in-process R&D had not yet reached technological feasibility and had no alternative future use.

**4. Restructuring Costs***Fiscal 2003 Second Quarter Restructuring*

During the quarter ended April 26, 2003, the Company reevaluated certain aspects of its business model and completed a program to restructure certain business operations, reorganize certain aspects of the Company, and reduce the Company's operating expense structure. The restructuring program included a workforce reduction of approximately nine percent, primarily in the sales, marketing, and engineering organizations. In addition, as a result of the restructuring, certain assets associated with reorganized or eliminated functions were determined to be impaired.

The following table summarizes the restructuring costs incurred and charged to restructuring expense, costs paid or otherwise settled, and remaining unpaid or otherwise unsettled accrued liabilities (in thousands) as of April 26, 2003:

	Severance and Benefits	Contract Terminations and Other	Equipment Impairment	Total
Restructuring costs incurred	\$ 4,165	\$1,478	\$ 5,245	\$10,888
Cash payments	(2,770)	(318)	—	(3,088)
Non-cash charges	(25)	—	(5,245)	(5,270)
Remaining accrued liabilities at April 26, 2003	\$ 1,370	\$1,160	\$ —	\$ 2,530

Severance and benefits charges of \$4.2 million consisted of severance and related employee termination costs, including outplacement services, associated with the reduction of the Company's workforce. Equipment impairment charges of \$5.2 million primarily consisted of excess equipment that is no longer being used as a result of the restructuring program. Contract termination and other charges of \$1.5 million were primarily related to the cancellation of certain contracts in connection with the restructuring of certain business functions.

Remaining accrued liabilities related to the Company's fiscal 2003 second quarter restructuring program are included in other accrued liabilities on the accompanying Condensed Consolidated Balance Sheets. The Company expects to pay or otherwise substantially settle the remaining accrued liabilities during the remainder of fiscal year 2003.

*Fiscal 2003 First Quarter Restructuring*

During the quarter ended January 25, 2003, the Company completed a restructuring program to reduce the Company's expense structure. The restructuring program included a company-wide workforce reduction of approximately 12 percent, consolidation of excess facilities, and the restructuring of certain business functions. This restructuring program affected all of the Company's functional areas.

The following table summarizes the restructuring costs incurred and charged to restructuring expense, costs paid or otherwise settled, and remaining unpaid or otherwise unsettled accrued liabilities (in thousands) as of April 26, 2003:

	Severance and Benefits	Contract Terminations	Equipment Impairment	Total
Restructuring costs incurred	\$ 8,549	\$ 947	\$ 622	\$10,118
Cash payments	(5,995)	(903)	—	(6,898)
Non-cash charges	(2,097)	—	(622)	(2,719)
Remaining accrued liabilities at April 26, 2003	\$ 457	\$ 44	\$ —	\$ 501

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Severance and benefits charges of \$8.5 million consisted of severance and related employee termination costs related to the reduction of the Company's workforce, including outplacement services and the write-off of unrecoverable employee loans of certain terminated employees. Contract termination charges of \$0.9 million were primarily related to the cancellation of certain contracts in connection with the restructuring of certain business functions and the consolidation of excess facilities. Equipment impairment charges of \$0.6 million were related to excess computer equipment resulting from the workforce reduction, consolidation of excess facilities, and the restructuring of certain business functions.

Remaining accrued liabilities related to the Company's fiscal 2003 first quarter restructuring program are included in other accrued liabilities on the accompanying Condensed Consolidated Balance Sheets. No material changes in estimates were made to the fiscal 2003 first quarter restructuring accrual during the three months ended April 26, 2003. The Company expects to pay or otherwise settle the remaining accrued liabilities during the remainder of fiscal year 2003.

**5. Balance Sheet Details**

The following tables provide details of selected balance sheet items (in thousands):

	April 26, 2003	October 26, 2002
<b>Inventories, net:</b>		
Raw materials	\$ 504	\$ 645
Finished goods	4,560	4,757
Total	<u>\$ 5,064</u>	<u>\$ 5,402</u>
<b>Property and equipment, net:</b>		
Computer equipment and software	\$ 66,764	\$ 64,220
Engineering and other equipment	97,579	96,904
Furniture and fixtures	3,809	3,647
Leasehold improvements	33,366	31,259
	201,518	196,030
Less: Accumulated depreciation and amortization	(68,208)	(52,405)
Total	<u>\$133,310</u>	<u>\$143,625</u>

Leasehold improvements as of April 26, 2003 and October 26, 2002, are shown net of estimated asset impairments related to facilities lease losses (see Note 7).

**6. Investments and Marketable Equity Securities**

The following tables summarize the Company's investments and marketable equity securities (in thousands):

	Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
<b>April 26, 2003</b>				
U.S. government obligations	\$463,301	\$12,937	\$ —	\$476,238
State and municipal obligations	5,500	—	—	5,500
Corporate notes	6,955	15	(10)	6,960
Marketable equity securities	1,040	—	(172)	868
Total	<u>\$476,796</u>	<u>\$12,952</u>	<u>\$(182)</u>	<u>\$489,566</u>
Reported as:				
Short-term investments				\$119,540
Marketable equity securities				868
Long-term investments				369,158
Total				<u>\$489,566</u>
<b>October 26, 2002</b>				
U.S. government obligations	\$361,074	\$10,779	\$ —	\$371,853
Marketable equity securities	347	—	(121)	226
Total	<u>\$361,421</u>	<u>\$10,779</u>	<u>\$(121)</u>	<u>\$372,079</u>
Reported as:				
Short-term investments				\$ 50,988
Marketable equity securities				226
Long-term investments				320,865
Total				<u>\$372,079</u>

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For the three and six months ended April 26, 2003, a loss of \$0.2 million was realized on the sale of marketable equity securities and included in interest and other income, net on the Condensed Consolidated Statements of Operations. No gains or losses were realized on the sale of investments or marketable equity securities during the three and six months ended April 27, 2002. As of April 26, 2003, and October 26, 2002, net unrealized holding gains of \$12.8 million and \$10.7 million, respectively, were included in accumulated other comprehensive income in the accompanying Condensed Consolidated Balance Sheets, net of any related tax effect.

The following table summarizes the maturities of the Company's investments in debt securities as of April 26, 2003 (in thousands):

	Amortized Cost	Fair Value
Less than one year	\$ 119,436	\$ 119,540
Due in 1 – 2 years	356,320	369,158
Due in 2 – 3 years	—	—
Total	\$475,756	\$488,698

## 7. Liabilities Associated with Facilities Lease Losses

During the quarter ended October 27, 2001, the Company recorded a charge of \$39.8 million related to estimated facilities lease losses, net of expected sublease income, and a charge of \$5.7 million in connection with the estimated impairment of certain related leasehold improvements. These charges represented the low-end of an estimated range that may be adjusted upon the occurrence of future triggering events. Triggering events may include, but are not limited to, changes in estimated time to sublease the facilities, sublease terms, sublease rates, expected future operating costs, and expected future use of the facilities.

During the three months ended July 27, 2002, the Company completed a transaction to sublease a portion of these vacant facilities. Accordingly, based on then current market data, the Company revised certain estimates and assumptions, including those related to estimated sublease rates, estimated time to sublease the facilities, expected future operating costs, and expected future use of the facilities. The Company reevaluates its estimates and assumptions on a quarterly basis and makes adjustments to the reserve balance if necessary. No material adjustments were made to the facilities lease losses reserve for the three or six months ended April 26, 2003.

Should there be changes in real estate market conditions or should it take longer than expected to find a suitable tenant to sublease the remaining vacant facilities, adjustments to the facilities lease losses reserve may be necessary in future periods based upon then current actual events and circumstances.

The following table summarizes the activity related to the facilities lease losses reserve, net of expected sublease income (in thousands):

	Facilities Lease Losses
Reserve balances at October 26, 2002	\$30,806
Cash payments on facilities leases	(4,344)
Non-cash charges	(371)
Adjustments (a)	2,840
Reserve balances at April 26, 2003	\$28,931

(a) Lease loss liability assumed in connection with the acquisition of Rhapsody (see Note 3).

Cash payments for facilities leases related to the above noted facilities lease losses will be paid over the respective lease terms through fiscal year 2006.



## 8. Convertible Subordinated Debt

On December 21, 2001, and January 10, 2002, the Company sold, in private placements pursuant to Section 4(2) of the Securities Act of 1933, as amended, \$550 million in aggregate principal amount, two percent convertible subordinated notes due 2007. The initial purchasers purchased the notes from the Company at a discount of 2.25 percent of the aggregate principal amount. Holders of the notes may, in whole or in part, convert the notes into shares of the Company's common stock at a conversion rate of 22.8571 shares per \$1,000 principal amount of notes (aggregate of approximately 12.6 million shares) at any time prior to maturity on January 1, 2007. At any time on or after January 5, 2005, the Company may redeem the notes in whole or in part at the following prices expressed as a percentage of the principal amount:

Redemption Period	Price
Beginning on January 5, 2005 and ending on December 31, 2005	100.80%
Beginning on January 1, 2006 and ending on December 31, 2006	100.40%
On January 1, 2007	100.00%

The Company is required to pay interest on January 1 and July 1 of each year, beginning July 1, 2002. Debt issuance costs of \$12.4 million are being amortized over the term of the notes. The amortization of debt issuance costs will accelerate upon early redemption or conversion of the notes. The net proceeds remain available for general corporate purposes, including working capital and capital expenditures.

The notes are not listed on any securities exchange or included in any automated quotation system; however, the notes are eligible for trading on the Portal<sup>SM</sup> Market. On April 25, 2003, the average bid and ask price on the Portal Market of the notes was 79.88, resulting in an aggregate fair value of approximately \$439.3 million.

## 9. Commitments and Contingencies

### Leases

The Company leases its facilities and certain equipment under various operating lease agreements that expire through November 2013. In connection with its facilities lease agreements, the Company has signed unconditional, irrevocable letters of credit totaling \$18.7 million as security for the leases. Future minimum lease payments under all non-cancelable operating leases as of April 26, 2003 were \$253.5 million. In addition to base rent, many of the facilities lease agreements require that the Company pay a proportional share of the respective facilities' operating expenses.

As of April 26, 2003, the Company had recorded \$28.9 million in facilities lease loss reserves related to future lease commitments, net of expected sublease income (see Note 7).

### Product Warranties

The Company provides warranties on its products ranging from one to three years. Estimated future warranty costs are accrued at the time of shipment and charged to cost of revenues based upon historical experience. The Company's accrued liability for estimated future warranty costs is included in other accrued liabilities on the accompanying Condensed Consolidated Balance Sheets. The following table summarizes the activity related to the Company's accrued liability for estimated future warranty costs during the six months ended April 26, 2003 (in thousands):

	Accrued Warranty
Balance at October 26, 2002	\$3,966
Liabilities accrued	767
Claims paid	(361)
Changes in liability for pre-existing warranties	(938)
Balance at April 26, 2003	\$3,434

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In addition, the Company has standard indemnification clauses contained within its various customer contracts whereby the Company indemnifies the parties to whom it sells its products with respect to the Company's product infringing upon any patents, trademarks, copyrights, or trade secrets, as well as against bodily injury or damage to real or tangible personal property caused by a defective Company product. As of April 26, 2003, there have been no known events or circumstances that have resulted in an indemnification related liability to the Company.

### *Manufacturing and Purchase Commitments*

The Company has manufacturing agreements with Solectron Corporation (Solectron) and Hon Hai Precision Industry Co. (Foxconn) under which the Company provides twelve-month product forecasts and places purchase orders in advance of the scheduled delivery of products to the Company's customers. The required lead-time for placing orders with both Solectron and Foxconn depends on the specific product. As of April 26, 2003, the Company's aggregate commitment to Solectron and Foxconn for inventory components used in the manufacture of Brocade products was \$43.4 million, net of purchase commitment reserves of \$1.3 million, which the Company expects to utilize during future normal ongoing operations. The Company's purchase orders placed with Solectron and Foxconn are cancelable, subject to certain requirements. The agreement with Solectron requires the Company to purchase from Solectron all inventory components not returnable or usable by other Solectron customers after 365 days.

### *Legal Proceedings*

From time to time, claims are made against the Company in the ordinary course of its business, which could result in litigation. Claims and associated litigation are subject to inherent uncertainties and unfavorable outcomes could occur, such as monetary damages, fines, penalties or injunctions prohibiting the Company from selling one or more products or engaging in other activities. The occurrence of an unfavorable outcome in any specific period could have a material adverse affect on the Company's results of operations for that period or future periods.

On May 23, 2003, a suit captioned *Vixel Corporation v. Brocade Communications Systems, Inc.* was filed in the United States District Court for the Northern District of California. The complaint alleges that Brocade products infringe United States Patents Nos. 6,118,776; 6,470,007; and 6,185,203 relating to switching and Fibre Channel technologies. The Company is investigating the allegations and intends to defend the action vigorously. The Company is in the initial stages of its investigation and at this time is not able to determine what effect, if any, this action will have on its business or financial position and results of operations.

On January 10, 2003, a suit captioned *Raytheon Company v. Brocade Communications Systems, Inc. et al.* was filed against Brocade and various other companies in the United States District Court for the Eastern District of Texas. The complaint alleges that Brocade products infringe United States Patent No. 5,412,791, entitled "Mass Data Storage Library." On February 6, 2003, Raytheon filed an amended complaint stating their original claim with more particularity. On May 9, 2003, the Company filed an answer and counterclaims, asserting, among other things, invalidity of all of Raytheon's claims. A scheduling conference was held on May 20, 2003, and trial has been scheduled for June 2004. The Company believes that it has meritorious defenses to the claims and intends to defend the action vigorously. At this time the Company is not able to determine what effect, if any, this action will have on its business or financial position and results of operations.

On February 14, 2002, a suit captioned *McDATA Corp. v. Brocade Communications Systems, Inc.* was filed against the Company in the United States District Court for the District of Colorado. The complaint alleged that the Brocade SilkWorm 3800 Enterprise Fibre Channel Fabric Switch and Brocade SilkWorm 12000 Core Fabric Switch infringe United States Patent No. 6,233,236, entitled "Method and Apparatus for Measuring Traffic Within a Switch." The complaint seeks unspecified compensatory and exemplary damages and to permanently enjoin the Company from infringing the patent in the future. On March 4, 2002, McDATA Corporation (McDATA) filed an amended complaint in which it additionally alleged that the Brocade SilkWorm 3200 Entry Fabric Switch infringed this patent. In connection with this suit, on March 4, 2002, McDATA filed a motion for a preliminary injunction against the Company with regard to the patent. On April 8, 2002, the Company filed an answer and counterclaims asserting, among other things, no infringement, and that the patent is invalid, unenforceable and covered by an existing covenant not to sue between the parties. A hearing on McDATA's motion for preliminary injunction was held during the week of July 15, 2002. In an order dated December 6, 2002, the Court denied McDATA's motion for a preliminary injunction. On December 23, 2002, McDATA filed a demand for arbitration to move this matter from the United States District Court for the District of Colorado to arbitration. The matter has been referred to arbitration.

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No arbitration date has been set. The Company believes that it has meritorious defenses to the claims and intends to defend the action vigorously. The Company believes that the ultimate disposition of this matter will not have a material adverse effect on its business or financial position and results of operations.

On July 20, 2001, the first of a number of putative class actions was filed in the United States District Court for the Southern District of New York against the Company, certain of its officers and directors, and certain of the underwriters for the Company's initial public offering. Those cases were consolidated under the caption *Chae v. Brocade Communications Systems, Inc. et al.* The complaints generally alleged that various underwriters engaged in improper and undisclosed activities related to the allocation of shares in the Company's initial public offering of securities. On March 1, 2002, the Court entered an order dismissing without prejudice all claims against the Company and its officers and directors named in the consolidated proceeding. On April 19, 2002, a consolidated amended class action captioned *In Re Brocade Communications Systems, Inc. Initial Public Offering Securities Litigation* was filed which makes claims against the Brocade parties that are substantially similar to those alleged in the earlier case. The complaint seeks unspecified damages on behalf of a purported class of purchasers of common stock from May 24, 1999 to December 6, 2000. In October 2002, the individual defendants were dismissed without prejudice from the action. On February 19, 2003, the Court entered an order dismissing all of the plaintiffs' claims against the Company. No appeal has been filed.

### **10. Common Stock**

On December 9, 2002, the Company announced that its Board of Directors approved a voluntary stock option exchange program (the Exchange Program) for employees. Under the Exchange Program, employees were offered the opportunity to exchange an aggregate of approximately 67.3 million outstanding stock options with exercise prices equal to or greater than \$12.00 per share for new stock options to be granted at an exchange ratio determined by the date the exchanged stock options were granted. Participating employees other than the Chief Executive Officer (CEO) would receive new stock options in exchange for their eligible outstanding stock options at an exchange ratio of either 1 for 1, 1 for 2, or 1 for 3, depending on the grant date of the exchanged stock option. The CEO would receive new stock options in exchange for eligible outstanding stock options at an exchange ratio of 1 for 10.

On January 9, 2003, and in accordance with the Exchange Program, the Company cancelled 58.6 million outstanding stock options and issued promises to grant new stock options to participating employees. The new stock options will be granted on July 10, 2003, which is the first business day that is six months and one day after the cancellation of the exchanged options. The exercise price per share of the new stock options will be equal to the fair market value of the Company's common stock at the close of regular trading on July 10, 2003. However, the exercise price per share of the new stock options granted to the Company's officers will not be less than \$5.21 per share, which is 110 percent of the average closing price of the Company's common stock during the offer period. The Company currently expects to grant approximately 28.5 million new stock options on July 10, 2003, which represent approximately 11 percent of the Company's total shares of common stock outstanding as of April 26, 2003. The new stock options could have a dilutive effect on the Company's future earnings per share to the extent that the future market price of the Company's common stock exceeds the exercise price of the new stock options. No financial or accounting effect to the Company's financial position, results of operations, or cash flows for the three and six months ended April 26, 2003, was associated with this transaction.

### **11. Segment Information**

The Company is organized and operates as one operating segment: the design, development, marketing and selling of infrastructure for storage area networks (SANs). The CEO is the Company's Chief Operating Decision Maker (CODM), as defined by SFAS 131, "Disclosures about Segments of an Enterprise and Related Information." The CODM allocates resources and assesses the performance of the Company 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 take possession of Brocade products domestically and then distribute those products to their international customers. Domestic and international revenues were approximately 66 percent and 34 percent of total revenues, respectively, for the three months ended April 26, 2003, and 67 percent and 33 percent of total revenues, respectively, for the six months ended April 26, 2003. Domestic and international revenues were approximately 66 percent and 34 percent of total revenues, respectively, for the three months ended April 27, 2002, and 68 percent and 32 percent of total revenues, respectively, for the six months ended April 27, 2002. To date, service revenue has not exceeded 10 percent of total revenues. Long-lived assets located in foreign countries were not material as of April 26, 2003 and October 26, 2002.

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For the three months ended April 26, 2003 and April 27, 2002, three and five customers each represented greater than ten percent of the Company's total revenues for combined totals of 72 percent and 69 percent of total revenues, respectively. For the six months ended April 26, 2003 and April 27, 2002, four customers each represented greater than ten percent of the Company's total revenues for combined totals of 79 percent and 62 percent of total revenues, respectively. The level of sales to any single customer may vary and the loss of any single customer, or a decrease in the level of sales to any single customer, could seriously harm the Company's financial condition and results of operations.

## 12. Interest and other income, net

Interest and other income, net consisted of the following (in thousands):

	Three Months Ended		Six Months Ended	
	April 26, 2003	April 27, 2002	April 26, 2003	April 27, 2002
Interest income	\$5,064	\$6,555	\$10,057	\$10,122
Gain on investment, net	156	—	530	—
Other income (expense), net	(123)	106	(157)	(126)
Total	\$5,097	\$6,661	\$10,430	\$ 9,996

Net gain on investments for the six months ended April 26, 2003, includes a gain of \$2.5 million recorded during the three months ended January 25, 2003, that resulted from the acquisition of a non-publicly traded company in which Brocade had a minority equity investment. This gain was partially offset by an impairment charge of \$2.2 million recorded during the three months ended January 25, 2003, that resulted from an other-than-temporary decline in the estimated fair value of a minority equity investment in a different non-publicly traded company.

## 13. Net Income (Loss) per Share

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

	Three Months Ended		Six Months Ended	
	April 26, 2003	April 27, 2002	April 26, 2003	April 27, 2002
Net income (loss)	\$(146,017)	\$ 13,978	\$(152,907)	\$ 25,649
Basic and diluted net income (loss) per share:				
Weighted-average shares of common stock outstanding	255,670	232,958	245,400	231,979
Less: Weighted-average shares of common stock subject to repurchase	(983)	(1,773)	(608)	(2,259)
Weighted-average shares used in computing basic net income (loss) per share	254,687	231,185	244,792	229,720
Dilutive effect of potential common shares	—	14,493	—	17,235
Weighted-average shares used in computing diluted net income (loss) per share	254,687	245,678	244,792	246,955
Basic net income (loss) per share	\$ (0.57)	\$ 0.06	\$ (0.62)	\$ 0.11
Diluted net income (loss) per share	\$ (0.57)	\$ 0.06	\$ (0.62)	\$ 0.10

For the three months ended April 26, 2003 and April 27, 2002, potential common shares in the form of stock options to purchase 15.3 million shares of common stock and 37.3 million shares of common stock, respectively, were antidilutive and therefore not included in the computation of diluted earnings per share. For the six months ended April 26, 2003 and April 27, 2002, potential common shares in the form of stock options to purchase 40.5 million shares of common stock and 33.3 million shares of common stock, respectively, were antidilutive and therefore not included in the computation of diluted earnings per share.

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In addition, for each of the three months ended April 26, 2003 and April 27, 2002, 12.6 million potential common shares resulting from the potential conversion of the Company's convertible subordinated debt were antidilutive and therefore not included in the computation of diluted earnings per share. For the six months ended April 26, 2003 and April 27, 2002, 12.6 million potential common shares and 8.8 million potential common shares, respectively, resulting from the potential conversion of the Company's convertible subordinated debt were antidilutive and therefore not included in the computation of diluted earnings per share.

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

This Quarterly Report on Form 10-Q (Quarterly Report) contains forward-looking statements. These forward-looking statements include predictions regarding our future:

- revenues and profits;
- customer concentration;
- research and development expenses;
- sales and marketing expenses;
- general and administrative expenses;
- technological feasibility of Rhapsody core technology;
- provision for income taxes;
- effective tax rate;
- realization of deferred tax assets;
- liquidity and sufficiency of existing cash, cash equivalents, and short-term investments for near-term requirements;
- purchase commitments; and
- the effect of recent accounting pronouncements on our financial condition and results of operations.

You can identify these and other forward-looking statements by the use of words such as "may," "will," "should," "expects," "plans," "anticipates," "believes," "estimates," "predicts," "intends," "potential," "continue," or the negative of such terms, or other comparable terminology. Forward-looking statements also include the assumptions underlying or relating to any of the foregoing statements.

Our actual results could differ materially from those anticipated in these forward-looking statements as a result of various factors, including those set forth below under the heading "Risk Factors." All forward-looking statements included in this document are based on information available to us on the date hereof. We assume no obligation to update any forward-looking statements.

The following information should be read in conjunction with the Condensed Consolidated Financial Statements and notes thereto included in Item 1 of this Quarterly Report, and with Management's Discussion and Analysis of Financial Condition and Results of Operations and the Consolidated Financial Statements and notes thereto contained in our Annual Report on Form 10-K for the fiscal year ended October 26, 2002, which was filed with the SEC on January 22, 2003.

#### **Recent Events**

On May 23, 2003, a suit captioned *Vixel Corporation v. Brocade Communications Systems, Inc.* was filed in the United States District Court for the Northern District of California. The complaint alleges that Brocade products infringe United States Patents Nos. 6,118,776; 6,470,007; and 6,185,203 relating to switching and Fibre Channel technologies. We are investigating the allegations and intend to defend the action vigorously. We are in the initial stages of our investigation and at this time are not able to determine what effect, if any, this action will have on our business or financial position and results of operations.

**Results of Operations**

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

	Three Months Ended		Six Months Ended	
	April 26, 2003	April 27, 2002	April 26, 2003	April 27, 2002
Net revenues	100.0%	100.0%	100.0%	100.0%
Cost of revenues	46.0	39.8	46.2	39.8
Gross margin	54.0	60.2	53.8	60.2
Operating expenses:				
Research and development	27.9	24.5	26.9	24.2
Sales and marketing	24.4	19.8	24.7	20.3
General and administrative	4.1	3.6	4.0	3.6
Restructuring costs	8.3	—	8.3	—
Amortization of deferred stock compensation	0.2	0.2	0.1	0.2
In-process research and development	103.0	—	53.1	—
Total operating expenses	167.9	48.1	117.1	48.3
Income (loss) from operations	(113.9)	12.1	(63.3)	11.9
Interest and other income, net	3.9	4.9	4.1	3.9
Interest expense	(2.6)	(2.4)	(2.6)	(1.8)
Income (loss) before provision for income taxes	(112.6)	14.6	(61.8)	14.0
Income tax (benefit) provision	(1.1)	4.2	(1.6)	4.1
Net income (loss)	(111.5)%	10.4%	(60.2)%	9.9%

*Revenues.* Our revenues are derived primarily from sales of our SilkWorm family of products. Net revenues for the three months ended April 26, 2003 were \$130.9 million, compared to \$135.0 million for the three months ended April 27, 2002. Net revenues for the six months ended April 26, 2003 were \$254.1 million, compared to \$258.0 million for the six months ended April 27, 2002. Revenues were negatively affected by declines in average selling prices as a result of increased competition. Revenue growth was also affected by the continuing unfavorable economic conditions and reduced IT spending environment that began in fiscal year 2001. We are unable to predict when the IT spending environment will improve, if at all. As a result, our growth rates may continue to be negatively affected.

Domestic and international revenues were 66 percent and 34 percent of total revenues, respectively, for each of the three months ended April 26, 2003 and April 27, 2002. Domestic and international revenues were 67 percent and 33 percent of total revenues, respectively, for the six months ended April 26, 2003, compared to 68 percent and 32 percent, respectively, for the six months ended April 27, 2002. Revenues are attributed to geographic areas based on the location of the customer to which our products are shipped. International revenues primarily consisted of sales to customers in Western Europe and the greater Asia Pacific region. Included in domestic revenues are sales to certain OEM customers who take possession of our products domestically and then distribute these products to their international customers. Our mix of international and domestic revenue can therefore vary depending on the relative mix of sales to certain OEM customers.

A significant portion of our revenues is concentrated among a relatively small number of customers. For the three months ended April 26, 2003 and April 27, 2002, three and five customers each represented greater than ten percent of our total revenues for combined totals of 72 percent and 69 percent of total revenues, respectively. For the six months ended April 26, 2003 and April 27, 2002, four customers each represented greater than ten percent of our total revenues for combined totals of 79 percent and 62 percent of total revenues, respectively. We expect that a significant portion of our future revenues will continue to come from sales of products to a relatively small number of customers. Therefore, the loss of any one significant customer, or a decrease in the level of sales to any one significant customer, could seriously harm our financial condition and results of operations.

*Gross margin.* Gross margin for the three months ended April 26, 2003 was 54.0 percent, compared to 60.2 percent for the three months ended April 27, 2002. Gross margin for the six months ended April 26, 2003 was 53.8 percent, compared to 60.2 percent for the six months ended April 27, 2002. The reductions in gross margins were primarily related to an increase in fixed manufacturing costs and declines in the average selling prices of our products.

*Research and development expenses.* Research and development (R&D) expenses were \$36.5 million for the three months ended April 26, 2003, compared to \$33.0 million for the three months ended April 27, 2002. R&D expenses were \$68.4 million for the six months ended April 26, 2003, compared to \$62.3 million for the six months ended April 27, 2002. R&D expenses consist primarily of salaries and related expenses for personnel engaged in engineering and R&D activities; fees paid to consultants and outside service providers; nonrecurring engineering charges; prototyping expenses related to the

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design, development, testing and enhancement of our products; depreciation related to engineering and other test equipment; and IT and facilities expenses. The increases in R&D expenses were primarily the result of incremental spending associated with our acquisition of Rhapsody. We currently anticipate that R&D expenses for the three months ended July 26, 2003 will increase on an absolute dollars basis from the \$36.5 million incurred during the three months ended April 26, 2003, primarily resulting from incremental spending associated with our acquisition of Rhapsody.

*Sales and marketing expenses.* Sales and marketing expenses were \$32.0 million for the three months ended April 26, 2003, compared to \$26.8 million for the three months ended April 27, 2002. Sales and marketing expenses were \$62.7 million for the six months ended April 26, 2003, compared to \$52.4 million for the six months ended April 27, 2002. Sales and marketing 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 expenses. The increase in sales and marketing expenses was primarily due to the expansion of our sales and marketing organizations. We currently anticipate that sales and marketing expenses for the three months ended July 26, 2003 will decrease on an absolute dollar basis, from the \$32.0 million incurred during the three months ended April 26, 2003, primarily as a result of the restructuring actions completed during the three months ended April 26, 2003.

*General and administrative expenses.* General and administrative (G&A) expenses were \$5.3 million for the three months ended April 26, 2003, compared to \$4.8 million for the three months ended April 27, 2002. G&A expenses were \$10.3 million for the six months ended April 26, 2003, compared to \$9.4 million for the six months ended April 27, 2002. G&A expenses consist primarily of salaries and related expenses for corporate executives, finance, human resources and investor relations, as well as recruiting expenses, professional fees, corporate legal expenses, other corporate expenses, and IT and facilities expenses. The increase in G&A expenses was primarily due to an increase in G&A related personnel. We currently anticipate that G&A expenses for the three months ended July 26, 2003 will remain relatively constant on an absolute dollar basis from the \$5.3 million incurred during the three months ended April 26, 2003.

*Restructuring costs.* During the three months ended April 26, 2003, we reevaluated certain aspects of our business model and completed a program to restructure and reorganize certain business operations and to reduce our expense structure. The restructuring program included a workforce reduction of approximately nine percent, primarily in the sales, marketing, and engineering organizations. In addition, as a result of the restructuring, certain assets associated with reorganized or eliminated functions were determined to be impaired. Accordingly, during the three months ended April 26, 2003, we recorded restructuring costs of \$10.9 million. Restructuring costs for the six months ended April 26, 2003, were \$21.0 million and include \$10.1 million in restructuring costs incurred in connection with a company-wide restructuring program affected during the three months ended January 25, 2003 (see Note 4 "Restructuring Costs" of the Notes to Condensed Consolidated Financial Statements).

*Amortization of deferred stock compensation.* Amortization of deferred stock compensation was \$0.2 million for each of the three months ended April 26, 2003 and April 27, 2002. Amortization of deferred stock compensation was \$0.3 million for the six months ended April 26, 2003, compared to \$0.5 million for the six months ended April 27, 2002. During the three months ended April 26, 2003, we recorded \$1.7 million of deferred stock compensation in connection with our acquisition of Rhapsody. The deferred stock compensation represented the intrinsic value of unvested restricted common stock and assumed stock options, and is being amortized over the respective remaining service periods on a straight-line basis (see Note 3 "Acquisition of Rhapsody Networks, Inc." of the Notes to Condensed Consolidated Financial Statements).

*In-process research and development.* On January 27, 2003, we completed our acquisition of Rhapsody, a provider of next-generation intelligent switching platforms. In exchange for all of the outstanding securities of Rhapsody, we issued 20.5 million shares of our common stock, including shares underlying assumed warrants and stock options. In addition, we will issue up to an additional 2.9 million shares of our common stock if the Rhapsody business successfully completes specified product milestones by November 30, 2003.

As of the acquisition date, Rhapsody was a development stage company that had no recognized revenue and a core technology that required substantial additional resources to bring it to technological feasibility. To date, we have incurred \$6.1 million in expenses related to bringing the Rhapsody core technology to technological feasibility, and we expect to incur additional quarterly expenses of approximately \$8.0 million to \$8.5 million. We currently believe that revenues related to this technology will commence during fiscal year 2004. As a result, the acquisition was accounted for as an asset purchase and the total purchase price of \$138.5 million was allocated to the assets acquired, liabilities assumed, and acquired in-process R&D based on their respective fair values. The excess of purchase price over the fair value of net assets received was allocated to acquired in-process R&D and acquired non-monetary assets on a pro-rata basis. The total acquired in-process R&D of \$134.9 million was expensed during the three months ended April 26, 2003, since the in-process R&D had not yet reached technological feasibility and had no alternative future use. No acquired in-process R&D was recorded in any of the other periods presented (see Note 3 "Acquisition of Rhapsody Networks, Inc." of the Notes to Condensed Consolidated Financial Statements).

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*Interest and other income, net.* Net interest and other income was \$5.1 million for the three months ended April 26, 2003, compared to \$6.7 million for the three months ended April 27, 2002. The decrease was primarily the result of lower interest rates. Net interest and other income was \$10.4 million for the six months ended April 26, 2003, compared to \$10.0 million for the six months ended April 27, 2002. The increase was primarily the result of increased cash and investment balances partially offset by lower interest rates. The increase in cash and investment balances was primarily related to the proceeds received from the \$550 million in aggregate principal amount of two percent convertible subordinated notes due 2007 that were issued in December of 2001 and January 2002 (see Note 8 "Convertible Subordinate Debt" of the Notes to Condensed Consolidated Financial Statements).

*Interest expense.* Interest expense was \$3.4 million for each of the three months ended April 26, 2003 and April 27, 2002, respectively. Interest expense was \$6.7 million for the six months ended April 26, 2003, compared to \$4.7 million for the six months ended April 27, 2002. Interest expense primarily represents the interest cost associated with our convertible subordinated notes issued during the three months ended January 26, 2002.

*Income tax (benefit) provision.* Our effective tax rate for the three months ended April 26, 2003, was a benefit of 0.9 percent, compared with a provision of 29.0 percent for the three months ended April 27, 2002. Our effective tax rate for the six months ended April 26, 2003, was a benefit of 2.7 percent, compared with a provision of 29.0 percent for the six months ended April 27, 2002. Our effective tax rate for the three and six months ended April 26, 2003, was affected by non-deductible expenses, primarily in-process R&D, incurred in connection with our acquisition of Rhapsody.

We currently anticipate an effective tax rate of 29 percent for the three months ended July 26, 2003. Our ability to maintain this effective tax rate requires that international revenues and earnings as a percentage of total revenues and earnings be consistent with historical levels. To the extent that international revenues and earnings differ from those historically achieved, a factor largely influenced by the buying behavior of our OEM partners, or unfavorable changes in tax laws and regulations occur, our effective tax rate could change.

### **Liquidity and Capital Resources**

Cash, cash equivalents, short-term and long-term investments were \$904.6 million as of April 26, 2003. For the six months ended April 26, 2003, we generated \$19.8 million in cash from operating activities, primarily related to a decrease in accounts receivable, partially offset by decreases in accounts payable and other accrued liabilities. Days sales outstanding in receivables for the three months ended April 26, 2003 was 46 days, compared with 53 days for the three months ended January 25, 2003.

Net cash used in investing activities for the six months ended April 26, 2003 totaled \$111.8 million and was primarily the result of \$102.4 million in purchases of short- and long-term investments, and \$16.7 million invested in capital equipment. Net cash used in financing activities totaled \$8.8 million. Net cash used in financing activities resulted from payments of \$12.6 million for assumed capital lease and debt obligations in connection with our acquisition of Rhapsody, partially offset by proceeds from the issuance of common stock related to employee participation in employee stock plans of \$3.8 million.

Net proceeds from the issuance of common stock related to employee participation in employee stock programs have historically been a significant component of our liquidity. The extent to which our employees participate in these programs generally increases or decreases based upon changes in the market price of our common stock. As a result, our cash flows resulting from the issuance of common stock related to employee participation in employee stock programs will vary. We do not expect to generate significant cash flows from the issuance of common stock related to employee participation in employee stock programs during fiscal year 2003 as a result of our voluntary stock option exchange program.

We have manufacturing agreements with Solectron and Foxconn under which we provide twelve-month product forecasts and place purchase orders advance of the scheduled delivery of products to our customers. The required lead-time for placing orders with both Solectron and Foxconn depends on the specific product. As of April 26, 2003, our aggregate commitment to Solectron and Foxconn for inventory components used in the manufacture of our products was \$43.4 million, net of purchase commitment reserves of \$1.3 million, which we expect to utilize during future normal ongoing operations. Our purchase orders placed with Solectron and Foxconn are cancelable, subject to certain requirements. The agreement with Solectron



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requires us to purchase from Solectron all inventory components not returnable or usable by other Solectron customers after 365 days.

On December 21, 2001, and January 10, 2002, we sold \$550 million in aggregate principal amount of two percent convertible subordinated notes due 2007 (see note 8, "Convertible Subordinated Debt" of the Notes to Condensed Consolidated Financial Statements). Holders of the notes may, in whole or in part, convert the notes into shares of our common stock at a conversion rate of 22.8571 shares per \$1,000 principal amount of notes (aggregate of approximately 12.6 million shares) at any time prior to maturity on January 1, 2007. At any time on or after January 5, 2005, we may redeem the notes in whole or in part at the following prices expressed as a percentage of the principal amount:

Redemption Period	Price
Beginning on January 5, 2005 and ending on December 31, 2005	100.80%
Beginning on January 1, 2006 and ending on December 31, 2006	100.40%
On January 1, 2007	100.00%

We are required to pay interest on January 1 and July 1 of each year, beginning July 1, 2002. Debt issuance costs of \$12.4 million are being amortized over the term of the notes. The amortization of debt issuance costs will accelerate upon early redemption or conversion of the notes. The net proceeds remain available for general corporate purposes, including working capital and capital expenditures.

The following table summarizes our contractual obligations (including interest expense) and commitments as of April 26, 2003 (in thousands):

	Total	Less than 1 year	1 – 3 years	After 3 years
<b>Contractual Obligations:</b>				
Convertible subordinated notes, including interest	\$594,000	\$11,000	\$22,000	\$561,000
Non-cancelable operating leases	253,548	31,900	54,687	166,961
Unconditional purchase obligations, gross	44,732	44,732	—	—
Total contractual cash obligations	\$892,280	\$87,632	\$76,687	\$727,961
<b>Other Commitments:</b>				
Standby letters of credit	\$ 18,749	\$ n/a	\$ n/a	\$ n/a

We believe that our existing cash, cash equivalents, short-term and long-term investments, and cash expected to be generated from future operations will be sufficient to meet our capital requirements at least through the next 12 months. Our future capital requirements will depend on many factors, including: our revenues; the timing and extent of spending to support product development efforts; the timing of introductions of new products and enhancements to existing products; and the market acceptance of our products.

### Related Party Transactions

Larry W. Sonsini, a director of Brocade, serves as a member of Wilson Sonsini Goodrich & Rosati, Professional Corporation (WSGR), our principal outside legal counsel. Aggregate fees billed to us by WSGR for legal services rendered, including general corporate counseling, litigation services, merger and acquisition related services, and services related to our convertible debt offering, during the six months ended April 26, 2003 and April 27, 2002, were \$0.9 million and \$1.0 million, respectively.

### Use of Estimates and Critical Accounting Policies

Our discussion and analysis of financial condition and results of operations is based upon our Condensed Consolidated Financial Statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these Condensed Consolidated Financial Statements requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosure of contingent assets and liabilities. We evaluate our estimates and judgments on an on-going basis, including those related to sales returns, bad debts, excess inventory and purchase commitments, investments, warranty obligations, lease losses, income taxes, and contingencies and litigation. We base our estimates on historical experience and assumptions that we believe to be reasonable.

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under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates.

The methods, estimates, and judgments we use in applying our most critical accounting policies have a significant effect on the results that we report in our Condensed Consolidated Financial Statements. The SEC considers an entity's most critical accounting policies to be those policies that are both most important to the portrayal of a company's financial condition and results of operations, and those that require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about matters that are inherently uncertain at the time of estimation. We believe the following critical accounting policies, among others, require significant judgments and estimates used in the preparation of our Condensed Consolidated Financial Statements:

- Revenue recognition, warranty reserves, and allowances for sales returns and doubtful accounts;
- Inventory and purchase commitment reserves;
- Lease losses; and
- Accounting for income taxes.

Product revenue is generally recognized when persuasive evidence of an arrangement exists, delivery has occurred, fee is fixed or determinable, and collection is probable. However, revenue recognition is deferred for shipments to new customers and for shipments to existing customers when significant support services are required to successfully integrate our products into our customers' products. These revenues, and related costs, are deferred and recognized when the customer has successfully integrated our products into its product offerings, and we have met any support obligations. In addition, revenue from sales to master resellers is recognized upon reported sell-through. We reduce revenue for estimated sales returns and other allowances at the time of shipment. Sales returns and other allowances are estimated based upon historical experience.

Service revenue, which to date has not been material, consists of training, warranty, and maintenance arrangements, including post-contract customer support (PCS) services. PCS services are offered under renewable, annual fee-based contracts or as part of multiple element arrangements and typically include upgrades and enhancements to our operating system software, and telephone support. For multiple element arrangements, we allocate revenue to each element based upon vendor-specific objective evidence (VSOE) of the fair value of the element or application of the residual method. VSOE of the fair value for an element is based upon the price charged when the element is sold separately. Service revenue, including revenue allocated to undelivered elements, is deferred and recognized ratably over the contractual period. Service contracts are typically one to three years in length. Training revenue is recognized upon completion of the training.

We provide warranties on our products ranging from one to three years. Estimated future warranty costs are accrued at the time of shipment and charged to cost of revenues based upon historical experience.

We maintain allowances for doubtful accounts for estimated losses resulting from the inability of our customers to make required payments. We analyze accounts receivable and historical bad debts, customer concentrations, customer creditworthiness, current economic trends and changes in customer payment terms and practices when evaluating the adequacy of the allowance for doubtful accounts. If the financial condition of our customers was to deteriorate, resulting in an impairment of their ability to make payments, additional allowances and charges against earnings may be required. To date, actual experience has been consistent with our estimates.

We write down inventory and record purchase commitment reserves for estimated excess and obsolete inventory equal to the difference between the cost of inventory and the estimated fair value based upon assumptions about future demand and market conditions. Although we strive to ensure the accuracy of our forecasts of future product demand, any significant unanticipated changes in demand or technological developments could have a significant effect on the value of our inventory and commitments, and our reported results. If actual market conditions are less favorable than those projected, additional inventory write-downs, purchase commitment reserves, and charges against earnings might be required. To date actual experience has been consistent with our estimates.

During the three months ended October 27, 2001, as a result of continuing unfavorable economic conditions and a reduction in IT spending rates, we performed a comprehensive analysis of our real estate facilities requirements and identified vacant excess facility space, which was subsequently offered for sublease. Based upon the results of this analysis, during the three months ended October 27, 2001, we recorded a charge of \$39.8 million related to estimated facilities lease losses, net of expected sublease income, and a charge of \$5.7 million in connection with the estimated impairment of certain related leasehold improvements. In determining the net facilities lease losses and related asset impairment charges, various

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assumptions were made, including the time period over which the facilities will be vacant, expected sublease terms, expected sublease rates, anticipated future operating expenses, and expected future use of the facilities. The charges represented the low-end of an estimated range that may be adjusted upon the occurrence of future triggering events. Triggering events may include, but are not limited to, changes in estimated time to sublease the facilities, sublease terms, sublease rates, expected future operating costs, and expected future use of the facilities.

During the three months ended July 27, 2002, we completed a transaction to sublease a portion of these vacant facilities. Accordingly, based on then current market data, we revised certain estimates and assumptions, including those related to estimated sublease rates, estimated time to sublease the facilities, expected future operating costs, and expected future use of the facilities. We reevaluate our estimates and assumptions on a quarterly basis and make adjustments to the reserve balance if necessary. No material adjustments were made to the facilities lease losses reserve for the three and six months ended April 26, 2003. Should there be changes in real estate market conditions or should it take longer than expected to find a suitable tenant to sublease the remaining vacant facilities, adjustments to the facilities lease losses reserve may be necessary in future periods based upon then current actual events and circumstances.

The determination of our tax provision is subject to judgments and estimates due to operations in several tax jurisdictions outside the United States. Sales to our international customers are generally taxed at rates that are lower than United States rates, resulting in a reduction of our effective tax rate. The ability to maintain our current effective tax rate is contingent upon existing tax laws in both the United States and in the respective countries in which our international subsidiaries are located. Future changes in domestic or international tax laws could affect the continued realization of the tax benefits we are currently receiving and expect to receive from international sales of our products. In addition, a decrease in the percentage of our total revenue from international customers or in the mix of international revenue among particular tax jurisdictions could change our overall effective tax rate. Also, our current effective tax rate assumes that United States income taxes are not provided for undistributed earnings of certain non-United States subsidiaries. These earnings could become subject to United States federal and state income taxes and foreign withholding taxes, as applicable, should they be either deemed or actually remitted from our international subsidiaries to the United States.

The carrying value of our net deferred tax assets, which is made up primarily of income tax deductions and credits resulting from stock option exercises, assumes that we will be able to generate sufficient future income to fully utilize these tax deductions and credits. If we do not generate sufficient future income, the realization of these deferred tax assets may be impaired resulting in additional income tax expense. We evaluate the expected realization of our deferred tax assets and assess the need for valuation allowances quarterly.

### **Recent Accounting Pronouncements**

In June 2002, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 146, "Accounting for Costs Associated with Exit or Disposal Activities" (SFAS 146). SFAS 146 requires the recording of costs associated with exit or disposal activities at their fair values only when a liability has been incurred. Under previous guidance, certain exit costs were accrued upon management's commitment to an exit plan, which is generally before an actual liability has been incurred. The requirements of SFAS 146 were effective prospectively for exit or disposal activities initiated after December 31, 2002. The adoption of SFAS 146 did not have a material effect on our financial position, results of operations, or cash flows.

In November 2002, the FASB issued FASB Interpretation No. 45, "Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others – an Interpretation of FASB Statements No. 5, 57, and 107 and Rescission of FASB Interpretation No. 34" (FIN 45). FIN 45 elaborates on the disclosures to be made by a guarantor in its interim and annual financial statements about its obligations under certain guarantees that it has issued. It also requires a guarantor to recognize, at the inception of a guarantee, a liability for the fair value of the obligation undertaken in issuing the guarantee. In general, FIN 45 applies to contracts or indemnification agreements that contingently require the guarantor to make payments to the guaranteed party based on changes in an underlying obligation that is related to an asset, liability or an equity security of the guaranteed party. The recognition provisions of FIN 45 are effective for guarantees issued or modified after December 31, 2002. The disclosure requirements of FIN 45 are effective for financial statements of interim or annual periods ending after December 15, 2002. We have determined that the requirements of FIN 45 apply to our accrued warranty and standard indemnification clauses contained within our various customer contracts (see Note 9, "Commitments and Contingencies" of the Notes to Condensed Consolidated Financial Statements).

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In December 2002, the FASB issued Statement of Financial Accounting Standards No. 148, "Accounting for Stock-Based Compensation — Transition and Disclosure an Amendment of FASB Statement No. 123" (SFAS 148). SFAS 148 amends SFAS 123 "Accounting for Stock-Based Compensation," to provide alternative methods of transition for a voluntary change to the fair value based method of accounting for stock-based employee compensation. In addition, SFAS 148 amends the disclosure requirements of SFAS 123 to require prominent disclosures in both annual and interim financial statements about the method of accounting for stock-based employee compensation and the effect of the method used on reported results. SFAS 148 is effective for fiscal years beginning after December 15, 2002. The interim disclosure provisions are effective for financial reports containing financial statements for interim periods beginning after December 15, 2002. The adoption of the interim disclosure provisions of SFAS 148 did not affect our financial position, results of operations, or cash flows.

In January 2003, the FASB issued FASB Interpretation No. 46, "Consolidation of Variable Interest Entities" (FIN 46). FIN 46 requires that if an entity has a controlling financial interest in a variable interest entity, the assets, liabilities and results of activities of the variable interest entity should be included in the consolidated financial statements of the entity. For arrangements entered into after January 31, 2003, FIN 46 was effective immediately. For arrangements entered into prior to January 31, 2003, FIN 46 is effective for the first interim or annual period beginning after June 15, 2003. We do not have any variable interest entities.

### **Risk Factors**

***Our quarterly revenues and operating results may fluctuate in future periods for a number of reasons, which could adversely affect the trading price of our stock.***

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

- changes in general economic conditions and specific economic conditions in the information technology industry. In particular, continuing economic uncertainty has resulted in a general reduction in IT spending. This reduction in IT spending has led to a decline in our growth rates compared to historical trends;
- the timing of customer orders and product implementations, particularly large orders from and product implementations of our OEM partners;
- disruptions or downturns in general economic activity resulting from terrorist activity and armed conflict;
- announcements, introductions, and transitions of new products by us and our competitors;
- the ability of new competitors to enter the market and effectively compete against us;
- deferrals of customer orders in anticipation of new products, services, or product enhancements introduced by us or our competitors;
- our ability to obtain sufficient supplies of sole- or limited-sourced components, including ASICs, microprocessors, certain connectors, certain logic chips, and programmable logic devices;
- increases in prices of components used in the manufacture of our products;
- our ability to attain and maintain production volumes and quality levels;
- variations in the mix of our products sold and the mix of distribution channels through which they are sold;
- litigation; and
- legislation and regulatory developments.

Accordingly, the results of any prior periods should not be relied upon as an indication of future performance. If our revenues or operating results are below the expectations of stock market analysts or investors, our stock price may decline.

***Our revenues may be affected by changes in IT spending levels.***

In recent quarters, unfavorable economic conditions and reduced global IT spending rates have adversely affected our operating results and led to a decline in our growth rates compared to historical trends. We are unable to predict when IT spending rates will return to historical levels, if at all. If there are further reductions in either domestic or international IT spending rates, or if IT spending rates do not return to historical levels, our revenues, operating results and financial condition may be adversely affected.

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Our storage networking products are sold as part of storage systems and subsystems. As a result, the demand for our storage networking products has historically been affected by changes in storage requirements associated with growth related to new applications and an increase in transaction levels. Although in the past we have experienced historical growth in our business as enterprise-class customers have adopted SAN technology, demand for SAN products in the enterprise-class sector is being adversely affected as a result of the weakened economy and because larger businesses have begun to focus on more efficiently using their existing IT infrastructure rather than making new equipment purchases. Increases in a customer's ability to utilize existing storage infrastructure and the continued weakened economy may cause a decline in the demand for SAN products. This may harm our financial condition and results of operations.

***Increased market competition may lead to reduced sales of our products, reduced margins, reduced profits, and reduced market share.***

The market for SAN solutions is competitive and subject to rapid technological change. Increased competition could result in greater pricing pressures, reduced sales, reduced margins, reduced profits, and reduced market share. Currently, we believe that we face competition from providers of Fibre Channel switching products for interconnecting servers and storage. These competitors include Cisco Systems, Computer Network Technology Corporation (CNT), Qlogic Corporation, McDATA Corporation, and Vixel Corporation.

The SAN market is likely to become even more competitive as new products are introduced by existing competitors and as new competitors enter the market. Our OEM partners could potentially become new competitors by developing and introducing products competitive with our product offerings. In addition, our OEM partners, who also have relationships with some of our current competitors, could choose to sell our competitors' products instead of our products, or offer preferred pricing or promotions on our competitors' products.

Some of our competitors have longer operating histories and significantly greater human and financial resources than us. These competitors could adopt more aggressive pricing policies and devote greater resources to the development, promotion, and sale of their products than we can. As a result, they may be able to respond more quickly to changes in customer or market requirements. We may not have the financial resources, technical expertise or marketing, manufacturing, distribution, and support capabilities to compete successfully against current or future competitors. This could materially harm our business.

***We depend on OEM partners. The loss of any of these OEM partners could significantly reduce our revenues and negatively affect our financial results.***

We still depend on large, recurring purchases from a limited number of large OEM partners. Our agreements with our OEM partners are typically cancelable, non-exclusive, and have no minimum purchase requirements. For the three months ended April 26, 2003, three customers represented greater than ten percent of our total revenues, or 72 percent.

In addition, the financial strength of some of our competitors could allow them to market their products aggressively and to target our OEM partners with special incentives. We anticipate that our revenues and operating results will continue to depend on sales to a relatively small number of customers. Therefore, the loss of any one significant customer, or a decrease in the level of sales to any one significant customer, could seriously harm our financial condition and results of operations.

***The prices of our products and gross margins have declined and may continue to decline, which would reduce our revenues, gross margins, and profitability.***

The average unit prices and gross margins of some of our products have declined and may continue to decline in the future in response to changes in product mix, competitive pricing pressures, increased sales discounts, new product introductions by us or our competitors, or other factors. If we are unable to offset these factors by increasing sales volumes and, in particular, increasing the percentage of software sales, our total revenues may decline. In addition, to maintain our gross margins we must maintain or increase current shipment volumes, develop and introduce new products and product enhancements, and we must continue to reduce the manufacturing cost of our products. Failure to reduce the manufacturing cost of our products in response to declines in unit selling prices would result in a further decline in our gross margins. Moreover, most of our expenses are fixed in the short-term or incurred in advance of receipt of corresponding revenue. As a result, we may not be able to decrease our spending to offset any unexpected shortfall in revenues. If this occurs, we could

incur losses, and our operating results and gross margins may be below our expectations and the expectations of investors and stock market analysts.

***We may not be able to maintain profitability.***

In fiscal year 2003, we do not expect to maintain profitability at historical levels, and may not be able to maintain profitability at all in the future. We expect to incur significant costs and expenses for product development, sales and marketing, customer support, and expansion of corporate infrastructure. We make investment decisions based upon anticipated revenues and margins. If these anticipated revenues and margins do not materialize, our future profitability could be adversely affected.

We recently completed our acquisition of Rhapsody. We expect this acquisition will adversely affect our earnings per share at least through our fiscal year 2004.

We recently completed programs to restructure certain business operations that included workforce reductions and the impairment of certain assets no longer being used as a result of the restructuring programs. Our planned reduction in spending related to this restructuring program is subject to risks and uncertainties, including the difficulty of achieving anticipated cost reductions due to unforeseen expenses we may incur in future quarters and an inability to reduce expenses without jeopardizing further development, marketing, and sales of our products. Additionally, it is possible that these reductions in spending may not be sufficient to achieve their intended goals. Additional restructuring activity may be necessary to reduce our expenses because we cannot predict our revenue with certainty.

Our Board of Directors approved a voluntary stock option exchange program for employees. Under the stock option exchange program, employees were offered the opportunity to exchange an aggregate of approximately 67.3 million outstanding stock options with exercise prices equal to or greater than \$12.00 per share for new stock options to be granted at an exchange ratio determined by the date the exchanged stock options were granted. In accordance with this program, on January 9, 2003, we cancelled 58.6 million outstanding stock options and issued promises to grant new stock options to participating employees. We currently expect to grant approximately 28.5 million new stock options on July 10, 2003, which is the first business day that is six months and one day after the cancellation of the exchanged options. The 28.5 million new stock options to be granted on July 10, 2003, represent approximately 11.1 percent of the total shares of our common stock outstanding as of April 26, 2003, and could have a dilutive effect on our future earnings per share to the extent that the future market price of our common stock exceeds the exercise price of the new stock options.

These actions involve numerous risks, including unanticipated costs, diversion of management's attention from our core business and adverse effects on existing business relationships with suppliers, customers, and employees. In addition, it is difficult to forecast future operating results based on historical results. We plan our operating expenses based in part on future revenue projections. Our ability to accurately forecast quarterly revenue is limited for the reasons discussed above in "Our quarterly revenues and operating results may fluctuate in future periods for a number of reasons, which could adversely affect the trading price of our stock." Moreover, most of our expenses are fixed in the short-term or incurred in advance of receipt of corresponding revenue. As a result, we may not be able to decrease our spending to offset any unexpected shortfall in revenues. If this occurs, we could incur losses, and our operating results and gross margins may be below our expectations and those of investors and stock market analysts.

***As we introduce new products, we must manage the transition between our new products and our older products.***

As new or enhanced products are introduced, we must 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 sufficient supplies of new products can be delivered to meet customer demands. Our failure to manage the transition to newer products in the future or to develop and successfully introduce new products and product enhancements could adversely affect our business and financial results. When we introduce new products and product enhancements, we face risks relating to product transitions, including risks relating to forecasting demand, and possible product and software defects and a potentially

different sales and support environment due to the complexity of these new systems. If any of the foregoing occurs, our business could be seriously harmed.

***Our success depends on our ability to develop new and enhanced products that achieve widespread market acceptance.***

We currently derive the majority of our revenues from sales of our SilkWorm family of products. We expect that revenue from this product family will continue to account for a substantial portion of our revenues for the foreseeable future. Therefore, widespread market acceptance of these products is critical to our future success. Some of our products have been recently introduced. For example, during the second quarter of fiscal 2003, we introduced a new operating system software release for our products. The demand and market acceptance of this new operating system software release is uncertain. Factors that may affect market acceptance include performance, price, and total cost of ownership; features and functionality; availability and price of competing products and technologies; and the success and development of our OEM partners and other distribution channels. Many of these factors are beyond our control.

Our future success depends upon our ability to address the rapidly changing needs of our customers by developing and introducing high-quality, cost-effective products and product enhancements on a timely basis, and by keeping pace with technological developments and emerging industry standards. We expect to launch new products and product enhancements during the next year that will further expand the market opportunity for our products. We expect that our future revenue growth will be dependent on the success of our current line of products, new product enhancements, and the continued development of new products. In the past we have experienced delays in product development; such delays could occur in the future. In addition, if we are unable to achieve market acceptance of our new products, our business and results of operations could be harmed.

***International political instability and concerns about other international crises, such as the severe acute respiratory syndrome (SARS) virus, may increase our cost of doing business and disrupt our business.***

International political instability, evidenced by the occurrence and threat of terrorist attacks, enhanced national security measures, and military action and armed conflicts in the Middle East and Asia, may halt or hinder our ability to do business and may increase our costs. In addition, concerns about the SARS virus are having an adverse effect upon the Asian economy and could adversely affect our business operations or the operations of our OEM partners, contract manufacturers and suppliers. This political instability and concerns about the SARS virus may, for example, negatively affect the reliability and cost of transportation, negatively affect the desire and ability of our employees and customers to travel, disrupt the production capabilities of our OEM partners, contract manufacturers and suppliers, adversely affect our ability to obtain adequate insurance at reasonable rates, and require us to take extra security precautions for our operations. In addition, to the extent that air transportation is delayed or disrupted, the operations of our contract manufacturers and suppliers may be disrupted, particularly if shipments of components and raw materials are delayed.

***Failure to manage distribution channels and relationships could significantly reduce our revenues.***

Our success will depend on our continuing ability to develop and manage relationships with large distribution partners, including OEM partners, value-added distributors, systems integrators, and value-added resellers, and on the sales efforts and success of these distribution partners. Our OEM partners must evaluate and qualify our products for a limited time period before they begin to market and sell them. Assisting these distribution partners through the evaluation process requires significant sales, marketing, and management efforts on our part, particularly if our products are being qualified with multiple distribution partners at the same time. In addition, once our products have been qualified, our customer agreements have no minimum purchase commitments. We may not be able to effectively maintain or expand our distribution channels, manage distribution relationships successfully, or market our products through distribution partners. Our failure to manage successfully our distribution relationships or the failure of our distribution partners to sell our products could reduce our revenues.

***Failure to manage our business effectively could seriously harm our business, financial condition, and prospects.***

Our ability to successfully implement our business plan, develop and offer products, and manage our business in a rapidly evolving market requires a comprehensive and effective planning and management process. We continue to change the scope of our operations domestically and internationally, including managing our headcount appropriately. In addition, our recent acquisition of Rhapsody and its integration into Brocade could present additional management challenges. Changes in our business, headcount, organizational structure and relationships with customers and other third parties has placed, and will

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continue to place, a significant strain on management systems and resources. Our failure to continue to improve upon our operational, managerial, and financial controls, reporting systems, and procedures, and our failure to continue to train and manage our workforce worldwide, could seriously harm our business and financial results.

***Failure to adequately anticipate future OEM and end-user product needs could negatively affect the demand for our products and reduce our revenues.***

We market and sell our products through distribution partners, including OEM partners, value-added distributors, system integrators, and value-added resellers. Therefore, we must continually assess, anticipate, and respond to the needs of these distribution partners and ensure that our products integrate with their solutions. We must also continually assess, anticipate, and respond to the needs of our distribution partners' customers, who are the end-users of our products. If we fail to respond to the needs of these groups, our business and operating results could be harmed.

Because of our indirect distribution model, our contact with the actual end-users of our products is limited. Although we make every effort to communicate with, understand, and anticipate the current and future needs of the end-users of our products, to a large extent we rely on our distribution partners for visibility into those end-user requirements. Our failure to adequately assess and anticipate future end-user needs could negatively affect the demand for our products and reduce our revenues.

***Uncertainties involving sales and demand forecasts for our products could negatively affect our business.***

We have limited ability to forecast the demand for our products. In preparing sales and demand forecasts, we rely largely on input from our distribution partners. If our distribution partners are unable to accurately forecast demand, or we fail to effectively communicate with our distribution partners about end-user demand or other time sensitive information, sales and demand forecasts may not reflect the most accurate, up-to-date information. Because we make business decisions based on our sales and demand forecasts, if these forecasts are inaccurate, our business and financial results could be negatively affected. Furthermore, we may not be able to identify these forecast differences until late in our fiscal quarter. Consequently, we may not be able to make adjustments to our business model without negatively affecting our business and results of operations.

***We plan to continue to increase our international sales activities, which will subject us to additional business risks.***

We plan to continue to expand our international sales activities. Expansion of international operations will involve inherent risks that we may not be able to control, including:

- supporting multiple languages;
- recruiting sales and technical support personnel with the skills to support our products;
- increased complexity and costs of managing international operations;
- commercial laws and business practices that favor local competition;
- multiple, potentially conflicting, and changing governmental laws and regulations, including differing labor and employment laws;
- 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 our international revenues and costs of revenues have been denominated in foreign currencies. As a result, an increase in the value of the United States dollar relative to foreign currencies could make our products more expensive and, thus, less competitive in foreign markets. In the future, a portion of our international revenues may be denominated in foreign currencies, including the Euro, which will subject us to risks associated with fluctuations in those foreign currencies. Additionally, we receive significant tax benefits from sales to our international customers. These benefits are contingent upon existing tax laws in both the United States and in the respective countries in which our international customers are located.

Future changes in domestic or international tax laws could affect the continued realization of the tax benefits that we currently receive and expect to receive from sales to our international customers. In addition, a decrease in the percentage of



our total revenue from international customers, or in the mix of international revenue among particular tax jurisdictions, could increase our overall effective tax rate.

***Our business may be subject to seasonal fluctuations in the future.***

Some of our large customers experience seasonality in their businesses. As our business and products become more mature it is possible that we could begin to experience seasonality similar to that experienced by our large customers. It is difficult for us to evaluate the degree to which the seasonality of our large customers may affect our business in the future because the overall growth of our business may have lessened the affect of this customer seasonality on our business in the past.

***The loss of our third-party contract manufacturers or the failure to accurately forecast demand for our products or successfully manage the production of our products could negatively affect our ability to manufacture and sell our products.***

We currently depend on two third-party contract manufacturers, Solectron and Foxconn, to manufacture our products. If we should fail to effectively manage the production of our products through Solectron and Foxconn, or if Solectron or Foxconn experience delays, disruptions, capacity constraints, or quality control problems in their manufacturing operations, shipment of our products to our customers could be delayed and our competitive position and reputation could be harmed. Qualifying a new contract manufacturer and commencing volume production is a lengthy and expensive process and if we are required or choose to change contract manufacturers, we may lose revenue and injure our customer relationships.

We provide to our contract manufacturers product forecasts and place purchase orders with our contract manufacturers in advance of the scheduled delivery of products to our customers. Although our purchase orders placed with our contract manufacturers are cancelable, we could be required to purchase all unused material not returnable or usable by other customers. Accordingly, if we inaccurately forecast demand for our products, we may be unable to obtain adequate manufacturing capacity from our contract manufacturers to meet customers' delivery requirements, or we may accumulate excess inventories.

***We are dependent on sole source and limited source suppliers for certain key components.***

We currently purchase several key components used in the manufacture of our products from single or limited sources. We purchase ASICs from a single source, and we purchase microprocessors, certain connectors, certain logic chips, and programmable logic devices from limited sources. In addition, we license certain third-party software that is incorporated into our operating system software and other software products. If we are unable to buy or license these components on a timely basis, we may not be able to deliver our products to our customers in a timely manner. We use a rolling six-month forecast based on anticipated product orders to determine component requirements. If we overestimate component requirements, we may have excess inventory, which would increase our costs. If we underestimate component requirements, we may have inadequate inventory, which could interrupt the manufacturing process and result in lost or deferred revenue. In addition, lead times for components vary significantly and depend on factors such as the specific supplier, contract terms, and demand for a component at a given time. We also may experience shortages of certain components from time to time, which also could delay the manufacturing and sales processes.

***Undetected software or hardware errors could increase our costs and reduce our revenues.***

Networking products frequently contain undetected software or hardware errors, or "bugs," when first introduced or as new versions are released. Our products are becoming increasingly complex, and errors may be found from time to time in our new or enhanced products. In addition, our 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 us to incur significant warranty and repair costs, divert the attention of engineering personnel from product development efforts and cause significant customer relations problems. Moreover, the occurrence of hardware and software errors, whether caused by another vendor's SAN products, or ours, could delay or prevent the development of the SAN market.

***If we lose key personnel or are unable to hire additional qualified personnel, we may not be successful.***

Our 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. We do not have life insurance on any of our key

personnel. We also believe that our success depends to a significant extent on the ability of management to operate effectively, both individually and as a group.

We believe our future success will also depend in large part upon our ability to attract and retain highly skilled managerial, engineering, sales and marketing, finance, and operations personnel. We have experienced difficulty in hiring qualified ASIC, software, system and test, sales and marketing, and customer support personnel. We may not be successful in attracting and retaining these individuals in the future. The loss of the services of any of our 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 affect our ability to sell, our products.

In addition, companies in the computer storage and server industry whose employees accept positions with competitors frequently claim that their competitors have engaged in unfair hiring practices. We may receive such claims in the future as we seek to hire qualified personnel. Such claims, if received, could result in material litigation. As a result, we could incur substantial costs in defending against these claims, regardless of their merits.

***We may be unable to protect our intellectual property, which would negatively affect our ability to compete.***

We rely on a combination of patent, copyright, trademark, and trade secret laws, confidentiality agreements, and other contractual restrictions on disclosure to protect our intellectual property rights. We also enter into confidentiality or license agreements with our employees, consultants, and corporate partners, and control access to and distribution of our technology, software, documentation, and other confidential information. These measures may not preclude competitors from independently developing products with functionality or features similar to our products. Despite efforts to protect our proprietary rights, unauthorized parties may attempt to copy or otherwise obtain and use our products or technology. Monitoring unauthorized use of our products is difficult, and we cannot be certain that the steps we take to prevent unauthorized use of our 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, which could be time-consuming and expensive to defend, against us.***

In recent years, there has been significant litigation in the United States involving patents and other intellectual property rights. On February 14, 2002, a suit captioned *McDATA Corp. v. Brocade Communications Systems, Inc.* was filed against us in the United States District Court for the District of Colorado. The complaint alleged that the Brocade SilkWorm 3800 Enterprise Fibre Channel Fabric Switch and Brocade SilkWorm 12000 Core Fabric Switch infringe United States Patent No. 6,233,236, entitled "Method and Apparatus for Measuring Traffic Within a Switch." The complaint seeks unspecified compensatory and exemplary damages and to permanently enjoin Brocade from infringing the patent in the future. On March 4, 2002, McDATA filed an amended complaint, in which it additionally alleged that the Brocade SilkWorm 3200 Entry Fabric Switch infringed this patent. In connection with this suit, on March 4, 2002, McDATA filed a motion for a preliminary injunction against Brocade with regard to the patent. On April 8, 2002, we filed an answer and counterclaims asserting, among other things, no infringement, and that the patent is invalid, unenforceable and covered by an existing covenant not to sue between the parties. A hearing on McDATA's motion for preliminary injunction was held during the week of July 15, 2002. In an order dated December 6, 2002, the Court denied McDATA's motion for a preliminary injunction. On December 23, 2002, McDATA filed a demand for arbitration to move this matter from the United States District Court for the District of Colorado to arbitration. The matter has been referred to arbitration. No arbitration date has been set. We believe that we have meritorious defenses to the claims and intend to defend the action vigorously. Additional action will be required to finally dispose of this case.

We may be a party to litigation in the future to protect our intellectual property or as a result of an alleged infringement of the intellectual property of others. These claims and any resulting lawsuit, including the McDATA lawsuit, could subject us 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's time and attention. Any potential intellectual property litigation, including the McDATA litigation, also could force us 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 a license to the relevant intellectual property, which may require us to license our intellectual property to such owner, or may not be available on reasonable terms or at all; and
- redesign those products or services that use technology that is the subject of an infringement claim. If we are forced to take any of the foregoing actions, we may be unable to manufacture, use, sell, import and export our products, which would reduce our revenues.

If we are forced to take any of the foregoing actions, we may be unable to manufacture, use, sell, import and export our products, which would reduce our revenues.

***We may engage in future acquisitions that dilute our stockholders and cause us to use cash, incur debt, or assume contingent liabilities.***

We recently completed our acquisition of Rhapsody. As part of our strategy, we expect to continue to review opportunities to buy other businesses or technologies that would complement our current products, expand the breadth of our markets or enhance our technical capabilities, or that may otherwise offer growth opportunities. We may buy other businesses, products, or technologies in the future. In the event of any future purchases, we could:

- issue stock that would dilute our current stockholders' percentage ownership;
- use cash, which may result in a reduction of our liquidity;
- incur debt; or
- assume liabilities.

These purchases also involve numerous risks, including:

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

We may not be able to successfully integrate any businesses, products, technologies, or personnel that we might acquire in the future.

***Our 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, we must continue to introduce new products and product enhancements that meet these industry standards. All components of the SAN must interoperate together. Industry standards are in place to specify guidelines for interoperability and communication based on standard specifications. Our products encompass only a part of the entire SAN solution utilized by the end-user, and we depend on the companies that provide other components of the SAN solution, many of whom are significantly larger than we are, 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 our products.

In addition, in the United States, our products comply with various regulations and standards defined by the Federal Communications Commission and Underwriters Laboratories. Internationally, products that we develop will 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 our business.

***Provisions in our charter documents, customer agreements, Delaware law, and our stockholder rights plan could prevent or delay a change in control of Brocade, which could hinder stockholders' ability to receive a premium for our stock.***

Provisions of our 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;
- limiting the persons who may call special meetings of stockholders;
- prohibiting stockholder actions by written consent; and
- requiring super-majority voting to effect amendments to the foregoing provisions of our certificate of incorporation and bylaws.

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Furthermore, the full effect of recent corporate governance legislation and regulations on our operations is uncertain at this time, but these laws and regulations could potentially result in changes to our charter documents or other agreements that affect our ability to enter into a merger or acquisition transaction.

Certain provisions of Delaware law also may discourage, delay, or prevent someone from acquiring or merging with us, and our agreements with certain of our customers require that we give prior notice of a change of control and grant certain manufacturing rights following a change of control. In addition, we currently have in place a stockholder rights plan. Furthermore, any of these things could prevent or delay a change in control of Brocade, which could hinder stockholders' ability to receive a premium for our stock.

### ***We expect to experience volatility in our stock price, which could negatively affect stockholders' investments.***

The market price of our common stock has experienced significant volatility in the past and may continue to fluctuate significantly in response to the following factors, some of which are beyond our control:

- macroeconomic conditions;
- actual or anticipated fluctuations in our operating results;
- changes in financial estimates and ratings by securities analysts;
- changes in market valuations of other technology companies;
- announcements of financial results by us or other technology companies;
- announcements by us, our competitors, customers, or similar businesses of significant technical innovations, contracts, acquisitions, strategic partnerships, joint ventures or capital commitments;
- losses of major OEM partners;
- additions or departures of key personnel;
- sales by us of common stock or convertible securities; and
- incurring additional debt.

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 our stock price to fall regardless of how the business performs.

### ***Our 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. We were recently a party in a securities class action litigation, which resulted in the court dismissing all claims against us. In the future we may be the target of other securities litigation. Securities litigation could result in substantial costs and divert management's attention and resources.

### ***Business interruptions could adversely affect our business.***

Our operations are vulnerable to interruption by fire, earthquake, power loss, telecommunications failure, and other events beyond our control. A substantial portion of our facilities, including our corporate headquarters, is located near major earthquake faults. In the event of a major earthquake, we could experience business interruptions, destruction of facilities and loss of life. We neither carry earthquake insurance nor have we set aside funds or reserves to cover such earthquake-related losses. Although we carry business interruption insurance to mitigate the effect of potential business interruptions, should a business interruption occur, our business could be seriously harmed.

### ***New tax legislation targeting companies operating in certain foreign jurisdictions could, if enacted into law, adversely affect our business.***

Legislation relating to the tax treatment of United States companies that operate in certain foreign jurisdictions and have undertaken certain types of expatriation transactions is being considered by the United States Congress. While we do not

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believe that this legislation, as currently proposed, would adversely affect us, the exact scope of the legislation and whether it will ultimately be enacted is unclear at this time. Therefore, it is possible that legislation in this area, if enacted, could increase our future tax burden or otherwise affect our business.

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

We are exposed to market risk related to changes in interest rates and equity security prices.

**Interest Rate Risk**

Our exposure to market risk due to changes in the general level of United States interest rates relates primarily to our cash equivalents and short-term and long-term investment portfolios. Our cash, cash equivalents, and short-term and long-term investments are primarily maintained at five major financial institutions in the United States. As of April 26, 2003, we did not hold any derivative instruments. The primary objective of our investment activities is the preservation of principal while maximizing investment income and minimizing risk.

The following table presents the hypothetical changes in fair values of our investments in debt securities as of April 26, 2003 that are sensitive to changes in interest rates (in thousands):

Issuer	Valuation of Securities Given an Interest Rate Decrease of X Basis Points			Fair Value As of April 26, 2003	Valuation of Securities Given an Interest Rate Increase of X Basis Points		
	(150 BPS)	(100 BPS)	(50 BPS)		50 BPS	100 BPS	150 BPS
U.S. government obligations	\$485,826	\$482,681	\$479,425	\$476,238	\$473,015	\$469,860	\$466,739
State & municipal obligations	5,503	5,502	5,501	5,500	5,499	5,498	5,497
Corporate notes	6,997	6,986	6,973	6,960	6,946	6,933	6,920
Total	\$498,326	\$495,169	\$491,899	\$488,698	\$485,460	\$482,291	\$479,156

These instruments are not leveraged and are classified as available-for-sale. The modeling technique used measures the change in fair values arising from selected potential changes in interest rates. Market changes reflect immediate hypothetical parallel shifts in the yield curve of plus or minus 50 basis points (BPS), 100 BPS, and 150 BPS, which are representative of the historical movements in the Federal Funds Rate.

The following table (in thousands) presents our cash equivalents and short-term and long-term investments subject to interest rate risk and their related weighted average interest rates as of April 26, 2003. Carrying value approximates fair value.

	Amount	Average Interest Rate
Cash and cash equivalents	\$415,946	1.1%
Short-term investments	119,540	2.0%
Long-term investments	369,158	3.7%
Total	\$904,644	2.3%

Our convertible subordinated debt is subject to a fixed interest rate and the notes are based on a fixed conversion ratio into common stock. Therefore, we are not exposed to changes in interest rates related to our long-term debt instruments. The notes are not listed on any securities exchange or included in any automated quotation system; however, the notes are eligible for trading on the Portal<sup>SM</sup> Market. On April 25, 2003, the average bid and ask price on the Portal Market of our convertible subordinated notes due 2007 was 79.88, resulting in an aggregate fair value of approximately \$439.3 million. Our common stock is quoted on the Nasdaq National Market under the symbol "BRCD." On April 25, 2003, the last reported sale price of our common stock on the Nasdaq National Market was \$5.40 per share.

**Equity Security Price Risk**

Our exposure to market risk due to equity security price fluctuations primarily relates to investments in marketable equity securities. These investments are principally in companies in the volatile high-technology sector. We do not attempt to reduce or eliminate the market exposure on these securities. Adverse changes in equity prices of 25 percent, 50 percent, and 75 percent would result in decreases of approximately \$0.2 million, \$0.4 million, and \$0.7 million in the fair value of marketable equity securities as of April 26, 2003, respectively.

**Item 4. Controls and Procedures**

(a) *Evaluation of disclosure controls and procedures:* Based on our evaluation as of a date within 90 days of the filing date of this Quarterly Report on Form 10-Q, our principal executive officer and principal financial officer have concluded that our disclosure controls and procedures (as defined in Rules 13a-14(c) and 15d-14(c) under the Securities Exchange Act of 1934 (the Exchange Act)) are effective to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms. It should be noted that the design of any system of controls is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote.

(b) *Changes in internal controls.* There were no significant changes in our internal controls or in other factors that could significantly affect these controls subsequent to the date of their evaluation. There were no significant deficiencies or material weaknesses, and therefore there were no corrective actions taken.

**PART II - OTHER INFORMATION**

**Item 1. Legal Proceedings**

From time to time, claims are made against us in the ordinary course of our business, which could result in litigation. Claims and associated litigation are subject to inherent uncertainties and unfavorable outcomes could occur, such as monetary damages, fines, penalties or injunctions prohibiting us from selling one or more products or engaging in other activities. The occurrence of an unfavorable outcome in any specific period could have a material adverse affect on our results of operations for that period or future periods.

On May 23, 2003, a suit captioned *Vixel Corporation v. Brocade Communications Systems, Inc.* was filed in the United States District Court for the Northern District of California. The complaint alleges that Brocade products infringe United States Patents Nos. 6,118,776; 6,470,007; and 6,185,203 relating to switching and Fibre Channel technologies. We are investigating the allegations and intend to defend the action vigorously. We are in the initial stages of our investigation and at this time are not able to determine what effect, if any, this action will have on our business or financial position and results of operations.

On January 10, 2003, a suit captioned *Raytheon Company v. Brocade Communications Systems, Inc. et al.* was filed against Brocade and various other companies in the United States District Court for the Eastern District of Texas. The complaint alleges that Brocade products infringe United States Patent No. 5,412,791, entitled "Mass Data Storage Library." On February 6, 2003, Raytheon filed an amended complaint stating their original claim with more particularity. On May 9, 2003, we filed an answer and counterclaims, asserting, among other things, invalidity of all of Raytheon's claims. A scheduling conference was held on May 20, 2003, and trial has been scheduled for June 2004. We believe that we have meritorious defenses to the claims and intend to defend the action vigorously. At this time, we are not able to determine what effect, if any, this action will have on our business or financial position and results of operations.

On February 14, 2002, a suit captioned *McDATA Corp. v. Brocade Communications Systems, Inc.* was filed against us in the United States District Court for the District of Colorado. The complaint alleged that the Brocade SilkWorm 3800 Enterprise Fibre Channel Fabric Switch and Brocade SilkWorm 12000 Core Fabric Switch infringe United States Patent No. 6,233,236, entitled "Method and Apparatus for Measuring Traffic Within a Switch." The complaint seeks unspecified compensatory and exemplary damages and to permanently enjoin Brocade from infringing the patent in the future. On March 4, 2002, McDATA filed an amended complaint, in which it additionally alleged that the Brocade SilkWorm 3200 Entry Fabric Switch infringed this patent. In connection with this suit, on March 4, 2002, McDATA filed a motion for a preliminary injunction against Brocade with regard to the patent. On April 8, 2002, we filed an answer and counterclaims asserting, among other things, no infringement, and that the patent is invalid, unenforceable and covered by an existing covenant not to sue between the parties. A hearing on McDATA's motion for preliminary injunction was held during the week of July 15, 2002. In an order dated December 6, 2002, the Court denied McDATA's motion for a preliminary injunction. On December 23, 2002, McDATA filed a demand for arbitration to move this matter from the United States District Court for the District of Colorado to arbitration. The matter has been referred to arbitration. No arbitration date has been set. We believe that we have

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meritorious defenses to the claims and intend to defend the action vigorously. We believe that the ultimate disposition of this matter will not have a material adverse effect on our business or financial position and results of operations.

On July 20, 2001, the first of a number of putative class actions was filed in the United States District Court for the Southern District of New York against Brocade, certain of its officers and directors, and certain of the underwriters for its initial public offering. Those cases were consolidated under the caption *Chae v. Brocade Communications Systems, Inc. et al.* The complaints generally alleged that various underwriters engaged in improper and undisclosed activities related to the allocation of shares in our initial public offering of securities. On March 1, 2002, the Court entered an order dismissing without prejudice all claims against Brocade and its officers and directors named in the consolidated proceeding. On April 19, 2002, a consolidated amended class action captioned *In Re Brocade Communications Systems, Inc. Initial Public Offering Securities Litigation* was filed which makes claims against the Brocade parties that are substantially similar to those alleged in the earlier case. The complaint seeks unspecified damages on behalf of a purported class of purchasers of common stock from May 24, 1999 to December 6, 2000. In October 2002, the individual defendants were dismissed without prejudice from the action. On February 19, 2003, the Court entered an order dismissing all of the plaintiffs' claims against the Company. No appeal has been filed.

### Item 4. Submission of Matters to a Vote of Security Holders

Our Annual Meeting of Stockholders was held on April 16, 2003 in San Jose, California. Of the 236,002,569 shares outstanding as of the record date, 213,656,059 were present or represented by proxy at the meeting. The results of the voting on the matters submitted to the stockholders are as follows:

1. To elect two Class I Directors to serve until the 2006 Annual Meeting of Stockholders or until their successors are duly elected and qualified.

Name	Votes For	Votes Withheld
Seth D. Neiman	206,891,019	6,765,040
Christopher B. Paisley	209,175,867	4,480,192

In addition, the terms of office of the following directors continued after the 2003 Annual Meeting:

Neal Dempsey  
Nicholas G. Moore  
Gregory L. Reyes  
Larry W. Sonsini

2. To ratify the appointment of KPMG LLP as independent auditors of Brocade for the fiscal year ending October 25, 2003.

Votes for:	211,053,588
Votes against:	2,473,052
Votes abstaining:	129,419

### Item 6. Exhibits and Reports on Form 8-K

#### (a) Exhibits.

Exhibit Number	Description of Document
2.1 (14)	Agreement and Plan of Reorganization by and among Brocade, Rhapsody Networks, Inc., and certain other parties dated November 5, 2002.
2.2 (14)	First Amendment to Agreement and Plan of Reorganization by and among Brocade, Rhapsody Networks, Inc., and certain other parties dated January 5, 2003.
3.1 (8)	Amended and Restated Certificate of Incorporation.
3.2 (1)	Bylaws of the Registrant.
3.3 (10)	Certificate of Designation of Rights, Preferences and Privileges of Series A Participating Preferred Stock of Brocade Communications Systems, Inc.

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<b>Exhibit Number</b>	<b>Description of Document</b>
4.1 (1)	Form of Registrant's Common Stock certificate.
4.2 (10)	Preferred Stock Rights Agreement dated as of February 7, 2002 between Brocade and Wells Fargo Bank MN, N.A.
4.3 (9)	Indenture, dated as of December 21, 2001, between Brocade and State Street Bank and Trust Company of California, N.A.
4.4 (9)	Form of Note (included in Exhibit 4.3).
4.5 (9)	Registration Rights Agreement, dated as of December 21, 2001, by and among Brocade and Morgan Stanley & Co. Incorporated, Goldman, Sachs & Co., Salomon Smith Barney Inc. and Merrill Lynch Pierce Fenner and Smith Incorporated.
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 (7) *	Amended and Restated 1999 Director Option Plan as of April 17, 2001, and form of agreement thereunder.
10.6 (2) *	1999 Employee Stock Purchase Plan.
10.7 (2) *	1999 Stock Plan and forms of agreements thereunder.
10.8 (13) *	1999 Nonstatutory Stock Option Plan and forms of agreements thereunder, as amended.
10.9 (1)	Master Equipment Lease Agreement between Venture Lending & Leasing, Inc. and Brocade dated September 5, 1996.
10.10 (1) #	Acknowledgement between Wind River Systems, Inc. and Brocade dated April 22, 1999.
10.11 (1) *	Letter Agreement with Michael J. Byrd dated April 5, 1999.
10.12 (3) #	Manufacturing Agreement between Solectron California Corporation and Brocade dated July 30, 1999.
10.13 (3)	Master Lease Agreement between Spieker Properties and Brocade dated December 17, 1999.
10.14 (5)	First Amendment to Lease between Spieker Properties and Brocade dated February 16, 2000.
10.15 (5)	Second Amendment to Lease between Spieker Properties and Brocade dated August 11, 2000.
10.16 (4)	Credit Agreement between Comerica Bank-California and Brocade dated January 5, 2000.
10.17 (5)	First Amendment to Credit Agreement between Comerica Bank-California and Brocade dated March 21, 2000.
10.18 (5)	Second Amendment to Credit Agreement between Comerica Bank-California and Brocade dated September 20, 2000.
10.19 (5)	Master Lease Agreement between Spieker Properties and Brocade dated July 26, 2000.
10.20 (5) #	Purchase Agreement between Compaq Computer Corporation and Brocade dated February 1, 2000.
10.21 (5) *	Promissory Note between David A. Smith and Brocade dated April 27, 2000.
10.22 (5) #	Purchase Agreement between EMC Corporation and Brocade dated January 25, 2000 (EMC Purchase Agreement).
10.23 (8) #	Extension Agreement between EMC Corporation and Brocade dated December 18, 2000.
10.24 (14)	Extension Agreement between EMC Corporation and Brocade dated November 13, 2002.
10.25 (8) #	Goods Agreement between International Business Machines Corporation and Brocade dated April 15, 1999.
10.26 (8)	Amendment #1 to the Goods Agreement between International Business Machines Corporation and Brocade.
10.27 (8) #	Statement of Work #1 between International Business Machines Corporation and Brocade.
10.28 (8) #	Amendment #3 to Statement of Work #1 between International Business Machines Corporation and Brocade.
10.29 (8) #	Amendment #4 to Statement of Work #1 between International Business Machines Corporation and Brocade.
10.30 (8) #	Statement of Work #2 between International Business Machines Corporation and Brocade.
10.31 (6)	Third Amendment to Credit Agreement between Comerica Bank-California and Brocade dated January 22, 2001.
10.32 (6)	Lease Agreement between MV Golden State San Jose, LLC and Brocade dated December 1, 2000.



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10.34 (11) #	Amendment No. 6 to Statement of Work No. 1 between International Business Machines Corporation and Brocade.
10.35 (12) +	Amendment No. 7 to Statement of Work No. 1 between International Business Machines Corporation and Brocade.
10.36 (14) +	Amendment No. 8 to Statement of Work No. 1 between International Business Machines Corporation and Brocade.
10.37 (14) +	Amendment No. 9 to Statement of Work No. 1 between International Business Machines Corporation and Brocade.
10.38 (11) #	Amendment No. 1 to Statement of Work No. 2 between International Business Machines Corporation and Brocade.
10.39 (11)	Amendment No. 2 to Statement of Work No. 2 between International Business Machines Corporation and Brocade.
10.40 (12) +	OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated January 28, 2000 (2000 OEM Purchase Agreement).
10.41 (12) +	Amendment to 2000 OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated April 20, 2001.
10.42 (12)	Letter Amendment to 2000 OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated January 25, 2002.
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10.44 (12) +	Amendment No. 1 to 2001 OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated July 1, 2001.
10.45 (12) +	Amendment No. 2 to 2001 OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated November 6, 2001.
10.46 (12) +	Amendment No. 3 to 2001 OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated February 1, 2002.
10.47 (12) +	Amendment No. 4 to 2001 OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated June 5, 2002.
10.48 (14) +	OEM Purchase Agreement between Brocade and Hewlett-Packard Company dated December 16, 2002.
10.49 +	Manufacturing and Purchase Agreement between Brocade and Hon Hai Precision Industry Co., Ltd. dated April 5, 2003 (HHPT Manufacturing and Purchase Agreement).
10.50	Amendment Number One to HHPI Manufacturing and Purchase Agreement between Brocade and Hon Hai Precision Industry Co., Ltd. dated April 5, 2003.
10.51 +	Manufacturing and Purchase Agreement between Brocade Communications Switzerland SarL and Hon Hai Precision Industry Co., Ltd. dated May 1, 2003.
10.52 +	Manufacturing and Purchase Agreement between Brocade and Solectron Corporation dated February 21, 2003 (Solectron Manufacturing and Purchase Agreement).
10.53	Amendment No. 1 to Solectron Manufacturing and Purchase Agreement between Brocade and Solectron Corporation dated March 21, 2003.
10.54 +	Manufacturing and Purchase Agreement between Brocade Communications Switzerland SarL and Solectron Corporation dated March 21, 2003.
10.55 +	Amendment No. 2 to EMC Purchase Agreement between Brocade and EMC dated February 18, 2003.
12.1	Statement of Computation of Ratio of Earnings to Fixed Charges.
99.1	Certification by the Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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

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**(b) Reports on Form 8-K.**

None.

Items 2, 3, and 5 are not applicable and have been omitted.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Date: June 9, 2003

Brocade Communications Systems, Inc.

By: /s/ ANTONIO CANOVA

Antonio Canova  
Vice President, Finance and  
Chief Financial Officer





## EXHIBIT INDEX

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MANUFACTURING AND PURCHASE AGREEMENT

This MANUFACTURING AND PURCHASE AGREEMENT ("Agreement") is entered into as of the date last executed below ("Effective Date") by and between Brocade Communications Systems, Inc., a Delaware corporation with a place of business at 1745 Technology Drive, San Jose, California 95110 ("Brocade"), and Hon Hai Precision Industry Co., Ltd., a Taiwan corporation with an office at No. 2, Tzu Yu St., Tu-Chen, Taipei Hsien, 20306, Taiwan, R.O.C. ("Hon Hai").

1. Definitions.

1.1 "Ancillary Technology" means all test programs and fixtures provided to Hon Hai by Brocade.

1.2 "Brocade Technology" means the Technology and all Derivatives thereof (a) provided by Brocade to Hon Hai pursuant to this Agreement, or (b) developed by Brocade pursuant to this Agreement, or (c) developed by Brocade or Hon Hai pursuant to a Statement of Work; provided, however, that such Technology is not Hon Hai Technology.

1.3 "Brocade Vendors" means third party producers and suppliers that have been specified by Brocade in writing (a) on Brocade's approved vendor list ("AVL") as provided by Brocade to Hon Hai and as updated by Brocade from time to time, and (b) as the source of certain parts and/or components to be used by Hon Hai in the manufacture of the Products.

1.4 "Derivative" means: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws.

1.5 "Hon Hai Technology" means the Technology [\*] which are (a) developed by Hon Hai prior to entering into this Agreement, and (b) specified on a Statement of Work executed by an authorized representative of Brocade as Hon Hai Technology.

1.6 "Intellectual Property Rights" means copyright rights, trademark rights (including, without limitation, trade names, trademarks, service marks, and trade dress), patent rights, trade secrets, moral rights, right of publicity, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, arising under the law of the United States or any state, country or other jurisdiction.

1.7 "Joint Technology" means any (a) Technology that is first conceived or reduced to practice by one or more of Hon Hai's employees with one or more of Brocade's employees; provided in the case of a patentable invention that a party's contribution will meet the requirements for joint invention under United States law, or (b) joint work of authorship fixed in a tangible medium of expression prepared by one or more of Hon Hai's employees with one or more of Brocade's employees with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

1.8 "Products" means the Brocade products identified on Exhibit A, which may be modified from time to time upon written agreement of the parties.

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\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

1.9 "Purchase Order" means a Brocade purchase order for the purchase of the Products issued to Hon Hai pursuant to the provisions of this Agreement.

1.10 "SLA" means the "service level agreement" document, which is a document created by Brocade and Hon Hai containing certain operational and financial terms agreed between the parties. The version of the SLA existing as of the Effective Date is attached as Exhibit C for reference only. The parties may change the SLA from time to time without amending Exhibit C or this Agreement.

1.11 "Specifications" means the functional and performance specifications (including, without limitation, bills of materials, schematic diagrams, parts and assembly drawings, and test specifications and work/assembly instructions) relating to the testing and manufacturing of each Product as provided by Brocade.

1.12 "Statement of Work" means a written statement of work signed by both parties for special development work to be done by Hon Hai for Brocade. Each Statement of Work will be sequentially numbered (e.g., SOW 1, SOW 2, etc.) and attached to this Agreement by an amendment.

1.13 "Technology" means any and all technical information and/or materials, including, without limitation, ideas, techniques, designs, sketches, drawings, models, inventions, know-how, processes, apparatus, methods, equipment, algorithms, software programs, data, software source documents, other works of authorship, formulae and information concerning engineering, research, experimental work, development, design details and specifications.

## 2. Material Procurement.

2.1 Forecasting and Material Purchasing. Once a [\*], Brocade will provide Hon Hai with a rolling [\*] forecast of the quantity demand for each Product ("Product Forecast"). For the purpose of spare parts, Brocade will provide Hon Hai, once per [\*], with a rolling [\*] repair forecast of the quantity demand for all Parts (defined in Section 11.1) listed by part number ("Parts Forecast", collectively with the Product Forecast, the "Forecasts"). Upon the end-of-life of any Product, Brocade will extend its Parts Forecast for all Parts used in such Product [\*], which shall in no case extend longer than [\*] from the end-of-life date of such Product. The Forecasts are [\*]: Hon Hai may purchase the materials required to meet the demand in the Forecasts only as far in advance as the published component lead time (including any manufacturing offset, as agreed to by the parties in the SLA) for each component necessary to manufacture the Product, or as otherwise instructed in writing by Brocade. [\*] purchased within the applicable lead time; provided that Hon Hai will take all steps [\*] component materials by diligently attempting to return unused materials or to transfer unused materials to use for other customers to the extent that they do not incorporate proprietary Brocade Technology. Brocade will not pay for any unused materials that are purchased [\*].

2.2 Vendor Forecasts. Hon Hai will provide each of the Brocade Vendors with [\*] forward-looking, rolling forecasts for the Product materials and will update such forecasts as necessary to keep each Brocade Vendor current with each new Forecast provided by Brocade.

2.3 Material Management. Hon Hai will, at a minimum, comply with the following obligations to ensure good component material management for the Products, including any Parts (defined in Section 11.1) for repair purposes: (a) [\*] component level failure analysis or [\*] by the Brocade Vendor; (b) [\*] component returns, failure analysis and corrective actions regarding defective components with the Brocade Vendors and promptly communicate this information to Brocade; (c) work with Brocade Vendors to [\*] component leadtimes and costs; (d) provide regular performance feedback to Brocade Vendors, with a copy to Brocade; (e) ensure that all component materials used by Hon Hai to produce the Products meet the Specifications; and (f) calculate for Brocade and provide documentation of the country of origin

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of each of the Products in accordance with US law. As between Hon Hai and Brocade, [\*] will be solely responsible for all costs relating to the collection and replacement of Products and Parts [\*] due to Hon Hai's use of component materials that [\*]

3. Manufacturing Obligations.

3.1 Work Instructions; SLA. Hon Hai will manufacture and test the Products in strict compliance with the work instructions agreed between Brocade and Hon Hai for each Product. Hon Hai will honor the lead time, reporting, and other requirements in the then-current version of the SLA as agreed between Brocade and Hon Hai. As the work instructions and SLA are operating documents that are subject to frequent change, the most recent versions of the documents will not be formally amended into this Agreement; however, both the work instructions for each Product and the SLA are incorporated herein by reference.

3.2 [\*]. Hon Hai acknowledges and agrees that [\*] for the provision of manufacturing and repair services and the supply of Products to Brocade hereunder and that the full [\*] provision of all manufacturing and repair services and supply of Products to Brocade hereunder is a material condition of this Agreement.

3.3 No Subcontracting. Hon Hai agrees that no portion of the manufacture, assembly, or test of the Products will be subcontracted to third parties and that Hon Hai will not change the location of the facilities for the manufacture, assembly, or test of the Products without Brocade's prior written consent. Hon Hai agrees that no portion of the subassembly of Parts will be subcontracted to affiliated or unaffiliated third parties without Brocade's prior written consent, which shall not be unreasonably withheld or delayed.

3.4 Ancillary Technology. Brocade, at its sole discretion, may furnish Ancillary Technology to Hon Hai solely for use in the manufacture and testing of the Products. Hon Hai will not at any time use the Ancillary Technology for any other purposes or for any third parties or in any manner other than in performing Hon Hai's obligations under this Agreement. Hon Hai will maintain the Ancillary Technology in good condition and repair and provide necessary calibration services for the Ancillary Technology. Brocade and Hon Hai agree that the terms set out in Exhibit B hereto, which may be modified from time to time upon written agreement of the parties, will apply to all Ancillary Technology, and Hon Hai will be responsible for obtaining the requisite insurance coverage and conducting appropriate inspections in accordance with Exhibit B hereto. With respect to any Ancillary Technology licensed to Hon Hai pursuant to this Agreement, Brocade agrees to provide Hon Hai with a reasonable amount of support, at no charge, with respect to the initial installation, set-up and debugging of such Ancillary Technology and Hon Hai will be solely responsible for all ongoing use and support of such Ancillary Technology.

3.5 Non-Exclusivity. Nothing in this Agreement will be construed or deemed to prevent or otherwise inhibit Brocade's ability or right to manufacture, any product (including the Products) at a Brocade facility or at alternate or additional third party facility(ies) of Brocade's choice. Further, nothing in this Agreement will be construed or deemed to (a) require Brocade to order all units of any Product from Hon Hai, or (b) prevent or otherwise inhibit Brocade's ability or right to design, develop, manufacture, have manufactured, market, use, sell, and or distribute any follow-on products or derivatives of the Products.

4. License Rights and Restrictions.

4.1 License to Hon Hai.

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(a) License to Specifications. Subject to the terms of this Agreement, Brocade hereby grants Hon Hai a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's trade secret rights, during the term of this Agreement, to use the Specifications solely internally and solely for the purpose of manufacturing the Products for Brocade.

(b) License to Ancillary Technology. Subject to the terms of this Agreement, Brocade hereby grants Hon Hai a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's copyright and trade secret rights, during the term of this Agreement, to use and copy the test software (provided as part of the Ancillary Technology) solely internally and solely for the purpose of manufacturing and testing the Products for Brocade.

(c) License to Brocade Firmware. Subject to the terms of this Agreement, Brocade hereby grants Hon Hai a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's copyright rights, during the term of this Agreement, to copy the Brocade Firmware onto Product units in the manufacturing process.

(d) License to Brocade Technology. Brocade hereby grants Hon Hai a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's Intellectual Property Rights, during the term of this Agreement, to use the Brocade Technology solely internally, and solely as necessary to fulfill its manufacturing obligations under this Agreement. Hon Hai is granted no right, and is expressly prohibited from using the Brocade Technology, to develop, manufacture or distribute any products other than the Products.

4.2 License to Brocade. Neither Hon Hai nor any third party will retain any rights in any materials incorporated into the Products. To the extent that Hon Hai provides any Hon Hai Technology to Brocade [\*], Hon Hai hereby grants to Brocade a non-exclusive, royalty-free, perpetual, irrevocable license under Hon Hai's Intellectual Property rights to make, have made, use, sell, import, reproduce, display, distribute, and create derivative works of the Hon Hai Technology solely in connection with the development, manufacture, marketing, and sale of Brocade Products, as listed on Exhibit A, which may be modified from time to time upon written agreement of the parties.

4.3 Restrictions. Except as expressly set forth above, each party retains all of its Intellectual Property Rights. No license is granted by Brocade to make, use or sell any other products under the Brocade Intellectual Property Rights or to make, use or sell any products for any other purpose. Hon Hai will not modify, decompile or reverse engineer the Brocade Firmware or any Brocade Technology.

## 5. Purchase Orders.

5.1 Purchase Order Acceptance. Hon Hai is permitted to sell the Products only to Brocade, and to third parties who have been authorized in writing by Brocade to purchase the Products from Hon Hai ("Designated Purchasers") in satisfaction of Purchase Orders issued during the term of this Agreement, subject to and in accordance with the terms and conditions of this Agreement.

5.2 Quantity Flexibility. Hon Hai will, at [\*], accept all Purchase Order cancellations, reschedulings and changes in the quantity of Products ordered within the cancellation, rescheduling, change, or other flexibility terms outlined in the SLA. The version of the SLA existing as of the Effective Date is attached as Exhibit C for reference only. The parties may change the SLA from time to time without amending Exhibit C or this Agreement.

## 6. Shipping and Delivery.

6.1 Shipment. All shipments of the Products will be made [\*] (per Incoterms 2000). [\*]

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6.2 Timing. Shipments to Brocade, or to other locations specified by Brocade, will be shipped in the [\*] ordered by Brocade, and [\*] the acknowledged delivery date, [\*] the acknowledged delivery date. Upon learning of any potential shipment delays, Hon Hai will notify Brocade [\*] within such shorter time as may be required in the SLA as to the cause and extent of such delay. Except as Brocade may otherwise advise in advance and in writing, Brocade [\*] any goods (i) shipped [\*] the quantity ordered, (ii) shipped in a [\*] shipments, or (iii) shipped [\*].

6.3 Accelerated Measures. If Hon Hai fails or has reason to believe it will fail to make shipments at the specified time and such failure is not due to an action or omission of Brocade, Hon Hai will, [\*] employ accelerated measures [\*] required to meet the specified delivery schedule or minimize the lateness of shipments.

7. Acceptance.

7.1 Inspection. Hon Hai will ship Products directly to [\*]. All deliveries of Products are subject to inspection and testing by Brocade [\*] before final acceptance. Within [\*] after receipt of Products ("Rejection Period"), Brocade [\*] may inspect and reject any Product that fails to meet the Specifications.

7.2 Rejection. Within the Rejection Period, customers may notify Brocade of any Product rejections and the reasons therefor. In accordance with the RMA procedures of Section 11.1, below, Brocade [\*] may return rejected or defective Products to Hon Hai, [\*]. In the event that the returned Product is defective, Hon Hai will repair or replace such defective Product, [\*]. For all returned Products that are defective, Hon Hai will return to Brocade or its customer, as the case may be, freight prepaid, all repaired or replaced Products within [\*] after Hon Hai's receipt of the returned Product or within such other time as specified in the SLA. Any returned Products that have been damaged by misuse, abuse or unauthorized repair, by or on behalf of the End User, may be treated by Hon Hai as "out of warranty" and subject to out of warranty repair charges referenced in Section 8.1 only. Any returned Products which are not in fact defective may be returned by Hon Hai to the End User at [\*] expense.

7.3 Spot Testing. Upon prior notice to Hon Hai, Brocade or its authorized representative(s) may conduct spot functional tests of the Products at Hon Hai's facility at which Products are being manufactured during Hon Hai's normal business hours. The parties will mutually agree upon the timing of such investigations, which will be conducted in such a manner as not to interfere with Hon Hai's operations. If any Products fail any material part of the test procedure set forth on the Statement of Work, Brocade may reject such Products, and Hon Hai will promptly take all steps necessary to correct such failures.

7.4 Site Inspections. Upon [\*] notice to Hon Hai, Brocade[\*] will have the right to perform on-site inspections at Hon Hai's manufacturing facilities and Hon Hai will fully cooperate with Brocade in that regard at mutually agreed upon times. If an inspection or test is made on Hon Hai's premises, Hon Hai will provide Brocade's inspectors with reasonable assistance at no additional charge. In the event that any on-site inspection of the Products indicates that the Products do not conform to the requirements of this Agreement, Hon Hai will not ship such Products to Brocade until such nonconformity has been cured and only Products meeting the conformance criteria may be shipped. This does not limit Brocade's right to perform additional acceptance testing at Brocade's facilities.

7.5 Failure to Inspect. Notwithstanding anything to the contrary contained in this Agreement, inspection or failure to inspect the Products upon Delivery will not affect Brocade's rights under the warranty provisions of this Agreement.

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8. Pricing and Payment.

8.1 Prices. The unit prices to be paid by Brocade for (a) the Products, and (b) all out-of-warranty repair services, shall be as set forth on Exhibit A or as otherwise agreed by the parties. Except as otherwise expressly provided in this Agreement, such unit prices includes [\*] for the Products or repair services (as the case may be), any related deliverable items and services and packaging for delivery to Brocade. All payments hereunder will be paid in U.S. Dollars unless otherwise mutually agreed upon by the parties in writing.

8.2 Taxes. Where the law permits, Hon Hai will treat Brocade as exempt from applicable state and/or local sales tax for Product(s) purchased pursuant to this Agreement. Where required by state or local law, Brocade will provide Hon Hai with a valid reseller's exemption certificate for each taxing jurisdiction to which Hon Hai ships Product(s). The Parties agree that for any purchases made in the People's Republic of China, no sales taxes shall apply.

8.3 Invoices. Hon Hai will submit invoice(s) periodically to Brocade upon [\*] of Product(s) to the United States. (All Products shipped outside of the United States shall be governed by the agreement entered into by and between Brocade Switzerland SarL and Hon Hai, dated \_\_\_\_\_, 2002.) Brocade will pay such invoices net [\*] after the date of [\*] of the Products or receipt of Hon Hai's invoice, whichever is later ("Payment Period"); provided however, that if the SLA specifies a different Payment Period, Brocade will pay within the time specified in the SLA and not the Payment Period specified in this Agreement. Payment will not constitute acceptance of the Products by Brocade.

9. Quality Assurance.

9.1 Quality Standards. Hon Hai will manufacture and repair the Products in accordance with the quality requirements, standards and expectations as set forth on the Statement of Work or as otherwise mutually agreed upon by the parties in writing.

9.2 Quality Plan. Hon Hai will establish, maintain and manage a quality assurance program for the Products that is consistent with, and at least as restrictive as, the terms and conditions listed in Exhibit D, which may be modified from time to time upon written agreement of the parties.

10. Engineering Changes.

10.1 ECOs. Brocade may, upon advance written notice to Hon Hai, submit engineering change orders ("ECOs") for changes to the Products. ECOs will include documentation of the change to effectively support an investigation of the impact of the engineering change. Hon Hai will review the ECO and report to Brocade within [\*] of Hon Hai's receipt of the ECO. If the ECO affects the manufacturing or repair costs of the Products or otherwise affects the price of the affected Products, the parties agree to negotiate in good faith an equitable adjustment to the price of the affected Products prior to implementation of the change. The parties agree that [\*] is a reasonable time period to permit Hon Hai to evaluate ECO impact regarding potential excess manufacturing costs and price.

10.2 No Changes. No changes will be made to the Products without Brocade's prior written consent and no approved change will be made effective prior to the date approved by Brocade in writing. Hon Hai will not change or modify the processes for the Products without Brocade's prior written consent. Hon Hai will reimburse Brocade for all expenses incurred by Brocade to qualify changes to such materials or processes that are undertaken by Hon Hai without Brocade's prior written consent.

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11. Product Repairs and Parts Supply.

11.1 Repair Services. [\*] Hon Hai will provide repair services to Brocade and Brocade-authorized third parties (i) for all in-warranty Products (including all parts therein and any parts provided separately "Parts") in accordance with the terms of Sections 14, below, and (ii) for any out-of-warranty Products and Parts for a period of [\*] from the end-of-life production of such Products or Parts by Hon Hai or a Brocade Vendor. For any Product or Part that is returned to Hon Hai for repair or replacement services, Brocade will issue a Return Material Authorization ("RMA") number, and will forward such RMA electronically to Hon Hai, through Brocade's Oracle system. All Products and Parts returned to Hon Hai for repair or replacement services will include the RMA affixed to the packaging.

11.2 Parts Supply. Hon Hai will make available to Brocade Product Parts as Brocade may [\*] for [\*] Products purchased by Brocade from Hon Hai during the Product production. For a period of [\*] after the date of delivery to Brocade by Hon Hai of the last unit of the Product manufactured by Hon Hai, Hon Hai will also undertake the following: (a) Hon Hai will maintain [\*] necessary for the Products; (b) Hon Hai will maintain [\*] so that Hon Hai will be able to [\*] any Parts originally [\*] by Hon Hai; (c) Hon Hai will [\*] its Parts vendors to obtain and will provide notice to Brocade at least [\*] prior to discontinuing the availability of any Part; (d) Hon Hai will inform Brocade of all [\*] notifications for Parts upon Hon Hai's receipt of such notifications; and (e) Hon Hai will inform Brocade if a [\*] is the most economical procurement strategy for such Parts as to which such a notification is received (especially [\*] Parts which may require tool maintenance and set-up charges that far outweigh piece part costs). [\*] If Brocade determines that [\*] is not financially favorable due to the [\*]of the remaining support period for the Part(s), Hon Hai will assist Brocade in [\*] through manufacturing. [\*]

12. Ownership.

12.1 Ownership by Brocade. As between Brocade and Hon Hai, Brocade will own all right, title, and interest in the Specifications, Brocade Firmware, Products, Ancillary Technology and the Brocade Technology (excluding the Hon Hai Technology, which will be owned exclusively by Hon Hai) and all Intellectual Property Rights therein, and Hon Hai hereby irrevocably transfers, conveys and assigns to Brocade all of its right, title, and interest therein. Hon Hai will execute such documents, render such assistance, and take such other action as Brocade may reasonably request, at Brocade's expense, to apply for, register, perfect, confirm and protect Brocade's rights to the Brocade Technology, and all Intellectual Property Rights therein.

12.2 Ownership by Hon Hai. As between Hon Hai and Brocade, Hon Hai will own all right, title and interest in the Hon Hai Technology (excluding the Brocade Technology, which will be owned exclusively by Brocade), and all Intellectual Property Rights therein.

12.3 Ownership of Joint Technology. Subject to the ownership rights specified in Sections 1.1 and 1.1, [\*] own all right, title and interest in the Joint Technology and all Intellectual Property Rights therein, and [\*] use the Joint Technology and all Intellectual Property Rights therein without restriction and for any reason. [\*] will execute such documents, render such assistance, and take such other action as [\*] may reasonably request, at [\*] expense, to apply for, register, perfect, confirm and protect [\*] rights in the Joint Technology.

12.4 Attorney in Fact. The Parties agree that that if either Party ("Assignee") is unable because of the other Party's ("Assignor") unavailability, dissolution or incapacity, unreasonable refusal or unreasonable failure to act in a timely manner such that intellectual property rights protection may be impaired, to secure Assignor's signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering the inventions assigned to Assignee under this Agreement, then Assignee hereby irrevocably designates and appoints Assignee and its duly

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authorized officers and agents as Assignor's agent and attorney in fact, to act for and in Assignor's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by Assignor.

13. Confidential Information.

13.1 General. Except as otherwise provided in this Section, the definition, use, and disclosure of confidential information by the parties shall be governed by the Mutual Non-Disclosure Agreement between the parties and dated May 22, 2000.

13.2 Sensitive Brocade Information. "Sensitive Brocade Information" means the Forecasts, Specifications, AVL, Brocade Technology, Ancillary Technology, bill of materials, SLA, work instructions, and all data accessed by Hon Hai pursuant to Sections 1, 1, 1, 1, 1 and 1.

13.3 Confidentiality Obligations. Hon Hai will, at all times, both during the term of this Agreement and at all times thereafter, keep in confidence and trust all Sensitive Brocade Information. Hon Hai may use the Sensitive Brocade Information only as necessary to perform its obligations under this Agreement. Hon Hai will take all required steps to prevent unauthorized disclosure or use of Sensitive Brocade Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Hon Hai will not disclose Sensitive Brocade Information to any person or entity other than its employees who need access to such Sensitive Brocade Information in order to effect the intent of this Agreement and who have entered into written confidentiality agreements that protect the Sensitive Brocade Information. Hon Hai will immediately give notice to Brocade of any unauthorized use or disclosure of Sensitive Brocade Information. Hon Hai agrees to assist Brocade in remedying such unauthorized use or disclosure of Sensitive Brocade Information.

13.4 Exclusions. These obligations will not apply to the extent that Sensitive Brocade Information: (a) is already known to Hon Hai at the time of disclosure, which knowledge Hon Hai will have the burden of proving; (b) is, or, through no act or failure to act of Hon Hai, becomes publicly known; (c) is received by Hon Hai from a third party without restriction on disclosure; (d) is independently developed by Hon Hai without reference to Sensitive Brocade Information, which independent development Hon Hai will have the burden of proving; or (e) is approved for release by written authorization of Brocade.

13.5 Legal Disclosures. A disclosure of Sensitive Brocade Information (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Hon Hai will provide prompt written notice thereof to Brocade to enable it to seek a protective order or otherwise prevent such disclosure and will cooperate with Brocade in seeking such protective order.

14. Warranty.

14.1 Product Warranty. Hon Hai warrants for a period of [\*] from the date of [\*] of each unit of each Product, that such unit of each Product [\*] (a) will conform to the Specifications; (b) will be of good material (except for material supplied by Brocade) and workmanship and free from defects in the manufacture; (c) will be free and clear of all liens and encumbrances and that Hon Hai will convey good and marketable title to such Product. For purposes of clarification, the Parties agree that Hon Hai will have satisfied its workmanship obligations in (b) above to the extent that such workmanship [\*] or (ii) the minimum requirements agreed upon in writing by the parties in a Statement of Work or other signed document. [\*]

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14.2 Product Warranty Remedy. In accordance with the RMA procedures outlined in Section 11.1, above, Brocade will promptly notify Hon Hai of any Products [\*] that Brocade believes do not comply with the warranties contained in this Agreement. Hon Hai will pay all [\*] associated with Products returned for repairs during the warranty period. Hon Hai will, at [\*] option, either (i) credit Brocade for the purchase price paid by Brocade for the defective Product units, or (ii) at [\*] expense, replace, repair or correct such Product within [\*] of notification [\*]. Hon Hai will [\*] any charges in order to effect the earliest reasonable replacement of such defective Products to Brocade [\*]. Hon Hai agrees to maintain a repair capability for products under warranty. Hon Hai will provide to Brocade detailed information, including location, telephone number, contact person and hours of operation for the Hon Hai service representative who will be Brocade's contact for warranty claims and questions. [\*] Replaced Products will be warranted for [\*] period, plus time equal to [\*] because of repair or replacement and shipment time, or [\*], whichever is longer. [\*]

(a) [\*]

#### 14.3 Other Obligations and Warranties.

(a) Regulatory Compliance. Hon Hai represents and warrants that its manufacturing facilities and processes will comply with all applicable international, federal, state and local statutes, laws and regulations.

(b) Import/Export Requirements. Brocade and Hon Hai will comply with all import and export laws and regulations and maintain appropriate import and export documentation. At Brocade's request, Hon Hai will make available for inspection and audit all import and export documentation for the Products and the Hon Hai Technology included in the Products sold under this Agreement. At Brocade's request, Hon Hai will also assist Brocade in determining an appropriate Export Control Classification Number ("ECCN") for all Products sold hereunder. At Brocade's request, Hon Hai will also provide export screening for all shipments of Products or Parts. Hon Hai will not, directly or indirectly, export, re-export or transship any Technology in violation of any applicable U.S. export control laws and regulations or any other applicable export control laws promulgated and administered by the government of any country having jurisdiction over the parties or the transactions contemplated herein.

(c) Formation, Good Standing and Authority. Each of Hon Hai and Brocade represents and warrants to the other that it is a company duly formed, validly existing and in good standing under the laws of its jurisdiction and that this Agreement has been duly executed and delivered by it, and (assuming due authorization, execution and delivery by the other) constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(d) DOAs and Misshipments. Notwithstanding the terms and conditions in Sections 7.2 and 14.2 of the Agreement, in the event that a Product is rejected and returned to Hon Hai by Brocade [\*] because (1) such Product was [\*] by, or on behalf of, Hon Hai (a "Misshipment"), and such Misshipment is attributable to Hon Hai's acts or omissions, or (2) such Product is found to be dead on arrival (a "DOA"), and such DOA is attributable to the acts or omissions of Hon Hai, then Hon Hai shall:

(i) [\*] for the return of such Misshipment/DOA;

and (ii) [\*] testing and reconfiguring such Misshipment/DOA so that it is fully functional and meets the Specifications; and

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(iii) hold such Misshipment/DOA [\*] for a period of up to [\*] or upon date of Brocade [\*], whichever is less.

Subject to Hon Hai's compliance with the obligations in (i), (ii) and (iii) above, Brocade agrees to provide Hon Hai with [\*] for Misshipments and DOAs. In addition, Hon Hai agrees to [\*] all Misshipments and DOAs and to provide Brocade, on a regular basis, a [\*] regarding such Misshipments and DOAs. The Parties agree to use their [\*] efforts to identify and resolve Misshipment and DOA issues and [\*] such issues.

14.4 Warranty Disclaimer. THE WARRANTIES CONTAINED IN THIS SECTION 14 ARE IN LIEU OF, AND EACH PARTY EXPRESSLY DISCLAIMS AND THE OTHER PARTY WAIVES ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.

15. Term and Termination.

15.1 Term. This Agreement will commence on the Effective Date and will continue for a period of [\*] thereafter, unless earlier terminated pursuant to this Agreement. [\*] may renew this Agreement for successive [\*] terms by providing written notice to [\*] no later than [\*] prior to the end of the then-current term.

15.2 Termination for Default. [\*] may terminate this Agreement if [\*] violates any covenant, agreement, representation or warranty contained herein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured within [\*] after written notice (which notice will describe the alleged breach in reasonable detail) from [\*] stating its intention to terminate this Agreement by reason thereof.

15.3 Other Causes of Termination. This Agreement will terminate upon written notice by either party, immediately, if

- (a) a receiver is appointed for the other party or its property;
- (b) the other party makes a general assignment for the benefit of its creditors;
- (c) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors;
- (d) the other party is liquidated or dissolved; or
- (e) any proceedings are commenced against the other party under any bankruptcy, insolvency or debtor's relief law and such proceedings are not vacated or set aside within sixty (60) days from the date of commencement thereof.

15.4 Effect of Termination. In the event of the expiration or termination of this Agreement:

- (a) Hon Hai will complete the production of any Products of which Hon Hai has [\*] as of the effective date of such expiration or termination and Deliver such completed Products to Brocade by the earlier of (i) the acknowledged delivery date, or (ii) [\*];

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(b) Hon Hai will immediately cease the use of all of the Brocade Technology upon completion of the work required in 1.1(a);

(c) Hon Hai will return or destroy (as appropriate depending on the nature of the material) all Sensitive Brocade Information within thirty (30) days after the effective date of the termination and certify in writing that such party has complied with its obligations hereunder; and

(d) NEITHER BROCADE NOR HON HAI SHALL BE LIABLE TO THE OTHER BECAUSE OF SUCH EXPIRATION OR TERMINATION, FOR COMPENSATION, REIMBURSEMENT OR DAMAGES FOR THE LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR GOODWILL, ON ACCOUNT OF ANY EXPENDITURES, INVESTMENTS OR COMMITMENTS MADE BY EITHER, OR FOR ANY OTHER REASON WHATSOEVER BASED UPON THE RESULT OF SUCH EXPIRATION OR TERMINATION.

15.5 Survival. The rights and obligations of the parties set forth in Sections 1, 3.3, 3.4, 4.2, 4.3, 5, 6, 7, 8, 9, 11, 12, 14, 15.4, 15.5, 16, 17, 18 and 19 will survive any termination or expiration of this Agreement [\*].

16. Dispute Resolution. In the spirit of continued cooperation, the parties agree to follow the dispute resolution procedure described in this Section in the event any controversy should arise out of or concerning the parties' performance under this Agreement. In the event of a dispute or claim arising between the parties on any matter relating to this Agreement, either party may initiate negotiation proceedings by written notice to the other party setting forth the particulars of the dispute. Upon receipt of such notice, the parties agree to meet in good faith within [\*] of the date of such notice, to jointly define the scope of and a method to remedy the dispute. If such meeting does not resolve the dispute, then senior management of Hon Hai and Brocade are authorized to and will meet personally within [\*] to confer in a bona fide attempt to resolve the matter. The parties will use diligent efforts to arrange meetings or telephone conferences as needed to facilitate these negotiations. If such dispute remains unresolved following the parties' undertaking of the actions set forth in this Section 16, the parties shall have the right to avail themselves of all other rights and remedies, whether available under this Agreement, at law or in equity. Each party's rights to terminate this Agreement for breach subject to the notice period set forth in Section 15 shall apply regardless of the parties' discussions under this Section 16.

17. Limitation of Liability.

17.1 Consequential Damages Waiver. EXCEPT FOR BREACHES OF [\*] NEITHER PARTY SHALL HAVE ANY LIABILITY TO EACH OTHER OR ANY OTHER THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, LOSS OF USE OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED THEREBY, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, AND IRRESPECTIVE OF WHETHER SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

17.2 Failure of Essential Purposes. THE LIMITATIONS SET FORTH IN THIS SECTION 17 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

18. Indemnification.

18.1 Hon Hai Indemnity. Hon Hai will defend, indemnify and hold Brocade and its officers, directors and employees harmless (inclusive of reasonable attorneys' fees) from and against any claim, suit, action or proceeding brought against Brocade arising from, relating to or in connection with: (a) Hon

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Hai's breach of any licenses granted to Hon Hai under this Agreement; (b) [\*] in the Products, to the extent that the claim is based on facts which constitute a non-conformance with the [\*] or [\*] or [\*] provided or developed by Hon Hai; (c) acts, errors or omissions by or negligence of Hon Hai, its employees, officers, agents or representative of any of them; (d) any third party claims founded on theories of [\*] related to the Products, to the extent that the claim is not based on elements of the Products manufactured in conformance with the Specifications; or (e) [\*] the Products or Hon Hai Technology of any [\*] not based on the [\*] provided by Brocade. In the event the Hon Hai Technology and/or the Products are held or believed by Hon Hai to infringe, or Brocade's use of the Hon Hai Technology and/or the Products is enjoined, [\*]

18.2 Brocade Indemnity. Brocade will defend, indemnify and hold Hon Hai and its officers, directors and employees harmless (inclusive of reasonable attorneys' fees) from and against any claim, suit, action or proceeding brought against Hon Hai arising from, relating to or in connection with: [\*] (c) acts, errors or omissions by or negligence of Brocade, its employees, officers, agents or representative of any of them[\*]. In the event the Brocade Technology is held or believed by Brocade to infringe, or Hon Hai's use of the Brocade Technology is enjoined, Brocade will have the option[\*] to: (i) procure for Hon Hai the right to continue using Brocade Technology; (ii) replace Brocade Technology with non-infringing technology; (iii) modify Brocade Technology so that it becomes non-infringing; or (iv) accept return of Brocade Technology. Brocade's obligations hereunder will be void as to any Brocade Technology modified by Hon Hai (without Brocade's approval), solely to the extent such modification is the alleged basis of the suit.

18.3 [\*]

19. Export. Hon Hai agrees that:

19.1 Hon Hai will perform routed transactions for Brocade, and

19.2 Hon Hai will provide Brocade with comprehensive ongoing support regarding the following key issues: [\*], accurate record-keeping of all export document packets, [\*] on all switches and FRUs, and Manufacturing affidavits for all Brocade Products and Parts.

20. Environmental Requirements. Hon Hai warrants and agrees that:

20.1 Product Content. All Products and their packaging will comply with Brocade's general specifications for environment (if any), and, for purposes of this Agreement, such specifications are part of the Specifications for the Product.

20.2 Shipment. All Products will be shipped in conformance with all applicable national and international [\*] including, where applicable, regulations regarding [\*], including regulations regarding [\*]. All packaging materials, including pallets, will be [\*] and comply with national and international regulations regarding [\*] where applicable.

20.3 [\*]. Each [\*] contained in the Product is on the inventory of [\*] compiled and published by [\*] pursuant to the [\*].

20.4 Hon Hai will provide complete and accurate [\*] for Product prior to shipment.

20.5 [\*] Information. Hon Hai will furnish Brocade any information reasonably requested by Brocade to confirm compliance with applicable laws or to determine the [\*] effects of materials included in the Products or in its packaging.

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\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

20.6 Hon Hai will comply with all applicable laws governing import or export of Products and will be solely responsible for obtaining all requisite licenses and other authorizations.

20.7 Disposition of Excess Materials. Hon Hai will [\*] of any excess or waste materials generated from manufacture of Product (including damaged or nonconforming product or materials) in compliance with the provisions of this Agreement, applicable laws and any specific instructions received from Brocade.

20.8 Hon Hai will continuously implement and maintain processes and policies designed to [\*] at any facility at which Product manufacturing operations are performed under this Agreement.

20.9 Ozone Depleting Substances. Hon Hai hereby certifies that neither Product, nor any part, piece or component of any Product:

(a) contains any [\*] as those terms are defined in [\*] and implementing regulations of the [\*], as now in existence or hereafter amended; or

(b) has been manufactured with a process that uses any [\*]

21. General.

21.1 Insurance. Each party will maintain workers' compensation and comprehensive general liability insurance (including product liability coverage) adequate to cover its obligations under this Agreement.

21.2 Assignment. [\*] will assign this Agreement, in whole or in part, or any obligations or rights hereunder (except the right to receive payments), except with the prior written consent of [\*], which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Brocade will have the right to assign or otherwise transfer this Agreement without such consent (i) to a subsidiary, parent, or entity under common control with Brocade, or (ii) to a successor party in the event of a merger, acquisition, sale, transfer or other disposition of all or substantially all of the assets of Brocade. Subject to the foregoing, this Agreement will inure to the benefit of each of the party's successors and assigns.

21.3 Relationship of the Parties. The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

21.4 Publicity. Hon Hai will not publicize or disclose the terms of this Agreement to any third party without the prior written consent of Brocade.

21.5 Waiver. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different or subsequent breach by either party.

21.6 Severability. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

21.7 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be

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performed entirely within California between California residents. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement.

21.8 Choice of Forum. This Agreement will be deemed made and entered into in Santa Clara County, California. Except for either party's right to apply to any court of competent jurisdiction for a temporary restraining order and/or a preliminary injunction to enjoin the other party from misappropriating or infringing any Intellectual Property Rights of the moving party, the parties hereby submit to the exclusive jurisdiction of, and waive any venue objections against, the United States District Court for the Northern District of California, San Jose Branch and the Superior and Municipal Courts of the State of California, Santa Clara County, in any litigation arising out of this Agreement. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar claim or defense.

21.9 Notices. Any notice provided for or permitted under this Agreement will be treated as having been given when (a) delivered personally, (b) sent by confirmed telex or telecopy, (c) sent by commercial overnight courier with written verification of receipt, or (d) mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this Section.

If to Brocade:                Brocade Communications Systems, Inc.  
   1745 Technology Drive  
   San Jose, CA 95110  
   Attn.: General Counsel

If to Hon Hai:                Hon Hai Precision  
   1705 Junction Court  
   Suite 200  
   San Jose, CA 95112-1023

Attn.: \_\_\_\_\_

Such notice will be treated as having been received upon the earlier of actual receipt or five (5) days after posting.

21.10 Amendment. This Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both parties.

21.11 Interpretation. No party will be deemed the drafter of this Agreement, which Agreement will be deemed to have been jointly prepared by the parties. If this Agreement is ever construed, whether by a court or by an arbitrator, such court or arbitrator will not construe this Agreement or any provision hereof against any party as drafter. The Section and other headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning and/or interpretation of this Agreement. It is the intent of the parties that this Agreement and its addenda will prevail over the terms and conditions of any purchase order, acknowledgment form or other instrument. In the event of a conflict between the terms of this Agreement and the terms contained in any addenda to this Agreement, the terms of the addenda will be controlling. Addenda will not be binding until executed by authorized representatives of each party.

21.12 Entire Agreement; Counterparts; Fax Signatures. This Agreement, including all exhibits to this Agreement, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior and/or simultaneous representations, discussions, negotiations and agreements, whether written or oral. This Agreement may be executed in counterparts, each of which will be deemed

an original, but both of which together will constitute one and the same instrument. The parties agree that facsimile signatures of the parties will be binding.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

HON HAI PRECISION

BROCADE COMMUNICATIONS SYSTEMS,  
INC.

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL



EXHIBIT A  
PRODUCTS

-----  
PRODUCT NAME  
-----

-----  
BROCADE PART NUMBER  
-----

-----  
UNIT PRICE  
-----

EXHIBIT B  
ANCILLARY TECHNOLOGY TERMS AND CONDITIONS

1. All tools, tooling equipment, test equipment and other materials furnished to Hon Hai by Brocade or paid for by Brocade ("Brocade Property" or "Ancillary Technology") in connection with this Agreement will be clearly identified by Hon Hai and will remain the property of Brocade and will be (a) clearly marked and remain the personal property of Brocade, and (b) kept free of liens and encumbrances. Hon Hai will allow Brocade personnel onto Hon Hai's premises upon 24 hours notice to allow Brocade to inspect the condition of the Brocade Property or reclaim possession of the Brocade Property.

2. Brocade [\*] the Brocade Property, and Hon Hai [\*] agrees that it will not issue any negotiable bills or receipts on the Brocade Property and will neither file nor permit any lien or other claim to be filed against any of the Brocade Property. In the event that such a lien or claim is filed, Hon Hai will promptly notify Brocade and will take all action necessary to cause such lien or claim against the Brocade Property to be released or otherwise removed within [\*]. If such lien or claim is not released within such [\*], then Brocade may deem that Hon Hai has purchased the Brocade Property at the [\*] cost for such Brocade Property and such amount will be immediately payable to Brocade. Hon Hai will hold Brocade Property at its own risk and will not modify the property without the written permission of Brocade. Hon Hai agrees that Brocade property will be used by Hon Hai only to perform Hon Hai's obligations under this Agreement. Upon Brocade's request, Hon Hai will redeliver the property to Brocade in the same condition as originally received by Hon Hai with the exception of reasonable wear and tear. Hon Hai agrees that in the event the property is lost, damaged or destroyed, Hon Hai's liability for the property is limited to the book value of the property.

3. Unless otherwise agreed to in writing by Brocade, all Ancillary Technology will be insured by [\*]. Hon Hai will execute and deliver to Brocade such other or further agreements relative to property furnished by Brocade to Hon Hai as may be requested by Brocade.

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\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.



EXHIBIT D  
QUALITY PLAN

Solectron shall comply with the terms and conditions of Brocade's quality procedure document identified in Brocade's Agile system as:

[\*] MANUFACTURING SUPPLIER QUALITY PROCEDURE

- -----

\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

EXHIBIT D  
BROCADE  
MANUFACTURING SUPPLIER QUALITY PROCEDURE  
OPERATIONS

REVISION #	DATE	DOCUMENT REVISION HISTORY DESCRIPTION
Draft	2/11/03	Written by RS and Team

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1.0 DESCRIPTION

1.1 This procedure outlines the generic product and process quality requirements for key commodity parts supplied to and/or manufactured for Brocade, Inc.

2.0 SCOPE

2.1 This procedure applies to [\*] to Brocade, Inc. It may also be applied, at Brocade's discretion, to products specifically developed for Brocade by [\*] and other [\*].

2.2 If a conflict arises between any requirement outlined in this procedure and a specific supplier contract signed by Brocade Inc., the [\*] take precedence.

3.0 REFERENCES

3.1 Acceptability of Printed Boards (Class 2) ANSI/IPC-A-600E (latest revision)

3.2 Acceptability of Printed Circuit Assemblies (Class 2) ANSI/IPC-A-610B (latest revision)

3.3 ANSI/IPC 7711 and 7721 Suggested Guidelines for Modification, Rework and Repair of Printed Boards and Assemblies (Level C)

3.5 ANSI/IPC-T-50D (Terms and Definitions for Interconnecting and Packaging Electronic Circuits)

3.6 ANSI Z1.4 Sampling tables

3.7 Brocade Product Quality Plan (Product Specific)

3.8 Manufacturing/contract agreement

4.0 PROCEDURE

4.1 VALUE PROPOSITION

4.1.1 The Brocade supply chain value proposition is to establish supplier partnerships characterized by the following:

- Open and honest communication
- Strong "values based" management
- On-time delivery of quality products
- End user customer focus
- Timely data driven decision making
- Mutual respect and responsiveness
- Ongoing mutual total life cycle cost reduction

4.1.2 We believe that relationships with these characteristics will enable us to establish a world class supply chain management system and provide products and services that consistently meet or exceed our customer's requirements.

[FLOW CHART]

4.1.3 We believe that everyone in a supply chain is a customer for the work done by an "upstream" internal employee or external supplier. As such, you have a right to expect good work from them and an obligation to deliver work of high caliber to your internal and/or external customer.

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[\*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

4.1.4 Sustained quality excellence requires continuous process improvement. This means, regardless of how good present performance is, it can become even better. "You can manage what you can measure." Align what you measure to the individual behaviors you want to support.

#### 4.2 SUPPLIER PARTICIPATION

4.2.1 Contract manufacturing and other key suppliers are expected to [\*] in the Brocade product development process. We depend on your [\*] to optimize the design, quality, cost and delivery of Brocade products. Brocade will formally engage suppliers, through meetings and dialogue, throughout the product life cycle. Appendix A outlines a generic product qualification process flow.

#### 4.3 MANAGEMENT COMMUNICATION

4.3.1 Our goal is to create a communication process to establish and sustain mutually profitable and rewarding business relationships. We want to become your [\*], and we want you to become our [\*].

4.3.2 To this end, Brocade will participate in periodic management communication meetings with key suppliers. These meetings will include a review of quality, cost and delivery performance metrics and ongoing improvement plans.

4.3.3 Specific Quality metrics and requirements are identified with in the Brocade Product Quality Plan's. Additionally, process parameters and controls may be included within each plan.

#### 4.4 WORKMANSHIP STANDARDS

4.4.1 Printed Wiring Boards shall meet the requirements of [\*], latest revision, Class [\*].

4.4.2 Printed Circuit Assemblies shall meet the requirements of [\*], latest revision, Class [\*].

4.4.3 [\*] Requirements for Soldered Electrical and Electronic Assemblies and HDBK-001 (Handbook and guide to supplement [\*] with amendment [\*]).

4.4.4 [\*]. Supplier specific workmanship standards should be identified and communicated to Brocade, Inc. prior to production.

4.4.5 Brocade Cosmetic Specification 95-0000001-01.

#### 4.5 REPAIR AND REWORK

4.5.1 [\*] (Terms and Definitions for Interconnecting and Packaging Electronic Circuits) contains the following definitions:

Repair(ing): The act of restoring the functional capability of a defective article in a manner that precludes compliance with applicable drawings or specifications.

Rework(ing): The act of reprocessing non-complying articles, through the use of original or alternate equivalent processing, in order to bring the article into compliance with applicable drawings and specifications.

4.5.2 [\*] (Suggested Guidelines for Modification, Rework and Repair of Printed Boards and Assemblies) categorizes modifications, rework and repairs into [\*] levels ([\*]).

4.5.3 Brocade will accept PWB fab and assemblies that have been [\*]), using Level [\*] techniques outlined in the above. Level [\*] rework techniques may be authorized by Brocade, only through prior Brocade Engineering or Quality approval.

4.5.4 All [\*] must meet the workmanship requirements of [\*] and/or [\*]. Any [\*] method not contained in [\*] must be authorized by Brocade Quality before being used on any Brocade product.

#### 4.6 DESIGN FOR MANUFACTURABILITY (DFM) AND VALUE ENGINEERING

4.6.1 [\*] shall conduct Design for Manufacturability analysis for every new Brocade board design and/or significant ECO. [\*] should participate in these reviews, as appropriate and/or conduct similar reviews for [\*] products.

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[\*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.



4.6.2 Suppliers are expected to initiate and/or participate in periodic value engineering efforts to reduce the current and future Brocade cost of goods sold (COGS). The timing and content of this activity shall be determined on a [\*] basis.

4.7 AUTHORIZED VENDOR LIST (AVL)

4.7.1 Contract manufacturers and other partners who supply critical components to Brocade must use Brocade's AVL, as required. Notification of this requirement will be made in advance.

4.7.2 Brocade will consider AVL change recommendations from any supplier. Change requests must be approved in writing by Brocade prior to implementation. This is typically done through Brocade's Agile Document System.

4.7.3 Brocade reserves the right to [\*] or [\*] at no additional cost of any materials supplied with [\*] content. This will be considered a serious offense and may have a negative impact on the offending supplier relationship with Brocade.

4.8 PROCESS QUALIFICATION & CONTROLS

4.8.1 Brocade may require certain documentation from selected suppliers prior to commencing production.

4.8.2 The following supporting documentation may be requested:

- Supplier qualification & performance monitoring process
- Production process flow diagram
- Product qualification testing plan and results (PVT)
- Supplier version of BOM's and AVL's used to produce Brocade products
- Process characterization documentation [e.g. SMT stencil, solder paste, SMT and through-hole reflow, board cleaning, rework, etc.]
- Production test specifications and instructions, and in-process quality/control plan
- Assembly process flow diagram
- Gage Repeatability and Reproducibility Studies (Gage R&R: where/when applicable)
- First Article Inspection
- Other documentation as appropriate

4.9 TEST/QUALITY DATA COLLECTION & REPORTING

4.9.1 Suppliers will be required to provide periodic test and inspection yield information to Brocade, upon request. Typical (but not limited to the following) test and inspection results requested would be:

Incoming Inspection	Test Failure Pareto Charts [debug/rework]
In-circuit Test	Quality Inspection Pareto Charts
Functional Test	Final Inspection Results
Environmental Stress Screening	Corrective Action Status
In-Process Audit Results	Third Party Audit Results

4.9.2 Performance reporting charts and graphs should generically include the following information:

- Goals: benchmarks of best in class performance
- Targets: interim goal for a given period
- Actions: actions that are necessary to realize these improvements with owners assigned and planned completion dates
- Progress: measured by relative improvements (delta) each period

[\*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been

requested with respect to the omitted portions.

Brocade Communication Systems Inc.  
Page 5 of 8

Document: 99-0000112-01  
Revision: A  
Revision Date: 2/11/03

4.10 PRODUCT INSPECTION / PROCESS AUDITING

- 4.10.1 Brocade reserves the right to conduct [\*] product inspection and/or process audits of supplier facilities engaged in producing supplied parts or Brocade final products. These activities would be conducted with [\*] of the respective supplier. Discrepancies found during these audits will result in a Corrective Action Request (CAR) (see Paragraph 4.12 below.)
- 4.10.2 Brocade also reserves the right to conduct source inspection at the supplier site. This inspection process, if implemented, would typically include the following activities:
- Inspection of in process and/or finished product against all appropriate workmanship standards.
  - Acceptance sampling in accordance with ANSI Z1.4 (supercedes Mil Std 105), Single Sampling Plan for 1% AQL, Level II, normal inspection level.
  - As an example, a random sample of 13 units would be inspected for critical workmanship attributes from a lot of 100 units. The lot would be accepted with zero defects found and rejected with one or more defects found. The supplier would be responsible to conduct a 100% screen of the entire lot for the defective attribute and re-submit the lot for another sample inspection.
  - Reduced inspection would occur when production is at steady state, ten consecutive lots pass at normal inspection levels, and the total number of defects in the sample from those ten lots are equal to or less than the applicable number given in ANSI Z1.4. Acceptance of five additional lots at reduced level would qualify the part number for dock-to-stock. Conversely, if two of five consecutive lots were rejected, a tightened inspection would be conducted until five consecutive lots were accepted. At that point, the part would start the qualification process over at the normal inspection level.
- 4.10.3 Details of the source inspection process and qualification standards will be further defined and agreed upon prior to implementation with selected suppliers.

4.11 RETURN MATERIAL AUTHORIZATION (RMA) PROCESSING

- 4.11.1 Brocade will contact suppliers with RMA requests via telephone, e-mail and/or fax, depending upon the specific arrangements made.
- 4.11.2 Unless otherwise specified, suppliers shall provide RMA numbers to Brocade within [\*] from receipt of the request.
- 4.11.3 Suppliers shall repair or replace the defective part within [\*] of receipt of the defective product.
- 4.11.4 Suppliers shall maintain records of all RMA requests and provide in-process and completion status of Brocade RMA's.

4.12 CORRECTIVE ACTION REQUESTS (CARS)

- 4.12.1 Brocade will issue a Corrective Action Request (Appendix B) whenever a discrepant product or unsatisfactory supplier process condition is discovered. The CAR Form may be transmitted to the supplier via e-mail or fax.
- 4.12.2 Unless otherwise specified, suppliers shall acknowledge receipt and provide a preliminary assessment and immediate corrective action of the discrepancy within [\*] of receipt. Unless otherwise specified, the preventative measures shall be completed and the documentation submitted no later than [\*] of a CAR receipt.

- - - - -  
[\*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Appendix A:

Standard Product Qualification Process Flow

[FLOW CHART]

Brocade Communication Systems Inc.  
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Revision: A  
Revision Date: 2/11/03

Appendix B: Corrective Action Template (8D)

CLOSED LOOP CORRECTIVE ACTION FORM

CUSTOMER AFFECTED                      BROCADE PART NUMBER                      CUSTOMER MODEL NUMBER                      QTY:

STEP 1                      INTERNAL TEAM MEMBERS                      EXTERNAL TEAM MEMBERS

STEP 2                      DESCRIBE THE PROBLEM                      DATE:

STEP 3                      ROOT CAUSE ANALYSIS                      DATE:

STEP 4                      CONTAINMENT PLAN                      DATE:

STEP 5                      CORRECTIVE ACTION PLAN                      DATE:

STEP 6                      VERIFICATION OF CORRECTIVE ACTION                      DATE:

STEP 7                      PREVENT RECURRENCE                      DATE:

STEP 8                      CONGRATULATE TEAM                      DATE:

-----

CLCA#	Status:	Target Closure Date:	Customer Ref. No.
-----			
BRC-MMDDYY	OPEN		If applicable
-----			

EXHIBIT E  
EXCLUDED PARTS

	PART -----	FXCN NO. -----
1.	[*]	[*]

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Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

AMENDMENT NO. ONE  
TO  
MANUFACTURING AND PURCHASE AGREEMENT  
BETWEEN  
BROCADE AND HON HAI

This Amendment Number One ("Amendment") to the Manufacturing and Purchase Agreement by and between Brocade Communications Systems, Inc. ("Brocade"), and Hon Hai Precision Industry Co., Ltd. ("Hon Hai"), dated February 27, 2003 ("Agreement") is entered into as of March \_\_, 2003.

In consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt of which both parties hereby acknowledge, Brocade and Hon Hai agree as follows:

- 1. Section 8.3. The first two sentences of Section 8.3 are deleted and replaced with the following:

Hon Hai will submit invoice(s) periodically to Brocade upon shipment of Product(s) for which the recipient takes delivery within the United States. (All Products for which the recipient takes delivery outside of the United States shall be governed by the agreement entered into by and between Brocade Switzerland SarL and Hon Hai, dated March \_\_, 2003.)

- 2. Section 19. Section 19 is deleted in its entirety and replaced with the following:

[THIS SECTION INTENTIONALLY LEFT BLANK]

- 3. No Other Changes. Except as specified in this Amendment, the Agreement remains unchanged and in full force and effect.

- 4. Counterparts. This Amendment may be executed in two or more counterparts, all of which, taken together, shall be regarded as one and the same instrument.

BROCADE COMMUNICATIONS SYSTEMS INC.

HON HAI

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Brocade Confidential

## MANUFACTURING AND PURCHASE AGREEMENT

This MANUFACTURING AND PURCHASE AGREEMENT ("Agreement") is entered into as of the date last executed below ("Effective Date") by and between Brocade Communications Switzerland SarL., a corporation organized under the laws of Switzerland, and having its principal place of business at 29, Route de l'Aéroport, Case Postale 105, CH-1215 Geneva 15, Switzerland ("Brocade"), and Hon Hai Precision Industry Co., Ltd., a Taiwan corporation with an office at No. 2, Tzu Yu St., Tu-Chen, Taipei Hsien, 20306, Taiwan, R.O.C. ("Hon Hai").

## 1. Definitions.

1.1 "Ancillary Technology" means all test programs and fixtures provided to Hon Hai by Brocade.

1.2 "Brocade Technology" means the Technology and all Derivatives thereof (a) provided by Brocade to Hon Hai pursuant to this Agreement, or (b) developed by Brocade pursuant to this Agreement, or (c) developed by Brocade or Hon Hai pursuant to a Statement of Work; provided, however, that such Technology is not Hon Hai Technology.

1.3 "Brocade Vendors" means third party producers and suppliers that have been specified by Brocade in writing (a) on Brocade's approved vendor list ("AVL") as provided by Brocade to Hon Hai and as updated by Brocade from time to time, and (b) as the source of certain parts and/or components to be used by Hon Hai in the manufacture of the Products.

1.4 "Derivative" means: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws.

1.5 "Hon Hai Technology" means the Technology [\*] which are (a) developed by Hon Hai prior to entering into this Agreement, and (b) specified on a Statement of Work executed by an authorized representative of Brocade as Hon Hai Technology.

1.6 "Intellectual Property Rights" means copyright rights, trademark rights (including, without limitation, trade names, trademarks, service marks, and trade dress), patent rights, trade secrets, moral rights, right of publicity, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, arising under the law of the United States or any state, country or other jurisdiction.

1.7 "Joint Technology" means any (a) Technology that is first conceived or reduced to practice by one or more of Hon Hai's employees with one or more of Brocade's employees; provided in the case of a patentable invention that a party's contribution will meet the requirements for joint invention under United States law, or (b) joint work of authorship fixed in a tangible medium of expression prepared by one or more of Hon Hai's employees with one or more of Brocade's employees with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

1.8 "Products" means the Brocade products identified on Exhibit A, which may be modified from time to time upon written agreement of the parties.

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1.9 "Purchase Order" means a Brocade purchase order for the purchase of the Products issued to Hon Hai pursuant to the provisions of this Agreement.

1.10 "SLA" means the "service level agreement" document, which is a document created by Brocade and Hon Hai containing certain operational and financial terms agreed between the parties. The version of the SLA existing as of the Effective Date is attached as Exhibit C for reference only. The parties may change the SLA from time to time without amending Exhibit C or this Agreement.

1.11 "Specifications" means the functional and performance specifications (including, without limitation, bills of materials, schematic diagrams, parts and assembly drawings, and test specifications and work/assembly instructions) relating to the testing and manufacturing of each Product as provided by Brocade.

1.12 "Statement of Work" means a written statement of work signed by both parties for special development work to be done by Hon Hai for Brocade. Each Statement of Work will be sequentially numbered (e.g., SOW 1, SOW 2, etc.) and attached to this Agreement by an amendment.

1.13 "Technology" means any and all technical information and/or materials, including, without limitation, ideas, techniques, designs, sketches, drawings, models, inventions, know-how, processes, apparatus, methods, equipment, algorithms, software programs, data, software source documents, other works of authorship, formulae and information concerning engineering, research, experimental work, development, design details and specifications.

## 2. Material Procurement.

2.1 Forecasting and Material Purchasing. Once a [\*], Brocade will provide Hon Hai with a rolling [\*] forecast of the quantity demand for each Product ("Product Forecast"). For the purpose of spare parts, Brocade will provide Hon Hai, once per [\*], with a rolling [\*] repair forecast of the quantity demand for all Parts (defined in Section 11.1) listed by part number ("Parts Forecast", collectively with the Product Forecast, the "Forecasts"). Upon the end-of-life of any Product, Brocade will extend its Parts Forecast for all Parts used in such Product [\*], which shall in no case extend longer than [\*] from the end-of-life date of such Product. The Forecasts are [\*]: Hon Hai may purchase the materials required to meet the demand in the Forecasts only as far in advance as the published component lead time (including any manufacturing offset, as agreed to by the parties in the SLA) for each component necessary to manufacture the Product, or as otherwise instructed in writing by Brocade. [\*] purchased within the applicable lead time; provided that Hon Hai will take all steps [\*] component materials by diligently attempting to return unused materials or to transfer unused materials to use for other customers to the extent that they do not incorporate proprietary Brocade Technology. Brocade will not pay for any unused materials that are purchased [\*].

2.2 Vendor Forecasts. Hon Hai will provide each of the Brocade Vendors with [\*], forward-looking, rolling forecasts for the Product materials and will update such forecasts as necessary to keep each Brocade Vendor current with each new Forecast provided by Brocade.

2.3 Material Management. Hon Hai will, at a minimum, comply with the following obligations to ensure good component material management for the Products, including any Parts (defined in Section 11.1) for repair purposes: (a) [\*] component level failure analysis or [\*] by the Brocade Vendor; (b) [\*] component returns, failure analysis and corrective actions regarding defective components with the Brocade Vendors and promptly communicate this information to Brocade; (c) work with Brocade Vendors to [\*] component leadtimes and costs; (d) provide regular performance feedback to Brocade Vendors, with a copy to Brocade; (e) ensure that all component materials used by Hon Hai to produce the Products meet the Specifications; and (f) calculate for Brocade and provide documentation of the country of origin

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of each of the Products in accordance with US law. As between Hon Hai and Brocade, [\*] will be solely responsible for all costs relating to the collection and replacement of Products and Parts [\*] due to Hon Hai's use of component materials that [\*].

3. Manufacturing Obligations.

3.1 Work Instructions; SLA. Hon Hai will manufacture and test the Products in strict compliance with the work instructions agreed between Brocade and Hon Hai for each Product. Hon Hai will honor the lead time, reporting, and other requirements in the then-current version of the SLA as agreed between Brocade and Hon Hai. As the work instructions and SLA are operating documents that are subject to frequent change, the most recent versions of the documents will not be formally amended into this Agreement; however, both the work instructions for each Product and the SLA are incorporated herein by reference.

3.2 [\*]. Hon Hai acknowledges and agrees that [\*] for the provision of manufacturing and repair services and the supply of Products to Brocade hereunder and that the full [\*] provision of all manufacturing and repair services and supply of Products to Brocade hereunder is a material condition of this Agreement.

3.3 No Subcontracting. Hon Hai agrees that no portion of the manufacture, assembly, or test of the Products will be subcontracted to third parties and that Hon Hai will not change the location of the facilities for the manufacture, assembly, or test of the Products without Brocade's prior written consent. Hon Hai agrees that no portion of the subassembly of Parts will be subcontracted to affiliated or unaffiliated third parties without Brocade's prior written consent, which shall not be unreasonably withheld or delayed.

3.4 Ancillary Technology. Brocade, at its sole discretion, may furnish Ancillary Technology to Hon Hai solely for use in the manufacture and testing of the Products. Hon Hai will not at any time use the Ancillary Technology for any other purposes or for any third parties or in any manner other than in performing Hon Hai's obligations under this Agreement. Hon Hai will maintain the Ancillary Technology in good condition and repair and provide necessary calibration services for the Ancillary Technology. Brocade and Hon Hai agree that the terms set out in Exhibit B hereto, which may be modified from time to time upon written agreement of the parties, will apply to all Ancillary Technology, and Hon Hai will be responsible for obtaining the requisite insurance coverage and conducting appropriate inspections in accordance with Exhibit B hereto. With respect to any Ancillary Technology licensed to Hon Hai pursuant to this Agreement, Brocade agrees to provide Hon Hai with a reasonable amount of support, at no charge, with respect to the initial installation, set-up and debugging of such Ancillary Technology and Hon Hai will be solely responsible for all ongoing use and support of such Ancillary Technology.

3.5 Non-Exclusivity. Nothing in this Agreement will be construed or deemed to prevent or otherwise inhibit Brocade's ability or right to manufacture, any product (including the Products) at a Brocade facility or at alternate or additional third party facility(ies) of Brocade's choice. Further, nothing in this Agreement will be construed or deemed to (a) require Brocade to order all units of any Product from Hon Hai, or (b) prevent or otherwise inhibit Brocade's ability or right to design, develop, manufacture, have manufactured, market, use, sell, and or distribute any follow-on products or derivatives of the Products.

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4. License Rights and Restrictions.

4.1 License to Hon Hai.

(a) License to Specifications. Subject to the terms of this Agreement, Brocade hereby grants Hon Hai a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's trade secret rights, during the term of this Agreement, to use the Specifications solely internally and solely for the purpose of manufacturing the Products for Brocade.

(b) License to Ancillary Technology. Subject to the terms of this Agreement, Brocade hereby grants Hon Hai a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's copyright and trade secret rights, during the term of this Agreement, to use and copy the test software (provided as part of the Ancillary Technology) solely internally and solely for the purpose of manufacturing and testing the Products for Brocade.

(c) License to Brocade Firmware. Subject to the terms of this Agreement, Brocade hereby grants Hon Hai a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's copyright rights, during the term of this Agreement, to copy the Brocade Firmware onto Product units in the manufacturing process.

(d) License to Brocade Technology. Brocade hereby grants Hon Hai a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's Intellectual Property Rights, during the term of this Agreement, to use the Brocade Technology solely internally, and solely as necessary to fulfill its manufacturing obligations under this Agreement. Hon Hai is granted no right, and is expressly prohibited from using the Brocade Technology, to develop, manufacture or distribute any products other than the Products.

4.2 License to Brocade. Neither Hon Hai nor any third party will retain any rights in any materials incorporated into the Products. To the extent that Hon Hai provides any Hon Hai Technology to Brocade [\*], Hon Hai hereby grants to Brocade a non-exclusive, royalty-free, perpetual, irrevocable license under Hon Hai's Intellectual Property rights to make, have made, use, sell, import, reproduce, display, distribute, and create derivative works of the Hon Hai Technology solely in connection with the development, manufacture, marketing, and sale of Brocade Products, as listed on Exhibit A, which may be modified from time to time upon written agreement of the parties.

4.3 Restrictions. Except as expressly set forth above, each party retains all of its Intellectual Property Rights. No license is granted by Brocade to make, use or sell any other products under the Brocade Intellectual Property Rights or to make, use or sell any products for any other purpose. Hon Hai will not modify, decompile or reverse engineer the Brocade Firmware or any Brocade Technology.

5. Purchase Orders.

5.1 Purchase Order Acceptance. Hon Hai is permitted to sell the Products only to Brocade, and to third parties who have been authorized in writing by Brocade to purchase the Products from Hon Hai ("Designated Purchasers") in satisfaction of Purchase Orders issued during the term of this Agreement, subject to and in accordance with the terms and conditions of this Agreement.

5.2 Quantity Flexibility. Hon Hai will, at [\*], accept all Purchase Order cancellations, reschedulings and changes in the quantity of Products ordered within the cancellation, rescheduling, change, or other flexibility terms outlined in the SLA. The version of the SLA existing as of the Effective Date is attached as Exhibit C for reference only. The parties may change the SLA from time to time without amending Exhibit C or this Agreement.

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6. Shipping and Delivery.

6.1 Shipment. All shipments of the Products will be made [\*] (per Incoterms 2000). [\*].

6.2 Timing. Shipments to Brocade, or to other locations specified by Brocade, will be shipped in the [\*] ordered by Brocade, and [\*] the acknowledged delivery date, [\*] the acknowledged delivery date. Upon learning of any potential shipment delays, Hon Hai will notify Brocade [\*] within such shorter time as may be required in the SLA as to the cause and extent of such delay. Except as Brocade may otherwise advise in advance and in writing, Brocade [\*] any goods (i) shipped [\*] the quantity ordered, (ii) shipped in a partial shipments, or (iii) shipped [\*].

6.3 Accelerated Measures. If Hon Hai fails or has reason to believe it will fail to make shipments at the specified time and such failure is not due to an action or omission of Brocade, Hon Hai will, [\*] employ accelerated measures [\*] required to meet the specified delivery schedule or minimize the lateness of shipments.

7. Acceptance.

7.1 Inspection. Hon Hai will ship Products directly to [\*]. All deliveries of Products are subject to inspection and testing by Brocade [\*] before final acceptance. Within [\*] after receipt of Products ("Rejection Period"), Brocade [\*] may inspect and reject any Product that fails to meet the Specifications.

7.2 Rejection. Within the Rejection Period, customers may notify Brocade of any Product rejections and the reasons therefor. In accordance with the RMA procedures of Section 11.1, below, Brocade [\*] may return rejected or defective Products to Hon Hai, [\*]. In the event that the returned Product is defective, Hon Hai will repair or replace such defective Product, [\*]. For all returned Products that are defective, Hon Hai will return to Brocade or its customer, as the case may be, freight prepaid, all repaired or replaced Products within [\*] after Hon Hai's receipt of the returned Product or within such other time as specified in the SLA. Any returned Products that have been damaged by misuse, abuse or unauthorized repair, by or on behalf of the End User, may be treated by Hon Hai as "out of warranty" and subject to out of warranty repair charges referenced in Section 8.1 only. Any returned Products which are not in fact defective may be returned by Hon Hai to the End User at [\*] expense.

7.3 Spot Testing. Upon prior notice to Hon Hai, Brocade or its authorized representative(s) may conduct spot functional tests of the Products at Hon Hai's facility at which Products are being manufactured during Hon Hai's normal business hours. The parties will mutually agree upon the timing of such investigations, which will be conducted in such a manner as not to interfere with Hon Hai's operations. If any Products fail any material part of the test procedure set forth on the Statement of Work, Brocade may reject such Products, and Hon Hai will promptly take all steps necessary to correct such failures.

7.4 Site Inspections. Upon [\*] notice to Hon Hai, Brocade[\*], will have the right to perform on-site inspections at Hon Hai's manufacturing facilities and Hon Hai will fully cooperate with Brocade in that regard at mutually agreed upon times. If an inspection or test is made on Hon Hai's premises, Hon Hai will provide Brocade's inspectors with reasonable assistance at no additional charge. In the event that any on-site inspection of the Products indicates that the Products do not conform to the requirements of this Agreement, Hon Hai will not ship such Products to Brocade until such nonconformity has been cured and only Products meeting the conformance criteria may be shipped. This does not limit Brocade's right to perform additional acceptance testing at Brocade's facilities.

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7.5 Failure to Inspect. Notwithstanding anything to the contrary contained in this Agreement, inspection or failure to inspect the Products upon Delivery will not affect Brocade's rights under the warranty provisions of this Agreement.

8. Pricing and Payment.

8.1 Prices. The unit prices to be paid by Brocade for (a) the Products, and (b) all out-of-warranty repair services, shall be as set forth on Exhibit A or as otherwise agreed by the parties. Except as otherwise expressly provided in this Agreement, such unit prices includes [\*] for the Products or repair services (as the case may be), any related deliverable items and services and packaging for delivery to Brocade. All payments hereunder will be paid in U.S. Dollars unless otherwise mutually agreed upon by the parties in writing.

8.2 Taxes. Where the law permits, Hon Hai will treat Brocade as exempt from applicable state and/or local sales tax for Product(s) purchased pursuant to this Agreement. Where required by state or local law, Brocade will provide Hon Hai with a valid reseller's exemption certificate for each taxing jurisdiction to which Hon Hai ships Product(s). The Parties agree that for any purchases made in the People's Republic of China, no sales taxes shall apply.

8.3 Invoices. Hon Hai will submit invoice(s) periodically to Brocade upon [\*] of Product(s) for which the recipient takes delivery outside the United States. (All Products for which the recipient takes delivery inside of the United States shall be governed by the agreement entered into by and between Brocade Communications Systems, Inc. and Hon Hai, dated \_\_\_\_\_, 2002.) Brocade will pay such invoices net [\*] after the date of [\*] of the Products or receipt of Hon Hai's invoice, whichever is later ("Payment Period"); provided however, that if the SLA specifies a different Payment Period, Brocade will pay within the time specified in the SLA and not the Payment Period specified in this Agreement. Payment will not constitute acceptance of the Products by Brocade.

9. Quality Assurance.

9.1 Quality Standards. Hon Hai will manufacture and repair the Products in accordance with the quality requirements, standards and expectations as set forth on the Statement of Work or as otherwise mutually agreed upon by the parties in writing.

9.2 Quality Plan. Hon Hai will establish, maintain and manage a quality assurance program for the Products that is consistent with, and at least as restrictive as, the terms and conditions listed in Exhibit D, which may be modified from time to time upon written agreement of the parties.

10. Engineering Changes.

10.1 ECOs. Brocade may, upon advance written notice to Hon Hai, submit engineering change orders ("ECOs") for changes to the Products. ECOs will include documentation of the change to effectively support an investigation of the impact of the engineering change. Hon Hai will review the ECO and report to Brocade within [\*] of Hon Hai's receipt of the ECO. If the ECO affects the manufacturing or repair costs of the Products or otherwise affects the price of the affected Products, the parties agree to negotiate in good faith an equitable adjustment to the price of the affected Products prior to implementation of the change. The parties agree that [\*] is a reasonable time period to permit Hon Hai to evaluate ECO impact regarding potential excess manufacturing costs and price.

10.2 No Changes. No changes will be made to the Products without Brocade's prior written consent and no approved change will be made effective prior to the date approved by Brocade in writing. Hon Hai will not change or modify the processes for the Products without Brocade's prior written consent.

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Hon Hai will reimburse Brocade for all expenses incurred by Brocade to qualify changes to such materials or processes that are undertaken by Hon Hai without Brocade's prior written consent.

11. Product Repairs and Parts Supply.

11.1 Repair Services. [\*] Hon Hai will provide repair services to Brocade and Brocade-authorized third parties (i) for all in-warranty Products (including all parts therein and any parts provided separately "Parts") in accordance with the terms of Sections 14, below, and (ii) for any out-of-warranty Products and Parts for a period of [\*] from the end-of-life production of such Products or Parts by Hon Hai or a Brocade Vendor. For any Product or Part that is returned to Hon Hai for repair or replacement services, Brocade will issue a Return Material Authorization ("RMA") number, and will forward such RMA electronically to Hon Hai, through Brocade's Oracle system. All Products and Parts returned to Hon Hai for repair or replacement services will include the RMA affixed to the packaging.

11.2 Parts Supply. Hon Hai will make available to Brocade Product Parts as Brocade may [\*] for [\*] Products purchased by Brocade from Hon Hai during the Product production. For a period of [\*] after the date of delivery to Brocade by Hon Hai of the last unit of the Product manufactured by Hon Hai, Hon Hai will also undertake the following: (a) Hon Hai will maintain [\*] necessary for the Products; (b) Hon Hai will maintain [\*] so that Hon Hai will be able to [\*] any Parts originally [\*] by Hon Hai; (c) Hon Hai will [\*] its Parts vendors to obtain and will provide notice to Brocade at least [\*] prior to discontinuing the availability of any Part; (d) Hon Hai will inform Brocade of all [\*] notifications for Parts upon Hon Hai's receipt of such notifications; and (e) Hon Hai will inform Brocade if a [\*] is the most economical procurement strategy for such Parts as to which such a notification is received (especially [\*] Parts which may require tool maintenance and set-up charges that far outweigh piece part costs). [\*] If Brocade determines that [\*] is not financially favorable due to the [\*] of the remaining support period for the Part(s), Hon Hai will assist Brocade in [\*] through manufacturing. [\*]

12. Ownership.

12.1 Ownership by Brocade. As between Brocade and Hon Hai, Brocade will own all right, title, and interest in the Specifications, Brocade Firmware, Products, Ancillary Technology and the Brocade Technology (excluding the Hon Hai Technology, which will be owned exclusively by Hon Hai) and all Intellectual Property Rights therein, and Hon Hai hereby irrevocably transfers, conveys and assigns to Brocade all of its right, title, and interest therein. Hon Hai will execute such documents, render such assistance, and take such other action as Brocade may reasonably request, at Brocade's expense, to apply for, register, perfect, confirm and protect Brocade's rights to the Brocade Technology, and all Intellectual Property Rights therein.

12.2 Ownership by Hon Hai. As between Hon Hai and Brocade, Hon Hai will own all right, title and interest in the Hon Hai Technology (excluding the Brocade Technology, which will be owned exclusively by Brocade), and all Intellectual Property Rights therein.

12.3 Ownership of Joint Technology. Subject to the ownership rights specified in Sections 12.1 and 12.2, [\*] own all right, title and interest in the Joint Technology and all Intellectual Property Rights therein, and [\*] use the Joint Technology and all Intellectual Property Rights therein without restriction and for any reason. [\*] will execute such documents, render such assistance, and take such other action as [\*] may reasonably request, at [\*] expense, to apply for, register, perfect, confirm and protect [\*] rights in the Joint Technology.

12.4 Attorney in Fact. The Parties agree that that if either Party ("Assignee") is unable because of the other Party's ("Assignor") unavailability, dissolution or incapacity, unreasonable refusal or unreasonable failure to act in a timely manner such that intellectual property rights protection may be

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impaired, to secure Assignor's signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering the inventions assigned to Assignee under this Agreement, then Assignee hereby irrevocably designates and appoints Assignee and its duly authorized officers and agents as Assignor's agent and attorney in fact, to act for and in Assignor's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by Assignor.

13. Confidential Information.

13.1 General. Except as otherwise provided in this Section, the definition, use, and disclosure of confidential information by the parties shall be governed by the Mutual Non-Disclosure Agreement between the parties and dated May 22, 2000.

13.2 Sensitive Brocade Information. "Sensitive Brocade Information" means the Forecasts, Specifications, AVL, Brocade Technology, Ancillary Technology, bill of materials, SLA, work instructions, and all data accessed by Hon Hai pursuant to Sections 2, 3, 4, 5, 6 and 11.

13.3 Confidentiality Obligations. Hon Hai will, at all times, both during the term of this Agreement and at all times thereafter, keep in confidence and trust all Sensitive Brocade Information. Hon Hai may use the Sensitive Brocade Information only as necessary to perform its obligations under this Agreement. Hon Hai will take all required steps to prevent unauthorized disclosure or use of Sensitive Brocade Information and to prevent it from falling into the public domain or into the possession of unauthorized persons. Hon Hai will not disclose Sensitive Brocade Information to any person or entity other than its employees who need access to such Sensitive Brocade Information in order to effect the intent of this Agreement and who have entered into written confidentiality agreements that protect the Sensitive Brocade Information. Hon Hai will immediately give notice to Brocade of any unauthorized use or disclosure of Sensitive Brocade Information. Hon Hai agrees to assist Brocade in remedying such unauthorized use or disclosure of Sensitive Brocade Information.

13.4 Exclusions. These obligations will not apply to the extent that Sensitive Brocade Information: (a) is already known to Hon Hai at the time of disclosure, which knowledge Hon Hai will have the burden of proving; (b) is, or, through no act or failure to act of Hon Hai, becomes publicly known; (c) is received by Hon Hai from a third party without restriction on disclosure; (d) is independently developed by Hon Hai without reference to Sensitive Brocade Information, which independent development Hon Hai will have the burden of proving; or (e) is approved for release by written authorization of Brocade.

13.5 Legal Disclosures. A disclosure of Sensitive Brocade Information (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Hon Hai will provide prompt written notice thereof to Brocade to enable it to seek a protective order or otherwise prevent such disclosure and will cooperate with Brocade in seeking such protective order.

14. Warranty.

14.1 Product Warranty. Hon Hai warrants for a period of [\*] from the date of [\*] of each unit of each Product, that such unit of each Product [\*] (a) will conform to the Specifications; (b) will be of good material (except for material supplied by Brocade) and workmanship and free from defects in the manufacture; (c) will be free and clear of all liens and encumbrances and that Hon Hai will convey good and marketable title to such Product. For purposes of clarification, the Parties agree that Hon Hai will have satisfied its workmanship obligations in (b) above to the extent that such workmanship [\*] or (ii) the

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minimum requirements agreed upon in writing by the parties in a Statement of Work or other signed document. [\*]

14.2 Product Warranty Remedy. In accordance with the RMA procedures outlined in Section 11.1, above, Brocade will promptly notify Hon Hai of any Products [\*] that Brocade believes do not comply with the warranties contained in this Agreement. Hon Hai will pay all [\*] associated with Products returned for repairs during the warranty period. Hon Hai will, at [\*] option, either (i) credit Brocade for the purchase price paid by Brocade for the defective Product units, or (ii) at [\*] expense, replace, repair or correct such Product within [\*] of notification [\*]. Hon Hai will [\*] any charges in order to effect the earliest reasonable replacement of such defective Products to Brocade [\*]. Hon Hai agrees to maintain a repair capability for products under warranty. Hon Hai will provide to Brocade detailed information, including location, telephone number, contact person and hours of operation for the Hon Hai service representative who will be Brocade's contact for warranty claims and questions. [\*] Replaced Products will be warranted for [\*] period, plus time equal to [\*] because of repair or replacement and shipment time, or [\*], whichever is longer. [\*]

14.3 [\*]Other Obligations and Warranties.

(a) Regulatory Compliance. Hon Hai represents and warrants that its manufacturing facilities and processes will comply with all applicable international, federal, state and local statutes, laws and regulations.

(b) Import/Export Requirements. Brocade and Hon Hai will comply with all import and export laws and regulations and maintain appropriate import and export documentation. At Brocade's request, Hon Hai will make available for inspection and audit all import and export documentation for the Products and the Hon Hai Technology included in the Products sold under this Agreement. At Brocade's request, Hon Hai will also assist Brocade in determining an appropriate Export Control Classification Number ("ECCN") for all Products sold hereunder. At Brocade's request, Hon Hai will also provide export screening for all shipments of Products or Parts. Hon Hai will not, directly or indirectly, export, re-export or transship any Technology in violation of any applicable U.S. export control laws and regulations or any other applicable export control laws promulgated and administered by the government of any country having jurisdiction over the parties or the transactions contemplated herein.

(c) Formation, Good Standing and Authority. Each of Hon Hai and Brocade represents and warrants to the other that it is a company duly formed, validly existing and in good standing under the laws of its jurisdiction and that this Agreement has been duly executed and delivered by it, and (assuming due authorization, execution and delivery by the other) constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(d) DOAs and Misshipments. Notwithstanding the terms and conditions in Sections 7.2 and 14.2 of the Agreement, in the event that a Product is rejected and returned to Hon Hai by Brocade [\*] because (1) such Product was [\*] by, or on behalf of, Hon Hai (a "Misshipment"), and such Misshipment is attributable to Hon Hai's acts or omissions, or (2) such Product is found to be dead on arrival (a "DOA"), and such DOA is attributable to the acts or omissions of Hon Hai, then Hon Hai shall:

(i) [\*] for the return of such Misshipment/DOA;

and

(ii) [\*] testing and reconfiguring such Misshipment/DOA so that it is fully functional and meets the Specifications; and

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(iii) hold such Misshipment/DOA [\*] for a period of up to [\*] or upon date of Brocade [\*], whichever is less.

Subject to Hon Hai's compliance with the obligations in (i), (ii) and (iii) above, Brocade agrees to provide Hon Hai with [\*] for Misshipments and DOAs. In addition, Hon Hai agrees to [\*] all Misshipments and DOAs and to provide Brocade, on a regular basis, a [\*] regarding such Misshipments and DOAs. The Parties agree to use their [\*] efforts to identify and resolve Misshipment and DOA issues and [\*] such issues.

14.4 Warranty Disclaimer. THE WARRANTIES CONTAINED IN THIS SECTION 14 ARE IN LIEU OF, AND EACH PARTY EXPRESSLY DISCLAIMS AND THE OTHER PARTY WAIVES ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.

15. Term and Termination.

15.1 Term. This Agreement will commence on the Effective Date and will continue for a period of [\*] thereafter, unless earlier terminated pursuant to this Agreement. [\*] may renew this Agreement for successive [\*] terms by providing written notice to [\*] no later than [\*] prior to the end of the then-current term.

15.2 Termination for Default. [\*] may terminate this Agreement if [\*] violates any covenant, agreement, representation or warranty contained herein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured within [\*] after written notice (which notice will describe the alleged breach in reasonable detail) from [\*] stating its intention to terminate this Agreement by reason thereof.

15.3 Other Causes of Termination. This Agreement will terminate upon written notice by either party, immediately, if

- (a) a receiver is appointed for the other party or its property;
- (b) the other party makes a general assignment for the benefit of its creditors;
- (c) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors;
- (d) the other party is liquidated or dissolved; or
- (e) any proceedings are commenced against the other party under any bankruptcy, insolvency or debtor's relief law and such proceedings are not vacated or set aside within sixty (60) days from the date of commencement thereof.

15.4 Effect of Termination. In the event of the expiration or termination of this Agreement:

- (a) Hon Hai will complete the production of any Products of which Hon Hai has [\*] as of the effective date of such expiration or termination and Deliver such completed Products to Brocade by the earlier of (i) the acknowledged delivery date, or (ii) [\*];

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\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

(b) Hon Hai will immediately cease the use of all of the Brocade Technology upon completion of the work required in 15.4(a);

(c) Hon Hai will return or destroy (as appropriate depending on the nature of the material) all Sensitive Brocade Information within thirty (30) days after the effective date of the termination and certify in writing that such party has complied with its obligations hereunder; and

(d) NEITHER BROCADE NOR HON HAI SHALL BE LIABLE TO THE OTHER BECAUSE OF SUCH EXPIRATION OR TERMINATION, FOR COMPENSATION, REIMBURSEMENT OR DAMAGES FOR THE LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR GOODWILL, ON ACCOUNT OF ANY EXPENDITURES, INVESTMENTS OR COMMITMENTS MADE BY EITHER, OR FOR ANY OTHER REASON WHATSOEVER BASED UPON THE RESULT OF SUCH EXPIRATION OR TERMINATION.

15.5 Survival. The rights and obligations of the parties set forth in Sections 1, 3.3, 3.4, 4.2, 4.3, 5, 6, 7, 8, 9, 11, 12, 14, 15.4, 15.5, 16, 17, 18 and 19 will survive any termination or expiration of this Agreement [\*].

16. Dispute Resolution. In the spirit of continued cooperation, the parties agree to follow the dispute resolution procedure described in this Section in the event any controversy should arise out of or concerning the parties' performance under this Agreement. In the event of a dispute or claim arising between the parties on any matter relating to this Agreement, either party may initiate negotiation proceedings by written notice to the other party setting forth the particulars of the dispute. Upon receipt of such notice, the parties agree to meet in good faith within [\*] of the date of such notice, to jointly define the scope of and a method to remedy the dispute. If such meeting does not resolve the dispute, then senior management of Hon Hai and Brocade are authorized to and will meet personally within [\*] to confer in a bona fide attempt to resolve the matter. The parties will use diligent efforts to arrange meetings or telephone conferences as needed to facilitate these negotiations. If such dispute remains unresolved following the parties' undertaking of the actions set forth in this Section 16, the parties shall have the right to avail themselves of all other rights and remedies, whether available under this Agreement, at law or in equity. Each party's rights to terminate this Agreement for breach subject to the notice period set forth in Section 15 shall apply regardless of the parties' discussions under this Section 16.

17. Limitation of Liability.

17.1 Consequential Damages Waiver. EXCEPT FOR BREACHES OF [\*] NEITHER PARTY SHALL HAVE ANY LIABILITY TO EACH OTHER OR ANY OTHER THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, LOSS OF USE OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED THEREBY, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, AND IRRESPECTIVE OF WHETHER SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

17.2 Failure of Essential Purposes. THE LIMITATIONS SET FORTH IN THIS SECTION 17 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

18. Indemnification.

18.1 Hon Hai Indemnity. Hon Hai will defend, indemnify and hold Brocade and its officers, directors and employees harmless (inclusive of reasonable attorneys' fees) from and against any claim, suit, action or proceeding brought against Brocade arising from, relating to or in connection with: (a) Hon

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Hai's breach of any licenses granted to Hon Hai under this Agreement; (b) [\*] in the Products, to the extent that the claim is based on facts which constitute a non-conformance with the [\*] or [\*] or [\*] provided or developed by Hon Hai; (c) acts, errors or omissions by or negligence of Hon Hai, its employees, officers, agents or representative of any of them; (d) any third party claims founded on theories of [\*] related to the Products, to the extent that the claim is not based on elements of the Products manufactured in conformance with the Specifications; or (e) [\*] the Products or Hon Hai Technology of any [\*] not based on the [\*] provided by Brocade. In the event the Hon Hai Technology and/or the Products are held or believed by Hon Hai to infringe, or Brocade's use of the Hon Hai Technology and/or the Products is enjoined, [\*]

18.2 Brocade Indemnity. Brocade will defend, indemnify and hold Hon Hai and its officers, directors and employees harmless (inclusive of reasonable attorneys' fees) from and against any claim, suit, action or proceeding brought against Hon Hai arising from, relating to or in connection with: [\*] (c) acts, errors or omissions by or negligence of Brocade, its employees, officers, agents or representative of any of them[\*]. In the event the Brocade Technology is held or believed by Brocade to infringe, or Hon Hai's use of the Brocade Technology is enjoined, Brocade will have the option[\*] to: (i) procure for Hon Hai the right to continue using Brocade Technology; (ii) replace Brocade Technology with non-infringing technology; (iii) modify Brocade Technology so that it becomes non-infringing; or (iv) accept return of Brocade Technology. Brocade's obligations hereunder will be void as to any Brocade Technology modified by Hon Hai (without Brocade's approval), solely to the extent such modification is the alleged basis of the suit.

18.3 [\*]

19. Export. Hon Hai agrees that:

19.1 Hon Hai will perform routed transactions for Brocade, and

19.2 Hon Hai will provide Brocade with comprehensive ongoing support regarding the following key issues: [\*], accurate record-keeping of all export document packets, [\*] on all switches and FRUs, and Manufacturing affidavits for all Brocade Products and Parts.

20. Environmental Requirements. Hon Hai warrants and agrees that:

20.1 Product Content. All Products and their packaging will comply with Brocade's general specifications for environment (if any), and, for purposes of this Agreement, such specifications are part of the Specifications for the Product.

20.2 Shipment. All Products will be shipped in conformance with all applicable national and international [\*] including, where applicable, regulations regarding [\*], including regulations regarding [\*]. All packaging materials, including pallets, will be [\*] and comply with national and international regulations regarding [\*] where applicable.

20.3 [\*]. Each [\*] contained in the Product is on the inventory of [\*] compiled and published by [\*] pursuant to the [\*].

20.4 Hon Hai will provide complete and accurate [\*] for Product prior to shipment.

20.5 [\*] Information. Hon Hai will furnish Brocade any information reasonably requested by Brocade to confirm compliance with applicable laws or to determine the [\*] effects of materials included in the Products or in its packaging.

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20.6 Hon Hai will comply with all applicable laws governing import or export of Products and will be solely responsible for obtaining all requisite licenses and other authorizations.

20.7 Disposition of Excess Materials. Hon Hai will [\*] of any excess or waste materials generated from manufacture of Product (including damaged or nonconforming product or materials) in compliance with the provisions of this Agreement, applicable laws and any specific instructions received from Brocade.

20.8 Hon Hai will continuously implement and maintain processes and policies designed to [\*] at any facility at which Product manufacturing operations are performed under this Agreement.

20.9 Ozone Depleting Substances. Hon Hai hereby certifies that neither Product, nor any part, piece or component of any Product:

(a) contains any [\*] as those terms are defined in [\*] and implementing regulations of the [\*], as now in existence or hereafter amended; or

(b) has been manufactured with a process that uses any [\*]

21. General.

21.1 Insurance. Each party will maintain workers' compensation and comprehensive general liability insurance (including product liability coverage) adequate to cover its obligations under this Agreement.

21.2 Assignment. [\*] will assign this Agreement, in whole or in part, or any obligations or rights hereunder (except the right to receive payments), except with the prior written consent of [\*], which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Brocade will have the right to assign or otherwise transfer this Agreement without such consent (i) to a subsidiary, parent, or entity under common control with Brocade, or (ii) to a successor party in the event of a merger, acquisition, sale, transfer or other disposition of all or substantially all of the assets of Brocade. Subject to the foregoing, this Agreement will inure to the benefit of each of the party's successors and assigns.

21.3 Relationship of the Parties. The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

21.4 Publicity. Hon Hai will not publicize or disclose the terms of this Agreement to any third party without the prior written consent of Brocade.

21.5 Waiver. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different or subsequent breach by either party.

21.6 Severability. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

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21.7 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement.

21.8 Choice of Forum. This Agreement will be deemed made and entered into in Santa Clara County, California. Except for either party's right to apply to any court of competent jurisdiction for a temporary restraining order and/or a preliminary injunction to enjoin the other party from misappropriating or infringing any Intellectual Property Rights of the moving party, the parties hereby submit to the exclusive jurisdiction of, and waive any venue objections against, the United States District Court for the Northern District of California, San Jose Branch and the Superior and Municipal Courts of the State of California, Santa Clara County, in any litigation arising out of this Agreement. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar claim or defense.

21.9 Notices. Any notice provided for or permitted under this Agreement will be treated as having been given when (a) delivered personally, (b) sent by confirmed telex or telecopy, (c) sent by commercial overnight courier with written verification of receipt, or (d) mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this Section.

If to Brocade: Brocade Communications Switzerland SarL.  
29, Route de l'Aeroport  
Case Postale 105  
CH-1215 Geneva 15, Switzerland  
Attn.: General Counsel

With a copy to: Brocade Communications Systems, Inc.  
1745 Technology Drive  
San Jose, CA 95110  
Attn.: General Counsel

If to Hon Hai: Hon Hai Precision  
1705 Junction Court  
Suite 200  
San Jose, CA 95112-1023  
Attn.: \_\_\_\_\_

Such notice will be treated as having been received upon the earlier of actual receipt or five (5) days after posting.

21.10 Amendment. This Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both parties.

21.11 Interpretation. No party will be deemed the drafter of this Agreement, which Agreement will be deemed to have been jointly prepared by the parties. If this Agreement is ever construed, whether by a court or by an arbitrator, such court or arbitrator will not construe this Agreement or any provision hereof against any party as drafter. The Section and other headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning and/or interpretation of this Agreement. It is the intent of the parties that this Agreement and its addenda will prevail over the terms and conditions of any purchase order, acknowledgment form or other instrument. In the event of a conflict between the terms of this Agreement and the terms contained in any addenda to this Agreement,

the terms of the addenda will be controlling. Addenda will not be binding until executed by authorized representatives of each party.

21.12 Entire Agreement; Counterparts; Fax Signatures. This Agreement, including all exhibits to this Agreement, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior and/or simultaneous representations, discussions, negotiations and agreements, whether written or oral. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument. The parties agree that facsimile signatures of the parties will be binding.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

HON HAI PRECISION

BROCADE COMMUNICATIONS SWITZERLAND  
SARL

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

EXHIBIT A  
PRODUCTS

PRODUCT NAME	BROCADE PART NUMBER	UNIT PRICE

EXHIBIT B  
ANCILLARY TECHNOLOGY TERMS AND CONDITIONS

1. All tools, tooling equipment, test equipment and other materials furnished to Hon Hai by Brocade or paid for by Brocade ("Brocade Property" or "Ancillary Technology") in connection with this Agreement will be clearly identified by Hon Hai and will remain the property of Brocade and will be (a) clearly marked and remain the personal property of Brocade, and (b) kept free of liens and encumbrances. Hon Hai will allow Brocade personnel onto Hon Hai's premises upon 24 hours notice to allow Brocade to inspect the condition of the Brocade Property or reclaim possession of the Brocade Property.

2. Brocade [\*] the Brocade Property, and Hon Hai [\*] agrees that it will not issue any negotiable bills or receipts on the Brocade Property and will neither file nor permit any lien or other claim to be filed against any of the Brocade Property. In the event that such a lien or claim is filed, Hon Hai will promptly notify Brocade and will take all action necessary to cause such lien or claim against the Brocade Property to be released or otherwise removed within [\*]. If such lien or claim is not released within such [\*], then Brocade may deem that Hon Hai has purchased the Brocade Property at the [\*] cost for such Brocade Property and such amount will be immediately payable to Brocade. Hon Hai will hold Brocade Property at its own risk and will not modify the property without the written permission of Brocade. Hon Hai agrees that Brocade property will be used by Hon Hai only to perform Hon Hai's obligations under this Agreement. Upon Brocade's request, Hon Hai will redeliver the property to Brocade in the same condition as originally received by Hon Hai with the exception of reasonable wear and tear. Hon Hai agrees that in the event the property is lost, damaged or destroyed, Hon Hai's liability for the property is limited to the book value of the property.

3. Unless otherwise agreed to in writing by Brocade, all Ancillary Technology will be insured by [\*]. Hon Hai will execute and deliver to Brocade such other or further agreements relative to property furnished by Brocade to Hon Hai as may be requested by Brocade.

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\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.



EXHIBIT C  
SLA (FOR REFERENCE ONLY)

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Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

EXHIBIT D  
QUALITY PLAN

Solectron shall comply with the terms and conditions of Brocade's quality procedure document identified in Brocade's Agile system as:

[\*] MANUFACTURING SUPPLIER QUALITY PROCEDURE

- -----  
\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

EXHIBIT D  
BROCADE  
MANUFACTURING SUPPLIER QUALITY PROCEDURE  
OPERATIONS

REVISION #	DATE	DOCUMENT REVISION HISTORY DESCRIPTION
Draft	2/11/03	Written by RS and Team

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1.0 DESCRIPTION

1.1 This procedure outlines the generic product and process quality requirements for key commodity parts supplied to and/or manufactured for Brocade, Inc.

2.0 SCOPE

2.1 This procedure applies to [\*] to Brocade, Inc. It may also be applied, at Brocade's discretion, to products specifically developed for Brocade by [\*] and other [\*].

2.2 If a conflict arises between any requirement outlined in this procedure and a specific supplier contract signed by Brocade Inc., the [\*] take precedence.

3.0 REFERENCES

3.1 Acceptability of Printed Boards (Class 2) ANSI/IPC-A-600E (latest revision)

3.2 Acceptability of Printed Circuit Assemblies (Class 2) ANSI/IPC-A-610B (latest revision)

3.3 ANSI/IPC 7711 and 7721 Suggested Guidelines for Modification, Rework and Repair of Printed Boards and Assemblies (Level C)

3.5 ANSI/IPC-T-50D (Terms and Definitions for Interconnecting and Packaging Electronic Circuits)

3.6 ANSI Z1.4 Sampling tables

3.7 Brocade Product Quality Plan (Product Specific)

3.8 Manufacturing/contract agreement

4.0 PROCEDURE

4.1 VALUE PROPOSITION

4.1.1 The Brocade supply chain value proposition is to establish supplier partnerships characterized by the following:

- Open and honest communication
- Strong "values based" management
- On-time delivery of quality products
- End user customer focus
- Timely data driven decision making
- Mutual respect and responsiveness
- Ongoing mutual total life cycle cost reduction

4.1.2 We believe that relationships with these characteristics will enable us to establish a world class supply chain management system and provide products and services that consistently meet or exceed our customer's requirements.

[FLOW CHART]

4.1.3 We believe that everyone in a supply chain is a customer for the work done by an "upstream" internal employee or external supplier. As such, you have a right to expect good work from them and an obligation to deliver work of high caliber to your internal and/or external customer.

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4.1.4 Sustained quality excellence requires continuous process improvement. This means, regardless of how good present performance is, it can become even better. "You can manage what you can measure." Align what you measure to the individual behaviors you want to support.

#### 4.2 SUPPLIER PARTICIPATION

4.2.1 Contract manufacturing and other key suppliers are expected to [\*] in the Brocade product development process. We depend on your [\*] to optimize the design, quality, cost and delivery of Brocade products. Brocade will formally engage suppliers, through meetings and dialogue, throughout the product life cycle. Appendix A outlines a generic product qualification process flow.

#### 4.3 MANAGEMENT COMMUNICATION

4.3.1 Our goal is to create a communication process to establish and sustain mutually profitable and rewarding business relationships. We want to become your [\*], and we want you to become our [\*].

4.3.2 To this end, Brocade will participate in periodic management communication meetings with key suppliers. These meetings will include a review of quality, cost and delivery performance metrics and ongoing improvement plans.

4.3.3 Specific Quality metrics and requirements are identified with in the Brocade Product Quality Plan's. Additionally, process parameters and controls may be included within each plan.

#### 4.4 WORKMANSHIP STANDARDS

4.4.1 Printed Wiring Boards shall meet the requirements of [\*], latest revision, Class [\*].

4.4.2 Printed Circuit Assemblies shall meet the requirements of [\*], latest revision, Class [\*].

4.4.3 [\*] Requirements for Soldered Electrical and Electronic Assemblies and HDBK-001 (Handbook and guide to supplement [\*] with amendment [\*]).

4.4.4 [\*]. Supplier specific workmanship standards should be identified and communicated to Brocade, Inc. prior to production.

4.4.5 Brocade Cosmetic Specification 95-0000001-01.

#### 4.5 REPAIR AND REWORK

4.5.1 [\*] (Terms and Definitions for Interconnecting and Packaging Electronic Circuits) contains the following definitions:

Repair(ing): The act of restoring the functional capability of a defective article in a manner that precludes compliance with applicable drawings or specifications.

Rework(ing): The act of reprocessing non-complying articles, through the use of original or alternate equivalent processing, in order to bring the article into compliance with applicable drawings and specifications.

4.5.2 [\*] (Suggested Guidelines for Modification, Rework and Repair of Printed Boards and Assemblies) categorizes modifications, rework and repairs into [\*] levels ([\*]).

4.5.3 Brocade will accept PWB fab and assemblies that have been [\*]), using Level [\*] techniques outlined in the above. Level [\*] rework techniques may be authorized by Brocade, only through prior Brocade Engineering or Quality approval.

4.5.4 All [\*] must meet the workmanship requirements of [\*] and/or [\*]. Any [\*] method not contained in [\*] must be authorized by Brocade Quality before being used on any Brocade product.

#### 4.6 DESIGN FOR MANUFACTURABILITY (DFM) AND VALUE ENGINEERING

4.6.1 [\*] shall conduct Design for Manufacturability analysis for every new Brocade board design and/or significant ECO. [\*] should participate in these reviews, as appropriate and/or conduct similar reviews for [\*] products.

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[\*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

4.6.2 Suppliers are expected to initiate and/or participate in periodic value engineering efforts to reduce the current and future Brocade cost of goods sold (COGS). The timing and content of this activity shall be determined on a [\*] basis.

4.7 AUTHORIZED VENDOR LIST (AVL)

4.7.1 Contract manufacturers and other partners who supply critical components to Brocade must use Brocade's AVL, as required. Notification of this requirement will be made in advance.

4.7.2 Brocade will consider AVL change recommendations from any supplier. Change requests must be approved in writing by Brocade prior to implementation. This is typically done through Brocade's Agile Document System.

4.7.3 Brocade reserves the right to [\*] or [\*] at no additional cost of any materials supplied with [\*] content. This will be considered a serious offense and may have a negative impact on the offending supplier relationship with Brocade.

4.8 PROCESS QUALIFICATION & CONTROLS

4.8.1 Brocade may require certain documentation from selected suppliers prior to commencing production.

4.8.2 The following supporting documentation may be requested:

- Supplier qualification & performance monitoring process
- Production process flow diagram
- Product qualification testing plan and results (PVT)
- Supplier version of BOM's and AVL's used to produce Brocade products
- Process characterization documentation [e.g. SMT stencil, solder paste, SMT and through-hole reflow, board cleaning, rework, etc.]
- Production test specifications and instructions, and in-process quality/control plan
- Assembly process flow diagram
- Gage Repeatability and Reproducibility Studies (Gage R&R: where/when applicable)
- First Article Inspection
- Other documentation as appropriate

4.9 TEST/QUALITY DATA COLLECTION & REPORTING

4.9.1 Suppliers will be required to provide periodic test and inspection yield information to Brocade, upon request. Typical (but not limited to the following) test and inspection results requested would be:

Incoming Inspection	Test Failure Pareto Charts [debug/rework]
In-circuit Test	Quality Inspection Pareto Charts
Functional Test	Final Inspection Results
Environmental Stress Screening	Corrective Action Status
In-Process Audit Results	Third Party Audit Results

4.9.2 Performance reporting charts and graphs should generically include the following information:

- Goals: benchmarks of best in class performance
- Targets: interim goal for a given period
- Actions: actions that are necessary to realize these improvements with owners assigned and planned completion dates
- Progress: measured by relative improvements (delta) each period

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Brocade Communication Systems Inc.  
Page 5 of 8

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Revision: A  
Revision Date: 2/11/03



4.10 PRODUCT INSPECTION / PROCESS AUDITING

- 4.10.1 Brocade reserves the right to conduct [\*] product inspection and/or process audits of supplier facilities engaged in producing supplied parts or Brocade final products. These activities would be conducted with [\*] of the respective supplier. Discrepancies found during these audits will result in a Corrective Action Request (CAR) (see Paragraph 4.12 below.)
- 4.10.2 Brocade also reserves the right to conduct source inspection at the supplier site. This inspection process, if implemented, would typically include the following activities:
- Inspection of in process and/or finished product against all appropriate workmanship standards.
  - Acceptance sampling in accordance with ANSI Z1.4 (supercedes Mil Std 105), Single Sampling Plan for 1% AQL, Level II, normal inspection level.
  - As an example, a random sample of 13 units would be inspected for critical workmanship attributes from a lot of 100 units. The lot would be accepted with zero defects found and rejected with one or more defects found. The supplier would be responsible to conduct a 100% screen of the entire lot for the defective attribute and re-submit the lot for another sample inspection.
  - Reduced inspection would occur when production is at steady state, ten consecutive lots pass at normal inspection levels, and the total number of defects in the sample from those ten lots are equal to or less than the applicable number given in ANSI Z1.4. Acceptance of five additional lots at reduced level would qualify the part number for dock-to-stock. Conversely, if two of five consecutive lots were rejected, a tightened inspection would be conducted until five consecutive lots were accepted. At that point, the part would start the qualification process over at the normal inspection level.
- 4.10.3 Details of the source inspection process and qualification standards will be further defined and agreed upon prior to implementation with selected suppliers.

4.11 RETURN MATERIAL AUTHORIZATION (RMA) PROCESSING

- 4.11.1 Brocade will contact suppliers with RMA requests via telephone, e-mail and/or fax, depending upon the specific arrangements made.
- 4.11.2 Unless otherwise specified, suppliers shall provide RMA numbers to Brocade within [\*] from receipt of the request.
- 4.11.3 Suppliers shall repair or replace the defective part within [\*] of receipt of the defective product.
- 4.11.4 Suppliers shall maintain records of all RMA requests and provide in-process and completion status of Brocade RMA's.

4.12 CORRECTIVE ACTION REQUESTS (CARS)

- 4.12.1 Brocade will issue a Corrective Action Request (Appendix B) whenever a discrepant product or unsatisfactory supplier process condition is discovered. The CAR Form may be transmitted to the supplier via e-mail or fax.
- 4.12.2 Unless otherwise specified, suppliers shall acknowledge receipt and provide a preliminary assessment and immediate corrective action of the discrepancy within [\*] of receipt. Unless otherwise specified, the preventative measures shall be completed and the documentation submitted no later than [\*] of a CAR receipt.

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[\*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Appendix A:

Standard Product Qualification Process Flow

[FLOW CHART]

Brocade Communication Systems Inc.  
Page 7 of 8

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Appendix B: Corrective Action Template (8D)

CLOSED LOOP CORRECTIVE ACTION FORM

CUSTOMER AFFECTED                      BROCADE PART NUMBER                      CUSTOMER MODEL NUMBER                      QTY:

STEP 1                      INTERNAL TEAM MEMBERS                      EXTERNAL TEAM MEMBERS

STEP 2                      DESCRIBE THE PROBLEM                      DATE:

STEP 3                      ROOT CAUSE ANALYSIS                      DATE:

STEP 4                      CONTAINMENT PLAN                      DATE:

STEP 5                      CORRECTIVE ACTION PLAN                      DATE:

STEP 6                      VERIFICATION OF CORRECTIVE ACTION                      DATE:

STEP 7                      PREVENT RECURRENCE                      DATE:

STEP 8                      CONGRATULATE TEAM                      DATE:

-----

CLCA#	Status:	Target Closure Date:	Customer Ref. No.
-----			
BRC-MMDDYY	OPEN		If applicable
-----			

EXHIBIT E  
EXCLUDED PARTS

	PART -----	FXCN NO. -----
1.	[*]	[*]

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Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

## MANUFACTURING AND PURCHASE AGREEMENT

This MANUFACTURING AND PURCHASE AGREEMENT ("Agreement") is entered into as of February 21, 2003 ("Effective Date") by and between Brocade Communications Systems, Inc., a Delaware corporation with a place of business at 1745 Technology Drive, San Jose, California 95110 ("Brocade"), on the one hand, and Solectron Corporation, a Delaware corporation with an office at 847 Gibraltar Drive, Milpitas, CA 95035, and its subsidiaries and affiliates, including but not limited to Solectron Technology Singapore Ltd., Solectron Technology Sdn Bhd, and Solectron Netherlands BV (collectively, "Solectron"), on the other hand (each a "Party" and collectively the "Parties").

## 1. Definitions.

1.1 "Ancillary Technology" means all test programs and consigned equipment and related fixtures provided to Solectron by Brocade.

1.2 "Brocade Technology" means the Technology and all Derivatives thereof (a) provided by Brocade to Solectron pursuant to this Agreement, or (b) developed by Brocade or Solectron pursuant to this Agreement; provided, however, that such Technology is not Solectron Technology.

1.3 "Brocade Vendors" means third party producers and suppliers that have been specified by Brocade in writing (a) on Brocade's approved vendor list ("Brocade AVL") as provided by Brocade to Solectron and as updated by Brocade from time to time, and (b) as the source of certain FRUs and/or components to be used by Solectron in the manufacture of the Products.

1.4 "Solectron Vendors" means any Brocade Vendors, which are also included on Solectron's preferred supplier list ("Solectron PSL"). The version of the Solectron PSL existing as of the Effective Date is attached as Exhibit F. This Solectron PSL may be modified from time to time without amending Exhibit F or this Agreement.

1.5 "Derivative" means: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws.

1.6 "Solectron Technology" means the Technology [\*], which are (a) developed by Solectron prior to entering into this Agreement, and (b) developed independently by Solectron.

1.7 "Intellectual Property Rights" means copyright rights, trademark rights (including, without limitation, trade names, trademarks, service marks, and trade dress), patent rights, trade secrets, moral rights, right of publicity, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, arising under the law of the United States or any state, country or other jurisdiction.

1.8 "Joint Technology" means any (a) Technology that is first conceived or reduced to practice by one or more of Solectron's employees with one or more of Brocade's employees; provided in the case of a patentable invention that a party's contribution will meet the requirements for joint invention under United States law, or (b) joint work of authorship fixed in a tangible medium of expression prepared

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by one or more of Solectron's employees with one or more of Brocade's employees with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

1.9 "Products" means the Brocade products and FRUs identified on Exhibit A.

1.10 "Purchase Order" means a Brocade purchase order for the purchase of the Products issued to Solectron pursuant to the provisions of this Agreement.

1.11 "SLA" means the "service level agreement" document, which is a document created by Brocade and Solectron containing certain operational terms agreed between the parties. The SLA will include mutually agreed upon operational/performance metrics for delivery, quality, communication, technical support and flexibility. These metrics will be used as guidelines for CSI input and quarterly scorecards. The version of the SLA existing as of the Effective Date is attached as Exhibit C for reference only. The parties may agree in writing from time to time to change the SLA, without amending Exhibit C or this Agreement.

1.12 "Specifications" means the functional and performance specifications (including, without limitation, bills of materials, schematic diagrams, and Product, component and assembly drawings) relating to the testing and manufacturing of each Product as provided in writing by Brocade to Solectron.

1.13 "Statement of Work" means a written statement of work signed by both parties for special development work to be done by Solectron for Brocade. Each Statement of Work will be sequentially numbered (e.g., SOW 1, SOW 2, etc.) and attached to this Agreement by an amendment.

1.14 "Technology" means any and all technical information and/or materials, including, without limitation, ideas, techniques, designs, sketches, drawings, models, inventions, know-how, processes, apparatus, methods, equipment, algorithms, software programs, data, software source documents, other works of authorship, formulae and information concerning engineering, research, experimental work, development, design details and specifications.

## 2. Material Procurement.

2.1 Forecasting and Material Purchasing. Once a [\*] (or as otherwise agreed in the SLA), Brocade will provide Solectron with a [\*] forecast of the quantity demand for each Product ("Product Forecast") either in writing or via EDI. For the purpose of spare parts, Brocade will provide Solectron, [\*], with a [\*] [\*] repair forecast of the quantity demand for all FRUs listed by part number ("Parts Forecast", collectively with the Product Forecast, the "Forecasts"). Upon the end-of-life of any Product, Brocade will extend its Parts Forecast for all FRUs used in such Product [\*], which shall in no case extend longer than [\*] from the end-of-life date of such Product. The Forecasts [\*] or as otherwise instructed in writing by Brocade. [\*] purchased within the applicable lead time; provided that, for a ninety (90) day period, Solectron will take all steps [\*] component materials by diligently attempting to return unused materials or to transfer unused materials to use for other customers to the extent that they do not incorporate proprietary Brocade Technology. Brocade will not pay for any unused materials that are not [\*].

2.2 [\*]

2.3 Vendor Forecasts. Solectron will provide each Brocade Vendor, as mutually agreed and specified in the SLA, with [\*] forecasts for the Product materials and will update such forecasts as necessary to keep each Brocade Vendor current with each new Forecast provided by Brocade.

2.4 Material Management. Solectron will, at a minimum, comply with the following obligations to ensure good component material management for the Products, including: (a) [\*]

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component level failure analysis or [\*] by the Brocade Vendor; (b) [\*] component returns, failure analysis and corrective actions regarding defective components with the Brocade Vendors and promptly communicate this information to Brocade; (c) work with Brocade Vendors to [\*] component leadtimes and costs; (d) provide regular performance feedback to Brocade Vendors, with a copy to Brocade; (e) ensure that all component materials used by Solectron to produce the Products meet the Specifications; and (f) calculate for Brocade and provide documentation of the country of origin of each of the Products and FRUs in accordance with US law. As between Solectron and Brocade, [\*] will be solely responsible for all costs relating to the collection and replacement of Products and FRUs due to Solectron's use of component materials that [\*].

2.5 Procurement Responsibility Table. Attached hereto as Exhibit G is the current Procurement Responsibility Table, which provides definitions of Tier 1, Tier 2 and Tier 3 components and the respective obligations of Brocade and Solectron for [\*] such components. The parties may agree in writing from time to time to change the Procurement Responsibility Table without amending Exhibit G or this Agreement, provided, however, that all revisions shall be controlled using a revision number to capture any mutually agreed upon changes.

2.6 Alternative Sourcing. Solectron may only procure FRUs and/or components used in the manufacture of Brocade Products from Brocade Vendors. During the life of this Agreement, Solectron will provide initial or alternative Solectron-approved sourcing suggestions to Brocade for those FRUs and/or components for which Brocade has not provided or accepted any Solectron Vendors. If approved by Brocade these vendors will be added to the Brocade AVL and deemed "Solectron Vendors".

2.7 Excess and Obsolete Materials. [\*] the materials purchased by Solectron subject to the terms of this Agreement, to support Brocade purchase orders, forecasted demand requirement, requested inventory build up and flexibility requirements as further detailed in the SLA. Excess and obsolete material will be managed according to the provisions of Exhibit H.

### 3. Manufacturing Obligations.

3.1 Specifications and Statements of Work. Solectron will manufacture and test the Products in strict compliance with the Specifications, Statements of Work and any other written instructions agreed between Brocade and Solectron for each Product. Solectron will honor the lead time, reporting, and other requirements in the then-current version of the SLA as agreed between Brocade and Solectron. As the work instructions and SLA are operating documents that are subject to frequent change, the most recent versions of the documents will not be formally amended into this Agreement; however, both the work instructions for each Product and the SLA are incorporated herein by reference.

3.2 Delivery. Solectron acknowledges and agrees to meet the delivery requirements of all Product manufacturing, supply and repair services as specified in the SLA.

3.3 Changes. Solectron agrees that Solectron will not change the manufacturing location of the facilities for the manufacture, assembly, or test of the Products, or use third party manufacturers, without Brocade's prior written consent, which shall not be unreasonably withheld.

3.4 Ancillary Technology. Brocade, at its sole discretion, may furnish Ancillary Technology to Solectron solely for use in the manufacture and testing of the Products. Solectron will not at any time use the Ancillary Technology for any other purposes or for any third parties or in any manner other than in performing Solectron's obligations under this Agreement. Solectron will maintain the Ancillary Technology in good condition and repair, ordinary wear and tear excepted, and provide necessary and reasonable calibration services for the Ancillary Technology. Brocade and Solectron agree that the terms set out in Exhibit B hereto will apply to all Ancillary Technology, and Solectron will be responsible for obtaining the

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requisite insurance coverage and conducting appropriate inspections in accordance with Exhibit B hereto. With respect to any Ancillary Technology licensed to Solectron pursuant to this Agreement, Brocade agrees to provide Solectron with a reasonable amount of support, at no charge, with respect to the initial installation, set-up and debugging of such Ancillary Technology.

3.5 Non-Exclusivity. Nothing in this Agreement will be construed or deemed to prevent or otherwise inhibit Brocade's ability or right to manufacture, any product (including the Products) at a Brocade facility or at alternate or additional third party facility(ies) of Brocade's choice. Further, nothing in this Agreement will be construed or deemed to (a) require Brocade to order all units of any Product from Solectron, or (b) prevent or otherwise inhibit Brocade's ability or right to design, develop, manufacture, have manufactured, market, use, sell, and or distribute any follow-on products or derivatives of the Products. The foregoing shall in no way limit Brocade's responsibility to fulfill its purchase obligations under any purchase orders issued by Brocade to Solectron and accepted by Solectron.

4. License Rights and Restrictions.

4.1 License to Solectron.

(a) License to Specifications. Subject to the terms of this Agreement, Brocade hereby grants Solectron a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's trade secret rights, during the term of this Agreement, to use the Specifications solely for the purpose of manufacturing the Products for Brocade.

(b) License to Ancillary Technology. Subject to the terms of this Agreement, Brocade hereby grants Solectron a limited [\*] non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's copyright and trade secret rights, during the term of this Agreement, to use and copy the test software (provided as part of the Ancillary Technology) solely for the purpose of manufacturing and testing the Products for Brocade.

(c) License to Brocade Firmware. Subject to the terms of this Agreement, Brocade hereby grants Solectron a limited [\*] non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's copyright rights, during the term of this Agreement, to copy the Brocade Firmware onto Product units in the manufacturing process at each Brocade-approved Solectron manufacturing facility.

(d) License to Brocade Technology. Brocade hereby grants Solectron a limited [\*] non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's Intellectual Property Rights, during the term of this Agreement, to use the Brocade Technology solely as necessary to fulfill its manufacturing obligations under this Agreement. Solectron is granted no right, and is expressly prohibited from using the Brocade Technology, to develop, manufacture or distribute any products other than the Products.

4.2 License to Brocade. Neither Solectron nor any third party will retain any rights in any materials incorporated into the Products. To the extent that (a) Solectron provides to Brocade any Solectron Technology [\*], Solectron hereby grants to Brocade a non-exclusive, royalty-free, perpetual, irrevocable license under Solectron's Intellectual Property rights to make, have made, use, sell, import, reproduce, display, distribute, and create derivative works of such Solectron Technology solely in connection with the development, manufacture, marketing, and sale of Brocade products.

4.3 Residual Information. Brocade may disclose and use the ideas, concepts, know-how, and techniques which are related to the manufacture of Brocade's products, retained in the memories of individuals, and contained in Solectron Technology or developed, provided, or accessed by Solectron

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under this Agreement (RESIDUAL INFORMATION) to make, have made, use, sell, import, reproduce, display, distribute, and create derivative works of such Solectron Technology solely as necessary in connection with the development, manufacture, marketing, and sale of Brocade products, [\*]. [\*]

4.4 Restrictions. Except as expressly set forth above, each party retains all of its Intellectual Property Rights. No license is granted by Brocade to make, use or sell any other products under the Brocade Intellectual Property Rights or to make, use or sell any products for any other purpose. Solectron will not modify, decompile or reverse engineer the Brocade Firmware or any Brocade Technology.

5. Purchase Orders.

5.1 Purchase Order Acceptance. Solectron is permitted to sell the Products only to Brocade, and to third parties who have been authorized in writing by Brocade to purchase the Products from Solectron ("Designated Purchasers") in satisfaction of Purchase Orders issued during the term of this Agreement, subject to and in accordance with the terms and conditions of this Agreement.

5.2 Quantity Flexibility. Subject to any flexibility terms set forth in the SLA, Solectron will, at [\*] accept all Purchase Order cancellations, reschedules and changes in the quantity of Products ordered within the cancellation, rescheduling, change, or other flexibility terms in the SLA.

5.3 Demand Flexibility Requirements. Solectron recognizes the uncertainty of Brocade demand and will accommodate changes to Brocade's demand pursuant to the terms in the SLA.

(a) Tooling, Equipment and Non-recurring Services.

Solectron customer orders for tooling, equipment and non-recurring services are typically firm and non-cancelable; however, in the event that Brocade determines that it must cancel such an order prior to the tooling or equipment being delivered or services rendered, then Brocade shall only be liable to Solectron for the actual and reasonable costs accrued by Solectron, [\*] as mutually agreed upon by the parties.

6. Shipping and Delivery.

6.1 Shipment. Unless otherwise agreed upon in writing, all shipments of the Products will be made [\*] (per Incoterms 2000).

6.2 Timing. Shipments to Brocade, or to other locations specified by Brocade, will be shipped in the [\*] ordered by Brocade, and [\*] the acknowledged delivery date, [\*] the acknowledged delivery date. Upon learning of any potential shipment delays, Solectron will notify Brocade as soon as reasonably possible, as to the cause and extent of such delay. Except as Brocade may otherwise advise in advance and in writing, Brocade may [\*] any goods (i) shipped [\*] the quantity ordered, (ii) shipped in a [\*] shipments, or (iii) shipped [\*].

6.3 Accelerated Measures. If Solectron fails or has reason to believe it will fail to make shipments at the specified time and such failure is not due to an action or omission of Brocade, Solectron will, [\*] employ accelerated measures such as [\*] required to meet the specified delivery schedule or minimize the lateness of shipments [\*]

7. Acceptance.

7.1 Inspection. Solectron will ship Products directly to [\*]. All deliveries of Products are subject to inspection and testing by Brocade [\*] before final acceptance. Within [\*] after receipt of

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Products ("Rejection Period"), Brocade [\*] may inspect and reject any Product that fails to meet the Specifications.

7.2 Rejection. Within the Rejection Period, customers may notify Brocade of any Product rejections and the reasons therefor. In accordance with the RMA procedures of Section 11.1, below, Brocade [\*] may return rejected or defective Products to Solectron, [\*]. [\*] In the event that the returned Product is defective, Solectron will repair or replace such defective Product, [\*]. Solectron will return to Brocade or its customer, as the case may be, freight prepaid, all repaired or replaced Products within [\*] after Solectron's receipt of the returned Product or within such other time as specified in the SLA. Any returned Products that have been damaged by misuse, abuse or unauthorized repair, by or on behalf of the End User, may be treated by Solectron as "out of warranty" and subject to out of warranty repair charges referenced in Section 8.1 only. Any returned Products, which are not, in fact, defective, may be returned by Solectron to the End User at [\*] expense, pursuant to the terms of the SLA.

7.3 Spot Testing. Upon prior written notice to Solectron, and subject to the confidentiality requirements herein, Brocade or its authorized representative(s) may conduct spot functional tests of the Products at Solectron's facility at which Products are being manufactured during Solectron's normal business hours. The parties will mutually agree upon the timing of such investigations, which will be conducted in such a manner as not to interfere with Solectron's operations. If any Products fail any material part of the test procedure set forth on the Statement of Work, Brocade may reject such Products, and Solectron will promptly take all steps necessary to correct such failures.

7.4 Site Inspections. Upon prior written notice to Solectron, and subject to the confidentiality provisions herein, Brocade[\*] will have the right to perform on-site inspections at Solectron's manufacturing facilities and Solectron will fully cooperate with Brocade in that regard at mutually agreed upon times. If an inspection or test is made on Solectron's premises, Solectron will provide Brocade's inspectors with reasonable assistance at no additional charge. In the event that any on-site inspection of the Products indicates that the Products do not conform to the requirements of this Agreement, Solectron will not ship such Products to Brocade until such nonconformity has been cured and only Products meeting the conformance criteria may be shipped. This does not limit Brocade's right to perform additional acceptance testing at Brocade's facilities.

7.5 Failure to Inspect. Notwithstanding anything to the contrary contained in this Agreement, inspection or failure to inspect the Products upon Delivery will not affect Brocade's rights under the warranty provisions of this Agreement.

## 8. Pricing and Payment.

8.1 Prices. The unit prices to be paid by Brocade for the Products shall be as set forth on Exhibit A or as otherwise agreed by the parties. Except as otherwise expressly provided in this Agreement, such unit prices include [\*] for the Products or warranty repair services (as the case may be), any related deliverable items and packaging for delivery to Brocade. The prices attached to the Exhibit A will be reviewed on a [\*] basis. All payments hereunder will be paid in U.S. Dollars unless otherwise mutually agreed upon by the parties in writing. [\*]

8.2 Components Management. Solectron agrees to manage inventory and purchase materials in a manner that is cost effective. [\*]

(a) Cost Reductions. Material cost reductions will be reviewed and mutually agreed upon by Brocade and Solectron on a [\*] basis and shall be included in an updated Exhibit A.

(b) [\*]

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8.3 Taxes. [\*] Where the law permits, Solectron will treat Brocade as exempt from applicable state and/or local sales tax for Product(s) purchased pursuant to this Agreement. Where required by state or local law, Brocade will provide Solectron with a valid reseller's exemption certificate for each taxing jurisdiction to which Solectron ships Product(s).

8.4 Invoices. [\*] Solectron will submit invoice(s) periodically to Brocade upon [\*] of Product(s). Brocade will pay non-disputed invoices net [\*] after the later of date of [\*] of (a) the Products [\*], or (b) Solectron's invoice to Brocade. Payment will not constitute acceptance of the Products by Brocade. If Brocade requests, and Solectron agrees, that Products or FRUs be kept in [\*], Solectron will invoice Brocade for the Products [\*] after the Products or FRUs enter [\*]. Upon [\*] for such Products or FRUs that enter Finished Goods, Brocade will take [\*] of these Products.

8.5 [\*]

9. Quality Assurance.

9.1 Quality Standards. Solectron will manufacture and repair the Products in accordance with the quality requirements, standards and expectations as set forth on the Statement of Work or as otherwise mutually agreed upon by the parties in writing.

9.2 Quality Plan. Solectron will establish, maintain and manage a quality assurance program for the Products that is consistent with, and at least as restrictive as, the terms and conditions listed in Exhibit D.

10. Engineering Changes.

10.1 ECOs. Brocade may, upon advance written notice to Solectron, submit engineering change orders ("ECOs") for changes to the Products. ECOs will include documentation of the change to effectively support an investigation of the impact of the engineering change. [\*] Solectron will acknowledge the ECO and report to Brocade within [\*] upon Solectron's receipt of the ECO. If the ECO affects the manufacturing or repair costs of the Products or otherwise affects the price of the affected Products, the parties agree to negotiate in good faith an equitable adjustment to the price of the affected Products prior to implementation of the change. The parties agree that [\*] is a reasonable time period to permit Solectron to evaluate ECO impact regarding potential excess manufacturing costs and price, if any, and non-recurring costs, if any. Notwithstanding the foregoing, Brocade may require, from time to time, [\*] implementation of an emergency ECO. In these cases, Solectron will provide Brocade with a preliminary estimate of the cost impact within [\*].

10.2 No Changes. No changes will be made to the Products without Brocade's prior written consent and no approved change will be made effective prior to the date approved by Brocade in writing. Solectron will not change or modify the processes for the Products without Brocade's prior written consent. Solectron will reimburse Brocade for all expenses incurred by Brocade to qualify changes to such materials or processes that are undertaken by Solectron without Brocade's prior written consent.

11. Product Repairs and FRUs Supply.

11.1 Repair Services. Solectron will provide repair services to Brocade and Brocade-authorized third parties (i) for all in-warranty Products in accordance with the terms of Sections 14, below, and (ii) [\*] for any out-of-warranty Products and FRUs for a period of [\*] from the end-of-life production of such Products or FRUs by Solectron or a Brocade Vendor. For any Product or FRU that is returned to Solectron for repair or replacement services, Brocade will issue a Return Material Authorization ("RMA") number, and will forward such RMA electronically to Solectron, through Brocade's [\*] system. All

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Products and FRUs returned to Solectron for repair or replacement services will include the RMA affixed to the packaging.

11.2 FRUs Supply. Solectron will make available to Brocade Product FRUs as Brocade may [\*] for [\*] Products purchased by Brocade from Solectron during the Product production. For a period of [\*] after the date of delivery to Brocade by Solectron of the last unit of the Product manufactured by Solectron, Solectron shall undertake the following: (a) Solectron will maintain [\*] for each Product; (b) Solectron will inform Brocade of all [\*] notifications for FRUs or components upon Solectron's receipt of such notifications; and (c) Solectron will inform Brocade if a [\*] is the most economical procurement strategy for such FRUs or components as to which such a notification is received (especially [\*] FRUs which may require tool maintenance and set-up charges that far outweigh piece part costs). [\*]. If Brocade determines that [\*] is not financially favorable due to the [\*] of the remaining support period for the FRU(s), Solectron will assist Brocade in [\*] through manufacturing. [\*]

12. Ownership.

12.1 Ownership by Brocade. As between Brocade and Solectron, Brocade will own all right, title, and interest in the Specifications, Brocade Firmware, Products, Ancillary Technology and the Brocade Technology (excluding the Solectron Technology, which will be owned exclusively by Solectron) and all Intellectual Property Rights therein, and Solectron hereby irrevocably transfers, conveys and assigns to Brocade all of its right, title, and interest therein. Solectron will execute such documents, render such assistance, and take such other action as Brocade may reasonably request, at Brocade's expense, to apply for, register, perfect, confirm and protect Brocade's rights to the Brocade Technology, and all Intellectual Property Rights therein.

12.2 Ownership by Solectron. As between Solectron and Brocade, Solectron will own all right, title and interest in the Solectron Technology (excluding the Brocade Technology, which will be owned exclusively by Brocade), and all Intellectual Property Rights therein.

12.3 Ownership of Joint Technology. All discoveries, improvements and inventions conceived or first reduced to practice, as those terms are used before the U.S. Patent and Trademark Office, in the performance of this Agreement jointly by Solectron personnel and Brocade personnel (the "Joint Technology"), shall be the property [\*] Each party shall execute all documents and take such further actions as may be reasonably required to evidence, perfect or enforce any such assignment. [\*]

12.4 [\*]

12.5 Attorney in Fact. Solectron agrees that that if Brocade is unable because of Solectron's unavailability, dissolution or incapacity, unreasonable refusal or failure to act in a timely manner such that intellectual property rights protection specified in Section 12.3 may be impaired, to secure Solectron's signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering the inventions assigned to Brocade under this Agreement, then Solectron hereby irrevocably designates and appoints the Brocade and its duly authorized officers and agents as Solectron's agent and attorney in fact, to act for and in Solectron's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by Solectron.

13. Confidential Information.

13.1 General. Except as otherwise provided in this Section, the definition, use, and disclosure of confidential information by the parties shall be governed by the Mutual Non-Disclosure Agreement

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between the parties and dated April 21, 1998. Notwithstanding any provision to the contrary contained herein, the Non-Disclosure Agreement shall be in full force and effect during the term of this Agreement and any renewal thereof.

13.2 Sensitive Brocade Information. "Sensitive Brocade Information" means the Forecasts, Specifications, Brocade AVL, Brocade Technology, Ancillary Technology, bill of materials, SLA, work instructions, and all data accessed by Solectron pursuant to Sections 2, 3, 4, 5, 6 and 11, as well as the contractual terms and conditions, including contract exhibits, between Brocade and Solectron.

13.3 [\*]

13.4 Confidentiality Obligations.

(a) Solectron Obligations. [\*] to assist Brocade in remedying such unauthorized use or disclosure of Sensitive Brocade Information

(b) [\*]

13.5 Exclusions. These obligations will not apply to the extent that Sensitive Brocade Information [\*]: (a) is already known to [\*] at the time of disclosure, which knowledge [\*] will have the burden of proving; (b) is, or, through no act or failure to act of [\*], becomes publicly known; (c) is received by [\*] from a third party without restriction on disclosure; [\*]; or (e) is approved for release by written authorization of [\*].

13.6 Legal Disclosures. A disclosure of Sensitive Brocade Information [\*] (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that [\*] will provide prompt written notice thereof to [\*] to enable [\*] to seek a protective order or otherwise prevent such disclosure and will cooperate with that party in seeking such protective order.

14. Warranty.

14.1 Product Warranty. [\*] Solectron warrants for a period of [\*] from the date of [\*] of each unit of each Product, [\*].

14.2 Product Warranty Remedy. In accordance with the RMA procedures outlined in Section 11.1, above, Brocade will promptly notify Solectron of any Products [\*] that Brocade believes do not comply with the warranties contained in this Agreement. Solectron will pay all [\*] associated with Products returned for repairs during the warranty period[\*] Solectron will, at [\*] option, either (i) credit Brocade for the purchase price paid by Brocade for the defective Product units, or (ii) at [\*] expense, replace, repair or correct such Product within [\*] of [\*] [\*]. Solectron will [\*] any charges in order to effect the earliest reasonable replacement of such defective Products to Brocade [\*]. Solectron agrees to maintain a repair capability for products under warranty. Solectron will provide to Brocade detailed information, including location, telephone number, contact person and hours of operation for the Solectron service representative who will be Brocade's contact for warranty claims and questions. [\*]. Replaced Products will be warranted for [\*]

14.3 [\*]Other Obligations and Warranties.

(a) Regulatory Compliance. Solectron represents and warrants that its manufacturing facilities and processes will comply with all applicable international, federal, state and local statutes, laws and regulations.

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(b) Import/Export Requirements. Brocade and Solectron will comply with all import and export laws and regulations and maintain appropriate import and export documentation. At Brocade's request, Solectron will make available for inspection and audit all import and export documentation for the Products and the Solectron Technology included in the Products sold under this Agreement. [\*] Solectron will not, directly or indirectly, export, re-export or transship any Technology in violation of any applicable U.S. export control laws and regulations or any other applicable export control laws promulgated and administered by the government of any country having jurisdiction over the parties or the transactions contemplated herein.

(c) Formation, Good Standing and Authority. Each of Solectron and Brocade represents and warrants to the other that it is a company duly formed, validly existing and in good standing under the laws of its jurisdiction and that this Agreement has been duly executed and delivered by it, and (assuming due authorization, execution and delivery by the other) constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(d) Consigned Equipment. Brocade shall ensure that at the time of delivery of Brocade Property or Ancillary Technology, Brocade shall have [\*] such Brocade Property or Ancillary Technology. [\*]Intellectual Property. Brocade warrants that it has all intellectual property rights required to make available to Solectron the material and information (including any designs, drawings and specifications) necessary for Solectron to manufacture the Products hereunder. In addition, Brocade warrants that it is the owner or all copyrights and trade secrets in, and that Brocade has the right to supply, the software provided by Brocade to Solectron hereunder for inclusion in the Products.

#### 14.4 Warranty Exclusions and Disclaimer.

(a) [\*]

(b) Disclaimer. THE WARRANTIES CONTAINED IN THIS SECTION 14 ARE IN LIEU OF, AND EACH PARTY EXPRESSLY DISCLAIMS AND THE OTHER PARTY WAIVES ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.

#### 15. Term and Termination.

15.1 Term. This Agreement will commence on the Effective Date and will continue for a period of [\*] thereafter, unless earlier terminated pursuant to this Agreement. [\*] renew [\*] for successive [\*] terms [\*] provides notice of its decision to not renew the Agreement no later than [\*] prior to the end of the then-current term.

15.2 Termination for Default. [\*] [\*] may terminate this Agreement if the [\*] violates any covenant, agreement, representation or warranty contained herein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured[\*], within [\*] after written notice (which notice will describe the alleged breach in reasonable detail) from [\*] stating its intention to terminate this Agreement by reason thereof.

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15.3 Other Causes of Termination. This Agreement will terminate upon written notice by either party, immediately, if

- (a) a receiver is appointed for the other party or its property;
- (b) the other party makes a general assignment for the benefit of its creditors;
- (c) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors;
- (d) the other party is liquidated or dissolved; or
- (e) any proceedings are commenced against the other party under any bankruptcy, insolvency or debtor's relief law and such proceedings are not vacated or set aside within sixty (60) days from the date of commencement thereof.

15.4 Effect of Termination. In the event of the expiration or termination of this Agreement:

- (a) Solectron will complete the production of any Products of which Solectron has [\*] as of the effective date of such expiration or termination and Deliver such completed Products to Brocade by the earlier of (i) the acknowledged delivery date, or (ii) [\*] of the effective date of such expiration or termination;
- (b) Solectron will immediately cease the use of all of the Brocade Technology upon completion of the work required in 15.4(a);
- (c) Solectron will return or destroy (as appropriate depending on the nature of the material) all Sensitive Brocade Information within thirty (30) days after the effective date of the termination and certify in writing that such party has complied with its obligations hereunder; and
- (d) NEITHER BROCADE NOR SOLECTRON SHALL BE LIABLE TO THE OTHER BECAUSE OF SUCH EXPIRATION OR TERMINATION, FOR COMPENSATION, REIMBURSEMENT OR DAMAGES FOR THE LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR GOODWILL, ON ACCOUNT OF ANY EXPENDITURES, INVESTMENTS OR COMMITMENTS MADE BY EITHER, OR FOR ANY OTHER REASON WHATSOEVER BASED UPON THE RESULT OF SUCH EXPIRATION OR TERMINATION.

15.5 Survival. The rights and obligations of the parties set forth in Sections 1, 2.7, 3.4, 4.2, 4.3, 4.4, 5, 6, 7, 8, 9, 11, 12, 14, 15.4, 15.5, 16, 17, 18 and 21 will survive any termination or expiration of this Agreement.

16. Dispute Resolution. In the spirit of continued cooperation, the parties agree to follow the dispute resolution procedure described in this Section in the event any controversy should arise out of or concerning the parties' performance under this Agreement. In the event of a dispute or claim arising between the parties on any matter relating to this Agreement, either party may initiate negotiation proceedings by written notice to the other party setting forth the particulars of the dispute. Upon receipt of such notice, the parties agree to meet in good faith within [\*] of the date of such notice, to jointly define the scope of and a method to remedy the dispute. If such meeting does not resolve the dispute, then senior management of Solectron and Brocade are authorized to and will meet personally within [\*] to confer in a bona fide attempt to resolve the matter. The parties will use diligent efforts to arrange meetings or telephone conferences as needed to facilitate these negotiations. If such dispute remains unresolved following the parties' undertaking of the actions set forth in this Section 16, the parties shall

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have the right to avail themselves of all other rights and remedies, whether available under this Agreement, at law or in equity. Each party's rights to terminate this Agreement for breach subject to the notice period set forth in Section 15 shall apply regardless of the parties' discussions under this Section 16.

17. Limitation of Liability.

17.1 Consequential Damages Waiver. EXCEPT FOR BREACHES OF [\*], NEITHER PARTY SHALL HAVE ANY LIABILITY TO EACH OTHER OR ANY OTHER THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, LOSS OF USE OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED THEREBY, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, AND IRRESPECTIVE OF WHETHER SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

17.2 Failure of Essential Purposes. THE LIMITATIONS SET FORTH IN THIS SECTION 17 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

18. Indemnification.

18.1 Solectron Indemnity. Solectron will defend, indemnify and hold Brocade and its officers, directors and employees harmless (inclusive of reasonable attorneys' fees) from and against any claim, suit, action or proceeding brought against Brocade arising from, relating to or in connection with: (a) Solectron's breach of any licenses granted to Solectron under this Agreement; (b) [\*], to the extent that the claim is based on (x) facts which constitute a non-conformance with [\*] or (y) [\*] provided or developed by Solectron; (c) acts, errors or omissions by or negligence of Solectron, its employees, officers, agents or representative of any of them; (d) any third party claims founded on theories of [\*] related to the Products, to the extent that the claim is not based on elements of the Products manufactured in conformance with the Specifications; or (e) [\*] the Products or Solectron Technology of [\*] not based on the [\*] provided by Brocade. [\*] In the event the Solectron Technology and/or the Products are held or believed by Solectron to infringe, or Brocade's use of the Solectron Technology and/or the Products is enjoined[\*]

18.2 Brocade Indemnity. Brocade will defend, indemnify and hold Solectron and its officers, directors and employees harmless (inclusive of reasonable attorneys' fees) from and against any claim, suit, action or proceeding brought against Solectron arising from, relating to or in connection with: [\*] (c) acts, errors or omissions by or negligence of Brocade, its employees, officers, agents or representative of any of them[\*]. In the event the Product or Brocade Technology or Ancillary Technology are held or believed by Brocade to infringe, or Solectron's manufacture of the Product or use of the Brocade Technology and/or the Ancillary Technology is enjoined, Brocade will have the option[\*] to: (x) replace or modify the relevant Product, Brocade Technology and/or the Ancillary Technology with non-infringing technology, software or hardware which is functionally equivalent or superior for use by Solectron on a going forward basis; or (y) obtain a license for Brocade to continue using the Product, Brocade Technology and/or the Ancillary Technology. Brocade's obligations hereunder will be void as to any Product, Brocade Technology and/or the Ancillary Technology modified by Solectron (without Brocade's approval), solely to the extent such modification is the alleged basis of the suit. [\*]

19. Export. Solectron agrees that:

19.1 Solectron will provide Brocade the trade management component of Solectron's customer order fulfillment supply chain offerings;

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19.2 From time to time, upon request by Brocade, Solectron will review Brocade's export databases and processes to ensure that such databases and processes meet all legal requirements

19.3 Solectron shall assume the [\*].

19.4 Solectron will perform routed transactions for Brocade.

19.5 Upon request by Brocade, Solectron will provide Brocade with comprehensive ongoing support regarding international trade matters, including but not limited to support for new site start-ups, [\*]

19.6 Solectron will provide Brocade with significant access to Solectron's trade experts.

19.7 Solectron will provide Brocade with comprehensive ongoing support regarding the following key issues: [\*], accurate record-keeping of all export document packets, [\*] on all switches and FRUs, and Manufacturing affidavits for all Brocade Products and FRUs.

20. Environmental Requirements. Solectron warrants and agrees that:

20.1 Product Content. All Products and their packaging will comply with Brocade's general specifications for environment (if any), and, for purposes of this Agreement, such specifications are part of the Specifications for the Product.

20.2 Shipment. All Products will be shipped in conformance with all applicable national and international [\*] including, where applicable, regulations regarding [\*], including regulations regarding [\*]. All packaging materials, including pallets, will be [\*] and comply with national and international regulations regarding [\*] where applicable.

20.3 [\*]. Each [\*] contained in the Product is on the inventory of [\*] compiled and published by the [\*] pursuant to the [\*].

20.4 Solectron will provide complete and accurate [\*] for Product prior to shipment.

20.5 [\*] Information. Solectron will furnish Brocade any information reasonably requested by Brocade to confirm compliance with applicable laws or to determine the [\*] effects of materials included in the Products or in its packaging.

20.6 Solectron will comply with all applicable laws governing import or export of Products.

20.7 Disposition of Excess Materials. Solectron will [\*] of any excess or waste materials generated from manufacture of Product (including damaged or nonconforming product or materials) in compliance with the provisions of this Agreement, applicable laws and any specific instructions received from Brocade.

20.8 Environment. Solectron will continuously implement and maintain processes and policies designed to protect [\*] at any facility at which Product manufacturing operations are performed under this Agreement.

20.9 Ozone Depleting Substances. Solectron hereby certifies that neither Product, nor any part, piece or component of any Product [\*]:

(a) contains any [\*] as those terms are defined in [\*] and implementing regulations of the United States [\*], as now in existence or hereafter amended; or

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(b) has been manufactured with a process that uses any  
[\*]

21. General.

21.1 Insurance. Each party will maintain workers' compensation and comprehensive general liability insurance (including product liability coverage) adequate to cover its obligations under this Agreement.

21.2 Assignment. [\*] will assign this Agreement, in whole or in part, or any obligations or rights hereunder (except the right to receive payments), except with the prior written consent of [\*], which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Brocade will have the right to assign or otherwise transfer this Agreement without such consent (i) to a subsidiary, parent, or entity under common control with Brocade [\*], or (ii) to a successor party in the event of a merger, acquisition, sale, transfer or other disposition of all or substantially all of the assets of Brocade [\*]. Subject to the foregoing, this Agreement will inure to the benefit of each of the party's successors and assigns.

21.3 Relationship of the Parties. The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

21.4 Publicity. Solectron will not publicize or disclose the terms of this Agreement to any third party without the prior written consent of Brocade.

21.5 Waiver. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different or subsequent breach by either party.

21.6 Severability. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

21.7 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement.

21.8 Choice of Forum. This Agreement will be deemed made and entered into in Santa Clara County, California. Except for either party's right to apply to any court of competent jurisdiction for a temporary restraining order and/or a preliminary injunction to enjoin the other party from misappropriating or infringing any Intellectual Property Rights of the moving party, the parties hereby submit to the exclusive jurisdiction of, and waive any venue objections against, the United States District Court for the Northern District of California, San Jose Branch and the Superior and Municipal Courts of the State of California, Santa Clara County, in any litigation arising out of this Agreement. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar claim or defense.

21.9 Notices. Any notice provided for or permitted under this Agreement will be treated as

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having been given when (a) delivered personally, (b) sent by confirmed telex or telecopy, (c) sent by commercial overnight courier with written verification of receipt, or (d) mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this Section.

If to Brocade:            Brocade Communications Systems, Inc.  
                              1745 Technology Drive  
                              San Jose, CA 95110  
                              Attn.: General Counsel

If to Solectron:         Solectron Corporation  
                              847 Gibraltar Drive, Bldg. 5  
                              Milpitas, CA 95035  
                              Attn.: Corporate Legal Department

Such notice will be treated as having been received upon the earlier of actual receipt or five (5) days after posting.

21.10     [\*]

21.11     Amendment. This Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both parties.

21.12     Interpretation. No party will be deemed the drafter of this Agreement, which Agreement will be deemed to have been jointly prepared by the parties. If this Agreement is ever construed, whether by a court or by an arbitrator, such court or arbitrator will not construe this Agreement or any provision hereof against any party as drafter. The Section and other headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning and/or interpretation of this Agreement. It is the intent of the parties that this Agreement and its addenda will prevail over the terms and conditions of any purchase order, acknowledgment form or other instrument. In the event of a conflict between the terms of this Agreement and the terms contained in any addenda to this Agreement, the terms of the addenda will be controlling. Addenda will not be binding until executed by authorized representatives of each party.

21.13     Entire Agreement; Counterparts; Fax Signatures. This Agreement, including all exhibits to this Agreement, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior and/or simultaneous representations, discussions, negotiations and agreements, whether written or oral. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument. The parties agree that facsimile signatures of the parties will be binding.

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IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

SOLETRON CORPORATION

BROCADE COMMUNICATIONS SYSTEMS, INC.

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

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EXHIBIT A  
PRODUCTS

PRODUCT / PART NAME	BROCADE PART NUMBER	UNIT PRICE

EXHIBIT B  
ANCILLARY TECHNOLOGY TERMS AND CONDITIONS

1. All tools, tooling equipment, test equipment and other materials furnished to Solectron by Brocade or paid for by Brocade ("Brocade Property" or "Ancillary Technology") in connection with this Agreement will be clearly identified by Solectron and will remain the property of Brocade and will be (a) clearly marked and remain the personal property of Brocade, and (b) kept free of liens and encumbrances. Solectron will allow Brocade personnel onto Solectron's premises upon 24 hours notice to allow Brocade to inspect the condition of the Brocade Property or reclaim possession of the Brocade Property.

2. Brocade [\*] Brocade Property or Ancillary Technology to Solectron[\*], and Solectron agrees that it will not issue any negotiable bills or receipts on the Brocade Property or Ancillary Technology and will neither file nor permit any lien or other claim to be filed against any of the Brocade Property or Ancillary Technology. In the event that such a lien or claim is filed that is created by or on behalf of Solectron, Solectron will promptly notify Brocade and will take all action necessary to cause such lien or claim against the Brocade Property or Ancillary Technology to be released or otherwise removed within [\*]. If such lien or claim is not released within such [\*], then Brocade may deem that Solectron has purchased the Brocade Property or Ancillary Technology at the [\*] cost for such Brocade Property or Ancillary Technology and such amount will be immediately payable to Brocade. Solectron will hold Brocade Property and Ancillary Technology at its own risk and will not modify the property without the written permission of Brocade, provided, however, that in the event the property is lost, damaged or destroyed, Solectron's liability for the Brocade Property or Ancillary Technology is limited to [\*] the Brocade Property or Ancillary Technology. Solectron agrees that Brocade property will be used by Solectron only to perform Solectron's obligations under this Agreement. Upon Brocade's request, Solectron will redeliver the property to Brocade in the same condition as originally received by Solectron with the exception of reasonable wear and tear.

3. Unless otherwise agreed to in writing by Brocade, all Brocade Property or Ancillary Technology will be insured by Solectron, at Solectron's expense, while in its custody or control in an amount equal to the replacement cost thereof, with loss payable to Brocade. Solectron will execute and deliver to Brocade such evidence of insurance relative to property furnished by Brocade to Solectron as may be requested reasonably by Brocade.

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Brocade Manufacturing Agreement

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EXHIBIT C  
SLA (FOR REFERENCE ONLY)

[TO BE ATTACHED]

Brocade Manufacturing Agreement

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EXHIBIT D  
QUALITY PLAN

Solectron shall comply with the terms and conditions of Brocade's quality procedure document identified in Brocade's Agile system as:

[\*] MANUFACTURING SUPPLIER QUALITY PROCEDURE

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Brocade Manufacturing Agreement

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EXHIBIT D  
BROCADE  
MANUFACTURING SUPPLIER QUALITY PROCEDURE  
OPERATIONS

REVISION #	DATE	DOCUMENT REVISION HISTORY DESCRIPTION
Draft	2/11/03	Written by RS and Team

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- 1.0 DESCRIPTION
- 1.1 This procedure outlines the generic product and process quality requirements for key commodity parts supplied to and/or manufactured for Brocade, Inc.
- 2.0 SCOPE
- 2.1 This procedure applies to [\*] to Brocade, Inc. It may also be applied, at Brocade's discretion, to products specifically developed for Brocade by [\*] and other [\*].
- 2.2 If a conflict arises between any requirement outlined in this procedure and a specific supplier contract signed by Brocade Inc., the [\*] take precedence.
- 3.0 REFERENCES
- 3.1 Acceptability of Printed Boards (Class 2) ANSI/IPC-A-600E (latest revision)
- 3.2 Acceptability of Printed Circuit Assemblies (Class 2) ANSI/IPC-A-610B (latest revision)
- 3.3 ANSI/IPC 7711 and 7721 Suggested Guidelines for Modification, Rework and Repair of Printed Boards and Assemblies (Level C)
- 3.5 ANSI/IPC-T-50D (Terms and Definitions for Interconnecting and Packaging Electronic Circuits)
- 3.6 ANSI Z1.4 Sampling tables
- 3.7 Brocade Product Quality Plan (Product Specific)
- 3.8 Manufacturing/contract agreement
- 4.0 PROCEDURE
- 4.1 VALUE PROPOSITION
- 4.1.1 The Brocade supply chain value proposition is to establish supplier partnerships characterized by the following:
- Open and honest communication
  - Strong "values based" management
  - On-time delivery of quality products
  - End user customer focus
  - Timely data driven decision making
  - Mutual respect and responsiveness
  - Ongoing mutual total life cycle cost reduction
- 4.1.2 We believe that relationships with these characteristics will enable us to establish a world class supply chain management system and provide products and services that consistently meet or exceed our customer's requirements.

[FLOW CHART]

- 4.1.3 We believe that everyone in a supply chain is a customer for the work done by an "upstream" internal employee or external supplier. As such, you have a right to expect good work from them and an obligation to deliver work of high caliber to your internal and/or external customer.

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4.1.4 Sustained quality excellence requires continuous process improvement. This means, regardless of how good present performance is, it can become even better. "You can manage what you can measure." Align what you measure to the individual behaviors you want to support.

#### 4.2 SUPPLIER PARTICIPATION

4.2.1 Contract manufacturing and other key suppliers are expected to [\*] in the Brocade product development process. We depend on your [\*] to optimize the design, quality, cost and delivery of Brocade products. Brocade will formally engage suppliers, through meetings and dialogue, throughout the product life cycle. Appendix A outlines a generic product qualification process flow.

#### 4.3 MANAGEMENT COMMUNICATION

4.3.1 Our goal is to create a communication process to establish and sustain mutually profitable and rewarding business relationships. We want to become your [\*], and we want you to become our [\*].

4.3.2 To this end, Brocade will participate in periodic management communication meetings with key suppliers. These meetings will include a review of quality, cost and delivery performance metrics and ongoing improvement plans.

4.3.3 Specific Quality metrics and requirements are identified with in the Brocade Product Quality Plan's. Additionally, process parameters and controls may be included within each plan.

#### 4.4 WORKMANSHIP STANDARDS

4.4.1 Printed Wiring Boards shall meet the requirements of [\*], latest revision, Class [\*].

4.4.2 Printed Circuit Assemblies shall meet the requirements of [\*], latest revision, Class [\*].

4.4.3 [\*] Requirements for Soldered Electrical and Electronic Assemblies and HDBK-001 (Handbook and guide to supplement [\*] with amendment [\*]).

4.4.4 [\*]. Supplier specific workmanship standards should be identified and communicated to Brocade, Inc. prior to production.

4.4.5 Brocade Cosmetic Specification 95-0000001-01.

#### 4.5 REPAIR AND REWORK

4.5.1 [\*] (Terms and Definitions for Interconnecting and Packaging Electronic Circuits) contains the following definitions:

Repair(ing): The act of restoring the functional capability of a defective article in a manner that precludes compliance with applicable drawings or specifications.

Rework(ing): The act of reprocessing non-complying articles, through the use of original or alternate equivalent processing, in order to bring the article into compliance with applicable drawings and specifications.

4.5.2 [\*] (Suggested Guidelines for Modification, Rework and Repair of Printed Boards and Assemblies) categorizes modifications, rework and repairs into [\*] levels ([\*]).

4.5.3 Brocade will accept PWB fab and assemblies that have been [\*]), using Level [\*] techniques outlined in the above. Level [\*] rework techniques may be authorized by Brocade, only through prior Brocade Engineering or Quality approval.

4.5.4 All [\*] must meet the workmanship requirements of [\*] and/or [\*]. Any [\*] method not contained in [\*] must be authorized by Brocade Quality before being used on any Brocade product.

#### 4.6 DESIGN FOR MANUFACTURABILITY (DFM) AND VALUE ENGINEERING

4.6.1 [\*] shall conduct Design for Manufacturability analysis for every new Brocade board design and/or significant ECO. [\*] should participate in these reviews, as appropriate and/or conduct similar reviews for [\*] products.

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4.6.2 Suppliers are expected to initiate and/or participate in periodic value engineering efforts to reduce the current and future Brocade cost of goods sold (COGS). The timing and content of this activity shall be determined on a [\*] basis.

4.7 AUTHORIZED VENDOR LIST (AVL)

4.7.1 Contract manufacturers and other partners who supply critical components to Brocade must use Brocade's AVL, as required. Notification of this requirement will be made in advance.

4.7.2 Brocade will consider AVL change recommendations from any supplier. Change requests must be approved in writing by Brocade prior to implementation. This is typically done through Brocade's Agile Document System.

4.7.3 Brocade reserves the right to [\*] or [\*] at no additional cost of any materials supplied with [\*] content. This will be considered a serious offense and may have a negative impact on the offending supplier relationship with Brocade.

4.8 PROCESS QUALIFICATION & CONTROLS

4.8.1 Brocade may require certain documentation from selected suppliers prior to commencing production.

4.8.2 The following supporting documentation may be requested:

- Supplier qualification & performance monitoring process
- Production process flow diagram
- Product qualification testing plan and results (PVT)
- Supplier version of BOM's and AVL's used to produce Brocade products
- Process characterization documentation [e.g. SMT stencil, solder paste, SMT and through-hole reflow, board cleaning, rework, etc.]
- Production test specifications and instructions, and in-process quality/control plan
- Assembly process flow diagram
- Gage Repeatability and Reproducibility Studies (Gage R&R: where/when applicable)
- First Article Inspection
- Other documentation as appropriate

4.9 TEST/QUALITY DATA COLLECTION & REPORTING

4.9.1 Suppliers will be required to provide periodic test and inspection yield information to Brocade, upon request. Typical (but not limited to the following) test and inspection results requested would be:

Incoming Inspection	Test Failure Pareto Charts [debug/rework]
In-circuit Test	Quality Inspection Pareto Charts
Functional Test	Final Inspection Results
Environmental Stress Screening	Corrective Action Status
In-Process Audit Results	Third Party Audit Results

4.9.2 Performance reporting charts and graphs should generically include the following information:

- Goals: benchmarks of best in class performance
- Targets: interim goal for a given period
- Actions: actions that are necessary to realize these improvements with owners assigned and planned completion dates
- Progress: measured by relative improvements (delta) each period

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Brocade Communication Systems Inc.  
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4.10 PRODUCT INSPECTION / PROCESS AUDITING

- 4.10.1 Brocade reserves the right to conduct [\*] product inspection and/or process audits of supplier facilities engaged in producing supplied parts or Brocade final products. These activities would be conducted with [\*] of the respective supplier. Discrepancies found during these audits will result in a Corrective Action Request (CAR) (see Paragraph 4.12 below.)
- 4.10.2 Brocade also reserves the right to conduct source inspection at the supplier site. This inspection process, if implemented, would typically include the following activities:
- Inspection of in process and/or finished product against all appropriate workmanship standards.
  - Acceptance sampling in accordance with ANSI Z1.4 (supercedes Mil Std 105), Single Sampling Plan for 1% AQL, Level II, normal inspection level.
  - As an example, a random sample of 13 units would be inspected for critical workmanship attributes from a lot of 100 units. The lot would be accepted with zero defects found and rejected with one or more defects found. The supplier would be responsible to conduct a 100% screen of the entire lot for the defective attribute and re-submit the lot for another sample inspection.
  - Reduced inspection would occur when production is at steady state, ten consecutive lots pass at normal inspection levels, and the total number of defects in the sample from those ten lots are equal to or less than the applicable number given in ANSI Z1.4. Acceptance of five additional lots at reduced level would qualify the part number for dock-to-stock. Conversely, if two of five consecutive lots were rejected, a tightened inspection would be conducted until five consecutive lots were accepted. At that point, the part would start the qualification process over at the normal inspection level.
- 4.10.3 Details of the source inspection process and qualification standards will be further defined and agreed upon prior to implementation with selected suppliers.

4.11 RETURN MATERIAL AUTHORIZATION (RMA) PROCESSING

- 4.11.1 Brocade will contact suppliers with RMA requests via telephone, e-mail and/or fax, depending upon the specific arrangements made.
- 4.11.2 Unless otherwise specified, suppliers shall provide RMA numbers to Brocade within [\*] from receipt of the request.
- 4.11.3 Suppliers shall repair or replace the defective part within [\*] of receipt of the defective product.
- 4.11.4 Suppliers shall maintain records of all RMA requests and provide in-process and completion status of Brocade RMA's.

4.12 CORRECTIVE ACTION REQUESTS (CARS)

- 4.12.1 Brocade will issue a Corrective Action Request (Appendix B) whenever a discrepant product or unsatisfactory supplier process condition is discovered. The CAR Form may be transmitted to the supplier via e-mail or fax.
- 4.12.2 Unless otherwise specified, suppliers shall acknowledge receipt and provide a preliminary assessment and immediate corrective action of the discrepancy within [\*] of receipt. Unless otherwise specified, the preventative measures shall be completed and the documentation submitted no later than [\*] of a CAR receipt.

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[\*] Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

Appendix A:

Standard Product Qualification Process Flow

[FLOW CHART]

Brocade Communication Systems Inc.  
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Appendix B: Corrective Action Template (8D)

CLOSED LOOP CORRECTIVE ACTION FORM

CUSTOMER AFFECTED                      BROCADE PART NUMBER                      CUSTOMER MODEL NUMBER                      QTY:

STEP 1                      INTERNAL TEAM MEMBERS                      EXTERNAL TEAM MEMBERS

STEP 2                      DESCRIBE THE PROBLEM                      DATE:

STEP 3                      ROOT CAUSE ANALYSIS                      DATE:

STEP 4                      CONTAINMENT PLAN                      DATE:

STEP 5                      CORRECTIVE ACTION PLAN                      DATE:

STEP 6                      VERIFICATION OF CORRECTIVE ACTION                      DATE:

STEP 7                      PREVENT RECURRENCE                      DATE:

STEP 8                      CONGRATULATE TEAM                      DATE:

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CLCA#	Status:	Target Closure Date:	Customer Ref. No.
-----			
BRC-MMDDYY	OPEN		If applicable
-----			

EXHIBIT E  
DOAs AND MISSHIPMENTS

[\*]

DOAs AND MISSHIPMENTS:

Notwithstanding the terms and conditions in Sections 7.2 and 14.2 of the Agreement, in the event that a Product is rejected and returned to Solectron by Brocade [\*] because (a) such Product was [\*]by, or on behalf of, Solectron (a "Misshipment"), or (b) such Product is found to be dead on arrival (a "DOA"), then Solectron shall: (i) [\*] for the return of such Product; (ii) [\*] such Product so that it is fully functional, meets the Specifications, and saleable as new; and (iii) [\*] such Product [\*] or until material [\*] by Brocade, whichever is less. In addition, Solectron agrees to [\*] all Misshipments and DOAs and to provide Brocade, on a regular basis, a [\*] regarding such Misshipments and DOAs. The Parties agree to use their best efforts to [\*] Misshipment and DOA issues and [\*] processes to reduce such issues.

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\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

EXHIBIT F  
SOLECTRON PREFERRED SUPPLIER LIST

The following is the Solectron PSL as of the Effective Date:

[TO BE ATTACHED]

Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

EXHIBIT G  
PROCUREMENT RESPONSIBILITY TABLE

[\*]

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Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

EXHIBIT H  
EXCESS AND OBSOLETE MATERIALS

DEFINITIONS:

"Excess Inventory" means on-hand component inventory purchased exclusively for the Brocade account that is in excess of [\*] demand.

"Obsolete Inventory" means [\*] inventory and [\*] inventory on-order with NO [\*] within the Obsolete Forecast Horizon.

"Obsolete Forecast Horizon" means a period in excess of [\*] for which there is no [\*] for inventory, unless otherwise mutually agreed to by Brocade and Solectron.

DISPOSITION OF EXCESS AND OBSOLETE MATERIAL

ON HAND EXCESS MATERIAL:

For Excess Inventory, Brocade will [\*] such Excess Inventory (the "Inventory [\*]") (by way of example only. [\*]) within [\*] of written notification by Solectron.

[\*]

The Excess Inventory will [\*] in Solectron's [\*]. The value of the components will continue to show in [\*] provided, however, that [\*] shall be calculated by [\*] of such Excess Inventory (example: [\*]) from Brocade's [\*]. [\*]

Solectron reporting of inventory balances to Brocade shall show an itemization of inventory components that equals the [\*] with a line at the bottom of the report which [\*] and which shows a [\*].

On a [\*] basis per a mutually agreeable schedule, (1) Solectron will refresh the E&O analysis to reflect any changes in [\*], (2) the parties will perform an evaluation of the reserve to cover the [\*], if any, and (3) the parties shall perform a [\*]. Solectron shall [\*] Brocade for any [\*] if overall exposure [\*] [\*] over [\*], or alternatively, within [\*] of receipt of a written accounting from Solectron, Brocade would [\*] Solectron [\*] to [\*] if [\*] [\*] over [\*].

For on hand inventory that is excess to [\*], Brocade will [\*] as obsolete material at [\*] (the [\*]% intended to include [\*]).

OBSOLETE MATERIAL:

For Obsolete Material, Brocade will [\*] within [\*] of written notification of by Solectron that such material [\*]. The [\*] for each component to be scrapped will be the [\*] of such material [\*] (the [\*]% intended to include [\*]).

Brocade may direct Solectron to utilize all or a portion of the [\*] (defined above) to [\*]

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If Brocade feels there may be a future need for Obsolete Inventory, Brocade could require Solectron to [\*] such [\*] for up to [\*] (unless a longer term is agreed to by the parties) from written notification by Solectron that such material has become Obsolete Inventory.

WAREHOUSE FEE:

[\*] indicated as follows:

Penang: [\*]%  
Columbia: [\*]%  
Milpitas: [\*]%

REPORTING:

Once per [\*], Solectron will prepare a report that will show Brocade [\*], its [\*], and its [\*] to a [\*] demand forecast horizon. This report will itemize the parts that are [\*] and [\*] (no gross requirements), and will split the [\*] between [\*] materials.

On a [\*] basis, Solectron will itemize all activity to [\*]. Any increases or decreases in the [\*] will be noted. Any utilization of any [\*] shall be [\*]. Solectron shall not make any utilizations without the written direction and authorization of Brocade. Certificates of destruction will be provided for scrap transactions, if requested by Brocade.

ENGINEERING CHANGE ORDER MANAGEMENT

For any engineering change order ("ECO") submitted by Brocade to Solectron, Solectron shall provide Brocade[\*] with an exposure analysis, which exposure analysis shall [\*] a comprehensive list of all [\*], and the [\*] Brocade, resultant from the implementation of such ECO.

Upon written approval by Brocade, Solectron shall implement such ECO. Within [\*] of Solectron's implementation of such ECO, Solectron shall provide Brocade with a final analysis of the [\*] due to the Brocade ECO.

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EXHIBIT I  
SOLELECTRON PATENTS

[TO BE ATTACHED]

Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

AMENDMENT NO. ONE  
TO  
MANUFACTURING AND PURCHASE AGREEMENT  
BETWEEN  
BROCADE AND SOLECTRON

This Amendment Number One ("Amendment") to the Manufacturing and Purchase Agreement by and between Brocade Communications Systems, Inc. ("Brocade"), and Solectron Corporation ("Solectron"), dated February 21, 2003 ("Agreement") is entered into as of March \_\_, 2003.

In consideration of the mutual covenants and promises set forth herein and for other good and valuable consideration, the receipt of which both parties hereby acknowledge, Brocade and Solectron agree as follows:

- 1. Section 2.7. Section 2.7 is deleted in its entirety.
- 2. Section 8.4. The first sentence in Section 8.4 is deleted and replaced with the following:

Unless otherwise agreed to in the SLA, Solectron will submit invoice(s) periodically to Brocade upon shipment of Product(s) for which the recipient takes delivery inside the United States. (All Products for which the recipient takes delivery outside of the United States shall be governed by the agreement entered into by and between Brocade Communications Switzerland, Sarl. and Solectron, dated March \_\_, 2003.)

- 3. Section 19. Section 19 is deleted in its entirety and replaced with the following:

[THIS SECTION INTENTIONALLY LEFT BLANK]

- 4. Exhibit H. Exhibit H is deleted in its entirety and replaced with the following:

[THIS EXHIBIT INTENTIONALLY LEFT BLANK]

- 5. No Other Changes. Except as specified in this Amendment, the Agreement remains unchanged and in full force and effect.
- 6. Counterparts. This Amendment may be executed in two or more counterparts, all of which, taken together, shall be regarded as one and the same instrument.

BROCADE COMMUNICATIONS SYSTEMS INC.

SOLECTRON CORPORATION

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

Brocade Confidential



## MANUFACTURING AND PURCHASE AGREEMENT

This MANUFACTURING AND PURCHASE AGREEMENT ("Agreement") is entered into as of March \_\_, 2003 ("Effective Date") by and between Brocade Communications Switzerland SarL., a corporation organized under the laws of Switzerland, and having its principal place of business at 29, Route de l'Aeroport, Case Postale 105, CH-1215 Geneva 15, Switzerland ("Brocade"), on the one hand, and Solectron Corporation, a Delaware corporation with an office at 847 Gibraltar Drive, Milpitas, CA 95035, and its subsidiaries and affiliates, including but not limited to Solectron Technology Singapore Ltd., Solectron Technology Sdn Bhd, and Solectron Netherlands BV(collectively, "Solectron"), on the other hand (each a "Party" and collectively the "Parties").

## 1. Definitions.

1.1 "Ancillary Technology" means all test programs and consigned equipment and related fixtures provided to Solectron by Brocade.

1.2 "Brocade Technology" means the Technology and all Derivatives thereof (a) provided by Brocade to Solectron pursuant to this Agreement, or (b) developed by Brocade or Solectron pursuant to this Agreement; provided, however, that such Technology is not Solectron Technology.

1.3 "Brocade Vendors" means third party producers and suppliers that have been specified by Brocade in writing (a) on Brocade's approved vendor list ("Brocade AVL") as provided by Brocade to Solectron and as updated by Brocade from time to time, and (b) as the source of certain FRUs and/or components to be used by Solectron in the manufacture of the Products.

1.4 "Solectron Vendors" means any Brocade Vendors, which are also included on Solectron's preferred supplier list ("Solectron PSL"). The version of the Solectron PSL existing as of the Effective Date is attached as Exhibit F. This Solectron PSL may be modified from time to time without amending Exhibit F or this Agreement.

1.5 "Derivative" means: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws.

1.6 "Solectron Technology" means the Technology [\*], which are (a) developed by Solectron prior to entering into this Agreement, and (b) developed independently by Solectron.

1.7 "Intellectual Property Rights" means copyright rights, trademark rights (including, without limitation, trade names, trademarks, service marks, and trade dress), patent rights, trade secrets, moral rights, right of publicity, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence and all renewals and extensions thereof, arising under the law of the United States or any state, country or other jurisdiction.

1.8 "Joint Technology" means any (a) Technology that is first conceived or reduced to practice by one or more of Solectron's employees with one or more of Brocade's employees; provided in the case of a patentable invention that a party's contribution will meet the requirements for joint invention under United States law, or (b) joint work of authorship fixed in a tangible medium of expression prepared

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\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

by one or more of Solectron's employees with one or more of Brocade's employees with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.

1.9 "Products" means the Brocade products and FRUs identified on Exhibit A.

1.10 "Purchase Order" means a Brocade purchase order for the purchase of the Products issued to Solectron pursuant to the provisions of this Agreement.

1.11 "SLA" means the "service level agreement" document, which is a document created by Brocade and Solectron containing certain operational terms agreed between the parties. The SLA will include mutually agreed upon operational/performance metrics for delivery, quality, communication, technical support and flexibility. These metrics will be used as guidelines for CSI input and quarterly scorecards. The version of the SLA existing as of the Effective Date is attached as Exhibit C for reference only. The parties may agree in writing from time to time to change the SLA, without amending Exhibit C or this Agreement.

1.12 "Specifications" means the functional and performance specifications (including, without limitation, bills of materials, schematic diagrams, and Product, component and assembly drawings) relating to the testing and manufacturing of each Product as provided in writing by Brocade to Solectron.

1.13 "Statement of Work" means a written statement of work signed by both parties for special development work to be done by Solectron for Brocade. Each Statement of Work will be sequentially numbered (e.g., SOW 1, SOW 2, etc.) and attached to this Agreement by an amendment.

1.14 "Technology" means any and all technical information and/or materials, including, without limitation, ideas, techniques, designs, sketches, drawings, models, inventions, know-how, processes, apparatus, methods, equipment, algorithms, software programs, data, software source documents, other works of authorship, formulae and information concerning engineering, research, experimental work, development, design details and specifications.

## 2. Material Procurement.

2.1 Forecasting and Material Purchasing. Once a [\*] (or as otherwise agreed in the SLA), Brocade will provide Solectron with a [\*] forecast of the quantity demand for each Product ("Product Forecast") either in writing or via EDI. For the purpose of spare parts, Brocade will provide Solectron, [\*], with a [\*] repair forecast of the quantity demand for all FRUs listed by part number ("Parts Forecast", collectively with the Product Forecast, the "Forecasts"). Upon the end-of-life of any Product, Brocade will extend its Parts Forecast for all FRUs used in such Product [\*], which shall in no case extend longer than [\*] from the end-of-life date of such Product. The Forecasts [\*], or as otherwise instructed in writing by Brocade. [\*] purchased within the applicable lead time; provided that, for a ninety (90) day period, Solectron will take all steps [\*] component materials by diligently attempting to return unused materials or to transfer unused materials to use for other customers to the extent that they do not incorporate proprietary Brocade Technology. Brocade will not pay for any unused materials that are not [\*].

2.2 [\*] [\*]

2.3 Vendor Forecasts. Solectron will provide each Brocade Vendor, as mutually agreed and specified in the SLA, with [\*] forecasts for the Product materials and will update such forecasts as necessary to keep each Brocade Vendor current with each new Forecast provided by Brocade.

2.4 Material Management. Solectron will, at a minimum, comply with the following obligations to ensure good component material management for the Products, including: (a) [\*]

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component level failure analysis or [\*] by the Brocade Vendor; (b) [\*] component returns, failure analysis and corrective actions regarding defective components with the Brocade Vendors and promptly communicate this information to Brocade; (c) work with Brocade Vendors to [\*] component leadtimes and costs; (d) provide regular performance feedback to Brocade Vendors, with a copy to Brocade; (e) ensure that all component materials used by Solectron to produce the Products meet the Specifications; and (f) calculate for Brocade and provide documentation of the country of origin of each of the Products and FRUs in accordance with US law. As between Solectron and Brocade, [\*] will be solely responsible for all costs relating to the collection and replacement of Products and FRUs due to Solectron's use of component materials that [\*]

2.5 Procurement Responsibility Table. Attached hereto as Exhibit G is the current Procurement Responsibility Table, which provides definitions of Tier 1, Tier 2 and Tier 3 components and the respective obligations of Brocade and Solectron for [\*] such components. The parties may agree in writing from time to time to change the Procurement Responsibility Table without amending Exhibit G or this Agreement, provided, however, that all revisions shall be controlled using a revision number to capture any mutually agreed upon changes.

2.6 Alternative Sourcing. Solectron may only procure FRUs and/or components used in the manufacture of Brocade Products from Brocade Vendors. During the life of this Agreement, Solectron will provide initial or alternative Solectron-approved sourcing suggestions to Brocade for those FRUs and/or components for which Brocade has not provided or accepted any Solectron Vendors. If approved by Brocade these vendors will be added to the Brocade AVL and deemed "Solectron Vendors".

2.7 Excess and Obsolete Materials. [\*] the materials purchased by Solectron subject to the terms of this Agreement, to support Brocade purchase orders, forecasted demand requirement, requested inventory build up and flexibility requirements as further detailed in the SLA. Excess and obsolete material will be managed according to the provisions of Exhibit H.

3. Manufacturing Obligations.

3.1 Specifications and Statements of Work. Solectron will manufacture and test the Products in strict compliance with the Specifications, Statements of Work and any other written instructions agreed between Brocade and Solectron for each Product. Solectron will honor the lead time, reporting, and other requirements in the then-current version of the SLA as agreed between Brocade and Solectron. As the work instructions and SLA are operating documents that are subject to frequent change, the most recent versions of the documents will not be formally amended into this Agreement; however, both the work instructions for each Product and the SLA are incorporated herein by reference.

3.2 Delivery. Solectron acknowledges and agrees to meet the delivery requirements of all Product manufacturing, supply and repair services as specified in the SLA.

3.3 Changes. Solectron agrees that Solectron will not change the manufacturing location of the facilities for the manufacture, assembly, or test of the Products, or use third party manufacturers, without Brocade's prior written consent, which shall not be unreasonably withheld.

3.4 Ancillary Technology. Brocade, at its sole discretion, may furnish Ancillary Technology to Solectron solely for use in the manufacture and testing of the Products. Solectron will not at any time use the Ancillary Technology for any other purposes or for any third parties or in any manner other than in performing Solectron's obligations under this Agreement. Solectron will maintain the Ancillary Technology in good condition and repair, ordinary wear and tear excepted, and provide necessary and reasonable calibration services for the Ancillary Technology. Brocade and Solectron agree that the terms set out in Exhibit B hereto will apply to all Ancillary Technology, and Solectron will be responsible for obtaining the

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requisite insurance coverage and conducting appropriate inspections in accordance with Exhibit B hereto. With respect to any Ancillary Technology licensed to Solectron pursuant to this Agreement, Brocade agrees to provide Solectron with a reasonable amount of support, at no charge, with respect to the initial installation, set-up and debugging of such Ancillary Technology.

3.5 Non-Exclusivity. Nothing in this Agreement will be construed or deemed to prevent or otherwise inhibit Brocade's ability or right to manufacture, any product (including the Products) at a Brocade facility or at alternate or additional third party facility(ies) of Brocade's choice. Further, nothing in this Agreement will be construed or deemed to (a) require Brocade to order all units of any Product from Solectron, or (b) prevent or otherwise inhibit Brocade's ability or right to design, develop, manufacture, have manufactured, market, use, sell, and or distribute any follow-on products or derivatives of the Products. The foregoing shall in no way limit Brocade's responsibility to fulfill its purchase obligations under any purchase orders issued by Brocade to Solectron and accepted by Solectron.

4. License Rights and Restrictions.

4.1 License to Solectron.

(a) License to Specifications. Subject to the terms of this Agreement, Brocade hereby grants Solectron a limited non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's trade secret rights, during the term of this Agreement, to use the Specifications solely for the purpose of manufacturing the Products for Brocade.

(b) License to Ancillary Technology. Subject to the terms of this Agreement, Brocade hereby grants Solectron a limited [\*], non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's copyright and trade secret rights, during the term of this Agreement, to use and copy the test software (provided as part of the Ancillary Technology) solely for the purpose of manufacturing and testing the Products for Brocade.

(c) License to Brocade Firmware. Subject to the terms of this Agreement, Brocade hereby grants Solectron a limited [\*], non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's copyright rights, during the term of this Agreement, to copy the Brocade Firmware onto Product units in the manufacturing process at each Brocade-approved Solectron manufacturing facility.

(d) License to Brocade Technology. Brocade hereby grants Solectron a limited [\*], non-exclusive, non-transferable, royalty-free license (without the right to sublicense) under Brocade's Intellectual Property Rights, during the term of this Agreement, to use the Brocade Technology solely as necessary to fulfill its manufacturing obligations under this Agreement. Solectron is granted no right, and is expressly prohibited from using the Brocade Technology, to develop, manufacture or distribute any products other than the Products.

4.2 License to Brocade. Neither Solectron nor any third party will retain any rights in any materials incorporated into the Products. To the extent that (a) Solectron provides to Brocade any Solectron Technology [\*], Solectron hereby grants to Brocade a non-exclusive, royalty-free, perpetual, irrevocable license under Solectron's Intellectual Property rights to make, have made, use, sell, import, reproduce, display, distribute, and create derivative works of such Solectron Technology solely in connection with the development, manufacture, marketing, and sale of Brocade products.

4.3 Residual Information. Brocade may disclose and use the ideas, concepts, know-how, and techniques which are related to the manufacture of Brocade's products, retained in the memories of individuals, and contained in Solectron Technology or developed, provided, or accessed by Solectron

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under this Agreement (RESIDUAL INFORMATION) to make, have made, use, sell, import, reproduce, display, distribute, and create derivative works of such Solectron Technology solely as necessary in connection with the development, manufacture, marketing, and sale of Brocade products, [\*]

4.4 Restrictions. Except as expressly set forth above, each party retains all of its Intellectual Property Rights. No license is granted by Brocade to make, use or sell any other products under the Brocade Intellectual Property Rights or to make, use or sell any products for any other purpose. Solectron will not modify, decompile or reverse engineer the Brocade Firmware or any Brocade Technology.

5. Purchase Orders.

5.1 Purchase Order Acceptance. Solectron is permitted to sell the Products only to Brocade, and to third parties who have been authorized in writing by Brocade to purchase the Products from Solectron ("Designated Purchasers") in satisfaction of Purchase Orders issued during the term of this Agreement, subject to and in accordance with the terms and conditions of this Agreement.

5.2 Quantity Flexibility. Subject to any flexibility terms set forth in the SLA, Solectron will, at [\*], accept all Purchase Order cancellations, reschedules and changes in the quantity of Products ordered within the cancellation, rescheduling, change, or other flexibility terms in the SLA.

5.3 Demand Flexibility Requirements. Solectron recognizes the uncertainty of Brocade demand and will accommodate changes to Brocade's demand pursuant to the terms in the SLA.

(a) Tooling, Equipment and Non-recurring Services. Solectron customer orders for tooling, equipment and non-recurring services are typically firm and non-cancelable; however, in the event that Brocade determines that it must cancel such an order prior to the tooling or equipment being delivered or services rendered, then Brocade shall only be liable to Solectron for the actual and reasonable costs accrued by Solectron, [\*] as mutually agreed upon by the parties.

6. Shipping and Delivery.

6.1 Shipment. Unless otherwise agreed upon in writing, all shipments of the Products will be made [\*] (per Incoterms 2000).

6.2 Timing. Shipments to Brocade, or to other locations specified by Brocade, will be shipped in the [\*] ordered by Brocade, and [\*] the acknowledged delivery date, [\*] the acknowledged delivery date. Upon learning of any potential shipment delays, Solectron will notify Brocade as soon as reasonably possible, as to the cause and extent of such delay. Except as Brocade may otherwise advise in advance and in writing, Brocade may [\*] any goods (i) shipped [\*] the quantity ordered, (ii) shipped in a [\*] shipments, or (iii) shipped [\*].

6.3 Accelerated Measures. If Solectron fails or has reason to believe it will fail to make shipments at the specified time and such failure is not due to an action or omission of Brocade, Solectron will, [\*], employ accelerated measures such as [\*] required to meet the specified delivery schedule or minimize the lateness of shipments [\*]

7. Acceptance.

7.1 Inspection. Solectron will ship Products directly to [\*]. All deliveries of Products are subject to inspection and testing by Brocade [\*] before final acceptance. Within [\*] after receipt of

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Products ("Rejection Period"), Brocade [\*] may inspect and reject any Product that fails to meet the Specifications.

7.2 Rejection. Within the Rejection Period, customers may notify Brocade of any Product rejections and the reasons therefor. In accordance with the RMA procedures of Section 11.1, below, Brocade [\*] may return rejected or defective Products to Solectron, [\*]. [\*], In the event that the returned Product is defective, Solectron will repair or replace such defective Product, [\*]. Solectron will return to Brocade or its customer, as the case may be, freight prepaid, all repaired or replaced Products within [\*] after Solectron's receipt of the returned Product or within such other time as specified in the SLA. Any returned Products that have been damaged by misuse, abuse or unauthorized repair, by or on behalf of the End User, may be treated by Solectron as "out of warranty" and subject to out of warranty repair charges referenced in Section 8.1 only. Any returned Products, which are not, in fact, defective, may be returned by Solectron to the End User at [\*] expense, pursuant to the terms of the SLA.

7.3 Spot Testing. Upon prior written notice to Solectron, and subject to the confidentiality requirements herein, Brocade or its authorized representative(s) may conduct spot functional tests of the Products at Solectron's facility at which Products are being manufactured during Solectron's normal business hours. The parties will mutually agree upon the timing of such investigations, which will be conducted in such a manner as not to interfere with Solectron's operations. If any Products fail any material part of the test procedure set forth on the Statement of Work, Brocade may reject such Products, and Solectron will promptly take all steps necessary to correct such failures.

7.4 Site Inspections. Upon prior written notice to Solectron, and subject to the confidentiality provisions herein, Brocade[\*], will have the right to perform on-site inspections at Solectron's manufacturing facilities and Solectron will fully cooperate with Brocade in that regard at mutually agreed upon times. If an inspection or test is made on Solectron's premises, Solectron will provide Brocade's inspectors with reasonable assistance at no additional charge. In the event that any on-site inspection of the Products indicates that the Products do not conform to the requirements of this Agreement, Solectron will not ship such Products to Brocade until such nonconformity has been cured and only Products meeting the conformance criteria may be shipped. This does not limit Brocade's right to perform additional acceptance testing at Brocade's facilities.

7.5 Failure to Inspect. Notwithstanding anything to the contrary contained in this Agreement, inspection or failure to inspect the Products upon Delivery will not affect Brocade's rights under the warranty provisions of this Agreement.

## 8. Pricing and Payment.

8.1 Prices. The unit prices to be paid by Brocade for the Products shall be as set forth on Exhibit A or as otherwise agreed by the parties. Except as otherwise expressly provided in this Agreement, such unit prices include [\*] for the Products or warranty repair services (as the case may be), any related deliverable items and packaging for delivery to Brocade. The prices attached to the Exhibit A will be reviewed on a [\*] basis. All payments hereunder will be paid in U.S. Dollars unless otherwise mutually agreed upon by the parties in writing. [\*]

8.2 Components Management. Solectron agrees to manage inventory and purchase materials in a manner that is cost effective. [\*]

(a) Cost Reductions. Material cost reductions will be reviewed and mutually agreed upon by Brocade and Solectron on a [\*] basis and shall be included in an updated Exhibit A.

(b) [\*]

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8.3 Taxes. [\*] Where the law permits, Solectron will treat Brocade as exempt from applicable state and/or local sales tax for Product(s) purchased pursuant to this Agreement.

8.4 Invoices. [\*], Solectron will submit invoice(s) periodically to Brocade upon [\*] of Product(s) for which the recipient takes delivery outside the United States. (All Products for which the recipient takes delivery inside of the United States shall be governed by the agreement entered into by and between Brocade Communications Systems, Inc. and Solectron, dated February 21, 2003.) Brocade will pay non-disputed invoices net [\*] after the later of date of [\*] of (a) the Products [\*], or (b) Solectron's invoice to Brocade. Payment will not constitute acceptance of the Products by Brocade. If Brocade requests, and Solectron agrees, that Products or FRUs be kept in [\*], Solectron will invoice Brocade for the Products [\*] after the Products or FRUs enter [\*]. Upon [\*] for such Products or FRUs that enter Finished Goods, Brocade will take [\*] of these Products.

8.5 [\*]

9. Quality Assurance.

9.1 Quality Standards. Solectron will manufacture and repair the Products in accordance with the quality requirements, standards and expectations as set forth on the Statement of Work or as otherwise mutually agreed upon by the parties in writing.

9.2 Quality Plan. Solectron will establish, maintain and manage a quality assurance program for the Products that is consistent with, and at least as restrictive as, the terms and conditions listed in Exhibit D.

10. Engineering Changes.

10.1 ECOs. Brocade may, upon advance written notice to Solectron, submit engineering change orders ("ECOs") for changes to the Products. ECOs will include documentation of the change to effectively support an investigation of the impact of the engineering change. [\*], Solectron will acknowledge the ECO and report to Brocade within [\*] upon Solectron's receipt of the ECO. If the ECO affects the manufacturing or repair costs of the Products or otherwise affects the price of the affected Products, the parties agree to negotiate in good faith an equitable adjustment to the price of the affected Products prior to implementation of the change. The parties agree that [\*] is a reasonable time period to permit Solectron to evaluate ECO impact regarding potential excess manufacturing costs and price, if any, and non-recurring costs, if any. Notwithstanding the foregoing, Brocade may require, from time to time, [\*] implementation of an emergency ECO. In these cases, Solectron will provide Brocade with a preliminary estimate of the cost impact within [\*].

10.2 No Changes. No changes will be made to the Products without Brocade's prior written consent and no approved change will be made effective prior to the date approved by Brocade in writing. Solectron will not change or modify the processes for the Products without Brocade's prior written consent. Solectron will reimburse Brocade for all expenses incurred by Brocade to qualify changes to such materials or processes that are undertaken by Solectron without Brocade's prior written consent.

11. Product Repairs and FRUs Supply.

11.1 Repair Services. Solectron will provide repair services to Brocade and Brocade-authorized third parties (i) for all in-warranty Products in accordance with the terms of Sections 14, below, and (ii) [\*] for any out-of-warranty Products and FRUs for a period of [\*] from the end-of-life production of such Products or FRUs by Solectron or a Brocade Vendor. For any Product or FRU that is returned to Solectron for repair or replacement services, Brocade will issue a Return Material Authorization ("RMA")

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number, and will forward such RMA electronically to Solectron, through Brocade's [\*] system. All Products and FRUs returned to Solectron for repair or replacement services will include the RMA affixed to the packaging.

11.2 FRUs Supply. Solectron will make available to Brocade Product FRUs as Brocade may [\*] for [\*] Products purchased by Brocade from Solectron during the Product production. For a period of [\*] after the date of delivery to Brocade by Solectron of the last unit of the Product manufactured by Solectron, Solectron shall undertake the following: (a) Solectron will maintain [\*] for each Product; (b) Solectron will inform Brocade of all [\*] notifications for FRUs or components upon Solectron's receipt of such notifications; and (c) Solectron will inform Brocade if a [\*] is the most economical procurement strategy for such FRUs or components as to which such a notification is received (especially [\*] FRUs which may require tool maintenance and set-up charges that far outweigh piece part costs). [\*] If Brocade determines that a final buy is not financially favorable due to the [\*] of the remaining support period for the FRU(s), Solectron will assist Brocade in [\*] through manufacturing. [\*]

## 12. Ownership.

12.1 Ownership by Brocade. As between Brocade and Solectron, Brocade will own all right, title, and interest in the Specifications, Brocade Firmware, Products, Ancillary Technology and the Brocade Technology (excluding the Solectron Technology, which will be owned exclusively by Solectron) and all Intellectual Property Rights therein, and Solectron hereby irrevocably transfers, conveys and assigns to Brocade all of its right, title, and interest therein. Solectron will execute such documents, render such assistance, and take such other action as Brocade may reasonably request, at Brocade's expense, to apply for, register, perfect, confirm and protect Brocade's rights to the Brocade Technology, and all Intellectual Property Rights therein.

12.2 Ownership by Solectron. As between Solectron and Brocade, Solectron will own all right, title and interest in the Solectron Technology (excluding the Brocade Technology, which will be owned exclusively by Brocade), and all Intellectual Property Rights therein.

12.3 Ownership of Joint Technology. All discoveries, improvements and inventions conceived or first reduced to practice, as those terms are used before the U.S. Patent and Trademark Office, in the performance of this Agreement jointly by Solectron personnel and Brocade personnel (the "Joint Technology"), shall be the property [\*] Each party shall execute all documents and take such further actions as may be reasonably required to evidence, perfect or enforce any such assignment. [\*]

## 12.4 [\*]

12.5 Attorney in Fact. Solectron agrees that that if Brocade is unable because of Solectron's unavailability, dissolution or incapacity, unreasonable refusal or failure to act in a timely manner such that intellectual property rights protection specified in Section 12.3 may be impaired, to secure Solectron's signature to apply for or to pursue any application for any United States or foreign patents or mask work or copyright registrations covering the inventions assigned to Brocade under this Agreement, then Solectron hereby irrevocably designates and appoints the Brocade and its duly authorized officers and agents as Solectron's agent and attorney in fact, to act for and in Solectron's behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyright and mask work registrations thereon with the same legal force and effect as if executed by Solectron.

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13. Confidential Information.

13.1 General. Except as otherwise provided in this Section, the definition, use, and disclosure of confidential information by the parties shall be governed by the Mutual Non-Disclosure Agreement between the parties and dated April 21, 1998. Notwithstanding any provision to the contrary contained herein, the Non-Disclosure Agreement shall be in full force and effect during the term of this Agreement and any renewal thereof.

13.2 Sensitive Brocade Information. "Sensitive Brocade Information" means the Forecasts, Specifications, Brocade AVL, Brocade Technology, Ancillary Technology, bill of materials, SLA, work instructions, and all data accessed by Solectron pursuant to Sections 2, 3, 4, 5, 6 and 11, as well as the contractual terms and conditions, including contract exhibits, between Brocade and Solectron.

13.3 [\*]

13.4 Confidentiality Obligations.

(a) Solectron Obligations. [\*] to assist Brocade in remedying such unauthorized use or disclosure of Sensitive Brocade Information

(b) [\*]

13.5 Exclusions. These obligations will not apply to the extent that Sensitive Brocade Information [\*]: (a) is already known to [\*] at the time of disclosure, which knowledge such party will have the burden of proving; (b) is, or, through no act or failure to act of [\*], becomes publicly known; (c) is received by [\*] from a third party without restriction on disclosure; [\*]; or (e) is approved for release [\*]

13.6 Legal Disclosures. A disclosure of Sensitive Brocade Information [\*] (a) in response to a valid order by a court or other governmental body, or (b) otherwise required by law, will not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that [\*] will provide prompt written notice thereof to [\*] to enable [\*] to seek a protective order or otherwise prevent such disclosure and will cooperate with that party in seeking such protective order.

14. Warranty.

14.1 Product Warranty. [\*], Solectron warrants for a period of [\*] from the date of [\*] of each unit of each Product, [\*]

14.2 Product Warranty Remedy. In accordance with the RMA procedures outlined in Section 11.1, above, Brocade will promptly notify Solectron of any Products [\*] that Brocade believes do not comply with the warranties contained in this Agreement. Solectron will pay all [\*] associated with Products returned for repairs during the warranty period[\*] Solectron will, at [\*] option, either (i) credit Brocade for the purchase price paid by Brocade for the defective Product units, or (ii) at [\*] expense, replace, repair or correct such Product within [\*] of [\*]. Solectron will [\*] any charges in order to effect the earliest reasonable replacement of such defective Products to Brocade [\*]. Solectron agrees to maintain a repair capability for products under warranty. Solectron will provide to Brocade detailed information, including location, telephone number, contact person and hours of operation for the Solectron service representative who will be Brocade's contact for warranty claims and questions. [\*]. Replaced Products will be warranted for [\*]

14.3 [\*]Other Obligations and Warranties.

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(a) Regulatory Compliance. Solectron represents and warrants that its manufacturing facilities and processes will comply with all applicable international, federal, state and local statutes, laws and regulations.

(b) Import/Export Requirements. Brocade and Solectron will comply with all import and export laws and regulations and maintain appropriate import and export documentation. At Brocade's request, Solectron will make available for inspection and audit all import and export documentation for the Products and the Solectron Technology included in the Products sold under this Agreement. [\*] Solectron will not, directly or indirectly, export, re-export or transship any Technology in violation of any applicable U.S. export control laws and regulations or any other applicable export control laws promulgated and administered by the government of any country having jurisdiction over the parties or the transactions contemplated herein.

(c) Formation, Good Standing and Authority. Each of Solectron and Brocade represents and warrants to the other that it is a company duly formed, validly existing and in good standing under the laws of its jurisdiction and that this Agreement has been duly executed and delivered by it, and (assuming due authorization, execution and delivery by the other) constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

(d) Consigned Equipment. Brocade shall ensure that at the time of delivery of Brocade Property or Ancillary Technology, Brocade shall have [\*]such Brocade Property or Ancillary Technology. [\*]Intellectual Property. Brocade warrants that it has all intellectual property rights required to make available to Solectron the material and information (including any designs, drawings and specifications) necessary for Solectron to manufacture the Products hereunder. In addition, Brocade warrants that it is the owner or all copyrights and trade secrets in, and that Brocade has the right to supply, the software provided by Brocade to Solectron hereunder for inclusion in the Products.

#### 14.4 Warranty Exclusions and Disclaimer.

(a) [\*]

(b) Disclaimer. THE WARRANTIES CONTAINED IN THIS SECTION 14 ARE IN LIEU OF, AND EACH PARTY EXPRESSLY DISCLAIMS AND THE OTHER PARTY WAIVES ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM, USAGE IN THE TRADE OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT OF THIRD PARTY RIGHTS.

#### 15. Term and Termination.

15.1 Term. This Agreement will commence on the Effective Date and will continue for a period of [\*] thereafter, unless earlier terminated pursuant to this Agreement. [\*] renew [\*] for successive [\*] terms [\*] provides notice of its decision to not renew the Agreement no later than [\*] prior to the end of the then-current term.

15.2 Termination for Default. [\*] [\*] may terminate this Agreement if the [\*] violates any covenant, agreement, representation or warranty contained herein in any material respect or defaults or fails to perform any of its obligations or agreements hereunder in any material respect, which violation, default or failure is not cured[\*], within [\*] after written notice (which notice will describe the alleged breach in reasonable detail) from [\*] stating its intention to terminate this Agreement by reason thereof.

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15.3 Other Causes of Termination. This Agreement will terminate upon written notice by either party, immediately, if

- (a) a receiver is appointed for the other party or its property;
- (b) the other party makes a general assignment for the benefit of its creditors;
- (c) the other party becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors;
- (d) the other party is liquidated or dissolved; or
- (e) any proceedings are commenced against the other party under any bankruptcy, insolvency or debtor's relief law and such proceedings are not vacated or set aside within sixty (60) days from the date of commencement thereof.

15.4 Effect of Termination. In the event of the expiration or termination of this Agreement:

- (a) Solectron will complete the production of any Products of which Solectron has [\*] as of the effective date of such expiration or termination and Deliver such completed Products to Brocade by the earlier of (i) the acknowledged delivery date, or (ii) [\*] of the effective date of such expiration or termination;
- (b) Solectron will immediately cease the use of all of the Brocade Technology upon completion of the work required in 15.4(a);
- (c) Solectron will return or destroy (as appropriate depending on the nature of the material) all Sensitive Brocade Information within thirty (30) days after the effective date of the termination and certify in writing that such party has complied with its obligations hereunder; and
- (d) NEITHER BROCADE NOR SOLECTRON SHALL BE LIABLE TO THE OTHER BECAUSE OF SUCH EXPIRATION OR TERMINATION, FOR COMPENSATION, REIMBURSEMENT OR DAMAGES FOR THE LOSS OF PROSPECTIVE PROFITS, ANTICIPATED SALES OR GOODWILL, ON ACCOUNT OF ANY EXPENDITURES, INVESTMENTS OR COMMITMENTS MADE BY EITHER, OR FOR ANY OTHER REASON WHATSOEVER BASED UPON THE RESULT OF SUCH EXPIRATION OR TERMINATION.

15.5 Survival. The rights and obligations of the parties set forth in Sections 1, 2.7, 3.4, 4.2, 4.3, 4.4, 5, 6, 7, 8, 9, 11, 12, 14, 15.4, 15.5, 16, 17, 18 and 21 will survive any termination or expiration of this Agreement.

16. Dispute Resolution. In the spirit of continued cooperation, the parties agree to follow the dispute resolution procedure described in this Section in the event any controversy should arise out of or concerning the parties' performance under this Agreement. In the event of a dispute or claim arising between the parties on any matter relating to this Agreement, either party may initiate negotiation proceedings by written notice to the other party setting forth the particulars of the dispute. Upon receipt of such notice, the parties agree to meet in good faith within [\*] of the date of such notice, to jointly define the scope of and a method to remedy the dispute. If such meeting does not resolve the dispute, then senior management of Solectron and Brocade are authorized to and will meet personally within [\*] to confer in a bona fide attempt to resolve the matter. The parties will use diligent efforts to arrange meetings or telephone conferences as needed to facilitate these negotiations. If such dispute remains unresolved following the parties' undertaking of the actions set forth in this Section 16, the parties shall

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have the right to avail themselves of all other rights and remedies, whether available under this Agreement, at law or in equity. Each party's rights to terminate this Agreement for breach subject to the notice period set forth in Section 15 shall apply regardless of the parties' discussions under this Section 16.

17. Limitation of Liability.

17.1 Consequential Damages Waiver. EXCEPT FOR BREACHES OF [\*], NEITHER PARTY SHALL HAVE ANY LIABILITY TO EACH OTHER OR ANY OTHER THIRD PARTY FOR ANY LOST PROFITS, LOST DATA, LOSS OF USE OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED THEREBY, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, AND IRRESPECTIVE OF WHETHER SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

17.2 Failure of Essential Purposes. THE LIMITATIONS SET FORTH IN THIS SECTION 17 SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

18. Indemnification.

18.1 Solectron Indemnity. Solectron will defend, indemnify and hold Brocade and its officers, directors and employees harmless (inclusive of reasonable attorneys' fees) from and against any claim, suit, action or proceeding brought against Brocade arising from, relating to or in connection with: (a) Solectron's breach of any licenses granted to Solectron under this Agreement; (b) [\*], to the extent that the claim is based on (x) facts which constitute a non-conformance with [\*] or (y) [\*] provided or developed by Solectron; (c) acts, errors or omissions by or negligence of Solectron, its employees, officers, agents or representative of any of them; (d) any third party claims founded on theories of [\*] related to the Products, to the extent that the claim is not based on elements of the Products manufactured in conformance with the Specifications; or (e) [\*] the Products or Solectron Technology of [\*] not based on the [\*] provided by Brocade. [\*] In the event the Solectron Technology and/or the Products are held or believed by Solectron to infringe, or Brocade's use of the Solectron Technology and/or the Products is enjoined[\*] [\*]

18.2 Brocade Indemnity. Brocade will defend, indemnify and hold Solectron and its officers, directors and employees harmless (inclusive of reasonable attorneys' fees) from and against any claim, suit, action or proceeding brought against Solectron arising from, relating to or in connection with: [\*] (c) acts, errors or omissions by or negligence of Brocade, its employees, officers, agents or representative of any of them[\*] In the event the Product or Brocade Technology or Ancillary Technology are held or believed by Brocade to infringe, or Solectron's manufacture of the Product or use of the Brocade Technology and/or the Ancillary Technology is enjoined, Brocade will have the option[\*] to: (x) replace or modify the relevant Product, Brocade Technology and/or the Ancillary Technology with non-infringing technology, software or hardware which is functionally equivalent or superior for use by Solectron on a going forward basis; or (y) obtain a license for Brocade to continue using the Product, Brocade Technology and/or the Ancillary Technology. Brocade's obligations hereunder will be void as to any Product, Brocade Technology and/or the Ancillary Technology modified by Solectron (without Brocade's approval), solely to the extent such modification is the alleged basis of the suit. [\*]

19. Export. Solectron agrees that:

19.1 Solectron will provide Brocade the trade management component of Solectron's customer order fulfillment supply chain offerings;

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19.2 From time to time, upon request by Brocade, Solectron will review Brocade's export databases and processes to ensure that such databases and processes meet all legal requirements

19.3 Solectron shall assume the [\*].

19.4 Solectron will perform routed transactions for Brocade.

19.5 Upon request by Brocade, Solectron will provide Brocade with comprehensive ongoing support regarding international trade matters, including but not limited to support for new site start-ups, [\*]

19.6 Solectron will provide Brocade with significant access to Solectron's trade experts.

19.7 Solectron will provide Brocade with comprehensive ongoing support regarding the following key issues: [\*], accurate record-keeping of all export document packets, [\*] on all switches and FRUs, and Manufacturing affidavits for all Brocade Products and FRUs.

20. Environmental Requirements. Solectron warrants and agrees that:

20.1 Product Content. All Products and their packaging will comply with Brocade's general specifications for environment (if any), and, for purposes of this Agreement, such specifications are part of the Specifications for the Product.

20.2 Shipment. All Products will be shipped in conformance with all applicable national and international [\*] including, where applicable, regulations regarding [\*], including regulations regarding [\*]. All packaging materials, including pallets, will be [\*] and comply with national and international regulations regarding [\*] where applicable.

20.3 [\*]. Each [\*] contained in the Product is on the inventory of [\*] compiled and published by the [\*] pursuant to the [\*].

20.4 Solectron will provide complete and accurate [\*] for Product prior to shipment.

20.5 [\*] Information. Solectron will furnish Brocade any information reasonably requested by Brocade to confirm compliance with applicable laws or to determine the [\*] effects of materials included in the Products or in its packaging.

20.6 Solectron will comply with all applicable laws governing import or export of Products.

20.7 Disposition of Excess Materials. Solectron will [\*] of any excess or waste materials generated from manufacture of Product (including damaged or nonconforming product or materials) in compliance with the provisions of this Agreement, applicable laws and any specific instructions received from Brocade.

20.8 Environment. Solectron will continuously implement and maintain processes and policies designed to protect [\*] at any facility at which Product manufacturing operations are performed under this Agreement.

20.9 Ozone Depleting Substances. Solectron hereby certifies that neither Product, nor any part, piece or component of any Product [\*]:

(a) contains any [\*] as those terms are defined in [\*] and implementing regulations of the United States [\*], as now in existence or hereafter amended; or

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(b) has been manufactured with a process that uses any  
[\*]

21. General.

21.1 Insurance. Each party will maintain workers' compensation and comprehensive general liability insurance (including product liability coverage) adequate to cover its obligations under this Agreement.

21.2 Assignment. [\*] will assign this Agreement, in whole or in part, or any obligations or rights hereunder (except the right to receive payments), except with the prior written consent of [\*], which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, Brocade will have the right to assign or otherwise transfer this Agreement without such consent (i) to a subsidiary, parent, or entity under common control with Brocade [\*], or (ii) to a successor party in the event of a merger, acquisition, sale, transfer or other disposition of all or substantially all of the assets of Brocade [\*]. Subject to the foregoing, this Agreement will inure to the benefit of each of the party's successors and assigns.

21.3 Relationship of the Parties. The parties to this Agreement are independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

21.4 Publicity. Solectron will not publicize or disclose the terms of this Agreement to any third party without the prior written consent of Brocade.

21.5 Waiver. No term or provision hereof will be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, will constitute a consent to, waiver of, or excuse of any other, different or subsequent breach by either party.

21.6 Severability. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible the same economic effect as the original provision and the remainder of this Agreement will remain in full force.

21.7 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement.

21.8 Choice of Forum. This Agreement will be deemed made and entered into in Santa Clara County, California. Except for either party's right to apply to any court of competent jurisdiction for a temporary restraining order and/or a preliminary injunction to enjoin the other party from misappropriating or infringing any Intellectual Property Rights of the moving party, the parties hereby submit to the exclusive jurisdiction of, and waive any venue objections against, the United States District Court for the Northern District of California, San Jose Branch and the Superior and Municipal Courts of the State of California, Santa Clara County, in any litigation arising out of this Agreement. The parties hereby irrevocably waive any and all claims and defenses either might otherwise have in any action or proceeding in any of such courts based upon any alleged lack of personal jurisdiction, improper venue, forum non conveniens or any similar claim or defense.

21.9 Notices. Any notice provided for or permitted under this Agreement will be treated as

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having been given when (a) delivered personally, (b) sent by confirmed telex or telecopy, (c) sent by commercial overnight courier with written verification of receipt, or (d) mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address set forth below, or at such other place of which the other party has been notified in accordance with the provisions of this Section.

If to Brocade: Brocade Communications Switzerland SarL.  
29, Route de l'Aeroport  
Case Postale 105  
CH-1215 Geneva 15, Switzerland  
Attn.: General Counsel

With a copy to: Brocade Communications Systems, Inc.  
1745 Technology Drive  
San Jose, CA 95110  
Attn.: General Counsel

If to Solectron: Solectron Corporation  
847 Gibraltar Drive, Bldg. 5  
Milpitas, CA 95035  
Attn.: Corporate Legal Department

Such notice will be treated as having been received upon the earlier of actual receipt or five (5) days after posting.

21.10 [\*]

21.11 Amendment. This Agreement may be amended or supplemented only by a writing that refers explicitly to this Agreement and that is signed on behalf of both parties.

21.12 Interpretation. No party will be deemed the drafter of this Agreement, which Agreement will be deemed to have been jointly prepared by the parties. If this Agreement is ever construed, whether by a court or by an arbitrator, such court or arbitrator will not construe this Agreement or any provision hereof against any party as drafter. The Section and other headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning and/or interpretation of this Agreement. It is the intent of the parties that this Agreement and its addenda will prevail over the terms and conditions of any purchase order, acknowledgment form or other instrument. In the event of a conflict between the terms of this Agreement and the terms contained in any addenda to this Agreement, the terms of the addenda will be controlling. Addenda will not be binding until executed by authorized representatives of each party.

21.13 Entire Agreement; Counterparts; Fax Signatures. This Agreement, including all exhibits to this Agreement, constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior and/or simultaneous representations, discussions, negotiations and agreements, whether written or oral. This Agreement may be executed in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument. The parties agree that facsimile signatures of the parties will be binding.

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\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first written above.

SOLETRON CORPORATION

BROCADE COMMUNICATIONS SWITZERLAND  
SARL

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL



EXHIBIT A  
PRODUCTS

PRODUCT / PART NAME	BROCADE PART NUMBER	UNIT PRICE

EXHIBIT B  
ANCILLARY TECHNOLOGY TERMS AND CONDITIONS

1. All tools, tooling equipment, test equipment and other materials furnished to Solectron by Brocade or paid for by Brocade ("Brocade Property" or "Ancillary Technology") in connection with this Agreement will be clearly identified by Solectron and will remain the property of Brocade and will be (a) clearly marked and remain the personal property of Brocade, and (b) kept free of liens and encumbrances. Solectron will allow Brocade personnel onto Solectron's premises upon 24 hours notice to allow Brocade to inspect the condition of the Brocade Property or reclaim possession of the Brocade Property.

2. Brocade [\*] Brocade Property or Ancillary Technology to Solectron[\*], and Solectron agrees that it will not issue any negotiable bills or receipts on the Brocade Property or Ancillary Technology and will neither file nor permit any lien or other claim to be filed against any of the Brocade Property or Ancillary Technology. In the event that such a lien or claim is filed that is created by or on behalf of Solectron, Solectron will promptly notify Brocade and will take all action necessary to cause such lien or claim against the Brocade Property or Ancillary Technology to be released or otherwise removed within [\*]. If such lien or claim is not released within such [\*], then Brocade may deem that Solectron has purchased the Brocade Property or Ancillary Technology at the [\*] cost for such Brocade Property or Ancillary Technology and such amount will be immediately payable to Brocade. Solectron will hold Brocade Property and Ancillary Technology at its own risk and will not modify the property without the written permission of Brocade, provided, however, that in the event the property is lost, damaged or destroyed, Solectron's liability for the Brocade Property or Ancillary Technology is limited to [\*] the Brocade Property or Ancillary Technology. Solectron agrees that Brocade property will be used by Solectron only to perform Solectron's obligations under this Agreement. Upon Brocade's request, Solectron will redeliver the property to Brocade in the same condition as originally received by Solectron with the exception of reasonable wear and tear.

3. Unless otherwise agreed to in writing by Brocade, all Brocade Property or Ancillary Technology will be insured by Solectron, at Solectron's expense, while in its custody or control in an amount equal to the replacement cost thereof, with loss payable to Brocade. Solectron will execute and deliver to Brocade such evidence of insurance relative to property furnished by Brocade to Solectron as may be requested reasonably by Brocade.

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EXHIBIT C  
SLA (FOR REFERENCE ONLY)

[TO BE ATTACHED]

Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

EXHIBIT D  
QUALITY PLAN

Solectron shall comply with the terms and conditions of Brocade's quality procedure document identified in Brocade's Agile system as:

[\*] MANUFACTURING SUPPLIER QUALITY PROCEDURE

- -----

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Brocade Manufacturing Agreement

BROCADE CONFIDENTIAL

EXHIBIT D  
BROCADE  
MANUFACTURING SUPPLIER QUALITY PROCEDURE  
OPERATIONS

REVISION #	DATE	DOCUMENT REVISION HISTORY DESCRIPTION
Draft	2/11/03	Written by RS and Team

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1.0 DESCRIPTION

1.1 This procedure outlines the generic product and process quality requirements for key commodity parts supplied to and/or manufactured for Brocade, Inc.

2.0 SCOPE

2.1 This procedure applies to [\*] to Brocade, Inc. It may also be applied, at Brocade's discretion, to products specifically developed for Brocade by [\*] and other [\*].

2.2 If a conflict arises between any requirement outlined in this procedure and a specific supplier contract signed by Brocade Inc., the [\*] take precedence.

3.0 REFERENCES

3.1 Acceptability of Printed Boards (Class 2) ANSI/IPC-A-600E (latest revision)

3.2 Acceptability of Printed Circuit Assemblies (Class 2) ANSI/IPC-A-610B (latest revision)

3.3 ANSI/IPC 7711 and 7721 Suggested Guidelines for Modification, Rework and Repair of Printed Boards and Assemblies (Level C)

3.5 ANSI/IPC-T-50D (Terms and Definitions for Interconnecting and Packaging Electronic Circuits)

3.6 ANSI Z1.4 Sampling tables

3.7 Brocade Product Quality Plan (Product Specific)

3.8 Manufacturing/contract agreement

4.0 PROCEDURE

4.1 VALUE PROPOSITION

4.1.1 The Brocade supply chain value proposition is to establish supplier partnerships characterized by the following:

- Open and honest communication
- Strong "values based" management
- On-time delivery of quality products
- End user customer focus
- Timely data driven decision making
- Mutual respect and responsiveness
- Ongoing mutual total life cycle cost reduction

4.1.2 We believe that relationships with these characteristics will enable us to establish a world class supply chain management system and provide products and services that consistently meet or exceed our customer's requirements.

[FLOW CHART]

4.1.3 We believe that everyone in a supply chain is a customer for the work done by an "upstream" internal employee or external supplier. As such, you have a right to expect good work from them and an obligation to deliver work of high caliber to your internal and/or external customer.

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4.1.4 Sustained quality excellence requires continuous process improvement. This means, regardless of how good present performance is, it can become even better. "You can manage what you can measure." Align what you measure to the individual behaviors you want to support.

#### 4.2 SUPPLIER PARTICIPATION

4.2.1 Contract manufacturing and other key suppliers are expected to [\*] in the Brocade product development process. We depend on your [\*] to optimize the design, quality, cost and delivery of Brocade products. Brocade will formally engage suppliers, through meetings and dialogue, throughout the product life cycle. Appendix A outlines a generic product qualification process flow.

#### 4.3 MANAGEMENT COMMUNICATION

4.3.1 Our goal is to create a communication process to establish and sustain mutually profitable and rewarding business relationships. We want to become your [\*], and we want you to become our [\*].

4.3.2 To this end, Brocade will participate in periodic management communication meetings with key suppliers. These meetings will include a review of quality, cost and delivery performance metrics and ongoing improvement plans.

4.3.3 Specific Quality metrics and requirements are identified with in the Brocade Product Quality Plan's. Additionally, process parameters and controls may be included within each plan.

#### 4.4 WORKMANSHIP STANDARDS

4.4.1 Printed Wiring Boards shall meet the requirements of [\*], latest revision, Class [\*].

4.4.2 Printed Circuit Assemblies shall meet the requirements of [\*], latest revision, Class [\*].

4.4.3 [\*] Requirements for Soldered Electrical and Electronic Assemblies and HDBK-001 (Handbook and guide to supplement [\*] with amendment [\*]).

4.4.4 [\*]. Supplier specific workmanship standards should be identified and communicated to Brocade, Inc. prior to production.

4.4.5 Brocade Cosmetic Specification 95-0000001-01.

#### 4.5 REPAIR AND REWORK

4.5.1 [\*] (Terms and Definitions for Interconnecting and Packaging Electronic Circuits) contains the following definitions:

Repair(ing): The act of restoring the functional capability of a defective article in a manner that precludes compliance with applicable drawings or specifications.

Rework(ing): The act of reprocessing non-complying articles, through the use of original or alternate equivalent processing, in order to bring the article into compliance with applicable drawings and specifications.

4.5.2 [\*] (Suggested Guidelines for Modification, Rework and Repair of Printed Boards and Assemblies) categorizes modifications, rework and repairs into [\*] levels ([\*]).

4.5.3 Brocade will accept PWB fab and assemblies that have been [\*]), using Level [\*] techniques outlined in the above. Level [\*] rework techniques may be authorized by Brocade, only through prior Brocade Engineering or Quality approval.

4.5.4 All [\*] must meet the workmanship requirements of [\*] and/or [\*]. Any [\*] method not contained in [\*] must be authorized by Brocade Quality before being used on any Brocade product.

#### 4.6 DESIGN FOR MANUFACTURABILITY (DFM) AND VALUE ENGINEERING

4.6.1 [\*] shall conduct Design for Manufacturability analysis for every new Brocade board design and/or significant ECO. [\*] should participate in these reviews, as appropriate and/or conduct similar reviews for [\*] products.

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4.6.2 Suppliers are expected to initiate and/or participate in periodic value engineering efforts to reduce the current and future Brocade cost of goods sold (COGS). The timing and content of this activity shall be determined on a [\*] basis.

4.7 AUTHORIZED VENDOR LIST (AVL)

4.7.1 Contract manufacturers and other partners who supply critical components to Brocade must use Brocade's AVL, as required. Notification of this requirement will be made in advance.

4.7.2 Brocade will consider AVL change recommendations from any supplier. Change requests must be approved in writing by Brocade prior to implementation. This is typically done through Brocade's Agile Document System.

4.7.3 Brocade reserves the right to [\*] or [\*] at no additional cost of any materials supplied with [\*] content. This will be considered a serious offense and may have a negative impact on the offending supplier relationship with Brocade.

4.8 PROCESS QUALIFICATION & CONTROLS

4.8.1 Brocade may require certain documentation from selected suppliers prior to commencing production.

4.8.2 The following supporting documentation may be requested:

- Supplier qualification & performance monitoring process
- Production process flow diagram
- Product qualification testing plan and results (PVT)
- Supplier version of BOM's and AVL's used to produce Brocade products
- Process characterization documentation [e.g. SMT stencil, solder paste, SMT and through-hole reflow, board cleaning, rework, etc.]
- Production test specifications and instructions, and in-process quality/control plan
- Assembly process flow diagram
- Gage Repeatability and Reproducibility Studies (Gage R&R: where/when applicable)
- First Article Inspection
- Other documentation as appropriate

4.9 TEST/QUALITY DATA COLLECTION & REPORTING

4.9.1 Suppliers will be required to provide periodic test and inspection yield information to Brocade, upon request. Typical (but not limited to the following) test and inspection results requested would be:

Incoming Inspection	Test Failure Pareto Charts [debug/rework]
In-circuit Test	Quality Inspection Pareto Charts
Functional Test	Final Inspection Results
Environmental Stress Screening	Corrective Action Status
In-Process Audit Results	Third Party Audit Results

4.9.2 Performance reporting charts and graphs should generically include the following information:

- Goals: benchmarks of best in class performance
- Targets: interim goal for a given period
- Actions: actions that are necessary to realize these improvements with owners assigned and planned completion dates
- Progress: measured by relative improvements (delta) each period

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Brocade Communication Systems Inc.  
Page 5 of 8

Document: 99-0000112-01  
Revision: A  
Revision Date: 2/11/03

4.10 PRODUCT INSPECTION / PROCESS AUDITING

- 4.10.1 Brocade reserves the right to conduct [\*] product inspection and/or process audits of supplier facilities engaged in producing supplied parts or Brocade final products. These activities would be conducted with [\*] of the respective supplier. Discrepancies found during these audits will result in a Corrective Action Request (CAR) (see Paragraph 4.12 below.)
- 4.10.2 Brocade also reserves the right to conduct source inspection at the supplier site. This inspection process, if implemented, would typically include the following activities:
- Inspection of in process and/or finished product against all appropriate workmanship standards.
  - Acceptance sampling in accordance with ANSI Z1.4 (supercedes Mil Std 105), Single Sampling Plan for 1% AQL, Level II, normal inspection level.
  - As an example, a random sample of 13 units would be inspected for critical workmanship attributes from a lot of 100 units. The lot would be accepted with zero defects found and rejected with one or more defects found. The supplier would be responsible to conduct a 100% screen of the entire lot for the defective attribute and re-submit the lot for another sample inspection.
  - Reduced inspection would occur when production is at steady state, ten consecutive lots pass at normal inspection levels, and the total number of defects in the sample from those ten lots are equal to or less than the applicable number given in ANSI Z1.4. Acceptance of five additional lots at reduced level would qualify the part number for dock-to-stock. Conversely, if two of five consecutive lots were rejected, a tightened inspection would be conducted until five consecutive lots were accepted. At that point, the part would start the qualification process over at the normal inspection level.
- 4.10.3 Details of the source inspection process and qualification standards will be further defined and agreed upon prior to implementation with selected suppliers.

4.11 RETURN MATERIAL AUTHORIZATION (RMA) PROCESSING

- 4.11.1 Brocade will contact suppliers with RMA requests via telephone, e-mail and/or fax, depending upon the specific arrangements made.
- 4.11.2 Unless otherwise specified, suppliers shall provide RMA numbers to Brocade within [\*] from receipt of the request.
- 4.11.3 Suppliers shall repair or replace the defective part within [\*] of receipt of the defective product.
- 4.11.4 Suppliers shall maintain records of all RMA requests and provide in-process and completion status of Brocade RMA's.

4.12 CORRECTIVE ACTION REQUESTS (CARS)

- 4.12.1 Brocade will issue a Corrective Action Request (Appendix B) whenever a discrepant product or unsatisfactory supplier process condition is discovered. The CAR Form may be transmitted to the supplier via e-mail or fax.
- 4.12.2 Unless otherwise specified, suppliers shall acknowledge receipt and provide a preliminary assessment and immediate corrective action of the discrepancy within [\*] of receipt. Unless otherwise specified, the preventative measures shall be completed and the documentation submitted no later than [\*] of a CAR receipt.

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Appendix A:

Standard Product Qualification Process Flow

[FLOW CHART]

Brocade Communication Systems Inc.  
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Revision: A  
Revision Date: 2/11/03

Appendix B: Corrective Action Template (8D)

CLOSED LOOP CORRECTIVE ACTION FORM

CUSTOMER AFFECTED                      BROCADE PART NUMBER                      CUSTOMER MODEL NUMBER                      QTY:

STEP 1                      INTERNAL TEAM MEMBERS                      EXTERNAL TEAM MEMBERS

STEP 2                      DESCRIBE THE PROBLEM                      DATE:

STEP 3                      ROOT CAUSE ANALYSIS                      DATE:

STEP 4                      CONTAINMENT PLAN                      DATE:

STEP 5                      CORRECTIVE ACTION PLAN                      DATE:

STEP 6                      VERIFICATION OF CORRECTIVE ACTION                      DATE:

STEP 7                      PREVENT RECURRENCE                      DATE:

STEP 8                      CONGRATULATE TEAM                      DATE:

-----

CLCA#	Status:	Target Closure Date:	Customer Ref. No.
-----			
BRC-MMDDYY	OPEN		If applicable
-----			

EXHIBIT E  
DOAS AND MISSHIPMENTS

[\*]

DOAS AND MISSHIPMENTS:

Notwithstanding the terms and conditions in Sections 7.2 and 14.2 of the Agreement, in the event that a Product is rejected and returned to Solectron by Brocade [\*] because (a) such Product was [\*] by, or on behalf of, Solectron (a "Misshipment"), or (b) such Product is found to be dead on arrival (a "DOA"), then Solectron shall: (i) [\*] for the return of such Product; (ii) [\*] such Product so that it is fully functional, meets the Specifications, and saleable as new; and (iii) [\*] such Product [\*] or until material [\*] by Brocade, whichever is less. In addition, Solectron agrees to [\*] all Misshipments and DOAs and to provide Brocade, on a regular basis, a [\*] regarding such Misshipments and DOAs. The Parties agree to use their best efforts to [\*] Misshipment and DOA issues and [\*] processes to reduce such issues.

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EXHIBIT F  
SOLECTRON PREFERRED SUPPLIER LIST

The following is the Solectron PSL as of the Effective Date:

[TO BE ATTACHED]

Brocade Manufacturing Agreement

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EXHIBIT G  
PROCUREMENT RESPONSIBILITY TABLE

[\*]

[\*]

[\*]

[\*]

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Brocade Manufacturing Agreement

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EXHIBIT H  
EXCESS AND OBSOLETE MATERIALS

DEFINITIONS:

"Excess Inventory" means on-hand component inventory purchased exclusively for the Brocade account that is in excess of [\*] demand.

"Obsolete Inventory" means [\*] inventory and [\*] inventory on-order with NO [\*] within the Obsolete Forecast Horizon.

"Obsolete Forecast Horizon" means a period in excess of [\*] for which there is no [\*] for inventory, unless otherwise mutually agreed to by Brocade and Solectron.

DISPOSITION OF EXCESS AND OBSOLETE MATERIAL

ON HAND EXCESS MATERIAL:

For Excess Inventory, Brocade will [\*] such Excess Inventory (the "Inventory [\*]") (by way of example only. [\*]) within [\*] of written notification by Solectron.

[\*]

The Excess Inventory will [\*] in Solectron's [\*]. The value of the components will continue to show in [\*], provided, however, that [\*] shall be calculated by [\*] of such Excess Inventory (example: [\*]) from Brocade's [\*]. [\*]

Solectron reporting of inventory balances to Brocade shall show an itemization of inventory components that equals the [\*] with a line at the bottom of the report which [\*] and which shows a [\*].

On a [\*] basis per a mutually agreeable schedule, (1) Solectron will refresh the E&O analysis to reflect any changes in [\*], (2) the parties will perform an evaluation of the reserve to cover the [\*], if any, and (3) the parties shall perform a [\*]. Solectron shall [\*] Brocade for any [\*] if overall exposure [\*] over [\*], or alternatively, within [\*] of receipt of a written accounting from Solectron, Brocade would [\*] Solectron [\*] to [\*] if [\*] over [\*].

For on hand inventory that is excess to [\*], Brocade will [\*] as obsolete material at [\*] (the [\*]% intended to include [\*]).

OBSOLETE MATERIAL:

For Obsolete Material, Brocade will [\*] within [\*] of written notification of by Solectron that such material [\*]. The [\*] for each component to be scrapped will be the [\*] of such material [\*] (the [\*]% intended to include [\*]).

Brocade may direct Solectron to utilize all or a portion of the [\*] (defined above) to [\*]

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If Brocade feels there may be a future need for Obsolete Inventory, Brocade could require Solectron to [\*] such [\*] for up to [\*] (unless a longer term is agreed to by the parties) from written notification by Solectron that such material has become Obsolete Inventory.

WAREHOUSE FEE:  
[\*] indicated as follows:

Penang: [\*]%  
Columbia: [\*]%  
Milpitas: [\*]%

REPORTING:

Once per [\*], Solectron will prepare a report that will show Brocade [\*], its [\*], and its [\*] to a [\*] demand forecast horizon. This report will itemize the parts that are [\*] and [\*] (no gross requirements), and will split the [\*] between [\*] materials.

On a [\*] basis, Solectron will itemize all activity to [\*]. Any increases or decreases in the [\*] will be noted. Any utilization of any [\*] shall be [\*]. Solectron shall not make any utilizations without the written direction and authorization of Brocade. Certificates of destruction will be provided for scrap transactions, if requested by Brocade.

ENGINEERING CHANGE ORDER MANAGEMENT

For any engineering change order ("ECO") submitted by Brocade to Solectron, Solectron shall provide Brocade[\*] with an exposure analysis, which exposure analysis shall [\*] a comprehensive list of all [\*], and the [\*] Brocade, resultant from the implementation of such ECO.

Upon written approval by Brocade, Solectron shall implement such ECO. Within [\*] of Solectron's implementation of such ECO, Solectron shall provide Brocade with a final analysis of the [\*] due to the Brocade ECO.

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EXHIBIT I  
SOLELECTRON PATENTS

[TO BE ATTACHED]

Brocade Manufacturing Agreement

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Amendment No. 2  
Purchase Agreement

This Amendment No. 2 ("the Amendment") to the Purchase Agreement (the "Agreement") dated January 25, 2000 by and among Brocade Communications Systems, Inc., a corporation organized under the laws of the State of Delaware, U.S.A., and having its principal place of business at 1745 Technology Drive, San Jose, California 95110 ("Brocade-US"), and Brocade Communications Switzerland SarL., a corporation organized under the laws of Geneva, and having its principal place of business at 29-31 Route de l'Aéroport, Case Postale 105 CH-1215 Geneva 15, Switzerland ("Brocade-Switzerland"), (collectively "SUPPLIER") and EMC Corporation, ("EMC"), a Massachusetts corporation, is made this 20 day of December 2002 by and between SUPPLIER and EMC and commences on the date accepted and executed by SUPPLIER("Effective Date"). [\*]

WHEREAS, the parties wish to amend the Agreement so as to 1) modify the responsibility of SUPPLIER 2) define the process for Forecasts, Purchase Orders, 3) modify certain change order terms, 4) modify the assignment terms and 7) add new Products and pricing for these Products.

NOW THEREFORE, IN CONSIDERATION OF THE ABOVE AND THE OTHER RESPECTIVE PROMISES OF THE PARTIES SET FORTH HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

1)) Add: Section 1.8, the following new definition is added as Section 1.8:

"SUPPLIER Fiscal Year" means the fiscal year for SUPPLIER, which shall commence on the first day of the month of November and conclude on the last day of October.

2)) Add: Section 1.9, "Qualified Product" means the Brocade Product that has been shipped to EMC in compliance with the EMC configuration of such Products. Qualified Products may include but are not limited to those EMC products that are made generally available. The parties agreed that general availability is not a condition of precedent for the products to be considered Qualified Products(s).

3)) Section 3.1 of the Agreement is hereby amended and replaced by the following:

3.1 Subject to the provisions of subsection 3.2, 3.3, 3.4, 3.5 and 3.6, the initial term of this Agreement commences on the Effective Date and continues in effect for a period of two (2) years, unless sooner terminated pursuant to the termination provisions in this Agreement. Thereafter, this Agreement may be renewed upon mutual agreement for successive one (1) year terms, unless the Agreement is cancelled by either EMC or

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SUPPLIER by notifying the other party in writing of its intent to do so at least [\*] prior to the end of the initial term or any renewal term.

4) Section 6.4 is replaced in its entirety with the following:

Payment terms for all Products sold to EMC by SUPPLIER shall be either net [\*] or [\*]% discount net [\*] as the parties have agreed from [\*]. 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 Systems, Inc.  
[\*]  
San Jose, CA 95161-9026

5) SECTION 7 OF THE AGREEMENT IS HEREBY AMENDED AND REPLACED BY THE FOLLOWING:

7.1 FORECASTS. EMC agrees to use commercially reasonable efforts to provide SUPPLIER with good faith [\*] rolling forecasts for [\*] of EMC's estimated Product(s) and Spare(s) purchase requirements. EMC's forecasts are for planning purposes only. EMC is under [\*] and if EMC [\*] quantities, EMC shall have [\*] (except as detailed in this Agreement) [\*] unless otherwise agreed to [\*] in writing. Accordingly, any commitments to buy are [\*] as defined in Section 7.2 below and as detailed in this Agreement. SUPPLIER shall use [\*] efforts to establish a supply line that results in sufficient material being available at the beginning of each [\*] to support EMC's [\*] rolling forecast. SUPPLIER shall respond [\*] within [\*] of [\*] of EMC's forecast if it cannot support the requested quantities.

7.2 PURCHASE ORDERS. EMC shall submit a binding, written purchase order for all Product(s) and Spare(s) ordered from SUPPLIER. EMC may transmit purchase orders by facsimile and/or e-mail. Purchase orders shall specify part numbers, Product(s) and/or Spare(s) model numbers, quantity ordered, shipping destination, carrier, and delivery dates, which dates shall be no more than [\*] from the date of [\*]. SUPPLIER shall acknowledge in writing to EMC its receipt of such purchase order within [\*] and acceptance or rejection of such purchase order within [\*] of SUPPLIER's receipt of each purchase order. [\*] If within [\*] 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 or SUPPLIER's order acknowledgment, 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

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the other party in writing. These purchase order terms may be modified per specific programs included for Products in Exhibit A.

7.3 LEAD-TIME, RESCHEDULING AND CANCELLATION.

7.3.1 LEAD-TIME. Lead-time for all Purchase Orders covered under this Agreement will be [\*] from [\*] In some cases, EMC may request delivery sooner than [\*] lead-time stated herein. In such cases, SUPPLIER will make [\*] effort to support these inside lead-time requests

7.3.2 RESCHEDULING. EMC shall have the right and ability to reschedule a purchase order [\*]as long as the total quantity of each Product stated on the purchase order does not change within the SUPPLIER Fiscal Quarter. Reschedules that reduce the quantity of each Product on the purchase order within the current SUPPLIER Fiscal Quarter are restricted to the terms documented below.

-----

Request made X business days before PO delivery date	Reschedule quantity allowed*
[*] days	[*]
[*] days	[*]

\*If any reschedule results in reductions to the PO quantities for the current SUPPLIER Fiscal Quarter, then EMC must reschedule such reduced quantities for delivery within [\*] after the end of the current quarter unless product is cancelled..

7.3.3 CANCELLATION. EMC shall have the right to cancel delivery of any purchase order by payment of the cancellation liability set forth below[\*]SUPPLIER's consent, provided SUPPLIER receives EMC's written notice [\*] prior to shipment. If no such notice is given and received, EMC is liable for the purchase orders.

-----

X business days prior to PO delivery date	EMC's liability
[*] days	[*]
[*] days	[*]
[*] days	[*]

FOOTNOTE: All material referenced in the cancellation section beyond [\*] days is at [\*]

7.4 PURCHASE ORDER NUMBERS. Purchase order numbers shall be referenced on all correspondence, invoicing, and packing slips relating to each order.

7) Section 8.8, shall be replaced in its entirety with the following:

\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

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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

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preference criteria as applicable; iii) harmonized scheduled tariff classification number; and iv) Export Control Classification Number ("ECCN").

8) Section 24.8 of the Agreement is hereby amended and replaced by the following:

24.8 ASSIGNMENT. Neither party may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld or delayed, provided that either party may withhold consent to assignment to a third party which the party reasonably believes is or is likely to be a competitor, for any reason or no reason. 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. Any assignment of rights shall not work as a novation of obligations hereunder without written agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 2 to OEM Purchase and License Agreement by their duly authorized representatives. Such execution of the Amendment may be in three counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

Executed and agreed to:  
BROCADE COMMUNICATIONS SYSTEMS, INC.  
(Brocade "SUPPLIER")

By: \_\_\_\_\_  
Name: Jack Cuthbert  
Title: VP Worldwide Sales

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

BROCADE COMMUNICATIONS SWITZERLAND SARL.  
(Brocade "Supplier")

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

Print Name: Philippe Bernard  
Title: Director, EMEA Sales & Support  
Place: Geneva, Switzerland  
Date: \_\_\_\_\_

Executed and agreed to:  
EMC CORPORATION (EMC)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

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[\*]

[\*] EMC Custom Enterprise Bundle: (EF,PM,FW,T) [\*]  
[\*]

EMC Unique Products as described in section 7.3.3 (as of January 20, 2003):

[\*]

EXHIBIT A1  
PRODUCT AND REPAIR PRICING

PRICING Model #	Description	Unit Price
-----	-----	-----
[*] [*]	64 Port Switch 2Gb, 4 P/S, 2 CP, 64 SWL SFP Software License Keys Enabled: Web Tools, Advanced Zoning Software Maintenance (Note 1) [*] Warranty	[*] [*]
[*]	128 Port Switch 2Gb, 4 P/S, 2 CP, 128 SWL SFP Web Tools, Advanced Zoning Software Maintenance (Note 1) [*] Warranty	[*]
[*] [*]	SWL SFP single (2Gb universal)	[*]
[*] [*]	Blade w/ Media	[*] [*]
[*] [*]	CP Card	[*] [*]
[*] [*]	Power Supply	[*]
[*] [*]	Blower Assembly	[*]
[*] [*]	WWN Card	[*]
[*] [*] [*] [*] [*]	PWR Cord NA PWR Cord UK/IRE PWR Cord CONT EU PWR Cord AUS/NZ PWR Cord Other 230v	[*] [*] [*] [*] [*]

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[*]	Chassis	[*]
[*]	WWN Bezel	[*]
[*]	Chassis Door	[*]
[*]	Port Card Slot Filler	[*]
[*]	Cable Management Tray	[*]
[*]	Trunking License	[*]
[*]	Extended Fabric License	[*]
[*]	Fabric Watch License	[*]
[*]	Performance Monitoring License	[*]
[*]	EMC Software Bundle License (EF,PM,FW,T)	[*]
[*]		
[*]		

EMC Unique Products as described in section 7.3.3 (as of January 20, 2003):

Note 1. The annual fee for Software Maintenance is [\*]. The above price includes the purchase of Software Maintenance for an initial term of [\*], commencing on the date of purchase, and [\*] renewal for a subsequent [\*] term. [\*] Thereafter, Software Maintenance may be renewed for additional [\*] periods[\*] for an annual fee of [\*]

EXHIBIT A2

PRODUCT AND REPAIR PRICING

PRICING Model # -----	Description -----	Unit Price -----
[*]	32 Port Switch 2Gb, 2 P/S, 16 SWL SFP, [*], Color, Label Software License Keys Enabled: Web Tools , Advanced Zoning Software Maintenance (Note 1)	[*]
[*]	SWL SFP 4-pack	[*]
[*]	LWL SFP single	[*] [*]

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[*]	SWL SFP single (2Gb universal)	[*]
[*]	Power Supply FRU, [*]	[*]
[*]	Fan Assembly	[*]
[*]	Quick loop License Upgrade key	[*]
[*]		[*]
[*]	Extended Fabric License upgrade key	[*]
[*]		[*]
[*]	Trunking License upgrade key	[*]
[*]		[*]
[*]	Fabric Watch License upgrade key	[*]
[*]		[*]
[*]	Advanced Performance Monitor	[*]
[*]		[*]
[*]	EMC Software Bundle License (EF,PM,FW,T)	[*]
[*]		[*]
[*]		[*]

Note 1: The annual fee for Software Maintenance is [\*]. The above price includes the purchase of Software Maintenance for an initial term of [\*], commencing on the date of purchase, and [\*] renewal for a subsequent [\*] term. [\*] Thereafter, Software Maintenance may be renewed for additional [\*] periods[\*] for an annual fee of [\*]

\* Certain information on this page has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions.

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Exhibit 12.1

Statement of Computation of Ratio of Earnings to Fixed Charges  
(in thousands, except ratios)

	Six Months Ended		Fiscal Year Ended				
	April 26, 2003	April 27, 2002	Oct. 26, 2002	Oct. 27, 2001	Oct. 28, 2000	Oct. 31, 1999	Oct. 31, 1998
Earnings (loss) from continuing operations before taxes	\$ (157,097)	\$ 36,138	\$ 84,151	\$ 17,802	\$ 88,316	\$ 2,591	\$ (15,111)
Fixed charges from continuing operations							
Interest expense and amortization of debt discount and issuance costs on all indebtedness	6,713	4,670	11,427	--	45	459	557
Interest included in rent	3,845	3,310	6,679	5,507	1,381	428	268
Total fixed charges from continuing operations	10,558	7,980	18,106	5,507	1,426	887	825
Earnings (loss) before taxes and fixed charges	\$ (146,539)	\$ 44,118	\$ 102,257	\$ 23,309	\$ 89,742	\$ 3,478	\$ (14,286)
Ratio of earnings to fixed charges (1)	(13.9x)(2)	5.5x	5.6x	4.2x	62.9x	3.9x	(17.3x)(2)
Coverage deficiency	\$ 157,097	\$ --	\$ --	\$ --	\$ --	\$ --	\$ 15,111

(1) The ratio of earnings to fixed charges was computed by dividing earnings (earnings from continuing operations before taxes adjusted for fixed charges from continuing operations) by fixed charges from continuing operations for the periods indicated. Fixed charges from continuing operations include (i) interest expense and amortization of debt discount and issuance costs on all indebtedness, and (ii) one-third of all rental expense, which the Company considers to be a reasonable approximation of the interest factor included in rental expense.

(2) Earnings were inadequate to cover fixed charges. For the six-month period ended April 26, 2003, and for the year ended October 31, 1998, the Company needed additional earnings of \$157.1 million and \$15.1 million, respectively, to achieve a ratio of earnings to fixed charges of 1.0x.

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER  
PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Gregory L. Reyes, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Brocade Communications Systems, Inc. on Form 10-Q for the fiscal quarter ended April 26, 2003 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition and results of operations of Brocade Communications Systems, Inc.

By: /s/ Gregory L. Reyes  
-----  
Gregory L. Reyes  
Chairman of the Board and  
Chief Executive Officer

A signed original of this written statement required by Section 906 has been provided to Brocade Communications Systems, Inc. and will be retained by Brocade Communications Systems, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

I, Antonio Canova, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Brocade Communications Systems, Inc. on Form 10-Q for the fiscal quarter ended April 26, 2003 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Quarterly Report on Form 10-Q fairly presents in all material respects the financial condition and results of operations of Brocade Communications Systems, Inc.

By: /s/ Antonio Canova  
-----  
Antonio Canova  
Vice President, Finance and  
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to Brocade Communications Systems, Inc. and will be retained by Brocade Communications Systems, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.